

SALMON, DEXTER & CO., PLAINTIFF AND APPELLEE, VS. TIMOTEO UNSON, DEFENDANT AND APPELLANT.

G.R. No. 23608. March 17, 1925

Ponente: MALCOLM, J.

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MALCOLM, J.:

The plaintiff seeks to recover of the defendant the sum of P1,000 with legal interest on a subscription for capital stock contract. The defense is that the defendant is released from his obligation on the subscription agreement by virtue of the increase of the capital stock of the plaintiff from P250,000, the amount mentioned in the agreement, to P500,000, the amount agreed upon by the stockholders prior to the defendant's signing the agreement. On this issue, judgment in the lower court was with the plaintiff.

The plaintiff is Salmon, Dexter & Company, a domestic corporation. It was organized under the name of C. S. Salmon & Company on May 28, 1918, with a capital stock of P250,000. Thereafter, pursuant to a resolution of the board of directors of the corporation of June 24, 1920, a meeting of the stockholders was had on July 14, 1920, at which the capital stock of C. S. Salmon & Company was increased to P500,000. The certificate of increase of capital stock from P250,000 to P500,000, and articles of incorporation, as amended, of Salmon, Dexter & Company were filed with the Mercantile Registry of the Bureau of Commerce and Industry on September 16, 1920.

On July 28, 1920, Timoteo Unson, the defendant, to follow the allegation in the third paragraph of the complaint, "became a subscriber of C. S. Salmon & Company, by signing an agreement in writing and delivering the same to C. S. Salmon & Company, * * * the name of which company was later changed to Salmon, Dexter & Company." Said agreement, Exhibit A, is in words and figures the following:

"SUBSCRIPTION FOR CAPITAL STOCK

"OF

"C. S. SALMON AND COMPANY

"Authorized Capital

P250,000 Shares P100 each

"I hereby subscribe for 10 shares of the capital stock of C. S. Salmon and Company, at the par value thereof and agree to pay for the same on or before Dec. 15, 1920.

"It is understood and agreed that dividends will be prorated and payable, only, from the date of actual payment of the subscription.

(Sgd.) "TIMOTEO UNSON

"Iloilo, July 28, 1920

"P. O. Address:

"Timoteo Unson,

"Pontevedra,

"Capiz."

Even a casual reading of the admitted facts brings prominently to notice that the agreement accomplished by Timoteo Unson on July 28, 1920, was for ten shares of the capital stock of C. S. Salmon & Company, "authorized capital P250,000," and that two weeks before, on July 14, 1920, the stockholders of C. S. Salmon & Company, without the acquiescence or participation of Unson, had authorized an increase of the capital stock of the corporation to P500,000. Three questions arise: Is the contract of Unson a contract of subscription to the capital stock of C. S. Salmon & Company, or is it a contract to purchase stock in the corporation? Whether one or the other, is Unson released from his obligation on the subscription agreement on account of the increase of the capital stock of C. S. Salmon & Company from P250,000 to P500,000? Was there present such fraud or misrepresentation as would permit the defendant to avoid the contract?

The parties disagree as to the nature of the transaction. The appellant considers Exhibit A as a subscription, and relies on the case of *Newport Cotton Mill Co. vs. Mima* ([1899], 103 Tenn., 465). (See also *Katama Land Company vs. Jernegan* [1879], 126 Mass., 155.) Appellee, on the other hand, alleges that the appellant has failed to take into account the legal distinction between a subscription to a corporation and a purchase from it of its shares, and reaches the conclusion on this premise that the contract in the present case is one of purchase and sale only.

After incorporation, one may become a shareholder by subscription, or by purchasing stock directly from the corporation, or from individual owners thereof. A distinction is drawn by the authorities between a subscription to the capital stock of the corporation after its organization and a sale of shares by it. Whether a particular contract is a subscription or a sale of stock is a matter of construction, and depends upon its terms and the intention of the parties. It has been held that a subscription to stock in an existing corporation is, as between the subscriber and the corporation, simply a contract of purchase and sale. (*Bole vs. Fulton* [1912], 233 Pa., 609; 2 *Fletcher*, *Cyclopedia of Corporations*, pp. 1120 et seq.)

The allegation of the complaint is that defendant is a "subscriber." Exhibit A, on its face, purports to be a "subscription for capital stock." The intention of the parties as gleaned from this contract was undoubtedly to consider it as such.

Admitting, however, that the terminology of the agreement is not conclusive, and admitting that it is a contract between a subscriber and the corporation, and thus simply a contract of purchase and sale, then under the last hypothesis we have to determine if the contract is avoided by misrepresentation.

Plaintiff's right of recovery rests exclusively upon the written agreement. The promise of Unson in this agreement was to subscribe for ten shares of the capital stock, authorized capital P250,000, of C. S. Salmon & Company. One of the essential conditions of this subscription or contract of sale was that the authorized capital stock of the company was P250,000. As far as we are informed, Unson would never have put his name to the agreement if he had known that two weeks before, the capital had been increased to P500,000. If knowledge of this increase had

been brought home to Unson before he signed, that would be a different question. But the record is silent on this point. So should the contract be enforced, Unson would be required to take and pay for a 1/500 Part of the capital stock of Salmon, Dexter & Company, whereas his obligation was to take and pay for a 1/250 part of the capital stock. Paraphrasing the United States Supreme Court in the case of Chicago City Railway Company vs. Allerton ([1874], 18 Wall., 233), a change in the capital stock without the consent of the stockholder would make him a member of an association in which he never consented to become such. "It would change the relative influence, control and profit of each member."

In our opinion, a contract different from that which was entered into cannot be made for the parties and imposed upon Unson. Unson has the right to stand upon the contract he has made. In our opinion also, there was such a non-disclosure of a material fact as was equivalent to false representation. This representation was of a character that the party to whom it was made had a right to rely upon it.

For all the foregoing, the judgment must be reversed and another entered absolving the defendant from the complaint. Without special pronouncement as to costs in either instance, it is so ordered.

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

Johnson, J., dissents.

Romualdez, J., dissenting: I am of the opinion that the judgment appealed from should be affirmed.

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