

Friendship and Business Don't Mix - MabuhayRadio

Written by Joseph G. Lariosa

Thursday, 24 September 2009 21:00 - Last Updated Thursday, 24 September 2009 21:05

JGL Eye

By JOSEPH G. LARIOSA

CHICAGO, Illinois (JGLi) – Filipino national hero Jose Rizal had said in unmistakable terms that it is very hard to treat the ailment of one's own family member.

As an ophthalmologist, Dr. Rizal frowned upon becoming a doctor to his own mother. And most probably, he also discouraged other doctors from treating members of their own family because they lacked objectivity.

In other words, you cannot be your own lawyer in a case. Or you cannot be lawyer for your own family either as it could be a recipe for disaster.

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This is even more demonstrated when you try to teach your family member how to drive a car. You will always be yelling at each other and leave your family member, learning nothing but to drive.

So, it will not be a bad idea if you leave some things to the pros, instead of saving a few dollars here and there.

By extension, if you do business with friends, it could also be fraught with risks.

Try extending a loan to your brothers or sisters or friends. And see if they can repay you one hundred percent of the principal or repay you plus interest after a certain period of time? Of course, you will say fat chance!

SET CONDITIONS

This is exactly what happened to businessman Carlos R. Araneta, majority owner of LBC Group, who chose a business partner based on their long-time friendship. Mr. Araneta's relationship with Mr. Ramon Arnaiz dates back from way, way back – from childhood.

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Without any precondition, Mr. Araneta invested into the pre-need business enterprise of ATRKE's Chairman Ramon Arnaiz in a Shareholders Agreement that would make him and ATRKE equal owners of Professional Holdings, a company that would own 80% of the pre-need enterprise.

Trouble was Mr. Arnaiz had other plans that did not sit well with Mr. Araneta.

The ATRKE had option to sell back the shares (a put on option) by Aug. 13, 2004.

So, on November 2002, ATRKE decided to sell its 50% share in Professional Holdings. The share was first offered to Mr. Araneta but Araneta refused, prompting Mr. Arnaiz to sell the share to a third party, which already owned 20% of the pre-need enterprise.

The "put on option" made Araneta lose controlling interest in the pre-need business enterprise they had agreed earlier. And Mr. Araneta felt betrayed by his boyhood friend and classmate.

Mr. Araneta showed his displeasure by rebuffing efforts of Araneta to get information about LBC Global.

The ATRKE went to court to compel Araneta to provide it financial information. The ATRKE convinced a Delaware court to do its bidding. In December 2003, ATRKE found out that LBC Global shed off its operating companies, leaving only "ownership of the minority position in the pre-need company."

BAIT AND SWITCH?

In July 2004, ATRKE tried to exercise its put option to recover its 10% investment in the shell Delaware holding company. But Araneta refused to sell back its 10% interest in LBC Global for 353.25 million pesos (US\$6.7-M) and brought the case to court.

Araneta took ATRKE to Regional Trial Court in Metro Manila's National Capitol Region, alleging Mr. Arnaiz defrauded him by "baiting" him to invest in ATRKE, using their friendship as front.

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Araneta wanted to undo all their agreements, including the Shareholders Agreement, that these had no legal effect.

Matters turned ugly as Araneta and his lawyer Ronaldo Tugonon attributed "corporate irregularities on ATRKE," prompting ATRKE to sue for libel.

Meanwhile, ATRKE filed a case in the United States against Araneta, LBC USA President Hugo Bonilla, LBC Bank President Ma. Eliza Berenguer, and Marites Vicente for waste and breach of fiduciary duty over the disappearance of substantial assets of LBC Global Corporation without any notice, explanation, or documentation.

ATRKE Financial director and executive vice president Renato Leveriza, in turn, in filing a libel case alleged that the "malicious and defamatory statements and information disseminated by Araneta and Tugonon have cause irreparable damage to ATRKE's business and good reputation."

COMMERCE AND CURRENCY

T his summer before a trial would start before the Superior Court of California that would compel Araneta to satisfy a Delaware court ruling, awarding US\$12.8-million ATRKE in settlement, Araneta capitulated and signed on the settlement agreement offered by ATRKE, thereby undoing all the peripheral cases that grew out from a business decision based on friendship.

It will be interesting to note that in upholding the validity of joint-venture agreement, shareholders agreement, and the undertaking agreement by and between LBC against ATRKE and its chairman Ramon Arnaiz, the

RTC

said: "Friendship was evident in the generation of the questioned contract, but it was not the motive that caused the parties (to do what they did but they) were propelled by commerce and currency, and not by long existing personal relationship." (

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