

TOMAS SUNICO, EXECUTOR OF THE ESTATE OF TELESFORO CHUIDIAN, PLAINTIFF AND APPELLANT, VS. FRANCISCO CHUIDIAN, DEFENDANT AND APPELLEE;*G.R. No. 3802 and 3804. January 17, 1908*

Ponente: CARSON, J.

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On the 6th of November, 1903, Tomas Sunico, executor under the will of Telesforo Chuidian, deceased, filed a complaint against Francisco Chuidian, in an action bearing the register number 2231, in which he alleged that the said Francisco Chuidian in the years 1902 and 1903 received of the said Telesforo Chuidian various sums amounting to 8,040.78 pesos, Mexican currency, which the said Francisco Chuidian obligated himself to pay with interest at the rate of 8 per cent per annum; that the said money was due and payable, and that the accumulated interest thereon up to the time of the filing of the complaint amounted to 1,195.25 pesos, Mexican currency.

Francisco Chuidian filed a general denial, and at the same time prayed that this action be united (acumulado) with a pending action bearing register number 2759, wherein Francisco Chuidian was plaintiff, and la testamentariade Telesforo Chuidian, deceased, Tomas Sunico, administrator, and la sociedad Chuidian, Buenaventura y Chi., and Enrique de Mercaida, liquidator, defendants; that the prayer of the complaint in this action bearing register number 2759 be treated as a counterclaim in the action bearing register number 2231; and that the appropriate judgment be rendered.

In that complaint it was alleged:

That on the 29th of December, 1882, Telesforo Chuidian, Candelaria Chuidian, Ilaymunda Chuidian, and Mariano Huenaventura executed an instrument in writing wherein they agreed to carry on the partnership (compañía regular colectiva) theretofore conducted under the firm name of Chuidian, Buenaventura y Compañía; that the capital of the said company was fixed at 160,00 pesos, Mexican currency, of which the three partners first above mentioned were to pay 150,000 pesos and the last mentioned 10,000 pesos; that aside from their interest in the capital of the said partnership, each of the said partners had a current account with the society, which was treated as an interestbearing credit against the same, there being due to Telesforo Chuidian 277,595.04 pesos, Mexican currency; to Candelaria Chuidian, 186,551.25 2/8 pesos, Mexican currency; to Raymunda Chuidian, 106,894.412 2/8 pesos, Mexican currency; to Mariano Bunaventura, 96,588.10 5/8 pesos, Mexican currency;

That besides these credits in favor of the individual partners, the said partnership was indebted to the plaintiff in the sum of 24,630.22 pesos, Mexican currency, bearing interest at the rate of 8 per cent per annum; and that in the said articles of partnership the partners had agreed that the credits of the plaintiff and of Jose Chuidian should be preferred to the credits of the different partners in the settlement of the partnership accounts;

That on the 31st of December, 1896, the account of the plaintiff with the society was balanced, showing a balance in favor of the plaintiff amounting to 20,116.00 3/8 pesos, Mexican currency;

That notwithstanding the preference secured to the credit of the plaintiff, the partners had withdrawn from their respective accounts-current considerable sums in excess of that authorized by the articles of partnership, for the purpose of paying their individual credits;

That early in the year 1902 Telesforo Chuidian died in the city of Manila, and that his estate is in administration in the hands of the defendant Tomas Sunico;

That since the date of the reorganization of the said society it had suffered heavy losses, which, united to the withdrawal of almost the entire individual credits due the partners, left the said society in a state of complete insolvency, and this notwithstanding that the capital of 160,000 pesos, Mexican currency, appears to be intact;

That the plaintiff has fruitlessly demanded payment of the said partnership; and that he presented his claim in due time to the commission appointed to hear claims against the estate of the said Telesforo Chuidian, deceased; that the claim had been rejected by the said commission; and that the plaintiff had appealed in due time from this ruling of the commission.

That the precise amount due at the date of the demand amounted to 32,053.73 pesos, Mexican currency.

The defendant partnership, replying to this complaint, set up in special defense the contention that the right of the plaintiff to recover the debt due him was postponed to the right of the outside creditors to be paid the debts due them amounting to 17,431.06 $\frac{2}{8}$ pesos, Mexican currency; that on the 25th of April, 1901, at the request of the plaintiff, the sum of 14,000 pesos, Mexican currency, which appeared in his current account, was transferred to Jose Chuidian; and that on the 20th of June, 1904, the date when the complaint was filed, the current account of the plaintiff amounted only to 14,619.74 $\frac{3}{8}$ pesos, Mexican currency.

The executor of the estate of Telesforo Chuidian, in his separate answer, alleged that the responsibility of the partners in the said partnership was limited to their share in the capital therein, because clause 19 of the articles of partnership prescribes that upon the dissolution of the partnership, outside creditors other than the said Francisco Chuidian and his brother Jose Chuidian should first be paid; that the indebtedness to outside creditors amounted to 17,431.06 $\frac{2}{8}$ pesos, Mexican currency; that the said partnership was in course of liquidation not yet terminated, and that, as a consequence thereof, the responsibility of the various partners could not as yet be fixed; that the said partnership never had been declared insolvent; and that, on the contrary, the said society had goods, real estate, and credits, to the value of 585,256.56 $\frac{7}{8}$ pesos, Mexican currency, upon which execution had never been levied.

On the 12th day of December, 1904, the trial court without objection directed that the said actions be united (acumulados), and on the 3d day of November, 1906, rendered judgment as follows:

"Let judgment be entered in favor of Tomas Sunico as administrator of the estate of Telesforo Chuidian, deceased, plaintiff in case No. 2231, and against the defendant Francisco Chuidian, for the sum of \$9,236.03, Mexican currency, equivalent to 9,236.03, Philippine currency, with interest thereon at the rate of 8 per cent per annum since March 23, 1904, and the costs of the action.

"Execution will not issue hereon until the partnership of Chuidian, Buenaventura & Co. has been liquidated, and the defendant's claim as hereinbefore found satisfied, and in case it is not satisfied any balance appearing unsatisfied may be offset against this judgment, and for judgment dismissing the said Francisco Chuidian's claim against said estate, subject to the foregoing findings.

"And let judgment be entered in favor of Francisco Chuidian against Enrique de Marcaida, as liquidator of the partnership of Chuidian, Buenaventura & Co., for the sum of 13,413.58, Mexican currency, equivalent to the sum of 13,413.58, Philippine currency, with interest thereon at the rate of 8 per cent per annum since April 5, 1901, and the costs of the action."

From this judgment the plaintiff Tomas Sunico, executor of the estate of Telesforo Chuidian appealed, and filed his assignments of error as follows:

First, the trial court erred in holding in its decision that the sum of 9,230 pesos, Mexican currency, with interest at the rate of 8 per cent from the 23d of March, 1904, until paid, which was adjudged in favor of the estate of the said Telesforo Chuidian, should not be executed until the day Francisco Chuidian should have been paid the amount indebted to him;

Second, the trial court erred in holding that the said Francisco Chuidian was entitled to recover the sum of 13,413.58 pesos, Mexican currency, with interest at the rate of 8 per cent per annum from the 5th of April, 1901;

Third, the trial court erred in holding that the members of the partnership Chuidian, Buenaventura y Cia. were jointly and severally responsible for the said debt.

In support of the first assignment of error, it is contended that the trial court erred in permitting the separate actions of Tomas Sunico, executor of the estate of Telesforo Chuidian, vs. Francisco Chuidian, and of Francisco Chuidian vs. The Estate of Telesforo Chuidian et al, to be united (acumulados), and in treating the complaint in the latter action as an answer setting up a counterclaim in the former action. It is sufficient answer to this contention to say that no objection was made on this ground in the court below, and appellant can not be heard to urge it for the first time on appeal.

In support of the first assignment of error as well as of the third, it is said that the appellee was not entitled to judgment against the appellant, an individual member of the partnership, in the same action in which judgment was rendered against the partnership itself, because under the provisions of article 237 of the Code of Commerce execution will not issue on the individual property of partners (of a *compañía colectiva*) until the partnership property has been exhausted.

But article 127 of the Code of Commerce provides that—

"All the members of the general copartnership, be they or be they not managing partners of the same, are personally and jointly liable with all their property for the results of the transactions made in the name and for the account of the partnership, * * *."

And article 1144 of the Civil Code provides that—

"A creditor may sue any of the joint debtors or all of them simultaneously * * *."

These provisions clearly establish the right of a creditor of the partnership (*compañía colectiva*) to bring his action against the individual partners and the partnership at the same time; and this right is not taken away by the provisions of article 237 of the Code of Commerce, because the rights secured therein can be and should be recognized and protected in the judgment. (*La Compania Maritima vs. Munoz*.^[1]) In the case at bar the provision for the suspension of execution on appellant's judgment, and its satisfaction from the amount which the appellee's participation in the proceeds of the liquidation of the partnership assets shall be found to fall short of the total amount for which judgment is allowed him against the partnership, seem to afford an eminently practical recognition and mode of preservation of the rights of both parties, and should not be disturbed.

It is contended, however, that the above-cited provisions of the Code of Commerce and the Civil Code are not applicable in this case because, as it is alleged, the partnership in question was not a *compañía colectiva*, and clause 19 of the articles of partnership expressly limits the responsibility of the partners to the amount of the capital invested in the partnership. Appellant insists that since one of the conditions of a *compañía colectiva* is that all its members are bound (responsible) personal y solidariamente (individually and jointly) for its

obligations, and since the said clause in the articles of partnership expressly provides that the partners shall not be thus responsible for its obligations, this partnership can not be held to be a *compañia colectiva* as defined in the Code of Commerce. We do not think, however, that this is a necessary consequence flowing from the insertion of this provision in the articles of partnership. On the contrary, we are of opinion that if it be found on examination that in all other respects the partnership is a *compañia colectiva* as defined by the Code of Commerce, this clause of the articles of partnership must be held to be absolutely null and void, so far as it affects third persons, being in manifest conflict with the provisions of the said article 127 of the code. Article 117 of the Code of Commerce expressly provides that whatever be the form in which the articles of partnership are executed, if they comply with the legal requisites, the lawful and honest conditions thereof shall be valid and obligatory, but only in so far as they are not expressly prohibited in that code. Clearly, a condition which attempts to relieve the partners of a responsibility expressly imposed by law for the protection and security of third persons dealing with the partnership is prohibited, and is therefore invalid and of no effect so far as it affects them.

Article 116 of the Code of Commerce defines mercantile partnership as follows:

"Articles of association by which two or more persons obligate themselves to place in a common fund any property, industry, or any of these things, in order to obtain profit, shall be commercial, no matter what the class may be, provided the association has been established in accordance with the provisions of this code.

* * * * *

Article 125 of the Code of Commerce is as follows:

"The articles of general copartnership must state :

"The names, surnames, and domiciles of the partners.

"The firm name.

"The names and surnames of the partners to whom the management of the firm and the use of its signature is intrusted.

"The capital which each partner contributes in cash, credits, or property, stating the value given the latter or the basis on which their appraisalment is to be made.

"The duration of the copartnership.

"The amounts which, in a proper case, are to be given to each managing partner annually for his private expenses.

"There may be also included in the articles the other legal agreements and special conditions which the partners may wish to make."

Article 122 of the Code of Commerce classifies mercantile partnerships as follows:

"As a general rule commercial associations shall be established by the adoption of any of the following forms:

"1. The regular general copartnership in which all the partners, under a collective and commercial name, bind themselves to participate, in the proportion which may be established, in the same rights and obligations.

"2. The limited copartnership to which one or more persons contribute a specific amount of capital to a common fund, in order to be liable for the social transactions executed exclusively by others under a collective name.

"3. The corporation, in which the members form the common fund by means of specific parts or portions,

represented by shares or in any other unquestionable manner leaving its management to removable managers or administrators, who represent the company under an appropriate denomination according to the purpose or undertaking the funds are destined to."

The partnership in question was undoubtedly a mercantile partnership as defined in article 116; the articles of partnership strictly comply with all the requirements prescribed in article 125; and the partnership manifestly does not fall under the head of compañías comanditarias or compañías anonimas as set out in article 122, while it does clearly come under the definition of a compania regular colectira, as set out therein. There can be no doubt therefore that the partnership in question is a compañía colectiva as defined in the mercantile code, and that clause 5, in so far at least as it affects third persons, is invalid and of no effect.

The second assignment of error is based on two grounds:

First, that under one of the clauses of the articles of partnership it was agreed that payment of the amount due the plaintiff should not be made until certain other debts had been paid, and that these debts have not yet been paid. This article is as follows:

"Upon the dissolution of the company the corporate capital shall be distributed as follows: After payment of outstanding obligations in favor of persons foreign to the society, the capital falling to the share of the minors Jose de Marcaida y Chuidian and Francisco Chuidian will be deducted together with interest at the rate of 8 per cent per annum, the latter to be credited in current account."

It does not appear, however, that the plaintiff was a member of said partnership, or that he ever agreed to this clause of the articles of partnership. On the contrary, it expressly appears from an examination of the said articles that he took no part therein, that he was not a partner, and that the debt due him stands on the same footing as any other indebtedness of the company, except that it is expressly recognized in the said articles. Under the circumstances the plaintiff is not and can not be bound by the provisions of the articles of partnership relied upon by the appellants nor can they have the effect of postponing his right of recovery, as contended by the appellant.

The second ground upon which this assignment of error is based is an alleged error in the calculation of principal and interest of the debt due the plaintiff. On examination of the judgment we find no error to the prejudice of the appellant in the statement of the account by the trial judge, though it is true that by mistake a certain item of the account is treated as of the 5th of April when it should have been entered as of the 25th of April. This error, however, in no wise prejudices the rights of the appellant, nor does it necessitate the modification of the judgment rendered in the court below.

The judgment of the trial court should be, and is hereby, affirmed with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Willard, and Tracey, JJ., concur.

[1] Page 326, supra.

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