

EUGENIA NATIVIDAD, PLAINTIFF AND APPELLANT, VS. FELISA VILLARICA, DEFENDANT AND APPELLEE.*G. R. No. 9681. July 26, 1915*

Ponente: ARAULLO, J.

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The prayer of the complaint upon which this case is based, dated May 2, 1913, is that the defendant be ordered to return to the plaintiff the sum of P703 with legal interest, and also to pay the costs, on the ground that the two parties formed a partnership for the sale of sinamay and native dry goods, according to the partnership agreement executed by them on July 2, 1906, a partnership that had begun before said date, to wit, February 1 of the same year, the plaintiff having contributed to the net capital the sum of P703 and the defendant the sum of P2,007, but that said defendant, who had been managing the partnership, had not prepared any balance sheet of the business thereof, thus violating one of the clauses of the partnership agreement.

On October 20, 1913, a so-called supplementary complaint was filed, the court being prayed therein to render judgment sentencing the defendant to pay to the plaintiff the sum of P2,079.20 as the latter's participation in the partnership and her share in the P8,000 representing the amount of the insurance on the shop of the partnership which was burned on July 4, 1913—that is, two months after the original complaint was filed—it being furthermore alleged that the said sum of P8,000 had already been paid to the defendant by the insurance companies.

On October 27, 1913, the defendant filed her answer to the supplementary complaint, denying everything set forth therein except the first paragraph, and alleging in special defense that while it was true that the partnership alleged by the plaintiff had been formed, it was dissolved on May 1, 1909, after due accounting, inventory, and liquidation, and that the liabilities on that date exceeded the assets in the sum of P3,719; that various balance sheets had been prepared and the plaintiff had always refused to give her assent thereto; that since said date the defendant had assumed all the debts and obligations of the partnership, and she prayed that judgment be rendered dismissing the complaint. Said defendant had also prayed in her answer to the first complaint that the partnership be declared dissolved as of the date of May 1, 1909, that she be ordered to prepare the corresponding balance sheets, and the plaintiff be sentenced to pay the balance thereby resulting against her.

After trial and presentation of evidence by both parties, the court on November 29, 1913, rendered judgment declaring the partnership formed by the two parties dissolved as of May 1, 1909, and ordering the defendant to render an account of all the business transacted from the date of its formation up to May 1, 1909, and to deliver to the plaintiff whatever balance appeared in her favor, after the court had approved the liquidation ordered.

Plaintiff excepted to this judgment, as well as to the order denying her motion for new trial, and has through the corresponding bill of exceptions submitted the case to this Supreme Court on appeal.

One of the causes of the dissolution of the partnership between the plaintiff and the defendant as set forth in the partnership agreement is, according to the judgment appealed from, the fact that the general balance reveals a loss of 50 per cent or more of the net partnership capital.

Defendant in her second answer set forth that the partnership had been dissolved on May 1, 1909, after an accounting, inventory, and liquidation, the liabilities on that date exceeding the assets in the sum of P3,719, and that the plaintiff had refused to give her assent to the various balance sheets prepared.

Starting from the ground that an instrument dissolving the partnership on May 1, 1909, had been executed between the parties, although there had been drawn up in December, 1911, an instrument presented in the case as Exhibit 5, showing that from the balancing and liquidation made therein the capital amounted to the sum of P5.22 and that, therefore, the loss had been much greater than 50 per cent of the original capital, which amounted to P2,710, the lower court held said partnership to have been dissolved as from May 1, 1909, but at the same time, recognizing that plaintiff had not approved the liquidation made by the defendant, declared that the former was entitled to have account rendered her up to that date and to take the steps she deemed suitable to protect her interest, and hence the defendant was further ordered in the decision to render account as stated therein.

But the plaintiff not only has not given her assent to the instrument of dissolution (Exhibit 5), to which reference is made in the judgment appealed from, but furthermore she refused to sign it when it was presented to her by the defendant in December, 1911, because, she said, it was unjust (sic). In the judgment appealed from, said instrument is characterized as a project of dissolution.

Moreover, even though defendant's witness, Andres Roxas, who said that he in company with one Lucas Ricafort prepared the balance sheet mentioned in the instrument, testified that the plaintiff said that it was all right and that she gave her assent, yet the plaintiff has asserted that before she left the shop in July, 1909, no balance sheet had been prepared or liquidation made, and the witness himself also stated that he did not give a copy of the balance sheet to the plaintiff, but that he showed it to her and she did not sign it.

Perfecto Maraña, a bookkeeper who compared the balance sheet said to have been prepared in May, 1909, with the books of the partnership, said that he had encountered therein various errors in the accounts of Various debtors and creditors, but that they amounted to nothing, and when he was asked whether the differences he had encountered in the books were favorable or unfavorable to the plaintiff, with reference to Exhibit 5—that is, to the said instrument of dissolution or to what appears therein—he replied that he could not explain it.

As is seen by the foregoing, when the case was brought up to this higher tribunal through the corresponding bill of exceptions on appeal from the judgment of the lower court whereby said partnership between the plaintiff and the defendant was declared dissolved from May 1, 1909, the matter of the rendition of accounts ordered by that court in said judgment and the approval thereof was still pending, so, as counsel for the defendant-appellee quite correctly says, the case had not yet been terminated in the Court of First Instance and was not appealable until termination thereof and the accounts to which the plaintiff, according to that court, was entitled to have rendered her, were either approved or disapproved. Consequently, the appeal filed by the plaintiff and allowed from said judgment in so far as it declared said partnership to have been dissolved was premature.

The said appeal is therefore set aside, and after the accounts mentioned in the judgment have been rendered by the defendant the court will proceed in accordance with law. No special finding is made as to the costs. So ordered.

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

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