

7 Phil. 117

[G.R. No. 2800. December 04, 1906]

**FRANK S. BOURNS, PLAINTIFF AND APPELLEE, VS. D. M. CARMAN ET AL.,
DEFENDANTS AND APPELLANTS.**

D E C I S I O N

MAPA, J.:

The plaintiff in this action seeks to recover the sum of \$437.50, United States currency, balance due on a contract for the sawing of lumber for the lumber yard of Lo-Chim-Lim. The contract relating to the said work was entered into by the said Lo-Chim-Lim, acting as in his own name with the plaintiff, and it appears that the said Lo-Chim-Lim personally agreed to pay for the work himself. The plaintiff, however, has brought this action against Lo-Chim-Lim and his codefendants jointly, alleging that, at the time the contract was made, they were the joint proprietors and operators of the said lumber yard engaged in the purchase and sale of lumber under the name and style of Lo-Chim-Lim. Apparently the plaintiff tries to show by the words above italicized that the other defendants were the partners of Lo-Chim-Lim in the said lumber-yard business.

The court below dismissed the action as to the defendants D. M. Carman and Fulgeneio Tan-Tongeo on the ground that they were not the partners of Lo-Chim-Lim, and rendered judgment against the other defendants for the amount claimed in the complaint with the costs of proceedings, Vicente Palanca and Go-Tauco only excepted to the said judgment, moved for a new trial, and have brought the case to this court by bill of exceptions.

The evidence of record shows, according to the judgment of the court below, "That Lo-Chim-Lim had a certain lumber yard in Calle Lemery of the" city of Manila, and that he was the manager of the same, having ordered the plaintiff to do some work for him at his sawmill in the city of Manila; and that Vicente Palanca was his partner, and had an interest in the said business as well as in the profits and losses thereof * * *," and that Go-Tauco received part of the earnings of the lumber yard in the management of which he was interested.

The court below accordingly found that “Lo-Chim-Lim Vicente Palanca, and Go-Tauco had a lumber yard in Calle Lemery of the city of Manila in the year 1904, and participated in the profits and losses of the business and that Lo-Chim-Lim was the managing partner of the said lumber yard.” In other words, that the appellants were, according to the court below, coparticipants with the said Lo-Chim-Lim in the business in question.

Although the evidence upon this point as stated by the court below is not entirely satisfactory, it can not be said> however, that it is plainly and manifestly in conflict with the above finding of that court. Such finding should therefore be sustained.

The question thus raised is, therefore, purely one of law and reduces itself to determining the real legal nature of the participation which the appellants had in Lo-Chim-Lim’s lumber yard, and consequently their liability toward the plaintiff, in connection with the transaction which gave rise to the present suit.

It seems that the alleged partnership between Lo-Chim-Lim and the appellants was formed by verbal agreement only. At least there is no evidence tending to show that said agreement was reduced to writing, or that it was ever recorded in a public instrument.

Moreover, that partnership had no corporate name. The plaintiff himself alleges in his complaint that the partnership was engaged in business under the name and style of Lo-Chim-Lim only, which according to the evidence was the name of one of the defendants. On the other hand, and this is very important, it does not appear that there was any mutual agreement between the parties, and if there were any, it has not been shown what that agreement was. As far as the evidence shows it seems that the business was conducted by Lo-Chim-Lim in his own name, although he gave to the appellants a share of the earnings of the business; but what that share was has not been shown with certainty. The contracts made with the plaintiff were made by Lo-Chim-Lim individually in his own name, and there is no evidence that the partnership ever contracted in any other form. Under such circumstances we find nothing upon Avhich to consider this partnership other than as a partnership of cuentas en partioipavidn. It may be that, as a matter of fact, it is something different, but the uncertain and scant evidence introduced by the parties does not permit of any other designation of this partnership. We see nothing, according to the evidence, but a simple business conducted by Lo-Chim-Lim exclusively, in his own name, and under his own personal management, he having effected every transaction connected therewith also in his own name, the names of the other persons interested in the profits and losses of the business nowhere appearing. A partnership constituted in such a manner, the existence of

which was only known to those who had an interest in the same, there being no mutual agreements between the partners, and without a corporate name indicating to the public in some way that there were other people besides the one who ostensibly managed and conducted the business, is exactly the accidental partnership of cuentas en participacion defined in article 239 of the Code of Commerce.

Those who contract with the person under whose name the business of such partnership of cuentas en participacion is conducted, shall have only a right of action against such person and not against the other persons interested, and the latter, on the other hand, shall have no right of action against the third person who contracted with the manager unless such manager formally transfers his right to them. (Art. 242 of the Code of Commerce.) It follows, therefore, that the plaintiff has no right to demand from the appellants the payment of the amount claimed in the complaint, as Lo-Chim-Lim was the only one who contracted with him. The action of the plaintiff lacks, therefore, a legal foundation and should be accordingly dismissed.

The judgment appealed from is hereby reversed and the appellants are absolved of the complaint without express provision as to the costs of both instances. After the expiration of twenty days let judgment be entered in accordance herewith, and ten days thereafter the cause be remanded to the court below for execution. So ordered.

Arellano, C. J., Torres, Johnson, Carson, Willard, and Tracey, JJ., concur.