

FIRST DIVISION

[G.R. No. 122710, October 12, 2001]

PHILIPPINE NATIONAL BANK, PETITIONER, VS. COURT OF APPEALS AND REMINGTON INDUSTRIAL SALES CORPORATION, RESPONDENTS.

D E C I S I O N

PARDO, J.:

The Case

The case is an appeal *via certiorari* from the decision of the Court of Appeals^[1] affirming the decision of the trial court sentencing petitioner Philippine National Bank (PNB), the Development Bank of the Philippines, Marinduque Mining and Industrial Corporation (MMIC), 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 of Marinduque Mining and Industrial Corporation (MMIC) to Remington Industrial Sales Corporation (Remington), including the stipulated interest as of June 22, 1984, plus ten (10%) per cent surcharge per annum by way of penalty, until fully paid, the sum equivalent to 10% of the amount due as attorneys' fees and costs.

The Facts

The facts, as found by the Court of Appeals, are as follows:

"On August 1, 1984, the plaintiff^[2] filed (with the Regional Trial Court, Branch 19, Manila)^[3] a complaint for sum of money with damages against the Marinduque Mining and Industrial Corporation for unpaid purchases of construction materials and other merchandise covering the period from July 16, 1982 to October 4, 1983, in the sum of P921,755.95; interest at the rate of 18% per annum; the sum equivalent to 25% of the amount of the claim as attorney's fees, and the costs of the suit. (pages 1-4, Vol. I of the Records).

"On September 7, 1984, said complaint was amended to include the Philippine National Bank and the Development Bank of the Philippines 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, machineries, equipment and other assets of the Marinduque Mining and Industrial Corporation. The amended complaint also prayed for the issuance of a writ of preliminary injunction to enjoin the sale of "defendant MMIC's Sipalay Copper Mines in Negros; the Gagacy Copper Mines in Samar, and the Antipolo Cement Plant which auction would more

than wipeout whatever worth defendant MMIC's assets which ultimately (*sic*) be prejudicial to the rights and interests" of plaintiff (appellee). (pages 179-185, Vol. I of the Records).

"Then again, on September 13, 1984, a second amended complaint was filed to include as additional defendant the Nonoc Mining and Industrial Corporation, a corporation organized by the Philippine National Bank and the Development Bank of the Philippines, it being the assignee of all real and personal properties, chattels, machineries, equipment and all other assets of the Marinduque Mining & Industrial Corporation at its Nonoc nickle factory in Surigao del Norte, which were foreclosed and acquired by the two banks. (pages 172-178, Vol. I of the Records).

"On March 26, 1986, with leave of court, the plaintiff (appellee) filed a third amended complaint including the Maricalum Mining Corporation and Island Cement Corporation as co-defendants, alleging therein that the properties, real and personal, chattels, machineries, equipment and all other assets of the Marinduque Mining & Industrial Corporation at Sipalay, Negros Occidental, mining projects at Rizal Province, which were foreclosed by the Philippine National Bank and Development Bank of the Philippines were transferred to MMC and ICC. (pages 329-339, Vol. I of the Records).

"The plaintiff (appellee), in said pleading, asserted that "defendants, PNB, DBP, MMIC, NMIC, Maricalum and Island Cement must be treated in law as one and the same entity by disregarding the veil of corporate fication, at least as far as plaintiff Remington Industrial Sales Corporation is concerned," on account of any or all of the following reasons:

"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 offices 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-defendant MMIC, 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 extra-judicial 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 extra-judicial foreclosure culminated in a complete takeover 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. (pages 335-337, Vol. I of the Records).

"On May 13, 1986, defendants PNB, Nonoc Mining and Industrial Corporation (NONOC), Maricalum Mining Corporation (MARICALUM), and Island Cement Corporation (ISLAND) filed their "Answer to Third Amended Complaint and Counterclaim,"^[4] alleging therein that "(n)owhere in the complaint is there any averment of facts by which answering defendants may be considered under obligation to the plaintiff, whether by law, contract, quasi-contract, delict, or quasi-delict, which are the only sources of obligations, and nowhere is there any averment in the complaint that such obligation is what is being enforced by court action.

"According to them:

--The PNB and the DBP, as the joint highest bidder, acquired the MARINDUQUE assets that had been sold at the foreclosure sales.

--The Nonoc Mining and Industrial Corporation (NONOC), the Maricalum Mining Corporation, and the Island Cement Corporation were organized

and established in accordance with the Corporation Law and duly registered with the Securities and Exchange Commission.

--The nickel mines plant in Nonoc Island, Surigao del Norte, and all appurtenances thereto which had been acquired by the PNB and the DBP on the foreclosure sale of said properties were sold to the Nonoc Mining and Industrial Corporation.

--The copper mines plant in Sipalay, Negros Occidental and all the appurtenances thereto which had been acquired by the PNB and the DBP at the foreclosure sales thereof were sold to Island Cement Corporation.

--There is no truth to the allegation that x x x: the NONOC, the MARICALUM and the ISLAND CEMENT are under the complete control of the PNB and the DBP--the truth being that the former are themselves separate and distinct corporations, with identity and personality of their own, with their own boards of directors, with their own management organizations.

--The allegation to the effect that their creation, organization, and establishment of the three named corporations were "maliciously designed to evade payment of obligations of defendant MMIC to creditors such as plaintiff," is completely bereft of any legal or factual basis. Simply put, said three (3) corporations were set up for the purpose of putting to good use their acquired assets rather than have them deteriorate to eventual uselessness by action of elements in a long course of time. The imputation of malicious intent in the establishment of said corporations is not only false and baseless, but also libelous and destructive of their good names and repute.

The defendants (appellants PNB, DBP, NONOC, MARICALUM, ISLAND CEMENT and APT) opposed plaintiff's (respondent Remington's) claim that it enjoys "preference to defendant MMIC's properties for the unpaid price of the movables sold by the plaintiff to defendant MMIC over and above that of the claim by way of mortgage of defendants DBP and PNB and therefore the acquisition in its entirety by the latter defendants of defendant MMIC's properties without paying herein plaintiff is not in accord with law. (pages 333-334, Vol. I of the Records).

On June 3, 1986, defendant DBP filed its Answer to Third Amended Complaint. (pages 5-14, Vol. II of the Records).

On September 12, 1986, respondent Remington filed with the trial court an "Ex Parte Motion for Preliminary Attachment of co-defendant Marinduque Mining and Industrial Corporation's Properties,"^[5] which was opposed by the defendants (appellants).

On April 3, 1989, respondent Remington filed with the trial court a motion for leave to admit its fourth amended complaint (pages 1-3, Vol. III of the Records). In said fourth amended complaint, the Asset Privatization Trust was impleaded (pages 4-15, Vol. III of the Records). Said fourth amended complaint was admitted by the lower court in its

order dated April 29, 1989. In impleading APT as one of the defendants, the plaintiff (appellee) cited the following grounds:

"1. Since the admission of the third amended complaint x x x Presidential Proclamation No. 50 dated December 8, 1986 took effect by virtue of which, the Asset Privatization Trust was created to take care among others, of the rehabilitation of the non-performing assets of the government owned or controlled corporations, and the disposition thereof;

"2. Pursuant to said Presidential Proclamation No. 50 the assets of Marinduque Mining and Industrial Corporation, Nonoc Mining and Industrial Corporation, Maricalum Mining Corporation and Island Cement Corporation, x x x have been transferred to the aforesaid Asset Privatization Trust x x x on June 5, 1987 as claimed by x x x PNB and DBP.

"3. Due to these subsequent developments x x x, which all took place after the admission of the third amended complaint, it is necessary now to include x x x the Asset Privatization Trust, the latter having become an indispensable and necessary party, in addition to the fact that all the more plaintiff has become uncertain against whom to ask for reliefs x x x.

"On June 14, 1989, defendant APT filed its answer (pages 217-223, Vol. III of the Records), alleging, *inter alia*, that the PNB and the DBP did not transfer and assign the properties of the NMIC, the MMC and the ICC in favor of the National Government or APT x x x what were actually transferred were the financial claims which the PNB and the DBP had against the NMIC, MMC and the ICC. Under paragraph 9 of the same answer, the APT stressed that:

"a) NMIC, MMC and ICC are private corporations duly organized and existing under and by virtue of Philippine laws and therefore, have separate and distinct personalities from each other, as well as from PNB, DBP and APT;

"b) The mere fact that the officers and employees of MMIC were re-hired by the x x x NMIC, MMC and ICC does not detract from the fact that there was indeed a change of ownership;

"c) Since there are three (3) separate mining claims situated in different areas, the same were transferred and assigned separately to NMIC, MMC and ICC. It is understandable, therefore, that NMIC, MMC and ICC have to maintain their respective places of business.

"d) The properties of MMIC which were foreclosed by PNB and DBP were never transferred to APT as evidenced by the Deeds of Transfer executed by PNB and DBP.

"On August 28, 1989, defendants PNB and DBP filed their separate reply to APT's answer (pages 314-315 and 317-319, Vol. III of the Records) denying APT's claim that what was transferred to the latter was merely