

**PIONEER INSURANCE & SURETY CORPORATION, PETITIONER,
VS. THE HON. COURT OF APPEALS, BORDER MACHINERY &
HEAVY EQUIPMENT, INC., (BORMAHECO), CONSTANCIO M.
MAGLANA AND JACOB S. LIM ...**

G.R. No. 84197. July 28, 1989

Ponente: GUTIERREZ, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-84197/>

GUTIERREZ, JR., J.:

The subject matter of these consolidated petitions is the decision of the Court of Appeals in CA-G.R. CV No. 66195 which modified the decision of the then Court of First Instance of Manila in Civil Case No. 66135. The plaintiff's complaint (petitioner in G.R. No. 84197) against all defendants (respondents in G.R. No. 84197) was dismissed but in all other respects the trial court's decision was affirmed.

The dispositive portion of the trial court's decision reads as follows:

"WHEREFORE, judgment is rendered against defendant Jacob S. Lim requiring him to pay plaintiff the amount of P311,056.02, with interest at the rate of 12% per annum compounded monthly; plus 15% of the amount awarded to plaintiff as attorney's fees from July 2, 1966, until full payment is made; plus P70,000.00 moral and exemplary damages.

"It is found in the records that the cross party plaintiffs incurred additional miscellaneous expenses aside from P151,000.00, making a total of P184,878.74. Defendant Jacob S. Lim is further required to pay cross party plaintiff, Bormaheco, the Cervanteses one-half and Maglana the other half, the amount of P184,878.74 with interest from the filing of the cross-complaints until the amount is fully paid; plus moral and exemplary damages in the amount of P184,878.84 with interest from filing of the cross-complaints until the amount is fully paid; plus moral and exemplary damages in the amount of P50,000.00 for each of the two Cervanteses.

"Furthermore, he is required to pay P20,000.00 to Bormaheco and the Cervanteses, and another P20,000.00 to Constancio B. Maglana as attorney's fees.

xxx xxx xxx

"WHEREFORE, in view of all above, the complaint of plaintiff Pioneer against defendants Bormaheco, the Cervanteses and Constancio B. Maglana, is dismissed. Instead, plaintiff is required to indemnify the defendants Bormaheco and the Cervanteses the amount of P20,000.00 as attorney's fees and the amount of P4,379.21, per year from 1966 with legal rate of interest up to the time it is paid.

"Furthermore, the plaintiff is required to pay Constancio B. Maglana the amount of P20,000.00 as attorney's fees and costs.

"No moral or exemplary damages is awarded against plaintiff for this action was filed in good faith. The fact that the properties of the Bormaheco and the Cervanteses were attached and that they were required to file a counterbond in order to dissolve the attachment, is not an act of bad faith. When a man tries to protect his

rights, he should not be saddled with moral or exemplary damages. Furthermore, the rights exercised were provided for in the Rules of Court, and it was the court that ordered it, in the exercise of its discretion.

"No damage is decided against Malayan Insurance Company, Inc., the third-party defendant, for it only secured the attachment prayed for by the plaintiff Pioneer. If an insurance company would be liable for damages in performing an act which is clearly within its power and which is the reason for its being, then nobody would engage in the insurance business. No further claim or counter-claim for or against anybody is declared by this Court." (Rollo - G.R. No. 24197, pp. 15-16)

In 1965, Jacob S. Lim (petitioner in G.R. No. 84157) was engaged in the airline business as owner-operator of Southern Air Lines (SAL) a single proprietorship.

On May 17, 1965, at Tokyo, Japan, Japan Domestic Airlines (JDA) and Lim entered into and executed a sales contract (Exhibit A) for the sale and purchase of two (2) DC-3A Type aircrafts and one (1) set of necessary spare parts for the total agreed price of US \$109,000.00 to be paid in installments. One DC-3 Aircraft with Registry No. PIC-718, arrived in Manila on June 7, 1965 while the other aircraft, arrived in Manila on July 18, 1965.

On May 22, 1965, Pioneer Insurance and Surety Corporation (Pioneer, petitioner in G.R. No. 84197) as surety executed and issued its Surety Bond No. 6639 (Exhibit C) in favor of JDA, in behalf of its principal, Lim, for the balance price of the aircrafts and spare parts.

It appears that Border Machinery and Heavy Equipment Company, Inc. (Bormaheco), Francisco and Modesto Cervantes (Cervanteses) and Constancio Maglana (respondents in both petitions) contributed some funds used in the purchase of the above aircrafts and spare parts. The funds were supposed to be their contributions to a new corporation proposed by Lim to expand his airline business. They executed two (2) separate indemnity agreements (Exhibits D-1 and D-2) in favor of Pioneer, one signed by Maglana and the other jointly signed by Lim for SAL, Bormaheco and the Cervanteses. The indemnity agreements stipulated that the indemnitors principally agree and bind themselves jointly and severally to indemnify and hold and save harmless Pioneer from and against any/all damages, losses, costs, damages, taxes, penalties, charges and expenses of whatever kind and nature which Pioneer may incur in consequence of having become surety upon the bond/note and to pay, reimburse and make good to Pioneer, its successors and assigns, all sums and amounts of money which it or its representatives should or may pay or cause to be paid or become liable to pay on them of whatever kind and nature.

On June 10, 1965, Lim doing business under the name and style of SAL executed in favor of Pioneer a deed of chattel mortgage as security for the latter's suretyship in favor of the former. It was stipulated therein that Lim transfer and convey to the surety the two aircrafts. The deed (Exhibit D) was duly registered with the Office of the Register of Deeds of the City of Manila and with the Civil Aeronautics Administration pursuant to the Chattel Mortgage Law and the Civil Aeronautics Law (Republic Act No. 776), respectively.

Lim defaulted on his subsequent installment payments prompting JDA to request payments from the surety. Pioneer paid a total sum of P298,626.12.

Pioneer then filed a petition for the extrajudicial foreclosure of the said chattel mortgage before the Sheriff of Davao City. The Cervanteses and Maglana, however, filed a third party claim alleging that they are co-owners of the aircrafts.

On July 19, 1966, Pioneer filed an action for judicial foreclosure with an application for a writ of preliminary attachment against Lim and respondents, the Cervanteses, Bormaheco and Maglana.

In their Answers, Maglana, Bormaheco and the Cervanteses filed cross-claims against Lim alleging that they were

not privies to the contracts signed by Lim and, by way of counterclaim, sought for damages for being exposed to litigation and for recovery of the sums of money they advanced to Lim for the purchase of the aircrafts in question.

After trial on the merits, a decision was rendered holding Lim liable to pay Pioneer but dismissed Pioneer's complaint against all other defendants.

As stated earlier, the appellate court modified the trial court's decision in that the plaintiff's complaint against all the defendants was dismissed. In all other respects the trial court's decision was affirmed.

We first resolve G.R. No. 84197.

Petitioner Pioneer Insurance and Surety Corporation avers that:

RESPONDENT COURT OF APPEALS GRIEVOUSLY ERRED WHEN IT DISMISSED THE APPEAL OF PETITIONER ON THE SOLE GROUND THAT PETITIONER HAD ALREADY COLLECTED THE PROCEEDS OF THE REINSURANCE ON ITS BOND IN FAVOR OF THE JDA AND THAT IT CANNOT REPRESENT A REINSURER TO RECOVER THE AMOUNT FROM HEREIN PRIVATE RESPONDENTS AS DEFENDANTS IN THE TRIAL COURT. (Rollo - G.R. No. 84197, p. 10)

The petitioner questions the following findings of the appellate court:

"We find no merit in plaintiff's appeal. It is undisputed that plaintiff Pioneer had reinsured its risk of liability under the surety bond in favor of JDA and subsequently collected the proceeds of such reinsurance in the sum of P295,000.00. Defendants' alleged obligation to Pioneer amounts to P295,000.00, hence, plaintiff's instant action for the recovery of the amount of P298,666.28 from defendants will no longer prosper. Plaintiff Pioneer is not the real party in interest to institute the instant action as it does not stand to be benefited or injured by the judgment.

"Plaintiff Pioneer's contention that it is representing the reinsurer to recover the amount from defendants, hence, it instituted the action is utterly devoid of merit. Plaintiff did not even present any evidence that it is the attorney-in-fact of the reinsurance company, authorized to institute an action for and in behalf of the latter. To qualify a person to be a real party in interest in whose name an action must be prosecuted, he must appear to be the present real owner of the right sought to be enforced (Moran, Vol. I, Comments on the Rules of Court, 1979 ed., p. 155). It has been held that the real party in interest is the party who would be benefited or injured by the judgment or the party entitled to the avails of the suit (Salonga v. Warner Barnes & Co., Ltd., 88 Phil. 125, 131). By real party in interest is meant a present substantial interest as distinguished from a mere expectancy or a future, contingent, subordinate or consequential interest (Garcia v. David, 67 Phil. 27; Ogilleaby v. Springfield Marine Bank, 52 N.E. 2d. 1600, 385 III, 414, Flowers v. Germana, 1 NW 2d 424; Weber v. City of Cheye, 97 P. 2d 667, 669, quoting 47 C.V. 35).

"Based on the foregoing premises, plaintiff Pioneer cannot be considered as the real party in interest as it has already been paid by the reinsurer the sum of P295,000.00 - the bulk of defendants' alleged obligation to Pioneer.

"In addition to the said proceeds of the reinsurance received by plaintiff Pioneer from its reinsurer, the former was able to foreclose extra-judicially one of the subject airplanes and its spare engine, realizing the total amount of P37,050.00 from the sale of the mortgaged chattels. Adding the sum of P37,050.00. to the proceeds of the reinsurance amounting to P295,000.00, it is patent that plaintiff has been overpaid in the amount of P33,383.72 considering that the total amount it had paid to JDA totals to only P298,666.28. To allow plaintiff Pioneer to recover from defendants the amount in excess of P298,666.28 would be tantamount to unjust enrichment as it has already been paid by the reinsurance company of the amount plaintiff has paid to JDA as surety of defendant Lim vis-a-vis defendant Lim's liability to JDA. Well settled is the rule that no person

should unjustly enrich himself at the expense of another (Article 22, New Civil Code)." (Rollo - 84197, pp. 24-25)

The petitioner contends that -- (1) it is at a loss where respondent court based its finding that petitioner was paid by its reinsurer in the aforesaid amount, as this matter has never been raised by any of the parties herein both in their answers in the court below and in their respective briefs with respondent court; (Rollo, p. 11) (2) even assuming hypothetically that it was paid by its reinsurer, still none of the respondents had any interest in the matter since the reinsurance is strictly between the petitioner and the re-insurer pursuant to section 91 of the Insurance Code; (3) pursuant to the indemnity agreements, the petitioner is entitled to recover from respondents Bormaheco and Maglana; and (4) the principle of unjust enrichment is not applicable considering that whatever amount he would recover from the co-indemnitor will be paid to the reinsurer.

The records belie the petitioner's contention that the issue on the reinsurance money was never raised by the parties.

A cursory reading of the trial court's lengthy decision shows that two of the issues threshed out were:

xxx xxx xxx

"1. Has Pioneer a cause of action against defendants with respect to so much of its obligations to JDA as has been paid with reinsurance money?

2. If the answer to the preceding question is in the negative, has Pioneer still any claim against defendants, considering the amount it has realized from the sale of the mortgaged properties? (Record on Appeal, p. 359, Annex B of G.R. No. 84157)

In resolving these issues, the trial court made the following findings:

"It appearing that Pioneer reinsured its risk of liability under the surety bond it had executed in favor of JDA, collected the proceeds of such reinsurance in the sum of P295,000, and paid with the said amount the bulk of its alleged liability to JDA under the said surety bond, it is plain that on this score it no longer has any right to collect to the extent of the said amount.

On the question of why it is Pioneer, instead of the reinsurance (sic), that is suing defendants for the amount paid to it by the reinsurers, notwithstanding that the cause of action pertains to the latter, Pioneer says: 'The reinsurers opted instead that the Pioneer Insurance & Surety Corporation shall pursue alone the case.' '....Pioneer Insurance & Surety Corporation is representing the reinsurers to recover the amount.' In other words, insofar as the amount paid to it by the reinsurers Pioneer is suing defendants as their attorney-in-fact.

But in the first place, there is not the slightest indication in the complaint that Pioneer is suing as attorney-in-fact of the reinsurers for any amount. Lastly, and most important of all, Pioneer has no right to institute and maintain in its own name an action for the benefit of the reinsurers. It is well-settled that an action brought by an attorney-in-fact in his own name instead of that of the principal will not prosper, and this is so even where the name of the principal is disclosed in the complaint.

"Section 2 of Rule 3 of the Old Rules of Court provides that 'Every action must be prosecuted in the name of the real party in interest.' This provision is mandatory. The real party in interest is the party who would be benefitted or injured by the judgment or is the party entitled to the avails of the suit.

"This Court has held in various cases that an attorney-in-fact is not a real party in interest, that there is no law permitting an action to be brought by an attorney-in-fact. *Arroyo v. Gradana and Gentero*, 18 Phil. Rep. 484; *Luchauco v. Limjuco and Gonzalo*, 19 Phil. Rep. 12; *Filipinas Industrial Corporation v. San Diego*, G.R. No. L-22347, 1968, 23 SACRA 706, 710-714."

"The total amount paid by Pioneer to JDA is P299,666.29. Since Pioneer has collected P295,000.00 from the reinsurers, the uninsured portion of what it paid to JDA is the difference between the two amounts, or P3,666.28. This is the amount for which Pioneer may sue defendants, assuming that the indemnity agreement is still valid and effective. But since the amount realized from the sale of the mortgaged chattels are P35,000.00 for one of the airplanes and P2,050.00 for a spare engine, or a total of P37,050.00, Pioneer is still overpaid by P33,383.72. Therefore, Pioneer has no more claim against defendants.' " (Record on Appeal, pp. 360-363)

The payment to the petitioner made by the reinsurers was not disputed in the appellate court. Considering this admitted payment, the only issue that cropped up was the effect of payment made by the reinsurers to the petitioner. Therefore, the petitioner's argument that the respondents had no interest in the reinsurance contract as this is strictly between the petitioner as insured and the reinsuring company pursuant to Section 91 (should be Section 98) of the Insurance Code has no basis.

"In general a reinsurer, on payment of a loss acquires the same rights by subrogation as are acquired in similar cases where the original insurer pays a loss (Universal Ins. Co. v. Old Time Molasses Co. C.C.A. La., 46 F 2d 925.

"The rules of practice in actions on original insurance policies are in general applicable to actions or contracts of reinsurance. (Delaware, Ins. Co. v. Pennsylvania Fire Ins. Co., 55 S.E. 330, 126 GA. 380, 7 Ann. Con. 1134)"

Hence the applicable law is Article 2207 of the new Civil Code, to wit:

"Art. 2207. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury."

Interpreting the aforesaid provision, we ruled in the case of *Phil. Air Lines, Inc. v. Heald Lumber Co.* (101 Phil. 1031 [1957]) which we subsequently applied in *Manila Mahogany Manufacturing Corporation v. Court of Appeals* (154 SCRA 650 [1987]):

"Note that if a property is insured and the owner receives the indemnity from the insurer, it is provided in said article that the insurer is deemed subrogated to the rights of the insured against the wrongdoer and if the amount paid by the insurer does not fully cover the loss, then the aggrieved party is the one entitled to recover the deficiency. Evidently, under this legal provision, the real party in interest with regard to the portion of the indemnity paid is the insurer and not the insured." (Underscoring supplied)

It is clear from the records that Pioneer sued in its own name and not as an attorney-in-fact of the reinsurer.

Accordingly, the appellate court did not commit a reversible error in dismissing the petitioner's complaint as against the respondents for the reason that the petitioner was not the real party in interest in the complaint and, therefore, has no cause of action against the respondents.

Nevertheless, the petitioner argues that the appeal as regards the counter indemnitors should not have been dismissed on the premise that the evidence on record shows that it is entitled to recover from the counter indemnitors. It does not, however, cite any grounds except its allegation that respondent "Maglana's defense and evidence are certainly incredible" (p. 12, Rollo) to back up its contention.

On the other hand, we find the trial court's findings on the matter replete with evidence to substantiate its finding that the counter-indemnitors are not liable to the petitioner. The trial court stated:

"Apart from the foregoing proposition, the indemnity agreement ceased to be valid and effective after the execution of the chattel mortgage.

"Testimonies of defendants Francisco Cervantes and Modesto Cervantes.

"Pioneer Insurance, knowing the value of the aircrafts and the spare parts involved, agreed to issue the bond provided that the same would be mortgaged to it, but this was not possible because the planes were still in Japan and could not be mortgaged here in the Philippines. As soon as the aircrafts were brought to the Philippines, they would be mortgaged to Pioneer Insurance to cover the bond, and this indemnity agreement would be cancelled.

"The following is averred under oath by Pioneer in the original complaint:

" 'The various conflicting claims over the mortgaged properties have impaired and rendered insufficient the security under the chattel mortgage and there is thus no other sufficient security for the claim sought to be enforced by this action.' "

"This is judicial admission and aside from the chattel mortgage there is no other security for the claim sought to be enforced by this action, which necessarily means that the indemnity agreement had ceased to have any force and effect at the time this action was instituted. Sec. 2, Rule 129, Revised Rules of Court.

"Prescinding from the foregoing, Pioneer, having foreclosed the chattel mortgage on the planes and spare parts, no longer has any further action against the defendants as indemnitors to recover any unpaid balance of the price. The indemnity agreement was ipso jure extinguished upon the foreclosure of the chattel mortgage. These defendants, as indemnitors, would be entitled to be subrogated to the right of Pioneer should they make payments to the latter. Articles 2067 and 2080 of the New Civil Code of the Philippines.

Independently of the preceding proposition Pioneer's election of the remedy of foreclosure precludes any further action to recover any unpaid balance of the price.

SAL or Lim, having failed to pay the second to the eight and last installments to JDA and Pioneer as surety having made of the payments to JDA, the alternative remedies open to Pioneer were as provided in Article 1484 of the New Civil Code, known as the Recto Law.

Pioneer exercised the remedy of foreclosure of the chattel mortgage both by extrajudicial foreclosure and the instant suit. Such being the case, as provided by the aforementioned provisions, Pioneer 'shall have no further action against the purchaser to recover any unpaid balance and any agreement to the contrary is void.' Cruz, et al. v. Filipinas Investment & Finance Corp. No. L-24772, May 27, 1968, 23 SCRA 791, 795-6.

The operation of the foregoing provision cannot be escaped from through the contention that Pioneer is not the vendor but JDA. The reason is that Pioneer is actually exercising the rights of JDA as vendor, having subrogated it in such rights. Nor may the application of the provision be validly opposed on the ground that these defendants and defendant Maglana are not the vendee but indemnitors. Pascual, et al. v. Universal Motors Corporation, G.R. No. L-27862, Nov. 20, 1974, 61 SCRA 124.

The restructuring of the obligations of SAL or Lim, thru the change of their maturity dates discharged these defendants from any liability as alleged indemnitors. The change of the maturity dates of the obligations of Lim, or SAL, extinguished the original obligations thru novations, thus discharging the indemnitors.

" 'The principal hereof shall be paid in eight equal successive three months interval installments, the first of which shall be due and payable 25 August 1965, the remainder of which x x x shall be due and payable on the 26th day xxx of each succeeding three months and the last of which shall be due and payable 26th May 1967.' "

"However, at the trial of this case, Pioneer produced a memorandum executed by SAL, or Lim and JDA,

modifying the maturity dates of the obligations, as follows:

"The principal hereof shall be paid in eight equal successive three month interval installments the first of which shall be due and payable 4 September 1965, the remainder of which xxx shall be due and payable on the 4th day xxx of each succeeding months and the last of which shall be due and payable 4th June 1967.' "

"Not only that, Pioneer also produced eight purported promissory notes bearing maturity dates different from that fixed in the aforesaid memorandum; the due date of the first installment appears as October 15, 1965, and those of the rest of the installments, the 15th of each succeeding three months, that of the last installment being July 15, 1967.

"These restructuring of the obligations with regard to their maturity dates, effected twice, were done without the knowledge, much less, would have it believed that these defendants Maglana (sic). Pioneer's official Numeriano Carbonel, would have it believed that these defendants and defendant Maglana knew of and consented to the modification of the obligations. But if that were so, there would have been the corresponding documents in the form of a written notice to as well as written conformity of these defendants, and there are no such documents. The consequence of this was the extinguishments of the obligations and of the surety bond secured by the indemnity agreement which was thereby also extinguished. Applicable by analogy are the rulings of the Supreme Court in the case of Kabankalan Sugar Co. v. Pacheco, 55 Phil. 553, 563, and the case of Asiatic Petroleum Co. v. Hizon David, 45 Phil. 532, 538.

" 'Art. 2079. An extension granted to the debtor by the creditor without the consent of the guarantor extinguishes the guaranty. The mere failure on the part of the creditor to demand payment after the debt has become due does not of itself constitute any extension of time referred to herein (New Civil Code).' "

"Manresa, 4th ed., Vol. 12, pp. 316-317, Vol. Vi, pp. 562-563, M.F. Stevenson & Co., Ltd., v. Climacom et al. (C.A.) 36 O.G. 1571.

"Pioneer's liability as surety to JDA had already prescribed when Pioneer paid the same. Consequently, Pioneer has no more cause of action to recover from these defendants, as supposed indemnitors, what it has paid to JDA. By virtue of an express stipulation in the surety bond, the failure of JDA to present its claim to Pioneer within ten days from default of Lim or SAL on every installment, released Pioneer from liability from the claim.

"Therefore, Pioneer is not entitled to exact reimbursement from these defendants thru the indemnity.

" 'Art. 1318. Payment by a solidary debtor shall not entitle him to reimbursement from his co-debtors if such payment made after the obligation has prescribed or became illegal.' "

"These defendants are entitled to recover damages and attorney's fees from Pioneer and its surety by reason of the filing of the instant case against them and the attachment and garnishment of their properties. The instant action is clearly unfounded insofar as plaintiff drags these defendants and defendant Maglana." (Record on Appeal, pp. 363-369, Rollo of G.R. No. 84157)

We find no cogent reason to reverse or modify these findings.

Hence, it is our conclusion that the petition in G.R. No. 84197 is not meritorious.

We now discuss the merits of G.R. No. 84157.

Petitioner Jacob S. Lim poses the following issues:

"1. What legal rules govern the relationship among co-investors whose agreement was to do business through the corporate vehicle but who failed to incorporate the entity in which they had chosen to invest? How are the losses to be treated in situations where their contributions to the intended 'corporation' were invested not

through the corporate form? This Petition presents these fundamental questions which we believe were resolved erroneously by the Court of Appeals ('CA')." (Rollo, p. 6)

These questions are premised on the petitioner's theory that as a result of the failure of respondents Bormaheco, Spouses Cervantes, Constancio Maglana and petitioner Lim to incorporate, a de facto partnership among them was created, and that as a consequence of such relationship all must share in the losses and/or gains of the venture in proportion to their contribution. The petitioner, therefore, questions the appellate court's findings ordering him to reimburse certain amounts given by the respondents to the petitioner as their contributions to the intended corporation, to wit:

"However, defendant Lim should be held liable to pay his co-defendants' cross-claims in the total amount of P184,878.74 as correctly found by the trial court, with interest from the filing of the cross-complaints until the amount is fully paid. Defendant Lim should pay one-half of the said amount to Bormaheco and the Cervanteses and the other one-half to defendant Maglana. It is established in the records that defendant Lim had duly received the amount of P151,000.00 from defendants Bormaheco and Maglana representing the latter's participation in the ownership of the subject airplanes and spare parts (Exhibit 58). In addition, the cross-party plaintiffs incurred additional expenses, hence, the total sum of P184,878.74."

We first state the principles.

"While it has been held that as between themselves the rights of the stockholders in a defectively incorporated association should be governed by the supposed charter and the laws of the state relating thereto and not by the rules governing partners (*Cannon v. Brush Electric Co.*, 54 A. 121, 96 Md. 446, 94 Am. S.R. 584), it is ordinarily held that persons who attempt, but fail, to form a corporation and who carry on business under the corporate name occupy the position of partners inter se (*Lynch v. Perryman*, 119 P. 229, 29 Okl. 615, Ann.Cas. 1913A 1065). Thus, where persons associate themselves together under articles to purchase property to carry on a business, and their organization is so defective as to come short of creating a corporation within the statute, they become in legal effect partners inter se, and their rights as members of the company to the property acquired by the company will be recognized (*Smith v. Schoodoc Pond Packing Co.*, 84 A. 268, 109 Me. 555; *Whipple v. Parker*, 29 Mich. 369). So, where certain persons associated themselves as a corporation for the development of land for irrigation purposes, and each conveyed land to the corporation, and two of them contracted to pay a third the difference in the proportionate value of the land conveyed by him, and no stock was ever issued in the corporation, it was treated as a trustee for the associates in an action between them for an accounting, and its capital stock was treated as partnership assets, sold, and the proceeds distributed among them in proportion to the value of the property contributed by each (*Shorb v. Beaudry*, 56 Cal. 446). However, such a relation does not necessarily exist, for ordinarily persons cannot be made to assume the relation of partners, as between themselves, when their purpose is that no partnership shall exist (*London Assur. Corp. v. Drennen*, Minn., 6 S.Ct. 442, 116 U. S. 461, 472, 29 L.Ed. 688), and it should be implied only when necessary to do justice between the parties; thus, one who takes no part except to subscribe for stock in a proposed corporation which is never legally formed does not become a partner with other subscribers who engage in business under the name of the pretended corporation, so as to be liable as such in an action for settlement of the alleged partnership and contribution (*Ward v. Brigham*, 127 Mass. 24). A partnership relation between certain stockholders and other stockholders, who were also directors, will not be implied in the absence of an agreement, so as to make the former liable to contribute for payment of debts illegally contracted by the latter (*Heald v. Owen*, 44 N.W. 210, 79 Iowa 23). (*Corpus Juris Secundum*, Vol. 68, p. 464) (Underlining supplied)

In the instant case, it is to be noted that the petitioner was declared non-suited for his failure to appear during the pre-trial despite notification. In his answer, the petitioner denied having received any amount from respondents Bormaheco, the Cervanteses and Maglana. The trial court and the appellate court, however, found through Exhibit 58, that the petitioner received the amount of P151,000.00 representing the participation of Bormaheco and Atty.

Constancio B. Maglana in the ownership of the subject airplanes and spare parts. The record shows that defendant Maglana gave P75,000.00 to petitioner Jacob Lim thru the Cervanteses.

It is therefore clear that the petitioner never had the intention to form a corporation with the respondents despite representations to them. This gives credence to the cross-claims the respondents to the effect that they were induced and lured by the petitioner to make contributions to a proposed corporation which was never formed because the petitioner reneged on their agreement. Maglana alleged in his cross-claim:

"x x x that sometime in early 1965, Jacob Lim proposed to Francisco Cervantes and Maglana to expand his airline business. Lim was to procure two DC-3's from Japan and secure the necessary certificates of public convenience and necessity as well as the required permits for the operation thereof. Maglana sometime in May 1965, gave Cervantes, his share of P75,000.00 for delivery to Lim which Cervantes did and Lim acknowledged receipt thereof. Cervantes, likewise, delivered his share of the undertaking. Lim in an undertaking sometime on or about August 9, 1965, promised to incorporate his airline in accordance with their agreement and proceeded to acquire the planes on his own account. Since then up to the filing of this answer, Lim has refused, failed and still refuses to set up the corporation or return the money of Maglana." (Record on Appeal, pp. 337-338)

while respondents Bormaheco and the Cervanteses alleged in their answer, counterclaim, cross-claim and third party complaint:

"Sometime in April 1965, defendant Lim lured and induced the answering defendants to purchase two airplanes and spare parts from Japan which the latter considered as their lawful contribution and participation in the proposed corporation to be known as SAL. Arrangements and negotiations were undertaken by defendant Lim. Down payments were advanced by defendants Bormaheco and the Cervanteses and Constancio Maglana (Exh. E-1). Contrary to the agreement among the defendants, defendant Lim in connivance with the plaintiff, signed and executed the alleged chattel mortgage and surety bond agreement in his personal capacity as the alleged proprietor of the SAL. The answering defendants learned for the first time of this trickery and misrepresentation of the other, Jacob Lim, when the herein plaintiff chattel mortgage (sic) allegedly executed by defendant Lim, thereby forcing them to file an adverse claim in the form of third party claim. Notwithstanding repeated oral demands made by defendants Bormaheco and Cervanteses, to defendant Lim, to surrender the possession of the two planes and their accessories and or return the amount advanced by the former amounting to an aggregate sum of P178,997.14 as evidenced by a statement of accounts, the latter ignored, omitted and refused to comply with them." (Record on Appeal, pp. 341-342)

Applying therefore the principles of law earlier cited to the facts of the case, necessarily, no de facto partnership was created among the parties which would entitle the petitioner to a reimbursement of the supposed losses of the proposed corporation. The record shows that the petitioner was acting on his own and not in behalf of his other would-be incorporators in transacting the sale of the airplanes and spare parts.

WHEREFORE, the instant petitions are DISMISSED. The questioned decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Fernan, C.J., (Chairman), Bidin, and Cortes, JJ., concur.
Feliciano, J., no part.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.