

**TIBURCIO SUMERA, AS RECEIVER OF THE CORPORATION
“DEVOTA DE NUESTRA SENORA DE LA CORREA”,
PLAINTIFF AND APPELLANT, VS. EXJGENIO VALENCIA, DEFENDANT
AND APPELLEE.**

G.R. No. 45485. May 03, 1939

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

In the municipality of Paombong, Province of Bulacan, Philippines, a corporation was organized in 1920 in accordance with the laws in force in these Islands, under the style, "Devota de Nuestra Senora de la Correa", for the promotion of the fishing industry or business for a period of twenty years. Said corporation was already in operation when, on petition of various stockholders thereof, an investigation into its financial condition was made by the provincial auditor in which it was discovered that Eugenio Valencia, manager of the corporation, had withdrawn the amount of P600 from the remaining assets of the corporation.

On September 26, 1927, a petition was filed for the voluntary dissolution of the corporation referred to, which was docketed as civil case No. 3560 of the Court of First Instance of Bulacan. After the requirements prescribed by law had been complied with, the court approved the voluntary dissolution in an order dated February 14, 1928, ordering the liquidation of the properties of the corporation and appointing Damaso P. Nicolas assignee to take charge of such liquidation. In compliance with his duty as such assignee, Damaso P. Nicolas went on December 7 and 13, 1928 to the house of Eugenio Valencia and demanded of the latter the payment of the amount of P600 belonging to the corporation. As he did not have any money, Eugenio Valencia then promised to deliver the amount referred to in May, 1929 (Exhibit A). Upon being asked again to pay the aforesaid amount, Eugenio Valencia delivered to the assignee, Damaso P. Nicolas, the sum of P200, leaving a balance of P400.

Damaso P. Nicolas, who had resigned from the office of assignee, was substituted by the herein appellant, Tiburcio Sumera, who filed a motion with the court asking that Eugenio Valencia be ordered to deliver to him the P400 belonging to the funds of the corporation. The Court of First Instance of Bulacan denied said motion in an order dated March 5, 1936, reserving, however, to said assignee the right to bring the proper action. On June 5, 1936, by virtue of the authority given him by the court In the order of April 27, 1936, Tiburcio Sumera, in his capacity as such assignee of the corporation referred to, filed a complaint in the present case against Eugenio Valencia for the recovery of the sum of P400 with interest at the rate of 12 per cent per annum from the year 1927, and the sum of P100 as indemnity. Said complaint was based on Exhibit X in which Eugenio Valencia admitted having withdrawn from the funds of the corporation the sum of P600.

Eugenio Valencia, answering the complaint, denied each and every fact alleged therein, and, as a special defense, alleged that if he has ever had any obligation with the corporation "Devota de Nuestra Senora de la Correa", said obligation has already been fully paid, denying under oath the genuineness and due execution of Exhibit X, and, by way of counterclaim, prayed that he be paid the sum of P200 by way of damages.

The case having been called for trial on October 12, 1936, defendant, with leave of court, inserted in his answer a new defense in which he alleged that the action brought by plaintiff against him has already prescribed.

Before trial, the parties submitted to the court the following stipulation of facts: First, that defendant admits the genuineness and due execution of Exhibit X which was executed and sworn to by him on May 28, 1927 and which forms part of the record in civil case No. 3560; second, that defendant likewise admits that he paid on account of the P600 mentioned in Exhibit X the amount of P200 to the former assignee, Damaso P. Nicolas; third, that the remaining sum of P400 has not been paid to date to the assignee of the corporation in spite of the fact that he had been repeatedly asked to do so by plaintiff. They also agreed that the only question on which the parties will adduce evidence is whether or not defendant really invested the amount of P400 which he owes the corporation in fixing one of its fish ponds. Lastly they agreed that they will also present evidence on whether or not plaintiff's action has already prescribed.

After the case was tried, the court rendered judgment dated October 14, 1936, the dispositive part of which is as follows:

"Wherefore, the court sentences defendant to pay plaintiff the sum of P400 with legal interest from the date of the filing of the complaint, or on June 5, 1936 until fully paid, plus the costs. The counterclaim of defendant is overruled."

Thereafter, in view of the presentation of a motion for reconsideration and new trial by defendant calling the attention of the court to the prescription fixed by section 77 of Act No. 1459 known as the Corporation Law, the court issued an order dated November 2, 1936, the dispositive part of which is as follows:

"Wherefore, the decision of October 14th, of this year, is hereby amended by changing the last two paragraphs thereof so as to read as follows:

" 'As to the second contention of defendant that the action of plaintiff has prescribed, the court finds the same completely tenable, inasmuch as the action in this case was commenced on June 5, 1936, and the corporation "Devota de Nuestra Señora de la Correa" was dissolved on February 14, 1928, and according to section 77 of Act No. 1459 and the Supreme Court in the case of the Voluntary Dissolution of George O'Farrel & Co., Inc., China Banking Corporation and Leopoldo Kahn, versus M. Michelin & Co., the action should have been brought within the three years following dissolution.

" 'Wherefore, the court dismisses the action of plaintiff, without costs. It is so ordered.' "

From the foregoing decision plaintiff took the present appeal, assigning as sole alleged error committed by the court a quo in its order referred to, the following:

"The court a quo erred in amending the decision rendered in this case, by virtue of the order dated November 2, 1936 sustaining the special defense of defendant, in the sense that the action of the plaintiff has prescribed in accordance with section 77 of Act No. 1459, and consequently in dismissing the case."

Before entering upon a consideration of the alleged error assigned by appellant, we shall deal with the preliminary question of procedural law raised by it, that is, whether the appeal has been brought out of time.

The bill of exceptions shows that the order amending the judgment of the Court of First Instance of Bulacan dated October 14, 1936 was issued on November 2, 1936. It does not appear when plaintiff received notice of said order, but on November 27, 1936 he filed a motion for reconsideration and new trial of the aforementioned order of November 2, 1936, on the ground that the same was not in accordance with the evidence and was contrary to law. It must be supposed that he received said notice if not on November 26, 1936, the day preceding that of the filing of the motion for reconsideration and new trial, on the latter date. From November 2, 1936 when the

amendatory order was issued up to the 26th of the same month and year on which it is supposed that he filed the motion for reconsideration and new trial, 24 days had elapsed, leaving plaintiff only 6 of the 30 days he had within which to file his motion for new trial, the running of which was suspended until the resolution of said motion for reconsideration and new trial by reason of the fact that the latter was based on one of the grounds enumerated in section 145 of the Code of Civil Procedure. On December 22, 1936, the Court of First Instance of Bulacan issued an order denying said motion for new trial, plaintiff receiving notice of said order of denial on the 24th of the same month and year. On December 29, 1936, or five days after being notified of said order, plaintiff filed his exception thereto and notice that he would bring this case to this court by appeal. On January 8, 1937, or ten days after filing his exception and notice of appeal, he filed his bill of exceptions.

The requirements prescribed by section 145 of the Code of Civil Procedure having been complied with and in accordance with the rulings of this court, the appeal taken by plaintiff is timely.

Passing now to discuss the question raised by plaintiff and appellant in his sole assignment of alleged error, section 77 of Act No. 1459 provides that "Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three years after the time When it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and of enabling it gradually to settle and close its affairs, to dispose of and convey its property and to divide its capital stock, but not for the purpose of continuing the business for which it was established." And section 78 of the same Act provides, "At any time during said three years said corporation is authorized and empowered to convey all of its property to trustees for the benefit of members, stockholders, creditors, and others interested. From and after any such conveyance by the corporation of its property in trust for the benefit of its members, stockholders, creditors, and others in interest, all interest which the corporation had in the property terminates, the legal interest vests in the trustees, and the beneficial interest in the members, stockholders, creditors, or other persons in interest."

Justice Fisher, formerly a member of this court, in his work *The Philippine Law of Stock Corporations*, pages 390, 391, says the following:

"It is to be noted that the time during which the corporation, through its own officers, may conduct the liquidation of its assets and sue and be sued as a corporation is limited to three years from the time the period of dissolution commences; but that there is no time limited within which the trustees must complete a liquidation placed in their hands. It is provided only (Corp. Law, sec. 78) that the conveyance to the trustees must be made within the three-year period. It may be found impossible to complete the work of liquidation within the three-year period or to reduce disputed claims to judgment. The authorities are to the effect that suits by or against a corporation abate when it ceases to be an entity capable of suing or being sued (7 R. C. L., Corps., par. 750); but trustees to whom the corporate assets have been conveyed pursuant to the authority of section 78 may sue and be sued as such in all matters connected with the liquidation. By the terms of the statute the effect of the conveyance is to make the trustees the legal owners of the property conveyed, subject to the beneficial interest therein of creditors and stockholders."

Fletcher, in volume 8, page 9226, of his *Encyclopedia of Private Corporations*, says:

"6537. Effect of expiration of statutory extension of life.—In general.—The qualified existence after dissolution, as provided for by statute, terminates at the expiration of the time fixed, or, no time is fixed, at the expiration of a reasonable time. Where the extreme limit to which the statute has extended the life of a corporation after its dissolution has expired, it has no officers which can bind it by agreement, but only the statutory trustee. After the expiration of such time, it is generally held not only that the corporation cannot sue or be sued but that actions pending at such time are abated. But a statute authorizing the continuance of a corporation for three years to wind up its affairs, does not preclude an action to wind up brought after the three years."

In the light of the legal provisions and authorities cited, interpretative of said laws, if the corporation carries out the liquidation of its assets through its own officers and continues and defends the actions brought by or against it, its existence shall terminate at the end of three years from the time of dissolution; but if a receiver or assignee is appointed, as has been done in the present case, with or without a transfer of its properties within three years, the legal interest passes to the assignee, the beneficial interest remaining in the members, stockholders, creditors and other interested persons; and said assignee may bring an action, prosecute that which has already been commenced for the benefit of the corporation, or defend the latter against any other action already instituted or which may be instituted even outside of the period of three years fixed for the officers of the corporation.

For the foregoing considerations, we are of the opinion and so hold that when a corporation is dissolved and the liquidation of its assets is placed in the hands of a receiver or assignee, the period of three years prescribed by section 77 of Act No. 1459 known as the Corporation Law is not applicable, and the assignee may institute all actions leading to the liquidation of the assets of the corporation even after the expiration of three years.

Wherefore, the order appealed from is reversed and it is ordered that the case be remanded to the court of origin to the end that it may decide the same on the merits, with costs against the appellee.

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

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