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SPECIAL THIRD DIVISION

[G.R. No. 220926. March 21, 2018]

LUIS JUAN L. VIRATA and UEM-MARA PHILIPPINES CORPORATION (now known as CAVITEX INFRASTRUCTURE CORPORATION), *petitioners, vs.* **ALEJANDRO NG WEE, WESTMONT INVESTMENT CORP., ANTHONY T. REYES, SIMEON CUA, VICENTE CUALOPING, HENRY CUALOPING, MARIZA SANTOS-TAN, and MANUEL ESTRELLA,** *respondents.*

[G.R. No. 221058. March 21, 2018]

WESTMONT INVESTMENT, CORPORATION, *petitioner, vs.* **ALEJANDRO NG WEE,** *respondent.*

[G.R. No. 221109. March 21, 2018]

MANUEL ESTRELLA, *petitioner, vs.* **ALEJANDRO NG WEE,** *respondent.*

[G.R. No. 221135. March 21, 2018]

SIMEON CUA, VICENTE CUALOPING, and HENRY CUALOPING, *petitioners, vs.* **ALEJANDRO NG WEE,** *respondent.*

[G.R. No. 221218. March 21, 2018]

ANTHONY T. REYES, *petitioner, vs.* **ALEJANDRO NG WEE, LUIS JUAN VIRATA, UEM-MARA PHILIPPINES CORP., WESTMONT INVESTMENT CORP., MARIZA SANTOS-TAN, SIMEON CUA, VICENTE CUALOPING, HENRY CUALOPING, and MANUEL ESTRELLA,** *respondents.*

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SYLLABUS

MERCANTILE LAW; CORPORATION CODE; BOARD OF DIRECTORS; CONCEPT OF CORPORATE RATIFICATION; FOR AN ACT TO CONSTITUTE AN IMPLIED RATIFICATION, THERE MUST BE NO ACCEPTABLE EXPLANATION FOR THE ACT OTHER THAN THAT THERE IS AN INTENTION TO ADOPT THE ACT AS ITS OWN; EFFECT IN CASE AT BAR.—The Court expounded on the concept of corporate ratification in *Board of Liquidators v. Heirs of Kalaw* in the following wise: Authorities, great in number, are one in the idea that "ratification by a corporation of an unauthorized act or contract by its officers or others relates back to the time of the act or contract ratified, and is equivalent to original authority;" and that "[t]he corporation and the other party to the transaction are in precisely the same position as if the act or contract had been authorized at the time." The language of one case is expressive: "**The adoption or ratification of a contract by a corporation is nothing more nor less than the making of an original contract.** xxx And in *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas*, We have discussed that: **Implied ratification may take the form of silence, acquiescence, acts consistent with approval of the act, or acceptance or retention of benefits.** However, silence, acquiescence, retention of benefits, and acts that may be interpreted as approval of the act do not by themselves constitute implied ratification. For an act to constitute an implied ratification, **there must be no acceptable explanation for the act other than that there is an intention to adopt the act as his or her own.** x x x In the case at bar, it can be inferred from the attendant circumstances that the Wincorp board ratified, if not approved, the Side Agreements. x x x The Wincorp directors are chargeable with knowledge of the surety agreement that Virata executed to secure the Hottick obligations to its investors. However, instead of enforcing the surety agreement against Virata when Hottick defaulted, the Wincorp board approved a resolution excluding Virata as a party respondent in the collection suit to be filed against Hottick and its proprietors. x x x To emphasize, there were clear warning signs that Power Merge would not have been able to pay the almost ₱2.5 billion face value of its promissory notes. To Our mind, the Wincorp board of directors' approval of the credit line agreement,

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notwithstanding these telltale signs and the above outlined circumstances, establishes the movant-directors' liability to Ng Wee. For if these do not attest to their privity to Wincorp's fraudulent scheme, they would, at the very least, convincingly prove that the movant –directors are guilty of gross negligence in managing the company affairs. The movant-board directors should not have allowed the exclusion of Virata from the collection suit against Hottick knowing that he is a surety thereof. As revealed by their subsequent actions, this was not a mere error in judgment but a calculated maneuver to defraud its investors. Hence, the Court did not err when it ruled that Sec. 31 of the Corporation Code must be applied, and the separate juridical personality of Wincorp, pierced.

TIJAM, *J.*, *dissenting opinion*:

1. COMMERCIAL LAW; CORPORATION CODE; PIERCING THE VEIL OF CORPORATE FICTION; THE JURIDICAL PERSONALITY OF A CORPORATION MAY BE REMOVED OR ITS CORPORATE VEIL PIERCED WHEN THE CORPORATION IS JUST AN ALTER EGO OF A PERSON OR OF ANOTHER CORPORATION; NOT ESTABLISHED IN CASE AT BAR.—As held by this Court in *Philippine National Bank v. Hydro Resources Contractors Corp.*, a corporation acquires a separate personality from that of its directors and officers, to wit: x xx It is well-settled that the juridical personality of a corporation may be removed or its corporate veil pierced when the corporation is just an alter ego of a person or of another corporation. When the corporation becomes a shield for fraud, illegality or inequity committed against third persons, the corporate veil will, as a result, be disregarded for the interest of justice. "However, the rule is that a court should be careful in assessing the milieu where the doctrine of the corporate veil may be applied. Otherwise an injustice, although unintended, may result from its erroneous application. Thus, cutting through the corporate cover requires an approach characterized by due care and caution." "It must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of its rights. The wrongdoing must be clearly and convincingly established; it cannot be presumed." Directors, Trustees or Officers can be held personally and

solidarily liable with the corporation in situations enumerated by law and jurisprudence, x x x In the present case, nowhere in the records does it appear that the granting, extending and approving of the Credit Line Agreement and the Amendment to the Credit Line Agreement is a patently unlawful act of the corporation. In fact, the granting and approval of the same falls within the function and purpose of Wincorp as an investment house. Thus, the mere approval of Cua, the Cualopings, Santos-Tan and Estrella of the said credit line agreements cannot be equated to knowingly assenting or approving a patently unlawful act of the corporation. Neither can it be equated to bad faith, fraud nor gross negligence. The records do not show that Cua, the Cualopings, Santos-Tan and Estrella willfully and knowingly voted for or assent to the execution of the Side Agreements that virtually exonerated Power Merge of its liability on the promissory notes, except for the signatories who were Ong and Reyes. Neither are they guilty of gross negligence or bad faith in directing or dealing in the affairs of the corporation, they merely approved the Credit Line Agreements because the screening committee of the corporation and its subordinate departments approved the same.

2. **ID.; ID.; ID.; ID.; ACTS OF AN OFFICER NOT AUTHORIZED BY THE BOARD OF DIRECTORS/ TRUSTEES DO NOT BIND THE CORPORATION; CASE AT BAR.—** "In this case, the Credit Line Agreements of Wincorp as approved by its officers may be called as a business strategy which turned out to be unfavorable. This does not mean however that Cua, the Cualopings, Santos-Tan and Estrella perpetrated fraud as they did not know and intend the effects of such act or omission, nor was there bad faith on their part since there is no dishonest purpose or consciousness in doing such wrong. It is undisputed that Ong and Reyes executed the Side Agreements which exonerated Power Merge from its liabilities to Wincorp. It does not however, show that Ong and Reyes were authorized by the board of directors in executing the Side Agreements. "Acts of an officer that are not authorized by the board of directors/trustees do not bind the corporation unless the corporation ratifies the acts or holds the officer out as a person with authority to transact on its behalf." Here, there is simply nothing that will establish that Cua, the Cualopings, Santos-Tan and Estrella authorized or ratified the acts of Ong and Reyes.

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APPEARANCES OF COUNSEL

Cadiz Tabayoyong & Partners for Alejandro Ng Wee.

Reyno Tiu Domingo Santos for Westmont Investment Corp.

Ronald Mark C. Lleno for Luis Juan Virata & UEM-Mara Phils. Corp.

Yorac Sarmiento Arroyo Chua Coronel & Reyes Law Firm for Manuel A. Estrella.

Santos Paruñgao Aquino & Santos for Simeon Cua, Vicente Cualoping & Henry Cualoping.

Abelardo B. Albis, Jr. for Mariza Santos-Tan.

Poblador Bautista & Reyes for Anthony Reyes.

R E S O L U T I O N

VELASCO JR., *J.*:

Before this Court are the following recourses from Our July 5, 2017 Decision:

a. Motion for Partial Reconsideration[1] filed by Luis Juan L. Virata (Virata);

b. Motion for Reconsideration[2] of Mariza Santos-Tan (Santos-Tan);

c. Motion for Reconsideration[3] of Manuel Estrella (Estrella);

d. Motion for Partial Reconsideration[4] of Alejandro Ng Wee (Ng Wee);

e. Motion for Reconsideration[5] of Simeon Cua, Vicente Cualoping, and Henry Cualoping (Cua and the Cualopings);

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[1] *Rollo* (G.R. No. 221218), Vol. 2, p. 1176.

[2] *Id*. at 1219.

[3] *Id*. at 1229.

[4] *Id*. at 1261.

[5] *Id*. at 1307.

f. Motion for Reconsideration[6] of Anthony T. Reyes (Reyes); and

g. Motion for Reconsideration[7] of Westmont Investment Corporation (Wincorp)

The Court notes that the grounds relied upon by the movants Virata, Estrella, Ng Wee, Cua and the Cualopings, Reyes, and Wincorp are the same or substantially similar to those raised in their respective petitions at bar. The same have been amply discussed, thoroughly considered, exhaustively threshed out and resolved in Our July 5, 2017 Decision. Said motions for reconsideration, perforce, must suffer the same fate of denial. Meanwhile, the Court deems it necessary to discuss the issues raised by Santos-Tan, who is only now participating in the proceedings, in her plea for reconsideration.

Respondent Santos-Tan never appealed the September 30, 2014 Decision and October 14, 2015 Resolution of the Court of Appeals (CA) in CA-G.R. CV. No. 97817 holding her liable with her co-parties to Ng Wee. Hence, she maintains that the Court does not have jurisdiction over her person and that, insofar as she is concerned, the CA ruling had already attained finality and can no longer be modified. And when the Court promulgated its July 5, 2017 Decision granting Virata's cross-claim against her, the Court allegedly altered the CA's final ruling as to her by increasing her exposure, in net effect.

Additionally, Santos-Tan was allegedly deprived of her right to due process since she was not afforded the opportunity to rebut the issue pertaining to Virata's counterclaim, a claim that was allegedly not raised in Virata's appeal but was granted nonetheless.

On the merits, Santos-Tan argues that the cross-claim should not have been granted because the February 15 and March 15, 1999 Side Agreements that served as the basis thereof never

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[6] *Id*. at 1343.

[7] *Id*. at 1363.

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got the imprimatur of the Board of Directors of Wincorp. Moreover, Santos-Tan points out that, as established, Power Merge made a total of ₱2,183,755,253.11 of drawdowns from its Credit Line Facility. Considering Power Merge's receipt of the said amount, it would be iniquitous and immoral to require Santos-Tan and her co-directors in Wincorp to reimburse Virata of whatever the latter would be required to pay Ng Wee.

The arguments do not persuade.

It is at the height of error for respondent Santos-Tan to claim that the Court does not have jurisdiction over her person. Clear in the petitions is that Virata and Reyes specifically impleaded Santos-Tan as one of the party respondents in their petitions, docketed as G.R. Nos. 220926 and 221218, respectively. Through her designation as a party respondent in the said appeals, the Court validly acquired jurisdiction over her person, and prevented the assailed September 30, 2014 Decision and October 14, 2015 Resolution of the CA in CA-G.R CV. No. 97817 from attaining finality as to her.

Santos-Tan's claim that she was denied of due process when the Court granted Virata's cross-claim is likewise unavailing.

Virata raised his claim against his co-parties as early as the filing of his Answer to Ng Wee's Complaint. The claim was then ventilated in trial where the extent of the liability of each party had been ascertained. Virata, Santos-Tan, and their co-parties would contest the findings of the trial court to the CA, but to no avail. Eventually, the controversy was elevated to this Court.

The implication of Virata's persistent plea, up to this Court, to be absolved of civil liability is to shift the burden entirely to his co-parties. Otherwise stated, he was essentially re-asserting his cross-claim, as against Santos-Tan included. However, Santos-Tan inexplicably waived her right to address the allegations in Virata's bid for exoneration in his petition, despite having been impleaded as party respondent.

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The perceived denial of due process right is therefore illusory. Santos-Tan had all the opportunity to counter Virata's allegations in his petition, but did not avail of the same. She only has herself to blame, not only for failing to appeal the appellate court's ruling, but also for her conscious refusal to even file a comment on the petitions in the case at bar.

Furthermore, even though the cross-claim was not explicitly raised as an issue in Virata's petition, the request therefor is subsumed under the general prayer for equitable relief. Jurisprudence teaches that the Court's grant of relief is limited to what has been prayed for in the Complaint or related thereto, supported by evidence, and covered by the party's cause of action.[8] Here, the grant of the cross-claim is but the logical consequence of the Court's finding that the Side Agreements, although not binding on Ng Wee and the other investors, are binding against the parties thereto. And under the terms of the Side Agreements, the only liability of Power Merge is not to pay for the promissory notes it issued, but to return and deliver to Wincorp all the rights, titles and interests conveyed to it by Wincorp over the Hottick obligations. It may be, as Santos-Tan argued, that Power Merge made drawdowns from the credit line facility, and that its receipt of a significant sum thereunder makes it liable to the investors. However, any payment made by Virata for this liability would nevertheless still be subject to the right of reimbursement from Wincorp by virtue of the Side Agreements.

In his Dissent, esteemed Associate Justice Noel G. Tijam (Justice Tijam) submits that the Wincorp directors — specifically Cua, the Cualopings, Santos-Tan and Estrella — should not be jointly and solidarily liable with Virata, Wincorp, Ong, and Reyes to pay Ng Wee the amount of his investment. Justice Tijam stressed that there is lack of proof that the said directors assented to the execution of the Side Agreements, barring the Court from holding them personally accountable for fraud.

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[8] *Philippine Charter Insurance Corporation v. Philippine National Construction Corporation*, G.R. No. 185066, October 2, 2009, 602 SCRA 723, 736.

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Neither can they be held liable for gross negligence since they exercised due diligence in conducting the affairs of Wincorp.

The Court finds the submissions meritless.

Section 31 of the Corporation Code expressly states:

> Section 31. *Liability of directors, trustees or officers*. - Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.
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> When a director, trustee or officer attempts to acquire or acquire, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.

In Our July 5, 2017 Decision, the Court explicated the liabilities of the board directors, thus:

> *G.R. No. 221135: The liabilities of Cua and the Cualopings*
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> On the other hand, the liabilities of Cua and the Cualopings are more straightforward. They admit of approving the Credit Line Agreement and its subsequent Amendment during the special meetings of the Wincorp board of directors, but interpose the defense that they did so because the screening committee found the application to be above board. They deny knowledge of the Side Agreements and of Power Merge's inability to pay.
>
> We are not persuaded.
>
> Cua and the Cualopings cannot effectively distance themselves from liability by raising the defenses they did. As ratiocinated by the CA:

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> Such submission creates a loophole, especially in this age of compartmentalization, that would create a nearly fool-proof scheme whereby well-organized enterprises can evade liability for financial fraud. Behind the veil of compartmentalized departments, such enterprise could induce the investing public to invest in a corporation which is financially unable to pay with promises of definite returns on investment. If we follow the reasoning of defendants-appellants, we allow the masterminds and profiteers from the scheme to take the money and run without fear of liability from law simply because the defrauded investor would be hard-pressed to identify or pinpoint from among the various departments of a corporation which directly enticed him to part with his money.

Petitioners Cua and the Cualopings bewail that the above-quoted statement is overarching, sweeping, and bereft of legal or factual basis. But as per the records, the totality of circumstances in this case proves that they are either complicit to the fraud, or at the very least guilty of gross negligence, as regards the "*sans recourse*" transactions from the Power Merge account.

The board of directors is expected to be more than mere rubber stamps of the corporation and its subordinate departments. It wields all corporate powers bestowed by the Corporation Code, including the control over its properties and the conduct of its business. Being stewards of the company, the board is primarily charged with protecting the assets of the corporation in behalf of its stakeholders.

Cua and the Cualopings failed to observe this fiduciary duty when they assented to extending a credit line facility to Power Merge. In PED Case No. 20-2378, the SEC discovered that Power Merge is actually Wincorp's largest borrower at about 30% of the total borrowings. It was then incumbent upon the board of directors to have been more circumspect in approving its credit line facility, and should have made an independent evaluation of Power Merge's application before agreeing to expose it to a ₱2,500,000,000.00 risk.

Had it fulfilled its fiduciary duty, the obvious warning signs would have cautioned it from approving the loan in haste. To recapitulate: (1) Power Merge has only been in existence for two years when it was granted a credit facility; (2) Power Merge was thinly capitalized with only ₱37,500,000.00 subscribed capital; (3) Power Merge was not an ongoing concern since it never secured the necessary permits and licenses to conduct business, it never

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engaged in any lucrative business, and it did not file the necessary reports with the SEC; and (4) no security other than its Promissory Notes was demanded by Wincorp or was furnished by Power Merge in relation to the latter's drawdowns.

It cannot also be ignored that prior to Power Merge's application for a credit facility, its controller Virata had already transacted with Wincorp. A perusal of his records with the company would have revealed that he was a surety for the Hottick obligations that were still unpaid at that time. This means that at the time the Credit Line Agreement was executed on February 15, 1999, Virata still had direct obligations to Wincorp under the Hottick account. But instead of impleading him in the collection suit against Hottick, Wincorp's board of directors effectively released Virata from liability, and, ironically, granted him a credit facility in the amount of ₱1,300,000,000.00 on the very same day.

This only goes to show that even if Cua and the Cualopings are not guilty of fraud, they would nevertheless still be liable for gross negligence in managing the affairs of the company, to the prejudice of its clients and stakeholders. Under such circumstances, it becomes immaterial whether or not they approved of the Side Agreements or authorized Reyes to sign the same since this could have all been avoided if they were vigilant enough to disapprove the Power Merge credit application. Neither can the business judgment rule apply herein for it is elementary in corporation law that the doctrine admits of exceptions: bad faith being one of them, gross negligence, another. The CA then correctly held petitioners Cua and the Cualopings liable to respondent Ng Wee in their personal capacity.

G.R. No. 221109: The liability of Manuel Estrella

To refresh, Estrella echoes the defense of Tankiansee, who was exempted from liability by the trial court. He claims that just like Tankiansee, he was not present during Wincorp's special board meetings where Power Merge's credit line was approved and subsequently amended. Both also claimed that they protested and opposed the board's actions. But despite the parallels in their defenses, the trial court was unconvinced that Estrella should be released from liability. Estrella appealed to the CA, but the adverse ruling was sustained.

We agree with the findings of the courts *a quo*.

The minutes of the February 9, 1999 and March 11, 1999 Wincorp Special Board Meetings were considered as damning evidence against Estrella, just as they were for Cua and the Cualopings. Although they were said to be unreliable insofar as Tankiansee is concerned, the trial court rightly distinguished between the circumstances of Estrella and Tankiansee to justify holding Estrella liable.

For perspective, Tankiansee was exempted from liability upon establishing that it was physically impossible for him to have participated in the said meetings since his immigration records clearly show that he was outside the country during those specific dates. In contrast, no similar evidence of impossibility was ever offered by Estrella to support his position that he and Tankiansee are similarly situated.

Estrella submitted his departure records proving that he had left the country in July 1999 and returned only in February of 2000. Be that as it may, this is undoubtedly insufficient to establish his defense that he was not present during the February 9, 1999 and March 11, 1999 board meetings.

Instead, the minutes clearly state that Estrella was present during the meetings when the body approved the grant of a credit line facility to Power Merge. Estrella would even admit being present during the February 9, 1999 meeting, but attempted to evade responsibility by claiming that he left the meeting before the "other matters," including Power Merge's application, could have been discussed.

Unfortunately, no concrete evidence was ever offered to confirm Estrella's alibi. In both special meetings scheduled, Estrella averred that he accompanied his wife to a hospital for her cancer screening and for dialogues on possible treatments. However, this claim was never corroborated by any evidence coming from the hospital or from his wife's physicians. Aside from his mere say-so, no other credible evidence was presented to substantiate his claim. Thus, the Court is not inclined to lend credence to Estrella's self-serving denials.

Neither can petitioner Estrella be permitted to raise the defense that he is a mere nominee of John Anthony Espiritu, the then chairman of the Wincorp board of directors. It is of no moment that he only had one nominal share in the corporation, which he did not even pay for, just as it is inconsequential whether or not Estrella had been receiving compensation or honoraria for attending the meetings of the board.

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The practice of installing undiscerning directors cannot be tolerated, let alone allowed to perpetuate. This must be curbed by holding accountable those who fraudulently and negligently perform their duties as corporate directors, regardless of the accident by which they acquired their respective positions.

In this case, the fact remains that petitioner Estrella accepted the directorship in the Wincorp board, along with the obligations attached to the position, without question or qualification. The fiduciary duty of a company director cannot conveniently be separated from the position he occupies on the trifling argument that no monetary benefit was being derived therefrom. The gratuitous performance of his duties and functions is not sufficient justification to do a poor job at steering the company away from foreseeable pitfalls and perils. The careless management of corporate affairs, in itself, amounts to a betrayal of the trust reposed by the corporate investors, clients, and stakeholders, regardless of whether or not the board or its individual members are being paid. The RTC and the CA, therefore, correctly disregarded the defense of Estrella that he is a mere nominee. (citations omitted, emphasis added)

As regards Santos-Tan, she would likewise be liable in her personal capacity under Section 31 of the Corporation Code.[9] Her liability is no different from that of Cua and the Cualopings. She cannot utilize the separate juridical personality of Wincorp as a shield when she, along with the other board members, approved the credit line application of Power Merge in the amount of ₱2,500,000,000.00 despite the glaring signs that it would be unable to make good its obligation, to wit:

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[9] Section 31. *Liability of directors, trustees or officers*. - Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

When a director, trustee or officer attempts to acquire or acquire, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.

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(1) Power Merge has only been in existence for two years when it was granted a credit facility;

(2) Power Merge was thinly capitalized with only ₱37,500,000.00 subscribed capital;

(3) Power Merge was not an ongoing concern since it never secured the necessary permits and licenses to conduct business, it never engaged in any lucrative business, and it did not file the necessary reports with the SEC; and

(4) No security other than its Promissory Notes was demanded by Wincorp or was furnished by Power Merge in relation to the latter's drawdowns.

Had Santos-Tan and the members of the board fulfilled their fiduciary duty to protect the corporation for the sake of its stakeholders, the obvious warning signs would have cautioned them from approving Power Merge's loan application and credit limit increase in haste. The failure to heed these warning signs, to Our mind, constitutes gross negligence, if not fraud, for which the members of the board could be held personally accountable.

The contention that the Side Agreements were without the imprimatur of its board of directors cannot be given credence. The totality of circumstances supports the conclusion that the Wincorp directors impliedly ratified, if not furtively authorized, the signing of the Side Agreements in order to lay the groundwork for the fraudulent scheme. Thus, even though it is quite understandable that there is no document traceable to said Wincorp directors expressly authorizing the execution of the said documents, We are not precluded from holding the same.

The Court expounded on the concept of corporate ratification in *Board of Liquidators v. Heirs of Kalaw*[10] in the following wise:

Authorities, great in number, are one in the idea that "ratification by a corporation of an unauthorized act or contract by its officers or others relates back to the time of the act or contract ratified, and is

[10] 127 Phil. 399 (1967).

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equivalent to original authority;" and that "[t]he corporation and the other party to the transaction are in precisely the same position as if the act or contract had been authorized at the time." The language of one case is expressive: "**The adoption or ratification of a contract by a corporation is nothing more nor less than the making of an original contract.** The theory of corporate ratification is predicated on the right of a corporation to contract, and **any ratification or adoption is equivalent to a grant of prior authority**." (emphasis added)

And in *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas*,[11] We have discussed that:

Implied ratification may take the form of silence, acquiescence, acts consistent with approval of the act, or acceptance or retention of benefits. However, silence, acquiescence, retention of benefits, and acts that may be interpreted as approval of the act do not by themselves constitute implied ratification. For an act to constitute an implied ratification, **there must be no acceptable explanation for the act other than that there is an intention to adopt the act as his or her own**. x x x (emphasis added)

In the case at bar, it can be inferred from the attendant circumstances that the Wincorp board ratified, if not approved, the Side Agreements. Guilty of reiteration, Virata's prior transactions with Wincorp is recorded in the latter's books. The Wincorp directors are chargeable with knowledge of the surety agreement that Virata executed to secure the Hottick obligations to its investors. However, instead of enforcing the surety agreement against Virata when Hottick defaulted, the Wincorp board approved a resolution excluding Virata as a party respondent in the collection suit to be filed against Hottick and its proprietors. What is more, this resolution was approved by the movant-directors on February 9, 1999, the very same day Virata's credit line application for Power Merge in the maximum amount of ₱1,300,000,000.00 was given the green light.

As further noted in the assailed Decision:

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[11] G.R. Nos. 194964-65, January 11, 2016.

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It must be remembered that the special meeting of Wincorp's board of directors was conducted on February 9 and March 11 of 1999, while the Credit Line Agreement and its Amendment were entered into on February 15 and March 15 of 1999, respectively. But as indicated in Power Merge's schedule of drawdowns, Wincorp already released to Power Merge the sum of ₱1,133,399,958.45 as of February 12, 1999, before the Credit Line Agreement was executed. And as of March 12, 1999, prior to the Amendment, ₱1,805,018,228.05 had already been released to Power Merge.

The fact that the proceeds were released to Power Merge before the signing of the Credit Line Agreement and the Amendment thereto lends credence to Virata's claim that Wincorp did not intend for Power Merge to be strictly bound by the terms of the credit facility; and that there had already been an understanding between the parties on what their respective obligations will be, although this agreement had not yet been reduced into writing. The underlying transaction would later on be revealed in black and white through the Side Agreements, the tenor of which amounted to Wincorp's intentional cancellation of Power Merge and Virata's obligation under their Promissory Notes. In exchange, Virata and Power Merge assumed the obligation to transfer equity shares in UPDI and the tollway project in favor of Wincorp. An arm's length transaction has indeed taken place, substituting Virata and Power Merge's obligations under the Promissory Notes, in pursuance of the Memorandum of Agreement and Waiver and Quitclaim executed by Virata and Wincorp. Thus, as far as Wincorp, Power Merge, and Virata are concerned, the Promissory Notes had already been discharged.

To emphasize, there were clear warning signs that Power Merge would not have been able to pay the almost ₱2.5 billion face value of its promissory notes. To Our mind, the Wincorp board of directors' approval of the credit line agreement, notwithstanding these telltale signs and the above outlined circumstances, establishes the movant-directors' liability to Ng Wee. For if these do not attest to their privity to Wincorp's fraudulent scheme, they would, at the very least, convincingly prove that the movant- directors are guilty of gross negligence in managing the company affairs. The movant-board directors should not have allowed the exclusion of Virata from the collection suit against Hottick knowing that he is a surety thereof. As revealed by their subsequent actions, this was not a mere

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error in judgment but a calculated maneuver to defraud its investors. Hence, the Court did not err when it ruled that Sec. 31 of the Corporation Code must be applied, and the separate juridical personality of Wincorp, pierced.

Moreover, the Court finds it highly suspect that the movant-directors, aside from Estrella, did not question why the case proceeded without the board chairman, John Anthony B. Espiritu (Espiritu). There were seventeen (17) named defendants in Civil Case No. 00-99006 with the Regional Trial Court, Branch 39 in Manila, which included the entire composition of the Wincorp board of directors. If the movant-directors truly believed that they are on par with each other in terms of participation, then they should have instituted a cross-claim against Espiritu, or at least objected against his being dropped as a party defendant.

WHEREFORE, premises considered, the following motions are hereby **DENIED** for lack of merit:

a. Motion for Partial Reconsideration filed by Luis Juan L. Virata;

b. Motion for Reconsideration of Mariza Santos-Tan;

c. Motion for Reconsideration of Manuel Estrella;

d. Motion for Partial Reconsideration of Alejandro Ng Wee;

e. Motion for Reconsideration of Simeon Cua, Vicente Cualoping, and Henry Cualoping;

f. Motion for Reconsideration of Anthony T. Reyes; and

g. Motion for Reconsideration of Westmont Investment Corporation.

No further pleadings or motions will be entertained.

Let entry of judgment be issued.

SO ORDERED.

Bersamin, Jardeleza, and *Reyes, Jr., JJ.*, concur.

Tijam, J., see dissenting opinion.

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DISSENTING OPINION

TIJAM, *J.*:

On July 5, 2017, this Court issued its Decision in the present consolidated cases. In the said Decision, it was found that Wincorp extended a credit line to Power Merge in the maximum amount of Php 2,500,000,000.00, and allowed the latter to make drawdowns of Php 2,183,755,253.11, despite signs that would show Power Merge's inability to pay. To secure the Credit Line Agreement and the Amendment to Credit Line Agreement, Power Merge executed promissory notes obliging itself to pay Wincorp, for itself or as agent for and on behalf of certain investors the amount of the drawdowns with interest on the maturity of the promissory note. However, unknown to Ng Wee, the promissory notes were rendered useless by the Side Agreements, simultaneously executed by Ong and Reyes with the Credit Line Agreement and the Amendment to Credit Line Agreement, which virtually exonerated Power Merge of its liability on the promissory notes.

The *ponencia* held that the actuations of Wincorp establishes the presence of actionable fraud, for which the corporation can be held liable, while Power Merge is liable to Ng Wee bases on the promissory notes even as an accommodation party.

On the basis of fraud, the *ponencia* pierced the corporate veil of Wincorp and held the directors and officers of the latter as personally liable to Ng Wee. The basis of their liability was grounded on Section 31 of the Corporation Code when they assented to the grant of the Credit Line Agreement and Amendment to the Credit Line Agreement to Power Merge.

I agree with the findings and rulings of the ponencia except for holding the individual petitioners, namely; Simeon Cua, Vicente and Henry Cualoping, Mariza Santos-Tan and Manuel Estrella solidarily liable with Wincorp, Luis L. Virata, Antonio T. Ong and Anthony T. Reyes to pay Ng Wee the amount of Php 213,290,410.36.

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As held by this Court in *Philippine National Bank v. Hydro Resources Contractors Corp.*,[1] a corporation acquires a separate personality from that of its directors and officers, to wit:

> A corporation is an artificial entity created by operation of law. It possesses the right of succession and such powers, attributes, and properties expressly authorized by law or incident to its existence. It has a personality separate and distinct from that of its stockholders and from that of other corporations to which it may be connected. As a consequence of its status as a distinct legal entity and as a result of a conscious policy decision to promote capital formation, a corporation incurs its own liabilities and is legally responsible for payment of its obligations. In other words, by virtue of the separate juridical personality of a corporation, the corporate debt or credit is not the debt or credit of the stockholder. This protection from liability for shareholders is the principle of limited liability.[2] (Citations omitted)

It is well-settled that the juridical personality of a corporation may be removed or its corporate veil pierced when the corporation is just an alter ego of a person or of another corporation. When the corporation becomes a shield for fraud, illegality or inequity committed against third persons, the corporate veil will, as a result, be disregarded for the interest of justice.[3]

"However, the rule is that a court should be careful in assessing the milieu where the doctrine of the corporate veil may be applied. Otherwise an injustice, although unintended, may result from its erroneous application. Thus, cutting through the corporate cover requires an approach characterized by due care and caution."[4]

"It must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of its rights. The wrongdoing must be clearly and convincingly established; it cannot be presumed."[5]

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[1] 706 Phil. 297 (2013).

[2] *Id*. at 308.

[3] *Id*. at 308-309.

[4] *Id*. at 309.

[5] *Id*.

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Directors, Trustees or Officers can be held personally and solidarily liable with the corporation in situations enumerated by law and jurisprudence,[6] thus:

"Personal liability of a corporate director, trustee or officer along (although not necessarily) with the corporation may so validly attach, as a rule, only when —

'1. He assents (a) to a patently unlawful act of the corporation, or (b) for bad faith or gross negligence in directing its affairs, or (c) for conflict of interest, resulting in damages to the corporation, its stockholders or other persons;

'2. He consents to the issuance of watered stocks or who, having knowledge thereof, does not forthwith file with the corporate secretary his written objection thereto;

'3. He agrees to hold himself personally and solidarily liable with the corporation; or

'4. He is made, by a specific provision of law, to personally answer for his corporate action.'"[7]

Section 31 of the Corporation Code provides that:

Sec. 31. *Liability of directors, trustees or officers*. - Directors or trustees who **willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation** or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

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[6] See *Edsa Shangri-La Hotel and Resort, Inc., et al. v. BF Corporation*, 578 Phil. 588, 607 (2008); *Aratea v. Suico*, 547 Phil. 407, 415-416 (2007) citing *MAM Realty Development Corp. v. National Labor Relations Commission*, 314 Phil. 838, 844-845 (1995); *Solidbank Corporation v. Mindanao Ferroalloy Corporation*, 502 Phil. 651, 665 (2005) citing *Tramat Mercantile, Inc. v. Court of Appeals*, 308 Phil. 13, 17 (1994).

[7] *Solidbank Corporation v. Mindanao Ferroalloy Corporation*, *supra* at 665 citing *Tramat Mercantile, Inc. v. Court of Appeals*, *supra* at 17. See also *Aratea v. Suico*, 547 Phil. 407, 415-416 (2007) citing *MAM Realty Development Corp. v. National Labor Relations Commission*, *supra* at 844-845.

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When a director, trustee or officer attempts to acquire or acquires, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation. (Emphasis ours)

In the present case, nowhere in the records does it appear that the granting, extending and approving of the Credit Line Agreement and the Amendment to the Credit Line Agreement is a patently unlawful act of the corporation. In fact, the granting and approval of the same falls within the function and purpose of Wincorp as an investment house. Thus, the mere approval of Cua, the Cualopings, Santos-Tan and Estrella of the said credit line agreements cannot be equated to knowingly assenting or approving a patently unlawful act of the corporation. Neither can it be equated to bad faith, fraud nor gross negligence.

The records do not show that Cua, the Cualopings, Santos-Tan and Estrella willfully and knowingly vote for or assent to the execution of the Side Agreements that virtually exonerated Power Merge of its liability on the promissory notes, except for the signatories who were Ong and Reyes. Neither are they guilty of gross negligence or bad faith in directing or dealing in the affairs of the corporation, they merely approved the Credit Line Agreements because the screening committee of the corporation and its subordinate departments approved the same. In the case of *Pioneer Insurance & Surety Corp. v. Morning Star Travel & Tours, Inc., et al.*,[8] "bad faith imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, not simply bad judgment or negligence."[9] "It means breach of a known duty through some motive or interest or ill will; it partakes of the nature of fraud."[10] "Fraud may be defined as

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[8] 763 Phil. 428 (2015).

[9] *Id*. at 442.

[10] *Ever Electrical Manufacturing, Inc., et al. v. Samahang Manggagawa ng Ever Electrical/NAMAWU Local 224*, 711 Phil. 529, 539 (2012).

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the voluntary execution of a wrongful act, or a willful omission, knowing and intending the effects which naturally and necessarily arise from such act or omission."[11]

In this case, the Credit Line Agreements of Wincorp as approved by its officers may be called as a business strategy which turned out to be unfavorable. This does not mean however that Cua, the Cualopings, Santos-Tan and Estrella perpetrated fraud as they did not know and intend the effects of such act or omission, nor was there bad faith on their part since there is no dishonest purpose or consciousness in doing such wrong.

It is undisputed that Ong and Reyes executed the Side Agreements which exonerated Power Merge from its liabilities to Wincorp. It does not however show that Ong and Reyes were authorized by the board of directors in executing the Side Agreements. "Acts of an officer that are not authorized by the board of directors/trustees do not bind the corporation unless the corporation ratifies the acts or holds the officer out as a person with authority to transact on its behalf."[12] Here, there is simply nothing that will establish that Cua, the Cualopings, Santos-Tan and Estrella authorized or ratified the acts of Ong and Reyes.

I am therefore inclined to rule that there is no basis in holding Cua, the Cualopings, Santos-Tan and Estrella jointly and severally liable with Virata, Wincorp, Ong and Reyes to pay Ng Wee the amount of his investment.

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[11] *Rep. of the Phils. v. Estate of Alfonso Lim, Sr., et al.*, 611 Phil. 37, 52 (2009).

[12] *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas, et al.*, 776 Phil. 401, 411 (2016).