

THE NATIONAL EXCHANGE COMPANY, LTD., PLAINTIFF AND APPELLANT, VS. JOSE S. RAMOS, DEFENDANT AND APPELLEE.

G.R. No. 27850. December 24, 1927

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This appeal was taken by the plaintiff, the National Exchange Co., from the judgment of the Court of First Instance of Manila absolving the defendant Jose S. Ramos from the complaint and ordering said plaintiff company to reimburse the said defendant in the sum of P5,308.30, the obligation of C. S. Salmon in favor of said defendant being extinguished as to such part as the latter may collect from said plaintiff included in the P5,308.30.

In support of its appeal the appellant assigns the following alleged errors as committed by the trial court in its decision, to wit: (1) The trial court erred in finding that the payment of P5,308.30 on account of the subscription to 100 shares of the capital stock of C. S. Salmon & Company was made by Mr. Salmon in the name, but without the consent, of the defendant on account of the former's debt to the latter; (2) the trial court erred in finding that the defendant had not been informed of the increase in the capital stock of Salmon, Dexter & Co. from P250,000 to P500,000; (3) the trial court erred in not taking into consideration in this case the decision of this court in the case of Salmon, Dexter & Co. vs. De la Pena, G. R. No. 26179,[1] instead of Salmon, Dexter & Co. vs. Unson (47 Phil., 649), which is inapplicable to the present case; (4) the trial court erred in absolving the defendant from the complaint and in ordering the plaintiff to reimburse the latter in the sum of P5,308.30 which was paid on account of his 100 shares of Salmon, Dexter & Co.'s stock; and (5) the trial court erred in not rendering judgment against the defendant and in denying the motion for a new trial.

The essential and pertinent facts for the determination of the questions raised in this appeal and regarding which there is no controversy, are as follows:

C. S. Salmon was the president of the firm of Salmon & Company. On July 14, 1920, the stockholders of said commercial firm resolved to increase the capital stock from P250,000 to P500,000 and to reorganize it under the name of Salmon, Dexter & Co., Inc. On August 21, 1920, C. S. Salmon succeeded in having Jose S. Ramos subscribe to 100 shares of stock of the corporation of C. S. Salmon & Co., having him sign the following subscription contract:

"SUBSCRIPTION FOR CAPITAL STOCK

"of "

C. S. Salmon & Company

"Authorized Capital P250,000 Shares 100 each.

"I hereby subscribe for 100 shares of the capital stock of C. S. Salmon & Co. at the par value thereof and agree to pay for the same on or before Dec. 1, 1920.

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

of the subscription.

(Sgd.) "Jose Ramos

"Himamaylan, August 21, 1920."

Jose S. Ramos made no direct payment on account of the amount of said subscription. C. S. Salmon was indebted to the defendant and from time to time, commencing with July 30th and ending with December 9, 1924, the former paid to Salmon, Dexter & Co., for the account of said defendant, various sums upon the principal and interest amounting to P5,308.30, receipts for which were sent by him to Jose S. Ramos. Only P1,863.89 of said sum of P5,308.30 was paid on account of the 100 shares and P3,441.41 was for interest due at the rate of 6 per cent per annum on the sum of P10,000, the total amount of the said 100 shares.

On December 31, 1925, Salmon, Dexter & Co., Inc., successors to C. S. Salmon & Co., in consideration of the sum of P246,472.66, assigned to the Philippine National Bank all their assets and outstanding accounts, including the one here in question, and the latter, in turn, assigned the same assets and outstanding accounts to the herein plaintiff-appellant, the National Exchange Co., Ltd,

In regard to the first assignment of error, Jose S. Ramos undoubtedly knew that C. S. Salmon had paid Salmon, Dexter & Co., Inc., P1,863.89 as principal and P3,441.41 as interest on account of his subscription for 100 shares.

With respect to the second assignment of error, the only evidence there is that Jose S. Ramos upon subscribing for the 100 shares, knew that at the meeting of the stockholders held on July 14, 1920 it had been resolved to increase the capital stock from P250,000 to P500,000, is the declaration of C. S. Salmon who stated that he had informed the defendant Jose S. Ramos of it. Due to the fact that Jose S. Ramos suffered a stroke of paralysis and was unable to testify at the trial, he has been unable, until this time, to deny C. S. Salmon's declaration. But, against said declaration we have the subscription slip, Exhibit A, signed by Jose S. Ramos at the instance of C. S. Salmon, in which it appears that the authorized capital stock was P250,000.

C. S. Salmon tried to overcome the unfavorable effect of this statement by declaring that a few days after the meeting of July 14, 1920 had taken place and before he had received the certificate of the increase in the capital stock from the Bureau of Commerce and Industry, he went to Negros, taking the old forms with him, using them until the middle of August of the same year. This explanation, however, is unsatisfactory because, if the old form was changed in the middle of August, it cannot be conceived why Jose S. Ramos signed the old form of subscription on the 21st of the same month. It having been decided on July 14, 1920 to increase the capital stock from P250,000 to P500,000, it is also inconceivable why the amount of the capital stock noted on the subscription blank was not changed before Jose S. Ramos signed it, or notation made thereon of said increase if the subscriber's attention was really called to it. All this indicates that at the time C. S. Salmon solicited the subscription from Jose S. Ramos the latter knew nothing of the increase in the capital stock, nor was he informed of its authorization.

The fact that C. S. Salmon, by agreement with and with the knowledge of Jose S. Ramos, had been making payments for the latter's account, of principal and interest due on the shares for which he had subscribed, does not imply that he knew that the capital stock to which he had subscribed was P500,000 because he might have consented to said payments and still continued to believe that the capital stock to which he had subscribed was P250,000, it not appearing, as it does not, that when he was notified of said payments made for his account, he had been informed that the capital stock on which such payments had been made was P500,000. Neither can it be presumed that Jose S. Ramos had knowledge of said increase since neither his occupation as a farmer, as most Negrosites are, nor by the geographical location of Himamaylan, was he in position to keep abreast of the fluctuations in the capital stock of corporations having their main offices in Manila.

It is to be noted that C. S. Salmon, in testifying in the case of Salmon, Dexter & Co. vs. Unson, did not say that he had informed the subscriber of the increase in the capital stock, notwithstanding that he had solicited and obtained a subscription from Unson for shares of C. S. Salmon & Co.'s stock on, July 28, 1920, after said increase had been decided upon on the 14th of the same month and year, as he remembered it only when he testified in the present case on December 20, 1926, after the publication of the decision in that case and where mention was made of said omission.

In view of the foregoing, the trial court did not commit the second error attributed to it.

Touching on the third assignment of error, having reached the conclusion that Jose S. Ramos, in subscribing to the 100 shares of C. S. Salmon & Company stock at P100 a share, it did so in the belief that the capital stock was P250,000 and was ignorant of its increase to P500,000, the trial court committed no error in taking into consideration the doctrine laid down by this court in the case of Salmon, Dexter & Co. vs. Unson (47 Phil., 649).

Passing now to the fourth assignment of error, and taking into consideration what has been said in regard to the third assignment, the trial court committed no error in absolving the defendant Jose S. Ramos from the complaint, but in ordering the plaintiff company, the National Exchange Co., Ltd., to pay the defendant Jose S. Ramos the sum of P5,308.30.

Article 1528 of the Civil Code provides the following:

"The sale or assignment of a credit includes that of all accessory rights, such as guaranty, suretyship, mortgage, pledge, or privilege."

The assignee acquires the same rights, and nothing but the rights, that the assignor had with respect to the debtor at the time the assignment is made (Decisions of Supreme Court of Spain of Feb. 21, 1863, May 24, 1869, and June 3, 1872) as no one can transfer, according to a rule of law, more rights than he has.

Manresa, interpreting the legal provision just quoted, in so far as it refers to accessory rights, makes the following questions) in which he himself answers:

"Is the interest which is due at the time of the assignment of the credit to be deemed included in the sale of a credit that draws interest? Is this interest an accessory of the credit? If said interest not only is due but has already been received by the assigning creditor, it is clear that it has already formed a part of his patrimony and all connection with the credits from which it originated has disappeared. * * *." (10 Manresa 2d ed., pp. 390, 391).

Conversely, if, when the credit assigned is valid and effective, what the debtor has paid to the assigning creditor is not included in the sale or assignment on account of its having formed a part of the latter's patrimony, every connection with the credit having disappeared, with greater reason he cannot be made liable to the assignee for the reimbursement of said payment in case the assigned credit, becomes null and void.

In the present case the credit of Salmon, Dexter & Co., Inc., against Jose S. Ramos assigned by the former to the Philippine National Bank and by the latter to the herein plaintiff-appellant, the National Exchange Co., Ltd., was null and void, because the contract under which the defendant became bound to Salmon, Dexter & Co. is different from that for which he is sought to be made liable and which is the subject matter of the assignment.

For the foregoing reasons, we are of the opinion, and so hold, that the defendant-appellee, Jose S. Ramos, having subscribed to 100 shares of stock, at par value, in a company whose authorized capital stock was P250,000 cannot be compelled to pay for said shares, he not knowing at the time of the subscription that it had been decided to increase the capital stock to P500,000 as, in fact, it was increased; because, not having given his consent to said

increase which constitutes a novation by changing the principal conditions (art. 1203, Civil Code), he is not bound by the contract thus novated and is relieved of the obligation contracted by him in the original contract, which became extinguished as a consequence of said novation (art. 1143, Civil Code) ; even if he made some partial payments, not having been informed of said increase at the time of having made them.

We also find that the credit assigned by Salmon, Dexter & Co., Inc., to the Philippine National Bank and by the latter to the herein plaintiff-appellant being null and of no effect, the latter is not bound to return the partial payments made by the defendant-appellee to the assignor, because the assignee not having acquired any rights under the assignment he could not have acquired any correlative obligation.

By virtue of the foregoing, the judgment appealed from is affirmed in regard to absolving the defendant-appellee from the complaint and dismissing the same, and reversed in regard to ordering the plaintiff-appellant to reimburse the defendant-appellee in the sum of P5,308.30, the subject matter of the counterclaim, absolving the latter, without any special pronouncement as to costs. So ordered.

Avanceña, C. J., Malcolm, Villamor, and Johns, JJ., concur.
Johnson and Street, JJ., dissent.

OSTRAND, J., dissenting:

I dissent In my opinion the judgment of the court below should have been reversed in toto.

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