

URBANO LOTA (SUBSTITUTED BY SOLOMON LOTA IN HIS CAPACITY AS ADMINISTRATOR OF THE ESTATE OF URBANO LOTA), PLAINTIFF AND APPELLANT, VS. BENIGNO TOLENTINO, DEFENDANT AND APPELLEE.

G.R. No. L-3518. February 29, 1952

Ponente: PARAS, C.J.

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PARAS, C.J.:

This is an appeal from a resolution of the Court of First Instance of Batangas of May 4, 1949, worded in full as follows:

"On April 6, 1949, counsel for plaintiff filed a motion praying that deceased defendant be substituted by his heirs, Marta Sadiasa and Eugenia, Resurrection and Mercedes, all surnamed Tolentino, as parties defendant in this case. To said motion counsel for defendant interposed an opposition upon the following grounds:

'I. That the nature of the action for accounting and liquidation of the partnership filed by plaintiff since March 3, 1937, is purely personal in character and, upon the death of the defendant on November 22, 1939, the claim was already extinguished. II. Assuming that the action for accounting and liquidation of the partnership is not purely personal in character and that such claim is not yet extinguished, the case should now be dismissed in view of the failure of the plaintiff to prosecute his action for an unreasonable length of time. III. Assuming further that the plaintiff's claim was not yet extinguished upon the death of the defendant on November 22, 1939, the rights, if any, sought to be enforced by the plaintiff in the complaint have already been lost by laches.'

"The question, before the Court therefore is whether the motion for substitution should be granted and the case allowed to go to trial on the merits, or whether the defendant's opposition should be sustained and the case dismissed. The following factual background appears of record:

"On March 3, 1937, plaintiff filed an action against defendant to order the latter (a) to render an accounting of his management of their partnership, and (b) to deliver to plaintiff whatever share he may have in the assets of the partnership after the liquidation has been approved by the Court.

"The partnership above-mentioned "was entered into by and between plaintiff and defendant in the year 1918, whereby they agreed to engage in general business in the municipality of Alabat, province of Batangas, both to divide the profits and losses share and share alike, and defendant to be manager of the partnership. Plaintiff alleges that from 1918 until 1928 defendant had rendered an annual accounting, but had refused to do so from 1929 to 1937, hence, plaintiff's complaint.

"To plaintiff's complaint, defendant filed answer, alleging that defendant was the industrial partner in said partnership; that he rendered a yearly accounting and liquidation thereof from 1918 to 1932, and that in the latter year, 1932, the partnership was dissolved and defendant delivered all its properties and assets to the plaintiff. Hence, defendant prays for the dismissal of plaintiff's complaint.

"The plaintiff died in 1938, and on September 28, 1939, he was substituted by the administrator of his estate, Solomon Lota.

"On December 8, 1939, defendant's counsel made a suggestion upon the record that defendant died on November 26, 1939. On January 9, 1940, the Court gave plaintiff 30 days to amend the complaint by substituting for the deceased defendant the administrator of his estate or his legal representative.

"On January 28, 1941, the Court ordered the dismissal of the case for lack of prosecution. This order was reconsidered and set aside upon a showing by plaintiff that on March 28, 1941, he had filed a petition for the issuance of letters of administration to deceased defendants' surviving spouse, Marta Sadiasa, for the purpose of substituting her for the deceased defendant, said petition being Special Proceedings No. 3859 of this Court entitled 'Intestate Estate of the late Benigno Tolentino, Solomon Lota, petitioner.' This special proceedings was, however, dismissed for failure of the administratrix to file a bond and to take her oath.

"It will thus be seen that from defendant's death on November 26, 1939, to the present, or almost ten years, no administrator or legal representative has been actually substituted to take the place of said defendant. It was only on April 6, 1949, that plaintiff made another try to substitute said deceased by filing his motion, referred to in the first paragraph of this resolution, praying that defendant's heirs be substituted for him as parties defendant.

"The following considerations stand in the way of plaintiff's motion for substitution:

"1. It being undisputed that defendant was the manager of the partnership formed by and between him and the plaintiff, and that said defendant died on November 26, 1939, during the pendency of the present action for accounting and liquidation against defendant, the said action should have been discontinued as it could no longer be maintained against the deceased defendant. Under these circumstances, the remedy and duty of the plaintiff are as set out in the following ruling of the Supreme Court in *Po Yeng Cheo vs. Lim Ka Yam*, 44 Phil. 172, 178):

'In the first place, it is well settled that when a member of a mercantile partnership dies, the duty of liquidating its affairs devolves upon the surviving member, or members of the firm, not upon the legal representative of the deceased partner. (*Wahl. vs. Donaldson Sim & Co.*, 5 Phil., 11; *Sugo and Shibata vs. Green*, 6 Phil., 744). And the same rule must be equally applicable to a civil partnership clothed with the form of a commercial association (ART. 1670, Civil Code; *Lichauco vs. Lichauco*, 33 Phil., 350).'

"If, as it appears of record, plaintiff died prior to defendant's death, the duty to liquidate devolved upon the legal representative of the plaintiff because it was the latter, who sought to establish a claim against the defendant,

"2. If after such liquidation, there should be found money or property due the partnership from the deceased defendant, a claim therefore should be filed against the latter's estate in administration. Again, this is the procedure marked out in the case just cited:

'Upon the death of Lim Ka Yam it therefore became the duty of his surviving associates to take the proper steps to settle the affairs of the firms, and any claim against him, or his estate, for a sum of money due to the partnership by reason of any misappropriation of its funds by him or damages resulting from his wrongful acts as manager, should be prosecuted against his estate in administration in the manner pointed out in sections 686 to 701, inclusive, of the Code of Civil Procedure. Moreover, when it appears, as here, that the property pertaining to Kwong Cheong Tay, like the shares in the Ya Sieng Chyip Konski and Manila Electric Railroad and Light Company, are in the possession, of the deceased partner, the proper step for the surviving associates to take would be to make application to the court having charge of the administration to require the administrator to surrender such property. (*Po Yeng Cheo vs. Lim Ka Yam*, *supra*.)

"This procedure was not also followed in the case at bar because plaintiff, or his legal representative, did not

procure the appointment and qualification of an administrator of the estate of deceased defendant, although he had already filed a petition looking towards such administration. This plaintiff was under a duty to do if he considered himself a creditor with a legitimate claim enforceable against the estate of deceased defendant.

"3. What plaintiff, or his legal representative, insisted on doing in the present case is to continue and press his action for accounting and liquidation against the heirs of deceased defendant, a procedure which, as above stated, runs counter to that set out in the *Po Yeng Cheo vs. Lim Ka Yam* case. But even in this, plaintiff, or his legal representative, proceeded half-heartedly, because he only filed a petition for the appointment of an administrator for the estate of deceased defendant, but did not see to it that said administrator file a bond and qualify as such. Hence, the said petition for administration was dismissed.

"4. Also, conceding, without admitting, that the present action for accounting would lie against defendant, it is this Court's opinion that such a duty to account died with the defendant, was extinguished upon his death, and was not shifted upon his heirs. The heirs of the defendant have never been partners in the partnership formed by and between plaintiff and defendant, and said heirs are hardly in a position and hardly called upon to effect an accounting of said partnership.

"5. Finally, it will be recalled that the partnership in question was organized in 1918 and dissolved in 1932. The action for accounting was commenced on March 3, 1937. And the present motion for substitution was filed on April 6, 1949, only. Trial on the merits at this late date might prove futile and fruitless if no partnership property is found in the possession of defendant's heirs, let alone the allegation of said defendant in his answer to the complaint back in 1937 that he had already delivered all the properties and assets of the partnership to the plaintiff. If the principle of laches is ever to be applied, it should be applied to this case.

"Wherefore, the plaintiff's action for substitution is denied and defendant's prayer for the dismissal of this case granted, with costs against the plaintiff."

The present appellant is Solomon Lota, in his capacity as administrator of the estate of Urbano Lota, original plaintiff, who died in 1938. The decisive question that arises is whether or not, after the death of the defendant Benigno Tolentino on November 22, 1939, plaintiff's action for accounting and liquidation of the partnership formed in 1918 between Urbano Lota and Benigno Tolentino, of which the latter was the industrial and managing partner, may be continued against the heirs of Benigno Tolentino. This question was decided adversely to the appellant by the lower court and, in our opinion, correctly. The applicable authority is the case of *Po Yeng Cheo vs. Lim Ka Yam*, 44 Phil. 172, in which the following pronouncements were made:

"In the first place, it is well settled that when a member of a mercantile partnership dies, the duty of liquidating its affairs devolves upon the surviving member or members of the firm, not upon the legal representatives of the deceased partner. (*Wahl vs. Donaldson Sim & Co.*, 5 Phil., 11; *Sugo and Shibata vs. Green*, 6 Phil., 744.) And the same rule must be equally applicable to a civil partnership clothed with the form of a commercial association (art. 1670, Civil Code: *Lichauco vs. Lichauco*, 33 Phil., 350). Upon the death of Lim Ka Yam it therefore became the duty of his surviving associates to take the proper steps to settle the affairs of the firm, and any claim against him, or his estate, for a sum of money due to the partnership by reason of any misappropriation of its funds by him, or for damages resulting from his wrongful acts as manager, should be prosecuted against his estate in administration in the manner pointed out in sections 686 to 701, inclusive, of the Code of Civil Procedure. Moreover, when it appears, as here, that the property pertaining to Kwong Cheong Tay, like the shares in the Yut Siong Chyip Konski and the Manila Electric Railroad and Light Company, are in the possession of the deceased partner, the proper step for the surviving associates to take would be to make application to the court having charge of the administration to require the administrator to surrender such property.

"But, in the second place, as already indicated, the proceedings in this cause, considered in the character of an action for an accounting, were futile; and the court, abandoning entirely the effort to obtain an accounting

gave judgment" against the administrator upon the supposed liability of his intestate to respond for the plaintiff's proportionate share of the capital and assets. But of course the action was not maintainable in this aspect after the death of the defendant; and the motion to discontinue the action as against the administrator should have been granted." (pp. 178-179.)

Another ground—equally decisive against the appellant—correctly advanced by the lower court in dismissing the present action for accounting, is lack of prosecution on the part of the appellant. It may fittingly be recalled that the action for accounting and liquidation was filed on March 3, 1937. No sooner had the defendant Benigno Tolentino died on November 22, 1939, than said fact was made of record by his attorney. On January 9, 1940, the lower court gave the plaintiff (who had then died and was substituted on September 28, 1939, by the administrator of his estate, Solomon Lota), 30 days to amend the complaint by substituting the administrator or legal representative of the deceased defendant Benigno Tolentino. On January 28, 1941, the lower court dismissed the case for lack of prosecution on the part of the plaintiff, but the order of dismissal was reconsidered, upon a showing by the plaintiff that on March 28, 1941, an administration proceeding for the estate of Benigno Tolentino was instituted by the plaintiff. On August 8, 1941, the lower court issued, at the instance of the plaintiff, letters of administration to Tolentino's surviving spouse, Marta Sadiasa, who however failed to qualify. Accordingly, the court dismissed the administration proceeding on January 3, 1949, for lack of interest. It was only as late as April 6, 1949, that the plaintiff filed the motion to substitute, not even the legal representative of Benigno Tolentino, but his heirs.

If the plaintiff was genuinely interested in substituting the proper party, assuming that plaintiff's action may still be pursued after Tolentino's death, he should have taken timely measures to have the administratrix appointed on August 8, 1941, qualify or, in case of her failure or refusal, to procure the appointment of another administrator; because the plaintiff could have availed himself of section 6, Rule 80, of the Rules of Court, providing that "letters of administration may be granted to any qualified applicant, though it appears that there are other competent persona having better right to the administration, if such persons fail to appear when notified and claim the issuance of letters to themselves." Certainly, inaction for almost eight years (after the issuance of letters of administration) on the part of the appellant, sufficiently implies indifference to or desistance from its suit.

The theory of the appellant is that the heirs may properly be substituted for the deceased Benigno Tolentino, because they are in possession of property allegedly belonging to the partnership in question, and the appellant seeks the recovery thereof. Apart from the fact that said allegation seems to refer to a cause of action foreign to the claim for accounting and liquidation against Tolentino, and should have been made in a proper pleading to be duly admitted by the lower court, the filing of appellant's motion for substitution more than twelve years after the institution of the complaint came too late and already called for the application of the rule requiring dismissal for lack of prosecution. It is immaterial that, before the appealed resolution was issued by the lower court, the appellant attempted to have the case set for hearing, because his counsel ought to have known that the deceased defendant had not yet been properly substituted.

The resolution herein complained of will therefore be as it is hereby affirmed, with costs against the appellant. So ordered.

Feria, Pablo, Padilla, Tuason, Montemayor, Reyes, Jugo, and Bautista Angelo, JJ., concur.

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