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**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Not Reportable

Case no: 586/2021

In the matter between:

J[...] J[...] J[...] B[...]

PLAINTIFF

and

S[...] J[...] M[...] B[...]

DEFENDANT

Neutral citation: *B[...] v B[...]* (586/2021) [2025] ZAFSHC 325 (16 October 2025)

Coram: JORDAAN AJ

Heard: 20-21 and 23 February 2024; 11 March 2024 and 1 April 2025

Delivered: 16 October 2025

Summary: Partnership agreements – conclusion of partnership agreement – *essentialia* thereof.

ORDER

1 It is declared that a universal partnership existed between the plaintiff and the defendant in equal shares in respect of the guesthouse business at 6[...] F[...] Street, Boshoff, Free State province;

2 It is declared that this universal partnership between the plaintiff and defendant in respect of the guesthouse business at 6[...] F[...] Street, Boshof, Free State is dissolved with effect from 3 May 2022;

3 It is declared that all profits of the guesthouse business that the defendant retained must be shared with - and accounted for in the partnership.

4 That a liquidator be appointed within 30days of this order, who is authorised to realise the partnership assets, to liquidate the liabilities of the partnership, to prepare a final account and to pay to the parties the amounts owing to them.

5 The defendant is ordered to pay the plaintiff's costs of this action including the costs occasioned by the postponement of 22 and 23 August 2023 on scale B.

JUDGMENT

Jordaan AJ

Introduction

[1] The plaintiff and the defendant (the parties) were spouses who had entered into a marriage, out of community of property excluding accrual, on 30 July 2011. This marriage has subsequently been dissolved by a decree of divorce granted on 3 of May 2022.

[2] In this action, the plaintiff claims for the dissolution and the legal consequences of the dissolution of the partnership, which he alleges, came into existence between the parties during the year 2014 in regard to the K[...] Guesthouse situated at 6[...] F[...] Street, Boshof, Free State.

[3] The defendant, on the other hand, denies the existence of the partnership. In the amendment effected at closing argument stage, the defendant, in the alternative, pleads

that, should the court find that a partnership existed as the plaintiff alleges (a contention which the defendant denies in all respects), then, in that event, the defendant specifically pleads that the immovable property in question never formed part of the partnership assets.

Issue for determination

[4] The issue for determination is whether a partnership agreement, either expressly or tacitly, was concluded between the parties in respect of the business operated under the name K[...] Guesthouse, at 6[...] F[...] Street, Boschoff, Free State.

Legal principles applicable

[5] The plaintiff bears the burden of proving the existence of a partnership between the parties on a balance of probabilities and accordingly attracts the duty to begin.

[6] A partnership may be defined as a legal relationship arising from a contract between two or more persons, each contributing to a business or an undertaking carried on for joint benefit, with the object of making a profit.¹

[7] The *essentialia* of a partnership agreement are:

- (a) that each party to the partnership brings something into the partnership, whether it be money, or his labor or skill;
- (b) that the business should be carried on for the joint benefit of both parties;
- (c) that the object should be to make a profit.²

[8] A contribution to the partnership includes everything which may aid in the achievement of the common goal and as such an obligation to refrain from doing something. The contribution can be either money, food, skill, knowledge, experience, expertise, labour or its equivalent or the mere signing of the partnership agreement by a party with a good personal credit would also be valid contributions.³

[9] It is required that the contribution that each partner brings into the partnership should be appreciable, it is not, however, necessary that what each of the contracting

¹ 31 *Lawsa* 3 ed para para 430.

² *Pezzuto v Dreyer* 1992 ZASCA 46; 1992 (3) SA 379 (AD); [1992] 2 All SA 81 (A) (*Pezzuto*) at 390A-B.

³ *Estate Agents Board v Swart* 1999 (1) SA 1097 (T); [1998] 4 All SA 373 (T).

parties bring into the partnership should be of the same nature or value. The contributions of the partners must be placed at the disposal of the partnership.

[10] A partnership is constituted by means of an agreement to carry on business. This business must be carried on in common, meaning each party cannot act independently in his sole interest and each party should be engaged as principal in the business. This business can be anything which occupies the time, attention and labour of a man for the purpose of profit.⁴

[11] The object of the partnership must be to make a profit jointly and not individually and for each party to the partnership to share in the profit or gains. The business must be capable of making profits, but it is not a requirement that that it should be distinctly clear that profits will actually ensue.⁵

[12] In addition to the presence of the partnership *essentialia* in an agreement, it must be clear that the parties to the contract did in fact intend to establish a partnership. What is required is a clear intention to be partners. Where this intention is absent, no partnership can come into being, even though the agreement may contain the required *essentialia* of partnership.

[13] In *Deary v Deputy Commissioner of Inland Revenue*,⁶ it was held:

‘It seems clear from authority that in order to determine whether a particular agreement does or does not constitute a partnership it is not sufficient to inquire whether the alleged partner does or does not enjoy a share of the profits, the fact that he receives a share is not conclusive, the real intention of the parties as deduced from the whole agreement must be looked to. . .’

[14] Partnership assets include the capital held in the firm together with all liabilities and outstanding credits, as in all business ventures.⁷

[15] Partnership assets can be described as all of those assets which the partners intend to be partnership property.⁸ The partners *inter se*, the exact scope and extent of

⁴ Op cit fn 2 para 439.

⁵ Ibid.

⁶ *Deary v Deputy Commissioner of Inland Revenue* 1920 CPD 541 at 547.

⁷ B Beinart ‘Capital in Partnership’ (1961) *Acta Juridica* 118 at 144.

⁸ *Cussons and Others v Kroon* [2001] ZASCA 69; [2002] 1 All SA 361 (A); 2001 (4) SA 833 SCA.

the partnership property therefore rests on the intention of the partners in the firm, regardless of the question whether the property is jointly owned by the partners or not.⁹

[16] In order to determine the true intention of the partners concerning the question whether a particular asset is a partnership asset or not, reference must be made to the partnership agreement and all other surrounding circumstances.¹⁰

[17] In regard to dissolution of a partnership, a partner may bring an application or action to have a partnership liquidated and wound up in the absence of a provision for dissolution in the partnership agreement or any subsequent agreement between the partners to have the partnership dissolved or wound up.

[18] A marriage out of community of property does not preclude the existence of a partnership as was found in the case of *Fink v Fink*,¹¹ wherein the court stated that a universal partnership existed between spouses who were married to each other out of community of property in respect of a milk producing business.

[19] Similarly, in the case of *Mühlmann v Mühlmann*,¹² the court found that a universal partnership in respect of certain commercial enterprises existed between spouses who were married to each other, out of community of property. The court emphasised that there must be an intention to contract and that the conduct from which a contract is sought to be inferred, must not simply be conduct which reflects what is ordinarily to be expected of a wife in a given situation.

[20] The same *essentialia* laid down in *Pezzuto*¹³ for a special contract of partnership are applicable in respect of universal partnerships between spouses married out of community of property.

[21] There is a distinction between two types of universal partnerships. One in which the parties agree to put in common all their property, both present and future, is known

⁹ *Muller en 'n Ander v Pienaar* 1970 (2) SA 385 (C); [1970] 2 All SA 410 (C).

¹⁰ Op cit fn 9.

¹¹ *Fink v Fink* 1945 WLD 226.

¹² *Mühlmann v Mühlmann* 1984 (3) SA 102 (A).

¹³ Op cit fn 3.

as *societas universum bonorum* as was stated in the case of *Isaacs v Isaacs*¹⁴ and is akin to community of property; while *societas universorum quae ex quaestu veniunt* is a universal partnership in which the parties agree that all they may acquire during the existence of the partnership, from every kind of commercial undertaking, shall be partnership property.¹⁵

[22] I now turn to have regard to the evidence presented during the trial.

Summary of evidence

[23] The plaintiff, the defendant and the defendant's helper were the only witnesses to testify in the case and their evidence can be summarised below as follows.

[24] The plaintiff, Mr J[...] J[...] J[...] B[...] (Mr B[...]), testified that he was working as a furniture manufacturer manager in Tanzania, when he entered into marriage with the defendant who had worked as a banking consultant for Standard Bank, prior to retirement and was living in Pretoria.

[25] It was his testimony further, that subsequent to their marriage, the parties relocated to the farm, Holpan in Boshof, which they rented. The cost of living, exasperated by the exorbitant utilities, made it virtually impossible for the parties to maintain a decent living standard and the defendant was particularly unhappy about the expenses. Mr Ben Theron (Mr Theron), a friend of the plaintiff, was the owner of 6[...] F[...] Street, Boshof, came to visit the couple and offered that they could live in his house free of charge, on condition that they maintain the property.

[26] Mr B[...] testified that his friend, Mr Theron, provided them with a solution when he offered that they could live in his vacant house at 6[...] F[...] Street, Boshof, free of charge on condition that they repair the house as it had fallen into disrepair through neglect by previous tenants.

¹⁴ *Isaacs v Isaacs* 1949 (1) SA 952 (C).

¹⁵ *Butters v Mnorca* [2012] ZASCA 29; 2012 (4) SA 1 SCA; [2012] 2 All SA 485.

[27] It was Mr B[...]’ testimony further that contemporaneous with their move to 6[...] F[...] Street in 2014, there was a burst of economic growth in sunfarming in Boshof, resulting in an influx of workers into Boshof.

[28] He testified that, on arrival at 6[...] F[...] Street, they found the house in a neglected condition consisting of four bedrooms, a dining room, one bathroom, an office and double garage on a double plot with a neglected garden and a neglected lapa, which was in disuse.

[29] It was his evidence that he had a background in hospitality industry, as well as construction, woodwork and farming, while the defendant was a good cook, had a banking financing background, and has good gardening and interior decorating skills. Based on these skills, they decided to establish a guesthouse out of the neglected house, in order to generate money for their retirement packages. He testified that they decided that he would do the building and renovations work, while the defendant will do the interior decorations and garden layouts and they will jointly manage the business.

[30] The plaintiff testified, that with much enthusiasm, they immediately started the renovations and agreed on the name of ‘K[...]’ for the guesthouse, a name he got to know in Tanzania, meaning butterfly. They proceeded in converting the house, to accommodate guests/boarders, by initially just cleaning and painting the house to provide boarding accommodation which was immediately sought by and provided for the sunfarm workers.

[31] Mr B[...] testified that, in accordance with establishing the guesthouse, they incrementally renovated and extended the house, ultimately to a seven bedroom, six bathroom house with the guestrooms having glass sliding doors leading to the garden, while operating the guesthouse in terms of their decision and agreed responsibilities.

[32] It was the plaintiff’s testimony that he bought the building materials, participated in the building and supervising of the workers, that he paid. He testified that he utilised his own funds from his bank account and from other sources of funding that he generated, to realise the renovation plans.

[33] The plaintiff further testified that he rose at 05h00 to make breakfast and accompany the guests while they were having breakfast. He also prepared braai and potjiekos for them as meal and entertainment. They operated in this manner while the property was still owned by Mr Theron.

[34] Mr B[...] testified that the parties then decided to purchase the property in the defendant's name, because she received certain benefits from Standard Bank as a former employee of 32 years service, while the plaintiff was to stand as surety.

[35] It was the plaintiff's evidence that the defendant paid R100 000 as a deposit for the homeloan, whose money was generated from her selling her townhouse in Pretoria. According to his testimony, Mr B[...] paid the transfer costs of approximately R50 000 to Welgemoed Attorneys in Kimberley.

[36] The plaintiff testified that he paid the running costs of the guesthouse from his private Standard Bank account and the defendant held his Standard Bank card. It was his evidence that he generated additional income streams from farm management, woodworking and working on the sunfarm. It was his evidence that the homeloan was serviced from his account. The defendant transferred money from his account into the homeloan account.

[37] Mr B[...] testified that he spent approximately one million three hundred thousand rand on renovating the original house into the guesthouse that it became, with additional independent flats on the property in which mostly the managers of the sunfarm development project would stay. It was further his testimony that he also renovated the lapa into a dining/function hall. In addition he would pay the telephone account and the internet account.

[38] It was his evidence that, when their partnership was profitable and doing well, they agreed that, should either of the parties die, there should be an inheritance for their children. The parties then accordingly signed a deed of donation in terms of which the defendant donates 50 percent of the land on which the guesthouse is built, known as part 1 and part 2 of erven 2[...] Boshof, Free State province individually 989 m² (nine hundred and eighty nine square meters) in size.

[39] It was his evidence that, on attending their attorney's office, they were informed that the deed of donation is invalid unless the parties re-apply for a new homeloan and they re-register the property in both their names and pay transfer fees again. Due to the costs involved, the process was not restarted as they had no guarantee that they would be approved for a new homeloan.

[40] It was Mr B[...]’ testimony further that, while he was working in Mozambique during 2020, he was called as surety, as the homeloan was not paid and he then paid the homeloan account, to remove the arrears and pay the account arrears up to date.

[41] The parties encountered marital problems, as a consequence, the plaintiff moved out of the marital home and instituted an action for divorce. A decree of divorce was granted on 3 May 2022.

[42] During cross-examination, the plaintiff was confronted with the assertion that the guesthouse does not have a liquor license, which he conceded, hence the expenses were reduced to R1 300 000.

[43] The plaintiff refuted the imputation that he did not pay for renovation costs, but asserted that he indeed paid for the renovation costs. His payments to various building suppliers as well as to builders are reflected on the consolidated audited statements.

[44] The plaintiff was also confronted with the allegation that it was the defendant who paid for the building renovations with a loan from Direct Axis. The plaintiff refuted this and further stated that he had to pay the defendant's loan as well, as she was unable to pay it.

[45] Mr B[...]’ testimony further was that he indeed claimed payment of R1 600 000 to recover what he had expended on the property in his summons, but after consulting with his attorneys, he was informed that his claim emanates from the partnership. When he was confronted with the assertion that he also worked at a Centurion farming company and thus not at the guesthouse, he replied that he went home everyday and

the problems of the guesthouse remained his to solve. The money he earned was also used towards the expenses of the guesthouse, where he worked during the weekends.

[46] Mrs S[...] J[...] M[...] B[...] (Mrs B[...]) testified, in corroboration of Mr B[...]' evidence, in regard to everything prior to their their move to 6[...] F[...] Street, Boshof. She denied that they decided to form a partnership for a guesthouse. She denied further that he contributed to the formation of the guesthouse or that he named the guesthouse. She denied that he contributed financially to the guesthouse or that he executed nor supervised any building renovations to the guesthouse.

[47] It was her evidence that Mr B[...] was an unemployed person whom she had to maintain. But during her evidence-in-chief, she testified that they were prepared to sacrifice and occupy one room in order to accommodate boarders when they just arrived at 6[...] F[...] Street. They would take bookings for boarders, forcing her counsel to ask who 'they' is, to which she replied that she made a mistake, it should be 'I'.

[48] It was Mrs B[...]' testimony that the plaintiff was not involved in the creation of the guesthouse' website. She was the one who provided the information for the website. When, during cross-examination, she was confronted with a quote from the website describing it as:

'K[...] Guesthouse is owned and managed by J[...] and S[...] B[...]. From arrival to checkout they strive to ensure that their guests are comfortable, relaxed and stress free in beautiful and tranquil surroundings... For reservations or queries please contact us today.' Mrs B[...] replied that it is correct.

[49] This prompted plaintiff's counsel to ask her why they were then in court if the quote is correct. Mrs B[...] replied that they do not have a partnership, that she bought the house and poured part of her pension into it and she cannot foretell what her pension value would be, in her old age.

[50] Mrs B[...] was further cross-examined on how her statement reconciled with the website description of the guesthouse. She replied that Annamarie created and designed the webpage and because the defendant was married to the plaintiff, she used both their names.

[51] When Mrs B[...] was confronted that she misrepresented the guesthouse to the public, her reply was that the plaintiff lived at the guesthouse.

[52] During cross-examination, she was confronted with the assertion that she knew that the deed of donation was not valid, to which she replied that she explained it to the plaintiff. She was however confronted with the allegation that she never testified, in evidence-in-chief, and that her counsel also never put it to the plaintiff, that Mrs B[...] indeed explained to him that the deed of donation was not realisable and therefore she misrepresented the deed of donation to the plaintiff. Mrs B[...] replied that the plaintiff ignored her and did not converse with her, so she signed the deed of donation, knowing that it was not realisable.

[53] The plaintiff's counsel put it to Mrs B[...] that she placed the deed of donation on record, in evidence in chief, and that she testified that she first took the deed of donation to the bank to enquire about its implications. Once it was explained to her that it is not realisable, she then signed the deed of donation and gave it to the Plaintiff, without informing him about the information received from the bank. She persisted that she told the plaintiff.

[54] When confronted that she was not telling the truth, Mrs B[...] then replied that she indeed did not tell the plaintiff at that time. She testified that she told him more than a year prior to her signing and presenting him with the deed of donation.

[55] It was Mr B[...]’ testimony further that contemporaneous with their move to 6[...] F[...] Street in 2014, there was a burst of economic growth in sunfarming in Boshof, resulting in an influx of workers into Boshof.

[56] Mrs B[...] was confronted on her testimony that the plaintiff made a minimal contribution. She explained that he just sat on the chair and supervised the workers doing the building work. When confronted that she relied on him and asked him to supervise the building projects, she replied that she only asked his advice, but that she forced her own ideas on him.

[57] During cross-examination she conceded the building renovations was an integral part in realising the guesthouse, however that did not entitle Mr. B[...] to half of her property.

[58] Mr B[...] confirmed that one of the workers was Jimmy Bolegrero and that she does not have a Capitec Bank account. When confronted that the Plaintiff made payments from his Capitec account and paid Mr. Bolegregro, Mrs B[...] replied that she gave the Plaintiff the money.

[59] When Mrs B[...] was requested to show her payments to the Plaintiff for same, she replied she reimbursed him afterward.

[60] Mrs B[...] was similarly confronted with proof of payments to Telkom and M-Web out of the plaintiff's Capitec account, she initially replied that the plaintiff opened the Telkom and M-Web accounts in his own name, when asked why, Mrs B[...] replied that they needed the services. When asked why then not open her own accounts, Mrs B[...] replied that she could not as it was a contract.

[61] Mr B[...] confronted that the plaintiff also built a reception counter, to which she conceded but it was used in the guestroom and that he built it with wood he brought from Tanzania.

[62] Mr B[...] testified that the guesthouse was not operated for profit. When confronted as to the reason why it was then operated bearing in mind she is a person who has banking experience, she replied the guesthouse was operated because her pension money was decreasing. It was then put that is then exactly for profit to ameliorate the income, Mrs B[...] then admitted it.

[63] During cross-examination, Mr B[...] was confronted that she used the plaintiff's account for payments, to which she replied she opened a second account.

[64] Mrs B[...] was asked whether she has any proof of payments of anything or any bank statements, to which she replied that she was not asked and she was on debt review. When confronted that there are audited reconciliation statements of numerous

large payments to various building supplying companies and asked whether she reimbursed the plaintiff for those payments, she replied that she cannot remember and does not know what amounts she paid and for what she paid to him.

[65] During cross-examination Mrs B[...]’ was again confronted that during her entire evidence, she consistently refer to ‘we’ in her evidence, she replied it is a mistake it should be ‘I’. Mrs B[...] was confronted that she would not have been able to buy the house as she did not qualify, unless the plaintiff stood surety for her. She conceded.

[66] Mrs Kedisaletsi Rosvinah Motlou (Mrs Matlou), testified that she was working at the K[...] Guesthouse for almost six years. Her working hours were from 08h00 in the morning until 16h00. It was her testimony further that the plaintiff did not work when she started to work at the guesthouse, but he only sat under the tree.

[67] During cross-examination, her evidence was that she cannot testify as to whether the plaintiff entertained the guests and “braai’ed” or made potjiekos, because that would be after her working hours.

[68] Mrs Motlou testified that she only came to K[...] at the time when the two small rooms were being renovated and she saw the Plaintiff building and working on the two small rooms. She could also not testify as to whether the plaintiff did the other renovation and building work on the rest of the property before she started working at the guesthouse.

Common cause

[69] From the evidence led during the trial it is common cause that:

- (a) The house at 6[...] F[...] Street, became occupiable rentfree through the friendship that the plaintiff had with Mr Theron.
- (b) The plaintiff was an experienced and skilled artisan, that he supervised the building renovations and built desks for the guesthouse, which played an integral role in establishing the guesthouse.
- (c) The plaintiff paid for building material costs and building labour costs, while investing his time, knowledge, skill and experience supervising the building renovations and expending his skill in building and working on the renovation and building projects.

(d) The plaintiff was pivotal in procuring the property. The plaintiff also stood surety for the purchasing of the property, without which the defendant would not have been able to qualify for a homeloan to purchase the property.

(e) The plaintiff also paid the transfer costs for the purchasing of the property.

(f) The defendant obtained the home loan to purchase the property and bought the property in her name.

(g) The defendant created a new garden, did the interior decorating and cooking.

In dispute

[70] At the conclusion of the case, it remains in dispute that:

(a) The parties had the intention to enter into a partnership;

(b) The parties carried on a partnership for the joint benefit of the Parties;

(c) The plaintiff made contributions to the partnership business.

Closing arguments

[71] Counsel for both parties prepared detailed heads of argument and presented closing argument, which was of great assistance to the court. In essence, counsel for the plaintiff requested that their claim be upheld, while counsel for the defendant sought the dismissal of the plaintiff's claim.

[72] Counsel for both parties were *ad idem*, considering the complexity of the issues and the considerable time that went into preparation, that costs should be awarded on scale B.

[73] I now turn to evaluate the evidence in order to determine whether the plaintiff has made out a case for the relief that he is seeking.

Analysis

[74] In this case, the plaintiff bears the onus to prove his case on a balance of probabilities. The evidence presented laid bare two irreconcilable versions, which are mutually destructive. In the circumstances, the court bears in mind the case of

*Stellenbosch Farmers Winery Group Ltd and Another v Martell et cie and Others*¹⁶, which lays down the approach to be adopted in resolving factual disputes. The court observed all the witnesses as they testified under oath.

[75] The plaintiff was the only witness to testify in his case. It was his version that, on seeing the property at 6[...] F[...] Street, the need for accommodation with the influx of sunfarm workers into Boshof, considering their individual abilities and experience, he and the defendant were enthusiastic and excited about teaming their abilities to form a guesthouse in partnership, which they will operate and manage together in order to make a profit, to provide a retirement package for them.

[76] He was subjected to long and rigorous cross-examination by an experienced counsel, but his evidence stood like the proverbial 'rock of Gibraltar', while his answers were not stoic, they were full explanatory answers. His evidence remained steadfast on his version that they excitedly discussed the starting of the guesthouse, bringing their expertise and resources to the guesthouse, to own and manage the guesthouse together in partnership with the object to make a profit so as to provide as their retirement package.

[77] The defendant's counsel, in closing argument, attacked the plaintiff's credibility on basis of the amendmends to his particulars of claim. The impugned amendmends were effected in 2023, prior to the case being enrolled for trial in 2024 on the amended pleadings. The plaintiff testified, during cross-examination, that he is not learned in the law, he consulted his attorneys, who drafted the papers based on their consultations with him.

[78] A litigating party may amend his or her pleadings or documents in order to rectify a *bona fide* error, to clarify or amplify a cause of action, to introduce a new or alternative cause of action and to reduce or increase the relief sought.

[79] In this particular case, the amendments were effected, prior to enrollment for trial and thus before any evidence was led. The case of *McDonald v Young (McDonald)*¹⁷ is

¹⁶ *Stellenbosch Farmers' Winery Group Ltd. and Another v Martell & Cie SA and Others* [2002] ZASCA 98; 2003 (1) SA 11 (SCA).

distinguishable from this case, in that, in the instant case, the plaintiff notwithstanding the amendments, never testified that he had no claim as was the case in *McDonald*, who then later testified that he indeed had a claim and the plaintiff in this court, on the other hand, did not contradict his pleaded case. In the circumstances the attack on the plaintiff's character, based on the amendments, is without merit.

[80] It must be restated that heads of argument is not evidence, nor is it pleadings. Novation was raised in the heads of argument, it was never pleaded and neither did the defendant testify on novation. The plaintiff did however testify that the deed of donation was drafted with a view of ensuring that their children should inherit should anything happen to them, clearly asserting a right or partial ownership. That contracts should have been drafted was never pleaded, nor was the Plaintiff cross examined on this. The court cannot adjudicate what was not pleaded and no evidence presented.

[81] The court noted that the plaintiff testified openly, chronologically and answered questions without hesitation. His evidence did not display any bias, either latent or blatant, against the defendant. He praised her cooking and gardening ability in circumstances where it was not required, without posturing and readily testified that the defendant paid for paint. His evidence showed no intra-contradictions and no contradictions with his pleaded case. The plaintiff's evidence accords with the objective evidence of the website, is externally corroborated by Mrs Motlou and by the defendant insofar as the defendant's evidence accords with the plaintiff's evidence. The court therefore finds the plaintiff to be a credible and reliable witness.

[82] Mrs Motlou, the defendant's witness, impressed the court as an impartial witness. She never embellished her evidence. She testified that, in the time that she worked at the Guesthouse, two outside rooms were built. She testified that the plaintiff was the one who did the building work and she also saw him working in those two rooms aswell. She was a neutral, open and honest witness, as no bias against any person was disclosed and her evidence showed no internal or external contradictions.

[83] The court finds her to be a credible and reliable witness. Her evidence corroborate the plaintiff's evidence on the disputed issue that he made direct

¹⁷ *McDonald v Young* 2011 ZASCA 31; 2012 (3) SA 1 (SCA).

contributions to the guesthouse by bringing his experience and expertise in masonry skills through building and renovating the rooms thereby advancing and working in the guesthouse.

[84] The defendant refuted the plaintiff's evidence stating that she never had any intention to form a partnership and that no partnership was formed. She testified that the plaintiff did not assist in the guesthouse business in any form or pay for anything. In chief, she however testified that 'we' heard of the sunfarm workers needing accommodation, 'we' indeed immediately started by accommodating the sunfarm workers as lodgers, the house was full of people but she made the best of the situation because 'we' could make extra money, 'we were in the thing and had to pull through'. The defendant explained how 'they' converted the house and how 'we' had eight rooms over the years. This evidence is contrary to her version that she was the sole owner of the guesthouse, contrary to what was put to the Plaintiff and contrary to her pleaded case.

[85] The defendant further testified that the plaintiff was not involved in the creation of the K[...] website, the defendant herself provided the website information to the website administrator. The K[...] Guesthouse website reads:

'K[...] Guesthouse is owned and managed by S[...] and J[...] B[...]. From arrival to check out they strive to ensure that their guests are comfortable, relaxed and stress free in beautiful and tranquil surroundings. With luxurious tastefully decorated rooms for single travellers and families, K[...] Guesthouse is sure to satisfy the requirements of even the most discerning of visitors. For reservations all queries please contact us today.'

The defendant when confronted with the content of description on website, stated that it is correct. The defendant hereby contradicted her evidence in chief, her pleaded case and what was put to the plaintiff. The website, created on instruction of the defendant who also confirmed the content, also provides objective evidence corroborating the plaintiff's case.

[86] The defendant asserted that the plaintiff was not a partner in the guesthouse and does nothing for the guesthouse. The defendant was shown proof of payments by the plaintiff for Telkom and M-Web internet. The defendant confirmed that the Telkom line and the internet is for the guesthouse and it is needed for the guesthouse. She however

avers that the plaintiff opened these accounts without her knowledge, this despite herself using these very accounts to have a website utilising that same internet and Telkom line. This not only shows the contradictions in the defendants case, it also shows towards unreliability in her evidence, you can surely not use a facility that you do not know it was opened.

[87] The defendant's version and evidence is that the plaintiff is not paying for any costs for the running of the guesthouse. She was confronted with proof of payments from the plaintiff's consolidated audited bank account statements to Mr White, a person who worked at the guesthouse. The defendant testified she paid the plaintiff back, but she could not say how much of the payments she paid back. The defendant was also confronted with considerable amount of payments for building materials to various building material suppliers as per the plaintiff's consolidated audited bank statements, the defendant again testified that she repaid the plaintiff, but she did not know how much she paid back or when she paid back, nor did she have any proof of payment. The defendant's reply that she reimbursed the plaintiff, debunks her earlier evidence that what the plaintiff contributed was what was ordinarily to be expected from a spouse.

[88] The court observed the defendant as she testified. She disclosed an unequivocal bias that was palpable against the plaintiff, it was displayed throughout her evidence her statements that she says 'he does not deserve' a share, notwithstanding the confirmed objective evidence that he is an owner and manager of the guesthouse. Defendant's evidence displayed internal and external contradictions, her own evidence in chief shows that she referred to 'we' throughout her evidence despite asserting that the plaintiff is not part of the business. The defendant contradicted her evidence and pleaded case when she denied the plaintiff's financial contribution to the guesthouse business, then admitted that the guesthouse needed the Telkom line and M-Web internet that the plaintiff paid.

[89] The defendant denied that they discussed anything about starting a guesthouse in partnership to make a profit to build a retirement package, yet, as already pointed out, she testified that she sacrificed having so many people in the house, so that 'they' could make extra money and she formulated the website content with an administrator and

confirmed it. While denying that the plaintiff did anything for the guesthouse or brought anything into the business, she later testified during cross-examination that the plaintiff made a desk, with wood that he brought from Tanzania, which was installed by him in the guestroom kitchen as a counter and that he built rooms. The defendant, while contradicting her pleaded case and evidence, through this evidence, confirms and corroborates the plaintiff's case.

[90] The defendant testified that she first enquired about the implications of the deed of donation from the bank. Consequent to being informed that the deed of donation is not realisable, she signed the deed of donation and handed it to the plaintiff while knowing it is not realisable. The defendant's evidence is again contradictory to her evidence-in-chief and what was put to the plaintiff.

[91] The internal and external contradictions, the blatant untruths revealed in the defendant's evidence during cross examination, the bias that the defendant displayed against the plaintiff and the external contradictions with objective facts shows that the defendant is not a credible witness. The defendant has been running the guesthouse since at least 2014 when they took in their first lodgers, thus everything that she was denying about the partnership, and plaintiff's involvement therein, was something she experienced and knew about from the onset, and she confirmed the website content, Telkom and M-Web ongoing payments years later showing entrenched knowledge, yet persisted in her denial only to later admit the truth. This, coupled with her contradictions and bias already pointed out, shows that the defendant is also not a reliable witness.

[92] The defendant iterates the exact same aim with the guesthouse that the plaintiff testified they had. The defendant also testified that she sacrificed so that they could make extra money. The objective evidence of the website content confirmed by the defendant as correct, is contrary to the defendant's case and is confirmation and corroboration of the plaintiff's case. The defendant testified that she replanted the garden, did the interiors and was the cook at the guesthouse. Contrary to her case, the defendant during cross examination testified that the plaintiff built rooms and constructed a counter – thereby confirming the the plaintiff's case.

[93] Clearly, from the above stated evidence the probabilities favour the plaintiff's version that the parties discussed and decided to form a guesthouse in partnership, that each party will bring their experience and skill to the partnership, that they immediately renovated and operated the guesthouse in partnership with the common aim of making extra money to sustain them and to build their retirement package, that the plaintiff contributed by building and renovating the guesthouse, that the plaintiff's consolidated audited bank statements show payments for the guesthouse expenses and the objective evidence of the website. The defendant's version is highly improbable that the parties, not having discussed anything about forming a guesthouse partnership, could have the exact same aim with it and conduct the operation of the guesthouse exactly in accord.

[94] The court finds that the plaintiff is not just a credible and reliable witness, but finds his version is probable, while the defendant was neither a credible or reliable witness and her version is found to be improbable. The court is satisfied that the plaintiff discharged the onus on him to proof his case on a balance of probabilities.

[95] The court finds that an express oral agreement of partnership in respect of the K[...] Guesthouse business at 6[...] F[...] Street, Boshof, Free State was entered into by the parties, from the evidence and the subsequent conduct of the operation of the guesthouse and the website, they had the requisite *animus contrahendi* to form a universal partnership, they each brought something into the partnership, the partnership was carried on for their joint benefit of building a pension package and the object was to make a profit. Having regard to the evidence it is clear that the parties poured everything they had into this universal partnership, money from other income streams were ploughed in to realise the guesthouse, assets were sold in order to purchase a reliable vehicle to use in the business, the house was purchased with considerable deposit by the defendant, but only because the plaintiff had to stand surety and the plaintiff paid the transfer fees. No evidence was presented to prove that the house at 6[...] F[...] Street, Boshoff, Free State and the two erven on which it stands does not form part of the the universal partnership, as such, this court finds that it does form part of the universal partnership. Fortified by the law and precedents mentioned herein, the court finds that this universal partnership is a *societas universum bonorum*.

[96] The award of costs resort within the discretion of the court and the usual practice is for costs to follow the result, this court sees no reason to deviate from that practice. There is, however the postponement of 22 and 23 August 2023 in regard to which costs were reserved. This court, having heard the evidence and submissions in this case and having regard to the time spent on the case, in light of all the concessions and the objective evidence which disposed of the disputed issues, that the defendant is ordered to pay the plaintiff's costs of this trial on scale "B" including the costs of the 22 and 23 of August 2023.

Order

[97] In the result the following order is made:

- 1 It is declared that a universal partnership existed between plaintiff and defendant in equal shares in respect of the guesthouse business at 6[...] F[...] Street, Boshoff, Free State province;
- 2 It is declared that this universal partnership between the plaintiff and defendant in respect of the guesthouse business at 6[...] F[...] Street, Boshof, Free State is dissolved with effect from 3 May 2022;
- 3 It is declared that all profits of the guesthouse business that the defendant retained must be shared with - and accounted for in the partnership.
- 4 That a liquidator be appointed within 30 days of this order, who is authorised to realise the partnership assets, to liquidate the liabilities of the partnership, to prepare a final account and to pay to the Parties the amounts owing to them.
- 5 The defendant is ordered to pay the plaintiff's costs of this action including the costs occasioned by the postponement of 22 and 23 August 2023 on scale B.

M T JORDAAN
ACTING JUDGE OF THE HIGH COURT

Appearances

For the plaintiff:

W A Van Aswegen

Instructed by:

McIntyre van der Post, Bloemfontein

For the defendant:

J Möller

Instructed by:

Verster-Roos Incorporated, Pretoria
c/o Honey Incorporated, Bloemfontein.