



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PHILIPPINE NATIONAL BANK,
Petitioner,

G.R. No. 167530

— versus —

HYDRO RESOURCES
CONTRACTORS CORPORATION,
Respondent.

X ----- X

ASSET PRIVATIZATION TRUST,
Petitioner,

G.R. No. 167561

— versus —

HYDRO RESOURCES
CONTRACTORS CORPORATION,
Respondent.

X ----- X

DEVELOPMENT BANK OF THE
PHILIPPINES,
Petitioner,

G.R. No. 167603

Present:

SERENO, *CJ.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ.*

— versus —

HYDRO RESOURCES
CONTRACTORS CORPORATION,
Respondent.

Promulgated:

MAR 13 2013

X ----- X

DECISION**LEONARDO-DE CASTRO, J.:**

These petitions for review on *certiorari*¹ assail the Decision² dated November 30, 2004 and the Resolution³ dated March 22, 2005 of the Court of Appeals in CA-G.R. CV No. 57553. The said Decision affirmed the Decision⁴ dated November 6, 1995 of the Regional Trial Court (RTC) of Makati City, Branch 62, granting a judgment award of ₱8,370,934.74, plus legal interest, in favor of respondent Hydro Resources Contractors Corporation (HRCC) with the modification that the Privatization and Management Office (PMO), successor of petitioner Asset Privatization Trust (APT),⁵ has been held solidarily liable with Nonoc Mining and Industrial Corporation (NMIC)⁶ and petitioners Philippine National Bank (PNB) and Development Bank of the Philippines (DBP), while the Resolution denied reconsideration separately prayed for by PNB, DBP, and APT.

Sometime in 1984, petitioners DBP and PNB foreclosed on certain mortgages made on the properties of Marinduque Mining and Industrial Corporation (MMIC). As a result of the foreclosure, DBP and PNB acquired substantially all the assets of MMIC and resumed the business operations of the defunct MMIC by organizing NMIC.⁷ DBP and PNB owned 57% and 43% of the shares of NMIC, respectively, except for five qualifying shares.⁸ As of September 1984, the members of the Board of Directors of NMIC, namely, Jose Tengco, Jr., Rolando Zosa, Ruben Ancheta, Geraldo Agulto, and Faustino Agbada, were either from DBP or PNB.⁹

Subsequently, NMIC engaged the services of Hercon, Inc., for NMIC's Mine Stripping and Road Construction Program in 1985 for a total contract price of ₱35,770,120. After computing the payments already made by NMIC under the program and crediting the NMIC's receivables from Hercon, Inc., the latter found that NMIC still has an unpaid balance of ₱8,370,934.74.¹⁰ Hercon, Inc. made several demands on NMIC, including a letter of final demand dated August 12, 1986, and when these were not heeded, a complaint for sum of money was filed in the RTC of Makati,

¹ Under Rule 45 of the Rules of Court.

² *Rollo* (G.R. No. 167530), pp. 56-68; penned by Associate Justice Romeo A. Brawner with Associate Justices Mariano C. del Castillo (now a member of this Court) and Magdangal M. de Leon, concurring.

³ *Id.* at 70.

⁴ *Id.* at 122-136; penned by Judge Roberto C. Diokno.

⁵ For purposes of these petitions, the PMO will be referred to as the APT.

⁶ Now, the Philnico Processing Corporation. (*Rollo* [G.R. No. 167561], p. 46.)

⁷ *Rollo* (G.R. No. 167530), p. 57.

⁸ *Id.* at 65.

⁹ *Id.* at 135.

¹⁰ *Id.* at 57.

Branch 136 seeking to hold petitioners NMIC, DBP, and PNB solidarily liable for the amount owing Hercon, Inc.¹¹ The case was docketed as Civil Case No. 15375.

Subsequent to the filing of the complaint, Hercon, Inc. was acquired by HRCC in a merger. This prompted the amendment of the complaint to substitute HRCC for Hercon, Inc.¹²

Thereafter, on December 8, 1986, then President Corazon C. Aquino issued Proclamation No. 50 creating the APT for the expeditious disposition and privatization of certain government corporations and/or the assets thereof. Pursuant to the said Proclamation, on February 27, 1987, DBP and PNB executed their respective deeds of transfer in favor of the National Government assigning, transferring and conveying certain assets and liabilities, including their respective stakes in NMIC.¹³ In turn and on even date, the National Government transferred the said assets and liabilities to the APT as trustee under a Trust Agreement.¹⁴ Thus, the complaint was amended for the second time to implead and include the APT as a defendant.

In its answer,¹⁵ NMIC claimed that HRCC had no cause of action. It also asserted that its contract with HRCC was entered into by its then President without any authority. Moreover, the said contract allegedly failed to comply with laws, rules and regulations concerning government contracts. NMIC further claimed that the contract amount was manifestly excessive and grossly disadvantageous to the government. NMIC made counterclaims for the amounts already paid to Hercon, Inc. and attorney's fees, as well as payment for equipment rental for four trucks, replacement of parts and other services, and damage to some of NMIC's properties.¹⁶

For its part, DBP's answer¹⁷ raised the defense that HRCC had no cause of action against it because DBP was not privy to HRCC's contract with NMIC. Moreover, NMIC's juridical personality is separate from that of DBP. DBP further interposed a counterclaim for attorney's fees.¹⁸

PNB's answer¹⁹ also invoked lack of cause of action against it. It also raised estoppel on HRCC's part and laches as defenses, claiming that the inclusion of PNB in the complaint was the first time a demand for payment was made on it by HRCC. PNB also invoked the separate juridical

¹¹ Id. at 123 and 133.

¹² Id. at 122.

¹³ *Rollo* (G.R. No. 167561), pp. 78-103 and 104-113, respectively.

¹⁴ *Rollo* (G.R. No. 167530), pp. 116-121.

¹⁵ Records, Vol. I, pp. 79-87.

¹⁶ Id. at 81-85.

¹⁷ Id. at 56-64.

¹⁸ Id. at 58-60.

¹⁹ Id. at 47-51.

personality of NMIC and made counterclaims for moral damages and attorney's fees.²⁰

APT set up the following defenses in its answer²¹: lack of cause of action against it, lack of privity between Hercon, Inc. and APT, and the National Government's preferred lien over the assets of NMIC.²²

After trial, the RTC of Makati rendered a Decision dated November 6, 1995 in favor of HRCC. It pierced the corporate veil of NMIC and held DBP and PNB solidarily liable with NMIC:

On the issue of whether or not there is sufficient ground to pierce the veil of corporate fiction, this Court likewise finds for the plaintiff.

From the documentary evidence adduced by the plaintiff, some of which were even adopted by defendants and DBP and PNB as their own evidence (Exhibits "I", "I-1", "I-2", "I-3", "I-4", "I-5", "I-5-A", "I-5-B", "I-5-C", "I-5-D" and submarkings, inclusive), it had been established that except for five (5) qualifying shares, [NMIC] is owned by defendants DBP and PNB, with the former owning 57% thereof, and the latter 43%. As of September 24, 1984, all the members of [NMIC]'s Board of Directors, namely, Messrs. Jose Tengco, Jr., Rolando M. Zosa, Ruben Ancheta, Geraldo Agulto, and Faustino Agbada are either from DBP or PNB (Exhibits "I-5", "I-5-C", "I-5-D").

The business of [NMIC] was then also being conducted and controlled by both DBP and PNB. In fact, it was Rolando M. Zosa, then Governor of DBP, who was signing and entering into contracts with third persons, on behalf of [NMIC].

In this jurisdiction, it is well-settled that "where it appears that the 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 legal fiction that two (2) corporations are distinct entities, and treat them as identical." (Phil. Veterans Investment Development Corp. vs. CA, 181 SCRA 669).

From all indications, it appears that [NMIC] is a mere adjunct, business conduit or alter ego of both DBP and PNB. Thus, the DBP and PNB are jointly and severally liable with [NMIC] for the latter's unpaid obligations to plaintiff.²³

Having found DBP and PNB solidarily liable with NMIC, the dispositive portion of the Decision of the trial court reads:

²⁰ Id. at 49-50.

²¹ Id., Vol. II, pp. 432-436.

²² Id. at 434.

²³ *Rollo* (G.R. No. 167530), p. 135.

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiff HYDRO RESOURCES CONTRACTORS CORPORATION and against the defendant[s] NONOC MINING AND INDUSTRIAL CORPORATION, DEVELOPMENT BANK OF THE PHILIPPINES and PHILIPPINE NATIONAL BANK, ordering the aforementioned defendants, to pay the plaintiff jointly and severally, the sum of ₱8,370,934.74 plus legal interest thereon from date of demand, and attorney's fees equivalent to 25% of the judgment award.

The complaint against APT is hereby dismissed. However, APT, as trustee of NONOC MINING AND INDUSTRIAL CORPORATION is directed to ensure compliance with this Decision.²⁴

DBP and PNB filed their respective appeals in the Court of Appeals. Both insisted that it was wrong for the RTC to pierce the veil of NMIC's corporate personality and hold DBP and PNB solidarily liable with NMIC.²⁵

The Court of Appeals rendered the Decision dated November 30, 2004, affirmed the piercing of the veil of the corporate personality of NMIC and held DBP, PNB, and APT solidarily liable with NMIC. In particular, the Court of Appeals made the following findings:

In the case before Us, it is indubitable that [NMIC] was owned by appellants DBP and PNB to the extent of 57% and 43% respectively; that said two (2) appellants are the only stockholders, with the qualifying stockholders of five (5) consisting of its own officers and included in its charter merely to comply with the requirement of the law as to number of incorporators; and that the directorates of DBP, PNB and [NMIC] are interlocked.

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We find it therefore correct for the lower court to have ruled that:

“From all indications, it appears that [NMIC] is a mere adjunct, business conduit or alter ego of both DBP and PNB. Thus, the DBP and PNB are jointly and severally liable with [NMIC] for the latter's unpaid obligation to plaintiff.”²⁶ (Citation omitted.)

The Court of Appeals then concluded that, “in keeping with the concept of justice and fair play,” the corporate veil of NMIC should be pierced, ratiocinating:

For to treat [NMIC] as a separate legal entity from DBP and PNB for the purpose of securing beneficial contracts, and then using such separate

²⁴ Id. at 136.

²⁵ Briefs for Defendant-Appellants Philippine National Bank and Development Bank of the Philippines. (CA *rollo*, pp. 104-127 and 167-190, respectively.)

²⁶ *Rollo* (G.R. No. 167530), pp. 65-66.

entity to evade the payment of a just debt, would be the height of injustice and iniquity. Surely that could not have been the intendment of the law with respect to corporations. x x x.²⁷

The dispositive portion of the Decision of the Court of Appeals reads:

WHEREFORE, premises considered, the Decision appealed from is hereby MODIFIED. The judgment in favor of appellee Hydro Resources Contractors Corporation in the amount of ₱8,370,934.74 with legal interest from date of demand is hereby AFFIRMED, but the dismissal of the case as against Assets Privatization Trust is REVERSED, and its successor the Privatization and Management Office is INCLUDED as one of those jointly and severally liable for such indebtedness. The award of attorney's fees is DELETED.

All other claims and counter-claims are hereby DISMISSED.

Costs against appellants.²⁸

The respective motions for reconsideration of DBP, PNB, and APT were denied.²⁹

Hence, these consolidated petitions.³⁰

All three petitioners assert that NMIC is a corporate entity with a juridical personality separate and distinct from both PNB and DBP. They insist that the majority ownership by DBP and PNB of NMIC is not a sufficient ground for disregarding the separate corporate personality of NMIC because NMIC was not a mere adjunct, business conduit or *alter ego* of DBP and PNB. According to them, the application of the doctrine of piercing the corporate veil is unwarranted as nothing in the records would show that the ownership and control of the shareholdings of NMIC by DBP and PNB were used to commit fraud, illegality or injustice. In the absence of evidence that the stock control by DBP and PNB over NMIC was used to commit some fraud or a wrong and that said control was the proximate cause of the injury sustained by HRCC, resort to the doctrine of "piercing the veil of corporate entity" is misplaced.³¹

DBP and PNB further argue that, assuming they may be held solidarily liable with NMIC to pay NMIC's exclusive and separate corporate indebtedness to HRCC, such liability of the two banks was transferred to and

²⁷ Id. at 66.

²⁸ Id. at 67.

²⁹ Id. at 70.

³⁰ Upon motion of HRCC, the petitions separately filed by DBP, PNB, and APT have been consolidated pursuant to this Court's Resolution dated September 26, 2005.

³¹ *Rollos* (G.R. No. 167530), pp. 40-46, (G.R. No. 167561), pp. 42-46 and (G.R. No. 167603), pp. 37-44.

assumed by the National Government through the APT, now the PMO, under the respective deeds of transfer both dated February 27, 1997 executed by DBP and PNB pursuant to Proclamation No. 50 dated December 8, 1986 and Administrative Order No. 14 dated February 3, 1987.³²

For its part, the APT contends that, in the absence of an unqualified assumption by the National Government of all liabilities incurred by NMIC, the National Government through the APT could not be held liable for NMIC's contractual liability. The APT asserts that HRCC had not sufficiently shown that the APT is the successor-in-interest of all the liabilities of NMIC, or of DBP and PNB as transferors, and that the adjudged liability is included among the liabilities assigned and transferred by DBP and PNB in favor of the National Government.³³

HRCC counters that both the RTC and the CA correctly applied the doctrine of "piercing the veil of corporate fiction." It claims that NMIC was the *alter ego* of DBP and PNB which owned, conducted and controlled the business of NMIC as shown by the following circumstances: NMIC was owned by DBP and PNB, the officers of DBP and PNB were also the officers of NMIC, and DBP and PNB financed the operations of NMIC. HRCC further argues that a parent corporation may be held liable for the contracts or obligations of its subsidiary corporation where the latter is a mere agency, instrumentality or adjunct of the parent corporation.³⁴

Moreover, HRCC asserts that the APT was properly held solidarily liable with DBP, PNB, and NMIC because the APT assumed the obligations of DBP and PNB as the successor-in-interest of the said banks with respect to the assets and liabilities of NMIC.³⁵ As trustee of the Republic of the Philippines, the APT also assumed the responsibility of the Republic pursuant to the following provision of Section 2.02 of the respective deeds of transfer executed by DBP and PNB in favor of the Republic:

SECTION 2. TRANSFER OF BANK'S LIABILITIES

X X X X

2.02 With respect to the Bank's liabilities which are contingent and those liabilities where the Bank's creditors consent to the transfer thereof is not obtained, said liabilities shall remain in the books of the BANK with the GOVERNMENT funding the payment thereof.³⁶

³² Rollos (G.R. No. 167530), pp. 46-50 and (G.R. No. 167603), pp. 45-47.

³³ Rollo (G.R. No. 167561), pp. 49-50.

³⁴ Rollo (G.R. No. 167530), pp. 185-188.

³⁵ Id. at 188.

³⁶ Id. at 84.

After a careful review of the case, this Court finds the petitions impressed with merit.

A corporation is an artificial entity created by operation of law. It possesses the right of succession and such powers, attributes, and properties expressly authorized by law or incident to its existence.³⁷ It has a personality separate and distinct from that of its stockholders and from that of other corporations to which it may be connected.³⁸ As a consequence of its status as a distinct legal entity and as a result of a conscious policy decision to promote capital formation,³⁹ a corporation incurs its own liabilities and is legally responsible for payment of its obligations.⁴⁰ In other words, by virtue of the separate juridical personality of a corporation, the corporate debt or credit is not the debt or credit of the stockholder.⁴¹ This protection from liability for shareholders is the principle of limited liability.⁴²

Equally well-settled is the principle that the corporate mask may be removed or the corporate veil pierced when the corporation is just an *alter ego* of a person or of another corporation. For reasons of public policy and in the interest of justice, the corporate veil will justifiably be impaled only when it becomes a shield for fraud, illegality or inequity committed against third persons.⁴³

However, the rule is that a court should be careful in assessing the milieu where the doctrine of the corporate veil may be applied. Otherwise an injustice, although unintended, may result from its erroneous application.⁴⁴ Thus, cutting through the corporate cover requires an approach characterized by due care and caution:

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

³⁷ *Sarona v. National Labor Relations Commission*, G.R. No. 185280, January 18, 2012, 663 SCRA 394, 416.

³⁸ *Francisco v. Mallen, Jr.*, G.R. No. 173169, September 22, 2010, 631 SCRA 118, 125.

³⁹ Rands, William, *Domination of a Subsidiary by a Parent*, 32 Ind. L. Rev. 421, 423 (1999) citing Philip I. Blumberg, *Limited Liability and Corporate Groups*, 11 J. Corp. L. 573, 575-576 (1986) and Stephen Presser, *Thwarting the Killing of the Corporation: Limited Liability, Democracy and Economics*, 87 NW. U. L. Rev. 148, 155 (1992).

⁴⁰ *Id.*

⁴¹ *Good Earth Emporium, Inc. v. Court of Appeals*, G.R. No. 82797, February 27, 1991, 194 SCRA 544, 550.

⁴² Rands, William, *supra* note 39.

⁴³ *Philippine National Bank v. Andrada Electric & Engineering Company*, 430 Phil. 882, 894 (2002).

⁴⁴ *Francisco Motors Corporation v. Court of Appeals*, 368 Phil. 374, 386 (1999).

presumed. x x x.⁴⁵ (Emphases supplied; citations omitted.)

*Sarona v. National Labor Relations Commission*⁴⁶ has defined the scope of application of the doctrine of piercing the corporate veil:

The doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or 3) alter ego cases, where a corporation is merely a farce since it is a 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. (Citation omitted.)

Here, HRCC has alleged from the inception of this case that DBP and PNB (and the APT as assignee of DBP and PNB) should be held solidarily liable for using NMIC as *alter ego*.⁴⁷ The RTC sustained the allegation of HRCC and pierced the corporate veil of NMIC pursuant to the *alter ego* theory when it concluded that NMIC “is a mere adjunct, business conduit or *alter ego* of both DBP and PNB.”⁴⁸ The Court of Appeals upheld such conclusion of the trial court.⁴⁹ In other words, both the trial and appellate courts relied on the *alter ego* theory when they disregarded the separate corporate personality of NMIC.

In this connection, case law lays down a three-pronged test to determine the application of the *alter ego* theory, which is also known as the instrumentality theory, namely:

- (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.⁵⁰ (Emphases omitted.)

⁴⁵ *Philippine National Bank v. Andrada Electric Engineering Company*, supra note 43 at 894-895.

⁴⁶ Supra note 37 at 417.

⁴⁷ See paragraphs 8(b) and 9 of the original Complaint and of the first and second Amended Complaints. (Records, Vol. I, pp. 3-4, 190-191 and 334-335, respectively.)

⁴⁸ *Rollo* (G.R. No. 167530), p. 135.

⁴⁹ Id. at 66.

⁵⁰ *Concept Builders, Inc. v. National Labor Relations Commission*, 326 Phil. 955, 966 (1996).

The first prong is the “instrumentality” or “control” test. This test requires that the subsidiary be completely under the control and domination of the parent.⁵¹ It examines the parent corporation’s relationship with the subsidiary.⁵² It inquires whether a subsidiary corporation is so organized and controlled and its affairs are so conducted as to make it a mere instrumentality or agent of the parent corporation such that its separate existence as a distinct corporate entity will be ignored.⁵³ It seeks to establish whether the subsidiary corporation has no autonomy and the parent corporation, though acting through the subsidiary in form and appearance, “is operating the business directly for itself.”⁵⁴

The second prong is the “fraud” test. This test requires that the parent corporation’s conduct in using the subsidiary corporation be unjust, fraudulent or wrongful.⁵⁵ It examines the relationship of the plaintiff to the corporation.⁵⁶ It recognizes that piercing is appropriate only if the parent corporation uses the subsidiary in a way that harms the plaintiff creditor.⁵⁷ As such, it requires a showing of “an element of injustice or fundamental unfairness.”⁵⁸

The third prong is the “harm” test. This test requires the plaintiff to show that the defendant’s control, exerted in a fraudulent, illegal or otherwise unfair manner toward it, caused the harm suffered.⁵⁹ A causal connection between the fraudulent conduct committed through the instrumentality of the subsidiary and the injury suffered or the damage incurred by the plaintiff should be established. The plaintiff must prove that, unless the corporate veil is pierced, it will have been treated unjustly by the defendant’s exercise of control and improper use of the corporate form and, thereby, suffer damages.⁶⁰

To summarize, piercing the corporate veil based on the *alter ego* theory requires the concurrence of three elements: control of the corporation by the stockholder or parent corporation, fraud or fundamental unfairness imposed on the plaintiff, and harm or damage caused to the plaintiff by the

⁵¹ Reed, Bradley, *Clearing Away the Mist: Suggestions for Developing a Principled Veil Piercing Doctrine in China*, Vanderbilt Journal of International Law 39: 1643, citing Stephen Presser, PIERCING THE CORPORATE VEIL, § 1:6, West (2004).

⁵² Id., citing *White v. Jorgenson*, 322 N.W.2d 607, 608 (Minn. 1982) and *Multimedia Publishing of South Carolina, Inc. v. Mullins*, 431 S.E.2d 569, 571 (S.C. 1993).

⁵³ Id. citing Maurice Wormser, DISREGARD OF THE CORPORATE FICTION AND ALLIED CORPORATE PROBLEMS (1929).

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ *White v. Jorgenson*, supra note 52.

⁵⁷ Reed, Bradley, supra note 51.

⁵⁸ *White v. Jorgenson*, supra note 52, citing *Victoria Elevator Co. v. Meriden Grain Co.*, 283 N.W.2d 509, 512 (Minn. 1979).

⁵⁹ Olthoff, Mark, *Beyond the Form: Should the Corporate Veil Be Pierced?*, 64 UMKC L. Rev. 311, 318 (1995).

⁶⁰ Id.

fraudulent or unfair act of the corporation. **The absence of any of these elements prevents piercing the corporate veil.**⁶¹

This Court finds that none of the tests has been satisfactorily met in this case.

In applying the *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.⁶² With respect to the control element, it refers not to paper or formal control by majority or even complete stock control but actual control which amounts to "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."⁶³ In addition, the control must be shown to have been exercised at the time the acts complained of took place.⁶⁴

Both the RTC and the Court of Appeals applied the *alter ego* theory and penetrated the corporate cover of NMIC based on two factors: (1) the ownership by DBP and PNB of effectively all the stocks of NMIC, and (2) the alleged interlocking directorates of DBP, PNB and NMIC.⁶⁵ Unfortunately, the conclusion of the trial and appellate courts that the DBP and PNB fit the *alter ego* theory with respect to NMIC's transaction with HRCC on the premise of complete stock ownership and interlocking directorates involved a quantum leap in logic and law exposing a gap in reason and fact.

While ownership by one corporation of all or a great majority of stocks of another corporation and their interlocking directorates may serve as indicia of control, by themselves and without more, however, these circumstances are insufficient to establish an *alter ego* relationship or connection between DBP and PNB on the one hand and NMIC on the other hand, that will justify the puncturing of the latter's corporate cover. This 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."⁶⁶ This 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."⁶⁷

⁶¹ *Concept Builders, Inc. v. National Labor Relations Commission*, supra note 50 at 966.

⁶² *Nisce v. Equitable PCI Bank, Inc.*, 545 Phil. 138, 166 (2007).

⁶³ *Concept Builders, Inc. v. National Labor Relations Commission*, supra note 50 at 966.

⁶⁴ *Id.*

⁶⁵ *Rollo* (G.R. No. 167530), p. 65.

⁶⁶ *Francisco v. Mejia*, 415 Phil. 153, 170 (2001).

⁶⁷ *Velarde v. Lopez, Inc.*, 464 Phil. 525, 538 (2004).

True, the findings of fact of the Court of Appeals are conclusive and cannot be reviewed on appeal to this Court, provided they are borne out of the record or are based on substantial evidence.⁶⁸ It is equally true that 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 the requisite quantum of evidence has been adduced warranting the piercing of the veil of corporate personality.⁶⁹ Nevertheless, it has been held in *Sarona v. National Labor Relations Commission*⁷⁰ that this Court has the power to resolve a question of fact, such as whether a corporation is a mere *alter ego* of another entity or whether the corporate fiction was invoked for fraudulent or malevolent ends, if the findings in the assailed decision are either not supported by the evidence on record or based on a misapprehension of facts.

In this case, nothing in the records shows that the corporate finances, policies and practices of NMIC were dominated by DBP and PNB in such a way that NMIC could be considered to have no separate mind, will or existence of its own but a mere conduit for DBP and PNB. On the contrary, the evidence establishes that HRCC knew and acted on the knowledge that it was dealing with NMIC, not with NMIC's stockholders. The letter proposal of Hercon, Inc., HRCC's predecessor-in-interest, regarding the contract for NMIC's mine stripping and road construction program was addressed to and accepted by NMIC.⁷¹ The various billing reports, progress reports, statements of accounts and communications of Hercon, Inc./HRCC regarding NMIC's mine stripping and road construction program in 1985 concerned NMIC and NMIC's officers, without any indication of or reference to the control exercised by DBP and/or PNB over NMIC's affairs, policies and practices.⁷²

HRCC has presented nothing to show that DBP and PNB had a hand in the act complained of, the alleged undue disregard by NMIC of the demands of HRCC to satisfy the unpaid claims for services rendered by HRCC in connection with NMIC's mine stripping and road construction program in 1985. On the contrary, the overall picture painted by the evidence offered by HRCC is one where HRCC was dealing with NMIC as a distinct juridical person acting through its own corporate officers.⁷³

⁶⁸ *Republic v. Hon. Mangotara*, G.R. No. 170375, July 7, 2010, 624 SCRA 360, 431.

⁶⁹ *Sarona v. National Labor Relations Commission*, supra note 37 at 414.

⁷⁰ *Id.*

⁷¹ Exhibits "A" (letter proposal dated January 31, 1985 of Hercon, Inc., through Earl Pitcock, Hercon's President) and "B" (letter of acceptance dated February 11, 1985 by the NMIC, through Rolando Zosa, the NMIC's President. (Records, Vol. II, pp. 737-742.)

⁷² Exhibits "C," "C-1" to "C-22" and their respective submarkings, "D" and "D-1" and its submarkings. (*Id.* at 743-838.)

⁷³ *Id.*

Moreover, the finding that the respective boards of directors of NMIC, DBP, and PNB were interlocking has no basis. HRCC's Exhibit "I-5,"⁷⁴ the initial General Information Sheet submitted by NMIC to the Securities and Exchange Commission, relied upon by the trial court and the Court of Appeals may have proven that DBP and PNB owned the stocks of NMIC to the extent of 57% and 43%, respectively. However, nothing in it supports a finding that NMIC, DBP, and PNB had interlocking directors as it only indicates that, of the five members of NMIC's board of directors, four were nominees of either DBP or PNB and only one was a nominee of both DBP and PNB.⁷⁵ Only two members of the board of directors of NMIC, Jose Tengco, Jr. and Rolando Zosa, were established to be members of the board of governors of DBP and none was proved to be a member of the board of directors of PNB.⁷⁶ No director of NMIC was shown to be also sitting simultaneously in the board of governors/directors of both DBP and PNB.

In reaching its conclusion of an *alter ego* relationship between DBP and PNB on the one hand and NMIC on the other hand, the Court of Appeals invoked *Sibagat Timber Corporation v. Garcia*,⁷⁷ which it described as "a case under a similar factual milieu."⁷⁸ However, in *Sibagat Timber Corporation*, this Court took care to enumerate the circumstances which led to the piercing of the corporate veil of Sibagat Timber Corporation for being the *alter ego* of Del Rosario & Sons Logging Enterprises, Inc. Those circumstances were as follows: holding office in the same building, practical identity of the officers and directors of the two corporations and assumption of management and control of Sibagat Timber Corporation by the directors/officers of Del Rosario & Sons Logging Enterprises, Inc.

Here, DBP and PNB maintain an address different from that of NMIC.⁷⁹ As already discussed, there was insufficient proof of interlocking directorates. There was not even an allegation of similarity of corporate officers. Instead of evidence that DBP and PNB assumed and controlled the management of NMIC, HRCC's evidence shows that NMIC operated as a distinct entity endowed with its own legal personality. Thus, what obtains in this case is a factual backdrop different from, not similar to, *Sibagat Timber Corporation*.

⁷⁴ Id. at 903-904.

⁷⁵ Id. In particular, those listed as members of the board of directors of NMIC were Jose Tengco, Jr. (DBP), Rolando M. Zosa (DBP), Ruben Ancheta (DBP/PNB), Geraldo Agulto (PNB), and Faustino Agbada (DBP).

⁷⁶ This fact was admitted by NMIC and DBP in their respective answers and in paragraph 6 of DBP's Reply to Request for Admission of HRCC. (Records, Vol. I, pp. 56, 73 and 308.)

⁷⁷ G.R. No. 98185, December 11, 1992, 216 SCRA 470, 474.

⁷⁸ *Rollo* (G.R. No. 167530), p. 65.

⁷⁹ Paragraph 2 of the original Complaint and of the first and second Amended Complaints identify the address of NMIC as "2283 Pasong Tamo Ext., Makati, Metro Manila;" that of DBP as "Makati Avenue corner Sen. Gil J. Puyat Avenue, Makati, Metro Manila;" and that of PNB as "Escolta, Manila." (Records, Vol. I, pp. 1, 188 and 332, respectively.)

In relation to the second element, to disregard the separate juridical personality of a corporation, the wrongdoing or unjust act in contravention of a plaintiff's legal rights must be clearly and convincingly established; it cannot be presumed. Without a demonstration that any of the evils sought to be prevented by the doctrine is present, it does not apply.⁸⁰

In this case, the Court of Appeals declared:

We are not saying that PNB and DBP are guilty of fraud in forming [NMIC], nor are we implying that [NMIC] was used to conceal fraud. x x x.⁸¹

Such a declaration clearly negates the possibility that DBP and PNB exercised control over NMIC which DBP and PNB used "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 rights." It is a recognition that, even assuming that DBP and PNB exercised control over NMIC, there is no evidence that the juridical personality of NMIC was used by DBP and PNB to commit a fraud or to do a wrong against HRCC.

There being a total absence of evidence pointing to a fraudulent, illegal or unfair act committed against HRCC by DBP and PNB under the guise of NMIC, there is no basis to hold that NMIC was a mere *alter ego* of DBP and PNB. As this Court ruled in *Ramoso v. Court of Appeals*⁸²:

As a general rule, a corporation will be looked upon as a legal entity, unless and until sufficient reason to the contrary appears. When the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons. Also, the corporate entity may be disregarded in the interest of justice in such cases as fraud that may work inequities among members of the corporation internally, involving no rights of the public or third persons. In both instances, **there must have been fraud, and proof of it.** For the separate juridical personality of a corporation to be disregarded, the wrongdoing must be clearly and convincingly established. It cannot be presumed.

As regards the third element, in the absence of both control by DBP and PNB of NMIC and fraud or fundamental unfairness perpetuated by DBP and PNB through the corporate cover of NMIC, no harm could be said to have been proximately caused by DBP and PNB on HRCC for which HRCC could hold DBP and PNB solidarily liable with NMIC.

⁸⁰ *Yamamoto v. Nishino Leather Industries, Inc.*, G.R. No. 150283, April 16, 2008, 551 SCRA 447, 454-455.

⁸¹ *Rollo* (G.R. No. 167530), p. 65.

⁸² 400 Phil. 1260, 1268 (2000).

Considering that, under the deeds of transfer executed by DBP and PNB, the liability of the APT as transferee of the rights, titles and interests of DBP and PNB in NMIC will attach only if DBP and PNB are held liable, the APT incurs no liability for the judgment indebtedness of NMIC. Even HRCC recognizes that “as assignee of DBP and PNB’s loan receivables,” the APT simply “stepped into the shoes of DBP and PNB with respect to the latter’s rights and obligations” in NMIC.⁸³ As such assignee, therefore, the APT incurs no liability with respect to NMIC other than whatever liabilities may be imputable to its assignors, DBP and PNB.


Even under Section 2.02 of the respective deeds of transfer executed by DBP and PNB which HRCC invokes, the APT cannot be held liable. The contingent liability for which the National Government, through the APT, may be held liable under the said provision refers to contingent liabilities of DBP and PNB. Since DBP and PNB may not be held solidarily liable with NMIC, no contingent liability may be imputed to the APT as well. Only NMIC as a distinct and separate legal entity is liable to pay its corporate obligation to HRCC in the amount of ₱8,370,934.74, with legal interest thereon from date of demand.

As trustee of the assets of NMIC, however, the APT should ensure compliance by NMIC of the judgment against it. The APT itself acknowledges this.⁸⁴

WHEREFORE, the petitions are hereby **GRANTED**.

The complaint as against Development Bank of the Philippines, the Philippine National Bank, and the Asset Privatization Trust, now the Privatization and Management Office, is **DISMISSED** for lack of merit. The Asset Privatization Trust, now the Privatization and Management Office, as trustee of Nonoc Mining and Industrial Corporation, now the Philnico Processing Corporation, is **DIRECTED** to ensure compliance by the Nonoc Mining and Industrial Corporation, now the Philnico Processing Corporation, with this Decision.

SO ORDERED.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

⁸³ Paragraph 14 of Amended Complaint. (Records, Vol. I, p. 336.)

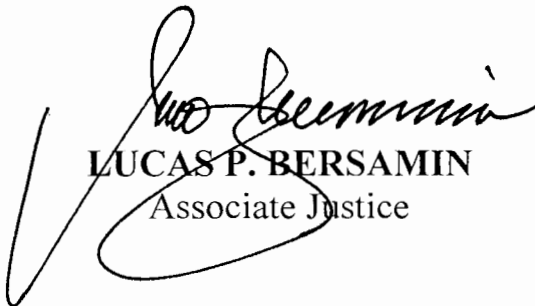
⁸⁴ Rollo (G.R. No. 167561), pp. 47-48.

WE CONCUR:



MARIA LOURDES P. A. SERENO

Chief Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice



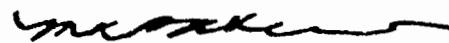
MARTIN S. VILLARAMA, JR.
Associate Justice



BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO

Chief Justice