NETTLETON, C.J. & DICKINSON, ACTING P.J. 1925 May 14

Appeal No. 3096.

[NETTLETON, C.J. AND DICKINSON, ACTING P.J.]

IN THE MATTER OF THE BANKRUPTCY OF THE FIRM N. CH. TAVERNARIS & BROS. CONSISTING OF AVRAAM TAVERNARIS AND MARIA A. FINIEFS,

AND

IN THE MATTER OF THE BANKRUPTCY OF AVRAAM TAVERNARIS AND MARIA A. FINIEFS PERSONALLY, JOINTLY AND SEVERALLY.

BANKRUPTCY—PARTNERSHIP—HOLDING OUT—OTTOMAN COMMERCIAL CODE, ART. 51.

Whereas on the application of Maria A. Finiefs the petition was referred back to the District Court of Nicosia by an order of the Supreme Court to decide the question whether Maria A. Finiefs is liable to a limited or unlimited extent towards the debts of the bankrupt firm, and the District Court has found that she is liable to an unlimited extent.

Maria A. Finiefs now appeals from that decision of the District Court.

For Appellant (Maria A. Finiefs) *N. Paschalis.*

For Respondents (the Syndics) *Artemis.*

Juge Commissaire present.

Judgment: This is an appeal from the finding of the District Court of Nicosia substantially as to the extent of the liability of the appellant Maria Finiefs, if any, for the debts of the commercial firm of N. Ch. Tavernaris & Brothers which has been declared bankrupt.

For about fifteen years up to March, 1921, Nicola & Avraam Tavernaris were trading as co-partners in the name of N. Ch. Tavernaris & Bros. in what was clearly a collectif partnership.

To the earlier history of that firm it is not necessary for the purpose of this appeal to refer, but it was one of very old standing. The death of Nicola at the above-mentioned date put an end to this partnership. Art. 51 Commercial Code.

The appellant was left the heir of the estate of Nicola and she and Avraam, the surviving partner in the defunct firm, lost no time in publishing in the local press a circular announcing that Nicola was dead but that the firm of N. Ch. Tavernaris & Bros. would continue to carry on business with Avraam as manager, with the sole power of signing in the name of the firm, and inviting the public to continue to extend

their confidence to the firm as hitherto. In other words the public was informed that the old collectif partnership of Nicola and Avraam was dissolved and that another partnership had taken its place.

The circular was signed firstly by Maria Finiefs, the appellant, who described herself as the sole heir of the estate of Nicola, and secondly by Avraam.

It runs as follows:—

" Dear Sir,

" We the undersigned have the honour to bring to your knowledge " that Mr. N. Ch. Tavernaris, one of the partners of the commercial " firm N. Ch. Tavernaris & Bros., died on the 4th of March, 1921, and " that the said commercial firm shall continue its business as before " under the same style ' N. Ch. Tavernaris & Bros.'

" The business of the said commercial firm will be managed by " Mr. Avraam Ch. Tavernaris, the other partner, who alone will have " the right to sign with the style of the commercial firm ' N. Ch. Taver- " naris & Bros.' for all transactions connected with the business of the " said commercial firm.

" Trusting that you will continue to bestow on the said commercial " firm the same confidence as before,

" We remain with respect,

" (*signature*) (1) Maria A. Finiefs,

" *the sole heir of the deceased N. Ch. Tavernaris.*

" (2) Avraam Ch. Tavernaris."

In our view they announced to the world that a new partnership firm had been formed under the old title, consisting of the heir of Nicola and Avraam, to carry on the business of the old firm.

There is nothing on the face of the circular to inform the public that the heir of Nicola limited her liability in any way for the debts of the new partnership. Quite the contrary. She joins in announcing that Avraam will act as manager and will alone have the right to sign (the words " manage " and " alone " are significant and pre-suppose the existence of at least one other partner in the firm) for the firm, but also proclaims that she is the sole heir of the person whose name appears in the firm's title, and on this invites public confidence in the firm.

For the appellant, Mr. Paschalis has urged with considerable and assiduous ingenuity that all she did in effect was to tell the public that the estate of Nicola, which she had inherited, would carry on the old partnership business with Avraam, in other words that, so far as she was concerned, her liability was limited to the estate she had inherited

from Nicola. She had merely, he contended, left her father Nicola's estate in the firm to be used in the business and thus made it liable for the debts of the firm.

This contention, in our view, is altogether untenable. She cannot lend as heir the name of her deceased testator or benefactor to a firm and announce in effect that the estate she had inherited from him has been put into this firm and explain how it is to be managed, and on that ask for the public to give credit to the firm in carrying on its business as before without becoming a partner either collectif or commandite. And to limit her liability for the debts of the firm as a commandite partner she must set this limitation out with the utmost clearness. This she has entirely failed to do. In our view by this circular she held herself out to the world as a collectif partner, and as such took the position in the newly constituted firm that Nicola occupied in the old firm, the only difference being that she was not to manage the business and was not to sign. People who issue circulars of this kind to the public must define their position beyond all question if they wish to avoid incurring liability.

Her subsequent conduct is consistent with her regarding herself as a collectif partner, and therefore liable to an unlimited extent for the debts of the firm, but as this is sufficiently dealt with in the judgment of the Court below, with which and its conclusions we generally concur, we need say little more on the point.

For one thing it is clear on the evidence that in 1923 appellant and Avraam were drawing from the firm in equal shares, inasmuch as when one drew more than the other he was debited with the difference in his private account; and properties bought and built with the firm's money were divided into equal shares between them and registered accordingly. She transferred her shares in some of these properties, by way of gift, to her husband and children, shortly before the firm made default.

Her reasons for failing to enter the witness-box and to submit herself to cross-examination are not difficult to conceive. Stress has been laid on the illegality of the collectif partnership of Avraam and the appellant in the matter of the firm's name.

We are satisfied there is nothing of substance in the point. As indicated above, the appellant lent the name of the person of whom she was the sole heir to the new firm. The public were fully informed as to the parties of whom it was composed, and we think article 12 was sufficiently complied with. And *see* Lyon-Caen, Vol. II., paragraphs 457 and 376 and 150 in confirmation of this view. Also article 35, Commercial Code.

Even if it were not so, it would be altogether against the spirit of equity to allow an omission on the part of a partnership firm, to comply strictly with the provisions of the law affecting firm names, to operate to the injury of creditors whose confidence it has invited and then abused.

As already indicated we are in substantial agreement with the carefully considered judgment of the District Court and dismiss the appeal with costs.

The adjudication in bankruptcy of the appellant by the District Court on the 18th July, 1924, is confirmed.

[NETTLETON, C.J. AND DICKINSON, ACTING P.J.]

REX

v.

IOANNIS F. MODINO.

OTTOMAN CRIMINAL CODE, ART. 236—LAW 1 OF 1886, SEC. 61—"CONCEAL" OR "DESTROY."

Accused was charged on information before a District Court :—

1. *With concealing or losing to the prejudice of A. B. and C. D. the sum of* £219 17*s.* 6*cp. the property of the said A. B. and C. D. the said sum having been received by him, the accused, as paid agent, from the Registrar of the High Court of Northern Rhodesia, Livingstone, for the purpose of transmission to the said A. B. and C. D. contrary to Art.* 236 *of the Ottoman Penal Code ;*

2. *With stealing the said sum contrary to Art.* 230 *of the Ottoman Penal Code and Law* 1 *of* 1886, *section* 61.

The facts are as follows :—

A. B. and C. D. are brothers of a man called Harris John, who was killed in a wild part of Portuguese West Africa. The High Court of Northern Rhodesia took over and administered Harris John's estate. A. B. and C. D. obtained information from an African newspaper written in Greek called the "Nea Ellas" that Harris John was killed and that he was stated to be a Cypriot.

A. B. and C. D. are both illiterate, and A. B. went to the accused and asked him to help them to find out about Harris John's estate. Accused is literate and can read English, and in addition is a clerk in the employ of a member of the Paphos Bar.