

E. WALCH, ASSIGNEE OF THE INSOLVENT ESTATE OF LIM HAI TAO (ALIAS GUAN HOO), PLAINTIFF AND APPELLANT, VS. LIM CHAY SENG, DEFENDANT AND APPELLEE.*G.R. No. 37160, March 02, 1933*

Ponente: HULL, J.

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On December 26, 1923, a limited copartnership was formed between Lim Hai Tao and the defendant Lim Chay Seng under the firm name of Lim Hai Tao, S. en C, and doing business under the Chinese name of Guan Hoo, which "partnership was duly registered in the Bureau of Commerce and Industry on January 2, 1924. According to its articles the general partner was Lim Hai Tao with a capital of P20,000 and the limited partner was Lim Chay Seng with a capital of P40,000, thereby making the sum of P60,000 as the total capital of the partnership. The term of the partnership was for an indefinite period, but it could be dissolved by agreement of both parties. Lim Hai Tao was the manager of the business and Lim Chay Seng had no intervention in its management with the exception of his right to examine the books of the partnership during the first days of January of each year.

According to the balance sheet of the partnership for the year ending December 31, 1929, which was made on January 5, 1930 and duly signed by Lim Hai Tao, its assets amounted to P130,723.14 after reducing 45 per cent from its collectible credits, while its obligations totalled P94,435.43. In pursuance with the same balance sheet, the participation of Lim Chay Seng in the capital of the partnership was P24,191.81 while his credit against the partnership was P6,937.46.

At the beginning of January, 1930, one Liong Kee Ho proposed to buy Lim Chay Seng's participation in the business of the partnership. So on January 6, 1930, a written agreement was entered into by and between Lim Hai Tao and Lim Chay Seng by virtue of which the latter retired and separated from the partnership effective on the same date, which agreement was likewise duly filed for registry in the Bureau of Commerce and Industry on January 9, 1930. Before the execution of this agreement of separation, Liong Kee Ho delivered to Lim Hai Tao the sum of P31,129.27 to be paid to Lim Chay Seng as purchase price of his participation in the business of the partnership. This transaction appears in the books of the partnership as a loan, but this circumstance was explained by Lim Chay Seng in that at the time of the delivery of the money to Lim Hai Tao by Liong Kee Ho, the deed of separation had not yet been formally executed. But when said deed was made, the aforesaid sum of P31,129.27 was paid to Lim Chay Seng on the same day, January 6, 1930. Of this amount, P24,191.81 corresponded to the participation of Lim Chay Seng in the partnership capital and P6,937.36 to his credit against the partnership. This transaction likewise appears in the books of the partnership.

On June 14, 1930; an insolvency proceeding was instituted in the Court of First Instance of Manila by his creditors named Menzi & Co., Inc., Otto Gmur, Inc., and Pacific Commercial Co., all of whom were duly represented by Attorney Simeon R. Cruz, against Lim Hai Tao, "doing Jbusiness individually and under the name and style of Guan Hoo & Co." Lim Hai Tao was duly adjudged insolvent by the court and the plaintiff, E. Walch,

was elected by the creditors as assignee of the insolvent estate. Plaintiff herein, in his aforesaid capacity as assignee of the insolvent estate of Lim Hai Tao (alias Guan Hoo), has sued the defendant Lim Chay Seng for the purpose of recovering from him the sum of P24,191.81 which was part of the money paid to him by Liong Kee Ho for his participation in the business of the partnership Lim Hai Tao, S. en C. (alias Guan Hoo). Plaintiff predicates his case on the theory that the payment of the aforesaid sum to Lim Chay Seng was in fraud of the creditors of both the partnership and Lim Hai Tao. To this complaint, the defendant Lim Chay Seng interposed several defenses.

After trial in the Court of First Instance of Manila judgment was rendered in favor of defendant. Plaintiff duly excepted, moved for new trial, and upon said motion being denied excepted and perfected this appeal.

The principal defenses relied upon by appellee are the facts that the copartnership has never been declared insolvent, that the transactions of the present creditors were actually with the individual Lim Hai Tao instead of with the copartnership, and that as the money which the defendant received was paid in by a third party for defendant's interest in the copartnership the assets of the copartnership suffered no diminution and therefore the creditors of the firm were not injuriously affected by that transaction.

The trial court based its decision on the first and second grounds. The second ground is more a question of fact than of law and a proper exposition of the question would require a lengthy opinion. No matter what conclusion we might reach on the second defense, we are convinced that recovery can not be had in view of the first and third defenses above-mentioned. The judgment appealed from is therefore affirmed with costs against the appellant. So ordered.

Villamor, Villa-Real, Vickers, and Imperial, JJ., concur.

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