

CALVIN S. ARCILLA, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND EMILIO RODULFO, RESPONDENTS.

G.R. No. 89804. October 23, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This petition is a belated attempt to avoid the adverse amended decision of public respondent, promulgated on 31 May 1989 in C.A.-G.R. CV No. 11389,[1] on the ground that petitioner is not personally liable for the amount adjudged since the same constitutes a corporate liability which nevertheless cannot even bind or be enforced against the corporation because it is not a party in the collection suit filed before the trial court.

The procedural antecedents are not complicated.

On 4 June 1985, private respondent filed with the Regional Trial Court (RTC) of Catanduanes a complaint for a sum of money against petitioner.[2] The case was docketed as Civil Case No. 1292 and was assigned to Branch 42 thereof. It is alleged therein:

X X X

"3. That from late 1981 up to early 1983, the defendant, taking advantage of his close friendship with the plaintiff, succeeded in securing on credit from the plaintiff, various items, cash and checks which the defendant encashed, in the total amount of P93,358.51, which the plaintiff willingly extended because of the representations of the defendant that he was a successful financial consultant of local and international businessmen;

4. That defendant's indebtedness referred to in the next preceding paragraph, is shown and described in thirty (30) 'vales' signed by him or by persons authorized by him, all of which documents are in the possession of the plaintiff for being unredeemed or unpaid, xerox copies attached as Annexes "A" to "Z" and "AA" to "DD" which are hereby made integral parts hereof;

5. That commencing with the summer months of 1983 up to the time immediately before the filing of this complaint, the plaintiff had made numerous demands for payment but the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

6. That the plaintiff is left without any recourse other than to enforce his claim in court and had to secure the services of the undersigned counsel who charged the plaintiff with P1,000.00 for accepting the case, P200.00 appearance fee for every appearance before this Court, and attorney's contingent fee of 25% of the award in favor of the plaintiff; plaintiff shall incur litigation expenses which may amount to no less than P5,000.00, all of which amounts are recoverable from the defendant."

In his Answer,[3] petitioner does not deny having had business transactions with the private respondent but alleges that the professional relationship began only in August of 1982 when he "was looking for a 'pro-forma' invoice to support his loan with the Kilusang Kabuhayan at Kaunlaran (KKK for short) under the Ministry of Human Settlement (sic)."[4] He explicitly admits that "(H)is loan was in the name of his family corporation,

CSAR Marine Resources, Inc.;"[5] however, the "vales", more specifically Annexes "A" to "DD" of the complaint, "were liquidated in the bank loan releases." [6] It is thus clear that his main defense is payment; he did not interpose any other affirmative defense.

In his Pre-Trial Brief,[7] petitioner reiterated the earlier claim that his first business dealing with the plaintiff (private respondent herein) was in August of 1982. This time, however, he alleges that "as President of CSAR Marine Resources, Inc., he requested for a pro-forma Invoice for said corporation to support the loan application with the Kilusang Kabuhayan at Kaunlaran (KKK for short), with the Ministry of Human Settlement (sic)."[8]

In its Decision of 1 August 1986,[9] the trial court made the following findings of fact:

"Defendant admitted the genuineness (sic) and due execution of Exhibits "A" to "DD" but, according to him, he already paid plaintiff P56,908.20 thru PNB Virac Branch, per Cash Voucher dated September 28, 1982 (Exh. 3) and then P42,363.75 also thru PNB Virac Branch, per PNB check No. 628861K dated December 16, 1982 (Exh. 1)."

Analyzing the evidence adduced by both parties, it ruled that since Exhibit "3" is dated 28 September 1982 and the "vales", Exhibits "A" to "DD", with the exception of Exhibits "K" in the amount of P1,730.00 and "Q" in the amount of P10,765.00, were issued after said date, it could not have been in payment of the "vales" other than that evidenced by Exhibits "K" and "Q". Considering, however, that the "vales" remained in the possession of the private respondent, they are presumed to remain unpaid; in fact, private respondent so testified that they were not paid at all. The court therefore ordered petitioner to pay private respondent:

"(a) The total amount of P92,358.43 covered by the 'vales', plus interest thereon at the rate of twelve (12%) per cent per annum from June 4, 1985 when the complaint was filed;

(b) P9,000.00 for and as attorney's fees; and

(c) The cost of suit." [10]

Petitioner appealed this decision to the public respondent which docketed the case as C.A.-G.R. CV No. 11389.

The public respondent affirmed the trial court's decision in its Decision of 14 January 1988.[11] As could be gleaned therefrom, petitioner's assigned errors are as follows:

"x x x defendant raised as errors of the court a quo in (sic) holding that the 'vales' (Exhs. A to DD) have not been paid; that the presumption in favor of the plaintiff-appellee that since he was in possession of the 'vales' the same have not been paid, remained undisputed; that the total transaction between the parties amounted to more than P200,000.00; and in rendering a decision in favor of the plaintiff-appellee plus the award of attorney's fees in his favor." [12]

On 5 February 1988, petitioner filed a motion to reconsider the aforesaid decision[13] alleging therein, inter alia, that (a) the evidence showing payment of the "vales" is "uncontroverted", hence the presumption that they were not paid simply because they remain in the possession of the creditor cannot arise; (b) the alleged non-payment of the "vales" could have been further explained if the trial court gave the appellant the opportunity to present a sur-rebuttal witness and documentary evidence; besides, he has newly discovered evidence -- invoked in a prayer for a new trial that was nevertheless denied by the lower court -- which consists of a letter, dated 7 February 1983, signed by Rafael Rodulfo, General Manager of the private respondent and addressed to Brig. Gen. Clemente Racela, then KKK General Action Officer, categorically stating that "the account of CSAR Marine Resources, Inc. c/o Atty. Calvin Arcilla" is only P23,639.33; and (c) the evidence presented by both parties discloses that "the subject account are (sic) all in the name of CSAR MARINE RESOURCES, INC., a corporation separate and distinct from the appellant;" such fact remains 'uncontroverted' as shown by Exhibits "1", "2", "3", "A" to "DD"

adopted as Exhibits "7" to "25 for the appellant." [14] He then prays that:

"x x x considering that appellee was not able to prove by preponderance of evidence the alleged unpaid account of appellant, the decision promulgated on January 14, 1988 be RECONSIDERED and a new one be entered REVERSING the lower court decision and thereby ordering the DISMISSAL of plaintiff-appellee's complaint, with damages and costs against appellee.

In the remote possibility, that the appellee's complaint cannot be dismissed outrightly, it is further prayed that this Honorable Tribunal orders (sic) a new trial for appellant to present additional evidence he wanted to present in his motion for new trial." [15]

x x x

Reacting to this motion, private respondent, in a Manifestation dated 7 February 1988, informed the public respondent that in the interest of justice and fair play, he interposes no objection to the alternative prayer for a new trial. [16] Hearing was thereafter conducted to receive the petitioner's so-called newly discovered evidence consisting of the abovementioned letter of Rafael Rodulfo, dated 7 February 1983, to General Clemente A. Racela (Exh. "1"-Motion) wherein the former, as General Manager of private respondent's Universal Enterprises, informed the latter that:

"x x x Csar Marine Resources, Inc. c/o Atty. Calvin Arcilla has an outstanding obligation of TWENTY THREE THOUSAND SIX HUNDRED THIRTY NINE and 33/100 (P23,639.33) PESOS to Universal Enterprises as a result of various purchases of construction materials." [17]

x x x

Thereafter, on 31 May 1989, the public respondent promulgated an Amended Decision, [18] the dispositive portion of which reads as follows:

"WHEREFORE, the decision of this Court promulgated on January 14, 1988 is hereby reconsidered and a new one rendered, ordering defendant-appellant to pay plaintiff-appellee in his capacity as President of Csar Marine Resources, Inc. the outstanding balance of P23,639.33 to Universal Enterprises, owned and operated by plaintiff-appellee, plus interest at 12% per annum from June 4, 1985 when the complaint was filed; attorney's fees of P1,000.00, P200.00 per court appearance of counsel and 25% of the amount awarded; plus the costs of the suit." [19]

On 4 June 1989, petitioner filed a Motion For Clarificatory Judgment [20] alleging therein that:

"3. It is very clear from the findings of this Honorable Court contained in the amended decision promulgated on May 31, 1989 that:

- 3.1. Defendant Calvin S. Arcilla never had any personal business transaction (sic) with the plaintiff;
- 3.2. Csar Marine Resources, Inc. has an outstanding balance in the amount of P23,636.33 with plaintiff-appellee out of the KKK loan transaction;
- 3.3. Csar Marine Resources, Inc. is not a party in this case;

x x x

5. It is rather confussing (sic) that defendant-appellant is ordered to pay plaintiff-appellee in his capacity as President of Csar Marine Resources, Inc. the said amount of P23,639.33 when plaintiff-appellee for ulterior motives choose (sic) not to implead said corporation. It need not be emphasized that the personality and liability of the defendant-appellant and that of Csar Marine Resources, Inc., as a corporation, are separate and distinct from its (sic) other. x x x." [21]

He then prays that:

"x x x an order be issued clarifying the liability of defendant-appellant in his personal capacity as regards the amount of P23,639.33, if any, otherwise, the case be dismissed against him." [22]

Public respondent denied this motion in its Resolution of 17 August 1989 [23] on these grounds: (a) the veil of corporate fiction should be pierced in this case; (b) since petitioner did not raise the issue of separate corporate identity in the pleadings in the trial court or in his Brief, he cannot raise it for the first time in a Motion for Clarificatory Judgment; in his answer to paragraphs 3 and 4 of the complaint, he admits that it was he and not his corporation who transacted business with the private respondent; and (c) the "vales" refer not only to construction materials for which the loan to Csar Marine Resources, Inc. was supposed to be used, but also to consumables such as salt, rice, food seasoning, cigarettes, coffee, etc.; this indicates that the petitioner himself did not seriously treat the corporate affairs of Csar Marine Resources, Inc. as separate and distinct from his own.

Not satisfied with the Resolution, petitioner filed this petition. He alleges therein that respondent Court of Appeals:

"I

x x x ERRED IN HOLDING CSAR MARINE RESOURCES, INC., A DOMESTIC CORPORATION DULY ORGANIZED ACCORDING TO LAW, WHERE PETITIONER THE PRESIDENT (sic), LIABLE TO THE PRIVATE RESPONDENT IN THE AMOUNT AWARDED IN THE APPEALED DECISION WITHOUT BEING IMPEADED AS A PARTY IN THE CASE IN VIOLATION OF LAW AND THE APPLICABLE DECISIONS OF THE SUPREME COURT; and

II

x x x IN NOT DISMISSING THE CASE AGAINST THE PETITIONER." [24]

After the filing of the Comment, the Reply thereto and the Rejoinder to the latter, this Court gave due course to the petition and required the parties to submit their respective Memoranda. [25]

The records bear nothing to prop up the instant petition. The arguments adduced by the petitioner breathe no life to it.

On the contrary, the pleadings lead Us to the inescapable conclusion that the petitioner, who is himself a lawyer, is merely taking advantage of the use of the innocuous phrase "in his capacity as President" found in the dispositive portion of the challenged Amended Decision -- making the same a sanctuary for a defense which he, as hereinafter discussed, had long since abandoned or waived either deliberately or through his obliviscence. His sole purpose, of course, is to avoid complying with the liability adjudged against him by the public respondent; such avoidance is premised on the so-called newly discovered evidence offered after the public respondent had bent over backwards to grant him a new trial despite the availability of such evidence during pendency of the proceedings before the trial court. It is to be noted that he failed to assign as error in his Brief the denial by the said court of his motion for new trial on the basis thereof.

The grant of affirmative relief based on the first assigned error would really redound to the benefit of an entity which was not made a party in the main case and which did not seek to intervene therein. Therefore, it has no personality to seek a review of the public respondent's Amended Decision under Rule 45 of the Rules of Court. Only the original parties to the main case may do so. [26] Moreover, by 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 therefore and consequently made to pay. That the latter was ordered to do so as president of the corporation would not free him from the responsibility of paying the due amount simply because according to him, he had ceased to be corporate president; such conclusion stems from the fact that the public respondent, in resolving his motion for clarificatory judgment, pierced the veil of corporate fiction and cast aside the contention that both he and the corporation have separate and distinct personalities. In short, 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.[27] Significantly, petitioner does not seriously challenge the public respondent's application of the doctrine which permits the piercing of the corporate veil and the disregarding of the fiction of a separate juridical personality; this is because he knows only too well that from the very beginning, he merely used the corporation for his personal purposes.

In his answer to the complaint, petitioner volunteered the information that the pro-forma invoice which he obtained from the private respondent and which became the source of the obligations reflected in the "vales" was to support his loan. He states in part:

"x x x when defendant was looking for a 'pro-forma' invoice to support his loan with the Kilusang Kabuhayan at Kaunlaran x x x. His loan was in the name of his family corporation, CSAR Marine Resources, Inc. x x x." [28]

That it was indeed his loan is further borne out by his allegations therein that:

(a) "The accounting between plaintiff and defendant, however, was not closed because adjustments were needed in the following points:" [29]

x x x

(b) "5. While it is true that plaintiff made demands for payment of an alleged balance of P23,000.00 in March, 1983, which demand was even coursed thru the KKK Regional and Provincial Offices, after that demand of P23,000.00 defendant paid additional P5,000.00 cash to plaintiff." [30]

In his motion to reconsider the public respondent's original decision, petitioner becomes more candid in his admissions that indeed, the transaction with the private respondent and the loan obtained previously were for his personal account. Thus he asserts that:

(a) "The first document made between appellee and appellant was the pro-forma invoice." [31]

(b) "[c]onsidering that appellant had already an approved loan and was ready for release x x x." [32]

Moreover, petitioner neglected to set up in his Answer the defense that he is not personally liable to the private respondent because the "vales" were corporate obligations of Csar Marine Resources, Inc.. Of course, that defense would have been inconsistent with his volunteered admission that the KKK loan --- which resulted in the procurement of the pro-forma invoice from the private respondents -- was for his benefit. In any case, the failure to set it up as an affirmative defense amounted to a waiver thereof. Section 2, Rule 9 of the Rules of Court expressly provides that defenses and objections, other than the failure to state a cause of action and lack of jurisdiction, not pleaded either in a motion to dismiss or in the answer are deemed waived. Petitioner, as a lawyer, knows or is supposed to know this rule. Since he prepared the Answer himself, we cannot think of any possible reason why he failed to set up this defense other than his realization of its inherent weakness or his outright inexcusable negligence or forgetfulness. And even if it were due to inadvertence, he could still have subsequently availed of Section 2, Rule 10 of the Rules of Court which allows a party to amend his answer as a matter of right

within the period therein stated. Failing that, he could have resorted to Section 3 thereof which allows the making of amendments upon leave of court. On the other hand, if the lapse was due to forgetfulness, it is just unfortunate that he did not exercise due diligence in the conduct of his own affairs. He can expect no reward for it.

Then too, as correctly noted by the public respondent, petitioner, in his Brief, did not assign as error the holding of the trial court that he is solely liable for the obligation.

Petitioners volunteered admission that he procured the pro?forma invoice from the private respondent in connection with his loan from the KKK, using his family corporation in the process, and his deliberate waiver of the aforementioned defense provide an insurmountable obstacle to the viability of this petition.

WHEREFORE, for utter lack of merit, the instant petition is DENIED with costs against petitioner.

This decision is immediately executory.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Rollo, 46-51; per then Presiding Justice Rodolfo A. Nocon, concurred in by then Associate Justice Josue N. Bellosillo and Associate justice Celso Magsino.

[2] Id., 17-19.

[3] Rollo, 20-23.

[4] Id., 20.

[5] Id.

[6] Id., 22.

[7] Id., 28-29.

[8] Id., 28.

[9] Id., 30-32.

[10] Rollo, 32.

[11] Rollo, 33-36.

[12] Id., 33-34.

[13] Id., 37.

[14] Rollo, 43.

[15] Id., 44-45.

[16] Id., 46.

[17] Rollo, 47.

[18] Id., 46-51.

[19] Id., 51.

[20] Id., 53-55.

[21] Rollo, 54.

[22] Id., 55.

[23] Id., 56-58.

[24] Rollo, 11.

[25] Id., 97.

[26] Metropolitan Waterworks and Sewerage System vs. Court of Appeals, 143 SCRA 623 [1986]; MORAN, M., Comments on the Rules of Court, Vol. 2, Part II, 1979 ed., 417.

[27] CIR vs. Norton & Harrison Co., 11 SCRA 714 [1964].

[28] Rollo, 20; emphasis supplied.

[29] Id., 22; emphasis supplied.

[30] Id., 23; emphasis supplied.

[31] Id. 38; emphasis supplied.

[32] Id.; emphasis supplied.

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