

## THIRD DIVISION

[ G.R. No. 136448, November 03, 1999 ]

**LIM TONG LIM, PETITIONER, VS. PHILIPPINE FISHING GEAR INDUSTRIES, INC., RESPONDENT.**

### DECISION

**PANGANIBAN, J.:**

A partnership may be deemed to exist among parties who agree to borrow money to pursue a business and to divide the profits or losses that may arise therefrom, even if it is shown that they have not contributed any capital of their own to a "common fund." Their contribution may be in the form of credit or industry, not necessarily cash or fixed assets. Being partners, they are all liable for debts incurred by or on behalf of the partnership. The liability for a contract entered into on behalf of an unincorporated association or ostensible corporation may lie in a person who may not have directly transacted on its behalf, but reaped benefits from that contract.

### The Case

In the Petition for Review on *Certiorari* before us, Lim Tong Lim assails the November 26, 1998 Decision of the Court of Appeals in CA-GR CV 41477,<sup>[1]</sup> which disposed as follows:

"WHEREFORE, [there being] no reversible error in the appealed decision, the same is hereby affirmed."<sup>[2]</sup>

The decretal portion of the Quezon City Regional Trial Court (RTC) ruling, which was affirmed by the CA, reads as follows:

"WHEREFORE, the Court rules:

1. That plaintiff is entitled to the writ of preliminary attachment issued by this Court on September 20, 1990;
2. That defendants are jointly liable to plaintiff for the following amounts, subject to the modifications as hereinafter made by reason of the special and unique facts and circumstances and the proceedings that transpired during the trial of this case;
  - a. P532,045.00 representing [the] unpaid purchase price of the fishing nets covered by the Agreement plus P68,000.00 representing the unpaid price of the floats not covered by said Agreement;
  - b. 12% interest per annum counted from date of plaintiff's invoices and computed on their respective amounts as follows:

- i. Accrued interest of P73,221.00 on Invoice No. 14407 for P385,377.80 dated February 9, 1990;
- ii. Accrued interest of P27,904.02 on Invoice No. 14413 for P146,868.00 dated February 13, 1990;
- iii. Accrued interest of P12,920.00 on Invoice No. 14426 for P68,000.00 dated February 19, 1990;
- c. P50,000.00 as and for attorney's fees, plus P8,500.00 representing P500.00 per appearance in court;
- d. P65,000.00 representing P5,000.00 monthly rental for storage charges on the nets counted from September 20, 1990 (date of attachment) to September 12, 1991 (date of auction sale);
- e. Cost of suit.

"With respect to the joint liability of defendants for the principal obligation or for the unpaid price of nets and floats in the amount of P532,045.00 and P68,000.00, respectively, or for the total amount of P600,045.00, this Court noted that these items were attached to guarantee any judgment that may be rendered in favor of the plaintiff but, upon agreement of the parties, and, to avoid further deterioration of the nets during the pendency of this case, it was ordered sold at public auction for not less than P900,000.00 for which the plaintiff was the sole and winning bidder. The proceeds of the sale paid for by plaintiff was deposited in court. In effect, the amount of P900,000.00 replaced the attached property as a guaranty for any judgment that plaintiff may be able to secure in this case with the ownership and possession of the nets and floats awarded and delivered by the sheriff to plaintiff as the highest bidder in the public auction sale. It has also been noted that ownership of the nets [was] retained by the plaintiff until full payment [was] made as stipulated in the invoices; hence, in effect, the plaintiff attached its own properties. It [was] for this reason also that this Court earlier ordered the attachment bond filed by plaintiff to guaranty damages to defendants to be cancelled and for the P900,000.00 cash bidden and paid for by plaintiff to serve as its bond in favor of defendants.

"From the foregoing, it would appear therefore that whatever judgment the plaintiff may be entitled to in this case will have to be satisfied from the amount of P900,000.00 as this amount replaced the attached nets and floats. Considering, however, that the total judgment obligation as computed above would amount to only P840,216.92, it would be inequitable, unfair and unjust to award the excess to the defendants who are not entitled to damages and who did not put up a single centavo to raise the amount of P900,000.00 aside from the fact that they are not the owners of the nets and floats. For this reason, the defendants are hereby relieved from any and all liabilities arising from the monetary judgment obligation enumerated above and for plaintiff to retain possession and ownership of the nets and floats and for the reimbursement of the P900,000.00 deposited by it with the Clerk of

Court.

SO ORDERED."<sup>[3]</sup>

### **The Facts**

On behalf of "Ocean Quest Fishing Corporation," Antonio Chua and Peter Yao entered into a Contract dated February 7, 1990, for the purchase of fishing nets of various sizes from the Philippine Fishing Gear Industries, Inc. (herein respondent). They claimed that they were engaged in a business venture with Petitioner Lim Tong Lim, who however was not a signatory to the agreement. The total price of the nets amounted to P532,045. Four hundred pieces of floats worth P68,000 were also sold to the Corporation.<sup>[4]</sup>

The buyers, however, failed to pay for the fishing nets and the floats; hence, private respondent filed a collection suit against Chua, Yao and Petitioner Lim Tong Lim with a prayer for a writ of preliminary attachment. The suit was brought against the three in their capacities as general partners, on the allegation that "Ocean Quest Fishing Corporation" was a nonexistent corporation as shown by a Certification from the Securities and Exchange Commission.<sup>[5]</sup> On September 20, 1990, the lower court issued a Writ of Preliminary Attachment, which the sheriff enforced by attaching the fishing nets on board *F/B Lourdes* which was then docked at the Fisheries Port, Navotas, Metro Manila.

Instead of answering the Complaint, Chua filed a Manifestation admitting his liability and requesting a reasonable time within which to pay. He also turned over to respondent some of the nets which were in his possession. Peter Yao filed an Answer, after which he was deemed to have waived his right to cross-examine witnesses and to present evidence on his behalf, because of his failure to appear in subsequent hearings. Lim Tong Lim, on the other hand, filed an Answer with Counterclaim and Crossclaim and moved for the lifting of the Writ of Attachment.<sup>[6]</sup> The trial court maintained the Writ, and upon motion of private respondent, ordered the sale of the fishing nets at a public auction. Philippine Fishing Gear Industries won the bidding and deposited with the said court the sales proceeds of P900,000.<sup>[7]</sup>

On November 18, 1992, the trial court rendered its Decision, ruling that Philippine Fishing Gear Industries was entitled to the Writ of Attachment and that Chua, Yao and Lim, as general partners, were jointly liable to pay respondent.<sup>[8]</sup>

The trial court ruled that a partnership among Lim, Chua and Yao existed based (1) on the testimonies of the witnesses presented and (2) on a Compromise Agreement executed by the three<sup>[9]</sup> in Civil Case No. 1492-MN which Chua and Yao had brought against Lim in the RTC of Malabon, Branch 72, for (a) a declaration of nullity of commercial documents; (b) a reformation of contracts; (c) a declaration of ownership of fishing boats; (d) an injunction and (e) damages.<sup>[10]</sup> The Compromise Agreement provided:

"a) That the parties plaintiffs & Lim Tong Lim agree to have the four (4) vessels sold in the amount of P5,750,000.00 including the fishing net. This P5,750,000.00 shall be applied as full

payment for P3,250,000.00 in favor of JL Holdings Corporation and/or Lim Tong Lim;

"b) If the four (4) vessel[s] and the fishing net will be sold at a higher price than P5,750,000.00 whatever will be the excess will be divided into 3: 1/3 Lim Tong Lim; 1/3 Antonio Chua; 1/3 Peter Yao;

"c) If the proceeds of the sale the vessels will be less than P5,750,000.00 whatever the deficiency shall be shouldered and paid to JL Holding Corporation by 1/3 Lim Tong Lim; 1/3 Antonio Chua; 1/3 Peter Yao."<sup>[11]</sup>

The trial court noted that the Compromise Agreement was silent as to the nature of their obligations, but that joint liability could be presumed from the equal distribution of the profit and loss.<sup>[12]</sup>

Lim appealed to the Court of Appeals (CA) which, as already stated, affirmed the RTC.

### **Ruling of the Court of Appeals**

In affirming the trial court, the CA held that petitioner was a partner of Chua and Yao in a fishing business and may thus be held liable as a such for the fishing nets and floats purchased by and for the use of the partnership. The appellate court ruled:

"The evidence establishes that all the defendants including herein appellant Lim Tong Lim undertook a partnership for a specific undertaking, that is for commercial fishing x x x. Obviously, the ultimate undertaking of the defendants was to divide the profits among themselves which is what a partnership essentially is x x x. By a contract of partnership, two or more persons bind themselves to contribute money, property or industry to a common fund with the intention of dividing the profits among themselves (Article 1767, New Civil Code)."

<sup>[13]</sup>

Hence, petitioner brought this recourse before this Court.<sup>[14]</sup>

### **The Issues**

In his Petition and Memorandum, Lim asks this Court to reverse the assailed Decision on the following grounds:

"I THE COURT OF APPEALS ERRED IN HOLDING, BASED ON A COMPROMISE AGREEMENT THAT CHUA, YAO AND PETITIONER LIM ENTERED INTO IN A SEPARATE CASE, THAT A PARTNERSHIP AGREEMENT EXISTED AMONG THEM.

"II SINCE IT WAS ONLY CHUA WHO REPRESENTED THAT HE WAS ACTING FOR OCEAN QUEST FISHING CORPORATION WHEN HE BOUGHT THE NETS FROM PHILIPPINE FISHING, THE COURT OF APPEALS WAS UNJUSTIFIED IN IMPUTING LIABILITY TO PETITIONER LIM AS WELL.

"III THE TRIAL COURT IMPROPERLY ORDERED THE SEIZURE AND ATTACHMENT OF PETITIONER LIM'S GOODS."

In determining whether petitioner may be held liable for the fishing nets and floats purchased from respondent, the Court must resolve this key issue: whether by their acts, Lim, Chua and Yao could be deemed to have entered into a partnership.

### **This Court's Ruling**

The Petition is devoid of merit.

#### **First and Second Issues:**

##### *Existence of a Partnership and Petitioner's Liability*

In arguing that he should not be held liable for the equipment purchased from respondent, petitioner controverts the CA finding that a partnership existed between him, Peter Yao and Antonio Chua. He asserts that the CA based its finding on the Compromise Agreement alone. Furthermore, he disclaims any direct participation in the purchase of the nets, alleging that the negotiations were conducted by Chua and Yao only, and that he has not even met the representatives of the respondent company. Petitioner further argues that he was a lessor, not a partner, of Chua and Yao, for the "Contract of Lease" dated February 1, 1990, showed that he had merely leased to the two the main asset of the purported partnership -- the fishing boat *F/B Lourdes*. The lease was for six months, with a monthly rental of P37,500 plus 25 percent of the gross catch of the boat.

We are not persuaded by the arguments of petitioner. The facts as found by the two lower courts clearly showed that there existed a partnership among Chua, Yao and him, pursuant to Article 1767 of the Civil Code which provides:

"Article 1767 - By the contract of partnership, two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves."

Specifically, both lower courts ruled that a partnership among the three existed based on the following factual findings:<sup>[15]</sup>

(1) That Petitioner Lim Tong Lim requested Peter Yao who was engaged in commercial fishing to join him, while Antonio Chua was already Yao's partner;

(2) That after convening for a few times, Lim Chua, and Yao verbally agreed to acquire two fishing boats, the *FB Lourdes* and the *FB Nelson* for the sum of P3.35 million;

(3) That they borrowed P3.25 million from Jesus Lim, brother of Petitioner Lim Tong Lim, to finance the venture.

(4) That they bought the boats from CMF Fishing Corporation, which executed a Deed of Sale over these two (2) boats in favor of Petitioner Lim Tong Lim only to serve as security for the loan extended by Jesus Lim;