

44 Phil. 172

[G. R. No. 18707. December 09, 1922]

PO YENG CHEO, PLAINTIFF AND APPELLEE, VS. LIM KA YAM, DEFENDANT AND APPELLANT.

D E C I S I O N

STREET, J.:

By the amended complaint in this action, the present plaintiff, Po Yeng Cheo, alleged sole owner of a business formerly conducted in the City of Manila under the style of Kwong Cheong Tay, sought to obtain an accounting from Lim Ka Yam, as managing partner in said business and to recover from him its properties and assets. The defendant having died during the pendency of the cause in the court below and the death suggested of record, his administrator, one Lim Yock Tock, was required to appear and make defense.

In a decision dated July 1, 1921, the Honorable C. A. Imperial, presiding in the court below, found that the plaintiff was entitled to an accounting from Lim Ka Yam, the original defendant, as manager of the business already referred to, and he accordingly required Lim Yock Tock, as administrator, to present a liquidation of said business within a stated time. This order bore no substantial fruit, for the reason that Lim Yock Tock personally knew nothing about the aforesaid business (which had ceased operation more than ten years previously) and was apparently unable to find any books or documents that could shed any real light on its transactions. However, he did submit to the court a paper written by Lim Ka Yam in life purporting to give, with vague and uncertain details, a history of the formation of the Kwong Cheong Tay and some account of its disruption and cessation from business in 1910. To this narrative was appended a statement of assets and liabilities, purporting to show that after the business was liquidated, it was actually debtor to Lim Ka Yam to the extent of several thousand pesos. Appreciating the worthlessness of this so-called statement, and all parties apparently realizing that nothing more was likely to be discovered by further insisting on an accounting, the court proceeded, on December 27, 1921, to render final judgment in favor of the plaintiff.

The decision made on this occasion takes as its basis the fact stated by the court in its earlier decision of July 1, 1921, which may be briefly set forth as follows:

The plaintiff, Po Yeng Cheo, is the sole heir of one Po Gui Yao, deceased, and as such Po Yeng Cheo inherited the interest left by Po Gui Yao in a business conducted in Manila under the style of Kwong Cheong Tay. This business had been in existence in Manila for many years prior to 1903, as a mercantile partnership, with a capitalization of P160,000, engaged in the import and export trade; and after the death of Po Gui Yao the following seven persons were interested therein as partners in the amounts set opposite their respective names, to wit: Po Yeng Cheo, P60,000; Chua Chi Yek, P50,000; Lim Ka Yam, P10,000; Lee Kom Chuen, P10,000; Ley Wing Kwong, P10,000; Chan Liong Chao, P10,000; Lee Ho Yuen, P10,000. The manager of Kwong Cheong Tay, for many years prior to its complete cessation from business in 1910, was Lim Ka Yam, the original defendant herein.

Among the properties pertaining to Kwong Cheong Tay and constituting part of its assets were ten shares of a total par value of P10,000 in an enterprise conducted under the name of Yut Siong Chyip Konski and certain shares to the amount of P1,000 in the Manila Electric Railroad and Light Company, of Manila.

In the year 1910 (exact date unstated) Kwong Cheong Tay ceased to do business, owing principally to the fact that the plaintiff ceased at that time to transmit merchandise from Hongkong, where he then resided. Lim Ka Yam appears at no time to have submitted to the partners' any formal liquidation of the business, though repeated demands to that effect have been made upon him by the plaintiff.

In view of the facts above stated, the trial judge rendered judgment in favor of the plaintiff, Po Yeng Cheo, to recover of the defendant Lim Yock Tock, as administrator of Lim Ka Yam, the sum of sixty thousand pesos (P60,000), constituting the interest of the plaintiff in the capital of Kwong Cheong Tay, plus the plaintiff's proportional interest in shares of the Yut Siong Chyip Konski and Manila Electric Railroad and Light Company, estimated at P11,000, together with the costs. From this judgment the defendant appealed.

In beginning our comment on the case, it is to be observed that this court finds itself strictly circumscribed so far as our power of review is concerned, to the facts found by the trial judge, for the plaintiff did not appeal from the decision of the court below in so far as it was unfavorable to him, and the defendant, as appellant, has not caused a great part of the oral testimony to be brought up. It results, as stated, that we must accept the facts as found by

the trial judge; and our review must be limited to the error, or errors, if any, which may be apparent upon the face of the appealed decision, in relation with the pleadings of record.

Proceeding then to consider the appealed decision in relation with the facts therein stated and other facts appearing in the orders and proceedings in the cause, it is quite apparent that the judgment cannot be sustained. In the first place, it was erroneous in any event to give judgment in favor of the plaintiff to the extent of his share of the capital of Kwong Cheong Tay. The managing partner of a mercantile enterprise is not a debtor to the shareholders for the capital embarked by them in the business; and he can only be made liable for the capital when, upon liquidation of the business, there are found to be assets in his hands applicable to capital account. That the sum of one hundred and sixty thousand pesos (P160,000) was embarked in this business many years ago reveals nothing as to the condition of the capital account at the time the concern ceased to do business; and even supposing—as the court possibly did—that the capital was intact in 1908, this would not prove that it was intact in 1910 when the business ceased to be a going concern; for in that precise interval of time the capital may have been diminished or dissipated from causes in no wise chargeable to the negligence or misfeasance of the manager.

Again, so far as appears from the appealed decision, the only property pertaining to Kwong Cheong Tay at the time this action was brought consisted of shares in the two concerns already mentioned of the total par value of P11,000. Of course, if these shares had been sold and converted into money, the proceeds, if not needed to pay debts, would have been distributable among the various persons in interest, that is, among the various shareholders, in their respective proportions, But under the circumstances revealed in this case, it was erroneous to give judgment in favor of the plaintiff for his aliquot part of the par value of said shares. It is elementary that one partner, suing alone, cannot recover of the managing partner the value of such partner's individual interest; and a liquidation of the business is an essential prerequisite. It is true that in *Lichauco vs. Lichauco* (33 Phil., 350), this court permitted one partner to recover of the manager the plaintiff's aliquot part of the proceeds of the business, then long since closed; but in that case the affairs of the defunct concern had been actually liquidated by the manager to the extent that he had apparently converted all its properties into money and had pocketed the same—which was admitted;—and nothing remained to be done except to compel him to pay over the money to the persons in interest. In the present case, the shares referred to—constituting the only assets of Kwong Cheong Tay—have not been converted into ready money and doubtless still remain in the name of Kwong Cheong Tay as owner. Under these circumstances it is impossible to sustain a judgment in favor of the plaintiff for his aliquot part of the par value of said shares, which

would be equivalent to allowing one of several coowners to recover from another, without process of division, a part of an undivided property.

Another condition will be noted as present in this case which in our opinion is fatal to the maintenance of the appealed judgment. This is that, after the death of the original defendant, Lim Ka Yam, the trial court allowed the action to proceed against Lim Yock Tock, as his administrator, and entered judgment for a sum of money against said administrator as the accounting party,—notwithstanding the insistence of the attorneys for the latter that the action should be discontinued in the form in which it was then being prosecuted. The error of the trial court in so doing can be readily demonstrated from more than one point of view.

In the first place, it is well settled that when a member of a mercantile partnership dies, the duty of liquidating its affairs devolves upon the surviving member, or members, of the firm, not “upon the legal representative of the deceased partner. (*Wahl vs. Donaldson Sim & Co.*, 5 Phil., 11; *Sugo and Shibata vs. Green*, 6 Phil., 744.) And the same rule must be equally applicable to a civil partnership clothed with the form of a commercial association (art. 1670, Civil Code; *Lichauco vs. Lichauco*, 33 Phil., 350). Upon the death of Lim Ka Yam it therefore became the duty of his surviving associates to take the proper steps to settle the affairs of the firm, and any claim against him, or his estate, for a sum of money due to the partnership by reason of any misappropriation of its funds by him, or for damages resulting from his wrongful acts as manager, should be prosecuted against his estate in administration in the manner pointed out in sections 686 to 701, inclusive, of the Code of Civil Procedure. Moreover, when it appears, as here, that the property pertaining to Kwong Cheong Tay, like the shares in the Yut Siong Chyip Konski and the Manila Electric Railroad and Light Company, are in the possession of the deceased partner, the proper step for the surviving associates to take would be to make application to the court having charge of the administration to require the administrator to surrender such property.

But, in the second place, as already indicated, the proceedings in this cause, considered in the character of an action for an accounting, were futile; and the court, abandoning entirely the effort to obtain an accounting, gave judgment against the administrator upon the supposed liability of his intestate to respond for the plaintiff's proportionate share of the capital and assets. But of course the action was not maintainable in this aspect after the death of the defendant; and the motion to discontinue the action as against the administrator should have been granted. The judgment must be reversed, and the defendant will be absolved from the complaint; but it will be understood that this order is without prejudice to any proceeding which may be undertaken by the proper person or persons in

interest to settle the affairs of Kwong Cheong Tay and in connection therewith to recover from the administrator of Lim Ka Yam the shares in the two concerns mentioned above. No special pronouncement will be made as to costs of either instance. So ordered.

Araullo, C. J., Johnson, Malcolm, Avanceña, and Villamor, JJ., concur.

Ostrand, J., concurs in the result.

Johns, and Romualdez, JJ., took no part in the decision of this case.

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