

TAN SENGUAN & CO., PLAINTIFF AND APPELLANT, VS. THE COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLEE.*G.R. No. 33196. December 19, 1930*

Ponente: JOHNS, J.

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body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; }

It is admitted that the original articles of copartnership of the plaintiff were duly registered in the mercantile registry on the 24th of August, 1914, and that its amended articles were also registered on the 9th of June, 1917, at which time the capital of the partnership was P200,000, of which Tan Senguan was then the owner of P75,000. That in the year 1923 Tan Senguan withdrew P70,000 from the partnership, which reduced his share to P5,000, and that in the same year Tan Chuan Hui withdrew all of his P10,000 thereby reducing the capital of the partnership to P120,000. That both of such withdrawals were approved by the partnership and duly annotated in the mercantile registry. That in the year 1926, one Tan Kim Pue became a partner and contributed P53,187.33 to the partnership, which was also approved by the other partners, which was duly annotated on the books of the partnership, but was not recorded in the mercantile registry. The question is thus squarely presented as to whether, for the purpose of taxation, the admission of Tan Kim Pue in 1926 as a new member in the old partnership legally operates as a dissolution of the old firm and the creation of a new partnership which, it is admitted, was not registered.

Article 25 of the Code of Commerce is as follows:

"There shall also be recorded in the registry all resolutions or acts which affect the increase or decrease in the capital of mercantile associations, whatever may be their denomination, and those which modify or alter the conditions of the recorded instrument.

"The omission of this requisite shall produce the effects mentioned in the foregoing article."

This clearly implies that, for a registered partnership to maintain its status as such, it is necessary that all its acts and resolutions, changing its membership and capital, should be recorded, so that the public in dealing with the partnership may be fully advised as to the names of the partners and the capital stock of the partnership. If the partnership may change its capital stock or its personnel of its own volition without the making of a corresponding record in the mercantile registry of such changes, the persons with whom it does business would then be misled and deceived as to the personnel and capital stock of the partnership. The purpose of the law is to exempt from such taxation a partnership which has its articles of copartnership duly registered in the mercantile registry, and to require the payment of the tax of a copartnership which does not have its articles of copartnership duly registered in the mercantile registry, and it is the policy of the law to encourage a copartnership to have its articles duly

registered in the mercantile registry, so that the public may know the names of the partners and the capital stock of the partnership, and the amount of stock of each partner. To permit changes in the capital stock and personnel of a registered partnership at the whim and volition of its members, without recording the changes in the mercantile registry, would in legal effect nullify the purpose and intent of the law.

As the lower court well says:

"The law is clear that unregistered concerns must pay income taxes as entities, while registered ones do not. The law was adopted for the very purpose of encouraging registration of partnerships. The courts would render poor service to the business community, if they did not strictly enforce the law."

The making of such changes in the official records is easy and simple and would avoid' the tax in question.

The judgment of the lower court is affirmed, with costs. So ordered.

Johnson, Malcolm, Ostrand and Romualdez, JJ., concur.

DISSENTING

Street, J., with whom concur Villamor and Villa-Real, JJ.:

The bringing of new capital into a registered general partnership by the admission of a new member, and the withdrawal therefrom of the capital pertaining to one or more of the original partners therein are undoubtedly acts that modify the conditions of partnership. These acts should, therefore, be recorded in the mercantile registry, in conformity with the requirement of article 25 of the Code of Commerce. But the omission to effect the notation of these acts in the registry does not, in the opinion of the undersigned, have the effect of destroying the status of the partnership as a registered partnership and of converting it into an unregistered partnership. The reason for this is found in the second paragraph of article 25, in relation with article 24 of the same Code, which, taken together, define the effect of the omission, and the dissolution, or destruction, of the partnership is not the effect there attributed to it. Said two provisions declare in substance that the omission to record resolutions or acts of the character mentioned shall be this, namely, that, while binding on the members of the partnership who participated in the execution of such acts, they shall not prejudice third persons, who, however, may make use thereof in so far as advantageous. This definition plainly excludes the idea of dissolution as a consequence of the omission to make the necessary notation in the registry.

The opinion of the court apparently proceeds upon the idea, familiar to common law, that changes in the personnel of a partnership result in the formation of an entirely new partnership. But the partnership, according to the conception of the common law, is not a legal entity; while a registered partnership under the civil law is a distinct legal entity. The rules relating to common law partnerships should not be applied in this jurisdiction with the effect of abrogating express provisions of our Code of Commerce.

It was, therefore, an error on the part of the trial court to treat the partnership entity Tan Senguan & Co. as an unregistered partnership, with the result of imposing upon it the taxes which were paid under protest in this case. The judgment, in the opinion of the undersigned, should be reversed; and the plaintiff should be permitted to recover the taxes improperly collected from it.

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