PHILIPPINE NATIONAL BANK, PETITIONER, VS. RITRATO GROUP INC., RIATTO INTERNATIONAL, INC., AND DADASAN GENERAL MERCHANDISE, RESPONDENT.

G.R. No. 142616. July 31, 2001

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

In a petition for review on certiorari under Rule 45 of the Revised Rules of Court, petitioner seeks to annul and set aside the Court of Appeals' decision in C.A. G.R. S.P. No. 55374 dated March 27, 2000, affirming the Order issuing a writ of preliminary injunction of the Regional Trial Court of Makati, Branch 147, dated June 30, 1999, and its Order dated October 4, 1999, which denied petitioner's motion to dismiss.

The antecedents of this case are as follows:

Petitioner Philippine National Bank is a domestic corporation organized and existing under Philippine law. Meanwhile, respondents Ritratto Group, Inc., Riatto International, Inc. and Dadasan General Merchandise are domestic corporations, likewise, organized and existing under Philippine law.

On May 29, 1996, PNB International Finance Ltd. (PNB-IFL), a subsidiary company of PNB, organized and doing business in Hong Kong, extended a letter of credit in favor of the respondents in the amount of US$300,000.00 secured by real estate mortgages constituted over four (4) parcels of land in Makati City. This credit facility was later increased successively to US$1,140,000.00 in September 1996; to US$1,290,000.00 in November 1996; to US$1,425,000.00 in February 1997; and decreased to US$1,421,316.18 in April 1998. Respondents made repayments of the loan incurred by remitting those amounts to their loan account with PNB-IFL in Hong Kong.

However, as of April 30, 1998, their outstanding obligations stood at US$1,497,274.70. Pursuant to the terms of the real estate mortgages, PNB-IFL, through its attorney-in-fact PNB, notified the respondents of the foreclosure of all the real estate mortgages and that the properties subject thereof were to be sold at a public auction on May 27, 1999 at the Makati City Hall.

On May 25, 1999, respondents filed a complaint for injunction with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order before the Regional Trial Court of Makati. The Executive Judge of the Regional Trial Court of Makati issued a 72-hour temporary restraining order. On May 28, 1999, the case was raffled to Branch 147 of the Regional Trial Court of Makati. The trial judge then set a hearing on June 8, 1999. At the hearing of the application for preliminary injunction, petitioner was given a period of seven days to file its written opposition to the application. On June 15, 1999, petitioner filed an opposition to the application for a writ of preliminary injunction to which the respondents filed a reply. On June 25, 1999, petitioner filed a motion to dismiss on the grounds of failure to state a cause of action and the absence of any privity between the petitioner and respondents. On June 30, 1999, the trial court judge issued an Order for the issuance of a writ of preliminary injunction, which writ was correspondingly issued on July 14, 1999. On October

4, 1999, the motion to dismiss was denied by the trial court judge for lack of merit.

Petitioner, thereafter, in a petition for certiorari and prohibition assailed the issuance of the writ of preliminary injunction before the Court of Appeals. In the impugned decision,[1] the appellate court dismissed the petition. Petitioner thus seeks recourse to this Court and raises the following errors:

> 1.
>
> THE COURT OF APPEALS PALPABLY ERRED IN NOT DISMISSING THE COMPLAINT A QUO, CONSIDERING THAT BY THE ALLEGATIONS OF THE COMPLAINT, NO CAUSE OF ACTION EXISTS AGAINST PETITIONER, WHICH IS NOT A REAL PARTY IN INTEREST BEING A MERE ATTORNEY-IN-FACT AUTHORIZED TO ENFORCE AN ANCILLARY CONTRACT.
>
> 2.
>
> THE COURT OF APPEALS PALPABLY ERRED IN ALLOWING THE TRIAL COURT TO ISSUE IN EXCESS OR LACK OF JURISDICTION A WRIT OF PRELIMINARY INJUNCTION OVER AND BEYOND WHAT WAS PRAYED FOR IN THE COMPLAINT A QUO CONTRARY TO CHIEF OF STAFF, AFP VS. GUADIZ, JR., 101 SCRA 827.[2]

Petitioner prays, inter alia, that the Court of Appeals' Decision dated March 27, 2000 and the trial court's Orders dated June 30, 1999 and October 4, 1999 be set aside and the dismissal of the complaint in the instant case.[3]

In their Comment, respondents argue that even assuming arguendo that petitioner and PNB-IFL are two separate entities, petitioner is still the party-in-interest in the application for preliminary injunction because it is tasked to commit acts of foreclosing respondents' properties.[4] Respondents maintain that the entire credit facility is void as it contains stipulations in violation of the principle of mutuality of contracts.[5] In addition, respondents justified the act of the court a quo in applying the doctrine of "Piercing the Veil of Corporate Identity" by stating that petitioner is merely an alter ego or a business conduit of PNB-IFL.[6]

The petition is impressed with merit.

Respondents, in their complaint, anchor their prayer for injunction on alleged invalid provisions of the contract:

> GROUNDS
>
> I
>
> THE DETERMINATION OF THE INTEREST RATES BEING LEFT TO THE SOLE DISCRETION OF THE DEFENDANT PNB CONTRAVENES THE PRINICIPAL OF MUTUALITY OF CONTRACTS.
>
> II
>
> THERE BEING A STIPULATION IN THE LOAN AGREEMENT THAT THE RATE OF INTEREST AGREED UPON MAY BE UNILATERALLY MODIFIED BY DEFENDANT, THERE WAS NO STIPULATION THAT THE RATE OF INTEREST SHALL BE REDUCED IN THE EVENT THAT THE APPLICABLE MAXIMUM RATE OF INTEREST IS REDUCED BY LAW OR BY THE MONETARY BOARD.[7]

Based on the aforementioned grounds, respondents sought to enjoin and restrain PNB from the foreclosure and eventual sale of the property in order to protect their rights to said property by reason of void credit facilities as bases for the real estate mortgage over the said property.[8]

The contract questioned is one entered into between respondent and PNB-IFL, not PNB. In their complaint, respondents admit that petitioner is a mere attorney-in-fact for the PNB-IFL with full power and authority to, inter

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alia, foreclose on the properties mortgaged to secure their loan obligations with PNB-IFL. In other words, herein petitioner is an agent with limited authority and specific duties under a special power of attorney incorporated in the real estate mortgage. It is not privy to the loan contracts entered into by respondents and PNB-IFL.

The issue of the validity of the loan contracts is a matter between PNB-IFL, the petitioner's principal and the party to the loan contracts, and the respondents. Yet, despite the recognition that petitioner is a mere agent, the respondents in their complaint prayed that the petitioner PNB be ordered to re-compute the rescheduling of the interest to be paid by them in accordance with the terms and conditions in the documents evidencing the credit facilities, and crediting the amount previously paid to PNB by herein respondents.[9]

Clearly, petitioner not being a party to the contract has no power to re-compute the interest rates set forth in the contract. Respondents, therefore do not have any cause of action against petitioner.

The trial court, however, in its Order dated October 4, 1994, ruled that since PNB-IFL is a wholly owned subsidiary of defendant Philippine National Bank, the suit against the defendant PNB is a suit against PNB-IFL.[10] In justifying its ruling, the trial court, citing the case of Koppel Phil Inc. vs. Yatco,[11] reasoned that the corporate entity may be disregarded where a corporation is the mere alter ego, or business conduit of a person or where the corporation is so organized and controlled and its affairs are so conducted, as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.[12]

We disagree.

The general rule is that as a legal entity, a corporation has a personality distinct and separate from its individual stockholders or members, and is not affected by the personal rights, obligations and transactions of the latter.[13] The mere fact that a corporation owns all of the stocks of another corporation, taken alone is not sufficient to justify their being treated as one entity. If used to perform legitimate functions, a subsidiary's separate existence may be respected, and the liability of the parent corporation as well as the subsidiary will be confined to those arising in their respective business. The courts may in the exercise of judicial discretion step in to prevent the abuses of separate entity privilege and pierce the veil of corporate entity.

We find, however, that the ruling in Koppel finds no application in the case at bar. In said case, this Court disregarded the separate existence of the parent and the subsidiary on the ground that the latter was formed merely for the purpose of evading the payment of higher taxes. In the case at bar, respondents failed to show any cogent reason why the separate entities of the PNB and PNB-IFL should be disregarded.

While there exists no definite test of general application in determining when a subsidiary may be treated as a mere instrumentality of the parent corporation, some factors have been identified that will justify the application of the treatment of the doctrine of the piercing of the corporate veil. The case of Garrett vs. Southern Railway Co[14] is enlightening. The case involved a suit against the Southern Railway Company. Plaintiff was employed by Lenoir Car Works and alleged that he sustained injuries while working for Lenoir. He, however, filed a suit against Southern Railway Company on the ground that Southern had acquired the entire capital stock of Lenoir Car Works, hence, the latter corporation was but a mere instrumentality of the former. The Tennessee Supreme Court stated that as a general rule the stock ownership alone by one corporation of the stock of another does not thereby render the dominant corporation liable for the torts of the subsidiary unless the separate corporate existence of the subsidiary is a mere sham, or unless the control of the subsidiary is such that it is but an instrumentality or adjunct of the dominant corporation. Said court then outlined the circumstances which may be useful in the determination of whether the subsidiary is but a mere instrumentality of the parent-corporation:

> The Circumstances rendering the subsidiary an instrumentality. It is manifestly impossible to catalogue the infinite variations of fact that can arise but there are certain common circumstances which are important and

> which, if present in the proper combination, are controlling.

These are as follows:

> (a) The parent corporation owns all or most of the capital stock of the subsidiary.
>
> (b) The parent and subsidiary corporations have common directors or officers.
>
> (c) The parent corporation finances the subsidiary.
>
> (d) The parent corporation subscribes to all the capital stock of the subsidiary or otherwise causes its incorporation.
>
> (e) The subsidiary has grossly inadequate capital.
>
> (f) The parent corporation pays the salaries and other expenses or losses of the subsidiary.
>
> (g) The subsidiary has substantially no business except with the parent corporation or no assets except those conveyed to or by the parent corporation.
>
> (h) In the papers of the parent corporation or in the statements of its officers, the subsidiary is described as a department or division of the parent corporation, or its business or financial responsibility is referred to as the parent corporation's own.
>
> (i) The parent corporation uses the property of the subsidiary as its own.
>
> (j) The directors or executives of the subsidiary do not act independently in the interest of the subsidiary but take their orders from the parent corporation.
>
> (k) The formal legal requirements of the subsidiary are not observed.

The Tennessee Supreme Court thus ruled:

> In the case at bar only two of the eleven listed indicia occur, namely, the ownership of most of the capital stock of Lenoir by Southern, and possibly subscription to the capital stock of Lenoir ... The complaint must be dismissed.

Similarly, in this jurisdiction, we have held that the doctrine of piercing the corporate veil is an equitable doctrine developed to address situations where the separate corporate personality of a corporation is abused or used for wrongful purposes. The doctrine applies when the corporate fiction is used to defeat public convenience, justify wrong, protect fraud or defend crime, or when it is made as a shield to confuse the legitimate issues, or where a corporation is the mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.[15]

In Concept Builders, Inc. v. NLRC,[16] we have laid the test in determining the applicability of the doctrine of piercing the veil of corporate fiction, to wit:

> - Control, not mere majority or complete control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own.
>
> - Such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and, unjust act in contravention of plaintiff's legal rights; and,
>
> - The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.

> The absence of any one of these elements prevents "piercing the corporate veil." In applying the "instrumentality" or "alter ego" doctrine, the courts are concerned with reality and not form, with how the corporation operated and the individual defendant's relationship to the operation.[17]

Aside from the fact that PNB-IFL is a wholly owned subsidiary of petitioner PNB, there is now showing of the indicative factors that the former corporation is a mere instrumentality of the latter are present. Neither is there a demonstration that any of the evils sought to be prevented by the doctrine of piercing the corporate veil exist. Inescapably, therefore, the doctrine of piercing the corporate veil based on the alter ego or instrumentality doctrine finds no application in the case at bar.

In any case, the parent-subsidiary relationship between PNB and PNB-IFL is not the significant legal relationship involved in this case since the petitioner was not sued because it is the parent company of PNB-IFL. Rather, the petitioner was sued because it acted as an attorney-in-fact of PNB-IFL in initiating the foreclosure proceedings. A suit against an agent cannot without compelling reasons be considered a suit against the principal. Under the Rules of Court, every action must be prosecuted or defended in the name of the real party-in-interest, unless otherwise authorized by law or these Rules.[18] In mandatory terms, the Rules require that "parties-in-interest without whom no final determination can be had, an action shall be joined either as plaintiffs or defendants."[19] In the case at bar, the injunction suit is directed only against the agent, not the principal.

Anent the issuance of preliminary injunction, the same must be lifted as it is a mere provisional remedy but adjunct to the main suit.[20] A writ of preliminary injunction is an ancillary or preventive remedy that may only be resorted to by a litigant to protect or preserve his rights or interests and for no other purpose during the pendency of the principal action. The dismissal of the principal action thus results in the denial of the prayer for the issuance of the writ. Further, there is no showing that respondents are entitled to the issuance of the writ. Section 3, Rule 58, of the 1997 Rules of Civil Procedure provides:

> SEC. 3. Grounds for issuance of preliminary injunction.- A preliminary injunction may be granted when it is established:
>
> (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;
>
> (b) That the commission, continuance or non-performance of the acts or acts complained of during the litigation would probably work injustice to the applicant; or
>
> (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

Thus, an injunctive remedy may only be resorted to when there is a pressing necessity to avoid injurious consequences which cannot be remedied under any standard compensation.[21] Respondents do not deny their indebtedness. Their properties are by their own choice encumbered by real estate mortgages. Upon the non-payment of the loans, which were secured by the mortgages sought to be foreclosed, the mortgaged properties are properly subject to a foreclosure sale. Moreover, respondents questioned the alleged void stipulations in the contract only when petitioner initiated the foreclosure proceedings. Clearly, respondents have failed to prove that they have a right protected and that the acts against which the writ is to be directed are violative of said right.[22] The Court is not unmindful of the findings of both the trial court an the appellate court that there may be serious grounds to nullify the provisions of the loan agreement. However, as earlier discussed, respondents committed the mistake of filing the case against the wrong party, thus, they must suffer the consequences of their error.

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All told, respondents do not have a cause of action against the petitioner as the latter is not privy to the contract the provisions of which private respondents seek to declare void. Accordingly the case before the Regional Trial Court must be dismissed and the preliminary injunction issued in connection therewith, must be lifted.

IN VIEW OF THE FOREGOING, the petition is hereby GRANTED. The assailed decision of the Court of Appeals is hereby REVERSED. The Orders dated June 30, 1999 and October 4, 1999 of the Regional Trial Court of Makati, Branch 147 in Civil Case No. 99-1037 are hereby ANNULLED and SET ASIDE and the complaint in said case DISMISSED.

SO ORDERED.

Pardo, and Ynares-Santiago, JJ., concur.
Davide, Jr., C.J., (Chairman), on official leave.
Puno, J., no part.

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[1] Decision, Court of Appeals, pp. 1-6; Rollo, pp. 37-42.

[2] Petition, p. 10; Rollo, p. 20.

[3] Id., at 24; Id., at 34.

[4] Comment, pp. 12-13; Rollo, pp. 438-439.

[5] Id., at 17-19; Id., at 443-445.

[6] Id., at 20-24; Id., at 446-450.

[7] Rollo, p. 266

[8] Id., at 270.

[9] See Complaint, p. 15; Rollo, p. 64.

[10] Rollo, p. 49.

[11] 77 Phil. 496 (1946).

[12] Ibid.

[13] Yutivo Sons Hardware Company v. Court of Tax Appeals, 1 SCRA 160 (1961).

[14] 173 F. Supp. 915, E.D. Tenn. (1959).

[15] Umali v. Court of Appeals, 189 SCRA 529, 524 (1990).

[16] 257 SCRA 149 (1996).

[17] Id., at 159.

[18] See RULES OF COURT, Rule 3, sec. 2.

[19] RULES OF COURT, Rule 3, sec. 7.

[20] Philippine Airlines, Inc. vs. NLRC, 287 SCRA 672 (1998).

[21] Union Bank of the Philippines v. Court of Appeals, 311 SCRA 795, 805-806 (1999).

[22] China Bank Corporation v. Court of Appeals, 265 SCRA 327, 343 (1996).

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