

E. M. BACHRACH, PLAINTIFF AND APPELLEE, VS. “LA PROTECTORA” ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 11624. January 21, 1918*

Ponente: STREET, J.

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In the year 1913, the individuals named as defendants in this action formed a civil partnership, called "La Protectora," for the purpose of engaging in the business of transporting passengers and freight at Laoag, Ilocos Norte. In order to provide the enterprise with means of transportation, Marcelo Barba, acting as manager, came to Manila and upon June 23, 1913, negotiated the purchase of two automobile trucks from the plaintiff, E. M. Bachrach, for the agreed price of P16,500. He paid the sum of 3,000 in cash, and for the balance executed promissory notes representing the deferred payments. These notes provided for the payment of interest from June 23, 1913, the date of the notes, at the rate of 10 per cent per annum. Provision was also made in the notes for the payment of 25 per cent of the amount due if it should be necessary to place the notes in the hands of an attorney for collection. Three of these notes, for the sum of P3,375 each, have been made the subject of the present action, and are exhibited with the complaint in the cause. One was signed by Marcelo Barba in the following manner:

"P. P. La Protectora
By Marcelo Barba
Marcelo Barba,"

The other two notes are signed in the same way with the word "By" omitted before the name of Marcelo Barba in the second line of the signature. It is obvious that in thus signing the notes Marcelo Barba intended to bind both . the partnership and himself. In the body of the note the word "I" (yo) instead of "we" (nosotros) is used before the words "promise to pay" (prometemos) used in the printed form. It is plain that the singular pronoun here has all the force of the plural.

As preliminary to the purchase of these trucks, the defendants Nicolas Segundo, Antonio Adiarte, Ignacio Flores, and Modesto Serrano, upon June 12, 1913, executed in due form a document in which they declared that they were members of the firm "La Protectora" and that they had granted to its president full authority "in the name and representation of said partnership to contract for the purchase of two automobiles" (en nombre y representation de la mencionada sociedad contratante la compra de dos automoviles). This document was apparently executed in obedience to the requirements of subsection 2 of article 1697 of the Civil Code, for the purpose of evidencing the authority of Marcelo Barba to bind the partnership by the purchase. The document in question was delivered by him to Bachrach at the time the automobiles were purchased.

From time to time after this purchase was made, Marcelo Barba purchased of the plaintiff various automobile effects and accessories to be used in the business of "La Protectora." Upon May 21, 1914, the indebtedness resulting from these additional purchases amounted to the sum of P2,916.57

In May, 1914, the plaintiff foreclosed a chattel mortgage which he had retained on the trucks in order to secure the

purchase price. The amount realized from this sale was P1,000. This was credited upon the notes, but a considerable sum still remained unpaid. To recover this balance, together with the sum due for the additional purchases, the present action was instituted in the Court of First Instance of the city of Manila, upon May 29, 1914, against "La Protectora" and the five individuals Marcelo Barba, Nicolas Segundo, Antonio Adiarte, Ignacio Flores, and Modesto Serrano. No question has been made as to the propriety of impleading "La Protectora" as if it were a legal entity. At the hearing, judgment was rendered against all of the defendants. From this judgment no appeal was taken in behalf either of "La Protectora" or Marcelo Barba; and their liability is not here under consideration. The four individuals who signed the document to which reference has been made, authorizing Barba to purchase the two trucks have, however, appealed and assigned errors. The question here to be determined is whether or not these individuals are liable for the firm debts and if so to what extent.

The amount of the indebtedness owing to the plaintiff is not in dispute, as the principal of the debt is agreed to be P7,037. Of this amount it must now be assumed, in view of the finding of the trial court, from which no appeal has been taken by the plaintiff, that the unpaid balance of the notes amounts to P4,121, while the remainder (P2,916) represents the amount due for automobile supplies and accessories.

The business conducted under the name of "La Protectora" was evidently that of a civil partnership; and the liability of the partners to this association must be determined under the provisions of the Civil Code. The authority of Marcelo Barba to bind the partnership, in the purchase of the trucks, is fully established by the document executed by the four appellants upon June 12, 1913. The transaction by which Barba secured these trucks was in conformity with the tenor of this document. The promissory notes constitute the obligation exclusively of "La protectora" and of Marcelo Barba; and they do not in any sense constitute an obligation directly binding on the four appellants. Their liability is based on the fact that they are members of the civil partnership and as such are liable for its debts. It is true that article 1698 of the Civil Code declares that a member of a civil partnership is not liable in solidum (solidariamente) with his fellows for its entire indebtedness; but it results from this article, in connection with article 1137 of the Civil Code, that each is liable with the others (mancomunadamente) for his aliquot part of such indebtedness. And so it has been held by this court. (*Co-Pitco vs. Yulo*, 8 Phil. Rep., 544.)

The Court of First Instance seems to have founded its judgment against the appellants in part upon the idea that the document executed by them constituted an authority for Marcelo Barba to bind them personally, as contemplated in the second clause of article 1698 of the Civil Code. That clause says that no member of the partnership can bind the others by a personal act if they have not given him authority to do so. We think that the document referred to was intended merely as an authority to enable Barba to bind the partnership and that the parties to that instrument did not intend thereby to confer upon Barba an authority to bind them personally. It is obvious that the contract which Barba in fact executed in pursuance of that authority did not by its terms profess to bind the appellants personally at all, but only the partnership and himself. It follows that the four appellants cannot be held to have been personally obligated by that instrument; but, as we have already seen, their liability rests upon the general principles underlying partnership liability.

As to so much of the indebtedness as is based upon the claim for automobile supplies and accessories, it is obvious that the document of June 12, 1913, affords no authority for holding the appellants liable. Their liability upon this account is, however, no less obvious than upon the debt incurred by the purchase of the trucks; and such liability is derived from the fact that the debt was lawfully incurred in the prosecution of the partnership enterprise.

There is no proof in the record showing what agreement, if any, was made with regard to the form of management. Under these circumstances it is declared in article 1695 of the Civil Code that all the partners are

considered agents of the partnership. Barba therefore must be held to have had authority to incur these expenses. But in addition to this he is shown to have been in fact the president or manager, and there can be no doubt that he had actual authority to incur this obligation.

From what has been said it results that the appellants are severally liable for their respective shares of the entire indebtedness found to be due; and the Court of First Instance committed no error in giving judgment against them. The amount for which judgment should be entered is P7,037, to which shall be added (1) interest at 10 per cent per annum from June 23, 1913, to be calculated upon the sum of P4,121; (2). interest at 6 per cent per annum from July 21, 1915, to be calculated upon the sum of P2,961; (3) the further sum of P1,030.25, this being the amount stipulated to be paid by way of attorney's fees. However, it should be noted that any property pertaining to "La Protectora" should first be applied to this indebtedness pursuant to the judgment already entered in this case in the court below; and each of the four appellants shall be liable only for the one-fifth part of the remainder unpaid.

Let judgment be entered accordingly, without any express finding of costs of this instance. So ordered.

Arellano, C. J., Torres, Carson, Araullo, Malcolm, and Avanceña, JJ., concur.

Johnson, J., did not sit in the case.

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