

SERGIO V. SISON, PLAINTIFF AND APPELLANT, VS. HELEN J. MCQUAID, DEFENDANT AND APPELLEE.*G.R. No. L-6304. December 29, 1953*

Ponente: REYES, J.

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On March 28, 1951, plaintiff brought an action in the Court of First Instance of Manila against defendant, alleging that during the year 1938 the latter borrowed from him various sums of money, aggregating P2,210, to enable her to pay her obligation to the Bureau of Forestry and to add to her capital in her lumber business, receipt of the amounts advanced being acknowledged in a document, Exhibit A, executed by her on November 10, 1938 and attached to the complaint; that as defendant was not able to pay the loan in 1938, as she had promised, she proposed to take in plaintiff as a partner in her lumber business, plaintiff to contribute to the partnership the said sum of P2,210 due him from defendant in addition to his personal services; that plaintiff agreed to defendant's proposal and, as a result, there was formed between them, under the provisions of the Civil Code, a partnership in which they were to share alike in the income or profits of the business, each to get one-half thereof; that in accordance with said contract, plaintiff, together with defendant, rendered services to the partnership without compensation from June 15, 1938 to December, 1941; that before the last World War, the partnership sold to the United States Army 230,000 board feet of lumber for P13,800, for the collection of which sum defendant, as manager of the partnership, filed the corresponding claim with the said army after the war; that the claim was "finally" approved and the full amount paid—the complaint does not say when—but defendant has persistently refused to deliver one-half of it, or P6,900, to plaintiff notwithstanding repeated demands, investing the whole sum of P13,800 for her own benefit. Plaintiff, therefore, prays for judgment declaring the existence of the alleged partnership and requiring defendant to pay him the said sum of P6,900, in addition to damages and costs.

Notified of the action, defendant filed a motion to dismiss on the grounds that plaintiff's action had already prescribed, that plaintiff's claim was not provable under the Statute of Frauds, and that the complaint stated no cause of action. Sustaining the first ground, the court dismissed the case, whereupon, plaintiff appealed to the Court of Appeals; but that court has certified the case here on the ground that the appeal involved only questions of law.

It is not clear from the allegations of the complaint just when plaintiff's cause of action accrued. Consequently, it cannot be determined with certainty whether that action has already prescribed or not. Such being the case, the defense of prescription can not be sustained on a mere motion to dismiss based on what appears on the face of the complaint.

But though the reason given for the order of dismissal be untenable, we find that the said order should be upheld on the ground that the complaint states no cause of action, which is also one of the grounds on which defendant's motion to dismiss was based. Plaintiff seeks to recover from defendant one-half of the purchase price of lumber sold by the partnership to the United States Army. But his complaint does not show why he should be entitled to the sum he claims. It does not allege that there has been a liquidation of the partnership business and the said sum

has been found to be due him as his share of the profits. The proceeds from the sale of a certain amount of lumber cannot be considered profits until costs and expenses have been deducted. Moreover, the profits of a business cannot be determined by taking into account the result of one particular transaction instead of all the transactions had. Hence, the need for a general liquidation before a member of a partnership may claim a specific sum as his share of the profits.

In view of the foregoing, the order of dismissal is affirmed, but on the ground that the complaint states no cause of action and without prejudice to the filing of an action for accounting or liquidation should that be what plaintiff really wants. Without costs in this instance.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Jugo, Bautista Angelo and Labrador, JJ., concur.

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