

## SECOND DIVISION

[ G.R. No. 150283, April 16, 2008 ]

**RYUICHI YAMAMOTO, Petitioner, vs. NISHINO LEATHER INDUSTRIES, INC. and IKUO NISHINO, Respondents.**

### DECISION

**CARPIO MORALES, J.:**

In 1983, petitioner, Ryuichi Yamamoto (Yamamoto), a Japanese national, organized under Philippine laws Wako Enterprises Manila, Incorporated (WAKO), a corporation engaged principally in leather tanning, now known as Nishino Leather Industries, Inc. (NLII), one of herein respondents.

In 1987, Yamamoto and the other respondent, Ikuo Nishino (Nishino), also a Japanese national, forged a Memorandum of Agreement under which they agreed to enter into a joint venture wherein Nishino would acquire such number of shares of stock equivalent to 70% of the authorized capital stock of WAKO.

Eventually, Nishino and his brother<sup>[1]</sup> Yoshinobu Nishino (Yoshinobu) acquired more than 70% of the authorized capital stock of WAKO, reducing Yamamoto's investment therein to, by his claim, 10%,<sup>[2]</sup> less than 10% according to Nishino.<sup>[3]</sup>

The corporate name of WAKO was later changed to, as reflected earlier, its current name NLII.

Negotiations subsequently ensued in light of a planned takeover of NLII by Nishino who would buy-out the shares of stock of Yamamoto. In the course of the negotiations, Yoshinobu and Nishino's counsel Atty. Emmanuel G. Doce (Atty. Doce) advised Yamamoto by letter dated October 30, 1991, the pertinent portions of which follow:

Hereunder is a simple memorandum of the subject matters discussed with me by Mr. Yoshinobu Nishino yesterday, October 29<sup>th</sup>, based on the letter of Mr. Ikuo Nishino from Japan, and which I am now transmitting to you.<sup>[4]</sup>

x x x x

12. Machinery and Equipment:

The following machinery/equipment have been contributed by you to the company:

Splitting machine - 1 unit  
Samming - 1 unit

machine  
Forklift - - 1 unit  
Drums - - 4 units  
Toggling machine- 2 units  
-

Regarding the above machines, you may take them out with you (for your own use and sale) if you want, **provided**, the value of such machines is deducted from your and Wako's capital contributions, which will be paid to you.

**Kindly let me know of your comments on all the above, soonest.**

x x x x<sup>[5]</sup> (Emphasis and underscoring supplied)

On the basis of such letter, Yamamoto attempted to recover the machineries and equipment which were, by Yamamoto's admission, part of his investment in the corporation,<sup>[6]</sup> but he was frustrated by respondents, drawing Yamamoto to file on January 15, 1992 before the Regional Trial Court (RTC) of Makati a complaint<sup>[7]</sup> against them for replevin.

Branch 45 of the Makati RTC issued a writ of replevin after Yamamoto filed a bond.<sup>[8]</sup>

In their Answer with Counterclaim,<sup>[9]</sup> respondents claimed that the machineries and equipment subject of replevin form part of Yamamoto's capital contributions in consideration of his equity in NLII and should thus be treated as corporate property; and that the above-said letter of Atty. Doce to Yamamoto was merely a proposal, "conditioned on [Yamamoto's] sell-out to . . . Nishino of his entire equity,"<sup>[10]</sup> which proposal was yet to be authorized by the stockholders and Board of Directors of NLII.

By way of Counterclaim, respondents, alleging that they suffered damage due to the seizure via the implementation of the writ of replevin over the machineries and equipment, prayed for the award to them of moral and exemplary damages, attorney's fees and litigation expenses, and costs of suit.

The trial court, by Decision of June 9, 1995, decided the case in favor of Yamamoto,<sup>[11]</sup> disposing thus:

WHEREFORE, judgment is hereby rendered: (1) declaring plaintiff as the rightful owner and possessor of the machineries in question, and making the writ of seizure permanent; (2) ordering defendants to pay plaintiff attorney's fees and expenses of litigation in the amount of Fifty Thousand Pesos (P50,000.00), Philippine Currency; (3) dismissing defendants' counterclaims for lack of merit; and (4) ordering defendants to pay the costs of suit.

SO ORDERED.<sup>[12]</sup> (Underscoring supplied)

On appeal,<sup>[13]</sup> the Court of Appeals held in favor of herein respondents and accordingly **reversed** the RTC decision and dismissed the complaint.<sup>[14]</sup> In so holding, the appellate court found that the machineries and equipment claimed by Yamamoto are corporate property of NLII and may not thus be retrieved without the authority of the NLII Board of Directors,<sup>[15]</sup> and that petitioner's argument that Nishino and Yamamoto cannot hide behind the shield of corporate fiction does not lie,<sup>[16]</sup> nor does petitioner's invocation of the doctrine of promissory estoppel.<sup>[17]</sup> At the same time, the Court of Appeals found no ground to support respondents' Counterclaim.<sup>[18]</sup>

The Court of Appeals having denied<sup>[19]</sup> his Motion for Reconsideration,<sup>[20]</sup> Yamamoto filed the present petition,<sup>[21]</sup> faulting the Court of Appeals

A.

x x x IN HOLDING THAT THE VEIL OF CORPORATE FICTION SHOULD NOT BE PIERCED IN THE CASE AT BAR.

B.

x x x IN HOLDING THAT THE DOCTRINE OF PROMISSORY ESTOPPEL DOES NOT APPLY TO THE CASE AT BAR.

C.

x x x IN HOLDING THAT RESPONDENTS ARE NOT LIABLE FOR ATTORNEY'S FEES.<sup>[22]</sup>

The resolution of the petition hinges, in the main, on whether the advice in the letter of Atty. Doce that Yamamoto may retrieve the machineries and equipment, which admittedly were part of his investment, bound the corporation. The Court holds in the negative.

Indeed, without a Board Resolution authorizing respondent Nishino to act for and in behalf of the corporation, he cannot bind the latter. Under the Corporation Law, unless otherwise provided, corporate powers are exercised by the Board of Directors.<sup>[23]</sup>

Urging this Court to *pierce the veil of corporate fiction*, Yamamoto argues, viz:

During the negotiations, the issue as to the ownership of the Machiner[ies] never came up. Neither did the issue on the proper procedure to be taken to execute the complete take-over of the Company come up since Ikuo, Yoshinobu, and Yamamoto were the owners thereof, the presence of other stockholders being only for the purpose of complying with the minimum requirements of the law.

What course of action the Company decides to do or not to do depends not on the "other members of the Board of Directors". **It depends on what Ikuo and Yoshinobu decide. The Company is but a mere**

**instrumentality of Ikuo [and] Yoshinobu.**<sup>[24]</sup>

x x x x

x x x The Company hardly holds board meetings. It has an inactive board, the directors are directors in name only and are there to do the bidding of the Nish[i]nos, nothing more. Its minutes are paper minutes. x x x<sup>[25]</sup>

x x x x

The fact that the parties started at a 70-30 ratio and Yamamoto's percentage declined to 10% does not mean the 20% went to others. x x x The 20% went to no one else but Ikuo himself. x x x **Yoshinobu is the younger brother of Ikuo and has no say at all in the business. Only Ikuo makes the decisions. There were, therefore, no other members of the Board who have not given their approval.**<sup>[26]</sup>  
(Emphasis and underscoring supplied)

While the veil of separate corporate personality may be pierced when the corporation is merely an adjunct, a business conduit, or alter ego of a person,<sup>[27]</sup> the mere ownership by a single stockholder of even all or nearly all of the capital stocks of a corporation is not by itself a sufficient ground to disregard the separate corporate personality.<sup>[28]</sup>

The elements determinative of the applicability of the doctrine of piercing the veil of corporate fiction follow:

*"1. Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own;*

*2. Such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of the plaintiff's legal rights; and*

*3. The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.*

**The absence of any one of these elements prevents "piercing the corporate veil."** *In applying the 'instrumentality' or 'alter ego' doctrine, the courts are concerned with reality and not form, with how the corporation operated and the individual defendant's relationship to that operation."*<sup>[29]</sup> (Italics in the original; emphasis and underscoring supplied)

In relation to the second element, to disregard the separate juridical personality of a corporation, the wrongdoing or unjust act in contravention of a plaintiff's legal rights