LIVING TOGETHER: YOUR HOUSE, BUT I PAID FOR THE RENOVATIONS!

R.D.M v M.D.K (8052/2019) [2025] ZALMPPHC 31 (19 February 2025)

In matters relating to immovable property, attorneys are often confronted with disputes that arose after a relationship breaks down. Where parties are unmarried, and never entered into an agreement regarding their shared financial affairs, it is extremely challenging to insist that contributions made in respect of the immovable property by one party can be claimed back. This judgment describes our courts' approach to resolving these arguments, and serves as a reminder of the importance for cohabitants to seek guidance from an attorney to assist them with a written recordal of their financial relationship.

The judgment can be viewed here.

FACTS

RDM and MDK were in a romantic relationship and, during 2014, they started living together. During this time, RDM had invested a portion of his pension pay-out, in the amount of R416,388.77, in the property they shared, for renovations. This was specifically to extend the house to make room for MDK's daughter, who also stayed there. At the time, each one of them, RDM, MDK and the daughter, contributed R300 per month for household expenses. The property was registered in the name of MDK.

The relationship broke down during 2019, and RDM moved out. He argued that they (RDM and MDK) had agreed to establish a universal life partnership of all their assets (a '*societas universorum bonorum*') when cohabiting, the terms of which were, amongst other things, that:

- they will live together under one roof as life partners;
- they will care for and maintain one another, and accord each other societal comforts and benefits in a relationship similar to that of husband and wife;
- they will contribute their resources, assets and labour towards the accumulation, upkeep and maintenance of the joint and shared estate; and
- they would create a universal partnership for gain between themselves and for their benefit.

Accordingly, RDM now seeks an equal division of the assets they accumulated during their co-habitation. He approached the court for a declaratory order stating that a partnership for gain existed, that the partnership was terminated in April 2019, and that a liquidator must be appointed to divide the assets.

MDK denies the existence of a partnership, claiming that any contributions made, were gifts. MDK also argues that RDM's contributions were not intended to create a partnership, and their relationship was merely a romantic one. MDK denied that RDM stayed with her uninterruptedly for the period 2014 to 2019. According to her testimony, he sometimes left for extended periods. She further acknowledged a payment of R10,000.00 that RDM paid to her - she testified that he gave her the money and told her to 'keep it'. It was not *lobola* as submitted by RDM.

As to his contribution towards the extension of MDK's property, she was adamant that there was no explicit discussion, or tacit intention on her behalf, to create a partnership of any form. Moreover, there was never any discussion that he would acquire any right whatsoever towards her property. The only discussion that ensued between the parties related to the fact that the house was too small to accommodate them all and as such, RDM offered to use a portion of his pension fund to extend the property.

RDM's testimony was that she was able to take care of herself, and that she indeed did so. Save for the monthly contribution of R300, RDM did not contribute financially to her welfare. There was no testimony of a shared endeavour to create a mutually beneficial situation. As such, she remained adamant that no partnership agreement was concluded either expressly or by means of the conduct of the parties.

HELD

Has the requirements for the existence of a partnership been met, and if so, how it should it be liquidated and dissolved?

- A partnership is often defined as a contract between two or more parties in term of which each contributes or undertakes to contribute towards an enterprise to be carried on jointly by them with the object of making a profit and of sharing it between them.
- The *essentialia* of a partnership agreement has been authoritatively dealt with in numerous cases. In the well-known case of *Joubert v Tarry & Co*, the requirements for the existence of a partnership were recorded to be the following:
    - Each one of the partners must bring something into the partnership, or binds himself to bring something into it, whether it be money, or his labour or skill.
    - The business should be carried on for the joint benefit of both parties;
    - The object of the business should be to make profit; and
    - The contract between the parties should be a legitimate contract.
- In a *societas universorum bonorum* — also referred to as the *societas omnium bonorum* —parties agree to put in common all their property, present and future. Another type of partnership exists, namely a *societas universorum quae ex quaestu veniunt*, where the parties agree that whatever they may acquire during the existence of the partnership, from every kind of commercial undertaking, shall be partnership property.
- Both types of partnerships can be constituted tacitly, by mere consent and circumstance. Neither type requires an express agreement. Like any other contract, they can also come into existence by tacit agreement derived from the conduct of the parties. Where the conduct of the parties is capable of more than one inference, the test for when a tacit universal partnership can be held to exist is whether it is more probable than not that a tacit agreement was reached.
- In this regard, a Court is obliged to look at substance, rather than form, to determine what the intention of the parties are. Where more than one inference can be drawn from the conduct of the parties, the test for when a tacit universal partnership can be held to exists is whether it is more probable than not that a tacit agreement was reached. In *Muhlman v Muhlman* the Court explained as follows: 'Before tacit agreement can be held to have been reached in any case it must be clear that the conduct relied upon is not only consistent with the making of the contract alleged but is consistent with no other reasonable interpretation…before a court can find that there has been a tacit contract, it must be satisfied that the person whom it is proposed to fix with a tacit contract must be fully aware of all the circumstances connected with the transaction, the act must be unequivocal and the tacit contract must not extend to more than what the parties contemplated.'
- RDM argued that a *societas universorum bonorum* had come into existence, in terms of which the parties agreed to contribute all their property and possessions which they own at the commencement of the partnership as well as property and possessions they may acquire in future from whatever source, irrespective of whether such property is acquired from commercial undertakings or otherwise.
- However, no testimony was led as to the respective assets of the parties prior to the commencement of the alleged partnership, or the assets that were acquired thereafter in their individual names. This is a critical element to prove the existence of a *societas universorum bonorum*.
- The test applied in cases where a tacit agreement potentially came into effect between the parties, has been stated above, i.e., there must be no other reasonable inference from the conduct of the parties.
- RDM's testimony made no reference to the profit requirement. This requirement will be satisfied if RDM could show that their relationship was an all-embracing venture, which included both their home lives

and the business lives and that aimed at a profit to be shared between the parties. RDM's testimony was largely limited to his contributions. This is but one element of a partnership.

- As to MDK's contribution to the profit (requirement), her testimony was effectively limited to the fact that she contributed the immovable property and she paid the agreed R300,00 per month. No testimony was led at all that she explicitly shared RDM's view that this is a partnership of all assets. As stated before, no testimony was led as to the assets in their separate estates that would automatically form part of the assets of the joint estate, nor was any testimony lead regarding the joint assets accumulated in either of the parties' personal names subsequent to the formation of the alleged partnership.
- In the present matter, from the testimony as to the conduct of the parties, it was not shown that there was an endeavour to conduct the 'business for the joint benefit of the parties' and with the aim of 'making profit'. Notably:
    - Our Courts have pointed out that 'unless a wife has rendered services manifestly surpassing those ordinarily expected of a wife in her situation, a court will not easily be persuaded to infer a tacit agreement of partnership between the spouses'.
    - 'It must be borne in mind that a *societas universorum bonorum* does not equate to a marriage in community of property. The normal principles pertaining to contributions of spouses in a marriage in community of property will therefore not apply to determining if a *societas universorum bonorum* came into existence. The mere fact that parties co-habitate does not entitle them to a proportionate share of the other parties' estate.'
- On the facts in this matter, it is evident that the relationship between the RDM and MDK is susceptible to a reasonable alternative interpretation, being that the parties were merely co-habitating and sharing expenses. It was not shown that what was contributed by RDM amounts to partnership contributions.

CONCLUSION

RDM's application is accordingly dismissed.