

ANTONINO ESCANO, PLAINTIFF AND APPELLEE, VS. FILIPINAS MINING CORPORATION ET AL., DEFENDANTS. STANDARD INVESTMENT OF THE PHILIPPINES, APPELLANT.

G.R. No. 49003. July 28, 1944

Ponente: OZAETA, J.

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OZAETA, J.:

This case was submitted to and decided by the Court of First Instance of Manila upon an agreed statement of facts which may be restated as follows:

On March 8, 1937, the plaintiff-appellee obtained judgment in the Court of First Instance of Manila against Silverio Salvosa whereby the latter was ordered to transfer and deliver to the former 116 active shares and an undetermined number of shares in escrow of the Filipinas Mining Corporation and to pay the sum of P500 as damages, with the proviso that the escrow shares shall be transferred and delivered to the plaintiff only after they shall have been released by the company. On June 25, 1937, a writ of garnishment was served by the sheriff of Manila upon the Filipinas Mining Corporation to satisfy the said judgment; and on July 29, 1937, the Filipinas Mining Corporation advised the sheriff of Manila that according to its books the judgment debtor Silverio Salvosa was the registered owner of 1,000 active shares and about 21,338 unissued shares held in escrow by the said corporation. The sheriff sold the 1,000 active shares at public auction, realizing therefrom only the sum of P10, which was applied in partial satisfaction of the judgment for damages in the sum of P500.

The present case, which was instituted by Antonio Escano against, the Filipinas Mining Corporation and the Standard Investment of the Philippines, relates to the escrow shares involved in the garnishment proceeding above mentioned. It appears that after the complaint in the original case of Escano vs. Salvosa was filed but before judgment was rendered therein, that is to say, on November 21, 1936, Silverio Salvosa sold to Jose P. Bengzon all his right, title, and interest in and to 18,580 shares of stock of the Filipinas Mining Corporation held in escrow which the said Salvosa was entitled to receive, and which Bengzon in turn subsequently sold and transferred to the present defendant-appellant, standard Investment of the Philippines. Neither Salvosa's sale to Bengzon nor Bengzon's sale to the Standard Investment of the Philippines was notified to and recorded in the books of the Filipinas Mining Corporation until December 7, 1940, that is to say, more than three years after the escrow shares in question were attached by garnishment served on the Filipinas Mining Corporation as hereinbefore set forth. On January 24, 1941, the defendant Filipinas Mining Corporation issued in favor of the defendant Standard Investment of the Philippines certificate of stock for the 18,580 shares formerly held in escrow by Silverio Salvosa and which had been claimed adversely by the present plaintiff-appellee on the one hand and the Standard Investment of the Philippines on the other, the first by virtue of garnishment proceedings and the second by virtue of the sale made to it by Jose P. Bengzon as aforesaid.

The question to determine is whether the issuance by the Filipinas Mining Corporation of the said 18,580 shares of its stock to the Standard Investment of the Philippines was valid as against the attaching judgment creditor of

the original owner, Silverio Salvosa, namely, the present plaintiff- appellee Antonio Escaño.

In addition to the above stipulated facts, the trial court found from the supplementary oral evidence adduced by the plaintiff "that several promises were made by the secretary of the defendant Filipinas Mining Corporation that as soon as the escrow shares pertaining to Silverio Salvosa were released he (the secretary) would notify the plaintiff so that the latter might take the proper action for the execution of the judgment rendered in the said case entitled 'Antonio Escaño vs. Silverio Salvosa,' civil case No. 50575 of the Court of First Instance of Manila. But the secretary, instead of complying with his promises, issued the escrow shares to the defendant Standard Investment of the Philippines * * *"

The trial court held that the transfer of the escrow shares in question from Salvosa to Bengzon and from Bengzon to the Standard Investment of the Philippines, not having been recorded in the books of the corporation as required by section 35 of the Corporation Law, could not prevail over the garnishment previously made by the plaintiff of the said shares, and rendered judgment "ordering the defendants Filipinas Mining Corporation and the Standard Investment of the Philippines to issue to the plaintiff out of the escrow shares which formerly belonged to Silverio Salvosa, 4,152 shares of the Filipinas Mining Corporation and to pay to him the dividends which have been and may be declared on said shares until the delivery thereof to the plaintiff; and ordering the sheriff to levy execution on the remaining shares which formerly belonged to Silverio Salvosa in order to satisfy the balance of the judgment rendered in the civil case entitled 'Antonio Escaño vs. Silverio Salvosa,' civil case No. 50575 of the Court of First Instance of Manila, with costs against the defendants." From that judgment the Standard Investment of the Philippines has appealed to this Court and makes the following assignment of errors:

"1. The trial court erred in holding that section 35 of Act 1459 and the doctrine laid down in the case of Uson vs. Diosomito, 61 Phil., 535, are applicable to the case at bar.

"2. The trial court erred in 'ordering the sheriff to levy execution, on the remaining snares of the 18,580 shares to satisfy the balance of the judgment rendered in civil case No. 50575 of the Court of First Instance of Manila'; and in not holding that because of the delay or neglect for an unreasonable length of time by the plaintiff to enforce his execution, the 18,580 shares affected in this litigation has been discharged thru his waiver or abandonment."

1. Sections 431 and 432 of the Code of Civil Procedure (now sections 7 and 8 of Rule 59), which were in force at the time the garnishment in question was served on the defendant Filipinas Mining Corporation, provide as follows:

"Sec. 431. Executing Order of Attachment as to Debts and Credits.—Debts and credits, and other personal property not capable of manual delivery, shall be attached by leaving: with the person owing such debts or having in his possession or under his control, such credits and other personal property, a copy of the order of attachment, and a notice that the debts owing by him to the defendant, or the credits and other personal property in his possession or under his control, belonging to the defendant, are attached in pursuance of such order.

"Sec. 432. Effect of Attachment of Debts and Credits. —All persons having in their possession or under their control any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the order of attachment and notice as provided in the last section, shall be, unless such property be delivered up or transferred, or such debts be paid to the clerk of the court in which the action is pending, liable to the plaintiff for the amount of such credits, property, or debts, until the attachment be discharged, or any judgment recovered by him be satisfied."

Under the section last above quoted, the Filipinas Mining Corporation became liable to the plaintiff for the shares of stock mentioned in its return to the sheriff of July 29, 1937, wherein it informed the latter in response to the

notice of garnishment "that according to its books said Silverio Salvosa was the registered owner of 1,000 active shares evidenced by certificate of stock No. 235 and about 21,338 unissued shares held in escrow by the defendant Filipinas Mining Corporation."

Counsel for the appellant Standard Investment of the Philippines contends that a distinction should be drawn between issued shares evidenced by certificates of stock and unissued shares held in escrow, in that while the transfer of the former is subject to the restriction contained in section 35 of the Corporation Law, that of the latter is not. The said section, insofar as pertinent here, reads as follows:

"* * * shares of stock so issued are personal property and may be transferred by delivery of the certificate indorsed by the owner or his attorney in fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is entered and noted upon the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate, and the number of shares transferred."

It is admitted that under this legal provision and the decision of this Court in *Uson vs. Diosomito*, 61 Phil. 535, the transfer of duly issued shares of stock is not valid as against third parties and the corporation until it is noted upon the books of the corporation; but it is contended that the transfer of unissued shares of stock held in escrow is valid against the whole world although not notified to the corporation and not noted upon its books. Since the sale, transfer, or assignment of unissued shares of stock held in escrow is not specifically provided for by law, the question has to be resolved by resorting to analogy. What is the reason of the law for requiring the recording upon the books of the corporation of transfers of shares of stock as a condition precedent to their validity against the corporation and third parties? We imagine that it is (1) to enable the corporation to know at all times who its actual stockholders are, because mutual rights and obligations exist between the corporation and its stockholders; (2) to afford to the corporation an opportunity to object or refuse its consent to the transfer in case it has any claim against the stock sought to be transferred, or for any other valid reason; and (3) to avoid fictitious or fraudulent transfers. Do these reasons hold as to the transfer of unissued shares held in escrow? To sustain appellant's contention is to declare that they do not. But we see no valid reason for treating unissued shares held in escrow differently from issued shares insofar as their sale and transfer is concerned. In both cases the corporation is entitled to know who the actual owners of the shares are, and to object to the transfer upon any valid ground. Likewise, in both cases the possibility of fictitious or fraudulent transfers exists. The only reason advanced by the appellant for exempting the transfer of unissued shares from recording is that in case of unissued shares there is no certificate number to be recorded. But that is a mere detail which does not affect the reasons behind the rule. The lack of such detail does not make it impossible to record the transfer upon the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, and the number of shares transferred, which are the most essential data. As a matter of fact, the defendant Filipinas Mining Corporation was able to take note of the transfer of the escrow shares in question to the Standard Investment of the Philippines on December 7, 1940, without knowing the certificate number that would correspond to said shares.

Moreover, it seems illogical and unreasonable to hold that inactive or unissued shares still held by the corporation in escrow pending receipt of authorization from the Government to issue them, may be negotiated or transferred unrestrictedly and more freely than active or issued shares evidenced by certificates of stock.

We are, therefore, of the opinion and so hold that section 35 of the Corporation Law, which requires the registration of transfers of shares of stock upon the books of the corporation as a condition precedent to their validity against the corporation and third parties, is also applicable to unissued shares held by the corporation in escrow.

2. Under its second assignment of error appellant contends that appellee has been guilty of laches in neglecting for

an unreasonable length of time to enforce its levy on the 18,580 shares of stock in question by having them sold at public auction, and that, consequently, said levy should be considered discharged through waiver or abandonment. We find no factual basis for the alleged laches and abandonment. The trial court found that the secretary of the defendant Filipinas Mining Corporation had repeatedly promised the plaintiff that he would notify the latter as soon as the escrow shares pertaining to Silverio Salvosa were released so that he (plaintiff) might take the proper action for the execution of his judgment. The Filipinas Mining Corporation having advised the sheriff that it was holding the escrow shares of the judgment debtor Silverio Salvosa, the plaintiff as execution creditor had the right to wait for the release or issuance of said shares before having, the same sold at public auction, so long as the period of five years within which to execute his judgment had not yet lapsed. Moreover, the judgment itself provided "that the escrow shares shall be transferred and delivered to the plaintiff only after they have been released by the company." It is stated in the stipulation of facts that it was only after the Filipinas Mining Corporation had issued the escrow shares in favor of the Standard Investment of the Philippines that the plaintiff Antonio Escano came to know that Jose P. Bengzon and the Standard Investment of the Philippines had acquired Silverio Salvosa's rights to the shares in question. Upon these facts, together with the consideration that the delay had not in any way misled the appellant to its prejudice, we find appellant's second assignment of error untenable.

The judgment appealed from is affirmed, with costs.

Yulo, C.J., Moran, Horrilleno, and Bocobo, JJ., concur.

PARAS, J.: I concur in the result.

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