

BENNY Y. HUNG, PETITIONER, VS. BPI CARD FINANCE CORP., RESPONDENT.

G.R. No. 182398. July 20, 2010

Ponente: PEREZ, J.

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PEREZ, J.:

For our resolution is the instant petition for review by certiorari assailing the Decision[1] dated 31 August 2007 and Resolution[2] dated 14 April 2008 of the Court of Appeals in CA-G.R. CV No. 84641. The Court of Appeals' Decision affirmed the Order[3] dated 30 November 2004 of the Regional Trial Court (RTC) of Makati City in Civil Case No. 99-2040, entitled BPI Card Finance Corporation v. B & R Sportswear Distributor, Inc., finding petitioner Benny Hung liable to respondent BPI Card Finance Corporation (BPI for brevity) for the satisfaction of the RTC's 24 June 2002 Decision[4] against B & R Sportswear Distributor, Inc. The pertinent portion of the Decision states:

xxx

The delivery by the plaintiff to the defendant of P3,480,427.43 pursuant to the Merchant Agreements was sufficiently proven by the checks, Exhibits B to V-5. Plaintiff's evidence that the amount due to the defendant was P139,484.38 only was not controverted by the defendant, hence the preponderance of evidence is in favor of the plaintiff. The lack of controversy on the amount due to the defendant when considered with the contents of the letter of the defendant, Exhibit TT when it returned to plaintiff P963,604.03 "as partial settlement of overpayments made by BPI Card Corporation to B & R Sportswear, pending final reconciliation of exact amount of overpayment" amply support the finding of the Court that plaintiff indeed has a right to be paid by the defendant of the amount of P2,516,826.68.

Plaintiff claims interest of 12%. The obligation of the defendant to return did not arise out of a loan or forbearance of money, hence, applying *Eastern Shipping Lines Inc. vs. Court of Appeals*, 234 SCRA 78 (1994) the rate due is only 6% computed from October 4, 1999 the date the letter of demand was presumably received by the defendant.

The foregoing effectively dispose of the defenses raised by the defendant and furnish the reason of the Court for not giving due course to them.

WHEREFORE, judgment is rendered directing defendant to pay plaintiff P2,516,826.68 with interest at the rate of 6% from October 4, 1999 until full payment.

The antecedent facts of the case are as follows:

Guess? Footwear and BPI Express Card Corporation entered into two merchant agreements,[5] dated 25 August 1994 and 16 November 1994, whereby Guess? Footwear agreed to honor validly issued BPI Express Credit Cards presented by cardholders in the purchase of its goods and services. In the first agreement, petitioner Benny Hung signed as owner and manager of Guess? Footwear. He signed the second agreement as president of Guess? Footwear which he also referred to as B & R Sportswear Enterprises.

From May 1997 to January 1999, respondent BPI mistakenly credited, through three hundred fifty-two (352) checks, Three Million Four Hundred Eighty Thousand Four Hundred Twenty-Seven Pesos and 23/100 (P3,480,427.23) to the account of Guess? Footwear. When informed of the overpayments,[6] petitioner Benny Hung transferred Nine Hundred Sixty-Three Thousand Six Hundred Four Pesos and 03/100 (P963,604.03) from the bank account of B & R Sportswear Enterprises to BPI's account as partial payment.[7] The letter dated 31 May 1999 was worded as follows:

Dear Sir/Madame

This is to authorize BPI Ortigas Branch to transfer the amount of P963,604.03 from the account of B & R Sportswear Enterprises to the account of BPI Card Corporation.

The aforementioned amount shall represent partial settlement of overpayments made by BPI Card Corporation to B & R Sportswear, pending final reconciliation of exact amount of overpayment. (Emphasis supplied.)

Thank you for your usual kind cooperation.

Very truly yours,

(Sgd.)

Benny Hung

In a letter dated 27 September 1999, BPI demanded the balance payment amounting to Two Million Five Hundred Sixteen Thousand Eight Hundred Twenty-Six Pesos and 68/100 (P2,516,826.68), but Guess? Footwear failed to pay.

BPI filed a collection suit before the RTC of Makati City naming as defendant B & R Sportswear Distributor, Inc.[8] Although the case was against B & R Sportswear Distributor, Inc., it was B & R Footwear Distributors, Inc., that filed an answer, appeared and participated in the trial.[9]

On 24 June 2002, the RTC rendered a decision ordering defendant B & R Sportswear Distributor, Inc., to pay the plaintiff (BPI) P2,516,826.68 with 6% interest from 4 October 1999. The RTC ruled that the overpayment of P3,480,427.43 was proven by checks credited to the account of Guess? Footwear and the P963,604.03 partial payment proved that defendant ought to pay P2,516,826.68[10] more. During the execution of judgment, it was discovered that B & R Sportswear Distributor, Inc., is a non-existing entity. Thus, the trial court failed to execute the judgment.

Consequently, respondent filed a Motion[11] to pierce the corporate veil of B & R Footwear Distributors, Inc. to hold its stockholders and officers, including petitioner Benny Hung, personally liable. In its 30 November 2004 Order, the RTC ruled that petitioner is liable for the satisfaction of the judgment, since he signed the merchant agreements in his personal capacity.[12]

The Court of Appeals affirmed the order and dismissed petitioner's appeal. It ruled that since B & R Sportswear Distributor, Inc. is not a corporation, it therefore has no personality separate from petitioner Benny Hung who induced the respondent BPI and the RTC to believe that it is a corporation.[13]

After his motion for reconsideration was denied, petitioner filed the instant petition anchored on the following grounds:

I.

PIERCING THE VEIL OF CORPORATE FICTION CANNOT JUSTIFY EXECUTION AGAINST [HIM].

II.

FOR LACK OF SERVICE OF SUMMONS AND A COPY OF THE COMPLAINT UPON [HIM], THE ASSAILED DECISION OF THE COURT OF APPEALS, AS WELL AS, ITS RESOLUTION DENYING [HIS] MOTION FOR RECONSIDERATION SHOULD BE DECLARED NULL AND VOID FOR LACK OF JURISDICTION.[14]

In essence, the basic issue is whether petitioner can be held liable for the satisfaction of the RTC's Decision against B & R Sportswear Distributor, Inc.? As we answer this question, we shall pass upon the grounds raised by petitioner.

Petitioner claims that he never represented B & R Sportswear Distributor, Inc., the non-existent corporation sued by respondent; that it would be unfair to treat his single proprietorship B & R Sportswear Enterprises as B & R Sportswear Distributor, Inc.; that the confusing similarity in the names should not be taken against him because he established his single proprietorship long before respondent sued; that he did not defraud respondent; that he even paid respondent "in the course of their mutual transactions;" and that without fraud, he cannot be held liable for the obligations of B & R Footwear Distributors, Inc. or B & R Sportswear Distributor, Inc. by piercing the veil of corporate fiction.

Petitioner also states that the "real corporation" B & R Footwear Distributors, Inc. or Guess? Footwear acknowledged itself as the "real defendant." It answered the complaint and participated in the trial. According to petitioner, respondent should have executed the judgment against it as the "real contracting party" in the merchant agreements. Execution against him was wrong since he was not served with summons nor was he a party to the case. Thus, the lower courts did not acquire jurisdiction over him, and their decisions are null and void for lack of due process.

Respondent counters that petitioner's initial silence on the non-existence of B & R Sportswear Distributor, Inc. was intended to mislead. Still, the evidence showed that petitioner treats B & R Footwear Distributors, Inc. and his single proprietorship B & R Sportswear Enterprises as one and the same entity. Petitioner ordered the partial payment using the letterhead of B & R Footwear Distributor, Inc. and yet the fund transferred belongs to his single proprietorship B & R Sportswear Enterprises. This fact, according to respondent, justifies piercing the corporate veil of B & R Footwear Distributor, Inc. to hold petitioner personally liable.

Citing Sections 4 and 5, Rule 10 of the Rules of Court, respondent also prays that the name of the inexistent defendant B & R Sportswear Distributor, Inc. be amended and changed to Benny Hung and/or B & R Footwear Distributors, Inc.

Moreover, respondent avers that petitioner cannot claim that he was not served with summons because it was served at his address and the building standing thereon is registered in his name per the tax declaration.

At the outset, we note the cause of respondent's predicament in failing to execute the 2002 judgment in its favor: its own failure to state the correct name of the defendant it sued and seek a correction earlier. Instead of suing Guess? Footwear and B & R Sportswear Enterprises, the contracting parties in the merchant agreements, BPI named B & R Sportswear Distributor, Inc. as defendant. BPI likewise failed to sue petitioner Benny Hung who signed the agreements as owner/manager and president of Guess? Footwear and B & R Sportswear Enterprises. Moreover, when B & R Footwear Distributors, Inc. appeared as defendant, no corresponding correction was sought. Unfortunately, BPI has buried its omission by silence and lamented instead petitioner's alleged initial silence on the non-existence of B & R Sportswear Distributor, Inc. Respondent even accused the "defendant" in its motion to pierce the corporate veil of B & R Footwear Distributors, Inc. of having "employed deceit, bad faith and illegal scheme/maneuver,"[15] an accusation no longer pursued before us.

Our impression that respondent BPI should have named petitioner as a defendant finds validation from (1)

petitioner's own admission that B & R Sportswear Enterprises is his sole proprietorship and (2) respondent's belated prayer that defendant's name be changed to Benny Hung and/or B & R Footwear Distributors, Inc. on the ground that such relief is allowed under Sections 4[16] and 5,[17] Rule 10 of the Rules of Court.

Indeed, we can validly make the formal correction on the name of the defendant from B & R Sportswear Distributor, Inc. to B & R Footwear Distributors, Inc. Such correction only confirms the voluntary correction already made by B & R Footwear Distributors, Inc. which answered the complaint and claimed that it is the defendant. Section 4, Rule 10 of the Rules of Court also allows a summary correction of this formal defect. Such correction can be made even if the case is already before us as it can be made at any stage of the action.[18] Respondent's belated prayer for correction is also sufficient since a court can even make the correction *motu proprio*. More importantly, no prejudice is caused to B & R Footwear Distributors, Inc. considering its participation in the trial. Hence, petitioner has basis for saying that respondent should have tried to execute the judgment against B & R Footwear Distributors, Inc.

But we cannot agree with petitioner that B & R Footwear Distributors, Inc. or Guess? Footwear is the only "real contracting party." The facts show that B & R Sportswear Enterprises is also a contracting party. Petitioner conveniently ignores this fact although he himself signed the second agreement indicating that Guess? Footwear is also referred to as B & R Sportswear Enterprises. Petitioner also tries to soften the significance of his directive to the bank, under the letterhead of B & R Footwear Distributor's, Inc., to transfer the funds belonging to his sole proprietorship B & R Sportswear Enterprises as partial payment to the overpayments made by respondent to Guess? Footwear. He now claims the partial payment as his payment to respondent "in the course of their mutual transactions."

Clearly, petitioner has represented in his dealings with respondent that Guess? Footwear or B & R Footwear Distributors, Inc. is also B & R Sportswear Enterprises. For this reason, the more complete correction on the name of defendant should be from B & R Sportswear Distributor, Inc. to B & R Footwear Distributors, Inc. and Benny Hung. Petitioner is the proper defendant because his sole proprietorship B & R Sportswear Enterprises has no juridical personality apart from him.[19] Again, the correction only confirms the voluntary correction already made by B & R Footwear Distributors, Inc. or Guess? Footwear which is also B & R Sportswear Enterprises. Correction of this formal defect is also allowed by Section 4, Rule 10 of the Rules of Court.

Relatedly, petitioner cannot complain of non-service of summons upon his person. Suffice it to say that B & R Footwear Distributors, Inc. or Guess? Footwear which is also B & R Sportswear Enterprises had answered the summons and the complaint and participated in the trial.

Accordingly, we find petitioner liable to respondent and we affirm, with the foregoing clarification, the finding of the RTC that he signed the second merchant agreement in his personal capacity.

The correction on the name of the defendant has rendered moot any further discussion on the doctrine of piercing the veil of corporate fiction. In any event, we have said that whether the separate personality of a corporation should be pierced hinges on facts pleaded and proved.[20] In seeking to pierce the corporate veil of B & R Footwear Distributors, Inc., respondent complained of "deceit, bad faith and illegal scheme/maneuver." As stated earlier, respondent has abandoned such accusation. And respondent's proof - the SEC certification that B & R Sportswear Distributor, Inc. is not an existing corporation - would surely attest to no other fact but the inexistence of a corporation named B & R Sportswear Distributor, Inc. as such name only surfaced because of its own error. Hence, we cannot agree with the Court of Appeals that petitioner has represented a non-existing corporation and induced the respondent and the RTC to believe in his representation.

On petitioner's alleged intention to mislead for his initial silence on the non-existence of the named defendant, we

find more notable respondent's own silence on the error it committed. Contrary to the allegation, the "real" defendant has even corrected respondent's error. While the evidence showed that petitioner has treated B & R Footwear Distributors, Inc. or Guess? Footwear as B & R Sportswear Enterprises, respondent did not rely on this ground in filing the motion to pierce the corporate veil of B & R Footwear Distributors, Inc. Respondent's main contention therein was petitioner's alleged act to represent a non-existent corporation amounting to deceit, bad faith and illegal scheme/maneuver.

With regard to the imposable rate of legal interest, we find application of the rule laid down by this Court in *Eastern Shipping Lines, Inc. vs. Court of Appeals*,^[21] to wit:

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

Since this case before us involves an obligation not arising from a loan or forbearance of money, the applicable interest rate is 6% per annum. The legal interest rate of 6% shall be computed from 4 October 1999, the date the letter of demand was presumably received by the defendant.^[22] And in accordance with the aforesaid decision, the rate of 12% per annum shall be charged on the total amount outstanding, from the time the judgment becomes final and executory until its satisfaction.

WHEREFORE, we DENY the petition for lack of merit, and ORDER B & R Footwear Distributors, Inc. and petitioner Benny Hung TO PAY respondent BPI Card Finance Corporation: (a) P2,516,823.40, representing the overpayments, with interest at the rate of 6% per annum from 4 October 1999 until finality of judgment; and (b) additional interest of 12% per annum from finality of judgment until full payment.

No pronouncement as to costs.

SO ORDERED.

Corona, C.J., (Chairperson), Brion,^[*] Del Castillo,^[**] and Abad, ^[***] JJ., concur.

[*] Also referred to as Benny Y. Hung and Benny W. Hung in the records.

[*] Designated as an additional member in lieu of Associate Justice Teresita J. Leonardo-De Castro per Special Order No. 856 dated 1 July 2010.

[**] Designated as Acting Working Chairperson in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 853 dated 1 July 2010.

[***] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura per Special

Order No. 869 dated 5 July 2010.

[1] Penned by Associate Justice Monina Arevalo-Zenarosa, with Acting Presiding Justice Conrado M. Vasquez, Jr. and Associate Justice Edgardo F. Sundiam, concurring. Rollo, pp. 29-41.

[2] Penned by Associate Justice Monina Arevalo-Zenarosa, with Presiding Justice Conrado M. Vasquez, Jr. and Associate Justice Edgardo F. Sundiam, concurring. Id. at 43-45.

[3] Id. at 33.

[4] Penned by Judge Sixto Marella, Jr., Id. at 92-94.

[5] Id. at 201-202.

[6] Id. at 30-31 and 93.

[7] Id. at 31.

[8] Id. at 92.

[9] Id. at 31-32.

[10] Based on the figures stated, the amount payable should be P2,516,823.40, or P3.28 lower. Id. at 94.

[11] Id. at 79-83.

[12] Id. at 33.

[13] Id. at 38-39.

[14] Id. at 17.

[15] Id. at 80.

[16] SEC. 4. Formal amendments. - A defect in the designation of the parties and other clearly clerical or typographical errors may be summarily corrected by the court at any stage of the action, at its initiative or on motion, provided no prejudice is caused thereby to the adverse party.

[17] SEC. 5. Amendments to conform to or authorize presentation of evidence. - When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made.

[18] See also *Yao Ka Sin Trading v. Court of Appeals*, G. R. No. 53820, 15 June 1992, 209 SCRA 763, 780.

[19] Id. at 780.

[20] See *General Credit Corporation v. Alsons Development and Investment Corporation*, G.R. No. 154975, 29 January 2007, 413 SCRA 225, 238.

[21] G. R. No. 97412, 12 July 1994, 234 SCRA 78, 96-97.

[22] *Supra* note 4.

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