

44 Phil. 469

[G.R. No. 19761. January 29, 1923]

PHILIPPINE TRUST COMPANY, AS ASSIGNEE IN INSOLVENCY OF “LA COOPERATIVA NAVAL FILIPINA,” PLAINTIFF AND APPELLEE, VS. MARCIANO RIVERA, DEFENDANT AND APPELLANT.

D E C I S I O N

STREET, J.:

This action was instituted on November 21, 1921, in the Court of First Instance of Manila, by the Philippine Trust Company, as assignee in insolvency of *La Cooperativa Naval Filipina*, against Marciano Rivera, for the purpose of recovering a balance of P22,500, alleged to be due upon defendant's subscription to the capital stock of said insolvent corporation. The trial judge having given judgment in favor of the plaintiff for the amount sued for, the defendant appealed.

It appears in evidence that in 1918 the *Cooperativa Naval Filipina* was duly incorporated under the laws of the Philippine Islands, with a capital of P100,000, divided into one thousand shares of a par value of P100 each. Among the incorporators of this company was numbered the defendant Marciano Rivera, who subscribed for 450 shares representing a value of P45,000, the remainder of the stock being taken by other persons. The articles of incorporation were duly registered in the Bureau of Commerce and Industry on October 30 of the same year.

In the course of time the company became insolvent and went into the hands of the Philippine Trust Company, as assignee in bankruptcy; and by it this action was instituted to recover one-half of the stock subscription of the defendant, which admittedly has never been paid.

The reason given for the failure of the defendant to pay the entire

subscription is, that not long after the *Cooperativa Naval Filipina* had been incorporated, a meeting of its stockholders occurred, at which a resolution was adopted to the effect that the capital should be reduced by 50 per centum and the subscribers released from the obligation to pay any unpaid balance of their subscription in excess of 50 per centum of the same. As a result of this resolution it seems to have been supposed that the subscriptions of the various shareholders had been cancelled to the extent stated; and fully paid certificates were issued to each shareholder for one-half of his¹ subscription. It does not appear that the formalities prescribed in section 17 of the Corporation Law (Act No. 1459), as amended, relative to the reduction of capital stock in corporations were observed, and in particular it does not appear that any certificate was at any time filed in the Bureau of Commerce and Industry, showing such reduction.

His Honor, the trial judge, therefore held that the resolution relied upon by the defendant was without effect and that the defendant was still liable for the unpaid balance of his subscription. In this we think his Honor was clearly right.

It is established doctrine that subscriptions to the capital of a corporation constitute a fund to which creditors have a right to look for satisfaction of their claims and that the assignee in insolvency can maintain an action upon any unpaid stock subscription in order to realize assets for the payment of its debts. (*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; and as against creditors a reduction of the capital stock can take place only in the manner and under the conditions prescribed by the statute or the charter or the articles of incorporation. Moreover, strict compliance with the statutory regulations is necessary (14 C. J., 498, 620).

In the case before us the resolution releasing the shareholders from their obligation to pay 50 per centum of their respective subscriptions was an attempted withdrawal of so much capital from the fund upon which the company's creditors were entitled ultimately to rely and, having been effected without compliance with the statutory requirements, was wholly ineffectual.

The judgment will be affirmed with costs, and it is so ordered.

Araullo, C.J., Malcolm, Avanceña, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

Date created: September 25, 2018