

ILDEFONSO DE LA ROSA, ADMINISTRATOR OF THE INTESTATE ESTATE OF THE DECEASED GO-LIO, PLAINTIFF AND APPELLANT, VS. ENRIQUE ORTEGA GO-COTAY, DEFENDANT AND APPELLANT.*G.R. No. 24243. January 15, 1926*

Ponente: VILLA-REAL, J.

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During the Spanish regime the Chinamen Go-Lio and Vicente Go-Sengco formed a society for the purchase and sale of articles of commerce, and for this purpose they opened a store in the town of San Isidro, Nueva Ecija. Later Go-Lio went to China. Vicente Go-Sengco died and his son Enrique Ortega Go-Cotay took charge of the business. Go-Lio died in China in October, 1916, leaving a widow and three children, one of whom came to the Philippines and filed a petition for the appointment of Ildefonso de la Rosa as administrator of the intestate estate of his deceased father, which petition was granted by the Court of First Instance of Nueva Ecija. Ildefonso de la Rosa, in his capacity as administrator of the intestate estate of the deceased Go-Lio, requested Enrique Ortega Go-Cotay to wind up the business and to deliver to him the portion corresponding to the deceased Go-Lio. Enrique Ortega Go-Cotay denied the petition, alleging that the business was his exclusively. In view of this denial, Ildefonso de la Rosa, as administrator, on July 2, 1918, filed with the Court of First Instance of Nueva Ecija a complaint against Enrique Ortega Go-Cotay in which he prayed that the defendant be sentenced to deliver to the plaintiff one-half of all the property of the partnership formed by Go-Lio and Vicente Go-Sengco, with costs against the defendant, and that the said plaintiff be appointed receiver for the property of the said partnership.

Defendant, in answering the complaint, denied each and every allegation thereof, and as a special defense alleged that more than ten years had elapsed before the filing of the complaint, and prayed that he be absolved therefrom, with costs against the plaintiff.

On August 3, 1918, the Court of First Instance of Nueva Ecija appointed Justo Cabo-Chan, Francisco T. Tantengco and Go-Tiao, as commissioners to make an inventory, liquidate and determine the one-half belonging to the plaintiff of all of the property of the store in question.

On August 9, 1918, in order to prevent Justo Cabo-Chan from assuming the office of receiver, pursuant to the order of the court dated August 3, 1918, the defendant filed a bond in the sum of P10,000.

Under the date of November 15, 1920, the said commissioners submitted to the court their report, showing the net profits of the business between the period from 1913 to 1917, which amounted to the total sum of P25,038.70 and consisted of the following items:

Profits for the year 1913

P2,979.00

Profits for the year 1914

3,046.94

Profits for the year 1915

4,103.07

Profits for the year 1916

4,735.00

Profits for the year 1917

10,174.69

Total

25,038.70

In view of the appeal taken by defendant the parties on December 7, 1921, entered into an agreement whereby they agreed to suspend the liquidation ordered by the court until the appeal to the Supreme Court was decided, and whereby the defendant was authorized to continue in the possession of the property in litigation, upon the giving of a bond in the amount of P25,000, and cancelling the former bond for P10,000.

This court in deciding case R. G. No. 18919, on October 5, 1922,¹ held that the appeal was premature and ordered that the record be remanded to the court of origin with instruction to enter a final order in accordance with the liquidation made by the commissioners.

The record having been remanded and two of the commissioners having filed their resignations, the court below appointed again Justo Cabo-Chan suggested by the defendant and Cua Poco suggested by the plaintiff, as commissioners, who submitted two reports, one prepared by commissioners Tantengco and Cua Poco, and the other by commissioner Justo Cabo-Chan. The former stated in their report that they had examined the books for the years 1919 to 1922, for the reason, they said, that they appeared "to have been prepared by some person in a careful way at a certain time." The latter commissioner examined all the books and stated in his report that the business had suffered a net loss amounting to the sum of P89,099.22.

After trial and the parties having introduced all their evidence, the lower court, by order of December 13, 1924, disapproved the report of the commissioners Tantengco and Cua Poco, but approved, with slight modifications, the report of commissioner Cabo-Chan, holding that the result of the liquidation showed liabilities to the amount of P89,690.45 in view of which plaintiff had nothing to recover from defendant, as there was no profit to divide.

From this decision the plaintiff has appealed in due time and form making the following assignment of errors: (1) The lower court erred in holding that the books were authentic, and in not holding that they were false books exhibited by the defendant about alleged operations in the years 1918 et seq. which show enormous debts and imaginary losses of the business; (2) the lower court erred in giving full credit to the testimony of commissioner Justo Cabo-Chan; (3) the lower court erred in holding that the partnership had incurred debts and suffered losses, as shown in the report of Justo Cabo-Chan from 1918 on; (4) the lower court erred in not holding that the share of the plaintiff, as his capital and profits until the end of 1917, is equivalent to the sum of twenty-seven thousand seven hundred fifty-five pesos and forty-seven centavos (P27,755.47), Philippine currency, plus an annual quota of at least two thousand five hundred three pesos and eighty-seven centavos (P2,503.87), Philippine currency, as his portion of the profits since the beginning of 1918 until the delivery to the plaintiff of his share in the partnership; (5) the court below erred in not ordering the prosecuting attorney to commence an investigation as to the falsified books of accounts that the defendant had exhibited for proper criminal proceeding.

From the evidence it appears that the partnership capital was P4,779.39, and the net profits until the year 1915 amounted to P5,551.40. Because some books of account had been destroyed by white ants (anay), the liquidation of the business of the partnership for the period from 1906 to 1912 could not be made. But knowing the net profit for the period between 1904 and 1905, which is P5,551.40, and finding the average of the profits for each of these years, which is P2,775.70; and knowing the net profit for the year 1913, which is P2,979, we can find the average between the net profit for 1905, namely, P2,275.70, and the net profit for the said year 1913, namely, P2,979. Said average is the sum of P2,877.35, which may be considered as the average of the net annual profits for the period between 1906 and 1912, which in seven years make a total of P20,141.45. The assets of the partnership, as well as the value of its property, could not be determined when making the liquidation because there was no inventory and for this reason it was not possible to determine the capital of the partnership. The plaintiff, however, seems to be agreeable to considering the initial partnership capital as the capital at the time of the winding up of the business.

August 3, 1918, defendant assumed complete responsibility for the business by objecting to the appointment of a receiver as prayed for by the plaintiff, and giving a bond therefor. Until that date his acts were those of a managing partner, binding against the partnership; but thereafter his acts were those of a receiver whose authority is contained in section 175 of the Code of Civil Procedure.

A receiver has no right to carry on and conduct a business unless he is authorized or directed by the court to do so, and such authority is not derived from an order of appointment to take and preserve the property (34 Cyc, 283; 23 R. C. L., 73). It does not appear that the defendant as a receiver was authorized by the court to continue the business of the partnership in liquidation. This being so, he is personally liable for the losses that the business may have sustained. (34 Cyc, 296.) The partnership must not, therefore, be liable for the acts of the defendant in connection with the management of the business until August 3, 1918, the date when he ceased to be a member and manager in order to become receiver.

As to the first semester of 1918, during which time the defendant had been managing the business of the partnership as a member and manager, taking into account that the profits had been on the increase, said profits having reached the amount of P10,174.69 in the year 1917, it would not be an exaggeration to estimate that the profits for 1918 would have been at least the same as the profits of 1917; so that for the first half of 1918, the profit would be P5,087.34.

In conclusion we have the following profits of the business of this partnership now in liquidation, to wit:

Capital of partnership

P4,779.39

Profits until 1906

6,651.40

Profits 1906-1912

20,141.46

Profits 1913-1917

25,038.70

Profits first semester 1918

5,087.34

Total

60,598.28

One-half of this total, that is, P30,299.14 pertains to the plaintiff as administrator of the intestate estate of Go-Lio.

In view of the foregoing, we are of the opinion that the case must be, as is hereby, decided by reversing the judgment appealed from, and sentencing the defendant to pay the plaintiff the sum of P30,299.14 with legal interest at the rate of 6 per cent per annum from July 1, 1918, until fully paid, with the costs. So ordered.

Avancena, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

[1] De la Rosa vs. Ortega Go-Cotay, not reported.

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