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Private Law: Partnership

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PARTNERSHIP

Milton M. Harrison*

Article 2848 of the Civil Code provides for the keeping of "a separate book for the purpose of recording of acts of partnership" by the "officer authorized to record mortgages." Although there is no requirement that all partnerships shall have written agreements, article 2836 does provide that if any part of the stock of a partnership "consist[s] of real estate, it must be in writing . . . and recorded as is hereafter prescribed with respect to partnership *in commendam*."¹ In two consolidated cases,² the court was confronted with a contest between the holder of mortgages on immovable property, who was seeking to foreclose on the property, and a judgment creditor who intervened to have its judicial mortgage recognized. The property in dispute was purchased by a partnership, composed of two partners, in the partnership name and was then mortgaged by the partnership. The recordation of title and mortgages was in the name of the partnership and all acts were executed by both partners for the partnership. There were no written articles of partnership and therefore no recordation as provided by article 2836. The court, following the well-established jurisprudence, held that immovable property recorded in the name of a partnership which has no recorded agreement is owned by the partners as individuals. Furthermore, the attempt by the partnership to sell and mortgage the property was an attempt to sell and mortgage the property belonging to another (the partners as individuals) and was void under articles 2452 and 3300 of the Civil Code. The court recognized that when partners sign as partners representing the partnership entity and also in their individual capacities, they may bind themselves.³

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1. LA. CIV. CODE art. 2848.

2. *Gulf Union Mtg. Corp. v. Michael & Barber Constr. Co.*, 251 So.2d 459 (La. App. 1st Cir. 1971).

3. See *American Bank & Trust Co. v. Michael*, 244 So.2d 882 (La. App. 1st Cir. 1971). This case involved the same partnership as the principal case, but the act of mortgage was signed by the partners both as partners and in their individual capacities.