

RENATO P. GIL, PLAINTIFF-APPELLEE, VS. INFINITY LENDING CORPORATION, CASIMIRO A. DE GUIA, JR., LEA ALVAREZ-BAGUI AND FERDINAND M. MACABABAD, DEFENDANTS-APPELLANTS.

Ponente: CRUZ, R.A. J.

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CRUZ, R.A. J.:

THE CASE

This is an ordinary appeal under Rule 41 of the Rules of Court of the Decision dated January 26, 2010[1] of the Regional Trial Court of Manila, Branch 173 (“RTC”), in Civil Case No. 02-103909, a civil case for sum of money and damages. The appeal essentially seeks an amendment of the RTC Decision which held in favor of plaintiff-appellee, ruling thus:

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“WHEREFORE, and in view of the foregoing disquisition, judgment is hereby rendered ordering the individual defendants CASIMIRO A. DE GUIA, JR., LEA ALVAREZ-BAGUI and FERDINAND M. MACABABAD (sic) and defendant-corporation Infinity Lending Corporation to pay in solidum the plaintiff the following amounts:

a) P500,000.00

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as principal with legal interest from the date of the filing of the complaint on July 2002;

b) P20,000.00

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as and for attorney’s fees; and

c) P6,049.47

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as cost of suit.

SO ORDERED.”[2]

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THE ANTECEDENTS

On January 28, 1997, Renato P. Gil (“Gil”) made an investment to Infinity Lending Corporation (“ILC”) in the amount of Four Hundred Thousand Philippine Pesos (P400,000.00) covered by BPI Family Bank Manager's Check No. 0000005542 purchased from the said bank[3] and evidenced by Official Receipt No. 3568 issued by ILC of even date.[4]

On July 28, 1997, Gil again made an additional investment in cash with ILC in the sum of One Hundred Thousand Philippine Pesos (P100,000.00), as shown by ILC Official Receipt No. 3092 of even date.[5]

On the same day, ILC, represented by Lea Alvarez-Bagui, Treasurer and incorporator of ILC, and Ferdinand M. Macababbad, another officer[6] and incorporator of ILC, issued in favor of Gil a Non-Negotiable/Non-Assignable Promissory Note (PN Number 97-862) dated July 28, 1997 in the amount of One Hundred Thousand Philippine Pesos (P100,000.00) with a maturity period of nine (9) months and to mature on April 28, 1998, at 2.5% interest per month payable on a monthly basis.[7]

On July 30, 1997, ILC, represented by Lea Alvarez-Bagui and Casimiro A. De Guia, Jr., President of ILC, issued in favor of Gil a Non-Negotiable/Non-Assignable Promissory Note (PN Number 97-866) of even date in the amount of Four Hundred Thousand Philippine Pesos (P400,000.00) with a maturity period of 9 months and to mature on April 30, 1998, at 2.5% interest per month payable on a monthly basis.[8]

Despite the maturity of both Promissory Notes and the repeated oral demands made by Gil on ILC, Lea Alvarez-Bagui, Casimiro De Guia and Ferdinand Macababbad, they did not pay the amounts due on the promissory notes.

Gil, through counsel, sent a demand letter dated May 15, 2002 to Casimiro De Guia, Lea Alvarez-Bagui and Ferdinand Macababbad demanding the amount of Six Hundred Twelve Thousand and Five Hundred Philippine Pesos (P612,500.00) less the partial payment of Seventy-Four Thousand Philippine Pesos (P74,000.00) made by them or demanding the balance of Five Hundred Thirty-Eight Thousand Five Hundred Philippine Pesos (P538,500.00) within ten (10) days from receipt of the demand.[9]

After they failed to pay the balance, Gil filed the Complaint for Sum of Money and Damages[10] against Infinity Lending Corporation, Casimiro A. De Guia, Jr., Lea Alvarez-Bagui and Ferdinand M. Macababbad before the RTC of Manila, Branch 173, which was docketed as Civil Case No. 02-103909, praying that all defendants be jointly and solidarily held liable to pay him Five Hundred Thirty-Eight Thousand and Five Hundred Philippine Pesos (P538,500.00) plus penalty and interest charges of 5% per month until fully paid, for them to pay attorney's fees equivalent to 20% of the total claim including Three Thousand Five Hundred Philippine Pesos (P3,500) as appearance fee and no less than One Hundred Thousand Philippine Pesos (P100,000.00) as litigation expenses and cost of suit.

In their Answer,[11] Casimiro De Guia, Lea Alvarez-Bagui and Ferdinand Macababbad denied the allegations of Gil and asserted that it was ILC which contracted the obligation to pay the amounts stipulated in the promissory notes and they were merely the signatories of the notes; they did not sign in their own personal capacity. ILC operated its lending business by giving salary loans to teachers and government employees, with the payments for such loans collected every day.[12] ILC private borrowers either issued postdated checks or surrendered car registrations or land titles as collateral. Its collection declined and it allegedly suffered financial losses in 1997 so it stopped accepting investments at that time. As a counterclaim, the three (3) individual defendants prayed for the payment of Five Hundred Thousand Pesos (P500,000.00) each as moral damages and Two Hundred Thousand Pesos (P200,000.00) each as exemplary damages, including Fifty Thousand Pesos (P50,000.00) as attorney's fees

and Three Thousand Pesos (P3,000.00) per court appearance.

For its failure to file an Answer or responsive pleading, ILC was declared in default by the RTC in its Order dated December 18, 2003.[13]

In its assailed Decision dated January 26, 2010, the RTC ruled in favor of Gil and ordered Infinity Lending Corporation, De Guia, Bagui and Macababbad to pay in solidum the amount of Five Hundred Thousand Philippine Pesos (P500,000.00) as principal with legal interest from the date of the filing of the Complaint in July 2002; Twenty Thousand Philippine Pesos (P20,000.00) as attorney's fees; and Six Thousand and Forty-Nine Philippine Pesos and 47/100 (P6,049.47) as cost of suit. The RTC held that while a corporation has a distinct and separate personality from its stockholders, the circumstances of the case provide that ILC was being used as a "mere conduit or instrumentality to extract or ferret out money from investors xxx".[14] De Guia, Bagui and Macababbad were the ones who directly received and accepted the investment returns without expectation that these investments will be returned to Gil.[15]

De Guia, Bagui and Macababbad moved for a reconsideration[16] of the said Decision on June 25, 2010. But the RTC denied the said Motion for Reconsideration in its Order dated January 4, 2011,[17] finding that the defendants who were officials of ILC cannot pretend that they lacked knowledge about the financial conditions of the corporation. The RTC also ruled that the testimonies of Casimiro de Guia, Jr. and Rodel Morales, ILC's General Manager, showed that at the time Gil made his second investment on July 28, 1997, the corporation was already on the verge of being insolvent and yet accepted the same.[18]

Aggrieved, De Guia, Bagui and Macababbad filed a Notice of Appeal on January 28, 2011.[19]

THE ASSIGNED ERRORS

I

WHETHER OR NOT THE TRIAL COURT GROSSLY ERRED IN NOT FINDING THAT THE PLAINTIFF-APPELLEE FAILED TO ESTABLISH BY ANY IOTA OF EVIDENCE WHAT SPECIFIC ACTS CONSTITUTE OF FRAUD WERE COMMITTED BY THE HEREIN INDIVIDUAL DEFENDANTS-APPELLANTS THAT WOULD JUSTIFY THE PIERCING OF THE VEIL OF CORPORATE FICTION;

II

WHETHER OR NOT THE TRIAL COURT GROSSLY ERRED IN NOT FINDING THAT FRAUD IS NEVER PRESUMED;

III

WHETHER OR NOT THE TRIAL COURT GROSSLY ERRED IN ORDERING THE PAYMENT OF INTEREST AGAINST THE INDIVIDUAL DEFENDANTS-APPELLANTS DESPITE THE FACT THAT NO DEMAND HAS BEEN MADE AGAINST THE INDIVIDUAL DEFENDANTS-APPELLANTS – FOLLOWING THE MAXIM – “NO DEMAND, NO DELAY AND NO DELAY, NO INTEREST”;

IV

WHETHER OR NOT THE TRIAL COURT GROSSLY ERRED IN ORDERING THE PAYMENT OF P6,049.47 AS COST OF SUIT WITHOUT ANY PROOF OR RECEIPT OF SUCH PAYMENT MADE BY THE PLAINTIFF-APPELLEE.

De Guia, Bagui and Macababbad, as Our defendants-appellants, claim that the RTC was not able to show that they particularly committed fraudulent acts against Gil. They insist that fraud should never be presumed and that there is no basis for the court to award the cost of suit in the amount of P6,049.47. They proffer that the reason that ILC was not able to return the money investment to plaintiff-appellee was because the corporation became bankrupt because it failed to collect the money it lent to its borrowers.

In his brief, Renato Gil, as plaintiff-appellee before Us, argues that the RTC was sufficiently able to prove that the corporate fiction of ILC was used to perpetrate fraud against him. He also contends that the defendants-appellants' deliberate refusal and failure to submit any document or audited financial statement at the time of investment to prove ILC's financial stability manifests that it was already bankrupt or almost bankrupt at the time he made an investment therein.

OUR RULING

We DISMISS this appeal.

The main issue in this appeal is whether defendants-appellants are solidarily liable to pay plaintiff-appellee the amounts indicated on the promissory notes upon default in payment by the defendant Infinity Lending Corporation ("ILC").

We affirm the RTC ruling finding fraud to have been committed by the defendants-appellants, thus making them solidarily liable with ILC to pay for amounts it owed to plaintiff-appellee.

The case of *Reynoso v. Court of Appeals*[20] is illustrative in explaining the nature of the corporation and when the doctrine of piercing the corporate fiction is appropriate. It held, thus:

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"A corporation is an artificial being created by operation of law, having the right of succession and the powers, attributes, and properties expressly authorized by law or incident to its existence. [17][21] It is an artificial being invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other legal entity to which it may be related. [18][22] It was evolved to make possible the aggregation and assembling of huge amounts of capital upon which big business depends. It also has the advantage of non-dependence on the lives of those who compose it even as it enjoys certain rights and conducts activities of natural persons.

Precisely because the corporation is such a prevalent and dominating factor in the business life of the country, the law has to look carefully into the exercise of powers by these artificial persons it has created.

Any piercing of the corporate veil has to be done with caution. However, the Court will not hesitate to use its supervisory and adjudicative powers where the corporate fiction is used as an unfair device to achieve an inequitable result, defraud creditors, evade contracts and obligations, or to shield it from the effects of a court decision. The corporate fiction has to be disregarded when necessary in the interest of justice." (Emphasis supplied.)

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In this case, it is obvious how the individual defendants-appellants, who were officers of the ILC, are hiding behind the veil of its separate personality so as to avoid payment of a validly contracted obligation, specifically the promissory notes in the total amount of Five Hundred Thousand Pesos (P500,000.00).

Plaintiff-appellee was encouraged to invest in ILC by his wedding godfather, a certain Cesar De Guia, brother of one of the defendants-appellants, Casimiro De Guia, Jr. The three defendants-appellants were all there to receive

his investment at the ILC office in Batangas. For his initial investment of Four Hundred Thousand Philippine Pesos (P400,000.00), he was promised to receive a monthly interest of Twelve Thousand Philippine Pesos (P12,000.00) per month. Several checks were issued to him; some of them were good but a check dated December 30, 1997 bounced in the amount of Ten Thousand Philippine Pesos (P10,000.00).[23]

Plaintiff-appellee's wife, Maricris Gil, also testified that the three individual defendants-appellants who were all officers and incorporators of defendant-appellant corporation assured them that their money invested with ILC will be safe.[24] Casimiro De Guia told them that their money will earn more interest than in the bank.[25] Lea Alvarez-Bagui told them that they should not worry since their money will be safe.[26] Ferdinand Macababba made the same assurances to the plaintiff-appellee and his wife.[27]

Defendants-appellants admitted that it was due to their lack of management why they were unable to collect from their borrowers leading to the financial loss of their business.[28] They did not foreclose on any of the collateral given to them by their borrowers due to the pleas of their borrowers (“pakiusap”). This is tantamount to negligence and mismanagement of the corporate affairs. Defendants-appellants also failed to show any documentary evidence proving that ILC is indeed a separate corporate entity that would have the financial capability to meet the the outstanding obligations it has against plaintiff-appellee. In fact, they did not offer any documentary evidence to show that ILC is a bona fide corporate juridical entity. We thus affirm the RTC holding that defendants-appellants must be held liable in solidum with ILC to pay for the obligation due to plaintiff-appellee.

However, We reverse the order of the RTC for defendants-appellants to pay the cost of suit to plaintiff-appellee in the amount of Six Thousand and Forty-Nine Philippine Pesos and 47/100 (P6,049.47). There is no documentary proof, like a receipt, found in the court records to sustain that plaintiff-appellee incurred the same amount to make defendants-appellants liable to pay it.

WHEREFORE, premises considered, the appeal is DISMISSED. The RTC Decision dated January 26, 2010 is AFFIRMED with MODIFICATION that the award to Renato Gil in the amount of P6,049.47 as cost of suit is DELETED.

Costs against the defendants-appellants.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Abdulwahid, H.S., Chairperson, and Barza., JJ., concur.

[1] Penned by Hon. Jose A. Mendoza; Rollo, 17-21.

[2] Rollo, 21.

[3] Exhibit “A-1” for the plaintiff; See Records, between 142-143.

[4] Exhibit “A” for the plaintiff; See Records, between 142-143.

- [5] Exhibit “B” for the plaintiff; See Records, between 142-143.
- [6] According to Casimiro De Guia, Jr., Ferdinand Macababbad may be the Chairman of the Board of ILC. See TSN, Testimony of Casimiro De Guia, Jr., April 24, 2007, 8.
- [7] Exhibit “D” for the plaintiff; See Records, between 142-143.
- [8] Exhibit “C” for the plaintiff; See Records, between 142-143.
- [9] Records, 11.
- [10] Records, 1-11.
- [11] Records, 40-45
- [12] TSN, Testimony of Casimiro De Guia, Jr., April 24, 2007, 29.
- [13] Records, 84-85.
- [14] Decision, 4; Rollo, 55.
- [15] Ibid.
- [16] Records, 284-287.
- [17] Records, 306-309.
- [18] Order, 3; Records, 308.
- [19] Records, 310-311.
- [20] G.R. Nos. 116124-25, November 22, 2000.
- [21] Ibid., citing Corporation Code, Section 2.
- [22] Ibid., citing *Yu v. NLRC*, 245 SCRA 134 (1995).
- [23] TSN, Testimony of Plaintiff-appellee Renato Gil, September 28, 2004, 19.
- [24] TSN, Testimony of Maricris Gil, June 22, 2006, 9.
- [25] Id., 10.
- [26] Ibid.
- [27] Ibid.
- [28] TSN, Testimony of C. De Guia, April 24, 2007, 31-33.

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