

## TWENTY-SECOND DIVISION

[ CA-G.R. CV NO. 02464-MIN, January 29, 2015 ]

**MIGUEL C. TAN, PLAINTIFF-APPELLEE, VS. SPOUSES JIMMINEE TAN AND MA. CORAZON V. TAN, DEFENDANTS-APPELLANTS,**

### DECISION

**PEREZ, J.:**

Spouses Jimminee Tan and Ma. Corazon Tan appeal from the 28 June 2010 Decision<sup>[1]</sup> of the Regional Trial Court (RTC), 11th Judicial Region, Branch 15, Davao City, in Civil Case No. 27,886-2000, an action for dissolution and liquidation of partnership, accounting and partition, damages and attorney's fees.

The differing claims of the parties, as summarized by the RTC, are as follows –

In his complaint, the plaintiff alleges that sometime on February 16, 1999[,] he and defendant Jimminee Tan agreed to form a partnership on a fifty-fifty basis to engage in a bakery and pastry business; that he has invested a total amount of Forty Three Thousand Pesos (P43,000.00); that the business has not been doing good as it was always suffering from losses; that his business partner, defendant Jimminee Tan has not been reporting to him the status of the operation of the business; that his co-business partner Jimminee Tan has not given him his share in the Two Million Pesos winning in the Coca-[C]ola crown [raffle] won by Jimminee Tan's wife[,] Ma. Corazon V. Tan; that the Two Million Pesos raffle winning belongs to the partnership because the winning [C]oca-[C]ola crowns or caps were collected by Ma. Corazon Tan from the store owned by the partnership.

Defendants Jimminee C. Tan and Corazon V. Tan deny every material averment in the complaint and allege that Jimminee Tan has always been talking to the plaintiff about the status of their business and showing to the latter the financial record of the business; that when the plaintiff has noticed that the financial record of the business records reflected negative balance, he told Jimminee that he did not want to have anything to do with the business and demanded the return of his capital contribution of P43,000.00; that the [C]oca-[C]ola winning caps or crown were personal collection of Ma. Corazon Tan which the latter shamelessly [and] personally gathered not only from the partnership store but also from other store she would go to because of her determination to join the Coca-[C]ola Bottling Company raffle promo; that the Two Million Pesos (P2,000,000.00) winnings from the Coca-[C]ola Bottling Company promo belonged to Ma. Corazon Tan personally and not to the business partnership.

During pre-trial conference on June 21, 2000, the parties agreed on two disputed issues as follows:

1. Whether or not the partnership was dissolved; and
2. Whether or not the disputed amounts were partnership investments or loans. x x x.<sup>[2]</sup>

On 28 June 2010, the RTC rendered the herein appealed Decision<sup>3</sup>, the dispositive portion of which reads –

WHEREFORE, in light of all the foregoing considerations, judgment is hereby rendered as follows:

1. The partnership of plaintiff Miguel Tan and defendant Jimminee Tan is hereby declared dissolved.
2. Defendant Jimminee Tan is ordered to render an inventory and accounting of partnership assets or properties as of September 1999; partition and distribute the remaining partnership assets after paying all partnership debts to third person or persons, if any.
3. Declaring that the Two Million Pesos (P2,000,000.00) winnings of [d]efendant [Ma.] Corazon Tan in the Coca-[C]ola Pamaskong Payaman Handog ng Coca-[C]ola Promotion is not part of the [p]artnership. The same is property or money belonging to [d]efendant [Ma.] Corazon Tan personally.
4. Plaintiff's claim for Attorney's Fees and litigation expenses are denied for lack of factual and legal basis.
5. Plaintiff's claim for moral, exemplary and temperate damages are likewise denied for lack of factual and legal basis; and
6. Defendants' counter-claim (*sic*) likewise DISMISSED for lack of merit.

SO ORDERED.

On 4 August 2010, defendants spouses Jimminee and Ma. Corazon Tan filed a Motion for Reconsideration<sup>[4]</sup> on the finding that a partnership was formally organized and should be liquidated, and on the dismissal of their counterclaims for damages and attorney's fees against plaintiff Miguel C. Tan.

On 3 January 2011, the RTC rendered an Order<sup>[5]</sup> denying the Motion for Reconsideration and denying again the appellants' counterclaims for being without merit.

The RTC reasoned –

Apparently, defendants spouses Jimminee Tan and Ma. Corazon Tan, have misread the import and significance of the decision of this court. They seem to entertain a mistaken belief that they won or were (*sic*) party in the above-entitled case. This is not correct.

A thorough reading and analysis of the whole content of the impugned decision would clearly and readily show that plaintiff Miguel Tan actually won in the above-entitled case as all reliefs he has prayed for in his complaint were granted except the exclusion of the two million pesos grand price winnings of defendant Ma. Corazon Tan from the partnership assets.

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xxx.

Being the defeated party in the instant case, the defendants have no legal basis to claim [that] they are entitled to their counter-claim. Thus, their instant motion would be denied for lack of merit.

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More, it bears to stress that [a]ttorneys fees and litigation expenses may only be recovered if it is shown that the filing of the complaint before the court was imbued with bad faith x x x. In the instant case, the action instituted by plaintiff Miguel Tan was based on a valid cause of action. "One who makes use of his own legal right does no injury["]. Thus, whatever damages are suffered by respondent should be borne solely by him x x x.

Thus, defendants, now appellants, take this appeal imputing the following errors to the RTC –

- I. THE COURT A *QUO* ERRED IN RESOLVING IN ITS DECISION DATED JUNE 28, 2010 THAT THE PARTNERSHIP BETWEEN THE PLAINTIFF AND DEFENDANT IS DISSOLVED AND THE DEFENDANT TO RENDER (*SIC*) AND ACCOUNTING OF PARTNERSHIP ASSETS OR PROPERTIES "AS OF SEPTEMBER 1999" WHEN THE PLAINTIFF DID IT ALREADY THAT MONTH, ABANDONED IT AND ORDERED THE DEFENDANT HIS INVESTMENT "WHEN ABLE".
- II. THE COURT A *QUO* ERRED IN RESOLVING THAT THE DEFENDANTS WERE ACTUALLY THE "LOSERS" AND THE PLAINTIFF THE "WINNER" DESPITE THE FACT THAT THE DEFENDANTS WERE DECLARED THE ABSOLUTE OWNERS OF THE WINNINGS OF TWO MILLION (P2,000,000.00) PESOS GRAND PRIZE AND THE PLAINTIFF'S CLAIM FOR ATTORNEYS FEES, LITIGATION EXPENSES, MORAL, EXEMPLARY, AND TEMPERATE DAMAGES, WERE RESOUNDINGLY REJECTED AND DENIED ALSO BY THE SAID COURT (*SIC*) A *QUO*, FOR UTTERLY "LACKING IN LEGAL OR FACTUAL BASIS". AND THEREFORE, TANTAMOUNT TO A CLEARLY UNFOUNDED CIVIL ACTION.
- III. THE COURT A *QUO* ERRED IN NOT FINDING AND HOLDING THE PLAINTIFF LIABLE FOR DAMAGES FOR FILING A CLEARLY

UNFOUNDED CIVIL ACTION MALICIOUSLY AND IN BAD FAITH AGAINST THE DEFENDANTS EVEN AFTER FINDING THE ASSERTION OF THE PLAINTIFF THAT THE P2,000,000.00 WAS PARTNERSHIP PROPERTY WAS "DEVOID OF FACTUAL AND LEGAL BASIS" BECAUSE "THERE IS NOTHING IN THE EVIDENCE ADDUCED BY THE PLAINTIFF THAT THE CROWNS CAME FROM THE PARTNERSHIP BAKERY".

The assigned errors may be restated in the following simple terms:

1. Did the RTC correctly rule that the partnership between the parties was dissolved as of September 1999, with the obligation to account and liquidate the partnership affairs arising from such date?
2. Did appellee Miguel file an unfounded civil action that justifies an award of damages to the appellants?

### The Court's Ruling

The appeal is bereft of merit.

The parties who are blood relatives do not dispute the existence of a partnership between them.

A partnership exists when two or more persons consensually bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves.<sup>[6]</sup> From the foregoing, a partnership is created when the following elements concur: (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.<sup>[7]</sup>

Moreover, a partnership is a consensual contract as it is perfected upon mere consent of the parties.<sup>[8]</sup> It may be constituted in any form in order to be valid and binding such as written, oral, express or be implied from the acts and declarations of the parties. The execution of a public instrument, however, is indispensable when any of the parties contribute an immovable property or a real right to the partnership.<sup>[9]</sup> In addition, a registration of the said public instrument with the Securities and Exchange Commission (SEC) is required if the capital contribution is three thousand pesos (P3,000.00) or more, in money or property.<sup>[10]</sup> Nonetheless, the failure to comply with the registration requirement does not prevent the formation of the partnership or affect its liability and that of the partners to third persons.<sup>[11]</sup> This is because the only objective of the registration is to make the instrument open to the public and to provide notice to interested parties.<sup>[12]</sup>

Based on the above, a partnership may be created by the oral agreement of the parties as long as the partners make the necessary contributions to their joint venture with the intent to share in the gains or losses of the enterprise. As much is stated in *Tocao v. Court of Appeals*<sup>[13]</sup>, where the Supreme Court emphasized that an oral contract of partnership is as good as a written one provided that the parties have complied with the requisites of a partnership.

In the present case, records show that, sometime on February 1999, appellant Jimminee and appellee Miguel verbally agreed to engage in a bakery business, establish a common fund for the said purpose and divide its profits or losses. These are borne out from a perusal of the respective testimonies of the parties:

Appellant Maria Corazon

Q: According to the plaintiff in his testimony he entered into partnership with your husband in an on[-]going business already being ran by your husband, is that true?

A: Yes, sir.

Q: Who invited to be (sic) partner in the existing business?

A: My Husband's uncle matched existing assets of my husband in cash.

Q: How much did your uncle contribute to the on-going business of your husband so that he will be considered as a partner?

A: I am not sure of the exact amount, it's only my husband who knows about that.

Q: But you know that your uncle contributed much for the business?

A: Yes, sir.

Q: How about you Mrs. Tan were you also a partner in the business of your husband?

A: No sir, I merely help and acted as a [c]ashier in the store.<sup>[14]</sup>

Appellant Jimminee Tan

Q: Mr. Tan please tell the court do you confirm the testimony (sic) the evidence of plaintiff Miguel Tan, your uncle, that there was a partnership that was entered into between him and you in a business?

A: Yes, sir.

Q: Would you be able to tell the court what kind of business did you and your uncle enter into?

A: We had a bakery business at Sasa.

Q: What is the name of your bakery business?

A: JMJ Foodhouse.

x x x.

Q: Please tell the court Mr. Tan if you can recall when did you and your uncle enter into your partnership, what year and what date?

A: Around February 1999.

x x x.

Q: Was the partnership entered into writing?

A: No, sir. Just (sic) verbal agreement between me and my uncle. Being