

DUHART FRERES Y CIE., PLAINTIFF AND APPELLEE, VS. ERNESTO MACIAS Y CONTADOR AND E. MACIAS COMMISSION IMPEX CO., LTD., DEFENDANTS AND APPELLANTS.

G. R. No. 32502. March 18, 1930

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

This appeal taken by the defendants against the judgment of the Court of First Instance of Manila rescinding the contract Exhibit A, sentencing them to pay the plaintiffs P5,919.11 with legal interest thereon from the date of the filing of the complaint, with costs, and in addition, sentencing the defendant Ernesto Macias to render a detailed account of the agency's business, is based upon the following assignment of errors as committed by the court below:

1. The trial court erred in not dissolving the attachment upon the films belonging to the defendants because there never existed any writ of attachment in favor of the present plaintiffs Eugenio Duhart and Pedro Duhart.
2. The trial court erred in declaring that the contract Exhibit A or 45 was made by the plaintiffs as managing partners of Duhart Freres & Cie., and in not declaring that said contract was made by and in the name of the partnership Duhart Freres & Cie.
3. The trial court erred in declaring that the document Exhibit A was a contract of agency and in ordering its rescission, and in not declaring that said document was a partnership contract of joint account.
4. The trial, court erred in sentencing the defendants to pay to the plaintiffs the sum of P5,919.11, with legal interest from the date the claim was entered.
5. The trial court erred in not declaring that the plaintiffs had violated the terms of the contract Exhibit A.
6. The trial court erred in ordering the defendants to pay to the plaintiffs the sum of P5,919.11 plus legal interest, and in ordering at the same time that the defendants render an accounting of the business of the partnership.
7. The trial court erred in dismissing the counterclaim of the defendants for damages suffered by them, and in not declaring that inasmuch as contract Exhibit 45 or A had been rescinded, the plaintiffs were under the obligation of paying back to the defendants all the capital invested by the defendant Ernesto Macias in the business of the partnership E. Macias Com. Impex Co., Ltd.
8. The trial court erred in dismissing the motion for a new trial requested by the defendants.

The change made in the names of the plaintiffs by the amended complaint filed on October 14, 1927, substituting for the partnership "Duhart Freres & Cie.," the names of Pedro Duhart and Eugenio Duhart, who according to said amended complaint are the sole collective partners, and the managing partners according to the evidence, does not constitute a substantial alteration of the party plaintiff, and does not affect the validity and legal force of the attachment of the defendants' property, issued in favor of said "Duhart Freres & Cie.," upon a prior complaint,

which writ still subsists as well in favor of the original plaintiff "Duhart Freres & Cie." as for the same entity in the persons of its own sole collective partners, the plaintiffs Pedro Duhart and Eugenio Duhart. Whenever it happens, as in the instant case, that there is no real change of party plaintiff, the writ of attachment issued in favor of said plaintiff as an entity, remains unchanged and in its full original force, and there is no necessity for issuing another in favor of such as may later appear in the cause as plaintiffs, so long as they are to all intents and purposes the same party plaintiff or its successors-in-interest. The alteration thus introduced into the complaint does not amount to a real change in the party plaintiff. Furthermore, this question has already been decided by this court against the defendants herein in the certiorari proceedings instituted by them in January, 1928, G. R. No. 28895.[1]

The appellants contend that as the plaintiffs subscribed the contract Exhibit A on behalf of the partnership "Duhart Freres & Cie.," they cannot now sue in their own behalf, and the instant action must be instituted by the partnership. It was so done in the beginning, but said defendant having demurred, and the court sustained their demurrer, the complaint had to be amended, naming the collective partners as plaintiff instead of the partnership itself. From the allegations and the evidence, it appears that the instant action shall be deemed to have been brought by the present plaintiffs in favor of the original plaintiff, the, partnership "Duhart Freres & Cie." It is to be noted that the present plaintiffs, in executing and signing the contract Exhibit A, did so, according to its own terms, "as partners of the firm 'Duhart Freres & Cie.' doing business in the aforementioned city" At any rate, the defendant, Ernesto Macias, who, in Exhibit A, contracted with the plaintiffs, cannot now gainsay their right to bring this suit as partners of said firm. As to the defendant "E. Macias Commission Impex Co., Ltd.," the parties entered into an agreement in contract Exhibit A (Clause V) as an agency under said commercial name, and it appears from paragraph 2 of the fifth special defense of the defendants that said defendant is an agency created and organized in the Philippines by virtue of said contract Exhibit A. The defendants come under the doctrine laid down by this court in *Strachan & MacMurray vs. Emaldi* (22 Phil., 295).

There is no merit in the assertion that the contract evidenced by instrument Exhibit A, is a joint-account partnership contract. We are not concerned with an accidental association confined to definite transactions, being thus free from any solemnity in its formation (art. 240, Code of Commerce; *Mercantile Law*, Carreras, p. 300, 3d edition), nor did they in the contract agree upon any capital, or that Ernesto Macias subscribed or would contribute a part of said capital (art. 239, Code of Commerce). On the contrary, it is plainly stated in said contract that the main purpose is the opening of an "agency," a word and an idea, repeated and explained throughout the instrument as signifying, a commercial agency. And notwithstanding the wide sphere of action granted to said agency, which, however, does not render it any the less an agency, the parties agreed upon a limit, until further stipulation, as may be seen in clause VIII of the contract, namely, "commissions," which are one of the kinds of a commercial agency, specifically so called in article 244 of the Code of Commerce.

We see no sufficient reason for holding that the plaintiffs violated the contract, and therefore, we find no error in the judgment appealed from ordering the dismissal of the defendants' counterclaim.

It appears of record that the defendant Ernesto Macias violated clauses VIII, XI, XII, and XIII of the contract, for it has been established that if he did open a banking: credit for fifty per centum of the value of his orders, which were not paid, he neither paid for the credit, nor sent a monthly statement, nor kept accounts, nor forwarded to the plaintiffs a balance and semestral inventory. All of which gives the plaintiffs a right to rescind the contract as agreed upon in clause XIX thereof.

As to the amount awarded to the plaintiffs, we find no reason in these proceedings to depart from the lower court's findings in this matter.

With regard to the order that defendant Macias render a detailed account to the plaintiffs of the business of said agency, as prayed for in the complaint, we deem it justified. It is simply the consequence of the rescission of the contract of agency, also decreed by the court below. Every agent must give an account of his operations, a general principle expressly laid down in article 1720 of the Civil Code. It is no obstacle to this order to render accounts that a sum of money has been adjudged to the plaintiffs, or that the defendants' counterclaim has been dismissed. Both the claim of said sum and the counterclaim are questions raised and submitted by the parties to the court, which, in view of the evidence, had to decide and did in fact decide, and it has not been shown that they represent all the transactions between the parties or all the operations of the agency.

The appeal being without merit, we affirm the judgment appealed from, with costs against the defendants. So ordered.

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

[1] Macias vs. Revilla, decided by resolution of January 14, 1928.

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