

IMMACULADA L. GARCIA, PETITIONER, VS. SOCIAL SECURITY COMMISSION LEGAL AND COLLECTION, SOCIAL SECURITY SYSTEM, RESPONDENTS.

G.R. No. 170735. December 17, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is petition for review on Certiorari under Rule 45 of the Rules of Court is assailing the 2 June 2005 Decision[1] and 8 December 2005 Resolution[2] both of the Court of Appeals in CA-G.R. SP No. 85923. the appellate court affirmed the --- Order and --- Resolution both of the Social Security Commission (SSC) in SSC Case No. 10048, finding Immaculada L. Garcia (Garcia), the sole surviving director of Impact Corporation, petitioner herein, liable for unremitted, albeit collected, SSS contributions.

Petitioner Immaculada L. Garcia, Eduardo de Leon, Ricardo de Leon, Pacita Fernandez, and Consuelo Villanueva were directors[3] of Impact Corporation. The corporation was engaged in the business of manufacturing aluminum tube containers and operated two factories. One was a "slug" foundry-factory located in Cuyapo, Nueva Ecija, while the other was an Extrusion Plant in Cainta, Metro Manila, which processed the "slugs" into aluminum collapsible tubes and similar containers for toothpaste and other related products.

Records show that around 1978, Impact Corporation started encountering financial problems. By 1980, labor unrest besieged the corporation.

In March 1983, Impact Corporation filed with the Securities and Exchange Commission (SEC) a Petition for Suspension of Payments,[4] docketed as SEC Case No. 02423, in which it stated that:

[Impact Corporation] has been and still is engaged in the business of manufacturing aluminum tube containers
x x x.

x x x x

In brief, it is an on-going, viable, and profitable enterprise.

On 8 May 1985, the union of Impact Corporation filed a Notice of Strike with the Ministry of Labor which was followed by a declaration of strike on 28 July 1985. Subsequently, the Ministry of Labor certified the labor dispute for compulsory arbitration to the National Labor Relations Commission (NLRC) in an Order[5] dated 25 August 1985. The Ministry of Labor, in the same Order, noted the inability of Impact Corporation to pay wages, 13[th] month pay, and SSS remittances due to cash liquidity problems. A portion of the order reads:

On the claims of unpaid wages, unpaid 13[th] month pay and non-remittance of loan amortization and SSS premiums, we are for directing the company to pay the same to the workers and to remit loan amortizations and SSS premiums previously deducted from their wages to the Social Security System. Such claims were never contested by the company both during the hearing below and in our office. In fact, such claims were admitted by the company although it alleged cash liquidity as the main reason for such non-payment.

WHEREFORE, the dispute at Impact Corporation is hereby certified to the National Labor Relations Commission for compulsory arbitration in accordance with Article 264 (g) of the Labor Code, as amended.

x x x x

The company is directed to pay all the entitled workers unpaid wages, unpaid 13th month pay and to remit to the Social Security System loan amortizations and SSS premiums previously deducted from the wages of the workers.[6]

On 3 July 1985, the Social Security System (SSS), through its Legal and Collection Division (LCD), filed a case before the SSC for the collection of unremitted SSS premium contributions withheld by Impact Corporation from its employees. The case which impleaded Impact Corporation as respondent was docketed as SSC Case No. 10048.[7]

Impact Corporation was compulsorily covered by the SSS as an employer effective 15 July 1963 and was assigned Employer I.D. No. 03-2745100-21.

In answer to the allegations raised in SSC Case No. 10048, Impact Corporation, through its then Vice President Ricardo de Leon, explained in a letter dated 18 July 1985 that it had been confronted with strikes in 1984 and layoffs were effected thereafter. It further argued that the P402,988.93 is erroneous. It explained among other things, that its operations had been suspended and that it was waiting for the resolution on its Petition for Suspension of Payments by the SEC under SEC Case No. 2423. Despite due notice, the corporation failed to appear at the hearings. The SSC ordered the investigating team of the SSS to determine if it can still file its claim for unpaid premium contributions against the corporation under the Petition for Suspension of Payments.

In the meantime, the Petition for Suspension of Payments was dismissed which was pending before the SEC in an Order[8] dated 12 December 1985. Impact Corporation resumed operations but only for its winding up and dissolution.[9] Due to Impact Corporation's liability and cash flow problems, all of its assets, namely, its machineries, equipment, office furniture and fixtures, were sold to scrap dealers to answer for its arrears in rentals.

On 1 December 1995, the SSS-LCD filed an amended Petition[10] in SSC Case No. 10048 wherein the directors of Impact Corporation were directly impleaded as respondents, namely: Eduardo de Leon, Ricardo de Leon,[11] Pacita Fernandez, Consuelo Villanueva, and petitioner. The amounts sought to be collected totaled P453,845.78 and P10,856.85 for the periods August 1980 to December 1984 and August 1981 to July 1984, respectively, and the penalties for late remittance at the rate of 3% per month from the date the contributions fell due until fully paid pursuant to Section 22(a) of the Social Security Law,[12] as amended, in the amounts of P49,941.67 and P2,474,662.82.

Period

Unremitted Amount

Penalties

(3% Interest Per
Month)

TOTAL

August 1980 to
December 1984

P 453,845.78

P49, 941.67

503,787.45

August 1981 to
July 1984

P 10,856.85

P2, 474, 662.82

2,485,519.67

Summonses were not served upon Eduardo de Leon, Pacita Fernandez, and Consuelo Villanueva, their whereabouts unknown. They were all later determined to be deceased. On the other hand, due to failure to file his responsive pleading, Ricardo de Leon was declared in default.

Petitioner filed with the SSC a Motion to Dismiss^[13] on grounds of prescription, lack of cause of action and cessation of business, but the Motion was denied for lack of merit.^[14] In her Answer with Counterclaim^[15] dated 20 May 1999, petitioner averred that Impact Corporation had ceased operations in 1980. In her defense, she insisted that she was a mere director without managerial functions, and she ceased to be such in 1982. Even as a stockholder and director of Impact Corporation, petitioner contended that she cannot be made personally liable for the corporate obligations of Impact Corporation since her liability extended only up to the extent of her unpaid subscription, of which she had none since her subscription was already fully paid. The petitioner raised the same arguments in her Position Paper. ^[16]

On 23 January 1998, Ricardo de Leon died following the death, too, of Pacita Fernandez died on 7 February 2000. In an Order dated 11 April 2000, the SSC directed the System to check if Impact Corporation had leviabale properties to which the investigating team of respondent SSS manifested that the Impact Corporation had already been dissolved and its assets disposed of.^[17]

In a Resolution dated 28 May 2003, the Social Security Commission ruled in favor of SSS and declared petitioner liable to pay the unremitted contributions and penalties, stating the following:

WHEREFORE, premises considered, this Commission finds, and so holds, that respondents Impact Corporation and/or Immaculada L. Garcia, as director and responsible officer of the said corporation, is liable to pay the SSS the amounts of P442,988.93, representing the unpaid SS contributions of their employees for the period August 1980 to December 1984, not inclusive, and P10,856.85, representing the balance of the unpaid SS contributions in favor of Donato Campos, Jaime Mascarenas, Bonifacio Franco and Romeo Fullon for the period August 1980 to December 1984, not inclusive, as well as the 3% per month penalty imposed thereon for late payment in the amounts of P3,194,548.63 and P78,441.33, respectively, computed as of April 30, 2003. This is without prejudice to the right of the SSS to collect the penalties accruing after April 30, 2003 and to institute other appropriate actions against the respondent corporation and/or its responsible officers.

Should the respondents pay their liability for unpaid SSS contributions within sixty (60) days from receipt of a copy of this Resolution, the 3% per month penalty for late payment thereof shall be deemed condoned pursuant to SSC Res. No. 397-S.97, as amended by SSC Res. Nos. 112-S.98 and 982-S.99, implementing the provision on condonation of penalty under Section 30 of R.A. No. 8282.

In the event the respondents fail to pay their liabilities within the aforestated period, let a writ of execution be issued, pursuant to Section 22 (c) [2] of the SS Law, as amended, for the satisfaction of their liabilities to the SSS.^[18]

Petitioner filed a Motion for Reconsideration[19] of the afore-quoted Decision but it was denied for lack of merit in an Order[20] dated 4 August 2004, thus:

Nowhere in the questioned Resolution dated May 28, 2003 is it stated that the other directors of the defunct Impact Corporation are absolved from their contribution and penalty liabilities to the SSS. It is certainly farthest from the intention of the petitioner SSS or this Commission to pin the entire liability of Impact Corporation on movant Immaculada L. Garcia, to the exclusion of the directors of the corporation namely: Eduardo de Leon, Ricardo de Leon, Pacita Fernandez and Conzuelo Villanueva, who were all impleaded as parties-respondents in this case.

The case record shows that there was failure of service of summonses upon respondents Eduardo de Leon, Pacita Fernandez and Conzuelo Villanueva, who are all deceased, for the reason that their whereabouts are unknown. Moreover, neither the legal heirs nor the estate of the defaulted respondent Ricardo de Leon were substituted as parties-respondents in this case when he died on January 23, 1998. Needless to state, the Commission did not acquire jurisdiction over the persons or estates of the other directors of Impact Corporation, hence, it could not validly render any pronouncement as to their liabilities in this case.

Furthermore, the movant cannot raise in a motion for reconsideration the defense that she was no longer a director of Impact Corporation in 1982, when she was allegedly eased out by the managing directors of Impact Corporation as purportedly shown in the Deed of Sale and Assignment of Shares of Stock dated January 22, 1982. This defense was neither pleaded in her Motion to Dismiss dated January 17, 1996 nor in her Answer with Counterclaim dated May 18, 1999 and is, thus, deemed waived pursuant to Section 1, Rule 9 of the 1997 Rules of Civil Procedure, which has suppletory application to the Revised Rules of Procedure of the Commission.

Finally, this Commission has already ruled in the Order dated April 27, 1999 that since the original Petition was filed by the SSS on July 3, 1985, and was merely amended on December 1, 1995 to implead the responsible officers of Impact Corporation, without changing its causes of action, the same was instituted well within the 20-year prescriptive period provided under Section 22 (b) of the SS Law, as amended, considering that the contribution delinquency assessment covered the period August 1980 to December 1984.

In view thereof, the instant Motion for Reconsideration is hereby denied for lack of merit.

Petitioner elevated her case to the Court of Appeals via a Petition for Review. Respondent SSS filed its Comment dated 20 January 2005, and petitioner submitted her Reply thereto on 4 April 2005.

The Court of Appeals, applying Section 28(f) of the Social Security Law,[21] again ruled against petitioner. It dismissed the petitioner's Petition in a Decision dated 2 June 2005, the dispositive portion of which reads:

WHEREFORE, premises considered, the petition is DISMISSED for lack of merit. The assailed Resolution dated 28 May 2003 and the Order dated 4 August 2004 of the Social Security Commission are AFFIRMED in toto.[22]

Aggrieved, petitioner filed a Motion for Reconsideration of the appellate court's Decision but her Motion was denied in a Resolution dated 8 December 2005.

Hence, the instant Petition in which petitioner insists that the Court of Appeals committed grave error in holding her solely liable for the collected but unremitted SSS premium contributions and the consequent late penalty payments due thereon. Petitioner anchors her Petition on the following arguments:

- SECTION 28(F) OF THE SSS LAW PROVIDES THAT A MANAGING HEAD, DIRECTOR OR PARTNER IS LIABLE ONLY FOR THE PENALTIES OF THE EMPLOYER CORPORATION AND NOT FOR UNPAID SSS CONTRIBUTIONS OF THE EMPLOYER CORPORATION.

- UNDER THE SSS LAW, IT IS THE MANAGING HEADS, DIRECTORS OR PARTNERS WHO SHALL BE LIABLE TOGETHER WITH THE CORPORATION. IN THIS CASE, PETITIONER HAS CEASED TO BE A STOCKHOLDER OF IMPACT CORPORATION IN 1982. EVEN WHILE SHE WAS A STOCKHOLDER, SHE NEVER PARTICIPATED IN THE DAILY OPERATIONS OF IMPACT CORPORATION.
- UNDER SECTION 31 OF THE CORPORATION CODE, ONLY DIRECTORS, TRUSTEES OR OFFICERS WHO PARTICIPATE IN UNLAWFUL ACTS OR ARE GUILTY OF GROSS NEGLIGENCE AND BAD FAITH SHALL BE PERSONALLY LIABLE. OTHERWISE, BEING A MERE STOCKHOLDER, SHE IS LIABLE ONLY TO THE EXTENT OF HER SUBSCRIPTION.
- IMPACT CORPORATION SUFFERED IRREVERSIBLE ECONOMIC LOSSES, EVENTS WHICH WERE NEITHER DESIRED NOR CAUSED BY ANY ACT OF THE PETITIONER. THUS, BY REASON OF FORTUITOUS EVENTS, THE PETITIONER SHOULD BE ABSOLVED FROM LIABILITY.
- RESPONDENT SOCIAL SECURITY SYSTEM FAILED MISERABLY IN EXERTING EFFORTS TO ACQUIRE JURISDICTION OVER THE LEVIABLE ASSETS OF IMPACT CORPORATION, PERSON/S AND/OR ESTATE/S OF THE OTHER DIRECTORS OR OFFICERS OF IMPACT CORPORATION.
- THE HONORABLE COMMISSION SERIOUSLY ERRED IN NOT RENDERING A JUDGMENT BY DEFAULT AGAINST THE DIRECTORS UPON WHOM IT ACQUIRED JURISDICTION.

Based on the foregoing, petitioner prays that the Decision dated 2 June 2005 and the Resolution dated 8 December 2005 of the Court of Appeals be reversed and set aside, and a new one be rendered absolving her of any and all liabilities under the Social Security Law.

In sum, the core issue to be resolved in this case is whether or not petitioner, as the only surviving director of Impact Corporation, can be made solely liable for the corporate obligations of Impact Corporation pertaining to unremitted SSS premium contributions and penalties therefore.

As a covered employer under the Social Security Law, it is the obligation of Impact Corporation under the provisions of Sections 18, 19 and 22 thereof, as amended, to deduct from its duly covered employee's monthly salaries their shares as premium contributions and remit the same to the SSS, together with the employer's shares of the contributions to the petitioner, for and in their behalf.

From all indications, the corporation has already been dissolved. Respondents are now going after petitioner who is the only surviving director of Impact Corporation.

A cursory review of the alleged grave errors of law committed by the Court of Appeals above reveals there seems to be no dispute as to the assessed liability of Impact Corporation for the unremitted SSS premiums of its employees for the period January 1980 to December 1984.

There is also no dispute as to the fact that the employees' SSS premium contributions have been deducted from their salaries by Impact Corporation.

Petitioner in assailing the Court of Appeals Decision, distinguishes the penalties from the unremitted or unpaid SSS premium contributions. She points out that although the appellate court is of the opinion that the concerned officers of an employer corporation are liable for the penalties for non-remittance of premiums, it still affirmed the SSC Resolution holding petitioner liable for the unpaid SSS premium contributions in addition to the penalties.

Petitioner avers that under the aforesaid provision, the liability does not include liability for the unremitted SSS premium contributions.

Petitioner's argument is ridiculous. The interpretation petitioner would like us to adopt finds no support in law or in jurisprudence. While the Court of Appeals Decision provided that Section 28(f) refers to the liabilities pertaining to penalty for the non-remittance of SSS employee contributions, holding that it is distinct from the amount of the supposed SSS remittances, petitioner mistakenly concluded that Section 28(f) is applicable only to penalties and not to the liability of the employer for the unremitted premium contributions. Clearly, a simplistic interpretation of the law is untenable. It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, i.e., that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment.[23] The liability imposed as contemplated under the foregoing Section 28(f) of the Social Security Law does not preclude the liability for the unremitted amount. Relevant to Section 28(f) is Section 22 of the same law.

SEC. 22. Remittance of Contributions. -- (a) The contributions imposed in the preceding Section shall be remitted to the SSS within the first ten (10) days of each calendar month following the month for which they are applicable or within such time as the Commission may prescribe. Every employer required to deduct and to remit such contributions shall be liable for their payment and if any contribution is not paid to the SSS as herein prescribed, he shall pay besides the contribution a penalty thereon of three percent (3%) per month from the date the contribution falls due until paid. If deemed expedient and advisable by the Commission, the collection and remittance of contributions shall be made quarterly or semi-annually in advance, the contributions payable by the employees to be advanced by their respective employers: Provided, That upon separation of an employee, any contribution so paid in advance but not due shall be credited or refunded to his employer.

Under Section 22(a), every employer is required to deduct and remit such contributions penalty refers to the 3% penalty that automatically attaches to the delayed SSS premium contributions. The spirit, rather than the letter of a law determines construction of a provision of law. It is a cardinal rule in statutory construction that in interpreting the meaning and scope of a term used in the law, a careful review of the whole law involved, as well as the intendment of the law, must be made.[24] Nowhere in the provision or in the Decision can it be inferred that the persons liable are absolved from paying the unremitted premium contributions.

Elementary is the rule that when laws or rules are clear, it is incumbent upon the judge to apply them regardless of personal belief or predilections - when the law is unambiguous and unequivocal, application not interpretation thereof is imperative.[25] However, where the language of a statute is vague and ambiguous, an interpretation thereof is resorted to. An interpretation thereof is necessary in instances where a literal interpretation would be either impossible or absurd or would lead to an injustice. A law is deemed ambiguous when it is capable of being understood by reasonably well-informed persons in either of two or more senses.[26] The fact that a law admits of different interpretations is the best evidence that it is vague and ambiguous.[27] In the instant case, petitioner interprets Section 28(f) of the Social Security Law as applicable only to penalties and not to the liability of the employer for the unremitted premium contributions. Respondents present a more logical interpretation that is consistent with the provisions as a whole and with the legislative intent behind the Social Security Law.

This Court cannot be made to accept an interpretation that would defeat the intent of the law and its legislators.[28]

Petitioner also challenges the finding of the Court of Appeals that under Section 28(f) of the Social Security Law, a mere director or officer of an employer corporation, and not necessarily a "managing" director or officer, can be held liable for the unpaid SSS premium contributions.

Section 28(f) of the Social Security Law provides the following:

(f) If the act or omission penalized by this Act be committed by an association, partnership, corporation or any

other institution, its managing head, directors or partners shall be liable to the penalties provided in this Act for the offense.

This Court agrees in petitioner's observation that the SSS did not even deny nor rebut the claim that petitioner was not the "managing head" of Impact Corporation. However, the Court of Appeals rightly held that petitioner, as a director of Impact Corporation, is among those officers covered by Section 28(f) of the Social Security Law.

Petitioner invokes the rule in statutory construction called *ejusdem generic*; that is, where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same kind or class as those specifically mentioned. According to petitioner, to be held liable under Section 28(f) of the Social Security Law, one must be the "managing head," "managing director," or "managing partner." This Court though finds no need to resort to statutory construction. Section 28(f) of the Social Security Law imposes penalty on:

- (1) the managing head;
- (2) directors; or
- (3) partners, for offenses committed by a juridical person

The said provision does not qualify that the director or partner should likewise be a "managing director" or "managing partner." [29] The law is clear and unambiguous.

Petitioner nonetheless raises the defense that under Section 31 of the Corporation Code, only directors, trustees or officers who participate in unlawful acts or are guilty of gross negligence and bad faith shall be personally liable, and that being a mere stockholder, she is liable only to the extent of her subscription.

Section 31 of the Corporation Code, stipulating on the liability of directors, trustees, or officers, provides:

SEC. 31. Liability of directors, trustees or officers. - Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors, or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

Basic is the rule that a corporation is invested by law with a personality separate and distinct from that of the persons composing it as well as from that of any other legal entity to which it may be related. A corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. Following this, the general rule applied is that obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities. [30] A director, officer, and employee of a corporation are generally not held personally liable for obligations incurred by the corporation.

Being a mere fiction of law, however, there are peculiar situations or valid grounds that can exist to warrant the disregard of its independent being and the lifting of the corporate veil. This situation might arise when a corporation is used to evade a just and due obligation or to justify a wrong, to shield or perpetrate fraud, to carry out other similar unjustifiable aims or intentions, or as a subterfuge to commit injustice and so circumvent the law. [31] Thus, Section 31 of the Corporation Law provides:

Taking a cue from the above provision, a corporate director, a trustee or an officer, may be held solidarily liable with the corporation in the following instances:

- When directors and trustees or, in appropriate cases, the officers of a corporation--

- (a) vote for or assent to patently unlawful acts of the corporation;
 - (b) act in bad faith or with gross negligence in directing the corporate affairs;
 - (c) are guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons.
- When a director or officer has consented to the issuance of watered stocks or who, having knowledge thereof, did not forthwith file with the corporate secretary his written objection thereto.
 - When a director, trustee or officer has contractually agreed or stipulated to hold himself personally and solidarily liable with the Corporation.
 - When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action. [32]

The aforesaid provision states:

SEC. 31. Liability of directors, trustees or officers. - Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors, or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

The situation of petitioner, as a director of Impact Corporation when said corporation failed to remit the SSS premium contributions falls exactly under the fourth situation. Section 28(f) of the Social Security Law imposes a civil liability for any act or omission pertaining to the violation of the Social Security Law, to wit:

(f) If the act or omission penalized by this Act be committed by an association, partnership, corporation or any other institution, its managing head, directors or partners shall be liable to the penalties provided in this Act for the offense.

In fact, criminal actions for violations of the Social Security Law are also provided under the Revised Penal Code. The Social Security Law provides, in Section 28 thereof, to wit:

(h) Any employer who, after deducting the monthly contributions or loan amortizations from his employees' compensation, fails to remit the said deductions to the SSS within thirty (30) days from the date they became due shall be presumed to have misappropriated such contributions or loan amortizations and shall suffer the penalties provided in Article Three hundred fifteen of the Revised Penal Code.

(i) Criminal action arising from a violation of the provisions of this Act may be commenced by the SSS or the employee concerned either under this Act or in appropriate cases under the Revised Penal Code: x x x.

Respondents would like this Court to apply another exception to the rule that the persons comprising a corporation are not personally liable for acts done in the performance of their duties.

The Court of Appeals in the appealed Decision stated:

Anent the unpaid SSS contributions of Impact Corporation's employees, the officers of a corporation are liable in behalf of a corporation, which no longer exists or has ceased operations. Although as a rule, the officers and members of a corporation are not personally liable for acts done in performance of their duties, this rule admits of exception, one of which is when the employer corporation is no longer existing and is unable to satisfy the judgment in favor of the employee, the officers should be held liable for acting on behalf of the corporation. Following the foregoing pronouncement, petitioner, as one of the directors of Impact Corporation, together with the other directors of the defunct corporation, are liable for the unpaid SSS contributions of their

employees.[33]

On the other hand, the SSC, in its Resolution, presented this discussion:

Although as a rule, the officers and members of a corporation are not personally liable for acts done in the performance of their duties, this rule admits of exceptions, one of which is when the employer corporation is no longer existing and is unable to satisfy the judgment in favor of the employee, the officers should be held liable for acting on behalf of the corporation. x x x.[34]

The rationale cited by respondents in the two preceding paragraphs need not have been applied because the personal liability for the unremitted SSS premium contributions and the late penalty thereof attaches to the petitioner as a director of Impact Corporation during the period the amounts became due and demandable by virtue of a direct provision of law.

Petitioner's defense that since Impact Corporation suffered irreversible economic losses, and by reason of fortuitous events, she should be absolved from liability, is also untenable. The evidence adduced totally belies this claim. A reference to the copy of the Petition for Suspension of Payments filed by Impact Corporation on 18 March 1983 before the SEC contained an admission that:

"[I]t has been and still is engaged in business" and "has been and still is engaged in the business of manufacturing aluminum tube containers" and "in brief, it is an on-going, viable, and profitable enterprise" which has "sufficient assets" and "actual and potential income-generation capabilities."

The foregoing document negates petitioner's assertion and supports the contention that during the period involved Impact Corporation was still engaged in business and was an ongoing, viable, profitable enterprise. In fact, the latest SSS form RIA submitted by Impact Corporation is dated 7 May 1984. The assessed SSS premium contributions and penalty are obligations imposed upon Impact Corporation by law, and should have been remitted to the SSS within the first 10 days of each calendar month following the month for which they are applicable or within such time as the SSC prescribes.[35]

This Court also notes the evident failure on the part of SSS to issue a judgment in default against Ricardo de Leon, who was the vice-president and officer of the corporation, upon his non-filing of a responsive pleading after summons was served on him. As can be gleaned from Section 11 of the SSS Revised Rules of Procedure, the Commissioner is mandated to render a decision either granting or denying the petition. Under the aforesaid provision, if respondent fails to answer within the time prescribed, the Hearing Commissioner may, upon motion of petitioner, or *motu proprio*, declare respondent in default and proceed to receive petitioner's evidence *ex parte* and thereafter recommend to the Commission either the granting or denial of the petition as the evidence may warrant.[36]

On a final note, this Court sees it proper to quote verbatim respondents' prefatory statement in their Comment:

The Social Security System is a government agency imbued with a salutary purpose to carry out the policy of the State to establish, develop, promote and perfect a sound and viable tax exempt social security system suitable to the needs of the people throughout the Philippines which shall promote social justice and provide meaningful protection to members and their beneficiaries against the hazards of disability, sickness, maternity, old-age, death and other contingencies resulting in loss of income or financial burden.

The soundness and viability of the funds of the SSS in turn depends on the contributions of its covered employee and employer members, which it invests in order to deliver the basic social benefits and privileges to its members. The entitlement to and amount of benefits and privileges of the covered members are contribution-based. Both the soundness and viability of the funds of the SSS as well as the entitlement and amount of benefits and privileges of its members are adversely affected to a great extent by the non-remittance

of the much-needed contributions.[37]

The sympathy of the law on social security is toward its beneficiaries. This Court will not turn a blind eye on the perpetration of injustice. This Court cannot and will not allow itself to be made an instrument nor be privy to any attempt at the perpetration of injustice.

Following the doctrine laid down in *Laguna Transportation Co., Inc. v. Social Security System*,^[38] this Court rules that although a corporation once formed is conferred a juridical personality separate and distinct from the persons comprising it, it is but a legal fiction introduced for purposes of convenience and to subserve the ends of justice. The concept cannot be extended to a point beyond its reasons and policy, and when invoked in support of an end subversive of this policy, will be disregarded by the courts.

WHEREFORE, pursuant to the foregoing, the Decision of the Court of Appeals dated 2 June 2005 in CA-G.R. SP No. 85923 is hereby **AFFIRMED WITH FINALITY**. Petitioner Immaculada L. Garcia, as sole surviving director of Impact Corporation is hereby **ORDERED** to pay for the collected and unremitted SSS contributions of Impact Corporation. The case is **REMANDED** to the SSS for computation of the exact amount and collection thereof.

SO ORDERED

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Penned by Associate Justice Eugenio S. Labitoria with Associate Justices Eliezer R. De Los Santos and Arturo D. Brion, concurring; rollo, pp. 32-43.

[2] *Id.* at 44.

[3] General Information Sheet of Impact Corporation Corporation, as of 31 December 1974.

[4] Records, pp. 265-283.

[5] *Id.* at 390-393.

[6] *Id.* at 392.

[7] *Id.* at 1-3.

[8] *Id.* at 395-400.

[9] *Id.* at 192-196.

[10] *Id.* at 223-233.

[11] Summons were served on Ricardo de Leon; See records, p. 259.

[12] SEC. 22. Remittance of Contributions. -- (a) The contribution imposed in the preceding Section shall be remitted to the SSS within the first ten (10) days of each calendar month following the month for which they are applicable or within such time as the Commission may prescribe. Every employer required to deduct and to remit such contributions shall be liable for their payment and if any contribution is not paid to the SSS as herein prescribed, he shall pay besides the contribution a penalty thereon of three percent (3%) per month from the date the contribution falls due until paid. If deemed expedient and advisable by the Commission, the collection and remittance of contributions shall be made quarterly or semi-annually in advance, the contributions payable by the employees to be advanced by their respective employers: Provided, That upon separation of an employee, any contribution so paid in advance but not due shall be credited or refunded to his employer.

[13] Dated 17 January 1996.

[14] Order issued by the SSC on 27 April 1999; records, pp. 320-325

[15] Records, pp. 336-345.

[16] Id. at 493-501.

[17] Order dated 11 April 2000.

[18] Rollo, pp. 66-67.

[19] Dated 16 June 2003.

[20] Adopted/promulgated by the SSC en banc under its Resolution No. 474 on 4 August 2004; Penned by Commissioner Aurora R. Arnaez; rollo, pp. 68-69.

[21] SEC. 28. Penal Clause. – x x x.

(e) Whoever fails or refuses to comply with the provisions promulgated by the Commission, shall be punished by a fine of not less than Five thousand pesos (P5,000.00) nor more than Twenty thousand pesos (P20,000.00), or imprisonment for not less than six (6) years and one (1) day nor more than twelve (12) years, or both, at the discretion of the court: Provided, That where the violation consists in failure or refusal to register employees or himself, in case of the covered self-employed or to deduct contributions from employees' compensation and remit the same to the SSS, the penalty shall be a fine of not less Five thousand pesos (P5,000.00) nor more than Twenty thousand pesos (P20,000.00) and imprisonment for not less than six (6) years and one (1) day nor more than twelve (12) years.

(f) If the act or omission penalized by this Act be committed by an association, partnership, corporation or any other institution, its managing head, directors or partners shall be liable to the penalties provided in this Act for the offense.

[22] Rollo, pp. 41-42; citations omitted.

[23] *Paras v. COMELEC*, 332 Phil. 56, 64 (1996).

[24] *Alpha Investigation and Security Agency, Inc. v. National Labor Relations Commission*, 339 Phil. 40, 44 (1997).

[25] *De Guzman, Jr. v. Sison*, 407 Phil. 351, 368-369 (2001), as cited in *Villamor Golf Club v. Pehid*, G.R. No. 166152, 4 December 2005, 472 SCRA 36, 47-48.

[26] *Del Mar v. Phil. Amusement and Gaming Corp.*, 400 Phil. 307, 357 (2000).

[27] *Villamor Golf Club v. Pehid*, supra note 25; *Abello v. Commissioner of Internal Revenue*, 23 February 2005, 452 SCRA 162, 169; *Chartered Bank Employees Association v. Ople*, G.R. No. L-44717, 28 August 1985, 138 SCRA 273, 281.

[28] *Escosura v. San Miguel Brewery, Inc.*, 114 Phil. 225 (1962).

[29] Decision, page 8.

[30] *Uichico v. National Labor Relations Commission*, 339 Phil. 242, 252 (1997), citing *Santos v. National Labor Relations Commission*, 325 Phil. 145, 158 (1996).

[31] *Santos v. National Labor Relations Commission*, id.

[32] *Philex Gold Philippines, Inc. v. Philex Bulawan Supervisors Union*, G.R. No. 149758, 25 August 2005, 468 SCRA 111, 124.

[33] *Rollo*, p. 39.

[34] *Id.* at 66.

[35] "The contributions imposed in the preceding section shall be remitted to the SSS within the first ten (10) days of each calendar month following the month for which they are applicable or within such time as the Commission may prescribe..." (Section 22, R. A. No. 8282 – SSS Law).

[36] Section 11, SSS Rules of Procedure.

[37] *Rollo*, pp. 51-52.

[38] 107 Phil. 833 (1960).

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