

## FIRST DIVISION

[ G.R. NO. 154975, January 29, 2007 ]

**GENERAL CREDIT CORPORATION (NOW PENTA CAPITAL FINANCE CORPORATION), PETITIONER, VS. ALSONS DEVELOPMENT AND INVESTMENT CORPORATION AND CCC EQUITY CORPORATION, RESPONDENTS.**

### D E C I S I O N

**GARCIA, J.:**

In this petition for review on certiorari under Rule 45 of the Rules of Court, petitioner General Credit Corporation, now known as Penta Capital Finance Corporation, seeks to annul and set aside the Decision<sup>[1]</sup> and Resolution<sup>[2]</sup> dated April 11, 2002 and August 20, 2002, respectively, of the Court of Appeals (CA) in *CA-G.R. CV No. 31801*, affirming the November 8, 1990 decision of the Regional Trial Court (RTC) of Makati City in its Civil Case No. 12707, an action for a sum of money thereat instituted by the herein respondent Alsons Development and Investment Corporation against the petitioner and respondent CCC Equity Corporation.

The facts:

Shortly after its incorporation in 1957 as a finance and investment company, petitioner General Credit Corporation (GCC, for short), then known as Commercial Credit Corporation (CCC), established CCC franchise companies in different urban centers of the country.<sup>[3]</sup> In furtherance of its business, GCC had, as early as 1974, applied for and was able to secure license from the then Central Bank (CB) of the Philippines and the Securities and Exchange Commission (SEC) to engage also in quasi-banking activities.<sup>[4]</sup> On the other hand, respondent CCC Equity Corporation (EQUITY, for brevity) was organized in November 1994 by GCC for the purpose of, among other things, taking over the operations and management of the various franchise companies. At a time material hereto, respondent Alsons Development and Investment Corporation (ALSONS, hereinafter) and Conrado, Nicasio, Editha and Ladislawa, all surnamed Alcantara, and Alfredo de Borja (hereinafter the Alcantara family, for convenience), each owned, just like GCC, shares in the aforesaid GCC franchise companies, *e.g.*, CCC Davao and CCC Cebu.

In December 1980, ALSONS and the Alcantara family, for a consideration of Two Million (P2,000,000.00) Pesos, sold their shareholdings – a total of 101,953 shares, more or less – in the CCC franchise companies to EQUITY.<sup>[5]</sup> On January 2, 1981, EQUITY issued ALSONS *et al.*, a “bearer” promissory note for P2,000,000.00 with a one-year maturity date, at 18% interest per annum, with provisions for damages and litigation costs in case of default.<sup>[6]</sup>

Some four years later, the Alcantara family assigned its rights and interests over the bearer note to ALSONS which thenceforth became the holder thereof.<sup>[7]</sup> But even before the execution of the assignment deal aforesaid, letters of demand for interest payment were already sent to EQUITY, through its President, Wilfredo Labayen, who pleaded inability to pay the stipulated interest, EQUITY no longer then having assets or property to settle its obligation nor being extended financial support by GCC.

What happened next, as narrated in the assailed Decision of the CA, may be summarized, as follows:

1. On January 14, 1986, before the RTC of Makati, ALSONS, having failed to collect on the bearer note aforementioned, filed a complaint for a sum of money<sup>[8]</sup> against EQUITY and GCC. The case, docketed as Civil Case No. 12707, was eventually raffled to Branch 58 of the court. As stated in par. 4 of the complaint, GCC is being impleaded as party-defendant for any judgment ALSONS might secure against EQUITY and, under the doctrine of piercing the veil of corporate fiction, against GCC, EQUITY having been organized as a tool and mere conduit of GCC.

2. Answering with a cross-claim against GCC, EQUITY stated by way of special and affirmative defenses that it (EQUITY):

a) was purposely organized by GCC for the latter to avoid CB Rules and Regulations on DOSRI (Directors, Officers, Stockholders and Related Interest) limitations, and that it acted merely as intermediary or bridge for loan transactions and other dealings of GCC to its franchisees and the investing public; and

b) is solely dependent upon GCC for its funding requirements, to settle, among others, equity purchases made by investors on the franchisees; hence, GCC is solely and directly liable to ALSONS, the former having failed to provide ...EQUITY the necessary funds to meet its obligations to ALSONS.

3. GCC filed its *ANSWER* to Cross-claim, stressing that it is a distinct and separate entity from EQUITY and alleging, in essence that the business relationships with each other were always at arm's length. And following the denial of its motion to dismiss ALSONS' complaint, on the ground of lack of jurisdiction and want of cause of action, GCC filed its Answer thereto and set up affirmative defenses with counterclaim for exemplary damages and attorney's fees.

Issues having been joined, trial ensued. Presented by ALSONS, but testifying as adverse witnesses, were CB and GCC officers. Among other things, ALSONS' evidence, which included the EQUITY-issued "bearer" promissory note marked as Exhibit "K" and over sixty (60) other marked and subsequently admitted documents,<sup>[9]</sup> were to the effect that five (5) incorporators, each contributing P100,000.00 as the initial paid up capital of the company, organized EQUITY to manage, as it did manage, various GCC franchisees through management contracts. Before EQUITY's

incorporation, however, GCC was already into the financing business as it was in fact managing and operating various CCC franchises. Presented in evidence, too, was the September 29, 1982 letter-reply of one G. Villanueva, then GCC President, to EQUITY President Wilfredo Labayen, bearing on the sale of EQUITY shares to third parties, part of the proceeds of which the Alcantaras wanted applied to liquidate the promissory note in question. In said letter, Mr. Villanueva explained that the GCC Board denied the Alcantaras' request to be paid out of such proceeds, but nonetheless authorized EQUITY to pay them interest out of EQUITY's operation income, in preference over what was due GCC.<sup>[10]</sup>

Albeit EQUITY presented its president, it opted to adopt the testimony of some of ALSONS' witnesses, inclusive of the documentary exhibits testified to by each of them, as its evidence.

For its part, GCC called only Wilfredo Labayen to testify. It stuck to its underlying defense of separateness and presented documentary evidence detailing the organizational structures of both GCC and EQUITY. And in a bid to negate the notion that it was conducting its business illegally, GCC presented CB and SEC-issued licenses authoring it to engage in financing and quasi-banking activities. It also adduced evidence to prove that it was never a party to any of the actionable documents ALSONS and its predecessors-in-interest had in their possession and that the November 27, 1985 deed of assignment of rights over the promissory note was unenforceable.

Eventually, the trial court, on its finding that EQUITY was but an instrumentality or adjunct of GCC and considering the legal consequences and implications of such relationship, came out with its decision on November 8, 1990, rendering judgment for ALSONS, to wit:

WHEREFORE, the foregoing premises considered, judgment is hereby rendered in favor of plaintiff [ALSONS] and against the defendants [EQUITY and GCC] who are hereby ordered, jointly and severally, to pay plaintiff:

1. the principal sum of Two Million Pesos (P2,000,000.00) together with the interest due thereon at the rate of eighteen percent (18%) annually computed from Jan. 2, 1981 until the obligation is fully paid;
2. liquidated damages due thereon equivalent to three percent (3%) monthly computed from January 2, 1982 until the obligation is fully paid;
3. attorney's fees in an amount equivalent to twenty four percent (24%) of the total obligation due; and
4. the costs of suit.

IT IS SO ORDERED. (Words in brackets added.)

Therefrom, GCC went on appeal to the CA where its appellate recourse was docketed as *CA-G.R. CV No. 31801*, ascribing to the trial court the commission of the following errors:

1. In holding that there is a "Parent-Subsidiary" corporate relationship between EQUITY and GCC;
2. In not holding that EQUITY and GCC are distinct and separate corporate entities;
3. In applying the doctrine of "Piercing the Veil of Corporate Fiction" in the case at bar; and
4. In not holding ALSONS in estoppel to question the corporate personality of EQUITY.

On April 11, 2002, the appellate court rendered the herein assailed Decision,<sup>[11]</sup> affirming that of the trial court, thus:

WHEREFORE, premises considered, the Decision of the Regional Trial Court, Branch 58, Makati in Civil Case No. 12707 is hereby AFFIRMED.

SO ORDERED.

In time, GCC moved for reconsideration followed by a motion for oral argument, but both motions were denied by the CA in its equally assailed Resolution of August 20, 2002.<sup>[12]</sup>

Hence, GCC's present recourse anchored on the following arguments, issues and/or submissions:

1. The motion for oral argument with motion for reconsideration and its supplement were perfunctorily denied by the CA without justifiable basis;
2. There is absolutely no basis for piercing the veil of corporate fiction;
3. Respondent Alsons is not a real party-in-interest as the promissory note payable to bearer subject of the collection suit is but a simulated document and/or refers to another party. Moreover, the subject promissory note is not admissible in evidence because it has not been duly authenticated and it is an altered document;
4. The fact of full payment stated in the ten (10) deeds of sale of the shares of stock is conclusive on the sellers, and by the patrol evidence rule, the alleged fact of its non-payment cannot be introduced in evidenced; and
5. The counter-claim filed by GCC against Alsons should be granted in the interest of justice.

The petition and the arguments and/or issues holding it together are without merit. The desired reversal of the assailed decision and resolution of the appellate court is accordingly **DENIED**.

Instead of raising distinctly formulated questions of law, as is expected of one seeking a review under Rule 45 of the Rules of Court of a final CA judgment,<sup>[13]</sup>

petitioner GCC starts off by voicing disappointment over the “perfunctory” denial by the CA of its twin motions for reconsideration and oral argument. Petitioner, to be sure, cannot plausibly expect a reversal action premised on the cursory way its motions were denied, if such indeed were the case. Such manner of denial, while perhaps far from ideal, is not even a recognized ground for appeal by certiorari, unless a denial of due process ensues, which is not the case here. And lest it be overlooked, the CA prefaced its assailed denial resolution with the clause: “[F]inding no reversible error committed to warrant the modification and/or reversal of the April 11, 2002 Decision,” suggesting that the appellate court gave the petitioner’s motion for reconsideration the attention it deserved. At the very least, the petitioner was duly apprised of the reasons why reconsideration could not be favorably considered. An extended resolution was not really necessary to dispose of the motion for reconsideration in question.

Petitioner’s lament about being deprived of procedural due process owing to the denial of its motion for oral argument is simply specious. Under the CA Internal Rules, the appellate court may tap any of the three (3) alternatives therein provided to aid the court in resolving appealed cases before it. It may rely on available records alone, require the submission of memoranda or set the case for oral argument. The option the Internal Rules thus gives the CA necessarily suggests that the appellate court may, at its sound discretion, dispense with a tedious oral argument exercise. Rule VI, Section 6 of the 2002 Internal Rules of the CA, provides:

**SEC. 6 Judicial Action on Certain Petitions.-** (a) In petitions for review, after the receipt of the respondent’s comment on the petition, ... the Court [of Appeals] may dismiss the petition if it finds the same to be patently without merit ..., otherwise, it shall give due course to it.

xxx    xxx    xxx

If the petition is given due course, the Court may consider the case submitted for decision or require the parties to submit their memorandum or set the case for oral argument. xxx. After the oral argument or upon submission of the memoranda ... the case shall be deemed submitted for decision.

In the case at bench, records reveal that the appellate court, in line with the prescription of its own rules, required the parties to just submit, as they did, their respective memoranda to properly ventilate their separate causes. Under this scenario, the petitioner cannot be validly heard, having been deprived of due process.

Just like the first, the last three (3) arguments set forth in the petition will not carry the day for the petitioner. In relation therewith, the Court notes that these arguments and the issues behind them were not raised before the trial court. This appellate maneuver cannot be allowed. For, well-settled is the rule that issues or grounds not raised below cannot be resolved on review in higher courts.<sup>[14]</sup> Springing surprises on the opposing party is antithetical to the sporting idea of fair play, justice and due process; hence, the proscription against a party shifting from one theory at the trial court to a new and different theory in the appellate level. On the same rationale, points of law, theories, issues not brought to the attention of the