IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED.

Case number: 52400/2017

18/4/2019

In the matter between:

C[….] M[….] K[….] Plaintiff

and

M[….] W[….] K[….] Defendant

JUDGMENT

AWAKOUMIDES, AJ

1. This is an exception brought by the Defendant against the Plaintiffs amended particulars of claim wherein the Plaintiff alleges that a universal partnership came into existence between the Plaintiff and the Defendant in respect of the property which formed the former matrimonial home of the parties.
2. The parties were married to each other by antenuptial contract on 25 April 2002 at Pretoria and the accrual system referred to in Chapter 1 of the Matrimonial Property Act, 88 of 1984 would not apply to the marriage between the parties.
3. In the amended particulars of claim, at paragraphs 8 and 9 thereof the

Plaintiff alleges that a partnership came into effect and exists between the parties in respect of the former matrimonial home which is currently registered in the name of the Defendant. The Plaintiff alleges that all the income derived from her employment was deposited into the Defendant's banking account for purposes of paying the mortgage bond over the property, the maintenance and improvements to the property and to pay the recurring monthly expenses. In addition thereto the Plaintiff invested the sum of R200 000.00 into the property which money she had received as a gift from her father who also provided time, skill and effort for the building of cottages adjacent to the property and general improvements thereto. In doing so the Plaintiff submitted that the parties tacitly entered into a universal partnership in equal shares as regards the immovable property.

6. In *Butters* the parties lived together as husband and wife for nearly 20 years. The court found that a universal partnership came into existence between the parties in that Ms Nncora shared in the benefits of Mr Butters' financial contribution (income of the business conducted by him) and he shared the benefits of her contribution to the maintenance of their common home and the raising of the children.

7. In my view the Butters case appears to be applicable to the case before me. The Defendant's counsel submitted that the prayer contained in the amended particulars of claim for an order dissolving the partnership is not competent *vis-a- vis* the dissolution of the partnership asset but may be limited only to the profit that is made on the partnership (if this is found to be an asset). In my view this is not an issue that I have to decide on at this stage of the proceedings. Having considered all the submissions made and the amended particulars of claim I do not believe that the exception holds any merit.

8. In the premises I make the following order:

   (a) The exception is dismissed with costs.

G.T. AVVAKOUMIDES

ACTING JUDGE OF THE HIGH COURT

Representation for Plaintiff:

Counsel: Adv. M Perreira

Instructed by: Andrea Rae Attorneys

Representation for Defendant:

Counsel: Adv. JR Minnaar

Instructed by: Riaan Bosch Attorneys