

**DAIKIN-ALEN AIR CONDITIONING INCORPORATED,
PLAINTIFF-APPELLEE, VS. SALEMAIRE INDUSTRIES CORPORATION,
DEFENDANT-APPELLANT.**

Ponente: CARANDANG, J.

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CARANDANG, J.:

Before this Court is an appeal seeking to nullify and set aside the Decision dated 12 September 2012 of the Regional Trial Court Branch 95 of Quezon City which ruled in favor of plaintiff-appellee and ordered the defendant-appellant to pay the sum of P2,191,163.70 with 2% monthly interest starting November 2006 until the full payment thereof, plus P100,000.00 as attorney's fees.

The facts, as culled from the records, are as follows:

From March to December 2003, appellant Salemaire Industries Corporation (appellant) purchased from the appellee Daikin-Alen Air Conditioning, Inc. (appellee) several air-conditioning units, parts and equipment. Per invoices, appellant's total purchases amounted to P4,665,080.00. Out of the said amount, appellant paid the amount of P2,473,916.64 only, leaving an unpaid balance of P2,191,163.36. Consequently, the appellee attempted to collect the unpaid balance from the appellant through notices and phone calls, but to no avail. As a result, appellee's counsel sent a letter dated 27 July 2006 to the appellant formally demanding the payment of the amount of P2,191,163.36 representing the unpaid balance of the purchase price due the appellee.

In a reply-letter dated 27 October 2006, the appellant denied that it had failed to pay its obligations with the appellee. It argued that it had already paid for the purchase price of the purchases it made by virtue of the verbal agreement made on 20 January 2004 between its president Mr. Roque Martos and the then president of the appellee, Mr. Hideki Nishimura wherein Mr. Nishimura supposedly agreed for the offsetting of the appellant's outstanding obligation due the appellee with the outstanding obligation of another company, Alen International Industrial Corporation (Alen International) due the appellant. Alen International owns 40% of the equity of the appellee. The total outstanding obligation of Alen International to the appellant amounted to P2,191,163.70 as of 20 January 2004, which is approximately equal to the appellant's outstanding obligation to the appellee. The following day, 21 January 2004, the appellant, through its president Mr. Roque Martos, sent a letter to the appellee, through Mr. Hideki Nishimura, reiterating the supposed offsetting agreement. Appellee did not respond to said letter.

On 30 August 2007, the appellee filed the Complaint a quo which prayed that judgment be rendered ordering the appellant to pay P2,191,163.36 plus interest of 2% from November 2006 until the said amount is fully paid, as well as attorney's fees.

On 12 September 2012, the lower court rendered a Decision finding the appellant liable to pay the outstanding obligation to the appellee, among others. The dispositive portion of the 12 September 2012 Decision reads:

“WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant. The defendant is ordered to pay the plaintiff the following amounts:

- Two Million One Hundred Ninety One Thousand One Hundred Sixty Three and Seventy Centavos (Php2,191,163.70) plus interest at the rate of two percent (2%) per month from November 2006 until the said amount is fully paid;

- One Hundred Thousand Pesos as Attorney's Fees.

SO ORDERED.”[1]

In ruling for the appellee, the lower court ratiocinated that the appellant's outstanding obligations to the appellee were not yet fully paid because there was no valid offsetting as the appellant is not a creditor of the appellee. Hence, the rule on compensation under Articles 1278 and 1279 of the Civil Code is not applicable in the instant case. The lower court adds that the appellee is not guilty of estoppel because Mr. Hideki Nishimura did not falsely represent or acquiesce to any off-setting agreement being claimed by the appellant. There was also no showing that Mr. Hideki Nishimura was authorized by the appellee to enter into any agreement with the appellant.

Hence, the present petition wherein the appellant assigns the following errors:

“I.

The Court a quo erred in finding the Appellant liable for the amount of PHP2,191,163.70.

There was a valid and binding offsetting between Appellee Daikin-Alen Air Conditioning Inc. and Appellant Salemaire Industries Corporation.”[2]

“II.

The Court a quo erred in ruling that the claim of Appellee is not barred by estoppel.”[3]

Appellant argues that there was a valid offsetting of the obligations of the appellee and the appellant because both are debtors and creditors of each other. This is anchored on appellant's argument that there was a “merger” between Daikin Corporation and Alen International from which the appellee (Daikin-Alen Airconditioning, Inc.) was created. Thus, under Section 80 of the Corporation Code, the appellee, as the newly-formed corporation, ipso jure assumes all the rights and obligations of the constituent corporations and becomes the debtor of the appellant. Consequently, there was a legal compensation between the debts of the appellee and the appellant as all the requirements for legal compensation under Article 1279 of the Civil Code are present.

Appellant also argues that the appellee is guilty of estoppel because Mr. Hideki Nishimura was vested with an apparent authority from the appellee when he purportedly entered into an agreement with the appellant's president regarding the offsetting of the appellant's debt with that of the appellee. Thus, appellee's failure to deny or refute the offsetting agreement and to demand its claim for payment of the unpaid balance for almost two years after the purported offsetting agreement is tantamount to an acquiescence or approval to the said agreement.

Appellant's contentions are without merit.

For legal compensation to take place, the requirements set forth in Articles 1278 and 1279 of the Civil Code, quoted below, must be present.

ARTICLE 1278. Compensation shall take place when two persons, in their own right, are creditors and debtors of each other.

ARTICLE 1279. In order that compensation may be proper, it is necessary:

- (1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;
- (2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;
- (3) That the two debts be due;
- (4) That they be liquidated and demandable;
- (5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

In this case, there was no legal compensation because the first requisite in Article 1279 is not present. That is, the appellee was never a debtor of the appellant. What is clear from the records is that appellant is indebted to the appellee in the amount of P2,191,163.70 representing the unpaid balance of its purchases from the latter. On the other hand, appellant is a creditor of Alen International which has a separate and distinct juridical personality from the appellee.

Merger is a union whereby one or more existing corporations are absorbed by another corporation which survives and continues the combined business.[4] Consolidation, on the other hand, is the union of two or more existing corporations to form a new corporation called the consolidated corporation. In consolidation all the constituent corporations are dissolved and absorbed by the new consolidated enterprise.[5]

Contrary to appellant's contention, there was no showing in this case that there was a merger or consolidation between Daikin and Alen International. Proving that there was a merger or consolidation rests with the appellant. This is based on the principle that he who alleges a fact has the burden of proving it.[6] In this case, the appellant failed to present any evidence that there was indeed a merger or consolidation between Daikin and Alen International such as (1) the approval by both the board of directors and the stockholders of Daikin and Alen International of the plan of merger or consolidation, (2) the execution of the articles of merger or consolidation, and (3) the issuance by the Securities and Exchange Commission of the certificate of merger or consolidation. On the contrary, records of this case is replete with evidence that the appellee, Daikin-Alen Air Conditioning, Inc., and Alen International are separate and distinct from each other and that the latter continues to exist despite the creation of the former. It bears to stress that one of the effects of merger or consolidation under Section 80 of the Corporation Code is the ipso jure cessation of the separate existence of the constituent corporations, except the surviving corporation in the case of merger or the new consolidated corporation in the case of consolidation.

In its Answer with Counterclaim, the appellant implicitly admitted the continued and separate existence of the Alen International. Thus:

“10. As it was at that time experiencing difficulty in collecting the afore-mentioned obligation from ALEN, the herein Defendant through its President, Mr. Roque Martos, purposely sought the assistance of Mr. Hideki Nishimura, then the incumbent President of the herein Plaintiff, collecting the said outstanding obligation from ALEN;

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12. After a thorough discussion, Mr. Hideki Nishimura and Mr. Roque Martos finally and expressly agreed, in the presence of Messrs. Dizon and Daguno, that it will be the Plaintiff who will assume and settle the

afore-mentioned outstanding obligation of ALEN to the herein Defendant by way of periodic deduction or offsetting of an amount equivalent to forty (40%) percent from the accrued and future payable accounts of the Defendant to the Plaintiff until the full amount of ALEN's outstanding indebtedness in the amount of P2,191,163.36 is finally covered or paid up;”[7]

Appellant's witness, Mr. Nonilon Daguno, even admitted that Alen International has its own officers separate and independent from that of the appellee. Thus:

“Q -

Now what finally transpired in that meeting?

A -

Since Mr. Nishimura could not collect any from Mr. Martos, so they finally settled that Mr. Nishimura will help Salemaire to collect by telling the matter to the chairperson/head of Alen-International. So, Mr. Nishimura told Mr. Martos to pay Daikin the outstanding balance and retain the P2.1 Million Pesos; and all other balances were paid.”[8] (Underscoring Ours.)

In its brief, appellant stated that Alen International Industrial Corporation (Alen) owned at least forty-percent of the total equity of plaintiff-appellee.[9] These admissions by the appellant only show that there was no merger or consolidation that took place between plaintiff and Alen International. Hence, the appellee did not assume the liabilities and obligations of Alen International which remains to have distinct and separate juridical personality. Thus, the first requisite of Article 1279 of the Civil Code that each one of the obligors be bound principally, and that it be at the same time a principal creditor of the other was not met in the instant case. Clearly, there was no legal compensation.

Neither was the appellee guilty of estoppel. The essential elements of estoppel are (i) conduct of a party amounting to false representation or concealment of material facts or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (ii) intent, or at least expectation, that this conduct shall be acted upon by, or at least influence, the other party; and (iii) knowledge, actual or constructive, of the real facts.[10]

Appellant failed to prove that Mr. Nishimura was duly authorized by the appellee to enter into an offsetting agreement with the appellant. The general rule is that, in the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation.¹¹ Neither can there be an apparent authority vested upon Mr. Nishimura. As ruled by the Supreme Court in *People's Cargo and Warehousing Co. vs. Court of Appeals*:

“A corporate officer or agent may represent and bind the corporation in transactions with third persons to the extent that [the] authority to do so has been conferred upon him, and this includes powers which have been intentionally conferred, and also such powers as, in the usual course of the particular business, are incidental to, or may be implied from, the powers intentionally conferred, powers added by custom and usage, as usually pertaining to the particular officer or agent, and such apparent powers as the corporation has caused persons dealing with the officer or agent to believe that it has conferred.”[12] (Underscoring Ours.)

In this case, the general rule must be applied because there was no apparent authority vested upon Mr. Nishimura. Certainly, the purported assumption by the appellee of another corporation's indebtedness was not within the domain of the general objectives of its business nor was it within the scope of Mr. Nishimura's usual duties and responsibilities. Hence, whatever offsetting agreement that was purportedly entered into by and between Mr.

Nishimura and Mr. Martos is not binding upon the appellee.

Also, it cannot be concluded that by virtue of the purported offsetting agreement, the appellant was misled to act upon it. As correctly observed by the lower court, the appellant had been paying only a partial amount or the 60% of its total amount of purchases from the plaintiff as early as March 2003. On the other hand, the meeting in which the supposed offsetting agreement was forged between Mr. Nishimura and Mr. Martos took place only on 20 January 2004.¹³ This only goes to show that the appellant's "offsetting" of 40% of the purchase price of its purchases from the appellee was not by virtue of the offsetting agreement between the Mr. Nishimura and Mr. Martos but by its own unilateral act.

WHEREFORE, premises considered, the instant petition is DENIED for lack of merit. The 12 September 2012 Decision of the lower court is AFFIRMED.

SO ORDERED.

C E R T I F I C A T I O N

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.

Gonzales-Sison and Sorongon, JJ., concur.

[1] Rollo, pp. 31-32.

[2] Ibid., p. 71.

[3] Id., p. 78.

[4] Villanueva, Cesar L. Philippine Corporate Law, 2001 Edition, p. 607.

[5] Id., p. 606-607.

[6] Asia Traders Insurance Corporation vs. The Honorable Court of Appeals, G.R. No. 152537. February 16, 2004.

[7] Records, p. 66.

[8] TSN, 14 October 2011, p. 29.

[9] Appellant's Brief, Paragraph 3, Statement of Facts.

[10] Lim v. Queensland Tokyo Commodities, Inc., 424 Phil. 35, 43-44 (2002) citing Philippine National Bank v. Court of Appeals, 308 SCRA 229 (1999).

[11] Premium Marble Resources, Inc. v. Court of Appeals, 264 SCRA 11, 17, November 4, 1996.

[12] 297 SCRA 170.

[13] Appellant's Brief, Paragraph 5, Statement of Facts.

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