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FIRST DIVISION

[G.R. No. 127405, October 04, 2000]

MARJORIE TOCAO AND WILLIAM T. BELO, PETITIONERS, VS. COURT OF APPEALS AND NENITA A. ANAY, RESPONDENTS.

DECISION

YNARES-SANTIAGO, J.:

This is a petition for review of the Decision of the Court of Appeals in CA-G.R. CV No. 41616,[1] affirming the Decision of the Regional Trial Court of Makati, Branch 140, in Civil Case No. 88-509.[2]

Fresh from her stint as marketing adviser of Technolux in Bangkok, Thailand, private respondent Nenita A. Anay met petitioner William T. Belo, then the vice-president for operations of Ultra Clean Water Purifier, through her former employer in Bangkok. Belo introduced Anay to petitioner Marjorie Tocao, who conveyed her desire to enter into a joint venture with her for the importation and local distribution of kitchen cookwares. Belo volunteered to finance the joint venture and assigned to Anay the job of marketing the product considering her experience and established relationship with West Bend Company, a manufacturer of kitchen wares in Wisconsin, U.S.A. Under the joint venture, Belo acted as capitalist, Tocao as president and general manager, and Anay as head of the marketing department and later, vice-president for sales. Anay organized the administrative staff and sales force while Tocao hired and fired employees, determined commissions and/or salaries of the employees, and assigned them to different branches. The parties agreed that Belo's name should not appear in any documents relating to their transactions with West Bend Company. Instead, they agreed to use Anay's name in securing distributorship of cookware from that company. The parties agreed further that Anay would be entitled to: (1) ten percent (10%) of the annual net profits of the business; (2) overriding commission of six percent (6%) of the overall weekly production; (3) thirty percent (30%) of the sales she would make; and (4) two percent (2%) for her demonstration services. The agreement was not reduced to writing on the strength of Belo's assurances that he was sincere, dependable and honest when it came to financial commitments.

Anay having secured the distributorship of cookware products from the West Bend Company and organized the administrative staff and the sales force, the cookware business took off successfully. They operated under the name of Geminesse Enterprise, a sole proprietorship registered in Marjorie Tocao's name, with office at 712 Rufino Building, Ayala Avenue, Makati City. Belo made good his monetary commitments to Anay. Thereafter, Roger Muencheberg of West Bend Company invited Anay to the distributor/dealer meeting in West Bend, Wisconsin, U.S.A., from July 19 to 21, 1987 and to the southwestern regional convention in Pismo Beach, California, U.S.A., from July 25-26, 1987. Anay accepted the invitation with the consent of Marjorie Tocao who, as president and general manager of Geminesse

Enterprise, even wrote a letter to the Visa Section of the U.S. Embassy in Manila on July 13, 1987. A portion of the letter reads:

> "Ms. Nenita D. Anay (sic), who has been patronizing and supporting West Bend Co. for twenty (20) years now, acquired the distributorship of Royal Queen cookware for Geminesse Enterprise, is the Vice President Sales Marketing and *a business partner of our company*, will attend in response to the invitation." (Italics supplied.)[3]

Anay arrived from the U.S.A. in mid-August 1987, and immediately undertook the task of saving the business on account of the unsatisfactory sales record in the Makati and Cubao offices. On August 31, 1987, she received a plaque of appreciation from the administrative and sales people through Marjorie Tocao[4] for her excellent job performance. On October 7, 1987, in the presence of Anay, Belo signed a memo[5] entitling her to a thirty-seven percent (37%) commission for her personal sales "up Dec 31/87." Belo explained to her that said commission was apart from her ten percent (10%) share in the profits. On October 9, 1987, Anay learned that Marjorie Tocao had signed a letter[6] addressed to the Cubao sales office to the effect that she was no longer the vice-president of Geminesse Enterprise. The following day, October 10, she received a note from Lina T. Cruz, marketing manager, that Marjorie Tocao had barred her from holding office and conducting demonstrations in both Makati and Cubao offices.[7] Anay attempted to contact Belo. She wrote him twice to demand her overriding commission for the period of January 8, 1988 to February 5, 1988 and the audit of the company to determine her share in the net profits. When her letters were not answered, Anay consulted her lawyer, who, in turn, wrote Belo a letter. Still, that letter was not answered.

Anay still received her five percent (5%) overriding commission up to December 1987. The following year, 1988, she did not receive the same commission although the company netted a gross sales of P13,300,360.00.

On April 5, 1988, Nenita A. Anay filed Civil Case No. 88-509, a complaint for sum of money with damages[8] against Marjorie D. Tocao and William Belo before the Regional Trial Court of Makati, Branch 140.

In her complaint, Anay prayed that defendants be ordered to pay her, jointly and severally, the following: (1) P32,00.00 as unpaid overriding commission from January 8, 1988 to February 5, 1988; (2) P100,000.00 as moral damages, and (3) P100,000.00 as exemplary damages. The plaintiff also prayed for an audit of the finances of Geminesse Enterprise from the inception of its business operation until she was "illegally dismissed" to determine her ten percent (10%) share in the net profits. She further prayed that she be paid the five percent (5%) "overriding commission" on the remaining 150 West Bend cookware sets before her "dismissal."

In their answer,[9] Marjorie Tocao and Belo asserted that the "alleged agreement" with Anay that was "neither reduced in writing, nor ratified," was "either unenforceable or void or inexistent." As far as Belo was concerned, his only role was to introduce Anay to Marjorie Tocao. There could not have been a partnership because, as Anay herself admitted, Geminesse Enterprise was the sole proprietorship of Marjorie Tocao. Because Anay merely acted as marketing

demonstrator of Geminesse Enterprise for an agreed remuneration, and her complaint referred to either her compensation or dismissal, such complaint should have been lodged with the Department of Labor and not with the regular court.

Petitioners (defendants therein) further alleged that Anay filed the complaint on account of "ill-will and resentment" because Marjorie Tocao did not allow her to "lord it over in the Geminesse Enterprise." Anay had acted like she owned the enterprise because of her experience and expertise. Hence, petitioners were the ones who suffered actual damages "including unreturned and unaccounted stocks of Geminesse Enterprise," and "serious anxiety, besmirched reputation in the business world, and various damages not less than P500,000.00." They also alleged that, to "vindicate their names," they had to hire counsel for a fee of P23,000.00.

At the pre-trial conference, the issues were limited to: (a) whether or not the plaintiff was an employee or partner of Marjorie Tocao and Belo, and (b) whether or not the parties are entitled to damages.[10]

In their defense, Belo denied that Anay was supposed to receive a share in the profit of the business. He, however, admitted that the two had agreed that Anay would receive a three to four percent (3-4%) share in the gross sales of the cookware. He denied contributing capital to the business or receiving a share in its profits as he merely served as a guarantor of Marjorie Tocao, who was new in the business. He attended and/or presided over business meetings of the venture in his capacity as a guarantor but he never participated in decision-making. He claimed that he wrote the memo granting the plaintiff thirty-seven percent (37%) commission upon her dismissal from the business venture at the request of Tocao, because Anay had no other income.

For her part, Marjorie Tocao denied having entered into an oral partnership agreement with Anay. However, she admitted that Anay was an expert in the cookware business and hence, they agreed to grant her the following commissions: thirty-seven percent (37%) on personal sales; five percent (5%) on gross sales; two percent (2%) on product demonstrations, and two percent (2%) for recruitment of personnel. Marjorie denied that they agreed on a ten percent (10%) commission on the net profits. Marjorie claimed that she got the capital for the business out of the sale of the sewing machines used in her garments business and from Peter Lo, a Singaporean friend-financier who loaned her the funds with interest. Because she treated Anay as her "co-equal," Marjorie received the same amounts of commissions as her. However, Anay failed to account for stocks valued at P200,000.00.

On April 22, 1993, the trial court rendered a decision the dispositive part of which is as follows:

> "WHEREFORE, in view of the foregoing, judgment is hereby rendered:
>
> 1. Ordering defendants to submit to the Court a formal account as to the partnership affairs for the years 1987 and 1988 pursuant to Art. 1809 of the Civil Code in order to determine the ten percent (10%) share of plaintiff in the net profits of the cookware business;
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> 2. Ordering defendants to pay five percent (5%) overriding commission for the one hundred and fifty (150) cookware sets

available for disposition when plaintiff was wrongfully excluded from the partnership by defendants;

3. Ordering defendants to pay plaintiff overriding commission on the total production which for the period covering January 8, 1988 to February 5, 1988 amounted to P32,000.00;

4. Ordering defendants to pay P100,000.00 as moral damages and P100,000.00 as exemplary damages, and

5. Ordering defendants to pay P50,000.00 as attorney's fees and P20,000.00 as costs of suit.

SO ORDERED."

The trial court held that there was indeed an "oral partnership agreement between the plaintiff and the defendants," based on the following: (a) there was an intention to create a partnership; (b) a common fund was established through contributions consisting of money and industry, and (c) there was a joint interest in the profits. The testimony of Elizabeth Bantilan, Anay's cousin and the administrative officer of Geminesse Enterprise from August 21, 1986 until it was absorbed by Royal International, Inc., buttressed the fact that a partnership existed between the parties. The letter of Roger Muencheberg of West Bend Company stating that he awarded the distributorship to Anay and Marjorie Tocao because he was convinced that with Marjorie's financial contribution and Anay's experience, the combination of the two would be invaluable to the partnership, also supported that conclusion. Belo's claim that he was merely a "guarantor" has no basis since there was no written evidence thereof as required by Article 2055 of the Civil Code. Moreover, his acts of attending and/or presiding over meetings of Geminesse Enterprise plus his issuance of a memo giving Anay 37% commission on personal sales belied this. On the contrary, it demonstrated his involvement as a partner in the business.

The trial court further held that the payment of commissions did not preclude the existence of the partnership inasmuch as such practice is often resorted to in business circles as an impetus to bigger sales volume. It did not matter that the agreement was not in writing because Article 1771 of the Civil Code provides that a partnership may be "constituted in any form." The fact that Geminesse Enterprise was registered in Marjorie Tocao's name is not determinative of whether or not the business was managed and operated by a sole proprietor or a partnership. What was registered with the Bureau of Domestic Trade was merely the business name or style of Geminesse Enterprise.

The trial court finally held that a partner who is excluded wrongfully from a partnership is an innocent partner. Hence, the guilty partner must give him his due upon the dissolution of the partnership as well as damages or share in the profits "realized from the appropriation of the partnership business and goodwill." An innocent partner thus possesses "pecuniary interest in every existing contract that was incomplete and in the trade name of the co-partnership and assets at the time he was wrongfully expelled."

Petitioners' appeal to the Court of Appeals[11] was dismissed, but the amount of damages awarded by the trial court were reduced to P50,000.00 for moral damages

and P50,000.00 as exemplary damages. Their Motion for Reconsideration was denied by the Court of Appeals for lack of merit.[12] Petitioners Belo and Marjorie Tocao are now before this Court on a petition for review on certiorari, asserting that there was no business partnership between them and herein private respondent Nenita A. Anay who is, therefore, not entitled to the damages awarded to her by the Court of Appeals.

Petitioners Tocao and Belo contend that the Court of Appeals erroneously held that a partnership existed between them and private respondent Anay because Geminesse Enterprise "came into being" exactly a year before the "alleged partnership" was formed, and that it was very unlikely that petitioner Belo would invest the sum of P2,500,000.00 with petitioner Tocao contributing nothing, without any "memorandum whatsoever regarding the alleged partnership."[13]

The issue of whether or not a partnership exists is a factual matter which are within the exclusive domain of both the trial and appellate courts. This Court cannot set aside factual findings of such courts absent any showing that there is no evidence to support the conclusion drawn by the court *a quo.*[14] In this case, both the trial court and the Court of Appeals are one in ruling that petitioners and private respondent established a business partnership. This Court finds no reason to rule otherwise.

To be considered a juridical personality, a partnership must fulfill these requisites: (1) two or more persons bind themselves to contribute money, property or industry to a common fund; and (2) intention on the part of the partners to divide the profits among themselves.[15] It may be constituted in any form; a public instrument is necessary only where immovable property or real rights are contributed thereto.[16] This implies that since a contract of partnership is consensual, an oral contract of partnership is as good as a written one. Where no immovable property or real rights are involved, what matters is that the parties have complied with the requisites of a partnership. The fact that there appears to be no record in the Securities and Exchange Commission of a public instrument embodying the partnership agreement pursuant to Article 1772 of the Civil Code[17] did not cause the nullification of the partnership. The pertinent provision of the Civil Code on the matter states:

> Art. 1768. 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.

Petitioners admit that private respondent had the expertise to engage in the business of distributorship of cookware. Private respondent contributed such expertise to the partnership and hence, under the law, she was the industrial or managing partner. It was through her reputation with the West Bend Company that the partnership was able to open the business of distributorship of that company's cookware products; it was through the same efforts that the business was propelled to financial success. Petitioner Tocao herself admitted private respondent's indispensable role in putting up the business when, upon being asked if private respondent held the positions of marketing manager and vice-president for sales, she testified thus:

> "A: No, sir at the start she was the marketing manager because there were no one to sell yet, it's only me there then her and