LILIBETH SUNGA-CHAN AND CECILIA SUNGA, PETITIONERS, VS. LAMBERTO T. CHUA, RESPONDENT.

G.R. No. 143340. August 15, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Before us is a petition for review on certiorari under Rule 45 of the Rules of Court of the Decision[1] of the Court of Appeals dated January 31, 2000 in the case entitled “Lamberto T. Chua vs.

Lilibeth Sunga Chan and Cecilia Sunga” and of the Resolution dated May 23, 2000 denying the motion for reconsideration of herein petitioners Lilibeth Sunga Chan and Cecilia Sunga (hereafter collectively referred to as petitioners).

The pertinent facts of this case are as follows:

On June 22, 1992, Lamberto T. Chua (hereafter respondent) filed a complaint against Lilibeth Sunga Chan (hereafter petitioner Lilibeth) and Cecilia Sunga (hereafter petitioner Cecilia), daughter and wife, respectively of the deceased Jacinto L. Sunga (hereafter Jacinto), for “Winding Up of Partnership Affairs, Accounting, Appraisal and Recovery of Shares and Damages with Writ of Preliminary Attachment” with the Regional Trial Court, Branch 11, Sindangan, Zamboanga del Norte.

Respondent alleged that in 1977, he verbally entered into a partnership with Jacinto in the distribution of Shellane Liquefied Petroleum Gas (LPG) in Manila. For business convenience, respondent and Jacinto allegedly agreed to register the business name of their partnership, SHELLITE GAS APPLIANCE CENTER (hereafter Shellite), under the name of Jacinto as a sole proprietorship. Respondent allegedly delivered his initial capital contribution of P100,000.00 to Jacinto while the latter in turn produced P100,000.00 as his counterpart contribution, with the intention that the profits would be equally divided between them. The partnership allegedly had Jacinto as manager, assisted by Josephine Sy (hereafter Josephine), a sister of the wife of respondent, Erlinda Sy. As compensation, Jacinto would receive a manager’s fee or remuneration of 10% of the gross profit and Josephine would receive 10% of the net profits, in addition to her wages and other remuneration from the business.

Allegedly, from the time that Shellite opened for business on July 8, 1977, its business operation went quite well and was profitable. Respondent claimed that he could attest to the success of their business because of the volume of orders and deliveries of filled Shellane cylinder tanks supplied by Pilipinas Shell Petroleum Corporation. While Jacinto furnished respondent with the merchandise inventories, balance sheets and net worth of Shellite from 1977 to 1989, respondent however suspected that the amount indicated in these documents were understated and undervalued by Jacinto and Josephine for their own selfish reasons and for tax avoidance.

Upon Jacinto’s death in the later part of 1989, his surviving wife, petitioner Cecilia and particularly his daughter, petitioner Lilibeth, took over the operations, control, custody, disposition and management of Shellite without respondent’s consent.

Despite respondent's repeated demands upon petitioners for accounting, inventory, appraisal, winding up and restitution of his net shares in the partnership, petitioners failed to comply. Petitioner Lilibeth allegedly continued the operations of Shellite, converting to her own use and advantage its properties.

On March 31, 1991, respondent claimed that after petitioner Lilibeth ran out of alibis and reasons to evade respondent's demands, she disbursed out of the partnership funds the amount of P200,000.00 and partially paid the same to respondent. Petitioner Lilibeth allegedly informed respondent that the P200,000.00 represented partial payment of the latter's share in the partnership, with a promise that the former would make the complete inventory and winding up of the properties of the business establishment. Despite such commitment, petitioners allegedly failed to comply with their duty to account, and continued to benefit from the assets and income of Shellite to the damage and prejudice of respondent.

On December 19, 1992, petitioners filed a Motion to Dismiss on the ground that the Securities and Exchange Commission (SEC) in Manila, not the Regional Trial Court in Zambaonga del Norte had jurisdiction over the action. Respondent opposed the motion to dismiss.

On January 12, 1993, the trial court finding the complaint sufficient in form and substance denied the motion to dismiss.

On January 30, 1993, petitioners filed their Answer with Compulsory Counterclaims, contending that they are not liable for partnership shares, unreceived income/profits, interests, damages and attorney's fees, that respondent does not have a cause of action against them, and that the trial court has no jurisdiction over the nature of the action, the SEC being the agency that has original and exclusive jurisdiction over the case. As counterclaim, petitioner sought attorney's fees and expenses of litigation.

On August 2, 1993, petitioner filed a second Motion to Dismiss this time on the ground that the claim for winding up of partnership affairs, accounting and recovery of shares in partnership affairs, accounting and recovery of shares in partnership assets /properties should be dismissed and prosecuted against the estate of deceased Jacinto in a probate or intestate proceeding.

On August 16, 1993, the trial court denied the second motion to dismiss for lack of merit.

On November 26, 1993, petitioners filed their Petition for Certiorari, Prohibition and Mandamus with the Court of Appeals docketed as CA-G.R. SP No. 32499 questioning the denial of the motion to dismiss.

On November 29, 1993, petitioners filed with the trial court a Motion to Suspend Pre-trial Conference.

On December 13, 1993, the trial court granted the motion to suspend pre-trial conference.

On November 15, 1994, the Court of Appeals denied the petition for lack of merit.

On January 16, 1995, this Court denied the petition for review on certiorari filed by petitioner, "as petitioners failed to show that a reversible error was committed by the appellate court."[2]

On February 20, 1995, entry of judgment was made by the Clerk of Court and the case was remanded to the trial court on April 26, 1995.

On September 25, 1995, the trial court terminated the pre-trial conference and set the hearing of the case on January 17, 1996. Respondent presented his evidence while petitioners were considered to have waived their right to present evidence for their failure to attend the scheduled date for reception of evidence despite notice.

On October 7, 1997, the trial court rendered its Decision ruling for respondent. The dispositive portion of the Decision reads:

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"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants, as follows:

(1) DIRECTING them to render an accounting in acceptable form under accounting procedures and standards of the properties, assets, income and profits of the Shellite Gas Appliance Center since the time of death of Jacinto L. Sunga, from whom they continued the business operations including all businesses derived from the Shellite Gas Appliance Center; submit an inventory, and appraisal of all these properties, assets, income, profits, etc. to the Court and to plaintiff for approval or disapproval;

(2) ORDERING them to return and restitute to the partnership any and all properties, assets, income and profits they misapplied and converted to their own use and advantage that legally pertain to the plaintiff and account for the properties mentioned in pars. A and B on pages 4-5 of this petition as basis;

(3) DIRECTING them to restitute and pay to the plaintiff ½ shares and interest of the plaintiff in the partnership of the listed properties, assets and good will (sic) in schedules A, B and C, on pages 4-5 of the petition;

(4) ORDERING them to pay the plaintiff earned but unreceived income and profits from the partnership from 1988 to may 30, 1992, when the plaintiff learned of the closure of the store the sum of P35,000.00 per month, with legal rate of interest until fully paid;

(5) ORDERING them to wind up the affairs of the partnership and terminate its business activities pursuant to law, after delivering to the plaintiff all the ½ interest, shares, participation and equity in the partnership, or the value thereof in money or money's worth, if the properties are not physically divisible;

(6) FINDING them especially Lilibeth Sunga-Chan guilty of breach of trust and in bad faith and hold them liable to the plaintiff the sum of P50,000.00 as moral and exemplary damages; and,

(7) DIRECTING them to reimburse and pay the sum of P25,000.00 as attorney's (sic) and P25,00.00 as litigation expenses.

NO special pronouncements as to COSTS.

SO ORDERED."[3]

On October 28, 1997, petitioners filed a Notice of Appeal with the trial court, appealing the case to the Court of Appeals.

On January 31, 2000, the Court of Appeals dismissed the appeal. The dispositive portion of the Decision reads:

"WHEREFORE, the instant appeal is dismissed. The appealed decision is AFFIRMED in all respects."[4]

On May 23, 2000, the Court of Appeals denied the motion for reconsideration filed by petitioner.

Hence, this petition wherein petitioner relies upon the following grounds:

"1.

The Court of Appeals erred in making a legal conclusion that there existed a partnership between respondent Lamberto T. Chua and the late Jacinto L. Sunga upon the latter's invitation and offer and that upon his death the partnership assets and business were taken over by petitioners.

2.

The Court of Appeals erred in making the legal conclusion that laches and/or prescription did not apply in the instant case.

3.

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> The Court of Appeals erred in making the legal conclusion that there was competent and credible evidence to warrant the finding of a partnership, and assuming arguendo that indeed there was a partnership, the finding of highly exaggerated amounts or values in the partnership assets and profits."[5]

Petitioners question the correctness of the finding of the trial court and the Court of Appeals that a partnership existed between respondent and Jacinto from 1977 until Jacinto's death. In the absence of any written document to show such partnership between respondent and Jacinto, petitioners argue that these courts were proscribed from hearing the testimonies of respondent and his witness, Josephine, to prove the alleged partnership three years after Jacinto's death. To support this argument, petitioners invoke the "Dead Man's Statute" or "Survivorship Rule" under Section 23, Rule 130 of the Rules of Court that provides:

> "SEC. 23. Disqualification by reason of death or insanity of adverse party.-- Parties or assignors of parties to a case, or persons in whose behalf a case is prosecuted, against an executor or administrator or other representative of a deceased person, or against a person of unsound mind, upon a claim or demand against the estate of such deceased person, or against such person of unsound mind, cannot testify as to any matter of fact occurring before the death of such deceased person or before such person became of unsound mind."

Petitioners thus implore this Court to rule that the testimonies of respondent and his alter ego, Josephine, should not have been admitted to prove certain claims against a deceased person (Jacinto), now represented by petitioners.

We are not persuaded.

A partnership may be constituted in any form, except where immovable property or real rights are contributed thereto, in which case a public instrument shall be necessary.[6] Hence, based on the intention of the parties, as gathered from the facts and ascertained from their language and conduct, a verbal contract of partnership may arise.[7] The essential points that must be proven to show that a partnership was agreed upon are (1) mutual contribution to a common stock, and (2) a joint interest in the profits.[8] Understandably so, in view of the absence of a written contract of partnership between respondent and Jacinto, respondent resorted to the introduction of documentary and testimonial evidence to prove said partnership. The crucial issue to settle then is whether or not the "Dead Man's Statute" applies to this case so as to render inadmissible respondent's testimony and that of his witness, Josephine.

The "Dead Man's Statute" provides that if one party to the alleged transaction is precluded from testifying by death, insanity, or other mental disabilities, the surviving party is not entitled to the undue advantage of giving his own uncontradicted and unexplained account of the transaction.[9] But before this rule can be successfully invoked to bar the introduction of testimonial evidence, it is necessary that:

> "1.
>
> The witness is a party or assignor of a party to a case or persons in whose behalf a case is prosecuted.
>
> 2.
>
> The action is against an executor or administrator or other representative of a deceased person or a person of unsound mind;
>
> 3.
>
> The subject-matter of the action is a claim or demand against the estate of such deceased person or against person of unsound mind;
>
> 4.

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> His testimony refers to any matter of fact which occurred before the death of such deceased person or before such person became of unsound mind."[10]

Two reasons forestall the application of the "Dead Man's Statute" to this case.

First, petitioners filed a compulsory counterclaim[11] against respondent in their answer before the trial court, and with the filing of their counterclaim, petitioners themselves effectively removed this case from the ambit of the "Dead Man's Statute".[12] Well entrenched is the rule that when it is the executor or administrator or representatives of the estate that sets up the counterclaim, the plaintiff, herein respondent, may testify to occurrences before the death of the deceased to defeat the counterclaim.[13] Moreover, as defendant in the counterclaim, respondent is not disqualified from testifying as to matters of fact occurring before the death of the deceased, said action not having been brought against but by the estate or representatives of the deceased.[14]

Second, the testimony of Josephine is not covered by the "Dead Man's Statute" for the simple reason that she is not "a party or assignor of a party to a case or persons in whose behalf a case is prosecuted". Records show that respondent offered the testimony of Josephine to establish the existence of the partnership between respondent and Jacinto. Petitioners' insistence that Josephine is the alter ego of respondent does not make her an assignor because the term "assignor" of a party means "assignor of a cause of action which has arisen, and not the assignor of a right assigned before any cause of action has arisen."[15] Plainly then, Josephine is merely a witness of respondent, the latter being the party plaintiff.

We are not convinced by petitioners' allegation that Josephine's testimony lacks probative value because she was allegedly coerced by respondent, her brother-in-law, to testify in his favor. Josephine merely declared in court that she was requested by respondent to testify and that if she were not requested to do so she would not have testified. We fail to see how we can conclude from this candid admission that Josephine's testimony is involuntary when she did not in any way categorically say that she was forced to be a witness of respondent. Also, the fact that Josephine is the sister of the wife of respondent does not diminish the value of her testimony since relationship per se, without more, does not affect the credibility of witnesses.[16]

Petitioners' reliance alone on the "Dead Man's Statute" to defeat respondent's claim cannot prevail over the factual findings of the trial court and the Court of Appeals that a partnership was established between respondent and Jacinto. Based not only on the testimonial evidence, but the documentary evidence as well, the trial court and the Court of Appeals considered the evidence for respondent as sufficient to prove the formation of a partnership, albeit an informal one.

Notably, petitioners did not present any evidence in their favor during trial. By the weight of judicial precedents, a factual matter like the finding of the existence of a partnership between respondent and Jacinto cannot be inquired into by this Court on review.[17] This Court can no longer be tasked to go over the proofs presented by the parties and analyze, assess and weigh them to ascertain if the trial court and the appellate court were correct in according superior credit to this or that piece of evidence of one party or the other.[18] It must be also pointed out that petitioners failed to attend the presentation of evidence of respondent. Petitioners cannot now turn to this Court to question the admissibility and authenticity of the documentary evidence of respondent when petitioners failed to object to the admissibility of the evidence at the time that such evidence was offered.[19]

With regard to petitioners' insistence that laches and/or prescription should have extinguished respondent's claim, we agree with the trial court and the Court of Appeals that the action for accounting filed by respondent three (3) years after Jacinto's death was well within the prescribed period. The Civil Code provides that an action to enforce an oral contract prescribes in six (6) years[20] while the right to demand an accounting for a partner's interest as against the person continuing the business accrues at the date of dissolution, in the absence of any

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contrary agreement.[21] Considering that the death of a partner results in the dissolution of the partnership[22], in this case, it was after Jacinto's death that respondent as the surviving partner had the right to an account of his interest as against petitioners. It bears stressing that while Jacinto's death dissolved the partnership, the dissolution did not immediately terminate the partnership. The Civil Code[23] expressly provides that upon dissolution, the partnership continues and its legal personality is retained until the complete winding up of its business, culminating in its termination.[24]

In a desperate bid to cast doubt on the validity of the oral partnership between respondent and Jacinto, petitioners maintain that said partnership that had an initial capital of P200,000.00 should have been registered with the Securities and Exchange Commission (SEC) since registration is mandated by the Civil Code. True, Article 1772 of the Civil Code requires that partnerships with a capital of P3,000.00 or more must register with the SEC, however, this registration requirement is not mandatory. Article 1768 of the Civil Code[25] explicitly provides that the partnership retains its juridical personality even if it fails to register. The failure to register the contract of partnership does not invalidate the same as among the partners, so long as the contract has the essential requisites, because the main purpose of registration is to give notice to third parties, and it can be assumed that the members themselves knew of the contents of their contract.[26] In the case at bar, non-compliance with this directory provision of the law will not invalidate the partnership considering that the totality of the evidence proves that respondent and Jacinto indeed forged the partnership in question.

WHEREFORE, in view of the foregoing, the petition is DENIED and the appealed decision is AFFIRMED.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Sandoval-Gutierrez, JJ., concur.

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[1] Per Associate Justice Delilah Vidallon-Magtolis and concurred in by Associate Justices Bernardo P. Abesamis and Mercedes Gozo-Dadole, Court of Appeals, Fourteenth Division.

[2] Rollo, p. 185.

[3] Records, pp. 75-76; Decision, pp. 25-26.

[4] Rollo, p. 46; Decision, p. 11.

[5] Rollo, pp. 13-14; Petition. pp. 6-7.

[6] JOSE C. VITUG, COMPENDIUM OF CIVIL LAW AND JURISPRUDENCE, REV. ED. (1993), p. 712.

[7] RAMON C. AQUINO AND CAROLINA C. GRIÑO-AQUINO, THE CIVIL CODE OF THE PHILIPPINES, VOL. 3 (1990), p. 295.

[8] ARTURO M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, VOLUME 5 (1997), p. 320.

[9] Tan vs. Court of Appeals, 295 SCRA 247 (1998), p. 258.

[10] OSCAR M. HERRERA, REMEDIAL LAW, REVISED RULES ON EVIDENCE, VOL. V (1999), pp. 308-309.

[11] Records, pp. 47-51.

[12] See Goni vs. Court of Appeals, 144 SCRA 222 (1986).

[13] HERRERA, supra, p. 310.

[14] Goni vs. Court of Appeals, supra, p. 233.

[15] RICARDO J. FRANCISCO, EVIDENCE, THIRD EDITION (1996), p. 135.

[16] People vs. Nang, 289 SCRA 16 (1998), p. 32.

[17] Alicbusan vs. Court of Appeals, 269 SCRA 336, p. 341

[18] Ibid.

[19] See Chua vs. Court of Appeals, 301 SCRA 356 (1999).

[20] "The following actions must be commenced within six years:

(1) Upon an oral contract; and

(2) Upon a quasi-contract."

[21] Art. 1842, Civil Code:

"The right to an account of his interest shall accrue to any partner, or his legal representative as against the winding up partners or the surviving partners or the person or partnership continuing the business, at the date of dissolution, in the absence of any agreement to the contrary."

[22] Article 1830, Civil Code.

[23] "Art. 1828. The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business.

Art. 1829. On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed."

[24] Sy vs. Court of Appeals, 313 SCRA 328 (1999), p. 347.

[25] "The partnership has a juridical personality separate and distinct from that of each of the partners, even in case of failure to comply with the requirements of article 1772, first paragraph."

[26] TOLENTINO, supra, p. 325.

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