

FIRST DIVISION

[G.R. No. 167530, March 13, 2013]

**PHILIPPINE NATIONAL BANK, PETITIONER, VS. HYDRO
RESOURCES CONTRACTORS CORPORATION, RESPONDENT.**

[G.R. NO. 167561]

**ASSET PRIVATIZATION TRUST, PETITIONER, VS. HYDRO
RESOURCES CONTRACTORS CORPORATION, RESPONDENT.**

[G.R. NO. 167603]

**DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS.
HYDRO RESOURCES CONTRACTORS CORPORATION,
RESPONDENT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

These petitions for review on *certiorari*^[1] assail the Decision^[2] dated November 30, 2004 and the Resolution^[3] dated March 22, 2005 of the Court of Appeals in CA-G.R. CV No. 57553. The said Decision affirmed the Decision^[4] dated November 6, 1995 of the Regional Trial Court (RTC) of Makati City, Branch 62, granting a judgment award of P8,370,934.74, plus legal interest, in favor of respondent Hydro Resources Contractors Corporation (HRCC) with the modification that the Privatization and Management Office (PMO), successor of petitioner Asset Privatization Trust (APT),^[5] has been held solidarily liable with Nonoc Mining and Industrial Corporation (NMIC)^[6] and petitioners Philippine National Bank (PNB) and Development Bank of the Philippines (DBP), while the Resolution denied reconsideration separately prayed for by PNB, DBP, and APT.

Sometime in 1984, petitioners DBP and PNB foreclosed on certain mortgages made on the properties of Marinduque Mining and Industrial Corporation (MMIC). As a result of the foreclosure, DBP and PNB acquired substantially all the assets of MMIC and resumed the business operations of the defunct MMIC by organizing NMIC.^[7] DBP and PNB owned 57% and 43% of the shares of NMIC, respectively, except for five qualifying shares.^[8] As of September 1984, the members of the Board of Directors of NMIC, namely, Jose Tengco, Jr., Rolando Zosa, Ruben Ancheta, Geraldo Agulto, and Faustino Agbada, were either from DBP or PNB.^[9]

Subsequently, NMIC engaged the services of Hercon, Inc., for NMIC's Mine Stripping and Road Construction Program in 1985 for a total contract price of P35,770,120. After computing the payments already made by NMIC under the program and crediting the NMIC's receivables from Hercon, Inc., the latter found that NMIC still

has an unpaid balance of P8,370,934.74.^[10] Hercon, Inc. made several demands on NMIC, including a letter of final demand dated August 12, 1986, and when these were not heeded, a complaint for sum of money was filed in the RTC of Makati, Branch 136 seeking to hold petitioners NMIC, DBP, and PNB solidarily liable for the amount owing Hercon, Inc.^[11] The case was docketed as Civil Case No. 15375.

Subsequent to the filing of the complaint, Hercon, Inc. was acquired by HRCC in a merger. This prompted the amendment of the complaint to substitute HRCC for Hercon, Inc.^[12]

Thereafter, on December 8, 1986, then President Corazon C. Aquino issued Proclamation No. 50 creating the APT for the expeditious disposition and privatization of certain government corporations and/or the assets thereof. Pursuant to the said Proclamation, on February 27, 1987, DBP and PNB executed their respective deeds of transfer in favor of the National Government assigning, transferring and conveying certain assets and liabilities, including their respective stakes in NMIC.^[13] In turn and on even date, the National Government transferred the said assets and liabilities to the APT as trustee under a Trust Agreement.^[14] Thus, the complaint was amended for the second time to implead and include the APT as a defendant.

In its answer,^[15] NMIC claimed that HRCC had no cause of action. It also asserted that its contract with HRCC was entered into by its then President without any authority. Moreover, the said contract allegedly failed to comply with laws, rules and regulations concerning government contracts. NMIC further claimed that the contract amount was manifestly excessive and grossly disadvantageous to the government. NMIC made counterclaims for the amounts already paid to Hercon, Inc. and attorney's fees, as well as payment for equipment rental for four trucks, replacement of parts and other services, and damage to some of NMIC's properties.^[16]

For its part, DBP's answer^[17] raised the defense that HRCC had no cause of action against it because DBP was not privy to HRCC's contract with NMIC. Moreover, NMIC's juridical personality is separate from that of DBP. DBP further interposed a counterclaim for attorney's fees.^[18]

PNB's answer^[19] also invoked lack of cause of action against it. It also raised estoppel on HRCC's part and laches as defenses, claiming that the inclusion of PNB in the complaint was the first time a demand for payment was made on it by HRCC. PNB also invoked the separate juridical personality of NMIC and made counterclaims for moral damages and attorney's fees.^[20]

APT set up the following defenses in its answer^[21]: lack of cause of action against it, lack of privity between Hercon, Inc. and APT, and the National Government's preferred lien over the assets of NMIC.^[22]

After trial, the RTC of Makati rendered a Decision dated November 6, 1995 in favor of HRCC. It pierced the corporate veil of NMIC and held DBP and PNB solidarily

liable with NMIC:

On the issue of whether or not there is sufficient ground to pierce the veil of corporate fiction, this Court likewise finds for the plaintiff.

From the documentary evidence adduced by the plaintiff, some of which were even adopted by defendants and DBP and PNB as their own evidence (Exhibits "I", "I-1", "I-2", "I-3", "I-4", "I-5", "I-5-A", "I-5-B", "I-5-C", "I-5-D" and submarkings, inclusive), it had been established that except for five (5) qualifying shares, [NMIC] is owned by defendants DBP and PNB, with the former owning 57% thereof, and the latter 43%. As of September 24, 1984, all the members of [NMIC]'s Board of Directors, namely, Messrs. Jose Tengco, Jr., Rolando M. Zosa, Ruben Ancheta, Geraldo Agulto, and Faustino Agbada are either from DBP or PNB (Exhibits "I-5", "I-5-C", "I-5-D").

The business of [NMIC] was then also being conducted and controlled by both DBP and PNB. In fact, it was Rolando M. Zosa, then Governor of DBP, who was signing and entering into contracts with third persons, on behalf of [NMIC].

In this jurisdiction, it is well-settled that "where it appears that the business enterprises are owned, conducted and controlled by the same parties, both law and equity will, when necessary to protect the rights of third persons, disregard legal fiction that two (2) corporations are distinct entities, and treat them as identical." (Phil. Veterans Investment Development Corp. vs. CA, 181 SCRA 669).

From all indications, it appears that [NMIC] is a mere adjunct, business conduit or alter ego of both DBP and PNB. Thus, the DBP and PNB are jointly and severally liable with [NMIC] for the latter's unpaid obligations to plaintiff.^[23]

Having found DBP and PNB solidarily liable with NMIC, the dispositive portion of the Decision of the trial court reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiff HYDRO RESOURCES CONTRACTORS CORPORATION and against the defendant[s] NONOC MINING AND INDUSTRIAL CORPORATION, DEVELOPMENT BANK OF THE PHILIPPINES and PHILIPPINE NATIONAL BANK, ordering the aforementioned defendants, to pay the plaintiff jointly and severally, the sum of P8,370,934.74 plus legal interest thereon from date of demand, and attorney's fees equivalent to 25% of the judgment award.

The complaint against APT is hereby dismissed. However, APT, as trustee of NONOC MINING AND INDUSTRIAL CORPORATION is directed to ensure compliance with this Decision.^[24]

DBP and PNB filed their respective appeals in the Court of Appeals. Both insisted that it was wrong for the RTC to pierce the veil of NMIC's corporate personality and hold DBP and PNB solidarily liable with NMIC.^[25]

The Court of Appeals rendered the Decision dated November 30, 2004, affirmed the piercing of the veil of the corporate personality of NMIC and held DBP, PNB, and APT solidarily liable with NMIC. In particular, the Court of Appeals made the following findings:

In the case before Us, it is indubitable that [NMIC] was owned by appellants DBP and PNB to the extent of 57% and 43% respectively; that said two (2) appellants are the only stockholders, with the qualifying stockholders of five (5) consisting of its own officers and included in its charter merely to comply with the requirement of the law as to number of incorporators; and that the directorates of DBP, PNB and [NMIC] are interlocked.

x x x x

We find it therefore correct for the lower court to have ruled that:

"From all indications, it appears that [NMIC] is a mere adjunct, business conduit or alter ego of both DBP and PNB. Thus, the DBP and PNB are jointly and severally liable with [NMIC] for the latter's unpaid obligation to plaintiff."^[26]
(Citation omitted.)

The Court of Appeals then concluded that, "in keeping with the concept of justice and fair play," the corporate veil of NMIC should be pierced, ratiocinating:

For to treat [NMIC] as a separate legal entity from DBP and PNB for the purpose of securing beneficial contracts, and then using such separate entity to evade the payment of a just debt, would be the height of injustice and iniquity. Surely that could not have been the intendment of the law with respect to corporations. x x x.^[27]

The dispositive portion of the Decision of the Court of Appeals reads:

WHEREFORE, premises considered, the Decision appealed from is hereby MODIFIED. The judgment in favor of appellee Hydro Resources Contractors Corporation in the amount of P8,370,934.74 with legal interest from date of demand is hereby AFFIRMED, but the dismissal of the case as against Assets Privatization Trust is REVERSED, and its successor the Privatization and Management Office is INCLUDED as one of those jointly and severally liable for such indebtedness. The award of attorney's fees is DELETED.

All other claims and counter-claims are hereby DISMISSED.

Costs against appellants.^[28]

The respective motions for reconsideration of DBP, PNB, and APT were denied.^[29]

Hence, these consolidated petitions.^[30]

All three petitioners assert that NMIC is a corporate entity with a juridical personality separate and distinct from both PNB and DBP. They insist that the majority ownership by DBP and PNB of NMIC is not a sufficient ground for disregarding the separate corporate personality of NMIC because NMIC was not a mere adjunct, business conduit or *alter ego* of DBP and PNB. According to them, the application of the doctrine of piercing the corporate veil is unwarranted as nothing in the records would show that the ownership and control of the shareholdings of NMIC by DBP and PNB were used to commit fraud, illegality or injustice. In the absence of evidence that the stock control by DBP and PNB over NMIC was used to commit some fraud or a wrong and that said control was the proximate cause of the injury sustained by HRCC, resort to the doctrine of "piercing the veil of corporate entity" is misplaced.^[31]

DBP and PNB further argue that, assuming they may be held solidarily liable with NMIC to pay NMIC's exclusive and separate corporate indebtedness to HRCC, such liability of the two banks was transferred to and assumed by the National Government through the APT, now the PMO, under the respective deeds of transfer both dated February 27, 1997 executed by DBP and PNB pursuant to Proclamation No. 50 dated December 8, 1986 and Administrative Order No. 14 dated February 3, 1987.^[32]

For its part, the APT contends that, in the absence of an unqualified assumption by the National Government of all liabilities incurred by NMIC, the National Government through the APT could not be held liable for NMIC's contractual liability. The APT asserts that HRCC had not sufficiently shown that the APT is the successor-in-interest of all the liabilities of NMIC, or of DBP and PNB as transferors, and that the adjudged liability is included among the liabilities assigned and transferred by DBP and PNB in favor of the National Government.^[33]

HRCC counters that both the RTC and the CA correctly applied the doctrine of "piercing the veil of corporate fiction." It claims that NMIC was the alter ego of DBP and PNB which owned, conducted and controlled the business of NMIC as shown by the following circumstances: NMIC was owned by DBP and PNB, the officers of DBP and PNB were also the officers of NMIC, and DBP and PNB financed the operations of NMIC. HRCC further argues that a parent corporation may be held liable for the contracts or obligations of its subsidiary corporation where the latter is a mere agency, instrumentality or adjunct of the parent corporation.^[34]

Moreover, HRCC asserts that the APT was properly held solidarily liable with DBP, PNB, and NMIC because the APT assumed the obligations of DBP and PNB as the successor-in-interest of the said banks with respect to the assets and liabilities of