

PAUL MACDONALD, ET AL., PETITIONERS, VS. THE NATIONAL CITY BANK OF NEW YORK, RESPONDENT.

G.R. No. L-7991. May 21, 1956

Ponente: PARAS, C.J.

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PARAS, C.J.:

This is an appeal by certiorari from the decision of the Court of Appeals from which we are reproducing the following basic findings of fact:

"STASIKINOCEY is a partnership doing business at No. 58, Aurora Boulevard, San Juan, Rizal, and formed by Alan W. Gorcey, Louis F. da Costa, Jr., William Kusik and Emma Badong Gavino. This partnership was denied registration in the Securities and Exchange Commission, and while it is confusing to see in this ease that the Cardinal Rattan, sometimes called the Cardinal Rattan Factory, is treated as a copartnership, of which defendants Gorcey and da Costa are considered general partners, we are satisfied that, as alleged in various instruments appearing of record, said Cardinal Rattan is merely the business name or style used by the partnership Stasikinocey.

"Prior to June 3, 1949, defendant Stasikinocey had an overdraft account with The National City Bank of New York, a foreign banking association duly licensed to do business in the Philippines. On June 3, 1949, the overdraft showed a balance of ₱6,134.92 against the defendant Stasikinocey or the Cardinal Rattan (Exhibit D), which account, due to the failure of the partnership to make the required payment, was converted into an ordinary loan for which the corresponding promissory 'joint note—non-negotiable' was executed on June 3, 1949, by Louis F. da Costa for and in the name of the Cardinal Rattan, Louis F. da Costa and Alan Gorcey (Exhibit D). This promissory note was secured on June 7, 1949, by a chattel mortgage executed by Louis F. da Costa, Jr., General Partner for and in the name of Stasikinocey, alleged' to be a duly registered Philippine partnership, doing business under the name and style of Cardinal Rattan, with principal office at 69 Riverside, San Juan, Rizal (Exhibit A). The chattels mortgaged were the following, motor vehicles:

"(a) Fargo truck with motor No. T-118-202839, Serial No. 81410206 and with plate No. T-7333 (1949);

"(b) Plymouth Sedan automobile motor No. T-S638876, Serial No. 11872718 and with plate No. 10372; and

"(c) Fargo Pick-up FKI-16, with motor No. T-112800032, Serial No. 8869225 and with plate No. T-7222 (1949).

The mortgage deed was fully registered by the mortgagee on June 11, 1949, in the Office of the Register Of Deeds for the province of Rizal, at Pasig, (Exhibit A), and among other provisions it contained the following:

""(a) That the mortgagor shall not sell or otherwise dispose of the said chattels without the mortgagee's written consent; and "

""(b) That the mortgagee may foreclose the mortgage at any time, after breach of any condition thereof, the mortgagor waiving the 30-day notice of foreclosure.

"On June 7,. 1949, the same day of the execution of the chattel mortgage aforementioned, Gorcey and Da Costa

executed an agreement purporting to convey and transfer all their rights, title and participation in defendant partnership to Shaeffer, allegedly in consideration of the cancellation of an indebtedness of P25,000 owed by them and defendant partnership to the latter (Exhibit J), which transaction is said to be in violation of the Bulk Sales Law (Act No. 3952 of the Philippine Legislature).

"While the said loan was still unpaid and the chattel mortgage subsisting, defendant partnership, through defendants Gorcey and Da Costa, transferred to defendant McDonald the Fargo truck and Plymouth sedan on June 24, 1949 (Exhibit L). The Fargo pick-up was also sold on June 28, 1949, by William Shaeffer to Paul McDonald.

"On or about July 19, 1944, Paul McDonald, notwithstanding plaintiff's existing mortgage lien, in turn transferred the Fargo truck and the Plymouth sedan to Benjamin Gonzales."

The National City Bank of New York, respondent herein, upon learning of the transfers made by the partnership Stasikinocey to William Shaeffer, from the latter to Paul McDonald, and from Paul McDonald to Benjamin Gonzales of the vehicles previously pledged by Stasikinocey to the respondent, filed an action against Stasikinocey and its alleged partners Gorcey and Da Costa, as well as Paul McDonald and Benjamin Gonzales, to recover its credit and to foreclose the corresponding chattel mortgage. McDonald and Gonzales were made defendants because they claimed to have a better right over, the pledged vehicle.

After trial the Court of First Instance of Manila rendered judgment in favor of the respondent, annulling the sale of the vehicles in question to Benjamin Gonzales; sentencing Da Costa and Gorcey to pay to the respondent jointly and severally the sum of P6,134.92, with legal interest from the debt of the promissory note involved; sentencing the petitioner Gonzales to deliver the vehicles in question to the respondent¹ for sale at public auction if Da Costa and Gorcey should fail to pay the money judgment; and sentencing Da Costa, Gorcey and Shaeffers to pay to the respondent jointly and severally any deficiency that may remain unpaid should the proceeds of the sale not be sufficient; and sentencing Gorcey, Da Costa, McDonald and Shaeffer to pay the costs. Only Paul McDonald and Benjamin Gonzales appealed to the Court of Appeals which rendered a decision the dispositive part of which reads as follows:

"Wherefore, the decision appealed from is hereby modified, relieving appellant William Shaeffer of the obligation of paying, jointly and severally, together with Alan W. Ooreey and Louis F. da Costa, Jr., any deficiency that may remain unpaid after applying the proceeds of the sale of the said motor vehicles which shall be undertaken upon the lapse of 90 days from the date this decision becomes final, if by then defendants Louis F. da Costa, Jr., and Alan W. Gorcey had not paid the amount of the judgment debt. With this modification the decision appealed from is in all other respects affirmed, with costs against appellants. This decision is without prejudice to whatever action Louis F. da Costa, Jr., and Alan W. Gorcey may take against their co-partners in the Stasikinocey unregistered partnership"

This appeal by certiorari was taken by Paul McDonald and Benjamin Gonzales, petitioners herein, who have assigned the following errors:

"I

"IN RULING THAT AN UNREGISTERED COMMERCIAL CO-PARTNER. SHIP WHICH HAS NO INDEPENDENT JURIDICAL PERSONALITY CAN HAVE A 'DOMICILE' SO THAT A CHATTEL MORTGAGE REGISTERED IN THAT 'DOMICILE' WOULD BIND THIRD PERSONS WHO ARE INNOCENT PURCHASERS FOR VALUE.

"II

"IN RULING THAT, WHEN A CHATTEL MORTGAGE IS EXECUTED BY ONE OF THE MEMBERS OF AN UNREGISTERED COMMERCIAL CO-PARTNERSHIP WITHOUT JURIDICAL PERSONALITY INDEPENDENT OF ITS MEMBERS, RR NEED NOT BE REGISTERED IN THE ACTUAL RESIDENCE OF THE MEMBERS WHO EXECUTED SAME; AND, AS A CONSEQUENCE THEREOF, IN NOT MAKING ANY FINDING OF FACT AS TO THE ACTUAL RESIDENCE OF SAID CHATTEL MORTGAGOR, DESPITE APPELLANTS' RAISING THAT QUESTION PROPERLY BEFORE IT AND REQUESTING A RULING THEREON.'

"III

"IN NOT RULING THAT, WHEN A CHATTEL MORTGAGOR EXECUTES AN AFFIDAVIT OF GOOD FAITH BEFORE A NOTARY PUBLIC OUTSIDE OF THE TERRITORIAL JURISDICTION OF THE LATTER, THE AFFIDAVIT IS VOID AND THE CHATTEL MORTGAGE IS NOT BINDING ON THIRD PERSONS WHO ARE INNOCENT PURCHASERS FOR VALUE; AND, AS A CONSEQUENCE THEREOF, IN NOT MAKING ANY FINDING OF FACT AS TO WHERE THE DEED WAS IN FACT EXECUTED, DESPITE APPELLANTS' RAISING THAT QUESTION PROPERLY BEFORE IT AND EXPRESSLY REQUESTING A RULING THEREON.

"IV

"IN RULING THAT A LETTER AUTHORIZING ONE MEMBER OF AN UNREGISTERED COMMERCIAL CO-PARTNERSHIP 'TO MAKE ALL OFFICIAL AND BUSINESS ARRANGEMENTS . . . WITH THE NATIONAL CITY BANK OF NEW YORK' IN ORDER TO SIMPLIFY ALL MATTERS RELATIVE TO LCS CABLE TRANSFERS, DRAFTS, OR OTHER BANKING MEDIUMS.' WAS SUFFICIENT AUTHORITY FOR THE SAID MEMBER TO EXECUTE A CHATTEL MORTGAGE IN ORDER TO GIVE THE BANK SECURITY FOR A PRE-EXISTING OVERDRAFT, GRANTED WITHOUT SECURITY, WHICH THE BANK HAD CONVERTED INTO A DEMAND LOAN UPON FAILURE TO PAY SAME AND BEFORE THE CHATTEL MORTGAGE WAS EXECUTED."

This is the first question propounded by the petitioners: "Since an unregistered commercial partnership unquestionably has no juridical personality, can it have a domicile so that the registration of a chattel mortgage therein is notice to the world?"

While an unregistered commercial partnership has no juridical personality, nevertheless, where two or more persons attempt to create a partnership failing to comply with all the legal formalities, the law considers them as partners and the association is a partnership in so far as it is favorable to third persons, by reason of the equitable principle of estoppel. In *Jo Chung Chang vs. Pacific Commercial Co.*, 45 Phil., 145, it was held "that although the partnership with the firm name of 'Teck Seing and Co. Ltd.' could not be regarded as a partnership de jure, yet with respect to third persons it will be considered a partnership with all the consequent obligations for the purpose of enforcing the rights of such third persons." *Da Costa and Gorcey* cannot deny that they are partners of the partnership *Stasikinocey*, because in all their transactions with the respondent they represented themselves as such. Petitioner *McDonald* cannot disclaim knowledge of the partnership *Stasikinocey* because he dealt with said entity in purchasing two of the vehicles in question through *Gorcey* and *Da Costa*. As was held in *Behn Meyer & Co. vs. Rosatzin*, 5 Phil., 660, where a partnership not duly organized has been recognized as such in its dealings with certain persons, it shall be considered as "partnership by estoppel and the persons dealing with it are estopped from denying its partnership existence. The sale of the vehicles in question being void as to petitioner *McDonald*, the transfer from the latter to petitioner *Benjamin Gonzales* is also void, as the buyer cannot have a better right than the seller.

It results that if the law recognizes a defectively organized partnership as de facto as far as third persons are concerned, for purposes of its de facto existence it should have such attribute of a partnership as domicile. In *Hung-Man Yoc vs. Kieng-Chiong-Seng*, 6 Phil., 498, it was held that although "it has no legal standing, it is a partnership de facto and the general provisions of the Code applicable to all partnerships apply to it." The registration of the chattel mortgage in question with the Office of the Register of Deeds of Rizal, the residence or place of business of the partnership Stasikinocey being San Juan, Rizal, was therefore in accordance with section 4 of the Chattel Mortgage Law.

The second question propounded by the petitioners is: "If not, is a chattel mortgage executed by only one of the 'partners' of an unregistered commercial partnership validly registered so as to constitute notice to the world if it is not registered at the place where the aforesaid 'partner' actually resides but only in the place where the deed states that he resides, which is not his real residence?" And the third question is as follows: "If the actual residence of the chattel mortgagor—not the residence stated in the deed of chattel mortgage—is controlling, may the Court of Appeals refuse to make a finding of fact as to where the mortgagor resided despite your petitioners having properly raised that question before it and expressly requested a ruling thereon?"

These two questions have become academic by reason of the answer to the first question, namely, that as a de facto partnership, Stasikinocey had its domicile in San Juan, Rizal.

The fourth question asked by the petitioners is as follows: "Is a chattel mortgage executed by only one of the 'partners' of an unregistered commercial partnership valid as to third persons when that 'partner' executed the affidavit of good faith in Quezon City before notary public whose appointment is only for the City of Manila? If not, may the Court of Appeals refuse to make a finding of fact as to where the deed was executed, despite your petitioners' having properly raised that issue before it and expressly requested a ruling thereon?"

It is noteworthy that the chattel mortgage in question is in the form required by law, and there is therefore the presumption of its due execution which cannot be easily destroyed by the biased testimony of the one who executed it. The interested version of Da Costa that the affidavit of good faith appearing in the chattel mortgage was executed in Quezon City before a notary public for and in the City of Manila was correctly rejected by the trial court and the Court of Appeals. Indeed, cumbersome legal formalities are imposed to prevent fraud. As aptly pointed out in *El Hogar Filipino vs. Olviga*, 60 Phil., 17, "If the biased and interested testimony of a grantor and the vague and uncertain testimony of his son are deemed sufficient to overcome a public instrument drawn up with all the formalities prescribed by the law then there will have been established a very dangerous doctrine which would throw wide open the doors to fraud."

The last question raised by the petitioners is as follows: "Does only one of several 'partners' of an unregistered commercial partnership have authority, by himself alone, to execute a valid chattel mortgage over property owned by the unregistered commercial partnership in order to guarantee a pre-existing overdraft previously granted, without guaranty, by the bank?"

In view of the conclusion that Stasikinocey is a de facto partnership, and Da Costa appears as a co-manager in the letter of Gorcey to the respondent and in the promissory note executed by Da Costa, and that even the partners considered him as such, as stated in the affidavit of April 21, 1948, to the effect that "That we as the majority partners hereby agree to appoint Louis da Costa co-managing partner of Alan W. Gorcey, duly approved managing partner of the said firm," the "partner" who executed the chattel mortgage in question must be deemed to be so fully authorized. Section 6 of the Chattel Mortgage Law provides that when a partnership is a party to the mortgage, the affidavit may be made and subscribed by one member thereof. In this case the affidavit was executed and subscribed by Da Costa, not only as a partner but as a managing partner.

There is no merit in petitioners' pretense that the motor vehicles in question are the common property of Da Costa and Gorcey. Petitioners invoke article 24 of the Code of Commerce in arguing that an unregistered commercial partnership has no juridical personality and cannot execute any act that would adversely affect innocent third persons. Petitioners forget that the respondent is a third person with respect to the partnership, and the chattel mortgage executed by Da Costa cannot therefore be impugned by Gorcey on the ground that there is no partnership between them and that the vehicles in question belonged to them in common. As a matter of fact, the respondent and the petitioners are all third persons as regards the partnership Stasikinocey and even assuming that the petitioners are purchasers in good faith and for value the respondent having transacted with Stasikinocey earlier than the petitioners, it should enjoy and be given priority.

Wherefore, the appealed decision of the Court of Appeals is affirmed with costs against the petitioners.

Bengzon, Montemayor, Reyes, A., Jugo, Bautista Angelo Labrador, Concepcion, Reyes, J. B, L., and Endencia, JJ., concur.

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