

Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

MERIAN B. SANTIAGO,  
Petitioner,

G.R. No. 228356

Present:

- versus -

PERALTA, *CJ, Chairman,*  
CAGUIOA, *Working Chairman,*  
REYES, J. JR.,  
LAZARO-JAVIER, and  
LOPEZ, *JJ.*

SPOUSES EDNA L. GARCIA  
AND BAYANI GARCIA,  
Respondents.

Promulgated:

MAR 09 2020

X-----X

DECISION

REYES, J. JR., *J.:*

This Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court assails the Decision<sup>2</sup> dated January 26, 2016 and Resolution<sup>3</sup> dated November 11, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 101908. In dismissing petitioner's appeal, the CA ruled that the contractual relation between the parties is one of investment and, as such, entails risk on the part of the petitioner as investor. Finding petitioner to have invested her money, the CA ruled that she has no cause of action for the return of investment.

<sup>1</sup> Rollo, pp. 3-23.

<sup>2</sup> Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Ricardo R. Rosario and Marie Christine Azcarraga Jacob, concurring; id. at 25-33.

<sup>3</sup> Id. at 35-37.

### Facts

In November 2000, petitioner Merian B. Santiago (Merian) was enticed by respondent Edna L. Garcia (Edna) to invest money in the latter's lending business with a promise of a high return in terms of monthly interest ranging from 5% to 8%. The parties agreed that monthly interest shall be remitted by Edna to Merian and that the principal amount invested shall be returned to Merian upon demand.<sup>4</sup> Neither of the parties, however, presented evidence to show that such agreement was reduced in writing.

Merian began investing several amounts from November 15, 2000 to June 30, 2003, reaching an aggregate amount of ₱1,569,000.00.<sup>5</sup> Edna had remitted to Merian the amount of ₱877,000.00 as interest on said amounts. However, in December 2003, Edna defaulted in remitting to Merian the interest due from said investments. Despite demands, Edna failed to remit the interest to Merian.

Consequently, Merian, through her lawyer, sent a letter dated January 20, 2004 to Edna demanding for the return of Merian's total investment of ₱1,569,000.00.<sup>6</sup> Merian also went to Edna's house where the latter agreed to pay the principal amount invested on a "pay when able" basis. On the same day, Edna paid Merian ₱15,000.00 in cash and ₱5,000.00 in gift cheque, for a total of ₱20,000.00.<sup>7</sup> Merian then signed a receipt prepared by Edna wherein she acknowledged that the ₱20,000.00 constitutes partial payment for the principal amount of ₱1,569,000.00.<sup>8</sup> The acknowledgment receipt<sup>9</sup> reads as follows:

This is to acknowledge receipt from Edna L. Garcia **partial payment from [the] principal** this 18<sup>th</sup> day of January 2004 the amount of [₱]20,000 ([₱]15,000 cash and [₱]5,000 gift cheque)

Signed  
Me-anne Bernardo

[T]otal Principal  
[₱]1,569,000<sup>10</sup> (emphasis supplied)

Because Merian learned that several other persons were likewise taken advantage of by Edna, Merian filed the complaint *a quo* on February 12, 2004, for sum of money with prayer for the issuance of a writ of preliminary attachment against spouses Edna L. Garcia and Bayani Garcia (spouses Garcia). In their Answer, spouses Garcia admitted the facts that

<sup>4</sup> Id. at 5.

<sup>5</sup> Id. at 78.

<sup>6</sup> Id. at 47.

<sup>7</sup> Id. at 6-7.

<sup>8</sup> Id. at 48.

<sup>9</sup> Id.

<sup>10</sup> Id.

Merian was enticed by Edna to invest in her lending business that will yield a high return in terms of monthly interest ranging from 5% to 8%, and that under said investment proposal, it was agreed that the interest earned shall be remitted by Edna to Merian on a monthly basis, while the principal amount shall be returned upon Merian's demand.<sup>11</sup> Nevertheless, spouses Garcia sought for the dismissal of the complaint for lack of cause of action since the amounts given by Merian were investments, not loans.

The Regional Trial Court (RTC) rendered its decision finding that a partnership was formed between Merian and Edna – the former as capitalist partner and the latter as industrial partner. It ruled that a person who invested in a business which incurred losses cannot convert such investment into a loan.<sup>12</sup> As such, the RTC dismissed Merian's complaint, and further ordered the payment of moral damages, attorney's fees, and costs of suit in favor of spouses Garcia.

When Merian's motion for reconsideration was denied, she appealed to the CA.

The CA disagreed with the RTC in its finding that a partnership was formed between Merian and Edna. The CA found that the money was given not as Merian's contribution or share in Edna's capital in the lending business, but as an investment that will earn interest in case of profit. Nevertheless, the CA agreed with the RTC that the complaint lacked cause of action as Merian was without legal right to recover her investment in case of losses, as to what happened to Edna's lending business, since an investment entails business risk. The CA thus affirmed the dismissal of Merian's complaint but deleted the award for moral damages, attorney's fees, and costs of suit.

Merian's motion for partial reconsideration met similar denial from the CA. Thus, this petition.

### **Issue**

The sole issue raised for resolution is whether the CA erred in finding that the contractual relation between Merian and Edna is one of investment which entails the assumption of business risk. Merian maintains that while she agreed to invest or place her money in Edna's lending business, it was their further agreement that the amount so invested will earn interest, and that the principal amount shall be returned to her upon demand.<sup>13</sup>

### **Ruling of the Court**

There is merit in the petition.

---

<sup>11</sup> Id. at 60.

<sup>12</sup> Id. at 81.

<sup>13</sup> Id. at 15.

Y

There is no dispute that Merian invested the total amount of ₱1,569,000.00 as this much was admitted by spouses Garcia in their answer to the complaint.<sup>14</sup> The contention lies as to whether Edna is obligated to return the principal amount to Merian upon demand. In resolving the issue in the negative, the RTC held that a partnership was formed between Merian and Edna; while the CA held that the contractual relation between the parties was neither a partnership nor a contract of loan but was an investment that entailed business risk.

A partnership, a simple contract of loan, and an investment contract carry peculiar definitions and are governed by pertinent laws. The existence of a partnership, simple loan, or an investment contract should not, therefore, be inferred lightly, especially where any of its requisite elements are lacking.

The Court cannot subscribe to the view that Merian and Edna formed a partnership. 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.<sup>15</sup> Partnership is essentially a result of an agreement or a contract, either express or implied, oral or in writing, between two or more persons. Here, there was neither allegation nor proof that Merian and Edna agreed to enter into a partnership for purposes of carrying out the lending business.

There was likewise no agreement for the sharing of profits, only that Merian expects to receive remittance of monthly interest from the amount she invested. At any rate, the receipt by a person of a share of the profits, or of a payment of a contingent amount in case of profits earned, is not a conclusive evidence of partnership. Article (Art.) 1769(3) of the Civil Code provides that “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 from which the returns are derived”.<sup>16</sup> There must be an unmistakable intention to form a partnership which is lacking in

---

<sup>14</sup> Id. at 26.

<sup>15</sup> CIVIL CODE, Article 1767.

<sup>16</sup> Art. 1769. 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 from 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 installments 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.

this case.<sup>17</sup> Most importantly, the facts do not disclose that there is mutual agency between Merian and Edna, that is, neither party alleged that she can bind by her acts the other, and can be bound by the acts of the other in the ordinary course of business.

The facts of the instant case do not support the conclusion that the parties entered into a contract of loan either. By a contract of simple loan, one of the parties delivers to another money upon the condition that the same amount of the same kind and quality shall be paid.<sup>18</sup> A person who receives a loan of money acquires ownership thereof, and is bound to pay to the creditor an equal amount of the same kind and quality.<sup>19</sup> Merian herself testified that Edna did not borrow money from her and Merian consistently alleged that she invested money in Edna's lending business. This is consistent with the fact that Merian gave to Edna money in various amounts and on various dates, in a series of transactions beginning November 15, 2000 to June 30, 2003, for which she earned profits in the form of interest payments.

The facts therefore demonstrate that Edna was engaged in the business of lending and that she solicited funds from Merian which Edna then used to grant loans to other persons. The parties' contemporaneous and subsequent acts reveal their intent to enter into an investment contract in a lending business.<sup>20</sup> Parenthetically, the lending activity conducted by Edna is what the law under Republic Act (R.A.) No. 9474<sup>21</sup> or the Lending Company Act of 2007 presently seeks to regulate. Under R.A. 9474, only corporations with a validly subsisting authority from the Securities and Exchange Commission can engage in the business of granting loans sourced from its own capital funds or from funds coming from not more than nineteen (19) persons. Nevertheless, since R.A. No. 9474 was passed into law only on May 22, 2007, the lending activities of Edna conducted from 2000 to 2003 cannot be considered unlawful.

Having established that the transaction between Merian and Edna is one of investment in a lending business, the question to be addressed is whether Edna is contractually bound to return Merian's capital. Investment

<sup>17</sup> *Obillos, Jr. v. Commissioner of Internal Revenue*, 223 Phil. 650, 654 (1985).

<sup>18</sup> CIVIL CODE, Art. 1933 provides:

Art. 1933. By the contract of loan, one of the parties delivers to another, either something not consumable so that the latter may use the same for a certain time and return it, in which case the contract is called a *commodatum*; or money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid, in which case the contract is simply called a loan or *mutuum*.

*Commodatum* is essentially gratuitous.

Simple loan may be gratuitous or with a stipulation to pay interest.

In *commodatum* the bailor retains the ownership of the thing loaned, while in simple loan, ownership passes to the borrower.

<sup>19</sup> *Id.*, Art. 1953 provides:

Art. 1953. A person who receives a loan of money or any other fungible thing acquires the ownership thereof, and is bound to pay to the creditor an equal amount of the same kind and quality.

<sup>20</sup> *See, id.* at Art. 1371.

<sup>21</sup> AN ACT GOVERNING THE ESTABLISHMENT, OPERATION AND REGULATION OF LENDING COMPANIES.

is ordinarily defined as the placement of capital or lay out of money in a way intended to secure income or profit from its employment. As in all contractual relations, an investment contract is largely governed by the stipulations, clauses, terms, and conditions as the parties may deem convenient, which shall be respected as long as it is not contrary to law, morals, good customs, public order, or public policy.<sup>22</sup> Thus, the parties are free to agree that the investment shall entail the sharing of profits and losses, or otherwise.

In this case, Merian alleged that she and Edna agreed that Merian will be investing capital on the lending business which shall earn a 5% monthly interest; that the capital will be revolving; and that the capital shall be returned upon demand. That Edna agreed to return the principal amount to Merian is further supported by the acknowledgment receipt which Edna herself had written. In said acknowledgment receipt, Edna paid the amount of ₱20,000.00 as “partial payment from the principal” – thus acknowledging her obligation to return the principal amount invested. Notably as well, Edna failed to present countervailing evidence to demonstrate the real agreement between the parties as her husband, who solely participated at the trial, merely denied knowledge of the agreement between Merian and Edna.

Even assuming that the agreement between the parties was that Merian shall bear the risk of losing the principal amount she invested, in case of business loss, there was no allegation nor proof presented that, indeed, Edna’s lending business suffered business loss. The ruling, therefore, that the principal amount should no longer be returned because of Merian’s assumption of risk lacks factual basis.

**WHEREFORE**, the petition is **GRANTED**. The Decision dated January 26, 2016 and the Resolution dated November 11, 2016 of the Court of Appeals are **REVERSED** and **SET ASIDE**. Spouses Edna L. Garcia and Bayani Garcia are **ORDERED** to **PAY** Merian B. Santiago the principal amount of One Million Five Hundred Forty-Nine Thousand Pesos (₱1,549,000.00) with interest at the rate of 12% per annum from January 20, 2004, the date of extrajudicial demand, until June 30, 2013, and at the rate of 6% per annum from July 1, 2013, until full payment.

**SO ORDERED.**

  
**JOSE C. REYES, JR.**  
*Associate Justice*

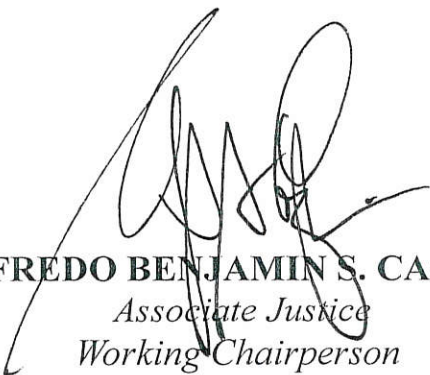
---

<sup>22</sup> CIVIL CODE, Art. 1306.

**WE CONCUR:**



**DIOSDADO M. PERALTA**  
*Chief Justice*  
*Chairperson*



**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*  
*Working Chairperson*



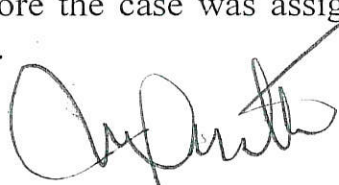
**AMY C. LAZARO-JAVIER**  
*Associate Justice*



**MARION V. LOPEZ**  
*Associate Justice*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**DIOSDADO M. PERALTA**  
*Chief Justice*