

GEORGE LITTON, PETITIONER AND APPELLANT, VS. HILL & CERON ET AL., RESPONDENTS AND APPELLEES.

G.R. No. 45624. April 25, 1939

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is a petition to review on certiorari the decision of the Court of Appeals in a case originating from the Court of First Instance of Manila wherein the herein petitioner George Litton was the plaintiff and the respondents Hill & Ceron, Robert Hill, Carlos Ceron and Visayan Surety & Insurance Corporation were defendants.

The facts are as follows: On February 14, 1934, the plaintiff sold and delivered to Carlos Ceron, who is one of the managing partners of Hill & Ceron, a certain number of mining claims, and by virtue of said transaction, the defendant Carlos Ceron delivered to the plaintiff a document reading as follows:

"Feb. 14, 1934

"Received from Mr. George Litton share certificates Nos. 4428, 4429 and 6699 for 5,000, 5,000 and 7,000 shares respectively—total 17,000 shares of Big Wedge Mining Company, which we have sold at P0.11 (eleven centavos) per share or P1,870.00 less 1/2 per cent brokerage.

"Hill & Ceron

"By: (Sgd.) Carlos Ceron"

Ceron paid to the plaintiff the sum of P1,150 leaving an unpaid balance of P720, and unable to collect this sum either from Hill & Ceron or from its surety Visayan Surety & Insurance Corporation, Litton filed a complaint in the Court of First Instance of Manila against the said defendants for the recovery of the said balance. The court, after trial, ordered Carlos Ceron personally to pay the amount claimed and absolved the partnership Hill & Ceron, Robert Hill and the Visayan Surety & Insurance Corporation. On appeal to the Court of Appeals, the latter affirmed the decision of the court on May 29, 1937, having reached the conclusion that Ceron did not intend to represent and did not act for the firm Hill & Ceron in the transaction involved in this litigation.

Accepting, as we cannot but accept, the conclusion arrived at by the Court of Appeals as to the question of fact just mentioned, namely, that Ceron individually entered into the transaction with the plaintiff, but in view, however, of certain undisputed facts and of certain regulations and provisions of the Code of Commerce, we reach the conclusion that the transaction made by Ceron with the plaintiff should be understood in law as effected by Hill & Ceron and binding upon it.

In the first place, it is an admitted fact by Robert Hill when he testified at the trial that he and Ceron, during the partnership, had the same power to buy and sell; that in said partnership Hill as well as Ceron made the transaction as partners in equal parts; that on the date of the transaction, February 14, 1934, the partnership between Hill and Ceron was in existence. After this date, or on February 19th, Hill & Ceron sold shares of the Big Wedge; and when the transaction was entered into with Litton, it was neither published in the newspapers nor

stated in the commercial registry that the partnership Hill & Ceron had been dissolved.

Hill testified that a few days before February 14th he had a conversation with the plaintiff in the course of which he advised the latter not to deliver shares for sale or on commission to Ceron because the partnership was about to be dissolved; but what importance can be attached to said advice if the partnership was not in fact dissolved on February 14th, the date when the transaction with Ceron took place?

Under article 226 of the Code of Commerce, the dissolution of a commercial association shall not cause any prejudice to third parties until it has been recorded in the commercial registry. (See also *Cardell vs. Mañeru*, 14 Phil., 368.) The Supreme Court of Spain held that the dissolution of a partnership by the will of the partners which is not registered in the commercial registry, does not prejudice third persons. (Opinion of March 23, 1885.)

Aside from the aforecited legal provisions, the order of the Bureau of Commerce of December 7, 1933, prohibits brokers from buying and selling shares on their own account. Said order reads:

"The stock and/or bond broker is, therefore, merely an agent or an intermediary, and as such, shall not be allowed. * * *

"(c) To buy or to sell shares of stock or bonds on his own account for purposes of speculation and/or for manipulating the market, irrespective of whether the purchase or sale is made from or to a private individual, broker or brokerage firm."

In its decision the Court of Appeals states:

"But there is a stronger objection to the plaintiff's attempt to make the firm responsible to him. According to the articles of copartnership of 'Hill & Ceron', filed in the Bureau of Commerce:

" 'Sixth. That the management of the business affairs of the copartnership shall be entrusted to both copartners who shall jointly administer the business affairs, transactions and activities of the copartnership, shall jointly open a current account or any other kind of account in any bank or banks, shall jointly sign all checks for the withdrawal of funds and shall jointly or singly sign, in the latter case, with the consent of the other partner. * * *

"Under this stipulation, a written contract of the firm can only be signed by one of the partners if the other partner consented. Without the consent of one partner, the other cannot bind the firm by a written contract. Now, assuming for the moment that Ceron attempted to represent the firm in this contract with the plaintiff (the plaintiff conceded that the firm name was not mentioned at that time), the latter has failed to prove that Hill had consented to such contract."

It follows from the sixth paragraph of the articles of partnership of Hill & Ceron above quoted that the management of the business of the partnership has been entrusted to both partners thereof, but we dissent from the view of the Court of Appeals that for one of the partners to bind the partnership the consent of the other is necessary. Third persons, like the plaintiff, are not bound in entering into a contract with any of the two partners, to ascertain whether or not this partner with whom the transaction is made has the consent of the other partner. The public need not make inquiries as to the agreements had between the partners. Its knowledge is enough that it is contracting with the partnership which is represented by one of the managing partners.

"There is a general presumption that each individual partner is an authorized agent for the firm and that he has authority to bind the firm in carrying on the partnership transactions." (*Mills vs. Higgle*, 112 Fac, 617.)

"The presumption is sufficient to permit third persons to hold the firm liable on transactions entered into by one of members of the firm acting apparently in its behalf and within the scope of his authority." (*Le Roy vs. Johnson*, 7 U. S. [Law. ed.], 391.)

The second paragraph of the articles of partnership of Hill & Ceron reads in part:

"Second: That the purpose or object for which this copartnership is organized is to engage in the business of brokerage in general, such as stock and bond brokers, real brokers, investment security brokers, shipping brokers, and other activities pertaining to the business of brokers in general."

The kind of business in which the partnership Hill & Ceron is to engage being thus determined, none of the two partners, under article 130 of the Code of Commerce, may legally engage in the business of brokerage in general as stock brokers, security brokers and other activities pertaining to the business of the partnership. Ceron, therefore, could not have entered into the contract of sale of shares with Litton as a private individual, but as a managing partner of Hill & Ceron.

The respondent argues in its brief that even admitting that one of the partners could not, in his individual capacity, engage in a transaction similar to that in which the partnership is engaged without binding the latter, nevertheless there is no law which prohibits a partner in the stock brokerage business for engaging in other transactions different from those of the partnership, as it happens in the present case, because the transaction made by Ceron is a mere personal loan, and this argument, so it is said, is corroborated by the Court of Appeals. We do not find this alleged corroboration because the only finding of fact made by the Court of Appeals is to the effect that the transaction made by Ceron with the plaintiff was in his individual capacity.

The appealed decision is reversed and the defendants are ordered to pay to the plaintiff, jointly and severally, the sum of P720, with legal interest, from the date of the filing of the complaint, minus the commission of one-half per cent ($\frac{1}{2}\%$) from the original price of P1,870, with the costs to the respondents. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Laurel, and Moran, JJ., concur.

RESOLUTION

July 13, 1939

CONCEPCION, J.:

A motion has been presented in this case by Robert Hill, one of the defendants sentenced in our decision to pay to the plaintiff the amount claimed in his complaint. It is asked that we reconsider our decision, the said defendant insisting that the appellant had not established that Carlos Ceron, another of the defendants, had the consent of his copartner, the movant, to enter with the appellant into the contract whose breach gave rise to the complaint. It is argued that, it being stipulated in the articles of partnership that Hill and Ceron, only partners of the firm Hill & Ceron, would, as managers, have the management of the business of the partnership, and that either may contract and sign for the partnership with the consent of the other; the articles of partnership having been, so it is said, recorded in the commercial registry, the appellant could not ignore the fact that the consent of the movant was necessary for the validity of the contract which he had with the other partner and defendant, Ceron, and there being no evidence that said consent had been obtained, the complaint to compel compliance with the said contract had to be, as it must be in fact, a procedural failure.

Although this question has already been considered and settled in our decision, we nevertheless take cognizance of the motion in order to enlarge upon our views on the matter.

The stipulation in the articles of partnership that any of the two managing partners may contract and sign in the name of the partnership with the consent of the other, undoubtedly creates an obligation between the two partners, which consists in asking the other's consent before contracting for the partnership. This obligation of course is not

imposed upon a third person who contracts with the partnership. Neither is it necessary for the third person to ascertain if the managing partner with whom he contracts has previously obtained the consent of the other. A third person may and has a right to presume that the partner with whom he contracts has, in the ordinary and natural course of business, the consent of his copartner; for otherwise he would not enter into the contract. The third person would naturally not presume that the partner with whom he enters into the transaction is violating the articles of partnership but, on the contrary, is acting in accordance therewith. And this finds support in the legal presumption that the ordinary course of business has been followed (No. 18, section 334, Code of Civil Procedure), and that the law has been obeyed (No. 31, section 334). This last presumption is equally applicable to contracts which have the force of law between the parties.

Wherefore, unless the contrary is shown, namely, that one of the partners did not consent to his copartner entering into a contract with a third person, and that the latter with knowledge thereof entered into said contract, the aforesaid presumption with all its force and legal effects should be taken into account.

There is nothing in the case at bar which destroys this presumption; the only thing appearing in the findings of fact of the Court of Appeals is that the plaintiff "has failed to prove that Hill had consented to such contract". According to this, it seems that the Court of Appeals is of the opinion that the two partners should give their consent to the contract and that the plaintiff should prove it. The clause of the articles of partnership should not be thus understood, for it means that one of the two partners should have the consent of the other to contract for the partnership, which is different; because it is possible that one of the partners may not see any prospect in a transaction, but he may nevertheless consent to the realization thereof by his copartner in reliance upon his skill and ability or otherwise. And here we have to hold once again that it is not the plaintiff who, under the articles of partnership, should obtain and prove the consent of Hill, but the latter's partner, Ceron, should he file a complaint against the partnership for compliance with the contract; but in the present case, it is a third person, the plaintiff, who asks for it. While the said presumption stands, the plaintiff has nothing to prove.

Passing now to another aspect of the case, had Ceron in any way stated to the appellant at the time of the execution of the contract, or if it could be inferred by his conduct, that he had the consent of Hill, and should it turn out later that he did not have such consent, this alone would not annul the contract judging from the provisions of article 130 of the Code of Commerce reading as follows:

"No new obligation shall be contracted against the will of one of the managing partners, should he have expressly stated it; but if, however, it should be contracted it shall not be annulled for this reason, and shall have its effects without prejudice to the liability of the partner or partners who contracted it to reimburse the firm for any loss occasioned by reason thereof." (Italics ours.)

Under the aforequoted provisions, when, not only without the consent but against the will of any of the managing partners, a contract is entered into with a third person who acts in good faith, and the transaction is of the kind of business in which the partnership is engaged, as in the present case, said contract shall not be annulled, without prejudice to the liability of the guilty partner.

The reason or purpose behind these legal provisions is no other than to protect a third person who contracts with one of the managing partners of the partnership, thus avoiding fraud and deceit to which he may easily fall a victim without this protection which the Code of Commerce wisely provides.

If we are to interpret the articles of partnership in question by holding that it is the obligation of the third person to inquire whether the managing copartner of the one with whom he contracts has given his consent to said contract, which is practically casting upon him the obligation to get such consent, this interpretation would, in similar cases, operate to hinder effectively the transactions, a thing not desirable and contrary to the nature of business

which requires promptness and dispatch on the basis of good faith and honesty which are always presumed.

In view of the foregoing, and sustaining the other views expressed in the decision, the motion is denied. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Laurel, and Moran, JJ., concur.

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