

**PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLEE, VS.  
SEVERO EUGENIO LO ET AL., DEFENDANTS. SEVERO EUGENIO LO,  
NG KHEY LING AND YEP SENG, APPELLANTS.**

*G.R. No. 26937. October 05, 1927*

Ponente: VILLAMOR, J.

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**VILLAMOR, J.:**

On September 29, 1916, the appellants Severo Eugenio Lo and Ng Khey Ling, together with J. A. Say Lian Ping, Ko Tiao Hun, On Yem Ke Lam and Co Sieng Peng formed a commercial partnership under the name of "Tai Sing & Co.," with a capital of P40,000 contributed by said partners. In the articles of copartnership, Exhibit A, it appears that the partnership was to last for five years from and after the date of its organization, and that its purpose was to do business in the City of Iloilo, Province of Iloilo, or in any other part of the Philippine Islands the partners might desire, under the name of "Tai Sing & Co.," for the purchase and sale of merchandise, goods, and native, as well as Chinese and Japanese, products, and to carry on such business and speculations as they might consider profitable. One of the partners, J. A. Say Lian Ping was appointed general manager of the partnership, with the powers specified in said articles of copartnership.

On June 4, 1917, general manager A. Say Lian Ping executed a power of attorney (Exhibit C-1) in favor of A. Y. Kelam, authorizing him to act in his stead as manager and administrator of "Tai Sing & Co." On July 26, 1918, A. Y. Kelam, acting under such power of attorney, applied for, and obtained a loan of P8,000 in current account from the plaintiff bank (Exhibit C). As security for said loan, he mortgaged certain personal property of Tai Sing & Co. (Exhibit C.)

This credit was renewed several times and on March 25, 1919, A. Y. Kelam, as attorney-in-fact of Tai Sing & Co., executed a chattel mortgage in favor of plaintiff bank as security for a loan of P20,000 with interest (Exhibit D). This mortgage was again renewed on April 16, 1920, and A. Y. Kelam, as attorney-in-fact of Tai Sing & Co., executed another chattel mortgage for the said sum of P20,000 in favor of the plaintiff bank. (Exhibit E.) According to this mortgage contract, the P20,000 loan was to earn 9 per cent interest per annum.

On April 20, 1920, Yap Seng, Severo Eugenio Lo, A. Y. Kelam and Ng Khey Ling, the latter represented by M. Pineda Tayenko, executed a power of attorney in favor of Sy Tit by virtue of which Sy Tit, representing Tai Sing & Co. obtained a credit of P20,000 from plaintiff bank on January 7, 1921, executing a chattel mortgage on certain personal property belonging to Tai Sing & Co.

Defendants had been using this commercial credit in a current account with the plaintiff bank, from the year 1918 to May 22, 1921, and the debit balance of this account, with interest to December 31, 1924, is as follows:

TAI SING & CO.

To your outstanding account (C. O. D.) with us on June 30, 1922.....

P16,518.74

Interest on same from June 30, 1922 to December 31, 1924, at 9 per cent per annum .....

3,720.86

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Total.....:

20,239.60

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This total is the sum claimed in the complaint, together with interest on the P16,518.74 debt, at 9 per cent per annum from January 1, 1925 until fully paid, with the costs of the trial.

Defendant Eugenio Lo sets up, as a general defense, that Tai Sing & Co., was not a general partnership, and that the commercial credit in current account which Tai Sing & Co. obtained from the plaintiff bank had not been authorized by the board of directors of the company, nor was the person who subscribed said contract authorized to make the same, under the articles of copartnership. The other defendants, Yap Sing and Ng Khey Ling, answered the complaint denying each and every one of the allegations contained therein.

After the hearing, the court found:

- (1) That defendants Severo Eugenio Lo, Ng Khey Ling and Yap Seng & Co., Sieng Peng are indebted to plaintiff Philippine National Bank in the sum of P22,595.26 to July 29, 1926, with a daily interest of P4.14 on the balance on account of the partnership Tai Sing & Co. for the sum of P16,518.74 until September 9, 1922;
- (2) Said defendants are ordered jointly and severally to pay the Philippine National Bank the sum of P22,727.74 up to August 31, 1926, and from that date, P4.14 daily interest on the principal; and
- (3) The defendants are furthermore ordered to pay the costs of the action.

Defendants appealed, making the following assignments of error:

"I, The trial court erred in finding that article 126 of the Code of Commerce at present in force is not mandatory.

"II. The trial court erred in finding that the partnership agreement of Tai Sing & Co. (Exhibit A), is in accordance with the requirements of article 125 of the Code of Commerce for the organization of a regular partnership.

"III. The trial court erred in not admitting J. A. Sai Lian Ping's death in China in November, 1917, as a proven fact.

"IV. The trial court erred in finding that the death of J. A. Sai Lian Ping cannot extinguish the defendants' obligation to the plaintiff bank, because the last debt incurred by the commercial partnership Tai Sing & Co. was that evidenced by Exhibit F, signed by Sy Tit as attorney-in-fact of the members of Tai Sing & Co., by virtue of Exhibit G.

"V. The trial court erred in not finding that plaintiff bank was not able to collect its credit from the goods of Tai Sing & Co. given as security therefor through its own fault and negligence; and that the action brought by plaintiff is a manifest violation of article 2-37 of the present Code of Commerce.

"VI. The trial court erred in finding that the current account of Tai Sing & Co. with plaintiff bank shows a debit balance of P16,518.74, which in addition to interest at 9 per cent per annum from July 29, 1926, amounts to P16,595.26, with a daily interest of P4.14 on the sum of P16,518.74.

"VII. The trial court erred in ordering the defendants-appellants to pay jointly and severally to the Philippine National Bank the sum of P22,727.74 up to August 31, 1926, and interest on P16,518.74 from that date until fully paid, with the costs of the action.

"VIII. The trial court erred in denying the motion for a new trial filed by defendants-appellants."

Appellants admit, and it appears from the context of Exhibit A, that the defendant association formed by the defendants is a general partnership, as defined in article 126 of the Code of Commerce. This partnership was registered in the mercantile register of the Province of Iloilo. The only anomaly noted in its organization is that instead of adopting for their firm name the names of all of the partners, of several of them, or only one of them, to be followed in the last two cases, by the words "and company," the partners agreed upon "Tai Sing & Co." as the firm name.

In the case of Hung-Man-Yoc, under the name of Kwong-Wo-Sing vs. Kieng-Chiong-Seng (6 Phil., 498), cited by appellants, this court held that, as the company formed by defendants had existed in fact, though not in law due to the fact that it was not recorded in the register, and having operated and contracted debts in favor of the plaintiff, the same must be paid by someone. This applies more strongly to the obligations contracted by the defendants, for they formed a partnership which was registered in the mercantile register, and carried on business contracting debts with the plaintiff bank. The anomalous adoption of the firm name above noted does not affect the liability of the general partners to third parties under article 127 of the Code of Commerce. And the Supreme Court so held in the case of Jo Chung Cang vs. Pacific Commercial Co, (45 Phil., 142), in which it said that the object of article 126 of the Code of Commerce in requiring a general partnership to transact business under the name of all its members, of several of them, or of one only, is to protect the public from imposition and fraud; and that the provision of said article 126 is for the protection of the creditors rather than of the partners themselves. And consequently the doctrine was enunciated that the law must be construed as rendering contracts made in violation of it unlawful and unenforceable only as between the partners and at the instance of the violating party, but not in the sense of depriving innocent parties of their rights who may have dealt with the offenders in ignorance of the latter having violated the law; and that contracts entered into by commercial associations defectively organized are valid when voluntarily executed by the parties, and the only question is whether or not they complied with the agreement. Therefore, the defendants cannot invoke in their defense the anomaly in the firm name which they themselves adopted.

As to the alleged death of the manager of the company, Say Lian Ping, before the attorney-in-fact Ou Yong Kelam executed Exhibits C, D and E, the trial court did not find this fact proven at the hearing. But even supposing that the court had erred, such an error would not justify the reversal of the judgment, for two reasons at least: (1) Because Ou Yong Kelam was a partner who contracted in the name of the partnership, without any objection of the other partners; and (2) because it appears in the record that the appellant-partners Severo Eugenio Lo, Ng Khey Ling and Yap Seng, appointed Sy Tit as manager, and he obtained from the plaintiff bank the credit in current account, the debit balance of which is sought to be recovered in this action.

Appellants allege that such of their property as is not included in the partnership assets cannot be seized for the payment of the debts contracted by the partnership until after the partnership property has been exhausted. The court found that the partnership property described in the mortgage Exhibit F no longer existed at the time of the filing of the herein complaint nor has its existence been proven, nor was it offered to the plaintiff for sale. We find no just reason to reverse this conclusion of the trial court, and this being so, it follows that article 237 of the Code

of Commerce, invoked by the appellants, can in no way have any application here.

Appellants also assign error to the action of the trial court in ordering them to pay plaintiff, jointly and severally, the sums claimed with 9 per cent interest on P16,518.74, owing from them.

The judgment against the appellants is in accordance with article 127 of the Code of Commerce which provides that all the members of a general partnership, be they managing partners thereof or not, shall be personally and solidarily liable with, all their property, for the results of the transactions made in the name and for the account of the partnership, under the signature of the latter, and by a person authorized to use it.

As to the amount of the interest suffice it to remember that the credit in current account sued on in this case has been renewed by the parties in such a way that while it appears in the mortgage Exhibit D executed on March 25, 1919 by the attorney-in-fact Ou Yong Kelam, that the P20,000 credit would earn 8 per cent interest annually, yet from that executed on April 16, 1920, Exhibit E, it appears that the P20,000 would earn 9 per cent interest per annum. The credit was renewed in January, 1921, and in the deed of pledge, Exhibit F, executed by "Tai Sing & Co." represented by the attorney-in-fact Sy Tit, it appears that this security is for the payment of the sums received by the partnership, not to exceed P20,000 with interest and collection fees. There can be no doubt that the parties agreed upon the rate of interest fixed in the document Exhibit E, namely, 9 per cent per annum.

The judgment appealed from is in accordance with the law, and must therefore be, as it is hereby, affirmed with costs against the appellants. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Johns, and Romualdez, JJ., concur.

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