

**MANUEL M. MENDOZA AND EDGARDO A. YOTOKO, PETITIONERS,
VS. BANCO REAL DEVELOPMENT BANK (NOW LBC DEVELOPMENT
BANK), RESPONDENT.**

G.R. NO. 140923. September 16, 2005

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.

Before us is a petition for review on certiorari[1], assailing the Decision[2] of the Court of Appeals dated September 21, 1998 in CA-G.R. No. 41544, entitled "BANCO REAL DEVELOPMENT BANK, plaintiff, versus, TECHNICA VIDEO INC., ET. AL., MANUEL M. MENDOZA, ET. AL., defendants" and Resolution dated December 3, 1999.

The petition alleges inter alia that on August 7, 1985, the Board of Directors of Technical Video, Inc. (TVI) passed a Resolution authorizing its President, Eduardo A. Yotoko, petitioner, or its General Manager-Secretary-Treasurer, Manuel M. Mendoza, also a petitioner, to apply for and secure a loan from the Pasay City Banco Real Development Bank (now LBC Development Bank), herein respondent.

On September 11, 1985, respondent bank extended a loan of P500,000.00 to TVI. In his capacity as General Manager, petitioner Mendoza executed a promissory note and chattel mortgage over 195 units of Beta video machines and their equipment and accessories belonging to TVI in favor of respondent bank.

On October 3, 1986, TVI and two other video firms, Fox Video and Galactica Video, organized a new corporation named FGT Video Network Inc. (FGT). It was registered with the Securities and Exchange Commission.[3] Petitioner Mendoza was the concurrent President of FGT and Operating General Manager of TVI. Thus, the office of TVI had to be transferred to the building of FGT for easier monitoring of the distribution and marketing aspects of the business.

For TVI's failure to pay its loan upon maturity, respondent bank, on January 26, 1987, filed with the Office of the Clerk of Court of the Regional Trial Court (RTC), Pasay City, a petition for Extra Judicial Foreclosure and Sale of Chattel Mortgage.

However, the Sheriff's Report/Return[4] dated January 27, 1987 shows that TVI is no longer doing business at its given address; that its General Manager, Mr. Manuel M. Mendoza, is presently employed at FGT Video Network with offices at the Philcemcor Bldg., No. 4 Edsa cor. Connecticut St., Greenhills, San Juan, Metro Manila; that when asked about the whereabouts of the video machines, in the presence of the representative of respondent bank and its counsel, Mr. Mendoza denied any knowledge of their whereabouts; and that action on respondent's petition is indefinitely postponed until further notice from the bank.

Respondent then wrote TVI demanding the surrender of the video machines. In his letter dated February 19, 1987, petitioner Mendoza requested the bank to give him "additional time to enable us to pay our total obligations" and proposed a repayment scheme to start not later than March 10, 1987.[5] Still, no payment was received by the

bank. TVI simply refused and ignored the demand and kept silent as to the whereabouts of the video machines.

Meanwhile, in a case entitled "Republic of the Philippines, plaintiff vs. FGT Video Network Inc., Manuel Mendoza, Alfredo C. Ongyangco, Eric Apolonio, Susan Yang ang Eduardo A. Yotoko, defendants," the RTC, Branch 167, Pasig City issued a search warrant. The agents of the National Bureau of Investigation (NBI) confiscated at the offices of FGT 638 machines and equipment including the 195 Beta machines mortgaged with respondent bank.

On May 29, 1987, upon motion of FGT and herein petitioners, the same court issued another Order directing the NBI to release and return the said machines to them.

However, Columbia Pictures Inc., Orion Pictures Corp., Paramount Pictures Corp., Universal City Studios Inc., The Walt Disney Company and Warner Bros. filed with this Court a petition for certiorari[6] assailing the Order of the lower court.

On June 18, 1987, this Court issued a temporary restraining order enjoining the RTC from enforcing its assailed order. The machines and equipment were left in the custody of the NBI until the petition for certiorari shall have been resolved with finality.

On July 13, 1990, respondent bank filed with the RTC, Branch 110, Pasig City,[7] a complaint for collection of a sum of money[8] against TVI, FGT and petitioners. Only petitioners filed their joint answer to the complaint.

In their joint answer, petitioners specifically denied the allegations in the complaint, raising the defense that the loan is purely a corporate indebtedness of TVI.

On April 29, 1991, the trial court rendered a Decision, holding that:

"As by these considerations, the Court finds that TVI was the mere alter ego or business conduit of Yotoko and Mendoza, and additionally considering 1) that Mendoza disclaimed knowledge of the whereabouts of the TVI mortgaged property at the time plaintiff's petition for extrajudicial foreclosure was being effected, and 2) that Mendoza and Yotoko transferred the mortgaged property to FGT without first securing plaintiff's consent despite their awareness that under the chattel mortgage, such consent was necessary, the doctrine of corporate entity must be pierced and the two must be held personally liable for TVI's obligation to plaintiff for said doctrine cannot be used to defeat public convenience, justify wrong, protect fraud or avoid a legal obligation."

The dispositive portion of the trial court's Decision reads:

"WHEREFORE, judgment is hereby rendered in favor of plaintiff and against defendants TECHNICA VIDEO, INC., Mendoza and Yotoko, ordering them,

1)

to pay plaintiff the sum of P500,000.00 plus interests, charges and penalties as agreed upon in the promissory note of September 11, 1985, until the same is fully paid;

2)

to pay plaintiff the sum equivalent to ten (10%) of the total unpaid obligation as and for attorney's fees, and

3)

to pay the costs.

SO ORDERED."

Upon appeal by herein petitioners, the Court of Appeals rendered its Decision dated September 21, 1998, affirming in toto the Decision of the trial court. Petitioners' motion for reconsideration was denied in its Resolution dated December 3, 1999.

Hence, the instant petition.

The basic issue for our resolution is whether herein petitioners are personally liable for TVI's indebtedness of P500,000.00 with respondent bank.

Both the trial court and the Appellate Court found that the petitioners transferred the Beta video machines from TVI to FGT without the consent of respondent bank. Also, upon inquiry of the sheriff, petitioner Mendoza declined knowledge of the whereabouts of the mortgaged video machines. Moreover, the fact that the NBI seized the video machines from FGT glaringly shows that petitioners transferred the same from TVI. More importantly, a comparison of the list of video machines in the Chattel Mortgage Contract and the list of video machines seized by the NBI from FGT shows that they have the same serial numbers.

The courts below also found that TVI is petitioners' mere alter ego or business conduit. They control the affairs of TVI. Among its stockholders or directors, they were the only ones who became incorporators of FGT. They transferred the assets of TVI to FGT.

The general rule is that obligations incurred by a corporation, acting through its directors, officers or employees, are its sole liabilities. However, the veil with which the law covers and isolates the corporation from its directors, officers or employees will be lifted when the corporation is used by any of them as a cloak or cover for fraud or illegality or injustice.^[9] Here, the fraud was committed by petitioners to the prejudice of respondent bank. It bears emphasis that as reported by the sheriff, TVI is no longer doing business at its given address and its whereabouts cannot be established as yet.

Both the trial court and the Court of Appeals thus concluded that petitioners succeeded to hide the chattels, preventing the sheriff to foreclose the mortgage. Obviously, they acted in bad faith to defraud respondent bank.

In fine, we hold that the Appellate Court, in affirming the Decision of the trial court, correctly ruled that petitioners, not TVI, are the ones personally liable to respondent bank for the payment of the loan.

WHEREFORE, the petition is DENIED. Costs against petitioners.

SO ORDERED.

Panganiban, (Chairman), Corona, Carpio-Morales, and Garcia, JJ., concur.

[1] Under Rule 45, Section 1 of the 1997 Revised Rules of Civil Procedure, as amended.

[2] Penned by Justice Bernardo P. Abesamis and concurred in by Justice Jainal D. Rasul (both retired) and Justice Romeo J. Callejo Sr. (now a member of this Court).

[3] SEC Registration No. 135565 issued on October 3, 1986, Rollo at 11.

[4] Rollo at 140-141.

[5] Id. at 80.

[6] Docketed as G.R. No. 78631 dated June 10, 1987.

[7] Then presided by Judge Conchita Carpio-Morales, now a member of this Court.

[8] Docketed as Civil Case No. 7429 before the Regional Trial Court, Branch CX, National Capital Judicial Region, Pasay City.

[9] Gala vs. Ellice Agro-Industrial Corporation, G.R. No. 156819, December 11, 2003, 418 SCRA 431.

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