

PACIFIC REHOUSE CORPORATION, PETITIONER, VS. COURT OF APPEALS AND EXPORT AND INDUSTRY BANK, INC., RESPONDENTS.

G.R. No. 199687. March 24, 2014

Ponente: REYES, J.

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REYES, J.:

On the scales of justice precariously lie the right of a prevailing party to his victor's cup, no more, no less; and the right of a separate entity from being dragged by the ball and chain of the vanquished party.

The facts of this case as garnered from the Decision[1] dated April 26, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 120979 are as follows:

We trace the roots of this case to a complaint instituted with the Makati City Regional Trial Court (RTC), Branch 66, against EIB Securities Inc. (E-Securities) for unauthorized sale of 32,180,000 DMCI shares of private respondents Pacific Rehouse Corporation, Pacific Concorde Corporation, Mizpah Holdings, Inc., Forum Holdings Corporation, and East Asia Oil Company, Inc. In its October 18, 2005 Resolution, the RTC rendered judgment on the pleadings. The fallo reads:

WHEREFORE, premises considered, judgment is hereby rendered directing the defendant [E-Securities] to return the plaintiffs' [private respondents herein] 32,180,000 DMCI shares, as of judicial demand.

On the other hand, plaintiffs are directed to reimburse the defendant the amount of [P]10,942,200.00, representing the buy back price of the 60,790,000 KPP shares of stocks at [P]0.18 per share.

SO ORDERED. x x x

The Resolution was ultimately affirmed by the Supreme Court and attained finality.

When the Writ of Execution was returned unsatisfied, private respondents moved for the issuance of an alias writ of execution to hold Export and Industry Bank, Inc. liable for the judgment obligation as E-Securities is "a wholly-owned controlled and dominated subsidiary of Export and Industry Bank, Inc., and is[,] thus[,] a mere alter ego and business conduit of the latter. E-Securities opposed the motion[,] arguing that it has a corporate personality that is separate and distinct from petitioner. On July 27, 2011, private respondents filed their (1) Reply attaching for the first time a sworn statement executed by Atty. Ramon F. Aviado, Jr., the former corporate secretary of petitioner and E-Securities, to support their alter ego theory; and (2) Ex-Parte Manifestation alleging service of copies of the Writ of Execution and Motion for Alias Writ of Execution on petitioner.

On July 29, 2011, the RTC concluded that E-Securities is a mere business conduit or alter ego of petitioner, the dominant parent corporation, which justifies piercing of the veil of corporate fiction. The trial court brushed aside E-Securities' claim of denial of due process on petitioner as "xxx case records show that notices regarding these proceedings had been tendered to the latter, which refused to even receive them. Clearly, [petitioner] had been sufficiently put on notice and afforded the chance to give its side[,] yet[,] it chose not to." Thus, the RTC disposed as follows:

WHEREFORE, xxx,

Let an Alias Writ of Execution be issued relative to the above-entitled case and pursuant to the RESOLUTION dated October 18, 2005 and to this Order directing defendant EIB Securities, Inc., and/or Export and Industry Bank, Inc., to fully comply therewith.

The Branch Sheriff of this Court is directed to cause the immediate implementation of the given alias writ in accordance with the Order of Execution to be issued anew by the Branch Clerk of Court.

SO ORDERED. x x x

With this development, petitioner filed an Omnibus Motion (Ex Abundanti Cautela) questioning the alias writ because it was not impleaded as a party to the case. The RTC denied the motion in its Order dated August 26, 2011 and directed the garnishment of P1,465,799,000.00, the total amount of the 32,180,000 DMCI shares at P45.55 per share, against petitioner and/or E-Securities.[2] x x x. (Citations omitted)

The Regional Trial Court (RTC) ratiocinated that being one and the same entity in the eyes of the law, the service of summons upon EIB Securities, Inc. (E-Securities) has bestowed jurisdiction over both the parent and wholly-owned subsidiary.[3] The RTC cited the cases of Sps. Violago v. BA Finance Corp. et al.[4] and Arcilla v. Court of Appeals[5] where the doctrine of piercing the veil of corporate fiction was applied notwithstanding that the affected corporation was not brought to the court as a party. Thus, the RTC held in its Order[6] dated August 26, 2011:

WHEREFORE, premises considered, the Motion for Reconsideration with Motion to Inhibit filed by defendant EIB Securities, Inc. is denied for lack of merit. The Omnibus Motion Ex Abundanti C[au]tela is likewise denied for lack of merit.

Pursuant to Rule 39, Section 10 (a) of the Rules of Court, the Branch Clerk of Court or the Branch Sheriff of this Court is hereby directed to acquire 32,180,000 DMCI shares of stock from the Philippine Stock Exchange at the cost of EIB Securities, Inc. and Export and Industry Bank[,] Inc. and to deliver the same to the plaintiffs pursuant to this Court's Resolution dated October 18, 2005.

To implement this Order, let GARNISHMENT issue against ALL THOSE HOLDING MONEYS, PROPERTIES OF ANY AND ALL KINDS, REAL OR PERSONAL BELONGING TO OR OWNED BY DEFENDANT EIB SECURITIES, INC. AND/OR EXPORT AND INDUSTRY BANK[,] INC., [sic] in such amount as may be sufficient to acquire 32,180,000 DMCI shares of stock to the Philippine Stock Exchange, based on the closing price of Php45.55 per share of DMCI shares as of August 1, 2011, the date of the issuance of the Alias Writ of Execution, or the total amount of PhP1,465,799,000.00.

SO ORDERED.[7]

CA-G.R. SP No. 120979

Export and Industry Bank, Inc. (Export Bank) filed before the CA a petition for certiorari with prayer for the issuance of a temporary restraining order (TRO)[8] seeking the nullification of the RTC Order dated August 26, 2011 for having been made with grave abuse of discretion amounting to lack or excess of jurisdiction. In its petition, Export Bank made reference to several rulings[9] of the Court upholding the separate and distinct personality of a corporation.

In a Resolution[10] dated September 2, 2011, the CA issued a 60-day TRO enjoining the execution of the Orders of the RTC dated July 29, 2011 and August 26, 2011, which granted the issuance of an alias writ of execution and ordered the garnishment of the properties of E-Securities and/or Export Bank. The CA also set a hearing to determine the necessity of issuing a writ of injunction, viz:

Considering the amount ordered to be garnished from petitioner Export and Industry Bank, Inc. and the fiduciary duty of the banking institution to the public, there is grave and irreparable injury that may be caused to [Export Bank] if the assailed Orders are immediately implemented. We thus resolve to GRANT the Temporary Restraining Order effective for a period of sixty (60) days from notice, restraining/enjoining the Sheriff of the Regional Trial Court of Makati City or his deputies, agents, representatives or any person acting in their behalf from executing the July 29, 2011 and August 26, 2011 Orders. [Export Bank] is DIRECTED to POST a bond in the sum of fifty million pesos (P50,000,000.00) within ten (10) days from notice, to answer for any damage which private respondents may suffer by reason of this Temporary Restraining Order; otherwise, the same shall automatically become ineffective.

Let the HEARING be set on September 27, 2011 at 2:00 in the afternoon at the Paras Hall, Main Building, Court of Appeals, to determine the necessity of issuing a writ of preliminary injunction. The Division Clerk of Court is DIRECTED to notify the parties and their counsel with dispatch.

x x x x

SO ORDERED.[11]

Pacific Rehouse Corporation (Pacific Rehouse), Pacific Concorde Corporation, Mizpah Holdings, Inc., Forum Holdings Corporation and East Asia Oil Company, Inc. (petitioners) filed their Comment[12] to Export Bank's petition and proffered that the cases mentioned by Export Bank are inapplicable owing to their clearly different factual antecedents. The petitioners alleged that unlike the other cases, there are circumstances peculiar only to E-Securities and Export Bank such as: 499,995 out of 500,000 outstanding shares of stocks of E-Securities are owned by Export Bank;[13] Export Bank had actual knowledge of the subject matter of litigation as the lawyers who represented E-Securities are also lawyers of Export Bank.[14] As an alter ego, there is no need for a finding of fraud or illegality before the doctrine of piercing the veil of corporate fiction can be applied.[15]

After oral arguments before the CA, the parties were directed to file their respective memoranda.[16]

On October 25, 2011, the CA issued a Resolution,[17] granting Export Bank's application for the issuance of a writ of preliminary injunction, viz:

WHEREFORE, finding [Export Bank's] application for the ancillary injunctive relief to be meritorious, and it further appearing that there is urgency and necessity in restraining the same, a Writ of Preliminary Injunction is hereby GRANTED and ISSUED against the Sheriff of the Regional Trial Court of Makati City, Branch 66, or his deputies, agents, representatives or any person acting in their behalf from executing the July 29, 2011 and August 26, 2011 Orders. Public respondents are ordered to CEASE and DESIST from enforcing and implementing the subject orders until further notice from this Court.[18]

The petitioners filed a Manifestation[19] and Supplemental Manifestation[20] challenging the above-quoted CA resolution for lack of concurrence of Associate Justice Socorro B. Inting (Justice Inting), who was then on official leave.

On December 22, 2011, the CA, through a Special Division of Five, issued another Resolution,[21] which reiterated the Resolution dated October 25, 2011 granting the issuance of a writ of preliminary injunction.

On January 2, 2012, one of the petitioners herein, Pacific Rehouse filed before the Court a petition for certiorari[22] under Rule 65, docketed as G.R. No. 199687, demonstrating its objection to the Resolutions dated October 25, 2011 and December 22, 2011 of the CA.

On April 26, 2012, the CA rendered the assailed Decision[23] on the merits of the case, granting Export Bank's petition. The CA disposed of the case in this wise:

We GRANT the petition. The Orders dated July 29, 2011 and August 26, 2011 of the Makati City Regional Trial Court, Branch 66, insofar as [Export Bank] is concerned, are NULLIFIED. The Writ of Preliminary Injunction (WPI) is rendered PERMANENT.

SO ORDERED.[24]

The CA explained that the alter ego theory cannot be sustained because ownership of a subsidiary by the parent company is not enough justification to pierce the veil of corporate fiction. There must be proof, apart from mere ownership, that Export Bank exploited or misused the corporate fiction of E-Securities. The existence of interlocking incorporators, directors and officers between the two corporations is not a conclusive indication that they are one and the same.[25] The records also do not show that Export Bank has complete control over the business policies, affairs and/or transactions of E-Securities. It was solely E-Securities that contracted the obligation in furtherance of its legitimate corporate purpose; thus, any fall out must be confined within its limited liability.[26]

The petitioners, without filing a motion for reconsideration, filed a Petition for Review[27] under Rule 45 docketed as G.R. No. 201537,[28] impugning the Decision dated April 26, 2012 of the CA.

Considering that G.R. Nos. 199687 and 201537 originated from the same set of facts, involved the same parties and raised intertwined issues, the cases were then consolidated.

Issues

In précis, the issues for resolution of this Court are the following:

In G.R. No. 199687,

WHETHER THE CA COMMITTED GRAVE ABUSE OF DISCRETION IN GRANTING EXPORT BANK'S APPLICATION FOR THE ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION.

In G.R. No. 201537,

I.

WHETHER THE CA COMMITTED A REVERSIBLE ERROR IN RULING THAT EXPORT BANK MAY NOT BE HELD LIABLE FOR A FINAL AND EXECUTORY JUDGMENT AGAINST E-SECURITIES IN AN ALIAS WRIT OF EXECUTION BY PIERCING ITS VEIL OF CORPORATE FICTION; and

II.

WHETHER THE CA COMMITTED A REVERSIBLE ERROR IN RULING THAT THE ALTER EGO DOCTRINE IS NOT APPLICABLE.

Ruling of the Court

G.R. No. 199687

The Resolution dated October 25, 2011 was initially challenged by the petitioners in its Manifestation[29] and Supplemental Manifestation[30] due to the lack of concurrence of Justice Inting, which according to the petitioners rendered the aforesaid resolution null and void.

To the petitioners' mind, Section 5, Rule VI of the Internal Rules of the CA (IRCA)[31] requires the submission of the resolution granting an application for TRO or preliminary injunction to the absent Justice/s when they report back to work for ratification, modification or recall, such that when the absent Justice/s do not agree with the issuance of the TRO or preliminary injunction, the resolution is recalled and without force and effect.[32]

Since the resolution which granted the application for preliminary injunction appears short of the required number of consensus, owing to the absence of Justice Inting's signature, the petitioners contest the validity of said resolution.

The petitioners also impugn the CA Resolution dated December 22, 2011 rendered by the Special Division of Five. The petitioners maintain that pursuant to Batas Pambansa Bilang 129[33] and the IRCA,[34] such division is created only when the three members of a division cannot reach a unanimous vote in deciding a case on the merits.[35] Furthermore, for petitioner Pacific Rehouse, this Resolution is likewise infirm because the purpose of the formation of the Special Division of Five is to decide the case on the merits and not to grant Export Bank's application for a writ of preliminary injunction.[36]

We hold that the opposition to the CA resolutions is already nugatory because the CA has already rendered its Decision on April 16, 2012, which disposed of the substantial merits of the case. Consequently, the petitioners' concern that the Special Division of Five should have been created to resolve cases on the merits has already been addressed by the rendition of the CA Decision dated April 16, 2012.

"It is well-settled that courts will not determine questions that have become moot and academic because there is no longer any justiciable controversy to speak of. The judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced." [37] In such cases, there is no actual substantial relief to which the petitioners would be entitled to and which would be negated by the dismissal of the petition.[38] Thus, it would be futile and pointless to address the issue in G.R. No. 199687 as this has become moot and academic.

G.R. No. 201537

The petitioners bewail that the certified true copy of the CA Decision dated April 26, 2012 along with its Certification at the bottom portion were not signed by the Chairperson[39] of the Special Division of Five; thus, it is not binding upon the parties.[40] The petitioners quoted this Court's pronouncement in *Limkaichong v. Commission on Elections*,[41] that a decision must not only be signed by the Justices who took part in the deliberation, but must also be promulgated to be considered a Decision.[42]

A cursory glance on a copy of the signature page[43] of the decision attached to the records would show that, indeed, the same was not signed by CA Associate Justice Magdangal M. De Leon. However, it must be noted that the CA, on May 7, 2012, issued a Resolution[44] explaining that due to inadvertence, copies of the decision not bearing the signature of the Chairperson were sent to the parties on the same day of promulgation. The CA directed the Division Clerk of Court to furnish the parties with copies of the signature page with the Chairperson's signature. Consequently, as the mistake was immediately clarified and remedied by the CA, the lack of the Chairperson's signature on the copies sent to the parties has already become a non-issue.

It must be emphasized that the instant cases sprang from *Pacific Rehouse Corporation v. EIB Securities, Inc.*[45] which was decided by this Court last October 13, 2010. Significantly, Export Bank was not impleaded in said case but was unexpectedly included during the execution stage, in addition to E-Securities, against whom the writ of execution may be enforced in the Order[46] dated July 29, 2011 of the RTC. In including Export Bank, the RTC considered E-Securities as a mere business conduit of Export Bank.[47] Thus, one of the arguments interposed by the latter in its Opposition[48] that it was never impleaded as a defendant was simply set aside.

This action by the RTC begs the question: may the RTC enforce the alias writ of execution against Export Bank?

The question posed before us is not novel.

The Court already ruled in *Kukan International Corporation v. Reyes*[49] that compliance with the recognized modes of acquisition of jurisdiction cannot be dispensed with even in piercing the veil of corporate fiction, to wit:

The principle of piercing the veil of corporate fiction, and the resulting treatment of two related corporations as one and the same juridical person with respect to a given transaction, is basically applied only to determine established liability; it is not available to confer on the court a jurisdiction it has not acquired, in the first place, over a party not impleaded in a case. Elsewise put, a corporation not impleaded in a suit cannot be subject to the court's process of piercing the veil of its corporate fiction. In that situation, the court has not acquired jurisdiction over the corporation and, hence, any proceedings taken against that corporation and its property would infringe on its right to due process. Aguedo Agbayani, a recognized authority on Commercial Law, stated as much:

“23. Piercing the veil of corporate entity applies to determination of liability not of jurisdiction. x x x

This is so because the doctrine of piercing the veil of corporate fiction comes to play only during the trial of the case after the court has already acquired jurisdiction over the corporation. Hence, before this doctrine can be applied, based on the evidence presented, it is imperative that the court must first have jurisdiction over the corporation. x x x”[50] (Citations omitted)

From the preceding, it is therefore correct to say that the court must first and foremost acquire jurisdiction over the parties; and only then would the parties be allowed to present evidence for and/or against piercing the veil of corporate fiction. If the court has no jurisdiction over the corporation, it follows that the court has no business in piercing its veil of corporate fiction because such action offends the corporation's right to due process.

“Jurisdiction over the defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court. When the defendant does not voluntarily submit to the court's jurisdiction or when there is no valid service of summons, ‘any judgment of the court which has no jurisdiction over the person of the defendant is null and void.’”[51] “The defendant must be properly apprised of a pending action against him and assured of the opportunity to present his defenses to the suit. Proper service of summons is used to protect one's right to due process.”[52]

As Export Bank was neither served with summons, nor has it voluntarily appeared before the court, the judgment sought to be enforced against E-Securities cannot be made against its parent company, Export Bank. Export Bank has consistently disputed the RTC jurisdiction, commencing from its filing of an Omnibus Motion[53] by way of special appearance during the execution stage until the filing of its Comment[54] before the Court wherein it was pleaded that “RTC [of] Makati[, Branch] 66 never acquired jurisdiction over Export [B]ank. Export [B]ank was not pleaded as a party in this case. It was never served with summons by nor did it voluntarily appear before RTC [of] Makati[, Branch] 66 so as to be subjected to the latter's jurisdiction.”[55]

In dispensing with the requirement of service of summons or voluntary appearance of Export Bank, the RTC applied the cases of *Violago* and *Arcilla*. The RTC concluded that in these cases, the Court decided that the doctrine of piercing the veil of corporate personality can be applied even when one of the affected parties has not been brought to the Court as a party.[56]

A closer perusal on the rulings of this Court in *Violago* and *Arcilla*, however, reveals that the RTC misinterpreted the doctrines on these cases. We agree with the CA that these cases are not congruent to the case at bar. In *Violago*, Spouses Pedro and Florencia Violago (Spouses Violago) filed a third party complaint against their cousin Avelino Violago (Avelino), who is also the president of Violago Motor Sales Corporation (VMSC), for selling them a vehicle which was already sold to someone else. VMSC was not impleaded as a third party defendant. Avelino contended that he was not a party to the transaction personally, but VMSC. The Court ruled that “[t]he fact that VMSC was not included as defendant in [Spouses Violago's] third party complaint does not

preclude recovery by Spouses Violago from Avelino; neither would such non-inclusion constitute a bar to the application of the piercing-of-the-corporate-veil doctrine.”[57] It should be pointed out that although VMSC was not made a third party defendant, the person who was found liable in Violago, Avelino, was properly made a third party defendant in the first instance. The present case could not be any more poles apart from Violago, because Export Bank, the parent company which was sought to be accountable for the judgment against E-Securities, is not a party to the main case.

In Arcilla, meanwhile, Calvin Arcilla (Arcilla) obtained a loan in the name of Csar Marine Resources, Inc. (CMRI) from Emilio Rodulfo. A complaint was then filed against Arcilla for non-payment of the loan. CMRI was not impleaded as a defendant. The trial court eventually ordered Arcilla to pay the judgment creditor for such loan. Arcilla argued that he is not personally liable for the adjudged award because the same constitutes a corporate liability which cannot even bind the corporation as the latter is not a party to the collection suit. The Court made the succeeding observations:

[B]y no stretch of even the most fertile imagination may one be able to conclude that the challenged Amended Decision directed Csar Marine Resources, Inc. to pay the amounts adjudged. By its clear and unequivocal language, it is the petitioner who was declared liable therefor and consequently made to pay. x x x, even if We are to assume arguendo that the obligation was incurred in the name of the corporation, the petitioner would still be personally liable therefor because for all legal intents and purposes, he and the corporation are one and the same. Csar Marine Resources, Inc. is nothing more than his business conduit and alter ego. The fiction of a separate juridical personality conferred upon such corporation by law should be disregarded. x x x.[58] (Citation omitted)

It is important to bear in mind that although CMRI was not a party to the suit, it was Arcilla, the defendant himself who was found ultimately liable for the judgment award. CMRI and its properties were left untouched from the main case, not only because of the application of the alter ego doctrine, but also because it was never made a party to that case.

The disparity between the instant case and those of Violago and Arcilla is that in said cases, although the corporations were not impleaded as defendant, the persons made liable in the end were already parties thereto since the inception of the main case. Consequently, it cannot be said that the Court had, in the absence of fraud and/or bad faith, applied the doctrine of piercing the veil of corporate fiction to make a non-party liable. In short, liabilities attached only to those who are parties. None of the non-party corporations (VMSC and CMRI) were made liable for the judgment award against Avelino and Arcilla.

The Alter Ego Doctrine is not applicable

“The question of whether one corporation is merely an alter ego of another is purely one of fact. So is the question of whether a corporation is a paper company, a sham or subterfuge or whether petitioner adduced the requisite quantum of evidence warranting the piercing of the veil of respondent’s corporate entity.”[59]

As a rule, the parties may raise only questions of law under Rule 45, because the Supreme Court is not a trier of facts. Generally, we are not duty-bound to analyze again and weigh the evidence introduced in and considered by the tribunals below.[60] However, justice for all is of primordial importance that the Court will not think twice of reviewing the facts, more so because the RTC and the CA arrived in contradicting conclusions.

“It is a fundamental principle of corporation law that a corporation is an entity separate and distinct from its stockholders and from other corporations to which it may be connected. But, this separate and distinct personality of a corporation is merely a fiction created by law for convenience and to promote justice. So, when the notion of separate juridical personality is used to defeat public convenience, justify wrong, protect fraud or defend crime, or

is used as a device to defeat the labor laws, this separate personality of the corporation may be disregarded or the veil of corporate fiction pierced. This is true likewise when the corporation is merely an adjunct, a business conduit or an alter ego of another corporation.”[61]

“Where one corporation is so organized and controlled and its affairs are conducted so that it is, in fact, a mere instrumentality or adjunct of the other, the fiction of the corporate entity of the “instrumentality” may be disregarded. The control necessary to invoke the rule is not majority or even complete stock control but such domination of finances, policies and practices that the controlled corporation has, so to speak, no separate mind, will or existence of its own, and is but a conduit for its principal. It must be kept in mind that the control must be shown to have been exercised at the time the acts complained of took place. Moreover, the control and breach of duty must proximately cause the injury or unjust loss for which the complaint is made.”[62]

The Court has laid down a three-pronged control test to establish when the alter ego doctrine should be operative:

- (1) Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own;
- (2) Such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiff’s legal right; and
- (3) The aforesaid control and breach of duty must [have] proximately caused the injury or unjust loss complained of.[63]

The absence of any one of these elements prevents ‘piercing the corporate veil’ in applying the ‘instrumentality’ or ‘alter ego’ doctrine, the courts are concerned with reality and not form, with how the corporation operated and the individual defendant’s relationship to that operation.[64] Hence, all three elements should concur for the alter ego doctrine to be applicable.

In its decision, the RTC maintained that the subsequently enumerated factors betray the true nature of E-Securities as a mere alter ego of Export Bank:

1. Defendant EIB Securities, a subsidiary corporation 100% totally owned by Export and Industry Bank, Inc., was only re-activated by the latter in 2002-2003 and the continuance of its operations was geared for no other reason than to serve as the securities brokerage arm of said parent corporation bank;
2. It was the parent corporation bank that provided and infused the fresh working cash capital needed by defendant EIB Securities which prior thereto was non-operating and severely cash-strapped. [This was so attested by the then Corporate Secretary of both corporations, Atty. Ramon Aviado, Jr., in his submitted Sworn Statement which is deemed allowable “evidence on motion”, under Sec. 7, Rule 133, Rules on Evidence; *Bravo vs. Borja*, 134 SCRA 438];
3. For effective control purposes, defendant EIB Securities and its operating office and staff are all housed in Exportbank Plaza located at Chino Roces cor. Sen. Gil Puyat Avenue, Makati City which is the same building where the bank parent corporation has its headquarters;
4. As shown in the General Information Sheets annually filed with the S.E.C. from 2002 to 2011, both defendant EIB Securities and the bank parent corporation share common key Directors and corporate officers. Three of the 5-man Board of Directors of defendant EIB Securities are Directors of the bank parent corporation, namely: Jaime C. Gonzales, Pauline C. Tan and Dionisio E. Carpio, Jr. In addition, Mr. Gonzales is Chairman of the Board of both corporations, whereas Pauline C. Tan is concurrently President/General Manager of EIB Securities, and Dionisio Carpio Jr., is not only director of the bank, but also Director

Treasurer of defendant EIB Securities;

5. As admitted by the bank parent corporation in its consolidated audited financial statements[,] EIB Securities is a CONTROLLED SUBSIDIARY, and for which reason its financial condition and results of operations are included and integrated as part of the group's consolidated financial statements, examined and audited by the same auditing firm;

6. The lawyers handling the suits and legal matters of defendant EIB Securities are the same lawyers in the Legal Department of the bank parent corporation. The Court notes that in [the] above-entitled suit, the lawyers who at the start represented said defendant EIB Securities and filed all the pleadings and filings in its behalf are also the lawyers in the Legal Services Division of the bank parent corporation. They are Attys. Emmanuel A. Silva, Leonardo C. Bool, Riva Khristine E. Maala and Ma. Esmeralda R. Cunanan, all of whom worked at the Legal Services Division of Export Industry Bank located at 36/F, Exportbank Plaza, Don Chino Roces Avenue, cor. Sen. Gil Puyat Avenue, Makati City.

7. Finally[,] and this is very significant, the control and sway that the bank parent corporation held over defendant EIB Securities was prevailing in June 2004 when the very act complained of in plaintiff's Complaint took place, namely the unauthorized disposal of the 32,180,000 DMCI shares of stock. Being then under the direction and control of the bank parent corporation, the unauthorized disposal of those shares by defendant EIB Securities is attributable to, and the responsibility of the former.[65]

All the foregoing circumstances, with the exception of the admitted stock ownership, were however not properly pleaded and proved in accordance with the Rules of Court.[66] These were merely raised by the petitioners for the first time in their Motion for Issuance of an Alias Writ of Execution[67] and Reply,[68] which the Court cannot consider. "Whether the separate personality of the corporation should be pierced hinges on obtaining facts appropriately pleaded or proved." [69]

Albeit the RTC bore emphasis on the alleged control exercised by Export Bank upon its subsidiary E-Securities, "[c]ontrol, by itself, does not mean that the controlled corporation is a mere instrumentality or a business conduit of the mother company. Even control over the financial and operational concerns of a subsidiary company does not by itself call for disregarding its corporate fiction. There must be a perpetuation of fraud behind the control or at least a fraudulent or illegal purpose behind the control in order to justify piercing the veil of corporate fiction. Such fraudulent intent is lacking in this case." [70]

Moreover, there was nothing on record demonstrative of Export Bank's wrongful intent in setting up a subsidiary, E-Securities. If used to perform legitimate functions, a subsidiary's separate existence shall be respected, and the liability of the parent corporation as well as the subsidiary will be confined to those arising in their respective business.[71] To justify treating the sole stockholder or holding company as responsible, it is not enough that the subsidiary is so organized and controlled as to make it "merely an instrumentality, conduit or adjunct" of its stockholders. It must further appear that to recognize their separate entities would aid in the consummation of a wrong.[72]

As established in the main case[73] and reiterated by the CA, the subject 32,180,000 DMCI shares which E-Securities is obliged to return to the petitioners were originally bought at an average price of P0.38 per share and were sold for an average price of P0.24 per share. The proceeds were then used to buy back 61,100,000 KPP shares earlier sold by E-Securities. Quite unexpectedly however, the total amount of these DMCI shares ballooned to P1,465,799,000.00.[74] It must be taken into account that this unexpected turnabout did not inure to the benefit of E-Securities, much less Export Bank.

Furthermore, ownership by Export Bank of a great majority or all of stocks of E-Securities and the existence of interlocking directorates may serve as badges of control, but ownership of another corporation, per se, without

proof of actuality of the other conditions are insufficient to establish an alter ego relationship or connection between the two corporations, which will justify the setting aside of the cover of corporate fiction. The Court has declared that “mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality.” The Court has likewise ruled that the “existence of interlocking directors, corporate officers and shareholders is not enough justification to pierce the veil of corporate fiction in the absence of fraud or other public policy considerations.”[75]

While the courts have been granted the colossal authority to wield the sword which pierces through the veil of corporate fiction, concomitant to the exercise of this power, is the responsibility to uphold the doctrine of separate entity, when rightly so; as it has for so long encouraged businessmen to enter into economic endeavors fraught with risks and where only a few dared to venture.

Hence, any application of the doctrine of piercing the corporate veil should be done with caution. A court should be mindful of the milieu where it is to be applied. It must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of its rights. The wrongdoing must be clearly and convincingly established; it cannot be presumed. Otherwise, an injustice that was never unintended may result from an erroneous application.[76]

In closing, we understand that the petitioners are disgruntled at the turnout of this case—that they cannot enforce the award due them on its entirety; however, the Court cannot supplant a remedy which is not sanctioned by our laws and prescribed rules.

WHEREFORE, the petition in G.R. No. 199687 is hereby DISMISSED for having been rendered moot and academic. The petition in G.R. No. 201537, meanwhile, is hereby DENIED for lack of merit. Consequently, the Decision dated April 26, 2012 of the Court of Appeals in CA-G.R. SP No. 120979 is AFFIRMED.

SO ORDERED.

Sereno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Villarama, Jr., JJ., concur.

[1] Penned by Associate Justice Mario V. Lopez, with Associate Justice Amy C. Lazaro-Javier, concurring; Associate Justice Vicente S.E. Veloso penned a Separate Concurring Opinion. Associate Justices Magdangal M. De Leon and Socorro B. Inting penned a Dissenting Opinion; rollo (G.R. No. 201537), pp. 47-68.

[2] Id. at 48-50.

[3] Id. at 230.

[4] 581 Phil. 62 (2008).

[5] G.R. No. 89804, October 23, 1992, 215 SCRA 120.

[6] Rollo (G.R. No. 201537), pp. 329-231.

[7] Id. at 231.

[8] Id. at 232-269.

[9] *Filmerco Commercial Co, Inc. v. Intermediate Appellate Court*, 233 Phil. 197 (1987); *Padilla v. CA*, 421 Phil. 883 (2001); *Kukan International Corporation v. Reyes*, G.R. No. 182729, September 29, 2010, 631 SCRA 596.

[10] Rollo (G.R. No. 201537), pp. 271-272.

[11] Id. at 272.

[12] Id. at 334-362.

[13] Id. at 352.

[14] Id. at 353.

[15] Id. at 355.

[16] See Petitioners' Memorandum, id. at 405-435; See Export Bank's Memorandum, id. at 436-451.

[17] Penned by Associate Justice Mario V. Lopez, with Associate Justice Magdangal M. De Leon, concurring; Associate Justice Socorro B. Inting was on official leave; id. at 453-455. See also rollo (G.R. No. 199687), pp. 27-29.

[18] Rollo (G.R. No. 201537), p. 454; rollo, (G.R. No. 199687), p. 28.

[19] Rollo (G.R. No. 201537), pp. 487-490.

[20] Id. at 491-493.

[21] Penned by Associate Justice Mario V. Lopez, with Associate Justices Magdangal M. De Leon and Amy C. Lazaro-Javier, concurring; Associate Justice Socorro B. Inting penned a Dissenting Opinion with Associate Justice Vicente S.E. Veloso, concurring; id. at 495-497. See also rollo (G.R. No. 199687), pp. 31-33.

[22] Rollo (G.R. No. 199687), pp. 3-23.

[23] Penned by Associate Justice Mario V. Lopez, with Associate Justice Amy C. Lazaro-Javier, concurring; Associate Justice Vicente S.E. Veloso penned a Separate Concurring Opinion. Associate Justice Magdangal M. De Leon and Socorro B. Inting penned a Dissenting Opinion; rollo (G.R. No. 201537), pp. 47-68.

[24] Id. at 67-68.

[25] Id. at 59-60.

[26] Id. at 61.

[27] Id. at 3-43.

[28] Court First Division Resolution dated September 26, 2012.

[29] Id. at 487-490.

[30] Id. at 491-493.

[31] Sec. 5. Action by a Justice. – All members of the Division shall act upon an application for temporary restraining order and preliminary injunction. However, if the matter is of extreme urgency and a Justice is absent, the two other justices shall act upon the application. If only the ponente is present, then he/she shall act alone upon the application. The action of the two Justices or of the ponente shall, however, be submitted on the next working day to the absent member or members of the Division for ratification, modification or recall.

[32] Rollo (G.R. No. 199687), pp. 15-16.

[33] Batas Pambansa Bilang 129, as amended by Executive Order No. 33

Section 6. Section 11 of the same Act is hereby amended to read as follows:

“Sec. 11. Quorum. A majority of the actual members of the Court shall constitute a quorum for its session en banc. Three members shall constitute a quorum for the sessions of a division. The unanimous vote of the three members of a division shall be necessary for the pronouncement of a decision or final resolution, which shall be reached in consultation before the writing of the opinion by any member of the division. In the event that the three members do not reach a unanimous vote, the Presiding Justice shall request the Raffle Committee of the Court for the designation of two additional Justices to sit temporarily with them, forming a special division of five members and the concurrence of a majority of such division shall be necessary for the pronouncement of a decision or final resolution. The designation of such additional Justices shall be made strictly by raffle.

A motion for reconsideration of its decision or final resolution shall be resolved by the Court within ninety (90) days from the time it is submitted for resolution, and no second motion for reconsideration from the same party shall be entertained.”

[34] Rule VI, Section 10. Procedure in Case of Dissent. – When the unanimous vote of the members of the Division cannot be attained, the following shall be observed:

(a) Within five (5) working days from the date of deliberation, the Chairperson of the Division shall refer the case in writing, together with the rollo, to the Raffle Committee which shall designate two (2) Justices by raffle from among the Justices in the same station to sit temporarily with the three members, forming a Special Division of Five.

A written dissenting opinion shall be submitted by a Justice to the ponente and the other members of the Special Division of Five within ten (10) working days from his/her receipt of the records.

If no written dissenting opinion is submitted within the period above-stated, with no additional period being agreed upon by majority of said Division, that Special Division shall be automatically abolished and the case shall revert to the regular Division as if no dissent has been made.

(b) The Special Division of Five shall retain the case until its final disposition regardless of reorganization, provided that all the members thereof remain in the same station. (Sec. 4, Rule 8, RIRCA [a])

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[35] Rollo (G.R. No. 199687), p. 14.

[36] Id. at 15.

[37] Philippine Savings Bank (PSBANK) v. Senate Impeachment Court, G.R. No. 200238, November 20, 2012, 686 SCRA 35, 37-38, citing Sales v. Commission on Elections, 559 Phil. 593, 597 (2007).

[38] Soriano Vda. De Dabao v. Court of Appeals, 469 Phil. 928, 937 (2004).

[39] CA Associate Justice Magdangal M. De Leon.

[40] Rollo (G.R. No. 201537), p. 18.

[41] G.R. Nos. 178831-32, July 30, 2009, 594 SCRA 434.

[42] Id. at 447-448; rollo (G.R. No. 201537), pp. 18-19.

[43] Rollo (G.R. No. 201537), p. 68.

[44] Id. at 810-811.

[45] G.R. No. 184036, October 13, 2010, 633 SCRA 214.

[46] Rollo (G.R. No. 201537), pp. 170-172.

[47] Id. at 171.

[48] Id. at 137-156.

[49] Supra note 9.

[50] Id. at 618-619.

[51] Pascual v. Pascual, G.R. No. 171916, December 4, 2009, 607 SCRA 288, 304.

[52] Manotoc v. CA, 530 Phil. 454, 462 (2006).

[53] Rollo (G.R. No. 201537), pp. 189-209.

[54] Id. at 724-800.

[55] Id. at 777.

[56] Id. at 230.

[57] Supra note 4, at 76.

[58] Supra note 5, at 129.

[59] China Banking Corp. v. Dyne-Sem Electronics Corporation, 527 Phil. 74, 80 (2006).

[60] Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc., G.R. No. 190515, June 6, 2011, 650 SCRA 656, 660, citing Rule 45 of the Rules of Court.

[61] Concept Builders, Inc. v. National Labor Relations Commission, 326 Phil. 955, 964-965 (1996).

[62] Id. at 965-966.

[63] Id. at 966.

[64] Philippine National Bank v. Hydro Resources Contractors Corporation, G.R. No. 167530, March 13, 2013, 693 SCRA 294, 309-310.

[65] Rollo (G.R. No. 201537), pp. 170-171.

[66] Id. at 59.

[67] Id. at 121-125.

[68] Id. at 157-169.

[69] Pantranco Employees Association (PEA-PTGWO) v. National Labor Relations Commission, G.R. No. 170689, March 17, 2009, 581 SCRA 598, 614.

[70] NASECO Guards Association-PEMA (NAGA-PEMA) v. National Service Corporation (NASECO), G.R. No. 165442, August 25, 2010, 629 SCRA 90, 101.

[71] Philippine National Bank v. Ritratto Group Inc., 414 Phil. 494, 503 (2001).

[72] Henry W. Ballantine, Separate Entity of Parent and Subsidiary Corporations, p. 20, California Law Review Volume 14 (1925), citing Erkenbrecher v. Grant, 187 Cal. 7, 200 Pac. 641, (1921); Minifie v. Rowlev, 187 Cal. 481, 202 Pac. 673, (1921); (visited January 20, 2013).

[73] Pacific Rehouse Corporation v. EIB Securities, Inc., supra note 45.

[74] Rollo (G.R. No. 201537), p. 62.

[75] Philippine National Bank v. Hydro Resources Contractors Corporation, supra note 64, at 311.

[76] Philippine National Bank v. Andrada Electric & Engineering Company, 430 Phil. 882, 894-895 (2002).

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