

## FIRST DIVISION

[ G.R. No. 199687, March 24, 2014 ]

**PACIFIC REHOUSE CORPORATION, PETITIONER, VS. COURT OF APPEALS AND EXPORT AND INDUSTRY BANK, INC., RESPONDENTS.**

[G.R. No. 201537]

**PACIFIC REHOUSE CORPORATION, PACIFIC CONCORDE CORPORATION, MIZPAH HOLDINGS, INC., FORUM HOLDINGS CORPORATION AND EAST ASIA OIL COMPANY, INC., PETITIONERS, VS. EXPORT AND INDUSTRY BANK, INC., RESPONDENT.**

### DECISION

**REYES, J.:**

On the scales of justice precariously lie the right of a prevailing party to his victor's cup, no more, no less; and the right of a separate entity from being dragged by the ball and chain of the vanquished party.

The facts of this case as garnered from the Decision<sup>[1]</sup> dated April 26, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 120979 are as follows:

We trace the roots of this case to a complaint instituted with the Makati City Regional Trial Court (RTC), Branch 66, against EIB Securities Inc. (E-Securities) for unauthorized sale of 32,180,000 DMCI shares of private respondents Pacific Rehouse Corporation, Pacific Concorde Corporation, Mizpah Holdings, Inc., Forum Holdings Corporation, and East Asia Oil Company, Inc. In its October 18, 2005 Resolution, the RTC rendered judgment on the pleadings. The *fallo* reads:

WHEREFORE, premises considered, judgment is hereby rendered directing the defendant [E-Securities] **to return the plaintiffs' [private respondents herein] 32,180,000 DMCI shares**, as of judicial demand.

On the other hand, plaintiffs are directed to reimburse the defendant the amount of [P]10,942,200.00, representing the buy back price of the 60,790,000 KPP shares of stocks at [P]0.18 per share.

SO ORDERED. x x x

The Resolution was ultimately affirmed by the Supreme Court and attained finality.

When the Writ of Execution was returned unsatisfied, private respondents moved for the issuance of an *alias* writ of execution to hold Export and Industry Bank, Inc. liable for the judgment obligation as E-Securities is “a wholly-owned controlled and dominated subsidiary of Export and Industry Bank, Inc., and is[,] thus[,] a mere alter ego and business conduit of the latter. E-Securities opposed the motion[,] arguing that it has a corporate personality that is separate and distinct from petitioner. On July 27, 2011, private respondents filed their (1) Reply attaching for the first time a sworn statement executed by Atty. Ramon F. Aviado, Jr., the former corporate secretary of petitioner and E-Securities, to support their alter ego theory; and (2) *Ex-Parte* Manifestation alleging service of copies of the Writ of Execution and Motion for *Alias* Writ of Execution on petitioner.

On July 29, 2011, the RTC concluded that E-Securities is a mere business conduit or alter ego of petitioner, the dominant parent corporation, which justifies piercing of the veil of corporate fiction. The trial court brushed aside E-Securities’ claim of denial of due process on petitioner as “xxx case records show that notices regarding these proceedings had been tendered to the latter, which refused to even receive them. Clearly, [petitioner] had been sufficiently put on notice and afforded the chance to give its side[,] yet[,] it chose not to.” Thus, the RTC disposed as follows:

WHEREFORE, xxx,

Let an Alias Writ of Execution be issued relative to the above-entitled case and pursuant to the RESOLUTION dated October 18, 2005 and to this Order directing defendant EIB Securities, Inc., and/or **Export and Industry Bank, Inc.**, to fully comply therewith.

The Branch Sheriff of this Court is directed to cause the immediate implementation of the given alias writ in accordance with the Order of Execution to be issued anew by the Branch Clerk of Court.

SO ORDERED. x x x

With this development, petitioner filed an Omnibus Motion (*Ex Abundanti Cautela*) questioning the *alias* writ because it was not impleaded as a party to the case. The RTC denied the motion in its Order dated August 26, 2011 and directed the garnishment of P1,465,799,000.00, the total amount of the 32,180,000 DMCI shares at P45.55 per share, against petitioner and/or E-Securities.<sup>[2]</sup> x x x. (Citations omitted)

The Regional Trial Court (RTC) ratiocinated that being one and the same entity in the eyes of the law, the service of summons upon EIB Securities, Inc. (E-Securities) has bestowed jurisdiction over both the parent and wholly-owned subsidiary.<sup>[3]</sup> The RTC cited the cases of *Sps. Violago v. BA Finance Corp. et al.*<sup>[4]</sup> and *Arcilla v. Court of Appeals*<sup>[5]</sup> where the doctrine of piercing the veil of corporate fiction was applied

notwithstanding that the affected corporation was not brought to the court as a party. Thus, the RTC held in its Order<sup>[6]</sup> dated August 26, 2011:

WHEREFORE, premises considered, the Motion for Reconsideration with Motion to Inhibit filed by defendant EIB Securities, Inc. is denied for lack of merit. The Omnibus Motion Ex Abundanti C[au]tela is likewise denied for lack of merit.

Pursuant to Rule 39, Section 10 (a) of the Rules of Court, the Branch Clerk of Court or the Branch Sheriff of this Court is hereby directed to acquire 32,180,000 DMCI shares of stock from the Philippine Stock Exchange at the cost of EIB Securities, Inc. and Export and Industry Bank[,] Inc. and to deliver the same to the plaintiffs pursuant to this Court's Resolution dated October 18, 2005.

To implement this Order, let GARNISHMENT issue against ALL THOSE HOLDING MONEYS, PROPERTIES OF ANY AND ALL KINDS, REAL OR PERSONAL BELONGING TO OR OWNED BY DEFENDANT EIB SECURITIES, INC. AND/OR EXPORT AND INDUSTRY BANK[,] INC., [sic] in such amount as may be sufficient to acquire 32,180,000 DMCI shares of stock to the Philippine Stock Exchange, based on the closing price of Php45.55 per share of DMCI shares as of August 1, 2011, the date of the issuance of the Alias Writ of Execution, or the total amount of PhP1,465,799,000.00.

SO ORDERED.<sup>[7]</sup>

#### **CA-G.R. SP No. 120979**

Export and Industry Bank, Inc. (Export Bank) filed before the CA a petition for *certiorari* with prayer for the issuance of a temporary restraining order (TRO)<sup>[8]</sup> seeking the nullification of the RTC Order dated August 26, 2011 for having been made with grave abuse of discretion amounting to lack or excess of jurisdiction. In its petition, Export Bank made reference to several rulings<sup>[9]</sup> of the Court upholding the separate and distinct personality of a corporation.

In a Resolution<sup>[10]</sup> dated September 2, 2011, the CA issued a 60-day TRO enjoining the execution of the Orders of the RTC dated July 29, 2011 and August 26, 2011, which granted the issuance of an *alias* writ of execution and ordered the garnishment of the properties of E-Securities and/or Export Bank. The CA also set a hearing to determine the necessity of issuing a writ of injunction, *viz*:

Considering the amount ordered to be garnished from petitioner Export and Industry Bank, Inc. and the fiduciary duty of the banking institution to the public, there is grave and irreparable injury that may be caused to [Export Bank] if the assailed Orders are immediately implemented. We thus resolve to **GRANT** the Temporary Restraining Order effective for a period of sixty (60) days from notice, restraining/enjoining the Sheriff of the Regional Trial Court of Makati City or his deputies, agents, representatives or any person acting in their behalf from executing the July 29, 2011 and August 26, 2011 Orders. [Export Bank] is **DIRECTED** to **POST** a bond in the sum of fifty million pesos (P50,000,000.00) within ten (10) days from notice, to answer for any damage which private

respondents may suffer by reason of this Temporary Restraining Order; otherwise, the same shall automatically become ineffective.

Let the **HEARING** be set on September 27, 2011 at 2:00 in the afternoon at the Paras Hall, Main Building, Court of Appeals, to determine the necessity of issuing a writ of preliminary injunction. The Division Clerk of Court is **DIRECTED** to notify the parties and their counsel with dispatch.

x x x x

**SO ORDERED.**<sup>[11]</sup>

Pacific Rehouse Corporation (Pacific Rehouse), Pacific Concorde Corporation, Mizpah Holdings, Inc., Forum Holdings Corporation and East Asia Oil Company, Inc. (petitioners) filed their Comment<sup>[12]</sup> to Export Bank's petition and proffered that the cases mentioned by Export Bank are inapplicable owing to their clearly different factual antecedents. The petitioners alleged that unlike the other cases, there are circumstances peculiar only to E-Securities and Export Bank such as: 499,995 out of 500,000 outstanding shares of stocks of E-Securities are owned by Export Bank;<sup>[13]</sup> Export Bank had actual knowledge of the subject matter of litigation as the lawyers who represented E-Securities are also lawyers of Export Bank.<sup>[14]</sup> As an alter ego, there is no need for a finding of fraud or illegality before the doctrine of piercing the veil of corporate fiction can be applied.<sup>[15]</sup>

After oral arguments before the CA, the parties were directed to file their respective memoranda.<sup>[16]</sup>

On October 25, 2011, the CA issued a Resolution,<sup>[17]</sup> granting Export Bank's application for the issuance of a writ of preliminary injunction, viz:

**WHEREFORE**, finding [Export Bank's] application for the ancillary injunctive relief to be meritorious, and it further appearing that there is urgency and necessity in restraining the same, a Writ of Preliminary Injunction is hereby **GRANTED** and **ISSUED** against the Sheriff of the Regional Trial Court of Makati City, Branch 66, or his deputies, agents, representatives or any person acting in their behalf from executing the July 29, 2011 and August 26, 2011 Orders. Public respondents are ordered to CEASE and DESIST from enforcing and implementing the subject orders until further notice from this Court.<sup>[18]</sup>

The petitioners filed a Manifestation<sup>[19]</sup> and Supplemental Manifestation<sup>[20]</sup> challenging the above-quoted CA resolution for lack of concurrence of Associate Justice Socorro B. Inting (Justice Inting), who was then on official leave.

On December 22, 2011, the CA, through a Special Division of Five, issued another Resolution,<sup>[21]</sup> which reiterated the Resolution dated October 25, 2011 granting the issuance of a writ of preliminary injunction.

On January 2, 2012, one of the petitioners herein, Pacific Rehouse filed before the

Court a petition for *certiorari*<sup>[22]</sup> under Rule 65, docketed as **G.R. No. 199687**, demonstrating its objection to the Resolutions dated October 25, 2011 and December 22, 2011 of the CA.

On April 26, 2012, the CA rendered the assailed Decision<sup>[23]</sup> on the merits of the case, granting Export Bank's petition. The CA disposed of the case in this wise:

We **GRANT** the petition. The Orders dated July 29, 2011 and August 26, 2011 of the Makati City Regional Trial Court, Branch 66, insofar as [Export Bank] is concerned, are **NULLIFIED**. The Writ of Preliminary Injunction (WPI) is rendered **PERMANENT**.

**SO ORDERED.**<sup>[24]</sup>

The CA explained that the alter ego theory cannot be sustained because ownership of a subsidiary by the parent company is not enough justification to pierce the veil of corporate fiction. There must be proof, apart from mere ownership, that Export Bank exploited or misused the corporate fiction of E-Securities. The existence of interlocking incorporators, directors and officers between the two corporations is not a conclusive indication that they are one and the same.<sup>[25]</sup> The records also do not show that Export Bank has complete control over the business policies, affairs and/or transactions of E-Securities. It was solely E-Securities that contracted the obligation in furtherance of its legitimate corporate purpose; thus, any fall out must be confined within its limited liability.<sup>[26]</sup>

The petitioners, without filing a motion for reconsideration, filed a Petition for Review<sup>[27]</sup> under Rule 45 docketed as **G.R. No. 201537**,<sup>[28]</sup> impugning the Decision dated April 26, 2012 of the CA.

Considering that **G.R. Nos. 199687** and **201537** originated from the same set of facts, involved the same parties and raised intertwined issues, the cases were then consolidated.

### **Issues**

*In précis*, the issues for resolution of this Court are the following:

In **G.R. No. 199687**,

WHETHER THE CA COMMITTED GRAVE ABUSE OF DISCRETION IN GRANTING EXPORT BANK'S APPLICATION FOR THE ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION.

In **G.R. No. 201537**,

I.

WHETHER THE CA COMMITTED A REVERSIBLE ERROR IN RULING THAT EXPORT BANK MAY NOT BE HELD LIABLE FOR A FINAL AND EXECUTORY JUDGMENT AGAINST E-SECURITIES IN AN ALIAS WRIT OF EXECUTION