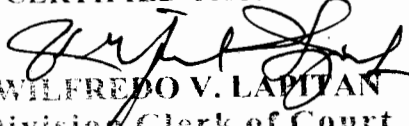


SPECIAL THIRD DIVISION

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WILFREDO V. LAPIDAN
Division Clerk of Court
Third Division

MAR 27 2018

G.R. No. 220926 - LUIS JUAN L. VIRATA and UEM-MARA PHILIPPINES CORPORATION (now known as CAVITEX INFRASTRUCTURE CORPORATION) *versus* ALEJANDRO NG WEE, WESTMONT INVESTMENT CORPORATION, ANTHONY T. REYES, SIMEON CUA, VICENTE CUALOPING, HENRY CUALOPING, MARIZA SANTOS-TAN, and MANUEL ESTRELLA

G.R. No. 221058 - WESTMONT INVESTMENT CORPORATION *versus* ALEJANDRO NG WEE

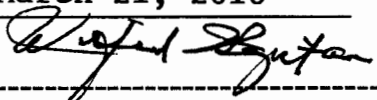
G.R. No. 221109 - MANUEL ESTRELLA *versus* ALEJANDRO NG WEE

G.R. No. 221135 - SIMEON CUA, VICENTE CUALOPING, and HENRY CUALOPING *versus* ALEJANDRO NG WEE

G.R. No. 221218 - ANTHONY T. REYES *versus* ALEJANDRO NG WEE, LUIS JUAN VIRATA, UEM-MARA PHILIPPINES CORP., WESTMONT INVESTMENT CORP., MARIZA SANTOS-TAN, SIMEON CUA, VICENTE CUALOPING, HENRY CUALOPING, and MANUEL ESTRELLA

Promulgated:

March 21, 2018



X-----X

DISSENTING OPINION

TIJAM, J.:

On July 5, 2017, this Court issued its Decision in the present consolidated cases. In the said Decision, it was found that Wincorp extended a credit line to Power Merge in the maximum amount of Php 2,500,000,000.00, and allowed the latter to make drawdowns of Php 2,183,755,253.11, despite signs that would show Power Merge's inability to pay. To secure the Credit Line Agreement and the Amendment to Credit Line Agreement, Power Merge executed promissory notes obliging itself to pay Wincorp, for itself or as agent for and on behalf of certain investors the amount of the drawdowns with interest on the maturity of the promissory note. However, unknown to Ng Wee, the promissory notes were rendered useless by the Side Agreements, simultaneously executed by Ong and Reyes with the Credit Line Agreement and the Amendment to Credit Line Agreement, which virtually exonerated Power Merge of its liability on



the promissory notes.

The *ponencia* held that the actuations of Wincorp establishes the presence of actionable fraud, for which the corporation can be held liable, while Power Merge is liable to Ng Wee bases on the promissory notes even as an accommodation party.

On the basis of fraud, the *ponencia* pierced the corporate veil of Wincorp and held the directors and officers of the latter as personally liable to Ng Wee. The basis of their liability was grounded on Section 31 of the Corporation Code when they assented to the grant of the Credit Line Agreement and Amendment to the Credit Line Agreement to Power Merge.

I agree with the findings and rulings ponencia except for holding the individual petitioners, namely; Simeon Cua, Vicente and Henry Cualoping, Mariza Santos-Tan and Manuel Estrella solidarily liable with Wincorp, Luis L. Virata, Antonio T. Ong and Anthony T. Reyes to pay Ng Wee the amount of Php 213,290,410.36.

As held by this Court in *Philippine National Bank v. Hydro Resources Contractors Corp.*,¹ a corporation acquires a separate personality from that of its directors and officers, to wit:

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. It has a personality separate and distinct from that of its stockholders and from that of other corporations to which it may be connected. As a consequence of its status as a distinct legal entity and as a result of a conscious policy decision to promote capital formation, a corporation incurs its own liabilities and is legally responsible for payment of its obligations. 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. This protection from liability for shareholders is the principle of limited liability.² (Citations omitted)

It is well-settled that the juridical personality of a corporation may be removed or its corporate veil pierced when the corporation is just an alter ego of a person or of another corporation. When the corporation becomes a shield for fraud, illegality or inequity committed against third persons, the corporate veil will, as a result, be disregarded for the interest of justice.³

¹ 706 Phil. 297 (2013).

² Id. at 308.

³ Id. at 308-309.

“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. Thus, cutting through the corporate cover requires an approach characterized by due care and caution.”⁴

“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 presumed.”⁵

Directors, Trustees or Officers can be held personally and solidarily liable with the corporation in situations enumerated by law and jurisprudence,⁶ 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.”⁷

Section 31 of the Corporation Code provides that:

Sec. 31. *Liability of directors, trustees or officers.* - Directors or trustees who **willfully 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

⁴ Id. at 309.

⁵ Id.

⁶ See *Edsa Shangri-La Hotel and Resort, Inc., et al. v. BF Corporation*, 578 Phil. 588, 607 (2008); *Aratea v. Suico*, 547 Phil. 407, 415-416 (2007) citing *MAM Realty Development Corp. v. National Labor Relations Commission*, 314 Phil. 838, 844-845 (1995); *Solidbank Corporation v. Mindanao Ferroalloy Corporation*, 502 Phil. 651, 665 (2005) citing *Tramat Mercantile, Inc. v. Court of Appeals*, 308 Phil. 13, 17 (1994).

⁷ *Solidbank Corporation v. Mindanao Ferroalloy Corporation*, supra at 665 citing *Tramat Mercantile, Inc. v. Court of Appeals*, supra at 17. See also *Aratea v. Suico*, 547 Phil. 407, 415-416 (2007) citing *MAM Realty Development Corp. v. National Labor Relations Commission*, supra at 844-845.

or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

When a director, trustee or officer attempts to acquire or acquires, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation. (Emphasis ours)

In the present case, nowhere in the records does it appear that the granting, extending and approving of the Credit Line Agreement and the Amendment to the Credit Line Agreement is a patently unlawful act of the corporation. In fact, the granting and approval of the same falls within the function and purpose of Wincorp as an investment house. Thus, the mere approval of Cua, the Cualopings, Santos-Tan and Estrella of the said credit line agreements cannot be equated to knowingly assenting or approving a patently unlawful act of the corporation. Neither can it be equated to bad faith, fraud nor gross negligence.

The records do not show that Cua, the Cualopings, Santos-Tan and Estrella willfully and knowingly vote for or assent to the execution of the Side Agreements that virtually exonerated Power Merge of its liability on the promissory notes, except for the signatories who were Ong and Reyes. Neither are they guilty of gross negligence or bad faith in directing or dealing in the affairs of the corporation, they merely approved the Credit Line Agreements because the screening committee of the corporation and its subordinate departments approved the same. In the case of *Pioneer Insurance & Surety Corp. v. Morning Star Travel & Tours, Inc., et al.*,⁸ “bad faith imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, not simply bad judgment or negligence.”⁹ “It means breach of a known duty through some motive or interest or ill will; it partakes of the nature of fraud.”¹⁰ “Fraud may be defined as the voluntary execution of a wrongful act, or a willful omission, knowing and intending the effects which naturally and necessarily arise from such act or omission.”¹¹


In this case, the Credit Line Agreements of Wincorp as approved by its officers may be called as a business strategy which turned out to be unfavorable. This does not mean however that Cua, the Cualopings, Santos-Tan and Estrella perpetrated fraud as they did not know and intend the effects of such act or omission, nor was there bad faith on their part since

⁸ 763 Phil. 428 (2015).

⁹ Id. at 442.

¹⁰ *Ever Electrical Manufacturing, Inc., et al. v. Samahang Manggagawa ng Ever Electrical/NAMAWU Local 224*, 711 Phil. 529, 539 (2012).

¹¹ *Rep. of the Phils. v. Estate of Alfonso Lim, Sr., et al.*, 611 Phil. 37, 52 (2009).



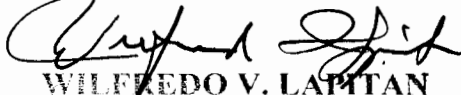
there is no dishonest purpose or consciousness in doing such wrong.

It is undisputed that Ong and Reyes executed the Side Agreements which exonerated Power Merge from its liabilities to Wincorp. It does however show that Ong and Reyes were authorized by the board of directors in executing the Side Agreements. "Acts of an officer that are not authorized by the board of directors/trustees do not bind the corporation, unless the corporation ratifies the acts or holds the officer out as a person with authority to transact on its behalf."¹² Here, there is simply nothing that will establish that Cua, the Cualopings, Santos-Tan and Estrella authorized or ratified the acts of Ong and Reyes.

I am therefore inclined to rule that there is no basis in holding Cua, the Cualopings, Santos-Tan and Estrella jointly and severally liable with Virata, Wincorp, Ong and Reyes to pay Ng Wee the amount of his investment.


NOEL GIMENEZ TIJAM
Associate Justice

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¹² *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas, et. al.*, 776 Phil. 401, 411 (2016).