SECOND DIVISION

[G.R. No. 150283. April 16, 2008]

RYUICHI YAMAMOTO, *petitioner, vs.* **NISHINO LEATHER INDUSTRIES, INC. and IKUO NISHINO,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION LAW; PRIVATE CORPORATIONS; DOCTRINE OF PIERCING THE VEIL OF CORPORATE FICTION; ELEMENTS DETERMINATIVE OF THE APPLICABILITY THEREOF.— While the veil of separate corporate personality may be pierced when the corporation is merely an adjunct, a business conduit, or alter ego of a person, the mere ownership by a single stockholder of even all or nearly all of the capital stocks of a corporation is not by itself a sufficient ground to disregard the separate corporate personality. The elements determinative of the applicability of the doctrine of piercing the veil of corporate fiction follow: *"1. Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so 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 fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of the plaintiff's legal rights; and 3. The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.* ***The absence of any one of these elements prevents "piercing the corporate veil."*** *In applying the 'instrumentality' or 'alter ego' doctrine, the courts are concerned with reality and not form, with how the corporation operated and the individual defendant's relationship to that operation."* In relation to the second element, to disregard the separate juridical personality of a corporation, the wrongdoing or unjust act in contravention of a plaintiff's legal rights must be clearly and convincingly established; it cannot be presumed. Without a demonstration that any of the evils

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sought to be prevented by the doctrine is present, it does not apply.

2. ID.; ID.; ID.; TRUST FUND DOCTRINE; EXPLAINED.— It is settled that the property of a corporation is not the property of its stockholders or members. Under the *trust fund doctrine*, the capital stock, property, and other assets of a corporation are regarded as equity in trust for the payment of corporate creditors which are preferred over the stockholders in the distribution of corporate assets. The distribution of corporate assets and property cannot be made to depend on the whims and caprices of the stockholders, officers, or directors of the corporation unless the indispensable conditions and procedures for the protection of corporate creditors are followed.

APPEARANCES OF COUNSEL

Salvador Guevara and Associates for petitioner.

Clarito I. Aquino, Jr. for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

In 1983, petitioner, Ryuichi Yamamoto (Yamamoto), a Japanese national, organized under Philippine laws Wako Enterprises Manila, Incorporated (WAKO), a corporation engaged principally in leather tanning, now known as Nishino Leather Industries, Inc. (NLII), one of herein respondents.

In 1987, Yamamoto and the other respondent, Ikuo Nishino (Nishino), also a Japanese national, forged a Memorandum of Agreement under which they agreed to enter into a joint venture wherein Nishino would acquire such number of shares of stock equivalent to 70% of the authorized capital stock of WAKO.

Eventually, Nishino and his brother[1] Yoshinobu Nishino (Yoshinobu) acquired more than 70% of the authorized capital

[1] TSN, May 7, 1993, p. 23.

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stock of WAKO, reducing Yamamoto's investment therein to, by his claim, 10%,[2] less than 10% according to Nishino.[3]

The corporate name of WAKO was later changed to, as reflected earlier, its current name NLII.

Negotiations subsequently ensued in light of a planned takeover of NLII by Nishino who would buy-out the shares of stock of Yamamoto. In the course of the negotiations, Yoshinobu and Nishino's counsel Atty. Emmanuel G. Doce (Atty. Doce) advised Yamamoto by letter dated October 30, 1991, the pertinent portions of which follow:

> Hereunder is a simple memorandum of the subject matters discussed with me by Mr. Yoshinobu Nishino yesterday, October 29th, based on the letter of Mr. Ikuo Nishino from Japan, and which I am now transmitting to you.[4]
>
> xxx xxx xxx
>
> 12. Machinery and Equipment:
>
> The following machinery/equipment have been contributed by you to the company:
>
> | | | |
> |---|---|---|
> | Splitting machine | - | 1 unit |
> | Samming machine | - | 1 unit |
> | Forklift | - | 1 unit |
> | Drums | - | 4 units |
> | Toggling machine | - | 2 units |
>
> Regarding the above machines, you may take them out with you (for your own use and sale) if you want, **provided**, the value of such machines is deducted from your and Wako's capital contributions, which will be paid to you.
>
> **Kindly let me know of your comments on all the above, soonest.**

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[2] *Id*. at 18.

[3] Records, p. 58.

[4] Exhibit "C", *id*. at 124.

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x x x[5] (Emphasis and underscoring supplied)

On the basis of such letter, Yamamoto attempted to recover the machineries and equipment which were, by Yamamoto's admission, part of his investment in the corporation,[6] but he was frustrated by respondents, drawing Yamamoto to file on January 15, 1992 before the Regional Trial Court (RTC) of Makati a complaint[7] against them for replevin.

Branch 45 of the Makati RTC issued a writ of replevin after Yamamoto filed a bond.[8]

In their Answer with Counterclaim,[9] respondents claimed that the machineries and equipment subject of replevin form part of Yamamoto's capital contributions in consideration of his equity in NLII and should thus be treated as corporate property; and that the above-said letter of Atty. Doce to Yamamoto was merely a proposal, "conditioned on [Yamamoto's] sell-out to . . . Nishino of his entire equity,"[10] which proposal was yet to be authorized by the stockholders and Board of Directors of NLII.

By way of Counterclaim, respondents, alleging that they suffered damage due to the seizure via the implementation of the writ of replevin over the machineries and equipment, prayed for the award to them of moral and exemplary damages, attorney's fees and litigation expenses, and costs of suit.

The trial court, by Decision of June 9, 1995, decided the case in favor of Yamamoto,[11] disposing thus:

WHEREFORE, judgment is hereby rendered: (1) declaring plaintiff as the rightful owner and possessor of the machineries in question,

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[5] Exhibit "C-3", *id*. at 127.

[6] *Vide* TSN, May 7, 1993, pp. 20-21,29, 35-36.

[7] Records, pp. 1-5.

[8] *Id*. at 39-50.

[9] *Id*. at 58-64.

[10] *Id*. at 61.

[11] *Id*. at 246-253. *Vide id*. at 220-228, 247-248.

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and making the writ of seizure permanent; (2) ordering defendants to pay plaintiff attorney's fees and expenses of litigation in the amount of Fifty Thousand Pesos (₱50,000.00), Philippine Currency; (3) dismissing defendants' counterclaims for lack of merit; and (4) ordering defendants to pay the costs of suit.

SO ORDERED.[12] (Underscoring supplied)

On appeal,[13] the Court of Appeals held in favor of herein respondents and accordingly **reversed** the RTC decision and dismissed the complaint.[14] In so holding, the appellate court found that the machineries and equipment claimed by Yamamoto are corporate property of NLII and may not thus be retrieved without the authority of the NLII Board of Directors;[15] and that petitioner's argument that Nishino and Yamamoto cannot hide behind the shield of corporate fiction does not lie,[16] nor does petitioner's invocation of the doctrine of promissory estoppel.[17] At the same time, the Court of Appeals found no ground to support respondents' Counterclaim.[18]

The Court of Appeals having denied[19] his Motion for Reconsideration,[20] Yamamoto filed the present petition,[21] faulting the Court of Appeals

A.

x x x IN HOLDING THAT THE VEIL OF CORPORATE FICTION SHOULD NOT BE PIERCED IN THE CASE AT BAR.

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[12] *Id*. at 253.

[13] *Id*. at 254.

[14] Decision of May 30, 2001, penned by Court of Appeals Associate Justice Josefina Guevara-Salonga, with the concurrence of Associate Justices Delilah Vidallon-Magtolis and Teodoro P. Regino. CA *rollo*, pp. 66-77.

[15] *Vide* id. at 73-74.

[16] *Id*. at 75.

[17] *Id*. at 74-75.

[18] *Id*. at 76.

[19] *Id*. at 94.

[20] *Id*. at 81-87.

[21] *Rollo*, pp. 16-34.

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B.

x x x IN HOLDING THAT THE DOCTRINE OF PROMISSORY ESTOPPEL DOES NOT APPLY TO THE CASE AT BAR.

C.

x x x IN HOLDING THAT RESPONDENTS ARE NOT LIABLE FOR ATTORNEY'S FEES.[22]

The resolution of the petition hinges, in the main, on whether the advice in the letter of Atty. Doce that Yamamoto may retrieve the machineries and equipment, which admittedly were part of his investment, bound the corporation. The Court holds in the negative.

Indeed, without a Board Resolution authorizing respondent Nishino to act for and in behalf of the corporation, he cannot bind the latter. Under the Corporation Law, unless otherwise provided, corporate powers are exercised by the Board of Directors.[23]

Urging this Court to *pierce the veil of corporate fiction*, Yamamoto argues, *viz*:

> During the negotiations, the issue as to the ownership of the Machiner[ies] never came up. Neither did the issue on the proper procedure to be taken to execute the complete take-over of the Company come up since Ikuo, Yoshinobu, and Yamamoto were the owners thereof, the presence of other stockholders being only for the purpose of complying with the minimum requirements of the law.
>
> What course of action the Company decides to do or not to do depends not on the "other members of the Board of Directors." **It depends on what Ikuo and Yoshinobu decide. The Company is but a mere instrumentality of Ikuo [and] Yoshinobu**.[24]
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> xxx xxx xxx

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[22] *Id*. at 23.

[23] *Vide* CORPORATION CODE, Section 23*; San Juan Structural & Steel Fabricators, Inc. v. Court of Appeals*, 357 Phil. 631, 644 (1998).

[24] *Rollo*, p. 25.

x x x The Company hardly holds board meetings. It has an inactive board, the directors are directors in name only and are there to do the bidding of the Nish[i]nos, nothing more. Its minutes are paper minutes. x x x[25]

xxx xxx xxx

The fact that the parties started at a 70-30 ratio and Yamamoto's percentage declined to 10% does not mean the 20% went to others. x x x The 20% went to no one else but Ikuo himself. x x x **Yoshinobu is the younger brother of Ikuo and has no say at all in the business. Only Ikuo makes the decisions. There were, therefore, no other members of the Board who have not given their approval**.[26] (Emphasis and underscoring supplied)

While the veil of separate corporate personality may be pierced when the corporation is merely an adjunct, a business conduit, or alter ego of a person,[27] the mere ownership by a single stockholder of even all or nearly all of the capital stocks of a corporation is not by itself a sufficient ground to disregard the separate corporate personality.[28]

The elements determinative of the applicability of the doctrine of piercing the veil of corporate fiction follow:

"1. Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so 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 fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of the plaintiff's legal rights; and

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[25] *Id*. at 27.

[26] *Id*. at 28.

[27] *Vide PNB v. Ritratto Group, Inc.*, 414 Phil. 494, 505 (2001) (citation omitted).

[28] *Vide Martinez v. Court of Appeals*, G.R. No. 131673, September 10, 2004, 438 SCRA 130, 150.

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

The absence of any one of these elements prevents "piercing the corporate veil." *In applying the 'instrumentality' or 'alter ego' doctrine, the courts are concerned with reality and not form, with how the corporation operated and the individual defendant's relationship to that operation."*[29] (Italics in the original; emphasis and underscoring supplied)

In relation to the second element, to disregard the separate juridical personality of a corporation, the wrongdoing or unjust act in contravention of a plaintiff's legal rights must be clearly and convincingly established; it cannot be presumed.[30] Without a demonstration that any of the evils sought to be prevented by the doctrine is present, it does not apply.[31]

In the case at bar, there is no showing that Nishino used the separate personality of NLII to unjustly act or do wrong to Yamamoto in contravention of his legal rights.

Yamamoto argues, in another vein, that *promissory estoppel* lies against respondents, thus:

Under the doctrine of promissory estoppel, x x x estoppel may arise from the making of a promise, even though without consideration, if it was intended that the promise should be relied upon and in fact it was relied upon, and if a refusal to enforce it would be virtually to sanction the perpetration of fraud or would result in other injustice.

x x x Ikuo and Yoshinobu wanted Yamamoto out of the Company. For this purpose negotiations were had between the parties. Having expressly given Yamamoto, through the Letter and through a subsequent meeting at the Manila Peninsula where Ikuo himself confirmed that Yamamoto may take out the Machinery from the

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[29] *Concept Builders, Inc. v. NLRC*, 326 Phil. 955, 966 (2001) (citation omitted).

[30] *Vide Solidbank Corporation v. Mindanao Ferroalloy Corporation*, G.R. No. 153535, July 28, 2005, 464 SCRA 409, 424-425 (citation omitted).

[31] *Vide Philippine National Bank v. Ritratto Group, Inc.*, *supra* note 27 at 506; *San Juan Structural and Steel Fabricators, Inc. v. Court of Appeals, supra* note 23 at 649.

Company anytime, respondents should not be allowed to turn around and do the exact opposite of what they have represented they will do.

In paragraph twelve (12) of the Letter, Yamamoto was expressly advised that he could take out the Machinery if he wanted to so, provided that the value of said machines would be deducted from his capital contribution x x x.

xxx xxx xxx

Respondents cannot now argue that they did not intend for Yamamoto to rely upon the Letter. That was the purpose of the Letter to begin with. Petitioner[s] in fact, relied upon said Letter and such reliance was further strengthened during their meeting at the Manila Peninsula.

To sanction respondents' attempt to evade their obligation would be to sanction the perpetration of fraud and injustice against petitioner.[32] (Underscoring supplied)

It bears noting, however, that the aforementioned paragraph 12 of the letter is followed by a request for Yamamoto to give his "comments on all the above, soonest."[33]

What was thus proffered to Yamamoto was not a promise, but a mere offer, subject to his acceptance. Without acceptance, a mere offer produces no obligation.[34]

Thus, under Article 1181 of the Civil Code, "[i]n conditional obligations, the acquisition of rights, as well as the extinguishment

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[32] *Rollo*, pp. 28-30 (citations omitted).

[33] Exhibit "C-3", records, p. 127.

[34] *Vide* CIVIL CODE, Article 1318:

> There is no contract unless the following requisites concur:
>
> (1) Consent of the contracting parties;
>
> (2) Object certain which is the subject matter of the contract;
>
> (3) Cause of the obligation which is established.;

Article 1319:

> Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer.
>
> xxx xxx xxx

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or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition." In the case at bar, there is no showing of compliance with the condition for allowing Yamamoto to take the machineries and equipment, namely, his agreement to the deduction of their value from his capital contribution due him in the buy-out of his interests in NLII. Yamamoto's allegation that he agreed to the condition[35] remained just that, no proof thereof having been presented.

The machineries and equipment, which comprised Yamamoto's investment in NLII,[36] thus remained part of the capital property of the corporation.[37]

It is settled that the property of a corporation is not the property of its stockholders or members.[38] Under the *trust fund doctrine*, the capital stock, property, and other assets of a corporation are regarded as equity in trust for the payment of corporate creditors which are preferred over the stockholders in the distribution of corporate assets.[39] The distribution of corporate assets and property cannot be made to depend on the whims and caprices of the stockholders, officers, or directors of the corporation unless the indispensable conditions and procedures for the protection of corporate creditors are followed.[40]

WHEREFORE, the petition is *DENIED*.

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[35] *Rollo*, p. 188.

[36] Records, pp. 60; Exhibits "B" – "B-1", records, pp. 122-123; Exhibit "C-3", records, p. 127; TSN, May 7, 1993, pp. 20-21, 35-36; CA *rollo*, p. 75.

[37] Vide *National Telecommunications Commission v. CA*, 370 Phil. 538, 544 (1999). "The term 'capital' and other terms used to describe the capital structure of a corporation are of universal acceptance, and their usages have long been established in jurisprudence. Briefly, capital refers to the value of the property or assets of a corporation."

[38] Vide *San Juan Structural and Steel Fabricators, Inc. v. Court of Appeals, supra* note 23 at 643.

[39] Vide *Boman Environmental Development Corporation v. Court of Appeals*, G.R. No. 77860, November 22, 1988, 167 SCRA 540, 548.

[40] Vide *Ong Yong v. Tiu*, 448 Phil. 860, 887 (2003).

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Costs against petitioner.

SO ORDERED.

Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

Quisumbing, J. (Chairperson), on official leave.

THIRD DIVISION

[G.R. No. 153420. April 16, 2008]

PARAISO INTERNATIONAL PROPERTIES, INC., *petitioner, vs.* **COURT OF APPEALS and PEOPLE'S HOUSING LAND CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WRIT OF *CERTIORARI*, WHEN ISSUED.— For a writ of *certiorari* to issue, the applicant must show that the court or tribunal acted with grave abuse of discretion in issuing the challenged order. Grave abuse of discretion is defined as such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave, as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; COMPROMISE AGREEMENT; DEFINED.— A compromise agreement is essentially a contract perfected by mere consent, the latter being manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract.