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seniority rights and to pay three (3) years backwages without qualification or deduction and ₱5,000.00 in attorney's fees. Should reinstatement not be feasible, the petitioner shall pay the private respondent termination benefits in addition to the above stated three years backpay and ₱5,000.00 attorney's fees.

**SO ORDERED.**

*Fernan, C.J. (Chairman), Feliciano, Bidin,* and *Cortes, JJ.*, concur.

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**FIRST DIVISION**

[G.R. No. 67626. April 18, 1989]

**JOSE REMO, JR.,** *petitioner, vs.* **THE HON. INTERMEDIATE APPELLATE COURT AND E.B. MARCHA TRANSPORT COMPANY, INC., represented by APIFANIO B. MARCHA,** *respondents.*

**SYLLABUS**

**1. COMMERCIAL LAW; CORPORATION; DEFINED.** — A corporation is an entity separate and distinct from its stockholders. While not in fact and in reality a person, the law treats a corporation as though it were a person by process of fiction or by regarding it as an artificial person distinct and separate from its individual stockholders.

**2. ID.; ID.; INSTANCES WHEN CORPORATE FICTION MAY BE DISREGARDED.** — The corporate fiction or the notion of legal entity may be disregarded when it "is used to defeat public convenience, justify wrong, protect fraud, or defend crime" in which instances "the law will regard the corporation as an association of persons, or in case of two corporations, will merge them into one." The corporate fiction may also be disregarded

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when it is the "mere alter ego or business conduit of a person." There are many occasions when this Court pierced the corporate veil because of its use to protect fraud and to justify wrong.

**3. ID.; NEGOTIABLE INSTRUMENTS; PROMISSORY NOTE; PERSON NOT A SIGNATORY THERETO CANNOT BE BOUND THEREBY.** — The promissory note was signed by Coprada to guarantee the payment of the unpaid balance of the purchase price out of the proceeds of a loan he supposedly sought from the DBP. The word "WE" in the said promissory note must refer to the corporation which Coprada represented in the execution of the note and not its stockholders or directors. Petitioner did not sign the said promissory note so he cannot be personally bound thereby.

**4. CIVIL LAW; CONTRACTS; CHATTEL MORTGAGE; HAS A PRIOR LIEN AGAINST THE *PACTO DE RETRO* SALE.** — The sale of the two units are not inherently fraudulent as the 13 units were sold through a deed of absolute sale to Akron so that the corporation is free to dispose of the same. Of course, it was stipulated that in case of default in payment to private respondent of the balance of the consideration, a chattel mortgage lien shall be constituted on the 13 units. Nevertheless, said mortgage is a prior lien as against the *pacto de retro* sale of the 2 units.

**5. REMEDIAL LAW; EVIDENCE; FRAUD; MUST BE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE.** — If the private respondent is the victim of fraud in this transaction, it has not been clearly shown that petitioner had any part or participation in the perpetration of the same. Fraud must be established by clear and convincing evidence. If at all, the principal character on whom fault should be attributed is Feliciano Coprada, the President of Akron, whom private respondent dealt with personally all through out. Fortunately, private respondent obtained a judgment against him from the trial court and the said judgment has long been final and executory.

**APPEARANCES OF COUNSEL**

*Orbos, Cabusora, Dumlao & Sta. Ana* for petitioner.

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## DECISION

**GANCAYCO, *J.*:**

A corporation is an entity separate and distinct from its stockholders. While not in fact and in reality a person, the law treats a corporation as though it were a person by process of fiction or by regarding it as an artificial person distinct and separate from its individual stockholders.[1]

However, the corporate fiction or the notion of legal entity may be disregarded when it "is used to defeat public convenience, justify wrong, protect fraud, or defend crime" in which instances "the law will regard the corporation as an association of persons, or in case of two corporations, will merge them into one." The corporate fiction may also be disregarded when it is the "mere alter ego or business conduit of a person."[2] There are many occasions when this Court pierced the corporate veil because of its use to protect fraud and to justify wrong.[3] The herein petition for review of a resolution of the Intermediate Appellate Court dated February 8, 1984 seeking the reversal thereof and the reinstatement of its earlier decision dated June 30, 1983 in AC-G.R. No. 68496-R[4] calls for the application of the foregoing principles.

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[1] Section 2, Batas Pambansa Blg. 68, the Corporation Code of the Philippines; 1 Fletcher, *Cyclopedia of the Law of Private Corporations*, pages 19 and 20.

[2] *Yutivo Sons Hardware Co. vs. Court of Tax Appeals*, 1 SCRA 160 (1961) citing *Koppel (Phil.), Inc. vs. Yatco*, 77 Phil. 496 (1946) in turn citing 1 Fletcher *Cyclopedia of the Law of Private Corporations*, perm. Ed. pages 13 and 135-136.

[3] *Namarco vs. Associated Finance Co. Inc.*, 19 SCRA 962 (1967); *Villa Rey Transit Inc. vs. Ferrer*, 25 SCRA 845 (1968); *Liddell & Co., Inc. vs. Collector of Internal Revenue*, 2 SCRA 632 (1961); *Emilio Cano Enterprises Inc. vs. Court of Industrial Relations*, 13 SCRA 290 (1965); *McConnel vs. Court of Appeals*, 1 SCRA 722 (1961).

[4] Justice Ramon G. Gaviola, Jr. was the *ponente*, with Justices Eduardo P. Caguioa and Ma. Rosario Quetulio-Losa, concurring.

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In the latter part of December, 1977 the board of directors of Akron Customs Brokerage Corporation (hereinafter referred to as Akron), composed of petitioner Jose Remo, Jr., Ernesto Bañares, Feliciano Coprada, Jemina Coprada, and Dario Punzalan with Lucia Lacaste as Secretary, adopted a resolution authorizing the purchase of thirteen (13) trucks for use in its business to be paid out of a loan the corporation may secure from any lending institution.[5]

Feliciano Coprada, as President and Chairman of Akron, purchased thirteen trucks from private respondent on January 25, 1978 for and in consideration of ₱525,000.00 as evidenced by a deed of absolute sale.[6] In a side agreement of the same date, the parties agreed on a downpayment in the amount of ₱50,000.00 and that the balance of ₱475,000.00 shall be paid within sixty (60) days from the date of the execution of the agreement. The parties also agreed that until said balance is fully paid, the down payment of ₱50,000.00 shall accrue as rentals of the 13 trucks; and that if Akron fails to pay the balance within the period of 60 days, then the balance shall constitute as a chattel mortgage lien covering said cargo trucks and the parties may allow an extension of 30 days and thereafter private respondent may ask for a revocation of the contract and the reconveyance of all said trucks.[7]

The obligation is further secured by a promissory note executed by Coprada in favor of Akron. It is stated in the promissory note that the balance shall be paid from the proceeds of a loan obtained from the Development Bank of the Philippines (DBP) within sixty (60) days.[8] After the lapse of 90 days, private respondent tried to collect from Coprada but the latter promised to pay only upon the release of the DBP loan. Private respondent sent Coprada a letter of demand dated May 10, 1978.[9] In his

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[5] Exhibits C and 7.

[6] Exhibit Q.

[7] Exhibits R-1 to R-4.

[8] Exhibit S.

[9] Exhibits T and T-1.

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reply to the said letter, Coprada reiterated that he was applying for a loan from the DBP from the proceeds of which payment of the obligation shall be made.[10]

Meanwhile, two of the trucks were sold under a *pacto de retro* sale to a certain Mr. Bais of the Perpetual Loans and Savings Bank at Baclaran. The sale was authorized by a board resolution made in a meeting held on March 15, 1978.[11]

Upon inquiry, private respondent found that no loan application was ever filed by Akron with DBP.[12]

In the meantime, Akron paid rentals of ₱500.00 a day pursuant to a subsequent agreement, from April 27, 1978 (the end of the 90-day period to pay the balance) to May 31, 1978. Thereafter, no more rental payments were made.

On July 17, 1978, Coprada wrote private respondent begging for a grace period of until the end of the month to pay the balance of the purchase price; that he will update the rentals within the week; and in case he fails, then he will return the 13 units should private respondent elect to get back the same.[13] Private respondent, through counsel, wrote Akron on August 1, 1978 demanding the return of the 13 trucks and the payment of ₱25,000.00 back rentals covering the period from June 1 to August 1, 1978.[14]

Again, Coprada wrote private respondent on August 8, 1978 asking for another grace period of up to August 31, 1978 to pay the balance, stating as well that he is expecting the approval of his loan application from a certain financing company, and that ten (10) trucks have been returned to Bagbag, Novaliches.[15] On December 9, 1978, Coprada informed private respondent

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[10] Exhibit W.

[11] Exhibit X.

[12] Exhibit V-1.

[13] Exhibit Y.

[14] Exhibit X.

[15] Exhibit AA.

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anew that he had returned ten (10) trucks to Bagbag and that a resolution was passed by the board of directors confirming the deed of assignment to private respondent of ₱475,000 from the proceeds of a loan obtained by Akron from the State Investment House, Inc.[16]

In due time, private respondent filed a complaint for the recovery of ₱525,000.00 or the return of the 13 trucks with damages against Akron and its officers and directors, Feliciano Coprada, Dario D. Punzalan, Jemina Coprada, Lucia Lacaste, Wilfredo Layug, Arcadio de la Cruz, Francisco Clave, Vicente Martinez, Pacifico Dollario and petitioner with the then Court of First Instance of Rizal. Only petitioner answered the complaint denying any participation in the transaction and alleging that Akron has a distinct corporate personality. He was, however, declared in default for his failure to attend the pre-trial.

In the meanwhile, petitioner sold all his shares in Akron to Coprada. It also appears that Akron amended its articles of incorporation thereby changing its name to Akron Transport International, Inc. which assumed the liability of Akron to private respondent.

After an *ex parte* reception of the evidence of the private respondent, a decision was rendered on October 28, 1980, the dispositive part of which reads as follows:

"Finding the evidence sufficient to prove the case of the plaintiff, judgment is hereby rendered in favor of the plaintiff and against the defendants, ordering them jointly and severally to pay;

a– the purchase price of the trucks in the amount of ₱525,000.00 with x x x legal rate (of interest) from the filing of the complaint until the full amount is paid;

b– rentals of Bagbag property at ₱1,000.00 a month from August 1978 until the premises is cleared of the said trucks;

c– attorney's fees of ₱10,000.00, and

d– costs of suit.

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[16] Exhibit BB.

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The ₱50,000.00 given as down payment shall pertain as rentals of the trucks from June 1 to August 1, 1978 which is ₱25,000.00 (see demand letter of Atty. Aniano Exhibit "T") and the remaining ₱25,000.00 shall be from August 1, 1978 until the trucks are removed totally from the place."[17]

A motion for new trial filed by petitioner was denied so he appealed to the then Intermediate Appellate Court (IAC) wherein in due course a decision was rendered on June 30, 1983 setting aside the said decision as far as petitioner is concerned. However, upon a motion for reconsideration filed by private respondent, the IAC, in a resolution dated February 8, 1984, set aside the decision dated June 30, 1983. The appellate court entered another decision affirming the appealed decision of the trial court, with costs against petitioner.

Hence, this petition for review wherein petitioner raises the following issues:

"I. The Intermediate Appellate Court (IAC) erred in disregarding the corporate fiction and in holding the petitioner personally liable for the obligation of the Corporation which decision is patently contrary to law and the applicable decision thereon.

II. The Intermediate Appellate Court (IAC) committed grave error of law in its decision by sanctioning the merger of the personality of the corporation with that of the petitioner when the latter was held liable for the corporate debts."[18]

We reverse.

The environmental facts of this case show that there is no cogent basis to pierce the corporate veil of Akron and hold petitioner personally liable for its obligation to private respondent. While it is true that in December, 1977 petitioner was still a member of the board of directors of Akron and that he participated in the adoption of a resolution authorizing the purchase of 13

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[17] Annex C to Petition, pages 24 and 25. Record on Appeal: page 50, *Rollo*.

[18] Page 18, *Rollo*.

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trucks for the use in the brokerage business of Akron to be paid out of a loan to be secured from a lending institution, it does not appear that said resolution was intended to defraud anyone and more particularly private respondent. It was Coprada, President and Chairman of Akron, who negotiated with said respondent for the purchase of 13 cargo trucks on January 25, 1978. It was Coprada who signed a promissory note to guarantee the payment of the unpaid balance of the purchase price out of the proceeds of a loan he supposedly sought from the DBP. The word "WE" in the said promissory note must refer to the corporation which Coprada represented in the execution of the note and not its stockholders or directors. Petitioner did not sign the said promissory note so he cannot be personally bound thereby.

Thus, if there was any fraud or misrepresentation that was foisted on private respondent in that there was a forthcoming loan from the DBP when in fact there was none, it is Coprada who should account for the same and not petitioner.

As to the sale through *pacto de retro* of the two units to a third person by the corporation by virtue of a board resolution, petitioner asserts that he never signed said resolution. Be that as it may, the sale is not inherently fraudulent as the 13 units were sold through a deed of absolute sale to Akron so that the corporation is free to dispose of the same. Of course, it was stipulated that in case of default in payment to private respondent of the balance of the consideration, a chattel mortgage lien shall be constituted on the 13 units. Nevertheless, said mortgage is a prior lien as against the *pacto de retro* sale of the 2 units.

As to the amendment of the articles of incorporation of Akron thereby changing its name to Akron Transport International, Inc., petitioner alleges that the change of corporate name was in order to include trucking and container yard operations in its customs brokerage of which private respondent was duly informed in a letter.[19] Indeed, the new corporation confirmed and assumed

[19] Page 10, Record on Appeal; Annex C, Petition.

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the obligation of the old corporation. There is no indication of an attempt on the part of Akron to evade payment of its obligation to private respondent.

There is the fact that petitioner sold his shares in Akron to Coprada during the pendency of the case. Since petitioner has no personal obligation to private respondent, it is his inherent right as a stockholder to dispose of his shares of stock anytime he so desires.

Mention is also made of the alleged "dumping" of 10 units in the premises of private respondent at Bagbag, Novaliches which to the mind of the Court does not prove fraud and instead appears to be an attempt on the part of Akron to attend to its obligations as regards the said trucks. Again petitioner has no part in this.

If the private respondent is the victim of fraud in this transaction, it has not been clearly shown that petitioner had any part or participation in the perpetration of the same. Fraud must be established by clear and convincing evidence. If at all, the principal character on whom fault should be attributed is Feliciano Coprada, the President of Akron, whom private respondent dealt with personally all through out. Fortunately, private respondent obtained a judgment against him from the trial court and the said judgment has long been final and executory.

**WHEREFORE,** the petition is GRANTED. The questioned resolution of the Intermediate Appellate Court dated February 8, 1984 is hereby set aside and its decision dated June 30, 1983 setting aside the decision of the trial court dated October 28, 1980 insofar as petitioner is concerned is hereby reinstated and affirmed, without costs.

**SO ORDERED.**

*Narvasa, Cruz, Griño-Aquino*, and *Medialdea, JJ.*, concur.