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WHEREFORE, for drunkenness, insubordination, grave misconduct, and conduct grossly prejudicial to the best interest of the service, respondent CARLITO C. BARCENAS is hereby *DISMISSED* from the service with forfeiture of all benefits and privileges and with prejudice to reemployment in any branch or agency of the government, including government-owned or -controlled corporations.

This Resolution shall take effect upon service thereof on respondent, and the Clerk of Court shall cause such service immediately upon the promulgation of this Resolution.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Vitug, Kapunan, Mendoza, Panganiban, Purisima, Pardo, Buena, Gonzaga-Reyes, and *De Leon, Jr., JJ.*, concur.

Puno, Quisumbing, and Santiago J., on official leave.

THIRD DIVISION

[G.R. No. 136448. November 3, 1999]

LIM TONG LIM, *petitioner, vs.* **PHILIPPINE FISHING GEAR INDUSTRIES, INC.,** *respondent.*

SYNOPSIS

Antonio Chua and Peter Yao entered into a contract in bahlf of Ocean Quest Fishing Corporation for the purchase of fishing nets from respondent Philippine Fishing Gear Industries, Inc. Chua and Yao claimed that they were engaged in business venture with petitioner Lim Tong Lim, who, however, was not a signatory to the contract. The buyers failed to pay the fishing nets. Respondent filed a collection against Chua, Yao and petitioner Lim in their capacities as general partners because it turned out that Ocean

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Quest Fishing Corporation is a non-existent corporation. The trial court issued a Writ of Preliminary Attachment, which the sheriff enforced by attaching the fishing nets. The trial court rendered its decision ruling that respondent was entitled to the Writ of Attachment and that Chua, Yao and Lim, as general partners, were jointly liable to pay respondent. Lim appealed to the Court of Appeals, but the appellate court affirrmed the decision of the trial court that petitioner Lim is a partner and may thus be held liable as such. Hence, the present petition. Petitioner claimed that since his name did not appear on any of the contracts and since he never directly transacted with the respondent corporation, ergo, he cannot be held liable.

The Supreme Court denied the petition. The Court ruled that having reaped the benefits of the contract entered into by Chua and Yao, with whom he had an existing relationship, petitioner Lim is deemed a part of said association and is covered by the doctrine of corporation by estoppel. The Court also ruled that under the principle of estoppel, those acting on behalf of a corporation and those benefited by it, knowing it to be without valid existence, are held liable as general partners.

SYLLABUS

1. **CIVIL LAW; PARTNERSHIP; AGREEMENT THAT ANY LOSS OR PROFIT FROM THE SALE AND OPERATION OF THE BOATS WOULD BE DIVIDED EQUALLY AMONG THEM SHOWS THAT THE PARTIES HAD INDEED FORMED A PARTNERSHIP.—** From the factual findings of both lower courts, it is clear that Chua, Yao and Lim had decided to engage in a fishing business, which they started by buying boats worth ₱3.35 million, financed by a loan secured from Jesus Lim who was petitioner's brother. In their Compromise Agreement, they subsequently revealed their intention to pay the loan with the proceeds of the sale of the boats, and to divide equally among them the excess or loss. These boats, the purchase and the repair of which were financed with borrowed money, fell under the term "common fund" under Article 1767. The contribution to such fund need not be cash or fixed assets; it could be an intangible like credit or industry. That the parties agreed that any loss or profit from the sale and operation of the boats would be divided equally among them also shows that they

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had indeed formed a partnership. Moreover, it is clear that the partnership extended not only to the purchase of the boat, but also to that of the nets and the floats. The fishing nets and the floats, both essential to fishing, were obviously acquired in furtherance of their business. It would have been inconceivable for Lim to involve himself so much in buying the boat but not in the acquisition of the aforesaid equipment, without which the business could not have proceeded. Given the preceding facts, it is clear that there was, among petitioner, Chua and Yao, a partnership engaged in the fishing business. They purchased the boats, which constituted the main assets of the partnership, and they agreed that the proceeds from the sales and operations thereof would be divided among them.

2. **ID.; ID.; COMPROMISE AGREEMENT OF THE PARTIES NOT THE SOLE BASIS OF PARTNERSHIP.**— Petitioner argues that the appellate court's sole basis for assuming the existence of a partnership was the Compromise Agreement. He also claims that the settlement was entered into only to end the dispute among them, but not to adjudicate their preexisting rights and obligations. His arguments are baseless. *The Agreement was but an embodiment of the relationship extant among the parties prior to its execution.* A proper adjudication of claimants' rights mandates that courts must review and thoroughly appraise all relevant facts. Both lower courts have done so and have found, correctly, a preexisting partnership among the parties. In implying that the lower courts have decided on the basis of one piece of document alone, petitioner fails to appreciate that the CA and the RTC delved into the history of the document and explored all the possible consequential combinations in harmony with law, logic and fairness. Verily, the two lower courts' factual findings mentioned above nullified petitioner's argument that the existence of a partnership was based only on the Compromise Agreement.

3. **ID.; ID.; PETITIONER WAS A PARTNER, NOT A LESSOR.**— Verily, as found by the lower courts, petitioner entered into a business agreement with Chua and Yao, in which debts were undertaken in order to finance the acquisition and the upgrading of the vessels which would be used in their fishing business. The sale of the boats, as well as the division among the three of the balance remaining after the payment of their loans, proves beyond cavil that *F/B Lourdes*, though registered in his name, was not his own property but an asset of the partnership. It is not uncommon

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to register the properties acquired from a loan in the name of the person the lender trusts, who in this case is the petitioner himself. After all, he is the brother of the creditor, Jesus Lim. We stress that it is unreasonable – indeed, it is absurd – for petitioner to sell his property to pay a debt he did not incur, if the relationship among the three of them was merely that of lessor-lessee, instead of partners.

4. **MERCANTILE LAW; PRIVATE CORPORATIONS; HAVING REAPED THE BENEFITS OF THE CONTRACT ENTERED INTO BY PERSONS WITH WHOM HE PREVIOUSLY HAD AN EXISTING RELATIONSHIP, PETITIONER IS DEEMED TO BE PART OF SAID ASSOCIATION AND IS COVERED BY THE DOCTRINE OF CORPORATION BY ESTOPPEL.**— There is no dispute that the respondent, Philippine Fishing Gear Industries, is entitled to be paid for the nets it sold. The only question here is whether petitioner should be held jointly liable with Chua and Yao. Petitioner contests such liability, insisting that only those who dealt in the name of the ostensible corporation should be held liable. Since his name does not appear on any of the contracts and since he never directly transacted with the respondent corporation, ergo, he cannot be held liable. Unquestionably, petitioner benefited from the use of the nets found inside *F/B Lourdes*, the boat which has earlier been proven to be an asset of the partnership. He in fact questions the attachment of the nets, because the Writ has effectively stopped his use of the fishing vessel. It is difficult to disagree with the RTC and the CA that Lim, Chua and Yao decided to form a corporation. Although it was never legally formed for unknown reasons, this fact alone does not preclude the liabilities of the three as contracting parties in representation of it. Clearly, under the law on estoppel, those acting on behalf of a corporation and those benefited by it, knowing it to be without valid existence, are held liable as general partners. Technically, it is true that petitioner did not *directly act* on behalf of the corporation. *However, having reaped the benefits of the contract entered into by persons with whom he previously had an existing relationship, he is deemed to be part of said association and is covered by the scope of the doctrine of corporation by estoppel.*

5. **REMEDIAL LAW; PROVISIONAL REMEDIES; ATTACHMENT; ISSUE OF VALIDITY THEREOF, MOOT AND ACADEMIC.**— Petitioner claims that the Writ of Attachment was

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improperly issued against the nets. We agree with the Court of Appeals that this issue is now moot and academic. As previously discussed, *F/B Lourdes* was an asset of the partnership and that it was placed in the name of petitioner, only to assure payment of the debt he and his partners owed. The nets and the floats were specifically manufactured and tailor-made according to their own design, and were bought and used in the fishing venture they agreed upon. Hence, the issuance of the Writ to assure the payment of the price stipulated in the invoices is proper. Besides, by specific agreement, ownership of the nets remained with Respondent Philippine Fishing Gear, until full payment thereof.

VITUG, *J., concurring opinion.*:

1. **CIVIL LAW; PARTNERSHIP; EXTENT OF LIABILITY OF PARTNERS IN A GENERAL PARTNERSHIP.—** When a person by his act or deed represents himself as a partner in an existing partnership or with one or more persons not actual partners, he is deemed an agent of such persons consenting to such representation and in the same manner, if he were a partner, with respect to persons who rely upon the representation. The association formed by Chua, Yao and Lim, should be, as it has been deemed, a *de facto* partnership with all the consequent obligations for the purpose of enforcing the rights of third persons. The liability of general partners (in a general partnership as so opposed to a limited partnership) is laid down in Article 1816 which posits that all partners shall be liable *pro rata* beyond the partnership assets for all the contracts which may have been entered into in its name, under its signature, and by a person authorized to act for the partnership.

2. **ID.; ID.; ID.; INSTANCES WHEN THE PARTNERS CAN BE HELD SOLIDARILY LIABLE WITH THE PARTNERSHIP.—** This rule is to be construed along with other provisions of the Civil Code which postulate that the partners can be held *solidarily* liable with the partnership specifically in these instances – (1) where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his co-partners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act; (2) where

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one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and (3) where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership – consistently with the rules on the nature of civil liability in delicts and quasi-delicts.

APPEARANCES OF COUNSEL

Roberto A. Abad for petitioner.
Benjamin S. Benito & Associates for private 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,[1] which disposed as follows:

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

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[1] Penned by *J.* Portia Alino-Hormachuelos; with the concurrence of *JJ.* Buenaventura J. Guerrero, Division chairman, and Presbitero J. Velasco, Jr., member.

[2] CA Decision, p. 12; *rollo*, p. 36.

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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. ₱532,045.00 representing [the] unpaid purchase price of the fishing nets covered by the Agreement plus ₱68,000.00 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 ₱73,221.00 on Invoice No. 14407 for ₱385,377.80 dated February 9, 1990;

ii. Accrued interest of ₱27,904.02 on Invoice No. 14413 for ₱146,868.00 dated February 13, 1990;

iii. Accrued interest of ₱12,920.00 on Invoice No. 14426 for ₱68,000.00 dated February 19, 1990;

c. ₱50,000.00 as and for attorney's fees, plus ₱8,500.00 representing P500.00 per appearance in court;

d. ₱65,000.00 representing ₱5,000.00 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 ₱532,045.00 and ₱68,000.00, respectively, or for the total amount of ₱600,045.00, 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 ₱900,000.00 for which the plaintiff was the sole and winning bidder. The proceeds of the sale paid for by plaintiff was

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deposited in court. In effect, the amount of ₱900,000.00 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 ₱900,000.00 cash bidded 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 ₱900,000.00 as this amount replaced the attached nets and floats. Considering, however, that the total judgment obligation as computed above would amount to only ₱840,216.92, 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 ₱900,000.00 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 ₱900,000.00 deposited by it with the Clerk of Court.

SO ORDERED." [3]

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 ₱532,045.

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[3] RTC Decision penned by Judge Maximiano C. Asuncion, pp. 11-12; *rollo*, pp. 48-49.

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Four hundred pieces of floats worth ₱68,000 were also sold to the Corporation.[4]

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.[5] 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.[6] 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 ₱900,000.[7]

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.[8]

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[4] CA Decision, pp. 1-2; *rollo*, pp. 25-26.

[5] *Ibid.*, p. 2; *rollo*, p. 26.

[6] RTC Decision, p. 2; *rollo,* p. 39.

[7] Petition, p. 4; *rollo*, p. 11.

[8] *Ibid.*

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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[9] 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.[10] The Compromise Agreement provided:

"a) That the parties plaintiffs & Lim Tong Lim agree to have the four (4) vessels sold in the amount of ₱5,750,000.00 including the fishing net. This ₱5,750,000.00 shall be applied as full payment for ₱3,250,000.00 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 ₱5,750,000.00 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 ₱5,750,000.00 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."[11]

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.[12]

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

[9] RTC Decision, pp. 6-7; *rollo*, pp. 43-44.

[10] Respondent's Memorandum, pp. 5, 8; *rollo*, pp. 107, 109.

[11] CA Decision, pp. 9-10; *rollo*, pp. 33-34.

[12] RTC Decision, p. 10; *rollo*, p. 47.

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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)."[13]

Hence, petitioner brought this recourse before this Court.[14]

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.

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[13] *Ibid.*

[14] This case was deemed submitted for resolution on August 10, 1999, when this Court received petitioner's Memorandum signed by Atty. Roberto A. Abad. Respondent's Memorandum signed by Atty. Benjamin S. Benito was filed earlier on July 27, 1999.

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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 ₱37,500 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:[15]

(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;

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[15] Nos. 1-7 are from CA Decision, p. 9 (*rollo*, p. 33); No. 8 is from RTC Decision, p. 5 (*rollo*, p. 42); and No. 9 is from CA Decision, pp. 9-10 (*rollo*, pp. 33-34).

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(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 ₱3.35 million;

(3) That they borrowed ₱3.25 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;

(5) That Lim, Chua and Yao agreed that the refurbishing, re-equipping, repairing, dry docking and other expenses for the boats would be shouldered by Chua and Yao;

(6) That because of the "unavailability of funds," Jesus Lim again extended a loan to the partnership in the amount of ₱1 million secured by a check, because of which, Yao and Chua entrusted the ownership papers of two other boats, Chua's *FB Lady Anne Mel* and *Yao's FB Tracy* to Lim Tong Lim.

(7) That in pursuance of the business agreement, Peter Yao and Antonio Chua bought nets from Respondent Philippine Fishing Gear, in behalf of "Ocean Quest Fishing Corporation," their purported business name.

(8) That subsequently, Civil Case No. 1492-MN was filed in the Malabon RTC, Branch 72 by Antonio Chua and Peter Yao against Lim Tong Lim for (a) declaration of nullity of commercial documents; (b) reformation of contracts; (c) declaration of ownership of fishing boats; (e) injunction; and (e) damages.

(9) That the case was amicably settled through a Compromise Agreement executed between the parties-litigants the terms of which are already enumerated above.

From the factual findings of both lower courts, it is clear that Chua, Yao and Lim had decided to engage in a fishing business, which they started by buying boats worth ₱3.35 million, financed by a loan secured from Jesus Lim who was petitioner's brother. In their Compromise Agreement, they subsequently revealed their intention to pay the loan with the proceeds of the sale of the boats, and to divide equally among them the excess or loss. These boats, the purchase and the repair of which were financed with borrowed

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money, fell under the term "common fund" under Article 1767. The contribution to such fund need not be cash or fixed assets; it could be an intangible like credit or industry. That the parties agreed that any loss or profit from the sale and operation of the boats would be divided equally among them also shows that they had indeed formed a partnership.

Moreover, it is clear that the partnership extended not only to the purchase of the boat, but also to that of the nets and the floats. The fishing nets and the floats, both essential to fishing, were obviously acquired in furtherance of their business. It would have been inconceivable for Lim to involve himself so much in buying the boat but not in the acquisition of the aforesaid equipment, without which the business could not have proceeded.

Given the preceding facts, it is clear that there was, among petitioner, Chua and Yao, a partnership engaged in the fishing business. They purchased the boats, which constituted the main assets of the partnership, and they agreed that the proceeds from the sales and operations thereof would be divided among them.

We stress that under Rule 45, a petition for review like the present case should involve only questions of law. Thus, the foregoing factual findings of the RTC and the CA are binding on this Court, absent any cogent proof that the present action is embraced by one of the exceptions to the rule.[16] In assailing the factual findings of the two lower courts, petitioner effectively goes beyond the bounds of a petition for review under Rule 45.

Compromise Agreement
Not the Sole Basis of Partnership

Petitioner argues that the appellate court's sole basis for assuming the existence of a partnership was the Compromise Agreement. He also claims that the settlement was entered into only to end the dispute among them, but not to adjudicate their preexisting rights and obligations. His arguments are baseless. *The Agreement was but an embodiment of the relationship extant among the parties prior to its execution.*

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[16] See *Fuentes v. Court of Appeals*, 268 SCRA 703, February 26, 1997.

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A proper adjudication of claimants' rights mandates that courts must review and thoroughly appraise all relevant facts. Both lower courts have done so and have found, correctly, a preexisting partnership among the parties. In implying that the lower courts have decided on the basis of one piece of document alone, petitioner fails to appreciate that the CA and the RTC delved into the history of the document and explored all the possible consequential combinations in harmony with law, logic and fairness. Verily, the two lower courts' factual findings mentioned above nullified petitioner's argument that the existence of a partnership was based only on the Compromise Agreement.

Petitioner Was a Partner, Not a Lessor

We are not convinced by petitioner's argument that he was merely the lessor of the boats to Chua and Yao, not a partner in the fishing venture. His argument allegedly finds support in the Contract of Lease and the registration papers showing that he was the owner of the boats, including *F/B Lourdes* where the nets were found.

His allegation defies logic. In effect, he would like this Court to believe that he consented to the sale of *his own* boats to pay a debt of *Chua and Yao,* with the excess of the proceeds to be divided among *the three of them.* No lessor would do what petitioner did. Indeed, his consent to the sale proved that there was a preexisting partnership among all three.

Verily, as found by the lower courts, petitioner entered into a business agreement with Chua and Yao, in which debts were undertaken in order to finance the acquisition and the upgrading of the vessels which would be used in their fishing business. The sale of the boats, as well as the division among the three of the balance remaining after the payment of their loans, proves beyond cavil that *F/B Lourdes,* though registered in his name, was not his own property but an asset of the partnership. It is not uncommon to register the properties acquired from a loan in the name of the person the lender trusts, who in this case is the petitioner himself. After all, he is the brother of the creditor, Jesus Lim.

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We stress that it is unreasonable – indeed, it is absurd — for petitioner to sell his property to pay a debt he did not incur, if the relationship among the three of them was merely that of lessor-lessee, instead of partners.

Corporation by Estoppel

Petitioner argues that under the doctrine of corporation by estoppel, liability can be imputed only to Chua and Yao, and not to him. Again, we disagree.

Section 21 of the Corporation Code of the Philippines provides:

"Sec. 21. *Corporation by estoppel.* — All persons who assume to act as a corporation knowing it to be without authority to do so shall be liable as general partners for all debts, liabilities and damages incurred or arising as a result thereof: *Provided however,* That when any such ostensible corporation is sued on any transaction entered by it as a corporation or on any tort committed by it as such, it shall not be allowed to use as a defense its lack of corporate personality.

"One who assumes an obligation to an ostensible corporation as such, cannot resist performance thereof on the ground that there was in fact no corporation."

Thus, even if the ostensible corporate entity is proven to be legally nonexistent, a party may be estopped from denying its corporate existence. "The reason behind this doctrine is obvious — an unincorporated association has no personality and would be incompetent to act and appropriate for itself the power and attributes of a corporation as provided by law; it cannot create agents or confer authority on another to act in its behalf; thus, those who act or purport to act as its representatives or agents do so without authority and at their own risk. And as it is an elementary principle of law that a person who acts as an agent without authority or without a principal is himself regarded as the principal, possessed of all the right and subject to all the liabilities of a principal, a person acting or purporting to act on behalf of a corporation which has no valid existence assumes such privileges and obligations and becomes personally liable for contracts entered into or for other acts performed as such agent."[17]

[17] *Salvatierra v. Garlitos*, 103 SCRA 757, May 23, 1958, per Felix, *J.*; citing *Fay v. Noble,* 7 Cushing [Mass.] 188.

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The doctrine of corporation by estoppel may apply to the alleged corporation and to a third party. In the first instance, an unincorporated association, which represented itself to be a corporation, will be estopped from denying its corporate capacity in a suit against it by a third person who relied in good faith on such representation. It cannot allege lack of personality to be sued to evade its responsibility for a contract it entered into and by virtue of which it received advantages and benefits.

On the other hand, *a third party who, knowing an association to be unincorporated, nonetheless treated it as a corporation and received benefits from it, may be barred from denying its corporate existence in a suit brought against the alleged corporation.* In such case, all those who benefited from the transaction made by the ostensible corporation, despite knowledge of its legal defects, may be held liable for contracts they impliedly assented to or took advantage of.

There is no dispute that the respondent, Philippine Fishing Gear Industries, is entitled to be paid for the nets it sold. The only question here is whether petitioner should be held jointly[18] liable with Chua and Yao. Petitioner contests such liability, insisting that only those who dealt in the name of the ostensible corporation should be held liable. Since his name does not appear on any of the contracts and since he never directly transacted with the respondent corporation, ergo, he cannot be held liable.

Unquestionably, petitioner benefited from the use of the nets found inside *F/B Lourdes*, the boat which has earlier been proven to be an asset of the partnership. He in fact questions the attachment of the nets, because the Writ has effectively stopped his use of the fishing vessel.

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[18] "The liability is joint if it is not specifically stated that it is solidary," *Maramba v. Lozano,* 126 Phil. 833, June 29, 1967, per Makalintal, *J. See also* Article 1207 of the Civil Code, which provides: "The concurrence of two or more creditors or of two or more debtors in one [and] the same obligation does not imply that each one of the former has a right to demand, or that each one of the latter is bound to render, entire compliance with the prestation. There is a solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity."

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It is difficult to disagree with the RTC and the CA that Lim, Chua and Yao decided to form a corporation. Although it was never legally formed for unknown reasons, this fact alone does not preclude the liabilities of the three as contracting parties in representation of it. Clearly, under the law on estoppel, those acting on behalf of a corporation and those benefited by it, knowing it to be without valid existence, are held liable as general partners.

Technically, it is true that petitioner did not *directly act* on behalf of the corporation. *However, having reaped the benefits of the contract entered into by persons with whom he previously had an existing relationship, he is deemed to be part of said association and is covered by the scope of the doctrine of corporation by estoppel.* We reiterate the ruling of the Court in *Alonso v. Villamor*:[19]

"A litigation is not a game of technicalities in which one, more deeply schooled and skilled in the subtle art of movement and position, entraps and destroys the other. It is, rather, a contest in which each contending party fully and fairly lays before the court the facts in issue and then, brushing aside as wholly trivial and indecisive all imperfections of form and technicalities of procedure, asks that justice be done upon the merits. Lawsuits, unlike duels, are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. There should be no vested rights in technicalities."

Third Issue:
Validity of Attachment

Finally, petitioner claims that the Writ of Attachment was improperly issued against the nets. We agree with the Court of Appeals that this issue is now moot and academic. As previously discussed, *F/B Lourdes* was an asset of the partnership and that it was placed in the name of petitioner, only to assure payment of the debt he and his partners owed. The nets and the floats were specifically manufactured and tailor-made according to their

[19] 16 Phil. 315, July 26, 1910, per Moreland, *J.*

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own design, and were bought and used in the fishing venture they agreed upon. Hence, the issuance of the Writ to assure the payment of the price stipulated in the invoices is proper. Besides, by specific agreement, ownership of the nets remained with Respondent Philippine Fishing Gear, until full payment thereof.

WHEREFORE, the Petition is **DENIED** and the assailed Decision **AFFIRMED.** Costs against petitioner.

SO ORDERED.

Melo, (Chairman), Purisima, and *Gonzaga-Reyes, JJ.*, concur.

Vitug, J., please see concurring opinion.

VITUG, *J., concurring opinion*:

I share the views expressed in the ponencia of an esteemed colleague, Mr. Justice Artemio V. Panganiban, particularly the finding that Antonio Chua, Peter Yao and petitioner Lim Tong Lim have incurred the liabilities of general partners. I merely would wish to elucidate a bit, albeit briefly, the liability of partners in a general partnership.

When a person by his act or deed represents himself as a partner in an existing partnership or with one or more persons not actual partners, he is deemed an agent of such persons consenting to such representation and in the same manner, if he were a partner, with respect to persons who rely upon the representation.[1] The association formed by Chua, Yao and Lim, should be, as it has been deemed, a *de facto* partnership with all the consequent obligations for the purpose of enforcing the rights

[1] Article 1825. When a person, by words spoken or written or by conduct, represents himself, or consents to another representing him to anyone, as a partner in an existing partnership or with one or more persons not actual partners, he is liable to any such persons to whom such representation has been made, who has, on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public manner he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made:

(1) When a partnership liability results, he is liable as though he were an actual member of the partnership;

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of third persons. The liability of general partners (in a general partnership as so opposed to a limited partnership) is laid down in Article 1816[2] which posits that all partners shall be liable pro rata beyond the partnership assets for all the contracts which may have been entered into in its name, under its signature, and by a person authorized to act for the partnership. This rule is to be construed along with other provisions of the Civil Code which postulate that the partners can be held solidarily liable with the partnership specifically in these instances – (1) where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his co-partners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act; (2) where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and (3) where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership[3] – consistently with the rules on the nature of civil liability in delicts and *quasi-delicts.*

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(2) When no partnership liability results, he is liable *pro rata* with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

When a person has been thus represented to be a partner in an existing partnership, or with one or more persons not actual partners, he is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though he were a partner in fact, with respect to persons who rely upon the representation. When all the members of the existing partnership consent to the representation, a partnership act or obligation results; *but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation.*

[2] All partners, including industrial ones, shall be liable *pro rata* with all their property and after all the partnership assets have been exhausted, for the contracts which may be entered into in the name and for the account of the partnership, under its signature and by a person authorized to act for the partnership. However, any partner may enter into a separate obligation to perform a partnership contract.

[3] Article 1824 in relation to Article 1822 and Article 1823, New Civil Code.