

JUAN E. TUASON, PLAINTIFF AND APPELLEE, VS. LA PREVISORA FILIPINA, MUTUAL BUILDING AND LOAN ASSOCIATION, DEFENDANT AND APPELLANT.

G.R. No. 44579, December 24, 1938

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the defendant, La Previsora Filipina, Mutual Building and Loan Association, from the judgment of the Court of First Instance of Manila, the dispositive part of which is as follows:

"In view of all the foregoing, judgment is hereby rendered in favor of the plaintiff Juan E. Tuason, and against the defendant La Previsora Filipina, ordering the defendant to pay the plaintiff the amount of P22,513.91, plus 10 per cent interest on P22,000 from March 27, 1934, until fully paid, and to pay the costs of this action. It is so ordered."

When the case was called for trial in the Court of First Instance of Manila and before the presentation of evidence, the parties submitted to the court for decision the following partial stipulation of facts:

"It is hereby agreed and stipulated by and between the respective parties hereto:

"(1) That the herein plaintiff is of age and a resident of the City of Manila, and that the herein defendant is a building and loan association, since 1929, having acquired by virtue of the laws of the Philippine Islands, with its principal place of business in the City of Manila.

"(2) That on October 11, 1932, plaintiff applied to surrender the shares of stock set out in plaintiff's complaint, in accordance with the provisions of Article 3 of the By-Laws.

"(3) That on March 26, 1934, the turn of plaintiff's application for surrender had been reached, and the defendant company had sufficient funds available to reimburse the plaintiff for the value of said shares.

"(4) That the last dividends received by plaintiff on said shares were paid on the dates set forth below:

Certificate
No.

Date of last dividend

414

.....

Oct. 9, 1933

416

.....

Oct. 15, 1933

417

.....

Oct. 17, 1933

439

.....

Nov. 15, 1933

486

.....

Jan. 7, 1934

499

.....

Jan. 16, 1934

511

.....
Jan. 23, 1934

519
.....

Jan. 30, 1934

639
.....

Jan. 5, 1934

"(5) That the only shares in the defendant corporation ever held by the plaintiff, other than those enumerated in plaintiff's complaint are thirty-five (35) shares of paid up stock of Series 'M' and one (1) share of paid up stock of Series 'F'; and that in addition thereto he has subscribed to fifty thousand (50,000) shares of installment stock of Series 'A.' "(6) It is further agreed and stipulated that the parties may present such additional evidence as they may deem convenient in support of their respective contentions in this case.

"Wherefore, it is respectfully prayed that this stipulation be approved.

"Manila, January 8, 1935.

"DEWITT, PERKINS & BRADY

By

"Attorneys for the plaintiff

"E. P. REVILLA

"Attorney for the defendant"

From the additional evidence adduced by the parties, the following facts have been made clear:

Appellee Juan E. Tuason had been a stockholder of the defendant and appellant, La Previsora Filipina, Mutual Building and Loan Association, since 1929, having acquired on different dates shares of stock thereof of the series M and C, at the par value of P200 per share with a guaranteed dividend of 10 per cent. Plaintiff acted as treasurer of defendant corporation from February 27, 1932 up to February 1, 1933. On February 15, 1932, said plaintiff subscribed for 50,000 accumulative shares of series A, paying on account the sum of P5,000, value of twenty-five shares subscribed and paid for by him, which he had exchanged for the equivalent value of the aforesaid accumulative shares in accordance with section 25 of the by-laws of the association. The corresponding certificate of stock, which bears number 8463 (Exhibit 5), had been prepared by defendant corporation and was dated February 15, 1932. On February 19, of the same year, said defendant corporation addressed a letter (Exhibit 4) to

plaintiff in which informed him that the certificate (Exhibit 5) issued by in his favor for 50,000 accumulative shares of series A, bearing number 8463, remained at his disposal in the office of said defendant where he might get the same when he so desired.

On August 1, 1932, the Collector of Internal Revenue, after an investigation, discovered that defendant had not affixed documentary stamps on the aforesaid certificate No. 8463 in violation of section 1449 (b) of Act No. 2711, for which reason he required defendant to pay P10,000 for documentary stamps (Exhibit 35). In view of said demand, the board of directors of defendant corporation, by resolution of August 4, 1932, agreed to pay the aforesaid amount.

Plaintiff Juan E. Tuason having failed to pay the remaining installments on the price of the 50,000 accumulative shares of series A, defendant corporation, by resolution of its board of directors of November 10, 1932, declared said shares forfeited in December, 1932.

On March 9, 1934, defendant corporation demanded of plaintiff, through the letter Exhibit Q, the reimbursement of the sum paid by it for documentary stamps.

On April 19, 1934, plaintiff, through his attorney, was notified by said defendant corporation of the declaration of forfeiture above-mentioned of the aforesaid 50,000 accumulative shares (Exhibit N).

On April 25, 1934, the corresponding documentary stamps were affixed to the stub Exhibit S of certificate No. 8463 (Exhibit 5) by a committee appointed by the Collector of Internal Revenue, which immediately cancelled the same.

The main question to be decided in this appeal is whether or not plaintiff was bound to reimburse defendant corporation for the value of the documentary stamps which the committee appointed by the Collector of Internal Revenue has affixed to certificate No. 8463 for 50,000 shares of stock issued in the name of said plaintiff.

The pertinent portion of section 1449 of the Revised Administrative Code as amended by Act No. 3709, reads as follows:

"SEC. 1449. Stamp tax upon documents and papers.— Upon documents, instruments, and papers, and upon acceptances, assignments, sales, and transfers of the obligation, right, or property incident thereto documentary taxes for and in respect of the transaction so had or accomplished shall be paid as hereinafter prescribed, by the person making, signing, issuing, accepting, or transferring the same, and at the time such act is done or transaction had:

* * * * *

(b) On every original issue, whether on organization, reorganization, or for any lawful purpose, of certificates of stock by any such association, company, or corporation, on each two hundred pesos, or fractional part thereof, of the par value of such certificate, twenty centavos: Provided, That in the case of the original issue of stock without par value the amount of the documentary stamp tax herein required shall be based upon the actual consideration received by the corporation for the issuance of such stock, and in the case of stock dividends, on the actual value represented by each share."

According to the legal provisions above quoted, it is the duty of the corporation or company issuing original shares of stock to affix the documentary stamps therein required on the issuance of said shares. Now, what is meant by the word "issue" as used in the corresponding texts of said section 1449 (b) or the Administrative Code?

On pages 324, 325 of volume 11 of Fletcher's Cyclopedia of Corporations, the following may be found:

"While issuance or delivery of a certificate is not necessary to constitute one a stockholder, delivery is,

generally speaking, an essential element of the issuance of certificates. So there is no issuance of a certificate where it is never detached from the stock book although the blanks therein are properly filled up, if the person whose name is inserted therein has no control over the books of the company. But the contrary has been held to be true where the persons sought to be held as stockholders are officers or trustees of the company, and have the custody of the stock book and can detach the certificates at any time. It has also been held that stock is not issued where a certificate made out in the name of the subscriber is never delivered to him but is retained by the corporation as security for notes given by him for the unpaid portion of his subscription; and this has been held to be true even though the subscriber votes the stock and though dividends are declared on it which are credited on the notes. Making out a certificate and mailing it to a stockholder is an issue thereof." (See also 14 Corpus Juris, pages 484, 485.)

The fact, therefore, that plaintiff received notice from defendant corporation on February 19, 1932 that certificate of stock No. 8463, issued in his favor, was at his disposal in the office of the company to be there taken by him when he so desired or had time to do so, was not sufficient for the purpose of considering said shares as issued in the light of the authorities above-cited because plaintiff could not dispose of said certificate inasmuch as he did not have control or ownership of the books of defendant corporation. Furthermore, the documentary stamps which the law requires to be affixed upon the issuance of the shares of stock not having been affixed on said date, the mere making of the certificate which represents the 50,000 accumulative shares of stock of series A for which plaintiff had subscribed can not be considered as having the effect of issuing them. While it is true that upon the discovery on August 1, 1932 by the Collector of Internal Revenue that the corresponding documentary stamps had not been attached to the certificate of shares of stock in question, said official required the defendant company to pay P10,000 for said stamps and that in view of said demand, the board of directors of the defendant company agreed on August 4, 1932 to pay said sum, payment had not been made. In the meantime, by resolution of November 10, 1932, the same board of directors declared said shares of stock forfeited in December, 1932 on account of failure of the plaintiff to pay the remaining installments on the price of the said 50,000 accumulative shares of stock of series A, depriving the plaintiff in this manner of all his rights over said shares of stock from the aforementioned month of December, 1932. If the obligation to pay the value of the documentary stamps which were affixed to the certificate of stock—supposing that plaintiff had agreed with defendant corporation to assume the same, which he, however, denies and no authentic evidence in the affirmative has been shown—arises from the existence of said right, upon the latter's disappearance, the former can not exist upon the principle that when there is no cause there can be no effect. When more than one year after, or on April 2b, 1934, the committee appointed by the Acting Collector of Internal Revenue affixed to the stub Exhibit B of the said certificate No. 8463 the documentary stamps in question and immediately cancelled them, plaintiff had no longer anything to do with the shares of stock which represented said certificate, and he can not now be made to answer for the payment of their value.

In view of the foregoing, we are of the opinion and so hold: First, that the mere making of a certificate of stock in the name of the subscriber thereof by installments and its signing by the officers of a mutual building and loan association, without affixing thereto the corresponding documentary stamps, does not constitute an issue of said certificate, notwithstanding the notice which the secretary of said association might have sent to the said subscriber advising him of its issuance and informing him that said certificate "was at his disposal whenever he desired or had time to get it"; second, that a subscriber of shares of stock in an association is not bound to pay the documentary stamp tax required by law, unless he had agreed with the association to assume payment thereof; and third, that even when there is such an agreement, if before the issuance of the shares of stock the right of the subscriber to the same is declared forfeited, said subscriber is likewise not bound to pay said tax.

Wherefore, finding no error in the judgment appealed from, the same is hereby affirmed in all its parts, with costs against the appellant. So ordered.

Avanceña, C. J., Imperial, Diaz, and Laurel, JJ., concur.

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