CHINA BANKING CORPORATION, PETITIONER, VS. DYNE-SEM ELECTRONICS CORPORATION, RESPONDENT.

G.R. NO. 149237. July 11, 2006

Ponente: CORONA, J.

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CORONA, J.:

On June 19 and 26, 1985, Dynetics, Inc. (Dynetics) and Elpidio O. Lim borrowed a total of P8,939,000 from petitioner China Banking Corporation. The loan was evidenced by six promissory notes.[1]

The borrowers failed to pay when the obligations became due. Petitioner consequently instituted a complaint for sum of money[2] on June 25, 1987 against them. The complaint sought payment of the unpaid promissory notes plus interest and penalties.

Summons was not served on Dynetics, however, because it had already closed down. Lim, on the other hand, filed his answer on December 15, 1987 denying that "he promised to pay [the obligations] jointly and severally to [petitioner]."[3]

On January 7, 1988, the case was scheduled for pre-trial with respect to Lim. The case against Dynetics was archived.

On September 23, 1988, an amended complaint[4] was filed by petitioner impleading respondent Dyne-Sem Electronics Corporation (Dyne-Sem) and its stockholders Vicente Chuidian, Antonio Garcia and Jacob Ratinoff. According to petitioner, respondent was formed and organized to be Dynetics' alter ego as established by the following circumstances:

> - Dynetics, Inc. and respondent are both engaged in the same line of business of manufacturing, producing, assembling, processing, importing, exporting, buying, distributing, marketing and testing integrated circuits and semiconductor devices;
>
> - [t]he principal office and factory site of Dynetics, Inc. located at Avocado Road, FTI Complex, Taguig, Metro Manila, were used by respondent as its principal office and factory site;
>
> - [r]espondent acquired some of the machineries and equipment of Dynetics, Inc. from banks which acquired the same through foreclosure;
>
> - [r]espondent retained some of the officers of Dynetics, Inc.[5]

xxx xxx xxx

On December 28, 1988, respondent filed its answer, alleging that:

> 5.1 [t]he incorporators as well as present stockholders of [respondent] are totally different from those of Dynetics, Inc., and not one of them has ever been a stockholder or officer of the latter;
>
> 5.2 [n]ot one of the directors of [respondent] is, or has ever been, a director, officer, or stockholder of

> Dynetics, Inc.;
>
> 5.3 [t]he various facilities, machineries and equipment being used by [respondent] in its business operations were legitimately and validly acquired, under arms-length transactions, from various corporations which had become absolute owners thereof at the time of said transactions; these were not just "taken over" nor "acquired from Dynetics" by [respondent], contrary to what plaintiff falsely and maliciously alleges;
>
> 5.4 [respondent] acquired most of its present machineries and equipment as second-hand items to keep costs down;
>
> 5.5 [t]he present plant site is under lease from Food Terminal, Inc., a government-controlled corporation, and is located inside the FTI Complex in Taguig, Metro Manila, where a number of other firms organized in 1986 and also engaged in the same or similar business have likewise established their factories; practical convenience, and nothing else, was behind [respondent's] choice of plant site;
>
> 5.6 [respondent] operates its own bonded warehouse under authority from the Bureau of Customs which has the sole and absolute prerogative to authorize and assign customs bonded warehouses; again, practical convenience played its role here since the warehouse in question was virtually lying idle and unused when said Bureau decided to assign it to [respondent] in June 1986.[6]

On February 28, 1989, the trial court issued an order archiving the case as to Chuidian, Garcia and Ratinoff since summons had remained unserved.

After hearing, the court a quo rendered a decision on December 27, 1991 which read:

> xxx [T]he Court rules that Dyne-Sem Electronics Corporation is not an alter ego of Dynetics, Inc. Thus, Dyne-Sem Electronics Corporation is not liable under the promissory notes.
>
> xxx xxx xxx
>
> WHEREFORE, judgment is hereby rendered ordering Dynetics, Inc. and Elpidio O. Lim, jointly and severally, to pay plaintiff.
>
> xxx xxx xxx
>
> Anent the complaint against Dyne-Sem and the latter's counterclaim, both are hereby dismissed, without costs.
>
> SO ORDERED.[7]

From this adverse decision, petitioner appealed to the Court of Appeals[8] but the appellate court dismissed the appeal and affirmed the trial court's decision.[9] It found that respondent was indeed not an alter ego of Dynetics. The two corporations had different articles of incorporation. Contrary to petitioner's claim, no merger or absorption took place between the two. What transpired was a mere sale of the assets of Dynetics to respondent. The appellate court denied petitioner's motion for reconsideration.[10]

Hence, this petition for review[11] with the following assigned errors:

VI.
Issues

What is the quantum of evidence needed for the trial court to determine if the veil of corporat[e] fiction should be pierced?

[W]hether or not the Regional Trial Court of Manila Branch 15 in its Decision dated December 27, 1991 and the Court of Appeals in its Decision dated February 28, 2001 and Resolution dated July 27, 2001, which affirmed en

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toto [Branch 15, Manila Regional Trial Court's decision,] have ruled in accordance with law and/or applicable [jurisprudence] to the extent that the Doctrine of Piercing the Veil of Corporat[e] Fiction is not applicable in the case at bar?[12]

We find no merit in the petition.

The question of whether one corporation is merely an alter ego of another is purely one of fact. So is the question of whether a corporation is a paper company, a sham or subterfuge or whether petitioner adduced the requisite quantum of evidence warranting the piercing of the veil of respondent's corporate entity. This Court is not a trier of facts. Findings of fact of the Court of Appeals, affirming those of the trial court, are final and conclusive. The jurisdiction of this Court in a petition for review on certiorari is limited to reviewing only errors of law, not of fact, unless it is shown, inter alia, that: (a) the conclusion is grounded entirely on speculations, surmises and conjectures; (b) the inference is manifestly mistaken, absurd and impossible; (c) there is grave abuse of discretion; (d) the judgment is based on a misapplication of facts; (e) the findings of fact of the trial court and the appellate court are contradicted by the evidence on record and (f) the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of both parties.[13]

We have reviewed the records and found that the factual findings of the trial and appellate courts and consequently their conclusions were supported by the evidence on record.

The general rule is that a corporation has a personality separate and distinct from that of its stockholders and other corporations to which it may be connected.[14] This is a fiction created by law for convenience and to prevent injustice.[15]

Nevertheless, being a mere fiction of law, peculiar situations or valid grounds may exist to warrant the disregard of its independent being and the piercing of the corporate veil.[16] In Martinez v. Court of Appeals,[17] we held:

> The veil of separate corporate personality may be lifted when such personality is used to defeat public convenience, justify wrong, protect fraud or defend crime; or used as a shield to confuse the legitimate issues; or when the corporation is merely an adjunct, a business conduit or an alter ego of another corporation 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; or when the corporation is used as a cloak or cover for fraud or illegality, or to work injustice, or where necessary to achieve equity or for the protection of the creditors. In such cases, the corporation will be considered as a mere association of persons. The liability will directly attach to the stockholders or to the other corporation.

To disregard the separate juridical personality of a corporation, the wrongdoing must be proven clearly and convincingly.[18]

In this case, petitioner failed to prove that Dyne-Sem was organized and controlled, and its affairs conducted, in a manner that made it merely an instrumentality, agency, conduit or adjunct of Dynetics, or that it was established to defraud Dynetics' creditors, including petitioner.

The similarity of business of the two corporations did not warrant a conclusion that respondent was but a conduit of Dynetics. As we held in Umali v. Court of Appeals,[19] "the mere fact that the businesses of two or more corporations are interrelated is not a justification for disregarding their separate personalities, absent sufficient showing that the corporate entity was purposely used as a shield to defraud creditors and third persons of their rights."

Likewise, respondent's acquisition of some of the machineries and equipment of Dynetics was not proof that respondent was formed to defraud petitioner. As the Court of Appeals found, no merger[20] took place between

Dynetics and respondent Dyne-Sem. What took place was a sale of the assets[21] of the former to the latter. Merger is legally distinct from a sale of assets.[22] Thus, where one corporation sells or otherwise transfers all its assets to another corporation for value, the latter is not, by that fact alone, liable for the debts and liabilities of the transferor.

Petitioner itself admits that respondent acquired the machineries and equipment not directly from Dynetics but from the various corporations which successfully bidded for them in an auction sale. The contracts of sale executed between the winning bidders and respondent showed that the assets were sold for considerable amounts.[23] The Court of Appeals thus correctly ruled that the assets were not "diverted" to respondent as an alter ego of Dynetics.[24] The machineries and equipment were transferred and disposed of by the winning bidders in their capacity as owners. The sales were therefore valid and the transfers of the properties to respondent legal and not in any way in contravention of petitioner's rights as Dynetics' creditor.

Finally, it may be true that respondent later hired Dynetics' former Vice-President Luvinia Maglaya and Assistant Corporate Counsel Virgilio Gesmundo. From this, however, we cannot conclude that respondent was an alter ego of Dynetics. In fact, even the overlapping of incorporators and stockholders of two or more corporations will not necessarily lead to such inference and justify the piercing of the veil of corporate fiction.[25] Much more has to be proven.

Premises considered, no factual and legal basis exists to hold respondent Dyne-Sem liable for the obligations of Dynetics to petitioner.

WHEREFORE, the petition is hereby DENIED. The assailed Court of Appeals' decision and resolution in CA-G.R. CV No. 40672 are hereby AFFIRMED.

Costs against petitioner.

SO ORDERED.

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

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[1] The promissory notes and their corresponding amounts were as follows: (1) PN No. BD-77698 for P39,000; (2) PN No. T-77701 for P900,000; (3) PN No. T-77702 for P900,000; (4)PN No. T-77703 for P1,000,000; (5) PN No. T-77834 for P4,100,000 and (6) PN No. T-77835 for P2,000,000; rollo, pp. 72-77.

[2] Id., pp. 64-71.

[3] Id., pp. 78-85.

[4] Id., pp. 86-95.

[5] Id., pp. 19-20.

[6] Id., pp. 104-109.

[7] Penned by Judge Benjamin P. Martinez of Branch 15, Regional Trial Court, Manila; id., pp. 48-63.

[8] Docketed as CA-G.R. CV No. 40672; id., pp. 110-111.

[9] Penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices B.A. Adefuin-de la Cruz and Rebecca de Guia-Salvador of the 16th Division of the Court of Appeals; February 28, 2001; id., pp. 29-44.

[10] July 27, 2001; id., p. 46.

[11] Under Rule 45 of the Rules of Court; id., pp. 15-27.

[12] Id., p. 20.

[13] Ladanga v. Aseneta, G.R. No. 145874, 30 September 2005.

[14] Francisco Motors Corporation v. Court of Appeals, 368 Phil. 374 (1999).

[15] Concept Builders, Inc. v. NLRC, G.R. No. 108734, 29 May 1996, 257 SCRA 149.

[16] Santos v. NLRC, G.R. No. 101699, 13 March 1996, 254 SCRA 673.

[17] G.R. No. 131673, 10 September 2004, 438 SCRA 130.

[18] Complex Electronics Employees Association v. NLRC, G.R. Nos. 121315 and 122136, 19 July 1999, 310 SCRA 403.

[19] G.R. No. 89561, 13 September 1990, 189 SCRA 529.

[20] Merger is a union whereby one or more existing corporations are absorbed by another corporation which survives and continues the combined business. (Villanueva, Philippine Corporate Law, 1998 Edition, p. 464.)

[21] In sale of assets, the purchaser is only interested in the raw assets of the selling corporation perhaps to be used to establish his own business enterprise or as an addition to his on-going business enterprise. (Id., at p. 444.)

[22] The Court of Appeals differentiated merger from sale of assets in this wise: (1) In merger, a sale of assets is always involved, while in the latter, the former is not always involved; (2) In the former, there is automatic assumption by the surviving corporation of the liabilities of the constituent corporations, while in the latter, the purchasing corporation is not generally liable for the debts and liabilities of the selling corporation; (3) In the former, there is a continuance of the enterprise and of the stockholders therein though in the altered form, while in the latter, the selling corporation ordinarily contemplates liquidation of the enterprise; (4) In the former, the title to the assets of the constituent corporations is by operation of law transferred to the new corporation, while in the latter, the transfer of title is by virtue of contract; and (5) In the former, the constituent corporations are automatically dissolved, while in the latter, the selling corporation is not dissolved by the mere transfer of all its property. (citing de Leon, The Corporation Code of the Philippines Annotated, 1989 Edition, pp. 509-510.)

[23] The total purchases made by respondent from Elders Pica Limited was for the amount of US$1,158,977.77; from Piso Development Bank, P19,950,000 plus the peso equivalent of US$280,000 and from Private Development Corporation of the Philippines, P11,956,134.44 plus the peso equivalent of US$1,616,324.17; rollo, p. 132.

[24] Id., pp. 43-44.

[25] Supra at note 19.

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