Supreme Court E-Library

THIRD DIVISION

[G.R. No. 142936. April 17, 2002]

PHILIPPINE NATIONAL BANK & NATIONAL SUGAR DEVELOPMENT CORPORATION, *petitioners, vs.* **ANDRADA ELECTRIC & ENGINEERING COMPANY,** *respondent.*

SYNOPSIS

Respondent filed an action against petitioners for the unpaid balance on electrical services it previously rendered to Pampanga Sugar Mill (PASUMIL). Respondent alleged that petitioners became liable to them when the former acquired the assets of, took over, and operated PASUMIL.

The Court disagreed with respondent. The following precludes the piercing of the corporate veil in the case at bar: Other than the fact that petitioners acquired the assets of PASUMIL, there was no showing that their control over it warrants the disregard of corporate personalities, there was no evidence that their juridical personality was used to commit fraud or to do a wrong, or that the separate corporate entity was farcically used as a mere alter ego, business conduit or instrumentality of another entity or person; respondent was not defrauded or injured when petitioners acquired the assets of PASUMIL. Neither is there merger nor consolidation with respect to PASUMIL and PNB.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; PETITION FOR REVIEW; QUESTIONS OF FACT MAY NOT BE RAISED THEREIN; EXCEPTION IS WHEN THERE IS MISAPPRECIATION OF THE EVIDENCE.** — As a general rule, questions of fact may not be raised in a petition for review under Rule 45 of the Rules of Court. To this rule, however, there are some exceptions enumerated in *Fuentes v. Court of Appeals*. After a careful scrutiny of the records and the pleadings submitted by the parties, we find that the lower courts misappreciated the evidence presented. Overlooked by

Supreme Court E-Library

the CA were certain relevant facts that would justify a conclusion different from that reached in the assailed Decision.

2. **COMMERCIAL LAW; PRIVATE CORPORATIONS; WHERE CORPORATION PURCHASED THE ASSETS OF ANOTHER CORPORATION, THE FORMER WILL NOT BE LIABLE TO THE DEBTS OF THE LATTER; EXCEPTIONS.** — As a rule, a corporation that purchases the assets of another will not be liable for the debts of the selling corporation, provided the former acted in good faith and paid adequate consideration for such assets, except when any of the following circumstances is present: (1) where the purchaser expressly or impliedly agrees to assume the debts, (2) where the transaction amounts to a consolidation or merger of the corporations, (3) where the purchasing corporation is merely a continuation of the selling corporation, and (4) where the transaction is fraudulently entered into in order to escape liability for those debts.

3. **ID.; ID.; CORPORATION; ELUCIDATED.** — A corporation is an artificial being 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 the persons composing it, as well as from any other legal entity to which it may be related. This is basic.

4. **ID.; ID.; DOCTRINE OF PIERCING THE VEIL OF CORPORATE FICTION; WHEN PROPER.** — Equally well-settled is the principle that the corporate mask may be removed or the corporate veil pierced when the corporation is just an alter ego of a person or of another corporation. For reasons of public policy and in the interest of justice, the corporate veil will justifiably be impaled only when it becomes a shield for fraud, illegality or inequity committed against third persons. Hence, any application of the doctrine of piercing the corporate veil should be done with caution. A court should be mindful of the milieu where it is to be applied. 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. Otherwise, an injustice that was never unintended may result from an erroneous application. This Court has pierced the corporate

Supreme Court E-Library

veil to ward off a judgment credit, to avoid inclusion of corporate assets as part of the estate of the decedent, to escape liability arising from a debt, or to perpetuate fraud and/or confuse legitimate issues either to promote or to shield unfair objectives or to cover up an otherwise blatant violation of the prohibition against forum-shopping. Only in these and similar instances may the veil be pierced and disregarded.

5. **ID.; ID.; ID.; ELEMENTS; NOT PRESENT IN CASE AT BAR.** — The question of whether a corporation is a mere alter ego is one of fact. Piercing the veil of corporate fiction may be allowed only if the following elements concur: (1) control — not mere stock control, but complete domination — not only of finances, but of policy and business practice in respect to the transaction attacked, must have been such that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; (2) such control must have been used by the defendant to commit a fraud or a wrong to perpetuate the violation of a statutory or other positive legal duty, or a dishonest and an unjust act in contravention of plaintiff's legal right; and (3) the said control and breach of duty must have proximately caused the injury or unjust loss complained of. We believe that the absence of the foregoing elements in the present case precludes the piercing of the corporate veil. *First*, other than the fact that petitioners acquired the assets of PASUMIL, there is no showing that their control over it warrants the disregard of corporate personalities. *Second*, there is no evidence that their juridical personality was used to commit a fraud or to do a wrong; or that the separate corporate entity was farcically used as a mere alter ego, business conduit or instrumentality of another entity or person. *Third*, respondent was not defrauded or injured when petitioners acquired the assets of PASUMIL. Being the party that asked for the piercing of the corporate veil, respondent had the burden of presenting clear and convincing evidence to justify the setting aside of the separate corporate personality rule. However, it utterly failed to discharge this burden; it failed to establish by competent evidence that petitioner's separate corporate veil had been used to conceal fraud, illegality or inequity. The CA erred in affirming the trial court's lifting of the corporate mask. The CA did not point to any fact evidencing bad faith on the part of PNB and its transferee. The corporate fiction was not

Supreme Court E-Library

used to defeat public convenience, justify a wrong, protect fraud or defend crime. None of the foregoing exceptions was shown to exist in the present case. On the contrary, the lifting of the corporate veil would result in manifest injustice. This we cannot allow.

6. **ID.; ID.; CONSOLIDATION OR MERGER OF CORPORATIONS; REQUISITES; NOT PRESENT IN CASE AT BAR.** — A consolidation is the union of two or more existing entities to form a new entity called the consolidated corporation. A merger, on the other hand, is a union whereby one or more existing corporations are absorbed by another corporation that survives and continues the combined business. The merger, however, does not become effective upon the mere agreement of the constituent corporations. Since a merger or consolidation involves fundamental changes in the corporation, as well as in the rights of stockholders and creditors, there must be an express provision of law authorizing them. For a valid merger or consolidation, the approval by the Securities and Exchange Commission (SEC) of the articles of merger or consolidation is required. These articles must likewise be duly approved by a majority of the respective stockholders of the constituent corporations. In the case at bar, we hold that there is no merger or consolidation with respect to PASUMIL and PNB. The procedure prescribed under Title IX of the Corporation Code was not followed.

APPEARANCES OF COUNSEL

Salvador Luy for petitioners.
Renecio Espiritu for private respondent.

D E C I S I O N

PANGANIBAN, *J.*:

Basic is the rule that a corporation has a legal personality distinct and separate from the persons and entities owning it. The corporate veil may be lifted only if it has been used to shield fraud, defend crime, justify a wrong, defeat public convenience, insulate bad faith or perpetuate injustice. Thus,

Supreme Court E-Library

the mere fact that the Philippine National Bank (PNB) acquired ownership or management of some assets of the Pampanga Sugar Mill (PASUMIL), which had earlier been foreclosed and purchased at the resulting public auction by the Development Bank of the Philippines (DBP), will not make PNB liable for the PASUMIL's contractual debts to respondent.

Statement of the Case

Before us is a Petition for Review assailing the April 17, 2000 Decision[1] of the Court of Appeals (CA) in CA-GR CV No. 57610. The decretal portion of the challenged Decision reads as follows:

"WHEREFORE, the judgment appealed from is hereby AFFIRMED."[2]

The Facts

The factual antecedents of the case are summarized by the Court of Appeals as follows:

"In its complaint, the plaintiff [herein respondent] alleged that it is a partnership duly organized, existing, and operating under the laws of the Philippines, with office and principal place of business at Nos. 794-812 Del Monte [A]venue, Quezon City, while the defendant [herein petitioner] Philippine National Bank (herein referred to as PNB), is a semi-government corporation duly organized, existing and operating under the laws of the Philippines, with office and principal place of business at Escolta Street, Sta. Cruz, Manila; whereas, the other defendant, the National Sugar Development Corporation (NASUDECO in brief), is also a semi-government corporation and the sugar arm of the PNB, with office and principal place of business at the 2nd Floor, Sampaguita Building, Cubao, Quezon City; and the defendant Pampanga Sugar Mills (PASUMIL in short), is a corporation organized, existing and operating under the 1975 laws of the Philippines, and had its business office before 1975 at Del Carmen, Floridablanca, Pampanga; that the plaintiff is engaged

---

[1] *Rollo*, pp. 30-39. Penned by Justice Renato C. Dacudao, with the concurrence of Justices Quirino D. Abad Santos Jr. (Division chairman) and B. A. Adefuin de la Cruz (member).

[2] Assailed Decision, p. 11; *rollo*, p. 39.

Supreme Court E-Library

in the business of general construction for the repairs and/or construction of different kinds of machineries and buildings; that on August 26, 1975, the defendant PNB acquired the assets of the defendant PASUMIL that were earlier foreclosed by the Development Bank of the Philippines (DBP) under LOI No. 311; that the defendant PNB organized the defendant NASUDECO in September, 1975, to take ownership and possession of the assets and ultimately to nationalize and consolidate its interest in other PNB controlled sugar mills; that prior to October 29, 1971, the defendant PASUMIL engaged the services of plaintiff for electrical rewinding and repair, most of which were partially paid by the defendant PASUMIL, leaving several unpaid accounts with the plaintiff; that finally, on October 29, 1971, the plaintiff and the defendant PASUMIL entered into a contract for the plaintiff to perform the following, to wit –

'(a) Construction of one (1) power house building;

'(b) Construction of three (3) reinforced concrete foundation for three (3) units 350 KW diesel engine generating set[s];

'(c) Construction of three (3) reinforced concrete foundation for the 5,000 KW and 1,250 KW turbo generator sets;

'(d) Complete overhauling and reconditioning tests sum for three (3) 350 KW diesel engine generating set[s];

'(e) Installation of turbine and diesel generating sets including transformer, switchboard, electrical wirings and pipe provided those stated units are completely supplied with their accessories;

'(f) Relocating of 2,400 V transmission line, demolition of all existing concrete foundation and drainage canals, excavation, and earth fillings – all for the total amount of ₱543,500.00 as evidenced by a contract, [a] xerox copy of which is hereto attached as Annex 'A' and made an integral part of this complaint;'

that aside from the work contract mentioned-above, the defendant PASUMIL required the plaintiff to perform extra work, and provide electrical equipment and spare parts, such as:

'(a) Supply of electrical devices;

'(b) Extra mechanical works;

Supreme Court E-Library

'(c) Extra fabrication works;

'(d) Supply of materials and consumable items;

'(e) Electrical shop repair;

'(f) Supply of parts and related works for turbine generator;

'(g) Supply of electrical equipment for machinery;

'(h) Supply of diesel engine parts and other related works including fabrication of parts.'

that out of the total obligation of ₱777,263.80, the defendant PASUMIL had paid only ₱250,000.00, leaving an unpaid balance, as of June 27, 1973, amounting to ₱527,263.80, as shown in the Certification of the chief accountant of the PNB, a machine copy of which is appended as Annex 'C' of the complaint; that out of said unpaid balance of ₱527,263.80, the defendant PASUMIL made a partial payment to the plaintiff of ₱14,000.00, in broken amounts, covering the period from January 5, 1974 up to May 23, 1974, leaving an unpaid balance of ₱513,263.80; that the defendant PASUMIL and the defendant PNB, and now the defendant NASUDECO, failed and refused to pay the plaintiff their just, valid and demandable obligation; that the President of the NASUDECO is also the Vice-President of the PNB, and this official holds office at the 10th Floor of the PNB, Escolta, Manila, and plaintiff besought this official to pay the outstanding obligation of the defendant PASUMIL, inasmuch as the defendant PNB and NASUDECO now owned and possessed the assets of the defendant PASUMIL, and these defendants all benefited from the works, and the electrical, as well as the engineering and repairs, performed by the plaintiff; that because of the failure and refusal of the defendants to pay their just, valid, and demandable obligations, plaintiff suffered actual damages in the total amount of ₱513,263.80; and that in order to recover these sums, the plaintiff was compelled to engage the professional services of counsel, to whom the plaintiff agreed to pay a sum equivalent to 25% of the amount of the obligation due by way of attorney's fees. Accordingly, the plaintiff prayed that judgment be rendered against the defendants PNB, NASUDECO, and PASUMIL, jointly and severally to wit:

'(1) Sentencing the defendants to pay the plaintiffs the sum of ₱513,263.80, with annual interest of 14% from the time the obligation falls due and demandable;

Supreme Court E-Library

'(2) Condemning the defendants to pay attorney's fees amounting to 25% of the amount claim;

'(3) Ordering the defendants to pay the costs of the suit.'

"The defendants PNB and NASUDECO filed a joint motion to dismiss the complaint chiefly on the ground that the complaint failed to state sufficient allegations to establish a cause of action against both defendants, inasmuch as there is lack or want of privity of contract between the plaintiff and the two defendants, the PNB and NASUDECO, said defendants citing Article 1311 of the New Civil Code, and the case law ruling in *Salonga v. Warner Barnes & Co.*, 88 Phil. 125; and *Manila Port Service, et al. v. Court of Appeals, et al.*, 20 SCRA 1214.

"The motion to dismiss was by the court *a quo* denied in its Order of November 27, 1980; in the same order, that court directed the defendants to file their answer to the complaint within 15 days.

"In their answer, the defendant NASUDECO reiterated the grounds of its motion to dismiss, to wit:

'That the complaint does not state a sufficient cause of action against the defendant NASUDECO because: (a) NASUDECO is not x x x privy to the various electrical construction jobs being sued upon by the plaintiff under the present complaint; (b) the taking over by NASUDECO of the assets of defendant PASUMIL was solely for the purpose of reconditioning the sugar central of defendant PASUMIL pursuant to martial law powers of the President under the Constitution; (c) nothing in the LOI No. 189-A (as well as in LOI No. 311) authorized or commanded the PNB or its subsidiary corporation, the NASUDECO, to assume the corporate obligations of PASUMIL as that being involved in the present case; and, (d) all that was mentioned by the said letter of instruction insofar as the PASUMIL liabilities [were] concerned [was] for the PNB, or its subsidiary corporation the NASUDECO, to make a study of, and submit [a] recommendation on the problems concerning the same.'

"By way of counterclaim, the NASUDECO averred that by reason of the filing by the plaintiff of the present suit, which it [labeled] as unfounded or baseless, the defendant NASUDECO was constrained to litigate and incur litigation expenses in the amount of ₱50,000.00,

Supreme Court E-Library

which plaintiff should be sentenced to pay. Accordingly, NASUDECO prayed that the complaint be dismissed and on its counterclaim, that the plaintiff be condemned to pay ₱50,000.00 in concept of attorney's fees as well as exemplary damages.

"In its answer, the defendant PNB likewise reiterated the grounds of its motion to dismiss, namely: (1) the complaint states no cause of action against the defendant PNB; (2) that PNB is not a party to the contract alleged in par. 6 of the complaint and that the alleged services rendered by the plaintiff to the defendant PASUMIL upon which plaintiff's suit is erected, was rendered long before PNB took possession of the assets of the defendant PASUMIL under LOI No. 189-A; (3) that the PNB take-over of the assets of the defendant PASUMIL under LOI 189-A was solely for the purpose of reconditioning the sugar central so that PASUMIL may resume its operations in time for the 1974-75 milling season, and that nothing in the said LOI No. 189-A, as well as in LOI No. 311, authorized or directed PNB to assume the corporate obligation/s of PASUMIL, let alone that for which the present action is brought; (4) that PNB's management and operation under LOI No. 311 did not refer to any asset of PASUMIL which the PNB had to acquire and thereafter [manage], but only to those which were foreclosed by the DBP and were in turn redeemed by the PNB from the DBP; (5) that conformably to LOI No. 311, on August 15, 1975, the PNB and the Development Bank of the Philippines (DBP) entered into a 'Redemption Agreement' whereby DBP sold, transferred and conveyed in favor of the PNB, by way of redemption, all its (DBP) rights and interest in and over the foreclosed real and/or personal properties of PASUMIL, as shown in Annex 'C' which is made an integral part of the answer; (6) that again, conformably with LOI No. 311, PNB pursuant to a Deed of Assignment dated October 21, 1975, conveyed, transferred, and assigned for valuable consideration, in favor of NASUDECO, a distinct and independent corporation, all its (PNB) rights and interest in and under the above 'Redemption Agreement.' This is shown in Annex 'D' which is also made an integral part of the answer; [7] that as a consequence of the said Deed of Assignment, PNB on October 21, 1975 ceased to managed and operate the above-mentioned assets of PASUMIL, which function was now actually transferred to NASUDECO. In other words, so asserted PNB, the complaint as to PNB, had become moot and academic because of the execution of the said Deed of Assignment; [8] that moreover, LOI No. 311 did not authorize or direct PNB to assume the corporate obligations of PASUMIL, including the alleged obligation upon which this present

Supreme Court E-Library

suit was brought; and [9] that, at most, what was granted to PNB in this respect was the authority to 'make a study of and submit recommendation on the problems concerning the claims of PASUMIL creditors,' under sub-par. 5 LOI No. 311.

"In its counterclaim, the PNB averred that it was unnecessarily constrained to litigate and to incur expenses in this case, hence it is entitled to claim attorney's fees in the amount of at least ₱50,000.00. Accordingly, PNB prayed that the complaint be dismissed; and that on its counterclaim, that the plaintiff be sentenced to pay defendant PNB the sum of ₱50,000.00 as attorney's fees, aside from exemplary damages in such amount that the court may seem just and equitable in the premises.

"Summons by publication was made *via* the Philippines Daily Express, a newspaper with editorial office at 371 Bonifacio Drive, Port Area, Manila, against the defendant PASUMIL, which was thereafter declared in default as shown in the August 7, 1981 Order issued by the Trial Court.

"After due proceedings, the Trial Court rendered judgment, the decretal portion of which reads:

> 'WHEREFORE, judgment is hereby rendered in favor of plaintiff and against the defendant Corpeoration, Philippine National Bank (PNB) NATIONAL SUGAR DEVELOPMENT CORPORATION (NASUDECO) and PAMPANGA SUGAR MILLS (PASUMIL), ordering the latter to pay jointly and severally the former the following:
>
> '1. The sum of ₱513,623.80 plus interest thereon at the rate of 14% per annum as claimed from September 25, 1980 until fully paid;
>
> '2. The sum of ₱102,724.76 as attorney's fees; and,
>
> '3. Costs.
>
> 'SO ORDERED.
>
> 'Manila, Philippines, September 4, 1986.
>
> '(SGD) ERNESTO S. TENGCO
> 'Judge'"[3]

---

[3] *Ibid.*, pp. 1-7; *ibid.*, pp. 30-35.

Supreme Court E-Library

Ruling of the Court of Appeals

Affirming the trial court, the CA held that it was offensive to the basic tenets of justice and equity for a corporation to take over and operate the business of another corporation, while disavowing or repudiating any responsibility, obligation or liability arising therefrom.[4]

Hence, this Petition.[5]

Issues

In their Memorandum, petitioners raise the following errors for the Court's consideration:

"*I*

The Court of Appeals gravely erred in law in holding the herein petitioners liable for the unpaid corporate debts of PASUMIL, a corporation whose corporate existence has not been legally extinguished or terminated, simply because of petitioners[']take-over of the management and operation of PASUMIL pursuant to the mandates of LOI No. 189-A, as amended by LOI No. 311.

"*II*

The Court of Appeals gravely erred in law in not applying [to] the case at bench the ruling enunciated in *Edward J. Nell Co. v. Pacific Farms,* 15 SCRA 415."[6]

Succinctly put, the aforesaid errors boil down to the principal issue of whether PNB is liable for the unpaid debts of PASUMIL to respondent.

This Court's Ruling

The Petition is meritorious.

---

[4] *Id.*, p. 9; *id.*, p. 37.

[5] The case was deemed submitted for decision on February 12, 2001, upon this Court's receipt of petitioners' Memorandum, signed by Atty. Salvador A. Luy. Respondent's Memorandum, which was filed on February 9, 2001, was signed by Atty. Renecio R. Espiritu.

[6] Petitioners' Memorandum, pp. 7-8; *rollo*, pp. 73-74. Original in upper case and italicized.

Supreme Court E-Library

Main Issue:

Liability for Corporate Debts

As a general rule, questions of fact may not be raised in a petition for review under Rule 45 of the Rules of Court.[7] To this rule, however, there are some exceptions enumerated in *Fuentes v. Court of Appeals*.[8] After a careful scrutiny of the records and the pleadings submitted by the parties, we find that the lower courts misappreciated the evidence presented.[9] Overlooked by the CA were certain relevant facts that would justify a conclusion different from that reached in the assailed Decision.[10]

Petitioners posit that they should not be held liable for the corporate debts of PASUMIL, because their takeover of the latter's foreclosed assets did not make them assignees. On the other hand, respondent asserts that petitioners and PASUMIL should be treated as one entity and, as such, jointly and severally held liable for PASUMIL's unpaid obligation.

As a rule, a corporation that purchases the assets of another will not be liable for the debts of the selling corporation, provided the former acted in good faith and paid adequate consideration for such assets, except when any of the following circumstances is present: (1) where the purchaser expressly or impliedly agrees to assume the debts, (2) where the transaction amounts to a consolidation or merger of the corporations, (3) where the purchasing corporation is merely a continuation of the selling corporation, and (4) where the transaction is fraudulently entered into in order to escape liability for those debts.[11]

---

[7] *Cordial v. Miranda*, 348 SCRA 158, December 14, 2000.

[8] 268 SCRA 703, February 26, 1997.

[9] *Baricuatro Jr. v. Court of Appeals,* 325 SCRA 137, February 9, 2000.

[10] *Ibid.*

[11] Jose C. Campos Jr. and Maria Clara Lopez-Campos, *The Corporation Code. Comments, Notes and Selected Cases,* Vol. 2, 1990 ed., p. 465, citing *Edward J. Nell Company v. Pacific Farms, Inc.*, 15 SCRA 415, November 29, 1965; *West Texas Refining & Dev. Co. v. Comm. of Int. Rev.*, 68 F. 2d 77.

Supreme Court E-Library

Piercing the Corporate Veil Not Warranted

A corporation is an artificial being 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.[12] It has a personality separate and distinct from the persons composing it, as well as from any other legal entity to which it may be related.[13] This is basic.

Equally well-settled is the principle that the corporate mask may be removed or the corporate veil pierced when the corporation is just an alter ego of a person or of another corporation.[14] For reasons of public policy and in the interest of justice, the corporate veil will justifiably be impaled[15] only when it becomes a shield for fraud, illegality or inequity committed against third persons.[16]

Hence, any application of the doctrine of piercing the corporate veil should be done with caution.[17] A court should be mindful of the milieu where it is to be applied.[18] 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.[19] The wrongdoing must be clearly and convincingly established; it cannot be presumed.[20] Otherwise, an injustice

---

[12] §2, Corporation Code.

[13] *Yu v. National Labor Relations Commission,* 245 SCRA 134, June 16, 1995.

[14] *Lim v. Court of Appeals,* 323 SCRA 102, January 24, 2000.

[15] *Francisco Motors Corporation v. Court of Appeals,* 309 SCRA 72, June 25, 1999.

[16] *San Juan Structural and Steel Fabricators, Inc. v. Court of Appeals,* 296 SCRA 631, September 29, 1998.

[17] *Reynoso IV v. Court of Appeals,* 345 SCRA 335, November 22, 2000.

[18] *Francisco Motors Corporation v. Court of Appeals, supra.*

[19] *Traders Royal Bank v. Court of Appeals,* 269 SCRA 15, March 3, 1997.

[20] *Matuguina Integrated Wood Products, Inc. v. Court of Appeals,* 263 SCRA 491, October 24, 1996.

Supreme Court E-Library

that was never unintended may result from an erroneous application.[21]

This Court has pierced the corporate veil to ward off a judgment credit,[22] to avoid inclusion of corporate assets as part of the estate of the decedent,[23] to escape liability arising from a debt,[24] or to perpetuate fraud and/or confuse legitimate issues[25] either to promote or to shield unfair objectives[26] or to cover up an otherwise blatant violation of the prohibition against forum-shopping.[27] Only in these and similar instances may the veil be pierced and disregarded.[28]

The question of whether a corporation is a mere alter ego is one of fact.[29] Piercing the veil of corporate fiction may be allowed only if the following elements concur: (1) control — not mere stock control, but complete domination — not only of finances, but of policy and business practice in respect to the transaction attacked, must have been such that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; (2) such control must have been used by the defendant to commit a fraud or a wrong to perpetuate the violation of a statutory or other positive legal duty, or a dishonest and an unjust act in contravention of plaintiff's legal right; and (3) the said control and breach of duty must have proximately caused the injury or unjust loss complained of.[30]

---

[21] *Francisco Motors Corporation v. Court of Appeals, supra.*

[22] *Sibagat Timber Corp. v. Garcia,* 216 SCRA 470, December 11, 1992.

[23] *Cease v. Court of Appeals,* 93 SCRA 483, October 18, 1979.

[24] *Arcilla v. Court of Appeals,* 215 SCRA 120, October 23, 1992.

[25] *Jacinto v. Court of Appeals,* 198 SCRA 211, June 6, 1991.

[26] *Villanueva v. Adre,* 172 SCRA 876, April 27, 1989

[27] *First Philippine International Bank v. Court of Appeals,* 252 SCRA 259, January 24, 1996.

[28] *ARB Construction Co., Inc. v. Court of Appeals,* 332 SCRA 427, May 31, 2000.

[29] *Heirs of Ramon Durano Sr. v. Uy,* 344 SCRA 238, October 24, 2000.

[30] *Lim v. Court of Appeals, supra.*

Supreme Court E-Library

We believe that the absence of the foregoing elements in the present case precludes the piercing of the corporate veil. *First*, other than the fact that petitioners acquired the assets of PASUMIL, there is no showing that their control over it warrants the disregard of corporate personalities.[31] *Second*, there is no evidence that their juridical personality was used to commit a fraud or to do a wrong; or that the separate corporate entity was farcically used as a mere alter ego, business conduit or instrumentality of another entity or person.[32] *Third*, respondent was not defrauded or injured when petitioners acquired the assets of PASUMIL.[33]

Being the party that asked for the piercing of the corporate veil, respondent had the burden of presenting clear and convincing evidence to justify the setting aside of the separate corporate personality rule.[34] However, it utterly failed to discharge this burden;[35] it failed to establish by competent evidence that petitioner's separate corporate veil had been used to conceal fraud, illegality or inequity.[36]

While we agree with respondent's claim that the assets of the National Sugar Development Corporation (NASUDECO) can be easily traced to PASUMIL,[37] we are not convinced that the transfer of the latter's assets to petitioners was fraudulently entered into in order to escape liability for its debt to respondent.[38]

A careful review of the records reveals that DBP foreclosed the mortgage executed by PASUMIL and acquired the assets

---

[31] *Traders Royal Bank, v. Court of Appeals, supra.*

[32] *Umali v. Court of Appeals*, 189 SCRA 529, September 13, 1990.

[33] *Traders Royal Bank, v. Court of Appeals, supra.*

[34] *Republic v. Sandiganbayan*, 346 SCRA 760, December 4, 2000.

[35] *Lim v. Court of Appeals, supra.*

[36] *San Juan Structural and Steel Fabricators, Inc. v. Court of Appeals, supra.*

[37] Respondent's Memorandum, p. 6; *rollo*, p. 60.

[38] *Edward J. Nell Company v. Pacific Farms Inc., supra*, p. 417, per Concepcion, *J.*

Supreme Court E-Library

as the highest bidder at the public auction conducted.[39] The bank was justified in foreclosing the mortgage, because the PASUMIL account had incurred arrearages of more than 20 percent of the total outstanding obligation.[40] Thus, DBP had not only a right, but also a duty under the law to foreclose the subject properties.[41]

Pursuant to LOI No. 189-A[42] as amended by LOI No. 311,[43] PNB acquired PASUMIL's assets that DBP had foreclosed and purchased in the normal course. Petitioner bank was likewise tasked to manage temporarily the operation of such assets either by itself or through a subsidiary corporation.[44]

PNB, as the second mortgagee, redeemed from DBP the foreclosed PASUMIL assets pursuant to Section 6 of Act No. 3135.[45] These assets were later conveyed to PNB for a

---

[39] *See* Redemption Agreement, Annex "C"; records, p. 56.

[40] Presidential Decree No. 385 (The Law on Mandatory Foreclosure) provides:

"Section 1. It shall be mandatory for government financial institutions, after the lapse of sixty (60) days from the issuance of this Decree, to foreclose the collaterals and/or securities for any loan, credit, accommodation, and/or guarantees granted by them whenever the arrearages on such account, including accrued interest and other charges, amount to at least twenty percent (20%) of the total outstanding obligations, including interest and other charges, as appearing in the books of account and/or related records of the financial institution concerned. This shall be without prejudice to the exercise by the government financial institutions of such rights and/or remedies available to them under their respective contracts with their debtors, including the right to foreclosure on loans, credits, accommodations and/or guarantees on which the arrearages are less than twenty percent (20%)."

[41] *Development Bank of the Philippines v. Court of Appeals, supra.*

[42] Annex "A"; records, p. 50.

[43] Annex "B"; *ibid.*, p. 52.

[44] *Ibid.*; *id.*, p. 53.

[45] This article provides:

"Sec. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successor in interest or any judicial creditor or judgment creditor of said debtor, or any person

Supreme Court E-Library

consideration, the terms of which were embodied in the Redemption Agreement.[46] PNB, as successor-in-interest, stepped into the shoes of DBP as PASUMIL's creditor.[47] By way of a Deed of Assignment,[48] PNB then transferred to NASUDECO all its rights under the Redemption Agreement.

In *Development Bank of the Philippines v. Court of Appeals,*[49] we had the occasion to resolve a similar issue. We ruled that PNB, DBP and their transferees were not liable for Marinduque Mining's unpaid obligations to Remington Industrial Sales Corporation (Remington) after the two banks had foreclosed the assets of Marinduque Mining. We likewise held that Remington failed to discharge its burden of proving bad faith on the part of Marinduque Mining to justify the piercing of the corporate veil.

In the instant case, the CA erred in affirming the trial court's lifting of the corporate mask.[50] The CA did not point to any fact evidencing bad faith on the part of PNB and its transferee.[51] The corporate fiction was not used to defeat public convenience, justify a wrong, protect fraud or defend crime.[52] None of the foregoing exceptions was shown to exist in the present case.[53]

---

having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty six, inclusive, of the Code of Civil Procedure (now Rule 39, Section 28 of the 1997 Revised Rules of Civil Procedure), in so far as these are not inconsistent with the provisions of this Act."

[46] *See* Redemption Agreement Annex "C"; records, p. 56.

[47] *Litonjua v. L &R Corporation*, 320 SCRA 405, December 9, 1999.

[48] Annex PNB-2; records, p. 61.

[49] G.R No. 126200, August 16, 2001.

[50] *Francisco Motors Corporation v. Court of Appeals, supra.*

[51] *Development Bank of the Philippines v. Court of Appeals, supra.*

[52] *Union Bank of the Philippines v. Court of Appeals,* 290 SCRA 198, May 19, 1998.

[53] *Vlason Enterprises Corporation v. Court of Appeals*, 310 SCRA 26, July 6, 1999.

Supreme Court E-Library

On the contrary, the lifting of the corporate veil would result in manifest injustice. This we cannot allow.

No Merger or Consolidation

Respondent further claims that petitioners should be held liable for the unpaid obligations of PASUMIL by virtue of LOI Nos. 189-A and 311, which expressly authorized PASUMIL and PNB to merge or consolidate. On the other hand, petitioners contend that their takeover of the operations of PASUMIL did not involve any corporate merger or consolidation, because the latter had never lost its separate identity as a corporation.

A consolidation is the union of two or more existing entities to form a new entity called the consolidated corporation. A merger, on the other hand, is a union whereby one or more existing corporations are absorbed by another corporation that survives and continues the combined business.[54]

The merger, however, does not become effective upon the mere agreement of the constituent corporations.[55] Since a merger or consolidation involves fundamental changes in the corporation, as well as in the rights of stockholders and creditors, there must be an express provision of law authorizing them.[56] For a valid merger or consolidation, the approval by the Securities and Exchange Commission (SEC) of the articles of merger or consolidation is required.[57] These articles must likewise be duly approved by a majority of the respective stockholders of the constituent corporations.[58]

In the case at bar, we hold that there is no merger or consolidation with respect to PASUMIL and PNB. The procedure

---

[54] Campos Jr. and Lopez-Campos, *The Corporation Code: Comments, Notes and Selected Cases*, *supra*, pp. 440-441.

[55] *Associated Bank v. Court of Appeals*, 291 SCRA 511, June 29, 1998.

[56] Campos Jr. and Lopez-Campos, *The Corporation Code: Comments, Notes and Selected Cases*, *supra*, p. 441.

[57] §79 Corporation Code.

[58] §77 Corporation Code.

Supreme Court E-Library

prescribed under Title IX of the Corporation Code[59] was not followed.

---

[59] "Title IX – MERGER AND CONSOLIDATION

"SEC. 76. Plan of merger or consolidation. – Two or more corporations may merge into a single corporation which shall be one of the constituent corporations or may consolidate into a new single corporation which shall be the consolidated corporation.

"The board of directors or trustees of each corporation, party to the merger or consolidation, shall approve a plan of merger or consolidation setting forth the following:

'1. The names of the corporations proposing to merge or consolidate, hereinafter referred to as the constituent corporations;

'2. The terms of the merger or consolidation and the mode of carrying the same into effect;

'3. A statement of the changes, if any, in the articles of incorporation of the surviving corporation in case of merger; and, with respect to the consolidated corporation in case of consolidation, all the statements required to be set forth in the articles of incorporation for corporations organized under this Code; and

'4. Such other provisions with respect to the proposed merger or consolidation as are deemed necessary or desirable.'

"SEC. 77. Stockholders' or members' approval. – Upon approval by majority vote of each of the board of directors or trustees of the constituent corporations of the plan of merger or consolidation, the same shall be submitted for approval by the stockholders or members of each of such corporations at separate corporate meetings duly called for the purpose. Notice of such meetings shall be given to all stockholders or members of the respective corporations, at least two (2) weeks prior to the date of the meeting, either personally or by registered mail. Said notice shall state the purpose of the meeting and shall include a copy or a summary of the plan of merger or consolidation. The affirmative vote of stockholders representing at least two-thirds (2/3) of the outstanding capital stock of each corporation in the case of stock corporations or at least two-thirds (2/3) of the members in the case of non-stock corporations shall be necessary for the approval of such plan. Any dissenting stockholder in stock corporations may exercise his appraisal right in accordance with the Code: Provided, That if after the approval by the stockholders of such plan, the board of directors decides to abandon the plan, the appraisal right shall be extinguished.

"Any amendment to the plan of merger or consolidation may be made, provided such amendment is approved by majority vote of the respective boards of directors or trustees of all the constituent corporations and ratified by the affirmative vote of stockholders representing at least two-thirds (2/3

Supreme Court E-Library

In fact, PASUMIL's corporate existence, as correctly found by the CA, had not been legally extinguished or

---

of the outstanding capital stock or of two thirds (2/3) of the members of each of the constituent corporations. Such plan, together with any amendment, shall be considered as the agreement of merger or consolidation.

"SEC. 78. Articles of merger or consolidation. — After the approval by the stockholders or members as required by the preceding section, articles of merger or articles of consolidation shall be executed by each of the constituent corporations, to be signed by the president or vice-president and certified by the secretary or assistant secretary of each corporation setting forth:

'1. The plan of the merger or the plan of consolidation;

'2. As to stock corporations, the number of shares outstanding, or in the case of non-stock corporations, the number of members, and

'3. As to each corporation, the number of shares or members voting for and against such plan, respectively.'

"SEC. 79. Effectivity of merger or consolidation. — The articles of merger or of consolidation, signed and certified as herein above required, shall be submitted to the Securities and Exchange Commission in quadruplicate for its approval: Provided, That in the case of merger or consolidation of banks or banking institutions, building and loan associations, trust companies, insurance companies, public utilities, educational institutions and other special corporations governed by special laws, the favorable recommendation of the appropriate government agency shall first be obtained. If the Commission is satisfied that the merger or consolidation of the corporations concerned is not inconsistent with the provisions of this Code and existing laws, it shall issue a certificate of merger or of consolidation, at which time the merger or consolidation shall be effective.

"If, upon investigation, the Securities and Exchange Commission has reason to believe that the proposed merger or consolidation is contrary to or inconsistent with the provisions of this Code or existing laws, it shall set a hearing to give the corporations concerned the opportunity to be heard. Written notice of the date, time and place of hearing shall be given to each constituent corporation at least two (2) weeks before said hearing. The Commission shall thereafter proceed as provided in this Code.

"SEC. 80. Effects of merger or consolidation. — The merger or consolidation shall have the following effects:

'1. The constituent corporations shall become a single corporation which, in case of merger, shall be the surviving corporation designated in the plan of merger; and, in case of consolidation, shall be the consolidated corporation designated in the plan of consolidation;

Supreme Court E-Library

terminated.[60] Further, prior to PNB's acquisition of the foreclosed assets, PASUMIL had previously made partial payments to respondent for the former's obligation in the amount of ₱777,263.80. As of June 27, 1973, PASUMIL had paid ₱250,000 to respondent and, from January 5, 1974 to May 23, 1974, another ₱14,000.

Neither did petitioner expressly or impliedly agree to assume the debt of PASUMIL to respondent.[61] LOI No. 11 explicitly provides that PNB shall study and submit recommendations on the claims of PASUMIL's creditors.[62] Clearly, the corporate separateness between PASUMIL and PNB remains, despite respondent's insistence to the contrary.[63]

'2. The separate existence of the constituent corporations shall cease, except that of the surviving or the consolidated corporation;

'3. The surviving or the consolidated corporation shall possess all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Code;

'4. The surviving or the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations; and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in such surviving or consolidated corporation without further act or deed; and

'5. The surviving or consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations; and any pending claim, action or proceeding brought by or against any of such constituent corporations may be prosecuted by or against the surviving or consolidated corporation. The right of creditors or liens upon the property of any of such constituent corporations shall not be impaired by such merger or consolidation.'"

[60] *Associated Bank v. Court of Appeals, supra.*

[61] *Edward J. Nell Company v. Pacific Farms, Inc., supra.*

[62] Annex "B"; records, p. 53.

[63] *Traders Royal Bank, v. Court of Appeals, supra.*

Supreme Court E-Library

WHEREFORE, the Petition is hereby *GRANTED* and the assailed Decision *SET ASIDE*. No pronouncement as to costs.

SO ORDERED.

Vitug (Acting Chairman), Sandoval-Gutierrez, and *Carpio, JJ.,* concur.

Melo (Chairman), J., Abroad, on official leave.

THIRD DIVISION

[G.R. No. 143658. April 17, 2002]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROMEO PAGURAYAN, JR.,** *accused-appellant.*

SYNOPSIS

Appellant was convicted of the crime of rape. Hence, this appeal.

The Court found no reason to reverse the ruling of the trial court. The alleged reluctance of the rape victim to give full details of the crime is understandable. Her alleged grudge against appellant and his wife was much too trivial compared to the magnitude of her accusations. The absence of external injuries on the victim does not negate rape.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.** — Like in many rape cases appealed to this Court, the issue raised is one that attempts to put in doubt the credibility of the victim. The crime of rape is essentially, at least almost always, one committed in relative isolation or even secrecy; hence, it is usually only the victim who can testify