

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. EL AHORRO INSULAR, DEFENDANT AND APPELLANT.

G.R. No. 37640. December 21, 1933

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

On September 28, 1931, the Government of the Philippine Islands, through the Attorney-General, instituted quo warranto proceedings against El Ahorro Insular, a mutual building and loan association, organized under Act No. 1459 commonly known as the "Corporation Law", as amended.

The action was based on eight alleged causes of action under which the plaintiff sought the following remedies: (1) That the defendant be deprived of all its corporate rights, privileges and franchises; (2) that the defendant corporation be dissolved; and (3) that the plaintiff be granted such other just and equitable relief. The dispositive part of the judgment rendered therein reads as follows:

"For the foregoing reasons, the defendant corporation is hereby ordered to comply with the orders and instructions of the Bank Commissioner and the Secretary of Finance mentioned in the first, second, third, fourth and seventh causes of action within two months after this decision shall become final. If the defendant fails or refuses to comply with this order, the defendant corporation shall be dissolved.

"It seems to the court that it would work a great hardship on the defendant and be impracticable to require it to carry into effect the orders mentioned in the first and fourth causes of action from the beginning of its operations. Said orders will therefore be given effect from the first of January, 1932.

"The defendant will pay the costs. It is so ordered."

The defendant excepted to the decision in toto. However, in its brief it assigns as alleged error only that part thereof relative to the first, third and seventh causes of action. Inasmuch as the present decision hinges only on the four alleged errors relied upon, it relieves us of the task of discussing the questions involved in the other causes of action alleged in the complaint. The assignments of error in question, as translated, read as follows:

"I. The trial court erred in prohibiting the defendant from paying a certain compensation to its incorporators:

"(a) Because the said incorporators were not parties to the suit.

"(b) Because the compensation was just and valid.

"II. The trial court erred in ordering the defendant to demand the payment of certain loans obtained on 'fundadores' shares:

"(a) Because the plaintiff failed to prove the facts as alleged therein.

"(b) Because a suit involving the same transaction is pending before this Honorable Court.

"(c) Because the whole transaction was perfectly valid and legal.

"III. The trial court erred in holding it illegal for the defendant to maintain a certain proportion between its shares by means of closing the issuance of certain shares.

"IV. The trial court erred in denying the defendant's motion for a new trial."

The facts relative to the first assignment of error are as follows: On February 23, 1930, at the general meeting of the stockholders of the defendant corporation, the resolution Exhibit J granting a compensation of P140,000 to six incorporators was adopted. For one reason or another, or perhaps because they already doubted the legality thereof, the beneficiaries renounced said compensation. At another general meeting of the stockholders held on February 22, 1931, the resolution Exhibit L was unanimously approved, whereby the board of directors was ordered to set aside annually a sum equivalent to between 2 per cent and 8 per cent of the net profits of the corporation, which sum must not exceed P140,000, for the purpose of compensating equally six incorporators. The incorporators likewise renounced such compensation. Notwithstanding said renunciations, at least the last resolution subsists. However, neither the board of directors nor the stockholders would repeal it in spite of the instructions given by the Bank Commissioner to the effect that they were illegal on the ground that they are in conflict with the spirit and purpose of mutual building and loan associations and with the express provisions of the Corporation Law.

The defendant contends that the compensation voted by the stockholders to be given to the incorporators is valid and is within the scope of its corporate powers. In the cases of *Barretto vs. La Previsora Filipina* (57 Phil., 649), and *Viuda de Barretto vs. La Previsora Filipina* (p. 212, post), in which the decisions rendered have been published recently, it was held that compensations and remunerations of similar character are null and void and illegal on the ground that they do not constitute a contract between the beneficiaries and the corporation, and that they are violative of the mutuality and cooperation which are the characteristic purposes that distinguish mutual building and loan associations from other ordinary corporations.

However, the defendant insists that the trial court erred in that respect: (a) Because judgment was rendered against the incorporators-beneficiaries without giving them a chance to be heard, and (b) because in the case of *Government of the Philippine Islands vs. El Hogar Filipino* (50 Phil., 399), another clause granting 5 per cent of the net profits of the corporation in favor of the founder thereof was held to be valid.

In fact and in conformity, with the provisions of the procedural law, no judgment has been rendered in the present case against the incorporators in whose favor the compensation was granted. It should be observed that the action instituted by the Government is in the nature of quo warranto proceedings for the sole purpose of testing the validity of certain resolutions adopted by the defendant. It is for this reason that the incorporators were not included as parties defendant. Neither was there any necessity of doing so. Whether the incorporators acquired any enforceable right under such resolutions or not, is a question to be decided between them and the defendant, to the exclusion of the herein plaintiff.

The case of *El Hogar Filipino* invoked by the defendant, was also taken into consideration when similar questions raised in the *Barretto* cases were decided. It was then held that there was no similarity in the facts involved therein on the ground that in the *El Hogar* case there had been a contract ratified by it through its board of directors and because some of the considerations of the said contract had been: the important services which the founder thereof was to render; the loan of P6,000 which he granted without interest; his payment of the organization expenses out of his own pocket and his promise to the effect that the capital of the corporation would not be less than P400,000. None of these considerations are found in the case of the incorporators. As we understand, the only consideration of the proposed compensation is the alleged services rendered by them prior and up to the time of the incorporation of the defendant.

The second assignment of error has its origin in a clause in the by-laws, which reads as follows:

"Paid-up shares denominated 'fundadores' shares shall have a par value of two hundred pesos (P200) each, fully paid, and shall be issued from the date the association is incorporated until such time as the Board of Directors deems such issuance closed, provided that shares of this series shall not exceed two thousand five hundred (2,500) in number. Until January 1, 1933, these shares shall bear interest at the rate of 10 per cent per annum payable on the 31st of December of every calendar year. However, from the aforesaid date forward, they shall bear interest at the rate of 12 per cent per annum payable at the expiration of every semester. Holders of this kind of shares shall have no other participation in the profits of the corporation than the right to collect the afore-stated fixed dividend * * *."

Several organizers and directors of the defendant corporation, their relatives and business associates subscribed for the "fundadores" shares paying only 20 per cent or less of the par value thereof and issuing promissory notes for the unpaid balance, secured by the pledge of the same shares so issued. The Bank Commissioner objected to this method of operation and ordered that said shares be cancelled or full payment thereof be demanded of the subscribers. The defendant appealed to the Secretary of Finance who granted it a period of ten days within which to demand the payment in cash of all the promissory notes secured by the "fundadores" shares, adding that in case said promissory notes are not paid for within the required period, the validity of the shares already issued shall not thenceforth be questioned, provided however that no loan on said "fundadores" shares would from that time on be granted unless made within six months from the date they are fully paid for and the Bank Commissioner is satisfied that it is a bona fide transaction and permits it. He ruled, further, that in case the promissory notes in question were not paid within ten days, the corresponding "fundadores" shares would be considered null and void and must be cancelled.

Instead of complying with the above-mentioned resolutions, the defendant instituted civil case No. 37703 of the Court of First Instance of Manila which resulted in a decision sustaining the Bank Commissioner and the Secretary of Finance and holding their disputed resolutions valid. Said case was appealed and registered in this court as G. R. No. 35982.[1] The said appeal, however, was dismissed upon petition of the herein defendant, then plaintiff-appellant, as evidenced by the resolution of this court dated August 11, 1932.

As hereinbefore stated, the court in sustaining the Bank Commissioner and the Secretary of Finance held that the transaction in question was illegal and the instructions given by the aforesaid administrative authorities should have been complied with. However, the defendant claims in its second assignment of error that the judgment of the trial court is untenable and erroneous: (a) Because the plaintiff has not proven the facts as alleged by it; (b) because a suit involving the transaction in question is pending before this court; and (c) because the whole transaction is valid and legal.

With respect to the first point, we are of the opinion that the facts stated therein are beyond question. The defendant itself admits them implicitly in the course of its arguments. The existence of such kind of shares cannot be denied.

As to the pending suit, it may be noted that the case instituted by the defendant against Unson and Martin, G. R. No. 39982, supra, has already been decided, having resulted in the dismissal of the appeal taken therein. If the alleged pendency of the said case was a bar to the discussion of the point in controversy in this case, undoubtedly the defendant wished to convey the idea that the final judgment that would be rendered therein should be respected by the parties. If such is the theory, as it undoubtedly is, it is unnecessary to pass upon this point of the present appeal, on the ground that it had already been decided conclusively in the judgment rendered by the trial court in the aforesaid case, which judgment became final upon the dismissal of the appeal taken therefrom. For this reason the Attorney-General abstained from discussing the second assignment of error in detail in his brief.

We deem it likewise our duty to abstain from passing upon this same point which had already been decided finally and in which the parties abided by the judgment rendered therein.

In our opinion, the third assignment of error involves purely academic and imaginary questions. We have read the decision of the trial court carefully but we have not found anything therein to the effect that it has held illegal the maintenance by the defendant of a certain proportion between its shares by means of closing the issuance of other shares. What the trial court really said in connection with paragraph (c) of the second cause of action was that the tables contained in the defendant's prospectus, whereby it assured that the accumulative shares would mature after a certain number of years and would earn as general average a dividend of 18 per cent, were illegal and misleading to the public on the ground that the defendant and its board of directors could not make any such promises nor give similar assurances to anybody inasmuch as the results thereof were dependent upon circumstances over which it had absolutely no control. It is a far cry from this pronouncement to the proposition submitted by the defendant in its third assignment of error. The Attorney-General has called attention to this same fact in his brief. We conclude that the question raised by the defendant in its aforesaid assignment of error is purely imaginary and anticipatory. Therefore, it merits no discussion nor solution.

Being a mere corollary of the former ones, the last assignment of error does not deserve any further consideration.

Wherefore, being convinced that the judgment appealed from is in accordance with the law in so far as it refers to the questions hereinbefore discussed and decided, it is hereby affirmed, with the costs against the defendant-appellant. So ordered.

Street, Malcolm, Butte, and Diaz, JJ., concur.

[1] El Ahorro Insular vs. Unson and Martin.

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