

UNION FARMACEUTICA FILIPINA, PLAINTIFF AND APPELLEE, VS. FRANCISCO ICASIANO, DEFENDANT AND APPELLANT.

G.R. No. 3713. December 05, 1907

Ponente: WILLARD, J.

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WILLARD, J.:

The plaintiff brought this action in the Court of First Instance of the city of Manila to recover the sum of P446.18, the value of drugs and other articles sold by it to the defendant. Judgment was rendered in the court below in favor of the plaintiff, and the defendant has brought the case here for review.

That the defendant, between the 9th day of September, 1904, and the 4th day of October of the same year, bought from the plaintiff the property described in the complaint, and that he has not paid in cash therefor, are facts admitted by him. His defense rests upon other facts, which are as follows:

The plaintiff is an anonymous mercantile partnership, organized in accordance with the provisions of the Code of Commerce. On the 9th day of September the defendant was, and still is, the owner of ten shares of the capital stock of the partnership of the value of P100 each. At the time the defendant bought the property in question, articles 8 and 9 of the by-laws provided as follows:

"ART. 8. All the partners or shareholders will keep a current account with the partnership up to the two-thirds of the sum paid in by them, and after exceeding the above two-thirds they will have to pay for their orders in cash.

"ART. 9. All orders made by the partners or share-holders residing in the city will be paid for on the first ten days of the following month, after which term the invoices will bear the interest of 10 per cent per annum in current account, during the maximum term of three months; and should this period expire before the partner has fully repaid the balance of his account, the amount unpaid will be deducted from his share in the capital. For the partners residing in the provinces the above terms will be one and four months, respectively."

The claim of the defendant is that, being a stockholder, he had the right to buy on credit from the company goods to the value of more than P446; that, not having paid for the same, by the operation of said article 9, the value thereof was at once taken from the amount of his capital stock and that his debt was thereby paid.

It is apparent that the purpose of article 8 was to allow stockholders to buy on credit, their stock being considered as pledged for the payment of the debt. It is to be noticed that persons other than stockholders are not allowed to buy on credit, and by the terms of article 10 [9] stockholders themselves, who have not paid what is due from them within a certain time, must thereafter buy for cash. Article 8 aforesaid is in violation of article 167 of the Code of Commerce and is therefore void. Said article 167 is as follows:

"Anonymous partnerships can never make loans upon the security of their own shares."

The effect of article 9 is to apply the stock in payment of the debt, thereby reducing the capital stock of the company. It is in effect a purchase by the company of its own shares of stock. The article is void as being in

violation of the provisions of article 166 of the Code of Commerce.

That article is as follows:

"Anonymous partnerships can only purchase their own shares with the profits of their capital for the purpose of amortization.

"In case of a reduction in the corporate capital, when it is proper in accordance with the provisions of this code, there may also be amortization with a portion of said capital, the legal measures which may be considered advisable being employed."

It is not necessary to consider any other question presented in the record. The judgment of the court below is affirmed, with the costs of this instance against the defendant. So ordered.

Torres, Johnson, Carson, and Tracey, JJ., concur.

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