

G.R. No. 26, August 24, 1901 WALTER JACKSON, PLAINTIFF AND APPELLEE, VS. PAUL BLUM ET AL., DEFENDANTS AND APPELLANTS.

DECISION

COOPER, J.:

This is an appeal from the judgment of the Court of First Instance of Intramuros (Manila) in an action for an accounting instituted by Walter Jackson against Paul Blum, H. Blum, W. A. Whaley, and L. M. Johnson. The matter involved is a leasehold interest in the business property known as the "Alhambra," situated on the Escolta in Manila, together with the furniture and fixtures and other appurtenances.

In August, 1898, Seor Roca took a lease from the owner of the Alhambra and a short time afterwards transferred the same to Evans, Jackson, and Williams. Williams conveyed his interest to Evans and Jackson and the establishment was conducted by Evans & Jackson. The firm of Evans & Jackson, being in need of money, on the 21st day of October, 1898, made an arrangement by which the interest of Jackson in the property was transferred to Evans. In this transfer it was agreed that when the establishment was free from all incumbrances there should be a settlement between Jackson and Evans, and that Jackson should remain the owner of his interest in the property. On the same day Evans, being then the apparent sole owner of the establishment, obtained a loan from Paul Blum in the sum of 32,443 pesos, and in carrying out the transaction a partnership was formed between Evans and Whaley. and a conveyance, absolute in form, was then made by Evans & Whaley to Paul Blum, transferring to him the establishment, and a contract was also entered into between Evans and Whaley on the one part and Paul Blum on the other part, in which agreement it was recited that Evans & Whaley had borrowed from Paul Blum the said sum of 32,443 pesos and that they had executed to Blum the conveyance of the establishment mentioned. It was stipulated that Whaley was to be the managing partner of the firm of Evans & Whaley, Evans having the right to enter the premises at any time and to inspect the books of account. Each was to receive out of the business for his personal expenses the sum of 300 pesos per month. It was also agreed by Evans & Whaley to purchase from the American Commercial Company, of which Paul Blum was then a member, all supplies which they needed for the establishment. The loan made by Paul Blum to Evans & Whaley was to be paid off from the net proceeds of each day's business, which were to be deposited with the American Commercial Company to the credit of the Alhambra account, or to be paid from any other funds, with interest at the rate of 8 per cent per annum, and Evans & Whaley had the right to pay the whole or any part of the debt at any time to Blum and from funds other than the profits of the Alhambra. Whaley was mentioned in the instrument as representative of Blum. It does not appear, however, from the instrument that Blum was to be considered a partner or in any way interested in the business. Blum perhaps required that Whaley should become the managing partner of the firm of Evans & Whaley for the protection of his interests in advancing the money to them. No term for the duration of the partnership between Evans and Whaley was fixed, nor can any particular term be inferred from the nature of the business to be carried on by them. On the 13th day of November, 1899, a partnership settlement of the firm, of Evans & Jackson was made between Evans and Jackson and the balance of \$5,000 was found to be due from Evans to Jackson, and an agreement was then entered into between Evans and Jackson in which it was recited that the sum of 20,000 pesos was the estimated amount due on the mortgage of the property to Blum and that the equity of redemption was of the value of 40,000 pesos, which belonged to each of the partners in equal parte. In payment of the balance of 5,000 pesos due Jackson on the settlement of accounts, and in

consideration of the sum of 5,000 pesos, Evans transferred all of his interest in the Alhambra property to Jackson. On the following day Evans applied to Blum to ascertain the amount due him on the mortgage, offering to pay the same. Blum refused to recognize Jackson as having any rights in the establishment. Afterwards Blum demanded of Evans & Whaley the payment of the sum of 28,000 pesos as due upon the mortgage, and Whaley, being then in exclusive possession of the property, turned over the same to Blum.

The judgment of the Court of First Instance was in favor of the plaintiff and an accounting was decreed. The contention of the defendants is: First, that by the sale from Evans and Whaley to Blum the property passed absolutely to Blum; second, that Evans could not substitute Jackson as debtor to Blum without the consent of the latter ; third, that the partnership between Evans and Whaley was based upon confidence, and that Jackson could not be substituted as a member of the firm; fourth, that the juridical relation does not exist between the plaintiff Jackson and the defendants.

We shall briefly state the law applicable to the facts in the case: A partnership may be terminated by the will or renunciation of one of the partners, provided no term has been fixed for its duration or when a term is not fixed by the nature of the business. (Arts. 1700 and 1705 of the Civil Code.)

Personal or real property which each partner possesses at the time of the execution of the contract continues to be his private property, the usufruct only passing to the partnership. (Art. 1675 of the Civil Code.)

Each coowner has the absolute ownership of his part and of the fruits and benefits belonging thereto, and he therefore may sell, assign, or mortgage the same or substitute another in its enjoyment unless personal rights are involved. The effect of the sale or mortgage, however, so far as affects the cocowners, shall be limited to that portion which may be allotted to him in the distribution at the termination of the community. (Art 399 of the Civil Code.)

No coowner is obliged to remain in the community. (Art. 400 of the Civil Code.)

The judgment of the Court of First Instance is affirmed with costs on appeal taxed to the appellant.

Arellano, C. J., Torres, Smith, Willard, and Ladd, JJ., concur, Mapa, J., did not sit in this case.