

M. E. GREY, PLAINTIFF AND APPELLANT, VS. INSULAR LUMBER COMPANY, DEFENDANT AND APPELLEE.

G.R. No. 45144. April 03, 1939

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

The only question of law raised in this appeal is whether the plaintiff-appellant is entitled, as stockholder of the defendant-appellee Insular Lumber Company, to inspect and examine the books and records of the transactions of said defendant.

The parties submitted a stipulation of facts on which the lower court based its judgment denying the mandamus against the defendant and absolving it from the complaint.

According to the stipulation of facts, the defendant was and is a corporation organized and existing under the laws of the State of New York, licensed to engage in business in the Philippines, with offices in the City of Manila, in Fabrica, Occidental Negros, in New York and in Philadelphia. The plaintiff was and is the owner and possessor of 57 shares of the capital stock of the defendant corporation, registered in his name in the books thereof; that he does not own three per cent of the total capital stock of the corporation, nor does he represent stockholders who own three per cent of its capital; that during the years 1932 and 1933, the plaintiff asked the offices of the defendant in Manila and in Fabrica to permit him to examine the books and records of the business of said defendant, but he was not allowed to do so; that under the law of New York, the rights of a stockholder to examine the books and records of a corporation organized under the laws of that State, have been, during the entire period material to this action, only those provided in section 77 of the Stock Corporation Law, which reads as follows:

"Financial Statement to Stockholders: Stockholders owning three per centum of the shares of any corporation other than a moneyed corporation may make a written request to the treasurer or other fiscal officer thereof for a statement of its affairs, under oath, embracing a particular account of all its assets and liabilities, and the treasurer shall make such statement and deliver it to the person making the request within thirty days thereafter, and keep on file in the office of the corporation for twelve months thereafter a copy of such statement, which shall at all times during business hours be exhibited to any stockholder demanding an examination thereof; but the treasurer shall not be required to deliver more than one such statement in any one year. The Supreme Court, or any justice thereof, may upon application, for good cause shown, extend the time for making and delivering such statement. For every neglect or refusal to comply with the provisions of this section the corporation shall forfeit and pay to the person making such request the sum of Fifty Dollars, and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished." (S. C. L., sec. 77.)

That neither the plaintiff nor any other stockholder of the defendant corporation has asked its treasurer or any of its officers for a statement of its affairs, as provided in the statutes of New York; neither did the plaintiff ask to be allowed to examine any of the statements prepared by the defendant corporation and existing in its files, as

provided by the statutes of New York.

In the light of the foregoing facts agreed upon by the parties and in accordance with section 77 of the Stock Corporation Law of New York which is conceded to be the law that governs the right of a stockholder to examine the books and papers of a corporation, it is a question fully settled that the plaintiff not being a stockholder owning at least three per cent of the capital stock of the defendant corporation, has no right to examine the books and records of the corporation nor to require a statement of its affairs embracing a particular account of its assets and liabilities.

Plaintiff-appellant contends, however, that, in accordance with our Corporation Law, under which the defendant company was registered to do business in the Philippines, the plaintiff, as stockholder, is entitled to inspect the record of the transactions of the defendant corporation (sec. 51, Act No. 1459), and this right, which is recognized in the common law, has not been altered by section 77 of the Stock Corporation Law of New York quoted in the stipulation of facts, and can be enforced by mandamus.

To this, defendant corporation answers, in the first place, that the stipulation of facts is binding upon both parties and cannot be altered by either of them. (25 R. C. L., 1104, 1105.) In the second place, on the strength of this principle, plaintiff-appellant is bound to adhere to the agreement made by him with the defendant corporation in paragraph four of the stipulation of facts, to the effect that the rights of a stockholder, under the law of New York, to examine the books and records of a corporation organized under the laws of said State, and during the entire period material to this action, are only those provided in section 77 of the Stock Corporation Law of New York. Under this law, plaintiff has the right to be furnished by the treasurer or other fiscal officer of the corporation with a statement of its affairs embracing a particular account of all its assets and liabilities. In the third place, inasmuch as plaintiff, either at the hearing or in his motion for new trial, did not ask to have the stipulation of facts altered or changed, he cannot now, for the first time on appeal, raise the question that aside from the right conferred upon him by section 77 of the Stock Corporation Law of New York, he is also entitled under the common law to examine and inspect the books and records of the defendant corporation. In the fourth place, neither can this right under the common law be granted the defendant in the present case, since the same can only be granted at the discretion of the court, under certain conditions, to wit:

(a)

That the stockholder of a corporation in New York has the right to inspect its books and records if it can be shown that he seeks information for an honest purpose (14 C. J., 853), or to protect his interests as stockholder. (In re Steinway, 159 N. Y., 250; 53 N. E., 1103; 45 L. R. A., 461 [aff. 31 App. Div., 70; 52 N. Y. S., 343]).

(b)

That said right to examine and inspect the books of the corporation must be exercised in good faith, for a specific and honest purpose, and not to gratify curiosity, or for speculative or vexatious purposes. (14 C. J., 854, 855.)

The appellant has made no effort to prove or even allege that the information he desired to obtain through the examination and inspection of defendant's books was necessary to protect his interests as stockholder of the corporation, or that it was for a specific and honest purpose, and not to gratify curiosity, nor for speculative or vexatious purposes.

In view of the foregoing, we affirm the judgment of the lower court, with costs against the appellant. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, and Laurel, JJ., concur.

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