

THIRD DIVISION

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

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

DECISION

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:

"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 retribute 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 retribute 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. 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