Supreme Court E-Library

WHEREFORE, the petition for *certiorari* is hereby *DISMISSED*. The Orders dated September 6, 2002 and April 21, 2003, both issued by respondent Judge Omar T. Viola of the RTC of Angeles City, Branch 57, are hereby *AFFIRMED*.

SO ORDERED.

Nachura,[**] *Brion,*[***] *Peralta,*[****] and *Bersamin, JJ.*, concur.

THIRD DIVISION

[G.R. No. 160236. October 16, 2009]

"G" HOLDINGS, INC., *petitioner, vs.* **NATIONAL MINES AND ALLIED WORKERS UNION Local 103 (NAMAWU); SHERIFFS RICHARD H. APROSTA and ALBERTO MUNOZ, all acting Sheriffs; DEPARTMENT OF LABOR AND EMPLOYMENT, Region VI, Bacolod District Office, Bacolod City,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; JUDICIAL NOTICE; COURTS MUST HAVE TAKEN JUDICIAL NOTICE OF PREVIOUS CASES AND RULINGS; APPLICATION.— Judicial notice must be taken by this Court of its Decision in *Maricalum Mining Corporation v. Hon. Arturo D. Brion and NAMAWU*, in which we upheld the right of herein private respondent, NAMAWU, to its labor claims. Upon the same principle of judicial notice, we acknowledge our Decision in

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[**] Additional member as per Special Order No. 740.

[***] Additional member as per Special Order No. 751.

[****] Additional member as per Special Order No. 754.

Supreme Court E-Library

Republic of the Philippines, through its trustee, the Asset Privatization Trust v. "G" Holdings, Inc., in which GHI was recognized as the rightful purchaser of the shares of stocks of MMC, and thus, entitled to the delivery of the company notes accompanying the said purchase. x x x The assailed CA decision apparently failed to consider the impact of these two decisions on the case at bar. Thus, we find it timely to reiterate that: "courts have also taken judicial notice of previous cases to determine whether or not the case pending is a moot one or whether or not a previous ruling is applicable to the case under consideration." However, the CA correctly assessed that the authority of the lower court to issue the challenged writ of injunction depends on the validity of the third party's (GHI's) claim of ownership over the property subject of the writ of execution issued by the labor department. Accordingly, the main inquiry addressed by the CA decision was whether GHI could be treated as a third party or a stranger to the labor dispute, whose properties were beyond the reach of the Writ of Execution dated December 18, 2001. In this light, all the more does it become imperative to take judicial notice of the two cases aforesaid, as they provide the necessary perspective to determine whether GHI is such a party with a valid ownership claim over the properties subject of the writ of execution. x x x The two cases that we have taken judicial notice of are of such character, and our review of the instant case cannot stray from the findings and conclusion therein.

2. CIVIL LAW; MORTGAGE; IN VIEW OF THE GOVERNMENT'S PARTICIPATION IN THE TRANSACTION, THE MORTGAGE CANNOT BE CHARACTERIZED AS FRAUDULENT.— The participation of the Government, through APT, in this transaction is significant. Because the Government had actively negotiated and, eventually, executed the agreement, then the transaction is imbued with an aura of official authority, giving rise to the presumption of regularity in its execution. This presumption would cover all related transactional acts and documents needed to consummate the privatization sale, inclusive of the Promissory Notes. It is obvious, then, that the Government, through APT, consented to the "establishment and constitution" of the mortgages on the assets of MMC in favor of GHI, as provided in the notes. Accordingly, the notes (and the stipulations therein) enjoy the benefit of the same presumption of regularity

Supreme Court E-Library

accorded to government actions. Given the Government consent thereto, and clothed with the presumption of regularity, the mortgages cannot be characterized as sham, fictitious or fraudulent.

3. ID.; ID.; LATE DOCUMENTATION OF A MORTGAGE DEED CANNOT GIVE RISE TO AN INFERENCE THAT IT IS A FRAUDULENT TRANSACTION.— While it is true that the Deed of Real Estate and Chattel Mortgage was executed only on September 5, 1996, it is beyond cavil that this formal document of mortgage was merely a derivative of the original mortgage stipulations contained in the Promissory Notes of October 2, 1992. The execution of this Deed in 1996 does not detract from, but instead reinforces, the manifest intention of the parties to "establish and constitute" the mortgages on MMC's real and personal properties. Apparently, the move to execute a formal document denominated as the Deed of Real Estate and Chattel Mortgage came about after the decision of the RTC of Manila in Civil Case No. 95-76132 became final in mid-1996. x x x With the RTC decision having become final owing to the failure of the Republic to perfect an appeal, it may have become necessary to execute the Deed of Real Estate and Chattel Mortgage on September 5, 1996, in order to enforce the trial court's decision of June 11, 1996. This appears to be the most plausible explanation for the execution of the Deed of Real Estate and Chattel Mortgage only in September 1996. Even as the parties had already validly constituted the mortgages in 1992, as explicitly provided in the Promissory Notes, a specific deed of mortgage in a separate document may have been deemed necessary for registration purposes. Obviously, this explanation is more logical and more sensible than the strained conjecture that the mortgage was executed on September 5, 1996 only for the purpose of defrauding NAMAWU. It is undeniable that the Deed of Real Estate and Chattel Mortgage was formally documented two weeks after NAMAWU filed its notice of strike against MMC on August 23, 1996. However, this fact alone cannot give rise to an adverse inference for two reasons. *First*, as discussed above, the mortgages had already been "established and constituted" as early as October 2, 1992 in the Promissory Notes, showing the clear intent of the parties to impose a lien upon MMC's properties. *Second,* the mere filing of a notice of strike by

Supreme Court E-Library

NAMAWU did not, as yet, vest in NAMAWU any definitive right that could be prejudiced by the execution of the mortgage deed.

4. ID.; ID.; THE FACT THAT THE OBLIGATION IS NOT REFLECTED IN THE FINANCIAL STATEMENT OF THE CORPORATION IS NOT A SUFFICIENT BASIS TO INVALIDATE A MORTGAGE DEED.— The fact that MMC's obligation to GHI is not reflected in the former's financial statements – a circumstance made capital of by NAMAWU in order to cast doubt on the validity of the mortgage deed – is of no moment. By itself, it does not provide a sufficient basis to invalidate this public document. To say otherwise, and to invalidate the mortgage deed on this pretext, would furnish MMC a convenient excuse to absolve itself of its mortgage obligations by adopting the simple strategy of not including the obligations in its financial statements. It would ignore our ruling in *Republic, etc. v. "G" Holdings, Inc.*, which obliged APT to deliver the MMC shares and financial notes to GHI. Besides, the failure of the mortgagor to record in its financial statements its loan obligations is surely not an essential element for the validity of mortgage agreements, nor will it independently affect the right of the mortgagee to foreclose.

5. ID.; ID.; A MORTGAGE DEED CANNOT BE CONSIDERED AS A FICTITIOUS CONTRACT BY REASON OF ITS LATE REGISTRATION.— [W]e cannot see how NAMAWU's right was prejudiced by the Deed of Real Estate and Chattel Mortgage, or by its delayed registration, when substantially all of the properties of MMC were already mortgaged to GHI as early as October 2, 1992. Given this reality, the Court of Appeals had no basis to conclude that this Deed of Real Estate and Chattel Mortgage, by reason of its late registration, was a simulated or fictitious contract. x x x [T]here is nothing in Act No. 496, as amended by P.D. No. 1529, that imposes a period within which to register annotations of "conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land." If liens were not so registered, then it "shall operate only as a contract between the parties and as evidence of authority to the Registry of Deeds to make registration." If registered, it "shall be the operative act to convey or affect the land insofar as third persons are concerned."

Supreme Court E-Library

The mere lapse of time from the execution of the mortgage document to the moment of its registration does not affect the rights of a mortgagee.

6. ID.; ID.; THE FORECLOSURE OF THE MORTGAGE DOES NOT NECESSARILY TRANSLATE TO HAVING BEEN EFFECTED TO PREVENT SATISFACTION OF THE JUDGMENT AWARD.— Neither will the circumstance of GHI's foreclosure of MMC's properties on July 31, 2001, or after the DOLE had already issued a Partial Writ of Execution on May 9, 2001 against MMC, support the conclusion of the CA that GHI's act of foreclosing on MMC's properties was *"effected to prevent satisfaction of the judgment award*." GHI's mortgage rights, constituted in 1992, antedated the Partial Writ of Execution by nearly ten (10) years. GHI's resort to foreclosure was a legitimate enforcement of a right to liquidate a *bona fide* debt. It was a reasonable option open to a mortgagee which, not being a party to the labor dispute between NAMAWU and MMC, stood to suffer a loss if it did not avail itself of the remedy of foreclosure. The well-settled rule is that a mortgage lien is inseparable from the property mortgaged. While it is true that GHI's foreclosure of MMC's mortgaged properties may have had the "effect to prevent satisfaction of the judgment award against the specific mortgaged property that first answers for a mortgage obligation ahead of any subsequent creditors," that same foreclosure does not necessarily translate to having been *"effected to prevent satisfaction of the judgment award"* against MMC. x x x [The] chronology of subsequent events shows that February 9, 2006 would have been the earliest date for the unimpeded enforcement of the Partial Writ of Execution, as it was only then that this Court resolved the issue. This happened four and a half years after July 31, 2001, the date when GHI foreclosed on the mortgaged properties. Thus, it is not accurate to say that the foreclosure made on July 31, 2001 was *"effected [only] to prevent satisfaction of the judgment award*."

7. ID.; ID.; THE RIGHT OF REDEMPTION WAS THE ONLY LEVIABLE PROPERTY RIGHT OF THE MORTGAGOR IN THE MORTGAGED REAL PROPERTIES.— Since the properties were already mortgaged to GHI, the only interest remaining in the mortgagor was its right to redeem said

Supreme Court E-Library

properties from the mortgage. The right of redemption was the only leviable or attachable property right of the mortgagor in the mortgaged real properties.

8. ID.; ID.; EFFECT OF REGISTRATION OF THE MORTGAGE.— Prior registration of a lien creates a preference, as the act of registration is the operative act that conveys and affects the land, even against subsequent judgment creditors, such as respondent herein. Its registration of the mortgage was not intended to defraud NAMAWU of its judgment claims, since even the courts were already judicially aware of its existence since 1992. Thus, at that moment in time, with the registration of the mortgage, either NAMAWU had no properties of MMC to attach because the same had been previously foreclosed by GHI as mortgagee thereof; or by virtue of the DOLE's levy to enforce NAMAWU's claims, the latter's rights are subject to the notice of the foreclosure on the subject properties by a prior mortgagee's right. GHI's mortgage right had already been registered by then, and "it is basic that mortgaged properties answer primarily for the mortgaged credit, not for the judgment credit of the mortgagor's unsecured creditor."

9. COMMERCIAL LAW; CORPORATIONS; DOCTRINE OF PIERCING THE VEIL OF CORPORATE FICTION, NOT APPLICABLE.— Since the factual antecedents of this case do not warrant a finding that the mortgage and loan agreements between MMC and GHI were simulated, then their separate personalities must be recognized. To pierce the veil of corporate fiction would require that their personalities as creditor and debtor be conjoined, resulting in a merger of the personalities of the creditor (GHI) and the debtor (MMC) in one person, such that the debt of one to the other is thereby extinguished. But the debt embodied in the 1992 Financial Notes has been established, and even made subject of court litigation (Civil Case No. 95-76132, RTC Manila). This can only mean that GHI and MMC have separate corporate personalities. Neither was MMC used merely as an alter ego, adjunct, or business conduit for the sole benefit of GHI, to justify piercing the former's veil of corporate fiction so that the latter could be held liable to claims of third-party judgment creditors, like NAMAWU. In this regard, we find American jurisprudence

persuasive. In a decision by the Supreme Court of New York bearing upon similar facts, the Court denied piercing the veil of corporate fiction to favor a judgment creditor who sued the parent corporation of the debtor, alleging fraudulent corporate asset-shifting effected after a prior final judgment.

10. ID.; ID.; ID.; MERE INTERLOCKING OF DIRECTORS AND OFFICERS DOES NOT WARRANT PIERCING THE SEPARATE CORPORATE PERSONALITIES.— In this case, the mere interlocking of directors and officers does not warrant piercing the separate corporate personalities of MMC and GHI. Not only must there be a showing that there was majority or complete control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked, so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own. The mortgage deed transaction attacked as a basis for piercing the corporate veil was a transaction that was an offshoot, a derivative, of the mortgages earlier constituted in the Promissory Notes dated October 2, 1992. But these Promissory Notes with mortgage were executed by GHI with APT in the name of MMC, in a full privatization process. It appears that if there was any control or domination exercised over MMC, it was APT, not GHI, that wielded it. Neither can we conclude that the constitution of the loan nearly four (4) years prior to NAMAWU's notice of strike could have been the proximate cause of the injury of NAMAWU for having been deprived of MMC's corporate assets.

11. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; INJUNCTION; VALIDITY OF AN INJUNCTION TO PREVENT EXECUTION BY THE NLRC ON THE PROPERTIES OF THIRD-PARTY CLAIMANTS, UPHELD.— It is settled that a Regional Trial Court can validly issue a Temporary Restraining Order (TRO) and, later, a writ of preliminary injunction to prevent enforcement of a writ of execution issued by a labor tribunal on the basis of a third-party's claim of ownership over the properties levied upon. While, as a rule, no temporary or permanent injunction or restraining order in any case involving or growing out of a labor dispute shall be issued by any court— where the writ of execution issued by a labor tribunal is sought to be enforced upon the property of a stranger to the labor

Supreme Court E-Library

dispute, even upon a mere *prima facie* showing of ownership of such claimant—a separate action for injunctive relief against such levy may be maintained in court, since said action neither involves nor grows out of a labor dispute insofar as the third party is concerned. x x x Likewise, since the third-party claimant is not one of the parties to the action, he cannot, strictly speaking, appeal from the order denying his claim, but he should file a separate reivindicatory action against the execution creditor or the purchaser of the property after the sale at public auction, or a complaint for damages against the bond filed by the judgment creditor in favor of the sheriff. A separate civil action for recovery of ownership of the property would not constitute interference with the powers or processes of the labor tribunal which rendered the judgment to execute upon the levied properties. The property levied upon being that of a stranger is not subject to levy. Thus, a separate action for recovery, upon a claim and *prima facie* showing of ownership by the petitioner, cannot be considered as interference. Upon the findings and conclusions we have reached above, petitioner is situated squarely as such third-party claimant. The questioned restraining order of the lower court, as well as the order granting preliminary injunction, does not constitute interference with the powers or processes of the labor department. The registration of the mortgage document operated as notice to all on the matter of the mortgagee's prior claims. Official proceedings relative to the foreclosure of the subject properties constituted a *prima facie* showing of ownership of such claimant to support the issuance of injunctive reliefs.

APPEARANCES OF COUNSEL

Quasha Ancheta Peña & Nolasco for petitioner.

Jose I. Lapak, Padilla & Associates, Law Firm of Lapena & Associates and *Beldad & Associates Law Office* for National Mines and Allied Workers Union Local 103.

Romulo Sumalinog for DOLE.

Supreme Court E-Library

D E C I S I O N

NACHURA, *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the October 14, 2003 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 75322.

The Facts

The petitioner, "G" Holdings, Inc. (GHI), is a domestic corporation primarily engaged in the business of owning and holding shares of stock of different companies.[2] It was registered with the Securities and Exchange Commission on August 3, 1992. Private respondent, National Mines and Allied Workers Union Local 103 (NAMAWU), was the exclusive bargaining agent of the rank and file employees of Maricalum Mining Corporation (MMC),[3] an entity operating a copper mine and mill complex at Sipalay, Negros Occidental.[4]

MMC was incorporated by the Development Bank of the Philippines (DBP) and the Philippine National Bank (PNB) on October 19, 1984, on account of their foreclosure of Marinduque

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[1] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Delilah Vidallon Magtolis (retired) and Hakim S. Abdulwahid concurring. CA *rollo,* pp. 1268-1283.

[2] *Rollo,* Vol. 1, p. 574. The company's primary purpose, stated in the Articles of Incorporation, is as follows:

"To own and hold shares of stock of different companies such as but not limited to mining, manufacturing, trading and industrial concerns, and to deal, engage and transact directly or indirectly (sic) all forms of business and mercantile acts (sic) the transactions concerning all kinds of real or personal property, movable, semi-movable, goods, wares (sic) chattels, choses in action, tangible and intangible property (sic) technical and industrial equipments (sic) and machineries, personal and real rights and documents, securities, evidence of indebtedness or representative of value or other forms of obligations, services and all things, including future ones, which are not excluded from the commerce of man or which are not contrary to law or good morals." (*Id.*)

[3] CA *rollo,* p. 5.

[4] *Rollo,* Vol. 1, p. 604.

Supreme Court E-Library

Mining and Industrial Corporation's assets. MMC started its commercial operations in August 1985. Later, DBP and PNB transferred it to the National Government for disposition or privatization because it had become a non-performing asset.[5]

On October 2, 1992, pursuant to a Purchase and Sale Agreement[6] executed between GHI and Asset Privatization Trust (APT), the former bought ninety percent (90%) of MMC's shares and financial claims.[7] These financial claims were converted into three Promissory Notes[8] issued by MMC in favor of GHI totaling ₱500M and secured by mortgages over MMC's properties. The notes, which were similarly worded except for their amounts, read as follows:

PROMISSORY NOTE

AMOUNT - Php114,715,360.00 [Php186,550,560.00 in the second note, and Php248,734,080.00 in the third note.]

MAKATI, METRO MANILA, PHILIPPINES, October 2, 1992

For Value Received, MARICALUM MINING CORPORATION (MMC) with postal address at 4th Floor, Manila Memorial Park Bldg., 2283 Pasong Tamo Extension, Makati, Metro Manila, Philippines, hereby promises to pay "G" HOLDINGS, INC., at its office at Phimco Compound, F. Manalo Street, Punta, Sta. Ana, Manila, the amount of PESOS ONE HUNDRED FOURTEEN MILLION, SEVEN HUNDRED FIFTEEN THOUSAND AND THREE HUNDRED SIXTY (Php114,715,360.00) ["PESOS ONE HUNDRED EIGHTY–SIX MILLION FIVE HUNDRED FIFTY THOUSAND FIFE (sic) HUNDRED AND SIXTY (Php186,550,560.00)" in the second note, and "PESOS TWO HUNDRED FORTY–EIGHT MILLION, SEVEN HUNDRED THIRTY–FOUR THOUSAND AND EIGHTY (Php248,734,080.00)" in the third note], PHILIPPINE CURRENCY, on or before October 2, 2002. Interest shall accrue on the amount

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[5] *Id.*

[6] *Id.* at 157-174.

[7] *Id.* at 158.

[8] *Id.* at 175-177.

Supreme Court E-Library

of this Note at a rate per annum equal to the interest of 90-day Treasury Bills prevailing on the Friday preceding the maturity date of every calendar quarter.

As collateral security, MMC hereby establishes and constitutes in favor of "G" HOLDINGS, INC., its successors and/or assigns:

1. A mortgage over certain parcels of land, more particularly listed and described in the Sheriff's Certificate of Sale dated September 7, 1984 issued by the *Ex-Officio* Provincial Sheriff of Negros Occidental, Rolando V. Ramirez, with office at Bacolod City following the auction sale conducted pursuant to the provisions of Act 3135, a copy of which certificate of sale is hereto attached as Annex "A" and made an integral part hereof;

2. A chattel mortgage over assets and personal properties more particularly listed and described in the Sheriff's Certificate of Sale dated September 7, 1984 issued by the *Ex-Officio* Provincial Sheriff of Negros Occidental, Rolando V. Ramirez, with office at Bacolod City following the auction conducted pursuant to the provisions of Act 1508, a copy of which Certificate of Sale is hereto attached as Annex "B" and made an integral part hereof.

3. Mortgages over assets listed in APT Specific Catalogue GC-031 for MMC, a copy of which Catalogue is hereby made an integral part hereof by way of reference, as well as assets presently in use by MMC but which are not listed or included in paragraphs 1 and 2 above and shall include all assets that may hereinafter be acquired by MMC.

MARICALUM MINING CORPORATION
(Maker)

x x x x x x x x x[9]

Upon the signing of the Purchase and Sale Agreement and upon the full satisfaction of the stipulated down payment, GHI immediately took physical possession of the mine site and its facilities, and took full control of the management and operation of MMC.[10]

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[9] *Id.*

[10] *Id.* at 170 and 574.

Supreme Court E-Library

Almost four years thereafter, or on August 23, 1996, a labor dispute (refusal to bargain collectively and unfair labor practice) arose between MMC and NAMAWU, with the latter eventually filing with the National Conciliation and Mediation Board of Bacolod City a notice of strike.[11] Then Labor Secretary, now Associate Justice of this Court, Leonardo A. Quisumbing, later assumed jurisdiction over the dispute and ruled in favor of NAMAWU. In his July 30, 1997 Order in OS-AJ-10-96-014 (Quisumbing Order), Secretary Quisumbing declared that the lay-off (of workers) implemented on May 7, 1996 and October 7, 1996 was illegal and that MMC committed unfair labor practice. He then ordered the reinstatement of the laid-off workers, with payment of full backwages and benefits, and directed the execution of a new collective bargaining agreement (CBA) incorporating the terms and conditions of the previous CBA providing for an annual increase in the workers' daily wage.[12] In two separate cases–G.R. Nos. 133519 and 138996–filed with this Court, we

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[11] Records, p. 320.

[12] CA *rollo*, p. 7. The dispositive portion of the Quisumbing Order reads:

"WHEREFORE, judgment is hereby rendered:

"1. Declaring that the lay-offs implemented on May 7, 1996 and October 7, 1996 as illegal;

"2. Ordering that all workers, whether union members or not, who were laid-off on May 7, 1996 and October 7, 1996 be immediately reinstated without gap in service, loss of seniority, and that their full backwages and benefits from the time of termination until actual reinstatement be paid;

"3. Declaring the Company to have violated the Labor Code provisions on Unfair Labor Practice for negotiating in bad faith and later refusing to negotiate; and

"4. Ordering the parties to enter into a new collective bargaining agreement incorporating all the terms and conditions of the previous collective bargaining agreement between the Company and the NFL, except the name of the exclusive bargaining agent, and providing for an annual across-the-board increase in the daily wage of all rank and file workers in the amount of ₱60.00 per day from February, 1996 until January, 1998 and another ₱50.00 increase annually effective February 1, 1998 until January 31, 2000.

"SO ORDERED."

Supreme Court E-Library

sustained the validity of the Quisumbing Order, which became final and executory on January 26, 2000.[13]

On May 11, 2001, then Acting Department of Labor and Employment (DOLE) Secretary, now also an Associate Justice of this Court, Arturo D. Brion, on motion of NAMAWU, directed the issuance of a partial writ of execution (Brion Writ), and ordered the DOLE sheriffs to proceed to the MMC premises for the execution of the same.[14] Much later, in 2006, this Court, in G.R. Nos. 157696-97, entitled *Maricalum Mining Corporation v. Brion and NAMAWU*,[15] affirmed the propriety of the issuance of the Brion Writ.

The Brion Writ was not fully satisfied because MMC's resident manager resisted its enforcement.[16] On motion of NAMAWU, then DOLE Secretary Patricia A. Sto. Tomas ordered the issuance of the July 18, 2002 Alias Writ of Execution and Break-Open Order (Sto. Tomas Writ).[17] On October 11, 2002, the respondent acting sheriffs, the members of the union, and several armed men implemented the Sto. Tomas Writ, and levied on the properties of MMC located at its compound in Sipalay, Negros Occidental.[18]

On October 14, 2002, GHI filed with the Regional Trial Court (RTC) of Kabankalan City, Negros Occidental, Special Civil Action (SCA) No. 1127 for Contempt with Prayer for the Issuance of a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction and to Nullify the Sheriff's Levy on Properties.[19] GHI contended that the levied properties were the subject of a

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[13] *Rollo*, Vol. 1, p. 1099; see *Maricalum Mining Corporation v. Brion and NAMAWU*, G.R. Nos. 157696-97, February 9, 2006, 482 SCRA 87, 93-94.

[14] *Id.* at 1099.

[15] *Supra* note 13.

[16] Records, p. 15.

[17] *Id.* at 15-18.

[18] *Id.* at 2.

[19] *Id.* at 1-11.

Supreme Court E-Library

Deed of Real Estate and Chattel Mortgage, dated September 5, 1996[20] executed by MMC in favor of GHI to secure the aforesaid ₱550M promissory notes; that this deed was registered on February 24, 2000;[21] and that the mortgaged properties were already extrajudicially foreclosed in July 2001 and sold to GHI as the highest bidder on December 3, 2001, as evidenced by the Certificate of Sale dated December 4, 2001.[22]

The trial court issued *ex parte* a TRO effective for 72 hours, and set the hearing on the application for a writ of injunction.[23] On October 17, 2002, the trial court ordered the issuance of a Writ of Injunction (issued on October 18, 2002)[24] enjoining the DOLE sheriffs from further enforcing the Sto. Tomas Writ and from conducting any public sale of the levied-on properties, subject to GHI's posting of a ₱5M bond.[25]

Resolving, among others, NAMAWU's separate motions for the reconsideration of the injunction order and for the dismissal of the case, the RTC issued its December 4, 2002 Omnibus Order,[26] the dispositive portion of which reads:

> WHEREFORE, premises considered, respondent NAMAWU Local 103's Motion for Reconsideration dated October 23, 2002 for the reconsideration of the Order of this Court directing the issuance of Writ of Injunction prayed for by petitioner and the Order dated October 18, 2002 approving petitioner's Injunction Bond in the amount of ₱5,000,000.00 is hereby DENIED.
>
> Respondent's Motion to Dismiss as embodied in its Opposition to Extension of Temporary Restraining Order and Issuance of Writ of Preliminary Injunction with Motion to Dismiss and Suspend Period to File Answer dated October 15, 2002 is likewise DENIED.

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[20] *Id.* at 19-39.

[21] *Id.* at 19, CA *rollo,* pp. 992-993.

[22] Records, pp. 45-47.

[23] *Id.* at 70-71.

[24] *Id.* at 90.

[25] *Id.* at 85D-89.

[26] *Id.* at 344-364.

Supreme Court E-Library

Petitioner's Urgent Motion for the return of the levied firearms is GRANTED. Pursuant thereto, respondent sheriffs are ordered to return the levied firearms and handguns to the petitioner provided the latter puts [up] a bond in the amount of ₱332,200.00.

Respondent's lawyer, Atty. Jose Lapak, is strictly warned not to resort again to disrespectful and contemptuous language in his pleadings, otherwise, the same shall be dealt with accordingly.

SO ORDERED.[27]

Aggrieved, NAMAWU filed with the CA a petition for *certiorari* under Rule 65, assailing the October 17, 18 and December 4, 2002 orders of the RTC.[28]

After due proceedings, on October 14, 2003, the appellate court rendered a Decision setting aside the RTC issuances and directing the immediate execution of the Sto. Tomas Writ. The CA ruled, among others, that the circumstances surrounding the execution of the September 5, 1996 Deed of Real Estate and Chattel Mortgage yielded the conclusion that the deed was sham, fictitious and fraudulent; that it was executed two weeks after the labor dispute arose in 1996, but surprisingly, it was registered only on February 24, 2000, immediately after the Court affirmed with finality the Quisumbing Order. The CA also found that the certificates of title to MMC's real properties did not contain any annotation of a mortgage lien, and, suspiciously, GHI did not intervene in the long drawn-out labor proceedings to protect its right as a mortgagee of virtually all the properties of MMC.[29]

The CA further ruled that the subsequent foreclosure of the mortgage was irregular, effected precisely to prevent the satisfaction of the judgment against MMC. It noted that the foreclosure proceedings were initiated in July 2001, shortly after the issuance of the Brion Writ; and, more importantly, the basis for the extrajudicial foreclosure was not the failure of MMC to pay the mortgage debt, but its failure "to satisfy any money

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[27] *Id.* at 164.

[28] *Supra* notes 24, 25 and 26.

[29] *Rollo,* Vol. 1, pp. 111-112.

Supreme Court E-Library

judgment against it rendered by a court or tribunal of competent jurisdiction, in favor of any person, firm or entity, without any legal ground or reason."[30] Further, the CA pierced the veil of corporate fiction of the two corporations.[31] The dispositive portion of the appellate court's decision reads:

> WHEREFORE, in view of the foregoing considerations, the petition is GRANTED. The October 17, 2002 and the December 4, 2002 Order of the RTC, Branch 61 of Kabankalan City, Negros Occidental are hereby ANNULLED and SET ASIDE for having been issued in excess or without authority. The Writ of Preliminary Injunction issued by the said court is lifted, and the DOLE Sheriff is directed to immediately enforce the Writ of Execution issued by the Department of Labor and Employment in the case "In re: Labor Dispute in Maricalum Mining Corporation" docketed as OS-AJ-10-96-01 (NCMB-RB6-08-96).[32]

The Issues

Dissatisfied, GHI elevated the case to this Court *via* the instant petition for review on *certiorari*, raising the following issues:

I

WHETHER OR NOT GHI IS A PARTY TO THE LABOR DISPUTE BETWEEN NAMAWU AND MMC.

II

WHETHER OR NOT, ASSUMING *ARGUENDO* THAT THE PERTINENT DECISION OR ORDER IN THE SAID LABOR DISPUTE BETWEEN MMC AND NAMAWU MAY BE ENFORCED AGAINST GHI, THERE IS ALREADY A FINAL DEETERMINATION (sic) BY THE SUPREME COURT OF THE RIGHTS OF THE PARTIES IN SAID LABOR DISPUTE CONSIDERING THE PENDENCY OF G.R. NOS. 157696-97.

III

WHETHER OR NOT GHI IS THE ABSOLUTE OWNER OF THE PROPERTIES UNLAWFULLY GARNISHED BY RESPONDENTS SHERIFFS.

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[30] *Id.* at 112.

[31] *Id.* at 115-116.

[32] *Id.* at 116.

Supreme Court E-Library

IV

WHETHER OR NOT THE HONORABLE HENRY D. ARLES CORRECTLY ISSUED A WRIT OF INJUNCTION AGAINST THE UNLAWFUL EXECUTIOIN (sic) ON GHI'S PROPERTIES.

V

WHETHER OR NOT THE VALIDITY OF THE DEED OF REAL AND CHATTEL MORTGAGE OVER THE SUBJECT PROPERTIES BETWEEN MMC AND GHI MAY BE COLLATERALLY ATTACKED.

VI

WHETHER OR NOT, ASSUMING *ARGUENDO* THAT THE VALIDITY OF THE SAID REAL AND CHATTEL MORTGAGE MAY BE COLLATERALLY ATTACKED, THE SAID MORTGAGE IS SHAM, FICTITIOUS AND FRAUDULENT.

VII

WHETHER OR NOT GHI IS A DISTINCT AND SEPARATE CORPORATE ENTITY FROM MMC.

VIII

WHETHER OR NOT GHI CAN BE PREVENTED THROUGH THE ISSUANCE OF A RESTRAINING ORDER OR INJUNCTION FROM TAKING POSSESSION OR BE DISPOSSESSED OF ASSETS PURCHASED BY IT FROM APT.[33]

Stripped of non-essentials, the core issue is whether, given the factual circumstances obtaining, the RTC properly issued the writ of injunction to prevent the enforcement of the Sto. Tomas Writ. The resolution of this principal issue, however, will necessitate a ruling on the following key and interrelated questions:

1. Whether the mortgage of the MMC's properties to GHI was a sham;
2. Whether there was an effective levy by the DOLE upon the MMC's real and personal properties; and
3. Whether it was proper for the CA to pierce the veil of corporate fiction between MMC and GHI.

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[33] *Id.* at 1093-1094.

Supreme Court E-Library

Our Ruling

Before we delve into an extended discussion of the foregoing issues, it is essential to take judicial cognizance of cases intimately linked to the present controversy which had earlier been elevated to and decided by this Court.

Judicial Notice.

Judicial notice must be taken by this Court of its Decision in *Maricalum Mining Corporation v. Hon. Arturo D. Brion and NAMAWU*,[34] in which we upheld the right of herein private respondent, NAMAWU, to its labor claims. Upon the same principle of judicial notice, we acknowledge our Decision in *Republic of the Philippines, through its trustee, the Asset Privatization Trust v. "G" Holdings, Inc.*,[35] in which GHI was recognized as the rightful purchaser of the shares of stocks of MMC, and thus, entitled to the delivery of the company notes accompanying the said purchase. These company notes, consisting of three (3) Promissory Notes, were part of the documents executed in 1992 in the privatization sale of MMC by the Asset Privatization Trust (APT) to GHI. Each of these notes uniformly contains stipulations *"establishing and constituting in favor of GHI"* mortgages over MMC's real and personal properties. The stipulations were subsequently formalized in a separate document denominated Deed of Real Estate and Chattel Mortgage on September 5, 1996. Thereafter, the Deed was registered on February 4, 2000.[36]

We find both decisions critically relevant to the instant dispute. In fact, they should have guided the courts below in the disposition of the controversy at their respective levels. To repeat, these decisions respectively confirm the right of NAMAWU to its labor claims[37] and affirm the right of GHI to its financial and

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[34] *Supra* note 13.

[35] G.R. No. 141241, November 22, 2005, 475 SCRA 608.

[36] *Rollo*, Vol. 1, pp. 19-39.

[37] The Quisumbing Order was affirmed by this Court in *Maricalum Mining Corp. v. Brion and NAMAWU, supra* note 13.

Supreme Court E-Library

mortgage claims over the real and personal properties of MMC, as will be explained below. The assailed CA decision apparently failed to consider the impact of these two decisions on the case at bar. Thus, we find it timely to reiterate that: "courts have also taken judicial notice of previous cases to determine whether or not the case pending is a moot one or whether or not a previous ruling is applicable to the case under consideration."[38]

However, the CA correctly assessed that the authority of the lower court to issue the challenged writ of injunction depends on the validity of the third party's (GHI's) claim of ownership over the property subject of the writ of execution issued by the labor department. Accordingly, the main inquiry addressed by the CA decision was whether GHI could be treated as a third party or a stranger to the labor dispute, whose properties were beyond the reach of the Writ of Execution dated December 18, 2001.[39]

In this light, all the more does it become imperative to take judicial notice of the two cases aforesaid, as they provide the necessary perspective to determine whether GHI is such a party with a valid ownership claim over the properties subject of the writ of execution. In *Juaban v. Espina*,[40] we held that "in some instances, courts have also taken judicial notice of proceedings in other cases that are closely connected to the matter in controversy. These cases may be so closely interwoven, or so clearly interdependent, as to invoke a rule of judicial notice." The two cases that we have taken judicial notice of are of such character, and our review of the instant case cannot stray from the findings and conclusions therein.

Having recognized these crucial Court rulings, situating the facts in proper perspective, we now proceed to resolve the questions identified above.

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[38] *Baguio v. Teofila L. Vda. de Jalagat, et al.,* 149 Phil. 436, 440 (1971).

[39] *Rollo*, Vol. 1, p. 110.

[40] G.R. No. 170049, March 14, 2008, 548 SCRA 588, 611; citing *Bongato v. Sps. Malvar,* 436 Phil. 109, 117-118 (2002).

Supreme Court E-Library

The mortgage was not a sham.

Republic, etc. v. "G" Holdings, Inc. acknowledged the existence of the Purchase and Sale Agreement between the APT and the GHI, and recounts the facts attendant to that transaction, as follows:

> The series of negotiations between the petitioner Republic of the Philippines, through the APT as its trustee, and "G" Holdings culminated in the execution of a purchase and sale agreement on October 2, 1992. Under the agreement, the Republic undertook to sell and deliver 90% of the entire issued and outstanding **shares** of MMC, as well as its **company notes**, to "G" Holdings in consideration of the purchase price of ₱673,161,280. It also provided for a down payment of ₱98,704,000 with the balance divided into four tranches payable in installment over a period of ten years."[41]

The "company notes" mentioned therein were actually the very same three (3) Promissory Notes amounting to ₱550M, issued by MMC in favor of GHI. As already adverted to above, these notes uniformly contained stipulations "establishing and constituting" mortgages over MMC's real and personal properties.

It may be remembered that APT acquired the MMC from the PNB and the DBP. Then, in compliance with its mandate to privatize government assets, APT sold the aforesaid MMC shares and notes to GHI. To repeat, this Court has recognized this Purchase and Sale Agreement in *Republic, etc. v. "G" Holdings, Inc.*

The participation of the Government, through APT, in this transaction is significant. Because the Government had actively negotiated and, eventually, executed the agreement, then the transaction is imbued with an aura of official authority, giving rise to the presumption of regularity in its execution. This presumption would cover all related transactional acts and documents needed to consummate the privatization sale, inclusive of the Promissory Notes. It is obvious, then, that the Government, through APT, consented to the "establishment and constitution"

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[41] *Supra* note 35, at 613; emphasis supplied.

Supreme Court E-Library

of the mortgages on the assets of MMC in favor of GHI, as provided in the notes. Accordingly, the notes (and the stipulations therein) enjoy the benefit of the same presumption of regularity accorded to government actions. Given the Government consent thereto, and clothed with the presumption of regularity, the mortgages cannot be characterized as sham, fictitious or fraudulent.

Indeed, as mentioned above, the three (3) Promissory Notes, executed on October 2, 1992, "established and constituted" in favor of GHI the following mortgages:

1. A mortgage over certain parcels of land, more particularly listed and described in the Sheriff's Certificate of Sale dated September 7, 1984 issued by the *Ex-Officio* Provincial Sheriff of Negros Occidental, Rolando V. Ramirez, with office at Bacolod City following the auction sale conducted pursuant to the provisions of Act 3135, a copy of which certificate of sale is hereto attached as Annex "A" and made an integral part hereof;

2. A chattel mortgage over assets and personal properties more particularly listed and described in the Sheriff's Certificate of Sale dated September 7, 1984 issued by the *Ex-Officio* Provincial Sheriff of Negros Occidental, Rolando V. Ramirez, with office at Bacolod City following the auction conducted pursuant to the provision of Act 1508, a copy of which Certificate of Sale is hereto attached as Annex "B" and made an integral part hereof.

3. Mortgages over assets listed in APT Specific catalogue GC-031 for MMC, a copy of which Catalogue is hereby made an integral part hereof by way of reference, as well as assets presently in use by MMC but which are not listed or included in paragraphs 1 and 2 above and shall include all assets that may hereinafter be acquired by MMC.[42]

It is difficult to conceive that these mortgages, already existing in 1992, almost four (4) years before NAMAWU filed its notice of strike, were a "fictitious" arrangement intended to defraud NAMAWU. After all, they were agreed upon long before the seeds of the labor dispute germinated.

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[42] *Rollo*, Vol. 1, pp. 175-177.

Supreme Court E-Library

While it is true that the Deed of Real Estate and Chattel Mortgage was executed only on September 5, 1996, it is beyond cavil that this formal document of mortgage was merely a derivative of the original mortgage stipulations contained in the Promissory Notes of October 2, 1992. The execution of this Deed in 1996 does not detract from, but instead reinforces, the manifest intention of the parties to "establish and constitute" the mortgages on MMC's real and personal properties.

Apparently, the move to execute a formal document denominated as the Deed of Real Estate and Chattel Mortgage came about after the decision of the RTC of Manila in Civil Case No. 95-76132 became final in mid-1996. This conclusion surfaces when we consider the genesis of Civil Case No. 95-76132 and subsequent incidents thereto, as narrated in *Republic, etc. v. "G" Holdings, Inc., viz:*

> Subsequently, a disagreement on the matter of when installment payments should commence arose between the parties. The Republic claimed that it should be on the seventh month from the signing of the agreement while "G" Holdings insisted that it should begin seven months after the fulfillment of the closing conditions.
>
> Unable to settle the issue, "G" Holdings filed a complaint for specific performance and damages with the Regional Trial Court of Manila, Branch 49, against the Republic to compel it to close the sale in accordance with the purchase and sale agreement. The complaint was docketed as Civil Case No. 95-76132.
>
> During the pre-trial, the respective counsels of the parties manifested that the issue involved in the case was one of law and submitted the case for decision. On June 11, 1996, the trial court rendered its decision. It ruled in favor of "G" Holdings and held:
>
> > "In line with the foregoing, this Court having been convinced that the Purchase and Sale Agreement is indeed subject to the final closing conditions prescribed by Stipulation No. 5.02 and conformably to Rule 39, Section 10 of the Rules of Court, **accordingly orders that the Asset Privatization Trust execute the corresponding Document of Transfer of the subject shares and financial notes and cause the actual delivery of subject shares and notes to "G" Holdings, Inc., within a period of thirty (30) days from receipt of this**

Supreme Court E-Library

> **Decision,** and after "G" Holdings Inc., shall have paid in full the entire balance, at its present value of ₱241,702,122.86, computed pursuant to the prepayment provisions of the Agreement. Plaintiff shall pay the balance simultaneously with the delivery of the Deed of Transfer and actual delivery of the shares and notes.
>
> SO ORDERED."

The Solicitor General filed a notice of appeal on behalf of the Republic on June 28, 1996. Contrary to the rules of procedure, however, the notice of appeal was filed with the Court of Appeals (CA), not with the trial court which rendered the judgment appealed from.

No other judicial remedy was resorted to until July 2, 1999 when the Republic, through the APT, filed a petition for annulment of judgment with the CA. It claimed that the decision should be annulled on the ground of abuse of discretion amounting to lack of jurisdiction on the part of the trial court. x x x

Finding that the grounds necessary for the annulment of judgment were inexistent, the appellate court dismissed the petition. x x x[43]

With the RTC decision having become final owing to the failure of the Republic to perfect an appeal, it may have become necessary to execute the Deed of Real Estate and Chattel Mortgage on September 5, 1996, in order to enforce the trial court's decision of June 11, 1996. This appears to be the most plausible explanation for the execution of the Deed of Real Estate and Chattel Mortgage only in September 1996. Even as the parties had already validly constituted the mortgages in 1992, as explicitly provided in the Promissory Notes, a specific deed of mortgage in a separate document may have been deemed necessary for registration purposes. Obviously, this explanation is more logical and more sensible than the strained conjecture that the mortgage was executed on September 5, 1996 only for the purpose of defrauding NAMAWU.

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[43] *Supra* note 35, at 613-615; emphasis supplied. It may be added that when the Republic, through the APT, elevated the case to the Court, we sustained the CA's dismissal of the Republic's petition, and as already adverted to, effectively upheld the right of GHI to the transfer and delivery of the shares and the financial notes.

Supreme Court E-Library

It is undeniable that the Deed of Real Estate and Chattel Mortgage was formally documented two weeks after NAMAWU filed its notice of strike against MMC on August 23, 1996. However, this fact alone cannot give rise to an adverse inference for two reasons. *First,* as discussed above, the mortgages had already been "established and constituted" as early as October 2, 1992 in the Promissory Notes, showing the clear intent of the parties to impose a lien upon MMC's properties. *Second,* the mere filing of a notice of strike by NAMAWU did not, as yet, vest in NAMAWU any definitive right that could be prejudiced by the execution of the mortgage deed.

The fact that MMC's obligation to GHI is not reflected in the former's financial statements—a circumstance made capital of by NAMAWU in order to cast doubt on the validity of the mortgage deed—is of no moment. By itself, it does not provide a sufficient basis to invalidate this public document. To say otherwise, and to invalidate the mortgage deed on this pretext, would furnish MMC a convenient excuse to absolve itself of its mortgage obligations by adopting the simple strategy of not including the obligations in its financial statements. It would ignore our ruling in *Republic, etc. v. "G" Holdings, Inc.*, which obliged APT to deliver the MMC shares and financial notes to GHI. Besides, the failure of the mortgagor to record in its financial statements its loan obligations is surely not an essential element for the validity of mortgage agreements, nor will it independently affect the right of the mortgagee to foreclose.

Contrary to the CA decision, *Tanongon v. Samson*[44] is not "on all fours" with the instant case. There are material differences between the two cases. At issue in *Tanongon* was a third-party claim arising from a Deed of Absolute Sale executed between Olizon and Tanongon on July 29, 1997, after the NLRC decision became final and executory on April 29, 1997. In the case at bar, what is involved is a loan with mortgage agreement executed on October 2, 1992, well ahead of the union's notice of strike on August 23, 1996. No presumption of regularity inheres in

[44] 431 Phil. 729 (2002).

Supreme Court E-Library

the deed of sale in *Tanongon,* while the participation of APT in this case clothes the transaction in 1992 with such a presumption that has not been successfully rebutted. In *Tanongon,* the conduct of a full-blown trial led to the finding—duly supported by evidence—that the voluntary sale of the assets of the judgment debtor was made in bad faith. Here, no trial was held, owing to the motion to dismiss filed by NAMAWU, and the CA failed to consider the factual findings made by this Court in *Republic, etc. v. "G" Holdings, Inc.* Furthermore, in *Tanongon,* the claimant did not exercise his option to file a separate action in court, thus allowing the NLRC Sheriff to levy on execution and to determine the rights of third-party claimants.[45] In this case, a separate action was filed in the regular courts by GHI, the third-party claimant. Finally, the questioned transaction in *Tanongon* was a plain, voluntary transfer in the form of a sale executed by the judgment debtor in favor of a dubious third-party, resulting in the inability of the judgment creditor to satisfy the judgment. On the other hand, this case involves an involuntary transfer (foreclosure of mortgage) arising from a loan obligation that well-existed long before the commencement of the labor claims of the private respondent.

Three other circumstances have been put forward by the CA to support its conclusion that the mortgage contract is a sham. First, the CA considered it highly suspect that the Deed of Real Estate and Chattel Mortgage was registered only on February 4, 2000, "three years after its execution, and almost one month after the Supreme Court rendered its decision in the labor dispute."[46] Equally suspicious, as far as the CA is concerned, is the fact that the mortgages were foreclosed on July 31, 2001, after the DOLE had already issued a Partial Writ of Execution on May 9, 2001.[47] To the appellate court,

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[45] In *Lim v. Court of Appeals,* G.R. No. 149748, November 16, 2006, 507 SCRA 38, 50, this Court ruled that "(t)he power of the sheriff to rule on the issue of ownership is settled."

[46] *Rollo,* Vol. 1, p. 111

[47] *Id.* at 112.

Supreme Court E-Library

the timing of the registration of the mortgage deed was too coincidental, while the date of the foreclosure signified that it was "effected precisely to prevent the satisfaction of the judgment awards."[48] Furthermore, the CA found that the mortgage deed itself was executed without any consideration, because at the time of its execution, all the assets of MMC had already been transferred to GHI.[49]

These circumstances provided the CA with sufficient justification to apply Article 1387 of the Civil Code on presumed fraudulent transactions, and to declare that the mortgage deed was void for being simulated and fictitious.[50]

We do not agree. We find this Court's ruling in *MR Holdings, Ltd. v. Sheriff Bajar*[51] pertinent and instructive:

> Article 1387 of the Civil Code of the Philippines provides:
>
> "Art. 1387. All contracts by virtue of which the debtor alienates property by gratuitous title are presumed to have been entered into in fraud of creditors, when the donor did not reserve sufficient property to pay all debts contracted before the donation.
>
> Alienations by onerous title are also presumed fraudulent when made by persons against whom some judgment has been rendered in any instance or some writ of attachment has been issued. The decision or attachment need not refer to the property alienated, and need not have been obtained by the party seeking rescission.
>
> In addition to these presumptions, the design to defraud creditors may be proved in any other manner recognized by law and of evidence."
>
> This article presumes the existence of fraud made by a debtor. Thus, in the absence of satisfactory evidence to the contrary,

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[48] *Id.*

[49] *Id.* at 113.

[50] *Id.* at 114.

[51] 430 Phil. 443, 467-469 (2002).

Supreme Court E-Library

> an alienation of a property will be held fraudulent if it is made after a judgment has been rendered against the debtor making the alienation. **This presumption of fraud is not conclusive and may be rebutted by satisfactory and convincing evidence. All that is necessary is to establish affirmatively that the conveyance is made in good faith and for a sufficient and valuable consideration.**

The "Assignment Agreement" and the "Deed of Assignment" were executed for valuable considerations. Patent from the "Assignment Agreement" is the fact that petitioner assumed the payment of US$18,453,450.12 to ADB in satisfaction of Marcopper's remaining debt as of March 20, 1997. Solidbank cannot deny this fact considering that a substantial portion of the said payment, in the sum of US$13,886,791.06, was remitted in favor of the Bank of Nova Scotia, its major stockholder.

The facts of the case so far show that the assignment contracts were executed in good faith. The execution of the "Assignment Agreement" on March 20, 1997 and the "Deed of Assignment" on December 8,1997 is not the *alpha* of this case. **While the execution of these assignment contracts almost coincided with the rendition on May 7, 1997 of the Partial Judgment in Civil Case No. 96-80083 by the Manila RTC,** however, there was no intention on the part of petitioner to defeat Solidbank's claim. It bears reiterating that as early as November 4, 1992, Placer Dome had already bound itself under a "Support and Standby Credit Agreement" to provide Marcopper with cash flow support for the payment to ADB of its obligations. When Marcopper ceased operations on account of disastrous mine tailings spill into the Boac River and ADB pressed for payment of the loan, Placer Dome agreed to have its subsidiary, herein petitioner, pay ADB the amount of US$18,453,450.12.

Thereupon, ADB and Marcopper executed, respectively, in favor of petitioner an "Assignment Agreement" and a "Deed of Assignment." **Obviously, the assignment contracts were connected with transactions that happened long before the rendition in 1997 of the Partial Judgment in Civil Case No. 96-80083 by the Manila RTC. Those contracts cannot be viewed in isolation.** If we may add, it is highly inconceivable that ADB, a reputable international financial organization, will connive with Marcopper to feign or simulate a contract in 1992 just to defraud Solidbank for its claim

Supreme Court E-Library

four years thereafter. And it is equally incredible for petitioner to be paying the huge sum of US$18,453,450.12 to ADB only for the purpose of defrauding Solidbank of the sum of ₱52,970,756.89.

It is said that the test as to whether or not a conveyance is fraudulent is – does it prejudice the rights of creditors? **We cannot see how Solidbank's right was prejudiced by the assignment contracts considering that substantially all of Marcopper's properties were already covered by the registered "Deed of Real Estate and Chattel Mortgage" executed by Marcopper in favor of ADB as early as November 11, 1992. As such, Solidbank cannot assert a better right than ADB, the latter being a preferred creditor. It is basic that mortgaged properties answer primarily for the mortgaged credit, not for the judgment credit of the mortgagor's unsecured creditor.** Considering that petitioner assumed Marcopper's debt to ADB, it follows that Solidbank's right as judgment creditor over the subject properties must give way to that of the former.[52]

From this ruling in *MR Holdings*, we can draw parallel conclusions. The execution of the subsequent Deed of Real Estate and Chattel Mortgage on September 5, 1996 was simply the formal documentation of what had already been agreed in the seminal transaction (the Purchase and Sale Agreement) between APT and GHI. It should not be viewed in isolation, apart from the original agreement of October 2, 1992. And it cannot be denied that this original agreement was supported by an adequate consideration. The APT was even ordered by the court to deliver the shares and financial notes of MMC in exchange for the payments that GHI had made.

It was also about this time, in 1996, that NAMAWU filed a notice of strike to protest non-payment of its rightful labor claims.[53] But, as already mentioned, the outcome of that labor dispute was yet unascertainable at that time, and NAMAWU could only have hoped for, or speculated about, a favorable ruling. To paraphrase *MR Holdings*, we cannot see how NAMAWU's right was prejudiced by the Deed of Real Estate and Chattel Mortgage,

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[52] Emphasis supplied.

[53] The Notice of Strike was filed on August 23, 1996.

Supreme Court E-Library

or by its delayed registration, when substantially all of the properties of MMC were already mortgaged to GHI as early as October 2, 1992. Given this reality, the Court of Appeals had no basis to conclude that this Deed of Real Estate and Chattel Mortgage, by reason of its late registration, was a simulated or fictitious contract.

The importance of registration and its binding effect is stated in Section 51 of the Property Registration Decree or Presidential Decree (P.D.) No. 1529,[54] which reads:

> SECTION 51. *Conveyance and other dealings by registered owner.*—An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms, deeds, mortgages, leases or other voluntary instrument as are sufficient in law. But no deed, mortgage, lease or other voluntary instrument, except a will purporting to convey or effect registered land, shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Registry of Deeds to make registration.
>
> The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned, and in all cases under this Decree, the registration shall be made in the Office of the Register of Deeds for the province or the city where the land lies.[55]

Under the Torrens system, registration is the operative act which gives validity to the transfer or creates a lien upon the land. Further, entrenched in our jurisdiction is the doctrine that registration in a public registry creates constructive notice to the whole world.[56] Thus, Section 51 of Act No. 496, as amended by Section 52 of P.D. No. 1529, provides:

> SECTION 52. *Constructive notice upon registration.*—Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the Office of the Register of Deeds for the province

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[54] *Talusan. v. Tayag,* 408 Phil. 373, 390 (2001).

[55] Underscoring supplied.

[56] *Olizon v. Court of Appeals*, G.R. No. 107075, September 1, 1994, 236 SCRA 148, 159.

Supreme Court E-Library

or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering.

But, there is nothing in Act No. 496, as amended by P.D. No. 1529, that imposes a period within which to register annotations of "conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land." If liens were not so registered, then it "shall operate only as a contract between the parties and as evidence of authority to the Registry of Deeds to make registration." If registered, it "shall be the operative act to convey or affect the land insofar as third persons are concerned." The mere lapse of time from the execution of the mortgage document to the moment of its registration does not affect the rights of a mortgagee.

Neither will the circumstance of GHI's foreclosure of MMC's properties on July 31, 2001, or after the DOLE had already issued a Partial Writ of Execution on May 9, 2001 against MMC, support the conclusion of the CA that GHI's act of foreclosing on MMC's properties was "*effected to prevent satisfaction of the judgment award*." GHI's mortgage rights, constituted in 1992, antedated the Partial Writ of Execution by nearly ten (10) years. GHI's resort to foreclosure was a legitimate enforcement of a right to liquidate a *bona fide* debt. It was a reasonable option open to a mortgagee which, not being a party to the labor dispute between NAMAWU and MMC, stood to suffer a loss if it did not avail itself of the remedy of foreclosure.

The well-settled rule is that a mortgage lien is inseparable from the property mortgaged.[57] While it is true that GHI's foreclosure of MMC's mortgaged properties may have had the "effect to prevent satisfaction of the judgment award against the specific mortgaged property that first answers for a mortgage obligation ahead of any subsequent creditors," that same foreclosure does not necessarily translate to having been "*effected to prevent satisfaction of the judgment award*" against MMC.

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[57] *Consolidated Bank and Trust Corporation v. Court of Appeals*, G.R. No. 78771, January 23, 1991, 193 SCRA 158, 176; citing *Philippine National Bank v. Mallorca*, G.R. No. L-22538, October 31, 1967, 21 SCRA 694, 698.

Supreme Court E-Library

Likewise, we note the narration of subsequent facts contained in the Comment of the Office of the Solicitor General. Therein, it is alleged that after the Partial Writ of Execution was issued on May 9, 2001, a motion for reconsideration was filed by MMC; that the denial of the motion was appealed to the CA; that when the appeal was dismissed by the CA on January 24, 2002, it eventually became the subject of a review petition before this Court, docketed as G.R. No. 157696; and that G.R. No. 157696 was decided by this Court only on February 9, 2006.

This chronology of subsequent events shows that February 9, 2006 would have been the earliest date for the unimpeded enforcement of the Partial Writ of Execution, as it was only then that this Court resolved the issue. This happened four and a half years after July 31, 2001, the date when GHI foreclosed on the mortgaged properties. Thus, it is not accurate to say that the foreclosure made on July 31, 2001 was "*effected [only] to prevent satisfaction of the judgment award*."

We also observe the error in the CA's finding that the 1996 Deed of Real Estate and Chattel Mortgage was not supported by any consideration since at the time the deed was executed, *"all the real and personal property of MMC had already been transferred in the hands of G Holdings*."[58] It should be remembered that the Purchase and Sale Agreement between GHI and APT involved large amounts (₱550M) and even spawned a subsequent court action (Civil Case No. 95-76132, RTC of Manila). Yet, nowhere in the Agreement or in the RTC decision is there any mention of real and personal properties of MMC being included in the sale to GHI in 1992. These properties simply served as mortgaged collateral for the 1992 Promissory Notes.[59] The Purchase and Sale Agreement and the Promissory Notes themselves are the best evidence that there was ample consideration for the mortgage.

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[58] *Rollo*, Vol. 1, p. 113.

[59] Under the Representations and Warranties clause of the Purchase and Sale Agreement dated October 2, 1992, paragraph (k) "Asset Catalogue GC 031" briefly describes **all** movable and immovable properties owned by or leased to MMC (*id.* at 165).

Supreme Court E-Library

Thus, we must reject the conclusion of the CA that the Deed of Real Estate and Chattel Mortgage executed in 1996 was a simulated transaction.

On the issue of whether there had been an effective levy upon the properties of GHI.

The well-settled principle is that the rights of a mortgage creditor over the mortgaged properties are superior to those of a subsequent attaching creditor. In *Cabral v. Evangelista*,[60] this Court declared that:

> Defendants-appellants purchase of the mortgaged chattels at the public sheriff's sale and the delivery of the chattels to them with a certificate of sale did not give them a superior right to the chattels as against plaintiffs-mortgagees. Rule 39, Section 22 of the old Rules of Court (now Rule 39, Section 25 of the Revised Rules), cited by appellants precisely provides that "the sale conveys to the purchaser all the right which the debtor had in such property on the day the execution or attachment was levied." It has long been settled by this Court that "The right of those who so acquire said properties should not and can not be superior to that of the creditor who has in his favor an instrument of mortgage executed with the formalities of the law, in good faith, and without the least indication of fraud. This is all the more true in the present case, because, when the plaintiff purchased the automobile in question on August 22, 1933, he knew, or at least, it is presumed that he knew, by the mere fact that the instrument of mortgage, Exhibit 2, was registered in the office of the register of deeds of Manila, that said automobile was subject to a mortgage lien. In purchasing it, with full knowledge that such circumstances existed, it should be presumed that he did so, very much willing to respect the lien existing thereon, since he should not have expected that with the purchase, he would acquire a better right than that which the vendor then had." In another case between two mortgagees, we held that "As between the first and second mortgagees, therefore, the second mortgagee has at most only the right to redeem, and even when the second mortgagee goes through the formality of an extrajudicial foreclosure, the purchaser acquires no more than the right of redemption from the first mortgagee."

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[60] *Cabral, et al. v. Evangelista, et al.*, 139 Phil. 300, 306-307 (1969).

Supreme Court E-Library

The superiority of the mortgagee's lien over that of a subsequent judgment creditor is now expressly provided in Rule 39, Section 16 of the Revised Rules of Court, which states with regard to the effect of levy on execution as to third persons that "The levy on execution shall create a lien in favor of the judgment creditor over the right, title and interest of the judgment debtor in such property at the time of the levy, subject to liens or encumbrances then existing."

Even in the matter of possession, mortgagees over chattel have superior, preferential and paramount rights thereto, and the mortgagor has mere rights of redemption.[61]

Similar rules apply to cases of mortgaged real properties that are registered. Since the properties were already mortgaged to GHI, the only interest remaining in the mortgagor was its right to redeem said properties from the mortgage. The right of redemption was the only leviable or attachable property right of the mortgagor in the mortgaged real properties. We have held that —

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[61] In *Northern Motors, Inc. v. Judge Coquia,* 160 Phil. 1091, 1095 (1975), in cases of chattel of mortgages, this Court pronounced:

We hold, under the facts of this case, that Northern Motors, Inc., as chattel mortgagee and unpaid vendor, should not be required to vindicate in a separate action its claims for the seven mortgaged taxicabs and for the proceeds of the execution sale of the other eight mortgaged taxicabs.

Inasmuch as the condition of the chattel mortgages had already been broken and Northern Motors, Inc. had in fact instituted an action for replevin so that it could take possession of the mortgaged taxicabs (Civil Case No. 20536, Rizal CFI) it has a superior, preferential and paramount right to have possession of the mortgaged taxicabs and to claim the proceeds of the execution sale (See *Bachrach Motor Co. v. Summer*, 42 Phil. 3; *Northern Motors, Inc. v. Herrera,* L-32674, February 22, 1973, 49 SCRA 392).

Respondent sheriff *wrongfully levied* upon the mortgaged taxicabs and erroneously took possession of them. He could have levied only upon *the right or equity of redemption* pertaining to the Manila Yellow Taxicab Co., Inc. as chattel mortgagor and judgment debtor, because that was the only leviable or attachable property right of the company in the mortgaged taxicabs (*Manila Mercantile Co. v. Flores,* 50 Phil. 759; *Levy Hermanos, Inc. v. Ramirez and Casimiro*, 60 Phil. 978, 981). "After a chattel mortgage is executed, there remains in the mortgagor a mere right of redemption" (citing *Tizon v. Valdez and Morales,* 48 Phil. 910, 916).

Supreme Court E-Library

The main issue in this case is the nature of the lien of a judgment creditor, like the petitioner, who has levied an attachment on the judgment debtor's (CMI) real properties which had been mortgaged to a consortium of banks and were subsequently sold to a third party, Top Rate.

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The sheriff's levy on CMI's properties, under the writ of attachment obtained by the petitioner, was actually a levy on the interest only of the judgment debtor CMI on those properties. Since the properties were already mortgaged to the consortium of banks, the only interest remaining in the mortgagor CMI was its right to redeem said properties from the mortgage. The right of redemption was the only leviable or attachable property right of CMI in the mortgaged real properties. The sheriff could not have attached the properties themselves, for they had already been conveyed to the consortium of banks by mortgage (defined as a "conditional sale"), so his levy must be understood to have attached only the mortgagor's remaining interest in the mortgaged property — the right to redeem it from the mortgage.[62]

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There appears in the record a factual contradiction relating to whether the foreclosure by GHI on July 13, 2001[63] over some of the contested properties came ahead of the levy thereon, or the reverse. NAMAWU claims that the levy on two trucks was effected on June 22, 2001,[64] which GHI disputes as a misstatement because the levy was attempted on July 18, 2002, and not 2001.[65] What is undisputed though is that the mortgage of GHI was registered on February 4, 2000,[66] well ahead of any levy by NAMAWU. Prior registration of a lien creates a

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[62] *Quezon Bearing & Parts Corporation v. Court of Appeals,* G.R. No. 76537, August 28, 1989, 176 SCRA 825, 829-830.

[63] *Rollo*, Vol 1, p. 105

[64] *Id.*

[65] *Id.* at 47.

[66] February 24, 2000, as per the allegation of NAMAWU, cited in the Decision of RTC Br. 61, Negros Occidental, dated December 4, 2002.

Supreme Court E-Library

preference, as the act of registration is the operative act that conveys and affects the land,[67] even against subsequent judgment creditors, such as respondent herein. Its registration of the mortgage was not intended to defraud NAMAWU of its judgment claims, since even the courts were already judicially aware of its existence since 1992. Thus, at that moment in time, with the registration of the mortgage, either NAMAWU had no properties of MMC to attach because the same had been previously foreclosed by GHI as mortgagee thereof; or by virtue of the DOLE's levy to enforce NAMAWU's claims, the latter's rights are subject to the notice of the foreclosure on the subject properties by a prior mortgagee's right. GHI's mortgage right had already been registered by then, and "it is basic that mortgaged properties answer primarily for the mortgaged credit, not for the judgment credit of the mortgagor's unsecured creditor."[68]

On the issue of piercing the veil of corporate fiction.

The CA found that:

"Ordinarily, the interlocking of directors and officers in two different corporations is not a conclusive indication that the corporations are one and the same for purposes of applying the doctrine of piercing the veil of corporate fiction. However, when the legal fiction of the separate corporate personality is abused, such as when the same is used for fraudulent or wrongful ends, the courts have not hesitated to pierce the corporate veil (*Francisco vs. Mejia*, 362 SCRA 738). In the case at bar, the Deed of Real Estate and Chattel Mortgage was entered into between MMC and G Holdings for the purpose of evading the satisfaction of the legitimate claims of the petitioner against MMC. The notion of separate personality is clearly being utilized by the two corporations to perpetuate the violation of a positive legal duty arising from a final judgment to the prejudice of the petitioner's right."[69]

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[67] *Macadangdang. v. Martinez,* G.R. No. 158682, January 31, 2005, 450 SCRA 363, 369.

[68] *MR Holdings, Ltd. v. Sheriff Bajar, supra* note 51, at 469.

[69] *Rollo,* Vol. 1, pp. 115-116.

Supreme Court E-Library

Settled jurisprudence[70] has it that –

"(A) corporation, upon coming into existence, is invested by law with a personality separate and distinct from those persons composing it as well as from any other legal entity to which it may be related. By this attribute, a stockholder may not, generally, be made to answer for acts or liabilities of the said corporation, and vice versa. This separate and distinct personality is, however, merely a fiction created by law for convenience and to promote the ends of justice. For this reason, it may not be used or invoked for ends subversive to the policy and purpose behind its creation or which could not have been intended by law to which it owes its being. This is particularly true **when the fiction is used to defeat public convenience, justify wrong, protect fraud, defend crime, confuse legitimate legal or judicial issues, perpetrate deception or otherwise circumvent the law**. This is likewise true where the corporate entity is being **used as an alter ego, adjunct, or business conduit for the sole benefit of the stockholders or of another corporate entity.** In all these cases, the notion of corporate entity will be pierced or disregarded with reference to the particular transaction involved.

Given this jurisprudential principle and the factual circumstances obtaining in this case, we now ask: Was the CA correct in piercing the veil of corporate identity of GHI and MMC?

In our disquisition above, we have shown that the CA's finding that there was a "simulated mortgage" between GHI and MMC to justify a wrong or protect a fraud has struggled vainly to find a foothold when confronted with the ruling of this Court in *Republic v. "G" Holdings, Inc.*

The negotiations between the GHI and the Government—through APT, dating back to 1992—culminating in the Purchase and Sale Agreement, cannot be depicted as a contrived transaction. In fact, in the said *Republic, etc., v. "G" Holdings, Inc.*, this Court adjudged that GHI was entitled to its rightful claims—not just to the shares of MMC itself, or just to the financial notes that already contained the mortgage clauses over MMCs

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[70] *Land Bank of the Philippines v. Court of Appeals,* 416 Phil. 774, 782-783. emphasis supplied.

Supreme Court E-Library

disputed assets, but also to the delivery of those instruments. Certainly, we cannot impute to this Court's findings on the case any badge of fraud. Thus, we reject the CA's conclusion that it was right to pierce the veil of corporate fiction, because the foregoing circumstances belie such an inference. Furthermore, we cannot ascribe to the Government, or the APT in particular, any undue motive to participate in a transaction designed to perpetrate fraud. Accordingly, we consider the CA interpretation unwarranted.

We also cannot agree that the presumption of fraud in Article 1387 of the Civil Code relative to property conveyances, when there was already a judgment rendered or a writ of attachment issued, authorizes piercing the veil of corporate identity in this case. We find that Article 1387 finds less application to an involuntary alienation such as the foreclosure of mortgage made before any final judgment of a court. We thus hold that when the alienation is involuntary, and the foreclosure is not fraudulent because the mortgage deed has been previously executed in accordance with formalities of law, and the foreclosure is resorted to in order to liquidate a *bona fide* debt, it is not the alienation by onerous title contemplated in Article 1387 of the Civil Code wherein fraud is presumed.

Since the factual antecedents of this case do not warrant a finding that the mortgage and loan agreements between MMC and GHI were simulated, then their separate personalities must be recognized. To pierce the veil of corporate fiction would require that their personalities as creditor and debtor be conjoined, resulting in a merger of the personalities of the creditor (GHI) and the debtor (MMC) in one person, such that the debt of one to the other is thereby extinguished. But the debt embodied in the 1992 Financial Notes has been established, and even made subject of court litigation (Civil Case No. 95-76132, RTC Manila). This can only mean that GHI and MMC have separate corporate personalities.

Neither was MMC used merely as an alter ego, adjunct, or business conduit for the sole benefit of GHI, to justify piercing

Supreme Court E-Library

the former's veil of corporate fiction so that the latter could be held liable to claims of third-party judgment creditors, like NAMAWU. In this regard, we find American jurisprudence persuasive. In a decision by the Supreme Court of New York[71] bearing upon similar facts, the Court denied piercing the veil of corporate fiction to favor a judgment creditor who sued the parent corporation of the debtor, alleging fraudulent corporate asset-shifting effected after a prior final judgment. Under a factual background largely resembling this case at bar, *viz*:

> In this action, plaintiffs seek to recover the balance due under judgments they obtained against Lake George Ventures Inc. (hereinafter LGV), a subsidiary of defendant that was formed to develop the Top O' (sic) the World resort community overlooking Lake George, by piercing the corporate veil or upon the theory that LGV's transfer of certain assets constituted fraudulent transfers under the Debtor and Creditor Law. We previously upheld Supreme Court's denial of defendant's motion for summary judgment dismissing the complaint (252 A.D.2d 609, 675 N.Y.S.2d 234) and the matter proceeded to a nonjury trial. Supreme Court thereafter rendered judgment in favor of defendant upon its findings that, although defendant dominated LGV, it did not use that domination to commit a fraud or wrong on plaintiffs. Plaintiffs appealed.
>
> The trial evidence showed that LGV was incorporated in November 1985. Defendant's principal, Francesco Galesi, initially held 90% of the stock and all of the stock was ultimately transferred to defendant. Initial project funding was provided through a $2.5 million loan from Chemical Bank, secured by defendant's guarantee of repayment of the loan and completion of the project. The loan proceeds were utilized to purchase the real property upon which the project was to be established. Chemical Bank thereafter loaned an additional $3.5 million to LGV, again guaranteed by defendant, and the two loans were consolidated into a first mortgage loan of $6 million. In 1989, the loan was modified by splitting the loan into a $1.9 term note on which defendant was primary obligor and a $4.1 million project note on which LGV was the obligor and defendant was a guarantor.

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[71] *George REBH, et al. v. ROTTERDAM VENTURES, INC., Doing Business as Galesi Group,* 277 A.D.2d 659, 716 N.Y.S.2d 457 (2000).

Supreme Court E-Library

Due to LGV's lack of success in marketing the project's townhouses **and in order to protect itself from the exercise of Chemical Bank's enforcement remedies,** defendant was forced to make monthly installments of principal and interest on LGV's behalf. Ultimately, defendant purchased the project note from Chemical Bank for $3.1 million, paid the $1.5 million balance on the term note and took an assignment of the first mortgage on the project's realty. After LGV failed to make payments on the indebtedness over the course of the succeeding two years, defendant brought an action to foreclose its mortgage. Ultimately, defendant obtained a judgment of foreclosure and sale in the amount of $6,070,246.50. Defendant bid in the property at the foreclosure sale and thereafter obtained a deficiency judgment in the amount of $3,070,246.50.

Following the foreclosure sale, LGV transferred to defendant all of the shares of Top of the World Water Company, a separate entity that had been organized to construct and operate the water supply and delivery system for the project, in exchange for a $950,000 reduction in the deficiency judgment.

the U.S. Supreme Court of New York held—

Based on the foregoing, and accepting that defendant exercised complete domination and control over LGV, we are at a loss as to how plaintiffs perceive themselves to have been inequitably affected by defendant's foreclosure action against LGV, by LGV's divestiture of the water company stock or the sports complex property, or by defendant's transfer to LGV of a third party's uncollectible note, accomplished solely for tax purposes. **It is undisputed that LGV was, and for some period of time had been, unable to meet its obligations and, at the time of the foreclosure sale, liens against its property exceeded the value of its assets by several million dollars, even including the water company and sports complex at the values plaintiffs would assign to them.** In fact, even if plaintiffs' analysis were utilized to eliminate the entire $3 million deficiency judgment, **the fact remains that subordinate mortgages totaling nearly an additional $2 million have priority over plaintiffs' judgments.**

As properly concluded by Supreme Court, **absent a finding of any inequitable consequence to plaintiffs, both causes of action pleaded in the amended complaint must fail. Fundamentally, a**

Supreme Court E-Library

party seeking to pierce the corporate veil must show complete domination and control of the subsidiary by the parent and also that such domination was used to commit a fraud or wrong against the plaintiff that resulted in the plaintiff's injury (252 A.D.2d 609, 610, 675 N.Y.S.2d 234, *supra;* see, *Matter of Morris v. New York State Dept. of Taxation & Fin.*, 82 N.Y.2d 135, 141, 603 N.Y.S.2d 807, 623 N.E.2d 1157). **Notably, "[e]vidence of domination alone does not suffice without an additional showing that it led to inequity, fraud or malfeasance"** (*TNS Holdings v. MKI Sec. Corp.*, 92 N.Y.2d 335, 339, 680 N.Y.S.2d 891, 703 N.E.2d 749).

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In reaching that conclusion, we specifically reject a number of plaintiffs' assertions, including the entirely erroneous claims that our determination on the prior appeal (252 A.D.2d 609, 675 N.Y.S.2d 234, *supra*) set forth a "roadmap" for the proof required at trial and mandated a verdict in favor of plaintiffs upon their production of evidence that supported the decision's "listed facts". To the contrary, our decision was predicated upon the existence of such evidence, absent which we would have granted summary judgment in favor of defendant. We are equally unpersuaded by plaintiffs' continued reliance upon defendant's December 1991 unilateral conversion of its intercompany loans with LGV from debt to equity, which constituted nothing more than a "bookkeeping transaction" and had no apparent effect on LGV's obligations to defendant or defendant's right to foreclose on its mortgage.[72]

This doctrine is good law under Philippine jurisdiction.

In *Concept Builders, Inc. v. National Labor Relations Commission*,[73] we laid down the test in determining the applicability of the doctrine of piercing the veil of corporate fiction, to wit:

1. Control, not mere majority or complete control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own.

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[72] Emphasis supplied.

[73] G.R. No. 108734, May 29, 1996, 257 SCRA 149, 159.

Supreme Court E-Library

2. Such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and, unjust act in contravention of plaintiffs legal rights; and,

3. The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.

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Time and again, we have reiterated that mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not, by itself, a sufficient ground for disregarding a separate corporate personality.[74] It is basic that a corporation has a personality separate and distinct from that composing it as well as from that of any other legal entity to which it may be related. Clear and convincing evidence is needed to pierce the veil of corporate fiction.[75]

In this case, the mere interlocking of directors and officers does not warrant piercing the separate corporate personalities of MMC and GHI. Not only must there be a showing that there was majority or complete control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked, so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own. The mortgage deed transaction attacked as a basis for piercing the corporate veil was a transaction that was an offshoot, a derivative, of the mortgages earlier constituted in the Promissory Notes dated October 2, 1992. But these Promissory Notes with mortgage were executed by GHI with APT in the name of MMC, in a full privatization process. It appears that if there was any control or domination exercised over MMC, it was APT, not GHI, that wielded it. Neither can we conclude that the constitution of the loan nearly four (4) years prior to NAMAWU's notice of strike could have been

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[74] *Francisco v. Mejia,* G.R. No. 141617, August 14, 2001, 362 SCRA 738, 753.

[75] *Manila Hotel Corp. v. NLRC,* 397 Phil., 1, 19 (2000).

Supreme Court E-Library

the proximate cause of the injury of NAMAWU for having been deprived of MMC's corporate assets.

On the propriety of injunction to prevent execution by the NLRC on the properties of third-party claimants

It is settled that a Regional Trial Court can validly issue a Temporary Restraining Order (TRO) and, later, a writ of preliminary injunction to prevent enforcement of a writ of execution issued by a labor tribunal on the basis of a third-party's claim of ownership over the properties levied upon.[76] While, as a rule, no temporary or permanent injunction or restraining order in any case involving or growing out of a labor dispute shall be issued by any court—where the writ of execution issued by a labor tribunal is sought to be enforced upon the property of a stranger to the labor dispute, even upon a mere *prima facie* showing of ownership of such claimant—a separate action for injunctive relief against such levy may be maintained in court, since said action neither involves nor grows out of a labor dispute insofar as the third party is concerned.[77] Instructively, *National Mines and Allied Workers' Union v. Vera*[78]

> Petitioners' reliance on the provision of Art. 254 of the New Labor Code (herein earlier quoted) which prohibits injunctions or restraining orders in any case involving or growing out of a 'labor dispute' is not well-taken. This has no application to the case at bar. Civil Case No. 2749 is one which neither "involves" nor "grows out" of a labor dispute. What 'involves' or 'grows out' of a labor dispute is the NLRC case between petitioners and the judgment debtor, Philippine Iron Mines. The private respondents are not parties to the said NLRC case. Civil Case No. 2749 does not put in issue either the fact or validity of the proceeding in the NLRC case nor the decision therein rendered, much less the writ of execution issued thereunder. It does not seek to enjoin the execution of the decision

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[76] *Penalosa v. Villanueva,* G.R. No. 75305, September 26, 1989, 177 SCRA 778, 786.

[77] *Id*.

[78] G.R. No. L-44230, November 19, 1984, 133 SCRA 259, 269-270.

Supreme Court E-Library

against the properties of the judgment debtor. What is sought to be tried in Civil Case No. 2749 is whether the NLRC's decision and writ of execution, above mentioned, shall be permitted to be satisfied against properties of private respondents, and not of the judgment debtor named in the NLRC decision and writ of execution. Such a recourse is allowed under the provisions of Section 17, Rule 39 of the Rules of Court.

To sustain petitioners' theory will inevitably lead to disastrous consequences and lend judicial imprimatur to deprivation of property without due process of law. Simply because a writ of execution was issued by the NLRC does not authorize the sheriff implementing the same to levy on anybody's property. To deny the victim of the wrongful levy, the recourse such as that availed of by the herein private respondents, under the pretext that no court of general jurisdiction can interfere with the writ of execution issued in a labor dispute, will be sanctioning a greater evil than that sought to be avoided by the Labor Code provision in question. Certainly, that could not have been the intendment of the law creating the NLRC. For well-settled is the rule that the power of a court to execute its judgment extends only over properties unquestionably belonging to the judgment debtor.

Likewise, since the third-party claimant is not one of the parties to the action, he cannot, strictly speaking, appeal from the order denying his claim, but he should file a separate reivindicatory action against the execution creditor or the purchaser of the property after the sale at public auction, or a complaint for damages against the bond filed by the judgment creditor in favor of the sheriff.[79]

A separate civil action for recovery of ownership of the property would not constitute interference with the powers or processes of the labor tribunal which rendered the judgment to execute upon the levied properties. The property levied upon being that of a stranger is not subject to levy. Thus, a separate action for recovery, upon a claim and *prima facie* showing of ownership by the petitioner, cannot be considered as interference.[80]

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[79] *Yupangco Cotton Mills, Inc. v. Court of Appeals,* 424 Phil. 469, 480 (2002).

[80] *Id.* at 481.

Supreme Court E-Library

Upon the findings and conclusions we have reached above, petitioner is situated squarely as such third-party claimant. The questioned restraining order of the lower court, as well as the order granting preliminary injunction, does not constitute interference with the powers or processes of the labor department. The registration of the mortgage document operated as notice to all on the matter of the mortgagee's prior claims. Official proceedings relative to the foreclosure of the subject properties constituted a *prima facie* showing of ownership of such claimant to support the issuance of injunctive reliefs.

As correctly held by the lower court:

> The subject incidents for TRO and/or Writ of Injunction were summarily heard and in resolving the same, the Court believes, that the petitioner has a clear and unmistakable right over the levied properties. The existence of the subject Deed of Real Estate and Chattel Mortgage, the fact that petitioner initiated a foreclosure of said properties before the Clerk of Court and Ex-Officio Sheriff, RTC Branch 61, Kabankalan City on July 13, 2001, the fact that said Ex-Officio Sheriff and the Clerk of Court issue a Notice of Foreclosure, Possession and Control over said mortgaged properties on July 19, 2001 and the fact that a Sheriff's Certificate of Sale was issued on December 3, 2001 are the basis of its conclusion. Unless said mortgage contract is annulled or declared null and void, the presumption of regularity of transaction must be considered and said document must be looked [upon] as valid.

Notably, the Office of the Solicitor General also aptly observed that when the respondent maintained that the Deed of Real Estate and Chattel mortgage was entered into in fraud of creditors, it thereby admitted that the mortgage was not void, but merely rescissible under Article 1381(3) of the Civil Code; and, therefore, an independent action is needed to rescind the contract of mortgage.[81] We, however, hold that such an independent action cannot now be maintained, because the mortgage has been previously recognized to exist, with a valid consideration, in *Republic, etc. v. "G" Holdings, Inc.*

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[81] *Rollo*, Vol. 1, p. 785.

A final word

The Court notes that the case filed with the lower court involves a principal action for injunction to prohibit execution over properties belonging to a third party not impleaded in the legal dispute between NAMAWU and MMC. We have observed, however, that the lower court and the CA failed to take judicial notice of, or to consider, our Decisions in *Republic, etc. v. "G" Holdings, Inc.*, and *Maricalum Mining Corporation v. Brion and NAMAWU*, in which we respectively recognized the entitlement of GHI to the shares and the company notes of MMC (under the Purchase and Sale Agreement), and the rights of NAMAWU to its labor claims. At this stage, therefore, neither the lower court nor the CA, nor even this Court, can depart from our findings in those two cases because of the doctrine of *stare decisis.*

From our discussion above, we now rule that the trial court, in issuing the questioned orders, did not commit grave abuse of discretion, because its issuance was amply supported by factual and legal bases.

We are not unmindful, however, of the fact that the labor claims of NAMAWU, acknowledged by this Court in *Maricalum*, still awaits final execution. As success fades from NAMAWU's efforts to execute on the properties of MMC, which were validly foreclosed by GHI, we see that NAMAWU always had, and may still have, ample supplemental remedies found in Rule 39 of the Rules of Court in order to protect its rights against MMC. These include the examination of the judgment obligor when judgment is unsatisfied,[82] the examination of the obligors of judgment obligors,[83] or even the resort to receivership.[84]

While, theoretically, this case is not ended by this decision, since the lower court is still to try the case filed with it and

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[82] Rules of Court, Rule 39, Sec. 36.

[83] Rules of Court, Rule 39, Sec 37.

[84] Rules of Court, Rule 39, Sec. 41.

Supreme Court E-Library

decide it on the merits, the matter of whether the mortgage and foreclosure of the assets that are the subject of said foreclosure is ended herein, for the third and final time. So also is the consequential issue of the separate and distinct personalities of GHI and MMC. Having resolved these principal issues with certainty, we find no more need to remand the case to the lower court, only for the purpose of resolving again the matter of whether GHI owns the properties that were the subject of the latter's foreclosure.

WHEREFORE, the Petition is *GRANTED*. The Decision of the Court of Appeals dated October 14, 2003 is *SET ASIDE*. The Omnibus Order dated December 4, 2002 of the Regional Trial Court, Branch 61 of Kabankalan City, Negros Occidental is *AFFIRMED*. No costs.

SO ORDERED.

Carpio Morales,[*] *Chico-Nazario (Acting Chairperson)*,[**] *Peralta*, and *Abad*,[***] *JJ.*, concur.

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[*] Additional member vice Justice Antonio T. Carpio per Special Order No. 744 dated October 13, 2009.

[**] Acting Chairperson vice Justice Antonio T. Carpio per Special Order No. 743 dated October 13, 2009.

[***] Additional member vice Justice Presbitero J. Velasco, Jr. per Special Order No. 753 dated October 13, 2009.