

J. A. WOLFSON, PLAINTIFF AND APPELLANT, VS. SIDNEY C. SCHWARZKOPF, DEFENDANT AND APPELLANT.

G.R. No. 23469. March 19, 1925

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STATEMENT

The defendant was formerly a clerk in the law firm of Wolfson & Wolfson, and, through the sheer force of his industry and ability, was admitted as a partner July 16, 1917, and continued as a member of the firm until November 15, 1921. Some time in 1921, he made a trip to the United States during which time he drew heavily on the firm, resulting in a large overdraft.

The record is conclusive that up to that time there existed a warm and close personal friendship between the members of the firm, and that it was doing a very substantial business. Largely on account of the large overdraft of the firm in the bank incurred by the defendant upon his trip to the United States, a few days after his return the following agreement was signed by the respective partners:

"Dissolution agreement

"Whereas the undersigned entered into a partnership agreement on July 16, 1917, and dissolved same by mutual consent on November 15, 1921:

"The following settlement is agreed to—

"1. S. C. Schwarzkopf hereby sells his entire interest in the firm, including all participation of whatsoever kind and nature in and to any and all fees, to J. A. Wolfson, in consideration of fifteen thousand pesos (P15,000), which amount shall forthwith be credited to S. C. Schwarzkopf's overdraft: Provided, however, That in those unfinished cases which S. C. Schwarzkopf takes over for his future clients, said S. C. Schwarzkopf shall give due credit for the services rendered by the old firm prior to the date of dissolution (November 15, 1921) and when said S. C. Schwarzkopf collects the fees, he shall pay J. A. Wolfson for such prior services: And provided, further, That in the case of 'Fulton Iron Works Company vs. Binalbagan Estates, Inc.,' the future fees, whatever they may be, shall be divided fifty per centum (50%) to J. A. Wolfson and fifty per centum (50%) to S. C. Schwarzkopf;

"2. S. C. Schwarzkopf agrees, free of charge, to render such assistance as he may be called upon to render to wind up pending cases where his special knowledge of such cases is considered requisite.

"Manila, P. I., November 21, 1921.

pp.

"JOS. N. WOLFSON

(Sgd.)

"J. A. WOLFSON

"J. A. WOLFSON

"SIDNEY C. SCHWARZKOPF"

As a result of some sharp correspondence between them, the plaintiff brought this action in which he alleges the execution of the dissolution agreement, and that after deducting the P15,000 therein mentioned, there is a balance due and owing him of P17,772.62, with interest, and he prays for a corresponding judgment, and as a second cause of action asks for an accounting, and when made, that plaintiff have a further judgment for the balance that may be shown due and owing upon such accounting, and he also prays for judgment in a third cause of action for the further sum of P2,497.61, with interest from December 7, 1921, at the rate of 9 per cent per annum and costs.

For answer the defendant makes a general and specific denial of all the material allegations of the complaint, except those which may be hereinafter admitted, and as a special defense, alleges in substance that all of the books and accounts of the firm were kept under the sole supervision of the plaintiff, and that the defendant relied upon the statements of account of the partnership as they were rendered and certified from time to time by the plaintiff. That previous to the execution of the dissolution agreement plaintiff represented and warranted to the defendant that the business assets of the firm would not exceed P50,000. That such representations were false and that plaintiff knew them to be false when made. That after the defendant discovered that they were false, he made a demand upon the plaintiff in writing for a written statement showing and disclosing the status of the business of the firm, and that he be given access to the books of account, for the purpose of having them checked and corrected.

As a second special defense, defendant alleges that the firm books of account are in the exclusive possession of the plaintiff, and defendant prays for an accounting of all of the firm business from July 15, 1917, to November 15, 1921, and as a counterclaim defendant alleges that on November 15, 1921, defendant delivered to the plaintiff five bonds of the Manila Golf Club worth P500, with interest coupons attached, with the agreement that the plaintiff should retain the same for the defendant and collect any matured interest. That demand has been made and plaintiff has failed and refused to deliver the bonds to this defendant, and that they are now of the reasonable value of P580. Defendant prays for judgment that plaintiff take nothing by his complaint, and that on account of fraud, the dissolution partnership agreement be set aside and held for naught, and that plaintiff be required to render a just, true and accurate accounting of all of the firm business, and that pending the suit, he be restrained from removing any of the books of account, vouchers, and letters concerning the firm business from the firm office, and that this defendant have the right to examine the accounts of the firm business through an authorized public accountant. That upon the rendition of the accounts, defendant recover from plaintiff such an amount as may be found justly due and owing, and that defendant have and recover judgment for his Manila Golf Club bonds, or their value, P580, and costs.

During the taking of testimony, different admissions were made by the respective parties, and the court later rendered judgment against the defendant upon the first cause of action for P17,772.62, with interest at 9 per cent from November 3, 1922, for P10,765.47, with legal interest from November 3, 1922, for P900 to be delivered by the defendant to the plaintiff whenever such amount is at defendant's disposal. The defendant is further ordered to deliver to plaintiff stock certificate for P1,000 of the Isuan, Inc., and stock certificate for P500 of the Haight's, Inc. The court denied the defendant's right to accounting and rendered judgment in his favor and against, the plaintiff for the delivery of the five Manila Golf Club bonds, or their value, P500.

From this decision the plaintiff appeals, contending that the lower court erred in allowing him interest only from the date of the filing of his complaint.

The defendant appeals, contending that the lower court erred in rendering judgment in favor of the plaintiff and against the defendant, and in denying defendant's motion for a new trial.

JOHNS, J.:

This is an unfortunate law suit between two prominent attorneys of the bar, who were at one time close personal friends, and for more than four years were members of the same legal firm.

The judgment for P17,772.62 in favor of the plaintiff is the balance due and owing upon defendant's overdraft after deducting the P15,000 which the defendant received as his share in the assets of the firm. The judgment for P10,000 is one-half of the fee of P20,000 which the defendant admits he received from the Fulton Iron Works, as specified in the dissolution agreement, which would be divided between them on a fifty-fifty basis.

The real question in this case is the legal force and effect of the dissolution agreement. As the defendant points out in his brief, the trial court made but two findings in substance as follows:

"First, that inasmuch as the plaintiff had afforded defendant an opportunity to examine the books, records and accounts of the former firm of Wolfson, Wolfson & Schwarzkopf, and inasmuch as the latter did not avail himself of that opportunity, he, defendant, is now estopped from complaining.

"Second, that plaintiff upon entering into this so-called dissolution agreement assumed the risk of collecting the amounts making up the sum of P50,000 which the plaintiff, claimed were the true assets of the former firm."

The record shows that while the defendant was in the United States, there was correspondence between him and the plaintiff tending to show that the firm would be dissolved upon the return of the defendant, and that the dissolution would be mutually satisfactory to both parties.

On November 11, 1921, plaintiff advised the defendant of his desire to dissolve the firm, and that the defendant agreed to the dissolution and admitted the amount which was overdrawn by him while he was in the United States. The dissolution agreement signed on November 21, 1921, was the result of negotiations between the plaintiff and the defendant covering a period of several days. During all of that time the defendant was a member of the firm, and as such had a legal right to see and examine all of the accounts, books and records of the firm, and the lower court found as a fact that the plaintiff had afforded defendant an opportunity to examine them, and that he had not availed himself of that opportunity. It will be noted that the dissolution agreement recites that the defendant sells his entire interest in the firm to the plaintiff for a consideration of P15,000 to be credited upon the defendant's overdraft. Provision is then made for any unfinished business, and that the fee from the Fulton Iron Works was to be divided on a fifty-fifty basis. In other words, the parties agreed upon the lump sum of P15,000 as the amount which the defendant should receive for his entire interest in the assets of the firm. That dissolution agreement was a voluntary settlement between the parties of all their mutual dealings as partners. Both of them were attorneys, skilled in their profession, and it must be presumed that each of them knew and understood the nature and intent of the settlement and its legal force and effect. That rule is especially true where the parties to a settlement are attorneys. To overcome that legal presumption, as between attorneys in particular, the evidence of fraud should be clear and convincing.

In this case we have had the benefit of able and exhaustive briefs of opposing counsel, but in the final analysis, the stubborn fact remains that the parties signed the dissolution agreement, and that it was signed as a result of several days negotiations between them, and that during all of that period the defendant had the legal right to see and examine the books and accounts of the firm, and that both parties voluntarily entered into the agreement.

In the very nature of things, the defendant must have had more or less knowledge of the firm business, and the agreement upon its face shows that it was intended to be a final settlement between the parties. It provides:

"That in those unfinished cases which S. C. Schwarzkopf takes over for his future clients, said S. C.

Schwarzkopf shall give due credit for the services rendered by the old firm prior to the date of dissolution (November 15, 1921) and when said S. C. Schwarzkopf collects the fees, he shall pay J. A. Wolfson for such prior services," and that as to the fees from the Fulton Iron Works, the future fees, whatever they may be, should be divided equally between the plaintiff and the defendant. That is to say, that the defendant was to receive P15,060 for his entire interest in the firm as of November 21, 1921, and that in addition thereto, as to any unfinished business which he took over for his own personal clients, the defendant should give due credit for any legal services rendered by the firm as a firm prior to November 15, 1921, and when collected, he should then account to the plaintiff for the pro rata share of the fees which had been earned by the firm as a firm. Under the articles of partnership, the defendant had a three-tenths interest in the firm. The settlement was made on the basis that the amount of earned and outstanding fees of the firm on November 21, 1921, was P50,000, three-tenths of which would be P15,000. That was more or less of an estimate, the amount of which would largely depend upon future collections.

As stated, both parties were attorneys and are presumed to know their own business and the legal force and effect of the written agreement. As found by the trial court, the proof of fraud is not clear or convincing. It may be that either the defendant or the plaintiff got the worst of the settlement. But the fact remains that both parties signed the "dissolution agreement," and that both of them are presumed to know what they were signing, and that it was intended as a full, complete and final settlement between them.

The plaintiff contends that he is entitled to interest from the date of the settlement, and it must be conceded that he has made out a fairly strong case. But all things considered, the judgment of the lower court is affirmed. Neither party to recover costs. So ordered.

Johnson, Malcolm, Villamor, Ostrand, and Romualdez, JJ., concur.

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