

THIRD DIVISION

[G.R. No. 144214, July 14, 2003]

**LUZVIMINDA J. VILLAREAL, DIOGENES VILLAREAL AND
CARMELITO JOSE, PETITIONERS, VS. DONALDO EFREN C.
RAMIREZ AND SPOUSES CESAR G. RAMIREZ JR. AND CARMELITA
C. RAMIREZ, RESPONDENTS.**

D E C I S I O N

PANGANIBAN, J.:

A share in a partnership can be returned only after the completion of the latter's dissolution, liquidation and winding up of the business.

The Case

The Petition for Review on Certiorari before us challenges the March 23, 2000 Decision^[1] and the July 26, 2000 Resolution^[2] of the Court of Appeals^[3] (CA) in CA-GR CV No. 41026. The assailed Decision disposed as follows:

"WHEREFORE, foregoing premises considered, the Decision dated July 21, 1992 rendered by the Regional Trial Court, Branch 148, Makati City is hereby SET ASIDE and NULLIFIED and in lieu thereof a new decision is rendered ordering the [petitioners] jointly and severally to pay and reimburse to [respondents] the amount of P253,114.00. No pronouncement as to costs."^[4]

Reconsideration was denied in the impugned Resolution.

The Facts

On July 25, 1984, Luzviminda J. Villareal, Carmelito Jose and Jesus Jose formed a partnership with a capital of P750,000 for the operation of a restaurant and catering business under the name "Aquarius Food House and Catering Services."^[5] Villareal was appointed general manager and Carmelito Jose, operations manager.

Respondent Donaldo Efren C. Ramirez joined as a partner in the business on September 5, 1984. His capital contribution of P250,000 was paid by his parents, Respondents Cesar and Carmelita Ramirez.^[6]

After Jesus Jose withdrew from the partnership in January 1987, his capital contribution of P250,000 was refunded to him in cash by agreement of the partners.

^[7]

In the same month, without prior knowledge of respondents, petitioners closed down the restaurant, allegedly because of increased rental. The restaurant furniture

and equipment were deposited in the respondents' house for storage.^[8]

On March 1, 1987, respondent spouses wrote petitioners, saying that they were no longer interested in continuing their partnership or in reopening the restaurant, and that they were accepting the latter's offer to return their capital contribution.^[9]

On October 13, 1987, Carmelita Ramirez wrote another letter informing petitioners of the deterioration of the restaurant furniture and equipment stored in their house. She also reiterated the request for the return of their one-third share in the equity of the partnership. The repeated oral and written requests were, however, left unheeded.^[10]

Before the Regional Trial Court (RTC) of Makati, Branch 59, respondents subsequently filed a Complaint^[11] dated November 10, 1987, for the collection of a sum of money from petitioners.

In their Answer, petitioners contended that respondents had expressed a desire to withdraw from the partnership and had called for its dissolution under Articles 1830 and 1831 of the Civil Code; that respondents had been paid, upon the turnover to them of furniture and equipment worth over P400,000; and that the latter had no right to demand a return of their equity because their share, together with the rest of the capital of the partnership, had been spent as a result of irreversible business losses.^[12]

In their Reply, respondents alleged that they did not know of any loan encumbrance on the restaurant. According to them, if such allegation were true, then the loans incurred by petitioners should be regarded as purely personal and, as such, not chargeable to the partnership. The former further averred that they had not received any regular report or accounting from the latter, who had solely managed the business. Respondents also alleged that they expected the equipment and the furniture stored in their house to be removed by petitioners as soon as the latter found a better location for the restaurant.^[13]

Respondents filed an Urgent Motion for Leave to Sell or Otherwise Dispose of Restaurant Furniture and Equipment^[14] on July 8, 1988. The furniture and the equipment stored in their house were inventoried and appraised at P29,000.^[15] The display freezer was sold for P5,000 and the proceeds were paid to them.^[16]

After trial, the RTC^[17] ruled that the parties had voluntarily entered into a partnership, which could be dissolved at any time. Petitioners clearly intended to dissolve it when they stopped operating the restaurant. Hence, the trial court, in its July 21, 1992 Decision, held them liable as follows:^[18]

"WHEREFORE, judgment is hereby rendered in favor of [respondents] and against the [petitioners] ordering the [petitioners] to pay jointly and severally the following:

- (a) Actual damages in the amount of P250,000.00
- (b) Attorney's fee in the amount of P30,000.00

(c) Costs of suit."

The CA Ruling

The CA held that, although respondents had no right to demand the return of their capital contribution, the partnership was nonetheless dissolved when petitioners lost interest in continuing the restaurant business with them. Because petitioners never gave a proper accounting of the partnership accounts for liquidation purposes, and because no sufficient evidence was presented to show financial losses, the CA computed their liability as follows:

"Consequently, since what has been proven is only the outstanding obligation of the partnership in the amount of P240,658.00, although contracted by the partnership before [respondents'] have joined the partnership but in accordance with Article 1826 of the New Civil Code, they are liable which must have to be deducted from the remaining capitalization of the said partnership which is in the amount of P1,000,000.00 resulting in the amount of P759,342.00, and in order to get the share of [respondents], this amount of P759,342.00 must be divided into three (3) shares or in the amount of P253,114.00 for each share and which is the only amount which [petitioner] will return to [respondents'] representing the contribution to the partnership minus the outstanding debt thereof."^[19]

Hence, this Petition.^[20]

Issues

In their Memorandum,^[21] petitioners submit the following issues for our consideration:

"9.1. Whether the Honorable Court of Appeals' decision ordering the distribution of the capital contribution, instead of the net capital after the dissolution and liquidation of a partnership, thereby treating the capital contribution like a loan, is in accordance with law and jurisprudence;

"9.2. Whether the Honorable Court of Appeals' decision ordering the petitioners to jointly and severally pay and reimburse the amount of [P]253,114.00 is supported by the evidence on record; and

"9.3. Whether the Honorable Court of Appeals was correct in making [n]o pronouncement as to costs."^[22]

On closer scrutiny, the issues are as follows: (1) whether petitioners are liable to respondents for the latter's share in the partnership; (2) whether the CA's computation of P253,114 as respondents' share is correct; and (3) whether the CA was likewise correct in not assessing costs.

This Court's Ruling

The Petition has merit.

First Issue:
Share in Partnership

Both the trial and the appellate courts found that a partnership had indeed existed, and that it was dissolved on March 1, 1987. They found that the dissolution took place when respondents informed petitioners of the intention to discontinue it because of the former's dissatisfaction with, and loss of trust in, the latter's management of the partnership affairs. These findings were amply supported by the evidence on record. Respondents consequently demanded from petitioners the return of their one-third equity in the partnership.

We hold that respondents have no right to demand from petitioners the return of their equity share. Except as managers of the partnership, petitioners did not personally hold its equity or assets. "The partnership has a juridical personality separate and distinct from that of each of the partners."^[23] Since the capital was contributed to the partnership, not to petitioners, it is the partnership that must refund the equity of the retiring partners.^[24]

Second Issue:
What Must Be Returned?

Since it is the partnership, as a separate and distinct entity, that must refund the shares of the partners, the amount to be refunded is necessarily limited to its total resources. In other words, it can only pay out what it has in its coffers, which consists of all its assets. However, before the partners can be paid their shares, the creditors of the partnership must first be compensated.^[25] After all the creditors have been paid, whatever is left of the partnership assets becomes available for the payment of the partners' shares.

Evidently, in the present case, the exact amount of refund equivalent to respondents' one-third share in the partnership cannot be determined until all the partnership assets will have been liquidated -- in other words, sold and converted to cash -- and all partnership creditors, if any, paid. The CA's computation of the amount to be refunded to respondents as their share was thus erroneous.

First, it seems that the appellate court was under the misapprehension that the total capital contribution was equivalent to the gross assets to be distributed to the partners at the time of the dissolution of the partnership. We cannot sustain the underlying idea that the capital contribution at the beginning of the partnership remains intact, unimpaired and available for distribution or return to the partners. Such idea is speculative, conjectural and totally without factual or legal support.

Generally, in the pursuit of a partnership business, its capital is either increased by profits earned or decreased by losses sustained. It does not remain static and unaffected by the changing fortunes of the business. In the present case, the financial statements presented before the trial court showed that the business had made meager profits.^[26] However, notable therefrom is the omission of any provision for the depreciation^[27] of the furniture and the equipment. The amortization of the goodwill^[28] (initially valued at P500,000) is not reflected either. Properly taking these non-cash items into account will show that the partnership