

CYRUS PADGETT, PLAINTIFF AND APPELLEE, VS. BABCOCK & TEMPLETON, INC., AND W. R. BABCOCK, DEFENDANTS AND APPELLANTS.

G.R. No. 38684. December 21, 1933

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

By resolution approved on November 25, 1933, this court set aside its decision in this case, which was promulgated on October 13th of the same year, and thereby granted a rehearing before the second division. The defendant W. R. Babcock and his counsel J. F. Boomer, both of whom were present during the said rehearing again argued the merits of the case. Nobody appeared for the plaintiff.

The facts of the case have not suffered any change. They remain the same as those which we stated in the original decision as follows: "The appellee was an employee of the appellant corporation and rendered services as such from January 1, 1923, to April 15, 1929. During that period he bought 35 shares thereof at P100 a share at the suggestion of the president of said corporation. He was also the recipient of 9 shares by way of bonus during Christmas seasons. In this way the said appellee became the owner of 44 shares for which the 12 certificates, Exhibits F to F-11, were issued in his favor. The word 'nontransferable' appears on each and every one of these certificates. Before severing his connections with the said corporation, the appellee proposed to the president that the said corporation buy his 44 shares at par value plus the interest thereon, or that he be authorized to sell them to other persons. The corporation bought similar shares belonging to other employees, at par value. Sometime later, the said president offered to buy the appellee's shares first at P85 each and then at P80. The appellee did not agree thereto."

The defendants admit that the 44 shares in question have become the property of the plaintiff. They likewise grant that under the law the said appellee has the right to have the restriction "nontransferable" appearing on the 12 certificates eliminated therefrom. However, they vigorously contend that there is no existing law nor authority in support of the proposition that they are bound to redeem or buy said shares at par value. Their admission is only limited to the proposition that after the restriction appearing thereon is eliminated, the plaintiff may sell the said shares to anybody, at their market value or at any price he sees fit.

We have not had the opportunity of hearing the opinion of the counsel for the plaintiff. We have again studied the laws applicable thereto and have searched for more authorities on the subject under discussion, but we have not found anything that bears directly on the question whether or not the defendants may be compelled, in this case, to buy the shares in question at par value. However, the opinion seems to be unanimous that a restriction imposed upon a certificate of shares, similar to the ones under consideration, is null and void on the ground that it constitutes an unreasonable limitation of the right of ownership and is in restraint of trade.

"Shares of corporate stock being regarded as property, the owner of such shares may, as a general rule, dispose of them as he sees fit, unless the corporation has been dissolved, or unless the right to do so is properly

restricted, or the owner's privilege of disposing of his shares has been hampered by his own action." (14 C. J., sec. 1033, pp. 663, 664.)

"Any restriction on a stockholder's right to dispose of his shares must be construed strictly; and any attempt to restrain a transfer of shares is regarded as being in restraint of trade, in the absence of a valid lien upon its shares, and except to the extent that valid restrictive regulations and agreements exist and are applicable. Subject only to such restrictions, a stockholder cannot be controlled in or restrained from exercising his right to transfer by the corporation or its officers or by other stockholders, even though the sale is to a competitor of the company, or to an insolvent person, or even though a controlling interest is sold to one purchaser." (Ibid., sec. 1035, pp. 665, 666.)

In the case of *Fleischer vs. Botica Nolasco Co.* (47 Phil., 583), we have discussed the validity of a clause in the by-laws of the defendant corporation, which provided that, under the same conditions, the owner of a share of stock could not sell it to another person except to the defendant corporation. In deciding the legality and validity of said restriction, we held:

"The only restraint imposed by the Corporation Law upon transfer of shares is found in section 35 of Act No. 1459, quoted above, as follows: 'No transfer, however, shall be valid, except as between the parties, until the transfer is entered and noted upon the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate, and the number of shares transferred.' This restriction is necessary in order that the officers of the corporation may know who are the stockholders, which is essential in conducting elections of officers, in calling meetings of stockholders, and for other purposes. But any restriction of the nature of that imposed in the by-law now in question, is ultra vires, violative of the property rights of shareholders, and in restraint of trade." (Id., p. 592.)

It is obvious, therefore, that the restriction consisting in the word "nontransferable", appearing on the 12 certificates, Exhibits F to F-11, is illegal and should be eliminated.

As we have hereinbefore stated, there is no existing law nor authority in support of the plaintiff's claim to the effect that the defendants are obliged to buy his shares of stock at par value, plus the interest demanded thereon. In this respect, we hold that there has been no such contract, either express or implied, between the plaintiff and the defendants. In the absence of a similar contractual obligation and of a legal provision applicable thereto, it is logical to conclude that it would be unjust and unreasonable to compel the said defendants to comply with a non-existent or imaginary obligation. Whereupon, we are likewise compelled to conclude that the judgment originally rendered to that effect is untenable and should be set aside.

Wherefore, the judgment appealed from is hereby reversed, and the restriction consisting in the word "non-transferable" appearing on the 12 certificates of shares of stock, is declared null and void. The defendants herein are hereby ordered to cancel the certificates in question and to issue in lieu thereof new ones without any restriction whatsoever, with the costs of both instances against the said defendants-appellants. So ordered.

Malcolm, Villa-Real, Abad Santos, and Hull, JJ., concur.

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