

LU MING, LAM LOY AND LEE E. WON, PLAINTIFFS-APPELLANTS, VS. VICENTE LOPEZ, TIMOTEO FERNANDEZ, FRANCISCO LEE LLACER, LEONG CHEW, KOK KO, MANILA CANTONESE ASSOCIATION, INC. AND TH...

G.R. No. L-25858. November 26, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal from an order of the Court of First Instance of Manila, granting defendant's motion to dismiss and, accordingly, dismissing plaintiffs' complaint.

Claiming to have acted as trustees of the Asociacion Cantonesa de Manila - hereinafter referred to as the Asociacion plaintiffs Lu Ming, Lam Loy and Lee Won, filed the complaint herein, with the Court of First Instance of Manila, to compel the Register of Deeds of Manila to cancel Transfer Certificate of Title No. 63964, in the name of his co-defendant, the Manila Cantonese Association, Inc. - hereinafter referred to as the Corporation upon the ground that the same had been issued in consequence of a deed of conveyance fraudulently executed by defendant Kok Ko, purporting to act on behalf of the Asociacion, in favor of the Corporation, and to secure from the latter and defendants Vicente Lopez, Timoteo Fernandez, Francisco Lee Llacer, Leong Chew and Kok Ko, an accounting of the earnings of the property covered by said title, as well as to recover exemplary damages and attorney's fees, apart from the costs and expenses of litigation.

Upon being summoned, defendants Vicente Lopez, Leong Chew and Kok Ko filed separate motions to dismiss, all predicated upon plaintiffs' alleged lack of legal capacity to sue. The motions of the first two (2), likewise, maintained that plaintiffs' complaint failed to state a cause of action. Upon the other hand, defendants Francisco Lee Llacer and Timoteo Fernandez filed their respective answers, admitting the formal allegations of the complaint, denying the other allegations thereof and setting up affirmative defenses - including lack of capacity to sue and absence of a cause of action - as well as a counterclaim for damages. After due hearing, the lower court issued the order appealed from, granting said motions to dismiss and dismissing the complaint, upon the ground "that the plaintiffs are without legal capacity to bring this action." A reconsideration of said order having been denied, plaintiffs interposed this appeal, directly to the Supreme Court, in which only one question of law is raised, namely, whether "plaintiffs have no legal capacity to sue."

It appears that plaintiffs - Lu Ming, Lam Loy and Lee E. Won - and defendants Vicente Lopez, Timoteo Fernandez, Francisco Lee Llacer, Leong Chew and Kok Ko, were members of a corporation organized, on September 1, 1908, under the name Asociacion Cantonesa de Manila, the lifetime of which was scheduled to expire, pursuant to the Corporation Law[1], 50 years later, or on September 1, 1958. About a week before the date last mentioned, or on August 23, 1958, the Board of Director of the Asociacion, which consisted of fifteen (15) members, including plaintiffs herein, approved a resolution constituting themselves as Board of Liquidators of the Asociacion, with authority, inter alia, to dispose of the corporate assets, "by sale, donation, or otherwise, or in

trust" for the benefit of its members. This board of liquidators, however, failed to wind up the corporate affairs during the incumbency of its aforementioned members. Although re-elected as members of the board of directors, and, hence, of the board of liquidators, from 1958 to 1960, plaintiffs herein lost in their bid for election in 1961. Upon the other hand, defendants Vicente Lopez, Leong Chew and Kok Ko were among the fifteen (15) members of the Board of Directors then elected.

By resolution, dated March 31, 1961, the members of this new board of directors constituted themselves as Board of Liquidators of the Asociacion, with authority to convey the properties thereof to the Corporation, which had, meanwhile, been organized to continue the humanitarian purposes of the Asociacion. Among said properties were three (3) parcels of land, with the building and other improvements thereon, located at Dasmariñas and Poblete Streets, Manila, and more particularly described in T.C.T. No. 17024 of Manila, in the name of the Asociacion. The new board of liquidators, likewise, authorized the corporate secretary, defendant Kok Ko, to execute, on behalf of the Asociacion, the corresponding deed of conveyance. Hence, acting in the name of the Asociacion, on June 8, 1961, Kok Ko conveyed the aforementioned land, with the building and improvements existing thereon, to the Corporation, and T.C.T. No. 63964 of the City of Manila was issued in its favor, upon cancellation of said T.C.T. No. 17204, in the name of the Asociacion.

About four (4) years later, or on June 6, 1965, plaintiffs herein commenced the present action, for the purpose above indicated. In their complaint, plaintiffs do not allege that they are trustees of the property in question. They merely claim to have acted as such trustees thereof. At best, however, those who acted as trustees were not plaintiffs herein, but the Board of Directors for the years 1958 to 1960, of which plaintiffs were merely three (3) of its fifteen (15) members, thus constituting a small minority thereof. Hence, it is not alleged in the complaint that plaintiffs represent either said Board of Directors or the Board of Liquidators, or the majority of either. At any rate, they ceased to be members of the Board of Directors in 1960, others having been elected thereto, in lieu of them, in 1961. As a consequence, plaintiffs' authority to participate in the liquidation of the Asociacion, likewise, came to an end in 1960, for the resolution constituting the Board of Directors of which they formed part, as Board of Liquidators, being good only "until their successors shall have been selected and qualified in accordance with x x x law and x x x the By-Laws," in the language of said resolution.

Besides, by resolution of March 31, 1961, the members of the Board of Directors for 1961, constituted themselves into another Board of Liquidators, which, as such, and, acting within the scope of its authority, authorized Kok Ko to convey the property in question to the Corporation, which had seemingly been organized to continue the humanitarian objectives of the Asociacion, inasmuch as the dissolution of the latter was due merely to the expiration of the maximum term of fifty (50) years allowed by the Corporation Law.

Then, again, there is no allegation in the complaint to the effect that the aforementioned property had ever been conveyed to the plaintiffs as trustees thereof, so that the records before us show they have no authority to sue for the recovery of said property, either as alleged trustees or on behalf of the "Asociacion". Indeed, inasmuch as it has no juridical existence, even for purposes of liquidation, since September 1, 1961, not even the Asociacion could have, in fact, brought the present action.[1]

WHEREFORE, the order appealed from should be, as it is hereby affirmed, with costs against plaintiffs-appellants, Lu Ming, Lam Loy and Lee Won.

SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, and Capistrano, JJ., concur.

[1] Section 6 of Act No. 1459, as amended.

[1] National Abaca & Other Fibers Corp. v. Pore, L- 16779, August 16, 1961; Board of Liquidators v. Kalaw, L-18805, August 14, 1967, Section 77 and 78, Act No. 1459.

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