

MIGUEL SOLER, ASSIGNEE IN THE VOLUNTARY INSOLVENCY OF THE PURAY PLANTATION & DEVELOPMENT CO., PLAINTIFF AND APPELLEE, VS. SEBASTIAN S. BASTIDA, JUAN VARELA FERNANDEZ, CONCEPCION...

G.R. No. 22822. March 19, 1925

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

As the assignee in insolvency of the Puray Plantation & Development Co., Inc., the plaintiff brings this action against the defendants to recover certain amounts of money.

The defendants answered with a general denial.

After the hearing of the case, the Court of First Instance of Manila rendered judgment, the disposing part of which is as follows:

"Against defendant Concepcion Ayala for the sum of six thousand pesos (P6,000); against defendant Sebastian S. Bastida for the sum of ten thousand fifteen and 80/100 pesos (P10,015.80); against defendant Maria Beltran for the sum of five hundred pesos (P500); against defendant Juan Varela Fernandez for the sum of nineteen thousand one hundred pesos (P19,100); and against defendant Antonio Mestres for the sum of forty-four thousand eight hundred pesos (P44,800), together with legal interest on each and all of said sums from May 4, 1922, the date of the filing of the complaint in this case, with the costs against the said defendants.

"The claim of defendant Bartolome Pons y Pons against his codefendants Concepcion Ayala, Sebastian S. Bastida, Maria Beltran, Juan Varela Fernandez, and Antonio Mestres is hereby dismissed, without any finding as to the costs."

The defendants Sebastian S. Bastida, Juan Varela Fernandez, Concepcion Ayala, and Maria Beltran appeal from said judgment and assign as errors the following:

- The finding that they are liable for the unpaid part of their subscribed shares.
- The rendering of judgment against them for the payment of said unpaid subscriptions.
- The denial of their motion for new trial.

The capital of the Puray Plantation & Development Co., Inc., was originally P1,000. This capital was increased to P101,000. The appellants question the legal validity of this increase. But, in our opinion, the interpretation which can rightly be given to minutes No. 9 of the meeting of the stockholders (fol. 16, Exhibit A), is no other than that it was really and in fact finally resolved to make such increase. The power of the board of directors mentioned in said minutes is not discretionary but correlative with the increase agreed upon and mandatory in view of the final character of the increase of the capital unanimously voted for by the stockholders.

The new shares were subscribed for by the following persons and in the amounts set opposite their names:

May 12, 1920:

Concepcion Ayala

800

Sebastian S. Bastida

400

Juan Varela Fernandez

400

Maria Beltran

400

2,000

May 15, 1920: Antonio Mestres

400

June 1, 1920:

Sebastian S. Bastida

200

Juan Varela Fernandez

200

Antonio Mestres

1,000

1,400

June 10, 1920: Antonio Mestres

400

June 15, 1920:

Sebastian S. Bastida

1,400

Juan Varela Fernandez

1,400

Antonio Mestres

2,800

Bartolome Pons y Pong

200

5,800

A total of

10,000

or P100,00

The board of directors in an extraordinary meeting (minutes No. 10, Exhibit A), the object of which was "to restrict the sale of the shares newly issued" (not to restrict the new issue), resolved to reduce the admitted subscriptions to P20,000. Supposing that this last resolution tends to cancel the unsubscribed shares of the new issue, such cancellation has no legal effect inasmuch as the shares were already subscribed for, and it does not appear that there was any just cause for such cancellation.

"A corporation has no power to release an original subscriber to its capital stock from the obligation of paying for his shares, without a valuable consideration; * * *." (Philippine Trust Co. vs. Rivera, 44 Phil., 469.)

The first assignment of error is therefore of no merit.

The evidence shows that the unpaid subscriptions are the following:

Concepcion Ayala

P6,000.00

Sebastian S. Bastida

19,015.80

Maria Beltran

500.00

Juan Varela Fernandez

19,100.00

Antonio Mestres

44,800.00

If, as we find, the shares subscribed for after the increase of the capital stock were payable and demandable, and it appearing that the unpaid subscriptions are for the amounts above set out, the second assignment of error of the appellants is groundless.

The third error is a consequence of the preceding ones.

The appellee calls the attention to an error committed in the judgment appealed from with regard to the amount which Sebastian S. Bastida must pay, and which, according to the disposing part of the judgment, is P10,015.80, but, as appears from the findings of fact contained in said judgment, must be P19,015.80.

We find that in the course of its original decision the trial court says the following:

" * * * and the court is of the opinion that the coconspirators are not jointly and severally liable for the payment of all the unpaid stock subscriptions, but are only liable upon their own individual unpaid stock subscriptions, as follows:

"Name of subscriber

No. of
shares
subscribed

Par value
of shares
subscribed

Amount
paid

Balance
due

*

*

*

*

*

*

"Sebastian S. Bastida

2,013

P20,130.00

net

P1,114.20

P10,015.80"

There is of course an error in the "balance due," for P20,130 minus P1,114.20 is not P10,015.80, but P19,015.80. And this arithmetical error gave rise to the other error, which is clerical in nature, committed in the disposing part of the judgment appealed from.

A clerical error in the judgment appealed from may be corrected by the appellate court. It was so held and done in the case of *National Bank vs. De la Viña* (46 Phil., 63). It is therefore but just that such clerical error committed in the judgment now before us should be corrected.

For the foregoing, the judgment appealed from is modified as to the sum that Sebastian S. Bastida must pay, which is P19,015.80, and affirmed in all other respects, with the costs against the appellants. So ordered.

Johnson, Malcolm, Villamor, Ostrand, and Johns, JJ., concur.

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