

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. INSTITUTE FOR SOCIAL CONCERN, FELIPE SUZARA AND RAMON GARCIA, RESPONDENTS.

G.R. NO. 156306. January 28, 2005

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

In issue in the present Petition for Review on Certiorari assailing the Court of Appeals decision[1] of November 29, 2002 which modified the trial court's decision is whether defendant appellant-respondent Felipe Suzara can be made solidarily liable, along with his co-respondents Institute for Social Concern (ISC) and its Executive Director Ramon Garcia.

On September 28, 1989, the Government of the Republic of the Philippines, through the Office of the President (the Republic), and the ISC, represented by its Executive Director Ramon Garcia, entered into a Memorandum of Agreement (MOA)[2] wherein ISC, for a consideration of P8,488,880.00, undertook to construct forty-five (45) one storey two-classroom school buildings in the Cordillera Autonomous Region, Region 2 and Region 5.

For its part, the Republic undertook, upon the signing and execution of the MOA, to deposit in trust in a non-interest earning account with ISC 70% of the contract price, with the balance of 30% to be remitted "after submission of monthly delivery report indicating 50% completion as attested and certified by the [Republic]."

It was made clear in the MOA that ISC would deliver the 45 two-classroom school buildings within 90 days from the release of funds "as specified in this agreement" and should it fail to comply therewith, the Republic may exact liquidated damages equivalent to one-tenth of one percent (0.1%) of the total amount for each day of delay.

The Republic complied with its undertaking by issuing a check dated October 6, 1989 in the amount of P5,942,160.00 in the name of ISC which the latter had encashed.

ISC, however, failed to comply with its obligation, it having been found that the construction of school buildings "lagged behind . . . time schedule." [3]

On July 5, 1990, the Republic issued another check in the name of ISC in the amount of P2,546,640.00 which check had been cleared.

Subsequently, or on September 12, 1990, the parties forged an amendment to the MOA[4] by adding the following conditions:

- That upon release of the 30% fund balance, the school buildings which are on-going must be completed within thirty (30) days for Cagayan and forty-five (45) days for Masbate. Those which are not yet started must be completed within one hundred twenty (120) days.
- The specified 120 days shall be devoted to physical construction works/activities provided that the buildings shall strictly follow the standard design of the PSF school building program. If the ORGANIZATION fails to

deliver the completed school buildings, the REPUBLIC may exact liquidated damages equivalent to one-tenth of one (0.1%) percent of the total amount for each day of delay.

x x x (Underscoring supplied)[5]

In the amendment to the MOA, ISC was represented by its Chairman Suzara.

The full payment to ISC of the contract price and the amendment to the MOA notwithstanding, ISC failed to honor its commitment under the MOA, as amended, drawing the Republic to file on December 8, 1993 a complaint for Damages before the Regional Trial Court (RTC) of Manila against ISC, its Chairman Suzara, and its Executive Director Garcia.

In its Complaint, the Republic alleged, inter alia, that

3.2 Defendants are guilty of fraud in contracting their obligations for they had no intention whatsoever to perform them and had falsely represented to Presidential Management and Staff that they were financially capable and had all the technical expertise and experience to construct the school buildings when in truth and in fact, they were not, as shown by the fact that they could not even start the construction of some school buildings and could not complete the construction of some of them. (Emphasis and underscoring supplied)

ISC and Suzara jointly filed an Answer with Counterclaims but Garcia did not file any and was, on the Republic's motion, declared in default.

On the allegation of fraud in the complaint, ISC and Suzara "specifically den[ied] the averments contained in pars. 3.1 to 3.7 inclusive," they alleging as SPECIAL AND AFFIRMATIVE DEFENSES the following:

x x x

9. That answering defendant Suzara's participation was limited to his official capacity as Chairman of ISC and did not at any time made (sic) any representation or undertakings in his personal capacity;

10. That the participation of answering defendant ISC in the completion and delivery of the subject school buildings, with the full knowledge and consent of plaintiff, was merely for purposes of supervision and monitoring;

11. That answering defendants complied with all its obligations and undertaking under the pertinent agreement entered into with the plaintiff;

12. That if there are any obligation due to plaintiff, the same are liabilities to be answered for and paid by the defaulting contractors of the project concerned as contracted by defendant ISC;

x x x (Underscoring supplied)[6]

At the pre-trial, ISC and Suzara, as well as their counsel, failed to show up. Hence, on motion of the Republic, they were declared as in default.

ISC and Suzara filed a motion to lift the order declaring them as in default, but the trial court denied the same.

The Republic was thus allowed to present evidence ex-parte by Branch 14 of the RTC of Manila to which the case was raffled, following which it rendered a decision[7] in favor of the Republic and disposed as follows:

WHEREFORE, judgment is hereby rendered in favor of plaintiff and against the defendants by ordering the latter to pay the former, jointly and solidarily, the sum of P3,757,288.26 representing a return of the consideration of the Memorandum of Agreement with liquidated damages equivalent to 0.1% from the filing of this suit until fully paid, and exemplary damages in the sum of P50,000.00. (Underscoring supplied)[8]

ISC and Suzara appealed the decision of the trial court to the Court of Appeals, raising the following errors:

FIRST ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN NOT PROPERLY APPLYING THE BASIC PROCEDURAL RULE AND WELL ESTABLISHED LEGAL DOCTRINE, THAT THE PLAINTIFF-APPELLEE, IN ESTABLISHING THE CAUSE OF ACTION ASSERTED IN ITS COMPLAINT, MUST RELY UPON THE STRENGTH OF ITS OWN EVIDENCE, RATHER THAN ON THE PERCEIVED WEAKNESS OR INSUFFICIENCIES IN THE DEFENDANTS-APPELLANTS' DEFENSES.

SECOND ASSIGNMENT OF ERROR.

THE LOWER COURT ERRED IN FAILING TO APPRECIATE, FIND AND DECLARE THAT THERE WAS NO EVIDENCE TO SHOW THAT THE DEFENDANT-APPELLANT BENEFITTED FROM THE ALLEGED TRANSACTION.

THIRD ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN NOT DECLARING THAT THE PLAINTIFF-APPELLEE FAILED TO ADDUCE PREPONDERANCE EVIDENCE, TO ESTABLISH THE CAUSE OF ACTION ASSERTED IN ITS COMPLAINT AGAINST THE DEFENDANTS-APPELLANTS.

FOURTH ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN NOT SETTING ASIDE ITS ORDER DATED APRIL 17, 1995 (ANNEX A, PETITION) AND LIKEWISE ERRED IN NOT GRANTING THE MOTION FOR RECONSIDERATION DATED MAY 2, 1995 FILED BY DEFENDANTS-APPELLANTS.

FIFTH ASSIGNMENT OF ERROR

THE LOWER COURT ERRED WHEN IT STRICTLY INTERPRETED THE RULES ON DEFAULT ON DEFENDANTS-APPELLANTS, RATHER THAN APPLYING ITS ACCEPTED LIBERAL CONSTRUCTION.

SIXTH ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED WHEN IT ADJUDGED THAT DEFENDANT-APPELLANT SUZARA WAS PERSONALLY LIABLE FOR THE OBLIGATIONS OF DEFENDANT-APPELLANT ISC WHEN HE MERELY ACTED IN A REPRESENTATIVE CAPACITY, THERE BEING NO EVIDENCE AVAILABLE TO SHOW THAT HE ACTED ON HIS PERSONAL CAPACITY.

SEVENTH ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN RENDERING JUDGMENT IN FAVOR OF THE PLAINTIFF-APPELLEE AND AGAINST DEFENDANTS-APPELLANTS FOR REIMBURSEMENT OF CONSIDERATION, LIQUIDATED AND EXEMPLARY DAMAGES. (Emphasis and underscoring supplied)[9]

By its present challenged decision of November 29, 2002, the Court of Appeals found the assigned errors, except No. 6, bereft of merit.

On assigned error No. 6, the appellate court held that indeed the trial court erred in holding Suzara jointly and severally liable with ISC, for Suzara acted in his personal capacity as Chairman of ISC which has a separate and distinct personality at the time of the execution of the MOA and its amendment. Citing the case of *Tramat Mercantile Inc. v. Court of Appeals*[10] wherein this Court cited instances when, without necessarily piercing the

veil of corporate fiction, personal civil liability can also lawfully attach to a corporate director, trustee or officer, to wit:

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 —

- 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;
- 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;
- He agrees to hold himself personally and solidarily liable with the corporation; or
- He is made, by a specific provision of law, to personally answer for his corporate action,[11]

the Court of Appeals, noting that none of the above enumerated instances is present in the case to call for the imposition of personal civil liability of Suzara, modified the trial court's decision by sparing Suzara from liability.

Hence, the present petition of the Republic raising the following sole issue:

WHETHER OR NOT THE ASSAILED DECISION DATED NOVEMBER 29, 2002 OF THE COURT OF APPEALS IS CORRECT IN NOT APPLYING THE DOCTRINE OF PIERCING THE VEIL OF CORPORATE ENTITY AND IN NOT ADJUDGING RESPONDENTS SUZARA AND GARCIA JOINTLY AND SOLIDARILY LIABLE WITH RESPONDENT ISC. (Underscoring supplied)[12]

The Republic argues that the dispositive portion of the Court of Appeals decision “speaks in no uncertain terms that it is only respondent ISC that should be liable to the petitioner [and] by absolving even Ramon Garcia who did not appeal, it . . . committed grave abuse of discretion.” The Republic goes on to argue as follows:

The evidence on record clearly shows that respondents Suzara and Garcia diverted the funds provided by petitioner to respondent ISC intended for the construction of the buildings. There is a need to apply the doctrine of piercing the veil of corporate entity in the instant case. Respondents Suzara and Garcia used respondent ISC, a corporation, as a shield to justify their wrong deeds and in order to protect the fraud they committed. The purpose of respondent ISC, a non-stock, non-profit and non-governmental organization organized under and by virtue of the laws of the Philippines is being used to defeat public convenience. Respondent ISC was contracted by petitioner due to its being organized as a non-governmental organization. This privilege was abused by respondents Suzara and Garcia.

It is not disputed that part of the amount given in consideration of the memorandum of agreement was invested in securities through Philippine Commercial Capital Inc. This could not have happened without the knowledge and consent of respondents Suzara and Garcia.[13]

Citing *Robledo v. National Labor Relations Commission*[14] wherein this Court held:

The doctrine of piercing the veil of corporate entity is used whenever a court finds that the corporate fiction is being used to defeat public convenience, justify wrong, protect fraud, or defend crime or to confuse legitimate issues, or that 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]

the Republic pleads that Suzara and Garcia must be made jointly and severally liable with ISC, “[t]he non application of the doctrine of piercing the veil of corporate entity . . . not be[ing] allowed to in a way justify the

wrong and protect the fraud committed by. . . Suzara and Garcia.”

The petition fails.

As quoted earlier, the Republic in its complaint charged ISC et al. to be guilty of fraud for “they had no intention whatsoever to perform them and had falsely represented . . . that they were financially capable and had all the technical expertise and experience.” But as stated earlier, Suzara in the Answer he jointly filed with ISC denied the allegation of misrepresentation, he claiming that his participation in the execution of the MOA was limited to his official capacity as Chairman of ISC.

Issues having been joined after ISC and Suzara jointly filed their Answer, it was incumbent for the Republic to prove the issue, inter alia, of whether Suzara’s participation in the MOA was limited to his official capacity as Chairman of ISC.

Albeit ISC and Suzara were declared as in default on December 12, 1994 under Rule 20 of the Revised Rules of Court,[16] the Republic had the burden of proving that first, Suzara, contrary to his claim, participated in the MOA not only in his official capacity as Chairman but also in his personal capacity, and second, that he, along with ISC, committed fraud. For fraud cannot be presumed and it must be established by clear and sufficient evidence.[17] Courts never sustain findings of fraud upon circumstances which, at most, create only suspicion.[18]

It does not mean, however, that fraud can only be proved by direct evidence. For, it being a state of mind, it may be inferred from the circumstances of the case.[19]

A scrutiny of the evidence presented ex-parte by the Republic shows that it is documentary.

Among the documents presented and offered in evidence were “Schedule I of Audit findings and recommendation” (Exh. “H-3”) showing ISC Investments as of August 31, 1991,[20] herein reproduced as follows:

PERIOD

PARTICULARS

PRINCIPAL

INTEREST EARNED

Sept. 30 – Oct. 30, 1990 Urban Bank

P1,500,000.00

P 34,684.41

Oct. 31 – Dec. 4, 1990 PCCI

1,534,684.41

37,685.03

Dec. 4, 1990 – Jan. 17, 1991 PCCI – rolled over

1,572,369.44

49,966.41

Jan. 17 – Mar. 4, 1991 PCCI - rolled over

1,622,335.85

57, 187.34

Mar. 5 – Apr. 4, 1991 PCCI – reduced

* 700,000.00

13,416.67

April 4 – May 6, 1991 PCCI

713,416.67

13,475.00

May 7 – June 6, 1991 PCCI – reduced

* * 500,000.00

7,965.28

June 7 – July 12, 1991 PCCI

507,965.28

8,642.46

P8,650,771.65

P223,022.60

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* - net of P979,523.19 withdrawal.

* - net of P213,475.00 withdrawal,

the purpose of which document was “To show the interests made by defendants of the amount received by them from plaintiff and the amount of P223,022.60 as interest earned from investments”;^[21] and “Financial analysis of investments made by defendants of the money received from plaintiff” (Exh. “S”)^[22] and “Documents issued by Philippine Commercial Capital, Inc. showing investments of defendants” (Exhs. “S-1” – “S-25”),^[23] the purpose of which was “To show that instead of using the funds received from plaintiff in the construction of the school buildings, defendants invested the same in certain financial institutions or Philippine Commercial Capital, Inc.”

In its decision, the trial court found that the ISC, Suzara and Garcia “diverted the funds intended for the

construction of the buildings by investing the same in certain financial institutions (Exhs. 'S,' 'S-1' to 'S-24') . . . naturally result[ing] in the non-completion of the school buildings and in some instances, although the buildings were completed, the same were defective . . ."[24]

Both the Schedule I, ISC Investments – Exh. "H-3" and the "Financial Analysis" – Exh. "S" as well as the documents – Exhs. "S-1" – "S-25" issued by Philippine Commercial Capital, Inc. indicate that placement of investments by ISC began on the last quarter of 1990. It bears noting, in this connection, that the Republic paid ISC P5,942,160.00 on October 6, 1989. And it paid P2,546,640.00 on July 5, 1990. There is no showing, however, that the same or part of the funds received from the Republic were those invested by ISC in financial institutions.

To infer from the above-specified documents, as what the Republic did in its brief before the appellate and this Court, that Suzara being then Chairman of ISC "clearly assented to a patently unlawful act" by agreeing "to divert the funds intended for the construction of 45 school buildings" is a non sequitor. Parenthetically, the allegation of fraud involving Suzara in the complaint was one arising from misrepresentation of financial capability and technical expertise and experience to construct the school buildings, not from "diversion."

In fine, the participation, if any, by Suzara in the alleged diversion is not unexplainable.[25] Unfortunately, he was declared as in default. At all events, it is speculative. As such, fraud as the Republic's basis in urging the piercing the veil of corporate fiction does not lie.

This Court would not also hold Suzara personally liable for, as correctly found by the appellate court which cited *Tramat Mercantile, Inc. v. CA*[26] enumerating instances when personal liability of a corporate director, trustee or officer along (although not necessarily) with the corporation may, as a rule, attach, none of those or of analogous instances is present in Suzara's case.

As for the Republic's lament in the appellate court's "not adjudging . . . Garcia jointly and solidarily liable with . . . ISC," its attention is invited to *Tropical Homes, Inc. v. Fortun et al.*[27] wherein this Court held:

We have always recognized the general rule that in appellate proceedings, the reversal of the judgment on appeal is binding only on the parties in the appealed case and does not affect or inure to the benefit of those who did not join or were not made parties to the appeal. An exception to the rule exists, however, where a judgment cannot be reversed as to the party appealing without affecting the rights of his co-debtor, or where the rights and liabilities of the parties appealing are so interwoven and dependent on each other as to be inseparable, in which case a reversal as to one operates as a reversal as to all. This exception which is based on a communality of interest of said parties is recognized in this jurisdiction.[28]

WHEREFORE, the petition is hereby DENIED.

No costs.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

[1] Rollo at 37-50.

[2] Annex "A" to the Complaint; Records at 9-13.

[3] RTC decision; Records at 385, 387.

[4] Amendment to the MOA, Annex "B" to the Complaint; Id. at 14-17.

[5] Records at 14-15.

[6] Records at 38.

[7] Id. at 385-387.

[8] Id. at 387.

[9] CA Rollo at 31-33.

[10] 238 SCRA 14 (1994); Loose copy of CA decision at 13.

[11] Id. at 19; Id. at 13-14.

[12] Rollo at 29.

[13] Id. at 28.

[14] 238 SCRA 52 (1994).

[15] Rollo at 33.

[16] Records at 107. The pertinent provisions of the present Rules of Court reads:

SEC. 5 Effect of failure to appear. — The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence ex parte and the court to render judgment on the basis thereof. (Underscoring supplied)

[17] Heng Tong Textile Co. v. CIR, 24 SCRA 767 (1968).

[18] Yutivo Sons Hardware Co. v. CTA, 1 SCRA 160 (1961).

[19] Republic v. Gonzales, 13 SCRA 633 (1965).

[20] Records at 213.

[21] Id. at 159.

[22] Id. at 233.

[23] Id. at 234-258.

[24] RTC Decision, Id. at 385, 387.

[25] Vide Gutierrez v. Villegas, 8 SCRA 527 (1963).

[26] Supra.

[27] 169 SCRA 81 (1989).

[28] Id. at 90.

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