

EN BANC

[G.R. No. 207161, September 08, 2015]

**Y-I LEISURE PHILIPPINES, INC., YATS INTERNATIONAL LTD.
AND Y-I CLUBS AND RESORTS, INC., PETITIONERS, VS. JAMES
YU, RESPONDENT.**

D E C I S I O N

MENDOZA, J.:

The present case attempts to unravel whether the transfer of all or substantially all the assets of a corporation under Section 40 of the Corporation Code carries with it the assumption of corporate liabilities.

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the January 30, 2012 Decision^[1] and the April 29, 2013 Resolution^[2] of the Court of Appeals (CA), in CA-G.R. CV No. 96036, which affirmed with modification the August 31, 2010 Decision^[3] of the Regional Trial Court, Branch 81, Quezon City (RTC).

The Facts

Mt. Arayat Development Co. Inc. (*MADCI*) was a real estate development corporation, which was registered^[4] on February 7, 1996 before the Security and Exchange Commission (*SEC*). On the other hand, respondent James Yu (*Yu*) was a businessman, interested in purchasing golf and country club shares.

Sometime in 1997, *MADCI* offered for sale shares of a golf and country club located in the vicinity of Mt. Arayat in Arayat, Pampanga, for the price of P550.00 per share. Relying on the representation of *MADCI*'s brokers and sales agents, Yu bought 500 golf and 150 country club shares for a total price of P650,000.00 which he paid by installment with fourteen (14) Far East Bank and Trust Company (*FEBTC*) checks.^[5]

Upon full payment of the shares to *MADCI*, Yu visited the supposed site of the golf and country club and discovered that it was non-existent. In a letter, dated February 5, 2000, Yu demanded from *MADCI* that his payment be returned to him.^[6] *MADCI* recognized that Yu had an investment of P650,000.00, but the latter had not yet received any refund.^[7]

On August 14, 2000, Yu filed with the RTC a complaint^[8] for collection of sum of money and damages with prayer for preliminary attachment against *MADCI* and its president Rogelio Sangil (*Sangil*) to recover his payment for the purchase of golf and country club shares. In his transactions with *MADCI*, Yu alleged that he dealt with Sangil, who used *MADCI*'s corporate personality to defraud him.

In his Answer,^[9] Sangil alleged that Yu dealt with MADCI as a juridical person and that he did not benefit from the sale of shares. He added that the return of Yu's money was no longer possible because its approval had been blocked by the new set of officers of MADCI, which controlled the majority of its board of directors.

In its Answer,^[10] MADCI claimed that it was Sangil who defrauded Yu. It invoked the Memorandum of Agreement^[11] (MOA), dated May 29, 1999, entered into by MADCI, Sangil and petitioner Yats International Ltd. (YIL). Under the MOA, Sangil undertook to redeem MADCI proprietary shares sold to third persons or settle in full all their claims for refund of payments.^[12] Thus, it was MADCI's position that Sangil should be ultimately liable to refund the payment for shares purchased.

After the pre-trial, Yu filed an Amended Complaint,^[13] wherein he also impleaded YIL, Y-I Leisure Phils., Inc. (YILPI) and Y-I Club & Resorts, Inc. (YICRI). According to Yu, he discovered in the Registry of Deeds of Pampanga that, substantially, all the assets of MADCI, consisting of one hundred twenty (120) hectares of land located in Magalang, Pampanga, were sold to YIL, YILPI and YICRI. The transfer was done in fraud of MADCI's creditors, and without the required approval of its stockholders and board of directors under Section 40 of the Corporation Code. Yu also alleged that Sangil even filed a case in Pampanga which assailed the said irregular transfers of lands.

In their Answer,^[14] YIL, YILPI and YICRI alleged that they only had an interest in MADCI in 1999 when YIL bought some of its corporate shares pursuant to the MOA. This occurred two (2) years *after* Yu bought his golf and country club shares from MADCI. As a mere stockholder of MADCI, YIL could not be held responsible for the liabilities of the corporation. As to the transfer of properties from MADCI to YILPI^[15] and subsequently to YICRI,^[16] they averred that it was not undertaken to defraud MADCI's creditors and it was done in accordance with the MOA. In fact, it was stipulated in the MOA that Sangil undertook to settle all claims for refund of third parties.

During the trial, the MOA was presented before the RTC. It stated that Sangil controlled 60% of the capital stock of MADCI, while the latter owned 120 hectares of agricultural land in Magalang, Pampanga, the property intended for the development of a golf course; that YIL was to subscribe to the remaining 40% of the capital stock of MADCI for a consideration of P31,000,000.00; that YIL also gave P500,000.00 to acquire the shares of minority stockholders; that as a condition for YIL's subscription, MADCI and Sangil were obligated to obtain several government permits, such as an environmental compliance certificate and land conversion permit; that should MADCI and Sangil fail in their obligations, they must return the amounts paid by YIL with interests; that if they would still fail to return the same, YIL would be authorized to sell the 120 hectare land to satisfy their obligation; and that, as an additional security, Sangil undertook to redeem all the MADCI proprietary shares sold to third parties or to settle in full all their claims for refund.

Sangil then testified that MADCI failed to develop the golf course because its properties were taken over by YIL after he allegedly violated the MOA.^[17] The lands of MADCI were eventually sold to YICRI for a consideration of P9.3 million, which was definitely lower than their market price.^[18] Unfortunately, the case assailing the

transfers was dismissed by a trial court in Pampanga.^[19]

The president and chief executive officer of YILPI and YICRI, and managing director of YIL, Denny On Yat Wang (*Wang*), was presented as a witness by YIL. He testified that YIL was an investment company engaged in the development of real estates, projects, leisure, tourism, and related businesses.^[20] He explained that YIL subscribed to the shares of MADCI because it was interested in its golf course development project in Pampanga.^[21] Thus, he signed the MOA on behalf of YIL and he paid P31.5 million to subscribe to MADCI's shares, subject to the fulfilment of Sangil's obligations.^[22]

Wang further testified that the MOA stipulated that MADCI would execute a special power of attorney in his favor, empowering him to sell the property of MADCI in case of default in the performance of obligations.^[23] Due to Sangil's subsequent default, a deed of absolute sale over the lands of MADCI was eventually executed in favor of YICRI, its designated company.^[24] Wang also stated that, aside from its lands, MADCI had other assets in the form of loan advances of its directors.^[25]

The RTC Ruling

In its August 31, 2010 Decision, the RTC ruled that because MADCI did not deny its contractual obligation with Yu, it must be liable for the return of his payments. The trial court also ruled that Sangil should be solidarily liable with MADCI because he used the latter as a mere alter ego or business conduit. The RTC was convinced that Sangil had absolute control over the corporation and he started selling golf and country club shares under the guise of MADCI even without clearance from SEC.

The RTC, however, exonerated YIL, YILPI and YICRI from liability because they were not part of the transactions between MADCI and Sangil, on one hand and Yu, on the other hand. It opined that YIL, YILPI and YICRI even had the foresight of protecting the creditors of MADCI when they made Sangil responsible for settling the claims of refunds of thirds persons in the proprietary shares. The decretal portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Ordering defendants Mt. Arayat Development Corporation, Inc. and Rogelio Sangil to pay plaintiff James Yu jointly and severally the amounts of P650,000.04 with 6% legal rate of interest from the filing of the amended complaint until full payment and and P50,000.00 as attorney's fees.
2. Dismissing the instant case against defendant Y-I Leisure Philippines, Inc., YATS International Limited and Y-I Clubs and Resorts, Inc.; and
3. Dismissing the counterclaims of Y-I Leisure Philippines, Inc., YATS International Limited and Y-I Clubs and Resorts, Inc.

SO ORDERED.^[26]

In two separate appeals, the parties elevated the case to the CA.

The CA Ruling

In its assailed Decision, dated January 30, 2012, the CA *partly granted* the appeals and *modified* the RTC decision by holding YIL and its companies, YILPI and YICRI, jointly and severally, liable for the satisfaction of Yu's claim.

The CA held that the sale of lands between MADCI and YIL must be upheld because Yu failed to prove that it was simulated or that fraud was employed. This did not mean, however, that YIL and its companies were free from any liability for the payment of Yu's claim.

The CA explained that YIL, YILPI and YICRI could not escape liability by simply invoking the provision in the MOA that Sangil undertook the responsibility of paying all the creditors' claims for refund. The provision was, in effect, a novation under Article 1293 of the Civil Code, specifically the substitution of debtors. Considering that Yu, as creditor of MADCI, had no knowledge of the "change of debtors," the MOA could not validly take effect against him. Accordingly, MADCI remained to be a debtor of Yu.

Consequently, as the CA further held, the transfer of the entire assets of MADCI to YICRI should not prejudice the transferor's creditors. Citing the case of *Caltex Philippines, Inc. v. PNOC Shipping and Transport Corporation*^[27] (*Caltex*), the CA ruled that the sale by MADCI of all its corporate assets to YIL and its companies *necessarily included the assumption of the its liabilities*. Otherwise, the assets were put beyond the reach of the creditors, like Yu. The CA stated that the liability of YIL and its companies was determined not by their participation in the sale of the golf and country club shares, but by the fact that they bought the entire assets of MADCI and its creditors might not have other means of collecting the amounts due to them, except by going after the assets sold.

Anent Sangil's liability, the CA ruled that he could not use the separate corporate personality of MADCI as a tool to evade his existing personal obligations under the MOA. The dispositive portion of the decision reads:

WHEREFORE, the appeals are PARTLY GRANTED. Accordingly, the assailed Decision dated August 31, 2010 in Civil Case No. Q-oo-41579 of the RTC of Quezon City, Branch 81, is hereby AFFIRMED WITH MODIFICATION, in that defendants-appellees YIL, YILPI and YICRI are hereby held jointly and severally liable with defendant-appellee MADCI and defendant-appellant Sangil for the satisfaction of plaintiff-appellant Yu's claim.

In all other respects, the assailed decision stands.

SO ORDERED.^[28]

YIL and its companies, YILPI and YICRI, moved for reconsideration, but their motion was denied by the CA in its assailed Resolution, dated April 29, 2013.

Hence, this petition.

ISSUE

WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT PETITIONERS YATS GROUP SHOULD BE HELD JOINTLY AND SEVERALLY LIABLE TO RESPONDENT YU DESPITE THE ABSENCE OF FRAUD IN THE SALE OF ASSETS AND BAD FAITH ON THE PART OF PETITIONERS YATS GROUP.^[29]

Petitioners YIL, YILPI and YICRI contend that the facts of *Caltex* are not on all fours with the case at bench. In *Caltex*, there was an express stipulation of the assumption of all the obligations of the judgment debtor. Here, there was no stipulation whatsoever stating that the petitioners shall assume the payment of MADCI's debts.

The petitioners also argue that fraud must exist to hold third parties liable. The sale in this case was not in any way tainted by any of the "badges of fraud" cited in *Oria v. McMicking*.^[30] The CA itself stated that the alleged simulation of the sale was not established by respondent Yu. Moreover, Article 1383 of the Civil Code requires that the creditor must prove that he has no other legal remedy to satisfy his claim. Such requirement must be followed whether by an action for rescission or action for sum of money.

On September 20, 2013, respondent Yu filed his Comment.^[31] He asserted that the CA correctly applied *Caltex* in the present case as the lands sold to the petitioners were the only assets of MADCI. After the sale, MADCI became incapable of continuing its business, and its corporate existence has just remained to this day in a virtual state of suspended animation. Thus, unless the creditors had agreed to the sale of all the assets of the corporation and had accepted the purchasing corporation as the new debtor, sufficient assets should have been reserved to pay their claims.

On June 19, 2014, the petitioners filed their Reply,^[32] reiterating their previous argument that the element of fraud was required in order for a third party buyer to be liable to the seller's creditors.

The Court's Ruling

The petition lacks merit.

To recapitulate, respondent Yu bought several golf and country club shares from MADCI. Regrettably, the latter did not develop the supposed project. Yu then demanded the return of his payment, but MADCI could not return it anymore because all its assets had been transferred. Through the acts of YIL, MADCI sold all its lands to YILPI and, subsequently to YICRI. Thus, Yu now claims that the