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THIRD DIVISION

[G.R. No. 173333. August 13, 2008]

LUCIA MAGALING, PARALUMAN R. MAGALING, MARCELINA MAGALING-TABLADA, and BENITO R. MAGALING (Heirs of the late Reynaldo Magaling), *petitioners, vs.* **PETER ONG,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION LAW; CORPORATION CODE; PRIVATE CORPORATIONS; PIERCING THE VEIL OF CORPORATE FICTION; WHEN ALLOWED.— It is basic that a corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. The general rule is that obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities, and *vice versa*. There are times, however, when solidary liabilities may be incurred and the veil of corporate fiction may be pierced. Exceptional circumstances warranting such disregard of a separate personality are summarized as follows: "1. When directors and trustees or, in appropriate case, the officers of a corporation; (a) vote for or assent to patently unlawful acts of the corporation; (b) act in bad faith or with gross negligence in directing the corporate affairs; (c) are guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons; 2. When a director or officer has consented to the issuance of watered down stocks or who, having knowledge thereof, did not forthwith file with the corporate secretary his written objection thereto; 3. When a director, trustee or officer has contractually agreed or stipulated to hold himself personally and solidarily liable with the corporation; or 4. When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action."

2. ID.; ID.; ID.; ID.; ID.; BAD FAITH BY THE DIRECTOR, TRUSTEE OR OFFICER IN DIRECTING THE CORPORATE AFFAIRS AS GROUND TO PIERCE THE VEIL OF CORPORATE

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FICTION, EXPLAINED.— [T]o hold a director, a trustee or an officer personally liable for the debts of the corporation and, thus, pierce the veil of corporate fiction, bad faith or gross negligence by the director, trustee or officer in directing the corporate affairs must be established clearly and convincingly. Bad faith is a question of fact and is evidentiary. Bad faith does not connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious wrongdoing. It means breach of a known duty through some ill motive or interest. It partakes of the nature of fraud. x x x [B]ad faith does not arise just because a corporation fails to pay its obligations, because the inability to pay one's obligation is not synonymous with fraudulent intent not to honor the obligations.

3. ID.; ID.; ID.; ID.;ID.; PIERCING THE VEIL OF CORPORATE FICTION FOR REASONS OF NEGLIGENCE BY THE DIRECTOR, TRUSTEE OR OFFICER IN THE CONDUCT OF THE TRANSACTIONS OF THE CORPORATION, ELUCIDATED.— In order to pierce the veil of corporate fiction, for reasons of negligence by the director, trustee or officer in the conduct of the transactions of the corporation, such negligence must be gross. Gross negligence is one that is characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected; and must be established by clear and convincing evidence. Parenthetically, gross or willful negligence could amount to bad faith.

4. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; LAWS, THEORIES, ISSUES AND ARGUMENTS NOT ADEQUATELY BROUGHT TO THE ATTENTION OF THE LOWER COURT CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.— Generally, laws, theories, issues and arguments not adequately brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as they cannot be raised for the first time on appeal and, as such, are deemed to have been waived. Basic consideration of due process impels this rule.

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5. ID.; ID.; ID.; OBJECTION TO EVIDENCE CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.— Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection, he cannot raise the question for the first time on appeal.

6. ID.; ID.; PROVISIONAL REMEDIES; PRELIMINARY ATTACHMENT; NATURE.— A writ of preliminary attachment is a provisional remedy by virtue of which a plaintiff or other proper party may, at the commencement of the action or at any time thereafter, have the property of the adverse party taken into the custody of the court as security for the satisfaction of the judgment that may be recovered. The chief purpose of the remedy of attachment is to secure a contingent lien on defendant's property until plaintiff can, by appropriate proceedings, obtain a judgment and have such property applied to its satisfaction, or to make some provision for unsecured debts in cases where the means of satisfaction thereof are liable to be removed beyond the jurisdiction, or improperly disposed of or concealed, or otherwise placed beyond the reach of creditors.

7. ID.; ID.; ID.; ID.; HOW DISSOLVED OR DISCHARGED.— Once the writ of preliminary attachment is issued, the same rule provides for two ways by which it can be dissolved or discharged. *First*, the writ of preliminary attachment may be discharged upon a security given, *i.e.*, a counter-bond. x x x *Second*, said provisional remedy must be shown to have been irregularly or improperly issued. x x x

8. ID.; ID.; ID.; ID.; ID.; THE DISCHARGE OR DISSOLUTION OF THE WRIT SHALL BE GRANTED ONLY AFTER DUE NOTICE AND HEARING.— [W]hen the attachment is challenged for having been illegally or improperly issued, there must be a hearing, with the burden of proof to sustain the writ being on the attaching creditor. That hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing parties and meet them. It means a fair and open hearing. [T]he discharge or dissolution of x x x writ, whether under Sec. 12 or Sec. 13 of Rule 57 of the Rules

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of Court, as amended, shall be granted only "after due notice and hearing."

APPEARANCES OF COUNSEL

De Jesus Linatoc Castillo & Associates for petitioners.
Ng & Associates for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] filed under Rule 45 of the Rules of Court, as amended, seeking the reversal of the *Decision*[2] and *Amended Decision*[3] both of the Court of Appeals, dated 31 August 2005 and 28 June 2006, respectively, in CA-G.R. CV No. 70954, entitled, "*Peter Ong v. Spouses Reynaldo Magaling and Lucia Magaling, and Thermo Loans and Credit Corporation.*" The assailed rulings reversed and set aside the *Decision*[4] of the Regional Trial Court (RTC), Branch 13, Lipa City, Batangas, which made petitioner Lucia Magaling, together with her spouse, Reynaldo Magaling,[5] and Termo[6] Loans & Credit Corporation, jointly and

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[1] *Rollo*, pp. 21-30.

[2] Penned by Court of Appeals Associate Justice Josefina Guevara-Salonga with Associate Justices Ruben T. Reyes (now an Associate Justice of this Court) and Fernanda Lampas-Peralta concurring; Annex "A" of the Petition; *rollo*, p. 32-41.

[3] Annex "B" of the Petition; *id.* at 42-44.

[4] Annex "E" of the Petition; *id.* at 59-65. Penned by Judge Jane Aurora C. Lantion.

[5] Reynaldo Magaling passed away on 31 May 2003, during the pendency of the present case before the Court of Appeals. He has since been substituted by his legal heirs, *i.e.*, Lucia Magaling, Paraluman R. Magaling, Marcelina Magaling-Tablada, and Benito R. Magaling.

[6] Referred to in the record of the case as THERMO Loans & Credit Corporation but should be read as TERMO (Loans & Credit Corporation) per the latter's Articles of Incorporation; records, pp. 117-128.

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severally liable to respondent Peter Ong for the corporate obligation of the aforenamed corporation as adjudged in the RTC *Decision* dated 23 June 1999.

As culled from the record, the antecedent facts of the present petition are as follows:

On 30 September 1998, respondent Peter Ong (Ong) instituted with the RTC a *Complaint*[7] for the collection of the sum of ₱389,000.00, with interest, attorney's fees and costs of suit, with prayer for issuance of a writ of preliminary attachment against the spouses Reynaldo Magaling and Lucila Magaling (Spouses Magaling) and Termo Loans & Credit Corporation (Termo Loans). The *Complaint* alleged that:

> 3. Defendants Sps. Reynaldo Magaling and Lucila Magaling are the controlling stockholders/owners of Thermo (sic) Loans and Credit Corp. and had used the corporation as mere alter ego or adjunct to evade the payment of valid obligation;
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> 4. On or about December 1994, defendant Reynaldo Magaling, (sic) approached plaintiff in his store at Lipa City and induced him to lend him money and/or his company Thermo (sic) Loans and Credit Corp. with undertaking to pay interest at the rate of two and a half (2 ½%) percent per month. Defendant gave assurance that he and his company Thermo (sic) Loans and Credit Corp. will be able to pay the loan. Without the assurance plaintiff would not have lent the money;
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> 5. Based on the assurance and representation of Reynaldo Magaling, Peter Ong extended loan to defendants. As of September 1997, the principal loan extended to defendants stands at ₱350,000.00. The interest thereon computed at 2 ½ % per month is ₱8,750.00 per month;
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> 6. In acknowledgment of the loan, on or about September 1997, defendants issued and tendered to plaintiff series of postdated checks more particularly described as follows:

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[7] Records, pp. 1-8.

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Planters Bank

Check No.	Date	Amount
0473400	Sept. 22, 1997	₱8,750.00
0473401	Oct. 22, 1997	8,750.00
0473402	Nov. 22, 1997	8,750.00
0473403	Dec. 22, 1997	8,750.00
0473404	Jan. 22, 1998	8,750.00
0473405	Feb. 22, 1998	8,750.00
0473406	Feb. 22, 1998	350,000.00

which were issued for payment of interest and principal loan of ₱350,000.00. However, only check nos. 473400 and 473401 were cleared by the bank. Check no. 473402 was likewise dishonored but it was subsequently replaced with cash x x x;

7. Despite demands, oral and written, defendants Sps. Reynaldo and Lucila Magaling and/or Thermo (sic) Loans and Credit Corp. unjustifiably and illegally failed, refused and neglected and still fail, refuse and neglect to pay to the prejudice and damage of plaintiff. As of June 30, 1998, defendants' obligation stands at ₱389,043.96 inclusive of interest;

It was alleged further that Reynaldo Magaling, as President of Termo Loans, together with the corporation's treasurer, a certain Mrs. L. Rosita, signed a *Promissory Note*[8] in favor of Ong for the amount of ₱300,000.00 plus a monthly interest of 2.5%.

Because of the failure of Termo Loans to pay its outstanding obligation despite demand, Ong filed the above-mentioned complaint praying that Spouses Magaling and Termo Loans be ordered to pay, jointly and severally, the principal amount of ₱389,000.00, plus interest, attorney's fees and costs of suit. In addition to the preceding entreaty, Ong asked for the issuance of the writ of preliminary attachment pursuant to Section 1(d), Rule 57 of the Rules of Court, as amended.

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[8] Annex "B" of the Amended Complaint; *rollo*, p. 50.

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On 7 October 1998, acting on Ong's prayer for the issuance of a writ of preliminary attachment grounded on the allegation that Spouses Magaling "were guilty of fraud in contracting the obligation subject of the complaint for sum of money"[9]; and finding the same to be impressed with merit, the RTC issued an *Order*[10] directing the issuance of the writ[11] prayed for upon the filing of a bond in the amount of ₱390,000.00.

Meanwhile, on 3 November 1998, Ong moved to amend the above complaint "to correct the name of Lucila Magaling to Lucia Magaling."[12] In an *Order*[13] dated 9 November 1998, the RTC granted the aforesaid motion and admitted Ong's *Amended Complaint*[14] dated 29 October 1998.

In their defense, Spouses Magaling alleged in their *Answer with Counterclaim*[15] dated 12 November 1998, that:

> [P]laintiff (Peter Ong) on its (sic) own invested money with Termo Loans and Credit Corp. x x x without any inducement from answering defendants much less assurance that Termo Loans will be able to pay the loan. Plaintiff got attracted with the rate of interest being given by Termo Loans to money placements and this is the reason why plaintiff, at its own risk, invested money with Termo Loans.
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> x x x x x x x x x
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> The alleged checks appear to have been issued by Termo Loans as a corporation and answering defendants are not even signatories thereto. Furthermore, the Promissory Note x x x was issued by Termo Loans and not by defendants in their individual capacity.

The Spouses Magaling further clarified that:

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[9] Records, p. 11.

[10] *Id.*

[11] *Id.* at 43.

[12] Motion for Leave to Admit Amended Complaint; *id.* at 53-54.

[13] *Id.* at 55.

[14] *Id.* at 49-52.

[15] Annex "D" of the Petition; *rollo,* pp. 53-58.

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There could be no fraud on the part of Reynaldo Magaling regarding the post-dated checks because he is not even a signatory thereto. The alleged assurances/warranties to plaintiff are mere after thoughts to make answering defendants personally answerable for corporate obligations of Termo Loans, and to give semblance of merit to plaintiff's application for attachment.

For its part, Termo Loans failed to file an Answer; thus, upon Ong's motion, the RTC declared said corporation in default and allowed Ong to present evidence *ex parte*.

Pursuant to the writ of preliminary attachment earlier issued, and evidenced by the *Sheriff's Return*[16] dated 27 November 1998, the Sheriff[17] of RTC, Br. 13 of Lipa City, caused the attachment of two (2) parcels of land covered by Transfer Certificates of Title No. T-109347 and No. T-75559, both in the names of the Spouses Magaling.

The Spouses Magaling expectedly moved for the reconsideration of the 7 October 1998 Order of the RTC granting the writ of preliminary attachment, arguing that:

> The Writ of Preliminary Attachment x x x was improperly or irregularly issued as there is no existing ground to support the issuance of an attachment.
>
> Plaintiff nakedly alleged that the individual defendants are guilty of fraud in contracting the obligation. Nevertheless, a perusal of the Amended Complaint and the annexes thereto readily reveals that the obligation subject of the present case is corporate in character and not personal obligations of the individual defendants.[18]

In an *Order*[19] dated 19 February 1999, the RTC found that Spouses Magaling's *Motion to Discharge Attachment*[20] was impressed with merit based on the following reasons:

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[16] Records, p. 46.

[17] Noel M. Ramos

[18] Records, p. 79.

[19] *Id.* at 105-106.

[20] *Id.* at 75-79.

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FIRSTLY, it appears that the obligation was incurred by Termo Loans and Credit Corporation x x x. It is therefore a corporate liability and not the personal obligation of herein movants. As correctly stated by the movants, a corporation has a personality separate and distinct from that of the stockholders and officers.

SECONDLY, the checks which bounced do not bear the signatures of herein movants. It is indeed implausible that movants will give assurances concerning checks they did not sign.

THIRDLY, the obligation appears to have been incurred in 1994 x x x. "Fraud" was alleged in connection with the checks that bounced, and which appear to have been issued only in 1998 by way of renewal of plaintiff's money placement. It appears therefore that if there was indeed fraud, the same was not committed simultaneously with the inception of the obligation.

On 23 June 1999, the RTC promulgated the first of two decisions in this case. Ruling in favor of Ong, and against Termo Loans, the dispositive portion reads:

WHEREFORE, the Court finds for the plaintiff and against the defendant-corporation and hereby orders the latter to pay the former the following amounts:

1. The sum of ₱350,000.00 representing principal obligation;
2. Interest at the rate of 2.5% per month from date of default until full payment (sic)
3. ₱20,000.00 as and for attorney's fees;
4. The expenses of litigation; and
5. The cost of suit.[21]

On 11 August 1999, Ong filed a motion[22] for execution of the above, which the RTC granted[23] on 18 October 1999. The *Writ of Execution*[24] was subsequently issued by the RTC on

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[21] *Rollo,* p. 71.

[22] Records, p. 150.

[23] *Id.* at 168.

[24] *Id.* at 204-A.

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1 March 2000. On 26 April 2000, the *Sheriff's Return*[25] was filed before the RTC manifesting that the Writ of Execution earlier issued was being returned unsatisfied in view of the fact that Termo Loans had ceased to exist or had been dissolved.

In a parallel development, trial on the merits concerning Ong's cause of action against the Spouses Magaling ensued.

On 5 February 2001, in complete contrast to its first decision, the RTC promulgated its second decision holding the Spouses Magaling free and clear of any obligation or liability with respect to the sum of money claimed by Ong. The trial court ruled in this wise:

> Records show that the subject obligation is the obligation of defendant corporation. The Non-negotiable Promissory Note No. 551 dated November 25, 1994 (Exh. B, p. 3) evidencing plaintiff's money placement belongs to/or is owned by defendant Thermo (sic) Loans and Credit Corporation. Defendant Reynaldo Magaling only signed said Promissory Note in his capacity as President of the corporation. Even plaintiff's documentary evidence shows that the obligation subject matter of the instant case is a corporate one for which the stockholders and officers of Thermo (sic) Loans and Credit Corporation are not personally answerable. For being its President, defendant Magaling's act of convincing the plaintiff in investing money with the corporation granting without admitting it to be true is an act in usual course of business of said corporation. Thus, Thermo (sic) Loans and Credit Corporation has a personality separate and distinct from that of Reynaldo Magaling who happens to be only a stockholder thereof and president at that time.
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> x x x x x x x x x
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> Furthermore, the Planters Development Bank Checks (Exh. A – A-3) which were allegedly issued by defendant Reynaldo Magaling to herein plaintiff were corporate checks under the account name of Thermo (sic) Loans and Credit Corporation with defendant Reynaldo Magaling not even a signatory thereof. In fact, plaintiff's demand letter dated February 24, 1998 (Exh. F) is addressed to the corporation and not to Reynaldo Magaling. A stockholder as a rule is not directly, individually and/or personally liable for the indebtedness of the

[25] *Id.* at 204-B.

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corporation (citation omitted). Hence, Reynaldo Magaling being a mere stockholder of Thermo (sic) Loans and Credit Corporation cannot be held personally liable for the corporate debt incurred by it.[26]

The *fallo* of the foregoing decision thus states:

> WHEREFORE, foregoing premises considered, the instant Complaint against defendants-spouses Magaling is hereby DISMISSED for lack of merit.[27]

Ong appealed the instant case to the Court of Appeals.

In a *Decision* dated 31 August 2005, the appellate court reversed and set aside the ruling of the RTC, *viz*:

> WHEREFORE, the foregoing considered, the instant appeal is hereby GRANTED. The assailed decision is REVERSED and SET ASIDE and a new one entered declaring appellee spouses Magaling jointly and severally liable to appellant Peter Ong for the corporate obligation of Thermo (sic) Loans adjudged in the decision of the trial court dated 23 June 1999.[28]

The Court of Appeals, in reversing the 5 February 2001 Decision of the RTC, found that the general rule that corporate officers cannot be held personally liable for corporate debt when they act in good faith and within the scope of their authority in executing a contract for and in behalf of the corporation, cannot apply to the spouses Magaling. The Court of Appeals pierced the veil of corporate fiction and held the spouses Magaling solidarily liable with Termo Loans for the corporate obligations of the latter since it found that Reynaldo Magaling was grossly negligent in managing the affairs of the said corporation.

The Spouses Magaling moved for the reconsideration of the aforequoted decision. But not to be outdone, Ong likewise filed a motion for reconsideration, albeit partial, that is, insofar as the issue of the propriety of the discharge of the writ of preliminary attachment was concerned.

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[26] *Rollo,* pp. 63-64.

[27] *Id.* at 65.

[28] *Id.* at 40-41.

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The Spouses Magaling's motion for reconsideration was denied by the Court of Appeals in its *Amended Decision* dated 28 June 2006. Deciding affirmatively on Ong's propositions, the Court of Appeals explained in the same *Amended Decision* that:

> With respect to appellant's prayer, he invited Our attention to his assignment of error in his Appellant's Brief where he sought the nullification of the Order of the trial court discharging the writ of attachment. He argued that the said Order granting such discharge had the effect of prejudging the merits of the case at a time when Thermo (sic) Loans and Credit Corp. had not even filed its answer to the complaint. Indeed, We find that such discharge, even before the issues were joined, prematurely adjudicated the merits of the case on the lack of personal liability of appellees, and without the latter even posting a counter bond. Therefore, as prayed for by appellant, the discharge of attachment is declared illegal and the writ of attachment is declared effective and subsisting.[29]

And the dispositive part of the *Amended Decision* provides:

> WHEREFORE, the foregoing considered, the partial motion for reconsideration of appellant is GRANTED. Accordingly, the Order discharging the writ of attachment is SET ASIDE and the Writ of Attachment is hereby declared effective and subsisting. Appellees' motion for reconsideration is DENIED.[30]

Hence, the present petition premised on the following arguments[31]:

I.

THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AND IN EXCESS OF JURISDICTION IN RELYING ON A GROUND RAISED ONLY FOR THE FIRST TIME ON APPEAL, TO MAKE REYNALDO MAGALING PERSONALLY LIABLE FOR CORPORATE LIABILITY; and

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[29] *Id.* at 43.

[30] *Id.*

[31] *Id.* at 24-26.

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II.

THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AND IN EXCESS OF JURISDICTION IN REINSTATING THE PRELIMINARY ATTACHMENT.

At the outset, we note that while the instant suit is denominated as a "Petition for Review on *Certiorari,*" under Rule 45 of the Revised Rules of Court, the allegations for the allowance of this petition are that the appellate court committed grave abuse of discretion amounting to lack or excess of jurisdiction in reversing the decision dated 5 February 2001 of the RTC. This is a procedural error. This being an appeal by *certiorari,* under Rule 45 of the Revised Rules of Court, this Court's power to review is generally limited to questions of law and errors of judgment.[32] Under this mode of appeal, this Court is precluded from entertaining errors of jurisdiction or grave abuse of discretion – a question which may be appropriately addressed through a petition for *certiorari* under Rule 65 of the Revised Rules of Court. In any case, to put an end to the present controversy, in accordance with the liberal spirit pervading the Revised Rules of Court and in the interest of justice, this Court decided to treat the present petition for *certiorari* as an appeal by *certiorari*, considering that it was filed[33] within 15 days from receipt of the *Amended Decision* of the Court of Appeals denying petitioners' motion for reconsideration.

In the case at bar, the Spouses Magaling claim that the Court of Appeals gravely abused its discretion when it (1) held the Spouses Magaling equally liable with Termo Loans with regard to the financial liability of the latter; and (2) reinstated the writ of preliminary attachment.

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[32] *Tañedo v. Court of Appeals*, 322 Phil. 84, 95 (1996).

[33] Court of Appeals *Amended Decision* dated 28 June 2006 was received on 6 July 2006; on 19 July 2006, petitioners moved for an additional 15 days within which to file the petition, or until 21 August 2006; on 26 July 2006, petitioners filed the petition.

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In ruling against the Spouses Magaling on the sole issue of whether or not they "may be held personally liable for the corporate obligation of Thermo (sic) Loans in favor of Peter Ong,"[34] the Court of Appeals debunked the ratiocination of the RTC that "the checks issued by appellee Reynaldo Magaling were all corporate checks under the account name of Thermo (sic) Loans to which he was not even a signatory (of) x x x (and) that the demand letter was addressed to Thermo (sic) Loans and not to Reynaldo Magaling."[35] It took note of the following:

> Appellee Reynaldo Magaling testified that as president of Thermo (sic) Loans from 1994 up to 1997, it was his duty and responsibility to supervise the personnel and the operation of the corporation. (Citation omitted.) The Articles of Incorporation of Thermo (sic) Loans where he was incorporator and director states its primary purpose was to engage in the business of a lending investor, lending money to persons and entities under the terms and conditions allowed by law. Renaldo (sic) Magaling likewise admitted that there are other twenty more different companies also dealing in financing or lending business. (Citation omitted.) Thus, while it is true that there may have been no fraud at the inception of the transaction with appellant Peter Ong, and from 1994 to 1997, he was paid his monthly interest of 2.5% on his investment or ₱8,750.00 monthly, the degree of diligence required of Reynaldo Magaling as director and president of Thermo (sic) Loans was not shown to have been exercised by him as expected from the highest officer of the said company.
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> Reynaldo Magaling resigned as president of Thermo (sic) Loans in 1998 when the company already became insolvent. He admitted that when he resigned, nobody took over as president of the company. Neither were the investors informed about the bankruptcy thereof, and nor was any bankruptcy or insolvency or suspension of payments proceedings instituted to protect the assets of the corporation and the interest of its investors. As director and president of the company, he seemed to know nothing at all about its operations, nor could he produce any financial document like the company's financial statement, and in his own words, he conveniently gave all the responsibilities to the manager x x x.

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[34] Court of Appeals' Decision, p. 6; *rollo*, p. 11.

[35] Court of Appeals' Decision, p. 7; *id.* at 12.

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Considering the nature of the business of Thermo (sic) Loans and other lending companies of appellee Reynaldo Magaling. It behooved him to have exercised utmost diligence in running the affairs of Thermo (sic) Loans to protect its interest and its investors. Miserably, he failed in this respect that the trial court even commented that he seemed not to know anything about the operation of his business. (Citation omitted.)

It then concluded that:

Clearly, Reynaldo Magaling was grossly negligent in directing the affairs of Thermo (sic) Loans without due regard to the plight of its investors and thus should be held jointly and severally liable for the corporate obligation of Thermo (***sic***) Loans to appellant Peter Ong.[36]

In asking this Court to reverse and set aside the above-quoted *Decision*, as well as the *Amended Decision*, of the Court of Appeals, the petitioners contend that the appellate court failed to appreciate several important facts: 1) that the issue of whether or not a corporate debt or credit can be the debt or credit of a stockholder was alleged for the first time on appeal; 2) that "the *Amended Complaint* did not allege that Reynaldo Magaling was guilty of gross negligence or bad faith in directing the affairs of the corporation"[37]; 3) that the solvency of Termo Loans was never put in issue or raised by Ong; and 4) that negligence "is not one of the grounds provided for by Rule 57 of the Rules of Court that will warrant (the) issuance of preliminary attachment."[38]

Ong, in traversing the allegations in support of the present petition, argues in his *Comment* that he brought up the issue of Reynaldo Magaling's negligence in managing the affairs of Termo Loans in his Memorandum before the RTC where he stated that:

Being President, it is incumbent upon Reynaldo Magaling to know the financial condition of his company. He was found wanting and

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[36] Court of Appeals' Decision, pp. 8-9; *id.* at 13-14.

[37] Petition, p. 5; *id.* at 25.

[38] Petition, p. 7; *id.* at 27.

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did not know the financial condition of his company. How many creditors does the company have? He was supposed to know that as President but he does not know. One glaring fact that stands out is that these creditors are left with an empty bag and cannot collect because of the negligence of Reynaldo Magaling in running his financing companies.[39]

From the preceding arguments and counter-arguments, the threshold issues proper for this Court's consideration are, given the facts of the case, whether or not the Court of Appeals erred in: 1) making the Spouses Magaling and Termo Loans jointly and severally liable to Ong for the obligation incurred by the corporation; and 2) reinstating the writ of preliminary attachment issued against two (2) real properties of the Spouses Magaling.

The petition is not meritorious.

It is basic that a corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it.[40] The general rule is that obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities, and *vice versa*.

There are times, however, when solidary liabilities may be incurred and the veil of corporate fiction may be pierced. Exceptional circumstances warranting such disregard of a separate personality are summarized as follows:

1. When directors and trustees or, in appropriate case, the officers of a corporation;

(a) vote for or assent to patently unlawful acts of the corporation;

(b) act in bad faith or with gross negligence in directing the corporate affairs;

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[39] Records, p. 237.

[40] *McLeod v. National Labor Relations Commission*, G.R. No. 146667, 23 January 2007, 512 SCRA 227.

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(c) are guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons; [41]

2. When a director or officer has consented to the issuance of watered down stocks or who, having knowledge thereof, did not forthwith file with the corporate secretary his written objection thereto;[42]

3. When a director, trustee or officer has contractually agreed or stipulated to hold himself personally and solidarily liable with the corporation;[43] or

4. When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action.[44]

In making the Spouses Magaling co-defendants of Termo Loans, Ong alleged in his Complaint for Sum of Money filed with the RTC that the spouses Reynaldo Magaling and Lucia Magaling were the controlling stockholders and/or owners of Termo Loans, and that they had used the corporation to evade the payment of a valid obligation. The appellate court eventually found the Spouses Magaling equally liable with Termo Loans for the sum of money sought to be collected by Ong.

As explained above, to hold a director, a trustee or an officer personally liable for the debts of the corporation and, thus, pierce the veil of corporate fiction, bad faith or gross negligence by the director, trustee or officer in directing the corporate affairs must be established clearly and convincingly. Bad faith is a question of fact and is evidentiary. Bad faith does not connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious wrongdoing. It means breach of a known duty through some ill motive or interest. It partakes of the nature of fraud.[45]

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[41] Sec. 31, Corporation Code.

[42] Sec. 65, Corporation Code.

[43] *De Asis and Co., Inc. v. Court of Appeals*, G.R. No. 61549, 27 May 1985, 136 SCRA 599.

[44] Exemplified in Article 144, Corporation Code; See also Sec. 13, Presidential Decree 115 entitled, "The Trust Receipts Law."

[45] *McLeod v. National Labor Relations Commission*, *supra* note 40.

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In the present case, there is nothing substantial on record to show that Reynaldo Magaling, as President of Termo Loans, has, indeed, acted in bad faith in inviting Ong to invest in Termo Loans and/or in obtaining a loan from Ong for said corporation in order to warrant his personal liability. From all indications, the proceeds of the investment and/or loan were indeed utilized by Termo Loans. Likewise, bad faith does not arise just because a corporation fails to pay its obligations, because the inability to pay one's obligation is not synonymous with fraudulent intent not to honor the obligations.[46]

The foregoing discussion notwithstanding, this Court still cannot totally absolve Reynaldo Magaling from any liability considering his gross negligence in directing the affairs of Termo Loans; thus, he must be made personally liable for the debt of Termo Loans to Ong.

In order to pierce the veil of corporate fiction, for reasons of negligence by the director, trustee or officer in the conduct of the transactions of the corporation, such negligence must be gross. Gross negligence is one that is characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected;[47] and must be established by clear and convincing evidence. Parenthetically, gross or willful negligence could amount to bad faith.[48]

In the case at bar, in their *Memorandum* filed before the RTC, the Spouses Magaling argued that "the *Amended Complaint* did not allege that Reynaldo Magaling was guilty of gross negligence or bad faith in directing the affairs of the corporation"; and that respondent Ong was not able to adduce evidence to

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[46] *Adlawan v. Torres*, G.R. Nos. 65957-58, 5 July 1994, 233 SCRA 645, 655.

[47] *Fonacier v. Sandiganbayan*, G.R. No. 50691, 5 December 1994, 238 SCRA 655, 687-688.

[48] *Fores v. Miranda*, 105 Phil. 266, 276.

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offset the effect of the particular allegation. Hence, they insist that it was unfair for the appellate court to conclude that Reynaldo Magaling failed to exercise the necessary diligence in running Termo Loans.

We disagree.

Petitioners' argument is that Ong failed to actually allege in the complaint Reynaldo Magaling's gross negligence in running Termo Loans as basis for making the subject sum of money a personal liability of Reynaldo. For them, it is, thus, too late in the day to raise the alleged gross negligence of Termo Loans' President, Reynaldo Magaling, as this matter has not been pleaded before the RTC. Or simply put, issues raised for the first time on appeal and not raised timely in the proceedings in the lower court are barred for being violative of basic due process.

Generally, laws, theories, issues and arguments not adequately brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as they cannot be raised for the first time on appeal[49] and, as such, are deemed to have been waived. Basic consideration of due process impels this rule.[50] In the case at bar, however, the issue respecting Reynaldo Magaling's gross negligence was seasonably raised in the proceedings before the RTC. The testimonial evidence elicited from Reynaldo Magaling himself during his cross-examination in the RTC bears out his wanton disregard of the transactions of Termo Loans, particularly in consideration of the fact that he was the latter's President.

It cannot be said that the Spouses Magaling were not given an opportunity to refute the issue of his supposed gross negligence in directing the affairs of Termo Loans when the same, having been established by his own testimony during cross-examination, could have been objected to at the time it was made. Objection

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[49] *Eastern Assurance & Surety Corporation v. Land Transportation Franchising and Regulatory Board*, 459 Phil. 395, 415 (2003).

[50] *Philippine Nails and Wires Corporation v. Malayan Insurance Company, Inc.*, 445 Phil. 465, 478 (2003).

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to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection, he cannot raise the question for the first time on appeal. That the Spouses Magaling were not able to present evidence to the contrary was solely due to the ineffectiveness of their counsel in rebutting the evidence unearthed and brought to light during the witness' presentation in court. Their counsel could have clarified in the re-direct examination the matters revealed during cross-examination, but he did not do so.

Reynaldo Magaling's gross negligence became apparent, undeniable and proven during the course of the proceedings in the trial court. Reynaldo Magaling was the lone witness presented in court to belie the claim of Ong. On cross-examination, he (Reynaldo Magaling) clearly and plainly shed light on how Termo Loans was run under his aegis, to wit:

ATTY. NG:

Q. Mr. witness, this company that you have, this Flagship Lending Corporation, you said … When was this established, Mr. witness?

A. I think it is in 1998, more or less, sir.

Q. 1998. How about this First Solid Lending Corporation, when was this put up?

A. ***I cannot remember also when it started operating, sir.***

COURT:

Q. So, when did you first realize that you have difficulty in receiving payments from borrowers?

A. In the later part of …

Q. 19 ...?

A. In 1998, Your Honor.

Q. And in 1998 you did not tell Peter Ong that there was difficulty in receiving payments from the borrowers?

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A. He knew about it, Your Honor.

Q. You cannot presume that the investor knows that you have difficulty. You have to tell the investor. Did you tell him?

A. It was told to him by our manager, what was happening, Your Honor.

Q. Your Manager. But you, yourself did not tell him?

A. ***I cannot remember, Your Honor.***

COURT:

Q. So, there was absolutely no occasion for you to tell him even in passing in his store that there is danger in the ₱300,000.00 investment?

A. ***No, Your Honor.***

Q. How about the other investors? Did you not also tell them of such a situation that you were in in your company?

A. ***No, Your Honor.***

Q. Why not?

A. ***I did not tell that to investors, what is going on for fear that they might be afraid of what is happening, Your Honor.***[51]

x x x x x x x x x

ATTY. NG:

Q. Mr. Witness, was there a formal bankruptcy proceedings filed in dissolving the company?

x x x x x x x x x

WITNESS:

A. ***I do not know, sir.***

ATTY. NG:

Q. Being the President, you do not know or you refused to know?

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[51] TSN, 22 June 2000, pp. 51-53.

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A. No, sir. I resigned at that time in 1998, sir.

COURT:

Q. And who took over as President?

A. ***Nobody took over, Your Honor.***

Q. How about the investors? Did they get all their money?

WITNESS:

A. ***I do not know, Your Honor.***

ATTY. NG:

Q. As of the time that you were still the President, were there other investors in the company, is it not, aside from Peter Ong?

A. Yes, sir.

Q. Do you know how much was the investment of the other persons aside from Peter Ong?

x x x x x x x x x

WITNESS:

A. Like me, I have invested, sir.

ATTY. NG:

Q. How much?

A. ₱1.8 Million, sir.

Q. That is your share in the company?

A. No. That is not a share, sir.

Q. So, that is your investment in the company?

A. That is my investment, sir.

Q. How about the other persons who also invested money with your company?

A. ***I do not know that, sir.***

Q. Can you produce the financial statement of Thermo (sic) Loans, Mr. witness?

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A. (No answer).

COURT:

Q. So, as President, you do not know who are the other investor?

A. I know the Directors, but the other investors, I do not know, Your Honor.

Q. Who is in-charged (sic) of the company?

A. As of now, Your Honor?

Q. As of now?

A. Our manager, Your Honor.

ATTY. NG:

Q. But because you were the President, you also supervised your manager, is it not?

A. Yes, sir.

Q. To your knowledge, can you name some of the other persons who also invested in your company, if you know?

A. Yes, sir.

Q. Can you name them?

A. The Directors listed there, sir.

Q. How much did the Directors invest in this company?

A. ***That I do not know, sir.***

COURT:

Q. Upon insolvency, the fact that Thermo (sic) Loans became insolvent in 1998, did all the investors get their money?

A. Many are saying that they will get their money, Your Honor.

Q. But did they actually get their money investment?

A. The others were not able to get back, Your Honor.

Q. Did they file a case against you?

A. No charges were filed against me, Your Honor.

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Q. How about Thermo (sic) Loans?

A. ***I do not know, Your Honor.***

Q. So, this is the only case filed by an investor against Thermo (sic) Loans?

A. Yes, Your Honor.

ATTY. NG:

Q. Mr. Witness, going back to your relationship with Mr. Peter Ong, were you the one who convinced Peter Ong to invest in your company, the Thermo (sic) Loans?

A. ***I do not remember that, sir.***

COURT:

Q. But you talked to him about the interest and the principal?

A. Yes, Your Honor.

Q. But you did not mention to him that you have other lending companies?

A. ***In that matter, I do not remember, Your Honor.***

ATTY. NG:

Q. Mr. Witness, when this company, Thermo (sic) Loans pulled (sic) it up, "*nagsarado*," it was a *de facto*, there was no…. who got hold of the assets of the company?

A. ***I do not know that, sir.***

Q. Why?

A. ***Because I am not only attending to that company, I have so many other companies, sir.***

COURT:

Q. You did not go after your ₱1.8 Million?

A. ***Nomore (sic), Your Honor, because "ako'y kinukunsensya rin ng aking sarili, bilang Katoliko'y ayaw ko nang makasali pa sa ibang bagay na sa banda roo'y pera lang ho iyon."***

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Q. "*Nakukunsiyensya ka*" but you were not being bothered for the money of the other investors? How can that be? Your conscience bothers you?

A. ***If I will think about it, I might get sick. I did not bother to run after my investment for reason of health*** x x x.

ATTY. NG:

Q. Okay, Mr. Witness, considering that you are a businessman engaged in similar lines of lending company and being the President, the former President of Themo (sic) Loans, you had … you were furnished with final… with financial statement of the company was it not?

A. ***I do not remember that, sir.***

COURT:

Q. You did not call a meeting of the Directors and other stock holders that your company is going down?

A. ***No more, Your Honor, because no Directors attended the meeting.***

Q. But you called a meeting?

A. Yes, Your Honor. I called a meeting but nobody attended the meeting.

ATTY. NG:

Q. Where are now the financial records of the company?

A. ***That I do not know, sir.***

Q. How about your own personal records? Your personal copy of the financial statement of the company, considering that your classification in Rotary Club is financial services?

A. ***I do not know where it was placed, sir.***

Q. So, you are telling this Court that you cannot produce anymore the financial statement related to this company, is it?

A. No, sir. Not like that.

Q. Where you tried to retrieve or will you try to retrieve the financial statement of this company?

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A. ***I gave all the responsibilities to the manager, sir.***[52]

Reynaldo Magaling's very own testimony gave reason for the appellate court's finding of gross negligence on his part. Instead of the intended effect of refuting the supposition that Termo Loans was assiduously managed, Reynaldo Magaling's foregoing testimony only convincingly displayed his gross negligence in the conduct of the affairs of Termo Loans. From our standpoint, his casual manner, insouciance and nonchalance, *nay*, indifference, to the predicament of the distressed corporation glaringly exhibited a lackadaisical attitude from a top office of a corporation, a conduct totally abhorrent in the corporate world.

Reynaldo Magaling is not a novice in the field of commerce. He is a seasoned businessman running several lending companies. During his cross-examination, he admitted that he had, aside from Termo Loans, various other lending companies, to wit:

ATTY. NG:

Q. Mr. witness, you said that you are a businessman by profession?

WITNESS:

A. Yes, sir.

x x x x x x x x x

ATTY. NG:

Q. In 1994 when you got this alleged investment from Peter Ong, what were the businesses that you own or control at that time?

x x x x x x x x x

WITNESS:

A. I did not receive the investment of Peter Ong, it was the company who received, sir.

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[52] *Id.* at 53-62.

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ATTY. NG:

Q. Okay. ***But what were your businesses that you had at that time?***

A. ***Lending companies, sir.***

Q. What are the names of that lending companies that you had?

A. ***Thermo Loans***, sir.

Q. Aside from Thermo Loans?

A. ***First Solid Lending Company***, sir.

Q. What else?

A. ***Mediator Lending Company***, sir.

Q. What else?

A. ***Beneficial Lending Company***, sir.

Q. What else?

A. ***Vintage Lending Company***, sir.

Q. What else?

A. ***New Profile Lending Company***, sir.

Q. What else?

A. ***Smart Cash Lending Company***, sir.

Q. What else?

A. ***Cash Line Lending Company***, sir.

Q. What else?

A. ***Insight Lending Company***, sir.

Q. What else?

A. ***Antigo Lending Company***, sir.

Q. What else?

A. ***Flagship Lending Company***, sir.

Q. What else?

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COURT:

Q. So, what happened to all these lending companies now?

A. They are okay, Your Honor.

ATTY. NG:

Q. Do you mean to tell this Honorable Court that all these companies are now doing well and still existing including Thermo Loans?

A. Thermo Loans was insolvent at that time, sir. But you did not ask those insolvent. ***I have so many companies that are already insolvent. But you did not ask about the company that are solvent.***

COURT:

Q. ***Among those companies which you mentioned, which of those are solvent and which are not?***

A. All of those I mentioned except Thermo Loans, Your Honor.[53]

x x x x x x x x x

COURT:

Q. And Peter Ong could have not parted with the Three Hundred Thousand pesos (₱300,000.00) investment if he did not talk to you?

A. He talked to me, Your Honor.

ATTY. NG:

Q. He talked to you? Now, that you admitted ….

COURT:

Q. Who was the one who made the offer for him to invest? Was he the one who voluntarily invested the money or you were the one who convinced him to invest the P300,000.00 money to Thermo Loans Lending and Credit Corporation?

A. I cannot remember, Your Honor, because due to the lapse of time. It was in 1994.[54]

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[53] *Id.* at 27-33.

[54] *Id.* at 42.

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x x x x x x x x x

COURT:

Q. So, what you are saying now is that, your manager and Peter Ong made preliminary talks about Peter Ong investing in Thermo Loans and Credit Corporation and thereafter, you also talked with Peter Ong about Peter Ong's investing in Thermo Loans?

A. Yes, Your Honor.

Q. What about after that?

A. After four (4) years … that investment was in 1994 up to 1998, Your Honor, and this last … in the year 1999, the corporation became insolvent, Your Honor.[55]

x x x x x x x x x

ATTY. NG:

x x x x x x x x x

Q. What happened when … Mr. witness, how did Thermo Loans become bankrupt?

A. The reason is that, the borrowers did not pay, sir.[56]

Accordingly, the Court of Appeals observed correctly when it succinctly stated that, "[c]learly, Reynaldo Magaling was grossly negligent in directing the affairs of Thermo (sic) Loans without due regard to the plight of its investors and thus should be held jointly and severally liable for the corporate obligation of Thermo (sic) Loans to appellant Peter Ong."

On the propriety of the RTC's discharge of the preliminary attachment, we hew to the provisions of the law and jurisprudence.

A writ of preliminary attachment is a provisional remedy by virtue of which a plaintiff or other proper party may, at the commencement of the action or at any time thereafter, have the property of the adverse party taken into the custody of the

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[55] *Id.* at 45-46.

[56] *Id.* at 49.

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court as security for the satisfaction of the judgment that may be recovered.[57] The chief purpose of the remedy of attachment is to secure a contingent lien on defendant's property until plaintiff can, by appropriate proceedings, obtain a judgment and have such property applied to its satisfaction, or to make some provision for unsecured debts in cases where the means of satisfaction thereof are liable to be removed beyond the jurisdiction, or improperly disposed of or concealed, or otherwise placed beyond the reach of creditors.[58]

For the provisional remedy to issue, Sec. 1, Rule 57 of the Rules of Court, as amended, provides that:

SECTION 1. *Grounds upon which attachment may issue.* – At the commencement of the action or at any time before entry of judgment, a plaintiff or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:

(a) In an action for the recovery of a specified amount of money or damages, other than moral and exemplary, on a cause of action arising from law, contract, quasi-contract, delict or quasi-delict against a party who is about to depart from the Philippines with intent to defraud his creditors;

(b) In an action for money or property embezzled or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty;

(c) In an action to recover possession of property unjustly or fraudulently taken, detained or converted, when the property, or any part thereof, has been concealed, removed, or disposed of to prevent its being found or taken by the applicant or an authorized person;

(d) In an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought, or in the performance thereof;

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[57] *Davao Light and Power Co., Inc. v. Court of Appeals*, G.R. No. 93262, 29 November 1991, 204 SCRA 343, 349.

[58] *Chemphil Export & Import Corp. v. Court of Appeals*, G.R. Nos. 112438-39, 12 December 1995, 251 SCRA 257, 284.

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(e) In an action against a party who has removed or disposed of his property, or is about to do so, with intent to defraud his creditors; or

(f) In an action against a party who does not reside and is not found in the Philippines, or on whom summons may be served by publication.

Once the writ of preliminary attachment is issued, the same rule provides for two ways by which it can be dissolved or discharged.

First, the writ of preliminary attachment may be discharged upon a security given, *i.e.*, a counter-bond, *viz*:

SEC. 12. *Discharge of attachment upon giving counter-bound.* – After a writ of attachment has been enforced, the party whose property has been attached, or the person appearing on his behalf, may move for the discharge of the attachment wholly or in part on the security given. **The court shall, after due notice and hearing, order the discharge of the attachment if the movant makes a cash deposit, or files a counter-bond executed to the attaching party with the clerk of the court where the application is made, in an amount equal to that fixed by the court in the order of attachment, exclusive of costs**. But if the attachment is sought to be discharged with respect to a particular property, the counter-bond shall be equal to the value of that property as determined by the court. In either case, the cash deposit or the counter-bond shall secure the payment of any judgment that the attaching party may recover in the action. A notice of the deposit shall forthwith be served on the attaching party. Upon the discharge of an attachment in accordance with the provisions of this section, the property attached, or the proceeds of any sale thereof, shall be delivered to the party making the deposit or giving the counter-bond, or to the person appearing on his behalf, the deposit or counter-bond aforesaid standing in place of the property so released. Should such counter-bond for any reason be found to be, or become insufficient, and the party furnishing the same fail to file an additional counter-bond, the attaching party may apply for a new order of attachment. (Emphasis supplied.)

Second, said provisional remedy must be shown to have been irregularly or improperly issued, to wit:

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SEC. 13. *Discharge of attachment on other grounds.* – The party whose property has been ordered attached may file a motion with the court in which the action is pending, before or after levy or even after the release of the attached property, for an order to set aside or discharge the attachment **on the ground that the same was improperly or irregularly issued or enforced, or that the bond is insufficient**. If the attachment is excessive, the discharge shall be limited to the excess. If the motion be made on affidavits on the part of the movant but not otherwise, the attaching party may oppose the motion by counter-affidavits or other evidence in addition to that on which the attachment was made. **After due notice and hearing, the court shall order the setting aside or the corresponding discharge of the attachment if it appears that it was improperly or irregularly issued or enforced, or that the bond is insufficient, or that the attachment is excessive, and the defect is not cured forthwith.** (Emphasis supplied.)

In the case at bar, there is no question that no counter bond was given by the Spouses Magaling for the discharge or dissolution of the writ of preliminary attachment, as their position is that the provisional remedy was irregularly or improperly issued. They sought the discharge or dissolution of the writ based on Sec. 13, Rule 57 of the Rules of Court, as amended. Under said provision, when the attachment is challenged for having been illegally or improperly issued, there must be a hearing, with the burden of proof to sustain the writ being on the attaching creditor.[59] That hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing parties and meet them. It means a fair and open hearing.[60] Herein, there is no showing that a hearing was conducted prior to the issuance of the 19 February 1999 Order of the RTC discharging or dissolving the writ of preliminary attachment. That Ong was able to file an opposition to the

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[59] *Benitez v. Intermediate Appellate Court*, G.R. No. 71535, 15 September 1987, 154 SCRA 41, 46; *Peroxide Philippines Corp. v. Court of Appeals*, G.R. No. 92813, 31 July 1991, 199 SCRA 882, 891.

[60] *Monson v. Secretary of Agriculture*, No. 81 F.S.C., April 28, 1938, cited in Martin, *Constitutional Law*, 1988 Ed., 233; cited in *Peroxide Philippines Corp. v. Court of Appeals, id.*

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motion of the Spouses Magaling to discharge the preliminary attachment is of no moment. The written opposition filed is not equivalent to a hearing. The absence of a hearing before the RTC bars the discharge of the writ of preliminary attachment for the simple reason that the discharge or dissolution of said writ, whether under Sec. 12 or Sec. 13 of Rule 57 of the Rules of Court, as amended, shall be granted only "after due notice and hearing."

WHEREFORE, premises considered, the instant petition is *DENIED.* Accordingly, the assailed 31 August 2005 *Decision* and 28 June 2006 *Amended Decision,* both of the Court of Appeals in CA-G.R. CV No. 70954, are hereby *AFFIRMED.* Costs against petitioners, heirs of Reynaldo Magaling.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez and *Nachura, JJ.,* concur.

Tinga,[*] *J.,* in the result.

THIRD DIVISION

[G.R. No. 174350. August 13, 2008]

SPOUSES BERNYL BALANGAUAN & KATHERENE BALANGAUAN, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS, SPECIAL NINETEENTH (19TH) DIVISION, CEBU CITY & THE HONGKONG AND SHANGHAI BANKING CORPORATION, LTD.,** *respondents.*

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[*] Designated as an additional member in place of Associate Justice Ruben T. Reyes who concurred in the Court of Appeals decision.