

PHILIPPINE BANK OF COMMUNICATIONS, PETITIONER, VS. COURT OF APPEALS, JOSEPH L. G. CHUA AND JALECO DEVELOPMENT, INC., RESPONDENTS.

G.R. No. 92067, March 22, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition seeks the reversal of the Court of Appeals' decision affirming the earlier decision of the Regional Trial Court of Makati, Branch 150 in Civil Case No. 7889 dismissing petitioner Philippine Bank of Communications' (PBCOM) complaint for annulment of a Deed of Exchange executed by respondent Joseph L. G. Chua in favor of Jaleco Development, Inc. (JALECO). The deed of exchange was alleged to be in fraud of PBCOM as creditor of Chua who previously signed as one of the sureties in three (3) Surety Agreements executed in favor of PBCOM. It involved a transfer by Chua of his real property in exchange for shares of stocks of JALECO.

The facts of the case as summarized by the appellate court are not in dispute, to wit:

On April 14, 1976, Fortune Motors (Phils.), Inc. executed a Surety Agreement in favor of Philippine Bank of Communications (PBCOM for short) with defendant-appellee Joseph L. G. Chua, as one of the sureties (Exh. "A"). Again, on October 1, 1981, Fortune Motors, (Phils.), Inc. executed another Surety Agreement in favor of PBCOM with Chua likewise acting as one of the sureties (Exh. "A-1").

From March 7, 1983 to May 3, 1983 Fortune Motors, (Phils.) thru its authorized officers and/or representatives executed several trust receipts (Exhibits "B", "B-1", "B-2", "B-3", "B-4", "B-5" and "B-6") in favor of PBCOM, the total principal amount of which was P2,492,543.00.

On March 6, 1981, Forte Merchant Finance, Inc., executed a Surety Agreement in favor of PBCOM with Joseph L. G. Chua as one of the sureties (Exh. "A-2").

On May 13, 1983 to March 16, 1984, Forte Merchant Finance, Inc. obtained credit accommodations from PBCOM in the form of trust receipt (Exh. "B-7") and loans represented by promissory notes (Exhibits "C", "C-1", "C-2", and "C-3") in the total amount of P2,609,862.00.

On October 24, 1983 Chua executed a Deed of Exchange (Exh. "F") transferring a parcel of land with improvements thereon covered by TCT No. S-52808 (343721) to JALECO Development, Inc., in exchange for 12,000 shares of said Corporation with a par value of P1,200,000.00. As a result, TCT No. 126573 of the Register of Deeds of Rizal covering the aforementioned parcel of land was issued in the name of JALECO Development, Inc., on November 24, 1983.

On November 2, 1983, Chua sold 6,000 shares of JALECO Development, Inc., to Mr. Chua Tiong King for P600,000.00 (Exh. "10" - Chua; Exh. "3"-JALECO) and another 6,000 shares of JALECO Development, Inc. to Guillermo Jose, Jr. also for P600,000.00 (Exh. "5"-JALECO) and Caw Le Ja Chua, wife of Chua sold the 6,000 share of JALECO Development, Inc., to Chua Tiong King for P200,000.00 (Exh. "11"-Chua).

In the meanwhile, for failure of both Fortune Motors (Phils.), Inc. and Forte Merchant Finance, Inc. to meet their respective financial obligations with PBCOM, the latter filed Civil Case No. 84-25159 against Fortune Motors (Phils.), Inc., Joseph L. G. Chua, George D. Tan, Edgar L. Rodriguez and Jose C. Alcantara and Civil Case No. 84--25160 against Forte Merchant Finance, Inc., Joseph L. G. Chua, George O. Tan and Edgar L. Rodriguez with the Regional Trial Court of Manila, both for Sum of Money with Writ of Preliminary Attachment where PBCOM was able to obtain a notice of levy on the properties of Fortune Motors (Phils.) covered by TCT No. S--41915 (Makati, MM IV) and S-54185 to 86 (Province of Rizal). When plaintiff was able to locate Chua's former property situated in Dasmariñas, Makati, Metro Manila, covered by TCT No. S-52808 containing an area of 1,541 square meters which was already transferred to JALECO Development, Inc., under TCT No. 126573 by virtue of the Deed of Exchange dated October 24, 1983, PBCOM filed Civil Case No. 7889 for annulment of Deed of Exchange with the Regional Trial Court of Makati, Metro Manila.

In due course, a decision was rendered on September 18, 1986 dismissing said case." (Rollo, pp. 37-39).

In affirming the dismissal of the complaint, the appellate court stated: The Deed of Exchange was neither submitted nor offered as evidence rendering the petitioner's cause of action untenable. Furthermore, the appellate court stated that the case for annulment of the deed of exchange was filed at a time when two (2) other cases for sums of money were filed against the respondent as one of the sureties of Fortune Motors (Phils.), Inc. (Civil Case No. 84-25159) and of Forte Merchant Finance, Inc. (Civil Case No. 84-25160) which are both pending. Hence, the annulment case which was filed in the hope of receiving favorable judgments in the two (2) other cases in the future is premature. Finally, the appellate court stated that the petitioner's interests in the meantime are sufficiently protected by a writ of preliminary attachment on several properties of one of the principal debtors.

The petition is impressed with merit.

The records reveal the following:

In its petition filed with the lower court, the petitioner alleged among others:

xxx xxx xxx

"12. That plaintiff was able to locate a parcel of land with buildings and improvements thereon situated in Dasmariñas Village, Makati, Metro Manila, with T. C. T. No. S-52808, containing an area of 1,514 square meters, but the said property was transferred to the name of a corporation named Jaleco Development Inc., pursuant to the Deed of Exchange executed between Defendant Joseph L. G. Chua and Jaleco Development, Inc., dated October 24, 1983, photocopy of T. C. T. No. S--52808, the Deed of Exchange, and T. C. T. No. 126573 are hereto attached as Annexes E, F, and G; and made integral part hereof;" (Rollo, pp. 95-96)

xxx xxx xxx

In his answer, respondent Chua stated:

xxx xxx xxx

"That paragraph 12, is admitted; the Said Deed of Exchange (Annex "F") was done in good faith, was done in accordance with law and same is valid;" (Rollo, p. 44)

xxx xxx xxx

Chua's admission of the existence of the Deed of Exchange, attached to the "Petition" as Annex "F" falls squarely within the scope of Judicial Admissions under Section 4, Rule 129 of the Rules of Court. The rule provides:

"Judicial Admissions. - An admission, verbal or written, made by a party in the course of the proceeding in the same case, does not require proof. The admission may be contradicted only by showing that it was made

through palpable mistake or that no such admission was made."

As early as 1925 in the case of *Asia Banking Corporation v. Walter E. Olsen & Co.* (48 Phil. 529), we have ruled that documents attached to the complaint are considered a part thereof and may be considered as evidence although they were not introduced as such. We said:

"Another error assigned by the appellant is the fact that the lower court took into consideration the documents attached to the complaint as a part thereof, without having been expressly introduced in evidence. This was no error. In the answer of the defendants there was no denial under oath of the authenticity of these documents. Under section 103 of the Code of Civil Procedure, the authenticity and due execution of these documents must, in that case, be deemed admitted. The effect of this is to relieve the plaintiff from the duty of expressly presenting such documents as evidence. The court, for the proper decision of the case, may and should consider, without the introduction of evidence, the facts admitted by the parties." (at p. 532)

We reiterated this principle in the later case of *Bravo, Jr. v. Borja* (134 SCRA 466 [1985]). In that case we said:

"But respondent judge claims that petitioner has not proved his minority. This is inaccurate. In the motion for bail, petitioner alleged that he was a minor of 16 and this averment was never challenged by the prosecution. Subsequently, in his memorandum in support of the motion for bail, petitioner attached a copy of his birth certificate. And finally, after respondent Judge had denied the motion for bail, petitioner filed a motion for reconsideration, attaching thereto a certified true copy of his birth certificate. Respondent Judge however refused to take cognizance of petitioner's unchallenged minority allegedly because the certificate of birth was not offered in evidence. This was error because evidence of petitioner's minority was already a part of the record of the case. It was properly filed in support of a motion. It would be a needless formality to offer it in evidence. Respondent Judge therefore acted with grave abuse of discretion in disregarding it."

For its part, JALECO stated in its Answer:

xxx xxx xxx

"2. That it has no knowledge or information sufficient to form a belief as to the truth of the allegation contained in pars. 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of the Petitioner;" (Emphasis supplied)

Paragraph 12 refers to the deed of exchange in the petition.

The Deed of Exchange was attached to the petition. Necessarily, JALECO's contention that it has no knowledge or information sufficient to form a belief as to the truth of the deed of exchange becomes an invalid or ineffective denial pursuant to the Rules of Court. Under the circumstances, the petitioner could have easily asserted whether or not it executed the deed of exchange. The ruling in *Capitol Motors Corporations v. Yabut* (32 SCRA 1 [1970]) applies:

"We agree with defendant-appellant that one of the modes of specific denial contemplated in Section 10, Rule 8, is a denial by stating that the defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment in the complaint. The question, however, is whether paragraph 2 of the defendant-appellant's answer constitutes a specific denial under the said rule. We do not think so. In *Warner Barnes & Co., Ltd. v. Reyes, et al.* G. R. No. L-9531, May 14, 1958 (103 Phil., 662), this Court said that the rule authorizing an answer to the effect that the defendant has no knowledge or information sufficient to form a belief as to the truth of an averment and giving such answer the effect of a denial, does not apply where the fact as to which want of knowledge is asserted, is so plainly and necessarily within the defendant's knowledge that his averment of ignorance must be palpably untrue. In said case the suit was one for foreclosure of mortgage, and a copy of the deed of mortgage was attached to the complaint; thus, according to this Court, it would have been easy for the defendants to specifically allege in their answer whether or not they had executed the alleged mortgage. The same thing can be said in the present case, where a copy of the promissory note sued

upon was attached to the complaint. x x x"

Considering the admission by Chua and the non-denial by JALECO of the document forming part of the petition, the appellate court committed reversible error in not admitting the deed of exchange as evidence.

Furthermore, we find as not well-taken the appellate court's ruling that the pendency of two (2) other cases for collection of money against respondent Chua, among others as surety of Fortune Motors (Phils.), Inc. and Forte Merchant Finance, Inc., renders the petition for annulment of deed of exchange premature.

For failure of both Fortune Motors (Phils), Inc. and Forte Merchant Finance, Inc. to pay their obligations with the petitioner, the latter filed the two civil cases against Fortune Motors (Phils.), Inc. and Forte Merchant Finance, Inc. and respondent Chua, among others with the Regional Trial Court of Manila. The petitioner was granted a writ of attachment as a result of which properties belonging to Fortune Motors (Phils.) were attached. It turned out, however, that the attached properties of Fortune Motors (Phils.), Inc. were already previously attached/mortgaged to prior lien holders in the amount of about P70,000,000.00. As regards Forte Merchant Finance, Inc., it appears that it has no property to satisfy the debts it incurred with PBCOM. The record further shows that as regards Chua, the property subject of the Deed of Exchange between him and JALECO was his only property.

Under these circumstances, the petitioner's petition for annulment of the deed of exchange on the ground that the deed was executed in fraud of creditors, despite the pendency of the two (2) other civil cases is well-taken.

As surety for the financial obligations of Fortune Motors (Phils.), Inc. and the Forte Merchant Finance, Inc., with the petitioner, respondent Chua bound himself solidarily liable with the two (2) principal debtors. (Article 2047, Civil Code) The petitioner may therefore demand payment of the whole financial obligations of Fortune Motors (Phils.), Inc and Forte Finance, Inc., from Chua, if the petitioner chooses to go directly after him. Hence, since the only property of Chua was sold to JALECO after the debts became due, the petitioner has the right to file an annulment of the deed of exchange between Chua and JALECO wherein Chua sold his only property to JALECO to protect his interests and so as not to make the judgments in the two (2) cases illusory:

"Rescission requires the existence of creditors at the time of the fraudulent alienation, and this must be proved as one of the bases of the judicial pronouncement setting aside the contract; without prior existing debts, there can be neither injury nor fraud. The credit must be existing at the time of the fraudulent alienation, even if it is not yet due. But at the time the accion pauliana is brought, the credit must already be due. Therefore, credits with suspensive term or condition are excluded, because the accion pauliana presupposes a judgment and unsatisfied execution, which cannot exist when the debt is not yet demandable at the time the rescissory action is brought. Rescission is a subsidiary action, which presupposes that the creditor has exhausted the property of the debtor, which is impossible in credits which cannot be enforced because of the term or condition.

While it is necessary that the credit of the plaintiff in the accion pauliana must be prior to the fraudulent alienation, the date of the judgment enforcing it is immaterial. Even if the judgment be subsequent to the alienation, it is merely declaratory, with retroactive effect to the date when the credit was constituted. x x x." (Emphasis Supplied) (Tolentino, Civil Code of the Philippines, Vol. IV 1986 Ed. pp. 578-579)

Parenthetically, the appellate court's observation that the petitioner's interests are sufficiently protected by a writ of attachment on the properties of Fortune Finance (Phils.), Inc. has neither legal nor factual basis.

One other point.

The trial court disregarded the ex-parte evidence adduced by the petitioner against JALECO when the latter was declared in default on the ground that the ex-parte proceedings were conducted by the Deputy Clerk of Court

which is not allowed in accordance with the ruling in the case of *Lim Tanhu v. Ramolete* (66 SCRA 425 [1975]). That ruling has already been overruled in the later case of *Gochangco v. CFI of Negros Occidental* (157 SCRA 40 [1988]), wherein we said:

"The respondent Court also declared null and void 'the reception of evidence ex parte before x x (the) deputy clerk of court.' It invoked what it termed 'the doctrinal rule laid down in the recent case of *Lim Tan Hu v. Ramolete*, 66 SCRA 430, promulgated on August 29, 1975 (inter alia declaring that) a Clerk of Court is not legally authorized to receive evidence ex-parte.'

Now, that declaration does not reflect long observed and established judicial practice with respect to default cases. It is not quite consistent, too, with the several explicitly authorized instances under the Rules where the function of receiving evidence and even of making recommendatory findings of facts on the basis thereof may be delegated to commissioners, inclusive of the Clerk of Court. These instances are set out in Rule 33, treating of presentation of evidence before commissioners, etc., in particular situations, such as when the trial of an issue of fact requires the examination of a long account, or when the taking of an account is necessary for the information of the court, or when issues of fact arise otherwise than upon the pleadings or while carrying a judgment or order into effect; Rules 67 and 69, dealing with submission of evidence also before commissioners in special civil actions of eminent domain and partition, respectively; Rule 86 regarding trials of contested claims in judicial proceedings for the settlement of a decedent's estate; Rule 136 empowering the clerk of court, when directed by the judge inter alia to receive evidence relating to the accounts of executors, administrators, guardians, trustees and receivers, or relative to the settlement of the estates of deceased persons, or to guardianships, trusteeships, or receiverships. In all these instances, the competence of the clerk of court is assumed. Indeed, there would seem, to be sure, nothing intrinsically wrong in allowing presentation of evidence ex parte before a Clerk of Court. Such a procedure certainly does not foreclose relief to the party adversely affected who, for valid cause and upon appropriate and seasonable application, may bring about the undoing thereof or the elimination of prejudice thereby caused to him; and it is, after all, the Court itself which is duty bound and has the ultimate responsibility to pass upon the evidence received in this manner, discarding in the process such proofs as are incompetent and then declare what facts have thereby been established. In considering and analyzing the evidence preparatory to rendition of judgment on the merits, it may not unreasonably be assumed that any serious error in the ex parte presentation of evidence, prejudicial to any absent party, will be detected and duly remedied by the Court, and/or may always, in any event' be drawn to its attention by any interested party. x x x."

Consequently, there is no legal impediment to the admissibility of the evidence presented by the petitioner against JALECO.

These findings pave the way to the resolution of the case on its merits.

Respondent Chua admitted his liability under the various Surety Agreements executed on several dates by Fortune Motors (Phils.), Inc. and Forte Merchants Finance, Inc. as principal debtors, respondent Chua, among others, as surety and the petitioner as creditor. He also admitted in the Pre-Trial Order that he has no other properties sufficient to cover the claims of the petitioner except for the Dasmariñas property, subject matter of the Deed of Exchange.

During the above-mentioned proceedings, the petitioner established the following:

After the petitioner attached the properties of Fortune Motors (Phils.), Inc. by virtue of the writ of attachment filed in the two (2) civil cases, it found out the same properties were previously mortgaged and/or attached in the amount of about P70,000,000.00. Thereafter, the petitioner was able to locate a property in the name of respondent Chua. This property was, however, already sold to JALECO on November 24, 1983 pursuant to a Deed of Exchange and the Register of Deeds of Makati had already issued T. C. T. No. 126573 covering the

property in the name of JALECO.

Upon investigation with the Securities and Exchange Commission (SEC), the petitioner gathered the following facts based on the SEC records: a) JALECO was organized on November 2, 1982 with a capital stock of P5,000,000.00; b) the stockholders of said corporation were mostly members of the immediate family of Joseph L. G. Chua; c) on April 4, 1983, a Board Resolution was passed authorizing the issuance of 12,000 shares of stocks worth P1,200,000.00 to a new subscriber and non-stockholder Joseph L. G. Chua; and d) prior to the acquisition by the corporation of the property located at Dasmariñas Village, Makati, the percentage of the shareholding of the members of the family of Joseph L. G. Chua was 88% while after the acquisition of the property and the issuance of the shares to Chua, they owned 94% of the corporation.

The evidence on record also shows that despite the "sale" of the Dasmariñas property, respondent Chua continued to stay in the said property.

The well settled principle is that a corporation "is invested by law with a separate personality, separate and distinct from that of the person composing it as well as from any other legal entity to which it may be related." (Tan Boon Bee & Co., Inc. v. Jarencio, 163 SCRA 205 [1988] citing Yutivo and Sons Hardware Company v. Court of Tax Appeals, 1 SCRA 160 [1961]; Emilio Cano Enterprises, Inc. v. Court of Industrial Relations, 13 SCRA 290 [1965]; and Western Agro Industrial Corporation and Antonio Rodriguez v. Court of Appeals, and Sia'a Automotive and Diesel Parts, Inc., G.R. No. 82558, August 20, 1990) However, the separate personality of the corporation may be disregarded, or the veil of corporate fiction pierced when the corporation is used "as a cloak or cover for fraud or illegality, or to work an injustice, or where necessary to achieve equity or when necessary for the protection of creditors." (Sulo ng Bayan, Inc. V. Araneta, Inc., 72 SCRA 347 [1976] cited in Tan Boon Bee & Co., Inc. v. Jarencio, supra; Western Agro Industrial Corporation, et al. v. Court of Appeals, supra.)

In the instant case, the evidence clearly shows that Chua and his immediate family control JALECO. The Deed of Exchange executed by Chua and JALECO had for its subject matter the sale of the only property of Chua at the time when Chua's financial obligations became due and demandable. The records also show that despite the "sale", respondent Chua continued to stay in the property, subject matter of the Deed of Exchange.

These circumstances tend to show that the Deed of Exchange was not what it purports to be. Instead, they tend to show that the Deed of Exchange was executed with the sole intention to defraud Chua's creditor - the petitioner. It was not a bona fide transaction between JALECO and Chua. Chua entered a sham or simulated transaction with JALECO for the sole purpose of transferring the title of the property to JALECO without really divesting himself of the title and control of the said property.

Hence, JALECO's separate personality should be disregarded and the corporation veil pierced. In this regard, the transaction leading to the execution of the Deed of Exchange between Chua and JALECO must be considered a transaction between Chua and himself and not between Chua and JALECO. Indeed, Chua took advantage of his control over JALECO to execute the Deed of Exchange to defraud his creditor, the petitioner herein. JALECO was but a mere alter ego of Chua. (See Tan Boon Bee & Co., Inc. v. Jarencio, supra)

WHEREFORE, the instant petition is GRANTED. The questioned decision dated February 8, 1990 of the Court of Appeals is REVERSED and SET ASIDE. The Deed of Exchange executed by and between Joseph L. G. Chua and JALECO Development, Inc., and the title issued in the name of JALECO on the basis thereof are declared NULL and VOID. Costs against the private respondents.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Davide, Jr., JJ., concur.

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