

**EL AHORRO INSULAR AND THE SHERIFF OF MANILA, PETITIONERS,
VS. VICTORINO T. AQUINO, RESPONDENT.***G.R. No. 11741. March 18, 1959*

Ponente: LABRADOR, J.

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Attached to the complaint is the contract marked Annex "A" which was executed by the plaintiff and the defendant El Ahorro Insular on September 8, 1933.

In its answer the El Ahorro Insular admits that the plaintiff obtained a loan from the defendant in the amount of P1,000 and that he executed a deed of mortgage over a house and lot belonging to him, which deed is Annex "A" of the plaintiff, but alleges that in accordance with the express provisions of said contract of mortgage, Annex "A", plaintiff became a mortgagor-stockholder of the defendant El Ahorro Insular, and as such he has all the obligations of a mortgagor and at the same time of a stockholder; that the monthly installment of P16.10 paid by the plaintiff represents P11.10 monthly interest on the loan of P1,000 and P5 as quota or installment on 10 shares Series D of the defendant corporation, which 10 shares, at the time of the action, had an actual book value of only P529.46; that because of the enormous losses amounting to 94.7% suffered by the defendant corporation during the war, as a result of the payment by its debtors of pre-war obligations in Japanese military notes that were deposited in the banks and which were later on expressly declared null and void, and of no value, the value of plaintiff's shares after the liberation and as of the date of the opening of the defendant corporation on January 1, 1947 is only P44.63; that because of the false allegations of plaintiff that the mortgage indebtedness amounting to P1,000 had already been fully overpaid, defendant suffered moral damages in the amount of P20,000 and is entitled to attorney's fees amounting to P1,000. Attached to the answer was a copy of the application for extrajudicial foreclosure of the mortgage. The Court of First Instance, after hearing the parties, issued a preliminary injunction prohibiting the extrajudicial sale on foreclosure, upon filing by the plaintiff of a bond of P1,000.

On August 6, 1952, defendant filed a supplementary counterclaim alleging that by reason of the suspension of the extrajudicial foreclosure of the mortgage, defendant has suffered damages in the amount of P155.90, representing the costs of publication and the sheriff's fees and a photostatic copy of a letter. The plaintiff denied the allegations of this supplemental counterclaim on the ground of lack of knowledge of the facts alleged therein.

On July 11, 1954, after trial, the Court of First Instance, Hon. Alejandro J. Panlilio presiding, rendered judgment finding that the personality of the plaintiff as mortgagor is distinct from his personality as subscriber to defendant's stock; that plaintiff without contradiction testified that he did not understand the Spanish language and said contract was never explained to him; and held that the defendant is under obligation to release and cancel the mortgage, and that, therefore, notwithstanding the terms of the agreement plaintiff did not become a stockholder; and therefore it ordered the cancellation of the mortgage. It also enjoined the sheriff of Manila from enforcing the extrajudicial sale of foreclosure. The defendant corporation appealed to the Court of Appeals, but in the latter court the judgment of the Court of First Instance was affirmed. So the case was prosecuted to this Court by a

petition for certiorari.

The defendant El Ahorro Insular is a mutual building and loan association. Its nature and the form and manner in which it conducts its business is expressly outlined in the Corporation Law (now embodied in the General Banking Act), particularly sections 171, paragraph (1), 182, and 188, which reads as follows:

"SEC. 171. All corporations whose capital stock is required or is permitted to be paid in by the stockholders in regular, equal, periodical payments and whose purpose is to accumulate the savings of its stockholders, to repay to said stockholders their accumulated savings and profits upon surrender of their stock, to encourage industry, frugality, and home building among its stockholders, and to loan its funds and funds borrowed for the purpose to stockholders on the security of unencumbered real estate and the pledge of shares of capital stock owned by the stockholders as collateral security, shall be known as building and loan associations, and the words "mutual building and loan association shall" form part of the name of every such corporation * * *."

"SEC. 182. Every loan made by the association must be properly evidenced by a note or other instrument in writing and must be secured by a first mortgage or deed of trust on unencumbered real estate and also by the pledge to the association of shares of stock of the association the matured value of which shall at least equal the amount loaned * * *."

"SEC. 188. At least once a year the profits on all business transacted shall be determined by the board of directors and apportioned to all the shares in each series outstanding at the time of such apportionment on the basis of the actual value of such shares as distinguished from their withdrawal value, but in determining the profits which may be so apportioned, there shall be deducted from the gross earnings of the association the expenses and losses incurred in conducting its business and from the net earnings so obtained there shall be deducted a sum equal to five per centum of such net earnings which sum shall be credited to a reserve account. The said percentage of net earnings shall be credited to the said reserve account until such time as the reserve equals five per centum of the total assets of the association, and the reserve shall be maintained at five per centum of the total assets, and shall be available for meeting losses incurred by the association. The net earnings which remain after making the foregoing deductions shall constitute the profits of the association available for apportionment among the shareholders. In the event of the liquidation of a building and loan association there shall escheat to the State any part of the reserve remaining after charging off all losses and defraying all expenses of liquidation. (As amended by Act No. 3610).

It is in accordance with the above provisions of the Corporation Law that the contract mortgage was executed by plaintiff and the defendant with the following provisions:

I—"LA SOCIEDAD" entrega en este acto al "accionista prestatario" y este declara haber recibido de "la sociedad" en calidad de prestatario la cantidad de MIL Pesos (P1,000.00), moneda filipina, por el tiempo y bajo las condiciones que a continuacion se establecen;

II—"EL ACCIONISTA PRESTATARIO" se obliga a pagar a "la sociedad" "UNA prima anual igual al 1.716% sobre el importe de capital prestado que se pagara por mensualidades anticipadas, juntamente con los intereses del 11.604% sobre el mismo capital y la cuota mensual que mas abajo se estipula;

III—La duracion de éste prestamo sera por el tiempo que sea necesario para que las diez (10) acciones acumulativas de la Serie "C", que el "accionista prestatario" en consideracion al prestamo que se le hace, suscribe en este acto, y cuyo importe se obliga y compromete a pagar en la forma que dispone la Clausula IV de este contrato hasta que con los pagos de cuotas mas los dividendos que se vayan acumulando anualmente, lleguen a su valor par de DOSCIENTOS PESOS (P200.00), moneda filipina, cada una;

IV—El "ACCIONISTA PRESTATARIO" se obliga solamente a pagar a "LA sociedad" en el domicilio de la misma en concepto de cuota por las diez (10) acciones acumulative de la Serie "C" que lia suscrito, la cantidad de cinco pesos (5.00) moneda filipina, mensualmente, comensando desde el mes de SEPTIEMBRE de

1933, y hasta que dichas acciones, con el importe de las cuotas y con los dividendos que se les vayan acumulando a fin de cada año, lleguen a su valor nominal de DOS CIENTOS PESOS (P200.00), moneda filipina, cada una Mientras dure este préstamo el "accionista prestatario" se obliga igualmente a pagar "la sociedad" la cantidad de once pesos con 10/100 (P11.10) moneda filipina, cada mes, en concepto de intereses y prima del capital prestado, los cuales intereses y prima se habrán de pagar en las mismas fechas que las cuotas correspondientes a las acciones por el suscritas, y juntamente con ellas no pudiendo hacer ninguno de los dos pagos por separados;

V—Una vez que el importe de las acciones suscritas por el "accionista prestatario" llegue a cubrir con las cuotas y dividendos, como mas arriba se estipula, el valor par de las mismas, "LA SOCIEDAD" se hará cobro del préstamo que en virtud de la presente ha hecho, con el importe de las CINCO (5) acciones, quedando con ello totalmente extinguida la deuda del "accionista prestatario":

VI—Una vez pagado el préstamo con el importe las CINCO (5) acciones acumulativas de la Serie "C" como se dispone en el parrafo V de este contrato, "LA sociedad" se obliga a entregar al "accionista prestatario" el importe de las otras CINCO (5) acciones que forman el fondo de ahorro, el cual importe será entregado por la "sociedad" en efectivo metálico al "accionista prestatario"; DC—Para garantizar el fiel y puntual cumplimiento de todas las obligaciones, sin perjuicio de la responsabilidad personal, que contrae en virtud de la presente escritura, el "accionista prestatario" por la presente cede y traspasa en calidad de primera hipoteca a favor de "la sociedad", el inmueble de su propiedad que a continuación se describe, a saber:

A parcel of land (Lot No. 17, Sub-Block No. 6 of the consolidation and subdivision plan Pcs-133, being a portion of Lot No. 5, described on the Consolidation and subdivision plan Pcs-89, G.L.R.O. Cadastral Record No. 192), situated in the District of Tondo, City of Manila. Bounded on the N. by Lot No. 15, sub Block No. 6; on the E. by Lot No. 18, sub-Block No. 6, on the S. by Lot No. 19, sub-Block No. 6 and on the W. by Street Lot No. 3 * * * containing an area of 200 SQUARE METERS more or less.

Este inmueble consta en el certificado de transferencia de título No. 43302, Libro No. T-132, Pagina No. 42 de la Oficina del Registrador de Títulos de la Ciudad de Manila, I. F.,

The question that presents itself for resolution by us is, What is the consideration of plaintiff under the contract Annex "A" executed by him and the defendant; is he a mere borrower or mortgagor, or a stockholder-mortgagor at the same time? The resolution of this question is necessary because if he were a mere mortgagor, then plaintiff may not be held responsible for the losses incurred by the corporation. But the contract itself expressly states that the plaintiff is an accionista prestatario or a stockholder-mortgagor. Under the terms of the Law and under the terms of the agreement Annex "A", plaintiff was to be credited with the dividends on his share every year and such dividends, together with the monthly payment of P5, are to accumulate until the same reaches the par value of his share. The claim of the plaintiff that he was a mere mortgagor is refuted by the very contract that he executed. If he did not understand the terms of the agreement it is his fault; besides, the nature of a building and loan association is fixed in the law and these provisions of law the plaintiff could not be excused from knowing.

Both the contract and the law expressly provide that the indebtedness shall be paid with the installments paid on the shares, together with the dividends, and that the loan given shall be paid only when the installments paid on said shares and the dividends thereon had reached their par value. So long, therefore, as the shares do not reach their par value the payment of the indebtedness cannot be considered as made, and whatever losses may be suffered must be borne by any stockholder in proportion to his subscription. The very nature of a mutual building and loan association presupposes that the stockholders, all of them, participate not only in the dividends but also in the losses. A building and loan association is not a bank that gives a loan, where the profits or losses of the bank are not shared by the debtor. Within a building and loan association such profits or losses are shared in by all stockholders, as it would be unjust and unfair for a stockholder to receive the dividends but be free from losses.

The agreement Annex "A", executed in accordance with the terms of the Corporation Law can not be held illegal and must be enforced against the plaintiff stockholdermortgagor according to its terms. There is nothing contrary to morals or public policy in the contract or in the law. Its purpose is to secure mutual help between members. There would be no mutuality unless all stockholders share in losses as well as in the profits.

For the foregoing considerations, the judgment rendered by the Court of Appeals should be, as it is hereby, set aside and another entered, dismissing the complaint of the plaintiff, declaring that he has only paid on account of his share the sum of P507.75 as of November, 1951. The counterclaim of the defendant is also dismissed, except that for the sum of P155.90, which the plaintiff is hereby ordered to pay to the defendant El Ahorro Insular. No costs.

Bengzon, Padilla, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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