

SECOND DIVISION

[G.R. NO. 163981, August 12, 2005]

**CONSTRUCTION & DEVELOPMENT CORPORATION OF THE
PHILIPPINES (NOW PHILIPPINE NATIONAL CONSTRUCTION
CORPORATION), PETITIONER, VS. RODOLFO M. CUENCA AND
MALAYAN INSURANCE CO., INC., RESPONDENTS.**

DECISION

CALLEJO, SR., J.:

Before this Court is a petition for review on *certiorari* of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. CV No. 44660 and its Resolution denying a motion for reconsideration thereof.

The Backdrop

Ultra International Trading Corporation (UITC) applied for a surety bond from Malayan Insurance Co., Inc. (MICI), to guarantee its credits, indebtedness, obligations and liabilities of any kind to Goodyear Tire and Rubber Company of the Philippines (Goodyear). MICI approved the application and issued MICO Bond No. 65734^[2] for an amount not exceeding P600,000.00. The surety bond was valid for 12 months, and was renewed several times, the last time being on May 15, 1983.^[3]

To protect MICI's interests, UITC, Edilberto Cuenca, and Rodolfo Cuenca, herein respondent, executed an Indemnity Agreement^[4] in favor of MICI. Edilberto was then the President, while Rodolfo was a member of the Board of Directors of UITC. Edilberto signed the indemnity agreement in his official and personal capacity, while Rodolfo signed in his personal capacity only. In the said agreement, UITC, Edilberto and Rodolfo bound themselves jointly and severally to indemnify MICI of any payment it would make under the surety bond.

On February 18, 1983, Goodyear sent a letter^[5] to MICI informing it of UITC's default on its obligation. In the said letter, Goodyear requested MICI to pay P600,000.00 under the surety bond. MICI sent several demand letters to UITC, Edilberto and Rodolfo, requiring them to immediately settle Goodyear's claim.^[6] UITC, Edilberto and Rodolfo failed to settle the account with Goodyear. Thus, on April 25, 1983, MICI paid Goodyear P600,000.00.^[7]

On May 3, 1983, MICI sent a demand letter to UITC, Edilberto and Rodolfo for reimbursement of the payment it made to Goodyear, plus legal interest.^[8] UITC replied that Construction & Development Corporation of the Philippines (CDCP), now Philippine National Construction Corporation (PNCC), had initiated a complete review of UITC's financial plans to enable it to pay its creditors, like MICI.^[9] UITC was a

subsidiary of petitioner PNCC,^[10] with the latter owning around 78% of the former's shares of stock.^[11] UITC requested MICI to delay the filing of any suit against it, to give it time to work out an acceptable repayment plan.^[12] MICI agreed and gave UITC until May 20, 1983 to come up with an offer.^[13]

However, UITC, Edilberto and Rodolfo still failed to pay MICI. On July 1, 1983, MICI filed a Complaint^[14] for sum of money against UITC, Edilberto and Rodolfo, praying for indemnity of the amount it paid to Goodyear, plus interest per annum compounded quarterly from April 25, 1983 until fully paid, and 20% of the amount involved as attorney's fees and costs of the suit.

On July 23, 1983, UITC wrote MICI proposing the following:

- a. Immediate payment of P150,000.00.
- b. Balance payable P50,000.00 per month until the obligation is fully liquidated.
- c. Interest and penalty charges are to be waived.^[15]

In the meantime, Rodolfo filed motion for leave to file a third-party complaint which the trial court granted.^[16] The third-party complaint^[17] against CDCP alleged that it had assumed Rodolfo's liability under the indemnity agreement as indicated in a board resolution. In support of this allegation, he presented in evidence a certification of Antonio Roque, Assistant Corporate Secretary of CDCP, attesting to the correctness of an excerpt from the minutes of the Board of Directors' meeting of January 10, 1978, which reads:

GUARANTEE MADE BY CDCP REPRESENTATIVES IN OTHER
CORPORATIONS

In fairness to the CDCP Board Members and/or Officers who represent the Corporation in other affiliated corporations and who are made to sign jointly and severally guarantees for and in support of said affiliated corporations, the Board under Res. No. BD-59-77/78 made of record CDCP's assumption of all said guarantees and the liabilities and responsibilities arising therefrom. In the same vein, any guaranty fee that may be payable to said representatives shall accrue to CDCP.^[18]

On August 26, 1983, UITC remitted to MICI P150,000.00 as partial payment of its obligation.^[19] Nonetheless, the parties failed to reach an amicable settlement of their respective claims.

On January 6, 1994, the Regional Trial Court (RTC) of Manila, Branch 51, rendered a decision holding UITC and PNCC, jointly and solidarily liable to MICI under the indemnity agreement. The trial court ruled that UITC was bound by the indemnity agreement entered into by its two officers, even though there was no board resolution specifically authorizing them to do so because it had, in effect, ratified the acts of the said officers. Moreover, UITC has acknowledged its obligation to MICI in the letters it sent to the latter, and when it had remitted P150,000.00 as partial payment. It also held PNCC solidarily liable with UITC on the basis of the board resolution attesting to the fact that PNCC had assumed all liabilities arising from the

guarantees made by its officers in other affiliated corporations.^[20] The trial court dismissed the complaint as against the Cuencas. The dispositive portion of the RTC decision reads:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered in favor of plaintiff Malayan Insurance Co., Inc. and against defendant ULTRA and Third-Party defendant PNCC, ordering the latter to pay jointly and solidarily the former the following:

- a) The sum of P600,000.00 but considering that defendant ULTRA had already advanced the amount of P150,000.00 to plaintiff, their liability has then reduced to the sum of P450,000.00 with legal interest from the date of the filing of the complaint until fully paid;
- b) The sum equivalent to 20% of all the amounts due and demandable as and for attorney's fees; and
- c) The costs of suit.

The complaint against defendants Edilberto Cuenca and Rodolfo Cuenca and their counter-claims are hereby dismissed for lack of merit.

SO ORDERED.^[21]

UITC and PNCC appealed the decision to the CA, but MICI did not. On October 28, 2003, the CA affirmed *in toto* the appealed decision.^[22] The appellate court held that UITC had impliedly authorized Edilberto and Rodolfo to procure the surety bond and the indemnity agreement; hence, UITC was liable. Moreover, UITC was estopped from questioning Edilberto and Rodolfo's authority to enter into the indemnity agreement in its behalf, considering that it had already partially paid P150,000.00 to MICI. The appellate court added that Edilberto and Rodolfo, having signed the indemnity agreement also in their personal capacity, would ordinarily be personally liable under the said agreement; but because MICI failed to appeal the decision, it had effectively waived its right to hold them liable on its claim.^[23]

The CA further affirmed the trial court's finding that PNCC was liable under the indemnity agreement. The appellate court noted that UITC was a subsidiary company of PNCC because the latter holds almost 78% of UITC's stocks. As such, UITC would purchase materials from suppliers such as Goodyear, in behalf of PNCC. Finally, the CA held that the award of attorney's fees was justified, considering that payment of attorney's fees is specifically stated in the indemnity agreement.

On June 3, 2004, the CA denied PNCC's motion for reconsideration for lack of merit.^[24] Hence, this petition for review, where the petitioner assigns the following errors:

I.

THE COURT OF APPEALS GRAVELY ERRED IN FINDING PETITIONER PNCC, JOINTLY AND SEVERALLY, LIABLE WITH ULTRA FOR THE INDEMNIFICATION AMOUNT REIMBURSABLE TO RESPONDENT MALAYAN AND IN EXEMPTING RESPONDENT RODOLFO CUENCA FROM ANY

LIABILITY THEREFOR.

II.

THE COURT OF APPEALS GRAVELY ERRED IN FINDING PETITIONER PNCC, JOINTLY AND SEVERALLY, LIABLE WITH ULTRA FOR THE PAYMENT OF ATTORNEY'S FEES AND COSTS OF SUIT.^[25]

The sole issue in this petition is whether or not the petitioner is jointly and solidarily liable with UITC, a subsidiary corporation, to respondent MICI under the indemnity agreement for reimbursement, attorney's fees and costs.

The petitioner maintains that it cannot be held liable under the indemnity agreement primarily because it was not a party to it. Likewise, it cannot answer for UITC's liability under the indemnity agreement merely because it is the majority stockholder of UITC. It maintains that it has a personality separate and distinct from that of UITC; hence, it cannot be held liable for the latter's obligations. The mere fact that the materials purchased from Goodyear were delivered to it does not warrant the piercing of the corporate veil so as to treat the two corporations as one entity, absent sufficient and clear showing that it was purposely used as a shield to defraud creditors.^[26]

Further, the petitioner asserts that respondent Cuenca's claim that it has assumed his personal liability under the indemnity agreement is unfounded. It assails the reliability of Exhibit 5, the certification attesting to the existence of the board resolution, wherein the petitioner allegedly assumed the personal guarantee of respondent Cuenca. The petitioner avers that the certification is a mere excerpt of the alleged board resolution. It points out that even the CA did not rely on this certification when it held that the Cuencas should be liable, but were absolved of their liabilities because MICI had waived the cause of action against them.^[27] Assuming that it has assumed the liability of respondent Cuenca, such liability is now extinguished after MICI waived its claim against the said respondent.^[28]

Finally, the petitioner asserts that there is no basis for the payment of attorney's fees and costs of suit. It was not a party to the indemnity agreement and the case does not fall under the instances enumerated under Article 2208 of the Civil Code when attorney's fees are proper.^[29]

For his part, respondent Cuenca reiterates that he is not liable because the petitioner has already assumed his personal liability under the indemnity agreement, as evidenced by a certification issued by the Assistant Corporate Secretary attesting that CDCP Board Resolution No. BD-59-77/78 exists. He points out that the petitioner has already admitted the due execution and authenticity of the certification; hence, it cannot now impugn the existence of the board resolution referred to therein.

Respondent Cuenca further argues that PNCC should be liable because it was the one which benefited from the transaction, having received the materials purchased from Goodyear; he did not derive any benefit from it. He emphasizes that the petitioner's liability arose out of its voluntary assumption of the liabilities of the guarantors under the indemnity agreement, and not from the fact that it is the majority stockholder of UITC. Finally, he asserts that the CA's decision holding UITC