

ROMANA MIRANDA, IN HER CAPACITY AS JUDICIAL ADMINISTRATRIX OF THE INTESTATE ESTATE OF HER DECEASED FATHER, ALBERTO MIRANDA, PLAINTIFF AND APPELLANT, VS. THE TARLAC RICE MILL CO....

G. R. No. 35961. December 02, 1932

Ponente: VICKERS, J.

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VICKERS, J.:

This is an appeal by the plaintiff from a decision of Judge A. M. Recto of the Court of First Instance of Tarlac, dismissing the case without a special finding as to costs.

The case was tried on the following agreed statement of facts:

"Comparecen las partes—la demandante, asistida de su infrascrito abogado, y la demandada, por medio de su presidente y abogado que subscriben—y para abreviar la vista de esta causa y sin perjuicio de practicarse pruebas adicionales sobre hechos en los que las partes no estan de acuerdo, respetuosamente someten, para la decision de esta causa, las siguientes estipulaciones:

- Que la demandante Romana Miranda es la administradora judicial, debidamente nombrada, del Intestado del finado Don Alberto Miranda,, Civil No. 3090, de este mismo Juzgado; y la entidad demandada es una corporacion debidamente organizada de acuerdo con las leyes en vigor en estas Islas, teniendo su domicilio legal, lo mismo que la demandante, en esta cabecera de Tarlac, Provincia de Tarlac;

- Que, con fecha 8 de junio de 1926, el hoy difunto Don Alberto Miranda—de cuyo intestado es administradora judicial la aqui demandante—subscribio acciones de la corporacion demandada, otorgando al efecto un contrato de subscripci6n, copia autentica del cual se une al presente y se hace parte integrante del mismo, como Exhibit A;

- Que, en relation con el contrato de subscription Exhibit A, a que se contrae el parrafo que precede, Don Alberto Miranda otorgo luego una escritura de poder a favor de la demandada, cuyo original se une asimismo al presente, haciendose parte integrante del mismo, como Exhibit B;

- Que, por virtud de los documentos a que se contraen los dos parrafos inmediatamente anteriores la corporaci6n demandada contrajo una deuda de P10,000 a los Sres. Mariano Tablante y Carmen Gueco, de Angeles, Pampanga, como se acredita por la escritura de prestamo hipotecario otorgada al efecto, que tambien se ad junta a la presente, como Exhibits C y C-1;

- Que la demandada no ha pagado en ningun tiempo ni el capital, ni los intereses, del prestamo arriba mencionado, motivo por el cual el referido Don Alberto Miranda hubo de entrar en arreglo amistoso con los acreedores, al expirar el plazo convenido para el pago, satisfaciendo dicho prestamo y sus intereses devengados, segtin consta en la carta de pago extendida al efecto, que se hace parte integrante del presente convenio como Anexo o Exhibit D;

- Que, a partir desde el ano 1928 hasta esta fecha, la demandada ha dejado de hacer negocios y operaciones de

ninguna clase;

- Que, con excepcion del citado Don Alberto Miranda, ninguno de las otras accionistas y directores de la corporation demandada ha pagado o se le ha hecho pagar, conforme los terminos de los contratos de subscripcidn otorgados al efecto, el importe de sus respectivas acciones, y a pesar de esta morosidad de los referidos accionistas y directores, la corporaci6n demandada no ha dado, hasta la fecha, ningun paso tendente a compeler la efectividad de las referidas acciones morosas."

The only additional evidence presented was the testimony of Marciano David, which is of no consequence in our view of the case.

The appellant makes the following assignment of errors:

"The trial court erred:

- In declaring that the defendant corporation did not violate the terms of the power of attorney Exhibit B, for the plaintiff, when she obtained the loan Exhibit C;
- In declaring that 'all responsibility originating in the execution by the officers of the defendant corporation of the mortgage contract Exhibit C has already ceased';
- In pretending to base the decision in this case upon theories neither presented by the pleadings of the parties nor deduced from the evidence produced by the parties;
- In denying the motion for new trial of the plaintiff-appellant; and
- In not sentencing the defendant to pay the plaintiff the sum of P10,000, with interest thereon at P1,200 a year, from the year 1927 until paid, plus the sum of P1,500, which the principal had to pay in the form of a penal clause for the violation of the terms of the mortgage contract Exhibit C, aside from the legal interests of all these amounts from the presentation of the present complaint, and the costs of the suit."

It appears from the evidence that on June 8, 1926 Alberto Miranda executed a written contract whereby he subscribed for 100 shares of the capital stock of a corporation to be organized under the laws of the Philippine Islands for the purpose of operating a rice mill in Tarlac, said corporation to be known as Tarlac Rice Mill Company, Inc.; that the par value of each share was P100; and that Alberto Miranda obligated himself to pay to the treasurer of the corporation or its assign the sum of P10,000 as follows:

On or before September 21, 1926

P1,000.00

On or before January 21, 1927

2,000.00

On or before January 21, 1928

2,000.00

On or before January 21, 1929

2,500.00

On or before January 21, 1930

2,500.00

On July 10, 1926 Alberto Miranda by means of a public document "assigned, mortgaged, or transferred in lieu of cash for the benefit and to the credit of the Tarlac Rice Mill Company, Inc., a corporation to be organized and to exist under and by virtue of the laws of the Philippine Islands", the parcel of land described in certificate No. 751 in the land records of the Province of Tarlac; and "to carry out the true intent, meaning, and purposes thereof I have hereby further voluntarily made, constituted, and appointed, and by these presents do make, constitute and appoint, either jointly, Evaristo Magbag, duly elected President and Treasurer of said Company, Eusebio R. Cabrera and Marcos P. Puno, duly elected Vice-Presidents of the same company, or anyone of the three named elected officers of the Tarlac Rice Mill Company, Inc., jointly with C. M. Dizon to be my true and lawful attorneys-in-fact, for me and in my name, and in my behalf to transfer, mortgage, convey or confirm or in any way convenient to them to any local or foreign bank, firm or individual in order to obtain, secure or solicit credit against my above described property in an amount not to exceed ten thousand pesos (P10,000), Philippine currency, in accordance with the subscription contract voluntarily executed by me, for or to increase the capital of the said Tarlac Rice Mill Company, Inc., in order to carry out the purposes for which such firm is to be organized.

"That for the foregoing purposes, I hereby transfer my right and interest in the said described properties, and by these presents do hereby give and grant unto my said attorneys-in-fact full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in all about the premises as fully to all intents and purposes as I might or could do if personally present with full power of substitution or revocation, hereby ratify and confirm all that my said attorneys-in-fact, anyone or all of the three, Evaristo Magbag, Eusebio R. Cabrera, and Marcos P. Puno, jointly with C. M. Dizon or their substitutes shall lawfully do or cause to be done by virtue of these presents."

On February 19, 1927 the president and vice-president of the Tarlac Rice Mill Company, Inc., and C. M. Dizon, acting on behalf of said corporation and Alberto Miranda, borrowed P10,000 from Mariano Tablante, and agreed to repay said sum on or before February 19, 1928, with interest at 12 per cent per annum, and to pay a further sum of 25 per cent of the principal for attorney's fees and expenses of collection in case the promissory note should not be paid at maturity. Marcos Puno, Evaristo Magbag, and Dizon & Co., Inc., jointly and severally guaranteed the payment of this sum; and the president and vice-president of the Tarlac Rice Mill Company, Inc., and C. M. Dizon as attorneys-in-fact of Alberto Miranda mortgaged to Mariano Tablante the aforementioned parcel of land to secure the payment of said promissory note.

The sum of P10,000 obtained from Mariano Tablante was retained by the corporation. When the promissory note became due, Alberto Miranda arranged for an extension of time in which to pay it, and on July 19, 1929 he sold the aforementioned parcel of land under pacto de retro to Vicente Panlilio for P10,000, and paid Mariano Tablante.

According to an allegation in the complaint, Alberto Miranda died on May 24, 1930.

It is agreed that the defendant corporation ceased to do business from the year 1928, and that the other stock-holders have not paid for their shares in accordance with their subscription agreement, and that; no action has been taken by the corporation to require them to do so.

The principal contention of the appellant is that the officers of the corporation violated the terms of the power of attorney in mortgaging the land on February 19, 1927 for P10,000, because the only sum then due and payable by Alberto Miranda to the corporation was P3,000, and that when the remaining instalments of the stock subscription became due, Alberto Miranda was under no obligation to pay them, because the corporation had already ceased to do business, and it had taken no steps to compel the other stockholders to pay for the shares for which they had subscribed.

No question as to the validity of subscription agreement is raised, and no fraud on the part of the officers of the corporation is alleged or proved. We shall therefore confine ourselves to the issues raised by the pleading.

It is true that when the property was mortgaged on February 19, 1927 the amount due from Alberto Miranda in accordance with the subscription agreement was only P3,000, and it is likewise true that it does not appear from the evidence that any call was issued by the directors for the payment of any subscriptions.

The fact that Alberto Miranda agreed on June 8, 1926 to pay the amount of his subscription in instalments on certain fixed dates did not, of course, prevent him from authorizing the officers of the corporation as his attorneys-in-fact to pay his subscription prior to the dates fixed in the subscription agreement. Great stress is laid by the appellant upon the fact that in one paragraph of the power of attorney it is stated that the attorneys-in-fact of Alberto Miranda are authorized to mortgage or convey the property in any way convenient to them in the amount not to exceed P10,000 in accordance with the subscription contract, but the phrase "in accordance with the subscription contract" is followed by the following words "for or to increase the capital of the said Tarlac Rice Mill Company, Inc., in order to carry out the purposes for which said firm is to be organized." Under the circumstances, it seems to us that it would be a strained construction of the power of attorney, taking into consideration the whole document, to hold that the officers of the corporation acting as attorneys-in-fact of Alberto Miranda were authorized to mortgage or convey the land for only the amount then due from Alberto Miranda in accordance with the subscription agreement. It can hardly be contended that the power of attorney contemplated that the property should be mortgaged three times, that is, each time that an instalment became due. We are inclined to the view that it was the intention of the parties that the property should be mortgaged immediately for a sum not to exceed P10,000, not only for the purpose of paying the subscription agreement of Alberto Miranda, but also for the purpose, as stated in the power of attorney, of increasing the capital of the corporation, not the capital stock, in order to carry out the purposes for which it was to be organized. This view of the matter is confirmed by the subsequent conduct of the parties. Although the corporation retained the full amount of the loan obtained from Mariano Tablante, and Alberto Miranda had to pay that obligation, he never sought, so far as the record shows, to recover from the corporation any part of the sum of P10,000. As we have already stated, the mortgage was executed on February 19, 1927; it was satisfied by Alberto Miranda on July 19, 1929, and he lived until May 24, 1930. It does not appear that he ever sought to evade the satisfaction of the mortgage by alleging that his attorneys-in-fact exceeded their authority in mortgaging the property on February 19, 1927 for P10,000. On the contrary he repaid to Mariano Tablante the amount which the officers of the corporation had borrowed. The fact that he at no time sought to recover from the corporation any part of the sum borrowed by the officers of the corporation in his name certainly tends to show that he acquiesced in the action taken by them. The phrase "in accordance with the subscription contract" found in the power of attorney probably was intended to mean "in pursuance of the subscription agreement", that is, it referred to the obligation, and had no particular reference to the dates when the different instalments were to be paid.

Section 38 of the Corporation Law provides that the board of directors of every corporation may at any time declare due and payable to the corporation unpaid subscriptions to the capital stock and may collect the same with interest accrued thereon or such percentage of said unpaid subscriptions as it may deem necessary. In his work, "The Philippine Law of Stock Corporations", page 97, Justice Fisher expresses the opinion that this power of the directors is absolute and cannot be limited by the subscription contract, but this does not mean that the directors may not rely on the subscription contract if they see fit to do so.

"No call is necessary when a subscription is payable, not upon call or demand by the directors or stockholders, but immediately, or on a specified day, or on or before a specified day, or when it is payable in instalments at specified times. In such cases it is the duty of the subscriber to pay the subscription or instalment thereof as soon

as it is due, without any call or demand, and, if he fails to do so, an action may be brought at any time." (Fletcher: Cyclopedia of the Law of Private Corporations, vol. 2, page 1809.)

When this action was filed on September 2, 1930, the last of the instalments had already become payable in accordance with the subscription agreement. It must be borne in mind that this is not an action by the corporation to recover on a subscription agreement, but an action by the administratrix of a stockholder to recover what was paid in to the corporation by the stockholder. It does not appear from the evidence whether or not the corporation has any debts. Neither the fact that the corporation has ceased to do business nor the fact that the other stockholders have not been required to pay for their shares in accordance with their subscription agreement justifies us in ordering the corporation to return to the plaintiff the amount paid in by Alberto Miranda. If the directors have failed to perform their duty with respect to the other stockholders, the law provides a remedy therefor.

In the case of *Velasco vs. Poizat* (37 Phil., 802), this court held that a stock subscription is a contract between the corporation and the subscriber, and courts will enforce it for or against either; that a corporation has no legal capacity to release a subscriber to its capital stock from the obligation to pay for his shares, and that any agreement to this effect is invalid.

In the case at bar it is not contended that Alberto Miranda cancelled his subscription agreement, or that the corporation attempted to release him therefrom.

For the foregoing reasons, the decision appealed from is affirmed, with the costs against the appellant.

Street, Malcolm, Ostrand, and Imperial, JJ., concur.

DISSENTING OPINION

ABAD SANTOS, J.:

The power of attorney, Exhibit B, was given for the purpose of carrying out the subscription agreement, Exhibit A. The two documents should, therefore, be construed together. The authority to mortgage the property described in Exhibit B was granted in order to pay the amount or amounts that might become due and payable on the subscription agreement. Now, under our law unpaid subscriptions to the capital stock of a corporation do not become due and payable until so declared by the board of directors. Section 38 of the Corporation Law provides: "The board of directors or trustees of any stock corporation formed, organized, or existing under this Act may at any time declare due and payable to the corporation unpaid subscriptions to the capital stock and may collect the same with interest accrued thereon or such percentage of said unpaid subscription as it may deem necessary.

"The order of the board of directors declaring payable any unpaid subscription to the capital stock shall state what percentage of the unpaid subscription is due and payable, when, where, and to whom payable, the date of delinquency, which must be subsequent to the full terms of publication of the notice of call for unpaid subscriptions and not less than thirty days nor more than sixty days from the date of the order of the board calling for the payment of unpaid subscriptions, and the date on which the delinquent stock will, be sold, which must not be less than fifteen days nor more than sixty days from the date the stock becomes delinquent."

Section 40 further provides: "Notice of call for unpaid subscriptions must be either personally served upon each stockholder or deposited in the post-office, postage prepaid, addressed to him at his place of residence, if known, and, if not known, addressed to the place where the principal office of the corporation is situated. The notice must also be published once a week for four successive weeks in some newspaper of general circulation devoted to the

publication of general news published at the place where the principal office of the corporation is established or located, and posted in some prominent place at the works of the corporation if any such there be. If there be no newspaper published at the place where the principal office of the corporation is established or located, then such notice may be published in any newspaper of general circulation devoted to the publication of general news in the Islands."

The provisions of law above quoted are clear and specific, and by their very language compliance with them is mandatory. The reasons for the enactment of such specific and mandatory provisions are not far to seek. They are based upon sound considerations of public policy. They are intended to safeguard the rights of stockholders and to subject them only to equality of assessment. As stated by the court in *Germania Iron Mining Co, vs. King* (36 L. R. A., 51, 52) : "The statute under consideration recognizes the necessity of a call, and that a notice thereof is necessary. A call without notice to the subscriber is practically no call at all. A call can not be made so as to affect a part only of the subscribers; it must be made on all alike, or it will be void. (*Pike vs. Bangor & C. Short Line R. Co.*, 68 Me., 445; *Great Western Teleg. Co. vs. Burnham*, 79 Wis., 47- 51.) And it seems that it has been held that a call need not indicate when or to whom, or where payment is required to be made; that these are to be stated in the notice. (*Cook, Stock, Stockholders, & Corp. Law*, sees. 114, 115.) Unless a uniform call or notice is made or given, it is apparent that the directors may practice favoritism and act oppressively."

Considering the reasons behind the provisions of law under consideration, which, to my mind, account for their mandatory character, the rule followed in some jurisdictions that no call is necessary when a subscription is payable in instalments at specified times, should not be applied here. In the case at bar, we can not even indulge in the presumption that there was a call for subscriptions, for it is agreed by the parties that, with the exception of Alberto Miranda, none of the other stockholders of the defendant corporation has paid or been required to pay on his subscription. Thus we see here practiced by the directors of the defendant corporation the very favoritism which the statutory provisions above mentioned seek to avert. And yet this court is going to sanction such an evil practice.

I am of the opinion that, under article 1895 of the Civil Code, the appellant is entitled to recover of the appellee the sum of ten thousand pesos with legal interest from September 2, 1930, the date of the filing of the complaint herein.

Villa-Real and Butte, JJ., concur in the foregoing dissenting opinion.

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