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he received only a five years' salary lump sum payment when he retired on April 4, 2001, he is therefore *GRANTED* an additional five years' salary lump sum payment pursuant to Sec. 3 of R.A. No. 910. In case Judge Alano survives beyond the period of 10 years after his retirement on April 4, 2001, he is likewise *ENTITLED* to receive a monthly pension for the rest of his natural life.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-de Castro, and *Brion, JJ.*, concur.

SECOND DIVISION

[G.R. No. 145842. June 27, 2008]

EDSA SHANGRI-LA HOTEL AND RESORT, INC., RUFO B. COLAYCO, RUFINO L. SAMANIEGO, KUOK KHOON CHEN, and KUOK KHOON TSEN, *petitioners, vs.* **BF CORPORATION,** *respondent.*

[G.R. No. 145873. June 27, 2008]

CYNTHIA ROXAS-DEL CASTILLO, *petitioner, vs.* **BF CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS, AFFIRMATORY OF THAT OF THE TRIAL COURT, ARE FINAL AND CONCLUSIVE ON THE COURT AND MAY NOT BE REVIEWED ON APPEAL; EXCEPTIONS TO THE RULE; NOT OBTAINING IN CASE

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AT BAR. — It should be stressed that the second and third issues tendered relate to the correctness of the CA's factual determinations, specifically on whether or not BF was in delay and had come up with defective works, and whether or not petitioners were guilty of malice and bad faith. It is basic that in an appeal by *certiorari* under Rule 45, only questions of law may be presented by the parties and reviewed by the Court. Just as basic is the rule that factual findings of the CA, affirmatory of that of the trial court, are final and conclusive on the Court and may not be reviewed on appeal, except for the most compelling of reasons, such as when: (1) the conclusion is grounded on speculations, surmises, or conjectures; (2) the inference is manifestly mistaken, absurd, or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) such findings are contrary to the admissions of both parties; and (7) the CA manifestly overlooked certain relevant evidence and undisputed facts, that, if properly considered, would justify a different conclusion. In our review of this case, we find that none of the above exceptions obtains. Accordingly, the factual findings of the trial court, as affirmed by the CA, that there was delay on the part of ESHRI, that there was no proof that BF's work was defective, and that petitioners were guilty of malice and bad faith, ought to be affirmed.

2. ID.; ID.; BEST EVIDENCE RULE; DOES NOT APPLY WHEN THE ORIGINAL IS IN THE CUSTODY OR UNDER THE CONTROL OF THE ADVERSE PARTY. — The only actual rule that the term "best evidence" denotes is the rule requiring that the original of a writing must, as a general proposition, be produced and secondary evidence of its contents is not admissible except where the original cannot be had. Rule 130, Section 3 of the Rules of Court enunciates the best evidence rule: SEC. 3. *Original document must be produced; exceptions*. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases: (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror; (b) **When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice**; Complementing the above provision is Sec. 6 of Rule 130, which reads: SEC. 6.

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When original document is in adverse party's custody or control. — If the document is in the custody or under control of the adverse party, he must have reasonable notice to produce it. If after such notice and after satisfactory proof of its existence, he fails to produce the document, secondary evidence may be presented as in the case of loss. Secondary evidence of the contents of a written instrument or document refers to evidence other than the original instrument or document itself. A party may present secondary evidence of the contents of a writing not only when the original is lost or destroyed, but also when it is in the custody or under the control of the adverse party. In either instance, however, certain explanations must be given before a party can resort to secondary evidence.

3. ID.; ID.; THE CONDITIONS *SINE QUA NON* FOR THE PRESENTATION AND RECEPTION OF THE PHOTOCOPIES OF THE ORIGINAL DOCUMENT AS SECONDARY EVIDENCE HAVE BEEN MET IN CASE AT BAR. — The trial court correctly allowed the presentation of the photocopied documents in question as secondary evidence. Any suggestion that BF failed to lay the required basis for presenting the photocopies of Progress Billing Nos. 14 to 19 instead of their originals has to be dismissed. The stenographic notes of the exchanges between Atty. Andres and Atty. Autea, counsel for BF and ESHRI, respectively, reveal that BF had complied with the requirements. Four factual premises are readily deducible from the exchanges, to wit: (1) the existence of the original documents which ESHRI had possession of; (2) a request was made on ESHRI to produce the documents; (3) ESHRI was afforded sufficient time to produce them; and (4) ESHRI was not inclined to produce them. Clearly, the circumstances obtaining in this case fall under the exception under Sec. 3 (b) of Rule 130. In other words, the conditions *sine qua non* for the presentation and reception of the photocopies of the original document as secondary evidence have been met. These are: (1) there is proof of the original document's execution or existence; (2) there is proof of the cause of the original document's unavailability; and (3) the offeror is in good faith. While perhaps not on all fours because it involved a check, what the Court said in *Magdayao v. People* is very much apt.

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4. ID.; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; PETITIONER'S CLAIM FOR RESTITUTION IS NEGATED BY THE FACT THAT THE EXECUTED APPEALED DECISION IN CIVIL CASE NO. 63435 WAS UPHELD *IN TOTO*. — Petitioners' contention on the restitution angle has no merit, for, as may be recalled, the CA, simultaneously with the nullification and setting aside of its August 13, 1999 Resolution, affirmed, via its assailed November 12, 1999 Decision, the RTC Decision of September 23, 1996, the execution pending appeal of which spawned another dispute between the parties. And as may be recalled further, the appellate court nullified its August 13, 1999 Resolution on the basis of Sec. 5, Rule 39, which provides: Sec. 5. *Effect of reversal of executed judgment.* — Where the executed judgment is reversed totally or partially, or annulled, on appeal or otherwise, the trial court may, on motion, issue such orders of restitution or reparation of damages as equity and justice may warrant under the circumstances. On the strength of the aforequoted provision, the appellate court correctly dismissed ESHRI's claim for restitution of its garnished deposits, the executed appealed RTC Decision in Civil Case No. 63435 having in fact been upheld *in toto.* It is true that the Court's Decision of August 11, 1998 in G.R. No. 132655 recognized the validity of the issuance of the desired restitution order. It bears to emphasize, however, that the CA had since then decided CA-G.R. CV No. 57399, the main case, on the merits when it affirmed the underlying RTC Decision in Civil Case No. 63435. This CA Decision on the original and main case effectively rendered our decision on the incidental procedural matter on restitution moot and academic. Allowing restitution at this point would not serve any purpose, but only prolong an already protracted litigation.

5. ID.; ID.; JUDGMENTS; THE REGIONAL TRIAL COURT DECISION IN QUESTION, AS COUCHED, DOES NOT PROVIDE THE FACTUAL OR LEGAL BASIS FOR HOLDING PETITIONER IN G.R. NO. 145873 PERSONALLY LIABLE UNDER THE PREMISES. — First off, Roxas-del Castillo submits that the RTC decision in question violated the requirements of due process and of Sec. 14, Article VII of the Constitution that states, "No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based." Roxas-

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del Castillo's threshold posture is correct. Indeed, the RTC decision in question, as couched, does not provide the factual or legal basis for holding her personally liable under the premises. In fact, only in the dispositive portion of the decision did her solidary liability crop up. And save for her inclusion as party defendant in the underlying complaint, no reference is made in other pleadings thus filed as to her liability.

6. MERCANTILE LAW; CORPORATION CODE; NO ACT OF MALICE OR LIKE DISHONEST PURPOSE IS ASCRIBED ON PETITIONER, AS CORPORATE OFFICER, TO WARRANT THE LIFTING OF THE CORPORATE VEIL. — The Court notes that the appellate court, by its affirmatory ruling, effectively recognized the applicability of the doctrine on piercing the veil of the separate corporate identity. Under the circumstances of this case, we cannot allow such application. A corporation, upon coming to existence, is invested by law with a personality separate and distinct from those of the persons composing it. Ownership by a single or a small group of stockholders of nearly all of the capital stock of the corporation is not, without more, sufficient to disregard the fiction of separate corporate personality. Thus, obligations incurred by corporate officers, acting as corporate agents, are not theirs, but direct accountabilities of the corporation they represent. Solidary liability on the part of corporate officers may at times attach, but only under exceptional circumstances, such as when they act with malice or in bad faith. Also, in appropriate cases, the veil of corporate fiction shall be disregarded when the separate juridical personality of a corporation is abused or used to commit fraud and perpetrate a social injustice, or used as a vehicle to evade obligations. In this case, no act of malice or like dishonest purpose is ascribed on petitioner Roxas-del Castillo as to warrant the lifting of the corporate veil.

7. ID.; ID.; TO HOLD PETITIONER IN G.R. NO. 145873 PERSONALLY LIABLE AS CORPORATE DIRECTOR, IT MUST BE SHOWN THAT SHE ACTED IN A MANNER AND UNDER THE CIRCUMSTANCES CONTEMPLATED IN SECTION 31 OF THE CORPORATION CODE. — The conclusion would still hold even if petitioner Roxas-del Castillo, at the time ESHRI defaulted in paying BF's monthly progress bill, was still a director, for, before she could be held personally liable as corporate director, it must be shown that she acted

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in a manner and under the circumstances contemplated in Sec. 31 of the Corporation Code, which reads: Sec. 31. Directors or trustees who **willfully or knowingly vote for or assent to patently unlawful acts of the corporation or acquire any pecuniary interest in conflict** with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons. We do not find anything in the testimony of one Crispin Balingit to indicate that Roxas-del Castillo made any misrepresentation respecting the payment of the bills in question. Balingit in fact testified that the submitted, but unpaid billings were still being evaluated. Further, in the said testimony, in no instance was bad faith imputed on Roxas-del Castillo.

8. CIVIL LAW; CONTRACTS; PETITIONER IN G.R. NO. 145873 COULD NOT PLAUSIBLY BE HELD LIABLE FOR BREACHES OF CONTRACT COMMITTED BY PETITIONER COMPANY NOR FOR THE ALLEGED WRONGDOINGS OF ITS GOVERNING BOARD OR CORPORATE OFFICERS OCCURING AFTER SHE SEVERED OFFICIAL TIES WITH THE HOTEL MANAGEMENT. — Not lost on the Court are some material dates. As it were, the controversy between the principal parties started in July 1992 when Roxas-del Castillo no longer sat in the ESHRI Board, a reality BF does not appear to dispute. In fine, she no longer had any participation in ESHRI's corporate affairs when what basically is the ESHRI-BF dispute erupted. Familiar and fundamental is the rule that contracts are binding only among parties to an agreement. Art. 1311 of the Civil Code is clear on this point: Article 1311. Contracts take effect only between the parties, their assigns and heirs, except in cases where the rights and obligations are not transmissible by their nature, or by stipulation or by provision of law. In the instant case, Roxas-del Castillo could not plausibly be held liable for breaches of contract committed by ESHRI nor for the alleged wrongdoings of its governing board or corporate officers occurring after she severed official ties with the hotel management. Given the foregoing perspective, the other issues raised by Roxas-del Castillo as to her liability for moral and exemplary damages and attorney's fees are now moot and academic. And her other arguments insofar they indirectly impact on the liability of ESHRI need not detain us any longer

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for we have sufficiently passed upon those concerns in our review of G.R. No. 145842.

APPEARANCES OF COUNSEL

Quisumbing Torres for EDSA Shangri-la Hotel & Resort, Inc., *et al.*

Romulo Mabanta Buenaventura Sayoc & Delos Angeles for C. Roxas-del Castillo.

Ponce Enrile Reyes and Manalastas for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

Before us are these two (2) consolidated petitions for review under Rule 45 to nullify certain issuances of the Court of Appeals (CA).

In the first petition, docketed as **G.R. No. 145842**, petitioners Edsa Shangri-la Hotel and Resort, Inc. (ESHRI), Rufo B. Colayco, Rufino L. Samaniego, Kuok Khoon Chen, and Kuok Khoon Tsen assail the Decision[1] dated November 12, 1999 of the CA in CA-G.R. CV No. 57399, affirming the Decision[2] dated September 23, 1996 of the Regional Trial Court (RTC), Branch 162 in Pasig City in Civil Case No. 63435 that ordered them to pay jointly and severally respondent BF Corporation (BF) a sum of money with interests and damages. They also assail the CA Resolution dated October 25, 2000 which, apart from setting aside an earlier Resolution[3] of August 13, 1999 granting ESHRI's application for restitution and damages against bond, affirmed the aforesaid September 23, 1996 RTC Decision.

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[1] *Rollo* (G.R. No. 145842), pp. 96-122. Penned by Associate Justice Omar U. Amin and concurred in by Associate Justices Bernardo P. Abesamis and Jose L. Sabio, Jr.

[2] *Id.* at 163-192.

[3] *Id.* at 450-454.

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In the second petition, docketed as **G.R. No. 145873**, petitioner Cynthia Roxas-del Castillo also assails the aforementioned CA Decision of November 12, 1999 insofar at it adjudged her jointly and severally liable with ESHRI, *et al*. to pay the monetary award decreed in the RTC Decision.

Both petitions stemmed from a construction contract denominated as *Agreement for the Execution of Builder's Work for the EDSA Shangri-la Hotel Project*[4] that ESHRI and BF executed for the construction of the EDSA Shangri-la Hotel starting May 1, 1991. Among other things, the contract stipulated for the payment of the contract price on the basis of the work accomplished as described in the monthly progress billings. Under this arrangement, BF shall submit a monthly progress billing to ESHRI which would then re-measure the work accomplished and prepare a Progress Payment Certificate for that month's progress billing.[5]

In a memorandum-letter dated August 16, 1991 to BF, ESHRI laid out the collection procedure BF was to follow, to wit: (1) submission of the progress billing to ESHRI's Engineering Department; (2) following-up of the preparation of the Progress Payment Certificate with the Head of the Quantity Surveying Department; and (3) following-up of the release of the payment with one Evelyn San Pascual. BF adhered to the procedures agreed upon in all its billings for the period from May 1, 1991 to June 30, 1992, submitting for the purpose the required Builders Work Summary, the monthly progress billings, including an evaluation of the work in accordance with the Project Manager's Instructions (PMIs) and the detailed valuations contained in the Work Variation Orders (WVOs) for final re-measurement under the PMIs. BF said that the values of the WVOs were contained in the progress billings under the section "Change Orders."[6]

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[4] *Id*. at 143-148.

[5] *Id*. at 97-98.

[6] *Id*. at 98-99.

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From May 1, 1991 to June 30, 1992, BF submitted a total of 19 progress billings following the procedure agreed upon. Based on Progress Billing Nos. 1 to 13, ESHRI paid BF PhP 86,501,834.05.[7]

According to BF, however, ESHRI, for Progress Billing Nos. 14 to 19, did not re-measure the work done, did not prepare the Progress Payment Certificates, let alone remit payment for the inclusive periods covered. In this regard, BF claimed having been misled into working continuously on the project by ESHRI which gave the assurance about the Progress Payment Certificates already being processed.

After several futile attempts to collect the unpaid billings, BF filed, on July 26, 1993, before the RTC a suit for a sum of money and damages.

In its defense, ESHRI claimed having overpaid BF for Progress Billing Nos. 1 to 13 and, by way of counterclaim with damages, asked that BF be ordered to refund the excess payments. ESHRI also charged BF with incurring delay and turning up with inferior work accomplishment.

The RTC found for BF

On September 23, 1996, the RTC, on the main finding that BF, as plaintiff *a quo*, is entitled to the payment of its claim covered by Progress Billing Nos. 14 to 19 and to the retention money corresponding to Progress Billing Nos. 1 to 11, with interest in both instances, rendered judgment for BF. The *fallo* of the RTC Decision reads:

WHEREFORE, defendants [EHSRI], Ru[f]o B. Colayco, Rufino L. Samaniego, Cynthia del Castillo, Kuok Khoon Chen, and Kuok Khoon Tsen, are jointly and severally hereby ordered to:

1. Pay plaintiff the sum of P24,780,490.00 representing unpaid construction work accomplishments under plaintiff's Progress Billings Nos. 14-19;

2. Return to plaintiff the retention sum of ₱5,810,000.00;

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[7] *Id*. at 100.

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3. Pay legal interest on the amount of ₱24,780,490.80 representing the construction work accomplishments under Progress Billings Nos. 14-19 and on the amount of ₱5,810,000.00 representing the retention sum from date of demand until their full Payment;

4. Pay plaintiff ₱1,000,000.00 as moral damages, ₱1,000,000.00 as exemplary damages, ₱1,000,000.00 as attorney's fees, and cost of the suit.[8]

According to the RTC, ESHRI's refusal to pay BF's valid claims constituted evident bad faith entitling BF to moral damages and attorney's fees.

ESHRI subsequently moved for reconsideration, but the motion was denied by the RTC, prompting ESHRI to appeal to the CA in **CA-G.R. CV No. 57399**.

Pending the resolution of CA-G.R. CV No. 57399, the following events and/or incidents transpired:

(1) The trial court, by Order dated January 21, 1997, granted BF's motion for execution pending appeal. ESHRI assailed this order before the CA via a petition for *certiorari*, docketed as **CA-G.R. SP No. 43187**.[9] Meanwhile, the branch sheriff garnished from ESHRI's bank account in the Philippine National Bank (PNB) the amount of PhP 35 million.

(2) On March 7, 1997, the CA issued in CA-G.R. SP No. 43187 a writ of preliminary injunction enjoining the trial court from carrying out its January 21, 1997 Order upon ESHRI's posting of a PhP 1 million bond. In a supplemental resolution issued on the same day, the CA issued a writ of preliminary mandatory injunction directing the trial court judge and/or his branch sheriff acting under him (a) to lift all the garnishments and levy made under the enjoined order of execution pending appeal; (b) to immediately return the garnished deposits to PNB instead of delivering the same to ESHRI; and (c) if the garnished

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[8] *Supra* note 2, at 192.

[9] *Rollo* (G.R. No. 145842), p. 101.

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deposits have been delivered to BF, the latter shall return the same to ESHRI's deposit account.

(3) By a Decision dated June 30, 1997 in CA-G.R. SP No. 43187, the CA set aside the trial court's January 21, 1997 Order. The CA would later deny BF's motion for reconsideration.

(4) Aggrieved, BF filed before this Court a petition for review of the CA Decision, docketed as **G.R. No. 132655**.[10] On August 11, 1998, the Court affirmed the assailed decision of the CA with the modification that the recovery of ESHRI's garnished deposits shall be against BF's bond.[11]

We denied the motions for reconsideration of ESHRI and BF.

(5) Forthwith, ESHRI filed, and the CA by Resolution of August 13, 1999 granted, an application for restitution or damages against BF's bond. Consequently, BF and Stronghold Insurance Co., Inc., the bonding company, filed separate motions for reconsideration.

On November 12, 1999, in CA-G.R. CV No. 57399, the CA rendered a Decision resolving (1) the aforesaid motions of BF and its surety and (2) herein petitioners' appeal from the trial court's Decision dated September 23, 1996. This November 12, 1999 Decision, finding for BF and now assailed in these separate recourses, dispositively reads:

> WHEREFORE, premises considered, the decision appealed from is **AFFIRMED *in toto***. This Court's Resolution dated 13 August 1999 is reconsidered and set aside, and defendants-appellants' application for restitution is denied for lack of merit.
>
> SO ORDERED.[12]

The CA predicated its ruling on the interplay of two main reasons. *First*, the issues the parties raised in their respective

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[10] *Id*. at 102.

[11] *Id.* at 377-386; *BF Corporation v. ESHRI*, G.R. No. 132655, August 11, 1998, 294 SCRA 109.

[12] *Supra* note 1, at 121.

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briefs were, for the most part, factual and evidentiary. Thus, there is no reason to disturb the case disposition of the RTC, inclusive of its award of damages and attorney's fees and the reasons underpinning the award. *Second*, BF had sufficiently established its case by preponderance of evidence. Part of what it had sufficiently proven relates to ESHRI being remiss in its obligation to re-measure BF's later work accomplishments and pay the same. On the other hand, ESHRI had failed to prove the basis of its disclaimer from liability, such as its allegation on the defective work accomplished by BF.

Apropos ESHRI's entitlement to the remedy of restitution or reparation arising from the execution of the RTC Decision pending appeal, the CA held that such remedy may peremptorily be allowed only if the executed judgment is reversed, a situation not obtaining in this case.

Following the denial by the CA, per its Resolution[13] dated October 25, 2000, of their motion for reconsideration, petitioners are now before the Court, petitioner del Castillo opting, however, to file a separate recourse.

G.R. No. 145842

In G.R. No. 145842, petitioners ESHRI, *et al*. raise the following issues for our consideration:

I. Whether or not the [CA] committed grave abuse of discretion in disregarding issues of law raised by petitioners in their appeal [particularly in admitting in evidence photocopies of Progress Billing Nos. 14 to 19, PMIs and WVOs].

II. Whether or not the [CA] committed grave abuse of discretion in not holding respondent guilty of delay in the performance of its obligations and, hence, liable for liquidated damages [in view that respondent is guilty of delay and that its works were defective].

III. Whether or not the [CA] committed grave abuse of discretion in finding petitioners guilty of malice and evidence bad faith, and in awarding moral and exemplary damages and attorney's fees to respondent.

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[13] *Rollo* (G.R. No. 145842), p. 124.

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IV. Whether or not the [CA] erred in setting aside its Resolution dated August 13, 2000.[14]

The petition has no merit.

Prefatorily, it should be stressed that the second and third issues tendered relate to the correctness of the CA's factual determinations, specifically on whether or not BF was in delay and had come up with defective works, and whether or not petitioners were guilty of malice and bad faith. It is basic that in an appeal by *certiorari* under Rule 45, only questions of law may be presented by the parties and reviewed by the Court.[15] Just as basic is the rule that factual findings of the CA, affirmatory of that of the trial court, are final and conclusive on the Court and may not be reviewed on appeal, except for the most compelling of reasons, such as when: (1) the conclusion is grounded on speculations, surmises, or conjectures; (2) the inference is manifestly mistaken, absurd, or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) such findings are contrary to the admissions of both parties; and (7) the CA manifestly overlooked certain relevant evidence and undisputed facts, that, if properly considered, would justify a different conclusion.[16]

In our review of this case, we find that none of the above exceptions obtains. Accordingly, the factual findings of the trial court, as affirmed by the CA, that there was delay on the part of ESHRI, that there was no proof that BF's work was defective, and that petitioners were guilty of malice and bad faith, ought to be affirmed.

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[14] *Id.* at 24-25.

[15] *Allied Banking Corporation v. Quezon City Government*, G.R. No. 154126, October 11, 2005, 472 SCRA 303, 316; *Bangko Sentral ng Pilipinas v. Santamaria*, G.R. No. 139885, January 13, 2003, 395 SCRA 84, 92.

[16] *Dungaran v. Koschnicke*, G.R. No. 161048, August 31, 2005, 468 SCRA 676, 685; *Larena v. Mapili*, G.R. No. 146341, August 7, 2003, 408 SCRA 484.

Admissibility of Photocopies of Progress Billing Nos. 14 to 19, PMIs and WVOs

Petitioners fault the CA, and necessarily the trial court, on the matter of the admission in evidence of the photocopies of Progress Billing Nos. 14 to 19 and the complementing PMIs and the WVOs. According to petitioners, BF, before being allowed to adduce in evidence the photocopies adverted to, ought to have laid the basis for the presentation of the photocopies as secondary evidence, conformably to the best evidence rule.

Respondent BF, on the other hand, avers having complied with the laying-the-basis requirement. Defending the action of the courts below in admitting into evidence the photocopies of the documents aforementioned, BF explained that it could not present the original of the documents since they were in the possession of ESHRI which refused to hand them over to BF despite requests.

We agree with BF. The only actual rule that the term "best evidence" denotes is the rule requiring that the original of a writing must, as a general proposition, be produced[17] and secondary evidence of its contents is not admissible except where the original cannot be had. Rule 130, Section 3 of the Rules of Court enunciates the best evidence rule:

SEC. 3. *Original document must be produced; exceptions.* — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice; (Emphasis added.)

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[17] *Consolidated Bank and Trust Corporation (SOLIDBANK) v. Del Monte Motor Works, Inc.*, G.R. No. 143338, July 29, 2005, 465 SCRA 117, 131; citing McCormick, *HANDBOOK OF THE LAW ON EVIDENC*E 409 (1954).

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Complementing the above provision is Sec. 6 of Rule 130, which reads:

SEC. 6. *When original document is in adverse party's custody or control.* – If the document is in the custody or under control of the adverse party, he must have reasonable notice to produce it. If after such notice and after satisfactory proof of its existence, he fails to produce the document, secondary evidence may be presented as in the case of loss.

Secondary evidence of the contents of a written instrument or document refers to evidence other than the original instrument or document itself.[18] A party may present secondary evidence of the contents of a writing not only when the original is lost or destroyed, but also when it is in the custody or under the control of the adverse party. In either instance, however, certain explanations must be given before a party can resort to secondary evidence.

In our view, the trial court correctly allowed the presentation of the photocopied documents in question as secondary evidence. Any suggestion that BF failed to lay the required basis for presenting the photocopies of Progress Billing Nos. 14 to 19 instead of their originals has to be dismissed. The stenographic notes of the following exchanges between Atty. Andres and Atty. Autea, counsel for BF and ESHRI, respectively, reveal that BF had complied with the requirements:

ATTY. ANDRES:

During the previous hearing of this case, your Honor, likewise, the witness testified that certain exhibits namely, the Progress Payment Certificates and the Progress Billings the originals of these documents were transmitted to ESHRI, all the originals are in the possession of ESHRI since these are internal documents and I am referring specifically to the Progress Payment Certificates. **We requested your Honor, that in order that plaintiff [BF] be allowed to present secondary original, that opposing counsel first be given opportunity to present the originals which are in their possession**. May we know if they have brought the originals and

[18] R.J. Francisco, *BASIC EVIDENCE* 283 (1991).

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whether they will present the originals in court, Your Honor. (Emphasis added.)

ATTY. AUTEA:

We have already informed our client about the situation, your Honor, that it has been claimed by plaintiff that some of the originals are in their possession and our client assured that, they will try to check. Unfortunately, we have not heard from our client, Your Honor.

Four factual premises are readily deducible from the above exchanges, to wit: (1) the existence of the original documents which ESHRI had possession of; (2) a request was made on ESHRI to produce the documents; (3) ESHRI was afforded sufficient time to produce them; and (4) ESHRI was not inclined to produce them.

Clearly, the circumstances obtaining in this case fall under the exception under Sec. 3(b) of Rule 130. In other words, the conditions *sine qua non* for the presentation and reception of the photocopies of the original document as secondary evidence have been met. These are: (1) there is proof of the original document's execution or existence; (2) there is proof of the cause of the original document's unavailability; and (3) the offeror is in good faith.[19] While perhaps not on all fours because it involved a check, what the Court said in *Magdayao v. People*, is very much apt, thus:

x x x To warrant the admissibility of secondary evidence when the original of a writing is in the custody or control of the adverse party, Section 6 of Rule 130 provides that the adverse party must be given reasonable notice, that he fails or refuses to produce the same in court and that the offeror offers satisfactory proof of its existence.

x x x x x x x x x

The mere fact that the original of the writing is in the custody or control of the party against whom it is offered does not warrant the admission of secondary evidence. The offeror must prove that he has done all in his power to secure the best evidence by giving notice to the said party to produce the document. The notice may be in the

[19] RULES OF COURT, Rule 130, Sec. 5.

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form of a motion for the production of the original or made in open court in the presence of the adverse party or *via* a *subpoena duces tecum*, provided that the party in custody of the original has sufficient time to produce the same. **When such party has the original of the writing and does not voluntarily offer to produce it or refuses to produce it, secondary evidence may be admitted.**[20] (Emphasis supplied.)

On the Restitution of the Garnished Funds

We now come to the propriety of the restitution of the garnished funds. As petitioners maintain, the CA effectively, but erroneously, prevented restitution of ESHRI's improperly garnished funds when it nullified its own August 13, 1999 Resolution in CA-G.R. SP No. 43187. In this regard, petitioners invite attention to the fact that the restitution of the funds was in accordance with this Court's final and already executory decision in G.R. No. 132655, implying that ESHRI should be restored to its own funds without awaiting the final outcome of the main case. For ease of reference, we reproduce what the appellate court pertinently wrote in its Resolution of August 13, 1999:

BASED ON THE FOREGOING, the Application (for Restitution/ Damages against Bond for Execution Pending Appeal) dated May 12, 1999 filed by [ESHRI] is **GRANTED**. Accordingly, the surety of [BF], STRONGHOLD Insurance Co., Inc., is **ORDERED** to **PAY** the sum of [PhP 35 million] to [ESHRI] under its SICI Bond. x x x In the event that the bond shall turn out to be insufficient or the surety (STRONGHOLD) cannot be made liable under its bond, [BF], being jointly and severally liable under the bond is **ORDERED** to **RETURN** the amount of [PhP 35 million] representing the garnished deposits of the bank account maintained by [ESHRI] with the [PNB] Shangri-la Plaza Branch, Mandaluyong City. Otherwise, this Court shall cause the implementation of the Writ of Execution dated April 24, 1998 issued in Civil Case No. 63435 against both [BF], and/or its surety, STRONGHOLD, in case they should fail to comply with these directives.

SO ORDERED.[21]

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[20] G.R. No. 152881, August 17, 2004, 436 SCRA 677, 684-685.

[21] *Supra* note 3, at 453.

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Petitioners' contention on the restitution angle has no merit, for, as may be recalled, the CA, simultaneously with the nullification and setting aside of its August 13, 1999 Resolution, affirmed, via its assailed November 12, 1999 Decision, the RTC Decision of September 23, 1996, the execution pending appeal of which spawned another dispute between the parties. And as may be recalled further, the appellate court nullified its August 13, 1999 Resolution on the basis of Sec. 5, Rule 39, which provides:

> Sec. 5. *Effect of reversal of executed judgment*. — Where the executed judgment is reversed totally or partially, or annulled, on appeal or otherwise, the trial court may, on motion, issue such orders of restitution or reparation of damages as equity and justice may warrant under the circumstances.

On the strength of the aforequoted provision, the appellate court correctly dismissed ESHRI's claim for restitution of its garnished deposits, the executed appealed RTC Decision in Civil Case No. 63435 having in fact been upheld *in toto*.

It is true that the Court's Decision of August 11, 1998 in G.R. No. 132655 recognized the validity of the issuance of the desired restitution order. It bears to emphasize, however, that the CA had since then decided CA-G.R. CV No. 57399, the main case, on the merits when it affirmed the underlying RTC Decision in Civil Case No. 63435. This CA Decision on the original and main case effectively rendered our decision on the incidental procedural matter on restitution moot and academic. Allowing restitution at this point would not serve any purpose, but only prolong an already protracted litigation.

G.R. No. 145873

Petitioner Roxas-del Castillo, in her separate petition, excepts from the CA Decision affirming, in its entirety, the RTC Decision holding her, with the other individual petitioners in G.R. No. 145842, who were members of the Board of Directors of ESHRI, jointly and severally liable with ESHRI for the judgment award. She presently contends:

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I. THE [CA] ERRED IN NOT DECLARING THAT THE DECISION OF THE TRIAL COURT ADJUDGING PETITIONER PERSONALLY LIABLE TO RESPONDENT VOID FOR NOT STATING THE FACTUAL AND LEGAL BASIS FOR SUCH AWARD.

II. THE [CA] ERRED IN NOT RULING THAT AS FORMER DIRECTOR, PETITIONER CANNOT BE HELD PERSONALLY LIABLE FOR ANY ALLEGED BREACH OF A CONTRACT ENTERED INTO BY THE CORPORATION.

III. THE [CA] ERRED IN NOT RULING THAT RESPONDENT IS NOT ENTITLED TO AN AWARD OF MORAL DAMAGES.

IV. THE [CA] ERRED IN HOLDING PETITIONER PERSONALLY LIABLE TO RESPONDENT FOR EXEMPLARY DAMAGES.

V. THE [CA] ERRED IN NOT RULING THAT RESPONDENT IS NOT ENTITLED TO ANY AWARD OF ATTORNEY'S FEES.[22]

First off, Roxas-del Castillo submits that the RTC decision in question violated the requirements of due process and of Sec. 14, Article VII of the Constitution that states, "No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based."

Roxas-del Castillo's threshold posture is correct. Indeed, the RTC decision in question, as couched, does not provide the factual or legal basis for holding her personally liable under the premises. In fact, only in the dispositive portion of the decision did her solidary liability crop up. And save for her inclusion as party defendant in the underlying complaint, no reference is made in other pleadings thus filed as to her liability.

The Court notes that the appellate court, by its affirmatory ruling, effectively recognized the applicability of the doctrine on piercing the veil of the separate corporate identity. Under the circumstances of this case, we cannot allow such application. A corporation, upon coming to existence, is invested by law

[22] *Rollo* (G.R. No. 145873), p. 16.

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with a personality separate and distinct from those of the persons composing it. Ownership by a single or a small group of stockholders of nearly all of the capital stock of the corporation is not, without more, sufficient to disregard the fiction of separate corporate personality.[23] Thus, obligations incurred by corporate officers, acting as corporate agents, are not theirs but direct accountabilities of the corporation they represent. Solidary liability on the part of corporate officers may at times attach, but only under exceptional circumstances, such as when they act with malice or in bad faith.[24] Also, in appropriate cases, the veil of corporate fiction shall be disregarded when the separate juridical personality of a corporation is abused or used to commit fraud and perpetrate a social injustice, or used as a vehicle to evade obligations.[25] In this case, no act of malice or like dishonest purpose is ascribed on petitioner Roxas-del Castillo as to warrant the lifting of the corporate veil.

The above conclusion would still hold even if petitioner Roxas-del Castillo, at the time ESHRI defaulted in paying BF's monthly progress bill, was still a director, for, before she could be held personally liable as corporate director, it must be shown that she acted in a manner and under the circumstances contemplated in Sec. 31 of the Corporation Code, which reads:

> Section 31. Directors or trustees who **willfully or knowingly vote for or assent to patently unlawful acts of the corporation or acquire any pecuniary interest in conflict** with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons. (Emphasis ours.)

We do not find anything in the testimony of one Crispin Balingit to indicate that Roxas-del Castillo made any misrepresentation

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[23] *Union Bank of the Philippines v. Ong*, G.R. No. 152347, June 21, 2006, 491 SCRA 581, 602.

[24] *Petron Corporation v. National Labor Relations Commission*, G.R. No. 154532, October 27, 2006, 505 SCRA 596, 613-614.

[25] *Enriquez Security Services, Inc. v. Cabotaje*, G.R. No. 147993, July 21, 2006, 496 SCRA 169, 175.

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respecting the payment of the bills in question. Balingit, in fact, testified that the submitted but unpaid billings were still being evaluated. Further, in the said testimony, in no instance was bad faith imputed on Roxas-del Castillo.

Not lost on the Court are some material dates. As it were, the controversy between the principal parties started in July 1992 when Roxas-del Castillo no longer sat in the ESHRI Board, a reality BF does not appear to dispute. In fine, she no longer had any participation in ESHRI's corporate affairs when what basically is the ESHRI-BF dispute erupted. Familiar and fundamental is the rule that contracts are binding only among parties to an agreement. Art. 1311 of the Civil Code is clear on this point:

> Article 1311. Contracts take effect only between the parties, their assigns and heirs, except in cases where the rights and obligations are not transmissible by their nature, or by stipulation or by provision of law.

In the instant case, Roxas-del Castillo could not plausibly be held liable for breaches of contract committed by ESHRI nor for the alleged wrongdoings of its governing board or corporate officers occurring after she severed official ties with the hotel management.

Given the foregoing perspective, the other issues raised by Roxas-del Castillo as to her liability for moral and exemplary damages and attorney's fees are now moot and academic.

And her other arguments insofar they indirectly impact on the liability of ESHRI need not detain us any longer for we have sufficiently passed upon those concerns in our review of G.R. No. 145842.

WHEREFORE, the petition in G.R. No. 145842 is *DISMISSED*, while the petition in G.R. No. 145873 is *GRANTED*. Accordingly, the appealed Decision dated November 12, 1999 of the CA in CA-G.R. CV No. 57399 is *AFFIRMED* with *MODIFICATION* that the petitioner in G.R. No. 145873, Cynthia Roxas-del Castillo, is absolved from any liability decreed in the RTC Decision dated

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September 23, 1996 in Civil Case No. 63435, as affirmed by the CA.

SO ORDERED.

Carpio Morales, Tinga, Reyes,[*] and *Brion, JJ.*, concur.

THIRD DIVISION

[G.R. No. 147559. June 27, 2008]

ARMED FORCES AND POLICE MUTUAL BENEFIT ASSOCIATION, INC., *petitioner, vs.* **INES BOLOS SANTIAGO,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; PROPERTY REGISTRATION DECREE; THE NOTICE OF LEVY ON ATTACHMENT IN FAVOR OF PETITIONER MAY BE ANNOTATED ON TCT NO. PT-94919; IN INVOLUNTARY REGISTRATION SUCH AS AN ATTACHMENT, ENTRY THEREOF IN THE DAY BOOK IS A SUFFICIENT NOTICE TO ALL PERSONS OF SUCH ADVERSE CLAIM. — The notice of levy on attachment in favor of petitioner may be annotated on TCT No. PT-94912. *Levin v. Bass* provided the distinction between voluntary registration and involuntary registration. In ***voluntary registration,*** such as a sale, mortgage, lease and the like, if the owner's duplicate certificate be not surrendered and presented or if no payment of registration fees be made within fifteen (15) days, entry in the day book of the deed of sale does not operate to convey and affect the land sold. In ***involuntary registration,*** such as an attachment, levy upon execution, *lis pendens* and the like, entry thereof in

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[*] Additional member as per April 16, 2008 Zero Backlog Raffle.