

## THIRD DIVISION

[ G.R. No. 166282, February 13, 2013 ]

**HEIRS OF FE TAN UY (REPRESENTED BY HER HEIR, MANLING UY LIM), PETITIONERS, VS. INTERNATIONAL EXCHANGE BANK, RESPONDENT.**

**[G.R. NO. 166283]**

**GOLDKEY DEVELOPMENT CORPORATION, PETITIONER. VS. INTERNATIONAL EXCHANGE BANK, RESPONDENT.**

### DECISION

**MENDOZA, J.:**

Before the Court are two consolidated petitions for review on certiorari under Rule 45 of the 1997 Revised Rules of Civil Procedure, assailing the August 16, 2004 Decision<sup>[1]</sup> and the December 2, 2004 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 69817 entitled "*International Exchange Bank v. Hammer Garments Corp., et al.*"

#### **The Facts**

On several occasions, from June 23, 1997 to September 3, 1997, respondent International Exchange Bank (*iBank*), granted loans to Hammer Garments Corporation (*Hammer*), covered by promissory notes and deeds of assignment, in the following amounts:<sup>[3]</sup>

<u>Date of Promissory Note</u>	<u>Amount</u>
June 23, 1997	P 5,599,471.33
July 24, 1997	2,700,000.00
July 25, 1997	2,300,000.00
August 1, 1997	2,938,505.04
August 1, 1997	3,361,494.96
August 14, 1997	980,000.00
August 21, 1997	2,527,200.00
August 21, 1997	3,146,715.00
September 3, 1997	<u>1,385,511.75</u>
Total	P24,938,898.08

These were made pursuant to the Letter-Agreement,<sup>[4]</sup> dated March 23,

1996, between iBank and Hammer, represented by its President and General Manager, Manuel Chua (*Chua*) a.k.a. Manuel Chua Uy Po Tiong, granting Hammer a P 25 Million-Peso Omnibus Line.<sup>[5]</sup> The loans were secured by a P 9 Million-Peso

Real Estate Mortgage<sup>[6]</sup> executed on July 1, 1997 by Goldkey Development Corporation (*Goldkey*) over several of its properties and a P 25 Million-Peso Surety Agreement<sup>[7]</sup> signed by Chua and his wife, Fe Tan Uy (*Uy*), on April 15, 1996.

As of October 28, 1997, Hammer had an outstanding obligation of P25,420,177.62 to iBank.<sup>[8]</sup> Hammer defaulted in the payment of its loans, prompting iBank to foreclose on Goldkey's third-party Real Estate Mortgage. The mortgaged properties were sold for P 12 million during the foreclosure sale, leaving an unpaid balance of P 13,420,177.62.<sup>[9]</sup> For failure of Hammer to pay the deficiency, iBank filed a Complaint<sup>[10]</sup> for sum of money on December 16, 1997 against Hammer, Chua, Uy, and Goldkey before the Regional Trial Court, Makati City (*RTC*).<sup>[11]</sup>

Despite service of summons, Chua and Hammer did not file their respective answers and were declared in default. In her separate answer, Uy claimed that she was not liable to iBank because she never executed a surety agreement in favor of iBank. Goldkey, on the other hand, also denies liability, averring that it acted only as a third-party mortgagor and that it was a corporation separate and distinct from Hammer.<sup>[12]</sup>

Meanwhile, iBank applied for the issuance of a writ of preliminary attachment which was granted by the RTC in its December 17, 1997 Order.<sup>[13]</sup>

The Notice of Levy on Attachment of Real Properties, dated July 15, 1998, covering the properties under the name of Goldkey, was sent by the sheriff to the Registry of Deeds of Quezon City.<sup>[14]</sup>

The RTC, in its Decision,<sup>[15]</sup> dated December 27, 2000, ruled in favor of iBank. While it made the pronouncement that the signature of Uy on the Surety Agreement was a forgery, it nevertheless held her liable for the outstanding obligation of Hammer because she was an officer and stockholder of the said corporation. The RTC agreed with Goldkey that as a third-party mortgagor, its liability was limited to the properties mortgaged. It came to the conclusion, however, that Goldkey and Hammer were one and the same entity for the following reasons: (1) both were family corporations of Chua and Uy, with Chua as the President and Chief Operating Officer; (2) both corporations shared the same office and transacted business from the same place, (3) the assets of Hammer and Goldkey were co-mingled; and (4) when Chua absconded, both Hammer and Goldkey ceased to operate. As such, the piercing of the veil of corporate fiction was warranted. Uy, as an officer and stockholder of Hammer and Goldkey, was found liable to iBank together with Chua, Hammer and Goldkey for the deficiency of P13,420,177.62.

Aggrieved, the heirs of Uy and Goldkey (*petitioners*) elevated the case to the CA. On August 16, 2004, it promulgated its decision affirming the findings of the RTC. The CA found that iBank was not negligent in evaluating the financial stability of Hammer. According to the appellate court, iBank was induced to grant the loan because petitioners, with intent to defraud the bank, submitted a falsified Financial Report for 1996 which incorrectly declared the assets and cashflow of Hammer.<sup>[16]</sup> Because petitioners acted maliciously and in bad faith and used the corporate fiction to defraud iBank, they should be treated as one and the same as Hammer.<sup>[17]</sup>

Hence, these petitions filed separately by the heirs of Uy and Goldkey. On February 9, 2005, this Court ordered the consolidation of the two cases.<sup>[18]</sup>

### **The Issues**

Petitioners raise the following issues:

**Whether or not a trial court, under the facts of this case, can go out of the issues raised by the pleadings;**<sup>[19]</sup>

**Whether or not there is guilt by association in those cases where the veil of corporate fiction may be pierced;**<sup>[20]</sup> and

**Whether or not the “alter ego” theory in disregarding the corporate personality of a corporation is applicable to Goldkey.**<sup>[21]</sup>

Simplifying the issues in this case, the Court must resolve the following: (1) whether Uy can be held liable to iBank for the loan obligation of Hammer as an officer and stockholder of the said corporation; and (2) whether Goldkey can be held liable for the obligation of Hammer for being a mere alter ego of the latter.

### **The Court’s Ruling**

The petitions are partly meritorious.

*Uy is not liable; The piercing of the veil of corporate fiction is not justified*

The heirs of Uy argue that the latter could not be held liable for being merely an officer of Hammer and Goldkey because it was not shown that she had committed any actionable wrong<sup>[22]</sup> or that she had participated in the transaction between Hammer and iBank. They further claim that she had cut all ties with Hammer and her husband long before the execution of the loan.<sup>[23]</sup>

The Court finds in favor of Uy.

Basic is the rule in corporation law that a corporation is a juridical entity which is vested with a legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. Following this principle, obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities. A director, officer or employee of a corporation is generally not held personally liable for obligations incurred by the corporation.<sup>[24]</sup> Nevertheless, this legal fiction may be disregarded if it is used as a means to perpetrate fraud or an illegal act, or as a vehicle for the evasion of an existing obligation, the circumvention of statutes, or to confuse legitimate issues.<sup>[25]</sup>

This is consistent with the provisions of the Corporation Code of the Philippines,

which states:

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.

Solidary liability will then attach to the directors, officers or employees of the corporation in certain circumstances, such as:

1. When directors and trustees or, in appropriate cases, the officers of a corporation: (a) vote for or assent to patently unlawful acts of the corporation; (b) act in bad faith or with gross negligence in directing the corporate affairs; and (c) are guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons;
2. When a director or officer has consented to the issuance of watered stocks or who, having knowledge thereof, did not forthwith file with the corporate secretary his written objection thereto;
3. When a director, trustee or officer has contractually agreed or stipulated to hold himself personally and solidarily liable with the corporation; or
4. When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action.<sup>[26]</sup>

Before a director or officer of a corporation can be held personally liable for corporate obligations, however, the following requisites must concur: (1) the complainant must allege in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (2) the complainant must clearly and convincingly prove such unlawful acts, negligence or bad faith.<sup>[27]</sup>

While it is true that the determination of the existence of any of the circumstances that would warrant the piercing of the veil of corporate fiction is a question of fact which cannot be the subject of a petition for review on certiorari under Rule 45, this Court can take cognizance of factual issues if the findings of the lower court are not supported by the evidence on record or are based on a misapprehension of facts.<sup>[28]</sup>

In this case, petitioners are correct to argue that it was not alleged, much less proven, that Uy committed an act as an officer of Hammer that would permit the piercing of the corporate veil. A reading of the complaint reveals that with regard to Uy, iBank did not demand that she be held liable for the obligations of Hammer

because she was a corporate officer who committed bad faith or gross negligence in the performance of her duties such that the lifting of the corporate mask would be merited. What the complaint simply stated is that she, together with her errant husband Chua, acted as surety of Hammer, as evidenced by her signature on the Surety Agreement which was later found by the RTC to have been forged.<sup>[29]</sup>

Considering that the only basis for holding Uy liable for the payment of the loan was proven to be a falsified document, there was no sufficient justification for the RTC to have ruled that Uy should be held jointly and severally liable to iBank for the unpaid loan of Hammer. Neither did the CA explain its affirmation of the RTC's ruling against Uy. The Court cannot give credence to the simplistic declaration of the RTC that liability would attach directly to Uy for the sole reason that she was an officer and stockholder of Hammer.

At most, Uy could have been charged with negligence in the performance of her duties as treasurer of Hammer by allowing the company to contract a loan despite its precarious financial position. Furthermore, if it was true, as petitioners claim, that she no longer performed the functions of a treasurer, then she should have formally resigned as treasurer to isolate herself from any liability that could result from her being an officer of the corporation. Nonetheless, these shortcomings of Uy are not sufficient to justify the piercing of the corporate veil which requires that the negligence of the officer must be so gross that it could amount to bad faith and must be established by clear and convincing evidence. Gross negligence is one that is characterized by the lack of the slightest care, acting or failing to act in a situation where there is a duty to act, wilfully and intentionally with a conscious indifference to the consequences insofar as other persons may be affected.<sup>[30]</sup>

It behooves this Court to emphasize that the piercing of the veil of corporate fiction is frowned upon and can only be done if it has been clearly established that the separate and distinct personality of the corporation is used to justify a wrong, protect fraud, or perpetrate a deception.<sup>[31]</sup> As aptly explained in *Philippine National Bank v. Andrada Electric & Engineering Company*:<sup>[32]</sup>

Hence, any application of the doctrine of piercing the corporate veil should be done with caution. A court should be mindful of the milieu where it is to be applied. 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. Otherwise, an injustice that was never unintended may result from an erroneous application.<sup>[33]</sup>

Indeed, there is no showing that Uy committed gross negligence. And in the absence of any of the aforementioned requisites for making a corporate officer, director or stockholder personally liable for the obligations of a corporation, Uy, as a treasurer and stockholder of Hammer, cannot be made to answer for the unpaid debts of the corporation.

*Goldkey is a mere alter ego of Hammer*