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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

NUCCIO SAVERIO and NS INTERNATIONAL, INC.,
Petitioners,

- versus -

ALFONSO G. PUYAT,
Respondent.

G.R. No. 186433

Present:

CARPIO, *J.*,
Chairperson,
BRION,
DEL CASTILLO,
ABAD,* and
PEREZ, *JJ.*

Promulgated:

NOV 27 2013

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DECISION

BRION, *J.*:

We resolve the petition for review on *certiorari*,[1] filed by petitioners Nuccio Saverio and NS International, Inc. (*NSI*) against respondent Alfonso G. Puyat, challenging the October 27, 2008 decision[2] and the February 10, 2009 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. CV. No. 87879. The CA decision affirmed the December 15, 2004 decision[4] of the Regional Trial Court (*RTC*) of Makati City, Branch 136, in Civil Case No. 00-594. The CA subsequently denied the petitioners' motion for reconsideration.

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* Designated as Acting Member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1619 dated November 22, 2013.

1 Under Rule 45 of the Rules of Court; *rollo*, pp. 9-20.

2 Id. at 23-34; penned by Associate Justice Andres B. Reyes, Jr., and concurred in by Associate Justices Jose C. Mendoza and Sesinando E. Villon.

3 Id. at 36-39.

4 Id. at 95-108; penned by Judge Rebecca R. Mariano.

The Factual Antecedents

On July 22, 1996, the respondent granted a loan to NSI. The loan was made pursuant to the Memorandum of Agreement and Promissory Note (*MOA*)[5] between the respondent and NSI, represented by Nuccio. It was agreed that the respondent would extend a credit line with a limit of ₱500,000.00 to NSI, to be paid within thirty (30) days from the time of the signing of the document. The loan carried an interest rate of 17% per annum, or at an adjusted rate of 25% per annum if payment is beyond the stipulated period. The petitioners received a total amount of ₱300,000.00 and certain machineries intended for their fertilizer processing plant business (*business*). The proposed business, however, failed to materialize.

On several occasions, Nuccio made personal payments amounting to ₱600,000.00. However, as of December 16, 1999, the petitioners allegedly had an outstanding balance of ₱460,505.86. When the petitioners defaulted in the payment of the loan, the respondent filed a collection suit with the RTC, alleging mainly that the petitioners still owe him the value of the machineries as shown by the Breakdown of Account[6] he presented.

The petitioners refuted the respondent's allegation and insisted that they have already paid the loan, evidenced by the respondent's receipt for the amount of ₱600,000.00. They submitted that their remaining obligation to pay the machineries' value, if any, had long been extinguished by their business' failure to materialize. They posited that, even assuming without conceding that they are liable, the amount being claimed is inaccurate, the penalty and the interest imposed are unconscionable, and an independent accounting is needed to determine the exact amount of their liability.

The RTC Ruling

In its decision dated December 15, 2004, the RTC found that aside from the cash loan, the petitioners' obligation to the respondent also covered the payment of the machineries' value. The RTC also brushed aside the petitioners' claim of partnership. The RTC thus ruled that the payment of ₱600,000.00 did not completely extinguish the petitioners' obligation.

The RTC also found merit in the respondent's contention that the petitioners are one and the same. Based on Nuccio's act of entering a loan with the respondent for purposes of financing NSI's proposed business and

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5 Id. at 52-54.

6 Id. at 55-56.

his own admission during cross-examination that the word "NS" in NSI's name stands for "Nuccio Saverio," the RTC found that the application of the doctrine of piercing the veil of corporate fiction was proper.

The RTC, moreover, concluded that the interest rates stipulated in the MOA were not usurious and that the respondent is entitled to attorney's fees on account of the petitioners' willful breach of the loan obligation. Thus, principally relying on the submitted Breakdown of Account, the RTC ordered the petitioners, jointly and severally, to pay the balance of ₱460,505.86, at 12% interest, and attorney's fees equivalent to 25% of the total amount due.

The CA Ruling

The petitioners appealed the RTC ruling to the CA. There, they argued that in view of the lack of proper accounting and the respondent's failure to substantiate his claims, the exact amount of their indebtedness had not been proven. Nuccio also argued that by virtue of NSI's separate and distinct personality, he cannot be made solidarily liable with NSI.

On October 27, 2008, the CA rendered a decision[7] declaring the petitioners jointly and severally liable for the amount that the respondent sought. The appellate court likewise held that since the petitioners neither questioned the delivery of the machineries nor their valuation, their obligation to pay the amount of ₱460,505.86 under the Breakdown of Account remained unrefuted.

The CA also affirmed the RTC ruling that petitioners are one and the same for the following reasons: (1) Nuccio owned forty percent (40%) of NSI; (2) Nuccio personally entered into the loan contract with the respondent because there was no board resolution from NSI; (3) the petitioners were represented by the same counsel; (4) the failure of NSI to object to Nuccio's acts shows the latter's control over the corporation; and (5) Nuccio's control over NSI was used to commit a wrong or fraud. It further adopted the RTC's findings of bad faith and willful breach of obligation on the petitioners' part, and affirmed its award of attorney's fees.

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7 *Supra* note 2.

The Petition

The petitioners submit that the CA gravely erred in ruling that a proper accounting was not necessary. They argue that the Breakdown of Account - which the RTC used as a basis in awarding the claim, as affirmed by the CA - is hearsay since the person who prepared it, Ramoncito P. Puyat, was not presented in court to authenticate it. They also point to the absence of the award's computation in the RTC ruling, arguing that assuming they are still indebted to the respondent, the specific amount of their indebtedness remains undetermined, thus the need for an accounting to determine their exact liability.

They further question the CA's findings of solidary liability. They submit that in the absence of any showing that corporate fiction was used to defeat public convenience, justify a wrong, protect fraud or defend a crime, or where the corporation is a mere alter ego or business conduit of a person, Nuccio's mere ownership of forty percent (40%) does not justify the piercing of the separate and distinct personality of NSI.

The Case for the Respondent

The respondent counters that the issues raised by the petitioners in the present petition – pertaining to the correctness of the calibration of the documentary and testimonial evidence by the RTC, as affirmed by the CA, in awarding the money claims – are essentially factual, not legal. These issues, therefore, cannot, as a general rule, be reviewed by the Supreme Court in an appeal by *certiorari*. In other words, the resolution of the assigned errors is beyond the ambit of a Rule 45 petition.

The Issue

The case presents to us the issue of whether the CA committed a reversible error in affirming the RTC's decision holding the petitioners jointly and severally liable for the amount claimed.

Our Ruling

After a review of the parties' contentions, we hold that a remand of the case to the court of origin for a complete accounting and determination of the actual amount of the petitioners' indebtedness is called for.

The determination of questions of fact is improper in a Rule 45 proceeding; Exceptions.

The respondent questions the present petition's propriety, and contends that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised. He argues that the petitioners are raising factual issues that are not permissible under the present petition and these issues have already been extensively passed upon by the RTC and the CA.

The petitioners, on the other hand, assert that the exact amount of their indebtedness has not been determined with certainty. They insist that the amount of ₱460,505.86 awarded in favor of the respondent has no basis because the latter failed to substantiate his claim. They also maintain that the Breakdown of Account used by the lower courts in arriving at the collectible amount is unreliable for the respondent's failure to adduce supporting documents for the alleged additional expenses charged against them. With no independent determination of the actual amount of their indebtedness, the petitioners submit that an order for a proper accounting is imperative.

We agree with the petitioners. While we find the fact of indebtedness to be undisputed, the determination of the extent of the adjudged money award is not, because of the lack of any supporting documentary and testimonial evidence. These evidentiary issues, of course, are necessarily factual, but as we held in *The Insular Life Assurance Company, Ltd. v. Court of Appeals*,[8] this Court may take cognizance even of factual issues under exceptional circumstances. In this cited case, we held:

> It is a settled rule that in the exercise of the Supreme Court's power of review, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the CA are conclusive and binding on the Court. However, the Court had recognized several exceptions to this rule, to wit: (1) **when the findings are grounded entirely on speculation, surmises or conjectures**; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the

[8] G.R. No. 126850, April 28, 2004, 428 SCRA 79, 85-86; emphasis ours, citations omitted.

> petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

We note in this regard that the RTC, in awarding the amount of ₱460,505.86 in favor of the respondent, principally relied on the Breakdown of Account. Under this document, numerous entries, including the cash loan, were enumerated and identified with their corresponding amounts. It included the items of expenses allegedly chargeable to the petitioners, the value of the machineries, the amount credited as paid, and the interest and penalty allegedly incurred.

A careful perusal of the records, however, reveals that the entries in the Breakdown of Account and their corresponding amounts are not supported by the respondent's presented evidence. The itemized expenses, as repeatedly pointed out by the petitioners, were not proven, and the remaining indebtedness, after the partial payment of ₱600,000.00, was merely derived by the RTC from the Breakdown of Account.

Significantly, the RTC ruling neither showed how the award was computed nor how the interest and penalty were calculated. In fact, it merely declared the petitioners liable for the amount claimed by the respondent and adopted the breakdown of liability in the Breakdown of Account. This irregularity is even aggravated by the RTC's explicit refusal to explain why the payment of ₱600,000.00 did not extinguish the debt. While it may be true that the petitioners' indebtedness, aside from the cash loan of ₱300,000.00, undoubtedly covered the value of the machineries, the RTC decision was far from clear and instructive on the actual remaining indebtedness (inclusive of the machineries' value, penalties and interests) after the partial payment was made and how these were all computed.

We, thus, find it unacceptable for the RTC to simply come up with a conclusion that the payment of ₱600,000.00 did not extinguish the debt, or, assuming it really did not, that the remaining amount of indebtedness amounts exactly to ₱460,505.86, without any showing of how this balance was arrived at. To our mind, the RTC's ruling, in so far as the determination of the actual indebtedness is concerned, is incomplete.

What happened at the RTC likewise transpired at the CA when the latter affirmed the appealed decision; the CA merely glossed over the contention of the petitioners, and adopted the RTC's findings without giving

any enlightenment. To reiterate, nowhere in the decisions of the RTC and the CA did they specify how the award, including the penalty and interest, was determined. The petitioners were left in the dark as to how their indebtedness of ₱300,000.00, after making a payment of ₱600,000.00, ballooned to ₱460,505.86. Worse, unsubstantiated expenses, appearing in the Breakdown of Account, were charged to them.

We, therefore, hold it inescapable that the prayer for proper accounting to determine the petitioners' actual remaining indebtedness should be granted. As this requires presentation of additional evidence, a remand of the case is only proper and in order.

Piercing the veil of corporate fiction is not justified. The petitioners are not one and the same.

At the outset, we note that the question of whether NSI is an alter ego of Nuccio is a factual one. This is also true with respect to the question of whether the totality of the evidence adduced by the respondent warrants the application of the piercing the veil of corporate fiction doctrine. As we did in the issue of accounting, we hold that the Court may properly wade into the piercing the veil issue although purely factual questions are involved.

After a careful study of the records and the findings of both the RTC and the CA, we hold that their conclusions, based on the given findings, are not supported by the evidence on record.

The rule is settled that a corporation is vested by law with a personality separate and distinct from the persons composing it. Following this principle, a stockholder, generally, is not answerable for the acts or liabilities of the corporation, and vice versa. The obligations incurred by the corporate officers, or other persons acting as corporate agents, are the direct accountabilities of the corporation they represent, and not theirs. A director, officer or employee of a corporation is generally not held personally liable for obligations incurred by the corporation[9] and while there may be instances where solidary liabilities may arise, these circumstances are exceptional.[10]

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[9] *Heirs of Fe Tan Uy v. International Exchange Bank*, G.R. Nos. 166282 and 166283, February 13, 2013, 690 SCRA 519, 525-526.

[10] *MAM Realty Devt. Corp. v. NLRC*, 314 Phil. 838, 844-845 (1995).

Incidentally, we have ruled that mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stocks of the corporation is not, by itself, a sufficient ground for disregarding the separate corporate personality. Other than mere ownership of capital stocks, circumstances showing that the corporation is being used to commit fraud or proof of existence of absolute control over the corporation have to be proven. In short, before the corporate fiction can be disregarded, alter-ego elements must first be sufficiently established.

In *Hi-Cement Corporation v. Insular Bank of Asia and America (later PCI-Bank, now Equitable PCI-Bank)*,[11] we refused to apply the piercing the veil doctrine on the ground that the corporation was a mere alter ego because mere ownership by a stockholder of all or nearly all of the capital stocks of a corporation does not, by itself, justify the disregard of the separate corporate personality. In this cited case, we ruled that in order for the ground of corporate ownership to stand, the following circumstances should also be established: (1) that the stockholders had control or complete domination of the corporation's finances and that the latter had no separate existence with respect to the act complained of; (2) that they used such control to commit a wrong or fraud; and (3) the control was the proximate cause of the loss or injury.

Applying these principles to the present case, we opine and so hold that the attendant circumstances do not warrant the piercing of the veil of NSI's corporate fiction.

Aside from the undisputed fact of Nuccio's 40% shareholdings with NSI, the RTC applied the piercing the veil doctrine based on the following reasons. *First*, there was no board resolution authorizing Nuccio to enter into a contract of loan. *Second*, the petitioners were represented by one and the same counsel. *Third*, NSI did not object to Nuccio's act of contracting the loan. *Fourth*, the control over NSI was used to commit a wrong or fraud. *Fifth*, Nuccio's admission that "NS" in the corporate name "NSI" means "Nuccio Saverio."

We are not convinced of the sufficiency of these cited reasons. In our view, the RTC failed to provide a clear and convincing explanation why the doctrine was applied. It merely declared that its application of the doctrine of piercing the veil of corporate fiction has a basis, specifying for this purpose the act of Nuccio's entering into a contract of loan with the respondent and the reasons stated above.

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11 560 Phil. 535 (2007).

The records of the case, however, do not show that Nuccio had control or domination over NSI's finances. The mere fact that it was Nuccio who, in behalf of the corporation, signed the MOA is not sufficient to prove that he exercised control over the corporation's finances. Neither the absence of a board resolution authorizing him to contract the loan nor NSI's failure to object thereto supports this conclusion. These may be indicators that, among others, may point the proof required to justify the piercing the veil of corporate fiction, but by themselves, they do not rise to the level of proof required to support the desired conclusion. It should be noted in this regard that while Nuccio was the signatory of the loan and the money was delivered to him, the proceeds of the loan were unquestionably intended for NSI's proposed business plan. That the business did not materialize is not also sufficient proof to justify a piercing, in the absence of proof that the business plan was a fraudulent scheme geared to secure funds from the respondent for the petitioners' undisclosed goals.

Considering that the basis for holding Nuccio liable for the payment of the loan has been proven to be insufficient, we find no justification for the RTC to hold him jointly and solidarily liable for NSI's unpaid loan. Similarly, we find that the CA ruling is wanting in sufficient explanation to justify the doctrine's application and affirmation of the RTC's ruling. With these points firmly in mind, we hold that NSI's liability should not attach to Nuccio.

On the final issue of the award of attorney's fees, Article 1229 of the New Civil Code provides:

> Article 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.

Under the circumstances of the case, we find the respondent's entitlement to attorney's fees to be justified. There is no doubt that he was forced to litigate to protect his interest, *i.e.*, to recover his money. We find, however, that in view of the partial payment of ₱600,000.00, the award of attorney's fees equivalent to 25% should be reduced to 10% of the total amount due. The award of appearance fee of ₱3,000.00 and litigation cost of ₱10,000.00 should, however, stand as these are costs necessarily attendant to litigation.

₱10,000.00 should, however, stand as these are costs necessarily attendant to litigation.

WHEREFORE, the petition is **GRANTED**. The October 27, 2008 decision and the February 10, 2009 resolution of the Court of Appeals in CA-G.R. CV. No. 87879 are **REVERSED AND SET ASIDE**. The case is **REMANDED** to the Regional Trial Court of Makati City, Branch 136, for proper accounting and reception of such evidence as may be needed to determine the actual amount of petitioner NS International, Inc.'s indebtedness, and to adjudicate respondent Alfonso G. Puyat's claims as such evidence may warrant.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

ROBERTO A. ABAD
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice