

NICOLAS GATDULA, PLAINTIFF AND APPELLEE, VS. SIMPLICIO SANTOS AND MODESTO SANTOS, DEFENDANTS AND APPELLANTS, JOSE SANTIAGO AND POLICARPIA DE LOS SANTOS, INTERVENERS AND APPELLAN...*G.R. No. 8933. December 22, 1914*

Ponente: TORRES, J.

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This is an appeal interposed through bill of exceptions by counsel for the defendants and interveners, from the judgment of March 24, 1913, wherein the Honorable A. S. Crossfield, judge, decided in favor of the plaintiff, Nicolas Gatdula, declaring him to be a partner in the joint-account partnership (sociedad de cuentas en participacion) "Los Obreros Pescadores," with an interest therein of P500; ordering the defendants, Simplicio Santos, Modesto Santos, and Jose Santiago to make an accounting of the management and administration of the business of said company since the commencement thereof, and ordering the said defendants, Simplicio Santos and Modesto Santos, to pay the costs; declaring the intervener Jose Santiago a partner in the said joint-account company with an interest of P1,000, without costs in his favor; declaring that the intervener Policarpia de los Santos has an interest of P3,709.75, with a mortgage for that amount on the building belonging to the company, which is now in the receiver's charge, without costs in her favor; declaring the organization known as "Los Obreros Pescadores" to be dissolved and that, after making the accounting as ordered in the judgment, all the property belonging to the said company "Los Obreros Pescadores" be distributed among those persons who are entitled to share in the business of said company; and that the receiver continue to discharge the duties of his office until the company shall have been dissolved and its business wound up.

By an instrument dated August 28, 1912, counsel for Nicolas Gatdula filed a complaint in the Court of First Instance of Manila, alleging as a cause of action that in the month of January, 1907, for the purpose of securing the good name and interests thereof the joint-account company denominated "Los Obreros Pescadores" was constituted; articles of partnership were drawn up among the partners Simplicio Santos, Modesto Santos, Mateo Felix, Andres Antonio, and the plaintiff Nicolas Gatdula, to engage in buying and selling fish and shipping and selling same on commission; that the plaintiff, being a partner and possessing stock of the value of P500, was eliminated as such partner from the said company "Los Obreros Pescadores" by the manager thereof, Simplicio Santos, who put in his place third parties who were not legitimate partners; that notwithstanding the repeated demands of the other partners, the manager Simplicio Santos never distributed dividends among the share holders, because there were no funds to distribute, as the former cashier, Mateo Felix, had embezzled over P25,000; that this alleged embezzlement of P25,000, the reason for the failure to distribute dividends, was wholly pretended and fictitious; that the manager, Simplicio Santos, in connivance with the present cashier, Modesto Santos, had falsely made debts to appear against the company to its prejudice; that the manager Simplicio Santos and the cashier Modesto Santos made the fish-salting establishment, called "Umbuyan Katagalugan," located in the barrio of Bancusay of the Tondo district of the city of Manila, appear as a separate industry, capitalized independently of

the company, although it was the property of the company "Los Obreros Pescadores;" wherefore judgment was asked declaring the plaintiff Nicolas Gatlula to be a partner in the company "Los Obreros Pescadores;" that the company be dissolved and the partners be paid their respective portion of the capital and amounts due as dividends; that the establishment for salting fish, called "Umbuyan Katagalugan," be included as property belonging to the company "Los Obreros Pescadores;" that a receiver be appointed by the court and that the defendants Simplicio Santos and Modesto Santos indemnify the plaintiff for the damages that have resulted from bad management of the business, and pay the costs.

The defendants, Simplicio Santos and Modesto Santos, in answer to the complaint, denied the facts therein contained, and alleged that the defendant Simplicio Santos had never been required to distribute dividends; that he had never handled money of the company, nor had he ever had anything to do with the company funds, just as he had never stated that the funds of the company had been embezzled; that the plaintiff Nicolas Gatlula is not a partner in "Los Obreros Pescadores," but a mere employee in said company on a fixed salary; that although it was true that the plaintiff Nicolas Gatlula had been included as a partner in the articles of partnership it was at his own request, and that after said articles had been signed the plaintiff Gatlula informed the defendants that he had given up the idea of becoming a partner in said company, wherefore he did not pay any part of the amount of his share. As a counterclaim, they set forth that the plaintiff well knew that he was not a partner in "Los Obreros Pescadores," although with unheard-of audacity he had instituted this action against the defendants, thereby damaging them in the sum of P2,000, incurred for expenses of defense; wherefore they prayed that the court render judgment declaring that the plaintiff, Nicolas Gatlula, had no right to institute this action against the defendants and that he be ordered to pay them the sum of P2,000 as damages, and another P2,000 as prayed for in the counterclaim.

The plaintiff answered the counterclaim of the defendants with a general and specific denial of all the allegations therein contained.

The defendants, Andres Antonio, Jose Flor Mata, and Mateo Felix, answered the complaint filed by Nicolas Gatlula, admitting that the latter is a partner in "Los Obreros Pescadores;" that in January, 1907, a joint-account company denominated "Los Obreros Pescadores" was formed among the plaintiff and all the defendants, articles of partnership being drawn up therefor; that since its formation the said company had never paid dividends among the shareholders, the manager Simplicio Santos alleging that there were no funds because the cashier Mateo Felix had embezzled over P25,000; as a special defense they alleged that they never had any share in the management of the business of the company, except that from the year 1905 until August 4, 1907, Andres Antonio had held the office of collector, Jose Flor Mata that of secretary, and Mateo Felix that of cashier, this last one having been sued by the board of directors in the year 1908 for a shortage of over P25,000 of the company's funds, the complaint being afterwards dismissed; that the defendants had never opposed the liquidation and dissolution of the company "Los Obreros Pescadores;" that after the filing of said complaint Antonio and Flor Mata discovered that the said embezzlement had been simulated, and that there had been other frauds in the management, wherefore they had filed claims against said Santos and Santiago. In conclusion they prayed that they be absolved from the complaint; that the said company be dissolved; that a receiver be appointed and that the legitimate partners be paid their respective shares in the business.

At the request of the plaintiff and by a vote of the majority of the stockholders of "Los Obreros Pescadores," the court on November 26, 1912, appointed Mateo Felix receiver of the property of the said company, the defendants Simplicio and Modesto Santos excepting thereto. In the motion opposing the appointment of Mateo Felix as receiver, filed by the defendants on December 3, 1912, Jose Santiago set up a claim of intervention, alleging that he was a profit-sharing partner in "Los Obreros Pescadores," he having two shares, worth P1,000.

On January 4, 1913, after the property of the company, including the establishment for salting fish, called "Umbuyan Katagalugan," in Bancusay, Tondo, had been turned over to the receiver Mateo Felix, Policarpia de los Santos set up a claim of intervention, alleging that she was the owner of said fish-salting establishment, she having expended in its construction the sum of P3,709.75, which she had given her sons Simplicio and Modesto Santos for that purpose; that when the receiver Mateo Felix took over the said establishment the business was in bad repute with the public; that from December 3, 1912, until the date of the filing of this claim of intervention, scarcely any business could be transacted in said fish-salting establishment, owing to the discredit caused by the receiver and by Jose Flor Mata and Andres A. Felix, she having been damaged thereby in an amount not less than P2,500; wherefore she prayed that the court order the establishment "Umbijyan Katagalugan" to be excluded from the property of the company "Los Obreros Pescadores" and that he direct Nicolas Gatdula, Mateo A. Felix, Andres A. Felix, and Jose Flor Mata, jointly and severally, to pay to the intervenes the damages they had caused her.

After trial of the case and examination of the evidence submitted by both parties, the court rendered the decision mentioned. The defendants Simplicio Santos and Modesto Santos and the interveners Jose Santiago and Policarpia de los Santos excepted thereto and prayed for a reopening of the case and a new trial. This motion was denied, the petitioners excepting to the ruling. A bill of exceptions was filed, approved and forwarded to the clerk of this court.

The questions to be decided in this suit are: whether the plaintiff Nicolas Gatdula and the intervener Jose Santiago form part as members of the joint-stock company denominated "Los Obreros Pescadores;" whether the other intervener, Policarpia de los Santos, is entitled to share in the property of said company to the extent of P3,709.75, as proprietor of the fish-salting establishment in Bancusay, Tondo; whether or not the defendants Simplicio Santos, Modesto Santos and the said Jose Santiago should be ordered to make an accounting, the company be dissolved, and the property thereof be distributed among the stockholders in the business.

It has been duly proven in the case that Nicolas Gatdula is a member of the joint-account partnership "Los Obreros Pescadores," for that is demonstrated by the articles of partnership of said company, Exhibit B (pp. 35-43), executed in Manila on January 17, 1907, by Simplicio Santos, Modesto Santos, Mateo A. Felix, Andres A. Felix, and the defendant Nicolas Gatdula. It appears in the second clause of said articles of partnership that the net capital of the company was P5,250 Philippine currency; and according to the twelfth clause thereof the plaintiff Nicolas Gatdula was elected a member of the board of directors of "Los Obreros Pescadores" with voice and vote therein. Although the respective amounts contributed by each partner to the capital does not appear, the plaintiff has shown by parol evidence that each of the partners executing those articles contributed P500, Philippine currency, which, added to the capital of its predecessor "La Consignataria," constituted the assets of the company "Los Obreros Pescadores."

The defendants have attempted to prove that Nicolas Gatdula is not a member of the firm "Los Obreros Pescadores," as he neither could nor can exhibit the corresponding receipt to show that he paid the amount of his share of P500 Philippine currency; that while it is true that Gatdula signed the articles of partnership, Exhibit B, yet later it was agreed that he should cease to belong to the company, so he did not pay the whole nor any part of his share.

Paragraph F of clause 19 of the said articles of partnership provides that the board of directors is empowered to issue the corresponding certificates to the partners, as is usual and ordinary in every commercial company or firm, but it does not appear in the record that any of the subscribers to the articles of partnership of the company "Los Obreros Pescadores" received the certificate or document showing that he had paid his share in the company and that he had been admitted as such member. Therefore it must be conceded, according to the evidence submitted by

the plaintiff Nicolas Gatdula, that all the subscribers to the articles of partnership paid their respective quotas or shares, since otherwise they would not have been permitted to sign those articles.

The only partner who exhibited a receipt for payment to the company of the value of his shares is the intervener Jose Santiago. He presented the receipt Exhibit A-1 (p. 196) signed by Simplicio Santos and Mateo A. Felix, manager and treasurer respectively of the company "Los Obreros Pescadores," showing that he had purchased two shares in the said company and had paid their value of P1,000. The existence of this receipt is explained by the simple reason that Jose Santiago did not sign the articles of partnership, Exhibit B, and it does not appear therein that he was a partner in "Los Obreros Pescadores," so when he purchased two shares in the company it was necessary to issue a receipt for the two shares he had paid in, the receipt to serve at the same time as a certificate of partnership in said company. From the foregoing we must conclude that the partners executing the articles of partnership of the company "Los Obreros Pescadores" paid their respective shares, although no receipts were issued to them therefor, the fact that they had executed and signed said instrument being sufficient as acknowledging them to be such partners and as having paid in their respective quotas. This is the situation of the plaintiff Gatdula, who signed those articles.

As grounds for the dissolution of the company and the demand for an accounting it is alleged that the managers and administrators thereof, Simplicio Santos, Modesto Santos, and Jose Santiago, have conducted the business badly and have committed frauds in their operations, for it is asserted that, in addition to this suit, there are two joined actions pending in the Court of First Instance of this city between the same parties; No. 8127, instituted by Andres Antonio Felix against Simplicio Santos, the manager of the company; and No. 8255, prosecuted by Jose Flor Mata against Jose Santiago, Modesto Santos, and Simplicio Santos, personally and as managers of the said company, and the intervener Mateo Antonio Felix. In these actions, judgment was rendered on July 3, 1912, whereby Judge Del Rosario ordered the defendants, Simplicio and Modesto Santos, manager and cashier respectively of the said company, to make an accounting of the liquidation within thirty days from the time that the judgment of the Supreme Court in case No. 6271, prosecuted by the defendants against the said Mateo Antonio Felix, should become final; that the account they would render would have to depend upon the result of the accounts kept by the former cashier Mateo Antonio Felix, as found correct by the Supreme Court in that case; and that after the accounts had been approved by the court and each participant had been paid what was due him, the interest of each of the parties now interested in the company "Los Obreros Pescadores" should cease (p. 1117). This judgment is now pending execution in the Court of First Instance; it does not appear that any exception has been taken to it, and the accounts rendered are now awaiting the approval of the court. It is to be noted that Nicolas Gatdula appeared in one of said cases and prayed that he be permitted to intervene as an interested party in said company.

In the articles of partnership of "Los Obreros Pescadores," Exhibit B (pp. 35-43), it is provided among other things that the duration of the company shall be ten years, counting from January 17, 1907. In article 12 it is stipulated that a monthly and semi-annual balance shall be struck, which may be examined by the partners for fifteen and thirty days respectively. It is also provided that all the partners are entitled to receive dividends after each semi-annual balance. In article 16 it is determined that there will be a regular meeting of partners the first Sunday of the months of January and July of each year, for approving the accounts and balances, to receive dividends, to make desirable reforms, and to hear the reports that might be presented. Article 23 prescribes that the treasurer must count the cash three times a week and report the result thereof to the board of directors, that he shall pay dividends every six months and that he alone shall be responsible for all sums paid into the company fund. Finally, under article 24, the company could be dissolved by the expiration of the period therefor, by loss in the business of ten per cent of the capital, by bankruptcy of the company, and by mutual agreement of the parties.

It has been fully demonstrated that through' fault and negligence of said company's board of directors, which, under the provisions of article 20, was obligated strictly to enforce all the terms of the said instrument, none of these stipulations of the articles of partnership has been carried out or executed.

During the five years and a half and more that said company was in operation, that is, from January 17, 1907, until the filing of the complaint herein on August 28, 1912, no regular meeting of stockholders was held, but there were two extraordinary meetings, the first in the house of the bookkeeper Avellana on September 4, 1907 (Exhibit 2, p. 206), and the second in the house of the director Jose Santiago (sten. notes, 32), solely to consider the alleged embezzlement of over P25,000 committed by the cashier Mateo A. Felix; that monthly and semi-annual balances were not struck, nor was the cash counted, something which the cashier ought to have done three times a week, for it appears that the accounts of the company were not properly kept, as the record shows; and that since the formation of the said company dividends were never paid, in spite of the demands therefor made by various partners. For these reasons the plaintiff Nicolas Gatdula and the defendants Andres Antonio, Jose Flor Mata, and Mateo

A. Felix prayed that the company be dissolved, and that an accounting be had, a prayer that has been opposed by the other defendants, Simplicio Santos and Modesto Santos, and the intervener Jose Santiago.

There can be no question that the majority of the partners seek an accounting, and the dissolution and liquidation of the company, because of the violation of certain clauses in the articles of partnership, whereby the company and its members have been damaged. The court found said claim to be just, since the grounds therefor were held to be established, and allowed it in the judgment appealed from. It does not appear that the appellants assigned any error on these points, so according to established jurisprudence, the judgment can not be revised as to the portions that refer to the liquidation and dissolution of the company "Los Obreros Pescadores."

With reference to the appointment of a receiver, the parties litigant agreed upon the necessity of appointing one for the property of the company, wherefore the court directed them to choose one from among themselves, the choice falling upon Mateo A. Felix, who received four out of the six votes. Consequently he was appointed receiver by the court, after filing a bond of ₱10,000 Philippine current. After the motion of the defendants Simplicio and Modesto Santos to reconsider this appointment of Mateo A. Felix was denied, they excepted to the ruling and in this instance alleged that under section 174 of the Code of Civil Procedure the appointment of the receiver was improper. The second paragraph of said section 174 clearly provides that a receiver may be appointed when it is made to appear by the complaint or answer and by such other proof as the judge may require, that the party making the application for the appointment of a receiver has an interest in the property or fund which is the subject of the action and when it is shown that the property or fund is in danger of being lost, removed, or materially injured unless a receiver is appointed to guard and preserve it. Aside from the fact that the appointment of Mateo A. Felix as receiver was made by the court in accordance with law, the defendants Simplicio and Modesto Santos themselves agree with the plaintiff in the expediency of appointing a receiver. The controversy turns solely upon the person appointed, who does not suit the defendant Santos brothers. This divergence of opinion is not sufficient cause, nor does any other reason exist, for setting aside the order of the Court of First Instance appointing the said Mateo A. Felix receiver of the property of the company "Los Obreros Pescadores."

With respect to the fish-salting establishment called "Umbuyan Katagalugan," located in the Tondo district, it has been proven in the case that this forms a part of the property belonging to "Los Obreros Pescadores," for the fish of the said company were therein salted, smoked, and stored. A part of the building was occupied by the office of the company, and the manager paid the wages of the laborers who worked therein.

The intervener, Policarpia de los Santos, mother of the defendants Simplicio and Modesto Santos, claims to be the exclusive owner of the building in question, although in her claim of intervention she alleged that her sons

Simplicio and Modesto Santos, as her representatives, asked her permission to employ some of her capital in its erection. It is proven that the intervener has been paying the rental of the ground on which said building is erected (pp. 231-236); that she spent the sum of P3,709.75 in the construction thereof (p. 225), which appears to have been built by Santiago Reyes in 1911; and that after its completion a notarial instrument was executed, in which it was set forth under date of November 16, 1911, that the said building was the property of the intervener Policarpia de los Santos. This document is not inscribed in the property registry as proof of the intervener's claim.

The witness Mateo Buson testified that the company "Los Obreros Pescadores" paid a monthly rental of P15 for the use of the building, but aside from this testimony it has not been satisfactorily demonstrated that the company was her lessee in the occupation thereof. The mere fact that "Los Obreros Pescadores" occupied the building without paying rent gives rise to the presumption that it belongs to the said company. Policarpia de los Santos is entitled to collect the sum of P3,709.75, which she lent to the company for constructing the building, but in the absence of proof of her claim she cannot be considered the owner thereof.

For these reasons, whereby the errors assigned to the judgment appealed from are held to be refuted and since the same is in accordance with law, it must be affirmed, as we do affirm it, and the plaintiff is absolved from the counterclaim, with the costs against the appellants.

Arellano, C. J., Johnson, Carson, Moreland, and Trent, JJ., concur.

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