

HI-CEMENT CORPORATION, PETITIONER, VS. INSULAR BANK OF ASIA AND AMERICA (LATER PHILIPPINE COMMERCIAL INTERNATIONAL BANK AND NOW, EQUITABLE-PCI BANK) RESPONDENT.

G.R. No. 132403 & 132419. September 28, 2007

Ponente: CORONA, J.

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CORONA, J.:

At bar are consolidated petitions assailing the decision of the Court of Appeals (CA) dated January 21, 1998 in CA-G.R. CV No. 31600 entitled Insular Bank of Asia and America [now Philippine Commercial International Bank/(PCIB)] v. E.T. Henry & Co., et al.[1]

The antecedent facts follow.

Petitioners Enrique Tan and Lilia Tan (spouses Tan) were the controlling stockholders of E.T. Henry & Co., Inc. (E.T. Henry), a company engaged in the business of processing and distributing bunker fuel.[2] Among E.T. Henry's customers were petitioner Hi-Cement Corporation (Hi-Cement),[3] Riverside Mills Corporation (Riverside) and Kanebo Cosmetics Philippines, Inc. (Kanebo). For their purchases, these corporations issued postdated checks to E.T. Henry.

Sometime in 1979, respondent Insular Bank of Asia and America (later PCIB and now Equitable PCI-Bank) granted E.T. Henry a credit facility known as "Purchase of Short Term Receivables." Through this arrangement, E.T. Henry was able to encash, with pre-deducted interest, the postdated checks of its clients. In other words, E.T. Henry and respondent were into "re-discounting" of checks.

For every transaction, respondent required E.T. Henry to execute a promissory note and a deed of assignment bearing the conformity of the client to the re-discounting.[4]

From 1979 to 1981, E.T. Henry was able to re-discount its clients' checks (with deeds of assignment) with respondent. However, in February 1981, 20 checks[5] of Hi-Cement (which were crossed and which bore the restriction "deposit to payee's account only") were dishonored. So were the checks of Riverside and Kanebo.[6]

Respondent filed a complaint for sum of money[7] in the then Court of First Instance of Rizal[8] against E.T. Henry, the spouses Tan, Hi-Cement (including its general manager[9] and its treasurer [10] as signatories of the postdated crossed checks), Riverside and Kanebo.[11]

In its complaint, respondent claimed that, due to the dishonor of the checks, it suffered actual damages equivalent to their value, exclusive of accrued and accruing interests, charges and penalties such as attorney's fees and expenses of litigation, as follows:

1. Riverside Mills Corporation

P 115,312.50

2. Kanebo Cosmetics Philippines, Inc.
5,811,750.00

3. Hi-Cement Corporation
10,000,000.00

Respondent also sought to collect from E.T. Henry and the spouses Tan other loan obligations (amounting to P1,661,266.51 and P4,900,805, respectively) as deficiencies resulting from the foreclosure of the real estate mortgage on E.T. Henry's property in Sucat, Parañaque.[12]

Hi-Cement filed its answer alleging, among others, that: (1) its general manager and treasurer were not authorized to issue the postdated crossed checks in E.T. Henry's favor; (2) the deed of assignment purportedly executed by Hi-Cement assigning them to respondent only bore the conformity of its treasurer and (3) respondent was not a holder in due course as it should not have discounted them for being "crossed checks." [13]

In their answer (with counterclaim against respondent and cross-claims against Hi-Cement, Riverside and Kanebo), [14] E.T. Henry and the spouses Tan claimed that: (1) the drawers of the postdated checks failed to honor them due to the adverse economic conditions prevailing at the time respondent presented them for payment; (2) the extra-judicial sale of the mortgaged Sucat property was void due to gross inadequacy of the bid price [15] and (3) their loans were subjected to a usurious interest rate of 21% p.a.

For their part, Riverside and Kanebo sought the dismissal of the case against them, arguing that they were not privy to the re-discounting arrangement between respondent and E.T. Henry.

On June 30, 1989, the trial court rendered a decision which read:

WHEREFORE, in view of the foregoing, and as a consequence of the preponderance of evidence, this Court hereby renders judgment in favor of [respondent] and against [E.T. Henry, spouses Tan, Hi-Cement, Riverside and Kanebo], to wit:

- Ordering [E.T. Henry, spouses Tan, Hi-Cement, Riverside and Kanebo], jointly and severally, to pay [respondent] damages represented by the face value of the postdated checks as follows:

(a) Riverside Mills Corporation
P 115,312.50

(b) Kanebo Cosmetics Philippines, Inc.
5,811,750.00

(c) Hi-Cement Corporation
10,000,000.00

plus interests, services, charges and penalties until fully paid;

- Ordering [E.T. Henry] and/or [spouses Tan] to pay to [respondent] the sum of P4,900,805.00 plus accrued interests, charges, penalties until fully paid;

- Ordering [E.T. Henry and spouses Tan] to pay [respondent] the sum of P1,661,266.51 plus interests, charges, and penalties until fully paid;

- Ordering [E.T. Henry, spouses Tan, Hi-Cement, Riverside and Kanebo] to pay [respondent] [a]ttorney's fees and expenses of litigation in the amount of P200,000.00 and pay the cost of this suit. [16]

SO ORDERED. [17]

Only petitioners appealed the decision to the CA which affirmed it in toto. Hence, these petitions.

In G.R. No. 132403, petitioner Hi-Cement disclaims liability for the postdated crossed checks because (1) it did not authorize their issuance; (2) respondent was not a holder in due course and (3) there was no basis for the lower court's holding that it was solidarily liable for the face value of Riverside's and Kanebo's checks.[18]

In G.R. No. 132419, on the other hand, E.T. Henry and the spouses Tan essentially contend that the lower courts erred in: (1) applying the doctrine of piercing the veil of the corporate entity to make the spouses Tan solidarily liable with E.T. Henry; (2) not ruling on their cross-claims and counterclaims, and (3) not declaring the foreclosure of E.T. Henry's Sucat property as void.[19]

(A) G.R. 132403

As a rule, an appeal by certiorari under Rule 45 of the Rules of Court is limited to review of errors of law.[20] The factual findings of the trial court, specially when affirmed by the appellate court, are generally binding on us unless there was a misapprehension of facts or when the inference drawn from the facts was manifestly mistaken.[21] This case falls within the exception.

AUTHORITY OF HI-CEMENT'S GENERAL MANAGER AND TREASURER TO ISSUE THE POSTDATED CROSSED CHECKS

Both the trial court and the CA concluded that Hi-Cement authorized its general manager and treasurer to issue the subject postdated crossed checks. They both held that Hi-Cement was already estopped from denying such authority since it never objected to the signatories' issuance of all previous checks to E.T. Henry which the latter, in turn, was able to re-discount with respondent.

We agree with the lower courts that both the general manager and treasurer of Hi-Cement were authorized to issue the subjects checks. However, notwithstanding such fact, respondent could not be considered a holder in due course.

RESPONDENT BANK NOT A HOLDER IN DUE COURSE

The Negotiable Instruments Law (NIL), specifically Section 191,[22] provides:

“Holder” means the payee or indorsee of a bill or a note, or the person who is in possession of it, or the bearer thereof.

On the other hand, Section 52[23] states:

A holder in due course is a holder who has taken the instrument under the following conditions: (a) it is complete and regular on its face; (b) he became the holder of it before it was overdue, and without notice that it has previously been dishonored, if such was the fact; (c) he took it in good faith and for value and (d) at the time it was negotiated to him, he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

Absent any of the elements set forth in Section 52, the holder is not a holder in due course. In the case at bar, the last two requirements were not met.

In *Bataan Cigar and Cigarette Factory, Inc. (BCCF) v. CA*,[24] we held that the holder of crossed checks was not a holder in due course. There, the drawer (BCCF) issued postdated crossed checks in favor of one of its suppliers

(George King) who promised to deliver bales of tobacco leaf but failed. George King, however, sold the checks on discount to State Investment House, Inc. (SIHI) and upon the latter's presentment to the drawee bank, BCCF ordered a "stop payment." Thereafter, SIHI filed a collection case against it. In ruling that SIHI was not a holder in due course, we explained:

In order to preserve the credit worthiness of checks, jurisprudence has pronounced that crossing of a check should have the following effects: (a) the check may not be encashed but only deposited in the bank; (b) the check may be negotiated only once – to one who has an account with a bank [and]; (c) the act of crossing the checks serves as warning to the holder that the check has been issued for a definite purpose so that he must inquire if he has received the check pursuant to that purpose, otherwise, he is not a holder in due course.

Likewise, in *Atrium Management Corporation v. CA*,^[25] where E.T. Henry, Hi-Cement and its treasurer^[26] again engaged in a legal scuffle over four postdated crossed checks, we held that Atrium (with which the checks were re-discounted) was not a holder in due course. In that case, E.T. Henry was the payee of four Hi-Cement postdated checks which it endorsed to Atrium. When the latter presented the crossed checks to the drawee bank, Hi-Cement stopped payment.^[27] We held that Atrium was not a holder in due course:

In the instant case, the checks were crossed and specifically indorsed for deposit to payee's account only. From the beginning, Atrium was aware of the fact that the checks were all for deposit only to payee's account, meaning E.T. Henry. Clearly, then, Atrium could not be considered a holder in due course.

In the case at bar, respondent's claim that it acted in good faith when it accepted and discounted Hi-Cement's postdated crossed checks from E.T. Henry (as payee therein) fails to convince us. Good faith becomes inconsequential amidst proof of respondent's grossly negligent conduct in dealing with the subject checks.

Respondent was all too aware that subject checks were crossed and bore restrictions that they were for deposit to payee's account only; hence, they could not be further negotiated to it. The records likewise reveal that respondent completely disregarded a telling sign of irregularity in the re-discounting of the checks when the general manager did not acquiesce to it as only the treasurer's signature appeared on the deed of assignment. As a banking institution, it behooved respondent to act with extraordinary diligence in every transaction.^[28] Its business is impressed with public interest, thus, it was not expected to be careless and negligent, specially so where the checks it dealt with were crossed. In *Bataan Cigar and Cigarette Factory, Inc.*,^[29] we ruled:

It is then settled that crossing of checks should put the holder on inquiry and upon him devolves the duty to ascertain the indorser's title to the check or the nature of his possession. Failing in this respect, the holder is declared guilty of gross negligence amounting to legal absence of good faith...and as such[,] the consensus of authority is to the effect that the holder of the check is not a holder in due course. (emphasis supplied)

The next query is whether Hi-Cement can still be made liable for the checks. We answer in the negative.

In *State Investment House, Inc. (SIHI) v. Intermediate Appellate Court*,^[30] SIHI re-discounted crossed checks and was declared not a holder in due course. As a result, when it presented the checks for deposit, we deemed that its presentment to the drawee bank was not proper, hence, the liability did not attach to the drawer of the checks. We ruled that:

The three subject checks in the case at bar had been crossed...which could only mean that the drawer had intended the same for deposit only by the rightful person, i.e., the payee named therein. Apparently, it was not the payee who presented the same for payment and therefore, there was no proper presentment, and the liability did not attach to the drawer. Thus, in the absence of due presentment, the drawer did not become liable. ^[31]

Our resolution in the foregoing case was reiterated in *Atrium Management Corporation v. CA*,^[32] where we

affirmed the CA ruling that the drawer of the postdated crossed checks was not liable to the holder who was deemed not a holder in due course.

We note, however, that in the two aforementioned cases, we made it clear that the NIL does not absolutely bar a holder who is not a holder in due course from recovering on the checks. In both, we ruled that it may recover from the party who indorsed/encashed the checks “if the latter has no valid excuse for refusing payment.” Here, there was no doubt that it was E.T. Henry that re-discounted Hi-Cement's checks and received their value from respondent. Since E.T. Henry had no justification to refuse payment, it should pay respondent.

SOLIDARY LIABILITY OF HI-CEMENT FOR THE FACE VALUE OF RIVERSIDE'S AND KANEBO'S CHECKS

Hi-Cement could not also be made solidarily liable with Riverside and Kanebo for the face value of their checks. Hi-Cement had nothing to do with the checks of these two corporations. However, although the language of the trial court decision's dispositive portion seemed confusing, a reading of the decision in its entirety reveals that the fallo was for each corporation to be liable solidarily with E.T. Henry and/or the spouses Tan for the respective values of their checks.

Furthermore, solidary liability cannot be presumed but must be established by law or contract. Neither is present here. Articles 1207 and 1208 of the Civil Code provide:

Art. 1207. The concurrence of two or more debtors in one and the same obligation does not imply that each one of the former has a right to demand, or that each one of the latter is bound to render, entire compliance with the presentation. There is solidary liability only when the obligation expressly so states, or when the obligation requires solidarity. (emphasis supplied)

Art. 1208. If from the law, or the nature of the wording of the obligations to which the preceding article refers to the contrary does not appear, the credit or debt shall be presumed to be divided into as many equal shares as there are creditors or debtors, the credits or debts being considered distinct from one another, subject to the Rules governing the multiplicity of suits.

At any rate, the issue has become moot in view of our ruling that Hi-Cement is not liable for the checks.

(B) G.R. No. 132419

DOCTRINE OF PIERCING THE VEIL OF CORPORATE ENTITY

In their petition, E.T. Henry and the spouses Tan argue that the lower courts erred in applying the “piercing the veil of corporate entity” doctrine to their case. They claim that both the trial and appellate courts failed to cite the reasons why the doctrine was relevant to them.

We agree with petitioners E.T. Henry and the spouses Tan in this respect.

If any general rule can be laid down, it is that the corporation will be looked upon as a legal entity until sufficient reasons to the contrary appear. [33] It is only when the fiction or notion of legal entity is used to defeat public convenience, justify wrong, perpetuate fraud or defend crime that the law will shred the corporate legal veil and regard it as a mere association of persons.[34] This is referred to as the doctrine of piercing the veil of corporate entity.

After a careful study of the records, we hold that E.T. Henry's corporate veil should not have been pierced at all.

First, the trial court failed to provide a clear ground why the doctrine was used. It merely stated that it agreed with respondent's arguments but did not explain why the doctrine was relevant to petitioner E.T. Henry's and the spouses Tan's case. On the other hand, the CA held:

...It appears that spouses Tan are controlling stockholders of E.T. Henry & Co., Inc. as well as its authorized signatories. The business of the corporation was conducted solely for the benefit of the spouses Tan who colluded with [Hi-Cement] in defrauding [respondent]. As the lower court cited...[I]t is a settled law in this and other jurisdictions that when the corporation is a mere alter ego of a person, same being true when the corporation is controlled, and its affairs are so conducted to make it merely an instrumentality, agency or conduit of another.[35]

Similarly, the CA left a gaping hole by failing to provide the basis for its ruling that E.T. Henry and the spouses Tan defrauded respondent. It did not also state what act constituted the fraud. Fraud is an allegation of fact that demands clear and convincing evidence.[36] It is never presumed.[37]

Second, the mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality.[38] For this ground to stand in this case, there must be proof that the spouses Tan: (1) had control or complete domination of E.T. Henry's finances and that the latter had no separate existence with respect to the act complained of; (2) used such control to commit fraud or wrong and (3) the control was the proximate cause of the loss or injury complained of by respondent.[39] The records of this case do not show that these elements were present.

INADEQUACY OF THE BID PRICE TO ANNUL FORECLOSURE PROCEEDING

With respect to the allegation that foreclosure was void due to the inadequacy of the bid price, we agree with the CA that the "mere inadequacy of the price obtained at the [s]heriff's sale, unless shocking to the conscience, (was) not sufficient to set aside the sale if there (was) no showing that, in the event of a regular sale, a better price (could) be obtained." [40]

Furthermore, in the absence of any irregularity in the foreclosure proceeding or proof that it was carried out without strict observance of the procedure, we will continue to assume its regularity and strike down any attempt to vitiate it. In this case, E.T. Henry and the spouses Tan made no mention of any anomaly to support the nullification of the foreclosure sale but merely alleged a disparity in the bid price and the property's fair market value.

COUNTERCLAIMS AND CROSS-CLAIMS

Lastly, E.T. Henry and the spouses Tan call this Court's attention to the alleged failure of the lower court to pass upon their counterclaim against respondent or cross-claims against Hi-Cement, Riverside and Kanebo. They ask us now to hold these parties liable on the basis of said claims. We decline to do so.

First, E.T. Henry and the spouses Tan failed to implead Hi-Cement, Riverside and Kanebo as parties in the case at bar. Under Rule 3 of the Rules of Court, every action, including a counterclaim (or a cross-claim), must be prosecuted or defended in the name of the real party in interest.[41] The term "defendant" may refer to the original defending party, the defendant in a counterclaim, the cross-defendant or the third (fourth, etc.) party defendant.[42] Hence, for this technical lapse, we are constrained not to pass on E.T. Henry's and the spouses Tan's cross-claims.

Second, E.T. Henry and the spouses Tan filed the counterclaim against respondent on the basis of an alleged void

foreclosure proceeding on E.T. Henry's Sucat property due to an inadequate bid price. It is no longer necessary to delve into this matter in view of our finding that the mere inadequacy of the bid price on the property did not automatically render the foreclosure sale irregular or void.

Incidentally, the petition in G.R. No. 132419 posed no contest on the lower courts' ruling on E.T. Henry's and the spouses Tan's solidary liability with Riverside and Kanebo vis-a-vis their checks.[43] To be consistent, however, with our dictum on the separate personality of E.T. Henry and the spouses Tan, the solidarity liability arising from the checks of Riverside and Kanebo shall only be enforced against E.T. Henry.

WHEREFORE, the assailed decision of the Court of Appeals in CA-G.R. CV No. 31600 is hereby **AFFIRMED** with **MODIFICATION**. Accordingly, petitioner Hi-Cement Corporation is discharged from any liability. Only petitioner E.T. Henry & Co. is **ORDERED** to pay respondent Insular Bank of Asia and America (later Philippine Commercial International Bank and now Equitable PCI-Bank) the following:

- P10,000,000 representing the value of Hi-Cement's checks it received from respondent plus accrued interests, charges and penalties until fully paid, and
- the loans for P1,661,266.51 and P4,900,805 plus accrued interests, charges and penalties until fully paid.

Let the records of this case be remanded to the trial court for the proper computation of E.T. Henry's, Riverside's and Kanebo's liabilities for the checks, attorney's fees and costs of litigation.

Costs against petitioners E.T. Henry and the spouses Enrique and Lilia Tan.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Azcuna, and Garcia, JJ., concur.

[1] Penned by Justice B.A. Adelfuin-de la Cruz (retired) with the concurrence of Justices Alicia Austria-Martinez (now Supreme Court Justice) and Roberto A. Barrios (deceased), Fifteenth Division of the Court of Appeals. Rollo (G.R. No. 132403), pp. 42-45.

[2] The spouses Tan and E.T. Henry are the petitioners in G.R. No. 132419.

[3] Hi-Cement is the petitioner in G.R. No. 132403.

[4] Respondent's Comment, rollo (G.R. No. 132403), p. 74.

[5] For the total amount of P10 million.

[6] Riverside's check was worth P115,312.50 and Kanebo's 19 checks amounted to P5,811,750.

[7] With application for a writ of preliminary attachment.

[8] Now Regional Trial Court (RTC).

[9] Antonio de las Alas.

[10] Lourdes Meer de Leon.

[11] The complaint also impleaded Philip Tanchi and Edward Lee as signatories of Riverside and Kanebo.

[12] E.T. Henry obtained loans (on separate dates) from respondent. The payment of these loans was secured by two real estate mortgages on E.T. Henry's Sucat, Parañaque property which were enforced by respondent after the

latter failed to pay the loans.

[13] Under the Negotiable Instruments Law, particularly Section 52 thereof, a holder in due course is a holder who has taken the instrument under the following conditions: (a) it is complete and regular on its face; (b) he became the holder of it before it was overdue, and without notice that it has previously been dishonored, if such was the fact; (c) he took it in good faith and for value and (d) at the time it was negotiated to him, he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

Under Section 191 of the same law, a “holder” is the payee or indorsee of a bill or a note, or the person who is in possession of either.

[14] E.T. Henry filed the counterclaim against respondent to nullify the foreclosure sale and cross-claims against Hi-Cement, Riverside and Kanebo for the value of their dishonored checks.

[15] E.T. Henry and spouses Tan claimed that the Sucat property was worth P23 million during the foreclosure sale but was awarded to respondent as the highest bidder for only P10 million.

[16] Decided by Judge Jainal D. Rasul. Rollo (G.R. No. 132419), pp. 38-A to 42.

[17] Rollo (G.R. No. 132419), p. 42. The trial court previously dropped the charges against de las Alas and de Leon on findings that they merely acted in a representative capacity.

[18] Rollo (G.R. No. 132403), p. 22.

[19] Id. (G.R. No. 132419), p. 23.

[20] Usero v. CA, G.R. No. 152115, 26 January 2005, 449 SCRA 352.

[21] Casol v. Purefoods Corporation, G.R. No. 166550, 22 September 2005, 470 SCRA 585.

[22] Supra at note 13.

[23] Id.

[24] G.R. No. 93048, 3 March 1994, 230 SCRA 643.

[25] The full title of the case was Atrium Management Corporation v. CA, E.T. Henry and Co., Lourdes Victoria M. De Leon, Rafael De Leon and Hi-Cement Corporation. G.R. No. 109491, 28 February 2001, 353 SCRA 23, consolidated with G.R. No. 121794, Lourdes de Leon v. CA and Hi-Cement Corporation.

[26] Lourdes Meer de Leon.

[27] Hi-Cement stopped payment claiming the checks were issued without its authority. In this case, Hi-Cement's treasurer (de Leon) was found to have been negligent when she signed the confirmation letter (deed of assignment) for the re-discounting of the crossed checks issued in favor of E.T. Henry. According to the Court, she was aware that the checks were strictly indorsed for deposit only to the payee's account and not to be further negotiated.

[28] Solidbank Corporation v. Spouses Tan, G.R. No. 167346, 2 April 2007.

[29] Supra at note 24.

[30] G.R. No. 72764, 13 July 1989, 175 SCRA 310.

[31] Id., pp. 316-317.

[32] Supra at note 25.

[33] Francisco v. Mejia, G.R. No. 141617, 14 August 2001, 362 SCRA 738.

[34] Id.

[35] Supra at note 1.

[36] Cathay Pacific Airways, Ltd. v. Sps. Vazquez, 447 Phil. 306 (2003); Maestrado v. CA, 384 Phil. 418 (2000); Loyola v. CA, 383 Phil. 171 (2000).

[37] Cathay Pacific Airways, Ltd. v. Sps. Vasquez, supra.

[38] Francisco v. Mejia, supra. See also Pabalan v. NLRC, G.R. No. 89879, 20 April 1990, 184 SCRA 495; Traders Royal Bank v. CA, 336 Phil. 15 (1997).

[39] Manila Hotel Corp. v. NLRC, 397 Phil. 1 (2000).

[40] Supra at note 1. See also Ponce de Leon v. Rehabilitation Finance Corporation, No. L-24571, 18 December 1970, 36 SCRA 289.

[41] Rule 3, Section 2. See also Tankiko v. Cezar, 362 Phil. 184 (1999).

[42] Rule 3, Section 1.

[43] Since Riverside and Kanebo did not appeal the trial court's decision, it is deemed final and executory to them.

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