

[G.R. No. 2888. October 23, 1906]

HUNG-MAN-YOC, IN THE NAME OF KWONG-WO-SING, PLAINTIFF AND APPELLEE, VS. KIENG-CHIONG-SENG ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

ARELLANO, C.J.:

The court below entered judgment against each and all of the defendants, Chua-Che-Co, Yu-Yec-Pin, and Ang-Chu-Keng for the sum of 7,962.14 pesos, Mexican, equivalent to 7,372.75 pesos, Philippine currency, with interest at the rate of 6 per cent per annum from December 7, 1903, and costs.

Chua-Che-Co is the only one who appealed. The court below found that Chua-Che-Co, Yu-Yec-Pin, and Ang-Chu-Keng were partners of Kiong-Tiao-Eng, under the firm name of Kieng-Chiong-Seng.

It has not been proved that Kieng-Chiong-Seng was the firm name, but rather the designation of the partnership.

It can not be the firm name of a general partnership because this should contain the names of all the partners, or some of them, or at least one of them to be, followed in the two latter cases by the words "and company" (art. 126 of the Code of Commerce), whereas in this case none of the four names of those who it is alleged were members of the firm appear in the firm name of the partnership. Neither can it be considered as the firm name of a limited partnership for the reason that this should contain the same requisites as the firm name of a general partnership, and in addition thereto the word "limited." (Art. 146.) The firm name in question has absolutely none of these requisites.

Anonymous partnerships (corporations) do not require a firm name or signature; a designation adequate, for the object or objects of the business to which it is dedicated, is

sufficient. (Arts. 151 and 152.)

The fact is, as alleged by the plaintiff and appellee in his brief, that "there is no doubt that the partnership of Kieng-Chiong-Seng was a mercantile partnership organized for the purpose of engaging in commercial pursuits, although such organization was not evidenced by any public document as required by article 119 of the Code of Commerce, nor was it registered as required by article 17 of the said code" (p. 5).

All these statements are correct.

The partnership in question was a mercantile one, as it was engaged in the importation of goods for sale here at a profit. It was so testified to by its manager, Yu-Yec-Pin, and Kiong-Tiao-Eng. But its organization is not evidenced by any public document. The agent Yu-Yec-Pin himself and some of his so-called, partners have merely noted in the books of the partnership, which by the way, were not introduced in evidence, the capital which each had contributed. The agent further testified that the partnership was not recorded in the Mercantile Registry but in the Internal Revenue office.

All this being so, the alleged partnership never had any legal existence nor has it acquired any juridical personality in the acts and contracts executed and made by it (Art. 116, par. 2.)

But as the said partnership was a partnership *de facto*, although it had no legal standing, and contracted obligations in favor of the plaintiff, the liability arising from such obligation must be enforceable Against some one.

The partnership in question not being included in any of the classes of partnership defined by the Code of Commerce there should be applied to it the general provisions applicable to all partnerships contained in article 120 of the Code of Commerce, which reads as follows:

"The persons in charge of the management of the association who do not comply with the provisions of the foregoing article (art. 119, which requires that the articles of partnership be recorded in a public instrument, and that the partnership be registered in the Mercantile Register) shall be responsible together with the persons hot members of the association with whom they may have transacted business in the name of the same."

The defendant, Chua-Che-Co, was not in charge of the management of the association, nor

did he make any contract at all with the plaintiff, as clearly appears from the testimony of the various witnesses, the agent of the partnership, Yu-Yec-Pin, being the person who made all the contracts for the partnership; also Kieng-Tiao-Eng according to two of the witnesses. It is evident, therefore, that he has incurred no liability and that he can not be held individually responsible for the payment of plaintiff's claims, as the court below found.

We accordingly reverse the judgment of the court below and acquit the defendant, Chua-Che-Co, without special condemnation as to costs in both instances.

After the expiration of ten days from the date of final judgment the record will be remanded to the Court of First Instance for execution. So ordered.

Torres, Mapa, Johnson, Carson, Willard, and Tracey, JJ., concur.
