

EUGENIO VERAGUTH, DIRECTOR AND STOCKHOLDER OF THE ISABELA SUGAR COMPANY, INC., PETITIONER, VS. ISABELA SUGAR COMPANY INC., GIL MONTILLA, ACTING PRESIDENT, AND AGUSTIN B. MONTILL...

G. R. No. 37064. October 04, 1932

Ponente: MALCOLM, J.

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MALCOLM, J.:

The parties to this action are Eugenio Veraguth, a director and stockholder of the Isabela Sugar Company, Inc., who is the petitioner, and the Isabela Sugar Company, Inc., Gil Montilla, acting president of the company, and Agustin B. Montilla, secretary of the company, who are

the respondents. The petitioner prays: (a) That the respondents be required within five days from receipt of notice of this petition to show cause why they refuse to notify the petitioner, as director, of the regular and special meetings of the board of directors, and to place at his disposal at reasonable hours, the minutes, documents, and books of the aforesaid corporation, for his inspection as director and stockholder, and to issue, upon payment of the fees, certified copies of any documentation in connection with said minutes, documents, and books of the corporation; and (b) that, in view of the memoranda and hearing of the parties, a final and absolute writ of mandamus be issued to each and all of the respondents to notify immediately the petitioner within the reglamentary period, of all regular and special meetings of the board of directors of the Isabela Sugar Central Company, Inc., and to place at his disposal at reasonable hours the minutes, documents, and books of said corporation for his inspection as director and stockholder, and to issue immediately, upon payment of the fees, certified copies of any documentation in connection with said minutes, documents, and books of the aforesaid corporation. To the petition an answer has been interposed by the respondents, too long to be here summarized, which raised questions of fact and law. Following the taking of considerable testimony before the clerk as commissioner, the case has been submitted on memoranda.

It should first be observed that when the case was filed here, it was, in accordance with settled practice, dismissed without prejudice to the right of the petitioner to present the action before the Court of First Instance of Occidental Negros. Thereafter, on a motion of reconsideration being presented, this order was set aside and the case was permitted to continue in this court. On further reflection, we now feel that this was error, and that it would have been the correct practice to have required the petitioner to present the action in a Court of First Instance which is better equipped for the taking of testimony and the resolution of questions of fact than is the appellate court. Only with considerable difficulty, therefore, can we decide S the issues of fact, since none of the members of the court saw or heard the witnesses testify.

Speaking to the first point with which the petition is concerned, relating to the alleged failure of the secretary of the company to notify the petitioner in due time of a special meeting of the company, we find the by-laws, together with a resolution of the board of directors, providing for the holding of ordinary and special meetings.

Whether there was a malicious attempt to keep Director Veraguth from attending a special meeting of the board of directors at which the compensation of the attorneys of the company was fixed, or whether Director Veraguth, in a spirit of antagonism, has made this merely a pretext to cause trouble, we are unable definitely to say. This much, however, can appropriately be stated and is decisive, and this is that the meeting in question is in the past and, therefore, now merely presents an academic question; that no damage was caused to Veraguth by the action taken at the special meeting which he did not attend, since his interests were fully protected by the Philippine National Bank; and that as to meetings in the future it is to be presumed that the secretary of the company will fulfill the requirements of the resolutions of the company pertaining to regular and special meetings. It will, of course, be incumbent upon Veraguth to give formal notice to the secretary of his post-office address if he desires notice sent to a particular residence.

On the second question pertaining to the right of inspection of the books of the company, we find Director Veraguth telegraphing the secretary of the company, asking the latter to forward in the shortest possible time a certified copy of the resolution of the board of directors concerning the payment of attorney's fees in the case against the Isabela Sugar Company and others. To this the secretary made answer by letter stating that, since the minutes of the meeting in question had not been signed by the directors present, a certified copy could not be furnished, and that as to other proceedings of the stockholders a request should be made to the president of the Isabela Sugar Company, Inc. It further appears that the board of directors adopted a resolution providing for inspection of the books and the taking of copies "by authority of the President of the corporation previously obtained in each case."

The Corporation Law, section 51, provides that:

"All business corporations shall keep and carefully preserve a record of all business transactions, and a minute of all meetings of directors, members, or stockholders, in which shall be set forth in detail the time and place of holding the meeting, how authorized, the notice given, whether the meeting was regular or special, if special its object, those present and absent, and every act done or ordered done at the meeting. * * *.

"The record of all business transactions of the corporation and the minutes of any meeting shall be open to the inspection of any director, member, or stockholder of the corporation at reasonable hours."

The above puts in statutory form the general principles of Corporation Law. Directors of a corporation have the unqualified right to inspect the books and records of the corporation at all reasonable times. Pretexts may not be put forward by officers of corporations to keep a director or shareholder from inspecting the books and minutes of the corporation, and the right of inspection is not to be denied on the ground that the director or shareholder is on unfriendly terms with the officers of the corporation whose records are sought to be inspected. A director or stockholder can of course make copies, abstracts, and memoranda of documents, books, and papers as an incident to the right of inspection, but cannot, without an order of a court, be permitted to take books from the office of the corporation. We do not conceive, however, that a director or stockholder has any absolute right to secure certified copies of the minutes of the corporation until these minutes have been written up and approved by the directors. (See Fisher's Philippine Law of Stock Corporations, sec. 153, and Fletcher Cyclopaedia Corporations, vol. 4, Chap. 45.)

Combining the facts and the law, we do not think that anything improper occurred when the secretary declined to furnish certified copies of minutes which had not been approved by the board of directors, and that while so much of the last resolution of the board of directors as provides for the prior approval of the president of the corporation before the books of the corporation can be inspected puts an illegal obstacle in the way of a stockholder or director, that resolution, so far as we are aware, has not been enforced to the detriment of anyone. In addition, it should be said that this is a family dispute, the petitioner and the individual respondents belonging- to the same

family; that a test case between the petitioner and the respondents has been begun in the Court of First Instance of Occidental Negros involving hundreds of thousands of pesos, and that the appellate court should not intrude its views to give an advantage to either party. We rule that the petitioner has not made out a case for relief by mandamus.

Petition denied, with costs.

Avanceña, C. J., Villamor, Villa-Reed, Hull, and Imperial, JJ., concur.

DISSENTING

VICKERS, J.,

I dissent.

An extraordinary meeting of the directors of the defendant corporation was held at Isabela, Occidental Negros, on April 21, 1932. A notice of this meeting was sent to the plaintiff by registered letter, but the notice was not received by him until May 4th, because the letter was addressed to the plaintiff at Isabela. The post-office address of the plaintiff at that time was Pulupandan, Occidental Negros, and this fact was known to the defendant officers of the corporation, as is evidenced by the notices of extraordinary meetings dated February 23 and March 11, 1932, which were sent to the plaintiff at Pulupandan. The plaintiff complains that he was not given timely notice of the extraordinary meetings to which these notices refer, because these notices were not mailed until the day of the respective meetings, although the notices were dated three days prior to the dates when they were mailed. These notices of February 23 and March 11, 1932 were not admissible over the objection of the attorney for the defendants for the purpose of proving that the plaintiff was not notified of those two meetings, because there is no allegation to that effect in the complaint. They were, however, admissible for the purpose of showing that the defendant officers of the corporation knew the plaintiff's post-office address to be Pulupandan. It is clear, therefore, that no notice of the meeting of April 21, 1932 was given the plaintiff, because the notice of said meeting was sent to Isabela instead of Pulupandan. Taking into consideration the relations existing between the parties, I am satisfied that this notice was addressed to Isabela instead of Pulupandan for the purpose of depriving the plaintiff of an opportunity of attending the meeting.

In the majority opinion it is stated that the meeting in question having already been held; the failure of the defendants to notify the plaintiff of said meeting is now merely an academic question. I cannot agree with that conclusion. The plaintiff seeks the protection of his right to a notice of all meetings of the board of directors, and prays that the defendant officers be required to perform their duties in accordance with the law. It is obvious that if the defendant officers should again fail to notify the plaintiff of any meeting of the board of directors, he would be in no better position than he is at the present time. Under the theory of the majority opinion the plaintiff would have no redress.

As to the second ground of plaintiff's complaint, or the refusal of the secretary of the corporation to allow the plaintiff to read the resolution adopted on April 21, 1932, on the ground that it had not been signed by the directors, the plaintiff was clearly within his rights in demanding that he be given an opportunity to examine said resolution. It does not appear that there was any necessity for the directors to sign the resolution in question. Such a resolution was a part of the secretary's minutes of the meeting, which would ordinarily be reported for approval at the next meeting. In any event the directors had adopted the resolution, and whether it was to be signed or not,

the plaintiff as a director of the corporation had a right to see it. As to the fact that ill-feeling exists between the parties and another suit between them is now pending, that seems to me only an additional reason why the plaintiff should be protected in the lawful rights which he now seeks to enforce. For the foregoing reasons, the writ prayed for should be granted.

STREET, J.:

I concur in the dissenting opinion of Justice Vickers.

OSTRAND and ABAD SANTOS, JJ.:

We concur in the dissenting opinion of Justice Vickers.

DISSENTING

BUTTE, J.,

I concur in the foregoing dissent insofar as it relates to the actions of the respondent corporation and its officers in denying to the petitioner, as stockholder and as director, the rights which the statutes confer upon him to examine and make or receive copies of any and all of the books and papers of the corporation pertaining to the conduct of its business. The record shows clearly that the officers and remaining directors have adopted a policy of obstruction toward the petitioner in this respect and imposed for the future, by resolution, illegal conditions upon the petitioner's exercise of the said right.

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