

FIRST DIVISION

[G.R. No. 126200, August 16, 2001]

**DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS.
HONORABLE COURT OF APPEALS AND REMINGTON INDUSTRIAL
SALES CORPORATION, RESPONDENTS.**

D E C I S I O N

KAPUNAN, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking a review of the Decision of the Court of Appeals dated October 6, 1995 and the Resolution of the same court dated August 29, 1996.

The facts are as follows:

Marinduque Mining Industrial Corporation (Marinduque Mining), a corporation engaged in the manufacture of pure and refined nickel, nickel and cobalt in mixed sulfides, copper ore/concentrates, cement and pyrite conc., obtained from the Philippine National Bank (PNB) various loan accommodations. To secure the loans, Marinduque Mining executed on October 9, 1978 a Deed of Real Estate Mortgage and Chattel Mortgage in favor of PNB. The mortgage covered all of Marinduque Mining's real properties, located at Surigao del Norte, Sipalay, Negros Occidental, and at Antipolo, Rizal, including the improvements thereon. As of November 20, 1980, the loans extended by PNB amounted to P4 Billion, exclusive of interest and charges.^[1]

On July 13, 1981, Marinduque Mining executed in favor of PNB and the Development Bank of the Philippines (DBP) a second Mortgage Trust Agreement. In said agreement, Marinduque Mining mortgaged to PNB and DBP all its real properties located at Surigao del Norte, Sipalay, Negros Occidental, and Antipolo, Rizal, including the improvements thereon. The mortgage also covered all of Marinduque Mining's chattels, as well as assets of whatever kind, nature and description which Marinduque Mining may subsequently acquire in substitution or replenishment or in addition to the properties covered by the previous Deed of Real and Chattel Mortgage dated October 7, 1978. Apparently, Marinduque Mining had also obtained loans totaling P2 Billion from DBP, exclusive of interest and charges.^[2]

On April 27, 1984, Marinduque Mining executed in favor of PNB and DBP an Amendment to Mortgage Trust Agreement by virtue of which Marinduque Mining mortgaged in favor of PNB and DBP all other real and personal properties and other real rights subsequently acquired by Marinduque Mining.^[3]

For failure of Marinduque Mining to settle its loan obligations, PNB and DBP instituted sometime on July and August 1984 extrajudicial foreclosure proceedings over the mortgaged properties.

The events following the foreclosure are narrated by DBP in its petition, as follows:

In the ensuing public auction sale conducted on August 31, 1984, PNB and DBP emerged and were declared the highest bidders over the foreclosed real properties, buildings, mining claims, leasehold rights together with the improvements thereon as well as machineries [sic] and equipments [sic] of MMIC located at Nonoc Nickel Refinery Plant at Surigao del Norte for a bid price of P14,238,048,150.00 [and] [o]ver the foreclosed chattels of MMIC located at Nonoc Refinery Plant at Surigao del Norte, PNB and DBP as highest bidders, bided for P170,577,610.00 (Exhs. "5" to "5-A", "6", "7" to "7-AA-" PNB/DBP). For the foreclosed real properties together with all the buildings, major machineries & equipment and other improvements of MMIC located at Antipolo, Rizal, likewise held on August 31, 1984, were sold to PNB and DBP as highest bidders in the sum of P1,107,167,950.00 (Exhs. "10" to "10-X"— PNB/ DBP).

At the auction sale conducted on September 7, 1984[,] over the foreclosed real properties, buildings, & machineries/equipment of MMIC located at Sipalay, Negros Occidental were sold to PNB and DBP, as highest bidders, in the amount of P2,383,534,000.00 and P543,040,000.00 respectively (Exhs. "8" to "8-BB", "9" to "90-GGGGGG"— PNB/DBP).

Finally, at the public auction sale conducted on September 18, 1984 on the foreclosed personal properties of MMIC, the same were sold to PNB and DBP as the highest bidder in the sum of P678,772,000.00 (Exhs. "11" and "12-QQQQQ"—PNB).

PNB and DBP thereafter thru a Deed of Transfer dated August 31, 1984, purposely, in order to ensure the continued operation of the Nickel refinery plant and to prevent the deterioration of the assets foreclosed, assigned and transferred to Nonoc Mining and Industrial Corporation all their rights, interest and participation over the foreclosed properties of MMIC located at Nonoc Island, Surigao del Norte for an initial consideration of P14,361,000,000.00 (Exh. "13"— PNB).

Likewise, thru [sic] a Deed of Transfer dated June 6, 1984, PNB and DBP assigned and transferred in favor of Maricalum Mining Corp. all its rights, interest and participation over the foreclosed properties of MMIC at Sipalay, Negros Occidental for an initial consideration of P325,800,000.00 (Exh. "14"— PNB/DBP).

On February 27, 1987, PNB and DBP, pursuant to Proclamation

No. 50 as amended, again assigned, transferred and conveyed to the National Government thru [sic] the Asset Privatization Trust (APT) all its existing rights and interest over the assets of MMIC, earlier assigned to Nonoc Mining and Industrial Corporation, Maricalum Mining Corporation and Island Cement Corporation (Exh. "15" & "15-A"— PNB/DBP).^[4]

In the meantime, between July 16, 1982 to October 4, 1983, Marinduque Mining purchased and caused to be delivered construction materials and other merchandise from Remington Industrial Sales Corporation (Remington) worth P921,755.95. The purchases remained unpaid as of August 1, 1984 when Remington filed a complaint for a sum of money and damages against Marinduque Mining for the value of the unpaid construction materials and other merchandise purchased by Marinduque Mining, as well as interest, attorney's fees and the costs of suit.

On September 7, 1984, Remington's original complaint was amended to include PNB and DBP as co-defendants in view of the foreclosure by the latter of the real and chattel mortgages on the real and personal properties, chattels, mining claims, machinery, equipment and other assets of Marinduque Mining.^[5]

On September 13, 1984, Remington filed a second amended complaint to include as additional defendant, the Nonoc Mining and Industrial Corporation (Nonoc Mining). Nonoc Mining is the assignee of all real and personal properties, chattels, machinery, equipment and all other assets of Marinduque Mining at its Nonoc Nickel Factory in Surigao del Norte.^[6]

On March 26, 1986, Remington filed a third amended complaint including the Maricalum Mining Corporation (Maricalum Mining) and Island Cement Corporation (Island Cement) as co-defendants. Remington asserted that Marinduque Mining, PNB, DBP, Nonoc Mining, Maricalum Mining and Island Cement must be treated in law as one and the same entity by disregarding the veil of corporate fiction since:

1. Co-defendants NMIC, Maricalum and Island Cement which are newly created entities are practically owned wholly by defendants PNB and DBP, and managed by their officers, aside from the fact that the aforesaid co-defendants NMIC, Maricalum and Island Cement were organized in such a hurry and in such suspicious circumstances by co-defendants PNB and DBP after the supposed extra-judicial foreclosure of MMIC's assets as to make their supposed projects assets, machineries and equipment which were originally owned by co-defendant MMIC beyond the reach of creditors of the latter.
2. The personnel, key officers and rank-and-file workers and employees of co-defendants NMIC, Maricalum and Island Cement creations of co-defendants PNB and DBP were the personnel of co-defendant MMIC such that x x x practically there has only been a change of name for all legal purpose and intents.
3. The places of business not to mention the mining claims and project premises of co-defendants NMIC, Maricalum and Island Cement likewise

used to be the places of business, mining claims and project premises of co-defendant MMIC as to make the aforesaid co-defendants NMIC, Maricalum and Island Cement mere adjuncts and subsidiaries of co-defendants PNB and DBP, and subject to their control and management.

On top of everything, co-defendants PNB, DBP NMIC, Maricalum and Island Cement being all corporations created by the government in the pursuit of business ventures should not be allowed to ignore, x x x or obliterate with impunity nay illegally, the financial obligations of x x x MMIC whose operations co-defendants PNB and DBP had highly financed before the alleged extrajudicial foreclosure of defendant MMIC's assets, machineries and equipment to the extent that major policies of co-defendant MMIC were being decided upon by co-defendants PNB and DBP as major financiers who were represented in its board of directors forming part of the majority thereof which through the alleged extrajudicial foreclosure culminated in a complete take-over by co-defendants PNB and DBP bringing about the organization of their co-defendants NMIC, Maricalum and Island Cement to which were transferred all the assets, machineries and pieces of equipment of co-defendant MMIC used in its nickel mining project in Surigao del Norte, copper mining operation in Sipalay, Negros Occidental and cement factory in Antipolo, Rizal to the prejudice of creditors of co-defendant MMIC such as plaintiff Remington Industrial Sales Corporation whose stockholders, officers and rank-and-file workers in the legitimate pursuit of its business activities, invested considerable time, sweat and private money to supply, among others, co-defendant MMIC with some of its vital needs for its operation, which co-defendant MMIC during the time of the transactions material to this case became x x x co-defendants PNB and DBP's instrumentality, business conduit, alter ego, agency (sic), subsidiary or auxiliary corporation, by virtue of which it becomes doubly necessary to disregard the corporation fiction that co-defendants PNB, DBP, MMIC, NMIC, Maricalum and Island Cement, six (6) distinct and separate entities, when in fact and in law, they should be treated as one and the same at least as far as plaintiff's transactions with co-defendant MMIC are concerned, so as not to defeat public convenience, justify wrong, subvert justice, protect fraud or confuse legitimate issues involving creditors such as plaintiff, a fact which all defendants were as (sic) still are aware of during all the time material to the transactions subject of this case.^[7]

On April 3, 1989, Remington filed a motion for leave to file a fourth amended complaint impleading the Asset Privatization Trust (APT) as co-defendant. Said fourth amended complaint was admitted by the lower court in its Order dated April 29, 1989.

On April 10, 1990, the Regional Trial Court (RTC) rendered a decision in favor of Remington, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff, ordering the defendants Marinduque Mining & Industrial Corporation,

Philippine National Bank, Development Bank of the Philippines, Nonoc Mining and Industrial Corporation, Maricalum Mining Corporation, Island Cement Corporation and Asset Privatization Trust to pay, jointly and severally, the sum of P920,755.95, representing the principal obligation, including the stipulated interest as of June 22, 1984, plus ten percent (10%) surcharge per annum by way of penalty, until the amount is fully paid; the sum equivalent to 10% of the amount due as and for attorney's fees; and to pay the costs.^[8]

Upon appeal by PNB, DBP, Nonoc Mining, Maricalum Mining, Island Cement and APT, the Court of Appeals, in its Decision dated October 6, 1995, affirmed the decision of the RTC. Petitioner filed a Motion for Reconsideration, which was denied in the Resolution dated August 29, 1996.

Hence, this petition, DBP maintaining that Remington has no cause of action against it or PNB, nor against their transferees, Nonoc Mining, Island Cement, Maricalum Mining, and the APT.

On the other hand, private respondent Remington submits that the transfer of the properties was made in fraud of creditors. The presence of fraud, according to Remington, warrants the piercing of the corporate veil such that Marinduque Mining and its transferees could be considered as one and the same corporation. The transferees, therefore, are also liable for the value of Marinduque Mining's purchases.

In *Yutivo Sons Hardware vs. Court of Tax Appeals*,^[9] cited by the Court of Appeals in its decision,^[10] this Court declared:

It is an elementary and fundamental principle of corporation law that a corporation is an entity separate and distinct from its stockholders and from other corporations to which it may be connected. However, when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons or in case of two corporations, merge them into one". (Koppel [Phils.], Inc., vs. Yatco, 71 Phil. 496, citing 1 Fletcher Encyclopedia of Corporation, Permanent Ed., pp. 135-136; U.S. vs. Milwaukee Refrigeration Transit Co., 142 Fed., 247, 255 per Sanborn, J.)
xxx

In accordance with the foregoing rule, this Court has disregarded the separate personality of the corporation where the corporate entity was used to escape liability to third parties.^[11] In this case, however, we do not find any fraud on the part of Marinduque Mining and its transferees to warrant the piercing of the corporate veil.

It bears stressing that PNB and DBP are mandated to foreclose on the mortgage when the past due account had incurred arrearages of more than 20% of the total outstanding obligation. Section 1 of Presidential Decree No. 385 (The Law on Mandatory Foreclosure) provides: