

EUFRACIO D. ROJAS, PLAINTIFF-APPELLANT, VS. CONSTANCIO B. MAGLANA, DEFENDANT-APPELLEE.

G.R. No. L-30616. December 10, 1990

Ponente: PARAS, J.

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PARAS, J.:

This is a direct appeal to this Court from a decision* of the then Court of First Instance of Davao, Seventh Judicial District, Branch III, in Civil Case No. 3518, dismissing appellant's complaint.

As found by the trial court, the antecedent facts of the case are as follows:

On January 14, 1955, Maglana and Rojas executed their Articles of Co-Partnership (Exhibit "A") called Eastcoast Development Enterprises (EDE) with only the two of them as partners. The partnership EDE with an indefinite term of existence was duly registered on January 21, 1955 with the Securities and Exchange Commission.

One of the purposes of the duly-registered partnership was to “apply or secure timber and/or minor forests products licenses and concessions over public and/or private forest lands and to operate, develop and promote such forests rights and concessions.” (Rollo, p. 114)

A duly registered Articles of Co-Partnership was filed together with an application for a timber concession covering the area located at Cateel and Baganga, Davao with the Bureau of Forestry which was approved and Timber License No. 35-56 was duly issued and became the basis of subsequent renewals made for and in behalf of the duly registered partnership EDE.

Under the said Articles of Co-Partnership, appellee Maglana shall manage the business affairs of the partnership, including marketing and handling of cash and is authorized to sign all papers and instruments relating to the partnership, while appellant Rojas shall be the logging superintendent and shall manage the logging operations of the partnership. It is also provided in the said articles of co-partnership that all profits and losses of the partnership shall be divided share and share alike between the partners.

During the period from January 14, 1955 to April 30, 1956, there was no operation of said partnership (Record on Appeal [R.A.] p. 946).

Because of the difficulties encountered, Rojas and Maglana decided to avail of the services of Pahamotang as industrial partner.

On March 4, 1956, Maglana, Rojas and Agustin Pahamotang executed their Articles of Co-Partnership (Exhibit "B" and Exhibit "C") under the firm name EASTCOAST DEVELOPMENT ENTERPRISES (EDE). Aside from the slight difference in the purpose of the second partnership which is to hold and secure renewal of timber license instead of to secure the license as in the first partnership and the term of the second partnership is fixed to thirty (30) years, everything else is the same.

The partnership formed by Maglana, Pahamotang and Rojas started operation on May 1, 1956, and was able to

ship logs and realize profits. An income was derived from the proceeds of the logs in the sum of P643,633.07 (Decision, R.A. 919).

On October 25, 1956, Pahamotang, Maglana and Rojas executed a document entitled "CONDITIONAL SALE OF INTEREST IN THE PARTNERSHIP, EASTCOAST DEVELOPMENT ENTERPRISES" (Exhibits "C" and "D") agreeing among themselves that Maglana and Rojas shall purchase the interest, share and participation in the Partnership of Pahamotang assessed in the amount of P31,501.12. It was also agreed in the said instrument that after payment of the sum of P31,501.12 to Pahamotang including the amount of loan secured by Pahamotang in favor of the partnership, the two (Maglana and Rojas) shall become the owners of all equipment contributed by Pahamotang and the EASTCOAST DEVELOPMENT ENTERPRISES, the name also given to the second partnership, be dissolved. Pahamotang was paid in full on August 31, 1957. No other rights and obligations accrued in the name of the second partnership (R.A. 921).

After the withdrawal of Pahamotang, the partnership was continued by Maglana and Rojas without the benefit of any written agreement or reconstitution of their written Articles of Partnership (Decision, R.A. 948).

On January 28, 1957, Rojas entered into a management contract with another logging enterprise, the CMS Estate, Inc. He left and abandoned the partnership (Decision, R.A. 947).

On February 4, 1957, Rojas withdrew his equipment from the partnership for use in the newly acquired area (Decision, R.A. 948).

The equipment withdrawn were his supposed contributions to the first partnership and was transferred to CMS Estate, Inc. by way of chattel mortgage (Decision, R.A. p. 948).

On March 17, 1957, Maglana wrote Rojas reminding the latter of his obligation to contribute, either in cash or in equipment, to the capital investments of the partnership as well as his obligation to perform his duties as logging superintendent.

Two weeks after March 17, 1957, Rojas told Maglana that he will not be able to comply with the promised contributions and he will not work as logging superintendent. Maglana then told Rojas that the latter's share will just be 20% of the net profits. Such was the sharing from 1957 to 1959 without complaint or dispute (Decision, R.A. 949).

Meanwhile, Rojas took funds from the partnership more than his contribution. Thus, in a letter dated February 21, 1961 (Exhibit "10") Maglana notified Rojas that he dissolved the partnership (R.A. 949).

On April 7, 1961, Rojas filed an action before the Court of First Instance of Davao against Maglana for the recovery of properties, accounting, receivership and damages, docketed as Civil Case No. 3518 (Record on Appeal, pp. 1-26).

Rojas' petition for appointment of a receiver was denied (R.A. 894).

Upon motion of Rojas on May 23, 1961, Judge Romero appointed commissioners to examine the long and voluminous accounts of the Eastcoast Development Enterprises (Ibid., pp. 894-895).

The motion to dismiss the complaint filed by Maglana on June 21, 1961 (Ibid., pp. 102-114) was denied by Judge Romero for want of merit (Ibid., p. 125). Judge Romero also required the inclusion of the entire year 1961 in the report to be submitted by the commissioners (Ibid., pp. 138-143). Accordingly, the commissioners started examining the records and supporting papers of the partnership as well as the information furnished them by the parties, which were compiled in three (3) volumes.

On May 11, 1964, Maglana filed his motion for leave of court to amend his answer with counterclaim attaching thereto the amended answer (Ibid., pp. 26-336), which was granted on May 22, 1964 (Ibid., p. 336).

On May 27, 1964, Judge M.G. Reyes approved the submitted Commissioners' Report (Ibid., p. 337).

On June 29, 1965, Rojas filed his motion for reconsideration of the order dated May 27, 1964 approving the report of the commissioners which was opposed by the appellee.

On September 19, 1964, appellant's motion for reconsideration was denied (Ibid., pp. 446-451).

A mandatory pre-trial was conducted on September 8 and 9, 1964 and the following issues were agreed upon to be submitted to the trial court:

- (a) The nature of partnership and the legal relations of Maglana and Rojas after the dissolution of the second partnership;
- (b) Their sharing basis: whether in proportion to their contribution or share and share alike;
- (c) The ownership of properties bought by Maglana in his wife's name;
- (d) The damages suffered and who should be liable for them; and
- (e) The legal effect of the letter dated February 23, 1961 of Maglana dissolving the partnership (Decision, R. A. pp. 895-896).

After trial, the lower court rendered its decision on March 11, 1968, the dispositive portion of which reads as follows:

"WHEREFORE, the above facts and issues duly considered, judgment is hereby rendered by the Court declaring that:

"1. The nature of the partnership and the legal relations of Maglana and Rojas after Pahamotang retired from the second partnership, that is, after August 31, 1957, when Pahamotang was finally paid his share - the partnership of the defendant and the plaintiff is one of a de facto and at will;

"2. Whether the sharing of partnership profits should be on the basis of computation, that is the ratio and proportion of their respective contributions, or on the basis of share and share alike - this covered by actual contributions of the plaintiff and the defendant and by their verbal agreement; that the sharing of profits and losses is on the basis of actual contributions; that from 1957 to 1959, the sharing is on the basis of 80% for the defendant and 20% for the plaintiff of the profits, but from 1960 to the date of dissolution, February 23, 1961, the plaintiff's share will be on the basis of his actual contribution and, considering his indebtedness to the partnership, the plaintiff is not entitled to any share in the profits of the said partnership;

"3. As to whether the properties which were bought by the defendant and placed in his or in his wife's name were acquired with partnership funds or with funds of the defendant and - the Court declares that there is no evidence that these properties were acquired the partnership funds, and therefore the same should not belong to the partnership;

"4. As to whether damages were suffered and, if so, how much, and who caused them and who should be liable for them - the Court declares that neither parties is entitled to damages, for as already stated above it is not a wise policy to place a price on the right of a person to litigate and/or to come to Court for the assertion of the rights they believe they are entitled to;

"5. As to what is the legal effect of the letter of defendant to the plaintiff dated February 23, 1961; did it dissolve the partnership or not - the Court declares that the letter of the defendant to the plaintiff dated February 23, 1961, in effect dissolved the partnership;

“6. Further, the Court relative to the canteen, which sells foodstuffs, supplies, and other merchandise to the laborers and employees of the Eastcoast Development Enterprises, - the COURT DECLARES THE SAME AS NOT BELONGING TO THE PARTNERSHIP;

“7. That the alleged sale of forest concession Exhibit '9-B' executed by Pablo Angeles David - is VALID AND BINDING UPON THE PARTIES AND SHOULD BE CONSIDERED AS PART OF MAGLANA'S CONTRIBUTION TO THE PARTNERSHIP;

“8. Further, the Court orders and directs plaintiff Rojas to pay or turn over to the partnership the amount of P69,000.00 the profits he received from the CMS Estate, Inc. operated by him;

“9. The claim that plaintiff Rojas should be ordered to pay the further sum of P85,000.00 which according to him he is still entitled to receive from the CMS Estate, Inc. is hereby denied considering that it has not yet been actually received, and further the receipt is merely based upon an expectancy and/or still speculative;

“10. The Court also directs and orders plaintiff Rojas to pay the sum of P62,988.19 his personal account to the partnership;

“11. The Court also credits the defendant the amount of P85,000.00 the amount he should have received as logging superintendent, and which was not paid to him, and this should be considered as part of Maglana's contribution likewise to the partnership; and

“12. The complaint is hereby dismissed with costs against the plaintiff.

“SO ORDERED.” (Decision, Record on Appeal, pp. 985-989).

Rojas interposed the instant appeal.

The main issue in this case is the nature of the partnership and legal relationship of the Maglana-Rojas after Pahamotang retired from the second partnership.

The lower court is of the view that the second partnership superseded the first, so that when the second partnership was dissolved there was no written contract of co-partnership; there was no reconstitution as provided for in the Maglana, Rojas and Pahamotang partnership contract. Hence, the partnership which was carried on by Rojas and Maglana after the dissolution of the second partnership was a de facto partnership and at will. It was considered as a partnership at will because there was no term, express or implied; no period was fixed, expressly or impliedly (Decision, R.A. pp. 962-963).

On the other hand, Rojas insists that the registered partnership under the firm name of Eastcoast Development Enterprises (EDE) evidenced by the Articles of Co-Partnership dated January 14, 1955 (Exhibit "A") has not been novated, superseded and/or dissolved by the unregistered articles of co-partnership among appellant Rojas, appellee Maglana and Agustin Pahamotang, dated March 4, 1956 (Exhibit "C") and accordingly, the terms and stipulations of said registered Articles of Co-Partnership (Exhibit "A") should govern the relations between him and Maglana. Upon withdrawal of Agustin Pahamotang from the unregistered partnership (Exhibit "C"), the legally constituted partnership EDE (Exhibit "A") continues to govern the relations between them and it was legal error to consider a de facto partnership between said two partners or a partnership at will. Hence, the letter of appellee Maglana dated February 23, 1961, did not legally dissolve the registered partnership between them, being in contravention of the partnership agreement agreed upon and stipulated in their Articles of Co-Partnership (Exhibit "A"). Rather, appellant is entitled to the rights enumerated in Article 1837 of the Civil Code and to the sharing profits between them of "share and share alike" as stipulated in the registered Articles of Co-Partnership (Exhibit "A").

After a careful study of the records as against the conflicting claims of Rojas and Maglana, it appears evident that

it was not the intention of the partners to dissolve the first partnership, upon the constitution of the second one, which they unmistakably called an "Additional Agreement" (Exhibit "9-B") (Brief for Defendant-Appellee, pp. 24-25). Except for the fact that they took in one industrial partner; gave him an equal share in the profits and fixed the term of the second partnership to thirty 30 years, everything else was the same. Thus, they adopted the same name, EASTCOAST DEVELOPMENT ENTERPRISES, they pursued the same purposes and the capital contributions of Rojas and Maglana as stipulated in both partnerships call for the same amounts. Just as important is the fact that all subsequent renewals of Timber License No. 35-36 were secured in favor of the First Partnership, the original licensee. To all intents and purposes therefore, the First Articles of Partnership were only amended, in the form of Supplementary Articles of Co-Partnership (Exhibit "C") which was never registered (Brief for Plaintiff-Appellant, p. 5). Otherwise stated, even during the existence of the second partnership, all business transactions were carried out under the duly registered articles. As found by the trial court, it is an admitted fact that even up to now, there are still subsisting obligations and contracts of the latter (Decision, R.A. pp. 950-957). No rights and obligations accrued in the name of the second partnership except in favor of Pahamotang which was fully paid by the duly registered partnership (Decision, R.A., pp. 919-921).

On the other hand, there is no dispute that the second partnership was dissolved by common consent. Said dissolution did not affect the first partnership which continued to exist. Significantly, Maglana and Rojas agreed to purchase the interest, share and participation in the second partnership of Pahamotang and that thereafter, the two (Maglana and Rojas) became the owners of equipment contributed by Pahamotang. Even more convincing, is the fact that Maglana on March 17, 1957, wrote Rojas, reminding the latter of his obligation to contribute either in cash or in equipment, to the capital investment of the partnership as well as his obligation to perform his duties as logging superintendent. This reminder cannot refer to any other but to the provisions of the duly registered Articles of Co-Partnership. As earlier stated, Rojas replied that he will not be able to comply with the promised contributions and he will not work as logging superintendent. By such statements, it is obvious that Roxas understood what Maglana was referring to and left no room for doubt that both considered themselves governed by the articles of the duly registered partnership.

Under the circumstances, the relationship of Rojas and Maglana after the withdrawal of Pahamotang can neither be considered as a De Facto Partnership, nor a Partnership At Will, for as stressed, there is an existing partnership, duly registered.

As to the question of whether or not Maglana can unilaterally dissolve the partnership in the case at bar, the answer is in the affirmative.

Hence, as there are only two parties when Maglana notified Rojas that he dissolved the partnership, it is in effect a notice of withdrawal.

Under Article 1830, par. 2 of the Civil Code, even if there is a specified term, one partner can cause its dissolution by expressly withdrawing even before the expiration of the period, with or without justifiable cause. Of course, if the cause is not justified or no cause was given, the withdrawing partner is liable for damages but in no case can he be compelled to remain in the firm. With his withdrawal, the number of members is decreased, hence, the dissolution. And in whatever way we may view the situation, the conclusion is inevitable that Rojas and Maglana shall be guided in the liquidation of the partnership by the provisions of its duly registered Articles of Co-Partnership: that is, all profits and losses of the partnership shall be divided "share and share alike" between the partners.

But an accounting must first be made and which in fact was ordered by the trial court and accomplished by the commissioners appointed for the purpose.

On the basis of the Commissioners' Report, the corresponding contribution of the partners from 1956-1961 are as follows: Eufracio Rojas who should have contributed P158,158.00, contributed only P18,750.00 while Maglana who should have contributed P160,984.00, contributed P267,541.44 (Decision, R.A. p. 976). It is a settled rule that when a partner who has undertaken to contribute a sum of money fails to do so, he becomes a debtor of the partnership for whatever he may have promised to contribute (Article 1786, Civil Code) and for interests and damages from the time he should have complied with his obligation (Article 1788, Civil Code) (Moran, Jr. v. Court of Appeals, 133 SCRA 94 [1984]). Being a contract of partnership, each partner must share in the profits and losses of the venture. That is the essence of a partnership (Ibid., p. 95).

Thus, as reported in the Commissioners' Report, Rojas is not entitled to any profits. In their voluminous reports which was approved by the trial court, they showed that on 50-50% basis, Rojas will be liable in the amount of P131,166.00; on 80-20%, he will be liable for P40,092.96 and finally on the basis of actual capital contribution, he will be liable for P52,040.31.

Consequently, except as to the legal relationship of the partners after the withdrawal of Pahamotang which is unquestionably a continuation of the duly registered partnership and the sharing of profits and losses which should be on the basis of share and share alike as provided for in the duly registered Articles of Co-Partnership, no plausible reason could be found to disturb the findings and conclusions of the trial court.

As to whether Maglana is liable for damages because of such withdrawal, it will be recalled that after the withdrawal of Pahamotang, Rojas entered into a management contract with another logging enterprise, the CMS Estate, Inc., a company engaged in the same business as the partnership. He withdrew his equipment, refused to contribute either in cash or in equipment to the capital investment and to perform his duties as logging superintendent, as stipulated in their partnership agreement. The records also show that Rojas not only abandoned the partnership but also took funds in an amount more than his contribution (Decision, R.A., p. 949).

In the given situation Maglana cannot be said to be in bad faith nor can he be liable for damages.

PREMISES CONSIDERED, the assailed decision of the Court of First Instance of Davao, Branch III, is hereby MODIFIED in the sense that the duly registered partnership of Eastcoast Development Enterprises continued to exist until liquidated and that the sharing basis of the partners should be on share and share alike as provided for in its Articles of Partnership, in accordance with the computation of the commissioners. We also hereby AFFIRM the decision of the trial court in all other respects.

SO ORDERED.

Melencio-Herrera, (Chairman), Sarmiento, and Regalado, JJ., concur.
Padilla, J., no part, related to petitioner's counsel.

* Penned by Judge Manases G. Reyes

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