

LUIS MA. ROBLES, PLAINTIFF AND APPELLEE, VS. PARDO Y ROBLES HERMANOS, ANTONIA CECILIO VIUDA DE PARDO, MANUEL PARDO, ANTONIA L. PARDO, AND CONCEPCION ROBLES DE COSTOSA, THIS LATT...

G. R. No. 38765. February 12, 1934

Ponente: HULL, J.

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HULL, J.:

Plaintiff for many years was a partner of the commercial firm of Pardo y Robles Hermanos. In the articles of co-partnership was a provision that when one of the partners desired to withdraw from the partnership and the remaining partners desired to continue the partnership, the withdrawing partner must give notice in writing, and the firm would have three years in which to pay his share or interest therein.

In compliance with this provision, on October 1, 1927, the herein plaintiff-appellee gave notice to the partnership, as well as to all the individual members thereof, of his desire to separate therefrom.

On January 28, 1930, plaintiff's share or interest in the firm was liquidated and found to be P80,000 and the method of payment was agreed upon as set forth in Exhibit B. Later, the form of payment was changed as shown by Exhibit E. Payments not having been made, this suit was duly brought, and after trial, judgment was given for plaintiff, and defendants bring this appeal.

It is claimed that the settlement of January 28, 1930, was not a final settlement but was contingent upon securing a loan. This is based upon the fact that the managing partner was authorized at the same meeting where the share of plaintiff was determined, to negotiate a loan if possible: But the value of plaintiff's interest in the partnership was not contingent upon whether the loan was secured or not. The securing of the loan might have made it easier for the partnership to liquidate the share of the retiring partner, but his rights as of that date were not contingent upon the future action of the partnership. Nor would he have to wait three years after the settlement then made before he was entitled to payment, which would mean an amendment to the articles of incorporation that a partner could not enforce liquidation of his account for six years. His right of action accrued as provided for in the contract. Nor is Exhibit E invalid because one of the defendants signed it "Salvo mi opinion". Nor would such a statement relieve the signer from his responsibility, which had become fixed on January 28, 1930.

It is also contended on the part of defendants that plaintiff was not entitled to recover until all the debts and obligations of the partnership had been paid off. The remaining partners have little right to advance such a contention. If there was a withdrawal with the intent to defraud any existing creditors, another question would be presented, but no such allegation is here made. Certainly, a withdrawing partner is not liable for debts and obligations of the partnership after he has ceased to be a member of the partnership and has only the position of a creditor.

Certain of the defendants claim that the proceedings must be set aside as Manuel Pardo, now deceased,

represented not only himself and the company of which he was general manager, but other defendants. It now appears that Manuel Pardo was authorized to practice in Spain but had never been admitted to practice in this country. Of course he had a right to represent himself and probably his right to represent the partnership while he was managing director would not be questioned.

As to the other defendants who at this late date are questioning his right to represent them in court, it must be noted that they were all duly served, that their interests were identical, that they were related one to the other and virtually lived together, and it is inconceivable that Manuel Pardo represented them without their knowledge and consent. If he did not, they were in such flagrant default that they have no right to complain of the proceedings. Had the facts been known, plaintiff or the court could have objected to Manuel Pardo's representing the other defendants, although it is very probable under the circumstances of the entire case that the court upon motion might have approved of his appearance in this one proceeding as an act of professional courtesy to a member of the bar of a friendly country.

The present contention of some of the defendants that they at all times had a right to have served on them individually a copy of all motions and decisions of the trial court, is entirely without foundation. They received summons and they had a right to appear in court if they saw fit. They did appear in court in a possibly irregular way, but they cannot take advantage of their own action to defeat or thwart the legal rights of plaintiff-appellee.

The judgment appealed from is therefore affirmed with costs against appellants. So ordered.

Malcolm, Villa-Real, Imperial, and Goddard, JJ., concur.

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