

6 Phil. 152

[G.R. No. 2334. April 18, 1906]

VICENTE W. PASTOR, PLAINTIFF AND APPELLANT, VS. MACARIO NICASIO ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

MAPA, J.:

In November, 1900, the defendants in this case were the sole members of a mercantile partnership entitled "Nicasio & Gaspar." Wishing to purchase six vessels, the total value of which was 46,500 pesos, and not having available more than 18,500 pesos for that purpose, the said defendants, in behalf of the said partnership borrowed the following amounts: 6,000 pesos from Lino Eguia; 3,000 pesos from Rafael Monserrat; 5,500 pesos from Isidoro Iboleon; 5,000 pesos from Patrick Hermoso, and 8,500 pesos from the plaintiff, Pastor. The sum total of these amounts is 28,000 pesos.

A public instrument was executed on the 24th of November, 1900, the subject of which was these loans, and in the fifth article of the same the principal conditions agreed upon between the parties are set forth. This article reads as follows:

"The partnership of Nicasio & Gaspar binds itself to return to the aforesaid Eguia, Monserrai, Iboleon, Pastor, and Hermoso, the said total amount of 28,000 pesos at the end of ten years from the date of this document, and as a guarantee of the payment of such amount the beforementioned lorchas, *Pepay, Lola, Gonstwlo, India, Nicetas, and Gastellana* are mortgaged in favor of the parties aforesaid in proportion to the amount which each one of them has contributed for the purchase and repairing of the same, * * * granting and transferring to them a proportionate share in the products, profits, and earnings which may be obtained from the operation of the vessels aforesaid, which will become the property of the said Eguia, Monserrat, Iboleon, Pastor, and Hermoso, as well that of the parties

executing the instrument (Nicasio & Gaspar) according to the amount which each has contributed in the partnership of Nicasio & Gaspar retaining the management of the said boats as consignees or ship agents until the amount owed is fully paid, it being understood that whatever may happen to the aforesaid vessels neither the aforesaid partnership nor the other parties to this instrument will be liable for the payment of the debt in any other way than with the boats themselves, and other property belonging to them shall under no consideration be liable therefor; any averages or the total loss of the said lorchas, as well as all expenses of the crews and other necessary disbursements for the preservation of the same shall be borne by all the creditors and the other parties to this contract in proportion to their interests in the partnership * * *.”

On the 22d day of July, 1901, the plaintiff executed a power of attorney in favor of the defendant, Macario Nicasio, to administer his property, to collect and receive his credits, to buy and sell every kind of property, property rights, or actions, to demand an accounting from whomsoever might be under the obligation of rendering the same, and to compromise credits, rights, and actions. The plaintiff having subsequently left the country, the defendant, Nicasio, represented him in the business of the partnership by virtue of this power of attorney. By mutual agreement of the parties interested in the said lorchas they were sold to the defendant, Manuel Gaspar, on the 12th of July, 1901, for the sum of 30,000 pesos. Prior to this agreement meetings were held on the 20th and the 25th of June, and the 9th of July, 1901, by the various interested parties; and it was at the meeting held on the 12th of July that this agreement was definitely reached; minutes of all these meetings having been kept. In all of them the plaintiff was represented by the defendant, Nicasio. The main reasons for this agreement to sell were the great competition then existing, the stagnation of business, and the bad condition of the lorchas which made costly repairs necessary, as is set forth in the minutes of the meeting of the 20th of June.

As a result of the said sale, on the 22d of July, 1901, a public instrument was executed by the defendants in this case in the name of, and acting for the partnership of Nicasio & Gaspar, and the other parties interested in the lorehas, in which it is stated (clause 3) that inasmuch as the parties last mentioned do not wish to defray their proportionate parts of the cost of repairs on the lorchas as stipulated in the document dated the 24th of November, 1900, they proposed to the defendants that their respective credits be paid, deducting therefrom their corresponding proportionate parts, estimated upon the selling price of the said lorchas—to wit, 30,000 pesos.

The defendant, Nicasio, took part at the same time in the execution of the aforesaid instrument as attorney in fact for the plaintiff, Pastor, and stated in the sixth clause of the same that "in accordance with what appears in the document he acknowledges the receipt of the sum of five thousand four hundred and eighty-three pesos and eighty-seven *centimos* from the partnership of Nicasio & Gaspar, the same being the balance due his principal, Vicente W. Pastor, after deducting the three thousand and sixteen pesos belonging to the latter as his share of the selling price of said lorchas;" and thereupon executed a formal receipt to the said partnership for the entire amount of his principal's; credit.

This act on the part of Nicasio is urged as he basis of the first cause of action set out in the complaint. The plaintiff contests the validity of this act, basing his attack upon the incompatibility of the dual capacity in which Nicasio acted. His contention is that Nicasio, as a member of the partnership of Nicasio & Gaspar, then indebted to the plaintiff in the sum of 8,500 pesos, could not properly use the power granted him by the said plaintiff for the purpose of discharging the entire debt of the partnership when, as a matter of fact, his principal only received 5,483.87 pesos of the entire amount due him, and that Nicasio, acting in such capacity, executed an onerous contract to the prejudice of his principal and to the benefit of the partnership and himself. The incompatibility of the dual exercise of this authority, according to the plaintiff, arose from the moment Nicasio entered into the said contract with the partnership of which he was a member, whereby the said partnership was relieved of all liability to the plaintiff, Pastor, as a result of the partial payment of his, Pastor's, claim; hence his claim that he be paid the 3,016.63 pesos, the difference between the amount of his credit and that actually received in payment thereof by his agent, Nicasio.

The question at issue, as may be seen, does not relate to the power of attorney which is assumed to have existed, but to the lawful and proper exercise of his authority thereunder in a specific case in which the respective personal interests of principal and agent were presumed to be opposed to each other and conflicting.

Owing to the special circumstances of this case, the question thus, raised presents various aspects. There is one, however, which by reason of its importance merits a special consideration. The defendants contend, among other things, that the plaintiff expressly and tacitly ratified the action of his attorney in fact, Nicasio, and that he can not now be permitted to deny his own acts.

In our opinion, the evidence sufficiently justifies this contention. Of course, the plaintiff approved of the sale of the lorchas to the defendant Gaspar for the sum of 30,000 peso His

agent, Nicasio, states positively that he informed him of everything that happened in connection with the said lorchas by sending him copies of the minutes signed by him that he might see for himself what had been done. The minutes referred to could have been no other than those of the 20th and 25th of June and the 9th and 12th of July, 1901, since prior to these dates there were evidently no minutes taken of the meetings which were held by the parties interested in the lorchas. It was only¹ at the meeting of the 20th of June as appears from the minutes of that meeting, that the idea of taking such minutes of these meetings was suggested and approved. The minutes in question refer to the proposed sale of the lorchas and in the minutes of the 12th of July the final sale to Gaspar is mentioned.

Thus, in a letter of the 11th of September, 1901, to the defendant, Nicasio, the plaintiff writes as follows:

“My dear Friend : I received your favor of the 13th of last July with the copies of the minutes taken at the meetings held by you. With regard to this, I have absolutely nothing to say as the matter has been settled by you whom I look upon not only as a friend but as a brother; I suppose you had your reasons for accepting this arrangement which I myself desired, although not so soon.”

This arrangement referred to as accepted by Nicasio related to the sale of the, lorchas for the sum of 30,000 pesos. There was no definite arrangement as to the disposition of the lorchas other than the sale in question. The meetings, prior to the one held on the 12th of July, in which it was definitely determined to dispose of the vessels for the said sum, were only preliminaries to the sale. Consequently the defendant had perfect knowledge of this transaction when he wrote the letter above quoted on the 11th of September and not only did he not disapprove of it or make the slightest objection to it, but he made in that letter the statement which has been quoted above. This statement, in our opinion, implies an approval of the sale in question. Indeed there appears to be no dispute upon this point, judging from the following paragraph taken from plaintiff's brief:

“They [the defendants] have contented themselves with evidence showing that the plaintiff approved the sale of the lorchas for the sum of 30,000 pesos. If business was bad, why should not the plaintiff have approved of this sale.”

The sum of 30,000 pesos, the purchase price, was distributed among those interested in the lorchas in proportion to the shares which each of them held in the business. The plaintiff's

share in the business was 8,500 pesos and on the basis upon which the distribution was made he was entitled to but 5,483.87 pesos. In a letter written by Nicasio to the plaintiff on the 17th of August, 1901, he inclosed a general statement of the latter's current account, as furnished by the defendant, Gaspar. This statement showed a balance of 4,850.94 pesos, in favor of the plaintiff. The statement appears to be dated July, 1901. On the credit side of the statement appears the sum of 5,483.87 pesos, above mentioned, plaintiff's share in the distribution of the selling price of the lorchas. The item which refers to it reads as follows: "The partnership of Nicasio & Gaspar having been dissolved his [plaintiff's] share in the lorchas is 5,483.87 pesos." The letter of the plaintiff of the 4th of October, 1901, in reply to that of Nicasio contains the following paragraph:

"I beg to acknowledge receipt of your favor of the 17th of August, with the statement of accounts of Gaspar, which shows a balance in my favor of 4,850.94 pesos; *and which I beg you to keep in your possession.*"

It is evident that Nicasio could not have, or keep in his possession, the balance before-mentioned without previously having received it from the partnership of Nicasio & Gaspar. For this reason it may be said that the letter of the plaintiff was in effect an order to his agent to receive the aforesaid balance, if he had not already received it. In any event the plaintiff approved of the said balance by accepting it without reserve or protest of any kind whatsoever, and directing his agent to keep it in his possession. The approval of the balance necessarily implies the approval of all the items of the account of which it was the result. One of these items was the proportionate share— to wit, 5,483.87 pesos—to which the plaintiff was entitled in the distribution of the selling price of the lorchas. It is therefore evident that the plaintiff accepted and approved the said item and the source from which it was derived; to wit, the proportionate distribution of the 30,000 pesos among the parties interested in the lorchas.

The plaintiff was in possession of all the data referring to this matter. He knew what his interest was. He knew, because he took part personally in the execution of the necessary instrument the conditions of which his interest in the partnership was subject. He also knew, for the same reason, the manner in which the lorchas in question were mortgaged to guarantee the loan. And finally he knew the price for which the lorchas had been sold. He could very easily see that the amount with which he was credited in the said statement, as his interest in the lorchas, was less than his original share in the partnership. He, however,

accepted and approved, unconditionally, the said statement, without any reserve or protest whatsoever, and consequently ordered his agent to keep the balance in his possession. This was either an acknowledgment that he was not entitled to receive from the selling price of the lorchas a larger amount than that stated in the statement submitted to him under the terms of the instrument evidencing the loan, or a formal ratification of the acts executed by his agent in accepting and receiving the aforesaid sum in full payment of his interest, assuming that his agent's acts in this connection were null by reason of the conflict existing between his own interests and those of his principal.

The subsequent conduct of the plaintiff supports this view. Nicasio testified that when the plaintiff arrived in Manila from Spain he, Nicasio, reported to him all that he had done and that the plaintiff examined the accounts and received the money due to him according to these accounts without complaint or objection thereto. This probably happened about the latter part of 1901 or early in 1902, and the defendant did not bring this action, until March, 1904.

The acts of the plaintiff constituted, in our opinion, a formal ratification. It is difficult to conceive, outside of a case of express ratification, of a more positive form of approving and ratifying the acts of an agent than by approving the original accounts submitted by the latter and receiving the balance due according to such accounts without any reserve or protest whatsoever. Moreover, the principal allowed two years to pass without making any objection which would show that he was not satisfied with such accounts; We, therefore, hold that the plaintiff approved and ratified the acts of his agent, Nicasio, which two years later he seeks to annul. Having reached this conclusion, we do not think it necessary to decide the other questions raised by the parties; Whatever might have been the objection to the conduct of the agent, such conduct was subsequently approved and ratified by the plaintiff. Therefore, the first cause of action set out in the complaint can not be sustained.

The second cause of action relates to the failure on the part of the defendants to render an account of the earnings obtained from the said lorchas. It would seem that the plaintiff thereby seeks to compel the defendants to render such an account, although what he expressly asks in this part of his complaint is that judgment be entered in his favor for 1,000 pesos due him as his share of the earnings of the said vessels, in addition to what he had already received, making in all 61.25 per cent of the amount loaned by him to the defendants.

The evidence does not sustain the contention of the plaintiff, but establishes the contrary.

On the 18th of March, 1901, there were distributed among the interested parties the earnings obtained from the said lorchas from the date of their purchase until the 28th of February, 1901. The plaintiff received his share, amounting to 2,020.95 pesos, and signed a receipt, stating at the bottom of the document relating to the distribution of such earnings or profits that the amount of his dividend was correct, The authenticity of plaintiff's signature to that document was duly proved at the trial of this case. Although the plaintiff alleges that he signed the said document without first examining the books of account of the partnership of Nicasio and Gaspar or the papers relating to the profits of the firm, the contrary was proved by the testimony of the defendant, Gaspar, and of Isidro Iboleon, who testified that the said books and papers were submitted to all those interested in the business and that the plaintiff examined them carefully before he signed the aforesaid account. This amounted to an actual rendition of the accounts of the business up to the 28th of February, 1901.

As to the period between the 1st of March, 1901, and the date when the lorchas were sold, the defendant, Gaspar, contends that the necessary accounting was made after the dissolution of the partnership of Nicasio & Gaspar and that in the absence" of the plaintiff, his agent, Nicasio, examined the books in the same manner as the others interested in the partnership. Here the question as to the incompatibility of the interests of the defendant, Nicasio, as a member of the partnership and his interest as the attorney in fact for the plaintiff might again arise, but this point has already been disposed of by what has been said about the approval and ratification by the plaintiff of the acts executed by his agent in his behalf.

Further, while the plaintiff was in Spain a statement of his current account was mailed to him in the month of July, 1901. That statement showed the share of the earnings obtained from the operation of the said lorchas to which he was entitled up to the time the said vessels were sold, the balance in his favor as shown by the said statement amounting to 4,850.94 pesos. It has already been said that the plaintiff accepted and received this balance without any reserve or protest whatsoever and that such action on his part amounted to an approval of each and all of the items of that statement. There can be no doubt that he had a perfect right to examine the accounts relating to those items before approving them, but once approved, he had no right to ask for a revision of the same. This is practically what he seeks when he asks in his complaint that the defendants be required to render a detailed account of the business. He is not entitled to such a remedy unless he shows that there was fraud, deceit, error, or mistake in the approval of the said accounts. The plaintiff failed to establish anything of this kind at the trial and consequently his claim is without foundation

and can not be sustained.

As to the 1,000 pesos for which judgment is prayed for in the complaint as part of the earnings obtained from the operation of the said lorchas and not paid to the plaintiff, no evidence has been introduced which would justify the granting of such petition. Consequently this prayer of the complaint is also denied.

We therefore affirm the judgment of the court below, with the costs of this instance against the appellant. After the expiration of twenty days from the date hereof let final judgment be entered in accordance herewith, and ten days thereafter the case be remanded to the Court of First Instance for proper procedure. So ordered.

Arellano, C. J., Torres, Carson, and Willard, JJ., concur.
