

WILLAMETTE IRON & STEEL WORKS, PLAINTIFF AND APPELLEE, VS. A. H. MUZZAL, DEFENDANT AND APPELLANT.

G.R. No. 42538. May 21, 1935

Ponente: GODDARD, J.

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GODDARD, J.:

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

"In view of the considerations above stated, judgment is hereby entered in favor of the plaintiff, ordering the defendant, for the first cause of action, to pay to plaintiff the sum of P2,837.34, with interest thereon at the rate of 6 per cent per annum from March 11, 1929, until paid, and to pay also the amount of P1,590.63, for the second cause of action, with interest thereon at 7 per cent per annum from April 8, 1929, until paid. The defendant is further ordered to pay the amount of P500 as reasonable attorney's fees in prosecuting this action, and to pay the costs of these proceedings."

This case involves the liability of the defendant, a former resident of the State of California, now residing in the Philippine Islands, for obligations contracted by a California corporation of which he was a stockholder at the time said obligations were contracted with the plaintiff-appellee in this case.

The section of the Civil Code of California under which the plaintiff seeks to recover reads:

"Sec. 322. Each stockholder of a corporation is individually and personally liable for such proportion, of all its debts and liabilities contracted or incurred during the tirae he was a stockholder as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation. Any creditor of the corporation may institute joint or several actions against any of its stockholders, for the proportion of his claim payable by each, and in such action the court must (1) ascertain the proportion of the claim or debt for which each defendant is liable, and (2) a several judgment must be rendered against each, in conformity therewith. If any stockholder pays his proportion of any debt due from the corporation, incurred while he was such stockholder, he is relieved from any further personal liability for such debt, and if an action has been brought against him upon such debt, it must be dismissed, as to him, upon his paying the costs, or such proportion thereof as may be properly chargeable against him. The liability of each stockholder is determined by the amount of stock or shares owned by him the time the debt or liability was incurred; and such liability is not released by any subsequent transfer of stock."

The defendant-appellant makes the following assignments of error:

"I. The lower court erred in holding that the defendant was the holder of 1,432 shares of the capital stock of the Meyer-Muzzal Company.

"II. The lower court erred in finding that plaintiff has proven the existence of the foreign law involved in this action.

"III. The lower court erred in enforcing the law of California.

"IV. The lower court erred in rendering judgment against the defendant."

As to the first assignment of error the witness Stanley H. Hermann, a certified public accountant, testified that he knows that the Meyer-Muzzal Company is a corporation and further testified as follows:

"I became acquainted with the corporation by reason of being employed by it in October, November and December of 1929 as a certified public accountant and auditor to personally examine the company's books of account, stock and other records of the company for the purpose of certifying, if possible, to the correctness of a statement of the financial condition of the company on March 31, 1929.

*****"8. Please state, if you know, whether or not one A. H. Muzzal was a stockholder of Meyer-Muzzal Company on November 5, 1928 and December 22, 1928, and if he was, please state the number and value of the shares of capital stock of Meyer-Muzzal Company subscribed and owned by said A. H. Muzzal on November 5, 1928 and December 22, 1928?

"A. Yes, Mr. A. H. Muzzal was a stockholder of the Meyer-Muzzal Company on the dates specified. Fourteen hundred thirty-three shares of the capital stock of Meyer-Muzzal Company of the par value of \$10 each were subscribed and owned by said A. H. Muzzal on November 5th, 1928 and on December 22nd, 1928, and said shares were issued to and standing in the name of A. H. Muzzal on the books of said company at said times.

"9. If, by reason of the loss, destruction and/or disappearance of the stock and other corporate records of the Meyer-Muzzal Company since the time you had occasion to examine them, you have been unable to make reference thereto in answering the questions asked of you in this deposition, please answer each and all of said questions by reference to any documents or working sheets which you may have prepared upon the occasion of your examining and/or auditing the books of account, stock and other records of the Meyer-Muzzal Company.

"A. By reference to my working papers which I made at the time I examined the books of account and stock records of Meyer-Muzzal Company in October, November, December, 1929, and which working papers are in my possession, I find and can state accordingly that these working papers show what the stock and other records of said Meyer-Muzzal Company recorded in regard to the matters contained in questions No. 6, No. 7 and No. 8 and I can state accordingly from my examination of said records and by reference to my working papers that I know who the stockholders of Meyer-Muzzal Company were; that the amount of the subscribed capital stock of said Meyer-Muzzal Company on said dates was 5,000 shares of the par value of \$10 each, and that A. H. Muzzal was a stockholder of the Meyer-Muzzal Company on the dates specified and that fourteen hundred thirty-three shares of the capital stock of Meyer-Muzzal Company of the par value of \$10 each were subscribed and owned by A. H. Muzzal on November 5, 1928 and on December 22nd, 1928 and said shares were issued to and standing in the name of A. H. Muzzal on the books of said company at said times."

The above sufficiently establishes the fact that the defendant was the owner of 1,433 shares of stock of the corporation Meyer-Muzzal Company when it contracted the obligations alleged in the complaint.

As to the second assignment of error Mr. Arthur W. Bolton, an attorney-at-law of San Francisco, California, since the year 1918, under oath, quoted verbatim section 322 of the California Civil Code and stated that said section was in force at the time the obligations of the defendant to the plaintiff were incurred, i. e., on November 5, 1928 and December 22, 1928. This evidence sufficiently established the fact that the section in question was the law of the State of California on the above dates. A reading of sections 300 and 301 of our Code of Civil Procedure will, convince one that these sections do not exclude the presentation of other competent evidence to prove the existence of a foreign law.

"The foreign law is a matter of fact * * * You ask the witness what the law is; he may from his recollection, or on producing and referring to books, say what it is." (Lord Campbell concurring in an opinion of Lord Chief Justice Denman in a well known English case where a witness was called upon to prove the Roman laws of marriage and was permitted to testify, though he referred to a book containing the decrees of the Council of Trent as controlling, Jones on Evidence, Second Edition, Volume 4, pages 3148-3152.) Aside from the

testimony of Attorney Bolton Ragland's Annotated Civil Code of California was presented as evidence. This book contains that State's Civil Code as adopted March 21, 1872, with the subsequent official statute amendments to and including the year 1929.

In the third and fourth assignments of error the appellant argues that since the law of California, as to the liability of stockholders of a corporation, is different from and inconsistent with the Philippine Corporation Law the courts here should not impose liability provided in that law upon a resident of these Islands who is a stockholder of a California corporation. The herein defendant is chargeable with notice of the law of California as to the liability of stockholders for debts of a corporation proportionate to their stock holdings, in view of the fact that he was one of the incorporators of the Meyer-Muzzal Company in the year 1924 and was still a stockholder in that company in the year 1928. Exhibit 10 of the plaintiff is a certified copy of the articles of incorporation of MeyerMuzzal Company in which it appears that that company was incorporated on August 22, 1924, and that the incorporators were A. H. Muzzal, Leo W. Meyer and James Rolph, jr., "all of whom are residents and citizens of the State of California." The defendant cannot now escape liability by alleging that the California law is unjust and different from and inconsistent with the Philippine Corporation Law.

The judgment of the trial court is affirmed with costs in both instances against the defendant-appellant.

Malcolm, Abad Santos, Hull, Vickers, and Diaz, JJ., concur.

DISSENTING

BUTTE, J.,

I think that the appellant's first assignment of error is well taken. See sections 284 and 321 of the Code of Civil Procedure.

Judgment affirmed.

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