Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ABOITIZ EQUITY VENTURES, INC.,	**G.R. No. 197530**
Petitioner,	Present:
-versus-	VELASCO, JR., *J., Chairperson,* PERALTA, VILLARAMA, JR.* MENDOZA, and LEONEN, *JJ.*
VICTOR S. CHIONGBIAN, BENJAMIN D. GOTHONG, and CARLOS A. GOTHONG LINES, INC. (CAGLI),	
Respondents.	**Promulgated:** July 9, 2014

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DECISION

LEONEN, *J.*:

This is a petition for review on certiorari with an application for the issuance of a temporary restraining order and/or writ of preliminary injunction under Rule 45 of the Rules of Court. This petition prays that the assailed orders dated May 5, 2011[1] and June 24, 2011[2] of the Regional Trial Court, Cebu City, Branch 10 in Civil Case No. CEB-37004 be nullified and set aside and that judgment be rendered dismissing with prejudice the

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* Villarama, Jr., *J.*, designated as Acting Member per Special Order No. 1691 dated May 22, 2014 in view of the vacancy in the Third Division.

1 *Rollo*, pp. 80–86.

2 Id. at 87.

complaint[3] dated July 20, 2010 filed by respondents Carlos A. Gothong Lines, Inc. ("CAGLI") and Benjamin D. Gothong.

On January 8, 1996, Aboitiz Shipping Corporation ("ASC"), principally owned by the Aboitiz family, CAGLI, principally owned by the Gothong family, and William Lines, Inc. ("WLI"), principally owned by the Chiongbian family, entered into an agreement (the "Agreement"),[4] whereby ASC and CAGLI would transfer their shipping assets to WLI in exchange for WLI's shares of stock.[5] WLI, in turn, would run their merged shipping businesses and, henceforth, be known as WG&A, Inc. ("WG&A").[6]

Sec. 11.06 of the Agreement required all disputes arising out of or in connection with the Agreement to be settled by arbitration:

> 11.06 Arbitration
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> > All disputes arising out of or in connection with this Agreement including any issue as to this Agreement's validity or enforceability, which cannot be settled amicably among the parties, shall be finally settled by arbitration in accordance with the Arbitration Law (Republic Act No. 876) by an arbitration tribunal composed of four (4) arbitrators. Each of the parties shall appoint one (1) arbitrator, the three (3) to appoint the fourth arbitrator who shall act as Chairman. Any award by the arbitration tribunal shall be final and binding upon the parties and shall be enforced by judgment of the Courts of Cebu or Metro Manila.[7]

Among the attachments to the Agreement was Annex SL-V.[8] This was a letter dated January 8, 1996, from WLI, through its President (herein respondent) Victor S. Chiongbian addressed to CAGLI, through its Chief Executive Officer Bob D. Gothong and Executive Vice President for Engineering (herein respondent) Benjamin D. Gothong. On its second page, Annex SL-V bore the signatures of Bob D. Gothong and respondent Benjamin D. Gothong by way of a conforme on behalf of CAGLI.

Annex SL-V confirmed WLI's commitment to acquire certain inventories of CAGLI. These inventories would have a total aggregate value of, at most, □400 million, "as determined after a special examination of the [i]nventories."[9] Annex SL-V also specifically stated that such acquisition

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3 Id. at 732–739.
4 Id. at 95–137.
5 Id. at 101–102.
6 Id. at 28.
7 Id. at 126.
8 Id. at 138–139.
9 Id. at 138.

was "pursuant to the Agreement."[10]

The entirety of Annex SL-V's substantive portion reads:

> We refer to the Agreement dated January 8, 1996 (the "Agreement") among William Lines, Inc. ("Company C"), Aboitiz Shipping Corporation ("Company A") and Carlos A. Gothong Lines, Inc. ("Company B") regarding the transfer of various assets of Company A and Company B to Company C in exchange for shares of capital stock of Company C. Terms defined in the Agreement are used herein as therein defined.
>
> This will confirm our commitment to acquire certain spare parts and materials inventory (the "Inventories") of Company B pursuant to the Agreement.
>
> The total aggregate value of the Inventories to be acquired shall not exceed P400 Million as determined after a special examination of the Inventories as performed by SGV & Co. to be completed on or before the Closing Date under the agreed procedures determined by the parties.
>
> Subject to documentation acceptable to both parties, the Inventories to be acquired shall be determined not later than thirty (30) days after the Closing Date and the payments shall be made in equal quarterly instalments over a period of two years with the first payment due on March 31, 1996.[11]

Pursuant to Annex SL-V, inventories were transferred from CAGLI to WLI. These inventories were assessed to have a value of ₱514 million, which was later adjusted to ₱558.89 million.[12] Of the total amount of ₱558.89 million, "CAGLI was paid the amount of ₱400 Million."[13] In addition to the payment of ₱400 million, petitioner Aboitiz Equity Ventures ("AEV") noted that WG&A shares with a book value of ₱38.5 million were transferred to CAGLI.[14]

As there was still a balance, in 2001, CAGLI sent WG&A (the renamed WLI) demand letters "for the return of or the payment for the excess [i]nventories."[15] AEV alleged that to satisfy CAGLI's demand, WLI/WG&A returned inventories amounting to ₱120.04 million.[16] As proof of this, AEV attached copies of delivery receipts signed by CAGLI's representatives as Annex "K" of the present petition.[17]

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10 Id.
11 Id.
12 Id. at 29 and 236.
13 Id. at 29.
14 Id.
15 Id. at 30.
16 Id.
17 Id. at 238–532.

Sometime in 2002, the Chiongbian and Gothong families decided to leave the WG&A enterprise and sell their interest in WG&A to the Aboitiz family. As such, a share purchase agreement[18] ("SPA") was entered into by petitioner AEV and the respective shareholders groups of the Chiongbians and Gothongs. In the SPA, AEV agreed to purchase the Chiongbian group's 40.61% share and the Gothong group's 20.66% share in WG&A's issued and outstanding stock.[19]

Section 6.5 of the SPA provided for arbitration as the mode of settling any dispute arising from the SPA. It reads:

> 6.5 Arbitration. Should there be any dispute arising between the parties relating to this Agreement including the interpretation or performance hereof which cannot be resolved by agreement of the parties within fifteen (15) days after written notice by a party to another, such matter shall then be finally settled by arbitration in Cebu City in accordance with the Philippine Arbitration Law. Substantive aspects of the dispute shall be settled by applying the laws of the Philippines. The decision of the arbitrators shall be final and binding upon the parties hereto and the expense of arbitration (including without limitation the award of attorney's fees to the prevailing party) shall be paid as the arbitrators shall determine.[20]

Section 6.8 of the SPA further provided that the Agreement (of January 8, 1996) shall be deemed terminated except its Annex SL-V. It reads:

> 6.8 Termination of Shareholders Agreement. The Buyer and the Sellers hereby agree that on Closing, the Agreement among Aboitiz Shipping Corporation, Carlos A. Gothong Lines, Inc. and William Lines, Inc. dated January 8, 1996, as the same has been amended from time to time (the "Shareholders' Agreement") shall all be considered terminated, except with respect to such rights and obligations that the parties to the Shareholders' Agreement have under a letter dated January 8, 1996 (otherwise known as "SL-V") from William Lines, Inc. to Carlos A. Gothong Lines, Inc. regarding certain spare parts and materials inventory, which rights and obligations shall survive through the date prescribed by the applicable statute of limitations.[21]

As part of the SPA, the parties entered into an Escrow Agreement[22] whereby ING Bank N.V.-Manila Branch was to take custody of the shares subject of the SPA.[23] Section 14.7 of the Escrow Agreement provided that

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18 Id. at 533–545.
19 Id. at 533–534.
20 Id. at 544.
21 Id.
22 Id. at 546–567.
23 Id. at 547.

all disputes arising from it shall be settled through arbitration:

> 14.7 All disputes, controversies or differences which may arise by and among the parties hereto out of, or in relation to, or in connection with this Agreement, or for the breach thereof shall be finally settled by arbitration in Cebu City in accordance with the Philippine Arbitration Law. The award rendered by the arbitrator(s) shall be final and binding upon the parties concerned. However, notwithstanding the foregoing provision, the parties reserve the right to seek redress before the regular court and avail of any provisional remedies in the event of any misconduct, negligence, fraud or tortuous acts which arise from any extra-contractual conduct that affects the ability of a party to comply with his obligations and responsibilities under this Agreement.[24]

As a result of the SPA, AEV became a stockholder of WG&A. Subsequently, WG&A was renamed Aboitiz Transport Shipping Corporation ("ATSC").[25]

Petitioner AEV alleged that in 2008, CAGLI resumed making demands despite having already received □120.04 million worth of excess inventories.[26] CAGLI initially made its demand to ATSC (the renamed WLI/WG&A) through a letter[27] dated February 14, 2008. As alleged by AEV, however, CAGLI subsequently resorted to a "shotgun approach"[28] and directed its subsequent demand letters to AEV[29] as well as to FCLC[30] (a company related to respondent Chiongbian).

AEV responded to CAGLI's demands through several letters.[31] In these letters, AEV rebuffed CAGLI's demands noting that: (1) CAGLI already received the excess inventories; (2) it was not a party to CAGLI's claim as it had a personality distinct from WLI/WG&A/ATSC; and (3) CAGLI's claim was already barred by prescription.

In a reply-letter[32] dated May 5, 2008, CAGLI claimed that it was unaware of the delivery to it of the excess inventories and asked for copies of the corresponding delivery receipts.[33] CAGLI threatened that unless it received proof of payment or return of excess inventories having been made on or before March 31, 1996, it would pursue arbitration.[34]

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24 Id. at 566.
25 Id. at 32.
26 Id.
27 Id. at 597–598.
28 Id. at 32.
29 Id. at 599–610.
30 Id. at 599–602 and 605–610.
31 Id. at 613–618.
32 Id. at 603–604.
33 Id. at 603.
34 Id. at 604.

In letters written for AEV (the first dated October 16, 2008 by Aboitiz and Company, Inc.'s Associate General Counsel Maria Cristina G. Gabutina[35] and the second dated October 27, 2008 by SyCip Salazar Hernandez and Gatmaitan[36]), it was noted that the excess inventories were delivered to GT Ferry Warehouse.[37] Attached to these letters were a listing and/or samples[38] of the corresponding delivery receipts. In these letters it was also noted that the amount of excess inventories delivered (□120.04 million) was actually in excess of the value of the supposedly unreturned inventories (□119.89 million).[39] Thus, it was pointed out that it was CAGLI which was liable to return the difference between □120.04 million and □119.89 million.[40]

Its claims not having been satisfied, CAGLI filed on November 6, 2008 the first of two applications for arbitration ("first complaint")[41] against respondent Chiongbian, ATSC, ASC, and petitioner AEV, before the Cebu City Regional Trial Court, Branch 20. The first complaint was docketed as Civil Case No. CEB-34951.

In response, AEV filed a motion to dismiss[42] dated February 5, 2009. AEV argued that CAGLI failed to state a cause of action as there was no agreement to arbitrate between CAGLI and AEV.[43] Specifically, AEV pointed out that: (1) AEV was never a party to the January 8, 1996 Agreement or to its Annex SL-V;[44] (2) while AEV is a party to the SPA and Escrow Agreement, CAGLI's claim had no connection to either agreement; (3) the unsigned and unexecuted SPA attached to the complaint cannot be a source of any right to arbitrate;[45] and (4) CAGLI did not say how WLI/WG&A/ATSC's obligation to return the excess inventories can be charged to AEV.

On December 4, 2009, the Cebu City Regional Trial Court, Branch 20 issued an order[46] dismissing the first complaint with respect to AEV. It sustained AEV's assertion that there was no agreement binding AEV and CAGLI to arbitrate CAGLI's claim.[47] Whether by motion for reconsideration, appeal or other means, CAGLI did not contest this dismissal.

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35 Id. at 615–616.
36 Id. at 617–618.
37 Id. at 615.
38 Id. at 619.
39 Id. at 616.
40 Id. at 616–617.
41 Id. at 620–627.
42 Id. at 628–631.
43 Id. at 628.
44 Id. at 629.
45 Id. at 630.
46 Id. at 656–658.
47 Id. at 657–658.

On February 26, 2010, the Cebu City Regional Trial Court, Branch 20 issued an order[48] directing the parties remaining in the first complaint (after the discharge of AEV) to proceed with arbitration.

The February 26, 2010 order notwithstanding, CAGLI filed a notice of dismissal[49] dated July 8, 2010, withdrawing the first complaint. In an order[50] dated August 13, 2010, the Cebu City Regional Trial Court, Branch 20 allowed this withdrawal.

ATSC (the renamed WLI/WG&A) filed a motion for reconsideration[51] dated September 20, 2010 to the allowance of CAGLI's notice of dismissal. This motion was denied in an order[52] dated April 15, 2011.

On September 1, 2010, while the first complaint was still pending (n.b., it was only on April 15, 2011 that the Cebu City Regional Trial Court, Branch 20 denied ATSC's motion for reconsideration assailing the allowance of CAGLI's notice of disallowance), CAGLI, now joined by respondent Benjamin D. Gothong, filed a second application for arbitration ("second complaint")[53] before the Cebu City Regional Trial Court, Branch 10. The second complaint was docketed as Civil Case No. CEB-37004 and was also in view of the return of the same excess inventories subject of the first complaint.

On October 28, 2010, AEV filed a motion to dismiss[54] the second complaint on the following grounds:[55] (1) forum shopping; (2) failure to state a cause of action; (3) res judicata; and (4) litis pendentia.

In the first of the two (2) assailed orders dated May 5, 2011,[56] the Cebu City Regional Trial Court, Branch 10 denied AEV's motion to dismiss.

On the matter of litis pendentia, the Regional Trial Court, Branch 10 noted that the first complaint was dismissed with respect to AEV on December 4, 2009, while the second complaint was filed on September 1, 2010. As such, the first complaint was no longer pending at the time of the filing of the second complaint.[57] On the matter of res judicata, the trial court

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48 Id. at 659.
49 Id. at 706–707.
50 Id. at 715.
51 Id. at 716–726.
52 Id. at 727–730.
53 Id. at 732–739.
54 Id. at 740–764.
55 Id. at 740–741.
56 Id. at 80–86.
57 Id. at 84.

noted that the dismissal without prejudice of the first complaint "[left] the parties free to litigate the matter in a subsequent action, as though the dismiss[ed] action had not been commenced."[58] It added that since litis pendentia and res judicata did not exist, CAGLI could not be charged with forum shopping.[59] On the matter of an agreement to arbitrate, the Regional Trial Court, Branch 10 pointed to the SPA as "clearly express[ing] the intention of the parties to bring to arbitration process all disputes, if amicable settlement fails."[60] It further dismissed AEV's claim that it was not a party to the SPA, as "already touching on the merits of the case"[61] and therefore beyond its duty "to determine if they should proceed to arbitration or not."[62]

In the second assailed order[63] dated June 24, 2011, the Cebu City Regional Trial Court, Branch 10 denied AEV's motion for reconsideration.

Aggrieved, AEV filed the present petition.[64] AEV asserts that the second complaint is barred by res judicata and litis pendentia and that CAGLI engaged in blatant forum shopping.[65] It insists that it is not bound by an agreement to arbitrate with CAGLI and that, even assuming that it may be required to arbitrate, it is being ordered to do so under terms that are "manifestly contrary to the . . . agreements on which CAGLI based its demand for arbitration."[66]

For resolution are the following issues:

I. Whether the complaint in Civil Case No. CEB-37004 constitutes forum shopping and/or is barred by res judicata and/or litis pendentia

II. Whether petitioner, Aboitiz Equity Ventures, Inc., is bound by an agreement to arbitrate with Carlos A. Gothong Lines, Inc., with respect to the latter's claims for unreturned inventories delivered to William Lines, Inc./WG&A, Inc./Aboitiz Transport System Corporation

AEV availed of the wrong remedy in seeking relief from this court

58 Id.
59 Id.
60 Id. at 85.
61 Id.
62 Id.
63 Id. at 87.
64 Id. at 24–73.
65 Id. at 46–47.
66 Id. at 47.

Before addressing the specific matters raised by the present petition, we emphasize that AEV is in error in seeking relief from this court via a petition for review on certiorari under Rule 45 of the Rules of Court. As such, we are well in a position to dismiss the present petition outright. Nevertheless, as the actions of the Cebu City Regional Trial Court, Branch 10 are tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, this court treats the present Rule 45 petition as a Rule 65 petition and gives it due course.

A petition for review on certiorari under Rule 45 is a mode of appeal. This is eminently clear from the very title and from the first section of Rule 45 (as amended by A.M. No. 07-7-12-SC):

> Rule 45
>
> **APPEAL BY CERTIORARI** TO THE SUPREME COURT
>
> SECTION 1. Filing of petition with Supreme Court. A party desiring to *appeal by certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency. (Emphasis supplied)

Further, it is elementary that an appeal may only be taken from a judgment or final order that completely disposes of the case.[67] As such, no appeal may be taken from an interlocutory order[68] (i.e., "one which refers to something between the commencement and end of the suit which decides some point or matter but it is not the final decision of the whole controversy"[69]). As explained in *Sime Darby Employees Association v. NLRC*,[70] "[a]n interlocutory order is not appealable until after the rendition of the judgment on the merits for a contrary rule would delay the administration of justice and unduly burden the courts."[71]

An order denying a motion to dismiss is interlocutory in character. Hence, it may not be the subject of an appeal. The interlocutory nature of an

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67 See RULES OF COURT, Rule 41, sec. 1.

68 Id. at par. (c).

69 *Sime Darby Employees Association v. NLRC*, 539 Phil. 258, 273 (2006) [Per J. Tinga, Third Division], *citing Bitong v. Court of Appeals*, 354 Phil. 516 (1998) [Per J. Bellosillo, First Division].

70 *Sime Darby Employees Association v. NLRC*, 539 Phil. 258, 273 (2006) [Per J. Tinga, Third Division].

71 *Sime Darby Employees Association v. NLRC*, 539 Phil. 258, 273 (2006) [Per J. Tinga, Third Division], *citing J. L. Bernardo Construction v. Court of Appeals*, 381 Phil. 25, 36 (2000) [Per J. Gonzaga-Reyes, Third Division].

order denying a motion to dismiss and the remedies for assailing such an order were discussed in *Douglas Lu Ym v. Nabua*:[72]

> *An order denying a motion to dismiss is an interlocutory order which neither terminates nor finally disposes of a case*, as it leaves something to be done by the court before the case is finally decided on the merits. As such, the general rule is that the denial of a motion to dismiss cannot be questioned in a special civil action for *certiorari* which is a remedy designed to correct errors of jurisdiction and not errors of judgment. *Neither can a denial of a motion to dismiss be the subject of an appeal unless and until a final judgment or order is rendered.* In order to justify the grant of the extraordinary remedy of *certiorari*, the denial of the motion to dismiss must have been tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.[73] (Emphasis supplied)

Thus, where a motion to dismiss is denied, the proper recourse is for the movant to file an answer.[74] Nevertheless, where the order denying the motion to dismiss is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, the movant may assail such order via a Rule 65 (i.e., certiorari, prohibition, and/or mandamus) petition. This is expressly recognized in the third paragraph of Rule 41, Section 1 of the Rules of Court.[75] Following the enumeration in the second paragraph of Rule 41, Section 1 of the instances when an appeal may not be taken, the third paragraph specifies that "[in] any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65."[76]

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72 492 Phil. 397 (2005) [Per J. Tinga, Second Division].

73 Id. at 404, *citing Bernardo v. Court of Appeals*, 388 Phil. 793 (2000) [Per J. Gonzaga-Reyes, Third Division] and *Diaz v. Diaz*, 387 Phil. 314 (2000) [Per J. De Leon, Jr., Second Division].

74 RULES OF COURT, Rule 16, sec. 4:

> Section 4. *Time to plead*. — If the motion [to dismiss] is denied, the movant shall file his answer within the balance of the period prescribed by Rule 11 to which he was entitled at the time of serving his motion, but not less than five (5) days in any event, computed from his receipt of the notice of the denial. If the pleading is ordered to be amended, he shall file his answer within the period prescribed by Rule 11 counted from service of the amended pleading, unless the court provides a longer period.

75 Sec. 1. Subject of appeal. — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

> No appeal may be taken from:
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> (a) An order denying a motion for new trial or reconsideration;
> (b) An order denying a petition for relief or any similar motion seeking relief from judgment;
> (c) An interlocutory order;
> (d) An order disallowing or dismissing an appeal;
> (e) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
> (f) An order of execution;
> (g) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and
> (h) An order dismissing an action without prejudice.
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> In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

76 RULES OF COURT, Rule 41, sec. 1, par. 3.

Per these rules, AEV is in error for having filed what it itself calls a "Petition for Review on Certiorari [Appeal by Certiorari under Rule 45 of the Rules of Court]."[77] Since AEV availed of the improper remedy, this court is well in a position to dismiss the present petition.

Nevertheless, there have been instances when a petition for review on certiorari under Rule 45 was treated by this court as a petition for certiorari under Rule 65. As explained in *China Banking Corporation v. Asian Construction and Development Corporation*:[78]

> [I]n many instances, the Court has treated a petition for review on *certiorari* under Rule 45 as a petition for *certiorari* under Rule 65 of the Rules of Court, such as in cases where the subject of the recourse was one of jurisdiction, or the act complained of was perpetrated by a court with grave abuse of discretion amounting to lack or excess of jurisdiction.[79]

In this case, the May 5, 2011 and June 24, 2011 orders of the Cebu City Regional Trial Court, Branch 10 in Civil Case No. CEB-37004 are assailed for having denied AEV's motion to dismiss despite: first, the second complaint having been filed in a manner constituting forum shopping; second, the prior judgment on the merits made in Civil Case No. CEB-34951, thereby violating the principle of res judicata; and third, the (then) pendency of Civil Case No. CEB-34951 with respect to the parties that, unlike AEV, were not discharged from the case, thereby violating the principle of litis pendentia. The same orders are assailed for having allowed CAGLI's application for arbitration to continue despite supposedly clear and unmistakable evidence that AEV is not bound by an agreement to arbitrate with CAGLI.

As such, the Cebu City, Regional Trial Court, Branch 10's orders are assailed for having been made with grave abuse of discretion amounting to lack or excess of jurisdiction in that the Cebu City Regional Trial Court, Branch 10 chose to continue taking cognizance of the second complaint, despite there being compelling reasons for its dismissal and the Cebu City, Regional Trial Court Branch 20's desistance. Conformably, we treat the present petition as a petition for certiorari under Rule 65 of the Rules of Court and give it due course.

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77 *Rollo*, p. 24.

78 574 Phil. 41 (2008) [Per J. Austria-Martinez, Third Division].

79 Id. at 49, *citing Estandarte v. People of the Philippines,* 569 Phil. 465, 476 (2008) [Per J. Austria-Martinez, Third Division]; *Longos Rural Waterworks and Sanitation Association, Inc. v. Desierto,* 434 Phil. 618, 624 (2002) [Per J. Austria-Martinez, First Division]; and *Fortich v. Corona*, 352 Phil. 461, 477 (1998) [Per J. Martinez, First Division].

The complaint in Civil Case No. CEB-37004 constitutes forum shopping and is barred by res judicata

The concept of and rationale against forum shopping were explained by this court in *Top Rate Construction & General Services, Inc. v. Paxton Development Corporation*:[80]

> FORUM SHOPPING is committed by a party who institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes or to grant the same or substantially the same reliefs, on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action. It is an act of malpractice for it trifles with the courts, abuses their processes, degrades the administration of justice and adds to the already congested court dockets. What is critical is the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes and grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different fora upon the same issues, regardless of whether the court in which one of the suits was brought has no jurisdiction over the action.[81]

Equally settled is the test for determining forum shopping. As this court explained in *Yap v. Chua*:[82]

> To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.[83]

Litis pendentia "refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious."[84] It requires the concurrence of three (3) requisites: "(1) the identity of parties, or at least such as representing the same interests in both actions; (2) the identity of

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80 457 Phil. 740 (2003) [Per J. Bellosillo, Second Division].

81 Id. at 747–748, *citing Santos v. Commission on Elections*, 447 Phil. 760 (2003) [Per J. Ynares-Santiago, En Banc]; *Young v. Keng Seng*, 446 Phil. 823 (2003) [Per J. Panganiban, Third Division]; *Executive Secretary v. Gordon*, 359 Phil. 266 (1998) [Per J. Mendoza, En Banc]; *Joy Mart Consolidated Corp. v. Court of Appeals*, G.R. No. 88705, June 11, 1992, 209 SCRA 738 [Per J. Griño-Aquino, First Division]; and *Villanueva v. Adre*, 254 Phil. 882 (1989) [Per J. Sarmiento, Second Division].

82 G.R. No. 186730, June 13, 2012, 672 SCRA 419 [Per J. Reyes, Second Division], *citing Young v. Keng Seng*, 446 Phil. 823, 833 (2003) [Per J. Panganiban, Third Division].

83 *Yap v. Chua*, G.R. No. 186730, June 13, 2012, 672 SCRA 419, 428 [Per J. Reyes, Second Division].

84 Id.

rights asserted and relief prayed for, the relief being founded on the same facts; and (3) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other."[85]

In turn, prior judgment or res judicata bars a subsequent case when the following requisites concur: "(1) the former judgment is final; (2) it is rendered by a court having jurisdiction over the subject matter and the parties; (3) it is a judgment or an order on the merits; (4) there is — between the first and the second actions — identity of parties, of subject matter, and of causes of action."[86]

Applying the cited concepts and requisites, we find that the complaint in Civil Case No. CEB-37004 is barred by res judicata and constitutes forum shopping.

First, between the first and second complaints, there is identity of parties. The first complaint was brought by CAGLI as the sole plaintiff against Victor S. Chiongbian, ATSC, and AEV as defendants. In the second complaint, CAGLI was joined by Benjamin D. Gothong as (co-)plaintiff. As to the defendants, ATSC was deleted while Chiongbian and AEV were retained.

While it is true that the parties to the first and second complaints are not absolutely identical, this court has clarified that, for purposes of forum shopping, "[a]bsolute identity of parties is not required [and that it] is enough that there is substantial identity of parties."[87]

Even as the second complaint alleges that Benjamin D. Gothong "is . . . suing in his personal capacity,"[88] Gothong failed to show any personal interest in the reliefs sought by the second complaint. Ultimately, what is at stake in the second complaint is the extent to which CAGLI may compel AEV and Chiongbian to arbitrate in order that CAGLI may then recover the value of its alleged unreturned inventories. This claim for recovery is pursuant to the agreement evinced in Annex SL-V. Annex SL-V was entered into by CAGLI and not by Benjamin D. Gothong. While it is true that Benjamin D. Gothong, along with Bob D. Gothong, signed Annex SL-V, he did so only in a representative, and not in a personal, capacity. As such, Benjamin D. Gothong cannot claim any right that personally accrues to him

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85 Id. at 429, *citing Villarica Pawnshop, Inc. v. Gernale*, 601 Phil. 66, 78 (2009) [Per J. Austria-Martinez, Third Division].

86 *Luzon Development Bank v. Conquilla*, 507 Phil. 509, 523 (2005) [Per J. Panganiban, Third Division], *citing Allied Banking Corporation v. Court of Appeals,* G.R. No. 108089, January 10, 1994, 229 SCRA 252, 258 [Per J. Davide, Jr., First Division].

87 *Korea Exchange Bank v. Gonzales*, 496 Phil. 127, 146 (2005) [Per J. Callejo, Sr., Second Division], *citing Santos v. Gabriel,* 150-A Phil. 641 (1972) [Per J. Zaldivar, En Banc].

88 *Rollo*, p. 732.

on account of Annex SL-V. From this, it follows that Benjamin D. Gothong is not a real party in interest — "one who stands to be benefitted or injured by the judgment in the suit or the party entitled to the avails of the suit"[89] — and that his inclusion in the second complaint is an unnecessary superfluity.

Second, there is identity in subject matter and cause of action. There is identity in subject matter as both complaints are applications for the same relief. There is identity in cause of action as both complaints are grounded on the right to be paid for or to receive the value of excess inventories (and the supposed corresponding breach thereof) as spelled out in Annex SL-V.

The first and second complaints are both applications for arbitration and are founded on the same instrument — Annex SL-V. Moreover, the intended arbitrations in both complaints cater to the same ultimate purpose, i.e., that CAGLI may recover the value of its supposedly unreturned inventories earlier delivered to WLI/WG&A/ATSC.

In both complaints, the supposed propriety of compelling the defendants to submit themselves to arbitration are anchored on the same bases: (1) Section 6.8 of the SPA, which provides that the January 8, 1996 Agreement shall be deemed terminated but that the rights and obligations arising from Annex SL-V shall continue to subsist;[90] (2) Section 6.5 of the SPA, which requires arbitration as the mode for settling disputes relating to the SPA;[91] and, (3) defendants' refusal to submit themselves to arbitration vis-a-vis Republic Act No. 876, which provides that "[a] party aggrieved by the failure, neglect or refusal of another to perform under an agreement in writing providing for arbitration may petition the court for an order directing that such arbitration proceed in the manner provided for in such agreement."[92]

Both complaints also rely on the same factual averments:[93]

1. that ASC, CAGLI, and WLI entered into an agreement on January 8, 1996;

2. that under Annex SL-V of the Agreement, WLI/WG&A "committed to acquire certain [inventories], the total aggregate value of which shall not exceed □400 Million";[94]

3. that after examination, it was ascertained that the value of the

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89 RULES OF COURT, Rule 3, sec. 2.
90 *Rollo*, pp. 623 and 735–736.
91 Id. at 623–624 and 736.
92 Id. at 624 and 737.
93 Id. at 621–623 and 733–735.
94 Id. at 621 and 733.

transferred inventories exceeded □400 million;

4. that pursuant to Annex SL-V, WG&A paid CAGLI □400 million but that the former failed to return or pay for spare parts representing a value in excess of □400 million;

5. "[t]hat on August 31, 2001, [CAGLI] wrote the WG&A through its AVP Materials Management, Ms. Concepcion M. Magat, asking for the return of the excess spare parts";[95]

6. that on September 5, 2001, WG&A's Ms. Magat replied that the matter is beyond her authority level and that she must elevate it to higher management;

7. that several communications demanding the return of the excess spare parts were sent to WG&A but these did not elicit any response; and

8. "[t]hat the issue of excess spare parts, was taken over by events, when on July 31, 2002,"[96] the Chiongbians and Gothongs entered into an Escrow Agreement with AEV.

Third, the order dated December 4, 2009 of the Cebu City Regional Trial Court, Branch 20, which dismissed the first complaint with respect to AEV, attained finality when CAGLI did not file a motion for reconsideration, appealed, or, in any other manner, questioned the order.

Fourth, the parties did not dispute that the December 4, 2009 order was issued by a court having jurisdiction over the subject matter and the parties. Specifically as to jurisdiction over the parties, jurisdiction was acquired over CAGLI as plaintiff when it filed the first complaint and sought relief from the Cebu City Regional Trial Court, Branch 20; jurisdiction over defendants AEV, ATSC, and Victor S. Chiongbian was acquired with the service of summons upon them.

Fifth, the dismissal of the first complaint with respect to AEV was a judgment on the merits. As explained in *Cabreza, Jr. v. Cabreza*:[97]

> A judgment may be considered as one rendered on the merits "when it determines the rights and liabilities of the parties based on the disclosed facts, irrespective of formal, technical or dilatory objections"; or when the judgment is rendered "after a determination of which party is

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95 Id. at 622 and 734.
96 Id. at 623 and 734.
97 G.R. No. 181962, January 16, 2012, 663 SCRA 29 [Per J. Sereno, Second Division].

> right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point."[98]

Further, as this court clarified in *Mendiola v. Court of Appeals*,[99] "[i]t is not necessary . . . that there [be] a trial"[100] in order that a judgment be considered as one on the merits.

Prior to issuing the December 4, 2009 order dismissing the first complaint with respect to AEV, the Cebu City Regional Trial Court, Branch 20 allowed the parties the full opportunity to establish the facts and to ventilate their arguments relevant to the complaint. Specifically, the Cebu City Regional Trial Court, Branch 20 admitted: 1) AEV's motion to dismiss;[101] 2) CAGLI's opposition to the motion to dismiss;[102] 3) AEV's reply and opposition;[103] 4) CAGLI's rejoinder;[104] and 5) AEV's sur-rejoinder.[105]

Following these, the Cebu City Regional Trial Court, Branch 20 arrived at the following findings and made a definitive determination that CAGLI had no right to compel AEV to subject itself to arbitration with respect to CAGLI's claims under Annex SL-V:

> After going over carefully the contentions and arguments of both parties, the court has found that *no contract or document exists binding CAGLI and AEV to arbitrate the former's claim*. The WLI Letter upon which the claim is based confirms only the commitment of William Lines, Inc. (WLI) to purchase certain material inventories from CAGLI. It does not involve AEV. The court has searched in vain for any agreement or document showing that said commitment was passed on to and assumed by AEV. Such agreement or document, if one exists, being an actionable document, should have been attached to the complaint. While the Agreement of January 8, 1996 and the Share Purchase Agreement provide for arbitration of disputes, they refer to disputes arising from or in connection with the Agreements themselves. No reference is made, as included therein, to the aforesaid commitment of WLI or to any claim that CAGLI may pursue based thereon or relative thereto. Section 6.8 of the Share Purchase Agreement, cited by plaintiff CAGLI, does not incorporate therein, expressly or impliedly, the WLI commitment above-mentioned. It only declares that the rights and obligations of the parties under the WLI Letter shall survive even after the termination of the Shareholder's Agreement. It does not speak of arbitration. Finally, the complaint does

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98 *Cabreza, Jr. v. Cabreza*, G.R. No. 181962, January 16, 2012, 663 SCRA 29, 37–38 [Per J. Sereno, Second Division], *citing Mirpuri v. Court of Appeals,* 376 Phil. 628 (1999) [Per J. Puno, First Division] and *Santos v. Intermediate Appellate Court*, 229 Phil. 260 (1986) [Per J. Gutierrez, Jr., Second Division].

99 327 Phil. 1156 (1996) [Per J. Hermosisima, Jr., First Division].

100 Id. at 1164.

101 *Rollo*, pp. 628–631.

102 Id. at 632–637.

103 Id. at 638–644.

104 Id. at 645–650.

105 Id. at 651–655.

> not allege the existence of a contract obliging CAGLI and AEV to arbitrate CAGLI's claim under the WLI Letter. Consequently, *there is no legal or factual basis for the present complaint for application for arbitration*.[106] (Emphasis supplied)

In the assailed order dated May 5, 2011, the Cebu City Regional Trial Court, Branch 10 made much of the Cebu City Regional Trial Court, Branch 20's pronouncement in the latter's December 4, 2009 order that "the [first] complaint fails to state a cause of action."[107] Based on this, the Cebu City Regional Trial Court, Branch 10 concluded that the dismissal of the first complaint was one made without prejudice, thereby "leav[ing] the parties free to litigate the matter in a subsequent action, as though the dismissal [sic] action had not been commenced."[108]

The Cebu City Regional Trial Court, Branch 10 is in serious error. In holding that the second complaint was not barred by res judicata, the Cebu City Regional Trial Court, Branch 10 ignored established jurisprudence.

Referring to the earlier cases of *Manalo v. Court of Appeals*[109] and *Mendiola v. Court of Appeals*,[110] this court emphasized in *Luzon Development Bank v. Conquilla*[111] that dismissal for failure to state a cause of action may very well be considered a judgment on the merits and, thereby, operate as res judicata on a subsequent case:

> *[E]ven a dismissal on the ground of "failure to state a cause of action" may operate as res judicata on a subsequent case involving the same parties, subject matter, and causes of action,* **provided** *that the order of dismissal* **actually ruled on the issues raised.** What appears to be essential to a judgment on the merits is that it be a reasoned decision, which clearly states the facts and the law on which it is based.[112] (Emphasis supplied)

To reiterate, the Cebu City Regional Trial Court, Branch 20 made a **definitive determination that CAGLI had no right to compel AEV to subject itself to arbitration** vis-a-vis CAGLI's claims under Annex SL-V. This determination was arrived at after due consideration of the facts established and the arguments advanced by the parties. Accordingly, the Cebu City Regional Trial Court, Branch 20's December 4, 2009 order constituted a judgment on the merits and operated as res judicata on the second complaint.

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106 Id. at 657–658.
107 Id. at 658.
108 Id. at 84.
109 409 Phil. 105 (2001) [Per J. Pardo, First Division].
110 327 Phil. 1156 (1996) [Per J. Hermosisima, Jr., First Division].
111 507 Phil. 509 (2005) [Per J. Panganiban, Third Division].
112 Id. at 531.

In sum, the requisites for res judicata have been satisfied and the second complaint should, thus, have been dismissed. From this, it follows that CAGLI committed an act of forum shopping in filing the second complaint. CAGLI instituted two suits in two regional trial court branches, albeit successively and not simultaneously. It asked both branches to rule on the exact same cause and to grant the exact same relief. CAGLI did so after it had obtained an unfavorable decision (at least with respect to AEV) from the Cebu City Regional Trial Court, Branch 20. These circumstances afford the reasonable inference that the second complaint was filed in the hopes of a more favorable ruling.

Notwithstanding our pronouncements sustaining AEV's allegations that CAGLI engaged in forum shopping and that the second complaint was barred by res judicata, we find that at the time of the filing of the second complaint, AEV had already been discharged from the proceedings relating to the first complaint. Thus, as between AEV and CAGLI, the first complaint was no longer pending at the time of the filing of the second complaint. Accordingly, the second complaint could not have been barred by litis pendentia.

There is no agreement binding AEV to arbitrate with CAGLI on the latter's claims arising from Annex SL-V

For arbitration to be proper, it is imperative that it be grounded on an agreement between the parties. This was adequately explained in *Ormoc Sugarcane Planters' Association, Inc. v. Court of Appeals*:[113]

> Section 2 of R.A. No. 876 (the Arbitration Law) pertinently provides:
>
> > Sec. 2. Persons and matters subject to arbitration. – *Two or more persons or parties may submit to the arbitration of one or more arbitrators any controversy existing between them at the time of the submission* and which may be the subject of an action, *or the parties to any contract may in such contract agree to settle by arbitration a controversy thereafter arising between them.* Such submission or contract shall be valid, enforceable and irrevocable, save upon such grounds as exist at law for the revocation of any contract. . . . (Emphasis ours)
>
> The foregoing provision speaks of two modes of arbitration: (a) an agreement to submit to arbitration some future dispute, usually stipulated upon in a civil contract between the parties, and known as an *agreement to*

[113] 613 Phil. 240 (2009) [Per J. Leonardo-De Castro, First Division].

> *submit to arbitration*, and (b) an agreement submitting an existing matter of difference to arbitrators, termed the *submission agreement*. Article XX of the milling contract is an *agreement to submit to arbitration* because it was made in anticipation of a dispute that might arise between the parties after the contract's execution.
>
> *Except where a compulsory arbitration is provided by statute, the first step toward the settlement of a difference by arbitration is the entry by the parties into a valid agreement to arbitrate.* An agreement to arbitrate is a contract, the relation of the parties is contractual, and the rights and liabilities of the parties are controlled by the law of contracts. In an agreement for arbitration, the ordinary elements of a valid contract must appear, including an agreement to arbitrate some specific thing, and an agreement to abide by the award, either in express language or by implication.[114] (Emphasis supplied)

In this petition, not one of the parties — AEV, CAGLI, Victor S. Chiongbian, and Benjamin D. Gothong — has alleged and/or shown that the controversy is properly the subject of "compulsory arbitration [as] provided by statute."[115] Thus, the propriety of compelling AEV to submit itself to arbitration must necessarily be founded on contract.

Four (4) distinct contracts have been cited in the present petition:

1. The January 8, 1996 Agreement in which ASC, CAGLI, and WLI merged their shipping enterprises, with WLI (subsequently renamed WG&A) as the surviving entity. Section 11.06 of this Agreement provided for arbitration as the mechanism for settling all disputes arising out of or in connection with the Agreement.

2. Annex SL-V of the Agreement between CAGLI and WLI (and excluded ASC and any other Aboitiz-controlled entity), and which confirmed WLI's commitment to acquire certain inventories, worth not more than □400 million, of CAGLI. Annex SL-V stated that the acquisition was "pursuant to the Agreement."[116] It did not contain an arbitration clause.

3. The September 23, 2003 Share Purchase Agreement or SPA in which AEV agreed to purchase the Chiongbian and Gothong groups' shares in WG&A's issued and outstanding stock. Section 6.5 of the SPA provided for arbitration as the mode of settling any dispute arising from the SPA. Section 6.8 of the SPA further provided that the Agreement of January 8, 1996 shall be deemed terminated except its Annex SL-V.

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114 Id. at 249, *citing* 5 Am Jur 2d Appeal and Error, Arbitration and Award, p. 527.
115 Id.
116 *Rollo*, p. 138.

4. The Escrow Agreement whereby ING Bank N.V.-Manila Branch was to take custody of the shares subject of the SPA. Section 14.7 of the Escrow Agreement provided that all disputes arising from it shall be settled via arbitration.

The obligation for WLI to acquire certain inventories of CAGLI and which is the subject of the present petition was contained in Annex SL-V. It is therefore this agreement which deserves foremost consideration. As to this particular agreement, these points must be underscored: first, that it has no arbitration clause; second, Annex SL-V is only between WLI and CAGLI.

On the first point, it is clear, pursuant to this court's pronouncements in *Ormoc Sugarcane Planters' Association*, that neither WLI nor CAGLI can compel arbitration under Annex SL-V. Plainly, there is no agreement to arbitrate.

It is of no moment that Annex SL-V states that it was made "pursuant to the Agreement" or that Section 11.06 of the January 8, 1996 Agreement provides for arbitration as the mode of settling disputes arising out of or in connection with the Agreement.

For one, to say that Annex SL-V was made "pursuant to the Agreement" is merely to acknowledge: (1) the factual context in which Annex SL-V was executed and (2) that it was that context that facilitated the agreement embodied in it. Absent any other clear or unequivocal pronouncement integrating Annex SL-V into the January 8, 1996 Agreement, it would be too much of a conjecture to jump to the conclusion that Annex SL-V is governed by the exact same stipulations which govern the January 8, 1996 Agreement.

Likewise, a reading of the Agreement's arbitration clause will reveal that it does not contemplate disputes arising from Annex SL-V.

Section 11.06 of the January 8, 1996 Agreement requires the formation of an arbitration tribunal composed of four (4) arbitrators. Each of the parties — WLI, CAGLI, and ASC — shall appoint one (1) arbitrator, and the fourth arbitrator, who shall act as chairman, shall be appointed by the three (3) arbitrators appointed by the parties. From the manner by which the arbitration tribunal is to be constituted, the necessary implication is that the arbitration clause is applicable to three-party disputes — as will arise from the tripartite January 8, 1996 Agreement — and *not to two-party disputes* as will arise from the two-party Annex SL-V.

From the second point — that Annex SL-V is only between WLI and CAGLI — it necessarily follows that none but WLI/WG&A/ATSC and CAGLI are bound by the terms of Annex SL-V. It is elementary that contracts are characterized by relativity or privity, that is, that "[c]ontracts take effect only between the parties, their assigns and heirs."[117] As such, one who is not a party to a contract may not seek relief for such contract's breach. Likewise, one who is not a party to a contract may not be held liable for breach of any its terms.

While the principle of privity or relativity of contracts acknowledges that contractual obligations are transmissible to a party's assigns and heirs, *AEV is not WLI's successor-in-interest*. In the period relevant to this petition, the transferee of the inventories transferred by CAGLI pursuant to Annex SL-V assumed three (3) names: (1) WLI, the original name of the entity that survived the merger under the January 8, 1996 Agreement; (2) WG&A, the name taken by WLI in the wake of the Agreement; and (3) ATSC, the name taken by WLI/WG&A in the wake of the SPA. As such, it is now ATSC that is liable under Annex SL-V.

Pursuant to the January 8, 1996 Agreement, the Aboitiz group (via ASC) and the Gothong group (via CAGLI) became stockholders of WLI/WG&A, along with the Chiongbian group (which initially controlled WLI). This continued until, pursuant to the SPA, the Gothong group and the Chiongbian group transferred their shares to AEV. With the SPA, AEV became a stockholder of WLI/WG&A, which was subsequently renamed ATSC. Nonetheless, AEV's status as ATSC's stockholder does not subject it to ATSC's obligations

It is basic that a corporation has a personality separate and distinct from that of its individual stockholders. Thus, a stockholder does not automatically assume the liabilities of the corporation of which he is a stockholder. As explained in *Philippine National Bank v. Hydro Resources Contractors Corporation*:[118]

> A corporation is an artificial entity created by operation of law. It possesses the right of succession and such powers, attributes, and properties expressly authorized by law or incident to its existence. It has a personality separate and distinct from that of its stockholders and from that of other corporations to which it may be connected. As a consequence of its status as a distinct legal entity and as a result of a conscious policy decision to promote capital formation, a corporation incurs its own liabilities and is legally responsible for payment of its obligations. In other words, by virtue of the separate juridical personality of a corporation, the corporate debt or credit is not the debt or credit of the stockholder. This protection from liability for shareholders is the principle of limited

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117 CIVIL CODE, art. 1311.
118 693 Phil. 294 (2013) [Per J. Leonardo-De Castro, First Division].

liability.[119]

In fact, even the ownership by a single stockholder of all or nearly all the capital stock of a corporation is not, in and of itself, a ground for disregarding a corporation's separate personality. As explained in *Secosa v. Heirs of Francisco*:[120]

> It is a settled precept in this jurisdiction that a corporation is invested by law with a personality separate from that of its stockholders or members. It has a personality separate and distinct from those of the persons composing it as well as from that of any other entity to which it may be related**.** *Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not in itself sufficient ground for disregarding the separate corporate personality.* A corporation's authority to act and its liability for its actions are separate and apart from the individuals who own it.
>
> The so-called veil of corporation fiction treats as separate and distinct the affairs of a corporation and its officers and stockholders. As a general rule, a corporation will be looked upon as a legal entity, unless and until sufficient reason to the contrary appears. When the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons. Also, the corporate entity may be disregarded in the interest of justice in such cases as fraud that may work inequities among members of the corporation internally, involving no rights of the public or third persons. In both instances, there must have been fraud and proof of it. For the separate juridical personality of a corporation to be disregarded, the wrongdoing must be clearly and convincingly established. It cannot be presumed.[121] (Emphasis supplied)

AEV's status as ATSC's stockholder is, in and of itself, insufficient to make AEV liable for ATSC's obligations. Moreover, the SPA does not contain any stipulation which makes AEV assume ATSC's obligations. It is true that Section 6.8 of the SPA stipulates that the rights and obligations arising from Annex SL-V are not terminated. But all that Section 6.8 does is recognize that the obligations under Annex SL-V subsist despite the

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119 Id. at 305–306, *citing Sarona v. National Labor Relations Commission*, G.R. No. 185280, January 18, 2012, 663 SCRA 394, 416 [Per J. Reyes, Second Division]; *Francisco v. Mallen, Jr*., G.R. No. 173169, September 22, 2010, 631 SCRA 118, 125 [Per J. Carpio, Second Division]; W. Rands, *Domination of a Subsidiary by a Parent*, 32 Ind. L. Rev. 421, 423 (1999), *citing* P. I. Blumberg, *Limited Liability and Corporate Groups*, 11 J. Corp. L. 573, 575–576 (1986) and S. Presser, *Thwarting the Killing of the Corporation: Limited Liability, Democracy and Economics*, 87 NW. U. L. Rev. 148, 155 (1992); and *Good Earth Emporium, Inc. v. Court of Appeals*, G.R. No. 82797, February 27, 1991, 194 SCRA 544, 550 [Per J. Paras, Second Division].

120 G.R. No. 160039, June 29, 2004, 433 SCRA 273 [Per J. Ynares-Santiago, First Division].

121 Id. at 280–281, *citing* C. L. Villanueva, *Philippine Commercial Law Review,* 345 (1998); *Sunio v. National Labor Relations Commission*, 212 Phil. 355 (1984) [Per J. Melencio-Herrera]; G. Jentz, R. L. Miller, F. B. Cross, and K. Clarkson, *West's Business Law: Text Cases and Legal Environment*, 4th ed., 614 (1989); Fletcher Cyclopedia Corporations, vol. 1, chap. 2, sec. 41.7; *Matuguina Integrated Wood Products, Inc. v. Court of Appeals*, 331 Phil. 795 (1996) [Per J. Torres, Jr., Second Division] and *Ramoso, et al. v. Court of Appeals, et al*., 400 Phil. 1260 (2000) [Per J. Quisumbing, Second Division].

termination of the January 8, 1996 Agreement. At no point does the text of Section 6.8 support the position that AEV steps into the shoes of the obligor under Annex SL-V and assumes its obligations.

Neither does Section 6.5 of the SPA suffice to compel AEV to submit itself to arbitration. While it is true that Section 6.5 mandates arbitration as the mode for settling disputes between the parties to the SPA, Section 6.5 does not indiscriminately cover any and all disputes which may arise between the parties to the SPA. Rather, Section 6.5 is limited to "dispute[s] arising between the parties relating to this Agreement [i.e., the SPA]."[122] To belabor the point, the obligation which is subject of the present dispute pertains to Annex SL-V, not to the SPA. That the SPA, in Section 6.8, recognizes the subsistence of Annex SL-V is merely a factual recognition. It does not create new obligations and does not alter or modify the obligations spelled out in Annex SL-V.

AEV was drawn into the present controversy on account of its having entered into the SPA. This SPA made AEV a stockholder of WLI/WG&A/ATSC. Even then, AEV retained a personality separate and distinct from WLI/WG&A/ATSC. The SPA did not render AEV personally liable for the obligations of the corporation whose stocks it held.

The obligation animating CAGLI's desire to arbitrate is rooted in Annex SL-V. Annex SL-V is a contract entirely different from the SPA. It created distinct obligations for distinct parties. AEV was never a party to Annex SL-V. Rather than pertaining to AEV, Annex SL-V pertained to a different entity: WLI (renamed WG&A then renamed ATSC). AEV is, thus, not bound by Annex SL-V.

On one hand, Annex SL-V does not stipulate that disputes arising from it are to be settled via arbitration. On the other hand, the SPA requires arbitration as the mode for settling disputes relating to it and recognizes the subsistence of the obligations under Annex SL-V. But as a separate contract, the mere mention of Annex SL-V in the SPA does not suffice to place Annex SL-V under the ambit of the SPA or to render it subject to the SPA's terms, such as the requirement to arbitrate.

WHEREFORE, the petition is **GRANTED**. The assailed orders dated May 5, 2011 and June 24, 2011 of the Regional Trial Court, Cebu City, Branch 10 in Civil Case No. CEB-37004 are declared **VOID**. The Regional Trial Court, Cebu City, Branch 10 is ordered to **DISMISS** Civil Case No. CEB-37004.

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[122] *Rollo*, p. 544.

SO ORDERED.

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE CATRAL MENDOZA
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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

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