

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number : 2012/36328

In the matter between:

C.: S.

Plaintiff

And

V.: C.

Defendant

DELETE WHICH IS NOT APPLICABLE

- (1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED

Date

Signature

JUDGMENT

BEKKER AJ:

- [1] The main issue to be decided in this matter is whether a universal partnership existed between the Plaintiff and the Defendant and, if so, when it terminated, which assets formed part thereof, what the parties' respective shares in the partnership were, and what form of relief should be granted. By agreement between the parties, the issues relating to merits were separated from those dealing with *quantum*, and the matter proceeded on the former issues only.

BACKGROUND

- [2] The Plaintiff in this matter (“*Sanet*”) was employed as a debtor’s controller at SASCO during 1996. During 1996, when Sanet was in her late 20’s, she formed a love relationship with the Defendant (“*Villet*”), who was operating a delivery services business styled “*Rapidel Deliveries*” at the time, pursuant to a contract he held with SASCO for the transportation of bread rolls.
- [3] During May 1996 Sanet and Villet moved into a residential house situated at [.....], Florida, where they started living as a couple. The house was bought by Villet, and it was registered in his name. According to Sanet, Villet first showed her the house and they then jointly decided on purchasing it. This was disputed by Villet, who testified that he had already made an offer to purchase the house before showing her the house, but he was unable to substantiate this statement.
- [4] Sanet fell pregnant about three months after the parties moved in together. Whilst she was pregnant, Sanet had to drive about 70 km to Midrand every day, where she was seconded to since taking up a more senior position than what she previously held at SASCO’s Erriton Branch. The laborious travelling for hours every day posed a risk of miscarriage to her.
- [5] Sanet testified that she discussed her risk of a miscarriage with Villet, and that they jointly took the decision that she should quit her employment at SASCO. Villet denied knowing about the threat of a miscarriage, but does admit that he then undertook to look after her. Sanet resigned from SASCO during or about October 1996. The proceeds of her provident fund,

amounting to R22 138, was paid into her bank account. Sanet closed this account as soon as these funds ran out, having been utilised towards the maintenance of the joint household.

- [6] Also during the latter half of 1996, SASCO terminated Villet's contract. SASCO having been his main, if not his only customer at the time, this effectively ended Villet's business, leaving him with a 4-ton truck and two bakkies, and without any income. Whether anything was owed on any of these vehicles is unknown. Villet also had a BMW motor vehicle at the time.

FIRST DAIRY

- [7] As a result, neither of the parties had an income during the latter part of 1996. During a visit to Sanet's parents' farm at Randfontein, Sanet's father (Mr Coetzee) realised their financial predicament, and decided to help his daughter get back on her feet. Mr Coetzee proposed to Villet and Sanet that they could move in with Mr Coetzee and his wife at their home on the farm, and that he would help the two of them to start their own dairy business, all at no cost to them. Mr Coetzee thus offered to share his house and his dairy facility and equipment for no consideration at all with Villet and Sanet, and that he would train Villet in the skills necessary to operate a dairy business.
- [8] During the course of these discussions held between Mr Coetzee, Villet and Sanet, Mr Coetzee also told Villet about a plot of approximately 8,5 hectares, immediately adjacent to Mr Coetzee's farm in Randfontein which was for sale, and which would provide additional land for the milk cows to

be kept and to graze on. He also gave Villet advice about, and assisted him with, the buying of milk cows. He stressed in his evidence that he did this for his daughter (Sanet) so that the couple could establish a business and earn an income therefrom.

- [9] At the end of 1996 or the beginning of [...] the parties moved into Sanet's parents' home on the farm, where they stayed free of charge. The house that they previously lived in at [.....] was rented out during this time, thereby providing a passive income for the parties. The adjacent plot was purchased for approximately R20 000, which was apparently financed either by taking a drawing against the access bond facility of the bond over [.....] property, or by the sale of Villet's delivery vehicles, although there was no proof thereof. The cows were evidently bought with Villet's personal funds, whilst the parties had applied Sanet's funds towards the joint household
- [10] During May [...] C. Jr. was born, and obviously immediately became a priority to Sanet. Living with Villet and their baby in her parents' home, Sanet attended to the baby and also handled the financial side of the new dairy business. She also generally assisted with other aspects of the dairy, including at times buying, and driving to collect, feed for the cows. Sanet also raised lay hens, and sold their eggs for a few extra rands.
- [11] Mr Coetzee duly contributed his efforts and shared his dairy facilities and equipment with this start-up venture, and trained Villet as he promised he would. Mr Coetzee testified that he did this for his daughter, as Villet was "*niks van my nie*". During this time, Villet was in charge of the milking of the cows and the processing of the milk in the stables, prior to it being sold.

The milk produced by these cows was sold daily, together with Mr Coetzee's milk production, by Coetzee Dairy to milk distributors. On a day to day basis, Sanet's mother, Mrs Coetzee (who handled the financial side of Mr Coetzee's dairy business) worked out with Villet what the production of the cows milked by Mr Villet was, and then paid the corresponding amount of the money received over, often in cash.

[12] Mr Coetzee testified that had it not been for the contribution that he made on behalf of Sanet, it would have been impossible for the parties to start and to build their business. The assets which Mr Coetzee contributed included the use of his land, his milking stable, a pasteuriser, a homogeniser, a sachet fill-machine, a cold room, his tractors and even his Ford Ranger bakkie. He estimated that, if the machinery and equipment in the business had to be purchased, it would have cost approximately R200 000 (being ten times the value of the plot).

[13] During their time on the farm, whilst conducting the first dairy, neither Villet nor Sanet received a salary. Apart from the income received from the sale of milk, they received the rental from the [.....] property, and a small additional income from the sale of eggs from Sanet's lay hens. Some of their income was received in the form of cash, whilst other moneys were paid into the bank account held in Villet's name, as this was the only account which the parties had. The parties both conducted and utilised this account for their household expenses and for the dairy business, in developing and expanding it.

- [14] During 1998 the first dairy had grown to the extent that, when an opportunity presented to hire a shop in Newlands (which was better located than the existing milk depot in Newlands which they supplied), the parties rented the shop, in order to sell their milk directly to the public. The purchase of the shop itself was financed by means of a second bond taken on the [.....] property, the instalments of which were always paid from the joint bank account. The parties therefore moved back from the farm into their house at [.....].
- [15] The day-to-day running and all the duties at the Newlands milk shop fell mainly on Sanet, who worked there seven days a week. She would start her day by first collecting milk from farmers' dairies in the small hours of the morning, and would then drive from Randfontein to Newlands to open the shop early in the morning. Not being able to look properly after her son (who was then about three years old) whilst fully occupied with the running of the shop, the boy frequently stayed with his grandparents on the farm. There his grandparents raised him and taught him farm life – Mr Coetzee summed it up saying that the boy practically grew up sitting on his lap on the tractor.
- [16] Whilst Sanet regretted not having more time to spend with her son, she testified that she and Villet were busy building their lives, and they wanted to make a success of their business. They made many sacrifices in their lives in their endeavour to achieve something with their business. During this period, Sanet also attended a yoghurt making course, and subsequently a feta cheese making course, which knowledge and skills she applied

personally in the dairy business, also transferring these skills to the employees.

- [17] Villet remained concerned with the performing the milking operations on the farm and delivering it to the Newlands shop, for about a year after the Newlands shop was opened. The parties then decided to sell the cows that were kept on the farm to henceforth concentrate on buying milk in and selling it directly to the public. The money received from the sale of the cows was invested back into the business – a bakkie was *inter alia* purchased for the Newlands shop from these proceeds.

- [18] Villet generally assisted Sanet in the running of the Newlands shop, although it is not too clear what role exactly he played therein. What is clear, however, is that Villet was, throughout the parties' relationship, passionately involved with the sport of wrestling in South Africa. He very often left Sanet to run the business whilst he went off to attend wrestling conventions, meetings and other events. This often occurred over weekends, but sometimes extended to more than a week at a time, both nationally and internationally. Villet failed to disclose documents and particulars relating to his wrestling schedule over the relevant years, despite being challenged to do so.

- [19] The income that was earned from the sale of milk through the Newlands shop was paid into the common bank account held in Villet's name, which was utilised freely by the parties. Neither of the parties ever drew a salary from the business, but both of them took cash out of the business and out of the common bank account as and when they needed money.

- [20] The Newlands shop, and accordingly the business as it presented at that time, traded under the name "*Chanet Dairy*", being a combination of the first part of Villet's name and the last part of Sanet's name. For what it may be worth, this trade name was probably the only outward indication given that the business conducted by the parties might be a partnership. The business has traded ever since as Chanet Dairy, and does so to this day.

SALE OF THE NEWLANDS SHOP

- [21] During 2002 the parties accepted an offer for the sale of the Newlands shop, and decided to sell the shop. The purchase price received therefor (R620 000 to R640 000, according to Villet) was paid into the access bond over [.....]. Having sold the shop, they lived off the proceeds of the sale, enjoying the fruits of their labour of the previous few years, until the funds in the account were depleted.

- [22] After about a year Sanet managed to obtain employment at Creative Stationery (trading as Cardies) at a salary of approximately R5 000 per month, which was paid into the common bank account. This salary was sufficient to maintain herself, Villet and their child. For his part, Villet started doing some vehicle repossession work together with friends of his. Villet's share of the income received from the financial institutions varied between about R4 000 per month to about R18 000 per month.

THE SECOND DAIRY

- [23] Having used up the money which they received from the sale of the Newlands shop and having no income, the parties resolved to start a dairy business afresh (*"the second dairy"*). During a visit to the farm, they asked Mr Coetzee whether they could return to the farm to start the dairy business again, and he obliged, undertaking to again assist them to do so. As the parties had no money left to pay for milk cows, Mr Coetzee agreed to stand surety for the loan which they needed to take out in order to finance the purchase price for the cows. Mr Coetzee therefore signed as a surety, putting up his own cows up as security for the loan to the bank. Mr Coetzee stated that, had it not been for his assistance, Sanet and Villet could not have commenced the second dairy business.
- [24] At the commencement of the second dairy, Villet attended to the milking of the cows on the farm whilst Sanet remained employed by Cardies. Approximately a year later (during 2005) the second dairy had grown to such an extent that Sanet could afford to resign from Cardies, which she did to enable her to work in the second dairy. The milk which was produced during the second dairy period was sold and distributed by the parties under the trade name Chanet Dairy, and was handled separately from the milk sold by Mr Coetzee under his trade name, Coetzee Melkery.
- [25] Sanet's duties in the second dairy essentially entailed obtaining orders from clients and processing invoices, on a full-time basis. In addition, she often assisted with the filling of bottles and sachets. She also learnt, during this time, to pasteurise and homogenise the milk, with which she assisted Villet. To enable the collection and distribution of milk, the business purchased

and financed a 4-ton Isuzu truck and a Kia bakkie. The vehicles were registered in Villet's name, as the bank account was in his name. Both Sanet and Villet at times drove around collecting milk from other farmers on buy-ins, before this job which was given to a driver.

- [26] The business did very well, and parties earned good money. Mr Coetzee's evidence was that the parties started the second dairy business together and that they conducted and operated their business together. He testified that Sanet was at all times part of the discussions regarding the business, and that he certainly saw Sanet as a partner in the business.

THE FACTORY

- [27] The second dairy business kept growing to the extent that Mr Coetzee's machinery and equipment no longer had the capacity to handle the volume of milk which was produced by Chanet Dairy. The parties therefore decided to look for larger premises in order to accommodate and develop their milk processing activities. They decided to stop milking, and instead to focus on processing milk and supplying it from the factory. They would therefore sell their cows and apply the proceeds thereof in the factory.
- [28] Having found certain factory premises in Florida, which included the stand on which it was built, they moved the business from the farm to Florida during or about 2007. When Sanet's Liberty Life policy, which was paid from the common account, was cancelled during 2006, the proceeds thereof in the sum of R23 946,89 was paid into the account, and used for the parties' living expenses and for the business conducted at the factory.

- [29] Sanet, for all intents and purposes, managed the factory. She started daily at 05h00, checking that the drivers had loaded the correct product for delivery. She would then open the factory at 09h00 and would start phoning clients to take orders, which she processed by drawing invoices and loading sheets - often she would also contact suppliers. As the orders came in, Sanet would instruct the employees at the factory about what quantities and types of product have to be packed. The factory ran for seven days a week – this meant that Sanet never took any weekend off, nor did she take any holiday, apart from the few days that the factory closed over Christmas and New Year.
- [30] This was Sanet's lot for some five years, which obviously made it very difficult for her to spend meaningful time with her son. But she and Villet were building up the business, and she was quite prepared to make these sacrifices. She kept a record of the cash sales of milk at the factory, which exceeded R1,1 million for the 2010 year, which income was not reflected on, and did not form part of, the financial statements prepared for the business by its accountant, Mr Basson.
- [31] Villet was not as involved as Sanet in the day-to-day running of the factory, and his duties mainly entailed attending to the mechanical side of the business, fixing machines and trucks whenever the need arose, and generally lending a hand. He was, however, still very often away on wrestling events which was indisputably a priority to him. If help was required whenever a problem arose at the business in Villet's absence, Sanet would simply call a technician out to fix it.

TERMINATION OF THE RELATIONSHIP

[32] At the beginning of 2010 Sanet learned that Villet was having a personal relationship with another woman, Mrs O. Sanet came to realise that Villet would not give this up, and contemplated terminating her personal relationship with him. Sanet nevertheless continued staying with Villet and working full-time in the business because, according to her, they had the business together. An opportunity arose during the beginning of 2012, when a prospective purchaser showed an interest in purchasing the factory as a going concern. The parties thereupon jointly prepared a written offer for the sale of the whole of the Chanet Dairy business, the offer to be held open for acceptance until the end of February 2012.

[33] Sanet testified that she and Villet jointly agreed on the assets which belonged to the business and which would form part of the sale, together with the agreed values, which appear on this list of assets (Bundle A, pages 230-231). Villet agreed that all the assets appearing on the list (*"the assets list"*) were all assets of the dairy, but contended that some of these values were inflated, although he was unable to indicate any item of which the value was allegedly inflated, and his evidence to this effect had no substance.

[34] As appears from the assets list, the business was possessed at the time of various assets, which included the immovable property from which the factory was conducted, to the value of slightly over R6 million. The draft sale agreement reflects that the total consideration sought for the business as a going concern was R11,5 million. Sanet testified that the list of assets

was carefully drawn and considered by Villet and herself, and that they both considered the value of some R6 million to comprise a fair reflection of what the assets alone were in fact worth.

[35] In this regard, she fairly volunteered that the total consideration sought for the business as a going concern of R11,5 million may have been too high. Importantly, Sanet testified that at the time that the sale of the business was contemplated and discussed by her and Villet, they agreed that all creditors would first be paid and that the surplus of the sale proceeds would then be divided equally between them.

[36] The offer was however not accepted, and absent any counter-offer the proposed sale fell through. That is when Sanet decided to walk out. At the end of March 2012 Sanet left the common home and discontinued her involvement at the factory, from which she was promptly banned, for no apparent reason - Villet confirmed that he refused Sanet access to the factory. When she left, Villet agreed to pay Sanet R15 000 per month for a period of three years, to give her the Toyota Prado vehicle and to transfer the plot in Randfontein to her.

[37] However, he never complied with any part of this undertaking. Instead, he adjusted his undertaking downwards, promising to pay her R8 000 per month for a period of three years. This he did only for six months, and then stopped paying. He has also not paid her anything else since. Sanet did not originally, in the early correspondence addressed by her attorneys of record, claim that a universal partnership existed; such a claim was made only later. Villet sought to make much of this point in his evidence.

THE PLAINTIFF'S CLAIM

[38] At the beginning of October 2012, Sanet instituted this action against Villet, in which she claims for an order declaring that a partnership existed between them in equal shares in respect of the partnership's business and assets, an order dissolving the partnership as from 31 March 2012, an order for the appointment of a liquidator and for ancillary relief.

[39] Villet alleged in his Plea that the parties had never agreed that the dairy business would be for their joint benefit, and that at all material times the business was operated and managed by himself, for his own account. He amplified that Sanet *"would on occasion render services to the dairy business, for which the Plaintiff received consideration for her services"*. By denying the existence of a universal partnership, he accordingly denied that the partnership contended for had any assets, and claimed that all the assets were his exclusive personal assets.

EVALUATION

[40] When the respective contributions made the parties to the business is considered, the evidence is overwhelming that they both contributed all their efforts, funds and income in order to commence and further the dairy business jointly. Nevertheless, they never had an express discussion about their position as partners in the partnership. Not only was Sanet Villet's life partner in their personal relationship and the mother of their child, she made a major contribution to the business. For years on end she started very early in the morning, working long hours every single day of the week,

seven days a week. I have already referred above to the functions which she fulfilled at each of the stages of the business, from which her managing, administrative and bookkeeping contribution to the business is plainly evident.

[41] Sanet was not challenged during cross-examination on the basis that she failed to contribute to the business; instead Villet contended that he realised afterwards that her contribution to the business was in fact a negative one, in that she had mismanaged her bookkeeping functions. In this regard, it was put to her that the financial records which she kept were incomplete, that not all moneys were accounted for and that not all creditors were recorded. However, neither Villet nor the accountant Basson was able to adduce any substantiation therefore, and ultimately this whole challenge proved to be completely unfounded.

[42] As Villet himself evidently had no real clue throughout the course of all these years what the financials of the business comprised (all of it having been handled by Sanet), he was not in a position to testify about the status, cogency or completeness of the records kept by Sanet. To fill this void, Villet adduced the evidence of the accountant of the business, being Mr Basson. Basson, however, showed himself in court to be completely inept at proper bookkeeping, and he was necessitated to concede that there were various major errors in the financials which he drew for the business. In short, the financial statements he drew were a mess.

[43] His evidence that Chanet Dairy was, at times, not profitable, was without any basis or foundation, particularly in so far as he conceded that his

financials did not include the cash received from the milk sales that Sanet testified about. He also conceded that whenever he asked Sanet to provide financial and other business information, she would always provide it to him. Taking everything into account, I am completely unpersuaded by Villet's purported attack on the quality of the financial records kept by Sanet.

[44] When originally Sanet resigned from SASCO, her provident fund moneys which were paid out was used to contribute to the household and to the new venture, being the first dairy. This was common cause. After the provident fund moneys were depleted in Sanet's bank account (probably at the end of 1996), she discontinued using the account and eventually closed it. From then onwards, in other words from the time of commencing the first dairy, the parties both utilised Villet's bank account on which Sanet had signing powers, and from which they both drew moneys as and when required.

[45] All further amounts which were subsequently paid to Sanet, including the insurance pay-out for Sanet's car and the salary which she earned whilst working at Cardies, was paid into the common bank account. To amplify, Mr Coetzee testified that he received R14 000 from the insurance company for Sanet's car, and that he and his wife contributed a few thousand rand of their own funds thereto, paying the amount of R30 000 to Sanet by paying it into the common bank account during 2008. Also, Sanet had taken out an insurance policy during 1993, the premiums of which were paid from at least [...] out of the common bank account. Upon the policy being cancelled in 2006, the proceeds of R22 138 was paid into the common bank account

and, like all other money paid into this account, was subsequently utilised by the parties towards the business and for their living expenses.

[46] The only indirect reference to Sanet in the documentation of the business is to be found in the name of the business, Chanet Dairy. Whilst she was described as an employee of the business in a CCMA matter, Sanet was never paid a salary and was never reflected as an employee for purposes of Workmen's Compensation. It is further evident that Sanet never had a specific job description or title, despite being described by Villet in certain formal documentation as his "*personal assistant*" and also as an "*office administrator*". Villet kept stressing this aspect, and he showed that she was never reflected as a partner on any writing.

[47] Sanet was however never concerned with how her position was described in the venture; her attitude was always that it was their venture, which they had jointly built up. She was quite happy that all of the accounts and assets were in Villet's name (as the common bank account was in his name) and that he was described on some documentation as the "*owner*". Like Villet, she never drew a salary, but both of them at all times had free access to the common bank account which she, Villet and the business utilised.

[48] Villet called three witnesses, namely Basson the accountant, one Ms van Schalkwyk who Villet dealt with at the bank, and Villet's friend, Mr Larkin, an attorney. The purpose of calling them was apparently for them to testify, as they did, that they had known Villet during this time, and that they did not know, were never told, and never formed the impression, that Sanet was a partner in the business. But not one of these witnesses

had ever specifically enquired about the position, they were simply not interested. The most that can be made of this evidence is that Villet himself never discussed with any of these witnesses whether Sanet was a partner, or not.

[49] Sanet also testified that she was consulted by Villet on all major financial decisions, such as the borrowing of money. This was denied by Villet, who testified that these decisions were always only his own. I find this highly improbable, as Villet never dealt with the financial side of the business and therefore had no proper grasp of its financial position. On the probabilities, I find that Villet would have needed to, and that he did, consult with Sanet on all of the major business decisions. The decision to sell the business at the beginning of 2012 was, in my view, similarly jointly taken, and I accept Sanet's evidence to the effect that the parties had reached an agreement to sell the business, that all creditors would be paid from the proceeds, and then to divide the balance of the proceeds between them equally.

[50] Sanet made a very good impression as a witness on the Court. She gave her evidence in an unemotional and calm manner, and answered all the questions put to her fairly, without ever creating the impression that she was not being open, honest and frank, or that she was evasive. After testifying, she sat quietly and impassively in Court for the duration of the trial, appearing rather forlorn. But when Villet testified that he never intended marrying her (this despite having been engaged to Sanet), her eyes shot full of tears, her mouth fell open and she shook her head in disbelief. It

appeared to me that this was the first time ever that she heard this being said.

[51] It must be emphasised that Sanet worked extremely hard at building up the dairy business. For most of the 16 years that her personal and business relationship with Villet endured, she did what very few other women would be prepared to do – driving out to farmers' dairies around Randfontein before sunrise to collect milk for the shop, or at the time of the factory, arriving at 05h00 to check that the drivers had loaded the correct product for delivery. In all those years, she worked seven days a week, not taking a weekend off or going on holiday (except for the few days between Christmas and over New Year, when the factory closed).

[52] She had always taken proper charge of the administration and bookkeeping of the business and handled all the cash and other payments that were made. The question marks that Villet tried to raise against the manner in which these functions were performed lacked any substance and did not amount to anything. The evidence did not disclose anything other than that all the bankable income of the dairy business was paid into the common bank account, and that it was commonly utilised by the parties for their joint household and for all the expenses of the business.

[53] Sanet's personal funds having merged with Villet's funds in his bank account at a very early stage of their relationship, there was no distinction to be drawn between Sanet's personal funds in the common bank account, and that of Villet. I am fully persuaded that Sanet had always, and for good

reason, accepted that the business which they were building up over the years was hers as much as it was Villet's, and that they shared in it equally.

[54] Mr Coetzee, similarly, made a very good impression on the Court. He presented as an honest and hard-working man, who twice made his house, his farm and his dairy facility available to his daughter when she was in a predicament, in order to help her get back on her feet. Whilst he never specifically enquired what exactly the arrangement between Sanet and Villet was, as he felt that this was their business, he certainly understood that they were starting and building up the business for their joint benefit. He also testified that he always intended that the contribution that he made was in order to assist and support his daughter.

[55] Villet, on the other hand, did not make a good impression on the Court. He was initially very confident and glib in giving his evidence, but this soon waned during cross-examination. The documentary evidence and records which he produced and sought to rely on were notably incomplete, questionable and deficient, and did not stand up to any degree of scrutiny. He was often embarrassed by the documents which he sought to rely on, notably by the financial statements which he sought to introduce through Mr Basson and the list of alleged current creditors of the business which he produced (which, incidentally, reflects a loan from Mrs O in an amount of just over R300 000). Various other relevant documents he refused to produce.

[56] Villet was often evasive in giving evidence, giving irrelevant and confusing answers, and even refusing to answer a number of questions. He also often

behaved awkwardly in the witness box - once complaining quite emotionally to the Court that copies were taken of certain bank accounts and other documents (which he was requested to produce) by the Plaintiff's representatives over lunch time, and pleading with the Court for these documents to be returned to him. A number of documents and records that he was required to produce were never produced, and he refused to answer questions on some of the other documents. On another occasion, he started crying under cross-examination when he was in a corner, pressed for an explanation.

[57] Throughout his evidence, Villet was at pains to try and demonstrate that it was always just his own business, and that Sanet allegedly always simply understood it that way. The gist of his evidence was that he allowed Sanet to work for him in his business during all these years (despite never intending to marry her) and that she was completely happy with this situation. Despite describing Sanet as an employee on some official documents, he never paid her any salary during this whole period, and according to him she was satisfied simply being able to draw money out of the common bank account, to order to meet the household expenses and her few personal expenses.

[58] Villet was unmoved by the very long hours that Sanet worked, the difficult nature of the work, particularly for a woman, or by the fact that she had to work seven days a week. To him, she was his "*fiancé*", his "*meisie*", and he stated that this is simply what a wife is expected to do. His involvement in the sport of wrestling, including the numerous times that he spent time away

from the farm, the Newlands shop and the factory whilst pursuing his involvement in wrestling nationally and internationally, whilst Sanet was working away in their business, did and does not appear to concern him. As mentioned, his case at the trial was that Sanet's contribution to the partnership was in fact a negative contribution, but all his attempts at finding fault with Sanet's bookkeeping and other functions were unfounded.

[59] Villet's version is even more improbable if one considers that, according to the evidence that he gave in Court, he never intended marrying Sanet. It is noteworthy in this regard that, after Sanet ended her personal relationship with Villet, she nevertheless stayed on and continued working in the business, which demonstrates that her interest in the business continued even after her personal relationship with Villet ended. It is difficult to draw any other inference therefrom than that Sanet had an interest in the business which she wished to protect. However, when the proposed sale of the business failed to materialise during February 2012, and with her personal relationship with Villet at an end, she moved out of their common home and stopped working at the factory. That is when Villet responded by refusing her access to the factory premises.

[60] Having regard to all of the above evidence, I accept the Sanet's version of the events on a balance of probabilities and I reject the Villet's version to the extent that it is conflict with her version. I further find that Villet has not been truthful in his evidence, and that he was not a credible witness in these proceedings.

FINDINGS ON A PARTNERSHIP

- [61] It is trite law that the *essentialia* of a partnership comprises that each party should contribute something to the partnership, whether it be money, labour or skill, and that the business should be carried on for the joint benefit of the parties, with the object of making a profit. It is in the essence of a partnership that two or more parties have the intention to share in the profits generated by their joint activity. The same principles apply with equal force to a universal partnership ¹.
- [62] The type of partnership that the Plaintiff contends for is a *societas universorum quae ex quaestu veniunt*. Such a partnership will be found to exist where the parties expressly or tacitly agree that all which they acquired during the existence of the partnership from every kind of commercial undertaking would constitute partnership property. This characteristic distinguishes it from a *societas universorum bonorum*, in terms of which parties typically agree to contribute all their property, present and future, in common.
- [63] It is further trite law that a universal partnership does not require, for its formation, an express agreement. It may be found to have come into existence by tacit agreement, by having regard to the manner in which the parties conducted themselves, and by employing the usual civil standard of a balance of probabilities. It was clearly stated in the **Mühlmann v Mühlmann** decision ² that the true enquiry is simply whether it is more probable than not that a tacit agreement had been reached - the Appellate Division held that it was not correct that such an agreement should be

¹ 1981(4) SA 632 (W)

² *supra*, at 634G

consistent with no other reasonable interpretation of the parties' conduct. The Court also held that whilst it is well-known that many wives work in the businesses of their husbands, 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 ³.

[64] The facts of the present matter have some aspects in common with the well-known decision in **Fink v Fink** ⁴. The **Fink** case also arose from a dairy business which was commenced and conducted jointly between the parties, except that the Finks were married, albeit out of community of property, without accrual. The Court considered that the parties contributed their money, property, labour, services and skill to the joint venture or partnership and that they pooled their joint efforts and resources, and that at the time of their divorce it constituted a substantial milk producing dairy business.

[65] I have also considered the decision in **Butters v Mncora** ⁵, in which matter the parties were also engaged but unmarried, having lived together as husband and wife for some 20 years, and had also never expressly discussed the issue of a partnership between them. In contra-distinction to the facts in the present matter, Ms Mncora did not actively assist in the business, but remained at home looking after the children and paying the household expenses with money provided by Mr Butters. Nevertheless, the Supreme Court of Appeal considered that on the facts to have been her

³ at 635B

⁴ 1945 WLD 226

⁵ 2012(4) SA 1 (SCA)

contribution. The SCA further held that where the partnership enterprise extends beyond commercial undertakings, the contribution of both parties need not be confined to a profit-making entity.

[66] Taking all of the foregoing into account, I conclude that a universal partnership did in fact exist between Sanet and Villet, and that it constituted a *societas universorum quae ex quaestu veniunt*. From the evidence before me of the manner in which the parties conducted themselves, I find that this partnership was entered into tacitly. I find that the partnership commenced when the parties accepted Mr Coetzee's offer to start a dairy business on his farm during the latter part of 1996. The partnership terminated and dissolved when Sanet left the common home at the end of March 2012 and discontinued her involvement at the factory.

[67] Regarding the percentage share held by each party in the partnership, I considered the contribution that each party made in terms of finances, skill, effort and time. As I mentioned above, I accept that the substantial contribution which Mr Coetzee made to assist his daughter, without which none of this would have been possible, is to be regarded as Sanet's contribution. Whilst she, in my assessment, contributed more than Villet did towards the partnership, I would fix their respective contributions at 50% each, in accordance with Sanet's evidence that this was always the understanding. I will now turn to a consideration of the assets which comprised assets of the partnership, and how these should be dealt with.

ASSETS

- [68] The house at [.....] was purchased by Villet at the commencement of the parties' cohabitation by means of 100% bond taken over the property in the amount of R249 000. The bond was thereafter paid off whilst the parties were living and working together, and from the income earned by the business that they conducted. By virtue of Villet having drawn against the access facility on this bond, and having taken out further bonds on the [.....] property during the various stages of the business, the amount of the bond liability increased over time to in excess of R1 million.
- [69] Mainly because the bond on this house was always paid from the income of the business, and because they used the house as their residential home, (save for a period of approximately one year when they went to live on the farm in order to conduct the first dairy) I find that this house formed part of the partnership assets. Over time, the parties furnished, decorated and generally improved the house. It was their main residential home.
- [70] The purchase of the cows for the first dairy may have been purchased with Villet's funds, although Villet did not disclose any documentary evidence in support thereof. She contributed what was left of her salary, as well as the proceeds from the SASCO Provident Fund towards meeting various expenses of both the household and the first dairy. In addition, it may be regarded as her contribution that the parties were able to stay for free with Sanet's parents and that Mr Coetzee made his whole farm, his dairy facilities and his skill and experience available to them.
- [71] The Randfontein plot, which was purchased at the commencement of the first dairy, deserves special mention. The Randfontein plot was clearly an

asset of the partnership, and it enabled the cows kept by both Mr Coetzee and by the partnership to graze on the adjoining land. The parties' son, C. Jr., grew up on the farm and learnt about dairy farming from his grandfather. By all accounts, dairy farming is the only occupational skill that he possesses, largely being the result of the circumstances under which he grew up. He currently still lives with his grandparents, and works on the farm and in the dairy with Mr Coetzee. The additional grazing provided by the Randfontein plot has been incorporated into the dairy operation.

[72] In order to finance the purchase of the equipment for the Newlands shop, a further bond was taken on [.....], whilst the income of the shop was utilised towards the payment of rental for the premises. Irrespective of what was spent by the parties on the Newlands shop, what they eventually earned from the sale thereof was paid into the common bank account held in Villet's name. Both parties thereupon lived off the proceeds of the sale until it was depleted. The parties were then left with the bonded property at [.....] and the amount of about R40 000 which they obtained by refinancing the BMW vehicle, which was registered in Villet's name, to Sanet. As far as the parties' initial financial contributions are therefore concerned, at this point in time (before the second dairy was commenced) this was cancelled out.

[73] Bearing these considerations in mind, I am of the few that fairness dictates that the Randfontein plot, whilst being an asset of the partnership, should not be liquidated together with the other partnership assets, but that a 50% interest therein should be transferred by Villet into Sanet's name. This

should provide some safeguard to C. Jr's interests, in that Sanet's consent would be required for any sale thereof.

[74] Apart from the aforementioned assets, two luxury vehicles, a 2004 model Mercedes Benz CLK Cab and a 2008 model Toyota Prado VX AT vehicle were purchased during 2008 by Villet, of which Sanet utilised the Prado and Villet the Mercedes. Regardless of the fact that these vehicles were registered in Villet's name, as the other assets of the partnership were, the instalments on these vehicles were always paid from the partnership's income. As Sanet always drove the Prado vehicle whilst Villet drove the Mercedes, I consider it to be fair that Villet be ordered to register the Prado in Sanet's name, and to keep the Mercedes.

[75] During 2008, the parties purchased another house in Goldman Street, situated at [...], for the purpose of renting it out for a profit during the 2010 Soccer World Cup, which was typically registered in Villet's name. The bond on the [...] property was, similarly, always serviced by the income of the partnership, which was, at that stage, conducting the factory. Because the partnership paid fully for the [...] property as a result of the personal contribution of both parties through the partnership, and because it was bought to earn a profit therefrom for the parties, I consider it also to comprise an asset of the partnership.

[76] There is no doubt that the dairy business conducted by the partnership eventually culminated in their purchasing of the factory. The purchase of the factory, which is situated at 25 Fourth Avenue, Florida, included the land on which the factory was built, as well as the machinery, equipment and

facilities from which the parties processed, packaged and marketed their dairy products. As mentioned above, the assets of the factory are correctly recorded on the assets list (at Bundle A, pp. 230-231), to which should be added the profits earned by the business for the year ending on 31 March 2012. Whilst the purchase of the factory was financed by means of a personal loan in Villet's name, the house at [.....] was put up as security for the loan.

[77] Having taken everything into account, I find that Sanet had proved the existence of the universal partnership that she claimed existed, on a balance of probabilities. She also proved that the partnership had assets, which assets formed part thereof, and that **the** parties had an equal share therein. I therefore find that she successful in this action, and in accordance with the normal principle of costs following the result, I hold that Villet should pay her costs. Having regard to Villet's dishonourable conduct towards Sanet, I would certainly have considered granting costs against him on the attorney-and-client scale, had that been requested by the Plaintiff.

ORDER

[78] In the result, I make the following order:

1. It is declared that a universal partnership existed between the Plaintiff and the Defendant, and that each of the parties held a 50% interest in such partnership.

2. It is declared that the partnership was dissolved with effect from 31 March 2012 (*“the date of dissolution”*).
3. It is declared that the following assets formed part of the partnership as at the date of dissolution thereof:
 - 3.1 the Randfontein plot;
 - 3.2 the dairy business of the partnership styled Chanet Dairy, as conducted at 25, 4th Avenue, Florida, inclusive of:
 - 3.2.1 the movable and immovable assets of the dairy business which appear on the list of assets (on pp. 230-231 of the Plaintiff’s discovery bundle ‘A’);
 - 3.2.2 the profits earned by the dairy business for a period of twelve months preceding the date of dissolution;
 - 3.2.3 the goodwill of the dairy business as at the date of dissolution;
 - 3.3 the immovable property situated at [.....], Florida;
 - 3.4 the immovable property situated at [....], Florida;
 - 3.5 the Toyota Prado VX AT motor vehicle; and
 - 3.6 the Mercedes Benz CLK 500 Cab vehicle.
4. The said partnership assets are to be dealt with as follows:
 - 4.1 The Defendant is ordered to take all steps necessary to transfer a 50% share in the Randfontein plot into the Plaintiff’s name, in order to procure that the Plaintiff is

duly reflected as the co-owner thereof, holding an undivided 50% interest therein.

- 4.2 The Defendant is ordered to pay 50% of the value of the dairy business, calculated as at 31 March 2012, to the Plaintiff. In this regard, the value of the dairy business is to be determined by having regard *inter alia* to:

4.2.1 all the assets listed on the assets list (Bundle 'A', pp. 230-231); and

4.2.2 the actual profit earned by the dairy business for the year ended 31 March 2012 of R550 239,79 as reflected on the financial statements of Chanut Dairy, plus the cash received from milk sales for the 2012 financial year which were not taken into account in the said financial statements, and which are recorded on the '*Winkelverkope*' list (Bundle "A", p.181);

4.2.3 the goodwill of the dairy business, as a going concern, calculated as at date of dissolution.

- 4.3 The Defendant is ordered to take all steps necessary to effect transfer to the Plaintiff or her nominee of the property situated at [.....], Florida, against and subject to the Plaintiff or her nominee obtaining a bond on the property for 50% of the amount which was owing on the bond as at the date of dissolution. In the event of the Plaintiff or her nominee failing to obtain such a bond within one month from date of this order, the Defendant is ordered to pay to the Plaintiff 50% of the reasonable market value of the said property, calculated as at the date of dissolution;

- 4.4 The Defendant is ordered to pay to the Plaintiff 50% of the reasonable market value of the property situated at [...], Florida, calculated as at the date of dissolution;
 - 4.5 The Defendant is ordered to deliver, and to transfer possession and control of, the Toyota Prado vehicle to the Plaintiff within one week from the date of this order, and to effect transfer of ownership of the said vehicle to the Plaintiff within three weeks of the date of this order.
 - 4.6 The Defendant will be entitled to retain the Mercedes Benz vehicle as his own, without reference to the Plaintiff.
5. It is further declared that the Plaintiff is entitled to payment of 25% of the profits of the dairy business, which were earned by the dairy business as from the date of dissolution to the date of this order. For purposes of calculating such 25% share of the profits:
- 5.1 any amounts which were expended by the Defendant in relation to this action do not constitute debts of the partnership, and are to be disregarded for purposes of calculating the partnership's profits;
 - 5.2 the Defendant is ordered to make full and disclosure to the Plaintiff, within one week of the date of this of this order, of all financial information and records, bank statements and other relevant documentation relating to the dairy business, from the date of dissolution to the date of this order, supported by all underlying documentation and records, and accompanied by a calculation of what he contends the profits of the dairy business comprised since the date of dissolution.
6. The respective values of:

- 6.1 the dairy business (in 3.2 and 4.2 above);
- 6.2 the [.....] property (in 3.3 and 4.3 above);
- 6.3 the [....] property (in 3.4 and 4.4 above); and
- 6.4 the profits and goodwill of the dairy business (in 3.2.2, 3.2.3 and 5 above);

will be determined either by agreement between the parties, to be reached within one month of the date of this order, or failing agreement being reached, by a valuer to be appointed by the parties within a period of two weeks thereafter. Should the parties fail to reach agreement on the appointment of a valuer within such two week period, either of them may approach the South African Council for the Property Valuers Profession to appoint a suitable valuer in order to perform a valuation of such assets. The Defendant will make payment to the Plaintiff of the amounts as determined within two weeks of the date of determination.

- 7. Pending effect being given to the foregoing, the Defendant may not encumber, dissipate or sell any of the assets of the partnership, nor may he deal with them in any manner which would expose them to the risk of loss or damage.
- 8. The Defendant is ordered to pay the Plaintiff's costs of the action.

S.J. BEKKER

Acting Judge of the Gauteng Local
Division of the High Court,
Johannesburg

Instructed by:	Wim Krynauw Attorneys
Counsel for the Defendant:	Adv. D. Milne
Instructed by:	C Bekker and Associates
Dates of trial:	25 to 29 November 2013 8 to 10 April 2015 29 May 2015
Date of judgment:	21 August 2015