

## SECOND DIVISION

[ G.R. No. 171736, July 05, 2010 ]

**PENTACAPITAL INVESTMENT CORPORATION, PETITIONER, VS.  
MAKILITO B. MAHINAY, RESPONDENT.**

[G.R. NO. 181482]

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### D E C I S I O N

**NACHURA, J.:**

Before us are two consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court filed by petitioner Pentacapital Investment Corporation. In G.R. No. 171736, petitioner assails the Court of Appeals (CA) Decision<sup>[1]</sup> dated December 20, 2005 and Resolution<sup>[2]</sup> dated March 1, 2006 in CA-G.R. SP No. 74851; while in G.R. No. 181482, it assails the CA Decision<sup>[3]</sup> dated October 4, 2007 and Resolution<sup>[4]</sup> dated January 21, 2008 in CA-G.R. CV No. 86939.

#### *The Facts*

Petitioner filed a complaint for a sum of money against respondent Makilito Mahinay based on two separate loans obtained by the latter, amounting to P1,520,000.00 and P416,800.00, or a total amount of P1,936,800.00. These loans were evidenced by two promissory notes<sup>[5]</sup> dated February 23, 1996. Despite repeated demands, respondent failed to pay the loans, hence, the complaint.<sup>[6]</sup>

In his Answer with Compulsory Counterclaim,<sup>[7]</sup> respondent claimed that petitioner had no cause of action because the promissory notes on which its complaint was based were subject to a condition that did not occur.<sup>[8]</sup> While admitting that he indeed signed the promissory notes, he insisted that he never took out a loan and that the notes were not intended to be evidences of indebtedness.<sup>[9]</sup> By way of counterclaim, respondent prayed for the payment of moral and exemplary damages plus attorney's fees.<sup>[10]</sup>

Respondent explained that he was the counsel of Ciudad Real Development Inc. (CRDI). In 1994, Pentacapital Realty Corporation (Pentacapital Realty) offered to buy parcels of land known as the Molino Properties, owned by CRDI, located in Molino, Bacoor, Cavite. The Molino Properties, with a total area of 127,708 square meters, were sold at P400.00 per sq m. As the Molino Properties were the subject of a pending case, Pentacapital Realty paid only the down payment amounting to P12,000,000.00. CRDI allegedly instructed Pentacapital Realty to pay the former's

creditors, including respondent who thus received a check worth P1,715,156.90.<sup>[11]</sup> It was further agreed that the balance would be payable upon the submission of an Entry of Judgment showing that the case involving the Molino Properties had been decided in favor of CRDI.<sup>[12]</sup>

Respondent, Pentacapital Realty and CRDI allegedly agreed that respondent had a charging lien equivalent to 20% of the total consideration of the sale in the amount of P10,277,040.00. Pending the submission of the Entry of Judgment and as a sign of good faith, respondent purportedly returned the P1,715,156.90 check to Pentacapital Realty. However, the Molino Properties continued to be haunted by the seemingly interminable court actions initiated by different parties which thus prevented respondent from collecting his commission.

On motion<sup>[13]</sup> of respondent, the Regional Trial Court (RTC) allowed him to file a Third Party Complaint<sup>[14]</sup> against CRDI, subject to the payment of docket fees.<sup>[15]</sup>

Admittedly, respondent earlier instituted an action for Specific Performance against Pentacapital Realty before the RTC of Cebu City, Branch 57, praying for the payment of his commission on the sale of the Molino Properties.<sup>[16]</sup> In an Amended Complaint,<sup>[17]</sup> respondent referred to the action he instituted as one of Preliminary Mandatory Injunction instead of Specific Performance. Acting on Pentacapital Realty's Motion to Dismiss, the RTC dismissed the case for lack of cause of action.<sup>[18]</sup> The dismissal became final and executory.

With the dismissal of the aforesaid case, respondent filed a Motion to Permit Supplemental Compulsory Counterclaim.<sup>[19]</sup> In addition to the damages that respondent prayed for in his compulsory counterclaim, he sought the payment of his commission amounting to P10,316,640.00, plus interest at the rate of 16% per annum, as well as attorney's fees equivalent to 12% of his principal claim.<sup>[20]</sup> Respondent claimed that Pentacapital Realty is a 100% subsidiary of petitioner. Thus, although petitioner did not directly participate in the transaction between Pentacapital Realty, CRDI and respondent, the latter's claim against petitioner was based on the doctrine of piercing the veil of corporate fiction. Simply stated, respondent alleged that petitioner and Pentacapital Realty are one and the same entity belonging to the Pentacapital Group of Companies.<sup>[21]</sup>

Over the opposition of petitioner, the RTC, in an Order<sup>[22]</sup> dated August 22, 2002, allowed the filing of the supplemental counterclaim. Aggrieved, petitioner sought recourse in the CA through a special civil action for *certiorari*, seeking to reverse and set aside the RTC Order. The case was docketed as CA-G.R. SP No. 74851. On December 20, 2005, the CA rendered the assailed Decision dismissing the petition.<sup>[23]</sup> The appellate court sustained the allowance of the supplemental compulsory counterclaim based on the allegations in respondent's pleading. The CA further concluded that there was a logical relationship between the claims of petitioner in its complaint and those of respondent in his supplemental compulsory counterclaim. The CA declared that it was inconsequential that respondent did not clearly allege the facts required to pierce the corporate separateness of petitioner and its subsidiary, the Pentacapital Realty.<sup>[24]</sup>

Petitioner now comes before us in G.R. No. 171736, raising the following issues:

A.

WHETHER RESPONDENT MAHINAY IS BARRED FROM ASSERTING THE CLAIM CONTAINED IN HIS "SUPPLEMENTAL COMPULSORY COUNTERCLAIM" ON THE GROUNDS OF (1) *RES JUDICATA*, (2) WILLFUL AND DELIBERATE FORUM SHOPPING, AND (3) FAILURE TO INTERPOSE SUCH CLAIM ON TIME PURSUANT TO SECTION 2 OF RULE 9 OF THE RULES OF COURT;

B.

WHETHER RESPONDENT MAHINAY'S SUPPLEMENTAL COMPULSORY COUNTERCLAIM IS ACTUALLY A THIRD-PARTY COMPLAINT AGAINST PENTACAPITAL REALTY, THE INTRODUCTION OF WHICH REQUIRES THE PAYMENT OF THE NECESSARY DOCKET FEES;

C.

ASSUMING FOR THE SAKE OF PURE ARGUMENT THAT IT IS PROPER TO PIERCE THE CORPORATE VEIL AND TO ALLOW RESPONDENT MAHINAY TO LODGE A "SUPPLEMENTAL COMPULSORY COUNTERCLAIM" AGAINST HEREIN PETITIONER PENTACAPITAL INVESTMENT FOR AN ALLEGED OBLIGATION OF ITS SUBSIDIARY, PENTACAPITAL REALTY, ON THE THEORY THAT THEY ARE "ONE AND THE SAME COMPANY," WHETHER PENTACAPITAL REALTY SHOULD HAVE AT LEAST BEEN MADE A PARTY TO THE CASE AS RULED BY THIS HONORABLE COURT IN *FILMERC COMMERCIAL CO., INC. VS. INTERMEDIATE APPELLATE COURT*;

D.

WHETHER RESPONDENT MAHINAY SHOULD BE ALLOWED TO PRESENT EVIDENCE ON HIS SO-CALLED "SUPPLEMENTAL COMPULSORY COUNTERCLAIM" INASMUCH AS (1) RESPONDENT MAHINAY'S PLEADINGS ARE BEREFT OF ANY ALLEGATIONS TO BUTTRESS THE MERGING OF PENTACAPITAL REALTY AND PENTACAPITAL INVESTMENT INTO ONE ENTITY AND THE CONSEQUENT IMPUTATION ON THE LATTER OF THE FORMER'S SUPPOSED LIABILITY ON RESPONDENT MAHINAY'S SUPPLEMENTAL COMPULSORY COUNTERCLAIM, AND (2) THE INCIDENTS ALLEGEDLY PERTAINING TO, AND WHICH WOULD THEREBY SUPPORT, THE PIERCING OF CORPORATE VEIL ARE NOT EVIDENTIARY MATTERS MATERIAL TO THE PROCEEDINGS BEFORE THE COURT *A QUO* CONSIDERING THAT THE SAME ARE BEYOND THE SCOPE OF THE PLEADINGS;

E.

WHETHER THE DOCTRINE OF PIERCING THE CORPORATE VEIL MAY BE INVOKED AND APPLIED IN ORDER TO EVADE AN OBLIGATION AND

FACILITATE PROCEDURAL WRONGDOING; AND

F.

WHETHER PETITIONER PENTACAPITAL INVESTMENT COMMITTED FORUM SHOPPING WHEN IT FILED THE PRESENT PETITION DURING THE PENDENCY OF THE MOTION FOR RECONSIDERATION IT FILED BEFORE THE COURT A *QUO* AND, SUBSEQUENTLY, OF THE APPEAL BEFORE THE COURT OF APPEALS TO QUESTION THE JUDGMENT OF THE COURT A *QUO*.<sup>[25]</sup>

There being no writ of injunction or Temporary Restraining Order (TRO), the proceedings before the RTC continued and respondent was allowed to present his evidence on his supplemental compulsory counterclaim. After trial on the merits, the RTC rendered a decision<sup>[26]</sup> dated March 20, 2006, the dispositive portion of which reads:

WHEREFORE, PREMISES CONSIDERED, plaintiff's complaint is hereby ordered dismissed for lack of merit. This court, instead, finds that defendant was able to prove by a clear preponderance of evidence his cause of action against plaintiff as to defendant's compulsory and supplemental counterclaims. That, therefore, this court hereby orders the plaintiff to pay unto defendant the following sums, to wit:

1. P1,715,156.90 representing the amount plaintiff is obligated to pay defendant as provided for in the deed of sale and the supplemental agreement, plus interest at the rate of 16% per annum, to be computed from September 23, 1998 until the said amount shall have been fully paid;
2. Php 10,316,640.00 representing defendant's share of the proceeds of the sale of the Molino property (defendant's charging lien) plus interest at the rate of 16% per annum, to be computed from September 23, 1998 until the said amount shall have been fully paid;
3. Php 50,000.00 as attorney's fees based on quantum meruit;
4. Php 50,000.00 litigation expenses, plus costs of suit.

This court finds it unnecessary to rule on the third party complaint, the relief prayed for therein being dependent on the possible award by this court of the relief of plaintiff's complaint.<sup>[27]</sup>

On appeal, the CA, in CA-G.R. CV No. 86939, affirmed *in toto* the above decision. The CA found no basis for petitioner to collect the amount demanded, there being

no perfected contract of loan for lack of consideration.<sup>[28]</sup> As to respondent's supplemental compulsory counterclaim, quoting the findings of the RTC, the appellate court held that respondent was able to prove by preponderance of evidence that it was the intent of Pentacapital Group of Companies and CRDI to give him P10,316,640.00 and P1,715,156.90.<sup>[29]</sup> The CA likewise affirmed the award of interest at the rate of 16% per annum, plus damages.<sup>[30]</sup>

Unsatisfied, petitioner moved for reconsideration of the aforesaid Decision, but it was denied in a Resolution<sup>[31]</sup> dated January 21, 2008. Hence, the present petition in G.R. No. 181482, anchored on the following arguments:

A.

Considering that the inferences made in the present case are manifestly absurd, mistaken or impossible, and are even contrary to the admissions of respondent Mahinay, and inasmuch as the judgment is premised on a misapprehension of facts, this Honorable Court may validly take cognizance of the errors relative to the findings of fact of both the Honorable Court of Appeals and the court *a quo*.

B.

Respondent Mahinay is liable to petitioner PentaCapital Investment for the PhP1,936,800.00 loaned to him as well as for damages and attorney's fees.

1.

The Honorable Court of Appeals erred in concluding that respondent Mahinay failed to receive the money he borrowed when there is not even any dispute as to the fact that respondent Mahinay did indeed receive the PhP1,936,800.00 from petitioner PentaCapital Investment.

2.

The Promissory Notes executed by respondent Mahinay are valid instruments and are binding upon him.

C.

Petitioner PentaCapital Investment cannot be held liable on the supposed "supplemental compulsory counterclaim" of respondent Mahinay.

1.

The findings of fact as well as the conclusions arrived at by the Court of Appeals in its decision were based on mistaken