

**C. F. ARBENZ, AS LIQUIDATOR OF SPRUNGLI & CO., PLAINTIFF
AND APPELLEE, VS. OTTO GMUR, DEFENDANT AND APPELLANT.***G. R. No. 10102. October 30, 1915*

Ponente: TRENT, J.

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Sprungli & Co. (consisting of Albert K. Sprungli, Emilio H. Sprungli and Otto Gmur), a duly registered mercantile partnership, commenced business in March, 1911, taking over the assets and liabilities of the old firm of Sprungli & Co. which had been dissolved by the death of the senior partner who was the father of the above-named Sprunglis. Gmur was also a partner in the old firm. The partnership capital of the new firm was fixed at P200,000, of which Gmur undertook to contribute P40,000 and the two Sprunglis P160,000. The partnership was to last five years, and all the partners were designated as managers. On June 10, 1912, the three partners executed Exhibit B, a public notarial document, which provided, among other things, that the firm should be dissolved on March 31, 1913, and that, in the meantime, the managing partner should be Gmur. On March 31, 1913, the three partners executed another notarial document whereby the contract of June 10, 1912, was amended by postponing the date of dissolution until May 31, 1913. On the latter date C. F. Arbenz took over the management of the firm from Gmur. On June 2, 1913, Arbenz was appointed liquidator of the partnership, with a view to closing up its affairs, and instituted this action on the 27th of that month for the purpose, as it is alleged, of recovering certain assets of the firm which were necessary for the payment of the firm's debts and which the defendant was withholding and appropriating to his own use and benefit. Judgment was rendered in favor of the plaintiff and the defendant has appealed. In the contract of June 10, 1912 (Exhibit B), it was stipulated that: "Secondly: That the party of the second part [Gmur] hereby agrees to sell, assign and deliver to the parties of the first part [the Sprunglis] all his right, title and interest in and to said partnership of Sprungli & Co. at the expiration of the term of his management of the said Sprungli & Co. [March 31, 1913], in consideration whereof the said parties of the first part agree to buy and take over, on the date aforementioned, or as soon thereafter as the interest of said party of the second part in the firm of Sprungli & Co. can be determined, all right, title and interest of the said party of the second part in the firm of Sprungli & Co., the said interest of the party of the second [part] to be ascertained from and based upon the usual balance sheet of Sprungli & Co. to be prepared on March 31, 1913.

"The said parties of the first part further agree to pay the said party of the second part twenty thousand pesos (P20,000) Philippine currency, over and above his interest in the firm of Sprungli & Co. as shown by said balance sheet of March 31, 1913, by way [of] indemnity and in their consideration for early relinquishment of the said partnership interest of said party of the second part.

"Thirdly: For the purpose of finally settling the value of the 'Geo. Y. Taylor' machine shop business, hereinafter referred to, it is hereby agreed that it, with all the property and rights appurtenant thereto, shall have a fixed Value of seventy thousand pesos (P70,000) and that should the balance sheet of March 31, 1913, show the party of the second part to have an interest in the business of Sprungli & Co. exceeding that value, then the parties of the first part will, in addition to said seventy thousand, pay him the difference between said seventy

thousand pesos and the value of his interest as shown by said balance sheet, plus the indemnity hereinabove mentioned. Should his said interest and the indemnity be less than said seventy thousand pesos then the party of the second part will pay the resulting difference to the parties of the first part.

"Thirdly: In order to secure the performance of the conditions specified in paragraph marked 'secondly' the parties of the first part will immediately assign and transfer, by way of (pacto de retro), to the party of the second part all their respective interest in the said machine shop business known as 'Geo. Y. Taylor, Machinist and Engineer' * * *. Should payment of the second party, for his interest as aforesaid, not be made however during the three months immediately following March 31, 1913, said conveyance shall become absolute and the partnership existing under the name of Sprungli & Co. ipso facto dissolved, *****

In the contract of August 30, 1912 (Exhibit C), it was provided that: "2. The above properties and business (the Geo. Y. Taylor machine shops), described in the preceding subdivisions of paragraph one, are hereby transferred, sold and delivered to the said party of the second part (Gmur), together with all burdens, obligations, and liabilities of whatsoever nature standing against same on the 10th day of June, 1912, and it is hereby provided that the title in and to the said properties shall be construed to have vested in the said party of the second part since and as of the date of the 10th day of June, 1912.

"3. To have and to hold all and singular the said premises and business, together with the appurtenances thereto belonging, unto the said party of the second part, his heirs, administrators and assigns forever—upon the following condition: That should party of the first part or either or both of the above mentioned A. K. Sprungli and H. Emilio Sprungli pay to the said party of the second part the value of his interest in Sprungli & Co. as the same may be ascertained in accordance with the provisions of paragraph two of the contract of June 10, 1912, (a copy of which is hereto attached) plus the sum of twenty thousand pesos (P20,000) being the indemnity also provided for in said paragraph two of said contract of June 10th, 1912, on or [before] the 30th day of June, 1913, then and in that event the said party of the second part will immediately reconvey and deliver to the said person, or persons, so paying the said sum as above provided, all of that business, property leasehold rights described in paragraph one, subdivisions a, b and c, of this indenture.

"4. The said party of the second part hereby accepts the sale, transfer and delivery of the above described properties, together with the obligations thereinbefore mentioned under the terms herein set forth."

The record fails to disclose whether or not there was a liquidation of the old firm's debts at the time of the reorganization or whether the property in question was a part of the assets of the old firm, but it is admitted that this property was a part of the assets of the new firm.

We will now inquire whether the defendant acquired, by virtue of the above-quoted provisions of the contracts, title to the property in question and is therefore entitled to retain possession of the same against the plaintiff as liquidator, who claims that this property is necessary for the due liquidation of the firm's debts.

The liquidator and interveners insist (1) that the attempted sale by the two Sprunglis of the Geo. Y. Taylor machine shops to the defendant conveyed to the latter no title to this property for the reason that such sale lacked one of the three essential elements, namely, a fixed price or consideration; (2) that assuming that the sale was valid, the defendant acquired only such interest as the two Sprunglis had in the property and no more; and (3) that under the law no partner is entitled to specify partnership property, nor has he any separate interest in such property, until after the dissolution of the firm and the payment of all its liabilities. While on the other hand, the defendant urges that the sale in question must be considered solely as an interpartnership transaction and therefore valid because all the partners of a firm of this character may agree to the retirement of one of the partners and the payment to him of his interest in the partnership property by the transfer to him of specific assets belonging to the firm.

The instrument of June 10, 1912, and August 30, 1912, must be considered together, since each is supplementary to the other. In that of June 10th, the Sprunglis agreed to buy and Gmur agreed to sell all of the latter's interest in the firm of Sprungli & Co., "said interest of the party of the second part to be ascertained from and based upon the balance sheet of Sprungli & Co., to be prepared on March 31, 1913." It was further agreed that "in order to secure the performance of this agreement" the Sprunglis would immediately assign and transfer by way of pacto de retro to Gmur all of their respective interests in the property in question. According to the terms of the contract of August 30th, the property was sold transferred, and delivered on that day to Gmur for and in consideration of the latter's Interest in the firm of Sprungli & Co., "the same to be ascertained in accordance with the provisions of paragraph 2 of the contract of June 10, 1912." This sale and transfer were made subject to the right of repurchase by the Sprunglis, or either of them, on or before June 30, 1913, and the sale and transfer were so accepted, "together with all burdens, obligations, and liabilities of whatsoever nature standing against the same (property) on the 10th day of June, 1912." The results is that the adjustment of Gmur's interest in the firm was to be determined by and based upon the balance sheet of March 31, 1913. If this balance sheet should show that Gmur's interest exceeded P90,000 (P70,000 for the machine shops and P20,000 as bonus for his premature retirement from the firm), the Sprunglis were to immediately pay the excess. If it should go below that amount, Gmur agreed to refund the difference. Although Gmur was to retire from the firm on March 31, 1913, he continued as manager until May 31, of that year, the date finally fixed for the dissolution of the firm. It was on this date that the plaintiff took over the management, he being appointed liquidator two days later. Before being relieved as manager, Gmur caused to be prepared a balance sheet, showing, as he claims, the correct status of the affairs of the firm of Sprungli & Co. on March 31, 1913. Gmur's interest was fixed therein at P74,000. The Sprunglis and interveners did not participate in the preparation of this balance sheet or approve of it after it had been prepared. The plaintiff immediately upon taking charge examined Gmur's balance sheet and compared it with the actual status of the affairs of the firm and found that it was not correct because the firm was wholly insolvent on March 31st, and had been for "many months" prior to that time. The trial court reached the same conclusion upon this branch of the case. This conclusion or finding of fact is certainly not against the weight of the evidence.

The transfer of the property in question, which was a part of the firm's assets, was not made to Gmur as a creditor. The firm owed him nothing. He had not furnished it with any materials or supplies or loaned it any money for the purpose of carrying on its business. He had contributed nothing to the firm, in so far as the questions under consideration are concerned, except his capital, which constituted his interest, and it was in payment of this interest that the transfer was made. Undoubtedly, the three partners could agree as they pleased about their joint property and all the parts of it; and so they could about their joint obligations, And all such agreements are valid, so far as they do not affect the right of creditors. Thus, the three partners could agree to dissolve, and divide all the property in a certain way, specifying that one shall have this, another that, and the third that thing, or they could make such an agreement about some one or more things, and not about all. All such agreements would determine their property rights in these things effectively as to the partners themselves. But all the assets of this insolvent firm are just as liable for the debts of the firm, after such division or settlement among partners, as they were before. (Parsons on Partnership, p. 385.)

Sprungli & Co. was a purely private partnership. It was not given the right of eminent domain and it owed no special duties to the public. If it had been solvent, there would be no reason to disturb or question the transfer of the machine shops to Gmur. But the moment it became insolvent (and this occurred prior to Gmur's retirement from the firm as a partner), the three partners became trustees for the creditors and it was their duty to manage the firm's property and assets with strict regard to the interests of the creditors. Neither partner, as long as this condition of affairs exist, will be permitted to secure his original capital by purchasing and taking possession of the firm's property or assets. He may, however, in good faith and for an adequate consideration purchase the

property of an insolvent firm, but this consideration must not be his interest in the insolvent concern. He must pay the partnership for the benefit of the creditors the real value of such property. (Mead vs. McCullough, 21 Phil. Rep., 95.) This Gmur did not do.

But counsel for the defendant urges that the interveners cannot interfere in this action to set aside a transfer of the property made on August 30, 1912, over a year after the transaction; that to warrant such interference on their part, they should have alleged and proven that their credits were given while the machine shops were the property of Sprungli & Co.; that they relied upon that fact to their damage; and that it is not sufficient to allege that the firm owed them the amount set forth on May 31, 1913, in order to set aside a deed dated August 30, 1912. Counsel further insist that the only possible theory that would permit third persons to intervene in interpartnership matters such as this is that the third party extended credit, believing the partnership to have had certain assets which it later turned out it did not have, and that in the case at bar none of the interveners can claim this for the reason that the record shows that the local banks all had knowledge of the intended transfer and of the actual transfer of the Taylor machine business to Gmur. They took an active part in these transactions and caused Gmur to remain responsible as a partner for almost a year after the sale.

Here counsel seems to lose sight of the facts that the validity of the sale and transfer of the machine shops to Gmur depended upon the latter's interest in the firm of Sprungli & Co. on March 31, 1913, and that such interest on that date amounted to nothing. According to the contention of counsel, we have one of the partners attempting to buy from the other two partners on August 30, 1912, certain assets of the partnership for and in consideration of his interest in the firm on March 31, 1913, this same partner continuing not only as a partner but as the manager, and so managing the firm during this time that it was wholly insolvent on the date when the consideration for the sale was to be fixed. Assuming that the interveners, as creditors, knew of these interpartner transactions, they also knew, when they extended credits, that such transactions depended solely upon Gmur's interest on March 31, 1913. These credits must have been extended at the instance of the manager, Gmur. To allow Gmur to secure his original capital by taking over a part of the firm's assets in this manner would not be in accordance with the principles of justice and equity which should govern him while holding a position of trust.

To hold that the title to the machine shops, which were a part of the firm's assets, vested in Gmur on August 30, 1912, would have the effect of placing Gmur's private creditors in a better position than the creditors of the firm, as the former could immediately proceed to satisfy their credits by moving against the machine shops, while the latter could not move against the private property of the individual partners until after the firm's assets had been exhausted.

In the decision of the supreme court of Spain, dated December 19 [29], 1870, the court said: "In the case of the failure of an association the private creditors of the members are not included among those of the association, but after the latter have been satisfied, the former may make use of their right against the residue due the debtor member."

Again, in the decision of the same court, dated July 12, 1883, it was held that the property of an association is liable in the first place for the debts of the same, and the creditors of the members may only collect the interest of the latter after the definite liquidation with relation to them has taken place. And finally, article 235 of the Code of Commerce provides that: "No member can demand the delivery to him of the capital due him from the common funds until all the debts and obligations of the association have been extinguished, or until the amount thereof has been deposited, if the delivery can not at once take place."

For the foregoing reasons we conclude that the property in question must be returned to the liquidator for the purpose of paying the insolvent firm's debts. The judgment is therefore affirmed, with costs against the appellant.

So ordered.

Arellano, C. J., Torres, Johnson, and Araullo, JJ., concur.

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