Supreme Court E-Library

FIRST DIVISION

[G.R. No. 129459. September 29, 1998]

SAN JUAN STRUCTURAL AND STEEL FABRICATORS, INC., *petitioner, vs.* **COURT OF APPEALS, MOTORICH SALES CORPORATION, NENITA LEE GRUENBERG, ACL DEVELOPMENT CORP. and JNM REALTY AND DEVELOPMENT CORP.,** *respondents.*

SYNOPSIS

Petitioner San Juan Structural and Steel Fabricators, Inc. entered into an agreement with private respondent Motorich Sales Corporation for the transfer to it of a parcel of land. Petitioner initially paid the downpayment in the amount of ₱100,000.00. When petitioner was ready with the amount corresponding to the balance, the payment did not push through because private respondent's treasurer, Nenita Lee Gruenberg, did not appear at the place agreed upon. Despite petitioner's repeated demands, private respondent disregarded its commitments and refused to execute the documents necessary to transfer the certificate of title. Petitioner was then constrained to file a complaint with the Regional Trial Court of Makati to compel private respondent corporation to execute a deed of absolute sale in accordance with their agreement. The trial court dismissed the complaint holding that private respondent corporation's treasurer, Nenita Lee Gruenberg was not authorized by the corporation to dispose of the subject property. Petitioner appealed to the Court of Appeals which affirmed the decision of the RTC. Hence, the present petition for review.

The Supreme Court ruled that the Agreement entered into by private respondent Nenita Lee Gruenberg in behalf of Motorich Sales Corporation is void under Article 1874 of the Civil Code being inexistent and void from the beginning. A corporation is a juridical person separate and distinct from its stockholders or members. The property of the corporation is not the property of its stockholders or members and may not be sold by the stockholders or members without the express

Supreme Court E-Library

authorization from the corporation's board of directors. The fact that Gruenberg is the treasurer of Motorich does not free petitioner from responsibility of ascertaining the extent of her authority to represent the corporation. Petitioner cannot assume that she, by virtue of her position, was authorized to sell the property of the corporation. Selling is obviously foreign to a corporate treasurer's function, which generally has been described as to receive and keep the funds of the corporation, and to disburse them in accordance with the authority given him by the board or the properly authorized officers.

SYLLABUS

1. **COMMERCIAL LAW; PRIVATE CORPORATIONS; TRANSFER OR SALE OF CORPORATE PROPERTY BY THE CORPORATION'S TREASURER WITHOUT ANY AUTHORITY FROM THE BOARD OF DIRECTORS IS NULL AND VOID.** — Indubitably, a corporation may act only through its board of directors or, when authorized either by its bylaws or by its board resolution, through its officers or agents in the normal course of business. The general principles of agency govern the relation between the corporation and its officers or agents, subject to the articles of incorporation, bylaws, or relevant provisions of law. Thus, this Court has held that "'a corporate officer or agent may represent and bind the corporation in transactions with third persons to the extent that the authority to do so has been conferred upon him, and this includes powers which have been intentionally conferred, and also such powers as, in the usual course of the particular business, are incidental to, or may be implied from, the powers intentionally conferred, powers added by custom and usage, as usually pertaining to the particular officer or agent, and such apparent powers as the corporation has caused persons dealing with the officer or agent to believe that it has conferred.'" Furthermore, the Court has also recognized the rule that "persons dealing with an assumed agent, whether the assumed agency be a general or special one, are bound their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controvert, the burden of proof is upon them to establish it (Harry Keeler *vs.* Rodriguez, 4 Phil. 19)." Unless duly authorized, a treasurer, whose powers are limited, cannot bind the corporation in a sale

Supreme Court E-Library

of its assets. In the case at bar, Respondent Motorich categorically denies that it ever authorized Nenita Gruenberg, its treasurer, to sell the subject parcel of land. Consequently, petitioner had the burden of proving that Nenita Gruenberg was in fact authorized to represent and bind Motorich in the transaction. Petitioner failed to discharge this burden. Its offer of evidence before the trial court contained no proof of such authority. It has not shown any provision of said respondent's articles of incorporation, bylaws or board resolution to prove that Nenita Gruenberg possessed such power. That Nenita Gruenberg is the treasurer of Motorich does not free petitioner from the responsibility of ascertaining the extent of her authority to represent the corporation. Petitioner cannot assume that she, by virtue of her position, was authorized to sell the property of the corporation. Selling is obviously foreign to a corporate treasurer's function, which generally has been described as "to received and keep the funds of the corporation and to disburse them in accordance with the authority given him by the board or the properly authorized officers." Neither was such real estate sale shown to be a normal business activity of Motorich. The primary purpose of Motorich is marketing, distribution, export and import in relation to a general merchandising business. Unmistakably, its treasurer is not cloaked with actual or apparent authority to buy or sell real property, an activity which falls way beyond the scope of her general authority.

2. **CIVIL LAW; CONTRACTS; A CONTRACT THAT IS CONSIDERED INEXISTENT AND VOID FROM THE BEGINNING IS NOT SUCEPTIBLE TO RATIFICATION.** — As a general rule, the acts of corporate officers within the scope of their authority are binding on the corporation. But when these officers exceed their authority, their actions "cannot bind the corporation, unless it has ratified such acts or is estopped from disclaiming them." In this case, there is a clear absence of proof that Motorich ever authorized Nenita Gruenberg, or made it appear to any third person that she had the authority, to sell its land or to received the earnest money. Neither was there any proof that Motorich ratified, expressly or impliedly, the contract. Petitioner rests its argument on the receipt which, however, does not prove the fact of ratification. The document is a hand-written one, not a corporate receipt, and it bears only Nenita Gruenberg's signature. Certainly, this document alone

Supreme Court E-Library

does not prove that her acts were authorized or ratified by Motorich. Article 1318 of the Civil Code lists the requisites of a valid and perfected contract: "(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." As found by the trial court and affirmed by the Court of Appeals, there is no evidence that Gruenberg was authorized to enter into the contract of sale, or that the said contract was ratified by Motorich. This factual finding of the two courts is binding on this Court. As the consent of the seller was not obtained, no contract to bind the obligor was perfected. Therefore, there can be no valid contract of sale between petitioner and Motorich. Because Motorich had never given a written authorization to Respondent Gruenberg to sell its parcel of land, we hold that the February 14, 1989 Agreement entered into by the latter with petitioner is void under Article 1874 of the Civil Code. Being inexistent and void from the beginning, said contract cannot be ratified.

3. **COMMERCIAL LAW; CORPORATION CODE; PIERCING THE CORPORATE VEIL IS NOT JUSTIFIED IN CASE AT BAR.** — We stress that the corporate fiction should be set aside when it becomes a shield against liability for fraud, illegality or inequity committed on third persons. The question of piercing the veil of corporate fiction is essentially, then, matter of proof. In the present case, however, the Courts finds no reason to pierce the corporate veil of Respondent Motorich. Petitioner utterly failed to establish that said corporation was formed, or that it is operated, for the purpose of shielding any alleged fraudulent or illegal activities of its officers or stockholders; or that the said veil was used to conceal fraud, illegality or inequity at the expense of third persons like petitioner.

4. **ID.; ID.; PRIVATE RESPONDENT CORPORATION IS NOT A CLOSE CORPORATION AS DEFINED UNDER SECTION 96 OF THE CORPORATION CODE.** — The articles of incorporation of Motorich Sales Corporation does not contain any provision stating that (1) the number of stockholders shall not exceed 20, or (2) a preemption of shares is restricted in favor of any stockholder or of the corporation, or (3) listing its stocks in any stock exchange or making a public offering of such stocks is prohibited. From its articles, it is clear that Respondent Motorich is not a close corporation. Motorich does

Supreme Court E-Library

not become one either, just because Spouses Reynaldo and Nenita Gruenberg owned 99.866% of its subscribed capital stock. The "[m]ere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personalities." So, too, a narrow distribution of ownership does not, by itself, make a close corporation.

5. **CIVIL LAW; DAMAGES; AWARD OF ATTORNEY'S FEES IS NOT JUSTIFIED IN CASE AT BAR; PETITIONER WAS A VICTIM OF IT'S OWN OFFICERS NEGLIGENCE IN ENTERING INTO A CONTRACT WITH AN UNAUTHORIZED OFFICER OF ANOTHER CORPORATION.** — We sustain the findings of both the trial and the appellate courts that the foregoing allegations lack factual bases. Hence, an award of damages or attorney's fees cannot be justified. The amount paid as "earnest money" was not proven to have redounded to the benefit of Respondent Motorich. Petitioner claims that said amount was deposited to the account of Respondent Motorich, because "it was deposited with the account of Aren Commercial c/o Motorich Sales Corporation." Respondent Gruenberg, however, disputes the allegations of petitioner. In any event, Gruenberg offered to return the amount to petitioner "xxx since the sale did not push through." Moreover, we note that Andres Co is not a neophyte in the world of corporate business. He has been the president of Petitioner Corporation for more than ten years and has also served as chief executive of two other corporate entities. Co cannot feign ignorance of the scope of the authority of a corporate treasurer such as Gruenberg. Neither can he be oblivious to his duty to ascertain the scope of Gruenberg's authorization to enter into a contract to sell a parcel of land belonging to Motorich. Indeed, petitioner's claim of fraud and bad faith is unsubstantiated and fails to persuade the Court. Indubitably, petitioner appears to be the victim of its own officer's negligence in entering into a contract with and paying an unauthorized officer of another corporation.

APPEARANCES OF COUNSEL

Albano & Associates for petitioner.
Tumangan & Partners for private respondents.

Supreme Court E-Library

DECISION

PANGANIBAN, *J.*:

May a corporate treasurer, by herself and without any authorization from the board of directors, validly sell a parcel of land owned by the corporation? May the veil of corporate fiction be pierced on the mere ground that almost all of the shares of stock of the corporation are owned by said treasurer and her husband?

The Case

These questions are answered in the negative by this Court in resolving the Petition for Review on *Certiorari* before us, assailing the March 18, 1997 Decision[1] of the Court of Appeals[2] in CA GR CV No. 46801 which, in turn, modified the July 18, 1994 Decision of the Regional Trial Court of Makati, Metro Manila, Branch 63[3] in Civil Case No. 89-3511. The RTC dismissed both the Complaint and the Counterclaim filed by the parties. On the other hand, the Court of Appeals ruled:

"WHEREFORE, premises considered, the appealed decision is AFFIRMED WITH MODIFICATION ordering defendant-appellee Nenita Lee Gruenberg to REFUND or return to plaintiff-appellant the downpayment of ₱100,000.00 which she received from plaintiff-appellant. There is no pronouncement as to costs."[4]

The petition also challenges the June 10, 1997 CA Resolution denying reconsideration.[5]

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[1] *Rollo*, pp. 54 to 65-A.

[2] Sixth Division, composed of *J.* Eduardo G. Montenegro, *ponente*; and *JJ.* Antonio M. Martinez, chairman (now a member of this Court); and Celia Lipana-Reyes, member, both concurring.

[3] Penned by Judge Julio R. Logarta.

[4] CA Decision, p. 14; *rollo*, p. 65-A.

[5] *Rollo*, p. 73.

Supreme Court E-Library

The Facts

The facts as found by the Court of Appeals are as follows:

"Plaintiff-appellant San Juan Structural and Steel Fabricators, Inc.'s amended complaint alleged that on 14 February 1989, plaintiff-appellant entered into an agreement with defendant-appellee Motorich Sales Corporation for the transfer to it of a parcel of land identified as Lot 30, Block 1 of the Acropolis Greens Subdivision located in the District of Murphy, Quezon City, Metro Manila, containing an area of Four Hundred Fourteen (414) square meters, covered by TCT No. (362909) 2876; that as stipulated in the Agreement of 14 February 1989, plaintiff-appellant paid the downpayment in the sum of One Hundred Thousand (₱100,000.00) Pesos, the balance to be paid on or before March 2, 1989; that on March 1, 1989, Mr. Andres T. Co, president of plaintiff-appellant corporation, wrote a letter to defendant-appellee Motorich Sales Corporation requesting for a computation of the balance to be paid; that said letter was coursed through defendant-appellee's broker, Linda Aduca, who wrote the computation of the balance; that on March 2, 1989, plaintiff-appellant was ready with the amount corresponding to the balance, covered by Metrobank Cashier's Check No. 004223, payable to defendant-appellee Motorich Sales Corporation; that plaintiff-appellant and defendant-appellee Motorich Sales Corporation were supposed to meet in the office of plaintiff-appellant but defendant-appellee's treasurer, Nenita Lee Gruenberg, did not appear; that defendant-appellee Motorich Sales Corporation despite repeated demands and in utter disregard of its commitments had refused to execute the Transfer of Rights/Deed of Assignment which is necessary to transfer the certificate of title; that defendant ACL Development Corp. is impleaded as a necessary party since Transfer Certificate of Title No. (362909) 2876 is still in the name of said defendant; while defendant JNM Realty & Development Corp. is likewise impleaded as a necessary party in view of the fact that it is the transferor of right in favor of defendant-appellee Motorich Sales Corporation; that on April 6, 1989, defendant ACL Development Corporation and Motorich Sales Corporation entered into a Deed of Absolute Sale whereby the former transferred to the latter the subject property; that by reason of said transfer, the Registry of Deeds of Quezon City issued a new title in the name of Motorich Sales Corporation, represented by defendant-appellee Nenita Lee Gruenberg and Reynaldo L. Gruenberg, under Transfer Certificate of Title No. 3571; that as a result of defendants-appellees

Supreme Court E-Library

Nenita Lee Gruenberg and Motorich Sales Corporation's bad faith in refusing to execute a formal Transfer of Rights/Deed of Assignment, plaintiff-appellant suffered moral and nominal damages which may be assessed against defendants-appellees in the sum of Five Hundred Thousand (500,000.00) Pesos; that as a result of defendants-appellees Nenita Lee Gruenberg and Motorich Sales Corporation's unjustified and unwarranted failure to execute the required Transfer of Rights/ Deed of Assignment or formal deed of sale in favor of plaintiff-appellant, defendants-appellees should be assessed exemplary damages in the sum of One Hundred Thousand (₱100,000.00) Pesos; that by reason of defendants-appellees' bad faith in refusing to execute a Transfer of Rights/Deed of Assignment in favor of plaintiff-appellant, the latter lost the opportunity to construct a residential building in the sum of One Hundred Thousand (₱100,000.00) Pesos; and that as a consequence of defendants-appellees Nenita Lee Gruenberg and Motorich Sales Corporation's bad faith in refusing to execute a deed of sale in favor of plaintiff-appellant, it has been constrained to obtain the services of counsel at an agreed fee of One Hundred Thousand (₱100,000.00) Pesos plus appearance fee for every appearance in court hearings.

"In its answer, defendants-appellees Motorich Sales Corporation and Nenita Lee Gruenberg interposed as affirmative defense that the President and Chairman of Motorich did not sign the agreement adverted to in par. 3 of the amended complaint; that Mrs. Gruenberg's signature on the agreement (ref: par. 3 of Amended Complaint) is inadequate to bind Motorich. The other signature, that of Mr. Reynaldo Gruenberg, President and Chairman of Motorich, is required; that plaintiff knew this from the very beginning as it was presented a copy of the Transfer of Rights (Annex B of amended complaint) at the time the Agreement (Annex B of amended complaint) was signed; that plaintiff-appellant itself drafted the Agreement and insisted that Mrs. Gruenberg accept the ₱100,000.00 as earnest money; that granting, without admitting, the enforceability of the agreement, plaintiff-appellant nonetheless failed to pay in legal tender within the stipulated period (up to March 2, 1989); that it was the understanding between Mrs. Gruenberg and plaintiff-appellant that the Transfer of Rights/Deed of Assignment will be signed only upon receipt of cash payment; thus they agreed that if the payment be in check, they will meet at a bank designated by plaintiff-appellant where they will encash the check and sign the Transfer of Rights/Deed. However, plaintiff-appellant informed Mrs. Gruenberg of the alleged availability of the check, by phone, only after banking hours.

Supreme Court E-Library

"On the basis of the evidence, the court *a quo* rendered the judgment appealed from[,] dismissing plaintiff-appellant's complaint, ruling that:

'The issue to be resolved is: whether plaintiff had the right to compel defendants to execute a deed of absolute sale in accordance with the agreement of February 14, 1989; and if so, whether plaintiff is entitled to damages.

'As to the first question, there is no evidence to show that defendant Nenita Lee Gruenberg was indeed authorized by defendant corporation, Motorich Sales, to dispose of that property covered by T.C.T. No. (362909) 2876. Since the property is clearly owned by the corporation, Motorich Sales, then its disposition should be governed by the requirement laid down in Sec. 40, of the Corporation Code of the Philippines, to wit:

> 'Sec. 40, Sale or other disposition of assets. Subject to the provisions of existing laws on illegal combination and monopolies, a corporation may by a majority vote of its board of directors xxx sell, lease, exchange, mortgage, pledge or otherwise dispose of all or substantially all of its property and assets, including its goodwill xxx when authorized by the vote of the stockholders representing at least two third (2/3) of the outstanding capital stock x x x.'

'No such vote was obtained by defendant Nenita Lee Gruenberg for that proposed sale[;] neither was there evidence to show that the supposed transaction was ratified by the corporation. Plaintiff should have been on the look out under these circumstances. More so, plaintiff himself [owns] several corporations (tsn dated August 16, 1993, p. 3) which makes him knowledgeable on corporation matters.

'Regarding the question of damages, the Court likewise, does not find substantial evidence to hold defendant Nenita Lee Gruenberg liable considering that she did not in anyway misrepresent herself to be authorized by the corporation to sell the property to plaintiff (tsn dated September 27, 1991, p. 8).

'In the light of the foregoing, the Court hereby renders judgment DISMISSING the complaint at instance for lack of merit.

Supreme Court E-Library

'Defendants' counterclaim is also DISMISSED for lack of basis.' (Decision, pp. 7-8; *Rollo*, pp. 34-35)"

For clarity, the Agreement dated February 14, 1989 is reproduced hereunder:

"AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This Agreement, made and entered into by and between:

MOTORICH SALES CORPORATION, a corporation duly organized and existing under and by virtue of Philippine Laws, with principal office address at 5510 South Super Hi-way cor. Balderama St., Pio del Pilar, Makati, Metro Manila, represented herein by its Treasurer, NENITA LEE GRUENBERG, hereinafter referred to as the TRANSFEROR;

- and -

SAN JUAN STRUCTURAL & STEEL FABRICATORS, a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at Sumulong Highway, Barrio Mambungan, Antipolo, Rizal, represented herein by its President, ANDRES T. CO, hereinafter referred to as the TRANSFEREE.

WITNESSETH, That:

WHEREAS, the TRANSFEROR is the owner of a parcel of land identified as Lot 30, Block 1 of the ACROPOLIS GREENS SUBDIVISION located at the District of Murphy, Quezon City, Metro Manila, containing an area of FOUR HUNDRED FOURTEEN (414) SQUARE METERS, covered by a TRANSFER OF RIGHTS between JNM Realty & Dev. Corp. as the Transferor and Motorich Sales Corp. as the Transferee;

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties have agreed as follows:

1. That the purchase price shall be at FIVE THOUSAND TWO HUNDRED PESOS (₱5,200.00) per square meter; subject to the following terms:

   a. Earnest money amounting to ONE HUNDRED THOUSAND PESOS (₱100,000.00), will be paid upon the execution of

Supreme Court E-Library

this agreement and shall form part of the total purchase price;

b. Balance shall be payable on or before March 2, 1989;

2. That the monthly amortization for the month of February 1989 shall be for the account of the Transferor; and that the monthly amortization starting March 21, 1989 shall be for the account of the Transferee;

The transferor warrants that he [sic] is the lawful owner of the above-described property and that there [are] no existing liens and/or encumbrances of whatsoever nature;

In case of failure by the Transferee to pay the balance on the date specified on 1. (b), the earnest money shall be forfeited in favor of the Transferor.

That upon full payment of the balance, the TRANSFEROR agrees to execute a TRANSFER OF RIGHTS/DEED OF ASSIGNMENT in favor of the TRANSFEREE.

IN WITNESS WHEREOF, the parties have hereunto set their hands this 14th day of February, 1989 at Greenhills, San Juan, Metro Manila, Philippines.

MOTORICH SALES CORPORATION	SAN JUAN STRUCTURAL STEEL FABRICATORS
TRANSFEROR	TRANSFEREE
[SGD.]	[SGD.]
By: NENITA LEE GRUENBERG Treasurer	By: ANDRES T. CO President

Signed in the presence of:

[SGD.]	[SGD.]

"[6]

In its recourse before the Court of Appeals, petitioner insisted:

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[6] Record, pp. 226-227.

Supreme Court E-Library

"1. Appellant is entitled to compel the appellees to execute a Deed of Absolute Sale in accordance with the Agreement of February 14, 1989,

2. Plaintiff is entitled to damages."[7]

As stated earlier, the Court of Appeals debunked petitioner's arguments and affirmed the Decision of the RTC with the modification that Respondent Nenita Lee Gruenberg was ordered to refund ₱100,000 to petitioner, the amount remitted as "downpayment" or "earnest money." Hence, this petition before us.[8]

The Issues

Before this Court, petitioner raises the following issues:

"I. Whether or not the doctrine of piercing the veil of corporate fiction is applicable in the instant case

"II. Whether or not the appellate court may consider matters which the parties failed to raise in the lower court

"III. Whether or not there is a valid and enforceable contract between the petitioner and the respondent corporation

"IV. Whether or not the Court of Appeals erred in holding that there is a valid correction/substitution of answer in the transcript of stenographic note[s]

"V. Whether or not respondents are liable for damages and attorney's fees"[9]

The Court synthesized the foregoing and will thus discuss them *seriatim* as follows:

1. Was there a valid contract of sale between petitioner and Motorich?

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[7] Petitioner's Brief before the Court of Appeals, p. 4; CA *rollo*, p. 21.

[8] This case was deemed submitted for resolution on May 15, 1998 upon receipt by this Court of the Memorandum for the Respondents. Petitioner's Memorandum was received earlier, on May 7, 1998.

[9] Petitioner's Memorandum, pp. 3-4; *rollo*, pp. 212-213.

Supreme Court E-Library

2. May the doctrine of piercing the veil of corporate fiction be applied to Motorich?

3. Is the alleged alteration of Gruenberg's testimony as recorded in the transcript of stenographic notes material to the disposition of this case?

4. Are respondents liable for damages and attorney's fees?

The Court's Ruling

The petition is devoid of merit.

First Issue: Validity of Agreement

Petitioner San Juan Structural and Steel Fabricators, Inc. alleges that on February 14, 1989, it entered through its president, Andres Co, into the disputed Agreement with Respondent Motorich Sales Corporation, which was in turn allegedly represented by its treasurer, Nenita Lee Gruenberg. Petitioner insists that "[w]hen Gruenberg and Co affixed their signatures on the contract they both consented to be bound by the terms thereof." Ergo, petitioner contends that the contract is binding on the two corporations. We do not agree.

True, Gruenberg and Co signed on February 14, 1989, the Agreement, according to which a lot owned by Motorich Sales Corporation was purportedly sold. Such contract, however, cannot bind Motorich, because it never authorized or ratified such sale.

A corporation is a juridical person separate and distinct from its stockholders or members. Accordingly, the property of the corporation is not the property of its stockholders or members and may not be sold by the stockholders or members without express authorization from the corporation's board of directors.[10] Section 23 of BP 68, otherwise known as the Corporation Code of the Philippines, provides:

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[10] *Traders Royal Bank v. Court of Appeals*, 177 SCRA 788, 792, September 26, 1989.

Supreme Court E-Library

"SEC. 23. *The Board of Directors or Trustees.* — Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year and until their successors are elected and qualified."

Indubitably, a corporation may act only through its board of directors or, when authorized either by its by-laws or by its board resolution, through its officers or agents in the normal course of business. The general principles of agency govern the relation between the corporation and its officers or agents, subject to the articles of incorporation, by-laws, or relevant provisions of law.[11] Thus, this Court has held that "'a corporate officer or agent may represent and bind the corporation in transactions with third persons to the extent that the authority to do so has been conferred upon him, and this includes powers which have been intentionally conferred, and also such powers as, in the usual course of the particular business, are incidental to, or may be implied from, the powers intentionally conferred, powers added by custom and usage, as usually pertaining to the particular officer or agent, and such apparent powers as the corporation has caused persons dealing with the officer or agent to believe that it has conferred.'"[12]

Furthermore, the Court has also recognized the rule that "persons dealing with an assumed agent, whether the assumed agency be a general or special one, are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to establish it (Harry Keeler *v.* Rodriguez, 4 Phil. 19)."[13] Unless

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[11] *Yao Ka Sin Trading v. Court of Appeals*, 209 SCRA 763, 781, June 15, 1992; citing 19 CJS 455.

[12] *Ibid.*, pp. 781-782; citing 19 CJS 456, per Davide, Jr., *J.*

[13] *BA Finance Corporation v. Court of Appeals*, 211 SCRA 112, 116, July 3, 1992, per Medialdea, *J.*

Supreme Court E-Library

duly authorized, a treasurer, whose powers are limited, cannot bind the corporation in a sale of its assets.[14]

In the case at bar, Respondent Motorich categorically denies that it ever authorized Nenita Gruenberg, its treasurer, to sell the subject parcel of land.[15] Consequently, petitioner had the burden of proving that Nenita Gruenberg was in fact authorized to represent and bind Motorich in the transaction. Petitioner failed to discharge this burden. Its offer of evidence before the trial court contained no proof of such authority.[16] It has not shown any provision of said respondent's articles of incorporation, by-laws or board resolution to prove that Nenita Gruenberg possessed such power.

That Nenita Gruenberg is the treasurer of Motorich does not free petitioner from the responsibility of ascertaining the extent of her authority to represent the corporation. Petitioner cannot assume that she, by virtue of her position, was authorized to sell the property of the corporation. Selling is obviously foreign to a corporate treasurer's function, which generally has been described as "to receive and keep the funds of the corporation, and to disburse them in accordance with the authority given him by the board or the properly authorized officers."[17]

Neither was such real estate sale shown to be a normal business activity of Motorich. The primary purpose of Motorich is marketing, distribution, export and import in relation to a general merchandising business.[18] Unmistakably, its treasurer is not cloaked with actual or apparent authority to buy or sell real

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[14] Justice Jose C. Campos, Jr. and Maria Clara Lopez-Campos, *The Corporation Code: Comments, Notes and Selected Cases*, Vol. I (1990), p. 386.

[15] Petitioner's Memorandum, pp. 16-17; *rollo*, pp. 242-243.

[16] *See* petitioner's Offer of Evidence before the RTC; Record, pp. 265-266.

[17] Campos and Campos, *supra*, p. 386.

[18] Articles of Incorporation of Motorich, pp. 1-2; CA *rollo*, pp. 86-87.

Supreme Court E-Library

property, an activity which falls way beyond the scope of her general authority.

Articles 1874 and 1878 of the Civil Code of the Philippines provides:

"ART. 1874. When a sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing; otherwise, the sale shall be void."

"ART. 1878. Special powers of attorney are necessary in the following case:

x x x x x x x x x

(5) To enter any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration;

x x x x x x x x x."

Petitioner further contends that Respondent Motorich has ratified said contract of sale because of its "acceptance of benefits," as evidenced by the receipt issued by Respondent Gruenberg.[19] Petitioner is clutching at straws.

As a general rule, the acts of corporate officers within the scope of their authority are binding on the corporation. But when these officers exceed their authority, their actions "cannot bind the corporation, unless it has ratified such acts or is estopped from disclaiming them."[20]

In this case, there is a clear absence of proof that Motorich ever authorized Nenita Gruenberg, or made it appear to any third person that she had the authority, to sell its land or to receive the earnest money. Neither was there any proof that Motorich ratified, expressly or impliedly, the contract. Petitioner rests its argument on the receipt, which, however, does not prove the fact of ratification. The document is a hand-written one, not a corporate receipt, and it bears only Nenita Gruenberg's

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[19] Petitioner's Memorandum, p. 11; *rollo*, p. 220.

[20] Art. 1910, Civil Code; Campos and Campos, *supra*, p. 385.

Supreme Court E-Library

signature. Certainly, this document alone does not prove that her acts were authorized or ratified by Motorich.

Article 1318 of the Civil Code lists the requisites of a valid and perfected contract: "(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." As found by the trial court[21] and affirmed by the Court of Appeals,[22] there is no evidence that Gruenberg was authorized to enter into the contract of sale, or that the said contract was ratified by Motorich. This factual finding of the two courts is binding on this Court.[23] As the consent of the seller was not obtained, no contract to bind the obligor was perfected. Therefore, there can be no valid contract of sale between petitioner and Motorich.

Because Motorich had never given a written authorization to Respondent Gruenberg to sell its parcel of land, we hold that the February 14, 1989 Agreement entered into by the latter with petitioner is void under Article 1874 of the Civil Code. Being inexistent and void from the beginning, said contract cannot be ratified.[24]

Second Issue:
Piercing the Corporate Veil Not Justified

Petitioner also argues that the veil of corporate fiction of Motorich should be pierced, because the latter is a close corporation. Since "Spouses Reynaldo L. Gruenberg and Nenita R. Gruenberg owned all or almost all or 99.866% to be accurate, of the subscribed capital stock"[25] of Motorich, petitioner argues that Gruenberg needed no authorization from the board to enter into the subject contract.[26] It adds that, being solely owned by

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[21] RTC Decision, p. 7; CA *rollo*, p. 34.

[22] CA Decision, p. 9; *rollo*, p. 62.

[23] *Fuentes v. Court of Appeals*, 268 SCRA 703, 710, February 26, 1997.

[24] Article 1409, Civil Code.

[25] CA Decision, pp. 4-5; *rollo*, pp. 213-214.

[26] *Ibid.*, p. 6; *rollo*, p. 215.

Supreme Court E-Library

the Spouses Gruenberg, the company can be treated as a close corporation which can be bound by the acts of its principal stockholder who needs no specific authority. The Court is not persuaded.

First, petitioner itself concedes having raised the issue belatedly,[27] not having done so during the trial, but only when it filed its sur-rejoinder before the Court of Appeals.[28] Thus, this Court cannot entertain said issue at this late stage of the proceedings. It is well-settled that points of law, theories and arguments not brought to the attention of the trial court need not be, and ordinarily will not be, considered by a reviewing court, as they cannot be raised for the first time on appeal.[29] Allowing petitioner to change horses in midstream, as it were, is to run roughshod over the basic principles of fair play, justice and due process.

Second, even if the above-mentioned argument were to be addressed at this time, the Court still finds no reason to uphold it. True, one of the advantages of a corporate form of business organization is the limitation of an investor's liability to the amount of the investment.[30] This feature flows from the legal theory that a corporate entity is separate and distinct from its stockholders. However, the statutorily granted privilege of a corporate veil may be used only for legitimate purposes.[31] On equitable considerations, the veil can be disregarded when it is utilized as a shield to commit fraud, illegality or inequity; defeat public convenience; confuse legitimate issues; or serve

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[27] *Ibid.*, p. 9; *rollo*, p. 218.

[28] CA *rollo*, pp. 78-79.

[29] *First Philippine International Bank v. Court of Appeals*, 252 SCRA 259, January 24, 1996; *Sanchez v. Court of Appeals*, G.R. No. 108947, p. 28, September 29, 1997; citing *Medida v. Court of Appeals*, 208 SCRA 887, 893, May 8, 1992 and *Caltex (Philippines), Inc. v. Court of Appeals*, 212 SCRA 448, 461, August 10, 1992.

[30] Campos and Campos, *supra*, p. 1.

[31] *Ibid.*, p. 149; Justice Jose C. Vitug, *Pandect of Commercial Law and Jurisprudence* (revised ed., 1990), p. 286.

Supreme Court E-Library

as a mere alter ego or business conduit of a person or an instrumentality, agency or adjunct of another corporation.[32]

Thus, the Court has consistently ruled that "[w]hen the fiction is used as a means of perpetrating a fraud or an illegal act or as a vehicle for the evasion of an existing obligation, the circumvention of statutes, the achievement or perfection of a monopoly or generally the perpetration of knavery or crime, the veil with which the law covers and isolates the corporation from the members or stockholders who compose it will be lifted to allow for its consideration merely as an aggregation of individuals."[33]

We stress that the corporate fiction should be set aside when it becomes a shield against liability for fraud, illegality or inequity committed on third persons. The question of piercing the veil of corporate fiction is essentially, then, a matter of proof. In the present case, however, the Court finds no reason to pierce the corporate veil of Respondent Motorich. Petitioner utterly failed to establish that said corporation was formed, or that it is operated, for the purpose of shielding any alleged fraudulent or illegal activities of its officers or stockholders; or that the said veil was used to conceal fraud, illegality or inequity at the expense of third persons like petitioner.

Petitioner claims that Motorich is a close corporation. We rule that it is not. Section 96 of the Corporation Code defines a close corporation as follows:

"SEC. 96. *Definition and Applicability of Title.* — A close corporation, within the meaning of this Code, is one whose articles

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[32] *Umali v. Court of Appeals*, 189 SCRA 529, 542, September 13, 1990; citing *Koppel (Philippines), Inc. v. Yatco*, 77 Phil. 496 (1946) and *Telephone Engineering & Service Co., Inc. v. Workmen's Compensation Commission, et al.*, 104 SCRA 354, May 13, 1981. See also *First Philippine International Bank v. Court of Appeals, supra*, 287-288 and *Boyer-Roxas vs. Court of Appeals*, 211 SCRA 470, 484-487, July 14, 1992.

[33] *First Philippine International Bank v. Court of Appeals, supra*, pp. 287-288, per Panganiban, *J.*; citing *Villa-Rey Transit, Inc. v. Ferrer*, 25 SCRA 845, 857-858, October 29, 1968.

Supreme Court E-Library

of incorporation provide that: (1) All of the corporation's issued stock of all classes, exclusive of treasury shares, shall be held of record by not more than a specified number of persons, not exceeding twenty (20); (2) All of the issued stock of all classes shall be subject to one or more specified restrictions on transfer permitted by this Title; and (3) The corporation shall not list in any stock exchange or make any public offering of any of its stock of any class. Notwithstanding the foregoing, a corporation shall be deemed not a close corporation when at least two-thirds (2/3) of its voting stock or voting rights is owned or controlled by another corporation which is not a close corporation within the meaning of this Code. xxx."

The articles of incorporation[34] of Motorich Sales Corporation does not contain any provision stating that (1) the number of stockholders shall not exceed 20, or (2) a preemption of shares is restricted in favor of any stockholder or of the corporation, or (3) listing its stocks in any stock exchange or making a public offering of such stocks is prohibited. From its articles, it is clear that Respondent Motorich is not a close corporation.[35] Motorich does not become one either, just because Spouses Reynaldo and Nenita Gruenberg owned 99.866% of its subscribed capital stock. The "[m]ere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personalities."[36] So, too, a narrow distribution of ownership does not, by itself, make a close corporation.

Petitioner cites *Manuel R. Dulay Enterprises, Inc. v. Court of Appeals*[37] wherein the Court ruled that "xxx petitioner

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[34] CA *rollo*, pp. 85-94.

[35] See *Abejo v. De la Cruz*, 149 SCRA 654, 667, May 19, 1987.

[36] *Santos v. National Labor Relations Commission*, 254 SCRA 673, March 13, 1996, per Vitug, *J.*; citing *Sunio v. National Labor Relations Commission*, 127 SCRA 390, 397-398, January 31, 1984. *See also* Vitug, *supra*, p. 286; citing *Burnet v. Clarke*, 287 US 410, L. ed. 397.

[37] 225 SCRA 678, August 27, 1993; cited in Memorandum for Petitioner, pp. 6-7; *rollo*, pp. 215-216.

Supreme Court E-Library

corporation is classified as a close corporation and, consequently, a board resolution authorizing the sale or mortgage of the subject property is not necessary to bind the corporation for the action of its president."[38] But the factual milieu in *Dulay* is not on all fours with the present case. In *Dulay*, the sale of real property was contracted by the president of a close corporation with the knowledge and acquiescence of its board of directors.[39] In the present case, Motorich is not a close corporation, as previously discussed, and the agreement was entered into by the corporate treasurer without the knowledge of the board of directors.

The Court is not unaware that there are exceptional cases where "an action by a director, who singly is the controlling stockholder, may be considered as a binding corporate act and a board action as nothing more than a mere formality."[40] The present case, however, is not one of them.

As stated by petitioner, Spouses Reynaldo and Nenita Gruenberg own "almost 99.866%" of Respondent Motorich.[41] Since Nenita is not the sole controlling stockholder of Motorich, the aforementioned exception does not apply. Granting *arguendo* that the corporate veil of Motorich is to be disregarded, the subject parcel of land would then be treated as conjugal property of Spouses Gruenberg, because the same was acquired during their marriage. There being no indication that said spouses, who appear to have been married before the effectivity of the Family Code, have agreed to a different property regime, their property relations would be governed by conjugal partnership of gains.[42] As a consequence, Nenita Gruenberg could not have effected a sale of the subject lot because "[t]here is no co-

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[38] *Ibid.*, p. 684, per Nocon, *J.*

[39] *Ibid.*, pp. 684-686.

[40] Vitug, *supra*, p. 355.

[41] Petitioner's Memorandum, p. 5; *rollo*, p. 214. *See also* Articles of Incorporation of Motorich, p. 7; CA *rollo*, p. 92.

[42] Arturo M. Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. I (1990), p. 408.

Supreme Court E-Library

ownership between the spouses in the properties of the conjugal partnership of gains. Hence, neither spouse can alienate in favor of another his or her interest in the partnership or in any property belonging to it; neither spouse can ask for a partition of the properties before the partnership has been legally dissolved."[43]

Assuming further, for the sake of argument, that the spouses' property regime is the absolute community of property, the sale would still be invalid. Under this regime, "alienation of community property must have the written consent of the other spouse or the authority of the court without which the disposition or encumbrance is *void*."[44] Both requirements are manifestly absent in the instant case.

Third Issue: Challenged Portion of TSN Immaterial

Petitioner calls our attention to the following excerpt of the transcript of stenographic notes(TSN):

"Q Did you ever represent to Mr. Co that you were authorized by the corporation to sell the property?

A Yes, sir."[45]

Petitioner claims that the answer "Yes" was crossed out, and, in its place was written a "No" with an initial scribbled above it.[46] This, however, is insufficient to prove that Nenita Gruenberg was authorized to represent Respondent Motorich in the sale of its immovable property. Said excerpt should be understood in the context of her whole testimony. During her cross-examination, Respondent Gruenberg testified:

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[43] *Ibid.*, p. 412.

[44] Justice Jose C. Vitug, *Compendium of Civil Law and Jurisprudence*, (revised ed., 1993), p. 177.

[45] TSN, September 27, 1993, p. 8; Record, p. 360. Cited in Petitioner's Memorandum, p. 12; *rollo*, p. 221.

[46] Petitioner's Memorandum, p. 12; *rollo*, p. 221.

Supreme Court E-Library

"Q So, you signed in your capacity as the treasurer?

[A] Yes, sir.

Q Even then you kn[e]w all along that you [were] not authorized?

A Yes, sir.

Q You stated on direct examination that you did not represent that you were authorized to sell the property?

A Yes, sir.

Q But you also did not say that you were not authorized to sell the property, you did not tell that to Mr. Co, is that correct?

A That was not asked of me.

Q Yes, just answer it.

A I just told them that I was the treasurer of the corporation and it [was] also the president who [was] also authorized to sign on behalf of the corporation.

Q You did not say that you were not authorized nor did you say that you were authorized?

A Mr. Co was very interested to purchase the property and he offered to put up a ₱100,000.00 earnest money at that time. That was our first meeting."[47]

Clearly then, Nenita Gruenberg did not testify that Motorich had authorized her to sell its property. On the other hand, her testimony demonstrates that the president of Petitioner Corporation, in his great desire to buy the property, threw caution to the wind by offering and paying the earnest money without first verifying Gruenberg's authority to sell the lot.

Fourth Issue:
Damages and Attorney's Fees

Finally, petitioner prays for damages and attorney's fees, alleging that "[i]n an utter display of malice and bad faith,

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[47] TSN, September 27, 1993, p. 16.

Supreme Court E-Library

[r]espondents attempted and succeeded in impressing on the trial court and [the] Court of Appeals that Gruenberg did not represent herself as authorized by Respondent Motorich despite the receipt issued by the former specifically indicating that she was signing on behalf of Motorich Sales Corporation. Respondent Motorich likewise acted in bad faith when it claimed it did not authorize Respondent Gruenberg and that the contract [was] not binding, [insofar] as it [was] concerned, despite receipt and enjoyment of the proceeds of Gruenberg's act."[48] Assuming that Respondent Motorich was not a party to the alleged fraud, petitioner maintains that Respondent Gruenberg should be held liable because she "acted fraudulently and in bad faith [in] representing herself as duly authorized by [R]espondent [C]orporation."[49]

As already stated, we sustain the findings of both the trial and the appellate courts that the foregoing allegations lack factual bases. Hence, an award of damages or attorney's fees cannot be justified. The amount paid as "earnest money" was not proven to have redounded to the benefit of Respondent Motorich. Petitioner claims that said amount was deposited to the account of Respondent Motorich, because "it was deposited with the account of Aren Commercial c/o Motorich Sales Corporation."[50] Respondent Gruenberg, however, disputes the allegations of petitioner. She testified as follows:

"Q You voluntarily accepted the ₱100,000.00, as a matter of fact, that was encashed, the check was encashed.

A Yes, sir, the check was paid in my name and I deposit[ed] it

. . . . . .

Q In your account?

A Yes, sir."[51]

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[48] Petitioner's Memorandum, p. 14, *rollo*, p. 223.

[49] *Ibid.*, p.15; *rollo*, p. 224.

[50] *Ibid.*, p. 11; *rollo*, p. 220.

[51] TSN, September 27, 1993, pp. 16-17; Record, pp. 368-369.

Supreme Court E-Library

In any event, Gruenberg offered to return the amount to petitioner "xxx since the sale did not push through."[52]

Moreover, we note that Andres Co is not a neophyte in the world of corporate business. He has been the president of Petitioner Corporation for more than ten years and has also served as chief executive of two other corporate entities.[53] Co cannot feign ignorance of the scope of the authority of a corporate treasurer such as Gruenberg. Neither can he be oblivious to his duty to ascertain the scope of Gruenberg's authorization to enter into a contract to sell a parcel of land belonging to Motorich.

Indeed, petitioner's claim of fraud and bad faith is unsubstantiated and fails to persuade the Court. Indubitably, petitioner appears to be the victim of its own officer's negligence in entering into a contract with and paying an unauthorized officer of another corporation.

As correctly ruled by the Court of Appeals, however, Nenita Gruenberg should be ordered to return to petitioner the amount she received as earnest money, as "no one shall enrich himself at the expense of another,"[54] a principle embodied in Article 2154 of the Civil Code.[55] Although there was no binding relation between them, petitioner paid Gruenberg on the mistaken belief that she had the authority to sell the property of Motorich.[56] Article 2155 of the Civil Code provides that "[p]ayment by reason of a mistake in the construction or application of a difficult question of law may come within the scope of the preceding article."

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[52] *Ibid.*, p. 17; Record, p. 369.

[53] TSN, August 16, 1993, p. 3; Record, p. 341. Cited in Memorandum for Respondents, p.19; *rollo*, p. 245.

[54] Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. V (1990), p. 581.

[55] "Art. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises."

[56] *See* Tolentino, *supra*, Vol. V, p. 581.

Supreme Court E-Library

WHEREFORE, the petition is hereby *DENIED* and the assailed Decision is *AFFIRMED*.

SO ORDERED.

Davide, Jr. (Chairman), Bellosillo, Vitug, and *Quisumbing, JJ.*, concur.

EN BANC

[G.R. No. 129529. September 29, 1998]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LEOPOLDO ILAO** *y* **MARAGA,** *accused-appellant.*

SYNOPSIS

Appellant and his wife Ruby had a fight inside their hut in the afternoon of February 7, 1995 so Ruby spent the night at the house of her brother-in-law. Left behind with appellant in the hut were the couple's children namely, Jonalyn, Jovelyn and Richard. Jonalyn, suffering from a mental deficiency was eleven years of age, Jovelyn was eight while Richard was four years old. At around 9:30 P.M. of that day, appellant instructed Jovelyn and Richard to go out of their hut. Fearful that her drunken father might do something bad to Jonalyn, Jovelyn peeped into the hut through a two and a half-inch opening in the wall thereof. Jovelyn saw appellant remove Jonalyn's underwear while the latter was lying on the floor. She saw the naked appellant climb atop the body of Jonalyn. Once on top of Jonalyn, appellant, in the innocent words of Jovelyn, did to Jonalyn what he does to her mother. Jovelyn heard her sister scream in pain. When asked where appellant's penis was at that time, Jovelyn answered that appellant's sexual organ was on top of Jonalyn's vagina. When Ruby went back to their house in the morning of February 8, Jovelyn revealed to her