

PAULINO ACOSTA, PLAINTIFF AND APPELLEE, VS. NICOLAS LLACUNA AND PABLO ARELLANO, DEFENDANTS AND APPELLANTS.

G. R. No. 40008. February 21, 1934

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is an action brought by the plaintiff to recover from the defendant Pablo Arellano the sum of P3,000, to require him to render an accounting of the lumber business in which both were partners, and to pay him his share of the profits thereof. The other defendant was included as Arellano's surety, and judgment for the sum of P3,000 has been sought against him in case Arellano should prove to be insolvent.

The defendants appealed from the judgment rendered by the Court of First Instance of Ilocos Norte ordering Arellano to pay to the plaintiff the sum of P3,067.10, with legal interest thereon from the filing of the complaint, and the costs, and the surety Nicolas Llacuna to pay, in case of Arellano's insolvency, the sum of P3,000 with interest thereon.

The parties entered into the following written stipulation of facts:

"1. That on March 6, 1927, the plaintiff Paulino Acosta and the defendant Pablo Arellano, by means of public instrument formed a partnership for the purpose of engaging in the purchase and sale of lumber of various kinds in the Province of Ilocos Norte, Philippine Islands, with a capital of P3,000, contributed by the plaintiff as capitalist partner, the defendant Pablo Arellano being an industrial partner and the other defendant as surety for the latter, as evidenced by said instrument hereto attached, and which is acknowledged by the parties as the instrument executed by them.

"2. That the term for which said partnership was to exist has not been fixed.

"3. That upon the organization of the partnership, the partners agreed: (a) That the defendant Pablo Arellano, as industrial partner with the necessary bond, would be the manager thereof, in the understanding that he should invest the capital in the acquisition and sale of Philippine lumber, without any intervention on the part of the plaintiff as to the price thereof, which was entirely left to Pablo Arellano's discretion; (b) that the defendant Pablo Arellano should submit a liquidation of accounts at the end of every month in order to show the number of cubic meters of lumber sold during the preceding month; (c) that the plaintiff would be entitled to the sum of P5 as his profit on every cubic meter of lumber sold, irrespective of the price at which it was disposed of.

"4. That the said capital of P3,000 has been invested by the defendant Pablo Arellano, as manager of the partnership, in the acquisition for said partnership of one hundred, cubic meters of different kinds of lumber and in the transportation thereof from the municipality of Bangui to that of Laoag, Ilocos Norte, which transportation was done by means of trucks and carts prior to April 15, 1927, on which date all the aforesaid one hundred cubic meters of lumber had already been transported, in accordance with the agreement between the plaintiff and the defendant Pablo Arellano contained in the public instrument under which the partnership had been organized.

"5. That the one hundred cubic meters of lumber in question consisted mostly of lumber which the defendant

Pablo Arellano had purchased at public auction in the municipality of Bangui, Ilocos Norte, and that which was cut under License No. 744-D, for cutting timber, issued to Pablo Arellano, as agreed upon at the organization of the partnership in question and evidenced by the public instrument under which it was organized.

"6. That prior to and after the filing of the complaint in the above entitled case, that is, on May 25, 1927, the defendant Pablo Arellano, as manager of the partnership, has been selling lumber from the one hundred cubic meters in question but to date the plaintiff has not yet received his profit of P5 on every cubic meter of lumber sold prior to the filing of the defendant's answer to the complaint of June 18, 1927, due to the said plaintiff's refusal to receive the same when it was offered him by the defendant Pablo Arellano. The latter claims that he has rendered to the plaintiff an accounting of the sales in question before the filing of the answer, while the former, that is the plaintiff, claims that the defendant has not done so.

"Laoag, Ilocos Norte, P. I., October 10, 1931.

(Sgd.) "PABLO ARELLANO

(Sgd.) "PAULINO ACOSTA

(Sgd.) "NICOLASLLACUNA

(Sgd.) "PEDRO L. VALDES

"Attorney for the defendants

(Sgd.) "CONRADO RUBIO

"Attorney for the plaintiff

(Sgd.) "SEVERO HERNANDO

"Attorney for the defendants"

The trial court based its appealed judgment mainly on the contract entered into by the parties on March 6, 1927 (Exhibit A, the Spanish translation of which is Exhibit A-I), the most important clauses of which read as follows:

"1. That I, Paulino Acosta, party of the first part, deliver to Pablo Arellano, party of the second part, the sum of three thousand pesos, Philippine currency, to be used as capital in the cutting of timber purchased by him at public auction in the town of Bangui, Province of Ilocos Norte, and in the cutting of timber under License No. 744-D, all of which timber amount to 100 cubic meters of different kinds; and that said Pablo Arellano shall bring all of such timber to Laoag, Ilocos Norte, until April 15, 1927.

"2. That I shall not charge any interest on the three thousand pesos which I have delivered to said Pablo Arellano but we have agreed that for every cubic meter of said lumber that he may sell, he shall deliver to me the sum of five pesos as my share of the profits thereon. I must not intervene as to the price at which he desires to sell the lumber. That at the end of every month, the number of cubic meters of lumber sold shall be examined and said Pablo Arellano shall deliver to me my share of the profits at the rate of five pesos for every cubic meter, as above stated. That upon refunding to me the capital, I shall be bound to issue a receipt therefor to Pablo Arellano, for his safekeeping, and so on until he shall have refunded to me the total amount of three thousand pesos, which I had delivered to him as capital.

"3. That I, Pablo Arellano, of the second part, agree to and accept all the conditions above stipulated. And for the receipt of the three thousand pesos from Paulino Acosta, I present as my guarantor Nicolas Llacuna, of age and resident of Laoag, Ilocos Norte, who shall be held responsible for the said three thousand pesos in case of my failure to refund the same. We have further agreed that the timber which I shall cut shall not be liable for the capital of three thousand pesos but said amount shall be refunded in cash to Paulino Acosta.

"We, Paulino Acosta and Pablo Arellano, have furthermore agreed that in case I, Pablo Arellano, shall fail to comply with the stipulations of this contract, and in consequence thereof court proceedings shall be instituted, I will be held responsible and will pay all the expenses occasioned thereby together with attorney's fees.

"I, Nicolas Llacuna, likewise aver that I agree and am willing to file a bond in favor of Paulino Acosta for the three thousand pesos which Pablo, Arellano has received from him, and bind myself that all my property described herein below shall be liable upon said Pablo Arellano's failure to comply with the stipulations of this contract."

The appellants assign the following alleged errors, to wit :

"FIRST ERROR

"The lower court erred in holding in its judgment that the concept of partnership, as expressed by the provisions of articles 1665 of the Civil Code and 116 of the Code of Commerce, is entirely in conflict with the terms of the contract in question; in holding that the sum of P3,000 was contributed not as a common fund of a partnership but as a loan to Pablo Arellano (pp. 20 and 21 of the Bill of Exceptions); and in holding as interest the share or profit of P5 on every cubic meter of lumber which may be sold.

"SECOND ERROR

"The lower court erred in not having given weight to the documentary and oral evidence of the defense as well as the evidence presented on the counterclaim.

"THIRD ERROR

"The lower court erred in deciding this case without adjusting its judgment to the legal provisions of the Code of Commerce applicable thereto, in conformity with the stipulation of facts, the amended complaint and the evidence presented; and in not having ordered a previous liquidation of the partnership with the appointment of a commissioner to examine the accounts thereof in order to determine the lawful obligations arising therefrom.

"FOURTH ERROR

"The lower court erred in not giving weight to the evidence on the counterclaim.

"FIFTH ERROR

"The lower court erred in condemning the defendant Pablo Arellano to refund the sum of P3,000 and the defendant Nicolas Llacuna to subsidiarily pay the sum in question, and in ordering both to pay the costs of the proceedings."

In the opinion of this court, the only points raised in this appeal are: (1) The nature of the contract entered into by the parties and the effects thereof upon each of them; (2) the responsibility of the codefendant Nicolas Llacuna, and (3) the tenableness of the defendants' counterclaim.

The court interpreted the nature of the contract entered into by the parties by considering only the terms thereof and absolutely disregarding the stipulation of facts. This court is of the opinion that the best way of interpreting

the contract in question is to abide by the stipulation of facts entered into by the parties because it reflects their true intention. According to the said stipulation, there is no question that the contract executed was one of civil partnership wherein the plaintiff alone contributed the capital of P3,000 and the defendant contributed his industry and was made the manager of the lumber business in which they were engaged. With respect to Llacuna, his intervention was that of a mere surety who answered for the refund to the plaintiff by Arellano of the capital contributed by the former. However, his liability should be determined after the liquidation of the business operations of the partnership. If the partnership failed and the capital was lost in consequence of legitimate business operations, there is not the least doubt but that the surety should not be held liable, even subsidiarily, for the refund of the capital in question. In order to arrive at this state of affairs, it is necessary to make a liquidation of the business, which is one of the remedies prayed for by the plaintiff in his amended complaint.

The trial court dismissed the defendants' counterclaim on the ground that the same has not been established by the evidence. This court is convinced that such conclusion is correct and should not be modified.

Wherefore, the judgment appealed from is hereby partly reversed and the defendant Pablo Arellano is hereby ordered to submit within thirty days a liquidation of the business of the partnership in question and the court shall proceed to approve the same after hearing the parties concerned. If it should appear from the result thereof that the surety, Llacuna, is answerable for any amount of money, the court shall likewise render judgment in conformity with such findings. The appealed judgment is hereby affirmed with respect to the defendants' counterclaim, without special pronouncement as to the costs of this instance. So ordered.

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

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