

WILHELM BAUERMANN, PLAINTIFF AND APPELLEE, VS. MAXIMA CASAS ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 4169. March 14, 1908

Ponente: CARSON, J.

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CARSON, J.:

The plaintiff and Eulalio Carmelo, deceased, were the only partners in a mercantile company (sociedad mercantil regular colectiva) regularly organized under the firm name of Carmelo & Bauermann. Clauses 5, 7, and 16 of the articles of partnership were as follows:

"Fifth. The duration of the partnership shall be for an unlimited period, commencing on the 1st day of January, of this year 1904.

* * * * *

"Seventh. Any one of the two members of the partnership shall be entitled to the use of the firm name and authorized to keep its so called necessary books, and may, therefore, perform in or out of court any act required by the transactions of the partnership, appoint lawyers for the presentation and recovery of outstanding claims, and file before the courts any complaints and exceptions necessary therefor. Neither of them, however, is authorized to make any important decision touching the business of the partnership without first having obtained the consent of the other member. Both members of the partnership shall be charged with the direction, and of the administrative and financial management thereof in the ordinary course of its business.

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"Sixteenth. In case of death of either of the members, the partnership will continue in business with the other surviving partner and Mr. Gustavo Otto, as members in case of the death of Mr. Bauermann, or with the surviving partner and Don Enrique Carmelo, as members, in the event of the death of Don Eulalio Carmelo. In either of the above cases the surviving partner and the representative of the deceased partner may call for a dissolution of the partnership and carry out the liquidation of its business in the manner to be agreed upon by them."

Eulalio Carmelo died on the 25th of March, 1906, leaving a widow, Maxima Casas, one son, Enrique Casas [Enrique Carmelo], by a former wife, and two children by his last wife, all of whom were made parties defendant in this action. On the 26th of November, 1906, the plaintiff filed his complaint alleging that upon the death of Eulalio Carmelo it became necessary, under the articles of partnership, to dissolve the company and liquidate the business; that the defendant, Enrique Carmelo, without any authority therefor, and not being a member of the company, had improperly interfered with the agent in whose hands the management of the company had been intrusted; and that as a consequence, and because of disagreements between the defendant heirs of his former partner, it was impossible to liquidate the company without judicial intervention; wherefore he prayed that an order be entered declaring the company in liquidation, and appointing one Gustavo Otto as liquidator.

The widow, for herself and her two children, filed a separate answer, admitting the allegations of the complaint and praying that the relief sought therein be granted.

Enrique Carmelo, in his separate¹ answer, denied the allegations of the complaint as to the necessity, under the articles of partnership, for the liquidation of the company upon the death of his father, and alleged that in fact the company had not gone into liquidation and had continued in operation with the consent of all parties up to the date of the filing of the complaint. He also filed a cross complaint wherein he alleged that under the articles of partnership he was entitled to be substituted in the place of his father as sole partner with the plaintiff; that the plaintiff has left the Philippines not to return; and prayed—

"That judgment be rendered declaring that, since the death of Eulalio Carmelo y Lacandola, the sole partners of the present regular general partnership, Carmelo & Bauermann, are Enrique Carmelo y Santisteban and Wilhelm Bauermann, the other cross defendants not having any interest therein.

"That the liquidation of the present regular general company, Carmelo & Bauermann, be ordered, in which company the sole partners are Enrique Carmelo y Santisteban and Wilhehn Bauermann.

"That Enrique Carmelo y Santisteban be appointed liquidator of the company, he being the only partner at present residing in Manila.

"That, in addition, any other remedy deemed proper and adequate under the law, be granted the cross plaintiff."

To this cross complaint the plaintiff filed his answer, denying defendants' allegations as to the manner in which the company had been conducted from the time of the death of Eulalio Carmelo up to the time of the filing of the complaint, and alleging that at the time of the death of Eulalio Carmelo, Enrique Carmelo was a minor, and therefore without legal capacity to become a member of the partnership, and that the provisions of the articles of partnership in that regard were, as a consequence, of no force or effect.

The widow for herself and her children, answering the cross complaint, alleged that she and her children had an interest in her deceased husband's participation in the partnership as his heirs, of which they could not be deprived by the articles of partnership, and further that she herself was entitled to an interest in the partnership based on her right to a share of all property acquired during the period of her marriage (bienes gananciales).

Thereafter the plaintiff moved for a judgment on the pleadings, and the court issued the following order:

"This case is before the court for hearing the motion of the plaintiff for the appointment of a liquidator of the partnership existing between him and one Eulalio Carmelo J Lacandola, deceased.

"Mr. Charles C. Cohn appeared in support of the motion; Sr. J. Varela y Calderon appeared in the interest of the defendant Enrique Carmelo; and Sr. Rafael Palma in behalf of the defendants Maxima Casas and the minors Carmen and Alfredo Carmelo.

"It appears from the evidence presented upon the motion that the plaintiff and the deceased Eulalio Carmelo y Lacandola were during the lifetime of the latter engaged in the business of lithography, and that since the death of Eulalio Carmelo y Lacandola the business has been continued, the widow of said Eulalio Carmelo y Lacandola, as administratrix of his estate, operating with the plaintiff, and conducting the business under the management of one Gustavo Otto.

"It further appears that the plaintiff does not wish to continue the operation of the business in partnership and that the interest of the estate of said Eulalio Carmelo y Lacandola will be subserved by the termination of the partnership and the liquidation of its effects, and there being no opposition to the liquidation as prayed for, it is ordered that the present manager, Gustavo Otto, be appointed liquidator of said partnership in connection with the administratrix of the estate of Eulalio Carmelo y Lacandola, the above mentioned Maxima Casas, and that the liquidation be forthwith proceeded with, according to law.

"Manila, P. I., May 1, 1907.

"A. S. CROSSFIELD, Judge."

We think this order must be revoke!, and the case sent back for further proceedings.

One who prays for judgment on the pleadings without offering proof as to the truth of his own allegations, and without giving the opposing party an opportunity to introduce evidence, must be understood to admit the truth of all the material and relevant allegations of the opposing party, and to rest his motion for judgment on those allegations taken together with such of his own as are admitted in the pleadings. (*La Yebana Company vs. Sevilla*,^[1] 5 Off Gaz., 1073.)

Examining the pleadings from this point of view, we do not think that the court was justified in finding as a fact "that since the death of Eulalio Carmelo y Lacandola the business has been continued, the widow of said Eulalio Carmelo y Lacandola, as administratrix of his estate, operating with the plaintiff, and conducting the business under the management of one Gustavo Otto," nor in appointing the said Otto as liquidator of the partnership, "in connection with the administratrix of the estate of Eulalio Carmelo, deceased," thus excluding the defendant Enrique Carmelo from all participation therein, and refusing to recognize his allegation that he alone, to the exclusion of the widow and children, was entitled to be substituted for his father as partner with the plaintiff.

Counsel for appellee contends that the refusal to appoint the appellee as liquidator and the appointment of Gustavo Otto "in connection with" the administratrix, Maxima Casas, was no more than a mere confirmation by the court of the appointee chosen by the interested parties, the plaintiff and the administratrix of "the estate, and that in fact the liquidator had already been appointed when the action was brought. But this is to assume the truth of the very facts denied by the appellant, and to deny the truth of the allegations of his cross complaint which the court was not "authorized to do upon plaintiff's motion for judgment on the pleadings.

Counsel for the appellee contends further that the court properly declined to decide the questions submitted in the cross complaint, because, as he suggests, the court had no jurisdiction to entertain a petition for the intervention of the court in proceedings to liquidate the affairs of the company, except only in case of an appeal interposed under the provisions of article 233 of the Code of Commerce. This contention, if it could be maintained, would be as fatal to the original complaint as to the cross complaint, but we think that, while it is true that the Code of Commerce furnishes an extrajudicial proceeding whereby the members of a company (*colectiva*) may liquidate the affairs of the company, nevertheless where disputes as to rights of membership render this proceeding impracticable, the parties interested are not precluded from seeking judicial intervention and assistance in the settlement of their disputes. All the parties interested have in fact sought the intervention of the court in this case, and it was the duty of the court to determine all the questions raised in the pleadings and necessarily involved in deciding the rights of the parties and the nature of the relief to which they are entitled.

It has been suggested that the proper time to determine disputes as to the division of the assets of the company is after the liquidation, and not in a proceeding for the appointment of a liquidator. It is to be observed, however, that the question under consideration is not the division of the assets, but whether certain parties are or are not members of the company, with a right to be heard in the judicial or extrajudicial administration of its affairs.

It is said that the trial court properly disregarded appellant's allegations of ownership of his father's participation in the company, to the exclusion of the widow and her children, because it appears that the estate of Eulalio Carmelo is in course of administration, and the court wherein those proceedings are pending has jurisdiction of the settlement of the respective interests of the heirs, to the exclusion of all other courts.

We can not agree with this proposition. The question submitted is not one of exclusive probate jurisdiction; that

is, of the settlement of the estate or probate of the will of a deceased person. (Sec. 599, Code of Civil Procedure.) By virtue of the terms of a certain agreement entered into by his father in his lifetime, appellant claims to be sole owner of certain property. The administratrix alleges that this property or a portion thereof is a part of the estate of Eulalio Carmelo, deceased, in course of administration in the probate court. The mere fact that one of the parties is an executor or administrator of a certain estate does not give exclusive jurisdiction to the probate court wherein the estate is being settled, of questions arising between such executor or administrator and third persons, as to, the ownership of specific property. Of course when it is once determined that certain property is the property of the estate, exclusive jurisdiction over the administration of such property vests in the court wherein the estate is being settled, but until this question is decided the mere allegation that certain property is the property of an estate in course of administration is not sufficient to oust all other courts of jurisdiction over questions touching the ownership of such property and rights based on the right of ownership.

The order issued by the trial court is hereby revoked, and the motion for judgment on the pleadings overruled, and the record will be returned to the court from whence it came, for further proceedings. No costs will be allowed either party on this appeal. So ordered.

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

[1] 9 Phil. Rep., 210.

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