IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SUIT NO. 412 OF 1998

IN THE MATTER OF THE PARTNERSHIP ACT CAP. 109 OF THE LAWS OF SAINT VINCENT AND THE GRENADINES

AND

IN THE MATTER OF AN APPLICATION BY ALBERT OLLIVIERRE

BETWEEN:

ALBERT OLLIVIERRE	**APPLICANT**
AND	
AUGUSTINE DE ROCHE	**RESPONDENT**

Appearances: *Mr J. Bayliss Frederick for the applicant.*
Mr A. F. Williams for the respondent.

[1998: November 12]
[1998: December 17]
[1998: December 21]

JUDGMENT

BAPTISTE J.

By notice of motion filed on the 30th September, 1998 the applicant is seeking a declaration that:

(1) the partnership entered into by applicant and the respondent on the 14th July, 1998 was on the 20th July, 1998 dissolved;

(2) the accounts settled by the applicant and the respondent on the 20th July, 1998, do show the monies to which the respondent is entitled.

(3) the arrest and or detention of the "MV Monica L" bears no relationship with the dissolution of the partnership or any dispute arising therefrom.

The application is supported by the affidavit of the applicant sworn to and filed on the 30th of September, 1998. In his affidavit the applicant deposed that he entered into a Partnership Agreement with the respondent on the 14th July, 1998. The object of the partnership being the owning and operating of shipping business, owning and operating the "MV Monica L" and businesses supportive and conducive of the business of cargo carriers, traders and charters.

In paragraph 4 he states:

> "On the 20th July, 1998, Augustine De Roche firmly requested the dissolution of the partnership and that an account be taken to show the earnings, debts and expenses of the partnership with a view to paying to him of such monies as may be found due and owing to him."

The respondent filed an affidavit in response on the 19th October, 1998. He also filed an affidavit on the 2nd of November, 1998, paragraphs 1, 2 and 3 of which state as follows:

"1. There was no Partnership agreement between the Applicant, Mr. Albert Ollivierre and myself.

2. We never discussed the formation of any partnership, nor did we enter into any partnership agreement or sign any partnership document or discuss the dissolution of any partnership, as there was no partnership to be dissolved.

3. The Applicant and I discussed the purchase of a ship with each of us having 32 shares."

According to the affidavit of the respondent filed on October 19, 1998, the ship MV Monica L was bought by the parties for $85,000.00 U.S. The ship was bought in Tortola. A down-payment of $70,000.00 U.S. was made with each party, that's the applicant and respondent, contributing $35,000 U.S. The remaining $15,000.00 U.S. was to be paid by the parties by monthly installments of $1,500.00 U.S. The parties operated the ship, the applicant being the Captain and the respondent, the engineer. The boat started to do profitable business and a joint account was operated in the joint names of the parties into which the takings from the boat were placed. Both parties signed to make withdrawals. The applicant collected the money and supervised the keeping of the accounts.

The question to be decided is whether there was a partnership between the parties. Section 3 subsection (1) of the Partnership Act Cap. 109 of Saint Vincent states that partnership is the relation which exists between persons carrying on a business with a view of profit.

Section 4 states:

> "In determining whether a partnership does or does not exist, regard shall be had to the following rules -
>
> (a) joint tenancy, tenancy in common, joint property, common property or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof;
>
> (b) the sharing of gross returns does not of itself create a partnership, whether the person sharing such returns have or have not a joint or common right or interest in any property from which, or from the use of which, the returns are derived;
>
> (c) 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 the receipt of such a share, or of a payment contingent on or varying with the profits of a

> business, does not of itself make him a partner in the business..."

As stated by the learned authors of Lindley on Partnership, 15th edition, page 73:

> "These rules are, with the exception of the rule that the receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner therein, expressed in a negative form and only state the weight which is to be attached to the facts mentioned in this section when such facts stand alone ...As will appear more clearly hereafter, the main rule to be observed in determining the existence of a partnership ... is that regard must be paid to the true contract and intention of the parties as appearing from the whole facts of the case."
>
> "In considering whether a partnership does or does not exist in any given situation, there should be no automatic assumption that the participants in a joint venture did not intend each to carry on their own separate business". (*See Lindley on Partnership, page 74).*
>
> "The agreement must however be construed as a whole and the mere fact that the parties describe themselves as partners is not conclusive ... If the agreement is not in writing the intention of the parties must be ascertained from their words and conduct." (*Lindley on Partnership, pages 74-75).*

In the instant case no written agreement exists evidencing the partnership contended for by the applicant. Learned counsel for the applicant submitted that a partnership should be implied from the conduct of the parties.

In Lindley on Partnership it is stated at page 134:

> "As partnerships, even for long term of years, often exist without any written agreement, the absence of direct documentary evidence of any agreement for a partnership is entitled to very little weight. As between the alleged partners themselves, the evidence relied on where no written agreement is forthcoming, is their conduct, the mode in which they have dealt with each other..."

The parties' conduct and the mode in which they have dealt with each other can be gleaned from their respective affidavits. It is uncontroverted that the parties bought the Monica L in Tortola for $85,000.00 U.S. They made a down-payment of $70,000.00 U.S. with each party contributing $35,000.00 U.S. They spent $35,000.00 E.C. to upgrade the ship. Of that sum each party contributed $3,000.00 U.S. with the remainder coming from the operation of the boat. Because of early problems with the ship neither party drew any salary for working on the boat until the month of December, 1997. The ship was bought and operated with a view to making a profit. The parties opened a joint account into which was placed the takings from the ship. Both parties signed to make withdrawals.

Differences occurred between the parties concerning the operation of the ship and negotiations took place between them at the instance of the respondent. The negotiations had as its aim the termination of the association between the parties with the respondent paying to the applicant such money as may represent his share or interest in the ship. A sum of money was agreed upon and the respondent was given a deadline to pay. The deadline was extended as the respondent failed to make the payment. Upon the further failure of the respondent to pay pursuant to the extension, the applicant imposed new conditions for selling his interest in the ship. The respondent apparently viewed the initial agreement arrived at as evidencing the termination of the "partnership" and the new conditions imposed as an attempt on the part of the applicant to revive the "partnership".

Before one can speak of the termination of or a reviving of a partnership it has to be found that a partnership existed between the parties. The point to be determined being whether from all the

circumstances of the case an agreement for a partnership ought to be inferred. It has been seen that the mere fact that the parties describe themselves as partners is not conclusive. Furthermore co-ownership of any property does not in itself create a partnership between the co-owners, whether or not they share any profits made by the use of it. The operation of a joint banking account in connection with a business may be some evidence of a partnership but it is certainly not conclusive or even *prima facie* evidence. *(See Lindley on Partnership, page 140).*

> "Part-owners who divide what is obtained by the use or employment of the thing owned are not thereby constituted partners ... part-owners of a ship are not usually partners though they may be partners as well as part-owners either in respect of the ship ... or in respect of its employment." *(Lindley on Partnership page 81).*

It can be difficult to determine whether a particular arrangement as for example, that obtained in the instant case constituted a partnership or was really one of co-ownership. Irrespective of the difficulty the Court has to come to a determination on the matter. In my judgment what exists is a dispute between the part-owners of a ship concerning an agreement for sale of his share or interest in the ship by the respondent to the applicant. Taking into account the conduct of the parties and the mode in which they have dealt with each other, and considering all the circumstances of the case the Court is unable to infer an agreement for a partnership between the parties.

Accordingly, it is ordered that the applicant's motion is dismissed with costs to the respondent to be taxed if not agreed.

Davidson Kelvin Baptiste
High Court Judge (Ag.)