

“Civil Partnership: Extent of Partner’s Liability To Third Persons”

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IT is not questioned that partners of a civil partnership are liable to third persons even to the extent of their own private property when the assets of the partnership have been exhausted. The nature of this liability is determined by Article 1698 of the Civil Code which provides thus: “The partners shall not be so solidarily bound with regard to the debts of the partnership; * * *.” According to this article, then, the liability of a partner is merely joint and not solidary. This provision is in accord with the general rule enunciated in the law of obligations as stated in Article 1137 of the Civil Code to the effect that “the concurrence of two or more creditors, or of two or more debtors, in a single obligation does not imply that each of the former has a right to ask, or that each of the latter must give in their entirety the things which are the object of such obligation. This shall obtain only when the obligation so expressly determines, by being constituted with the character of a solidary obligation.”

Having known the nature of the liability of a partner to third persons, we next inquire as to the extent of such liability. Two theories may arise as to this question. A theory may be advanced that the extent of the joint liability of a partner to a third person is absolute, that is, in paying a debt to a third person because the partnership assets have been exhausted such partner shares equally with all the other partners regardless of the amount of his

contribution to the common fund. Another theory may be advanced to the effect that a partner is liable only to the extent of his contribution to the partnership capital, or in other words, his share is proportional to his contribution.

This liability to third persons who are creditors of the partnership should not be confused with the sharing of losses among the partners. The former is governed by positive provisions of law, while the latter may be determined by the partners among themselves within the limits prescribed by law.

It is believed that the first theory is the sounder of the two for the following reasons:

(1) According to Article 1698 of the Civil Code, which is an affirmation of Article 1137 of the same Code, a partner is liable only jointly and not solidarily for the debts of the partnership. Now, it is a recognized principle of joint obligations (and of solidary obligations, for that matter) that “if from the context of the obligations referred to in the preceding article the contrary is not shown, the credit or *the debt shall be presumed as divided into as many equal parts as there are creditors or debtors*, each part to be considered as a distinct credit or debt from the others.” (Art. 1138, C. C.) From the foregoing provision it can thus be seen that in cases of joint and solidary obligations the presumption of the law is that the debt is divided into as many equal parts as there are debtors and this presumption will give way only when

there is a stipulation to the contrary or where the law otherwise provides. Can it be said then that Article 1698 of the Civil Code which fixes the liability of a partner to a third person has altered the rule enunciated in Article 1138 above cited by providing that a partner's liability is only in proportion to his share? Nowhere from the context of Article 1698 can we find any indication that such is the case.

(2) Turning now to jurisprudence the contention that the first theory is better is further strengthened. But before examining these cases it is best to state a proposition to the following effect: "If it is true, as maintained by the second theory, that the liability of a partner to a third person is only in proportion to his share in the capital, then before such liability can be determined it is essential that his share in the common fund must first be determined." Close examination of this proposition is invited because it forms the basis of the second argument.

Going now to the cases, we find that in the case of *Co-Pitco v. Yulo*, 8 Phil., 544, the plaintiff brought an action against the partners Jaime Palacios and Pedro Yulo for the recovery of a debt owing from their partnership which was engaged in the exploitation of the sugar industry. The Supreme Court held: "The liability is pro-rata and in this case Pedro Yulo is responsible to the plaintiff for only one-half of the debt."

In another case decided (*Dietrich v. Freeman*, 18 Phil., 341) the plaintiff brought an action to recover his salary for services rendered to the partnership with the firm name "Manila Steam Laundry" of which the defendants Freeman and Whitcomb were the partners. The Court held: "There-

fore, by the express provision of Articles 1698 and 1137 of the Civil Code the partners are not liable individually for the entire amount due the plaintiff. The liability is pro rata and in this case the appellant is responsible to the plaintiff for only one-half of the debt."

Of course in both cases the Supreme Court speaks of dividing the debt *pro rata* and the term *pro-rata* is synonymous with the English term "*proportional*". But it is very apparent that the Court does not mean what it says for otherwise it would have first determined the amount contributed by each partner in order to have a basis in apportioning the debt. And nowhere within the four corners of each of the decisions cited do we find any mention or even any attempt to inquire as to the amount of contribution made by each of the partners.

(3) As a concluding argument the following is presented: If the contention that a partner is liable to third persons only in proportion to his contribution of the common fund is accepted, such a doctrine will work prejudice and inconvenience to a third person creditor.

That a contract of civil partnership may be made orally is the rule of Article 1667 of the Civil Code which reads thus: "A civil partnership may be established in any form whatever except when immovable property or real rights are contributed thereto, in which case a public instrument is necessary." Hence, if the contract among the partners is not evidenced by any written instrument, private or public, and a suit is brought by a creditor against the several partners, there is nothing which will prevent a partner from

claiming that his share in the capital is less than that what the other partners allege it to be. The obvious reason for making such a claim is to diminish his liability with respect to the creditor. While this claim is being determined in

the litigation the poor creditor has to wait and he is deprived of the use of his capital not to mention the inconvenience resulting from the delay. On the other hand, if the first theory is adopted no prejudice or inconvenience will result.

HONESTY

“THERE is a vague popular belief that lawyers are necessarily dishonest. I say vague, because when we consider to what confidence and honor are reposed in and conferred upon lawyers by the people, it appears improbable that their impression is common, almost universal. Let no young man choosing the law for a calling for a moment yield to the popular belief—resolve to be honest at all events; and if in your own judgment you cannot be an honest lawyer, resolve to be honest without being a lawyer. Choose some other occupation rather than one in the choosing of which you do, in advance, consent to be a knave.”—
ABRAHAM LINCOLN.