

2 Phil. 210

[G.R. No. 1011. May 13, 1903]

JOSE MACHUCA, PLAINTIFF AND APPELLEE, VS. CHUIDIAN, BUENAVENTURA & CO., DEFENDANTS AND APPELLANTS.

D E C I S I O N

LADD, J.:

Most of the allegations of the complaint were admitted by the defendant at the hearing, and the judgment of the court below is based on the state of facts appearing from such admissions, no evidence having been taken.

The defendants are a regular general partnership, organized in Manila, December 29, 1882, as a continuation of a prior partnership of the same name. The original partners constituting the partnership of 1882 were D. Telesforo Chuidian, Dona Raymunda Chuidian, Dona Candelaria Chuidian, and D. Mariano Buenaventura. The capital was fixed in the partnership agreement at 160,000 pesos, of which the first three partners named contributed 50,000 pesos each, and the last named 10,000 pesos, and it was stipulated that the liability of the partners should be "limited to the amounts brought in by them to form the partnership stock."

In addition to the amounts contributed by the partners to the capital, it appears from the partnership agreement that each one of them had advanced money to the preexisting partnership, which advances were assumed as liabilities by the new partnership. These advances or accounts-current aggregated something over 665,000 pesos, of which sum about 569,000 pesos represented the advances from the Cluidians and the balance that from D. Mariano Buenaventura.

Dona Raymunda Chuidian retired from the partnership November 4, 1885. On January 1, 1888, the partnership went into liquidation, and it does not appear that the liquidation had been terminated when this action was brought.

Down to the time the partnership went into liquidation the accounts-current of D. Telesforo Chuidian and Dona Candeiria Chuidian had been diminished in an amount aggregating about 288,000 pesos, while that of D. Mariano Buenaventura had been increased about 51,000 pesos. During the period from the commencement of the liquidation down to January 1, 1890, the account-current of each of the Chuidians had been still further decreased, while that of D. Mariano Buenaventura had been still further increased.

On January 1, 1894, D. Mariano Buenaventura died, his estate passing by will to his children, among whom was D. Vicente Buenaventura. Upon the partition of the estate the amount of the interest of D. Vicente Buenaventura in his father's account-current and in the capital was ascertained and recorded in the books of the firm.

On December 15, 1898, D. Vicente Buenaventura executed a public instrument in which for a valuable consideration he "assigns to D. Jose Gervasio Garcia * * * a 25 per cent share in all that may be obtained by whatever right or in whatever form from the liquidation of the partnership of Chuidian, Buenaventura & Co., in the part pertaining to him in said partnership, * * * the assignee, being expressly empowered to do in his own name, and as a part owner, by virtue of this assignment in the assets of the partnership, whatever things may be necessary for the purpose of accelerating the liquidation, and of obtaining judicially or extrajudicially the payment of the deposits on account-current pertaining to the assignor, it being understood that D. Jose Gervasio Garcia is to receive the 25 per cent assigned to him, in the same form in which it may be obtained from said partnership, whether in cash, credits, goods, movables or immovables, and on the date when Messrs. Chuidian, Buenaventura & Co., in liquidation, shall have effected the operations necessary in order to satisfy the credits and the share in the partnership capital hereinbefore mentioned."

The plaintiff claims under Garcia by virtue of a subsequent assignment, which has been notified to the liquidator of the partnership.

The liquidator of the partnership having declined to record in the books of the partnership the plaintiff's claim under the assignment as a credit due from the concern to him this action is brought to compel such record to be made, and the plaintiff further asks that he be adjudicated to be a creditor of the partnership in an amount equal to 25 per cent of D. Vicente Buenaventura's share in his father's account-current, as ascertained when the record was made in the books of the partnership upon the partition of the latter's estate, with interest, less the liability to which the plaintiff is subject by reason of his share in the capital; that the necessary liquidation being first had, the partnership pay to the plaintiff the

balance which may be found to be due him; and that if the partnership has no funds with which to discharge this obligation an adjudication of bankruptcy be made. He also asks to recover the damages caused by reason of the failure of the liquidator to record his credit in the books of the partnership.

The judgment of the court below goes beyond the relief asked by the plaintiff in the complaint, the plaintiff being held entitled not only to have the credit assigned him recorded in the books of the partnership but also to receive forthwith 25 per cent of an amount representing the share of D. Vicente Buenaventura in the account-current at the time of the partition of his father's estate, with interest, the payment of the 25 per cent of Buenaventura's share in the capital to be postponed till the termination of the liquidation. This point has not, however, been taken by counsel, and Ave have therefore considered the case upon its merits.

The underlying question in the case relates to the construction of clause 1\$ of the partnership agreement, by which it was stipulated that "upon the dissolution of the company, the pending obligations in favor of outside¹ parties should be satisfied, the funds of the minors Jose and Francisco Chuidian [it does not appear what their interest in the partnership was or when or how it was acquired] should be taken out, and afterwards the resulting balance of the account-current of each one of those who had put in money (imponentes) should be paid."

Our construction of this clause is that it establishes a basis for the final adjustment of the affairs of the partnership; that that basis is that the liabilities to nonpartners are to be first discharged; that the claims of the Chuidian minors are to be next satisfied; and that what is due to the respective partners on account of their advances to the firm is to be paid last of all, leaving the ultimate residue, of course, if there be any, to be distributed among the partners in the proportions in which they may be entitled thereto.

Although in a sense the partners, being at the same time creditors, were "outside parties," it is clear that a distinction is made in this clause between creditors who were partners and creditors who were not partners, and that the expression "outside parties" refers to the latter class. And the words "pending obligations," we think, clearly comprehend outstanding obligations of every kind in favor of such outside parties, and do not refer merely, as claimed by counsel for the plaintiff, to the completion of mercantile operations unfinished at the time of the dissolution of the partnership, such as consignments of goods and the like. As respects the claims of the Chuidian minors, the suggestion of counsel is that the clause in

question means that their accounts are to be adjusted before those of the partners but not paid first. Such a provision would have been of no practical utility, and the language used—that the funds should be “taken out”—(*se dedujeran*) does not admit of such a construction.

Such being the basis upon which by agreement of the partners the assets of the partnership are to be applied to the discharge of the various classes of the firm’s liabilities, it follows that D. Vicente Buenaventura, whose rights are those of his father, is in no case entitled to receive any part of the assets until the creditors who are nonpartners and the Chuidian minors are paid. Whatever rights he had either as creditor or partner, he could only transfer subject to this condition. And it is clear, from the language of the instrument under which the plaintiff claims, that this conditional interest was all that D. Vicente Buenaventura ever intended to transfer. By that instrument he undertakes to assign to Garcia not a present interest in the assets of the partnership but an interest in whatever “may be obtained from the liquidation of the partnership,” which Garcia is to receive “in the same form in which it may be obtained from said partnership,” and “on the date when Messrs. Chuidian, Buenaventura & Co., in liquidation, shall have effected the operations necessary in order to satisfy” the claims of D. Vicente Buenaventura..

Upon this interpretation of the assignment, it becomes unnecessary to inquire whether article 143 of the Code of Commerce, prohibiting a partner from transferring his interest in the partnership without the consent of the other partners, applies to partnerships in liquidation, as contended by the defendant. The assignment by its terms is not to take effect until all the liabilities of the partnership have been discharged and nothing remains to be done except to distribute the assets, if there should be any, among the partners. Meanwhile the assignor, Buenaventura, is to continue in the enjoyment of the rights and is to remain subject to the liabilities of a partner as though no assignment had been made. In other words, the assignment does not purport to transfer an interest in the partnership, but only a future contingent right to 25 per cent of such portion of the ultimate residue of the partnership property as the assignor may become entitled to receive by virtue of his proportionate interest in the capital.

There is nothing in the case to show either that the non-partner creditors of the partnership have been paid or that the claims of the Chuidian minors have been satisfied. Such rights as the plaintiff has acquired against the partnership under the assignment still remain, therefore, subject to the condition which attached to them in their origin, a condition wholly uncertain of realization, since it may be that the entire assets of the partnership will be

exhausted in the payment of the creditors entitled to preference under the partnership agreement, thus extinguishing the plaintiff's right to receive anything from the liquidation.

It is contended by the plaintiff that, as the partnership was without authority to enter upon new mercantile operations after the liquidation commenced, the increase in D. Mariano Buenaventura's account-current during that period was the result of a void transaction, and that therefore the plaintiff is entitled to withdraw at once the proportion of such increase to which he is entitled under the assignment. With reference to this contention, it is sufficient to say that it nowhere appears in the case that the increase in D. Mariano Buenaventura's account-current during the period of liquidation was the result of new advances to the firm, and the figures would appear to indicate that it resulted from the accumulation of interest.

Counsel for the plaintiff have discussed at length in their brief the meaning of the clause in the partnership agreement limiting the liability of the partners to the amounts respectively brought into the partnership by them, and the effect of this stipulation upon their rights as creditors of the firm. These are questions which relate to the final adjustment of the affairs of the firm, the distribution of the assets remaining after all liabilities have been discharged, or, on the other hand, the apportionment of the losses if the assets should not be sufficient to meet the liabilities. They are in no way involved in the determination of the present case.

The plaintiff having acquired no rights under the assignment which are now enforceable against the defendant, this action can not be maintained. The liquidator of the defendant having been notified of the assignment, the plaintiff will be entitled to receive from the assets of the partnership, if any remain, at the termination of the liquidation, 25 per cent of D. Vicente's resulting interest, both as partner and creditor. The judgment in this case should not affect the plaintiff's right to bring another action against the partnership when the affairs of the same are finally wound up. The proper judgment will be that the action be dismissed. The judgment of the court below is reversed and the case is remanded to that court with directions to enter a judgment of dismissal. So ordered.

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

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

