

SECOND DIVISION

[G.R. No. 126006, January 29, 2004]

**LAPULAPU FOUNDATION, INC. AND ELIAS Q. TAN, PETITIONERS,
VS. COURT OF APPEALS (SEVENTEENTH DIVISION) AND ALLIED
BANKING CORP., RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

Before the Court is the petition for review on certiorari filed by the Lapulapu Foundation, Inc. and Elias Q. Tan seeking to reverse and set aside the Decision^[1] dated June 26, 1996 of the Court of Appeals (CA) in CA-G.R. CV No. 37162 ordering the petitioners, jointly and solidarily, to pay the respondent Allied Banking Corporation the amount of P493,566.61 plus interests and other charges. Likewise, sought to be reversed and set aside is the appellate court's Resolution dated August 19, 1996 denying the petitioners' motion for reconsideration.

The case stemmed from the following facts:

Sometime in 1977, petitioner Elias Q. Tan, then President of the co-petitioner Lapulapu Foundation, Inc., obtained four loans from the respondent Allied Banking Corporation covered by four promissory notes in the amounts of P100,000 each. The details of the promissory notes are as follows:

<u>P/N No.</u>	<u>Date of P/N</u>	<u>Maturity Date</u>	<u>Amount as of 1/23/79</u>
BD No. 504	Nov. 7, 1977	Feb. 5, 1978	P123,377.76
BD No. 621	Nov. 28, 1977	Mar. 28, 1978	P123,411.10
BD No. 716	Dec. 12, 1977	Apr. 11, 1978	P122,322.21
BD No. 839	Jan. 5, 1978	May 5, 1978	P120,455.54 ^[2]

As of January 23, 1979, the entire obligation amounted to P493,566.61 and despite demands made on them by the respondent Bank, the petitioners failed to pay the same. The respondent Bank was constrained to file with the Regional Trial Court of Cebu City, Branch 15, a complaint seeking payment by the petitioners, jointly and solidarily, of the sum of P493,566.61 representing their loan obligation, exclusive of interests, penalty charges, attorney's fees and costs.

In its answer to the complaint, the petitioner Foundation denied incurring indebtedness from the respondent Bank alleging that the loans were obtained by petitioner Tan in his personal capacity, for his own use and benefit and on the strength of the personal information he furnished the respondent Bank. The petitioner Foundation maintained that it never authorized petitioner Tan to co-sign in his capacity as its President any promissory note and that the respondent Bank fully knew that the loans contracted were made in petitioner Tan's personal capacity and

for his own use and that the petitioner Foundation never benefited, directly or indirectly, therefrom. The petitioner Foundation then interposed a cross-claim against petitioner Tan alleging that he, having exceeded his authority, should be solely liable for said loans, and a counterclaim against the respondent Bank for damages and attorney's fees.

For his part, petitioner Tan admitted that he contracted the loans from the respondent Bank in his personal capacity. The parties, however, agreed that the loans were to be paid from the proceeds of petitioner Tan's shares of common stocks in the Lapulapu Industries Corporation, a real estate firm. The loans were covered by promissory notes which were automatically renewable ("rolled-over") every year at an amount including unpaid interests, until such time as petitioner Tan was able to pay the same from the proceeds of his aforesaid shares.

According to petitioner Tan, the respondent Bank's employee required him to affix two signatures on every promissory note, assuring him that the loan documents would be filled out in accordance with their agreement. However, after he signed and delivered the loan documents to the respondent Bank, these were filled out in a manner not in accord with their agreement, such that the petitioner Foundation was included as party thereto. Further, prior to its filing of the complaint, the respondent Bank made no demand on him.

After due trial, the court *a quo* rendered judgment the dispositive portion of which reads:

WHEREFORE, in view of the foregoing evidences [sic], arguments and considerations, this court hereby finds the preponderance of evidence in favor of the plaintiff and hereby renders judgment as follows:

"1. Requiring the defendants Elias Q. Tan and Lapulapu Foundation, Inc. [the petitioners herein] to pay jointly and solidarily to the plaintiff Allied Banking Corporation [the respondent herein] the amount of P493,566.61 as principal obligation for the four promissory notes, including all other charges included in the same, with interest at 14% per annum, computed from January 24, 1979, until the same are fully paid, plus 2% service charges and 1% monthly penalty charges.

"2. Requiring the defendants Elias Q. Tan and Lapulapu Foundation, Inc., to pay jointly and solidarily, attorney's fees in the equivalent amount of 25% of the total amount due from the defendants on the promissory notes, including all charges;

"3. Requiring the defendants Elias Q. Tan and Lapulapu Foundation, Inc., to pay jointly and solidarily litigation expenses of P1,000.00 plus costs of the suit."^[3]

On appeal, the CA affirmed with modification the judgment of the court *a quo* by deleting the award of attorney's fees in favor of the respondent Bank for being without basis.

The appellate court disbelieved petitioner Tan's claim that the loans were his personal loans as the promissory notes evidencing them showed upon their faces that these were obligations of the petitioner Foundation, as contracted by petitioner Tan himself in his "official and personal character." Applying the parol evidence rule, the CA likewise rejected petitioner Tan's assertion that there was an unwritten agreement between him and the respondent Bank that he would pay the loans from the proceeds of his shares of stocks in the Lapulapu Industries Corp.

Further, the CA found that demand had been made by the respondent Bank on the petitioners prior to the filing of the complaint *a quo*. It noted that the two letters of demand dated January 3, 1979^[4] and January 30, 1979^[5] asking settlement of the obligation were sent by the respondent Bank. These were received by the petitioners as shown by the registry return cards^[6] presented during trial in the court *a quo*.

Finally, like the court *a quo*, the CA applied the doctrine of piercing the veil of corporate entity in holding the petitioners jointly and solidarily liable. The evidence showed that petitioner Tan had represented himself as the President of the petitioner Foundation, opened savings and current accounts in its behalf, and signed the loan documents for and in behalf of the latter. The CA, likewise, found that the petitioner Foundation had allowed petitioner Tan to act as though he had the authority to contract the loans in its behalf. On the other hand, petitioner Tan could not escape liability as he had used the petitioner Foundation for his benefit.

Aggrieved, the petitioners now come to the Court alleging that:

- I. THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE LOANS SUBJECT MATTER OF THE INSTANT PETITION ARE ALREADY DUE AND DEMANDABLE DESPITE ABSENCE OF PRIOR DEMAND.
- II. THE COURT OF APPEALS GRAVELY ERRED IN APPLYING THE PAROL EVIDENCE RULE AND THE DOCTRINE OF PIERCING THE VEIL OF CORPORATE ENTITY AS BASIS FOR ADJUDGING JOINT AND SOLIDARY LIABILITY ON THE PART OF PETITIONERS ELIAS Q. TAN AND LAPULAPU FOUNDATION, INC.^[7]

The petitioners assail the appellate court's finding that the loans had become due and demandable in view of the two demand letters sent to them by the respondent Bank. The petitioners insist that there was no prior demand as they vigorously deny receiving those letters. According to petitioner Tan, the signatures on the registry return cards were not his.

The petitioners' denial of receipt of the demand letters was rightfully given scant consideration by the CA as it held:

Exhibits "R" and "S" are two letters of demand, respectively dated January 3, 1979 and January 30, 1979, asking settlement of the obligations covered by the promissory notes. The first letter was written by Ben Tio Peng Seng, Vice-President of the bank, and addressed to Lapulapu Foundation, Inc., attention of Mr. Elias Q. Tan, President, while the second was a final demand written by the appellee's counsel, addressed to both defendants-appellants, and giving them five (5) days