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SPECIAL THIRD DIVISION

[G.R. No. 220926, March 21, 2018]

LUIS JUAN L. VIRATA AND UEM-MARA PHILIPPINES CORPORATION (NOW KNOWN AS CAVITEX INFRASTRUCTURE CORPORATION), PETITIONERS, VS. ALEJANDRO NG WEE, WESTMONT INVESTMENT CORP., ANTHONY T. REYES, SIMEON CUA, VICENTE CUALOPING, HENRY CUALOPING, MARIZA SANTOSTAN, AND MANUEL ESTRELLA, RESPONDENTS.

[G.R. No. 221058]

WESTMONT INVESTMENT, CORPORATION, PETITIONER, VS. ALEJANDRO NG WEE, RESPONDENT.

[G.R. No. 221109]

MANUEL ESTRELLA, PETITIONER, VS. ALEJANDRO NG WEE, RESPONDENT.

[G.R. No. 221135]

SIMEON CUA, VICENTE CUALOPING, AND HENRY CUALOPING, PETITIONERS, VS. ALEJANDRO NG WEE, RESPONDENT.

[G.R. No. 221218]

ANTHONY T. REYES, PETITIONER, VS. 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, RESPONDENTS.

RESOLUTION

VELASCO JR., J.:

Before this Court are the following recourses from Our July 5, 2017 Decision:

a. Motion for Partial Reconsideration[1] filed by Luis Juan L. Virata (Virata);

b. Motion for Reconsideration[2] of Mariza Santos-Tan (SantosTan);

c. Motion for Reconsideration[3] of Manuel Estrella (Estrella)

d. Motion for Partial Reconsideration[4] of Alejandro Ng Wee (Ng Wee);

e. Motion for Reconsideration[5] of Simeon Cua, Vicente Cualoping, and Henry Cualoping (Cua and the Cualopings);

f. Motion for Reconsideration[6] of Anthony T. Reyes (Reyes); and

g. Motion for Reconsideration[7] of Westmont Investment Corporation (Wincorp)

The Court notes that the grounds relied upon by the movants Virata, Estrella, Ng Wee, Cua and the Cualopings, Reyes, and Wincorp are the same or substantially similar to those raised in their respective petitions at bar. The same have been amply discussed, thoroughly considered, exhaustively threshed out and resolved in Our July 5, 2017 Decision. Said motions for reconsideration, perforce, must suffer the same fate of denial. Meanwhile, the Court deems it necessary to discuss the issues raised by Santos-Tan, who is only now participating in the proceedings, in her plea for reconsideration.

Respondent Santos-Tan never appealed the September 30, 2014 Decision and October 14, 2015 Resolution of the Court of Appeals (CA) in CA-G.R CV. No. 97817 holding her liable with her co-parties to Ng Wee. Hence, she maintains that the Court does not have jurisdiction over her person and that, insofar as she is concerned, the CA ruling had already attained finality and can no longer be modified. And when the Court promulgated its July 5, 2017 Decision granting Virata's cross-claim against her, the Court allegedly altered the CA's final ruling as to her by increasing her exposure, in net effect.

Additionally, Santos-Tan was allegedly deprived of her right to due process since she was not afforded the opportunity to rebut the issue pertaining to Virata's counterclaim, a claim that was allegedly not raised in Virata's appeal but was granted nonetheless.

On the merits, Santos-Tan argues that the cross-claim should not have been granted because the February 15 and March 15, 1999 Side Agreements that served as the basis thereof never got the imprimatur of the Board of Directors of Wincorp. Moreover, Santos-Tan points out that, as established, Power Merge made a total of P2,183,755,253.11 of drawdowns from its Credit Line Facility. Considering Power Merge's receipt of the said amount, it would be iniquitous and immoral to require Santos-Tan and her codirectors in Wincorp to reimburse Virata of whatever the latter would be required to pay Ng Wee.

The arguments do not persuade.

It is at the height of error for respondent Santos-Tan to claim that the Court does not have jurisdiction over her person. Clear in the petitions is that Virata and Reyes specifically impleaded Santos-Tan as one of the party respondents in their petitions, docketed as G.R. Nos. 220926 and 221218, respectively. Through her designation as a party respondent in the said appeals, the Court validly acquired jurisdiction over her person, and prevented the assailed September 30, 2014 Decision and October 14, 2015 Resolution of the CA in CA-G.R CV. No. 97817 from attaining finality as to

her.

Santos-Tan's claim that she was denied of due process when the Court granted Virata's cross-claim is likewise unavailing.

Virata raised his claim against his co-parties as early as the filing of his Answer to Ng Wee's Complaint. The claim was then ventilated in trial where the extent of the liability of each party had been ascertained. Virata, Santos-Tan, and their co-parties would contest the findings of the trial court to the CA, but to no avail. Eventually, the controversy was elevated to this Court.

The implication of Virata's persistent plea, up to this Court, to be absolved of civil liability is to shift the burden entirely to his co-parties. Otherwise stated, he was essentially re-asserting his cross-claim, as against Santos-Tan included. However, Santos-Tan inexplicably waived her right to address the allegations in Virata's bid for exoneration in his petition, despite having been impleaded as party respondent.

The perceived denial of due process right is therefore illusory. SantosTan had all the opportunity to counter Virata's allegations in his petition, but did not avail of the same. She only has herself to blame, not only for failing to appeal the appellate court's ruling, but also for her conscious refusal to even file a comment on the petitions in the case at bar.

Furthermore, even though the cross-claim was not explicitly raised as an issue in Virata's petition, the request therefor is subsumed under the general prayer for equitable relief. Jurisprudence teaches that the Court's grant of relief is limited to what has been prayed for in the Complaint or related thereto, supported by evidence, and covered by the party's cause of action.[8] Here, the grant of the cross-claim is but the logical consequence of the Court's finding that the Side Agreements, although not binding on Ng Wee and the other investors, are binding against the parties thereto. And under the terms of the Side Agreements, the only liability of Power Merge is not to pay for the promissory notes it issued, but to return and deliver to Wincorp all the rights, titles and interests conveyed to it by Wincorp over the Hottick obligations. It may be, as Santos-Tan argued, that Power Merge made drawdowns from the credit line facility, and that its receipt of a significant sum thereunder makes it liable to the investors. However, any payment made by Virata for this liability would nevertheless still be subject to the right of reimbursement from Wincorp by virtue of the Side Agreements.

In his Dissent, esteemed Associate Justice Noel G. Tijam (Justice Tijam) submits that the Wincorp directors-specifically Cua, the Cualopings, Santos-Tan and Estrella-should not be jointly and solidarily liable with Virata, Wincorp, Ong, and Reyes to pay Ng Wee the amount of his investment. Justice Tijam stressed that there is lack of proof that the said directors assented to the execution of the Side Agreements, barring the Court from holding them personally accountable for fraud. Neither can they be held liable for gross negligence since they exercised due diligence in conducting the affairs of Wincorp.

The Gourt finds the submissions meritless.

Section 31 of the Corporation Code expressly states:

> Section 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 or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.
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> When a director, trustee or officer attempts to acquire or acquire, 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.

In Our July 5, 2017 Decision, the Court explicated the liabilities of the board directors, thus:

> *G.R. No. 221135: The liabilities of Cua and the Cualopings*
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> On the other hand, the liabilities of Cua and the Cualopings are more straightforward. They admit of approving the Credit Line Agreement and its subsequent Amendment during the special meetings of the Wincorp board of directors, but interpose the defense that they did so because the screening committee found the application to be above board. They deny knowledge of the Side Agreements and of Power Merge's inability to pay.
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> We are not persuaded.
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> Cua and the Cualopings cannot effectively distance themselves from liability by raising the defenses they did. As ratiocinated by the CA:
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> > Such submission creates a loophole, especially in this age of compartmentalization, that would create a nearly fool-proof scheme whereby well-organized enterprises can evade liability for financial fraud. Behind the veil of compartmentalized departments, such enterprise could induce the investing public to invest in a corporation which is financially unable to pay with promises of definite returns on investment. If we follow the reasoning of defendants-appellants, we allow the masterminds and profiteers from the scheme to take the money and run without fear of liability from law simply because the defrauded investor would be hard-pressed to identify or pinpoint from among the various departments of a corporation which directly enticed him to part with his money.
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> Petitioners Cua and the Cualopings bewail that the above-quoted statement is overarching, sweeping, and bereft of legal or factual basis. But as per the records, the totality of circumstances in this case proves that they are either complicit to the fraud, or at the very least guilty of gross negligence, as regards the "*sans recourse*" transactions from the Power Merge account.

The board of directors is expected to be more than mere rubber stamps of the corporation and its subordinate departments. It wields all corporate powers bestowed by the Corporation Code, including the control over its properties and the conduct of its business. Being stewards of the company, the board is primarily charged with protecting the assets of the corporation in behalf of its stakeholders.

Cua and the Cualopings failed to observe this fiduciary duty when they assented to extending a credit line facility to Power Merge. In PED Case No. 20-2378, the SEC discovered that Power Merge is actually Wincorp's largest borrower at about 30% of the total borrowings. It was then incumbent upon the board of directors to have been more circumspect in approving its credit line facility, and should have made an independent evaluation of Power Merge's application before agreeing to expose it to a P2,500,000,000.00 risk.

Had it fulfilled its fiduciary duty, the obvious warning signs would have cautioned it from approving the loan in haste. To recapitulate: (1) Power Merge has only been in existence for two years when it was granted a credit facility; (2) Power Merge was thinly capitalized with only P37,500,000.00 subscribed capital; (3) Power Merge was not an ongoing concern since it never secured the necessary permits and licenses to conduct business, it never engaged in any lucrative business, and it did not file the necessary reports with the SEC; and (4) no security other than its Promissory Notes was demanded by Wincorp or was furnished by Power Merge in relation to the latter's drawdowns.

It cannot also be ignored that prior to Power Merge's application for a credit facility, its controller Virata had already transacted with Wincorp. A perusal of his records with the company would have revealed that he was a surety for the Hottick obligations that were still unpaid at that time. This means that at the time the Credit Line Agreement was executed on February 15, 1999, Virata still had direct obligations to Wincorp under the Hottick account. But instead of impleading him in the collection suit against Hottick, Wincorp's board of directors effectively released Virata from liability, and, ironically, granted him a credit facility in the amount of P1,300,000,000.00 on the very same day.

This only goes to show that even if Cua and the Cualopings are not guilty of fraud, they would nevertheless still be liable for gross negligence in managing the affairs of the company, to the prejudice of its clients and stakeholders. Under such circumstances, it becomes immaterial whether or not they approved of the Side Agreements or authorized Reyes to sign the same since this could have all been avoided if they were vigilant enough to disapprove the Power Merge credit application. Neither can the business judgment rule apply herein for it is elementary in corporation law that the doctrine admits of exceptions: bad faith being one of them, gross negligence, another. The CA then correctly held petitioners Cua and the Cualopings liable to respondent Ng Wee in their personal capacity.