

JOSUE SONCUYA, PLAINTIFF AND APPELLANT, VS. CARMEN DE LUNA, DEFENDANT AND APPELLEE.

G.R. No. 45464. April 28, 1939

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

On September 11, 1936, plaintiff Josue Soncuya filed with the Court of First Instance of Manila an amended complaint against Carmen de Luna in her own name and as co-administratrix of the intestate estate of Librada Avelino, in which, upon the facts therein alleged, he prayed that defendant be sentenced to pay him the sum of P700,432 as damages and costs.

To the aforesaid amended complaint defendant Carmen de Luna interposed a demurrer based on the following grounds: (1) That the complaint does not contain facts sufficient to constitute a cause of action; and (2) that the complaint is ambiguous, unintelligible and vague.

Trial on the demurrer having been held and the parties heard, the court found the same well-founded and sustained it, ordering the plaintiff to amend his complaint within a period of ten days from receipt of notice of the order.

Plaintiff having manifested that he would prefer not to amend his amended complaint, the attorney for the defendant, Carmen de Luna, filed a motion praying that the amended complaint be dismissed with costs against the plaintiff. Said motion was granted by the Court of First Instance of Manila which ordered the dismissal of the aforesaid amended complaint, with costs against the plaintiff.

From this order of dismissal, the appellant took an appeal, assigning twenty alleged errors committed by the lower court in its order referred to.

The demurrer interposed by defendant to the amended complaint filed by plaintiff having been sustained on the grounds that the facts alleged in said complaint are not sufficient to constitute a cause of action and that the complaint is ambiguous, unintelligible and vague, the only questions which may be raised and considered in the present appeal are those which refer to said grounds.

In the amended complaint it is prayed that defendant Carmen de Luna be sentenced to pay plaintiff damages in the sum of P700,432 as a result of the administration, said to be fraudulent, of the partnership, "Centro Escolar de Senoritas", of which plaintiff, defendant and the deceased Librada Avelino were members. For the purpose of adjudicating to plaintiff damages which he alleges to have suffered as a partner by reason of the supposed fraudulent management of the partnership referred to, it is first necessary that a liquidation of the business thereof be made to the end that the profits and losses may be known and the causes of the latter and the responsibility of the defendant as well as the damages which each partner may have suffered, may be determined. It is not alleged in the complaint that such a liquidation has been effected nor is it prayed that it be made. Consequently, there is no reason or cause for plaintiff to institute the action for damages which he claims from the managing partner

Carmen de Luna (Po Yeng Cheo vs. Lim Ka Yam, 44 Phil., 172).

Having reached the conclusion that the facts alleged in the complaint are not sufficient to constitute a cause of action on the part of plaintiff as member of the partnership "Centro Escolar de Senoritas" to collect damages from defendant as managing partner thereof, without a previous liquidation, we do not deem it necessary to discuss the remaining question of whether or not the complaint is ambiguous, unintelligible and vague.

In view of the foregoing considerations, we are of the opinion and so hold that for a partner to be able to claim from another partner who manages the general copartnership, damages allegedly suffered by him by reason of the fraudulent administration of the latter, a previous liquidation of said partnership is necessary.

Wherefore, finding no error in the order appealed from, the same is affirmed in all its parts, with costs against the appellant. So ordered.

Avanceña, C. J., Imperial, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

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