SAMUEL BARANGAN, PETITIONER, VS. COURT OF APPEALS AND LEOVINO JOSE, RESPONDENTS.

G.R. No. 123307. November 29, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Put not your trust in money; rather, put your money in trust.[1] Perhaps this concept was unknown to private respondent Leovino Jose and his townmates when they invested their hard-earned money in a paluwagan that would "treble in fifteen (15) days." To their endless consternation however they could only sense their money fast dissipating like a bubble bursting in mid-air.

Sometime in 1989 the San Mateo Small Town Multi-Purpose Cooperative (SMSTMC) was organized "to uplift the economic condition of its members." The officers were Federico Castillo, Chairman; Atty. Samuel Barangan, Vice-Chairman; and Rolando Remigio, Efigenia Marquez, Federico Sison Jr. and Esperanza Garcia as Members of the Board of Directors. The cooperative was short-lived as it was dissolved for engaging in a paluwagan. Undeterred, the officers of the SMSTMC lost no time in organizing the Biyaya Foundation (BIYAYA) and had the Foundation duly registered with the Securities and Exchange Commission. Apparently, the formation of the new corporation was a mere subterfuge to perpetuate their illegal activity as it continued operating as a paluwagan. Plainly, the BIYAYA was the "same dog with a different collar," so to speak. As explained by Samuel Barangan, the mechanics of the paluwagan follow:[2] For any amount invested, after the expiration of fifteen (15) working days, the investor will be able to withdraw three (3) times the amount of his investment. Specifically, Barangan testified

> Q.
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> Will you further explain to the Court the scheme of plan to pay the supposed last investor considering that the receipt of the investment would be consumed before the last investor? How will he be paid?
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> A:
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> What the manager explained to us is that this is a continuing process so there is always money that will be returned to any investor. Aside from that, we put up a business, that is the marketing branch, we can also derive income aside from the bank interests, sir x x x x
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> Q:
>
> All right, you are a lawyer. They claim that it is a scheme of pyramiding. In other words, the original investment comes from small investors, you get the payments of these small investors from a big investor. Now comes a time that the bigger investor could not be paid because there was no money to pay them. Will you explain how the Biyaya Foundation plans to pay the larger investments?
>
> A:
>
> When we asked that during the deliberation in the Board meeting, Federico Castillo explained to us that in

every investment, say of P1,000.00, it will be two management slots. sir.

Q:

So you mean to say that when a matured investment is paid, the money to pay it comes from other investors which you refer to as "slots"?

A:

Yes, your honor.

Akin to any pyramiding scam, in no time the BIYAYA office was raided by the NBI and the military taking with them stacks of documents and other incriminatory evidence. Consequently, the operations of BIYAYA were stopped leaving its numerous investors - two (2) of whom being John Gatmen and Leovino Jose - like a school of fish gasping for breath in a just emptied lagoon.

On 22 August 1989 a criminal complaint for estafa was filed against BIYAYA's Chairman Federico Castillo, Vice-Chairman Samuel Barangan, and Board Members Efigenia Marquez, Merlinda Topinio, Gualberto Ola, Federico Sison Jr. and Rolando Remigio. The complaint alleged that these seven (7) accused feloniously solicited investments from John Gatmen in the sum of P31,200.00 where he would be paid 300% in dividends after (15) fifteen days plus another 200% in dividends after (21) twenty-one days, and on such dates the capital would be returned. But, despite repeated demands, John Gatmen was never paid his investment and guaranteed profits.[3] On 30 August 1989 another complaint for estafa was filed by Leovino Jose similarly alleging that he was defrauded by the same accused by convincing him to part with P43,500.00 and to deposit the amount with the Biyaya Foundation. But far from complying with their promise, the money was misappropriated and misapplied to their own use and benefit.[4] Thus, Leovino Jose never recovered what he invested, much less its promised returns.

On 6 September 1989 a warrant of arrest was issued against the seven (7) accused. Atty. Samuel Barangan, Merlinda Topinio and Efigenia Marquez were thereafter apprehended and detained, while Federico Castillo and Gualberto Ola up to this day remain at large. As regards Federico Sison Jr, and Rolando Remegio, the records are not clear although they appear to have subsequently participated in the trial and even took the witness stand.

In a Resolution dated 14 September 1989 the trial court ordered the filing of formal charges against Federico Castillo, Samuel V. Barangan, Efigenia Marquez, Gualberto Ola, Federico Sison, Jr., and Rolando Remegio but dropped the charge against Merlinda G. Topinio for the reason that she was a mere employee of BIYAYA.

On 6 November 1989 two (2) separate Informations were filed against the herein mentioned accused, one by complainant John Gatmen, and the other by Leovino Jose. In the joint hearing subsequently conducted, the prosecution failed to present evidence in Crim. Case No. 20-251 for failure of complaining witness therein, John Gatmen, and his witnesses to appear during the trial. Hence, only testimonies of the witnesses in Crim. Case No. Br. 20-252, more prominently that of Leovino Jose, were offered in evidence.

On 26 November 1990 the trial court in both cases acquitted Samuel Barangan, Efigenia Marquez, Federico Sison, Jr., and Rolando Remigio on reasonable doubt. They were however ordered to pay jointly and severally the amount of P43,000.00 to Leovino Jose. As adverted to earlier, accused Federico Castillo and Gualberto Ola were not apprehended hence were never arraigned, much less tried.

In acquitting the four (4) accused the trial court[5] opined that there was nothing in the testimonies of the prosecution witnesses to support the allegation that they, singly or collectively, induced or convinced Leovino Jose to invest in the paluwagan. Nor was there evidence to show that they represented to him before or at the time

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he made the investment that it would earn 300% in fifteen (15) days and 200% in twenty-one (21) days. In fact, what appears clear from the testimonies of the prosecution witnesses is that they were induced to invest only after learning that there were those who already received the guaranteed dividends.

As regards the civil liability of the accused, the trial court observed[6]-

Leovino Jose did not give his money to the accused: he gave it to the BF through its employees. As the BF has a juridical personality separate and distinct from that of its stockholders and officers, it is the one, not the accused, who is liable to Leovino Jose for the return of his P43,5000.00.

This is the rule under normal circumstances x x x x But when the corporate entity is used to defeat public convenience, justify a wrong, protect fraud or defend crime or when it is used as a shield to confuse issues, the fiction that the corporation has a separate and distinct personality from its stockholders and officers may be discarded. In such a case, the corporation is considered as a mere association of persons and the stockholders or members of the corporation are considered as the corporation. This is called "piercing the veil of corporate fiction" or "looking at the substance rather than form" x x x x Compelling and valid reasons exist warranting the lifting of the veil of corporate fiction of BF and hold its officers, the accused herein, liable for its obligation to Leovino Jose. BF was engaged in an illegal activity by operating a paluwagan. BF is practically dissolved and abandoned when its officers went into hiding after the military raided it to stop its operation. Unless its officers are held liable for the obligation of BF to Leovino Jose, the wrong committed against him will be perpetuated as recourse to the BF is futile.

Within the reglementary period accused Samuel Barangan together with his co-accused Efigenia Marquez, Federico Sison, Jr. and Rolando Remigio appealed their civil liability to the Court of Appeals which on 17 November 1995 rendered the assailed Decision[7] which affirmed that of the trial court except that Efigenia Marquez was absolved from any liability to Leovino Jose. Thus -

It is also well to stress that neither Biyaya nor its officers can evade the demands of justice by the simple expedient of invoking the illegality of the contract for which they themselves are responsible. In this case, the principle of estoppel would step in to prevent one party from going back upon his own acts to the prejudice of the other party who relied upon them.

In their last assignment of error, the appellants assail the decision of the lower court in holding them jointly and severally liable to Leovino Jose and in not dismissing the complaint. They claim that Efigenia Marquez cannot be liable because she was not an officer of Biyaya; neither could Rolando Remigio be liable since the inclusion of his name in the articles of incorporation of Biyaya was done without his knowledge and consent.

To this contention, this Court finds that Efigenia Marquez cannot be held jointly and severally liable with her co-defendants in the absence of any showing that she is an officer or a member of the board of directors of Biyaya. Barangan himself vehemently denied that Marquez had ever been an officer or director of Biyaya. That there was no proof that the persons whose names appear in the articles of incorporation are the only officers of Biyaya is immaterial. If at all, the burden of proving the same would have lain in the appellee, not with Marquez.

However as regards Rolando Remigio and Federico Sison, this court finds no cogent reason to depart from the ruling of the lower court. Rolando Remigio's name appears in the articles of incorporation of Biyaya. Such a representation is binding on him as regards persons dealing with Biyaya. If Remigio had not really consented to the inclusion of his name in the articles of incorporation, it would normally be expected that Remigio take positive action to have his name stricken therefrom. In the absence of any such categorical action, it is but sound to conclude that he acquiesced thereto.

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This court furthermore agrees with the holding of the trial court as to the liability of Federico Sison. While it may be true that Sison wrote a letter to Biyaya regarding his resignation, the fact remains that there is no showing that Biyaya accepted the same.[8]

Petitioner Samuel Barangan now comes to us contending that respondent appellate court committed a reversible error in holding without evidence that Leovino Jose invested any amount with the BIYAYA and in holding him together with the other accused jointly and severally liable to pay Leovino Jose.[9] Barangan argues that there was no evidence at all that Jose actually invested any amount with BIYAYA. His claim that he was given slots for his investment should not be given credence in view of his failure to present any of the slots in evidence. He did not even know the name of the employee of BIYAYA to whom he gave the money nor could he remember the amount he invested in his name or in the name of his relatives.

We are not persuaded. There is sufficient evidence to show that Leovino Jose did invest his money with the BIYAYA. The accused themselves furnished the proof therefor. Barangan affirmed that Jose was an investor of the BIYAYA.[10] The fact that he was not able to present the slots, supposedly the only proof of receipt of the investment, was explained by him to the satisfaction of this Court. Jose testified that he gave the slots to Atty. Manuel in preparation for the filing of the complaint but unfortunately the latter died before the same could be presented in court. As correctly pointed out by respondent Court of Appeals, it is understandable why Jose could not retrieve the slots from the widow of their former counsel since she could not be expected to keep track of the records of her husband. Nonetheless, the existence of the slots has never been put in issue.

Again Jose's failure to identify the employee to whom he gave his money can be satisfactorily explained in the light of the circumstances then obtaining. As testified to by the witnesses, there were thousands of investors who deposited their money with the BIYAYA. Reports that many had already received the unexpected bounty must have whetted the appetite for money of Jose and his fellow investors. Come what may, Jose would join the bandwagon. Throwing caution to the wind, he invested his P43,500.00 without any proof of receipt nor bothered to identify the person to whom he gave the money. He was complacent with the thought that he was familiar with some of the officers of the association and he was in possession of the slots in question. He was just doing what others before him had done.

It has been proven time and again that schemes such as in the instant case - innocuously denominated as a paluwagan - are but rackets designed to victimize the gullible public. We want to clarify, however, that a paluwagan, which operates as a trust fund from which members can draw money in case of need, is not illegal per se. But if it becomes a device to entice investments, usually with the promise of enormous dividends, when in truth the ultimate objective is to swindle the investors, then the scheme is transformed into an illegal activity. It is undisputed that BIYAYA was engaged in one such activity which was cloaked in the guise of a paluwagan. Jose's investment of P43,500.00 was not returned because the officers of BIYAYA went into hiding after the authorities raided its office. For having engaged in an illegal transaction, the officers and the members of the Board of the Biyaya Foundation who had actual knowledge of the transactions and thus tacitly approved and acquiesced thereto, should be made to answer criminally and civilly. It is indeed difficult to fathom why the accused were acquitted considering that BIYAYA could not have possibly undertaken the illegal transactions without the imprimatur of its officers and board members. Yet our hands are now tied by the constitutional mandate against double jeopardy, hence, their acquittal must stand. Petitioner Barangan cannot use the defense that since both parties were in pari delicto they could have no action against each other. It is well to stress that the illegality is attributable to the BIYAYA alone as there is no showing from the records that Jose was aware of the illegality of their business operation or that it was prohibited by law.

This Court agrees with respondent court that Efigenia Marquez cannot be held jointly and severally liable with her

co-defendants since there is no proof that she was an officer or member of the Board of Directors of BIYAYA. With respect to Rolando Remigio and Federico Sison, we likewise see no reason to deviate from the ruling of respondent court that they failed to adequately prove that they were not officers of BIYAYA so as to warrant their exoneration from civil liability.

Incidentally, we note that in the body of respondent court's Decision mention was made of Federico Castillo and Gualberto Ola as having been acquitted of estafa by the trial court. Yet the dispositive portion of the decision of the trial court and respondent court made no such pronouncement. To set the record straight, Federico Castillo and Gualberto Ola are still at large despite a standing warrant against them. Consequently, the trial court did not acquire jurisdiction over their person for purposes of criminal prosecution. Hence as to them the case must be archived pending their eventual apprehension.

WHEREFORE, the assailed Decision of the Court of Appeals sustaining the acquittal of petitioner Samuel Barangan, together with Efigenia Marquez, Federico Sison, Jr. and Rolando Remigio, but ordering them, with the exception of Efigenia Marquez, to pay jointly and severally the amount of P43,500.00 to private respondent Leovino Jose in civil liability with interest at 14% per annum from August 1989 until the full amount is paid without subsidiary imprisonment in case of insolvency, is AFFIRMED, with costs against petitioner.

SO ORDERED.

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Oliver Wendell Holmes (1809-94), The Autocrat of the Breakfast Table, Vol. II, 1858.

[2] TSN, 13 September 1990, pp. 18-22.

[3] Criminal Complaint; Original Records, p. 1.

[4] Criminal Case Br. 20-252; Original Records, p. 1.

[5] Decision penned by Judge Henedino P. Eduarte, RTC-Br. 20, Cauayan, Isabela, the dispositive portion of which reads: WHEREFORE x x x x judgment is hereby rendered: In Criminal Case No. Br. 20-251 - Acquitting the accused Atty. Samuel Barangan, Efigenia D. Marquez, Federico Sison Jr. and Rolando Remigio on the ground that no evidence was presented against them. In Criminal Case No. Br. 20-252 - Acquitting the accused Atty. Samuel Barangan, Efigenia D. Marquez, Federico Sison, Jr., and Rolando Remigio on the ground that their guilt is not established beyond reasonable ground. They are, however, ordered to pay jointly and severally Forty Three Thousand Five Hundred (P43,500.00) Pesos to Leovino Jose with interest at 14% per annum from August 1989 up to and until the full amount is fully paid without subsidiary imprisonment in case of insolvency. Costs against the accused.

[6] Rollo, p. 20.

[7] Decision penned by Associate Justice Celia Lipana-Reyes and concurred in by Associate Justices Alfredo Benipayo and Corona Ibay-Somera.

[8] Rollo, p. 29.

[9] Id., p. 61.

[10] TSN, 14 September 1990, pp. 4-5.

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