FILED
JAN 30 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

JOY FLATGARD AND ESTHER FLATGARD,
d/b/a SERV PRO OF FORT DODGE,
Plaintiffs-Appellee,)

vs.)

FRANK W. PECHACEK, JR.,)
ELLEN E. PECHACEK, E. FRANK HORN
AND DOROTHY D. HORN,)

Defendants-Appellants,)

Filed January 30, 1981

-0-363
2-64683

Appeal from Webster District Court - Albert Habhab, Judge.

Defendants Pechaceks appeal from judgment for plaintiffs in this action to recover the balance due on a bill for cleaning up fire damage to a motel. Defendants claim that the trial court erred in imposing liability on them under the theory that they were partners with the person who was responsible for paying the bill and were therefore jointly liable. -- REVERSED.

Frank W. Pechacek, Jr., of Smith Peterson, Beckman & Willson, Council Bluffs, for defendants-appellants.

Terry W. Guinan, Fort Dodge, for plaintiffs-appellees.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, J.J.

PER CURIAM

Defendants Pechaceks appeal from judgment for plaintiffs in this action to recover the balance due on a bill for cleaning up fire damage to a motel. Defendants claim that the trial court erred in imposing liability on them under the theory that they were partners with the person who was responsible for paying the bill and were therefore jointly liable. We reverse.

Plaintiffs filed their petition on January 16, 1979 to recover $3040.05, the balance due for their services in cleaning up damage done in a July 28, 1974 fire in what was then known as the Ramada Inn in Fort Dodge. At this point, it is necessary to describe the various interests held in this motel. John Rosmann had previously purchased it and on July 26, two days before the fire, assigned an undivided one-half interest to a bank as collateral for a loan. On the same day, Rosmann assigned a one-third interest to defendant Frank Pechacek and the remaining one-sixth interest to his wife, defendant Ellen Pechacek. The land on which the motel was located was owned by others and leased to previous owners of the motel. Rosmann and the Pechaceks were assignees of that lease. As co-owners Rosmann, his wife and the Pechaceks then leased the motel to MPR Inns, Inc., an Iowa Corporation. Mr. Pechacek, a Council Bluffs attorney drew up the papers for the corporation and served as its registered agent, incorporator and initial director. Once MPR commenced its operations, however, he resigned as director and was succeeded by Rosmann who was also the sole stockholder and who, alone with his wife, were the only officers of the corporation. Rosmann assumed all debts and obligations against the motel, and it was he who paid part of plaintiffs' cleaning bill, the balance of which is the subject of this action.

On October 15, 1979, plaintiffs amended their petition to allege that defendants were partners and joint adventurers with Rosmann as additional grounds for the Pechaceks' liability. After an non-jury trial on October 16, the court issued its ruling on December 24, 1979 in favor of the plaintiffs. It held that defendants and Rosmann were partners in the ownership of the motel and were jointly liable for its debts. This appeal followed.

It is evident that the trial court relied primarily, if not exclusively, on the fact of defendants' joint ownership of the motel with Rosmann in finding the existence of a partnership. In its ruling, the court said "... as of July 26, 1974, the court must and does find that the Rosmann and the Pechaceks were partners in the ownership of the

Ramada Inn." It is further stated that "[t]here is not much question that Rosmann and the Pechaceks were partners insofar as the ownership of the land and improvements are concerned.

It is clear, however, that such joint or co-ownership alone of a motel building and leasehold in land is not sufficient to indicate the existence of a partnership. Section 544.7(2), The Code, provides in part as follows:". . . part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property." Another salient feature of partnership existence is community of power and administration. Anderson v. Walker, 256 Iowa 1324, 131N.W.2d 524 (1964). The evidence is uncontradicated that defendants had no voice in or control over the operations of the motel or MPR Inns, Inc. At no time while the corporation was in operation were defendants involved as officers, directors or shareholders. Nor did they ever have any ownership interest in MPR. Furthermore, the lease between defendants and Rosmann (lessors) or MPR (lessee) required the lessee to insure the property and pay for all necessary maintenance and repair work.

Because the trial court did not apply the correct legal principles in determining whether a partnership existed, it erred in concluding that defendants were partners with Rosmann and were therefore liable for plaintiffs' claim. Because of this error, the judgment against defendants in the amount of $3040.05 must be reversed. Our disposition of the appeal renders it unnecessary for us to consider plaintffs' cross-appeal regarding the amount of interest on the judgment.

REVERSED.