

BONIFACIO LUMANLAN, PLAINTIFF AND APPELLEE, VS. JACINTO R. CURA ET AL., DEFENDANTS. DIZON & CO., INC., ETC., APPELLANT.*G. R. No. 39681. March 21, 1934*

Ponente: GODDARD, J.

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This is an appeal from a decision of the Court of First Instance of Tarlac, the dispositive part of which reads as follows:

"Por las consideraciones expuestas, el Juzgado falla este asunto condenando a Dizon y Cia., Inc., a acreditar en sus libros coxno pago de las obligaciones? de Bonifacio Lumanlan la suma de P11,840, ordenando a la misma entidad que inmediatamente expida los certificados de accion equivalente a la menclonada suma; declarando perpetuo y absoluto el interdicto prohibitorio expedido contra los demandados; condenando a la Dizon y Cia., Inc., al pago de la suma de P2,000 a favor del demandante, y se condena a los demandados al pago de las costas del juicio. En cuanto a los danos y perjuicios reclamados por el demandante, no habiendo este probado los mismos, el Juzgado no puede accederlos."

The appellant, Dizon & Co., Inc., assigns twenty-three errors as having been committed by the trial court

The appellant is a corporation duly organized under the laws of the Philippine Islands with its central office in the City of Manila. The plaintiff-appellee Bonifacio Lumanlan, on July 31, 1922, subscribed for 300 shares of stock of said corporation at a par value of P50 or a total of P15,000. Julio Valenzuela, Pedro Santos and Francisco Escoto, creditors of this corporation, filed suit against it in the Court of First Instance of Manila, case No. 37007, praying that a receiver be appointed, as it appeared that the corporation at that time had no assets except credits against those who had subscribed for shares of stock. The court named Tayag as receiver for the purpose of collecting said subscriptions. As Bonifacio Lumanlan had only paid P1,500 of the P15,000, par value of the stock for which he subscribed, the receiver on August 30, 1930, filed a suit against him in the Court of First Instance of Manila, civil case No. 37492, for the collection of P15,109, P13,500 of which was the amount he owed for unpaid stock and P1,609 for loans and advances by the corporation to Lumanlan. In that case Lumanlan was sentenced to pay the corporation the above-mentioned sum of P15,109 with legal interest thereon from August 30, 1930, and costs. Lumanlan appealed from this decision.

Pending this appeal, with the permission of the court, the creditors, some of the directors and the majority of the stockholders held several meetings in which it was agreed in substance that subscribers for the capital stock who were in default should pay the creditors; Lumanlan was designated to pay the debt of the corporation to Julio Valenzuela, one of the petitioners in case No. 37007; at that time the corporation owed Valenzuela the sum of P8,000 plus interest thereon at the rate of 12 per cent per annum from March 17, 1928. Lumanlan agreed to assume this obligation and in turn the corporation agreed that if Lumanlan would dismiss his appeal in case No. 37492 the corporation would collect only 50 per cent of the amount subscribed by him for stock, provided that in case the 50 per cent was insufficient to pay Valenzuela he should pay an additional amount which should not

exceed the amount of the judgment against him in that case. In view of this agreement Lumanlan withdrew his appeal and paid Valenzuela the sum of P11,840 including interest and thereby was subrogated in place of Valenzuela. The petitioning creditors having been paid the amounts owed to them by the corporation asked that the receiver be dismissed and the court granted this. Disregarding this agreement and notwithstanding the payment made by Lumanlan to Valenzuela, the corporation on May 5, 1932, asked for the execution of the sentence in case No. 37492 and by virtue of an order of execution the provincial sheriff levied upon two parcels of land belonging to Lumanlan described in certificate of title No. 901 of the Province of Tarlac. Lumanlan brought this case to collect from Dizon & Co., Inc., and to prevent the sheriff from selling the two parcels of land. Pending the result of this case the sheriff was enjoined from proceeding with the sale.

In the promissory note given by the corporation to Valenzuela the former obligated itself to pay Valenzuela the sum of P8,000 with interest at 12 per cent per annum and, upon failure to pay said sum and interest when due, 25 per cent of the principal as expenses of collection and judicial costs in case of litigation.

By virtue of these facts Lumanlan is entitled to a credit against the judgment in case No. 37492 for P11,840 and an additional sum of P2,000, which is 25 per cent on the principal debt, as he had to file this suit to collect, or receive credit for the sum which he had paid Valenzuela for and in place of the corporation, or a total of P13,840. This leaves a balance due Dizon & Co., Inc., of P1,269 on that judgment with interest thereon at 6 per cent per annum from August 30, 1930.

It appears from the record that during the trial of the case now under consideration, the Bank of the Philippine Islands appeared in this case as assignee in the "Involuntary Insolvency of Dizon & Co., Inc." That bank was appointed assignee in case No. 43065 of the Court of First Instance of the City of Manila on November 28, 1932. It is therefore evident that there are still other creditors of Dizon & Co., Inc. This being the case that corporation has a right to collect all unpaid stock subscriptions and any other amounts which may be due it.

"It is established doctrine that subscriptions to the capital of a corporation constitute a fund to which the creditors have a right to look for satisfaction of their claims and that the assignee in insolvency can maintain an action upon any unpaid stock subscription in order to realize assets for the payment of its debts." (Philippine Trust Co. vs. Rivera, 44 Phil., 469, 470.)

"* * * the Corporation Law clearly recognizes that a stock subscription is a subsisting liability from the time the subscription is made, since it requires the subscriber to pay interest quarterly from that date unless he is relieved from such liability by the by-laws of the corporation. The subscriber is as much bound to pay the amount of the share subscribed by him as he would be to pay any other debt, and the right of the company to demand payment is no less incontestable." (Velasco vs. Poizat, 37 Phil., 802, 805.)

In view of the above conclusions it is not necessary to discuss the other questions raised by the parties in this case.

The judgment of the trial court is modified in accordance with the above and Dizon & Co., Inc., is ordered to credit Bonifacio Lumanlan with the sum of P13,840 against the judgment for P15,109, in case No. 37492 of the Court of First Instance of Manila; to issue to Bonifacio Lumanlan 300 shares of its capital stock upon payment by him of the sum of P1,269 with interest thereon at 6 per cent per annum from August 30, 1930. The preliminary injunction issued in this case is hereby dissolved for the purpose of enabling Dizon & Co., Inc., to ask for a new order of execution in case No. 37492, Court of First Instance of Manila, for the sum of P1,269 with interest thereon as stated above. Without pronouncement as to costs.

Malcolm, Villa-Real, Hull, and Imperial, JJ., concur.

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