

CRISTOBAL BONNEVIE, ET AL., PLAINTIFFS AND APPELLANTS VS. JAIME HERNANDEZ, DEFENDANT AND APPELLEE.*G.R. No. L-5837. May 31, 1954*

Ponente: REYES, J.

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This is an action for the recovery of the sum of P115,312.50, with interests, as plaintiffs' alleged share in the profits of a partnership.

It appears that prior to January, 1947, plaintiffs with other associates formed a syndicate or secret partnership for the purpose of acquiring the plants, franchises and other properties of the Manila Electric Co.—hereinafter called the Meralco—in the provinces of Camarines Sur, Albay, and Sorsogon, with the idea of continuing that company's business in that region. No formal articles were drawn for it was the purpose of the members to incorporate once the deal had been consummated. But in the meantime they elected Pedro Serranzana and David Serrano general manager and secretary-treasurer, respectively, of the partnership.

Negotiation for the purchase was commenced, but as it made no headway, defendant was taken in as a member of the partnership so that he could push the deal through, and to that end he was given the necessary power of attorney. Using partnership funds, defendant was able to buy the Meralco properties for P122,000, paying P40,000 upon the signing of the deed of sale and agreeing to pay the balance in two equal installments, that is, P41,000 on or before July 31, 1947, and another P41,000 on or before January 31, 1948, with interests at 6 per cent per annum and with a penalty clause which reads:

"(6) That in case the VENDEE fails to make the payment or payments of the balance due or any part thereof as herein provided, this contract shall, at the option of the VENDOR, be annulled and, in such an event, all payments made by the VENDEE to the VENDOR by virtue of this contract shall be forfeited and retained by the vendor in full satisfaction as the liquidated damages sustained by said VENDOR; and the said vendor shall have the right to forthwith reenter and take possession of the premises, properties and rights which are the subject-matter of this contract."

Although defendant was the one named vendee in the deed of sale, there is no question that the transaction was in reality made for the partnership so that the latter assumed control of the business the day following the sale.

About the latter half of the following month the members of the partnership proceeded with the formation of the proposed corporation, apportioning among themselves its shares of stock in proportion to their respective contributions to the capital of the partnership and their individual efforts in bringing about the acquisition of the Meralco properties. But before the incorporation papers could be perfected, several partners, not satisfied with the way matters were being run and fearful that the venture might prove a failure because the business was not going well and there was a possibility of their being assessed more than their original investments when the time came to meet the two installments of the unpaid purchase price due the Meralco, expressed their desire to withdraw from the partnership and get back the money they had invested therein. In accordance with this wish, one of them,

Judge Jaime Reyes, in a meeting held on April 10, 1947, to consider various matters connected with the business, presented a resolution to the effect that those partners who did not want to remain in the association should be allowed to withdraw and get back their contributions. The resolution was approved, with the herein plaintiffs voting affirmatively, and on that same day plaintiffs and Judge Reyes withdrew from the partnership, and, as admitted by both parties, the partnership was then dissolved. In accordance with the terms of the resolution, the withdrawing partners were, on the following day, reimbursed their respective contributions to the partnership fund.

Following the dissolution of the partnership, the members who preferred to remain in the business went ahead with the formation of the corporation, taking in new associates as stockholders. And defendant, on his part, in fulfillment of his trust, made a formal assignment of the Meralco properties to the treasurer of the corporation, giving them a book value of P365,000, in return for which the corporation issued, to the various subscribers to its capital stock, shares of stock of the total face value of P225,000 and assumed the obligation of paying what was still due the Meralco on the purchase price. The new corporation was named "Bicol Electric Company."

Though business was losing during the first year, that is, in 1947, the corporation, thanks to a loan obtained from the RFC later prospered and made money. Then trouble began for one of its big stockholders, the defendant herein.

Two years from their withdrawal from the partnership, when the corporate business was already in a prosperous condition, plaintiffs brought the present suit against Jaime Hernandez, claiming a share in the profit the latter is supposed to have made from the assignment of the Meralco properties to the corporation, estimated by plaintiffs to be P225,000 and their share of it to be P115,312.50.

Defendant's answer denies that he has made any profit out of the assignment in question and alleges that in any event plaintiffs, after their withdrawal from the partnership, ceased to have any further interest in the subsequent transactions of the remaining members.

After trial the lower court found that the partnership had not realized any profit out of the assignment of the Meralco properties to the corporation and that, even supposing that profit had really been made, defendant would not be the one to answer to plaintiffs for their share thereof, because he did not receive the consideration for the assignment, which according to the court, consisted of the subscriptions of various persons to the capital stock of the corporation. The court therefore dismissed the complaint with costs against the plaintiffs. From this decision plaintiffs appealed. The case comes within our jurisdiction because of the amount involved.

We find no merit in the appeal.

In the first place, the profit alleged to have been realized from the assignment of the Meralco properties to the new corporation, the Bicol Electric Company, is more apparent than real. It is true that the value set for those properties in the deed of assignment was P365,000 when the acquisition price was only P122,000. But one should not jump to the conclusion that a profit, consisting of the difference between the two sums was really made out of the transaction, for the assignment was not made for cash put in payment for subscriptions to shares of stock in the assignee, and while those shares had a total face value of P225,000, this is not necessarily their real worth. Needless to say, the real value of the shares of stock of a corporation depends upon the value of its assets over and above its liabilities. It does not appear that the Bicol Electric Company had any assets other than those acquired from the Meralco, and according to the evidence the company, aside from owing the Meralco, P82,000 was, in the language of the court below, actually "in the red."

In the second place, assuming that the assignment actually brought profit to the partnership, it is hard to see how

defendant could be made to answer for plaintiffs' alleged share thereof. As stated in the decision below, defendant did not receive the consideration for the assignment for, as already stated, the assignment was made in payment for subscriptions of various persons to the capital stock of the new corporation. Plaintiffs, in order to give color of legality to their claim against defendant, maintain that the latter should be held liable for damages caused to them, consisting of the loss of their share of the profits, due to defendant's failure properly to perform his duty as a liquidator of the dissolved partnership, this on the theory that as managing partner of the partnership, it was defendant's duty to liquidate its affairs upon its dissolutions. But it does not appear that plaintiffs have ever asked for a liquidation, and as will presently be explained no liquidation was called for because when plaintiffs withdrew from the partnership the understanding was that after they had been reimbursed their investment, they were no longer to have any further interest in the partnership or its assets and liabilities. Moreover, the stipulation of facts made at the hearing does not bear out the claim that defendant was the managing partner of the partnership, for if there appears that the partnership had its general manager in the person of Pedro Serranzana, who upon the formation of the new corporation also became its vice-president and general manager,

As a general rule, when a partner retires from the firm, he is entitled to the payment of what may be due him after a liquidation. But certainly no liquidation is necessary where there is already a settlement or an agreement as to what the retiring partner shall receive. In the instant case, it appears that a settlement was agreed upon on the very day the partnership was dissolved. For when plaintiffs and Judge Jaime Reyes withdrew from the partnership on that day they did so as agreed to by all the partners, subject to the only condition that they were to be repaid their contributions or investments within three days from said date. And this condition was fulfilled when on the following day they were reimbursed the respective amounts due them pursuant to the agreement.

There is evidence that the partnership was at that time operating its business at a loss and that the partnership did not have necessary funds to meet its obligation to Meralco for the balance of the purchase price. And in that connection it should be recalled that nonpayment of that obligation would result in the partnership losing its entire investment because of the penalty clause in the deed of sale. Because of these circumstances there is every reason to believe that plaintiffs together with Judge Jaime Reyes, withdrew from the partnership for fear that they might lose their entire investment should they choose to remain in the partnership which then faced the danger of losing its entire assets. As testified to by Judge Reyes, one of the withdrawing partners, it was clearly understood that upon their withdrawal and return to them of their investment they would have nothing more to do with the association. It must, therefore, have been the intention or understanding of the parties that the withdrawing partners were relinquishing all their rights and interest in the partnership upon the return to them of their investment. That Judge Reyes did not join the plaintiffs in this action is a clear indication that such was really the understanding. Judge Reyes has testified that when he was invited to join in the present claim he refused because he did not want to be a "sin verguenza." And, indeed, if the agreement was that the withdrawing partners were still to have participation in the subsequent transactions of the partnership so that they would have a share not only in the profits but also in the losses, it is not likely that their investment would have been returned to them.

It is, therefore, our conclusion that the acceptance by the withdrawing partners, including the plaintiffs, of their investment in the instant case was understood and intended by all the parties as a final settlement of whatever rights or claim the withdrawing partners might have in the dissolved partnership. Such being the case they are now precluded from claiming any share in the alleged profits, should there be any, at the time of the dissolution.

In view of the foregoing, we find plaintiffs' claim against defendant to be without legal basis so that the judgment of dismissal rendered by the court below should be, as it is hereby, affirmed, with costs against the appellants.

Paras, C. J., Pablo, Bengzon, Montemayor, Jugo, Bautista Angelo, Labrador and Concepcion, JJ., concur.

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