

ELMO MUÑASQUE, PETITIONER, VS. COURT OF APPEALS, CELESTINO GALAN, TROPICAL COMMERCIAL COMPANY AND RAMON PONS, RESPONDENTS.

G.R. No. L-39780. November 11, 1985

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

In this petition for certiorari, the petitioner seeks to annul and set aside the decision of the Court of Appeals affirming the existence of a partnership between petitioner and one of the respondents, Celestino Galan and holding both of them liable to the two intervenors which extended credit to their partnership. The petitioner wants to be excluded from the liabilities of the partnership.

Petitioner Elmo Muñasque filed a complaint for payment of sum of money and damages against respondents Celestino Galan, Tropical Commercial, Co., Inc. (Tropical) and Ramon Pons, alleging that the petitioner entered into a contract with respondent Tropical through its Cebu Branch Manager Pons for remodelling a portion of its building without exchanging or expecting any consideration from Galan although the latter was casually named as partner in the contract; that by virtue of his having introduced the petitioner to the employing company (Tropical), Galan would receive some kind of compensation in the form of some percentages or commission; that Tropical, under the terms of the contract, agreed to give petitioner the amount of P7,000.00 soon after the construction began and thereafter the amount of P6,000.00 every fifteen (15) days during the construction to make a total sum of P25,000.00; that on January 9, 1967, Tropical and/or Pons delivered a check for P7,000.00 not to the plaintiff but to a stranger to the contract, Galan, who succeeded in getting petitioner's indorsement on the same check persuading the latter that the same be deposited in a joint account; that on January 26, 1967, when the second check for P6,000.00 was due, petitioner refused to indorse said check presented to him by Galan but through later manipulations, respondent Pons succeeded in changing the payee's name from Elmo Muñasque to Galan and Associates, thus enabling Galan to cash the same at the Cebu Branch of the Philippine Commercial and Industrial Bank (PCIB) placing the petitioner in great financial difficulty in his construction business and subjecting him to demands of creditors to pay for construction materials, the payment of which should have been made from the P13,000.00 received by Galan; that petitioner undertook the construction at his own expense completing it prior to the March 16, 1967 deadline; that because of the unauthorized disbursement by respondents Tropical and Pons of the sum of P13,000.00 to Galan, petitioner demanded that said amount be paid to him by respondents under the terms of the written contract between the petitioner and respondent company.

The respondents answered the complaint by denying some and admitting some of the material averments and setting up counterclaims.

During the pre-trial conference, the petitioners and respondents agreed that the issues to be resolved are:

- (1) Whether or not there existed a partnership between Celestino Galan and Elmo Muñasque; and
- (2) Whether or not there existed a justifiable cause on the part of respondent Tropical to disburse money to

respondent Galan.

The business firms Cebu Southern Hardware Company and Blue Diamond Glass Palace were allowed to intervene, both having legal interest in the matter in litigation.

After trial, the court rendered judgment, the dispositive portion of which states:

"IN VIEW WHEREOF, Judgment is hereby rendered:

"(1) ordering plaintiff Muñasque and defendant Galan to pay jointly and severally the intervenors Cebu and Southern Hardware Company and Blue Diamond Glass Palace the amount of P6,229.34 and P2,213.51, respectively;

"(2) absolving the defendants Tropical Commercial Company and Ramon Pons from any liability.

"No damages awarded whatsoever"

The petitioner and intervenor Cebu Southern Company and its proprietor, Tan Siu filed motions for reconsideration.

On January 15, 1971, the trial court issued another order amending its judgment to make it read as follows:

"IN VIEW WHEREOF, Judgment is hereby rendered:

"(1) ordering plaintiff Muñasque and defendant Galan to pay jointly and severally the intervenors Cebu Southern Hardware Company and Blue Diamond Glass Palace the amount of P6,229.34 and P2,213.51, respectively;

"(2) ordering plaintiff and defendant Galan to pay Intervenor Cebu Southern Hardware Company and Tan Siu jointly and severally interest at 12% per annum of the sum of P6,229.34 until the amount is fully paid;

"(3) ordering plaintiff and defendant Galan to pay P500.00 representing attorney's fees jointly and severally to Intervenor Cebu Southern Hardware Company;

"(4) absolving the defendants Tropical Commercial Company and Ramon Pons from any liability.

"No damages awarded whatsoever".

On appeal, the Court of Appeals affirmed the judgment of the trial court with the sole modification that the liability imposed in the dispositive part of the decision on the credit of Cebu Southern Hardware and Blue Diamond Glass Palace was changed from "jointly and severally" to "jointly".

Not satisfied, Mr. Muñasque filed this petition.

The present controversy began when petitioner Muñasque in behalf of the partnership of "Galan and Muñasque" as Contractor entered into a written contract with respondent Tropical for remodelling the respondent's Cebu branch building. A total amount of P25,000.00 was to be paid under the contract for the entire services of the Contractor. The terms of payment were as follows: thirty percent (30%) of the whole amount upon the signing of the contract and the balance thereof divided into three equal installments at the rate of Six Thousand Pesos (P6,000.00) every fifteen (15) working days.

The first payment made by respondent Tropical was in the form of a check for P7,000.00 in the name of the petitioner. Petitioner, however, indorsed the check in favor of respondent Galan to enable the latter to deposit it in the bank and pay for the materials and labor used in the project.

Petitioner alleged that Galan spent P6,183.37 out of the P7,000.00 for his personal use so that when the second check in the amount of P6,000.00 came and Galan asked the petitioner to indorse it again, the petitioner refused.

The check was withheld from the petitioner. Since Galan informed the Cebu branch of Tropical that there was a "misunderstanding" between him and petitioner, respondent Tropical changed the name of the payee in the second check from Muñasque to "Galan and Associates" which was the duly registered name of the partnership between Galan and petitioner and under which name a permit to do construction business was issued by the mayor of Cebu City. This enabled Galan to encash the second check.

Meanwhile, as alleged by the petitioner, the construction continued through his sole efforts. He stated that he borrowed some P12,000.00 from his friend, Mr. Espina and although the expenses had reached the amount of P29,000.00 because of the failure of Galan to pay what was partly due the laborers and partly due for the materials, the construction work was finished ahead of schedule with the total expenditure reaching P34,000.00.

The two remaining checks, each in the amount of P6,000.00, were subsequently given to the petitioner alone with the last check being given pursuant to a court order.

As stated earlier, the petitioner filed a complaint for payment of sum of money and damages against the respondents, seeking to recover the following: the amounts covered by the first and second checks which fell into the hands of respondent Galan, the additional expenses that the petitioner incurred in the construction, moral and exemplary damages, and attorney's fees.

Both the trial and appellate courts not only absolved respondents Tropical and its Cebu Manager, Pons, from any liability but they also held the petitioner together with respondent Galan, liable to the intervenors Cebu Southern Hardware Company and Blue Diamond Glass Palace for the credit which the intervenors extended to the partnership of petitioner and Galan.

In this petition, the legal questions raised by the petitioner are as follows: (1) Whether or not the appellate court erred in holding that a partnership existed between petitioner and respondent Galan. (2) Assuming that there was such a partnership, whether or not the court erred in not finding Galan guilty of malversing the P13,000.00 covered by the first and second checks and therefore, accountable to the petitioner for the said amount; and (3) Whether or not the court committed grave abuse of discretion in holding that the payment made by Tropical through its manager Pons to Galan was "good payment."

Petitioner contends that the appellate court erred in holding that he and respondent Galan were partners, the truth being that Galan was a sham and a perfidious partner who misappropriated the amount of P13,000.00 due to the petitioner. Petitioner also contends that the appellate court committed grave abuse of discretion in holding that the payment made by Tropical to Galan was "good" payment when the same gave occasion for the latter to misappropriate the proceeds of such payment.

The contentions are without merit.

The records will show that the petitioner entered into a contract with Tropical for the renovation of the latter's building on behalf of the partnership of "Galan and Muñasque." This is readily seen in the first paragraph of the contract where it states:

"This agreement made this 20th day of December in the year 1966 by Galan and Muñasque hereinafter called the Contractor, and Tropical Commercial, Co., Inc., hereinafter called the owner do hereby for and in consideration agree on the following: x x x."

There is nothing in the records to indicate that the partnership organized by the two men was not a genuine one. If there was a falling out or misunderstanding between the partners, such does not convert the partnership into a sham organization.

Likewise, when Muñasque received the first payment of Tropical in the amount of P7,000.00 with a check made out in his name, he indorsed the check in favor of Galan. Respondent Tropical therefore, had every right to presume that the petitioner and Galan were true partners. If they were not partners as petitioner claims, then he has only himself to blame for making the relationship appear otherwise, not only to Tropical but to their other creditors as well. The payments made to the partnership were, therefore, valid payments.

In the case of *Singsong v. Isabela Sawmill* (88 SCRA 643), we ruled:

"Although it may be presumed that Margarita G. Saldajeno had acted in good faith, the appellees also acted in good faith in extending credit to the partnership. Where one of two innocent persons must suffer, that person who gave occasion for the damages to be caused must bear the consequences."

No error was committed by the appellate court in holding that the payment made by Tropical to Galan was a good payment which binds both Galan and the petitioner. Since the two were partners when the debts were incurred, they are also both liable to third persons who extended credit to their partnership. In the case of *George Litton v. Hill and Ceron, et al.*, (67 Phil. 513, 514), we ruled:

"There is a general presumption that each individual partner is an authorized agent for the firm and that he has authority to bind the firm in carrying on the partnership transactions." (*Mills vs. Riggle*, 112 Pac., 617).

"The presumption is sufficient to permit third persons to hold the firm liable on transactions entered into by one of members of the firm acting apparently in its behalf and within the scope of his authority." (*Le Roy vs. Johnson*, 7 U.S. (Law. ed.), 391.)

Petitioner also maintains that the appellate court committed grave abuse of discretion in not holding Galan liable for the amounts which he "malversed" to the prejudice of the petitioner. He adds that although this was not one of the issues agreed upon by the parties during the pre-trial, he, nevertheless, alleged the same in his amended complaint which was duly admitted by the court.

When the petitioner amended his complaint, it was only for the purpose of impleading Ramon Pons in his personal capacity. Although the petitioner made allegations as to the alleged malversations of Galan, these were the same allegations in his original complaint. The malversation by one partner was not an issue actually raised in the amended complaint but the alleged connivance of Pons with Galan as a means to serve the latter's personal purposes.

The petitioner, therefore, should be bound by the delimitation of the issues during the pre-trial because he himself agreed to the same. In *Permanent Concrete Products, Inc. v. Teodoro*, (26 SCRA 336), we ruled:

xxx xxx xxx

"xxx The appellant is bound by the delimitation of the issues contained in the trial court's order issued on the very day the pre-trial conference was held. Such an order controls the subsequent course of the action, unless modified before trial to prevent manifest injustice. In the case at bar, modification of the pre-trial order was never sought at the instance of any party."

Petitioner could have asked at least for a modification of the issues if he really wanted to include the determination of Galan's personal liability to their partnership but he chose not to do so, as he vehemently denied the existence of the partnership. At any rate, the issue raised in this petition is the contention of Muñasque that the amounts payable to the intervenors should be shouldered exclusively by Galan. We note that the petitioner is not solely burdened by the obligations of their illstarred partnership. The records show that there is an existing judgment against respondent Galan, holding him liable for the total amount of P7,000.00 in favor of Eden Hardware which extended credit to the partnership aside from the P2,000.00 he already paid to Universal Lumber.

We, however, take exception to the ruling of the appellate court that the trial court's ordering petitioner and Galan to pay the credits of Blue Diamond and Cebu Southern Hardware "jointly and severally" is plain error since the liability of partners under the law to third persons for contracts executed in connection with partnership business is only pro rata under Art. 1816, of the Civil Code.

While it is true that under Article 1816 of the Civil Code, "All partners, including industrial ones, shall be liable pro rata with all their property and after all the partnership assets have been exhausted, for the contracts which may be entered into the name and for the account of the partnership, under its signature and by a person authorized to act for the partnership. x x x", this provision should be construed together with Article 1824 which provides that: "All partners are liable solidarily with the partnership for everything chargeable to the partnership under Articles 1822 and 1823." In short, while the liability of the partnership merely joint in transactions entered into by the partnership, a third person who transacted with said partnership can hold the partners solidarily liable for the whole obligation if the case of the third person falls under Articles 1822 or 1823.

Articles 1822 and 1823 of the Civil Code provide:

"Art. 1822. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his co-partners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act."

"Art. 1823. The partnership is bound to make good the loss:

"(1) Where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and

"(2) Where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership."

The obligation is solidary because the law protects him, who in good faith relied upon the authority of a partner, whether such authority is real or apparent. That is why under Article 1824 of the Civil Code all partners, whether innocent or guilty, as well as the legal entity which is the partnership, are solidarily liable.

In the case at bar the respondent Tropical had every reason to believe that a partnership existed between the petitioner and Galan and no fault or error can be imputed against it for making payments to "Galan and Associates" and delivering the same to Galan because as far as it was concerned, Galan was a true partner with real authority to transact on behalf of the partnership with which it was dealing. This is even more true in the cases of Cebu Southern Hardware and Blue Diamond Glass Palace who supplied materials on credit to the partnership. Thus, it is but fair that the consequences of any wrongful act committed by any of the partners therein should be answered solidarily by all the partners and the partnership as a whole.

However, as between the partners Muñasque and Galan, justice also dictates that Muñasque be reimbursed by Galan for the payments made by the former representing the liability of their partnership to herein intervenors, as it was satisfactorily established that Galan acted in bad faith in his dealings with Muñasque as a partner.

WHEREFORE, the decision appealed from is hereby AFFIRMED with the MODIFICATION that the liability of petitioner and respondent Galan to intervenors Blue Diamond Glass and Cebu Southern Hardware is declared to be joint and solidary. Petitioner may recover from respondent Galan any amount that he pays, in his capacity as a partner, to the above intervenors.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, De La Fuente, and Patajo, JJ., concur.

Plana, J., no part.

Relova, J., on leave.

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