

SECOND DIVISION

[G.R. NO. 149237, July 11, 2006]

CHINA BANKING CORPORATION, PETITIONER, VS. DYNE-SEM ELECTRONICS CORPORATION, RESPONDENT.

DECISION

CORONA, J.:

On June 19 and 26, 1985, Dynetics, Inc. (Dynetics) and Elpidio O. Lim borrowed a total of P8,939,000 from petitioner China Banking Corporation. The loan was evidenced by six promissory notes.^[1]

The borrowers failed to pay when the obligations became due. Petitioner consequently instituted a complaint for sum of money^[2] on June 25, 1987 against them. The complaint sought payment of the unpaid promissory notes plus interest and penalties.

Summons was not served on Dynetics, however, because it had already closed down. Lim, on the other hand, filed his answer on December 15, 1987 denying that "he promised to pay [the obligations] jointly and severally to [petitioner]."^[3]

On January 7, 1988, the case was scheduled for pre-trial with respect to Lim. The case against Dynetics was archived.

On September 23, 1988, an amended complaint^[4] was filed by petitioner impleading respondent Dyne-Sem Electronics Corporation (Dyne-Sem) and its stockholders Vicente Chuidian, Antonio Garcia and Jacob Ratinoff. According to petitioner, respondent was formed and organized to be Dynetics' alter ego as established by the following circumstances:

- Dynetics, Inc. and respondent are both engaged in the same line of business of manufacturing, producing, assembling, processing, importing, exporting, buying, distributing, marketing and testing integrated circuits and semiconductor devices;
- [t]he principal office and factory site of Dynetics, Inc. located at Avocado Road, FTI Complex, Taguig, Metro Manila, were used by respondent as its principal office and factory site;
- [r]espondent acquired some of the machineries and equipment of Dynetics, Inc. from banks which acquired the same through foreclosure;
- [r]espondent retained some of the officers of Dynetics, Inc.^[5]

On December 28, 1988, respondent filed its answer, alleging that:

5.1 [t]he incorporators as well as present stockholders of [respondent] are totally different from those of Dynetics, Inc., and not one of them has ever been a stockholder or officer of the latter;

5.2 [n]ot one of the directors of [respondent] is, or has ever been, a director, officer, or stockholder of Dynetics, Inc.;

5.3 [t]he various facilities, machineries and equipment being used by [respondent] in its business operations were legitimately and validly acquired, under arms-length transactions, from various corporations which had become absolute owners thereof at the time of said transactions; these were not just "taken over" nor "acquired from Dynetics" by [respondent], contrary to what plaintiff falsely and maliciously alleges;

5.4 [respondent] acquired most of its present machineries and equipment as second-hand items to keep costs down;

5.5 [t]he present plant site is under lease from Food Terminal, Inc., a government-controlled corporation, and is located inside the FTI Complex in Taguig, Metro Manila, where a number of other firms organized in 1986 and also engaged in the same or similar business have likewise established their factories; practical convenience, and nothing else, was behind [respondent's] choice of plant site;

5.6 [respondent] operates its own bonded warehouse under authority from the Bureau of Customs which has the sole and absolute prerogative to authorize and assign customs bonded warehouses; again, practical convenience played its role here since the warehouse in question was virtually lying idle and unused when said Bureau decided to assign it to [respondent] in June 1986.^[6]

On February 28, 1989, the trial court issued an order archiving the case as to Chuidian, Garcia and Ratinoff since summons had remained unserved.

After hearing, the court *a quo* rendered a decision on December 27, 1991 which read:

xxx [T]he Court rules that Dyne-Sem Electronics Corporation is not an alter ego of Dynetics, Inc. Thus, Dyne-Sem Electronics Corporation is not liable under the promissory notes.

xxx xxx xxx

WHEREFORE, judgment is hereby rendered ordering Dynetics, Inc. and Elpidio O. Lim, jointly and severally, to pay plaintiff.

xxx xxx xxx

Anent the complaint against Dyne-Sem and the latter's counterclaim, both are hereby dismissed, without costs.

SO ORDERED.^[7]

From this adverse decision, petitioner appealed to the Court of Appeals^[8] but the appellate court dismissed the appeal and affirmed the trial court's decision.^[9] It found that respondent was indeed not an alter ego of Dynetics. The two corporations had different articles of incorporation. Contrary to petitioner's claim, no merger or absorption took place between the two. What transpired was a mere sale of the assets of Dynetics to respondent. The appellate court denied petitioner's motion for reconsideration.^[10]

Hence, this petition for review^[11] with the following assigned errors:

VI. Issues

What is the quantum of evidence needed for the trial court to determine if the veil of corporat[e] fiction should be pierced?

[W]hether or not the Regional Trial Court of Manila Branch 15 in its Decision dated December 27, 1991 and the Court of Appeals in its Decision dated February 28, 2001 and Resolution dated July 27, 2001, which affirmed *en toto* [Branch 15, Manila Regional Trial Court's decision,] have ruled in accordance with law and/or applicable [jurisprudence] to the extent that the Doctrine of Piercing the Veil of Corporat[e] Fiction is not applicable in the case at bar?^[12]

We find no merit in the petition.

The question of whether one corporation is merely an alter ego of another is purely one of fact. So is the question of whether a corporation is a paper company, a sham or subterfuge or whether petitioner adduced the requisite quantum of evidence warranting the piercing of the veil of respondent's corporate entity. This Court is not a trier of facts. Findings of fact of the Court of Appeals, affirming those of the trial court, are final and conclusive. The jurisdiction of this Court in a petition for review on certiorari is limited to reviewing only errors of law, not of fact, unless it is shown, *inter alia*, that: (a) the conclusion is grounded entirely on speculations, surmises and conjectures; (b) the inference is manifestly mistaken, absurd and impossible; (c) there is grave abuse of discretion; (d) the judgment is based on a misapplication of facts; (e) the findings of fact of the trial court and the appellate court are contradicted by the evidence on record and (f) the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of both parties.^[13]

We have reviewed the records and found that the factual findings of the trial and appellate courts and consequently their conclusions were supported by the evidence on record.

The general rule is that a corporation has a personality separate and distinct from