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THIRD DIVISION

[G.R. No. 153886. January 14, 2004]

MEL V. VELARDE, *petitioner, vs.* **LOPEZ, INC.**, *respondent.*

SYNOPSIS

Petitioner, then General Manager of Sky Vision Corporation, a subsidiary of the respondent corporation, obtained a ten million-peso loan from the respondent corporation. When petitioner failed to pay the installments as they became due, the respondent filed a complaint for collection of sum of money with damages at the Regional Trial Court of Pasig City against the petitioner. In his answer, petitioner alleged that the loan agreement did not reflect his true agreement with respondent, it being merely a "cover document" to evidence the reward to him of ten million pesos for his loyalty and excellent performance as General Manager of Sky Vision and that the payment, if any was expected, was in the form of continued service; and that it was when he was compelled by respondent to retire that the form of payment agreed upon was rendered impossible, prompting the late Eugenio Lopez, Jr. to agree that his retirement benefits from Sky Vision would instead be applied to the loan. By way of compulsory counterclaim, petitioner claimed that he was entitled to retirement benefits, unpaid salaries and incentives, unpaid share in net income, reasonable return on the stock ownership plan and other benefits for services rendered to Sky Vision. Respondent moved to dismiss the counterclaim for want of jurisdiction. Petitioner opposed the motion and asserted that the veil of corporate fiction must be pierced to hold respondent liable for his counterclaims. The RTC of Pasig denied respondent's motion to dismiss and subsequently its motion for reconsideration. On petition for *certiorari* the orders of the trial court were set aside by the Court of Appeals and the petitioner's counterclaims were dismissed.

Hence, the instant petitions.

With regard to petitioner's counterclaim, jurisdiction thereon pertains to the Securities Exchange Commission even if the complaint by a corporate officer includes money claims, since

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such claims were actually part of the prerequisite of his position and, therefore, interlinked with his relations with the corporation. The question of remuneration involving a person who is not a mere employee but a stockholder and officer of the corporation is not a simple labor problem but a matter that comes within the area of corporate affairs and management, and is in fact a corporate controversy in contemplation of the Corporation Code. However, jurisdiction over intra-corporate controversies, subject of the counterclaims, is now transferred to the RTCs. Nonetheless, even if the subject matter of the counterclaims is now cognizable by RTCs, the filing thereof against respondent is improper, it not being the real party-in-interest, for it is petitioner's employer Sky Vision, respondent's subsidiary. It cannot be gainsaid that a subsidiary has an independent and separate juridical personality, distinct from that of its parent company, hence, any claim or suit against the latter does not bind the former and vice versa. Piercing the veil of corporate fiction is warranted, however, only in cases when the separate legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, such that in the case of two corporations, the law will regard the corporations as merged into one. Nowhere, however, in the pleadings and other records of the case can it be gathered that respondent has complete control over Sky Vision, not only of finances but of policy and business practice in respect to the transaction attacked, so that Sky Vision had at the time of the transaction no separate mind, will or existence of its own. The existence of interlocking directors, corporate officers and shareholders is not enough justification to pierce the veil of corporate fiction in the absence of fraud or other public policy considerations. Consequently, the instant petition for review on *certiorari* was denied by the Court.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; REMEDY FROM DENIAL THEREOF IS TO APPEAL IN DUE COURSE AFTER A DECISION HAS BEEN RENDERED ON THE MERITS; EXCEPTIONS.**— While petitioner correctly invokes the ruling in *Atienza v. Court of Appeals* to postulate that not every denial of a motion to dismiss can be corrected by *certiorari* under Rule 65 and that,

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as a general rule, the remedy from such denial is to appeal in due course after a decision has been rendered on the merits, there are exceptions thereto, as when the court in denying the motion to dismiss acted without or in excess of jurisdiction or with patent grave abuse of discretion, or when the assailed interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief, or when the ground for the motion to dismiss is improper venue, *res judicata*, or lack of jurisdiction as in the case at bar.

2. **COMMERCIAL LAW; CORPORATIONS; CORPORATE OFFICER'S DISMISSAL IS AN INTRA-CORPORATE CONTROVERSY.**— In determining which has jurisdiction over a case, the averments of the complaint/counterclaim, taken as a whole, are considered. At the heart of petitioner's counterclaim is his alleged forced retirement which is also the basis of his claim for, among other things, unpaid salaries, unpaid incentives, reasonable return on the stock ownership plan, and other benefits from a subsidiary company of the respondent. Section 5(c) of P.D. 902-A (as amended by R.A. 8799, the Securities Regulation Code) applies to a corporate officer's dismissal. For a corporate officer's dismissal is always a corporate act and/or an intra-corporate controversy and that its nature is not altered by the reason or wisdom which the Board of Directors may have in taking such action.

3. **ID.; ID.; JURISDICTION OVER CORPORATE OFFICER'S MONEY CLAIMS PERTAINS TO THE SECURITIES EXCHANGE COMMISSION; QUESTION OF REMUNERATION INVOLVING A PERSON WHO IS NOT A MERE EMPLOYEE BUT A STOCKHOLDER AND OFFICER OF THE CORPORATION IS A CORPORATE CONTROVERSY.**— With regard to petitioner's claim for unpaid salaries, unpaid share in net income, reasonable return on the stock ownership plan and other benefits for services rendered to Sky Vision, jurisdiction thereon pertains to the Securities Exchange Commission even if the complaint by a corporate officer includes money claims since such claims are actually part of the prerequisite of his position and, therefore, interlinked with his relations with the corporation. The question of remuneration involving a person who is not a mere employee but a stockholder and officer of the corporation is not a simple labor problem but a matter that comes within the area of corporate affairs

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and management, and is in fact a corporate controversy in contemplation of the Corporation Code.

4. **ID.; ID.; INTRA-CORPORATE CONTROVERSIES NOW COGNIZABLE BY THE REGIONAL TRIAL COURTS.**— While petitioner's counterclaims were filed on December 1, 1998, the second challenged order of the trial court denying respondent's motion for reconsideration of the denial of its motion to dismiss was issued on October 9, 2000 at which time P.D. 902-A had been amended by R.A. 8799 (approved on July 19, 2000) which mandated the transfer of jurisdiction over intra-corporate controversies, subject of the counterclaims, to RTCs.

5. **ID.; ID.; PIERCING THE VEIL OF CORPORATE FICTION WHEN WARRANTED; RATIONALE.**— But even if the subject matter of the counterclaims is now cognizable by RTCs, the filing thereof against respondent is improper, it not being the real party-in-interest, for it is petitioner's employer Sky Vision, respondent's subsidiary. It cannot be gainsaid that a subsidiary has an independent and separate juridical personality, distinct from that of its parent company, hence, any claim or suit against the latter does not bind the former and vice versa. Petitioner argues nevertheless that jurisdiction over the subsidiary is justified by piercing the veil of corporate fiction. Piercing the veil of corporate fiction is warranted, however, only in cases when the separate legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, such that in the case of two corporations, the law will regard the corporations as merged into one. The rationale behind piercing a corporation's identity is to remove the barrier between the corporation from the persons comprising it to thwart the fraudulent and illegal schemes of those who use the corporate personality as a shield for undertaking certain proscribed activities.

6. **ID.; ID.; DOCTRINE OF PIERCING THE VEIL OF CORPORATE FICTION; REQUISITES.**— In applying the doctrine of piercing the veil of corporate fiction, the following requisites must be established: (1) control, not merely majority or complete stock control; (2) such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest acts in contravention of plaintiff's legal rights; and

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

7. ID.; ID.; ID.; **EXISTENCE OF INTERLOCKING DIRECTORS, CORPORATE OFFICERS AND SHAREHOLDERS NOT SUFFICIENT JUSTIFICATION TO PIERCE THE VEIL OF CORPORATE FICTION ABSENT FRAUD OR OTHER PUBLIC POLICY CONSIDERATIONS.**— Nowhere, however, in the pleadings and other records of the case can it be gathered that respondent has complete control over Sky Vision, not only of finances but of policy and business practice in respect to the transaction attacked, so that Sky Vision had at the time of the transaction no separate mind, will or existence of its own. The existence of interlocking directors, corporate officers and shareholders is not enough justification to pierce the veil of corporate fiction in the absence of fraud or other public policy considerations. This Court is thus not convinced that the real party-in-interest with regard to the counterclaim for damages arising from the alleged tortuous manner by which petitioner was forced to retire as General Manager of Sky Vision is respondent.

APPEARANCES OF COUNSEL

Quiazon Makalintal Barot Torres and Ibarra for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court, which seeks to review the decision[1] and resolution[2] of the Court of Appeals, raises the issue of whether the defendant in a complaint for collection of sum of money can raise a counterclaim for retirement benefits, unpaid salaries and incentives, and other benefits arising from services rendered by him in a subsidiary of the plaintiff corporation.

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[1] CA-G.R. SP No. 61706, dated December 21, 2001.

[2] CA-G.R. SP No. 61706, dated May 13, 2002.

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On January 6, 1997, Eugenio Lopez Jr., then President of respondent Lopez, Inc., as LENDER, and petitioner Mel Velarde, then General Manager of Sky Vision Corporation (Sky Vision), a subsidiary of respondent, as BORROWER, forged a notarized loan agreement covering the amount of ten million (₱10,000,000.00) pesos. The agreement expressly provided for, among other things, the manner of payment and the circumstances constituting default which would give the lender the right to declare the loan together with accrued interest immediately due and payable.[3]

Sec. 6 of the agreement detailed what constituted an "event of default" as follows:

Section 6

Each of the following events and occurrences shall constitute an Event of Default ("Event of Default") under this Agreement:

a) the BORROWER fails to make payment when due and payable of any amount he is obligated to pay under this Agreement;

b) the BORROWER fails to mortgage in favor of the LENDER real property sufficient to cover the amount of the LOAN.[4]

As petitioner failed to pay the installments as they became due, respondent, apparently in answer to a proposal of petitioner respecting the settlement of the loan, advised him by letter dated July 15, 1998 that he may use his retirement benefits in Sky Vision in partial settlement of his loan after he settles his accountabilities to the latter and gives his written instructions to it (Sky Vision).[5]

Petitioner protested the computation indicated in the July 15, 1998 letter, he asserting that the imputed unliquidated advances from Sky Vision had already been properly liquidated.[6]

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[3] *Rollo* at 133 to 136.

[4] *Id.* at 134.

[5] *Id.* at 143.

[6] *Id.* at 18.

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On August 18, 1998, respondent filed a complaint for collection of sum of money with damages at the Regional Trial Court (RTC) of Pasig City against petitioner, alleging that petitioner violated the above-quoted Section 6 of the loan agreement as he failed to put up the needed collateral for the loan and pay the installments as they became due, and that despite his receipt of letters of demand dated December 1, 1997[7] and January 13, 1998,[8] he refused to pay.

In his answer, petitioner alleged that the loan agreement did not reflect his true agreement with respondent, it being merely a "cover document" to evidence the reward to him of ten million pesos (₱10,000,000.00) for his loyalty and excellent performance as General Manager of Sky Vision and that the payment, if any was expected, was in the form of continued service; and that it was when he was compelled by respondent to retire that the form of payment agreed upon was rendered impossible, prompting the late Eugenio Lopez, Jr. to agree that his retirement benefits from Sky Vision would instead be applied to the loan.[9]

By way of compulsory counterclaim, petitioner claimed that he was entitled to retirement benefits from Sky Vision in the amount of ₱98,280,000.00, unpaid salaries in the amount of ₱2,740,000.00, unpaid incentives in the amount of ₱500,000, *unpaid share from the "net income* of Plaintiff corporation," equity in his service vehicle in the amount of ₱1,500,000, reasonable return on the stock ownership plan for services rendered as General Manager, and moral damages and attorney's fees.[10]

Petitioner thus prayed for the dismissal of the complaint and the award of the following sums of money in the form of compulsory counterclaims:

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[7] *Id.* at 140.

[8] *Id.* at 141.

[9] *Id.* at 19.

[10] *Id.* at 153.

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1. ₱103,020,000.00, PLUS the value of Defendant's stock options and unpaid share from the net income with Plaintiff corporation (to be computed) as actual damages;
2. ₱15,000,000.00, as moral damages; and
3. ₱1,500,000.00, as attorney's fees plus appearance fees and the costs of suit.[11]

Respondent filed a manifestation and a motion to dismiss the counterclaim *for want of jurisdiction*, which drew petitioner to assert in his comment and opposition thereto that the veil of corporate fiction must be pierced to hold respondent liable for his counterclaims.

By Order of January 3, 2000, Branch 155 of the RTC of Pasig denied respondent's motion to dismiss the counterclaim on the following premises: A counterclaim being essentially a complaint, the principle that a motion to dismiss hypothetically admits the allegations of the complaint is applicable; the counterclaim is compulsory, hence, within its jurisdiction; and there is identity of interest between respondent and Sky Vision to merit the piercing of the veil of corporate fiction.[12]

Respondent's motion for reconsideration of the trial court's Order of January 3, 2000 having been denied, it filed a Petition for *Certiorari* at the Court of Appeals which held that respondent is not the real party-in-interest on the counterclaim and that there was failure to show the presence of any of the circumstances to justify the application of the principle of "piercing the veil of corporate fiction." The Orders of the trial court were thus set aside and the counterclaims of petitioner were accordingly dismissed.[13]

The Court of Appeals having denied petitioner's motion for reconsideration, the instant Petition for Review was filed which assigns the following errors:

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[11] *Id.* at 154.

[12] *Id.* at 121-123.

[13] *Supra* note 1.

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I.

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE RTC BRANCH 155 ALLEGEDLY ACTED WITH GRAVE ABUSE OF DISCRETION IN ISSUING THE ORDERS DATED JANUARY 3, 2000 AND OCTOBER 9, 2000 CONSIDERING THAT THE GROUNDS RAISED BY RESPONDENT LOPEZ, INC. IN ITS PETITION FOR *CERTIORARI* INVOLVED MERE ERRORS OF JUDGMENT AND NOT ERRORS OF JURISDICTION.

II.

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT RESPONDENT LOPEZ, INC. IS NOT THE REAL PARTY-IN-INTEREST AS PARTY-DEFENDANT ON THE COUNTERCLAIMS OF PETITIONER VELARDE CONSIDERING THAT THE FILING OF RESPONDENT LOPEZ, INC.'S MANIFESTATION AND MOTION TO DISMISS COUNTERCLAIM HAD THE EFFECT OF HYPOTHETICALLY ADMITTING THE TRUTH OF THE MATERIAL AVERMENTS OF THE ANSWER, WHICH MATERIAL AVERMENTS SUFFICIENTLY ALLEGED THAT RESPONDENT LOPEZ, INC. COMMITTED ACTS WHICH SHOW THAT ITS SUBSIDIARY, SKY VISION, WAS A MERE BUSINESS CONDUIT OR ALTER EGO OF THE FORMER, THUS, JUSTIFYING THE PIERCING OF THE VEIL OF CORPORATE FICTION.

III.

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE COUNTERCLAIMS OF PETITIONER VELARDE ARE NOT COMPULSORY.[14]

While petitioner correctly invokes the ruling in *Atienza v. Court of Appeals*[15] to postulate that not every denial of a motion to dismiss can be corrected by *certiorari* under Rule 65 and that, as a general rule, the remedy from such denial is to appeal in due course after a decision has been rendered on the merits, there are exceptions thereto, as when the court in denying the motion to dismiss acted without or in excess of jurisdiction or

[14] *Rollo* at 26 and 27.

[15] 232 SCRA 737 (1994).

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with patent grave abuse of discretion,[16] or when the assailed interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief,[17] or when the ground for the motion to dismiss is improper venue,[18] *res judicata*,[19] or lack of jurisdiction[20] as in the case at bar.

Early on, it bears noting, when the case was still with the trial court, respondent filed a motion to dismiss the counterclaims to assail its *jurisdiction*, respondent asserting that the counterclaims, being money claims arising *from a labor relationship*, are within the exclusive competence of the National Labor Relations Commission.[21] On the other hand, petitioner alleged that due to the tortuous manner he was coerced into retirement, it is the Regional Trial Courts (RTCs) and not the National Labor Relations Commission which has exclusive jurisdiction over his counterclaims.

In determining which has jurisdiction over a case, the averments of the complaint/counterclaim, taken as a whole, are considered.[22] In his counterclaim, petitioner alleged that:

xxx xxx xxx

29. It was only on July 15, 1998 that Lopez, Inc. submitted a computation of the retirement benefit due to the Defendant. (Copy attached as ANNEX 4). Immediately after receiving this computation, Defendant immediately informed Plaintiff of the erroneous figure used as salary in the computation of benefits. This was done in a

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[16] *National Investment and Development Corporation v. Aquino*, 163 SCRA 153 (1988); *J.L. Bernardo Construction v. Court of Appeals*, 324 SCRA 24 (2000); *Newsweek, Inc. v. IAC*, 142 SCRA 171 (1986); *Mendoza v. Court of Appeals, 201* SCRA 343 (1991).

[17] *J. L. Bernardo Construction v. Court of Appeals*, 324 SCRA 24 (2000).

[18] *Enriquez vs. Macadaeg*, 84 Phil. 674 (1949).

[19] *Manalo vs. Mariano*, 69 SCRA 80 (1976).

[20] *De Jesus vs. Garcia*, 19 SCRA 554 (1967).

[21] *Rollo* at 165 and 167.

[22] *De Jesus v. Garcia*, 19 SCRA 554 (1967).

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telephone conversation with a certain Atty. Amina Amado of Lopez, Inc.

> 29.1 The Defendant also informed her that the so called "unliquidated advances amounting to ₱422,922.87 since 1995" had all been properly liquidated as reflected in all the reports of the company. The Defendant reminded Atty. Amado of *unpaid incentives and salaries for 1997.*
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> 29.2 Defendant likewise informed Plaintiff that the *one month for every year of service as a basis for the computation of the Defendant's retirement benefit is erroneous.* This computation is even less than what the rank and file employees get. That CEO's, COO's and senior executives of the level of ABS-CBN, Sky Vision, Benpres, Meralco and other Lopez companies had and have received a lot more than the regular rank and file employees. All these retired executives and records can be summoned for verification.
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> 29.3 The circumstances of the retirement of the Defendant are not those for a simple and ordinary rank and file employee. Mr. Lopez, III admitted that he and the Defendant have had problems which accumulated through time and that they chose to part ways in a manner that was dignified for both of them. Treating the Defendant as a rank and file employee is hardly dignified not just to the Defendant but also to the Lopezes whose existing executives serving them will draw lessons from the Defendant's experience.
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> 29.4 *These circumstances hardly reflect a simple retirement. The Defendant, who is known in the local and international media community, is hardly considered a rank and file employee. Defendant was a stockholder of the Corporation and a duly-elected member of the Board of Directors.* Certain government officials can attest to the sensitivity of issues and matters the Defendant had represented for the Lopezes that are hardly issues handled by a simple rank and file employee. Respectable individuals in government and industry are willing to testify to this regard. . . .[23] (Emphasis and italics supplied).

At the heart of petitioner's counterclaim is his alleged forced retirement which is also the basis of his claim for, among other things, unpaid salaries, unpaid incentives, reasonable return on

[23] *Rollo* at 149 and 150.

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the stock ownership plan, and other benefits from a subsidiary company of the respondent.

Section 5(c) of P.D. 902-A (as amended by R.A. 8799, the Securities Regulation Code) applies to a corporate officer's dismissal. For a corporate officer's dismissal is always a corporate act and/or an intra-corporate controversy and that its nature is not altered by the reason or wisdom which the Board of Directors may have in taking such action.[24]

With regard to petitioner's claim for unpaid salaries, unpaid share in net income, reasonable return on the stock ownership plan and other benefits for services rendered to Sky Vision, jurisdiction thereon pertains to the Securities Exchange Commission even if the complaint by a corporate officer includes money claims since such claims are actually part of the prerequisite of his position and, therefore, interlinked with his relations with the corporation.[25] The question of remuneration involving a person who is not a mere employee but a stockholder and officer of the corporation is not a simple labor problem but a matter that comes within the area of corporate affairs and management, and is in fact a corporate controversy in contemplation of the Corporation Code.[26]

While petitioner's counterclaims were filed on December 1, 1998, the second challenged order of the trial court denying respondent's motion for reconsideration of the denial of its motion to dismiss was issued on October 9, 2000 at which time P.D. 902-A had been amended by R.A. 8799 (approved on July 19, 2000) which mandated the transfer of jurisdiction over intra-corporate controversies, subject of the counterclaims, to RTCs.

But even if the subject matter of the counterclaims is now cognizable by RTCs, the filing thereof against respondent is

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[24] *Ongkiko v. National Labor Relations Commission*, 270 SCRA 613 (1997) citing *Luzon v. NLRC*, 240 SCRA 1 (1995) and *Espino v. NLRC*, 240 SCRA 52 (1995).

[25] *Ongkiko v. National Labor Relations Commission*, 270 SCRA 613 (1997).

[26] *Dy v. National Labor Relations Commission*, 145 SCRA 211 (1986).

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improper, it not being the real party-in-interest, for it is petitioner's employer Sky Vision, respondent's subsidiary.

It cannot be gainsaid that a subsidiary has an independent and separate juridical personality, distinct from that of its parent company, hence, any claim or suit against the latter does not bind the former and vice versa.

Petitioner argues nevertheless that jurisdiction over the subsidiary is justified by piercing the veil of corporate fiction. Piercing the veil of corporate fiction is warranted, however, only in cases when the separate legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, such that in the case of two corporations, the law will regard the corporations as merged into one.[27] The rationale behind piercing a corporation's identity is to remove the barrier between the corporation from the persons comprising it to thwart the fraudulent and illegal schemes of those who use the corporate personality as a shield for undertaking certain proscribed activities.[28]

In applying the doctrine of piercing the veil of corporate fiction, the following requisites must be established: (1) control, not merely majority or complete stock control; (2) such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest acts in contravention of plaintiff's legal rights; and (3) the aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.[29]

Nowhere, however, in the pleadings and other records of the case can it be gathered that respondent has complete control over Sky Vision, not only of finances but of policy and business practice in respect to the transaction attacked, so that Sky Vision had at the time of the transaction no separate mind, will or

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[27] *Tan Boon Bee & Co., Inc. v. Jarencio*, 163 SCRA 205 (1988) and *Yutivo Sons Hardware Co. v. CTA*, 1 SCRA 160 (1961).

[28] *Francisco Motors Corporation v. Court of Appeals*, 309 SCRA 72 (1999).

[29] *Heirs of Ramon Durano Sr. v. Uy*, 344 SCRA 238 (2000).

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existence of its own. The existence of interlocking directors, corporate officers and shareholders is not enough justification to pierce the veil of corporate fiction in the absence of fraud or other public policy considerations.

This Court is thus not convinced that the real party-in-interest with regard to the counterclaim for damages arising from the alleged tortuous manner by which petitioner was forced to retire as General Manager of Sky Vision is respondent.

Petitioner muddles the issues by arguing that respondent fraudulently took advantage of the control over the matter of compensation and benefits of an employee of Sky Vision to deceive petitioner into signing the loan agreement on the misleading assurance that it was merely for the purpose of documenting the reward to him of ten million pesos. This argument does not persuade. Petitioner, being a lawyer, is presumed to know the legal and binding effects of loan agreements.

It bears emphasis that Sky Vision's involvement in the transaction subject of the case sprang only after a proposal was apparently proffered by petitioner that his retirement benefits from Sky Vision be used in partial payment of his loan from respondent as gathered from the July 15, 1998 letter [30] of Rommel Duran, Vice-President and General Manager of respondent, to petitioner reading:

> Dear Mr. Velarde:
>
> *As requested*, we have made computations on the outstanding amount of your loan with Lopez, Inc. should your retirement benefits from Sky Vision Corporation/Central CATV, Inc. ("Sky/Central") be applied to the partial payment of your loan. Please note that in order to effect the application of your retirement benefits to the partial payment of your loan, *you will need to give Sky/Central written instructions on the same in the soonest possible time.*
>
> As you will see in the attached computation, the amount of ₱4,077,077.13 will be applied to the payment of your loan to retroact on January 1, 1998. The amount of ₱422,922.87, representing unliquidated advances made by Sky/Central to you

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(see attached listing), has been deducted from your retirement pay of ₱4.5 million. Should you be *able to liquidate the advances as requested by Sky/Central*, the said amount will be applied to the partial payment of your loan and we shall adjust the amount of principal and interest due from you accordingly. After the application of the amount of ₱4,077,077.13 to the partial payment of your loan, the amount of ₱7,585,912.86 will be immediately due and demandable. The amount of ₱7,585,912.86 represents the outstanding principal and interest due as of July 15, 1998.

Without the application of your retirement benefits to the partial payment of your loan, the amount of ₱11,850,000.00 is due as of July 15, 1998. We reiterate our demand for full payment of your outstanding obligation immediately. (Emphasis supplied)

As for the trial court's ruling that the agreement to set-off is an amendment of the loan agreement resulting to an identity of interest between respondent and Sky Vision and, therefore, sufficient to pierce the veil of corporate fiction, it is untenable. The abovequoted letter is clear that, to effect a set-off, it is a condition *sine qua non* that the approval thereof by "Sky/Central" must be obtained, and that petitioner liquidate his advances from Sky Vision. These conditions hardly manifest that respondent possessed that degree of control over Sky Vision as to make the latter its mere instrumentality, agency or adjunct.

WHEREFORE, the instant petition for review on *certiorari* is hereby *DENIED*.

SO ORDERED.

Vitug, Sandoval-Gutierrez and *Corona, JJ.*, concur.

[30] *Rollo* at 143.