

**VICENTE SABALVARO, PLAINTIFF AND APPELLANT, VS. ERLANGER
& GALINGER, INC., WM. H. ANDERSON, S. FELDSTEIN, H. N.
SALET, WM. WOLFF, F. C. HAGEDGRN, AND W. H. RENNOLDS,
DEFENDANTS ...**

G. R. No. 43045. August 17, 1937

Ponente: DIAZ, J.

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DIAZ, J.:

Having lost at the trial in the Court of First Instance of Manila, the plaintiff appealed from the judgment rendered against him, alleging that the trial judge committed the five errors assigned by him in his brief. By means of said alleged errors he raises the following three questions, to wit:

- (1) Is the defendant corporation or its officers, who are the other defendants, under obligation or not to purchase from the plaintiff his ten shares of stock in the corporation, which had been assigned to him upon partial payments with the same dividends earned by said shares of stock and which are those stated in certificates of stock Nos. 30, 43 and 48, for 1, 7 and 2 shares, respectively, according to Exhibits C, A and B, after the plaintiff's separation from said defendant corporation?
- (2) Is the defendant corporation under obligation or not to pay to the plaintiff an amount equivalent to 7 per cent of the value of his said ten shares of stock, as interest during the year 1932, under the terms of Exhibit A?
- (3) Is the defendant corporation under obligation or not to pay to the plaintiff the value of his alleged accrued leave of 12 months and 25 days, for his 12 years and 10 months of service rendered thereto, after his separation from the service?

To understand the questions raised it is necessary to know the pertinent facts of the case proven at the trial, which are as follows:

The defendant corporation accepted the services of the plaintiff, as its employee, on April 16, 1920. A few months after the plaintiff had entered said defendant's service—the record is silent as to the date—the defendant Feldstein, who was the vice-president thereof, offered to sell him the share which had originally been issued in the name of Serapio Estabaya and transferred by the latter to the corporation, for economic reasons. In view of the fact that the plaintiff had no money available to pay for the value of the share offered to him, which was P500, he by agreement with Feldstein signed a promissory note for said amount, with the understanding that it would be paid piecemeal with bonus thereafter to be given him monthly as dividends by the corporation, which was so done although not completed.

In January, 1923, the defendant corporation was kind enough to raise the salaries of its employees, but instead of giving the plaintiff a raise, the defendant Feldstein made him a present of said share formerly belonging to Serapio Estabaya, informing him in his letter of the 14th of said month and year that with said arrangement his promissory note would be cancelled and returned to him on the following Monday (Exhibit C).

On January 1, 1924, the defendants Win. H. Anderson and S. Feldstein, who were the holders of the majority stock of the defendant corporation, on their own account, granted the plaintiff an option to acquire the 7 shares stated in certificate No. 43, which are the ones referred to in Exhibit A, expressly informing him in the latter document which, by the way, is also signed by the defendant corporation and by the plaintiff himself, among other things, as follows:

"1. You are entitled to purchase seven shares of the capital stock at par, which is P500 a share. This privilege is nontransferable.

"2. Until the shares are fully paid for by you, they shall remain in our name and we shall vote them.

"3. You will pay the purchase price of said shares out of the earnings of the stock.

"4. You shall not sell the shares acquired by you except to the officers of the corporation unless the Board of Directors of the corporation approve the sale.

"5. After you have fully paid for the aforesaid shares, then and then only the purchase price paid by you shall draw interest at 7 per cent a year in addition to drawing such dividends as the Board of Directors may authorize.

"6. Should you become separated from the Company's employment through any cause—except sickness or death— before fully paying for your shares, you forfeit all earnings on the stock and you forfeit all your rights to acquire the shares. Should, however, your separation from the Company's employment be by reason of sickness or death, before fully paying for your shares, you or your estate will be entitled to receive only the earning of such shares as shown by the last balance sheet prior to your separation but all your rights to acquire such shares shall be and stand forfeited. This clause is inserted as expressing the intention of the parties hereto that the offer to acquire shares is in the nature of a special bonus for long, faithful and continuous service.

"This agreement is also signed by Erlanger & Galinger, Inc. so as to be binding as to clauses 4 and 5 hereof."

The plaintiff succeeded in paying piecemeal the value of the 7 shares in question with the dividends earned by the same during the years 1924, 1925 and 1926 (Exhibit H).

The defendant Feldstein again gave the plaintiff other 2 shares under the same conditions for payment as those granted him for the acquisition of the 7 shares stated in certificate No. 43, so as to permit him, as he stated in his letter of January 24, 1928 (Exhibit B), "to become permanently identified with this company", referring to the defendant corporation. Feldstein, however, imposed upon him the following condition:

"These stock certificates must not be sold without the approval of the Board of Directors whose authority must first be obtained and they will automatically revert to me in case you leave the employ of the company. If for any reason whatsoever, you leave the employ of the company you will not be entitled to any earnings on this stock.

"Effective Jan. 1, 1928."

As promised him in paragraph 5 of Exhibit A, the stipulated interest of 7 per cent per annum, from 1926 to the month of December, 1931, was paid to the plaintiff. In December, 1932, however, the officers of the defendant corporation, to wit: Wm. H. Anderson, S. Feldstein, H. N. Salet, Wm. Wolff, F. C. Hagedorn, and W. H. Rennolds, together with the plaintiff and the other stockholders thereof, agreed to discontinue payment of said interest from January 1, 1932, executing to that effect the document marked in the record as Exhibit P, which literally reads as follows:

"This indenture, executed this * * * day of December, 1932 by the parties undersigned, all of whom are of age and residing in the places set opposite their signature,

"WITNESSETH—THAT:

"For and in consideration of the sum of one peso (P1) and other valuable considerations, receipt whereof is hereby acknowledged, the parties undersigned, for themselves, their heirs, successors, executors, administrators and assigns, have waived, renounced and quit-claimed, freely and voluntarily, any and all rights in and to the credit or interest of seven per centum (7%) per annum heretofore paid, and now due, owing and/or payable or which may hereafter accrue, become due, owing and/or payable upon or account of the divers shares of stock to all and each of them appertaining, or by them owned and held, in the capital stock of 'Erlanger & Galinger, Inc.', a corporation organized under and by virtue of the laws of the Philippine Islands, with main offices therein in the City of Manila; this waiver, renunciation and quit-claim to inure to the benefit of the said corporation 'Erlanger & Galinger, Inc.', its successors and assigns, from and after December 15, 1932, including interest accrued during the year 1932.

"In witness whereof, the Parties have executed these presents, in Manila, P. I, the day and year first written above.

"Names

Shares

Address

"Maj. Wm. H. Anderson.....

601

(Sgd.) Win. H. Anderson

"Mr. S. Feldstein

378

"Mr. Wm. H. Rennolds

1

"Mr. H. N. Salet.....

101

"Mr. Wm. Wolff.....

31

"Mr. K. L. Morrison

25

"Mr. B. W. Guysi.....

20

"Mr. J. Tremblay

10

"Mr. V. Sabalvaro.....

10

"Mr. R. Munos

8

"Mr. P. C. Hagedorn

5

"Mr. N. Dominguez

5

"Mr. E. Mascunana.....

4

"Mr. B. H. Silen.....

1

"Total

1,200"

Prior to and even during the time the plaintiff was in the service of the defendant corporation, the latter had been granting accrued leave privileges at the rate of one month a year, with pay, to its American and European employees who had rendered it services for more than 4 years. In addition to these privileges, it generously granted them free transportation expenses to and from their respective countries. The privileges were later extended by it to some employees residing in the Philippines.

When the plaintiff voluntarily separated from the service of the defendant corporation on February 17, 1933, he asked the latter and the officers thereof to purchase his 10 shares in question as they previously purchased those of other employees. He likewise asked them to pay him 7 per cent of the value of his said shares, as interest, during the year 1932. He finally requested them to commute his accrued leave by paying him the value thereof, as they previously did to other employees of the corporation. He was granted nothing, however, except authority to sell to whomsoever he wished, 7 of said 10 shares which he had in the corporation (Exhibit 3).

- From the foregoing facts it is clear that the three shares referred to in certificates Nos. 48 and 30 and Exhibits B and C are not in the same conditions as the seven shares stated in certificate No. 43 and in Exhibit A. The assignment of the same to the plaintiff took place under other circumstances and entirely different conditions. Such assignment has not been subject to the stipulations appearing in paragraphs 4, 5 and 6 of Exhibit A. It is evident that in no contract may a contracting party be obligated to more than what he has really bound himself and that the contract should not be construed as including things and cases different from those with respect to which the persons interested intended to contract (art. 1283, Civil Code). If this is true in the case of the defendant corporation and in that of the defendants Wm. H. Anderson, H. N. Salet, Wm. Wolff, F. C. Hagedorn and W. H. Rennolds who did not even intervene in any manner in the execution of the documents Exhibits B and C which imply at most a contract between the defendant S. Feldstein and the plaintiff, it is no less true in the case of the plaintiff with respect to the share referred to in Exhibit C. The assignment of said share to him (Exhibit C), was made through mere liberality, as a present, according to said document, without being subject to any condition and without any obligation on the part of Feldstein to purchase it from him, either during his stay in the service, of the defendant corporation or after his separation therefrom.

The second paragraph of Exhibit B which imposes upon the plaintiff the condition not to sell the two shares stated therein without first obtaining authority from the defendant corporation, and that the same must revert to the defendant Feldstein in case said plaintiff should leave the employ of the corporation, does not mean that there is obligation on the part of said corporation, its officers or Feldstein himself to purchase from him the two shares in question. It should be borne in mind that said shares were not purchased by the plaintiff with his own money but with the dividends or profits earned by the same. It may therefore be stated that the plaintiff loses nothing if the clause of Exhibit B, providing for the reversion of said shares to Feldstein, is carried into effect, inasmuch as such reversion may take place as soon as the plaintiff leaves the employ of the defendant corporation. In other words, if he remains in the service, he obtains the benefit of earning the dividends of the shares in question which really did not cost him anything, and he certainly received such dividends from the time the certificates covering said shares were issued to him until his separation from the service. He cannot claim that he was led into error because he had before him Exhibit B, which is clear enough, and it is to be presumed that he read and considered it with the necessary mature reflection, before giving his consent to the transaction proposed to him therein (section S34, No. 4, Act No. 190).

The same reasons stated with regard to the shares referred to in certificates Nos. 48 and 30 and in Exhibits B and C resolve the question relative to the 7 shares of the plaintiff stated in certificate No. 43 and in Exhibit A. By reading the entire text of the latter document, it will clearly appear that the only thing to which the defendant corporation bound itself upon affixing its signature thereto (Nos. 4 and 5 and paragraph next to No. 6 of Exhibit A) was to approve or disapprove the transfer or transfers which the plaintiff might wish to make of his 7 shares in favor of persons not connected with the corporation (par. 4), and to pay him interest at 7 per cent per annum on the purchase price thereof plus such dividends as the board of directors might authorize (par. 5), the former obligation having been performed by it by means of its resolution of February 23, 1933 (Exhibit 3). There is nothing in Exhibit A to indicate, that the defendant corporation or the officers thereof, that is, the other defendants, or its employees, are under obligation to purchase the shares of the plaintiff after his separation from

the service. The only thing provided for therein is the case of the plaintiff's separation from the service of the defendant corporation before the value of the seven shares in question has been fully paid with the same dividends thereafter to be earned by them. If there is anything provided for therein relative to what would be done with his shares fully paid for in the manner above-stated, after his separation from the service of the corporation, it is that he must first obtain authority from said corporation in the event he should choose to sell them to persons not connected with it. The fact that on previous occasions the defendant corporation voluntarily and spontaneously purchased the shares of some other officers and stockholders thereof, who had separated from its service, does not permit the inference that the understanding had between it and the plaintiff was that it would purchase the latter's shares as soon as he left its service. The clear terms of a contract should never be the subject matter of interpretation. Their true meaning must be enforced as it is to be presumed that the contracting parties know their scope and effects. Construction and interpretation should not be resorted to where it is unnecessary and where it is possible to apply the terms of a contract, because to do so would result in making precisely a new contract between the parties (*Lambert vs. Fox* [1914], 26 Phil, 588).

This court is of the opinion that the doctrine laid down in the case of *Padgett vs. Babcock & Templeton, Inc.* and *Babcock* ([1933], 59 Phil., 232), is applicable to the case at bar. In the absence of a contract, either express or implied, providing for the acquisition by a corporation or its officers of the shares of the stockholders thereof, they should not and cannot be obliged to acquire them. Therefore the answer to be given to the first question raised by the plaintiff must be in the negative.

- With respect to the second question, suffice it to state that the plaintiff, as it clearly appears in Exhibit P which, by the way, was executed in December, 1932, expressly and formally renounced the stipulated interest of 7 per cent per annum corresponding to said year, that is, from January 1st to December 31st, thereby relieving the defendant corporation of the obligation to pay it to him. It is true that during the hearing the plaintiff testified that if he subscribed the document in question it was in deference to the wishes of the defendant Wm. H. Anderson who was the president of the defendant corporation, but it is no less true that he was contradicted on this point by H. N. Salet, the vice-president of said corporation, saying that it was he and not Wm. H. Anderson who had intervened in the transaction; that the plaintiff signed said document with absolute freedom and as voluntarily as did the others who signed it; that no threat or pressure of any kind on the part of anybody intervened in the execution thereof, and that the payment of interest ceased due to the fact that the economic conditions of the defendant corporation no longer permitted it (t. s. n., p. 28). The argument that the plaintiff signed the document in question for fear of being dismissed from the corporation, which fear was unfounded because it does not appear that he has been intimidated by somebody, does not prove that his consent was obtained by means of intimidation; and if he were to allege that it was for fear of incurring the displeasure of his employers that he signed the document in question, the answer would be the provision of article 1267 of the Civil Code that: "Fear of displeasing persons to whom obedience and respect are due shall not annul a contract." For these reasons the question under consideration should be decided in the negative.

- The third question should not even be discussed because the plaintiff himself admits that it was and is discretionary on the part of the defendant corporation to grant or not accrued leave privileges to its officers and employees. On the other hand, the preponderance of evidence establishes that the accrued leave privileges were limited by the defendant corporation to its employees of foreign residence. The plaintiff attempted to prove by means of his testimony that commutation had been made of the accrued leave of the employees named W. H. Gray, Ernest Loewinsohn and F. C. Hagedorn who permanently resided in this country. Granting this to be true, although it does not seem to be so because the names given sound like they were names of foreigners and because there is the evidence presented by the defendant corporation to the effect that the accrued leave privileges were extended only to its employees of foreign residence, it does not follow that it is obliged to grant accrued leave to

the plaintiff and have it commuted for him, because the discretionary character of said act would be destroyed. The performance of a discretionary act is not enforceable by action. In view of the foregoing reasons, the third question must also necessarily be decided in the negative.

This court holds that the lower court committed none of the errors assigned by the plaintiff and hereby affirms the appealed judgment in all its parts, with costs to the plaintiff. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Imperial, and Concepcion, JJ., concur.

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