

ADRIANO BUENAVENTURA Y DEZOLLIER, PLAINTIFF AND APPELLANT, VS. ANTONIO DAVID Y ABELIDO, DEFENDANT AND APPELLEE.*G.R. No. 12151. January 19, 1918*

Ponente: STREET, J.

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By an agreement effective from April 20, 1906, a partnership was formed by Antonio David y Abelido and Adriano Buenaventura y Dezollier for the conduct of the business of real estate brokers in the city of Manila, under the firm name of "Abelido & Co." The first named party was the capitalist member of the firm and its manager, while the last named, was the industrial member and bookkeeper. The firm maintained a feeble external existence for a few months, during which period the capitalist associate placed P209.86 in the enterprise. This was consumed in office rent and other incidental expenses. Only two profitable transactions were ever accomplished by the firm of Abelido & Co. during its existence. These produced a total income of P42, which sum was noted on the credit side of the company's ledger.

It was agreed in the articles that the partnership should be liquidated upon April 20, 1907, in the absence of any agreement for the extension of its life; but upon February 1, 1908, it was agreed in writing that the partnership should not be liquidated until the sale of a piece of real estate in which the firm had become interested should be effected with profit. The property to which reference was thus made consisted of a farm in the municipality of Murcia, in the Province of Tarlac, known as the "Hacienda de Guitan."

This farm had been formerly owned by the spouses Lino Diangco and Epifania Torres; and long before the firm of Abelido & Co. had come into existence Antonio David y Abelido had been their creditor by reason of certain sums of money from time to time loaned to them. After the death of Lino Diangco in 1890 still other sums of money were advanced by David to the widow, Epifania Torres, in behalf of herself and her minor son Pablo Diangco. Upon July 10, 1906, Epifania agreed to convey the Hacienda de Guitan to Abelido and Buenaventura for a consideration stated at P2,050 (Exhibit C). The purpose of the transaction was to settle the debt of several thousand pesos owing by her and her son to Antonio David y Abelido. The conveyance by which this contract was finally carried into effect was executed upon January 30, 1908. The grantee named in the deed was Antonio David y Abelido; and no reference was made in this instrument to the firm of Abelido & Co., or to Buenaventura as a partner therein. Buenaventura was present at the time of the execution of this deed and signed as a subscribing witness. The total consideration for the conveyance was P7,170, of which the sum of P5,870 was consumed in satisfying the old indebtedness due to David. The balance (according to the recitals of the deed) was paid by him to Epifania Torres. It further appears that Antonio David y Abelido proceeded to procure the registration of the hacienda in his own name and a Torrens title was in due course issued to him.

Upon the same day that the above-mentioned deed was executed by Epifania Torres to Antonio David, a declaration was drawn up and ratified by Antonio David and Adriano Buenaventura in which it was stated that

Epifania Torres had sold the estate above mentioned to Antonio David for the sum of P7,170 and that of this amount the sum of P3,370 had been advanced by Abelido & Co., while P3,800 had been paid by David individually. It was then said that the firm thereby became the owner of the property in the proportion of the value satisfied by it; and this was followed by an obscure clause meaning, probably, that the right of the firm to acquire this participation was dependent on the reimbursement of David for the outlay made by him with respect to such share. A further statement was added to the effect that Buenaventura should have the option to advance half of the sum paid out by Antonio David y Abelido, to wit, the sum of P1,900, in the event Buenaventura should desire to have a half interest in the property in his own name.

From the date of the conveyance above mentioned David exercised all the rights of an owner over the property. Upon one occasion he mortgaged it for the sum of P5,000 and Buenaventura was paid P300 for assisting in the securing of this loan. At another time David mortgaged the property for the sum of P15,000 and applied the money thus secured to his own uses.

Upon February 18, 1915, or more than seven years after the day upon which the deed to the property had been executed to David, Buenaventura filed the complaint in this action. In this proceeding he seeks relief embracing the following features: (1) a dissolution of the partnership of Abelido & Co.; (2) judgment for a balance of some P2,344.85, alleged to be due as arrears upon salary account; (3) a transfer of the title of the Hacienda de Guitan to Abelido & Co.; (4) and accounting for, and division of all money, property and other effects of the firm; and especially an accounting for profits alleged to have been made by the defendant David from investments of money derived from the hacienda, which profits were alleged to amount to the sum of P5,190; (5) a judgment for damages in the sum of P10,000; (6) such other and further relief as might seem to the court just and equitable.

At the hearing the court entered a judgment declaring that the partnership of Abelido & Co. was dissolved and denying all other relief sought in the complaint. From this judgment the plaintiff Buenaventura has appealed.

As regards the Hacienda de Guitan, it is in our opinion clear upon the oral testimony and other proof adduced in the cause that every cent of the consideration for the purchase of this property was supplied by David; and it consisted, as we have seen, mostly of money previously loaned. Buenaventura had no resources, and it was evidently quite beyond his power to raise the funds necessary to participate in a business transaction of the size of that in question. His pretension that he supplied P1,025 or half of the consideration named in the original contract (Exhibit C) was rightly rejected by the court. Furthermore it appears that the firm of Abelido & Co., as distinguished from the individual David Abelido, never in fact advanced a single peso in the transaction, although the "declaration" of January 30, 1908, states that the firm advanced P3,370. That declaration constitutes an admission which entitles it to weight but its recital as to the money paid or received may be explained and even contradicted, as in case of a simple receipt. David's explanation is that the plaintiff, as bookkeeper, had made it appear in the firm books that the firm was debtor to David in the amount of P3,370 in respect to this transaction and that the plaintiff had requested David to sign the declaration showing the firm to be a participant. Throughout this affair David exhibited considerable complaisance in signing papers at Buenaventura's request. He apparently considered Buenaventura an amiable old friend and was willing to indulge the latter's fancy with the idea that he was party to an important transaction, well knowing that he could never put up the necessary money to enable him to share in the deal. Whatever may be the explanation of David's imprudence in allowing himself to be thus drawn into an admission showing that the firm participated in the deal, it is quite clear that he supplied all the money for the purchase in question.

The situation then, as regards the title to the hacienda is this: David, who supplied all the funds, has obtained the legal title in his own individual name. This was accomplished with knowledge on the part of Buenaventura. Furthermore he has registered his title by means of legal proceedings which were probably known to

Buenaventura. Still later, the latter is seen acting as broker for David in securing a loan on the hacienda and receives a fee for his services. Meanwhile the original partnership enterprise is abandoned. Finally, more than seven years after the day when Buenaventura stood by and signed as a witness the deed conveying the property to David, he comes into court and seeks to reach this property through the ghost of the firm of Abelido & Co. and to bring the defendant to account for the profits which he has obtained from the investments of its proceeds in various enterprises.

The purpose of the action is to impress a trust on the property in favor of Abelido & Co., to divest the title out of the present owner, and to have it, or its proceeds, liquidated and administered as firm assets. We are of the opinion that there is no merit in the plaintiff's contention. It is true that a court will not hesitate, under certain circumstances, to divest a title out of the holder and impress a trust upon it in favor of another, or to require the holder of the title to administer the property for the true owner (*Uy Aloc vs. Cho Jan Ling*, 19 Phil. Rep., 202) ; yet this will not be done in the absence of a sufficient contract, an express trust, or other strong equitable circumstances requiring the intervention of equity. No such relief can be granted, upon purely equitable grounds, against a party who has himself paid the entire purchase price in favor of one who advanced nothing. But the declaration of January 30, 1908, is relied upon as evidence of a contract establishing the right of Abelido & Co. The reply is that by the terms of that instrument Buenaventura's personal right was dependent upon the advancement of money by him which was in fact never supplied, and as to the statement contained in that declaration that Abelido & Co. had advanced a certain sum, it clearly appears that this is not true; and we hold that the defendant is not precluded, or estopped, by that admission from showing the actual facts.

Furthermore, it is evident that the plaintiff's ease is adversely affected by his long delay in bringing this action. Undue delay in the enforcement of a right is strongly persuasive of a lack of merit in the claim, since it is human nature for a person to assert his rights most strongly when they are threatened or invaded, flit is hard to believe that, if the plaintiff had been convinced of the justice of his contention, he would have failed to assert his right to a division at the time when the defendant was pocketing the proceeds of the loans obtained upon the security of the Hacienda de Guitan. The probabilities are that Buenaventura realized at that time that his hopes of sharing in this investment were doomed to disappointment and that with full knowledge of all the "facts he decided to abandon the claim, or not to assert it. However, the documents which appear on their face to establish his right to a participation in this property remained in existence; and in course of time said claim was made the basis of this action. The assertion of doubtful claims, after long delay, can not be favored by the courts. Time inevitably tends to obliterate occurrences from the memory of witnesses, and even where the recollection appears to be entirely clear, the true clue to the solution of a case may be hopelessly lost. These considerations constitute one of the pillars of the doctrine long familiar in equity jurisprudence to the effect that laches or unreasonable delay on the part of a plaintiff in seeking to enforce a right is not only persuasive of a want of merit but may, according to the circumstances, be destructive of the right itself. *Vigilantibus non dormientibus equitas subvenit*.

The decision of the main issue relative to the hacienda renders unnecessary any discussion of other features of the case presented in appellant's brief. Upon the whole it is our opinion that there was no error prejudicial to the plaintiff in the action of the court below and the judgment is therefore affirmed, with costs against the appellant.

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

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