

## FIRST DIVISION

[ G.R. No. 182398, July 20, 2010 ]

**BENNY Y. HUNG,\* PETITIONER, VS. BPI CARD FINANCE CORP.,  
RESPONDENT.**

### D E C I S I O N

**PEREZ, J.:**

For our resolution is the instant petition for review by *certiorari* assailing the Decision<sup>[1]</sup> dated 31 August 2007 and Resolution<sup>[2]</sup> dated 14 April 2008 of the Court of Appeals in CA-G.R. CV No. 84641. The Court of Appeals' Decision affirmed the Order<sup>[3]</sup> dated 30 November 2004 of the Regional Trial Court (RTC) of Makati City in Civil Case No. 99-2040, entitled *BPI Card Finance Corporation v. B & R Sportswear Distributor, Inc.*, finding petitioner Benny Hung liable to respondent BPI Card Finance Corporation (BPI for brevity) for the satisfaction of the RTC's 24 June 2002 Decision<sup>[4]</sup> against B & R Sportswear Distributor, Inc. The pertinent portion of the Decision states:

xxx

The delivery by the plaintiff to the defendant of P3,480,427.43 pursuant to the Merchant Agreements was sufficiently proven by the checks, Exhibits B to V-5. Plaintiff's evidence that the amount due to the defendant was P139,484.38 only was not controverted by the defendant, hence the preponderance of evidence is in favor of the plaintiff. The lack of controversy on the amount due to the defendant when considered with the contents of the letter of the defendant, Exhibit TT when it returned to plaintiff P963,604.03 "as partial settlement of overpayments made by BPI Card Corporation to B & R Sportswear, pending final reconciliation of exact amount of overpayment" amply support the finding of the Court that plaintiff indeed has a right to be paid by the defendant of the amount of P2,516,826.68.

Plaintiff claims interest of 12%. The obligation of the defendant to return did not arise out of a loan or forbearance of money, hence, applying *Eastern Shipping Lines Inc. vs. Court of Appeals*, 234 SCRA 78 (1994) the rate due is only 6% computed from October 4, 1999 the date the letter of demand was presumably received by the defendant.

The foregoing effectively dispose of the defenses raised by the defendant and furnish the reason of the Court for not giving due course to them.

WHEREFORE, judgment is rendered directing defendant to pay plaintiff

P2,516,826.68 with interest at the rate of 6% from October 4, 1999 until full payment.

The antecedent facts of the case are as follows:

Guess? Footwear and BPI Express Card Corporation entered into two merchant agreements,<sup>[5]</sup> dated 25 August 1994 and 16 November 1994, whereby Guess? Footwear agreed to honor validly issued BPI Express Credit Cards presented by cardholders in the purchase of its goods and services. In the first agreement, petitioner Benny Hung signed as owner and manager of Guess? Footwear. He signed the second agreement as president of Guess? Footwear which he also referred to as B & R Sportswear Enterprises.

From May 1997 to January 1999, respondent BPI mistakenly credited, through three hundred fifty-two (352) checks, Three Million Four Hundred Eighty Thousand Four Hundred Twenty-Seven Pesos and 23/100 (P3,480,427.23) to the account of Guess? Footwear. When informed of the overpayments,<sup>[6]</sup> petitioner Benny Hung transferred Nine Hundred Sixty-Three Thousand Six Hundred Four Pesos and 03/100 (P963,604.03) from the bank account of B & R Sportswear Enterprises to BPI's account as partial payment.<sup>[7]</sup> The letter dated 31 May 1999 was worded as follows:

Dear Sir/Madame

This is to authorize BPI Ortigas Branch to transfer the amount of P963,604.03 from the account of B & R Sportswear Enterprises to the account of BPI Card Corporation.

**The aforementioned amount shall represent partial settlement of overpayments** made by BPI Card Corporation to B & R Sportswear, pending final reconciliation of exact amount of overpayment. (*Emphasis supplied.*)

Thank you for your usual kind cooperation.

Very truly yours,

(Sgd.)  
Benny Hung

In a letter dated 27 September 1999, BPI demanded the balance payment amounting to Two Million Five Hundred Sixteen Thousand Eight Hundred Twenty-Six Pesos and 68/100 (P2,516,826.68), but Guess? Footwear failed to pay.

BPI filed a collection suit before the RTC of Makati City naming as defendant B & R Sportswear Distributor, Inc.<sup>[8]</sup> Although the case was against B & R Sportswear Distributor, Inc., it was B & R Footwear Distributors, Inc., that filed an answer, appeared and participated in the trial.<sup>[9]</sup>

On 24 June 2002, the RTC rendered a decision ordering defendant B & R Sportswear

Distributor, Inc., to pay the plaintiff (BPI) P2,516,826.68 with 6% interest from 4 October 1999. The RTC ruled that the overpayment of P3,480,427.43 was proven by checks credited to the account of Guess? Footwear and the P963,604.03 partial payment proved that defendant ought to pay P2,516,826.68<sup>[10]</sup> more. During the execution of judgment, it was discovered that B & R Sportswear Distributor, Inc., is a non-existing entity. Thus, the trial court failed to execute the judgment.

Consequently, respondent filed a Motion<sup>[11]</sup> to pierce the corporate veil of B & R Footwear Distributors, Inc. to hold its stockholders and officers, including petitioner Benny Hung, personally liable. In its 30 November 2004 Order, the RTC ruled that petitioner is liable for the satisfaction of the judgment, since he signed the merchant agreements in his personal capacity.<sup>[12]</sup>

The Court of Appeals affirmed the order and dismissed petitioner's appeal. It ruled that since B & R Sportswear Distributor, Inc. is not a corporation, it therefore has no personality separate from petitioner Benny Hung who induced the respondent BPI and the RTC to believe that it is a corporation.<sup>[13]</sup>

After his motion for reconsideration was denied, petitioner filed the instant petition anchored on the following grounds:

I.

PIERCING THE VEIL OF CORPORATE FICTION CANNOT JUSTIFY EXECUTION AGAINST [HIM].

II.

FOR LACK OF SERVICE OF SUMMONS AND A COPY OF THE COMPLAINT UPON [HIM], THE ASSAILED DECISION OF THE COURT OF APPEALS, AS WELL AS, ITS RESOLUTION DENYING [HIS] MOTION FOR RECONSIDERATION SHOULD BE DECLARED NULL AND VOID FOR LACK OF JURISDICTION.<sup>[14]</sup>

In essence, the basic issue is whether petitioner can be held liable for the satisfaction of the RTC's Decision against B & R Sportswear Distributor, Inc.? As we answer this question, we shall pass upon the grounds raised by petitioner.

Petitioner claims that he never represented B & R Sportswear Distributor, Inc., the non-existent corporation sued by respondent; that it would be unfair to treat his single proprietorship B & R Sportswear Enterprises as B & R Sportswear Distributor, Inc.; that the confusing similarity in the names should not be taken against him because he established his single proprietorship long before respondent sued; that he did not defraud respondent; that he even paid respondent "in the course of their mutual transactions;" and that without fraud, he cannot be held liable for the obligations of B & R Footwear Distributors, Inc. or B & R Sportswear Distributor, Inc. by piercing the veil of corporate fiction.

Petitioner also states that the "real corporation" B & R Footwear Distributors, Inc. or

Guess? Footwear acknowledged itself as the "real defendant." It answered the complaint and participated in the trial. According to petitioner, respondent should have executed the judgment against it as the "real contracting party" in the merchant agreements. Execution against him was wrong since he was not served with summons nor was he a party to the case. Thus, the lower courts did not acquire jurisdiction over him, and their decisions are null and void for lack of due process.

Respondent counters that petitioner's initial silence on the non-existence of B & R Sportswear Distributor, Inc. was intended to mislead. Still, the evidence showed that petitioner treats B & R Footwear Distributors, Inc. and his single proprietorship B & R Sportswear Enterprises as one and the same entity. Petitioner ordered the partial payment using the letterhead of B & R Footwear Distributor, Inc. and yet the fund transferred belongs to his single proprietorship B & R Sportswear Enterprises. This fact, according to respondent, justifies piercing the corporate veil of B & R Footwear Distributor, Inc. to hold petitioner personally liable.

Citing Sections 4 and 5, Rule 10 of the Rules of Court, respondent also prays that the name of the inexistent defendant B & R Sportswear Distributor, Inc. be amended and changed to Benny Hung and/or B & R Footwear Distributors, Inc.

Moreover, respondent avers that petitioner cannot claim that he was not served with summons because it was served at his address and the building standing thereon is registered in his name per the tax declaration.

At the outset, we note the cause of respondent's predicament in failing to execute the 2002 judgment in its favor: its own failure to state the correct name of the defendant it sued and seek a correction earlier. Instead of suing Guess? Footwear and B & R Sportswear Enterprises, the contracting parties in the merchant agreements, BPI named B & R Sportswear Distributor, Inc. as defendant. BPI likewise failed to sue petitioner Benny Hung who signed the agreements as owner/manager and president of Guess? Footwear and B & R Sportswear Enterprises. Moreover, when B & R Footwear Distributors, Inc. appeared as defendant, no corresponding correction was sought. Unfortunately, BPI has buried its omission by silence and lamented instead petitioner's alleged initial silence on the non-existence of B & R Sportswear Distributor, Inc. Respondent even accused the "defendant" in its motion to pierce the corporate veil of B & R Footwear Distributors, Inc. of having "employed deceit, bad faith and illegal scheme/maneuver,"<sup>[15]</sup> an accusation no longer pursued before us.

Our impression that respondent BPI should have named petitioner as a defendant finds validation from (1) petitioner's own admission that B & R Sportswear Enterprises is his sole proprietorship and (2) respondent's belated prayer that defendant's name be changed to Benny Hung and/or B & R Footwear Distributors, Inc. on the ground that such relief is allowed under Sections 4<sup>[16]</sup> and 5,<sup>[17]</sup> Rule 10 of the Rules of Court.

Indeed, we can validly make the formal correction on the name of the defendant from B & R Sportswear Distributor, Inc. to B & R Footwear Distributors, Inc. Such correction only confirms the voluntary correction already made by B & R Footwear Distributors, Inc. which answered the complaint and claimed that it is the