

**SOLIDBANK CORPORATION, PETITIONER, VS. MINDANAO
FERROALLOY CORPORATION, SPOUSES JONG-WON HONG AND
SOO-OK KIM HONG, TERESITA CU, AND RICARDO P. GUEVARA AND
SPOUSE, RESPONDENTS.**

G.R. No. 153535. July 28, 2005

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

To justify an award for moral and exemplary damages under Articles 19 to 21 of the Civil Code (on human relations), the claimants must establish the other party's malice or bad faith by clear and convincing evidence.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, assailing the December 21, 2001 Decision[2] and the May 15, 2002 Resolution[3] of the Court of Appeals (CA) in CA-GR CV No. 67482. The CA disposed as follows:

"IN THE LIGHT OF ALL THE FOREGOING, the appeal is DISMISSED. The Decision appealed from is AFFIRMED."[4]

The assailed Resolution, on the other hand, denied petitioner's Motion for Reconsideration.

The Facts

The CA narrated the antecedents as follows:

"The Maria Cristina Chemical Industries (MCCI) and three (3) Korean corporations, namely, the Ssangyong Corporation, the Pohang Iron and Steel Company and the Dongil Industries Company, Ltd., decided to forge a joint venture and establish a corporation, under the name of the Mindanao Ferroalloy Corporation (Corporation for brevity) with principal offices in Iligan City. Ricardo P. Guevara was the President and Chairman of the Board of Directors of the Corporation. Jong-Won Hong, the General Manager of Ssangyong Corporation, was the Vice-President of the Corporation for Finance, Marketing and Administration. So was Teresita R. Cu. On November 26, 1990, the Board of Directors of the Corporation approved a 'Resolution' authorizing its President and Chairman of the Board of Directors or Teresita R. Cu, acting together with Jong-Won Hong, to secure an omnibus line in the aggregate amount of P30,000,000.00 from the Solidbank x x x.

x x x x x x x x

"In the meantime, the Corporation started its operations sometime in April, 1991. Its indebtedness ballooned to P200,453,686.69 compared to its assets of only P65,476,000.00. On May 21, 1991, the Corporation secured an ordinary time loan from the Solidbank in the amount of P3,200,000.00. Another ordinary time loan was granted by the Bank to the Corporation on May 28, 1991, in the amount of P1,800,000.00 or in the total amount of P5,000,000.00, due on July 15 and 26, 1991, respectively.

"However, the Corporation and the Bank agreed to consolidate and, at the same time, restructure the two (2) loan availments, the same payable on September 20, 1991. The Corporation executed 'Promissory Note No. 96-91-00865-6' in favor of the Bank evidencing its loan in the amount of P5,160,000.00, payable on September 20, 1991. Teresita Cu and Jong-Won Hong affixed their signatures on the note. To secure the payment of the said loan, the Corporation, through Jong-Won Hong and Teresita Cu, executed a 'Deed of Assignment' in favor of the Bank covering its rights, title and interest to the following:

'The entire proceeds of drafts drawn under Irrevocable Letter of Credit No. M-S-041-2002080 opened with The Mitsubishi Bank Ltd. - Tokyo dated June 13, 1991 for the account of Ssangyong Japan Corporation, 7F. Matsuoka-Tamura-Cho Bldg., 22-10, 5-Chome, Shimbashi, Minato-Ku, Tokyo, Japan up to the extent of US\$197,679.00'

"The Corporation likewise executed a 'Quedan', by way of additional security, under which the Corporation bound and obliged to keep and hold, in trust for the Bank or its Order, 'Ferrosilicon for US\$197,679.00'. Jong-Won Hong and Teresita Cu affixed their signatures thereon for the Corporation. The Corporation, also, through Jong-Won Hong and Teresita Cu, executed a 'Trust Receipt Agreement', by way of additional security for said loan, the Corporation undertaking to hold in trust, for the Bank, as its property, the following:

'1.

THE MITSUBISHI BANK LTD., Tokyo L/C No. M-S-041-2002080 for account of Ssangyong Japan Corporation, Tokyo, Japan for US\$197,679.00 Ferrosilicon to expire September 20, 1991.

'2.

SEC QUEDAN NO. 91-476 dated June 26, 1991 covering the following:

Ferrosilicon for US\$197,679.00'

"However, shortly after the execution of the said deeds, the Corporation stopped its operations. The Corporation failed to pay its loan availments from the Bank inclusive of accrued interest. On February 11, 1992, the Bank sent a letter to the Corporation demanding payment of its loan availments inclusive of interests due. The Corporation failed to comply with the demand of the Bank. On November 23, 1992, the Bank sent another letter to the [Corporation] demanding payment of its account which, by November 23, 1992, had amounted to P7,283,913.33. The Corporation again failed to comply with the demand of the Bank.

"On January 6, 1993, the Bank filed a complaint against the Corporation with the Regional Trial Court of Makati City, entitled and docketed as 'Solidbank Corporation vs. Mindanao Ferroalloy Corporation, Sps. Jong-Won Hong and the Sps. Teresita R. Cu, Civil Case No. 93-038' for 'Sum of Money' with a plea for the issuance of a writ of preliminary attachment. x x x

x x x x x x x x

"Under its 'Amended Complaint', the Plaintiff alleged that it impleaded Ricardo Guevara and his wife as Defendants because, [among others]:

'Defendants JONG-WON HONG and TERESITA CU, are the Vice-Presidents of defendant corporation, and also members of the company's Board of Directors. They are impleaded as joint and solidary debtors of [petitioner] bank having signed the Promissory Note, Quedan, and Trust Receipt agreements with [petitioner],

in this case.

x x x x x x x x'

"[Petitioner] likewise filed a criminal complaint x x x entitled and docketed as 'Solidbank Corporation vs. Ricardo Guevara, Teresita R. Cu and Jong Won Hong x x x for 'Violation of P.D. 115'. On April 14, 1993, the investigating Prosecutor issued a 'Resolution' finding no probable cause for violation of P.D. 115 against the Respondents as the goods covered by the quedan 'were nonexistent':

x x x x x x x x

"In their Answer to the complaint [in the civil case], the Spouses Jong-Won Hong and Soo-ok Kim Hong alleged, inter alia, that [petitioner] had no cause of action against them as:

'x x x the clean loan of P5.1 M obtained was a corporate undertaking of defendant MINFACO executed through its duly authorized representatives, Ms. Teresita R. Cu and Mr. Jong-Won Hong, both Vice Presidents then of MINFACO. x x x.'

x x x x x x x x

"[On their part, respondents] Teresita Cu and Ricardo Guevara alleged that [petitioner] had no cause of action against them because: (a) Ricardo Guevara did not sign any of the documents in favor of [petitioner]; (b) Teresita Cu signed the 'Promissory Note', 'Deed of Assignment', 'Trust Receipt' and 'Quedan' in blank and merely as representative and, hence, for and in behalf of the Defendant Corporation and, hence, was not personally liable to [petitioner].

"In the interim, the Corporation filed, on June 20, 1994, a 'Petition', with the Regional Trial Court of Iligan City, for 'Voluntary Insolvency' x x x.

x x x x x x x x

"Appended to the Petition was a list of its creditors, including [petitioner], for the amount of P8,144,916.05. The Court issued an Order, on July 12, 1994, finding the Petition sufficient in form and substance x x x.

x x x x x x x x

"In view of said development, the Court issued an Order, in Civil Case No. 93-038, suspending the proceedings as against the Defendant Corporation but ordering the proceedings to proceed as against the individual defendants x x x.

x x x x x x x x

"On December 10, 1999, the Court rendered a Decision dismissing the complaint for lack of cause of action of [petitioner] against the Spouses Jong-Won Hong, Teresita Cu and the Spouses Ricardo Guevara, x x x.

x x x x x x x x

"In dismissing the complaint against the individual [respondents], the Court a quo found and declared that [petitioner] failed to adduce a morsel of evidence to prove the personal liability of the said [respondents] for the claims of [petitioner] and that the latter impleaded the [respondents], in its complaint and amended complaint, solely to put more pressure on the Defendant Corporation to pay its obligations to [petitioner].

"[Petitioner] x x x interposed an appeal, from the Decision of the Court a quo and posed, for x x x resolution, the issue of whether or not the individual [respondents], are jointly and severally liable to [petitioner] for the loan

availments of the [respondent] Corporation, inclusive of accrued interests and penalties.

"In the meantime, on motion of [petitioner], the Court set aside its Order, dated February 2, 1995, suspending the proceedings as against the [respondent] Corporation. [Petitioner] filed a 'Motion for Summary Judgment' against the [respondent] Corporation. On February 28, 2000, the Court rendered a 'Summary Judgment' against the [respondent] Corporation, the decretal portion of which reads as follows:

'WHEREFORE, premises considered, this Court hereby resolves to give due course to the motion for summary judgment filed by herein [petitioner]. Consequently, judgment is hereby rendered in favor of [Petitioner] SOLIDBANK CORPORATION and against [Respondent] MINDANAO FERROALLOY CORPORATION, ordering the latter to pay the former the amount of P7,086,686.70, representing the outstanding balance of the subject loan as of 24 September 1994, plus stipulated interest at the rate of 16% per annum to be computed from the aforesaid date until fully paid together with an amount equivalent to 12% of the total amount due each year from 24 September 1994 until fully paid. Lastly, said [respondent] is hereby ordered to pay [petitioner] the amount of P25,000.00 to [petitioner] as reasonable attorney's fees as well as cost of litigation.'"[5]

In its appeal, petitioner argued that (1) it had adduced the requisite evidence to prove the solidary liability of the individual respondents, and (2) it was not liable for their counterclaims for damages and attorney's fees.

Ruling of the Court of Appeals

Affirming the RTC, the appellate court ruled that the individual respondents were not solidarily liable with the Mindanao Ferroalloy Corporation, because they had acted merely as officers of the corporation, which was the real party in interest. Respondent Guevara was not even a signatory to the Promissory Note, the Trust Receipt Agreement, the Deed of Assignment or the Quedan; he was merely authorized to represent Minfaco to negotiate with and secure the loans from the bank. On the other hand, the CA noted that Respondents Cu and Hong had not signed the above documents as comakers, but as signatories in their representative capacities as officers of Minfaco.

Likewise, the CA held that the individual respondents were not liable to petitioner for damages, simply because (1) they had not received the proceeds of the irrevocable Letter of Credit, which was the subject of the Deed of Assignment; and (2) the goods subject of the Trust Receipt Agreement had been found to be nonexistent. The appellate court took judicial notice of the practice of banks and financing institutions to investigate, examine and assess all properties offered by borrowers as collaterals, in order to determine the feasibility and advisability of granting loans. Before agreeing to the consolidation of Minfaco's loans, it presumed that petitioner had done its homework.

As to the award of damages to the individual respondents, the CA upheld the trial court's findings that it was clearly unfair on petitioner's part to have impleaded the wives of Guevara and Hong, because the women were not privy to any of the transactions between petitioner and Minfaco. Under Articles 19, 20 and 2229 of the Civil Code, such reckless and wanton act of pressuring individual respondents to settle the corporation's obligations is a ground to award moral and exemplary damages, as well as attorney's fees.

Hence this Petition.[6]

Issues

In its Memorandum, petitioner raises the following issues:

"A. Whether or not there is ample evidence on record to support the joint and solidary liability of individual respondents with Mindanao Ferroalloy Corporation.

"B. In the absence of joint and solidary liability[,] will the provision of Article 1208 in relation to Article 1207 of the New Civil Code providing for joint liability be applicable to the case at bar.

"C. May bank practices be the proper subject of judicial notice under Sec. 1 [of] Rule 129 of the Rules of Court.

"D. Whether or not there is evidence to sustain the claim that respondents were impleaded to apply pressure upon them to pay the obligations in lieu of MINFACO that is declared insolvent.

"E. Whether or not there are sufficient bases for the award of various kinds of and substantial amounts in damages including payment for attorney's fees.

"F. Whether or not respondents committed fraud and misrepresentations and acted in bad faith.

"G. Whether or not the inclusion of respondents spouses is proper under certain circumstances and supported by prevailing jurisprudence." [7]

In sum, there are two main questions: (1) whether the individual respondents are liable, either jointly or solidarily, with the Mindanao Ferroalloy Corporation; and (2) whether the award of damages to the individual respondents is valid and legal.

The Court's Ruling

The Petition is partly meritorious.

First Issue:

Liability of Individual Respondents

Petitioner argues that the individual respondents were jointly or solidarily liable with Minfaco, either because their participation in the loan contract and the loan documents made them comakers; or because they committed fraud and deception, which justifies the piercing of the corporate veil.

The first contention hinges on certain factual determinations made by the trial and the appellate courts. These tribunals found that, although he had not signed any document in connection with the subject transaction, Respondent Guevara was authorized to represent Minfaco in negotiating for a P30 million loan from petitioner. As to Cu and Hong, it was determined, among others, that their signatures on the loan documents other than the Deed of Assignment were not prefaced with the word "by," and that there were no other signatures to indicate who had signed for and on behalf of Minfaco, the principal borrower. In the Promissory Note, they signed above the printed name of the corporation — on the space provided for "Maker/Borrower," not on that provided for "Co-maker."

Petitioner has not shown any exceptional circumstance that sanctions the disregard of these findings of fact, which are thus deemed final and conclusive upon this Court and may not be reviewed on appeal.[8]

No Personal Liability

for Corporate Deeds

Basic is the principle that a corporation is vested by law with a personality separate and distinct from that of each person composing[9] or representing it.[10] Equally fundamental is the general rule that corporate officers cannot be held personally liable for the consequences of their acts, for as long as these are for and on behalf of the corporation, within the scope of their authority and in good faith.[11] The separate corporate personality is a shield against the personal liability of corporate officers, whose acts are properly attributed to the corporation.[12]

Tramat Mercantile v. Court of Appeals[13] held thus:

"Personal liability of a corporate director, trustee or officer along (although not necessarily) with the corporation may so validly attach, as a rule, only when —

'1. He assents (a) to a patently unlawful act of the corporation, or (b) for bad faith or gross negligence in directing its affairs, or (c) for conflict of interest, resulting in damages to the corporation, its stockholders or other persons;

'2. He consents to the issuance of watered stocks or who, having knowledge thereof, does not forthwith file with the corporate secretary his written objection thereto;

'3. He agrees to hold himself personally and solidarily liable with the corporation; or

'4. He is made, by a specific provision of law, to personally answer for his corporate action.' "

Consistent with the foregoing principles, we sustain the CA's ruling that Respondent Guevara was not personally liable for the contracts. First, it is beyond cavil that he was duly authorized to act on behalf of the corporation; and that in negotiating the loans with petitioner, he did so in his official capacity. Second, no sufficient and specific evidence was presented to show that he had acted in bad faith or gross negligence in that negotiation. Third, he did not hold himself personally and solidarily liable with the corporation. Neither is there any specific provision of law making him personally answerable for the subject corporate acts.

On the other hand, Respondents Cu and Hong signed the Promissory Note without the word "by" preceding their signatures, atop the designation "Maker/Borrower" and the printed name of the corporation, as follows:

____(Sgd) Cu/Hong____

(Maker/Borrower)

MINDANAO FERROALLOY

While their signatures appear without qualification, the inference that they signed in their individual capacities is negated by the following facts: 1) the name and the address of the corporation appeared on the space provided for "Maker/Borrower"; 2) Respondents Cu and Hong had only one set of signatures on the instrument, when there should have been two, if indeed they had intended to be bound solidarily — the first as representatives of the corporation, and the second as themselves in their individual capacities; 3) they did not sign under the spaces provided for "Co-maker," and neither were their addresses reflected there; and 4) at the back of the Promissory Note, they signed above the words "Authorized Representative."

Solidary Liability

Not Lightly Inferred

Moreover, it is axiomatic that solidary liability cannot be lightly inferred.[14] Under Article 1207 of the Civil Code, "there is a solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity." Since solidary liability is not clearly expressed in the Promissory Note and is not required by law or the nature of the obligation in this case, no conclusion of solidary liability can be made.

Furthermore, nothing supports the alleged joint liability of the individual petitioners because, as correctly pointed out by the two lower courts, the evidence shows that there is only one debtor: the corporation. In a joint obligation, there must be at least two debtors, each of whom is liable only for a proportionate part of the debt; and the creditor is entitled only to a proportionate part of the credit.[15]

Moreover, it is rather late in the day to raise the alleged joint liability, as this matter has not been pleaded before the trial and the appellate courts. Before the lower courts, petitioner anchored its claim solely on the alleged joint

and several (or solidary) liability of the individual respondents. Petitioner must be reminded that an issue cannot be raised for the first time on appeal, but seasonably in the proceedings before the trial court.[16]

So too, the Promissory Note in question is a negotiable instrument. Under Section 19 of the Negotiable Instruments Law, agents or representatives may sign for the principal. Their authority may be established, as in other cases of agency. Section 20 of the law provides that a person signing "for and on behalf of a [disclosed] principal or in a representative capacity x x x is not liable on the instrument if he was duly authorized."

The authority of Respondents Cu and Hong to sign for and on behalf of the corporation has been amply established by the Resolution of Minfaco's Board of Directors, stating that "Atty. Ricardo P. Guevara (President and Chairman), or Ms. Teresita R. Cu (Vice President), acting together with Mr. Jong Won Hong (Vice President), be as they are hereby authorized for and in behalf of the Corporation to: 1. Negotiate with and obtain from (petitioner) the extension of an omnibus line in the aggregate of P30 million x x x; and 2. Execute and deliver all documentation necessary to implement all of the foregoing."[17]

Further, the agreement involved here is a "contract of adhesion," which was prepared entirely by one party and offered to the other on a "take it or leave it" basis. Following the general rule, the contract must be read against petitioner, because it was the party that prepared it,[18] more so because a bank is held to high standards of care in the conduct of its business.[19]

In the totality of the circumstances, we hold that Respondents Cu and Hong clearly signed the Note merely as representatives of Minfaco.

No Reason to Pierce the Corporate Veil

Under certain circumstances, courts may treat a corporation as a mere aggroupment of persons, to whom liability will directly attach. The distinct and separate corporate personality may be disregarded, inter alia, when the corporate identity is used to defeat public convenience, justify a wrong, protect a fraud, or defend a crime. Likewise, the corporate veil may be pierced when the corporation acts as a mere alter ego or business conduit of a person, or when it is so organized and controlled and its affairs so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.[20] But to disregard the separate juridical personality of a corporation, the wrongdoing must be clearly and convincingly established; it cannot be presumed.[21]

Petitioner contends that the corporation was used to protect the fraud foisted upon it by the individual respondents. It argues that the CA failed to consider the following badges of fraud and evident bad faith: 1) the individual respondents misrepresented the corporation as solvent and financially capable of paying its loan; 2) they knew that prices of ferrosilicon were declining in the world market when they secured the loan in June 1991; 3) not a single centavo was paid for the loan; and 4) the corporation suspended its operations shortly after the loan was granted.[22]

Fraud refers to all kinds of deception — whether through insidious machination, manipulation, concealment or misrepresentation — that would lead an ordinarily prudent person into error after taking the circumstances into account.[23] In contracts, a fraud known as *dolo causante* or causal fraud[24] is basically a deception used by one party prior to or simultaneous with the contract, in order to secure the consent of the other.[25] Needless to say, the deceit employed must be serious. In contradistinction, only some particular or accident of the obligation is referred to by incidental fraud or *dolo incidente*,[26] or that which is not serious in character and without which the other party would have entered into the contract anyway.[27]

Fraud must be established by clear and convincing evidence; mere preponderance of evidence is not adequate.[28] Bad faith, on the other hand, imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, not simply bad judgment or negligence.[29] It is synonymous with fraud, in that it involves a design to mislead or deceive another.[30]

Unfortunately, petitioner was unable to establish clearly and precisely how the alleged fraud was committed. It failed to establish that it was deceived into granting the loans because of respondents' misrepresentations and/or insidious actions. Quite the contrary, circumstances indicate the weakness of its submission.

First, petitioner does not deny that the P5 million loan represented the consolidation of two loans,[31] granted long before the bank required the individual respondents to execute the Promissory Note, Trust Receipt Agreement, Quedan or Deed of Assignment. Hence, no words, acts or machinations arising from any of those instruments could have been used by them prior to or simultaneous with the execution of the contract, or even as some accident or particular of the obligation.

Second, petitioner bank was in a position to verify for itself the solvency and trustworthiness of respondent corporation. In fact, ordinary business prudence required it to do so before granting the multimillion loans. It is of common knowledge that, as a matter of practice, banks conduct exhaustive investigations of the financial standing of an applicant debtor, as well as appraisals of collaterals offered as securities for loans to ensure their prompt and satisfactory payment. To uphold petitioner's cry of fraud when it failed to verify the existence of the goods covered by the Trust Receipt Agreement and the Quedan is to condone its negligence.

Judicial Notice of Bank Practices

This point brings us to the alleged error of the appellate court in taking judicial notice of the practice of banks in conducting background checks on borrowers and sureties. While a court is not mandated to take judicial notice of this practice under Section 1 of Rule 129 of the Rules of Court, it nevertheless may do so under Section 2 of the same Rule. The latter Rule provides that a court, in its discretion, may take judicial notice of "matters which are of public knowledge, or ought to be known to judges because of their judicial functions."

Thus, the Court has taken judicial notice of the practices of banks and other financial institutions. Precisely, it has noted that it is their uniform practice, before approving a loan, to investigate, examine and assess would-be borrowers' credit standing or real estate[32] offered as security for the loan applied for.

Second Issue: Award of Damages

The individual respondents were awarded moral and exemplary damages as well as attorney's fees under Articles 19 to 21 of the Civil Code, on the basic premise that the suit was clearly malicious and intended merely to harass.

Article 19 of the Civil Code expresses the fundamental principle of law on human conduct that a person "must, in the exercise of his rights and in the performance of his duties, act with justice, give every one his due, and observe honesty and good faith." Under this basic postulate, the exercise of a right, though legal by itself, must nonetheless be done in accordance with the proper norm. When the right is exercised arbitrarily, unjustly or excessively and results in damage to another, a legal wrong is committed for which the wrongdoer must be held responsible.[33]

To be liable under the abuse-of-rights principle, three elements must concur: a) a legal right or duty, b) its exercise in bad faith, and c) the sole intent of prejudicing or injuring another.[34] Needless to say, absence of

good faith^[35] must be sufficiently established.

Article 20 makes "[e]very person who, contrary to law, willfully or negligently causes damage to another" liable for damages. Upon the other hand, held liable for damages under Article 21 is one who "willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy."

For damages to be properly awarded under the above provisions, it is necessary to demonstrate by clear and convincing evidence^[36] that the action instituted by petitioner was clearly so unfounded and untenable as to amount to gross and evident bad faith.^[37] To justify an award of damages for malicious prosecution, one must prove two elements: malice or sinister design to vex or humiliate and want of probable cause.^[38]

Petitioner was proven wrong in impleading Spouses Guevara and Hong. Beyond that fact, however, respondents have not established that the suit was so patently malicious as to warrant the award of damages under the Civil Code's Articles 19 to 21, which are grounded on malice or bad faith.^[39] With the presumption of law on the side of good faith, and in the absence of adequate proof of malice, we find that petitioner impleaded the spouses because it honestly believed that the conjugal partnerships had benefited from the proceeds of the loan, as stated in their Complaint and subsequent pleadings. Its act does not amount to evident bad faith or malice; hence, an award for damages is not proper. The adverse result of an act per se neither makes the act wrongful nor subjects the actor to the payment of damages, because the law could not have meant to impose a penalty on the right to litigate.^[40]

For the same reason, attorney's fees cannot be granted. Article 2208 of the Civil Code states that in the absence of a stipulation, attorney's fees cannot be recovered, except in any of the following circumstances:

- "(1) When exemplary damages are awarded;
- "(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- "(3) In criminal cases of malicious prosecution against the plaintiff;
- "(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- "(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- "(6) In actions for legal support;
- "(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- "(8) In actions for indemnity under workmen's compensation and employer's liability laws;
- "(9) In a separate civil action to recover civil liability arising from a crime;
- "(10) When at least double judicial costs are awarded;
- "(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered."

In the instant case, none of the enumerated grounds for recovery of attorney's fees are present.

WHEREFORE, this Petition is **PARTIALLY GRANTED**. The assailed Decision is **AFFIRMED**, but the award of moral and exemplary damages as well as attorney's fees is **DELETED**. No costs.

SO ORDERED.

Sandoval-Gutierrez, Corona, Carpio-Morales, and Garcia, JJ., concur.

[*] Her first name is not specified in title of the Petition, but is found on page 1 of the Spouses' Memorandum. Rollo, p. 222.

[**] The name of Mr. Guevara's spouse is not found in the records.

[1] Rollo, pp. 18-42.

[2] Penned by Justice Romeo J. Callejo Sr. (then chair, Twelfth Division, and now a member of this Court) and concurred in by Justices Remedios Salazar-Fernando and Josefina Guevara-Salonga (members).

[3] Supra, p. 34.

[4] CA Decision, pp. 25-26; id., pp. 31-32.

[5] Excerpted from the CA Decision, pp. 1-10; rollo, pp. 7-16. Citations omitted.

[6] The Petition was deemed submitted for decision on June 28, 2004, upon the Court's receipt of the Memorandum of Respondents Teresita Cu and Guevara, signed by Atty. Antonio C. Pacis. The Memorandum of Respondent Spouses Jong-Won Hong and Soo-ok Kim Hong, signed by Attys. Constantine G. Agagan and Mario R. Frez, was filed on June 21, 2004. Petitioner's Memorandum, signed by Atty. Maximino Z. Banaga Jr., was received by the Court on June 8, 2004.

[7] Petitioner's Memorandum, pp. 10-11; rollo, pp. 202-203. Original in uppercase.

[8] Larena v. Mapili, 408 SCRA 484, 488, August 7, 2003; Bordalba v. CA, 425 Phil. 407, 415, January 25, 2002; Roca v. CA, 350 SCRA 414, 420, January 29, 2001; Bañas v. CA, 382 Phil. 144, 154, February 10, 2000.

[9] They are the stockholders or members of a corporation. See Francisco v. Mejia, 415 Phil. 153, 165, August 14, 2001; Consolidated Bank and Trust Corporation (Solidbank) v. CA, 356 SCRA 671, 682, April 19, 2001; Reahs Corp. v. National Labor Relations Commission, 337 Phil. 698, 706, April 15, 1997.

[10] Being a juridical entity, a corporation acts through its board of directors and/or officers and agents. See Monfort Hermanos Agricultural Development Corp. v. Monfort III, 434 SCRA 27, 31, July 8, 2004; Firme v. Bukal Enterprises and Development Corporation, 414 SCRA 190, 208, October 23, 2003; People's Aircargo and Warehousing Co., Inc. v. CA, 357 Phil. 850, 863, October 7, 1998.

[11] Francisco v. Mejia, supra, pp. 166-167; Bogo-Medellin Sugarcane Planters Association, Inc. v. NLRC, 357 Phil. 110, 127, September 25, 1998.

[12] Consolidated Bank and Trust Corporation (Solidbank) v. CA, supra.

[13] 238 SCRA 14, 19, November 7, 1994, per Vitug, J. (cited in FCY Construction Group, Inc. v. CA, 381 Phil. 282, 290, February 1, 2000).

[14] Industrial Management International Development Corp. v. NLRC, 387 Phil. 659, 666, May 11, 2000; Smith, Bell & Co., Inc. v. CA, 335 Phil. 194, 203, February 6, 1997; Sesbreño v. CA, 222 SCRA 466, 481, May 24, 1993.

[15] PH Credit Corporation v. CA, 421 Phil. 821, 832, November 22, 2001; Inciong Jr. v. CA, 327 Phil. 364, 373,

June 26, 1996; Quiombing v. CA, 189 SCRA 325, 328, August 30, 1990; The Imperial Insurance, Inc. v. David, 218 Phil. 298, 302, November 21, 1984.

[16] Lim v. Queensland Tokyo Commodities, Inc., 424 Phil. 35, 47, January 4, 2002; Del Rosario v. Bonga, 350 SCRA 101, 108, January 23, 2001; Sanchez v. CA, 345 Phil. 155, 186, September 29, 1997.

[17] CA Decision (referring to Exhibit "A" and Records, p. 595), p. 20; rollo, p. 26.

[18] Ouano v. CA, 446 Phil. 690, 708, March 4, 2003; BPI Express Card Corporation v. Olalia, 423 Phil. 593, 599, December 14, 2001; Geraldez v. CA, 230 SCRA 320, 331, February 23, 1994.

[19] See Associated Bank v. Tan, GR No. 156940, December 14, 2004, p. 10 (citing BPI v. Casa Montessori Internationale, 430 SCRA 262, 293, May 28, 2004); Philippine Commercial and International Bank v. CA, 350 SCRA 446, 472, January 29, 2001; Bank of the Philippine Islands v. Intermediate Appellate Court, 206 SCRA 408, 412-413, February 21, 1992.

[20] Lipat v. Pacific Banking Corporation, 450 Phil. 401, 410, April 30, 2003; Francisco v. Mejia, supra, pp. 165-166; Francisco Motors Corp. v. CA, 368 Phil. 374, 384, June 25, 1999; Sulo ng Bayan, Inc. v. Araneta, Inc., 72 SCRA 347, 355, August 17, 1976.

[21] Marubeni Corporation v. Lirag, 415 Phil. 29, 39, August 10, 2001.

[22] Petitioner's Memorandum, pp. 24-25; rollo, pp. 216-217.

[23] Maestrado v. CA, 384 Phil. 418, 434, March 9, 2000; Caram Jr. v. Laureta, 103 SCRA 7, 18, February 24, 1981.

[24] Article 1338 of the Civil Code refers to this kind of fraud. See also Geraldez v. CA, supra, p. 336.

[25] Samson v. CA, 238 SCRA 397, 404, November 25, 1994. See also Tolentino, Civil Code of the Philippines, 1991 ed., Vol. IV, p. 506.

[26] Article 1344 of the Civil Code.

[27] Caram Jr. v. Laureta, supra; Tolentino, supra.

[28] Inciong Jr. v. CA, supra, p. 371.

[29] Cojuangco Jr. v. CA, 369 Phil. 41, 55, July 2, 1999; Philippine Air Lines, Inc. v. NLRC, 362 Phil. 197, 204, February 2, 1999; Samson v. CA, supra.

[30] Ibid.

[31] The first indebtedness was for P3. 2 million, which was granted by the bank to the corporation on May 21, 1991, while the second loan of P1.8 million was granted on May 28, 1991.

[32] Heirs of Manlapat v. CA, GR No. 125585, June 8, 2005, pp. 25-26; Home Bankers Savings & Trust Co. v. CA, GR No. 128354, April 26, 2005, p. 17; Rural Bank of Sta. Ignacia Inc. v. Dimatulac, 449 Phil. 800, 812, April 29, 2003; Cruz v. Bancom Finance Corporation, 429 Phil. 225, 240, March 19, 2002.

[33] Metropolitan Waterworks and Sewerage System v. Act Theater, Inc., 432 SCRA 418, 422, June 17, 2004; Rellosa v. Pelloso, 414 Phil. 786, 792, August 9, 2001; Sea Commercial Company, Inc. v. CA, 377 Phil. 221, 229, November 25, 1999.

[34] Ibid.

[35] In *University of the East v. Jader*, 382 Phil. 697, 705, February 17, 2000, good faith was defined as "an honest intention to abstain from taking undue advantage of another, even though the forms and technicalities of the law, together with the absence of all information or belief of facts, would render the transaction unconscientious."

[36] *Audion Electric Co. v. NLRC*, 367 Phil. 620, 635, June 17, 1999.

[37] *Savellano v. Northwest Airlines*, 405 SCRA 416, 428-429, July 8, 2003; *Cervantes v. CA*, 363 Phil. 399, 407, March 2, 1999. See also Article 2220 of the Civil Code.

[38] *Inhelder Corporation v. CA*, 122 SCRA 576, 584, May 30, 1983.

[39] *ABS-CBN Broadcasting Corp. v. CA*, 361 Phil. 499, 531, January 21, 1999.

[40] *ABS-CBN Broadcasting Corp. v. CA*, *supra*, p. 529; *BPI Family Savings Bank v. Manikan*, 443 Phil. 463, 468, January 16, 2003; *R & B Surety & Insurance Co., Inc. v. Intermediate Appellate Court*, 129 SCRA 736, 744-745, June 22, 1984; *Inhelder Corporation v. CA*, *supra*.

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