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SECOND DIVISION

[G.R. No. 126881. October 3, 2000]

HEIRS OF TAN ENG KEE, *petitioners, vs.* **COURT OF APPEALS and BENGUET LUMBER COMPANY, represented by its President TAN ENG LAY,** *respondents.*

SYNOPSIS

Petitioners, Heirs of Tan Eng Kee, filed a complaint for accounting of partnership assets, dissolution and the equal division of the net assets of Benguet Lumber, later incorporated as "Benguet Lumber Company" which was allegedly a partnership entered into and managed by their father, Tan Eng Kee, and Tan Eng Lay. Tan Eng Lay, however, countered that he had his business and his brother (Tan Eng Kee) had his, and that it was only later on that Tan Eng Kee came to work for him as an employee

The court *a quo* declared that Tan Eng Kee and Tan Eng Lay were joint adventurers and/or partners and ruled that petitioners-heirs of the deceased Tan Eng Kee, had a right to share in the company's assets. The CA, however, ruled that there was no partnership since Benguet Lumber was a sole proprietorship, and that Tan Eng Kee was only an employee thereof.

While as a rule, the Supreme Court cannot entertain inquiries relative to the correctness of the assessment of the evidence by the court *a quo*, the Supreme Court examined the record to determine if the reversal was justified.

The Supreme Court concluded that Tan Eng Kee was only an employee, not a partner, because: Tan Eng Lay directly controverted testimonies of petitioners' witnesses that Tan Eng Kee contributed resources to a common fund to establish a partnership; despite the forty years the partnership was allegedly in existence, Tan Eng Kee never asked for an accounting; payrolls show that Tan Eng Kee was an ordinary employee of Benguet Lumber who received wages; petitioners failed to show how much share in the profits of the company, if any, their father Tan Eng Kee, received for any particular period.

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SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL UNDER RULE 45; RULE WHEN FACTUAL FINDINGS OF THE COURT OF APPEALS AND THE COURT *A QUO* ARE CONFLICTING.** — As can be seen, the appellate court disputed and differed from the trial court which had adjudged that TAN ENG KEE and TAN ENG LAY had allegedly entered into a joint venture. In this connection, we have held that whether a partnership exists is a factual matter; consequently, since the appeal is brought to us under Rule 45, we cannot entertain inquiries relative to the correctness of the assessment of the evidence by the court *a quo*. Inasmuch as the Court of Appeals and the trial court had reached conflicting conclusions, perforce we must examine the record to determine if the reversal was justified.

2. **CIVIL LAW; CIVIL CODE; SPECIAL CONTRACTS; PARTNERSHIP; PROOF REQUIRED TO ESTABLISH A PARTNERSHIP.** — In order to constitute a partnership, it must be established that (1) two or more persons bound themselves to contribute money, property, or industry to a common fund, and (2) they intend to divide the profits among themselves. The agreement need not be formally reduced into writing, since statute allows the oral constitution of a partnership, save in two instances: (1) when immovable property or real rights are contributed, and (2) when the partnership has a capital of three thousand pesos or more. In both cases, a public instrument is required. An inventory to be signed by the parties and attached to the public instrument is also indispensable to the validity of the partnership whenever immovable property is contributed to the partnership.

3. **ID.; ID.; ID.; ID.; ID.; CIRCUMSTANCES INDICATING TAN ENG KEE WAS AN EMPLOYEE, NOT A PARTNER IN CASE AT BAR.** — Unfortunately for petitioners, Tan Eng Kee has passed away. Only he, aside from Tan Eng Lay, could have expounded on the precise nature of the business relationship between them. In the absence of evidence, we cannot accept as an established fact that Tan Eng Kee allegedly contributed his resources to a common fund for the purpose of establishing a partnership. The testimonies to that effect of petitioners' witnesses is directly controverted by Tan Eng Lay. x x x Besides, it is indeed odd, if not unnatural, that despite the forty years the partnership

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was allegedly in existence, Tan Eng Kee never asked for an accounting. The essence of a partnership is that the partners share in the profits and losses. Each has the right to demand an accounting as long as the partnership exists. x x x Exhibits "4" to "4-U" x x x shows that Tan Eng Kee received sums as *wages* of an employee. x x x Even if the payrolls as evidence were discarded, petitioners would still be back to square one, so to speak, since they did not present and offer evidence that would show that Tan Eng Kee received amounts of money allegedly representing his share in the profits of the enterprise.

APPEARANCES OF COUNSEL

Soo Gutierrez Leogardo & Lee for petitioners.
Francisco S. Reyes Law Office for private respondents.

D E C I S I O N

DE LEON, JR., *J.*:

In this petition for review on *certiorari*, petitioners pray for the reversal of the Decision[1] dated March 13, 1996 of the former Fifth Division[2] of the Court of Appeals in CA-G.R. CV No. 47937, the dispositive portion of which states:

THE FOREGOING CONSIDERED, the appealed decision is hereby set aside, and the complaint dismissed.

The facts are:

Following the death of Tan Eng Kee on September 13, 1984, Matilde Abubo, the common-law spouse of the decedent, joined by their children Teresita, Nena, Clarita, Carlos, Corazon and Elpidio, collectively known as herein petitioners HEIRS OF TAN ENG KEE, filed suit against the decedent's brother TAN ENG LAY on February 19, 1990. The complaint,[3] docketed as

[1] *Rollo*, pp. 129-147.

[2] Justice Bernardo LL. Salas, ponente, with Justices Pedro A. Ramirez and Ma. Alicia Austria-Martinez, concurring.

[3] Records, pp. 1-4.

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Civil Case No. 1983-R in the Regional Trial Court of Baguio City was for accounting, liquidation and winding up of the alleged partnership formed after World War II between Tan Eng Kee and Tan Eng Lay. On March 18, 1991, the petitioners filed an amended complaint[4] impleading private respondent herein BENGUET LUMBER COMPANY, as represented by Tan Eng Lay. The amended complaint was admitted by the trial court in its Order dated May 3, 1991.[5]

The amended complaint principally alleged that after the second World War, Tan Eng Kee and Tan Eng Lay, pooling their resources and industry together, entered into a partnership engaged in the business of selling lumber and hardware and construction supplies. They named their enterprise "Benguet Lumber" which they jointly managed until Tan Eng Kee's death. Petitioners herein averred that the business prospered due to the hard work and thrift of the alleged partners. However, they claimed that in 1981, Tan Eng Lay and his children caused the conversion of the partnership "Benguet Lumber" into a corporation called "Benguet Lumber Company." The incorporation was purportedly a ruse to deprive Tan Eng Kee and his heirs of their rightful participation in the profits of the business. Petitioners prayed for accounting of the partnership assets, and the dissolution, winding up and liquidation thereof, and the equal division of the net assets of Benguet Lumber.

After trial, Regional Trial Court of Baguio City, Branch 7 rendered judgment[6] on April 12, 1995, to wit:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered:

a) Declaring that Benguet Lumber is a joint venture which is akin to a particular partnership;

b) Declaring that the deceased Tan Eng Kee and Tan Eng Lay are joint adventurers and/or partners in a business venture and/or

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[4] Records, pp. 123-126.

[5] Records, p. 130.

[6] Records, pp. 632-647.

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particular partnership called Benguet Lumber and as such should share in the profits and/or losses of the business venture or particular partnership;

c) Declaring that the assets of Benguet Lumber are the same assets turned over to Benguet Lumber Co. Inc. and as such the heirs or legal representatives of the deceased Tan Eng Kee have a legal right to share in said assets;

d) Declaring that all the rights and obligations of Tan Eng Kee as joint adventurer and/or as partner in a particular partnership have descended to the plaintiffs who are his legal heirs.

e) Ordering the defendant Tan Eng Lay and/or the President and/or General Manager of Benguet Lumber Company Inc. to render an accounting of all the assets of Benguet Lumber Company, Inc. so the plaintiffs know their proper share in the business;

f) Ordering the appointment of a receiver to preserve and/or administer the assets of Benguet Lumber Company, Inc. until such time that said corporation is finally liquidated are directed to submit the name of any person they want to be appointed as receiver failing in which this Court will appoint the Branch Clerk of Court or another one who is qualified to act as such.

g) Denying the award of damages to the plaintiffs for lack of proof except the expenses in filing the instant case.

h) Dismissing the counter-claim of the defendant for lack of merit.

SO ORDERED.

Private respondent sought relief before the Court of Appeals which, on March 13, 1996, rendered the assailed decision reversing the judgment of the trial court. Petitioners' motion for reconsideration[7] was denied by the Court of Appeals in a Resolution[8] dated October 11, 1996.

Hence, the present petition.

As a side-bar to the proceedings, petitioners filed Criminal Case No. 78856 against Tan Eng Lay and Wilborn Tan for the

[7] *Rollo*, pp. 148-159.

[8] *Rollo*, p. 173.

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use of allegedly falsified documents in a judicial proceeding. Petitioners complained that Exhibits "4" to "4-U" offered by the defendants before the trial court, consisting of payrolls indicating that Tan Eng Kee was a mere employee of Benguet Lumber, were fake, based on the discrepancy in the signatures of Tan Eng Kee. They also filed Criminal Cases Nos. 78857-78870 against Gloria, Julia, Juliano, Willie, Wilfredo, Jean, Mary and Willy, all surnamed Tan, for alleged falsification of commercial documents by a private individual. On March 20, 1999, the Municipal Trial Court of Baguio City, Branch 1, wherein the charges were filed, rendered judgment[9] dismissing the cases for insufficiency of evidence.

In their assignment of errors, petitioners claim that:

I

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THERE WAS NO PARTNERSHIP BETWEEN THE LATE TAN ENG KEE AND HIS BROTHER TAN ENG LAY BECAUSE: (A) THERE WAS NO FIRM ACCOUNT; (B) THERE WAS NO FIRM LETTERHEADS SUBMITTED AS EVIDENCE; (C) THERE WAS NO CERTIFICATE OF PARTNERSHIP; (D) THERE WAS NO AGREEMENT AS TO PROFITS AND LOSSES; AND (E) THERE WAS NO TIME FIXED FOR THE DURATION OF THE PARTNERSHIP (PAGE 13, DECISION).

II

THE HONORABLE COURT OF APPEALS ERRED IN RELYING SOLELY ON THE SELF-SERVING TESTIMONY OF RESPONDENT TAN ENG LAY THAT BENGUET LUMBER WAS A SOLE PROPRIETORSHIP AND THAT TAN ENG KEE WAS ONLY AN EMPLOYEE THEREOF.

III

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE FOLLOWING FACTS WHICH WERE DULY SUPPORTED BY EVIDENCE OF BOTH PARTIES DO NOT SUPPORT THE EXISTENCE OF A PARTNERSHIP JUST BECAUSE THERE WAS NO ARTICLES

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[9] *Rollo*, pp. 412-419.

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OF PARTNERSHIP DULY RECORDED BEFORE THE SECURITIES AND EXCHANGE COMMISSION:

a. THAT THE FAMILIES OF TAN ENG KEE AND TAN ENG LAY WERE ALL LIVING AT THE BENGUET LUMBER COMPOUND;

b. THAT BOTH TAN ENG LAY AND TAN ENG KEE WERE COMMANDING THE EMPLOYEES OF BENGUET LUMBER;

c. THAT BOTH TAN ENG KEE AND TAN ENG LAY WERE SUPERVISING THE EMPLOYEES THEREIN;

d. THAT TAN ENG KEE AND TAN ENG LAY WERE THE ONES DETERMINING THE PRICES OF STOCKS TO BE SOLD TO THE PUBLIC; AND

e. THAT TAN ENG LAY AND TAN ENG KEE WERE THE ONES MAKING ORDERS TO THE SUPPLIERS (PAGE 18, DECISION).

IV

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THERE WAS NO PARTNERSHIP JUST BECAUSE THE CHILDREN OF THE LATE TAN ENG KEE: ELPIDIO TAN AND VERONICA CHOI, TOGETHER WITH THEIR WITNESS BEATRIZ TANDOC, ADMITTED THAT THEY DO NOT KNOW WHEN THE ESTABLISHMENT KNOWN IN BAGUIO CITY AS BENGUET LUMBER WAS STARTED AS A PARTNERSHIP (PAGE 16-17, DECISION).

V

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THERE WAS NO PARTNERSHIP BETWEEN THE LATE TAN ENG KEE AND HIS BROTHER TAN ENG LAY BECAUSE THE PRESENT CAPITAL OR ASSETS OF BENGUET LUMBER IS DEFINITELY MORE THAN P3,000.00 AND AS SUCH THE EXECUTION OF A PUBLIC INSTRUMENT CREATING A PARTNERSHIP SHOULD HAVE BEEN MADE AND NO SUCH PUBLIC INSTRUMENT ESTABLISHED BY THE APPELLEES (PAGE 17, DECISION).

As a premise, we reiterate the oft-repeated rule that findings of facts of the Court of Appeals will not be disturbed on appeal

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if such are supported by the evidence.[10] Our jurisdiction, it must be emphasized, does not include review of factual issues. Thus:

> *Filing of petition with Supreme Court.* — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. *The petition shall raise only questions of law which must be distinctly set forth.*[11] [italics supplied]

Admitted exceptions have been recognized, though, and when present, may compel us to analyze the evidentiary basis on which the lower court rendered judgment. Review of factual issues is therefore warranted:

(1) when the factual findings of the Court of Appeals and the trial court are contradictory;

(2) when the findings are grounded entirely on speculation, surmises, or conjectures;

(3) when the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd, or impossible;

(4) when there is grave abuse of discretion in the appreciation of facts;

(5) when the appellate court, in making its findings, goes beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee;

(6) when the judgment of the Court of Appeals is premised on a misapprehension of facts;

(7) when the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion;

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[10] *Brusas v. Court of Appeals*, 313 SCRA 176, 188 (1999); *Guerrero v. Court of Appeals*, 285 SCRA 670, 678 (1998); *Atillo III v. Court of Appeals*, 266 SCRA 596, 605-606 (1997); *Mallari v. Court of Appeals*, 265 SCRA 456, 461 (1996).

[11] 1997 RULES OF CIVIL PROCEDURES, Rule 45, Sec. 1.

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(8) when the findings of fact are themselves conflicting;

(9) when the findings of fact are conclusions without citation of the specific evidence on which they are based; and

(10) when the findings of fact of the Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record.[12]

In reversing the trial court, the Court of Appeals ruled, to wit:

We note that the Court *a quo* over extended the issue because while the plaintiffs mentioned only the existence of a partnership, the Court in turn went beyond that by justifying the existence of a joint venture.

When mention is made of a joint venture, it would presuppose parity of standing between the parties, equal proprietary interest and the exercise by the parties equally of the conduct of the business, thus:

xxx xxx xxx

We have the admission that the father of the plaintiffs was not a partner of the Benguet Lumber before the war. The appellees however argued that (*Rollo*, p. 104; Brief, p. 6) this is because during the war, the entire stocks of the pre-war Benguet Lumber were confiscated if not burned by the Japanese. After the war, because of the absence of capital to start a lumber and hardware business, Lay and Kee pooled the proceeds of their individual businesses earned from buying and selling military supplies, so that the common fund would be enough to form a partnership, both in the lumber and hardware business. That Lay and Kee actually established the Benguet Lumber in Baguio City, was even testified to by witnesses. Because of the pooling of resources, the post-war Benguet Lumber was eventually established. That the father of the plaintiffs and Lay were partners, is obvious from the fact that: (1) they conducted the affairs of the business during Kee's lifetime, jointly, (2) they were the ones giving orders to the employees, (3) they were the ones preparing orders from the suppliers, (4) their families stayed together at the Benguet Lumber

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[12] *Fuentes v. Court of Appeals*, 268 SCRA 703, 708-709 (1997).

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compound, and (5) all their children were employed in the business in different capacities.

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It is obvious that there was no partnership whatsoever. Except for a firm name, there was no firm account, no firm letterheads submitted as evidence, no certificate of partnership, no agreement as to profits and losses, and no time fixed for the duration of the partnership. There was even no attempt to submit an accounting corresponding to the period after the war until Kee's death in 1984. It had no business book, no written account nor any memorandum for that matter and no license mentioning the existence of a partnership [citation omitted].

Also, the exhibits support the establishment of only a proprietorship. The certification dated March 4, 1971, Exhibit "2", mentioned co-defendant Lay as the only registered owner of the Benguet Lumber and Hardware. His application for registration, effective 1954, in fact mentioned that his business started in 1945 until 1985 (thereafter, the incorporation). The deceased, Kee, on the other hand, was merely an employee of the Benguet Lumber Company, on the basis of his SSS coverage effective 1958, Exhibit "3". In the Payrolls, Exhibits "4" to "4-U", inclusive, for the years 1982 to 1983, Kee was similarly listed only as an employee; precisely, he was on the payroll listing. In the Termination Notice, Exhibit "5", Lay was mentioned also as the proprietor.

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We would like to refer to Arts. 771 and 772, NCC, that a partner [*sic*] may be constituted in any form, but when an immovable is constituted, the execution of a public instrument becomes necessary. This is equally true if the capitalization exceeds ₱3,000.00, in which case a public instrument is also necessary, and which is to be recorded with the Securities and Exchange Commission. In this case at bar, we can easily assume that the business establishment, which from the language of the appellees, prospered (pars. 5 & 9, Complaint), definitely exceeded ₱3,000.00, in addition to the accumulation of real properties and to the fact that it is now a compound. The execution of a public instrument, on the other hand, was never established by the appellees.

And then in 1981, the business was incorporated and the incorporators were only Lay and the members of his family. There is

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no proof either that the capital assets of the partnership, assuming them to be in existence, were maliciously assigned or transferred by Lay, supposedly to the corporation and since then have been treated as a part of the latter's capital assets, contrary to the allegations in pars. 6, 7 and 8 of the complaint.

These are not evidences supporting the existence of a partnership:

1) That Kee was living in a bunk house just across the lumber store, and then in a room in the bunk house in Trinidad, but within the compound of the lumber establishment, as testified to by Tandoc; 2) that both Lay and Kee were seated on a table and were "commanding people" as testified to by the son, Elpidio Tan; 3) that both were supervising the laborers, as testified to by Victoria Choi; and 4) that Dionisio Peralta was supposedly being told by Kee that the proceeds of the 80 pieces of the G.I. sheets were added to the business.

Partnership presupposes the following elements [citation omitted]: 1) a contract, either oral or written. However, if it involves real property or where the capital is P3,000.00 or more, the execution of a contract is necessary; 2) the capacity of the parties to execute the contract; 3) money property or industry contribution; 4) community of funds and interest, mentioning equality of the partners or one having a proportionate share in the benefits; and 5) intention to divide the profits, being the true test of the partnership. The intention to join in the business venture for the purpose of obtaining profits thereafter to be divided, must be established. We cannot see these elements from the testimonial evidence of the appellees.

As can be seen, the appellate court disputed and differed from the trial court which had adjudged that TAN ENG KEE and TAN ENG LAY had allegedly entered into a joint venture. In this connection, we have held that whether a partnership exists is a factual matter; consequently, since the appeal is brought to us under Rule 45, we cannot entertain inquiries relative to the correctness of the assessment of the evidence by the court *a quo*.[13] Inasmuch as the Court of Appeals and the trial

[13] Cf. *Alicbusan v. Court of Appeals,* 269 SCRA 336, 340-341 (1997).

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court had reached conflicting conclusions, perforce we must examine the record to determine if the reversal was justified.

The primordial issue here is whether Tan Eng Kee and Tan Eng Lay were partners in Benguet Lumber. A contract of partnership is defined by law as one where:

> x x x 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.
>
> Two or more persons may also form a partnership for the exercise of a profession.[14]

Thus, in order to constitute a partnership, it must be established that (1) two or more persons bound themselves to contribute money, property, or industry to a common fund, and (2) they intend to divide the profits among themselves.[15] The agreement need not be formally reduced into writing, since statute allows the oral constitution of a partnership, save in two instances: (1) when immovable property or real rights are contributed,[16] and (2) when the partnership has a capital of three thousand pesos or more.[17] In both cases, a public instrument is required.[18] An inventory to be signed by the parties and attached to the public instrument is also indispensable to the validity of the partnership whenever immovable property is contributed to the partnership.[19]

The trial court determined that Tan Eng Kee and Tan Eng Lay had entered into a joint venture, which it said is

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[14] CIVIL CODE, Art. 1767.

[15] *Yulo v. Yang Chiao Seng*, 106 Phil. 110, 116 (1959).

[16] CIVIL CODE, Art. 1771.

[17] CIVIL CODE, Art. 1772.

[18] Note, however, Article 1768 of the Civil Code which provides: "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."

[19] CIVIL CODE, Art. 1773.

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akin to a particular partnership.[20] A particular partnership is distinguished from a joint adventure, to wit:

(a) A joint adventure (an American concept similar to our *joint accounts*) is a sort of informal partnership, with no firm name and no legal personality. In a joint account, the participating merchants can transact business under their own name, and can be *individually liable* therefor.

(b) Usually, but not necessarily a joint adventure is limited to a SINGLE TRANSACTION, although the business of pursuing to a successful termination may continue for a number of years; a partnership *generally* relates to a continuing business of various transactions of a certain kind.[21]

A joint venture "presupposes generally a parity of standing between the joint co-ventures or partners, in which each party has an equal proprietary interest in the capital or property contributed, and where each party exercises equal rights in the conduct of the business."[22] Nonetheless, in *Aurbach, et al. v. Sanitary Wares Manufacturing Corporation, et al.*,[23] we expressed the view that a joint venture may be likened to a particular partnership, thus:

The legal concept of a joint venture is of common law origin. It has no precise legal definition, but it has been generally understood to mean an organization formed for some temporary purpose. (*Gates v. Megargel*, 266 Fed. 811 [1920]) It is hardly distinguishable from the partnership, since their elements are similar — community of interest in the business, sharing of profits and losses, and a mutual right of control. (*Blackner v. McDermott,* 176 F. 2d. 498, [1949]; *Carboneau v. Peterson,* 95 P.2d., 1043 [1939]; *Buckley v. Chadwick,* 45 Cal. 2d. 183, 288 P.2d. 12 289 P.2d. 242 [1955]). The main distinction

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[20] "A particular partnership has for its object determinate things, their use or fruits, or a specific undertaking, or the exercise of a profession or vocation." (CIVIL CODE, Art. 1783)

[21] V.E. PARAS, CIVIL CODE OF THE PHILIPPINES ANNOTATED 546 (13th ed., 1995).

[22] *Sevilla v. Court of Appeals,* 160 SCRA 171, 181 (1988).

[23] 180 SCRA 130, 146-147 (1989).

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cited by most opinions in common law jurisdiction is that the partnership contemplates a general business with some degree of continuity, while the joint venture is formed for the execution of a single transaction, and is thus of a temporary nature. (*Tufts v. Mann.* 116 Cal. App. 170, 2 P. 2d. 500 [1931]; *Harmon v. Martin*, 395 Ill. 595, 71 NE 2d. 74 [1947]; *Gates v. Megargel* 266 Fed. 811 [1920]). This observation is not entirely accurate in this jurisdiction, since under the Civil Code, a partnership may be particular or universal, and a particular partnership may have for its object a specific undertaking. (Art. 1783, Civil Code). It would seem therefore that under Philippine law, a joint venture is a form of partnership and should thus be governed by the law of partnerships. The Supreme Court has however recognized a distinction between these two business forms, and has held that although a corporation cannot enter into a partnership contract, it may however engage in a joint venture with others. (At p. 12, *Tuazon v. Bolaños*, 95 Phil. 906 [1954]) (Campos and Lopez-Campos, *Comments, Notes and Selected Cases, Corporation Code 1981*).

Undoubtedly, the best evidence would have been the contract of partnership itself, or the articles of partnership but there is none. The alleged partnership, though, was never formally organized. In addition, petitioners point out that the New Civil Code was not yet in effect when the partnership was allegedly formed sometime in 1945, although the contrary may well be argued that nothing prevented the parties from complying with the provisions of the New Civil Code when it took effect on August 30, 1950. But all that is in the past. The net effect, however, is that we are asked to determine whether a partnership existed based purely on circumstantial evidence. A review of the record persuades us that the Court of Appeals correctly reversed the decision of the trial court. The evidence presented by petitioners falls short of the quantum of proof required to establish a partnership.

Unfortunately for petitioners, Tan Eng Kee has passed away. Only he, aside from Tan Eng Lay, could have expounded on the precise nature of the business relationship between them. In the absence of evidence, we cannot accept as an established fact that Tan Eng Kee allegedly contributed his resources to a common fund for the purpose of establishing

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a partnership. The testimonies to that effect of petitioners' witnesses is directly controverted by Tan Eng Lay. It should be noted that it is not with the number of witnesses wherein preponderance lies;[24] the quality of their testimonies is to be considered. None of petitioners' witnesses could suitably account for the beginnings of Benguet Lumber Company, except *perhaps* for Dionisio Peralta whose deceased wife was related to Matilde Abubo.[25] He stated that when he met Tan Eng Kee after the liberation, the latter asked the former to accompany him to get 80 pieces of G.I. sheets supposedly owned by both brothers.[26] Tan Eng Lay, however, denied knowledge of this meeting or of the conversation between Peralta and his brother.[27] Tan Eng Lay consistently testified that he had his business and his brother had his, that it was only later on that his said brother, Tan Eng Kee, came to work for him. Be that as it may, co-ownership or co-possession (specifically here, of the G.I. sheets) is not an indicium of the existence of a partnership[28]

Besides, it is indeed odd, if not unnatural, that despite the forty years the partnership was allegedly in existence, Tan Eng Kee never asked for an accounting. The essence of a partnership is that the partners share in the profits and losses.[29] Each has the right to demand an accounting as long as the partnership exists.[30] We have allowed a scenario wherein "[i]f excellent relations exist among the partners at the start of the business and all the partners are more interested in seeing the firm grow rather than get immediate returns, a

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[24] REVISED RULES ON EVIDENCE, Rule 133, Sec. 1.

[25] TSN, June 23, 1990, p. 9.

[26] TSN, January 28, 1993, p. 85.

[27] TSN, July 1, 1993, p. 13; TSN, July 8, 1993, p. 4.

[28] *Navarro v. Court of Appeals*, 222 SCRA 675, 679 (1993); CIVIL CODE, Art. 1769.

[29] *Moran v. Court of Appeals*, 133 SCRA 88, 95 (1984).

[30] *Fue Lung v. Intermediate Appellate Court*, 169 SCRA 746, 755 (1989).

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deferment of sharing in the profits is perfectly plausible."[31] But in the situation in the case at bar, the deferment, if any, had gone on too long to be plausible. A person is presumed to take ordinary care of his concerns.[32] As we explained in another case:

> In the first place, plaintiff did not furnish the supposed P20,000.00 capital. In the second place, she did not furnish any help or intervention in the management of the theatre. In the third place, *it does not appear that she has even demanded from defendant any accounting of the expenses and earnings of the business. Were she really a partner, her first concern should have been to find out how the business was progressing, whether the expenses were legitimate, whether the earnings were correct, etc. She was absolutely silent with respect to any of the acts that a partner should have done*; all that she did was to receive her share of P3,000.00 a month, which cannot be interpreted in any manner than a payment for the use of the premises which she had leased from the owners. Clearly, plaintiff had always acted in accordance with the original letter of defendant of June 17, 1945 (Exh. "A"), which shows that both parties considered this offer as the real contract between them.[33] [italics supplied]

A demand for periodic accounting is evidence of a partnership.[34] During his lifetime, Tan Eng Kee appeared never to have made any such demand for accounting from his brother, Tang Eng Lay.

This brings us to the matter of Exhibits "4" to "4-U" for private respondents, consisting of payrolls purporting to show that Tan Eng Kee was an ordinary employee of Benguet Lumber, as it was then called. The authenticity of these documents was questioned by petitioners, to the extent that they filed criminal charges against Tan Eng Lay and his wife and children. As aforesaid, the criminal cases were dismissed for insufficiency of evidence. Exhibits "4" to "4-U" in fact shows that Tan Eng

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[31] *Id.*, at 754.

[32] 1997 RULES OF CIVIL PROCEDURE, Rule 131, Sec. 3, Par. (d).

[33] *Yulo v. Yang Chiao Seng*, 106 Phil. 110, 117 (1959).

[34] *Estanislao, Jr. vs. Court of Appeals*, 160 SCRA 830, 837 (1988).

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Kee received sums as wages of an employee. In connection therewith, Article 1769 of the Civil Code provides:

> In determining whether a partnership exists, these rules shall apply:
>
> (1) Except as provided by Article 1825, persons who are not partners as to each other are not partners as to third persons;
>
> (2) Co-ownership or co-possession does not of itself establish a partnership, whether such co-owners or co-possessors do or do not share any profits made by the use of the property;
>
> (3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property which the returns are derived;
>
> (4) The receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:
>
> (a) As a debt by installment or otherwise;
>
> (b) As wages of an employee or rent to a landlord;
>
> (c) As an annuity to a widow or representative of a deceased partner;
>
> (d) As interest on a loan, though the amount of payment vary with the profits of the business;
>
> (e) As the consideration for the sale of a goodwill of a business or other property by installments or otherwise.

In the light of the aforequoted legal provision, we conclude that Tan Eng Kee was only an employee, not a partner. Even if the payrolls as evidence were discarded, petitioners would still be back to square one, so to speak, since they did not present and offer evidence that would show that Tan Eng Kee received amounts of money allegedly representing his share in the profits of the enterprise. Petitioners failed to show how much their father, Tan Eng Kee, received, if any, as his share in the profits of Benguet Lumber Company for any particular period. Hence, they failed to prove that Tan Eng Kee and Tan

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Eng Lay intended to divide the profits of the business between themselves, which is one of the essential features of a partnership.

Nevertheless, petitioners would still want us to infer or believe the alleged existence of a partnership from this set of circumstances: that Tan Eng Lay and Tan Eng Kee were commanding the employees; that both were supervising the employees; that both were the ones who determined the price at which the stocks were to be sold; and that both placed orders to the suppliers of the Benguet Lumber Company. They also point out that the families of the brothers Tan Eng Kee and Tan Eng Lay lived at the Benguet Lumber Company compound, a privilege not extended to its ordinary employees.

However, private respondent counters that:

Petitioners seem to have missed the point in asserting that the above enumerated powers and privileges granted in favor of Tan Eng Kee, were indicative of his being a partner in Benguet Lumber for the following reasons:

(i) even a mere supervisor in a company, factory or store gives orders and directions to his subordinates. So long, therefore, that an employee's position is higher in rank, it is not unusual that he orders around those lower in rank.

(ii) even a messenger or other trusted employee, over whom confidence is reposed by the owner, can order materials from suppliers for and in behalf of Benguet Lumber. Furthermore, even a partner does not necessarily have to perform this particular task. It is, thus, not an indication that Tan Eng Kee was a partner.

(iii) although Tan Eng Kee, together with his family, lived in the lumber compound and this privilege was not accorded to other employees, the undisputed fact remains that *Tan Eng Kee is the brother of Tan Eng Lay.* Naturally, close personal relations existed between them. Whatever privileges Tan Eng Lay gave his brother, and which were not given the other employees, only proves the kindness and generosity of Tan Eng Lay towards a blood relative.

(iv) and even if it is assumed that Tan Eng Kee was quarreling with Tan Eng Lay in connection with the pricing of stocks, this does not adequately prove the existence of a partnership relation between them. Even highly confidential employees and the owners of a

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company sometimes argue with respect to certain matters which, in no way indicates that they are partners as to each other.[35]

In the instant case, we find private respondent's arguments to be well-taken. Where circumstances taken singly may be inadequate to prove the intent to form a partnership, nevertheless, the *collective effect* of these circumstances may be such as to support a finding of the existence of the parties' intent. [36] Yet, in the case at bench, even the aforesaid circumstances when taken together are not persuasive *indicia* of a partnership. They only tend to show that Tan Eng Kee was involved in the operations of Benguet Lumber, but in what capacity is unclear. We cannot discount the likelihood that as a member of the family, he occupied a niche above the rank-and-file employees. He would have enjoyed liberties otherwise unavailable were he not kin, such as his residence in the Benguet Lumber Company compound. He would have moral, if not actual, superiority over his fellow employees, thereby entitling him to exercise powers of supervision. It may even be that among his duties is to place orders with suppliers. Again, the circumstances proffered by petitioners do not provide a logical nexus to the conclusion desired; these are not inconsistent with the powers and duties of a manager, even in a business organized and run as informally as Benguet Lumber Company.

There being no partnership, it follows that there is no dissolution, winding up or liquidation to speak of. Hence, the petition must fail.

WHEREFORE, the petition is hereby denied, and the appealed decision of the Court of Appeals is hereby *AFFIRMED in toto*. No pronouncement as to costs.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Quisumbing, and *Buena, JJ.*, concur.

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[35] Private Respondent's Memorandum, *Rollo*, p. 390.

[36] *Evangelista, et al. v. Collector of Internal Revenue, et al.*, 102 Phil. 141, 146 (1957).