

M. TEAGUE, PLAINTIFF AND APPELLANT, VS. H. MARTIN, J. T. MADDY AND L. H. GOLUCKE, DEFENDANTS AND APPELLEES.*G.R. No. 30286. September 12, 1929*

Ponente: JOHNS, J.

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By their respective pleadings, all parties agreed that there was a partnership between them, which appears at one time to have done a good business. In legal effect, plaintiff asked for its dissolution and the appointment of a receiver pendente lite. The defendants did not object to the dissolution of the partnership, but prayed for an accounting with the plaintiff. It was upon such issues that the evidence was taken and the case tried. Hence, there is no merit in the first assignment of error. Complaint is made that the lower court did not specifically decide as to whether or not the plaintiff was the manager of the unregistered partnership. But upon that question the lower court, in legal effect, followed and approved the contention of the defendants that the duties of each partner were specified and defined in the "plans for formation of a limited partnership," in which it is stated that Captain Maddy would have charge of the Barracuda and its navigation, with a salary of P300 per month, and that Martin would have charge of the southern station, cold stores, commissary and procuring fish, with a salary of P300 per month, and that the plaintiff would have charge of selling fish in Manila and purchasing supplies, without salary until such time as the business is placed on a paying basis, when his salary would be the same as that of Maddy and Martin, and that the principal office of the partnership shall be in Manila, and that each party doing business with the partnership "shall keep books showing plainly all transactions," which shall be available at all time for inspection of any of the members.

It will thus be noted that the powers and duties of Maddy, Martin, and the plaintiff are specifically defined, and that each of them was more or less the general manager in his particular part of the business. That is to say, that Maddy's power and duties are confined and limited to the charge of the Barracuda and its navigation, and Martin's to the southern station, cold stores, commissary and procuring fish, and that plaintiff's powers and duties are confined and limited to selling fish in Manila and the purchase of supplies. Under this agreement, plaintiffs powers and duties were confined and limited to "selling fish in Manila and the purchase of supplies." In the selling of fish, plaintiff received a substantial amount of money which he deposited to the credit of the company and paid out by checks of the company signed by him as manager, but it appears that was a requirement which the bank made in the ordinary course of business, as to who was authorized to sign checks for the partnership; otherwise, it would not cash the checks.

In the final analysis, the important question in this case is the ownership of the Lapu-Lapu, the Ford truck, and the adding machine. The proof is conclusive that they were purchased by the plaintiff and paid for by him from and out of the money of the partnership. That at the time of their purchase, the Lapu-Lapu was purchased in the name of the plaintiff, and that he personally had it registered in the customs house in his own name, for which he made an affidavit that he was its owner. After the purchase, he also had the Ford truck registered in his own name. His contention that this was done as a matter of convenience is not tenable. The record shows that when the

partnership purchased the Barracuda, it was registered in the customs house in the name of the partnership, and that it was a very simple process to have it so registered.

Without making a detailed analysis of the evidence, we agree with the trial court that the Lapu-Lapu, the Ford truck, and the adding machine were purchased by the plaintiff and paid for out of the funds of the partnership, and that by his own actions and conduct, and the taking of the title in his own name, he is now estopped to claim or assert that they are not his property or that they are the property of the company. Again, under his powers and duties as specified in the tentative, unsigned written agreement, his authority was confined and limited to the "selling of fish in Manila and the purchase of supplies." It must be conceded that, standing alone, the power to sell fish and purchase supplies does not carry with it or imply the authority to purchase the Lapu-Lapu, or the Ford truck, or the adding machine. From which it must follow that he had no authority to purchase the lighter Lapu-Lapu, the Ford truck, or the adding machine, as neither of them can be construed as supplies for the partnership business. While it is true that the tentative agreement was never personally signed by any member of the firm, the trial court found as a fact, and that finding is sustained by the evidence, that this unsigned agreement was acted upon and accepted by all parties as the basis of the partnership. It was upon that theory that the lower court allowed the defendants Maddy and Martin a salary of P300 per month and the money which each of them paid out and advanced in the discharge of their respective duties, and denied any salary to the plaintiff, for the simple reason that the business was never on a paying basis.

Much could be said about this division of powers, and that Maddy and Martin's duties were confined and limited to the catching and procuring of fish, which were then shipped to the plaintiff who sold them on the Manila market and received the proceeds of the sales. In other words, Maddy and Martin were supplying the fish to plaintiff who sold them under an agreement that he would account for the money.

Upon the question of accounting, his testimony as to the entries which he made and how he kept the books of the partnership is very interesting:

"Q. Then this salary does not take into consideration the fact that you claim the company is very badly in debt?

A. Well, I put the salary in there.

"Q. I am asking you if that is true?

A. I do not think I will decide that, I think it will be decided by the court.

"Q. I will ask you to answer the question?

A. You asked me my opinion and I said that I am entitled to it.

* * * * *

"I am not on trial as a bookkeeper; if my lawyers won't object to the question I will object myself; I am not on trial as a bookkeeper; I keep my books any way I want to, put in what I want to, and I leave out anything I don't choose to put in,—

* * * * *

"Q. You have your own bookkeeping?

A. Well, I run my business to suit myself, I put in the books what I want to, and I leave out what I want to, and I have a quarter of a million pesos to show for it,—

* * * * *

"Q. Did you not say that you paid yourself a salary in August because you made a profit?

A. Yes. This profit was made counting the stock on hand and equipment on hand, but as far as cash to pay this balance, I did not have it. When I wanted a salary I just took it. I ran things to suit myself.

* * * * *

"Q. In other words in going against these partners you are going to tax them for the services of your attorney?

A. You are mistaken; I am not against them. I paid this out for filing this complaint and if the honorable court strikes it out, all right. I think it was a just charge. When I want to sue them the company can pay for my suit.

"Q. Would you have any objection to their asking for their attorney's fees from the company as partners also in the business?

A. Yes.

"Q. You would object to your partners having their attorney's fees here paid out of the copartnership like you have had yours paid?

A. Yes, that is the way I do my business."

To say the least, this kind of evidence does not appeal to the court. This case has been bitterly contested, and there is much feeling between the parties and even their respective attorneys. Be that as it may, we are clearly of the opinion that the findings of the lower court upon questions of fact are well sustained by the evidence. Plaintiff's case was tried on the theory that the partnership was the owner of the property in question, and no claim was made for the use of the Lapu-Lapu, and it appears that P14,032.26 of the partnership money was used in its purchase, overhauling, expenses and repairs. That in truth and in fact the partnership had the use and benefit of the Lapu-Lapu in its business from sometime in May until the receiver was appointed on November 11, 1927, or a period of about six months, and that the partnership has never paid anything for its use. It is true that there is no testimony as to the value of such use, but the cost of the Lapu-Lapu and the time of its use and the purpose for which it was used, all appear in the record. For such reasons, in the interest of justice, plaintiff should be compensated for the reasonable value of the time which the partnership made use of the Lapu-Lapu.

All things considered, we are of the opinion that P2,000 is a reasonable amount which the plaintiff should receive for its use.

In all things and respects, the judgment of the lower court as to the merits is affirmed, with the modification only that P2,000 shall be deducted from the amount of the judgment which was awarded against the plaintiff, such deduction to be made for and on account of such use of the Lapu-Lapu by the partnership, with costs against the appellant. So ordered.

Avanceña, C. J., Street, Villamor, Romualdez, and Villa-Real, JJ., concur,

Johnson, J., reserves his vote.

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