FIRST DIVISION

**[G.R. No. 127405. October 4, 2000]**

# MARJORIE TOCAO and WILLIAM T. BELO, *petitioners, vs*. COURT OF APPEALS and NENITA A. ANAY,*respondents.*

## D E C I S I O N

**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 Belos name should not appear in any documents relating to their transactions with West Bend Company. Instead, they agreed to use Anays 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 Belos 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 Tocaos 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;

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 attorneys 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, Anays 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 Marjories financial contribution and Anays experience, the combination of the two would be invaluable to the partnership, also supported that conclusion. Belos 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 Tocaos 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 companys cookware products; it

was through the same efforts that the business was propelled to financial success. Petitioner Tocao herself admitted private respondents 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, its only me there then her and then two (2) people, so about four (4). Now, after that when she recruited already Oscar Abella and Lina Torda-Cruz these two (2) people were given the designation of marketing managers of which definitely Nita as superior to them would be the Vice President.[18]

By the set-up of the business, third persons were made to believe that a partnership had indeed been forged between petitioners and private respondents. Thus, the communication dated June 4, 1986 of Missy Jagler of West Bend Company to Roger Muencheberg of the same company states:

> Marge Tocao is president of Geminesse Enterprises. Geminesse will finance the operations. Marge does not have cookware experience. Nita Anay has started to gather former managers, Lina Torda and Dory Vista. She has also gathered former demonstrators, Betty Bantilan, Eloisa Lamela, Menchu Javier. They will continue to gather other key people and build up the organization. All they need is the finance and the products to sell.[19]

On the other hand, petitioner Belos denial that he financed the partnership rings hollow in the face of the established fact that he presided over meetings regarding matters affecting the operation of the business. Moreover, his having authorized in writing on October 7, 1987, on a stationery of his own business firm, Wilcon Builders Supply, that private respondent should receive thirty-seven (37%) of the proceeds of her personal sales, could not be interpreted otherwise than that he had a proprietary interest in the business. His claim that he was merely a guarantor is belied by that personal act of proprietorship in the business. Moreover, if he was indeed a guarantor of future debts of petitioner Tocao under Article 2053 of the Civil Code,[20] he should have presented documentary evidence therefor. While Article 2055 of the Civil Code simply provides that guaranty must be express, Article 1403, the Statute of Frauds, requires that a special promise to answer for the debt, default or miscarriage of another be in writing.[21]

Petitioner Tocao, a former ramp model,[22] was also a capitalist in the partnership. She claimed that she herself financed the business. Her and petitioner Belos roles as both capitalists to the partnership with private respondent are buttressed by petitioner Tocaos admissions that petitioner Belo was her boyfriend and that the partnership was not their only business venture together. They also established a firm that they called Wiji, the combination of petitioner Belos first name, William, and her nickname, Jiji.[23] The special relationship between them dovetails with petitioner Belos claim that he was acting in behalf of petitioner Tocao. Significantly, in the early stage of the business operation, petitioners requested West Bend Company to allow them to utilize their banking and trading facilities in Singapore in the matter of importation and payment of the cookware products.[24] The inevitable conclusion, therefore, was that

petitioners merged their respective capital and infused the amount into the partnership of distributing cookware with private respondent as the managing partner.

The business venture operated under Geminesse Enterprise did not result in an employer-employee relationship between petitioners and private respondent. While it is true that the receipt of a percentage of net profits constitutes only *prima facie* evidence that the recipient is a partner in the business,[25] the evidence in the case at bar controverts an employer-employee relationship between the parties. In the first place, private respondent had a voice in the management of the affairs of the cookware distributorship,[26] including selection of people who would constitute the administrative staff and the sales force. Secondly, petitioner Tocaos admissions militate against an employer-employee relationship. She admitted that, like her who owned Geminesse Enterprise,[27] private respondent received only commissions and transportation and representation allowances[28] and not a fixed salary.[29] Petitioner Tocao testified:

Q: Of course. Now, I am showing to you certain documents already marked as Exhs. X and Y. Please go over this. Exh. Y is denominated `Cubao overrides 8-21-87 with ending August 21, 1987, will you please go over this and tell the Honorable Court whether you ever came across this document and know of your own knowledge the amount ---

A: Yes, sir this is what I am talking about earlier. Thats the one I am telling you earlier a certain percentage for promotions, advertising, incentive.

Q: I see. Now, this promotion, advertising, incentive, there is a figure here and words which I quote: Overrides Marjorie Ann Tocao P21,410.50 this means that you have received this amount?

A: Oh yes, sir.

Q: I see. And, by way of amplification this is what you are saying as one representing commission, representation, advertising and promotion?

A: Yes, sir.

Q: I see. Below your name is the words and figure and I quote Nita D. Anay P21,410.50, what is this?

A: Thats her overriding commission.

Q: Overriding commission, I see. Of course, you are telling this Honorable Court that there being the same P21,410.50 is merely by coincidence?

A: *No, sir, I made it a point that we were equal because the way I look at her* kasi*, you know in a sense because of her expertise in the business she is vital to my business. So, as part of the incentive I offer her the same thing.*

Q: So, in short you are saying that this you have shared together, I mean having gotten from the company P21,140.50 is your way of indicating that *you were treating her as an equal*?

A: *As an equal.*

Q: As an equal, I see. You were treating her as an equal?

A: *Yes, sir.*

Q: I am calling again your attention to Exh. Y Overrides Makati the other one is ---

A: That is the same thing, sir.

Q: With ending August 21, words and figure Overrides Marjorie Ann Tocao P15,314.25 the amount there you will acknowledge you have received that?

A: Yes, sir.

Q: Again in concept of commission, representation, promotion, etc.?

A: Yes, sir.

Q: Okey. Below your name is the name of Nita Anay P15,314.25 that is also an indication that she received the same amount?

A: Yes, sir.

Q: And, as in your previous statement it is not by coincidence that these two (2) are the same?

A: No, sir.

Q: It is again in concept of you treating Miss Anay as your equal?

A: Yes, sir. (Italics supplied.)[30]

If indeed petitioner Tocao was private respondents employer, it is difficult to believe that they shall receive the same income in the business.In a partnership, each partner must share in the profits and losses of the venture, except that the industrial partner shall not be liable for the losses.[31] As an industrial partner, private respondent had the right to demand for a formal accounting of the business and to receive her share in the net profit.[32]

The fact that the cookware distributorship was operated under the name of Geminesse Enterprise, a sole proprietorship, is of no moment.What was registered with the Bureau of Domestic Trade on August 19, 1987 was merely the name of that enterprise.[33] While it is true that in her undated application for renewal of registration of that firm name, petitioner Tocao indicated that it would be engaged in retail of kitchenwares, cookwares, utensils, skillet,[34] she also admitted that the enterprise was only 60% to 70% for the cookware business, while 20% to 30% of its business activity was devoted to the sale of water sterilizer or purifier.[35] Indubitably then, the business name Geminesse Enterprise was used only for practical reasons - it was utilized as the common name for petitioner Tocaos various business activities, which included the distributorship of cookware.

Petitioners underscore the fact that the Court of Appeals did not return the unaccounted and unremitted stocks of Geminesse Enterprise amounting to P208,250.00.[36] Obviously a ploy to offset the damages awarded to private respondent, that claim, more than anything else, proves the existence of a partnership between them. In *Idos v. Court of Appeals,* this Court said:

The best evidence of the existence of the partnership, which was not yet terminated (though in the winding up stage), were the unsold goods and uncollected receivables,

which were presented to the trial court. Since the partnership has not been terminated, the petitioner and private complainant remained as co-partners. x x x.[37]

It is not surprising then that, even after private respondent had been unceremoniously booted out of the partnership in October 1987, she still received her overriding commission until December 1987.

Undoubtedly, petitioner Tocao unilaterally excluded private respondent from the partnership to reap for herself and/or for petitioner Belo financial gains resulting from private respondents efforts to make the business venture a success. Thus, as petitioner Tocao became adept in the business operation, she started to assert herself to the extent that she would even shout at private respondent in front of other people.[38] Her instruction to Lina Torda Cruz, marketing manager, not to allow private respondent to hold office in both the Makati and Cubao sales offices concretely spoke of her perception that private respondent was no longer necessary in the business operation,[39] and resulted in a falling out between the two. However, a mere falling out or misunderstanding between partners does not convert the partnership into a sham organization.[40] The partnership exists until dissolved under the law. Since the partnership created by petitioners and private respondent has no fixed term and is therefore a partnership at will predicated on their mutual desire and consent, it may be dissolved by the will of a partner. Thus:

x x x. The right to choose with whom a person wishes to associate himself is the very foundation and essence of that partnership. Its continued existence is, in turn, dependent on the constancy of that mutual resolve, along with each partners capability to give it, and the absence of cause for dissolution provided by the law itself. Verily, any one of the partners may, at his sole pleasure, dictate a dissolution of the partnership at will. He must, however, act in good faith, not that the attendance of bad faith can prevent the dissolution of the partnership but that it can result in a liability for damages.[41]

An unjustified dissolution by a partner can subject him to action for damages because by the mutual agency that arises in a partnership, the doctrine of *delectus personae* allows the partners to have the *power,* although not necessarily the *right* to dissolve the partnership.[42]

In this case, petitioner Tocaos unilateral exclusion of private respondent from the partnership is shown by her memo to the Cubao office plainly stating that private respondent was, as of October 9, 1987, no longer the vice-president for sales of Geminesse Enterprise.[43] By that memo, petitioner Tocao effected her own withdrawal from the partnership and considered herself as having ceased to be associated with the partnership in the carrying on of the business. Nevertheless, the partnership was not terminated thereby; it continues until the winding up of the business.[44]

The winding up of partnership affairs has not yet been undertaken by the partnership. This is manifest in petitioners claim for stocks that had been entrusted to private respondent in the pursuit of the partnership business.

The determination of the amount of damages commensurate with the factual findings upon which it is based is primarily the task of the trial court.[45] The Court of Appeals may modify that amount only when its factual findings are diametrically opposed to that of the lower court,[46] or the award is palpably or scandalously and unreasonably excessive.[47] However, exemplary damages that are awarded by way of example or correction for the public good,[48] should be reduced to P50,000.00, the amount correctly awarded by the Court of Appeals. Concomitantly, the award of moral damages of P100,000.00 was excessive and should be likewise reduced to P50,000.00. Similarly, attorneys fees that should be granted on account of the award of exemplary damages and petitioners evident bad faith in refusing to satisfy private respondents plainly valid, just and demandable claims,[49] appear to have been excessively granted by the trial court and should therefore be reduced to P25,000.00.

**WHEREFORE**, the instant petition for review on *certiorari* is DENIED. The partnership among petitioners and private respondent is ordered dissolved, and the parties are ordered to effect the winding up and liquidation of the partnership pursuant to the pertinent provisions of the Civil Code. This case is remanded to the Regional Trial Court for proper proceedings relative to said dissolution. The appealed decisions of the Regional Trial Court and the Court of Appeals are AFFIRMED with MODIFICATIONS, as follows ---

1. Petitioners are ordered to submit to the Regional Trial Court a formal account of the partnership affairs for the years 1987 and 1988, pursuant to Article 1809 of the Civil Code, in order to determine private respondents ten percent (10%) share in the net profits of the partnership;

2. Petitioners are ordered, jointly and severally, to pay private respondent five percent (5%) overriding commission for the one hundred and fifty (150) cookware sets available for disposition since the time private respondent was wrongfully excluded from the partnership by petitioners;

3. Petitioners are ordered, jointly and severally, to pay private respondent overriding commission on the total production which, for the period covering January 8, 1988 to February 5, 1988, amounted to P32,000.00;

4. Petitioners are ordered, jointly and severally, to pay private respondent moral damages in the amount of P50,000.00, exemplary damages in the amount of P50,000.00 and attorneys fees in the amount of P25,000.00.

**SO ORDERED.**

*Davide, Jr., C.J., (Chairman), Puno, Kapunan,* and *Pardo, JJ.,* concur.

[1] Presiding Justice Nathanael P. de Pano, Jr., *ponente*; Associate Justices Fermin A. Martin, Jr. and Conchita Carpio Morales, concurring.

[2] Presided by Judge Leticia P. Morales.

[3] Exh. VV.

[4] Exh. WW.

[5] Exh. CC.

[6] Exh. JJ.

[7] Exh. HH.

[8] *Rollo*, p. 67-73.

[9] *Rollo*, pp. 79-82.

[10] Record, p. 71.

[11] Decision dated August 9, 1996; *Rollo*, pp. 24-37.

[12] Resolution dated December 5, 1996; *Rollo*, pp. 39-43.

[13] Petition, p. 15.

[14] Alicbusan *v*. Court of Appeals, 336 Phil. 321, 326-327 (1997).

[15] Civil Code, Art. 1767; Fue Leung *v*. Intermediate Appellate Court, 169 SCRA 746, 754 (1989); citing Yulo v. Yang Chiao Cheng, 106 Phil. 110 (1959).

[16] Civil Code, Art. 1771; Agad v. Mabato, 132 Phil. 634, 636 (1968).

[17] Civil Code, 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.

Failure to comply with the requirements of the preceding paragraph shall not affect the liability of the partnership and the members thereof to third persons.

[18] TSN, November 12, 1991, p. 49.

[19] Exh. C-5-A.

[20] Civil Code, Art. 2053. A guaranty may also be given as security for future debts, the amount of which is not yet known; there can be no claim against the guarantor until the debt is liquidated. A conditional obligation may also be secured.

[21] V TOLENTINO, CIVIL CODE OF THE PHILIPPINES, p. 507, 1992 ed.

[22] TSN, November 12, 1991, p. 4.

[23] *Ibid*., p. 44.

[24] Exh. C-4; TSN, December 16, 1991, pp. 15-18.

[25] Sardane v. Court of Appeals, 167 SCRA 524, 530-531 (1998).

[26] *Ibid*.

[27] TSN, November 12, 1991, pp. 54.

[28] *Ibid*., pp. 52-53.

[29] *Ibid*., p. 50.

[30] *Ibid*., pp. 56-59.

[31] Civil Code, Art. 1797; Moran, Jr. *v*. Court of Appeals, 218 Phil. 105, 112 (1984).

[32] Civil Code, Art. 1799; Evangelista & Co. *v*. Abad Santos, 151-A Phil. 853, 860 (1973).

[33] Exh. 5.

[34] Exh. 5-A.

[35] TSN, November 12, 1991, p. 42.

[36] Petition, p. 10; *Rollo*, p. 18.

[37] 296 SCRA 194, 206 (1998).

[38] TSN, June 14, 1989, pp. 5-6.

[39] TSN, November 12, 1991, p. 35.

[40] Muasque *v*. Court of Appeals, 139 SCRA 533, 540 (1985).

[41] Ortega *v*. Court of Appeals, 315 Phil. 573, 580-581 (1995).

[42] *Ibid*., at p. 581.

[43] Exh. 7.

[44] Singsong *v*. Isabela Sawmill, 88 SCRA 623 (1979).

[45] Air France *v*. Carrascoso, 124 Phil. 722, 742 (1966).

[46] Prudencio *v*. Alliance Transport System, Inc., 148 SCRA 440, 447 (1987).

[47] *Ibid*.; Philippine Airlines, Inc. v. Court of Appeals, 226 SCRA 423, 425 (1993).

[48] Civil Code, Art. 2229.

[49] Civil Code, Art. 2208 (1) & (5).