

SIBAGAT TIMBER CORPORATION, PETITIONER, VS. ADOLFO B. GARCIA, USIPHIL, INC. AND STRONGHOLD INSURANCE CO., INC., RESPONDENTS.

G.R. No. 98185. December 11, 1992

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals dated February 15, 1991 in CA-G.R. No. 20799 entitled, "Sibagat Timber Corp. vs. Adolfo B. Garcia, et al.," affirming the decision of the Regional Trial Court which dismissed the petitioner's petition for certiorari, prohibition and injunction with restraining order and writ of preliminary injunction and damages (Spl. Case No. 548, RTC, Branch I, Butuan City).

On August 30, 1988, respondent Sheriff Adolfo B. Garcia, who was entrusted with the implementation of the writ of execution issued by the Regional Trial Court, Branch 147, Makati, Metro Manila in Civil Case No. 7180 entitled, "USIPHIL, INC. vs. Del Rosario and Sons Logging Enterprises, Inc.," levied on the following personal properties of Del Rosario & Sons, Inc.:

One (1) Unit CAT Grader with SN 99E--5016

One (1) Unit Generating Set with Cummins

Engine No. 1074304 Model V-855QC

and Generator 125 KVA No. HA-90071

1720-1 and Panel Switch Board

One (1) Generating Set with CAT

D?311 Series H No. 51B4241

w/ Generator No. 30TH 211 1800

RPM, 60 Cycles, 30KVA

One (1) pc. Engine Block CAT D-4600

One TD-25B w/ Hyster D988, Triple

Drum Model BY B14 SN-9PI55E

One TD-25A w/ No. Engine Number, w/

Radiator and X-2 Triple Drum

Model 149 Yarder and blade

which he scheduled for sale at public auction on September 7, 1988 at 10:00 o'clock in the morning. He also levied on:

One (1) Unit Reo Logging Truck (5)

tonner not in running condition; and

One (1) Unit White Logging (5)

tonner not in running condition

which he scheduled for sale at public auction on September 8, 1988.

On the same date (August 30, 1988) that levy was made by the sheriff, the petitioner herein, through Mariano Rana, filed a third-party claim alleging that it is the lawful owner of the levied machinery and equipment, by virtue of deeds of sale executed in its favor by Del Rosario & Sons Logging Enterprises, Inc.

Pursuant to Section 17, Rule 39 of the Rules of Court, an indemnity bond was posted by the judgment creditor, USIPHIL, Inc., to indemnify the respondent sheriff against the claim of the third-party claimant.

On September 6, 1988, at 2:00 P.M., petitioner filed in the Regional Trial Court of Butuan City, a petition for "Certiorari, Prohibition and Injunction with Restraining Order & Writ of Preliminary Injunction and Damages" in Special Civil Case No. 548. A temporary restraining order was issued on September 6, 1988 by the Executive Judge of that court.

On September 7, 1988, at 11:10 A.M., the court employees who were deputized to serve the restraining order arrived at the place where the auction sale was to be held. However, they were told by Sheriff Garcia that the auction sale was finished at 10:30 A.M. yet, and that a certificate of sale for each of the personal properties to be auctioned on that day had already been issued to USIPHIL, INC., the judgment creditor, as the only bidder and purchaser.

After the hearing on the application for preliminary injunction was held on September 15, 1988, the parties were directed to submit simultaneous memoranda. Thereafter the case was deemed submitted for resolution. In the meantime, respondent USIPHIL, INC. filed a formal motion to dismiss the petition which the trial court granted on February 28, 1990.

On March 9, 1990, the petitioner appealed the order of dismissal to the Court of Appeals (CA G.R. No. 20799). On February 15, 1991, the Court of Appeals dismissed the appeal.

Petitioner's motion for reconsideration was denied by the Court of Appeals. Hence, this petition for review under Rule 45 of the Rules of Court.

The main issue raised by the petitioner is the supposed error of the Court of Appeals in piercing the veil of corporate entity and in holding that the third-party claimant, herein petitioner Sibagat Corporation, is not a separate and distinct entity from the judgment debtor, Del Rosario & Sons Logging Enterprises, Inc.

As pointed out by the Court of Appeals in its decision:

"Gleaned from the records of this case, Mariano Rana, the third-party claimant for and in behalf of petitioner testified, among others, that he is the office manager of Sibagat Timber Corporation (p. 58, Record); that he is the administrative manager of Del Rosario and Sons Logging Enterprises, Inc. in a concurrent capacity (p. 60 id.); that the officers of the Sibagat Timber Corporation are: Mr. Policarpio C. Del Rosario, President and General Manager; Miss Conchita C. Del Rosario, Vice-President and General Manager (p. 60, id.); and the Directors are: Policarpio del Rosario, Jr., Cristina del Rosario, Mrs. Jasmin del Rosario, and Vicente C. del

Rosario (pp. 61-63, id.). On the part of Del Rosario and Sons Logging Enterprises, Inc., the officers of the company are: Mr. Policarpio C. del Rosario, President; Miss Conchita del Rosario, Vice-President/General Manager/Director and Treasurer; Mrs. Jasmin A. del Rosario, Querubin del Rosario, and Cristeta del Rosario, respectively." (p. 29, Rollo.)

The circumstances that: (1) petitioner and Del Rosario & Sons Logging Enterprises, Inc. hold office in the same building; (2) the officers and directors of both corporations are practically the same; and (3) the Del Rosarios assumed management and control of Sibagat and have been acting for and managing its business (p. 30, Rollo), bolster the conclusion that petitioner is an alter ego of the Del Rosario & Sons Logging Enterprises, Inc.

The rule is that the veil of corporate fiction may be pierced when made as a shield to perpetrate fraud and/or confuse legitimate issues (*Jacinto vs. CA*, 198 SCRA 211). The theory of corporate entity was not meant to promote unfair objectives or otherwise, to shield them (*Villanueva vs. Adre*, 172 SCRA 876). Likewise, where it appears that two business enterprises are owned, conducted, and controlled by the same parties, both law and equity will, when necessary to protect the rights of third persons, disregard the legal fiction that two corporations are distinct entities, and treat them as identical (*Phil. Veterans Investment Development Corp. vs. CA*, 181 SCRA 669).

The petitioner further contends that the Court of Appeals erroneously disregarded the decision of this Court in G.R. No. 84497 entitled, "*Alfonso Escovilla, Jr., Cecilio M. Meris and Cuison Engineering and Machinery Co., Inc., Petitioner vs. The Hon. Court of Appeals, Sibagat Timber Corporation and Conchita del Rosario, Respondents*," wherein this Court held that private respondents (herein petitioner) are the actual owners of the properties subject of execution by virtue of a sale in their favor by Del Rosario & Sons Logging Enterprises, Inc.

That allegation has no merit. The issue raised in that case was "whether or not an action for prohibition will prosper as a remedy for acts already accomplished." It was a procedural question, not the ownership of the properties subject of the execution.

The issue of ownership being raised now by the petitioner involves a factual question requiring an assessment of the evidence. This may not be done in a petition for review under Rule 45 for it is not the function of this Court to examine and weigh evidence already considered in the proceedings below. Our jurisdiction is limited to reviewing only errors of law that may have been committed by the lower courts (*Navarra vs. CA*, 204 SCRA 850).

Assuming arguendo that this Court in G.R. No. 84497 held that petitioner is the owner of the properties levied under execution, that circumstance will not be a legal obstacle to the piercing of the corporate fiction. As found by both the trial and appellate courts, petitioner is just a conduit, if not an adjunct of Del Rosario & Sons Logging Enterprises, Inc. In such a case, the real ownership becomes unimportant and may be disregarded for the two entities may/can be treated as only one agency or instrumentality.

"The corporate entity is disregarded where a corporation is the mere alter ego, or business conduit of a person or where the corporation is so organized and controlled and its affairs are so conducted, as to make it merely an instrumentality, agency, conduit or adjunct of another corporation." (*Aguedo F. Agbayani Commercial Laws of the Philippines*, Vol. 3, 1984 Ed., p. 30, citing decided cases.)

WHEREFORE, the petition for review is DENIED and the decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Cruz, (Chairman), Padilla, and Bellosillo, JJ., concur.

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