

EUGENIA LICHAUCO ET AL., PLAINTIFFS AND APPELLANTS, VS. FAUSTINO LICHAUCO, DEFENDANT AND APPELLANT.

G.R. No. 10040. January 31, 1916

Ponente: CARSON, J.

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CARSON, J.:

This action was brought by two of the partners of an enterprise of which the defendant was manager (gestor), to secure an accounting of its affairs, and the payment to the plaintiffs of their respective shares of capital and profits.

The defendant admitted the allegations of the complaint as to the organization of the enterprise and¹ the participation of the plaintiffs therein, but he contended that the plaintiffs could not maintain this action under the terms of the written contract by virtue of which the enterprise was organized. This contention having been overruled, an account of the affairs of the enterprise was submitted, and the parties having been given an opportunity to offer evidence for and against certain disputed items of the account, judgment was rendered for the balance shown to be due the plaintiffs, after allowing some of these disputed items and disallowing the rest. To this judgment, both plaintiffs and defendant excepted, and the record is now before us on their respective bills of exceptions.

In October, 1901, a notarial instrument was executed in Manila, by the terms of which a partnership was duly organized for the purpose of carrying on a rice-cleaning business at Dagupan, and for the purchase and sale of "palay" and rice. The articles of association, which were not recorded in the mercantile registry, contain, among others, the following provisions:

"2. The association will be named F. Lichauco Hermanos and will be domiciled in the center of its operations, that is, in the pueblo of Dagupan, Province of Pangasinan.

"3. The association cannot be dissolved except by the consent and agreement of two-thirds of its partners and in the event of the death of any of the latter, the heirs of the deceased, if they be minors or otherwise incapacitated, shall be represented in the association by their legal representatives or if two-thirds of the surviving partners agree thereto, the participation of the deceased partner may be liquidated.

"5. The management and direction of the association shall be in charge of Don Faustino Lichauco y Santos, who shall be domiciled in this city of Manila, with ample powers to direct and manage the business; to carry out all manner of purchases and sales of 'palay,' rice, chattels, machinery and whatsoever may be necessary and proper for the business of the association; to make all contracts of every kind related to said business, either orally, in private documents or in public instruments, as he deems fit; to appoint subordinates and other employees such as may be necessary; and finally to perform whatever acts and things he may deem suitable to the interest of the association; and to appear before the courts of justice and other authorities and public offices in such matters as may concern the association and to appoint agents for those matters to which he cannot attend personally."

The articles disclose that the capital invested in the enterprise was fixed at P100,000, of which amount P60,000 was contributed by the defendant and his brothers in the form of machinery in a mill at Dagupan and the good will of the milling business formerly conducted at the place, the balance of the capital being contributed by the plaintiffs and others in cash, in the following proportions: Eugenia Lichauco, P13,000; Catalino Arevalo, P8,000; Mariano Nable Jose, P6,000; Tomas Roux, P4,000; Julita Lichauco, P10,000.

The business thus organized was carried on until May, 1904, when it was found to be unprofitable and discontinued by the defendant manager (gestor); and, thereafter, the machinery of the rice mill was dismantled by his orders, and offered for sale. No accounting ever was made to his associates by the defendant until this action was instituted in October, 1912, although it appears that in the year 1905, Mariano Limjap, one of the participants in the venture, demanded a rendition of accounts; and that Eugenia Lichauco, one of the plaintiffs in this action, made repeated unsuccessful demands for the return of her share of the capital invested in the enterprise. And yet it further appears that during all that time the defendant manager of the defunct enterprise had in his possession not less than P20,000, the cash balance on hand, over and above all claims of indebtedness after suspending operations in 1904; and that since that time he received or should have received substantial sums of money from the sale of the machinery of the dismantled mill.

There is evidence in the record tending to show that the defendant informed some of his associates, about the year 1906 or 1907, that the whole enterprise was bankrupt; and it appears that some months prior to the institution of this action, he rendered upon demand of counsel, a so-called account showing a balance to the credit of the enterprise of only P634.64; although at the trial, some six months afterwards, he expressly admitted the existence of a cash balance of some P23,131.53, and the amount by the trial judge as due by him on account of the venture was P29,549.99. The defendant explained that the account rendered to counsel for the plaintiffs showing a balance of P634.64 was mailed by one of his employees without his knowledge, and that it was a stupid blunder which he greatly regretted; and it would seem that his statements as to the bankruptcy of the enterprise were not intended to be understood as an assertion that there was no balance due the partners, but merely that the enterprise had not paid, and that the losses of operation had exceeded the profits.

Giving the defendant the benefit of the doubt, we are inclined to accept these explanations of these incidents, as it is hardly possible that he could have hoped to escape indefinitely the necessity of accounting for his management of the enterprise, and thus permanently retain in his own possession the substantial balance due to his associates. But it is to be observed that, viewed from any standpoint, these statements, made and rendered by the defendant as to the affairs of the association, taken together with the other evidence in the record, leave no room for doubt that from the time he concluded the operations of the business in 1904 until the date of the institution of this action in 1912 he made no attempt to account to his associates or to turn over to them the amount due them on a proper accounting.

The assignments of error made by counsel for the defendant, as appellant, are as follows:

"Error No. 1.—The trial court erred in rendering judgment in favor of the plaintiffs and against the defendant for any sum, without first decreeing a dissolution of the association and final liquidation of its assets in accordance with paragraph 10 of the articles of association, and because such judgment is not within the issues joined.

"Error No. 2.—The trial court erred in charging the defendant with P5,500, the price of certain boilers and machinery sold to one Marciano Rivera by Crisanto Lichauco, which amount never came into the possession of the defendant.

"Error No. 3.—The trial court erred in disallowing the credit of P60.36, taken by defendant for that amount expended in an attempt to make good the sale and delivery to Marciano Rivera of the boilers and machinery

mentioned in the second assignment of error.

"Error No. 4.—The court erred in charging the defendant with the P1,820, covered by stipulation of December 10, 1913, for the reason that the defendant's liability under that stipulation can only accrue on the final dissolution and liquidation of the association.

"Error No. 5.—The court erred in rendering judgment against the defendant for the costs of the action." The assignments of error made by counsel for the plaintiffs, as appellants, are as follows:

"Error No. 1.—The court erred in refusing to condemn the defendant to the payment of interest at the legal rate of 6 per cent upon the credit balance of the joint venture from May 30, 1904, to date of payment.

"Error No. 2.—The court erred in refusing to allow interest at the legal rate of 6 per cent upon the sum of P1,147.44 from May 30, 1904, to date of payment, said sum being the amount by which the said credit balance of the joint venture was unduly diminished by error in the conversion of gold currency.

"Error No. 3.—The court erred in refusing to allow the joint venture account the sum of P17,746, being the value of 3,736 cavanas of rice at P4.75 per cavan, for which the defendant has wholly failed to account.

"Error No. 4.—The court erred in declining to allow the joint venture account the sum of P8,943.98 as interest upon said last-mentioned sum at the legal rate.

"Error No. 5.—The court erred in declining to allow the joint venture account the sum of P564.34, as interest at the legal rate upon the sum of P5,500, for which the defendant has failed and refused to account.

"Error No. 6.—The court erred in declining to credit the joint venture account with the sum of P2,498.46 as the amount due said account from Mariano Nable Jose, together with interest thereon at the legal rate, amounting to P1,259.22."

We shall first examine the contentions of counsel for the defendant in support of his principal assignment of error, as a ruling in this regard is necessary to the proper disposition of all the other assignments of error by both plaintiffs and defendant.

Counsel for defendant says in his brief:

"It is our contention, and we believe it to be unanswerable, that the dissolution and liquidation, either in whole or in part, of the association is absolutely prohibited by paragraph 10 of the articles of association, except by and with the conformity and agreement of two-thirds of the partners, and that as a consequence thereof the court, without allegations or proof of compliance with that paragraph and without making the other partners parties to the action, had no power to decree a distribution either in whole or in part of the capital or assets of the association.

"It certainly cannot be seriously contended that part of the capital and assets of this association can be lawfully returned to and distributed between the plaintiffs who constitute one-fifth of the total number of partners, as required by paragraph 10 of the articles of association,

"It is elementary that no lawful liquidation and distribution of capital and assets of any company or association can ever take place except upon dissolution thereof."

These contentions of counsel for the defendant take no account of the provisions of both the Civil and Commercial Codes for the dissolution and liquidation of the different classes of partnerships and mercantile associations upon the occurrence of certain contingencies not within the control of the partners. The provisions of paragraph 10 of the articles of partnership prohibiting the dissolution of the association under review, except by the consent and agreement of two-thirds of its partners, denied the right to a less number of the partners to effect a

dissolution of the partnership through judicial intervention or otherwise; but it in no wise limited or restricted the rights of the individual partners in the event the dissolution of the association was effected, not by any act of theirs, but by the express mandate of statutory law. It would be absurd and unreasonable to hold that such an association could never be dissolved and liquidated without the consent and agreement of two-thirds of its partners, notwithstanding that it had lost all its capital, or had become bankrupt, or that the enterprise for which it had been organized had been concluded or utterly abandoned.

Chapter 3 of Title VIII [Book IV,] of the Civil Code prescribes the means by which partnership (sociedades), as defined in that code, may be terminated. The first article of that chapter is as follows:

"1700. Partnership is extinguished:

"(1) When the term for which it was constituted expires.

"(2) When the thing is lost, or the business for which it was constituted ends.

"(3) By the natural death, civil interdiction, or insolvency of any of the partners, and in the case provided for in article 1699.

"(4) By the will of any of the partners, subject to the provisions of articles 1705 and 1707.

"Partnerships, to which article 1670 refers, are excepted from the provisions of Nos. 3 and 4 of this article, in the cases in which they should exist, according to the Code of Commerce."

"1670. Civil partnerships, on account of the objects for which they are destined, may adopt all the forms accepted by the Code of Commerce. In this case, the provisions of the same shall be applicable, in so far as they are not in conflict with those of the present Code."

Articles 221 and 222 of the Code of Commerce are as follows:

"221, Associations of any kind whatsoever shall be completely dissolved for the following reasons:

"(1) The termination of the period fixed in the articles of association or the conclusion of the enterprise which constitutes its purpose.

"(2) The entire loss of the capital.

"(3). The failure of the association.

"222. General and limited copartnerships shall furthermore be totally dissolved for the following reasons:

"(1) The death of one of the general partners if the articles of copartnership do not contain an express agreement that the heirs of the deceased partner are to continue in the copartnership, or an agreement to the effect that said copartnership will continue between the surviving partners.

"(2) The insanity of a managing partner or any other cause which renders him incapable of administering his property.

"(3) The failure of any of the general partners." It cannot be doubted that under these provisions of law the association of which the defendant was nominated manager (gestor) was totally dissolved in the year 1904, when the rice mill for the operation of which it was organized was dismantled, the machinery offered for sale and the whole enterprise concluded and abandoned.

Upon the dissolution of the association in 1904 it became the duty of the defendant to liquidate its affairs and account to his associates for their respective shares in the capital invested—this not merely from the very nature of his relation to the enterprise and of his duties to those associated with him as partners, but also by the express

mandate of the law. The association having been dissolved by the termination and abandonment of the enterprise for which it was organized, he owed this duty to liquidate and account to all and to each of his associates, and upon his failure to perform that duty, all or any of them had a clear legal right to compel him to fulfill it. Each of his associates had a perfect right to demand for himself a full, complete and satisfactory accounting, and in the event that he conceived himself aggrieved in this regard, to institute the appropriate judicial proceedings to secure relief. Doubtless, in order to avoid a multiplicity of actions, the defendant in such an action could require all the associates to be made parties, but the right of an individual member of the association to recover his share in the enterprise and to assert his individual claim for redress, wholly independent of the action or attitude of his associates, could be in no wise affected thereby. The other associates would be proper, but not necessary, parties to an action of this kind; and when, as in the case at bar, the defendant proceeds to trial without objection on the express ground that all the associates in the enterprise have not been made parties to the action, he cannot thereafter be heard to raise such an objection for the purpose of challenging any judgment which may be rendered therein.

Although the enterprise was organized in the year 1901 for the purpose of conducting mercantile operations, including the buying and selling of "palay" and rice, the articles of partnership or association were not registered in the mercantile registry in accordance with the provisions of articles 17 and 119 of the Commercial Code. It was therefore a mere unregistered commercial partnership, and the association never became in the legal sense a juridical person, nor did it attain the dignity, rights or privileges accorded the different classes of *compañías mercantiles* (mercantile partnerships) discussed in Title 1 of Book 2 of the Commercial Code. Still, under the provisions of the above-cited article 1670 of the Civil Code, if it be found that the association is clothed with the forms of any of the commercial associations or partnerships recognized in the Commercial Code, the provisions of that code, in so far as they are not in conflict with those of the Civil Code, may be relied upon in an attempt to define the legal relations of the association and its members. Though the unregistered articles of partnership gave the association a form of organization closely assimilated to that of a regular "*compañia en co-mandita*," as prescribed in the Commercial Code, except that the name designated in the articles did not include the words "*y compañía*" (and company) and the additional words "*sociedad en comandita*," it appears to have been organized and conducted in substantially the manner and form prescribed for "*cuentas en participacion*" (joint accounts) in articles 239-243 of that Code.

The plaintiffs alleged in their complaint and the defendant admitted in his answer that the contract was one of a "*sociedad de cuentas en participaci6n*" (joint account partnership) of which the defendant was gestor (manager). In his brief on appeal, however, counsel for defendant intimates that under article 241 of the Commercial Code, the adoption in the articles of partnership of a firm name deprived the parties of the rights and privileges secured to those interested in *cuentas en participacion* under the provisions of the Commercial Code.

But whatever effect the inclusion or omission of a firm name in the articles of partnership may have had as to third persons dealing with the partnership, we are of opinion that as between the associates themselves, their mutual rights, duties and obligations may properly be determined upon the authority of article 1670 of the Civil Code by the provisions of the Commercial Code touching partnerships, the form of which in all other respects, the partners have adopted in their articles of partnership.

The duty of the defendant to liquidate the affairs of the enterprise and to account to his associates promptly upon the dissolution of the association in the year 1904 is expressly prescribed in the Commercial Code, whether we regard the association, so far as it affects the mutual rights and obligations of the partners, as clothed with the forms of a "*sociedad de cuentas en participacion*" (joint account partnership), or a "*sociedad en comandita*."

Article 243 of the Code of Commerce prescribes with reference to "*cuentas en participacion*" (joint accounts) that:

"243. The liquidation shall be effected by the manager, and after the transactions have been concluded he shall render a proper account of its results." Articles 229 and 230 of the same Code are as follows:

"229. In general or limited copartnerships, should there be no opposition on the part of any of the partners, the persons who managed the common funds shall continue in charge of the liquidation; but should all the partners not agree thereto a general meeting shall be called without delay, and the decision adopted at the same shall be enforced with regard to the appointment of liquidators from among the members of the association or not, as well as in all that refers to the form and proceedings of the liquidation and the management of the common funds.

"230. Under the penalty of removal the liquidators shall—

"(1) Draw up and communicate to the members, within the period of twenty days, an inventory of the common property, with a balance of the association in liquidation, according to its books.

"(2) Communicate in the same manner to the members every month the condition of the liquidation."

We conclude that an express statutory obligation imposed upon the defendant an imperative obligation to proceed without delay to the liquidation of the association in the year 1904 and the further duty to account to his associates for the result of that liquidation. While he appears to have gone forward with the liquidation far enough to collect all the cash resources of the association into his own hands, he utterly failed and neglected to account therefor to his associates or to make any attempt so to do, and we are of opinion that the plaintiffs were clearly entitled to bring this action to compel an accounting, and the payment of their respective shares of the capital invested, together with damages resulting from the failure of the defendant to perform the duty expressly imposed upon him by statute. The damages arising from the failure to account consisted of the loss of the use of the money to which they would have been entitled upon a proper accounting, from the date at which it should have been turned over by the defendant until it is actually paid by him, that is to say, interest on that amount at the rate of six per centum per annum until paid.

What has been said disposes adversely of the contentions of the defendant in support of his assignments of errors Nos. 1 and 5; and sustains the contentions of the plaintiffs in their assignments of errors Nos. 1 and 2, to the extent that interest at the rate of six per centum per annum should have been allowed upon the credit balance of the enterprise from May 30, 1904, the date when it should have been distributed among his associates by the defendant had he performed his statutory duty in that regard. This balance (including the item mentioned in plaintiff's assignment of error No. 2) we fix at P23,131.53, adopting as a basis for our finding in this regard, the findings and conclusions of the trial judge, and disregarding the possibility that had defendant accounted promptly to his associates, interest might not have been chargeable on some of the smaller items included in the account until some little time after the date just mentioned.

As to the other assignments of error it must suffice to say that we have carefully examined the record and have arrived at the following conclusions:

With relation to the item of account referred to in defendant's assignment of error No. 2 and plaintiff's assignment No. 5, we hold that the defendant's account was properly charged by the trial judge with the sum of P5,500, the purchase price of certain machinery sold by him and for which, under all the circumstances, he must account, together with interest at the rate of six per centum per annum from January 8, 1912, the date of sale to Marciano Rivera.

With relation to the items mentioned in plaintiff's assignments of errors Nos. 3 and 4, we hold that the trial judge properly declined to charge the defendant's account with the amounts mentioned therein, the evidence of record not being sufficient to establish his liability therefor as manager or gestor of the enterprise.

With relation to the matter referred to in plaintiff's assignment of error number 6 and defendant's assignment No. 4, we are of opinion that the trial judge properly disposed of the issues between the parties in this regard, as they were submitted to him and as they are disclosed by the record brought here on appeal.

We find no merit in defendant's assignment of error numbered 3.

Twenty days hereafter let judgment be entered reversing the judgment of the lower court, without special condemnation of the costs in this instance, and directing the return of the record to the trial court, wherein judgment will be entered in accordance herewith, and ten days thereafter let the record be remanded in conformity therewith. So ordered.

Arellano, C. J., Torres and Trent, JJ., concur.

Moreland, J., owing to the advisability of publishing this case as soon as possible he refrain from giving his views at this time, reserving the right to do so later.

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