

ALBERTO BARRETTO ET AL., PLAINTIFFS AND APPELLEES, VS. LA PREVISORA FILIPINA, DEFENDANT AND APPELLANT.

G. R. No. 34719. December 08, 1932

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is an appeal from a decision rendered by the Court of First Instance of Manila, ordering the defendant corporation to pay to each of the three plaintiffs the amount of P507.02, including interest thereon from May 2, 1930, to date of payment, with costs.

The action which gave rise to this appeal was brought by Alberto Barretto, Jose de Amusategui, and Jose Barretto, who had been directors of the defendant corporation from its incorporation up to the month of March, 1929, to recover from the defendant, La Previsora Filipina, a mutual building and loan association, 1 per cent to each of the plaintiffs of the net profits of said corporation for the year 1929, which amount to P50,727.53, under and in accordance with the following amendment to the by-laws of the defendant corporation, which was made at a general meeting of the stockholders thereof on February 23, 1929, to wit:

"ARTICULO 68.º A.—En consideration a los valiosos servicios que por varios anos hasta la fecha han venido prestando gratuitamente a favor de la Sociedad, los senores Alberto Barretto, Ariston de Guzman, Miguel Romualdez, Pedro Mata, Vicente L. Legarda, Alexander Bachrach, Jose M. de Amusategui y Jose A. Barretto y Moratinos, se acuerda y concede por la presente, a todos y cada uno de dichos senores, una cantidad igualal uno por ciento (1%) de todas las utilidades liquidas de la Sociedad, del ano y aios en que se deje de ser director de la misma. Entendiendose, sin embargo, que esta remuneracion especial subsistira mientras dicho director viva, y cesara durante el tiempo en que dicho sefior vuelva a ser director de la Sociedad. Se hace constar por la presente, que este articulo de los presentes Estatutos constituye un contrato formal entre la Sociedad y cada unpo de los senores directores arriba mencionados, y este contrato no podra ser modificado ni enmendado sino por mutuo convenio entre las partes."

The case was set for trial on July 30, 1930, and after the presentation of the plaintiffs' evidence, counsel for the defendant informed the court that they desired, before offering defendant's evidence, to present a motion to dismiss the complaint on the ground that the plaintiffs had not shown a cause of action against the defendant, and requested time to file said motion in writing and to present a written memorandum in support thereof. This request was granted by the court below and on August 2, 1930, counsel for the defendant presented, with the reservation of the right to offer defendant's evidence in support of its special defenses and counterclaim in the event it was denied, a written motion to dismiss the complaint on the above mentioned ground.

On the 29th day of August, 1930, the court below entered an order, in which it held that the evidence offered by the plaintiffs showed a cause of action on the part of the plaintiffs and constituted sufficient legal reason to require the defendant corporation to present its evidence, if it so desired, in support of the allegations contained in its answer, and denied the defendant's motion to dismiss the complaint and set the case for a continuation of the hearing on September 22, 1930. On September 4, 1930, the defendant filed its exception to the order of the trial

court of August 29, 1930, in so far as it declared that the evidence offered by the plaintiffs showed a cause of action and denied the dismissal of the complaint.

On September 2, 1930, the plaintiffs, through their attorney, presented to the court below a petition praying the said court to issue an order declaring that the defendant had no right to present evidence; that the case be declared submitted; and that judgment be entered in accordance with the prayer of the complaint.

After hearing the parties, and without setting aside its former order giving the defendant the right to present its evidence and setting the case for a continuation of the hearing on September 22, 1930, the court, on September 11, 1930, rendered its decision in this case holding that the defendant, by presenting its motion to dismiss the complaint, had impliedly waived its right to present its evidence, and rendering judgment in favor of each of the plaintiffs and against the defendant for the sum of P505.25, with legal interest thereon from May 2, 1930, until paid, with the costs of the action.

On October 1, 1930, defendant moved the trial court for a reconsideration of its decision of September 11, 1930, and that said decision be set aside, and that the trial of the case be continued for the taking of the evidence of the defendant, for the reasons stated therein. This motion was denied on October 7, 1930, whereupon the defendant excepted to the decision and the order of the court below denying its motion for a reconsideration, and moved for a new trial on the ground that the decision was contrary to law and the weight of the evidence. This motion was denied by the trial court on October 18, 1930, and on October 25, 1930, the defendant filed its exception to said order and gave notice of its intention to appeal from said decision and orders, and the case has been brought to this court by way of bill of exceptions.

After a careful consideration we fully agree with the appellant. Article 68-A of the amended by-laws of the defendant corporation upon which the action is based, does not under the law as applied to the express provisions thereof create any legal obligation on its part to pay to the persons named therein, including the plaintiffs, such a life gratuity or pension out of its net profits. A by-law provision of this nature must be regarded as clearly beyond the lawful powers of a mutual building and loan association, such as the defendant corporation.

While such associations are expressly authorized by the Corporation Law to adopt by-laws for their government, section 20, of that Act, as construed by this court in the case of *Fleischer vs. Botica Nolasco Co.* (47 Phil., 583), expressly limits such authority to the adoption of by-laws which are not inconsistent with the provisions of the law. The appellees contend that the article in question is merely a provision for the compensation of directors, which is not only consistent with but expressly authorized by section 21 of the Corporation Law. We cannot agree with this contention. The authority conferred upon corporations in that section refers only to providing compensation for the future services of directors, officers, and employees thereof after the adoption of the by-law or other provision in relation thereto, and cannot in any sense be held to authorize the giving, as in this case, of continuous compensation to particular directors after their employment has terminated for past services rendered gratuitously by them to the corporation. To permit the transaction involved in this case would be to create an obligation unknown to the law, and to countenance a misapplication of the funds of the defendant building and loan association to the prejudice of the substantial right of its shareholders.

Building and loan associations are peculiar and special corporations. They are founded upon principles of strict mutuality and equality of benefits and obligations, and the trend of the more recent decisions is that any contract made or by-law provision adopted by such an association in contravention of the statute is ultra vires and void. It stands in a trust relation to the contributors in respect to the funds contributed, and there is an implied contract with its members that it shall not divert its funds or powers to purposes other than those for which it was created. The fundamental law of building and loan associations organized under the different statutes throughout the

American Union is that all members must participate equally in the profits and bear the losses, if any, in the same proportion, and any diversion of their funds to purposes not authorized by the law of their creation is violative of the principles of mutuality between the members, (See *Bertche vs. Equitable Loan etc. Association*, 147 Mo., 343; 71 A. S. R., 571.) As correctly stated in the case of *McCauley vs. Building and Saving Assn.* (97 Tenn., 421; 56 A. S. R., 813, 818), "Strict mutuality and equality of benefits and obligations must be kept the groundwork and basis of these associations, and if they are not so founded they are not truly building and loan associations, entitled to the protection given such associations by the statute." When we consider the fundamental nature and purposes of building and loan associations, as above stated, in relation to the subject matter of this by-law, it is obvious that the provisions thereof are entirely foreign to the government of defendant corporation, inconsistent with and subversive of the legislative scheme governing such associations, and contrary to the spirit of the law, and cannot therefore be the basis of a cause of action against the defendant corporation.

Irrespective of our conclusion that the provision in question is ultra vires, we are of the opinion that said by-law cannot be held to establish a contractual relation between the parties to this action, because the essential elements of a contract are lacking. The article which the appellees rely upon is merely a by-law provision adopted by the stock-holders of the defendant corporation, without any action having been taken in relation thereto by its board of directors. The law is settled that contracts between a corporation and third persons must be made by or under the authority of its board of directors and not by its stockholders. Hence, the action of the stockholders in such matters is only advisory and not in any wise binding on the corporation. (See *Ramirez vs. Orientalist Co. and Fernandez*, 38 Phil., 634.) There could not be a contract without mutual consent, and it appears that the plaintiffs did not consent to the provisions of the by-law in question, but, on the contrary, they objected to and voted against it in the stockholders' meeting in which it was adopted. Furthermore, the said by-law shows on its face that there was no valid consideration for the supposed obligation mentioned therein. It is clearly an attempt to give in the future to certain directors compensation for past services gratuitously rendered by them to the corporation. Such a provision is without consideration, and imposes no obligation on the corporation which can be enforced by action at law. (4 *Fletcher on Corporations*, p. 2762, and cases cited.)

The appellees in their brief refer to the cases of *El Hogar Filipino vs. Rafferty* (37 Phil., 995), and *Government of the Philippine Islands vs. El Hogar Filipino* (50 Phil., 399J), and contend that those decisions are authority for sustaining the validity of the by-law in this case. We have carefully examined those decisions, and find that those cases are clearly distinguishable from the present action. It is sufficient to say that the causes of action are not of the same nature, and the facts upon which those decisions are based are entirely different from the facts of the present case.

The judgment of the court below is reversed, and the complaint is dismissed with the costs of this instance against the appellees. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Villa-Real, Abad Santos, Hull, Vickers, Imperial, and Butte, JJ., concur.

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