

NICANOR JACINTO, AS ADMINISTRATOR OF THE ESTATE OF THE DECEASED SILVINO LIM, PLAINTIFF AND APPELLEE, VS. BERNARDO & CO. ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 28185. December 29, 1928*

Ponente: OSTRAND, J.

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In October, 1920, Pedro Claudio, Manuel Escobar, Joaquin Lazo, Josefa Bernardo, Felicidad Bernardo and Vicenta Pantangco organized a so-called mercantil collective partnership, under the name and style of "Bernardo & Company," as successor to another partnership organized in July, 1910, apparently by the same parties. The partnership articles provided for the admission of cuentas en participacion or joint accounts. Article 3 of the document reads as follows:

"No participant in joint account can separate himself from the partnership, except after the annual balance is made, giving notice in writing of his intention addressed to the manager, and abiding by the profits or losses that according to said balance, the partnership may have obtained, after deducting such proportional part of the reserve fund as may belong to him. In case the separation is by transfer of his rights to another, preference is to be given, all conditions being equal, to the members of the firm and the other partners in joint account, before they are transferred to other persons strangers to the firm, and in any case the transfer must be recorded in the offices of the firm, without which requisite the transfer shall be void."

A number of persons, among them one Silvino Lim, were admitted as participants in the joint account. Silvino Lim died, and the plaintiff, Nicanor Jacinto, was appointed administrator of his estate. After the death of Silvino Lim, Josefa Lim de Barcelon, his daughter and only heir, desired to withdraw the capital contributed by him as participant in the joint account and made several verbal demands on the company to that effect subsequent to the balance struck June 30, 1924. No action was taken by the company, and on April 17, 1925, Josefa wrote Pedro Claudio, the manager of the company, the following letter:

"Manila, 17 de abril de 1925

"Sr. D. PEDRO CLAUDIO

"Gerente de 'Los Filipinos'

"SEÑOR GERENTE: Veo que se va demorando indefinidamente al parecer la devolution del capital que mi padre, Don Silvino Lim, tiene puesto en ese establecimiento de que es V. digno gerente, no obstante las reiteradas instancias que le he hecho a ese efecto, y la promesa de V. de que se accederia a la retirada que he solicitado de la participacion de mi padre, tan pronto se arreglasen algunas cosas del establecimiento. Esta es la razon porque vuelvo a insistir en mi peticion de retirada de capital como socio cuentaparticipante, suplicandole encarecidamente que proveyera lo antes posible a esta mi peticion, porque la mucha demora en su solucion perjudica grandemente a mis intereses.

"Respetuosamente,

"JOSEFA LIM DE BARCELON"

No answer to the letter was received, and on May 25, 1925, Josefa wrote Claudio another letter to the same effect, and of which he acknowledged receipt, but still paid no attention to the demand.

The present action was thereupon brought, and upon trial the Court of First Instance rendered judgment in favor of the plaintiff and against all of the defendants for the sum of P35,652.30 with legal interest from March 1, 1926, the date of filing the complaint, said sum representing the remainder of the capital contributed by Silvino Lim according to the balance shown on June 30, 1924. From this judgment the defendants appeal.

Upon appeal the main contention of the appellants is that the partnership was in reality a sociedad en comandita; that the deceased Silvino Lim, having furnished a large part of the working capital of the partnership, was a socio comanditario instead of being a participant in a joint account; and that he therefore could not withdraw his capital until the partnership was liquidated and its debts to outsiders paid.

Aside from the fact that the organization of the partnership lacks several important features characteristic of a sociedad en comandita, it is to be observed that the defendants, in their answer to the complaint, expressly admit that the partnership is collective and that Silvino Lim in his lifetime was a participant in the joint account. The case was consequently tried on that theory, and the defendants' change of front now comes too late. Their present contention upon this point will, therefore, not be considered.

The appellants also assert that the partnership was in process of liquidation at the time the plaintiff gave notice of the withdrawal of the capital contributed by Silvino Lim and that therefore the plaintiff must await the result of the liquidation and then, with the other creditors of the partnership, take his proportionate share of the remaining assets. This argument would have had some weight if it had been shown that a real liquidation had existed, but such does not appear to have been the case. The manager, Pedro Claudio, continued to buy and sell merchandise on behalf of the partnership, and the fact that he sold more than he bought did not constitute a liquidation in the true sense of the word.

We agree with the court below that, after giving notice of withdrawal, the plaintiff became creditor of the partnership and ceased to be a participant in the joint account. But we think the court erred in allowing the plaintiff to recover the full amount of the credit appearing to be due him in the 1924 balance. That balance was based on the financial condition of the partnership on June 30, 1924. No formal notice of withdrawal of the plaintiff's share of the capital was made until April 17, 1925, nine and a half months afterwards. In the meantime, the partnership had suffered losses, which in part would be charged against the capital contributed by the participants in the joint account, and it seems to us that from an equitable standpoint the balance of June 30, 1925, should have been made the basis of the computation of the amount due the plaintiff. But the defendants argue that as the notice of withdrawal was presented before, and not after, the striking of the 1925 balance, it was of no effect as to that balance. We cannot find much force in this argument; the notice was not cancelled, and the presumption is that the plaintiff continued to insist on the withdrawal of his capital.

It appears from the accounts attached to the record that the amount due the plaintiff on June 30, 1925, was P26,363.72.

The appealed judgment is therefore modified by reducing the plaintiff's recovery to the sum of P26,363.72, with interest at the rate of 6 per cent per annum from March 9, 1926. In all other respects the judgment is affirmed with the costs against the appellants. So ordered.

Johnson, Street, Malcolm, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

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