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proceedings below. Indeed, even the majority concedes that "the proceedings conducted by the Investigating Committee were short of circumspection and may have indeed left much to be desired."

The conclusion therefore of the majority that "the demands of due process, nonetheless, cannot be said under the circumstances to have been inadequately met" does not follow from the premise that the proceedings "left much to be desired." The right to due process should not be denied to any individual and a finding that the right had not been violated should not be based on unfounded inferences unsupported by concrete factual findings. I therefore vote to grant the petition and remand the case to the DECS for proper re-determination of the culpability of each teacher for the reasons stated above in addition to those set forth in my dissenting opinion in G.R. Nos. 95445 and 95590 (200 SCRA 346, 348).

SECOND DIVISION

[G.R. No. 91889. August 27, 1993]

MANUEL R. DULAY ENTERPRISES, INC., VIRGILIO E. DULAY and NEPOMUCENO REDOVAN, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS, EDGARDO D. PABALAN, MANUEL A. TORRES, JR., MARIA THERESA V. VELOSO and CASTRENSE C. VELOSO,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; CLOSE CORPORATION; BOARD MEETING WITHOUT PROPER NOTICE; CORPORATE ACTION DEEMED RATIFIED BY ABSENT DIRECTOR UNLESS PROMPTLY

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OBJECTED. — Petitioner corporation is classified as a close corporation and consequently a board resolution authorizing the sale or mortgage of the subject property is not necessary to bind the corporation for the action of its president. At any rate, a corporate action taken at a board meeting without proper call or notice in a close corporation is deemed ratified by the absent director unless the latter promptly files his written objection with the secretary of the corporation after having knowledge of the meeting which, in this case, petitioner Virgilio Dulay failed to do. Petitioners' claim that the sale of the subject property by its president, Manuel Dulay, to private respondents spouses Veloso is null and void as the alleged Board Resolution No. 18 was passed without the knowledge and consent of the other members of the board of directors cannot be sustained. The sale of the subject property to private respondents by Manuel Dulay is valid and binding.

2. **ID.; ID.; PIERCING THE VEIL OF CORPORATE ENTITY; WHEN RESORTED TO. —** Although a corporation is an entity which has a personality distinct and separate from its individual stockholders or members, the veil of corporate fiction may be pierced when it is used to defeat public convenience, justify wrong, protect fraud or defend crime. The privilege of being treated as an entity distinct and separate from its stockholders or members is therefore confined to its legitimate uses and is subject to certain limitations to prevent the commission of fraud or other illegal or unfair act. When the corporation is used merely as an alter ego or business conduit of a person, the law will regard the corporation as the act of that person. The Supreme Court had repeatedly disregarded the separate personality of the corporation where the corporate entity was used to annul a valid contract executed by one of its members.

3. **REMEDIAL LAW; APPEALS; FINDINGS OF TRIAL COURT, RESPECTED. —** The appellate courts will not disturb the findings of the trial judge unless he has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case, which is not present in the instant case.

4. **CIVIL LAW; SPECIAL CONTRACTS; SALES; OBLIGATIONS OF THE VENDOR; DELIVERY OF THE THING SOLD; WHEN SALE EXECUTED IN PUBLIC INSTRUMENT.**

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— Paragraph 1, Article 1498 of the New Civil Code provides: "When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred." Under the aforementioned article, the mere execution of the deed of sale in a public document is equivalent to the delivery of the property. Likewise, this Court had held that: "It is settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of the sale. As such, he is entitled to the possession of the said property and can demand it at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. The buyer can in fact demand possession of the land even during the redemption period except that he has to post a bond in accordance with Section 7 of Act No. 3133 as amended. No such bond is required after the redemption period if the property is not redeemed. Possession of the land then becomes an absolute right of the purchaser as confirmed owner." Therefore, prior physical delivery or possession is not legally required since the execution of the Deed of Sale is deemed equivalent to delivery.

5. REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; DENIAL DESPITE FAILURE TO SUBMIT COMMENT THERETO, PROPER. — The respondent appellate court did not err in denying petitioner's motion for reconsideration despite the fact that private respondents failed to submit their comment to said motion as required by the respondent appellate court. There is nothing in the Revised Rules of Court which prohibits the respondent appellate court from resolving petitioners' motion for reconsideration without the comment of the private respondent which was required merely to aid the court in the disposition of the motion. The courts are as much interested as the parties in the early disposition of cases before them. To require otherwise would unnecessarily clog the courts' dockets.

APPEARANCES OF COUNSEL

Virgilio E. Dulay for petitioners.
Torres, Tobias, Azura & Jocson for private respondents.

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D E C I S I O N

NOCON, *J.*:

This is a petition for review on *certiorari* to annul and set aside the decision[1] of the Court of Appeals affirming the decision[2] of the Regional Trial Court of Pasay, Branch 114 in Civil Cases Nos. 8198-P, 8278-P and 2880-P, the dispositive portion of which reads, as follows:

"WHEREFORE, in view of all the foregoing considerations, this Court hereby renders judgment, as follows:

"In Civil Case No. 2880-P, the petition filed by Manuel R. Dulay Enterprises, Inc. and Virgilio E. Dulay for annulment or declaration of nullity of the decision of the Metropolitan Trial Court, Branch 46, Pasay City, in its Civil Case No. 38-81 entitled '*Edgardo D. Pabalan, et al. vs. Spouses Florentino Manalastas, et al.,*' is dismissed for lack of merit;

"In Civil Case No. 8278-P, the complaint filed by Manuel R. Dulay Enterprises, Inc. for cancellation of title of Manuel A. Torres, Jr. (TCT No. 24799 of the Register of Deeds of Pasay City) and reconveyance, is dismissed for lack of merit; and,

"In Civil Case No. 8198-P, defendants Manuel R. Dulay Enterprises, Inc. and Virgilio E. Dulay are ordered to surrender and deliver possession of the parcel of land, together with all the improvements thereon, described in Transfer Certificate of Title No. 24799 of the Register of Deeds of Pasay City, in favor of therein plaintiffs Manuel A. Torres, Jr. as owner and Edgardo D. Pabalan as real estate administrator of said Manuel A. Torres, Jr.; to account for and return to said plaintiffs the rentals from dwelling unit No. 8-A of the apartment building (Dulay Apartment) from June 1980 up to the present; to indemnify plaintiffs, jointly and severally, expenses of litigation in the amount of ₱4,000.00 and attorney's fees in the sum of ₱6,000.00, for all the three (3) cases. Co-defendant Nepomuceno Redovan is ordered to pay the current and subsequent rentals on the premises leased by him to plaintiffs.

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[1] Penned by Justice Jorge S. Imperial with the concurrence of Justice Reynato S. Puno and Justice Cezar D. Francisco.

[2] Penned by Judge Fermin Martin, Jr.

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"The counterclaim of defendants Virgilio E. Dulay and Manuel R. Dulay Enterprises, Inc. and N. Redovan, is dismissed for lack of merit. With costs against the three (3) aforenamed defendants."[3]

The facts as found by the trial court are as follows:

Petitioner Manuel R. Dulay Enterprises, Inc., a domestic corporation with the following as members of its Board of Directors: Manuel R. Dulay with 19,960 shares and designated as president, treasurer and general manager; Atty. Virgilio E. Dulay with 10 shares and designated as vice-president; Linda E. Dulay with 10 shares; Celia Dulay-Mendoza with 10 shares; and Atty. Plaridel C. Jose with 10 shares and designated as secretary, owned a property covered by TCT No. 17880[4] and known as Dulay Apartment consisting of sixteen (16) apartment units on a six hundred eighty-nine (689) square meter lot, more or less, located at Seventh Street (now Buendia Extension) and F.B. Harrison Street, Pasay City.

Petitioner corporation through its president, Manuel Dulay, obtained various loans for the construction of its hotel project, Dulay Continental Hotel (now Frederick Hotel). It even had to borrow money from petitioner Virgilio Dulay to be able to continue the hotel project. As a result of said loan, petitioner Virgilio Dulay occupied one of the unit apartments of the subject property since 1973 while at the same time managing the Dulay Apartment as his shareholdings in the corporation was subsequently increased by his father.[5]

On December 23, 1976, Manuel Dulay by virtue of Board Resolution No. 18[6] of petitioner corporation sold the subject property to private respondents spouses Maria Theresa and Castrense Veloso in the amount of ₱300,000.00 as evidenced by the Deed of Absolute Sale.[7] Thereafter, TCT No. 17880

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[3] *Rollo*, p. 77.

[4] Exhibit "1", Records/Index of Exhibits, p. 30.

[5] *Rollo*, pp. 31-32.

[6] Exhibit "C", Records/Index of Exhibits, p. 5.

[7] Exhibit "A", Records/Index of Exhibits, pp. 1-2.

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was cancelled and TCT No. 23225 was issued to private respondent Maria Theresa Veloso.[8] Subsequently, Manuel Dulay and private respondents spouses Veloso executed a Memorandum to the Deed of Absolute Sale of December 23, 1976[9] dated December 9, 1977 giving Manuel Dulay within two (2) years or until December 9, 1979 to repurchase the subject property for ₱200,000.00 which was, however, not annotated either in TCT No. 17880 or TCT No. 23225.

On December 24, 1976, private respondent Maria Veloso, without the knowledge of Manuel Dulay, mortgaged the subject property to private respondent Manuel A. Torres for a loan of ₱250,000.00 which was duly annotated as Entry No. 68139 in TCT No. 23225.[10]

Upon the failure of private respondent Maria Veloso to pay private respondent Torres, the subject property was sold on April 5, 1978 to private respondent Torres as the highest bidder in an extrajudicial foreclosure sale as evidenced by the Certificate of Sheriff's Sale[11] issued on April 20, 1978.

On July 20, 1978, private respondent Maria Veloso executed a Deed of Absolute Assignment of the Right to Redeem[12] in favor of Manuel Dulay assigning her right to repurchase the subject property from private respondent Torres as a result of the extrajudicial sale held on April 25, 1978.

As neither private respondent Maria Veloso nor her assignee Manuel Dulay was able to redeem the subject property within the one year statutory period for redemption, private respondent Torres filed an Affidavit of Consolidation of Ownership[13] with

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[8] Exhibit "B", Records/Index of Exhibits, p. 3.

[9] Exhibit "17-C", Records/Index of Exhibits, pp. 96-97.

[10] Exhibit "B", Records/Index of Exhibits, p. 4.

[11] Exhibit "F", Records/Index of Exhibits, pp. 11-12.

[12] Exhibit "H", Records/Index of Exhibits, pp. 14-15.

[13] Exhibit "G", Records/Index of Exhibits, p. 13.

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the Registry of Deeds of Pasay City and TCT No. 24799[14] was subsequently issued to private respondent Manuel Torres on April 23, 1979.

On October 1, 1979, private respondent Torres filed a petition for the issuance of a writ of possession against private respondents spouses Veloso and Manuel Dulay in LRC Case No. 1742-P. However, when petitioner Virgilio Dulay appeared in court to intervene in said case alleging that Manuel Dulay was never authorized by the petitioner corporation to sell or mortgage the subject property, the trial court ordered private respondent Torres to implead petitioner corporation as an indispensable party but the latter moved for the dismissal of his petition which was granted in an Order dated April 8, 1980.

On June 20, 1980, private respondent Torres and Edgardo Pabalan, real estate administrator of Torres, filed an action against petitioner corporation, Virgilio Dulay and Nepomuceno Redovan, a tenant of Dulay Apartment Unit No. 8-A for the recovery of possession, sum of money and damages with preliminary injunction in Civil Case No. 8198-P with the then Court of First Instance of Rizal.

On July 21, 1980, petitioner corporation filed an action against private respondents spouses Veloso and Torres for the cancellation of the Certificate of Sheriff's Sale and TCT No. 24799 in Civil Case No. 8278-P with the then Court of First Instance of Rizal.

On January 29, 1981, private respondents Pabalan and Torres filed an action against spouses Florentino and Elvira Manalastas, a tenant of Dulay Apartment Unit No. 7-B, with petitioner corporation as intervenor for ejectment in Civil Case No. 38-81 with the Metropolitan Trial Court of Pasay City which rendered a decision on April 25, 1985, the dispositive portion of which reads, as follows:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff (herein private respondents) and against the defendants:

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[14] Exhibit "I", Records/Index of Exhibits, p. 16.

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"1. Ordering the defendants and all persons claiming possession under them to vacate the premises;

"2. Ordering the defendants to pay the rents in the sum of ₱500.00 a month from May, 1979 until they shall have vacated the premises with interest at the legal rate;

"3. Ordering the defendants to pay attorney's fees in the sum of ₱2,000.00 and ₱1,000.00 as other expenses of litigation and for them to pay the costs of the suit."[15]

Thereafter or on May 17, 1985, petitioner corporation and Virgilio Dulay filed an action against the presiding judge of the Metropolitan Trial Court of Pasay City, private respondents Pabalan and Torres for the annulment of said decision with the Regional Trial Court of Pasay in Civil Case No. 2880-P.

Thereafter, the three (3) cases were jointly tried and the trial court rendered a decision in favor of private respondents.

Not satisfied with said decision, petitioners appealed to the Court of Appeals which rendered a decision on October 23, 1989, the dispositive portion of which reads, as follows:

"PREMISES CONSIDERED, the decision being appealed should be as it is hereby AFFIRMED in full."[16]

On November 8, 1989, petitioners filed a Motion for Reconsideration which was denied on January 26, 1990.

Hence, this petition.

During the pendency of this petition, private respondent Torres died on April 3, 1991 as shown in his death certificate[17] and named Torres-Pabalan Realty & Development Corporation as his heir in his holographic will[18] dated October 31, 1986.

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[15] Original Records of Civil Case No. 2880-P, p. 84.

[16] *Rollo*, p. 95.

[17] *Id*., p. 171.

[18] *Id*., p. 172.

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Petitioners contend that the respondent court had acted with grave abuse of discretion when it applied the doctrine of piercing the veil of corporate entity in the instant case considering that the sale of the subject property between private respondents spouses Veloso and Manuel Dulay has no binding effect on petitioner corporation as Board Resolution No. 18 which authorized the sale of the subject property was resolved without the approval of all the members of the board of directors and said Board Resolution was prepared by a person not designated by the corporation to be its secretary.

We do not agree.

Section 101 of the Corporation Code of the Philippines provides:

"Sec. 101. When board meeting is unnecessary or improperly held. Unless the by-laws provide otherwise, any action by the directors of a close corporation without a meeting shall nevertheless be deemed valid if:

"1. Before or after such action is taken, written consent thereto is signed by all the directors; or

"2. All the stockholders have actual or implied knowledge of the action and make no prompt objection thereto in writing; or

"3. The directors are accustomed to take informal action with the express or implied acquiesce of all the stockholders; or

"4. All the directors have express or implied knowledge of the action in question and none of them makes prompt objection thereto in writing.

"If a directors' meeting is held without proper call or notice, an action taken therein within the corporate powers is deemed ratified by a director who failed to attend, unless he promptly files his written objection with the secretary of the corporation after having knowledge thereof."

In the instant case, petitioner corporation is classified as a close corporation and consequently a board resolution authorizing the sale or mortgage of the subject property is not necessary to bind the corporation for the action of its president. At any rate,

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a corporate action taken at a board meeting without proper call or notice in a close corporation is deemed ratified by the absent director unless the latter promptly files his written objection with the secretary of the corporation after having knowledge of the meeting which, in this case, petitioner Virgilio Dulay failed to do.

It is relevant to note that although a corporation is an entity which has a personality distinct and separate from its individual stockholders or members,[19] the veil of corporate fiction may be pierced when it is used to defeat public convenience, justify wrong, protect fraud or defend crime.[20] The privilege of being treated as an entity distinct and separate from its stockholders or members is therefore confined to its legitimate uses and is subject to certain limitations to prevent the commission of fraud or other illegal or unfair act. When the corporation is used merely as an alter ego or business conduit of a person, the law will regard the corporation as the act of that person.[21] The Supreme Court had repeatedly disregarded the separate personality of the corporation where the corporate entity was used to annul a valid contract executed by one of its members.

Petitioners' claim that the sale of the subject property by its president, Manuel Dulay, to private respondents spouses Veloso is null and void as the alleged Board Resolution No. 18 was passed without the knowledge and consent of the other members of the board of directors cannot be sustained. As correctly pointed out by the respondent Court of Appeals:

"Appellant Virgilio E. Dulay's protestations of complete innocence to the effect that he never participated nor was even aware of any meeting or resolution authorizing the mortgage or sale of the subject premises (see par. 8, affidavit of Virgilio E. Dulay, dated May 31, 1984, p. 14, Exh. "21") is difficult to believe. On the contrary, he

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[19] *Good Earth Emporium, Inc. vs. Court of Appeals*, 194 SCRA 544 [1991].

[20] *Philippine Veterans Investment Development Corporation vs. Court of Appeals*, 181 SCRA 678 [1990].

[21] *Cagayan Valley Enterprises, Inc. vs. Court of Appeals*, 179 SCRA 218 [1989].

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is very much privy to the transactions involved. To begin with, he is an incorporator and one of the board of directors designated at the time of the organization of Manuel R. Dulay Enterprises, Inc. In ordinary parlance, the said entity is loosely referred to as a 'family corporation'. The nomenclature, if imprecise, however, fairly reflects the cohesiveness of a group and the parochial instincts of the individual members of such an aggrupation of which Manuel R. Dulay Enterprises, Inc. is typical: four-fifths of its incorporators being close relatives namely, three (3) children and their father whose name identifies their corporation (Articles of Incorporation of Manuel R. Dulay Enterprises, Inc., Exh. "31-A")."[22]

Besides, the fact that petitioner Virgilio Dulay on June 24, 1975 executed an affidavit[23] that he was a signatory witness to the execution of the post-dated Deed of Absolute Sale of the subject property in favor of private respondent Torres indicates that he was aware of the transaction executed between his father and private respondents and had, therefore, adequate knowledge about the sale of the subject property to private respondents.

Consequently, petitioner corporation is liable for the act of Manuel Dulay and the sale of the subject property to private respondents by Manuel Dulay is valid and binding. As stated by the trial court:

"x x x the sale between Manuel R. Dulay Enterprises, Inc. and the spouses Maria Theresa V. Veloso and Castrense C. Veloso, was a corporate act of the former and not a personal transaction of Manuel R. Dulay. This is so because Manuel R. Dulay was not only president and treasurer but also the general manager of the corporation. The corporation was a closed family corporation and the only non-relative in the board of directors was Atty. Plaridel C. Jose who appeared on paper as the secretary. There is no denying the fact, however, that Maria Socorro R. Dulay at times acted as secretary. x x x, the Court can not lose sight of the fact that the Manuel R. Dulay Enterprises, Inc. is a closed family corporation where the incorporators and directors belong to one single family. It cannot be concealed that Manuel R. Dulay as president, treasurer and general manager

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[22] *Rollo*, p. 89.

[23] Exhibit "24", Records/Index of Exhibits, p. 155.

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almost had absolute control over the business and affairs of the corporation."[24]

Moreover, the appellate courts will not disturb the findings of the trial judge unless he has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case,[25] which is not present in the instant case.

Petitioners' contention that private respondent Torres never acquired ownership over the subject property since the latter was never in actual possession of the subject property nor was the property ever delivered to him is also without merit.

Paragraph 1, Article 1498 of the New Civil Code provides:

"When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred."

Under the aforementioned article, the mere execution of the deed of sale in a public document is equivalent to the delivery of the property. Likewise, this Court had held that:

"It is settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of the sale. As such, he is entitled to the possession of the said property and can demand it at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. The buyer can in fact demand possession of the land even during the redemption period except that he has to post a bond in accordance with Section 7 of Act No. 3133 as amended. No such bond is required after the redemption period if the property is not redeemed. Possession of the land then becomes an absolute right of the purchaser as confirmed owner."[26]

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[24] *Rollo,* p. 74.

[25] *People vs. Pirreras,* 179 SCRA 33 [1989].

[26] *F. David Enterprises vs. Insular Bank of Asia and America,* 191 SCRA 516 [1990].

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Therefore, prior physical delivery or possession is not legally required since the execution of the Deed of Sale is deemed equivalent to delivery.

Finally, we hold that the respondent appellate court did not err in denying petitioner's motion for reconsideration despite the fact that private respondents failed to submit their comment to said motion as required by the respondent appellate court. There is nothing in the Revised Rules of Court which prohibits the respondent appellate court from resolving petitioners' motion for reconsideration without the comment of the private respondent which was required merely to aid the court in the disposition of the motion. The courts are as much interested as the parties in the early disposition of cases before them. To require otherwise would unnecessarily clog the courts' dockets.

WHEREFORE, the petition is *DENIED* and the decision appealed from is hereby *AFFIRMED*.

SO ORDERED.

Narvasa, C.J. (Chairman), Padilla, and *Regalado, JJ*., concur.

Puno, J., no part.

EN BANC

[A.M. No. MTJ-91-565. August 30, 1993]

PATRICIO T. JUNIO, *complainant, vs.* **JUDGE PEDRO C. RIVERA, JR.,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; CRIMES AGAINST CHASTITY; MAY BE COMMITTED IN PLACES PRESENTING A HIGH RISK OF DISCOVERY. — Crimes against chastity have been