

**NATIONAL MARKETING CORPORATION (NAMARCO), PLAINTIFF
AND APPELLANT, VS. ASSOCIATED FINANCE COMPANY, INC., AND
FRANCISCO SYCIP, DEFENDANTS, FRANCISCO SYCIP, DEFENDANT
AND APPELLEE.**

G.R. No. 20886. April 27, 1967

Ponente: DIZON, J.

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DIZON, J.:

Appeal taken by the National Marketing Corporation - hereinafter referred to as NAMARCO, from the decision of the Court of First Instance of Manila in Civil Case No. 45770 ordering the Associated Finance Company, Inc. - hereinafter referred to as the ASSOCIATED - to pay the NAMARCO the sum of P403,514.28, with legal interest thereon from the date of filing of the action until fully paid, P80,702.26 as liquidated damages, P5,000.00 as attorney's fees, plus costs, but dismissing the complaint insofar as defendant Francisco Sycip was concerned, as well as the latter's counterclaim. The appeal is only from that portion of the decision dismissing the case as against Francisco Sycip.

On March 25, 1958, ASSOCIATED, a domestic corporation, through its President, appellee Francisco Sycip, entered into an agreement to exchange sugar with NAMARCO, represented by its then General Manager, Benjamin Estrella, whereby the former would deliver to the latter 22,516 bags (each weighing 100 pounds) of "Victorias" and/or "National" refined sugar in exchange for 7,732.71 bags of "Busilak" and 17,285.08 piculs of "Pasumil" raw sugar belonging to NAMARCO, both agreeing to pay liquidated damages equivalent to 20% of the contractual value of the sugar should either party fail to comply with the terms and conditions stipulated (Exhibit A). Pursuant thereto, on May 19, 1958, NAMARCO delivered to ASSOCIATED 7,732.71 bags of "Busilak" and 17,285.08 piculs of "Pasumil" domestic raw sugar. As ASSOCIATED failed to deliver to NAMARCO the 22,516 bags of "Victorias" and/or "National" refined sugar agreed upon, the latter, on January 12, 1959, demanded in writing from the ASSOCIATED either (a) immediate delivery thereof before January 20, or (b) payment of its equivalent cash value amounting to P372,639.80.

On January 19, 1959, ASSOCIATED, through Sycip, offered to pay NAMARCO the value of 22,516 bags of refined sugar at the rate of P15.30 per bag, but the latter rejected the offer. In-stead, on January 21 of the same year, it demanded payment of the 7,732.71 bags of "Busilak" raw sugar at P15.30 per bag, amounting to P118,310.40, and of the 17,285.08 piculs of "Pasumil" raw sugar at P16.50 per picul, amounting to P285,203.82, or a total price of P403,514.28 for both kinds of sugar, based on the sugar quotations (Exh. H) as of March 20, 1958 - the date when the exchange agreement was entered into.

As ASSOCIATED refused to deliver the raw sugar or pay for the refined sugar delivered to it, in spite of repeated demands therefore, NAMARCO instituted the present action in the lower court to recover the sum of P403,514.28 in payment of the raw sugar received by defendants from it; P80,702.86 as liquidated damages; P10,000.00 as attorney's fees, expenses of litigation and exemplary damages, with legal interest thereon from the filing of the

complaint until fully paid.

In their amended answer defendants, by way of affirmative defenses, alleged that the correct value of the sugar delivered by NAMARCO to them was P259,451.09 or P13.30 per bag of 100 lbs. weight (quedan basis) and not P403,514.38 as claimed by NAMARCO. As counterclaim they prayed for the award of P500,000.00 as moral damages, P100,000.00 as exemplary damages and P10,000.00 as attorney's fees.

After due trial the court rendered the appealed judgment. The appeal was taken to the Court of Appeals, but on January 15, 1963 the latter certified the case to Us for final adjudication pursuant to sections 17 and 31 of the Judiciary Act of 1948, as amended, the amount involved being more than P200,000.00, exclusive of interests and costs.

The only issue to be resolved is whether, upon the facts found by the trial court, - which, in our opinion, are fully supported by the evidence - Francisco Sycip may be held liable, jointly and severally with his co-defendant, for the sums of money adjudged in favor of NAMARCO.

The evidence of record shows that, of the capital stock of ASSOCIATED, Sycip owned P60,000.00 worth of shares, while his wife - the second biggest stockholder - owned P20,000.00 worth of shares; that the par value of the subscribed capital stock of ASSOCIATED was only P105,000.00; that negotiations that lead to the execution of the exchange agreement in question were conducted exclusively by Sycip on behalf of ASSOCIATED; that, as a matter of fact, in the course of his testimony, Sycip referred to himself as the one who contracted or transacted the business in his personal capacity, and asserted that the exchange agreement was his personal contract; that it was Sycip who made personal representations and gave assurances that ASSOCIATED was in actual possession of the 22,516 bags of "Victorias" and/or "National" refined sugar which the latter had agreed to deliver to NAMARCO, and that the same was ready for delivery; that, as a matter of fact, ASSOCIATED was at that time already insolvent; that when NAMARCO made written demands upon ASSOCIATED to deliver the 22,516 bags of refined sugar it was under obligation to de-liver to the former, ASSOCIATED and Sycip, instead of making delivery of the sugar, offered to pay its value at the rate of P15.30 per bag - a clear indication that they did not have the sugar contracted for.

The foregoing facts, fully established by the evidence, can lead to no other conclusion than that Sycip was guilty of fraud because through false representations he succeeded in inducing NAMARCO to enter into the aforesaid exchange agreement, with full knowledge, on his part, of the fact that ASSOCIATED whom he represented and over whose business and affairs he had absolute control, was in no position to comply with the obligation it had assumed. Consequently, he can not now seek refuge behind the general principle that a corporation has a personality distinct and separate from that of its stockholders and that the latter are not personally liable for the corporate obligations. To the contrary, upon the proven facts, We feel perfectly jus-tified in "piercing the veil of corporate fiction" and in holding Sycip personally liable, jointly and severally with his co-defendant, for the sums of money adjudged in favor of appellant. It is settled law in this and other jurisdictions that when the corporation is the mere alter ego of a person, the corporate fiction may be disregarded; the same being true when the corporation is controlled, and its affairs are so conducted as to make it merely an instrumentality, agency or conduit of another (Koppel Phils. etc. vs. Yatco etc., 43 O.G. No. 11, Nov. 1947; Yutivo Sons etc. vs. Court of Tax Appeals etc., G.R. No. L-13203, promulgated on January 28, 1961.

WHEREFORE, the decision appealed from is modified by sentencing defendant-appellee Francisco Sycip to pay, jointly and severally with the Associated Finance Company, Inc., the sums of money which the trial court sentenced the latter to pay to the National Marketing Corporation, as follows: the sum of FOUR HUNDRED THREE THOUSAND FIVE HUNDRED FOURTEEN PESOS and TWENTY-EIGHT CENTAVOS

(P403,514.28), with interest at the legal rate from the date of the filing of the action until fully paid plus an additional amount of EIGHTY THOUSAND SEVEN HUNDRED TWO PESOS and EIGHTY-SIX CENTAVOS (P80,702.86) as liquidated damages and P5,000.00 as attorney's fees and further to pay the costs.

With costs.

Concepcion, C.J., Reyes, J.B.L., Regala, Makalintal, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.

Ruiz Castro, J., took no part.

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