

GERARDO GARCIA, PLAINTIFF AND APPELLEE, VS. ANGEL SUAREZ, DEFENDANT AND APPELLANT.*G.R. No. 45493. April 21, 1939*

Ponente: CONCEPCION, J.

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On October 4, 1924, the appellant subscribed to sixteen shares of the capital stock of the Compania Hispano-Filipina, Inc., a corporation which is duly formed and organized. Of the sixteen subscribed shares, at the par value of P100 each, the appellant only paid P400, the value of four shares. On June 5, 1931, the plaintiff-appellee was appointed by the court receiver of the Compañia Hispano-Filipina, Inc., to collect all the credits of said corporation, pay its debts and dispose of the remainder of its assets and of its properties. On June 18, 1931, the plaintiff-appellee in vain made demand upon the defendant-appellant to pay the balance of his subscription. On July 10, 1933, the plaintiff, as receiver, brought an action in the Court of First Instance of Manila to recover from the defendant-appellant and other shareholders the balance of their subscriptions, but the complaint was dismissed for lack of prosecution. On October 10, 1935, a similar complaint was filed against the appellant, and after trial, judgment was rendered therein ordering the said defendant to pay to the plaintiff, as receiver of Compania Hispano-Filipina, Inc., the sum of P1,200, with legal interest thereon from October 4, 1924, and the costs. The defendant appealed and in this instance contends that the trial court erred in holding that the action of the plaintiff-appellee has not prescribed, and that the appellant has not been released from his obligation to pay the balance of his subscription.

The first alleged error is based on the ground that the obligation contracted by the appellant to pay the value of his subscription was demandable, according to him, from the date of subscription in the absence of any stipulation to the contrary, and he says that from the date of his subscription, October 4, 1924, until the filing of the complaint on October 10, 1935, more than ten years have elapsed, a period which is more than sufficient for the prescription of the action brought against the appellant.

In support of his contention, the appellant cites section 37 of the Corporation Law, amended by Act No. 3518, according to which, subscribers for stock shall pay to the corporation quarterly on all unpaid subscription interest, from the date of subscription, at the rate of six per centum per annum unless otherwise provided in the by-laws. From this legal provision the appellant infers that the subscriber is bound to pay the total amount of the subscription from the perfection of the contract, there being, as there is none in this case, any stipulation to the contrary in the by-laws of the corporation or in the contract of subscription.

The premise of the argument is wrong because it confuses two distinct obligations: the obligation to pay interest and that to pay the amount of the subscription. The said section 37 of the Corporation Law provides when the obligation to pay interest arises and when payment should be made, but it is absolutely silent as to when the subscription to a stock should be paid. Of course, the obligation to pay arises from the date of the subscription, but the coming into being of an obligation should not be confused with the time when it becomes demandable. In a loan, for example, the obligation to pay arises from the time the loan is taken; but the maturity of that obligation,

the date when the debtor can be compelled to pay, is not the date itself of the loan, because this would be absurd. The date when payment can be demanded is necessarily distinct from and subsequent to that when the obligation is contracted.

By the same token, the subscription to the capital stock of a corporation, unless otherwise stipulated, is not payable at the moment of the subscription but on a subsequent date which may be fixed by the corporation. Hence, section 38 of the Corporation Law, amended by Act No. 3518, provides that:

"The board of directors or trustees of any stock corporation formed, organized, or existing under this Act may at any time declare due and payable to the corporation unpaid subscriptions to the capital stock * * *."

The board of directors of the Compania Hispano-Filipina, Inc., not having declared due and payable the stock subscribed by the appellant, the prescriptive period of the action for the collection thereof only commenced to run from June 18, 1931 when the plaintiff, in his capacity as receiver and in the exercise of the power conferred upon him by the said section 38 of the Corporation Law, demanded of the appellant to pay the balance of his subscription. The present action having been filed on October 10, 1935, the defense of prescription is entirely without basis.

The second alleged error of the court assigned by the appellant consists in not holding that he was released from the obligation to pay the balance of his subscription. In support of his contention, the appellant adduced as evidence a letter, allegedly signed by R. Pando, acting president of the corporation Compania Hispano-Filipina, Inc., wherein the appellant was released by Pando from all obligation with respect to the payment of his subscription in consideration of his transfer of his shares to the corporation.

The very citation of authorities made by the appellant in his brief destroys his contention. It says:

"Release of subscribers by the corporation.—There can be no doubt that a corporation may effectually release a subscriber from liability on his subscription, in whole or in part, or allow him to modify his contract, if all the stockholders expressly or impliedly consent * * *."

"The agents or officers of the corporation have no such power, however, unless it is expressly conferred upon them by the charter or statute, or by the stockholders by a by-law or otherwise. * * * (Thomas vs. Wentworth Hotel Co., 117 Pac, 1041; Fletcher, Encyc. of Private Corporations, sec. 638)." (Italics ours,)

It has not been established that the stockholders of the Compania Hispano-Filipina, Inc., have in any wise consented to release the appellant from his obligation, or that the acting president, R. Pando, was expressly authorized by the stockholders, or was authorized by the by-laws of the corporation, to release the appellant from his obligation.

Against the contention of the appellant, this court has held that:

"A corporation has no legal capacity to release a subscriber to its capital stock from the obligation to pay for his shares; and any agreement to this effect is invalid." (Velasco vs. Poizat, 37 Phil., 802.)

"A corporation has no power to release an original subscriber to its capital stock from the obligation of paying for his shares, without a valuable consideration for such release; * * *." (Philippine Trust Co. vs. Rivera, 44 Phil., 469.) "A stock subscription is a contract between the corporation and the subscriber, and courts will enforce it for or against either. A corporation has no legal capacity to release a subscriber to its capital stock from the obligation to pay for his shares, and any agreement to this effect is invalid. (Velasco vs. Poizat, 37 Phil, 802.)" (Miranda vs. Tarlac Rice Mill Co., 57 Phil., 619.)

The appealed judgment is affirmed, with the costs to the appellant. So ordered.

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

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