

PEDRO MARTINEZ, PLAINTIFF AND APPELLEE, VS. ONG PONG CO AND ONG LAY, DEFENDANTS. – ONG PONG CO, APPELLANT.

G. R. No. 5236. January 10, 1910

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

On the 12th of December, 1900, the plaintiff herein delivered P1,500 to the defendants who, in a private document, acknowledged that they had received the same with the agreement, as stated by them, "that we are to invest the amount in a store, the profits or losses of which we are to divide with the former, in equal shares."

The plaintiff filed a complaint on April 25, 1907, in order to compel the defendants to render him an accounting of the partnership as agreed to, or else to refund him the P1,500 that he had given them for the said purpose. Ong Pong Co alone appeared to answer the complaint; he admitted the fact of the agreement and the delivery to him and to Ong Lay of the P1,500 for the purpose aforesaid, but he alleged that Ong Lay, who was then deceased, was the one who had managed the business, and that nothing had resulted therefrom save the loss of the capital of P1,500, to which loss the plaintiff had agreed.

The judge of the Court of First Instance of the city of Manila who tried the case ordered Ong Pong Co to return to the plaintiff one-half of the said capital of P1,500 which, together with Ong Lay, he had received from the plaintiff, to wit, P750, plus P90 as one-half of the profits, calculated at the rate of 12 per cent per annum for the six months that the store was supposed to have been open, both sums in Philippine currency, making a total of P840, with legal interest thereon at the rate of 6 per cent per annum, from the 12th of June, 1901, when the business terminated and on which date he ought to have returned the said amount to the plaintiff, until the full payment thereof with costs.

From this judgment Ong Pong Co appealed to this court, and assigned the following errors:

- For not having taken into consideration the fact that the reason for the closing of the store was the ejectment from the premises occupied by it.
- For not having considered the fact that there were losses.
- For holding that there should have been profits.
- For having applied article 1138 of the Civil Code.
- and 6. For holding that the capital ought to have yielded profits, and that the latter should be calculated at 12 per cent per annum; and
- The findings of the judgment.

As to the first assignment of error, the fact that the store was closed by virtue of ejectment proceedings is of no importance for the effects of the suit. The whole action is based upon the fact that the defendants received certain

capital from the plaintiff for the purpose of organizing a company; they, according to the agreement, were to handle the said money and invest it in a store which was the object of the association; they, in the absence of a special agreement vesting in one sole person the management of the business, were the actual administrators thereof; as such administrators they were the agents of the company and incurred the liabilities peculiar to every agent, among which is that of rendering account to the principal of their transactions, and paying him everything they may have received by virtue of the mandatam. (Arts, 1695 and 1720, Civil Code.) Neither of them has rendered such account nor proven the losses referred to by Ong Pong Co; they are therefore obliged to refund the money that they received for the purpose of establishing the said store - the object of the association. This was the principal pronouncement of the judgment.

With regard to the second and third assignments of error, this court, like the court below, finds no evidence that the entire capital or any part thereof was lost. It is no evidence of such loss to aver, without proof, that the effects of the store were ejected. Even though this were proven, it could not be inferred therefrom that the ejectment was due to the fact that no rents were paid, and that the rent was not paid on account of the loss of the capital belonging to the enterprise.

With regard to the possible profits, the findings of the court below are based on the statements of the defendant Ong Pong Co, to the effect that "there were some profits, but not large ones." This court, however, does not find that the amount thereof has been proven, nor deem it possible to estimate them to be a certain sum, and for a given period of time; hence, it can not admit the estimate, made in the judgment, of 12 per cent per annum for the period of six months.

Inasmuch as in this case nothing appears other than the failure to fulfill an obligation on the part of a partner who acted as agent in receiving money for a given purpose, for which he has rendered no accounting, such agent is responsible only for the losses which, by a violation of the provisions of the law, he incurred. This being an obligation to pay in cash, there are no other losses than the legal interest, which interest is not due except from the time of the judicial demand, or, in the present case, from the filing of the complaint. (Arts. 1108 and 1100, Civil Code.) We do not consider that article 1688 is applicable in this case, in so far as it provides "that the partnership is liable to every partner for the amounts he may have disbursed on account of the same and for the proper interest," for the reason that no other money than that contributed as capital is involved.

As in the partnership there were two administrators or. agents liable for the above-named amount, article 1138 of the Civil Code has been properly applied, and article 1698 might also have been invoked; this latter deals with debts of a partnership where the obligation is not a joint one, as is likewise provided by article 1723 of said code with respect to the liability of two or more agents with respect to the return of the money that they receive from their principal. Therefore, the other errors assigned have not been committed.

In view of the foregoing, the judgment appealed from is hereby affirmed, provided, however, that the defendant Ong Pong Co shall only pay the plaintiff the sum of P750 with the legal interest thereon at the rate of 6 per cent per annum from the time of the filing of the complaint, and the costs, without special ruling as to the costs of this instance. So ordered.

Torres, Johnson, Carson, and Moreland, JJ., concur.

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