

ADRIANO ARBES ET AL., PLAINTIFFS AND APPELLEES, VS. VICENTE POLISTICO ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 31057. September 07, 1929

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

This is an action to bring about a liquidation of the funds and property of the association called "Turnuhan Polistico & Co." The plaintiffs were members or shareholders, and the defendants were designated as president-treasurer, directors and secretary of said association.

It is well to remember that this case is now brought before the consideration of this court for the second time. The first time was when the same plaintiffs appealed from the order of the court below sustaining the defendants' demurrer, and requiring the former to amend their complaint within a certain period, so as to include all the members of "Turnuhan Polistico & Co.," either as plaintiffs or as defendants. This court held then that in an action against the officers of a voluntary association to wind up its affairs and to enforce an accounting for money and property in their possession, it is not necessary that all members of the association be made parties to the action. (Borlasa vs. Polistico, 47 Phil., 345.) The case having been remanded to the court of origin, both parties amended, respectively, their complaint and their answer, and by agreement of the parties, the court appointed Amadeo R. Quintos, of the Insular Auditor's Office, commissioner to examine all the books, documents and accounts of "Turnuhan Polistico & Co.," and to receive whatever evidence the parties might desire to present.

The commissioner rendered his report, which is attached to the record, with the following resume:

Income:

Members' shares P97,263.70

Credits paid 6,196.55

Interest received 4,569.45

Miscellaneous 1,891.00

P109,620.70

Expenses:

Premiums to members 68,146.25

Loans on real-estate security 9,827.00

Loans on promissory notes 4,258.55

Salaries 1,095.00

Miscellaneous 1,686.10

85,012.90

Cash on hand 24,607.80

The defendants objected to the commissioner's report, but the trial court, having examined the reasons for the objection, found the same sufficiently explained in the report and the evidence, and accepting it, rendered judgment, holding that the association 'Turnuhan Polistico & Co.*' is unlawful, and sentencing the defendants jointly and severally to return the amount of P24,607.80, as well as the documents showing the uncollected credits of the association, to the plaintiffs in this case, and to the rest of the members of said association represented by said plaintiffs, with costs against the defendants.

The defendants assigned several errors as grounds for their appeal, but we believe they can all be reduced to two points, to wit; (1) That not all persons having an interest in this association are included as plaintiffs or defendants; (2) that the objection to the commissioner's report should have been admitted by the court below.

As to the first point, the decision in the case of *Borlasa vs. Polistico*, supra, must be followed.

With regard to the second point, despite the praiseworthy efforts of the attorney for the defendants, we are of opinion that, the trial court having examined all the evidence touching the grounds for the objection and having found that they had been explained away in the commissioner's report, the conclusion reached by the court below, accepting and adopting the findings of fact contained in said report, and especially those referring to the disposition of the association's money, should not be disturbed.

In *Tan Diangseng Tan Siu Pic vs. Echauz Tan Siuco* (5 Phil., 516), it was held that the findings of fact made by a referee appointed under the provisions of section 135 of the Code of Civil Procedure stand upon the same basis, when approved by the court, as findings made by the judge himself. And in *Kriedt vs. E. C. McCullough & Co.* (37 Phil., 474), the court held: "Under section 140 of the Code of Civil Procedure it is made the duty of the court to render judgment in accordance with the report of the referee unless the court shall for cause shown set aside the report or recommit it to the referee. This provision places upon the litigant parties the duty of discovering and exhibiting to the court any error that may be contained therein." The appellants stated the grounds for their objection. The trial court examined the evidence and the commissioner's report, and accepted the findings of fact made in the report. We find no convincing argument in the appellants' brief to justify a reversal of the trial court's conclusion admitting the commissioner's findings.

There is no question that "Turnuhan Polistico & Co." is an unlawful partnership (*U. S. vs. Baguio*, 39 Phil., 962), but the appellants allege that because it is so, some charitable institution to whom the partnership funds may be ordered to be turned over, should be included as a party defendant. The appellants refer to article 1666 of the Civil Code, which provides:

"A partnership must have a lawful object, and must be established for the common benefit of the partners.

"When the dissolution of an unlawful partnership is decreed, the profits shall be given to the charitable institutions of the domicile of the partnership, or, in default of such, to those of the province."

Appellants' contention on this point is untenable. According to said article, no charitable institution is a necessary party in the present case for the determination of the rights of the parties. The action which may arise from said article, in the case of an unlawful partnership, is that for the recovery of the amounts paid in by the members from those in charge of the administration of said partnership, and it is not necessary for the said partners to base their action on the existence of the partnership, but on the fact of having contributed some money to the partnership

capital. And hence, the charitable institutions of the domicile of the partnership, and in default thereof, those of the province are not necessary parties in this case. The article cited above permits no action for the purpose of obtaining the earnings made by the unlawful partnership, during its existence as a result of the business in which it was engaged, because, for that purpose, as Manresa remarks, the partner will have to base his action upon the partnership contract, which is null and without legal existence by reason of its unlawful object; and it is self-evident that what does not exist cannot be a cause of action. Hence, paragraph 2 of the same article provides that when the dissolution of an unlawful partnership is decreed, the profits cannot inure to the benefit of the partners, but must be given to some charitable institution.

We deem it pertinent to quote Manresa's commentaries on article 1666 at length, as a clear explanation of the scope and spirit of the provision of the Civil Code with which we are concerned. Commenting on said article, Manresa, among other things says:

"When the subscriptions of the members have been paid to the management of the partnership, and employed by the latter in transactions consistent with the purposes of the partnership may the former demand the return or reimbursement thereof from the manager or administrator withholding them?

"Apropos of this, it is asserted: If the partnership has had no valid existence, if it is considered juridically nonexistent, the contract entered into can have no legal effect; and in that case, how can it give rise to an action in favor of the partners to judicially demand from the manager or administrator of the partnership capital, each one's contribution ?

"The authors discuss this point at great length; but Ricci decides the matter quite clearly, dispelling all doubts thereon. He holds that the partner who limits himself to demanding only the amount contributed by him need not resort to the partnership contract on which to base his claim or action. And, he adds in explanation, that the partner makes his contribution, which passes to the managing partner for the purpose of carrying on the business or industry which is the object of the partnership; or, in other words, to breathe the breath of life into a partnership contract with an object forbidden by the law. And as said contract does not exist in the eyes of the law, the purpose for which the contribution was made has not come into existence, and the administrator of the partnership holding said contribution retains what belongs to others, without any consideration; for which reason he is bound to return it, and he who has paid in his share is entitled to recover it.

"But this is not the case with regard to profits earned in the course of the partnership, because they do not constitute or represent the partner's contribution but are the result of the industry, business, or speculation, which is the object of the partnership; and, therefore, in order to demand the proportional part of said profits, the partner would have to base his action on the contract, which is null and void, since this partition or distribution of the profits is one of the juridical effects thereof. Wherefore, considering this contract as non-existent, by reason of its illicit object, it cannot give rise to the necessary action, which must be the basis of the judicial complaint. Furthermore, it would be immoral and unjust for the law to permit a profit from an industry prohibited by it.

"Hence, the distinction made in the second paragraph of this article of our Code, providing that the profits obtained by unlawful means shall not enrich the partners, but shall, upon the dissolution of the partnership, be given to the charitable institutions of the domicile of the partnership, or, in default of such, to those of the province.

"This is a new rule, unprecedented in our law, introduced to supply an obvious deficiency of the former law, which did not prescribe the purpose to which those profits denied to the partners were to be applied, nor state what was to be done with them.

"The profits are so applied, and not the individual contributions, because this would be an excessive and unjust sanction for, as we have seen, there is no reason, in such a case, for depriving the partner of the portion of the

capital that he contributed, the circumstances of the two cases being entirely different.

"Our Code does not state whether, upon the dissolution of the unlawful partnership, the amounts contributed are to be returned to the partners, because it only deals with the disposition of the profits; but the fact that said contributions are not included in the disposal prescribed for said profits, shows that in consequence of said exclusion, the general rules of law must be followed, and hence, the partners must be reimbursed the amount of their respective contributions. Any other solution would be immoral, and the law will not consent to the latter remaining in the possession of the manager or administrator who has refused to return them, by denying to the partners the action to demand them." (Manresa, Commentaries on the Spanish Civil Code, vol. XI, pp. 262-264.)

The judgment appealed from, being in accordance with law, should be, as it is hereby, affirmed with costs against the appellants; provided, however, that the defendants shall pay the legal interest on the sum of P24,607.80 from the date of the decision of the court, and provided, further, that the defendants shall deposit these sums of money and other documents evidencing uncollected credits in the office of the clerk of the trial court, in order that said court may distribute them among the members of said association, upon being duly identified in the manner it may deem proper. So ordered,

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

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