

**DHEN SONG, Plaintiff-Appellee**

**v.**

**BEN FEJERAN, d/b/a BEN'S WHOLESALERS,  
Defendant-Appellant**

**Civil Appeal No. 282**

**Appellate Division of the High Court**

**Northern Mariana Islands District**

**October 27, 1982**

Appeal from a judgment of the Trial Division in which findings were made that business in which parties were involved was not a partnership and therefore plaintiff was entitled to recover certain funds invested by him in the business. The Appellate Division of the High Court, Gianotti, Associate Justice, held that, regardless of what the parties called their arrangement in fact it amounted to a partnership, and therefore judgment of the trial court was reversed.

**1. Partnership—Existence—Generally**

Whether a partnership exists depends upon the intent of the parties.

**2. Partnership—Existence—Particular Cases**

Where facts showed that parties intended to enter into business wherein one party furnished capital and property and the other party ran the business with an intent to share in the profits, this constituted the legal entity of a partnership, regardless of what the parties called their arrangement.

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*Counsel for Appellee:*

FERENZ, WILLIAMS & ASHTON

*Counsel for Appellant:*

CUSHNIE & FITZGERALD

Before BURNETT, *Chief Justice*, NAKAMURA, *Associate Justice*, GIANOTTI, *Associate Justice*

GIANOTTI, *Associate Justice*

This is an appeal from a judgment of the Trial Division of the High Court wherein certain findings were made determining that the business in which appellant and appellee were involved was not a partnership and therefore appellee was entitled to recover certain funds invested by him in the business.

Whether appellee is entitled to recover funds from the business depends on one factor, i.e., the relationship of the parties. If the parties were a partnership as contended by appellant, appellee would not be entitled to recover. If a partnership did not exist as determined by the Trial Court, then recovery was available.

[1] The general rule as to distribution of moneys in a partnership has been stated under 60 Am. Jur. 2d Partnerships section 309, as follows:

In the absence of an agreement which will determine rights as to advances, each partner is a creditor of the firm as to money loaned it and has a right to repayment after the debts to other creditors have been met.

After liability to third persons and firm debts to partners are paid, each partner is entitled to the repayment of the capital contributed by him.

And, whether a partnership existed depends upon the intent of the parties. See *Nichols v. Elkins*, 408 P.2d 34; *Hayes v. Killinger*, 385 P.2d 747.

The contention of the appellee in this case is that no partnership existed; however, at the outset, the appellee filed a complaint alleging a "joint venture." The legal offset of such language denotes partnership. The complaint further alleged that the "profits" of the joint venture were to be divided.

However, after the trial court dismissed the original complaint, appellee filed an amended complaint wherein the allegation of joint venture or partnership was not alleged; however, the allegation as to distribution of "profits" was retained. (See First Amended Complaint, paragraph two, subsection five.) Additionally, the affidavit of the appellee filed in the trial court on April 30, 1976, and made a part of the file, states:

I and Fejeran were to share the *profits* from any such investment. (Affidavit, page 1, lines 25-26, emphasis added.)

The fact that appellee now denies a partnership partially based upon the non-ability of appellee to enter into a business in Saipan as he is not a citizen of the Northern Marianas nor has he ever been, would indicate that this business venture was an attempt to subvert the belief that an alien could not enter into business in the Northern Marianas.

A. Well, that—we are to do a wholesale business here on Saipan, and that I will put up the building, run the business, provide the vehicle for deliveries and hauling cargo from the dock; and he was to put the working capital for the company and that he is supposed to get 60 per cent of the profit, and I was to get 40 per cent.

Q. Did you in fact provide a building?

A. I did.

Q. Did you in fact run a business?

A. I did.

Q. What was the name of that business?

A. Ben's Wholesale.

Q. What was the nature of the business of Ben's Wholesale?

A. To wholesale general merchandise.

Q. Did Mr. Song in fact contribute substantial sums to the business?

A. A few in dollars and mostly in goods.

(*Trial Div. Transcript*, page 9, lines 1–17.)

[2] The fact that the parties, regardless of what they called their business, intended to enter into business wherein appellee furnished capital and property and appellant ran the business with an intent to share in the profits can only constitute one type of legal entity, i.e., partnership.

The requisites of partnership are that the parties must have joined together to carry on a trade or adventure for their common benefit, each contributing property or services and having a community of interest in the profits. *Meehan v. Valentine*, 145 U.S. 611, 12 S. Ct. 972.

A community of interest in the profits of joint ownership in the property, resulting from the union of money and skill, or money and

labor, of two or more persons combined for the purpose of carrying on business constitutes the status of partnership between the the parties. *Garrett v. Harrell*, 146 P.2d 829, citing *Peters v. Fry*, 46 P.2d 358.

The leading case on this question is the case of *Dinkelspeel v. Lewis*, 62 P.2d 296 (Wyo.). This case cites numerous case authorities on pages 298, 299, 300, and 301, holding that an agreement to share in the profits amounts to a partnership. Of particular importance is the case cited on page 300:

If one person advances funds, and another furnishes his personal services and skill in carrying on the business and is to share in the profits, it amounts to a partnership. It would be a valid partnership, notwithstanding the whole capital was in the first instance advanced by one partner, if the other contributed his time and skill to the business, and although his proportion of gain and loss was to be very unequal. It is sufficient that his interest in the profits be not intended as a mere substitute for a commission, or in lieu of brokerage, and that he be received into the association as a merchant and not an agent. *Kelly Island Lime v. Masterson*, 100 Tex. 39, 93 S.W. 427, 430.

It is obvious to the Court that the intent of the parties was to form a partnership to carry on the business agreed upon and to share in the profits. In view of this finding of a partnership, appellee is not entitled to recover any moneys until the debts of the partnership are satisfied.

Judgment is hereby REVERSED.