

FIRST DIVISION

[G.R. No. 170284, March 16, 2007]

**BENITO ARATEA AND PONCIANA CANONIGO, PETITIONERS, V.S.
ESMERALDO P. SUICO AND COURT OF APPEALS, CEBU CITY,
RESPONDENTS.**

D E C I S I O N

This petition for review on certiorari under Rule 45 of the Rules of Court seeks the reversal and setting aside of the decision^[1] dated 5 May 2005 of the Court of Appeals (CA)-Cebu City, as reiterated in its resolution^[2] of 23 September 2005, in *CA-G.R. CV No. 60174* which affirmed an earlier decision of the Regional Trial Court (RTC) of Cebu City, Branch 24, in an action for a sum of money and damages thereat instituted by the herein private respondent Esmeraldo P. Suico (Suico) against, among others, the herein petitioners Benito Aratea (Aratea) and Ponciana Canonigo (Canonigo).

The facts:

Petitioners Aratea and Canonigo are the controlling stockholders of Samar Mining Development Corporation (*SAMDECO*), a domestic corporation engaged in mining operations in San Isidro, Wright, Western Samar. On the other hand, private respondent Suico is a businessman engaged in export and general merchandise.

Sometime in 1989, Suico entered into a *Memorandum of Agreement* (MOA) with *SAMDECO*. Armed with the proper board resolution, Aratea and Canonigo signed the MOA as the duly authorized representatives of the corporation. Under the MOA, Suico would extend loans and cash advances to *SAMDECO* in exchange for the grant of the exclusive right to market fifty percent (50%) of the total coal extracted by *SAMDECO* from its mining sites in San Isidro, Wright, Western Samar.

Suico was enticed into the aforementioned financing scheme because Aratea and Canonigo assured him that the money he would lend to *SAMDECO* would easily be paid with five percent (5%) monthly interest as the coals in said sites is easier to gather because it is excavated from open-pit mines. Aratea and Canonigo also promised to Suico that the loan the latter would extend to *SAMDECO* could easily be paid from the profits of his fifty percent (50%) share of the coal produced. Also reserved in favor of Suico was the right of first priority to operate the mining facilities in the event *SAMDECO* becomes incapable of coping with the work demands. By way of further incentive, Suico was actually appointed *SAMDECO*'s Vice-President for Administration.

Pursuant to the same MOA, Suico started releasing loans and cash advances to *SAMDECO*, still through Aratea and Suico. *SAMDECO* started operations in its mining sites to gather the coal. As agreed in the MOA, fifty percent (50%) of the coals produced were offered by Suico to different buyers. However, *SAMDECO*, again

through Aratea and Canonigo, prevented the full implementation of the marketing arrangement by not accepting the prices offered by Suico's coal buyers even though such prices were competitive and fair enough, giving no other explanation for such refusal other than saying that the price was too low. Aratea and Canonigo did not also set any criterion or standard with which any price offer would be measured against. Because he failed to close any sale of his 50% share of the coal-produce and gain profits therefrom, Suico could not realize payment of the loans and advances he extended to SAMDECO.

SAMDECO, on the other hand, successfully disposed of its 50% share of the coal-produce. Even with said coal sales, however, SAMDECO absolutely made no payment of its loan obligations to Suico, despite demands.

Aratea and Canonigo eventually sold the mining rights and passed on the operations of SAMDECO to Southeast Pacific Marketing, Inc. (SPMI). They also sold their shares in SAMDECO to SPMI's President, Arturo E. Dy without notice to, or consent of Suico, in violation of the MOA.

Hence, in the RTC of Cebu City, Suico filed a complaint for a Sum of Money and Damages against SAMDECO, Aratea, Canonigo, and Seiko Philippines, Inc. (SEIKO, which was later substituted by SPMI and Arturo E. Dy). The complaint was docketed as Civil Case No. CEB-10618 and raffled to Branch 24 of the court.

On 5 January 1998, the trial court came out with its decision rendering judgment for Suico as follows:

WHEREFORE, finding that the plaintiff has meritorious cause of action against the defendants, this Court hereby orders all the defendants SAMDECO, SPMI, Dy, SEIKO, Benito Aratea, Ponciana Canonigo to solidarily pay the plaintiff the principal obligation of P3.5 million plus 5% interest per month reckoned from March 1989 until fully paid; while defendants Aratea Canonigo should solidarily pay plaintiff the balance on the principal amounting to P978,440.00 plus 5% interest per month reckoned from March 1989 until fully paid. In addition all defendants are hereby ordered solidarily to pay plaintiff P2,000,000.00 million (sic) as moral damages, P500,000.00 as exemplary damages, P250,000.00 as attorney's fees, and P100,000.00 as litigation expenses. All counterclaims and cross-claims are hereby dismissed.

SO ORDERED.

On 9 February 1998, SAMDECO, SPMI, Dy, and SEIKO filed their common notice of appeal, while Aratea and Canonigo filed theirs on 16 February 1998. All appeals were docketed in CA-Cebu City as *CA-G.R. CV No. 60174*.

After review of the records of the case, CA-Cebu City, in its decision of 5 May 2005, dismissed the appeal and affirmed the appealed decision of the trial court, to wit::

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us **DISMISSING** the appeal filed in this case and **AFFIRMING** the decision dated January 5, 1998 of the RTC of Cebu City, Branch 24 in Civil Case No. CEB-10618.

SO ORDERED.

Petitioners Aratea and Canonigo filed their common motion for reconsideration but the same was denied by the appellate court in its resolution of 23 September 2005.

Hence, this recourse by the two on the following assigned errors:

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ERROR IN FINDING AGAINST THE DEFENDANTS-APPELLANTS BENITO ARATEA AND PONCIANA CANONIGO AND CONDEMNING THEM TO PAY JOINTLY AND SEVERALLY THE LOANS, CASH ADVANCES AND CAPITAL INFUSION MADE BY PLAINTIFF TO DEFENDANT-APPELLANT SAMDECO. THE COURT OF APPEALS OVERLOOKED AND MISINTERPRETED SOME FACTS OR CIRCUMSTANCES AND COMMITTED SOME MISAPPREHENSION OF THE FACTS AND THE APPLICABLE LAW/S WHICH HAD ADVERSELY AFFECTED THE RESULT OF THE CASE.

We **DENY**.

The Court notes that petitioners Aratea and Canonigo do not assail the decisions of the two courts below insofar as their co-defendants in the court of origin, namely: SAMDECO; SPMI; Dy; and SEIKO, were held liable to Suico. As it were, petitioners take exception from both decisions only, insofar as they are held personally and solidarily liable with their co-defendants. They strongly assert that "the records of this case clearly show that the loans, cash advances and capital infusion made by xxx Suico to SAMDECO are the sole and exclusive liability and/or responsibility of SAMDECO and/or its transferee/s."^[3] Relying heavily on the allegations in Suico's complaint in Civil Case No. CEB-10618, whereunder they were referred to as mere representatives/agents of SAMDECO, petitioners seek to be declared free from any liability which their co-defendants in the suit may be adjudged liable for.

We must first stress that petitioners' personal and solidary liability depends on whether the Court finds SAMDECO's monetary obligations on account of the loans and cash advances made to it by Suico are due and demandable as borne by the evidence.

After carefully and thoroughly reviewing the records of the proceedings before the trial court, we find no cogent reason to depart from the factual findings of both the trial and appellate courts holding all defendants liable for said loans and cash advances.

However, in determining whether SAMDECO's stockholders and/or representatives (petitioners Aratea and Canonigo) may be held solidarily liable with SAMDECO's obligations, the Court must determine whether, upon the same facts found by the two courts below, there is basis to pierce the veil of corporate fiction and hold SAMDECO's stockholders and/or officers personally and solidarily liable with the corporation.

Prudential Bank v. Alviar^[4] stated:

Well-settled is the rule that a corporation has a personality separate and distinct from that of its officers and stockholders. Officers of a