

7 Phil. 204

[G.R. No. 2908. December 20, 1906]

**ANTONIO TORRES Y ROXAS AND THE INTERNATIONAL BANK ET AL.,
APPELLEES, VS. RAMON B. GENATO (INTER VENOR), APPELLANT.**

D E C I S I O N

CARSON, J.:

It appears from the record in this case that on the 29th of October, 1903, Antonio Torres and Simon Selmeer entered into articles of copartnership for the purpose of conducting the business known as the New Oriente Hotel; that the new firm became the owner of the furniture in the said, hotel and of a lease on the buildingwherein it was conducted, together with other valuable property; that on the 9th of December, 1903, the copartnership borrowed 20,000 pesos from the International I Sank, and executed or undertook to execute a conveyance of certain partnership property to one Jose Kobles Lahesa as security for this loan; that on the 25th of August, 1904, one of the partners, Antonio Torres, filed a complaint, making his partner, Simon Schneer, the International Bank, and the said Lahesa parties defendant, praying that the affairs of the partnership be wound up, the partnership property sold, the debts paid, and the proceeds distributed to the interested parties; that in the course of the proceedings had on this complaint the appellant, Ramon Genato, was permitted to intervene and that he filed his complaint, alleging that the partnership was indebted to him in the sum of 572 pesos, Mexican currency, being the purchase price of certain chairs purchased by the partnership in the month of December, 1903; that on the 22d of August, 1905, without hearing evidence as to the facts set out in the complaint, the court ordered its dismissal on the ground that it failed to set out "an interest in the matter in litigation, or in the success of either party, or an interest against both," as required by section 121 of the Code of Civil Procedure.

We are of opinion that the trial court erred in holding that the complaint of the appellant did not set out a "legal interest in the matter in litigation" in the proceedings for the winding up

of the affairs of the partnership.

The complaint alleges that some time in the month of December, 1903, the intervenor sold a number of chairs to the partnership for the sum of 572 pesos, Mexican currency, and that the purchase price has never been paid. Article 1922 of the Civil Code provides that:

“Con relacion a determinados bienes muebles del deudor, gozan de preferencia:

“1.º Los creditos por construccion, reparacion, conservacion o precio de venta de bienes muebles que esten en poder del deudor, hasta donde alcancen el valor de los mismos.”

Hence, if it appear that these chairs continued in the possession of the partnership, the vendor had a right to a preference in the distribution of the proceeds of the sale of these chairs in the course of the proceedings for the settlement and winding up of the affairs of the partnership.

The trial court appears to have been of opinion that these chairs passed beyond the control of the purchaser on December 9, 1903, by virtue of the alleged conveyance to the said Lahesa as security or pledge for the loan from the International Bank of certain property of the partnership; but this is a question of fact, which is denied by the intervenor, and as to which he is entitled to be heard in any proceeding for the sale of these chairs and the distribution of the proceeds of such sale.

The vendor insists that these chairs are not included in the inventory of the property conveyed to the International Bank and there is nothing in the record to show whether this contention is well founded or not, and since he alleges that the chairs were sold by him to the partnership and were in its control in December, 1903, and this allegation is not denied, they must be presumed to have continued in the possession and control of the partnership until the contrary appears. (Code of Civil Procedure, subsection 30, section 334.)

The order of the trial court dismissing the complaint in intervention of Ramon Genato is reversed, without special condemnation of costs, and after twenty days judgment will be entered in accordance herewith and ten days thereafter the record will be returned to the court from whence it came here on appeal for proper procedure. So ordered.

Arellano, C. J., Torres, Mapa, Willard, and Tracey, JJ., concur.

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