



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PIONEER INSURANCE & G.R. No. 198436  
SURETY CORPORATION,  
Petitioner, Present:

-versus-

PERALTA, J.\*  
BERSAMIN,\*\*  
DEL CASTILLO, *Acting Chairperson*\*\*\*  
MENDOZA, and  
LEONEN, JJ.

MORNING STAR TRAVEL &  
TOURS, INC., ESTELITA CO  
WONG, BENNY H. WONG,  
ARSENIO CHUA, SONNY CHUA,  
AND WONG YAN TAK,  
Respondents.

Promulgated:

08 JUL 2015

*Honorable Perfecto*

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DECISION

LEONEN, J.:

As a general rule, a corporation has a separate and distinct personality from those who represent it.<sup>1</sup> Its officers are solidarily liable only when exceptional circumstances exist, such as cases enumerated in Section 31 of the Corporation Code.<sup>2</sup> The liability of the officers must be proven by

\* Designated Acting Member per S.O. No. 2088 dated July 1, 2015.

\*\* Designated Acting Member per S.O. No. 2079 dated June 29, 2015.

\*\*\* Designated Acting Chairperson per S.O. No. 2087 (Revised) dated July 1, 2015.

<sup>1</sup> *Solidbank Corporation v. Mindanao Ferroalloy Corporation*, 502 Phil. 651, 664 (2005) [Per J. Panganiban, Third Division].

<sup>2</sup> CORP. CODE, sec. 31: *Liability of Directors, Trustees or Officers*. — Directors or trustees who wilfully and knowingly vote for or assent to patently unlawful acts of the corporation or *who are guilty of gross negligence or bad faith in directing the affairs of the corporation* or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees *shall be liable jointly and severally for all damages resulting therefrom* suffered by the corporation, its stockholders or members and other persons. (Emphasis supplied)

See also *MAM Realty Development Corp. v. National Labor Relations Commission*, 314 Phil. 838, 844

evidence sufficient to overcome the burden of proof borne by the plaintiff.

This case originated from a Complaint<sup>3</sup> for Collection of Sum of Money and Damages filed by Pioneer Insurance & Surety Corporation (Pioneer) against Morning Star Travel & Tours, Inc. (Morning Star) for the amounts Pioneer paid the International Air Transport Association under its credit insurance policy. The amounts of ₱100,479,171.59 and US\$457,834.14 represent Morning Star's overdue remittances to the International Air Transport Association.<sup>4</sup>

Pioneer filed this Petition for Review<sup>5</sup> assailing the Court of Appeals' February 28, 2011 Decision<sup>6</sup> "only insofar as it absolved the individual respondents of their joint and solidary liability to petitioner[.]"<sup>7</sup> and August 31, 2011 Resolution<sup>8</sup> denying reconsideration.

Morning Star is a travel and tours agency with Benny Wong, Estelita Wong, Arsenio Chua, Sonny Chua, and Wong Yan Tak as shareholders and members of the board of directors.<sup>9</sup>

International Air Transport Association is a Canadian corporation licensed to do business in the Philippines "to promote safe, regular and economical air transport for all people, among others."<sup>10</sup>

International Air Transport Association appointed Morning Star as an accredited travel agent.<sup>11</sup> Morning Star "avail[ed] of the privilege of getting on credit . . . air transport tickets from various airline companies [to be sold] to passengers at prices fixed by the airline companies[.]"<sup>12</sup>

Morning Star and International Air Transport Association entered a Passenger Sales Agency Agreement such that Morning Star must report all air transport ticket sales to International Air Transport Association and account all payments received through the centralized system called Billing and Settlement Plan.<sup>13</sup> Morning Star only holds in trust all monies collected

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(1995) [Per J. Vitug, Third Division].

<sup>3</sup> *Rollo*, pp. 93–104.

<sup>4</sup> *Id.* at 12.

<sup>5</sup> *Id.* at 25–73. This Petition was filed pursuant to Rule 45 of the Rules of Court.

<sup>6</sup> *Id.* at 78–89. The Decision was penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Juan Q. Enriquez, Jr. (Chair) and Ramon M. Bato, Jr. of the Sixth Division.

<sup>7</sup> *Id.* at 71.

<sup>8</sup> *Id.* at 91–92. The Resolution was penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Juan Q. Enriquez, Jr. (Chair) and Ramon M. Bato, Jr. of the Sixth Division.

<sup>9</sup> *Id.* at 79.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

as these belong to the airline companies.<sup>14</sup>

International Air Transport Association obtained a Credit Insurance Policy from Pioneer to assure itself of payments by accredited travel agents for ticket sales and monies due to the airline companies under the Billing and Settlement Plan.<sup>15</sup> The policy was for the period from November 1, 2001 to December 31, 2002, renewed for the period from January 1, 2003 to December 31, 2003.<sup>16</sup>

The policy was made known to the accredited travel agents. Morning Star, through its President, Benny Wong, was among those that declared itself liable to indemnify Pioneer for any and all claims under the policy. He executed a registration form under the Credit Insurance Program for BSP-Philippines Agents.<sup>17</sup>

Morning Star had an accrued billing of ₱49,051,641.80 and US\$325,865.35 for the period from December 16, 2002 to December 31, 2002. It failed to remit these amounts through the Billing and Settlement Plan, prompting the International Air Transport Association to send a letter dated January 17, 2003 advising on the overdue remittance.<sup>18</sup>

International Air Transport Association again declared Morning Star in default by a letter dated January 20, 2003 for its overdue account covering the period from January 1, 2003 to January 20, 2003.<sup>19</sup>

Pursuant to the credit insurance policies, International Air Transport Association demanded from Pioneer the sums of ₱109,728,051.00 and US\$457,834.14 representing Morning Star's overdue account as of April 30, 2003. Pioneer investigated, ascertained, and validated the claims, then paid International Air Transport Association the amounts of ₱100,479,171.59 and US\$457,834.14.<sup>20</sup>

Consequently, Pioneer demanded these amounts from Morning Star through a letter dated September 23, 2003.<sup>21</sup> International Air Transport Association executed in Pioneer's favor a Release of Claim and Subrogation

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<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Id. at 79–80. The policy for the period from November 1, 2001 to December 31, 2002 was denominated as Credit Insurance Policy No. GA-NIL-FG-HO-02-00000-46N forming part of Policy No. GA-NIL-FG-HO-01-0000003. The policy for the period from January 1, 2003 to December 31, 2003 was denominated as Credit Policy No. GA-FG-HO-03-0000009-00-D/GA-FG-HO-030000011-00-D.

<sup>17</sup> Id. at 80.

<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> Id. at 80–81.

Receipt on December 23, 2003.<sup>22</sup>

On November 10, 2005, Pioneer filed a Complaint for Collection of Sum of Money and Damages against Morning Star and its shareholders and directors.<sup>23</sup>

Morning Star, Benny Wong, and Estelita Wong were served with summons and a copy of the Complaint on November 22, 2005, while Arsenio Chua, Sonny Chua, and Wong Yan Tak were unserved.<sup>24</sup>

The trial court granted Pioneer's Motion to Declare Respondents in Default for failure to file an Answer within the period.<sup>25</sup> Pioneer presented its evidence ex-parte.<sup>26</sup>

Meanwhile, Pioneer filed an Ex-Parte Motion for Issuance of Alias Summons since Morning Star was previously served through substituted service. The trial court granted the Motion, and alias summons was served on February 5, 2007. Upon motion, Morning Star was declared in default for failure to file an Answer within the period.<sup>27</sup>

On June 28, 2007, Morning Star filed a Motion for Leave of Court to File Attached Answer explaining that it only received a copy of the Complaint on February 5, 2007.<sup>28</sup> Its counsel also alleged that he was retained only on June 22, 2007.<sup>29</sup> The trial court denied the Motion on July 23, 2007, and also denied reconsideration.<sup>30</sup>

The Regional Trial Court in its Decision<sup>31</sup> dated November 9, 2007 ruled in favor of Pioneer and ordered respondents to jointly and severally pay Pioneer:

WHEREFORE PREMISES CONSIDERED, judgment is hereby rendered in favor of the plaintiff as against the defendants ordering the latter to jointly and severally pay the following amount:

1. One Hundred Million Four Hundred Seventy Nine Thousand One Hundred Seventy One Pesos and Fifty Nine (Php100,479,171.59) and Four Hundred Fifty Seven

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<sup>22</sup> Id. at 81.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> Id.

<sup>28</sup> Id. at 81–82.

<sup>29</sup> Id. at 82.

<sup>30</sup> Id.

<sup>31</sup> Id. at 344–351. The Decision was penned by Judge Zenaida T. Galapate-Laguilles of the Regional Trial Court, Makati City, Branch 143.

Thousand Eight Hundred Thirty Four Dollars and 14/100 (US\$457,834.14), with interest at 12% per annum from September 23, 2003 until the sum is fully paid;

2. Php100,000.00 as attorney's fees;
3. Php100,000.00 as exemplary damages;
4. Php200,000.00 as litigation expenses[;]
5. costs of suit.

SO ORDERED.<sup>32</sup>

The Court of Appeals, in its Decision dated February 28, 2011, affirmed the trial court with modification in that only Morning Star was liable to pay petitioner:

**WHEREFORE**, premises considered, the instant Appeal is **DENIED**. Accordingly, the assailed 9 November 2007 Decision of the Regional Trial Court of Makati City, Branch 143 in Civil Case No. 05-993 is **AFFIRMED with MODIFICATION**. Insofar as the trial court ordered Defendants-Appellants Estelita Co Wong, Benny H. Wong, Arsenio Chua, Sonny Chua and Wong Yan Tak to jointly and severally pay the amounts awarded to Plaintiff-Appellee, the same is deleted. Only Morning Star is held personally liable for the payment thereof. Further, exemplary damages and attorney's fees are likewise deleted for lack of basis.

**SO ORDERED.**<sup>33</sup>

The Court of Appeals denied Pioneer's Motion for Partial Reconsideration.<sup>34</sup> Thus, Pioneer filed this Petition.

Pioneer submits that its Petition falls under the exceptions to the general rule that petitions for review may raise only questions of law.<sup>35</sup> Pioneer raises conflicting findings and conclusions by the lower courts regarding solidary liability, and misapprehension of facts by the Court of Appeals.<sup>36</sup>

Pioneer argues that "the individual respondents were, at the very least, grossly negligent in running the affairs of respondent Morning Star by knowingly allowing it to amass huge debts to [International Air Transport Association] despite its financial distress, thus, giving sufficient ground for

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<sup>32</sup> Id. at 351.

<sup>33</sup> Id. at 89.

<sup>34</sup> Id. at 92.

<sup>35</sup> Id. at 550.

<sup>36</sup> Id. at 553–556.

the court to pierce the corporate veil and hold said individual respondents personally liable.”<sup>37</sup> It cites Section 31 of the Corporation Code on the liability of directors “guilty of gross negligence or bad faith in directing the affairs of the corporation[.]”<sup>38</sup>

Pioneer also cites jurisprudence<sup>39</sup> on the requisites for the doctrine of piercing the corporate veil to apply.<sup>40</sup> It submits that all requisites are present, thus, the individual respondents should be held solidarily liable with Morning Star.<sup>41</sup> It cites at length the testimony of its witness Atty. Vincenzo Nonato M. Taggweg (Atty. Taggweg)<sup>42</sup> that based on Morning Star’s General Information Sheet and financial statements, Morning Star “has been accumulating losses as early as 1998 continuing to 1999 and 2000 resulting to a deficit of Php26,168,1768.00 [sic] as of December 31, 2000[.]”<sup>43</sup>

Pioneer contends that the abnormally large indebtedness to International Air Transport Association was incurred in fraud and bad faith, with Morning Star having no intention to pay its debt.<sup>44</sup> It cites *Oria v. McMicking*<sup>45</sup> on the badges of fraud.<sup>46</sup> Pioneer then enumerates “the unmistakable badges of fraud and deceit committed by individual respondents”<sup>47</sup> such as the fact that Morning Star had no assets,<sup>48</sup> but the two corporations also “controlled and managed by the individual respondents were doing relatively well [at] the time . . . Morning Star was incurring huge losses[.]”<sup>49</sup> Moreover, a new travel agency called Morning Star Tour Planners, Inc. now operates at the Morning Star’s former principal place of business in Pedro Gil, Manila, with the children of individual respondents as its stockholders, directors, and officers.<sup>50</sup>

Respondents counter with the general rule clothing corporations with personality separate and distinct from their officers and stockholders.<sup>51</sup> They submit that “[m]ere sweeping allegations that officers acted in bad faith because it incurred obligations it cannot pay will not hold any water.”<sup>52</sup> Respondents argue that Pioneer failed to prove bad faith, relying only on

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<sup>37</sup> Id. at 555–556.

<sup>38</sup> Id. at 556.

<sup>39</sup> Id. at 557–558 and 568. Petitioner quotes *Concept Builders, Inc. v. National Labor Relations Commission*, 326 Phil. 955, 966 (1996) [Per J. Hermosisima, Jr., First Division], *Francisco v. Mejia*, 415 Phil. 153, 166–167 (2001) [Per J. Gonzaga-Reyes, Third Division], and *Mendoza v. Banco Real Development Bank*, 507 Phil. 88, 92–93 (2005) [Per J. Sandoval-Gutierrez, Third Division].

<sup>40</sup> Id. at 557.

<sup>41</sup> Id. at 558.

<sup>42</sup> Id. at 559–562.

<sup>43</sup> Id. at 559.

<sup>44</sup> Id. at 564.

<sup>45</sup> 21 Phil. 243, 250–251 (1912) [Per J. Moreland, En Banc].

<sup>46</sup> *Rollo*, p. 570.

<sup>47</sup> Id. at 565.

<sup>48</sup> Id.

<sup>49</sup> Id. at 566.

<sup>50</sup> Id. at 568–569.

<sup>51</sup> Id. at 583.

<sup>52</sup> Id. at 584.

Atty. Taggug's testimony, but "Mr. Taggug admitted that his knowledge about the defendant Morning Star was merely based on his assumptions and his examination of the [Securities and Exchange Commission] documents."<sup>53</sup>

The issues for resolution are:

First, whether this case involves an exception to the general rule that petitions for review are limited to questions of law; and

Second, whether the doctrine of piercing the corporate veil applies to hold the individual respondents solidarily liable with respondent Morning Star Travel and Tours, Inc. to pay the award in favor of petitioner Pioneer Insurance & Surety Corporation.

## I

Only questions of law may be raised in a petition for review.<sup>54</sup> Factual findings of the Court of Appeals are generally "final and conclusive, and cannot be reviewed on appeal by [this court], provided they are borne out by the record or based on substantial evidence."<sup>55</sup>

Issues such as whether the separate and distinct personality of a corporation was used for fraudulent ends, or whether the evidence warrants a piercing of the corporate veil, involve questions of fact.<sup>56</sup>

Jurisprudence established exceptions from the general rule against a factual review by this court. These exceptions include cases when the judgment appears to be based on a "patent misappreciation of facts."<sup>57</sup>

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<sup>53</sup> Id. at 585.

<sup>54</sup> RULES OF COURT, Rule 45, sec. 1.

<sup>55</sup> *Lipat v. Pacific Banking Corporation*, 450 Phil. 401, 412 (2003) [Per J. Quisumbing, Second Division], citing *Milestone Realty and Co., Inc. v. Court of Appeals*, 431 Phil. 119, 130 (2002) [Per J. Quisumbing, Second Division].

<sup>56</sup> *See Sarona v. National Labor Relations Commission*, 679 Phil. 394, 414 (2012) [Per J. Reyes, Second Division], citing *China Banking Corporation v. Dyne-Sem Electronics Corporation*, 527 Phil. 74, 80 (2006) [Per J. Corona, Second Division].

<sup>57</sup> *See Sarona v. National Labor Relations Commission*, 679 Phil. 394, 415 (2012) [Per J. Reyes, Second Division]. *See also Edsa Shangri-La Hotel and Resort, Inc., et al. v. BF Corporation*, 578 Phil. 588, 600 (2008) [Per J. Velasco, Jr., Second Division], citing *Dungaran v. Koschnicke*, 505 Phil. 746, 755 (2005) [Per J. Callejo, Sr., Second Division] and *Larena v. Mapili*, 455 Phil. 944, 950–951 (2003) [Per J. Panganiban, Third Division]:

"Just as basic is the rule that factual findings of the CA, affirmatory of that of the trial court, are final and conclusive on the Court and may not be reviewed on appeal, except for the most compelling of reasons, such as when: (1) the conclusion is grounded on speculations, surmises, or conjectures; (2) the inference is manifestly mistaken, absurd, or impossible; (3) there is grave abuse of discretion; (4) **the judgment is based on a misapprehension of facts**; (5) **the findings of fact are conflicting**; (6) such findings are contrary to the admissions of both parties; and (7) the CA manifestly overlooked certain relevant evidence and undisputed facts, that, if properly considered, would justify a different

Petitioner invokes this exception in alleging that “the conflicting findings and conclusions between the Court of Appeals and the trial court insofar as the solidary liability of respondents to pay petitioner and the misapprehensions of facts by the Court of Appeals constrains petitioner to raise both questions of fact and law in the Petition.”<sup>58</sup>

In ruling against the solidary liability of the individual respondents with respondent Morning Star, the Court of Appeals discussed that “the trial court merely stated in the dispositive portion thereof that Defendants-Appellants are ordered to pay Plaintiff-Appellee jointly and severally the judgment award without discussing in the body of the decision the reason for such conclusion.”<sup>59</sup>

The Court of Appeals then enumerated the exceptional circumstances warranting solidary liabilities by corporate agents based on jurisprudence, and found none to be present in this case.<sup>60</sup>

We affirm the Court of Appeals.

## II

The law vests corporations with a separate and distinct personality from those that represent these corporations.<sup>61</sup>

The corporate legal structure draws its “economic superiority”<sup>62</sup> from key features such as a separate corporate personality. Unlike other business associations such as partnerships, the corporate framework encourages investment by allowing even small capital contributors to be part of a big business endeavor made possible by the aggregation of their capital funds.<sup>63</sup> The consequent limited liability feature, since corporate assets will answer for corporate debts, also proves attractive for investors. However, this legal structure should not be abused.

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conclusion.” (Emphasis supplied)

<sup>58</sup> *Rollo*, pp. 551–552.

<sup>59</sup> *Id.* at 86.

<sup>60</sup> *Id.* at 87, citing *MAM Realty Development Corp. v. National Labor Relations Commission*, 314 Phil. 838, 844–845 (1995) [Per J. Vitug, Third Division].

<sup>61</sup> *Solidbank Corporation v. Mindanao Ferroalloy Corporation*, 502 Phil. 651, 664 (2005) [Per J. Panganiban, Third Division], citing *Monfort Hermanos Agricultural Development Corporation v. Monfort III*, 478 Phil. 34, 42 (2004) [Per J. Ynares-Santiago, First Division], *Spouses Firme v. Bukal Enterprises and Development Corporation*, 460 Phil. 321, 345 (2003) [Per J. Carpio, First Division], and *People’s Aircargo and Warehousing Co. Inc. v. Court of Appeals*, 357 Phil. 850, 863 (1998) [Per J. Panganiban, First Division].

<sup>62</sup> See Paddy Ireland, *Limited liability, shareholder rights and the problem of corporate irresponsibility*, *Cambridge Journal of Economics* 837, 838 (2010) <<http://cje.oxfordjournals.org/content/34/5/837.full.pdf+html>> (visited July 9, 2015).

<sup>63</sup> *Id.*



A separate corporate personality shields corporate officers acting in good faith and within their scope of authority from personal liability except for situations enumerated by law and jurisprudence,<sup>64</sup> thus:

Personal liability of a corporate director, trustee or officer along (although not necessarily) with the corporation may so validly attach, as a rule, only when —

‘1. He assents (a) to a patently unlawful act of the corporation, or (b) for bad faith or gross negligence in directing its affairs, or (c) for conflict of interest, resulting in damages to the corporation, its stockholders or other persons;

‘2. He consents to the issuance of watered stocks or who, having knowledge thereof, does not forthwith file with the corporate secretary his written objection thereto;

‘3. He agrees to hold himself personally and solidarily liable with the corporation; or

‘4. He is made, by a specific provision of law, to personally answer for his corporate action.’<sup>65</sup>

The first exception comes from Section 31 of the Corporation Code:

SECTION 31. *Liability of Directors, Trustees or Officers.* — ***Directors*** or trustees who wilfully and knowingly vote for or assent to patently unlawful acts of the corporation or ***who are guilty of gross negligence or bad faith in directing the affairs of the corporation*** or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees ***shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation***, its stockholders or members and other persons. (Emphasis supplied)

Petitioner imputes gross negligence and bad faith on the part of the individual respondents for incurring the huge indebtedness to International

<sup>64</sup> See *Edsa Shangri-La Hotel and Resort, Inc., et al. v. BF Corporation*, 578 Phil. 588, 607 (2008) [Per J. Velasco, Jr., Second Division], *Aratea v. Suico*, 547 Phil. 407, 415–416 (2007) [Per J. Garcia, First Division]; *Solidbank Corporation v. Mindanao Ferroalloy Corporation*, 502 Phil. 651, 665 (2005) [Per J. Panganiban, Third Division], *MAM Realty Development Corp. v. National Labor Relations Commission*, 314 Phil. 838, 844–845 (1995) [Per J. Vitug, Third Division], citing *Tramat Mercantile, Inc. v. Court of Appeals*, G.R. No. 111008, November 7, 1994, 238 SCRA 14, 19 [Per J. Vitug, Third Division].

<sup>65</sup> *Solidbank Corporation v. Mindanao Ferroalloy Corporation*, 502 Phil. 651, 665 (2005) [Per J. Panganiban, Third Division], quoting *Tramat Mercantile, Inc. v. Court of Appeals*, G.R. No. 111008, November 7, 1994, 238 SCRA 14, 19 [Per J. Vitug, Third Division]. See also *Aratea v. Suico*, 547 Phil. 407, 415–416 (2007) [Per J. Garcia, First Division], quoting *MAM Realty Development Corp. v. National Labor Relations Commission*, 314 Phil. 838, 844–845 (1995) [Per J. Vitug, Third Division].

Air Transport Association.<sup>66</sup>

Bad faith “imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, not simply bad judgment or negligence.”<sup>67</sup> “[I]t means breach of a known duty through some motive or interest or ill will; it partakes of the nature of fraud.”<sup>68</sup>

The trial court gave weight to its finding that respondent Morning Star still availed itself of loans and/or obligations with International Air Transport Association despite its financial standing of operating at a loss:

Based on the plaintiff’s examination of the financial statements submitted by the defendant Morning Star with the Securities and Exchange Commission (SEC) for the years 2000 and 2001 with comparative figures for the years ending 1998, 1999 and 2000, herein defendant corporation has been accumulating losses as early as 1998 continuing to 1999 and 2000 resulting to a deficit of Php26,168,176.80 as of December 31, 2000. It was also shown that for the prior years of 1998 and 1999, defendant Morning Star incurred a deficit of Php3,910,763.00 as of December 31, 1998 and Php2,841,626.00 as of December 31, 1999 and in the Balance Sheet, it indicated therein the defendants’ total assets of Php150,579,421.00 while the total liabilities amounted to Php160,222,966.00, thereby making the defendant Morning Star insolvent. ***Despite the fact that defendant Morning Star was already incurring losses as early as 1998 up to the year 2000, the latter still contracted loans and/or obligations with IATA sometime in 2002 and which indebtedness ballooned to the huge amount of Php109,728,051.00 and US\$496,403.21 as of April 30, 2003, which obviously it could not pay considering its financial standing.***

Further investigation by the plaintiff shows that it could not find any assets or properties in the name of defendant Morning Star because even the land and the building where it held office was registered in the name of “Morning Star Management Ventures Corporation”, as evidenced by the certified true copies of the transfer certificates of title (TCT) nos. 192243 and 192244 in the name of Morning Star Management Ventures Corporation and unlike the defendant Morning Star, which has practically the same officers and members of the Board, has only an asset of Php125,392,960.00 and liabilities of Php4,306,702[.]00 and an income deficit of Php26,922,598.00 as of December 31, 2001. Similarly, the Pic [‘]N Pac Mart, Inc., which has the same set of officers, said corporation has shown a total assets of Php5,423,201.30 and liabilities/stockholders equity of Php5,423,201.30 but with a retained earnings of Php194,412[.]74 as of December 31, 1999. ***Plaintiff contends that in such a case, defendant Morning Star has used the separate and distinct***

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<sup>66</sup> *Rollo*, pp. 554–556.

<sup>67</sup> *Solidbank Corporation v. Mindanao Ferroalloy Corporation*, 502 Phil. 651, 670 (2005) [Per J. Panganiban, Third Division], citing *Cojuangco Jr. v. Court of Appeals*, 369 Phil. 41, 55, (1999) [Per J. Panganiban, Third Division], *Philippine Airlines, Inc. v. National Labor Relations Commission*, 362 Phil. 197, 204 (1999) [Per J. Puno, Second Division], and *Samson v. Court of Appeals*, G.R. No. 108245, November 25, 1994, 238 SCRA 397, 404 [Per J. Puno, Second Division].

<sup>68</sup> *Ever Electrical Manufacturing, Inc. (EEMI) v. Samahang Manggagawa ng Ever Electrical/NAMAWU Local 224*, G.R. No. 194795, June 13, 2012, 672 SCRA 562, 572 [Per J. Mendoza, Third Division].

*corporate personality accorded to it under the Corporation Code to commit said fraudulent transaction of incurring corporate debts and allow the herein individual defendants to escape personal liability and placing the assets beyond the reach of the creditors.*<sup>69</sup> (Emphasis supplied, citations omitted)

On the other hand, the Court of Appeals ruled that the general rule on separate corporate personality and against personal liability by corporate officers applies since petitioner failed to prove bad faith amounting to fraud by the corporate officers:

The mere fact that Morning Star has been incurring huge losses and that it has no assets at the time it contracted large financial obligations to IATA, cannot be considered that its officers, Defendants-Appellants Estelita Co Wong, Benny H. Wong, Arsenio Chua, Sonny Chua and Wong Yan Tak, acted in bad faith or such circumstance would amount to fraud, warranting personal and solidary liability of its corporate officers. The same is also true with the fact that Morning Star Management Ventures Corporation and Pic ‘N Pac Mart, Inc., corporations having the same set of officers as Morning Star, were doing relatively well during the time that the former incurred huge losses. Thus, only Morning Star should be held personally liable to Plaintiff-Appellee, and not its corporate officers.<sup>70</sup>

Piercing the corporate veil in order to hold corporate officers personally liable for the corporation’s debts requires that “the bad faith or wrongdoing of the director *must be established clearly and convincingly* [as] [b]ad faith is never presumed.”<sup>71</sup>

### III

*Oria v. McMicking*<sup>72</sup> enumerates several badges of fraud. Petitioner argues the existence of the fourth to sixth badges:<sup>73</sup>

1. The fact that the consideration of the conveyance is fictitious or is inadequate.
2. A transfer made by a debtor after suit has been begun and while it is pending against him.
3. A sale upon credit by an insolvent debtor.

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<sup>69</sup> *Rollo*, pp. 311–313.

<sup>70</sup> *Id.* at 87–88.

<sup>71</sup> *Francisco v. Mallen, Jr.*, 645 Phil. 369, 376 (2010) [Per J. Carpio, Second Division], quoting *Carag v. National Labor Relations Commission*, 548 Phil. 581, 602 (2007) [Per J. Carpio, En Banc], emphasis supplied.

<sup>72</sup> 21 Phil. 243 (1912) [Per J. Moreland, En Banc].

<sup>73</sup> *Rollo*, p. 570.

*4. Evidence of large indebtedness or complete insolvency.*

*5. The transfer of all or nearly all of his property by a debtor, especially when he is insolvent or greatly embarrassed financially.*

*6. The fact that the transfer is made between father and son, when there are present other of the above circumstances.*

7. The failure of the vendee to take exclusive possession of all the property.<sup>74</sup> (Emphasis supplied)

Petitioner listed the following circumstances as constituting badges of fraud by the individual respondents:

Attention is drawn to the following badges of fraud by individual respondents to use the corporate fiction of respondent Morning Star as a veil or cloak to insulate themselves from any liability to pay its indebtedness to [sic], to wit:

a. As members of the Board of Directors and at the same time, officers of respondent Morning Star, individual respondents Estelita Co Wong (President and Member of the Board), Benny H. Wong (Chairman of the Board), Arsenio Chua (Member of the Board), Sonny Chua (Secretary and Member of the Board) and Wong Yan Tak (Treasurer and Member of the Board) undoubtedly exercised complete control and direction of the financial management and business operations of respondent Morning Star;

b. Similarly, the individual respondents are likewise in direct control of the management of two other corporations, Morning Star Management Ventures Corp. and Pic 'N Pac Mart[,] Inc., being the shareholders, members of the Board and officers of the said corporations, as evidenced by the General Information Sheets (GIS) of the said corporations filed with the Securities and Exchange Commission (Exhibits "O" to "O-4" and "P" to "P-3" of petitioner's Formal Offer of Evidence dated August 15, 2007);

c. Respondent Morning Star has no assets or property in its name that may be levied upon for attachment and execution to secure and to satisfy any judgment debt, as in fact the land and building where its offices can be found and situated at J. Bocobo Street cor. Pedro Gil Street, Ermita Manila is not even registered in its name but in the name of another corporation "Morning Star Management Ventures Corporation" which is similarly owned and controlled by the individual respondents (Exhibits "S" to "S-2" and "T" to "T-2" of petitioner's Formal Offer of Evidence dated August 15, 2007);

d. As early as 1998, respondent Morning Star had already been incurring huge losses which clearly show the inability to pay its obligations to IATA but the individual respondents contracted its huge financial obligations from IATA knowing fully well that

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<sup>74</sup> *Oria v. McMicking*, 21 Phil. 243, 250-251 (1912) [Per J. Moreland, En Banc].

respondent Morning Star will be unable to pay such obligations;

e. Strangely, on the other hand, Pic ‘N Pac Mart, Inc. and Morning Star Management Ventures Corp., the other two (2) corporations similarly controlled and managed by the individual respondents, were doing relatively well during the time that respondent Morning Star was incurring huge losses (Exhibits “U” to “U-7” and “V” to “V-9” of petitioner’s Formal Offer of Evidence dated August 15, 2007);

f. Individual respondents allowed the indebtedness of respondent Morning Star to balloon to a staggering amount of Php100,479,171.59 and US\$457,834.14[.]<sup>75</sup> (Citations omitted)

This court finds that petitioner was not able to clearly and convincingly establish bad faith by the individual respondents, nor substantiate the alleged badges of fraud.

#### IV

First, petitioner failed to substantiate the fourth badge of fraud on “[e]vidence of large indebtedness or complete insolvency.”<sup>76</sup>

In 1993, International Air Transport Association appointed respondent Morning Star as an accredited travel agent with the privilege of getting air tickets on credit, and they entered a Passenger Sales Agency Agreement.<sup>77</sup> None of the parties made allegations on the financial status or business standing of respondent Morning Star during the first five years from its accreditation in 1993.

Petitioner relies on Atty. Taggug’s testimony regarding respondent Morning Star’s financial statements with the Securities and Exchange Commission.

Atty. Taggug testified on the comparative figures for the years ended 1998, 1999, and 2000 and how the company was “accumulating losses as early as 1998 continuing to 1999 and 2000 resulting to a deficit of Php26,168,1768.00 [sic] as of December 31, 2000 . . . deficit of Php3,910,763.00 as of December 31, 1998 and another deficit of Php2,841,626.00 as of December 31, 1999[.]”<sup>78</sup> He testified that as of December 31, 2000, respondent Morning Star had total assets of Php150,579,421.00 and total liabilities of Php160,222,966.00.<sup>79</sup>

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<sup>75</sup> *Rollo*, pp. 545–546.

<sup>76</sup> *Oria v. McMicking*, 21 Phil. 243, 251 (1912) [Per J. Moreland, En Banc].

<sup>77</sup> *Rollo*, p. 543.

<sup>78</sup> *Id.* at 559–560.

<sup>79</sup> *Id.* at 560.

Atty. Taggug then testified that despite this insolvency, “Morning Star Travel still contracted loans and/or obligations from the IATA sometime in December 2002 which indebtedness with IATA ballooned to the huge amount of Php109,728,051.00 and US\$496,403.21 as of April 30, 2003[.]”<sup>80</sup>

Petitioner did not present Securities and Exchange Commission documents on respondent Morning Star’s total assets as of December 2002. It did not present respondent Morning Star’s financial statements for December 2002, the year it incurred obligations from International Air Transport Association.<sup>81</sup>

The financial statements for years 1998 to 1999 and 1999 to 2000 testified on by Atty. Taggug are not representative of the financial status of respondent Morning Star’s business. Year 2000 reflected total assets of □150,579,421.00 and total liabilities of □160,222,966.00.<sup>82</sup> On the other hand, year 1999 showed total assets of □134,361,353.00 and total liabilities of □120,678,345.00.<sup>83</sup> Businesses may earn profits in some years and operate at a loss in others as a result of changing economic conditions. These two financial statements do not show that respondent Morning Star was operating at a loss in 2002. Deficits in the years 1998 to 2000 do not necessarily mean deficits in 2002. It is unclear if these figures included previous obligations to International Air Transport Association, or whether some or all of such obligations were paid in subsequent years as an indication of respondent Morning Star’s credit history.

In any event, it is in the nature of businesses to take risks when making business judgments, and this includes taking loans and incurring liabilities.

Atty. Taggug’s association with respondent Morning Star, or this case, is also unclear. Respondents submit in their memorandum that “[i]n his testimony[,] Mr. Taggug admitted that his knowledge about . . . Morning Star was merely based on his assumptions and his examination of the [Securities and Exchange Commission] documents.”<sup>84</sup>

Petitioner’s reliance on Atty. Taggug’s testimony on respondent Morning Star’s financial statements for previous years fails to clearly and convincingly establish bad faith by the individual respondents.

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<sup>80</sup> Id. at 561.

<sup>81</sup> Id. at 177–185.

<sup>82</sup> Id. at 250.

<sup>83</sup> Id. at 256.

<sup>84</sup> Id. at 585.

## V

Second, petitioner failed to substantiate the fifth badge of fraud on the “transfer of all or nearly all of his property by a debtor, especially when he is insolvent or greatly embarrassed financially.”<sup>85</sup>

Mere allegations that Morning Star Management Ventures Corporation and Pic ‘N Pac Mart, Inc. “were doing relatively well during the time that respondent Morning Star was incurring huge losses”<sup>86</sup> do not establish bad faith or fraud by the individual respondents. Such allegations alone do not prove that the individual respondents were transferring respondent Morning Star’s properties in fraud of its creditors.

Neither does the allegation that Morning Star Management Ventures Corporation has title over the land and building where the offices can be found establish bad faith or fraud. Petitioner did not show that this title was originally in respondent Morning Star’s name and was later transferred to respondent Morning Star.

This court has held 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.”<sup>87</sup>

## VI

Third, petitioner also failed to substantiate the sixth badge of fraud that “the transfer is made between father and son, when there are present other of the above circumstances.”<sup>88</sup>

Petitioner submits that:

It would be the height of injustice to allow individual respondents to get away with their gross negligence to the prejudice of petitioner, especially since there is now another travel agency in the name of Morning Star Tour Planners, Inc. operating at the respondent Morning Star’s former principal place of business at 1600 J. Bocobo St. corner Pedro Gil Malate, Manila. . . .

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<sup>85</sup> *Oria v. McMicking*, 21 Phil. 243, 251 (1912) [Per J. Moreland, En Banc].

<sup>86</sup> *Rollo*, p. 546.

<sup>87</sup> *Pacific Rehouse Corporation v. Court of Appeals*, G.R. No. 199687, March 24, 2014, 719 SCRA 665, 694 [Per J. Reyes, First Division], citing *Philippine National Bank v. Hydro Resources Contractors Corporation*, G.R. No. 167530, March 13, 2013, 693 SCRA 294, 311 [Per J. Leonardo-De Castro, First Division].

<sup>88</sup> *Oria v. McMicking*, 21 Phil. 243, 251 (1912) [Per J. Moreland, En Banc].

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Curiously, among the stockholders, directors and officers of Morning Star Tour Planners, Inc., are the following: Belinda Wong, Billy Wong, Barbara C. Wong and Benny C. Wong, Jr., who all have the same address as individual respondents Estelita Co Wong and Benny H. Wong.

Given, these vital pieces of information, it is at once indubitable that respondents have established another travel agency in the name of their children in order to escape their solidary liability to petitioner!<sup>89</sup> (Citation omitted)

This court has held that “compliance with the recognized modes of acquisition of jurisdiction cannot be dispensed with even in piercing the veil of corporate fiction[.]”<sup>90</sup> Morning Star Tour Planners, Inc. is not a party in this case. It would offend due process rights if what petitioner ultimately seeks in its allegation is to hold Morning Star Tour Planners, Inc. responsible for respondent Morning Star’s liability.

In any event, petitioner failed to plead and prove the circumstances that would pass the following control test for the operation of the alter ego doctrine:

(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.<sup>91</sup>

The records do not show that the individual respondents controlled Morning Star Tour Planners, Inc. and that such control was used to commit fraud against petitioner. Neither does this suspicion support petitioner’s position that the individual respondents were in bad faith or gross negligence in directing the affairs of respondent Morning Star.

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<sup>89</sup> *Rollo*, pp. 568–569.

<sup>90</sup> *Pacific Rehouse Corporation v. Court of Appeals*, G.R. No. 199687, March 24, 2014, 719 SCRA 665, 694 [Per J. Reyes, First Division], citing *Kukan International Corporation v. Hon. Judge Reyes, et al.*, 646 Phil. 210, 234 (2010) [Per J. Velasco, Jr., First Division].


<sup>91</sup> *Id.* at 689, citing *Concept Builders, Inc. v. National Labor Relations Commission*, 326 Phil. 955, 964–965 (1996) [Per J. Hermosisima, Jr., First Division].



Finally, pursuant to this court's pronouncement in *Nacar v. Gallery Frames*,<sup>92</sup> the interest rate should be 6% per annum on the amount owing to petitioner representing respondent Morning Star's unpaid air transport tickets availed on credit.

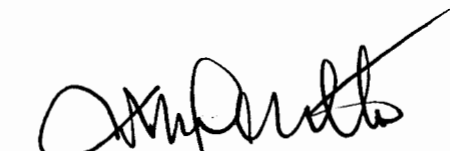
**WHEREFORE**, the Petition is **DENIED**. The Court of Appeals Decision is **AFFIRMED with MODIFICATION** in that legal interest is 6% per annum from September 23, 2003 until fully paid.

**SO ORDERED.**



**MARVIC M.V.F. LEONEN**  
Associate Justice

WE CONCUR:



**DIOSDADO M. PERALTA**  
Associate Justice



**LUCAS P. BERSAMIN**  
Associate Justice




**MARIANO C. DEL CASTILLO**  
Associate Justice  
Acting Chairperson



**JOSE CATRAL MENDOZA**  
Associate Justice

**ATTESTATION**

I attest 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.

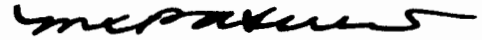


**MARIANO C. DEL CASTILLO**  
Associate Justice  
Acting Chairperson, Second Division

<sup>92</sup> G.R. No. 189871, August 13, 2013, 703 SCRA 439, 457-458 [Per J. Peralta, En Banc].

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, 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