1 Phil. 671

[G.R. No. 413. February 02, 1903]

JOSE FERNANDEZ, PLAINTIFF AND APPELLANT, VS. FRANCISCO DE LA ROSA, DEFENDANT AND APPELLEE.

D E C I S I O N

LADD, J.:

The object of this action is to obtain from the court a declaration that a partnership exists between the parties, that the plaintiff has a Consequent interest in certain cascoes which are alleged to be partnership property, and that the defendant is bound to render an account of his administration of the cascoes and the business carried on with them.

Judgment was rendered for the defendant in the court below and the plaintiff appealed.

The respective claims of the parties as to the facts, so far as it is necessary to state them in order to indicate the point in dispute, may be briefly summarized. The plaintiff alleges that in January, 1900, he entered into a verbal agreement with the .defendant to form a partnership for the purchase of cascoes and the carrying on of the business of letting the same for hire in Manila, the defendant to buy the cascoes and each partner to furnish for that purpose such amount of money as he could, the profits to be divided proportionately; that in the same January the plaintiff furnished the defendant 300 pesos to purchase a casco designated as No. 1515, which the defendant did purchase for 500 pesos of Dona Isabel Vales, taking the title in his own name; that the plaintiff furnished further sums aggregating about 300 pesos for repairs on this casco; that on the fifth of the folloAving March he furnished the defendant 825 pesos to purchase another casco designated as No. 2089, which the defendant did purchase for 1,000 pesos of Luis R. Yangco, taking the title to this casco also in his own name; that in April the parties undertook to draw up articles of partnership for the purpose of embodying the same in an authentic document, but that the defendant having proposed a draft of such articles which differed materially from the terms of the earlier verbal agreement, and being unwilling to include casco No.2089 in the

partnership, they were unable to come to any understanding and no written agreement was executed; that the defendant having in the meantime had the control and management of the two cascoes, the plaintiff made a demand for an accounting upon him, which the defendant refused to render, denying the existence of the partnership altogether.

The defendant admits that the project of forming a partnership in the casco business in which he was already engaged to some extent individually was discussed between himself and the plaintiff in January, 1900, and earlier, one Marcos Angulo, who was a partner of the plaintiff in a bakery business, being also a party to the negotiations, but he denies that any agreement was ever consummated. He denies that the plaintiff furnished any money in January, 1900, for the purchase of casco No. 1515, or for repairs on the same, but claims that he borrowed 300 pesos on his individual account in January from the bakery firm, consisting of the plaintiff, Marcos Angulo, and Antonio Angulo. The 825 pesos, which he admits he received from the plaintiff March 5, he claims was for the purchase of casco No. 1515, which he alleged was bought March 12, and he alleges that he never received anything from the defendant toward the purchase of casco No. 2089. He claims to have paid, exclusive of repairs, 1,200 pesos for the first casco and 2,000 pesos for the second one.

The case comes to this court under the old procedure, and it is therefore necessary for us the review the evidence and pass upon the facts. Our general conclusions may be stated as follows:

(1) Dona Isabel Vales, from whom the defendant bought casco No. 1515, testifies that the sale was made and the casco delivered in January, although the public document of sale was not executed till some time afterwards. This witness is apparently disinterested, and we think it is safe to rely upon the truth of her testimony, especially as the defendant, while asserting that the sale was in March, admits that he had the casco taken to the ways for repairs in January. It is true that the public document of sale was executed March 10, and that the vendor declares therein that she is the owner of the casco, but such declaration does not exclude proof as to the actual date of the sale, at least as against the the plaintiff, who was not a party to the instrument. (Civil Code, sec. 1218.) It often happens, of course, in such cases, that the actual sale precedes by a considerable time the execution of the formal instrument of transfer, and this is what we think occurred here.

(2) The plaintiff presented in evidence the following receipt: “I have this day received from D. Jose Fernandez eight hundred and twenty-five pesos for the cost of a casco which we are

to purchase in company. Manila, March 5, 1900. Francisco de la Rosa." The authenticity of this receipt is admitted by the defendant. If casco No. 1515 was bought, as we think it was, in January, the casco referred to in the receipt "which the parties "are to purchase in company" must be casco No. 2089, which was bought March 22. We find this to be the fact, and that the plaintiff furnished and the defendant received 825 pesos toward the purchase of this casco, with the understanding that it was to be purchased on joint account.

(3) Antonio Fernandez testifies that in the early part of January, 1900, he saw Antonio Angulo give the defendant, in the name of the plaintiff, a sum of money, the amount of which he is unable to state, for the purchase of a casco to be used in the plaintiff's and defendant's business. Antonio Angulo also testified, but the defendant claims that the fact that Angulo was a partner of the plaintiff rendered him incompetent as a witness under the provisions of article 643 of the then Code of Civil Procedure, and without deciding whether this point is well taken, we have discarded his testimony altogether in considering the case. The defendant admits the receipt of 300 pesos from Antonio Angulo in January, claiming, as has been stated, that it was a loan from the firm. Yet he sets up the claim that the 825 pesos which he received from the plaintiff in March were furnished toward the purchase of casco No. 1515, thereby virtually admitting that that casco was purchased in company with the plaintiff. We discover nothing in the evidence to support the claim that the 300 pesos received in January was a loan, unless it may be the fact that the defendant had on previous occasions borrowed money from the bakery firm. We think all the probabilities of the case point to the truth of the evidence of Antonio Fernandez as to this transaction, and we find the fact to be that the sum in question was furnished by the plaintiff toward the purchase for joint ownership of casco No. 1515, and that the defendant received it with the understanding that it was to be used for this purpose. We also find that the plaintiff furnished some further sums of money for the repair of this casco.

(4) The balance of the purchase price of each of the two cascoes over and above the amount contributed by the plaintiff was furnished by the defendant.

(5) We are unable to find upon the evidence before us that there was any specific verbal agreement of partnership, except such as may be implied from the facts as to the purchase of the casco.

(6) Although the evidence is somewhat unsatisfactory upon this point, we think it more probable than otherwise that no attempt was made to agree upon articles of partnership till about the middle of the April following the purchase of the caseoes.

(7) At some time subsequently to the failure of the attempt to agree upon partnership articles and after the defendant had been operating the cascoes for some time, the defendant returned to the plaintiff 1,125 pesos, in two different sums, one of 300 and one of 825 pesos. The only evidence in the record as to the circumstances under which the plaintiff received these sums is contained in his answers to the interrogatories proposed to him by the defendant, and the whole of his statement on this point may properly be considered in determining the fact as being in the nature of an indivisible admission. He states that both sums were received with an express reservation on his part of all his rights as a partner. We find this to be the fact.

Two questions of law are raised by the foregoing facts:

(1) Did a partnership exist between the parties? (2) If such partnership existed, was it terminated as a result of the act of the defendant in receiving back the 1,125 pesos?

(1) "Partnership is a contract by which two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves." (Civil Code, art. 1665.)

The essential points upon which the minds of the parties must meet in a contract of partnership are, therefore, (1) mutual contribution to a common stock, and (2) a joint interest in the profits. If the contract contains these two elements the partnership relation results, and the law itaelf fteefc the incidents of this relation if the parties fail to do so. (Civil Code, sees. 1689, 1695.)

We have found as a fact that money was furnished by the plaintiff and received by the defendant with the understanding that it was to be used for the purchase of the cascoes in question. This establishes the first element of the contract, namely, mutual contribution to a common stock. The second element, namely, the intention to share profits, appears to be an unavoidable deduction from the fact of the purchase of the cascoes in common, in the absence of any other explanation of the object of the parties in making the purchase in that form, and,. it may be added, in view of the admitted fact that prior to the purchase of the first casco the formation of a partnership had been a subject of negotiation between them.

Under other circumstances the relation of joint ownership, a relation distinct though perhaps not essentially different in its practical consequence from that of partnership, might have been the result of the joint purchase. If, for instance, it were shown that the object of the parties in purchasing in company had been to make a more favorable bargain for the

two cascoes than they could have done by purchasing them separately, and that they had no ulterior object except to effect a division of the common property when once they had acquired it, the *affectio societatis* would be lacking and the parties would have become joint tenants only; but, as nothing of this sort appears in the case, we must assume that the object of the purchase was active use and profit and not mere passive ownership in common.

It is thus apparent that a complete and perfect contract of partnership was entered into by the parties. This contract, it is true, might have been subject to a suspensive condition, postponing its operation until an agreement was reached as to the respective participation of the partners in the profits, the character of the partnership as collective or *en comandita*, and other details, but although it is asserted by counsel for the defendant that such was the case, there is little or nothing in the record to support this claim, and the fact that the defendant did actually go on and purchase the boats, as it would seem, before any attempt had been made to formulate partnership articles, strongly discountenances the theory.

The execution of a written agreement was not necessary in order to give efficacy to the verbal contract of partnership as a civil contract, the contributions of the partners not having been in the form of immovables or rights in immovables. (Civil Code, art. 1667.) The special provision cited, requiring the execution of a public writing in the single case

(2) The remaining question is as to ihe legal effect of the acceptance by the plaintiff of the money returned to him by the defendant after the definitive failure of the attempt to agree upon partnership articles. The amount returned fell short, in our view of the facts, of that which the plaintiff had contributed to the capital of the partnership, since it did not include the sum which he had furnished for the repairs of casco No. 1515. Moreover, it is quite possible, as claimed by the plaintiff, that a profit may have been realized from the business during the period in which the defendant had been administering it prior to the return of the money, and if so he still retained that sum in his hands. For these reasons the acceptance of the money by the plaintiff did not have the effect of terminating the legal existence of the partnership by converting it into a *societas leonina*, as claimed by counsel for the defendant.

Did the defendant waive his right to such interest as remained to him in the partnership property by receiving the money? Did he by so doing waive his right to an accounting of the profits already realized, if any, and a participation in them in proportion to the amount he had originally contributed to the common fund? Was the partnership dissolved by the “will or withdrawal of one of the partners” under article 1705 of the Civil Code? We think these

questions must be answered in the negative.

There was no intention on the part of the plaintiff in accepting the money to relinquish his rights as a partner, nor is there any evidence that by anything that he said or by anything that he omitted to say he gave the defendant any ground whatever to believe that he intended to relinquish them. On the contrary he notified the defendant that he waived none of his rights in the partnership. Nor was the acceptance of the money an act which was in itself inconsistent with the continuance of the partnership relation, as would have been the case had the plaintiff withdrawn his entire interest in the partnership. There is, therefore, nothing upon which a waiver, either express or implied, can be predicated. The defendant might have himself terminated the partnership relation at any time, if he had chosen to do so, by recognizing the plaintiff's right in the partnership property and in the profits. Having failed to do this he can not be permitted to force a dissolution upon his copartner upon terms which the latter is unwilling to accept. We see nothing in the case which can give the transaction in question any other aspect than that of the withdrawal by one partner with the consent of the other of a portion of the common capital. The result is that we hold and declare that a partnership was formed between the parties in January, 1900, the existence of which the defendant igrXfund to recognize; that cascoes Nos, 1515 and 2089^

The judgment of the court below will be reversed without costs, and the record returned for the execution of the judgment now rendered. So ordered.

Arellano, C. J., Torres, Cooper and *Mapa, JJ.,* concur.

Willard, J., dissenting.

ON MOTION FOR A REHEARING

MAPA, J.:

This case has been decided on appeal in favor of the plaintiff, and the defendant has moved for a rehearing upon the following grounds:

1. Because that part of the decision which refers to the existence of the partnership which is the object of the complaint is not .based upon clear and decisive legal grounds; and
2. Because, upon the supposition of the existence of the partnership, the decision does

> not clearly determine whether the juridical relation between the partners suffered any modification in consequence of the withdrawal by the plaintiff of the sum of 1,125 pesos from the funds of the partnership, or if it continued as before, the parties being thereby deprived, he alleges, of one of the principal bases for determining with exactness the amount due to each.

With respect to the first point, the appellant cites the fifth conclusion of the decision, which is as follows: “We are unable to find from the evidence before us that there was any specific verbal agreement of partnership, except such as may be implied from the facts as to the purchase of the cascoes.”

Discussing this part of the decision, the defendant says that, in the judgment of the court, if on the one hand there is no direct evidence of a contract, on the other its existence can only be inferred from certain facts, and the defendant adds that the possibility of an inference is not sufficient ground upon which to consider as existing what may be inferred to exist, and still less as sufficient ground for declaring its efficacy to produce legal effects.

This reasoning rests upon a false basis. We have not taken into consideration the mere possibility of an inference, as the appellant gratuitously states, for the purpose of arriving at a conclusion that a contract of partnership was entered into between him and the plaintiff, but have considered the proof which is derived from the facts connected with the purchase of the cascoes. It is stated in the decision that with the exception of this evidence we find no other which shows the making of the contract. But this does not mean (for it says exactly the contrary) that this fact is not absolutely proven, as the defendant erroneously appears to think. From this data we infer a fact which to our mind is certain and positive, and not a mere possibility; we infer not that it is possible that the contract may have existed, but that it actually did exist. The proofs constituted by the facts referred to, although it is the only evidence, and in spite of the fact that it is not direct, we consider, however, sufficient to produce such a conviction, which may certainly be founded upon any of the various classes of evidence which the law admits. There is all the more reason for its being so in this case, because a civil partnership may be constituted in any form, according to article 1667 of the Civil Code, unless real property or real rights are contributed to it—the only case of exception in which it is necessary that the agreement be recorded in a public instrument.

It is of no importance that the parties have failed to reach an agreement with respect to the minor details of contract. These details pertain to the accidental and not to the essential part of the contract. We have already stated in the opinion what are the essential requisites

of a contract of partnership, according to the definition of article 1665. Considering as a whole the probatory facts which appears from the record, we have reached the conclusion that the plaintiff and the defendant agreed to the essential parts of that contract, and did in fact constitute a partnership, with the funds of which were purchased the cascoes with which this litigation deals, although it is true that they did not take the precaution to precisely establish and determine from the beginning the conditions with respect to the participation of each partner in the profits or losses of the partnership. The disagreements subsequently arising between them, when endeavoring to fix these conditions, should not and can not produce the effect of destroying that which has been done, to the prejudice of one of the partners, nor could it divest his rights under the partnership which had accrued by the actual contribution of capital which followed the agreement to enter into a partnership, together with the transactions effected with partnership funds. The law has foreseen the possibility of the constitution of a partnership without an express stipulation by the partners upon those conditions, and has established rules which may serve as a basis for the distribution of profits and losses among the partners. (Art. 1689 of the Civil Code.) We consider that the partnership entered into by the plaintiff and the defendant falls within the provisions of this article.

With respect to the second point, it is obvious that upon declaring the existence of a partnership and the right of the plaintiff to demand from the defendant an itemized accounting of his management thereof, it was impossible at the same time to determine the effects which might have been produced with respect to the interest of the partnership by the withdrawal by the plaintiff of the sum of 1,125 pesos. This could only be determined after a liquidation of the partnership. Then, and only then, can it be known if this sum is to be charged to the capital contributed by the plaintiff, or to his share of the profits, or to both. It might well be that the partnership has earned profits, and that the plaintiff's participation therein is equivalent to or exceeds the sum mentioned. In this case it is evident that, notwithstanding that payment, his interest in the partnership would still continue. This is one case. It would be easy to imagine many others, as the possible results of a liquidation are innumerable. The liquidation will finally determine the condition of the legal relations of the partners *inter se* at the time of the withdrawal of the sum mentioned. It was not, nor is it possible to determine this status *a priori* without prejudging the result, as yet unknown, of the litigation. Therefore it is that in the decision no direct statement has been made upon this point. It is for the same reason that it was expressly stated in the decision that it "*does not involve an adjudication as to any disputed item of the partnership account.*"

The contentions advanced by the moving party are so evidently unfounded that we can not

see the necessity or convenience of granting the rehearing prayed for, and the motion is therefore denied.

Arellano, C. J., Torres, Cooper, and *Ladd, JJ.*, concur.

Willard and *McDonough, JJ.,* did not sit in this case.

Date created: April 14, 2014