513 Phil. 707

THIRD DIVISION

[G.R. NOS. 166299-300, December 13, 2005]

AURELIO K. LITONJUA, JR., PETITIONER, VS. EDUARDO K. LITONJUA, SR., ROBERT T. YANG, ANGLO PHILS. MARITIME, INC., CINEPLEX, INC., DDM GARMENTS, INC., EDDIE K. LITONJUA SHIPPING AGENCY, INC., EDDIE K. LITONJUA SHIPPING CO., INC., LITONJUA SECURITIES, INC. (FORMERLY E. K. LITONJUA SEC), LUNETA THEATER, INC., E & L REALTY, (FORMERLY E & L INT'L SHIPPING CORP.), FNP CO., INC., HOME ENTERPRISES, INC., BEAUMONT DEV. REALTY CO., INC., GLOED LAND CORP., EQUITY TRADING CO., INC., 3D CORP., "L" DEV. CORP, LCM THEATRICAL ENTERPRISES, INC., LITONJUA SHIPPING CO. INC., MACOIL INC., ODEON REALTY CORP., SARATOGA REALTY, INC., ACT THEATER INC. (FORMERLY GENERAL THEATRICAL & FILM EXCHANGE, INC.), AVENUE REALTY, INC., AVENUE THEATER, INC. AND LVF PHILIPPINES, INC., (FORMERLY VF PHILIPPINES), RESPONDENTS.

D E C I S I O N

GARCIA, J.:

In this petition for review under Rule 45 of the Rules of Court, petitioner Aurelio K. Litonjua, Jr. seeks to nullify and set aside the Decision of the Court of Appeals (CA) dated March 31, 2004[1] in consolidated cases *C.A. G.R. Sp. No. 76987* and *C.A. G.R. SP. No 78774* and its Resolution dated December 07, 2004,[2] denying petitioner's motion for reconsideration.

The recourse is cast against the following factual backdrop:

Petitioner Aurelio K. Litonjua, Jr. (Aurelio) and herein respondent Eduardo K. Litonjua, Sr. (Eduardo) are brothers. The legal dispute between them started when, on December 4, 2002, in the Regional Trial Court (RTC) at Pasig City, Aurelio filed a suit against his brother Eduardo and herein respondent Robert T. Yang (Yang) and several corporations for specific performance and accounting. In his complaint,[3] docketed as Civil Case No. 69235 and eventually raffled to Branch 68 of the court,[4] Aurelio alleged that, since June 1973, he and Eduardo are into a joint venture/partnership arrangement in the Odeon Theater business which had expanded thru investment in Cineplex, Inc., LCM Theatrical Enterprises, Odeon Realty Corporation (operator of Odeon I and II theatres), Avenue Realty, Inc., owner of lands and buildings, among other corporations. Yang is described in the complaint as petitioner's and Eduardo's partner in their Odeon Theater investment.[5] The same complaint also contained the following material averments:

> 3.01 On or about 22 June 1973, [Aurelio] and Eduardo entered into a joint venture/partnership for the continuation of their family business and

common family funds ....

3.01.1 This joint venture/[partnership] agreement was contained in a memorandum addressed by Eduardo to his siblings, parents and other relatives. Copy of this memorandum is attached hereto and made an integral part as **Annex "A"** and the portion referring to [Aurelio] submarked as **Annex "A-1".**

3.02 It was then agreed upon between [Aurelio] and Eduardo that in consideration of [Aurelio's] retaining his share in the remaining family businesses (mostly, movie theaters, shipping and land development) and contributing his industry to the continued operation of these businesses, [Aurelio] will be given P1 Million or 10% equity in all these businesses and those to be subsequently acquired by them whichever is greater. . . .

4.01 ... from 22 June 1973 to about August 2001, or [in] a span of 28 years, [Aurelio] and Eduardo had accumulated in their joint venture/partnership various assets including but not limited to the corporate defendants and [their] respective assets.

4.02 In addition . . . the joint venture/partnership ... had also acquired [various other assets], but Eduardo caused to be registered in the names of other parties....

xxx xxx xxx

4.04 The substantial assets of most of the corporate defendants consist of real properties .... A list of some of these real properties is attached hereto and made an integral part as **Annex "B".**

xxx xxx xxx

5.02 Sometime in 1992, the relations between [Aurelio] and Eduardo became sour so that [Aurelio] requested for an accounting and liquidation of his share in the joint venture/partnership [but these demands for complete accounting and liquidation were not heeded].

xxx xxx xxx

5.05 What is worse, [Aurelio] has reasonable cause to believe that Eduardo and/or the corporate defendants as well as Bobby [Yang], are transferring . . . various real properties of the corporations belonging to the joint venture/partnership to other parties in fraud of [Aurelio]. In consequence, [Aurelio] is therefore causing at this time the annotation on the titles of these real properties' a notice of *lis pendens* .... (Emphasis in the original; underscoring and words in bracket added.)

For ease of reference, Annex ***"A-1"*** of the complaint, which petitioner asserts to have been meant for him by his brother Eduardo, pertinently reads:

10) JR. (AKL) [Referring to petitioner Aurelio K. Litonjua]:

> You have now your own life to live after having been married. ....
>
> I am trying my best to mold you the way I work so you can follow the pattern .... You will be the only one left with the company, among us brothers and I will ask you to stay as I want you to run this office every time I am away. I want you to run it the way I am trying to run it because I will be all alone and I will depend entirely to you (sic). My sons will not be ready to help me yet until about maybe 15/20 years from now. Whatever is left in the corporation, I will make sure that you get ONE MILLION PESOS (P1,000,000.00) or ten percent (10%) equity, whichever is greater. We two will gamble the whole thing of what I have and what you are entitled to. .... It will be you and me alone on this. If ever I pass away, I want you to take care of all of this. You keep my share for my two sons are ready take over but give them the chance to run the company which I have built.
>
> xxx xxx xxx
>
> Because you will need a place to stay, I will arrange to give you first ONE HUNDRED THOUSANDS PESOS: (P100, 000.00) in cash or asset, like Lt. Artiaga so you can live better there. The rest I will give you in form of stocks which you can keep. This stock I assure you is good and saleable. I will also gladly give you the share of Wack-Wack ...and Valley Golf ... because you have been good. The rest will be in stocks from all the corporations which I repeat, ten percent (10%) equity. [6]

On December 20, 2002, Eduardo and the corporate respondents, as defendants *a quo,* filed a joint *ANSWER With Compulsory Counterclaim* denying under oath the material allegations of the complaint, more particularly that portion thereof depicting petitioner and Eduardo as having entered into a contract of partnership. As affirmative defenses, Eduardo, *et al.,* apart from raising a jurisdictional matter, alleged that the complaint states no cause of action, since no cause of action may be derived from the actionable document, *i.e.,* Annex ***"A-1",*** being void under the terms of Article 1767 in relation to Article 1773 of the Civil Code, *infra*. It is further alleged that whatever undertaking Eduardo agreed to do, if any, under Annex ***"A-1",*** are unenforceable under the provisions of the Statute of Frauds.[7]

For his part, Yang - who was served with summons long after the other defendants submitted their answer – moved to dismiss on the ground, *inter alia,* that, as to him, petitioner has no cause of action and the complaint does not state any.[8] Petitioner opposed this motion to dismiss.

On January 10, 2003, Eduardo, *et al.,* filed a *Motion to Resolve Affirmative Defenses.*[9] To this motion, petitioner interposed an *Opposition with ex-Parte Motion to Set the Case for Pre-trial.*[10]

Acting on the separate motions immediately adverted to above, the trial court, in an Omnibus Order dated March 5, 2003, denied the affirmative defenses and, except for Yang, set the case for pre-trial on April 10, 2003.[11]

In another Omnibus Order of April 2, 2003, the same court denied the motion of

Eduardo, *et al.,* for reconsideration[12] and Yang's motion to dismiss. The following then transpired insofar as Yang is concerned:

1. On April 14, 2003, Yang filed his *ANSWER,* but expressly reserved the right to seek reconsideration of the April 2, 2003 Omnibus Order and to pursue his failed motion to dismiss[13] to its full resolution.

2. On April 24, 2003, he moved for reconsideration of the Omnibus Order of April 2, 2003, but his motion was denied in an Order of July 4, 2003.[14]

3. On August 26, 2003, Yang went to the Court of Appeals (CA) in a petition for *certiorari* under Rule 65 of the Rules of Court, docketed as ***CA-G.R. SP No. 78774,***[15] to nullify the separate orders of the trial court, the first denying his motion to dismiss the basic complaint and, the second, denying his motion for reconsideration.

Earlier, Eduardo and the corporate defendants, on the contention that grave abuse of discretion and injudicious haste attended the issuance of the trial court's aforementioned Omnibus Orders dated March 5, and April 2, 2003, sought relief from the CA *via* similar recourse. Their petition for *certiorari* was docketed as ***CA G.R. SP No. 76987.***

Per its resolution dated October 2, 2003,[16] the CA's 14th Division ordered the consolidation of *CA G.R. SP No. 78774* with *CA G.R. SP No. 76987.*

Following the submission by the parties of their respective Memoranda of Authorities, the appellate court came out with the herein assailed ***Decision dated March 31, 2004,*** finding for Eduardo and Yang, as lead petitioners therein, disposing as follows:

> WHEREFORE, judgment is hereby rendered granting the issuance of the writ of certiorari in these consolidated cases annulling, reversing and setting aside the assailed orders of the court a quo dated March 5, 2003, April 2, 2003 and July 4, 2003 and the complaint filed by private respondent [now petitioner Aurelio] against all the petitioners [now herein respondents Eduardo, *et al.*] with the court a quo is hereby ***dismissed.***
>
> SO ORDERED.[17] (Emphasis in the original; words in bracket added.)

Explaining its case disposition, the appellate court stated, *inter alia,* that the alleged partnership, as evidenced by the actionable documents, Annex ***"A"*** and ***"A-1"*** attached to the complaint, and upon which petitioner solely predicates his right/s allegedly violated by Eduardo, Yang and the corporate defendants *a quo* is *"void or legally inexistent"*.

In time, petitioner moved for reconsideration but his motion was denied by the CA in its equally assailed **Resolution of December 7, 2004**.[18] .

Hence, petitioner's present recourse, on the contention that the CA erred:

A. When it ruled that there was no partnership created by the actionable document because this was not a public instrument and immovable properties were contributed to the partnership.

B. When it ruled that the actionable document did not create a demandable right in favor of petitioner.

C. When it ruled that the complaint stated no cause of action against [respondent] Robert Yang; and

D. When it ruled that petitioner has changed his theory on appeal when all that Petitioner had done was to support his pleaded cause of action by another legal perspective/argument.

The petition lacks merit.

Petitioner's demand, as defined in the petitory portion of his complaint in the trial court, is for delivery or payment to him, as Eduardo's and Yang's partner, of his partnership/joint venture share, after an accounting has been duly conducted of what he deems to be partnership/joint venture property.[19]

A partnership exists when two or more persons agree to place their money, effects, labor, and skill in lawful commerce or business, with the understanding that there shall be a proportionate sharing of the profits and losses between them.[20] A contract of partnership is defined by the Civil Code as one where two or more persons bound themselves to contribute money, property, or industry to a common fund with the intention of dividing the profits among themselves.[21] A joint venture, on the other hand, is hardly distinguishable from, and may be likened to, a partnership since their elements are similar, *i.e.,* community of interests in the business and sharing of profits and losses. Being a form of partnership, a joint venture is generally governed by the law on partnership.[22]

The underlying issue that necessarily comes to mind in this proceedings is whether or not petitioner and respondent Eduardo are partners in the theatre, shipping and realty business, as one claims but which the other denies. And the issue bearing on the first assigned error relates to the question of what legal provision is applicable under the premises, petitioner seeking, as it were, to enforce the actionable document - Annex ***"A-1"*** - which he depicts in his complaint to be the contract of partnership/joint venture between himself and Eduardo. Clearly, then, a look at the legal provisions determinative of the existence, or defining the formal requisites, of a partnership is indicated. Foremost of these are the following provisions of the Civil Code:

> Art. 1771. 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.
>
> Art. 1772. Every contract of partnership having a capital of three thousand pesos or more, in money or property, shall appear in a public instrument, which must be recorded in the Office of the Securities and Exchange Commission.