2 Phil.305

[G.R. No. 39. May 19, 1903]

TUASON & SAN PEDRO, PLAINTIFFS AND APPELLEES, VS. GAVINA ZAMORA & SONS, DEFENDANTS AND APPELLANTS.

D E C I S I O N

MAPA, J.:

Don Mariano Tuason and Don Manuel Garcia San Pedro had entered into a mercantile partnership *en comandita* with Luis Vives, under the firm name of "Luis Vives & Co." By the death of Luis Vives the partnership was dissolved, and was then reorganized under the name of "Tuason & San Pedro" on the 31st of December, 1898, composed solely of the surviving partners. This partnership assumed the business of the former partnership as wood sawyers and building contractors, the liability of the firm being made retroactive to the 11th of July, 1897. In February, 1898, Don Mariano Tuason entered into the contract with Don Juan Feliciano upon which this case turns, the contract being for the construction of a house. He did not mention in the contract that it was made on behalf of the firm of Tuason & San Pedro. In the protest, dated tin; 23d day of June, 1898, it is seen that Don Manuel San Pedro makes this protest with respect to the delivery of the house, and makes it on behalf of the firm of "Tuason & San Pedro," the manager of which, Don Mariano Tuason, says Don Manuel San Pedro had contracted for the building. On the 25th of August, 1900, Tuason & San Pedro brought this action. Objection having been made to the right of the plaintiff partnership to sue, the question must be determined whether a partnership can maintain an action in its own behalf upon a contract entered into by one of the partners in his own name, thus binding the third person who contracted with this partner.

The purpose of the complaint is the recovery of the price of the house built. The entire question is reduced to these terms; Should this payment be made to the partnership?

The following facts had been made to appear of record before the exception was taken: (1) That the partnership claimed to be the owner of this credit by its protest against default. (2)

That it was in the possession of the document evidentiary of the credit and others connected with it, such as the notarial record of demand for payment made by the partner Tuason, and the record made of the offer to deliver the keys of the house, prepared at the instance of Tuason. (3) That the attorney appearing for the partnership held a power of attorney from the partnership, executed by Tuason as managing partner. There can not, therefore, be any duality, any incompatibility, or repetition of action. Everything which Tuason might have done is being done by the partnership, and after what the partnership has done Tuason can do nothing. The action being a solidary one, therefore, the result is the same whether it has been brought by Tuason & San Pedro or by Tuason alone. "Payment should be made to the person in whose favor the obligation is constituted, or to some other person authorized to receive it in his name." (Art. 1162 of the Civil Code.)

> "The first of these cases," says Manresa, "the most natural and simple, refers not only to the person who may have been the creditor at the time the obligation was created but rather to the person who is the creditor at the time payment is due. * * * That the principle laid down by the code has this wide meaning1 is demonstrated by the fact .that it has no rules, as have other codes (for instance, the Argentine code) which expressly authorized heirs, assignees, and subrogated creditors to demand payment, and the right of these persons being unquestionable they must be regarded as included in the first part of article 1162, because, although the obligation was not created in their favor, it has subsequently resulted that its constitution is to their benefit." (Manresa, Commentaries on the Civil Code, vol. 8, p. 252.)

When process was served upon the defendant to answer the complaint, it could be seen that the plaintiff was not an heir, an assignee, or a subrogated creditor, physically distinct from the person who made the contract, but this verjr same person, also bringing with him into the case the responsibility of a general partnership, which, far from declining to entertain the exceptions, set-offs, and counter claims which might be available against the original creditor, undertakes to defend against them as the original, actual, and sole creditor.

Hence it is that the defense of the defendant is by no means limited, nor will the effects of the payment be frustrated. Furthermore, it is evident that although Tuason may have operated in his own name, it certainly was not with his own private funds. Therefore it was that this contract was communicated to the partnership which became responsible therefor.

(Art. 134, Code of Commerce.)

In view of the understanding and agreement between Tuason and the partnership, shown by the facts stated, the responsibility of the partner Tuason being included in the responsibility of Tuason & San Pedro, the liability of the firm is not less than the personal liability of the partner, as the partnership was a general one. And the action brought by the firm being simply the action in favor of the partner assumed by the firm as the result of the assumption of the business and the filing of the complaint, the exception, practically speaking, is entirely unnecessary, although, from a theoretical point of view, it might perhaps be supported. We therefore decide that the action brought by the partnership will lie, and the payment which may be made to the partnership upon the circumstances stated will be perfectly legal.

The legal grounds on which paragraph 8 of the conclusions of law of the appealed judgment was based, are hereby modified to conform to the preceding opinion, and so modified we accept the findings of fact and the conclusions of law of the court below,with the following amendment : That part of the first conclusion of law which reads, "the owner of the property, Don Juan Feliciano, and, by reason of his death, his heirs, now defendants, are bound to pay the entire price agreed upon with the contractor, as the work was terminated and delivered" being amended to read as follows: "The owner, Don Juan Feliciano, and, by his death, his heirs, now defendants, are bound to pay all the price agreed upon to the contractor, because the house burned *after the work terminated, and after the defendants had become in default with respect to their obligation to receive it;"* for although it is evident, as stated in the seventh conclusion of law, that the contractor has done everything incumbent upon him for the delivery of the house, it is none the less true, as a matter of fact, that no such delivery took place.

We therefore affirm the judgment below, with costs in this instance to the appellant. So ordered.

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

McDonough, J., did not sit in this case.

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