

**ROSARIO U. YULO, ASSISTED BY HER HUSBAND JOSE C. YULO,
PLAINTIFFS AND APPELLANTS, VS. YANG CHIAO SENG, DEFENDANT
AND APPELLEE.***G.R. No. 12541. August 28, 1959*

Ponente: LABRADOR, J.

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Appeal from the judgment of the Court of First Instance of Manila, Hon. Bienvenido A. Tan, presiding, dismissing plaintiff's complaint as well as defendant's counterclaim. The appeal is prosecuted by plaintiff.

The record discloses that on June 17, 1945, defendant Yang Chiao Seng wrote a letter to the plaintiff Mrs. Rosario U. Yulo, proposing the formation of a partnership between them to run and operate a theatre on the premises occupied by former Cine Oro afc Plaza Sta. Cruz, Manila. The principal conditions of the offer are (1) that Yang Chiao Seng guarantees Mrs. Yulo a monthly participation of P3,000, payable quarterly in advance within the first 15 days of each quarter, (2) that the partnership shall be for a period of two years and six months, starting from July 1, 1945 to December 31, 1947, with the condition that if the land is expropriated or rendered impracticable for the business, or if the owner constructs a permanent building thereon, or Mrs. Yulo's right of lease is terminated by the owner, then the partnership shall be terminated even if the period for which the partnership was agreed to be established has not yet expired; (3) that Mrs. Yulo is authorized personally to conduct such business in the lobby of the building as is ordinarily carried on in lobbies of theatres in operation, provided the said business may not obstruct the free ingress and egress of patrons of the theatre; (4) that after December 31, 1947, all improvements placed by the partnership shall belong to Mrs. Yulo, but that if the partnership agreement is terminated before the lapse of one and a half years period under any of the causes mentioned in paragraph (2), then Yang Chiao Seng shall have the right to remove and take away all improvements that the partnership may place in the premises.

Pursuant to the above offer, which plaintiff evidently accepted, the parties executed a partnership agreement establishing the "Yang & Company, Limited," which was to exist from July 1, 1945 to December 31, 1947. It states that it will conduct and carry on the business of operating a theatre for the exhibition of motion and talking pictures. The capital is fixed at P100,000, P80,000 of which is to be furnished by Yang Chiao Seng and P20,000, by Mrs. Yulo. All gains and profits are to be distributed among the partners in the same proportion as their capital contribution, and the liability of Mrs. Yulo, in case of loss, shall be limited to her capital contribution (Exh. "B").

In June, 1946, they executed a supplementary agreement, extending the partnership for a period of three years beginning January 1, 1948 to December 31, 1950. The benefits are to be divided between them at the rate of 50-50 and after December 31, 1950, the showhouse building shall belong exclusively to the second party, Mrs. Yulo.

The land on which the theatre was constructed was leased by plaintiff Mrs. Yulo from Emilia Carrion Santa Marina and Maria Carrion Santa Marina. In the contract of lease it was stipulated that the lease shall continue for

an indefinite period of time, but that after one year the lease may be cancelled by either party by written notice to the other party at least 90 days before the date of cancellation. The last contract was executed between the owners and Mrs. Yulo on April 5, 1948. But on April 12, 1949, the the attorney for the owners notified Mrs. Yulo of the owner's desire to cancel the contract of lease on July 31, 1949. In view of the above notice, Mrs. Yulo and her husband brought a civil action in the Court of First Instance of Manila on July 3, 1949 to declare the lease of the premises one for an indefinite period. On August 17, 1949, the owners on their part brought an action in the Municipal Court of Manila against Mrs. Yulo and her husband and Yang Chiao Seng to eject them from the premises. On February 9, 1950, the Municipal Court of Manila rendered judgment ordering the ejectment of Mrs. Yulo and Mr. Yang. The judgment was appealed. In the Court, of First Instance, the two cases were afterwards heard jointly, and judgment was rendered dismissing the complaint of Mrs. Yulo and her husband, and declaring the contract of lease of the premises terminated as of July 31, 1949, and fixing the reasonable monthly rentals of said premises at P100. Both parties appealed from said decision and the Court of Appeals, on April 30, 1955, affirmed the judgment.

On October 27, 1950, Mrs. Yulo demanded from Yang Chiao Seng her share in the profits of the business. Yang answered the letter saying that upon the advice of his counsel he had to suspend the payment (of the rentals) because of the pendency of the ejectment suit by the owners of the land against Mrs. Yulo. In this letter Yang alleges that inasmuch as he is a sublessee and inasmuch as Mrs. Yulo has not paid to the lessors the rentals from August, 1949, he was retaining the rentals to make good to the landowners the rentals due from Mrs. Yulo in arrears (Exh. "E").

In view of the refusal of Yang to pay to her the amount agreed upon, Mrs. Yulo instituted this action on May 26, 1954, alleging the existence of a partnership between them, and that defendant Yang Chiao Seng has refused to pay her share from December, 1949 to December, 1950; that after December 31, 1950 the partnership between Mrs. Yulo and Yang terminated, as a result of which, plaintiff became the absolute owner of the building occupied by the Cine Astor; that the reasonable rental that the defendant should pay therefor from January, 1951 is P5,000; that the defendant has acted maliciously and refuses to pay the participation of the plaintiff in the profits of the business amounting to P35,000 from November, 1949 to October, 1950, and that as a result of such bad faith and malice on the part of the defendant, Mrs. Yulo has suffered damages in the amount of P160,000 and exemplary damages to the extent of P5,000. The prayer includes a demand for the payment of the above sums plus the sum of P10,000 for attorney's fees.

In answer to the complaint, defendant alleges that the real agreement between the plaintiff and the defendant was one of lease and not of partnership; that the partnership was adopted as a subterfuge to get around the prohibition contained in the contract of lease between the owners and the plaintiff against the sublease of the said property. As to the other claims, he denies the same and alleges that the fair rental value of the land is only P1,100. By way of counterclaim he alleges that by reason of an attachment issued against the properties of the defendant the latter has suffered damages amounting to P100,000.

The first hearing was had on April 19, 1955, at which time only the plaintiff appeared. The court heard evidence of the plaintiff in the absence of the defendant and thereafter rendered judgment ordering the defendant to pay to the plaintiff P41,000 for her participation in the business up to December, 1950; P5,000 as monthly rental for the use and occupation of the building from January 1, 1951 until defendant vacates the same, and P300 for the use and occupation of the lobby from July 1, 1945 until defendant vacates the property. This decision, however, was set aside on a motion for reconsideration. In said motion it is claimed that defendant failed to appear at the hearing because of his honest belief that a joint petition for postponement filed by both parties, in view of a possible amicable settlement, would be granted; that in view of the decision of the Court of Appeals in two previous cases

between the owners of the land and the plaintiff Rosario Yulo, the plaintiff has no right to claim the alleged participation in the profits of the business, etc. The court, finding the above motion well-founded, set aside its decision and a new trial was held. After trial the court rendered the decision making the following findings: that it is not true that a partnership was created between the plaintiff and the defendant because defendant has not actually contributed the sum mentioned in the Articles of Partnership, or any other amount; that the real agreement between the plaintiff and the defendant is not one of partnership but one of lease for the reason that under the agreement the plaintiff did not share either in the profits or in the losses of the business as required by Article 1769 of the Civil Code; and that the fact that plaintiff was granted a "guaranteed participation" in the profits also belies the supposed existence of a partnership between them. It, therefore, denied plaintiff's claim for damages or supposed participation in the profits.

As to her claim for damages for the refusal of the defendant to allow the use of the supposed lobby of the theatre, the court after ocular inspection found that the said lobby was a very narrow space leading to the balcony of the theatre which could not be used for business purposes under existing ordinances of the City of Manila because it would constitute a hazard and danger to the patrons of the theatre. The court, therefore, dismissed the complaint; so did it dismiss the defendant's counter-claim, on the ground that defendant failed to present sufficient evidence to sustain the same. It is against this decision that the appeal has been prosecuted by plaintiff to this Court.

The first assignment of error imputed to the trial court is its order setting aside its former decision and allowing a new trial. This assignment of error is without merit. As the parties had agreed to postpone the trial because of a probable amicable settlement, the plaintiff could not take advantage of defendant's absence at the time fixed for the hearing. The lower court, therefore, did not err in setting aside its former judgment. The final result of the hearing shown by the decision indicates that the setting aside of the previous decision was in the interest of justice.

In the second assignment of error plaintiff-appellant claims that the lower court erred in not striking out the evidence offered by defendant-appellee to prove that the relation between him and the plaintiff is one of sublease and not of partnership. The action of the lower court in admitting evidence is justified by the express allegation in the defendant's answer that the agreement set forth in the complaint was one of lease and not of partnership, and that the partnership formed was adopted in view of a prohibition contained in plaintiff's lease against a sublease of the property.

The most important issue raised in the appeal is that contained in the fourth assignment of error, to the effect that the lower court erred in holding that the written contracts, Exhs. "A", "B", and "C, between plaintiff and defendant, are one of lease and not one of partnership. We have gone over the evidence and we fully agree with the conclusion of the trial court that the agreement was a sublease, not a partnership. The following are the requisites of partnership: (1) two or more persons who bind themselves to contribute money, property, or industry to a common fund; (2) intention on the part of the partners to divide the profits among themselves. (Art. 1767, Civil Code.)

In the first place, plaintiff did not furnish the supposed P20,000 capital. In the second place, she did not furnish any help or intervention in the management of the theatre. In the third place, it does not appear that she has ever demanded from defendant any accounting of the expenses and earnings of the business. Were she really a partner, her first concern should have been to find out how the business was progressing, whether the expenses were legitimate, whether the earnings were correct, etc. She was absolutely silent with respect to any of the acts that a partner should have done; all that she did was to receive her share of P3,000 a month, which can not be interpreted in any manner than a payment for the use of the premises which she had leased from the owners. Clearly, plaintiff had always acted in accordance with the original letter of defendant of June 17, 1945 (Exh. "A"),

which shows that both parties considered this offer as the real contract between them.

Plaintiff claims the sum of P41,000 as representing her share or participation in the business from December, 1949. But the original letter of the defendant, Exh. "A", expressly states that the agreement between the plaintiff and the defendant was to end upon the termination of the right of the plaintiff to the lease. Plaintiff's right having terminated in July, 1949 as found by the Court of Appeals, the partnership agreement or the agreement for her to receive a participation of P3,000 automatically ceased as of said date.

We find no error in the judgment of the court below and we affirm it in toto, with costs against plaintiff-appellant.

Paras, C. J., Padilla, Bautista Angelo, Endencia, and Barrera, JJ., concur.

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