

## SECOND DIVISION

[ G.R. No. 149351, March 17, 2004 ]

**SPEED DISTRIBUTING CORP., LITA MARCELO, IRENEO MARCELO  
AND PEDRO AQUINO, PETITIONERS, VS. COURT OF APPEALS  
AND RUFINA LIM, RESPONDENTS.**

### D E C I S I O N

**CALLEJO, SR., J.:**

This is a petition for review of the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. No. 52214 (CV) reversing the November 21, 1995 Order<sup>[2]</sup> of the Regional Trial Court of Quezon City, Branch 222, dismissing the complaint in Civil Case No. Q-95-24588, and its August 8, 2001 Resolution denying the Motion for Reconsideration of the aforesaid decision.

#### *The Antecedents*

On September 20, 1953, Pastor Y. Lim married private respondent Rufina Luy Lim.<sup>[1]</sup> During the early part of their marriage, Pastor organized some family corporations using their conjugal funds. Among these corporations was Skyline International Corporation (Skyline, for brevity) which was engaged in the importation and sale of Hankook Brand Korean Tires and the acquisition of real estate. The couple were incorporators and major stockholders of the corporation and were also employed therein.

Pastor and the private respondent did not have a child. They decided to "adopt" Leonard Lim and petitioner Lita Lim Marcelo, who were children of their distant poor relatives in Zamboanga City. There was, however, no formal court adoption. Sometime thereafter, marital problems arose, as a result of which the private respondent stopped working at Skyline. As the domestic problems remained unresolved, Pastor and the private respondent jointly filed on August 13, 1968 a Petition before the Juvenile and Domestic Relations Court of Quezon City, for voluntary dissolution of conjugal properties. As their differences worsened, the private respondent filed on January 27, 1971 a petition for legal separation against Pastor on the ground of infidelity before the then Juvenile and Domestic Relations Court of Quezon City. The petition was amended into one for Support with Alimony and the case was docketed as Civil Case No. QE-0030.

On February 17, 1972, the court rendered a decision, awarding P3,000 monthly support to the private respondent and the children, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered:

1. Ordering defendant to pay plaintiff monthly support of P3,000.00 effective as of February, 1971;

2. Ordering defendant to pay plaintiff attorney's fees in the sum of P2,000.00, plus the cost of this suit. [4]

On June 24, 1975, the private respondent filed a motion for execution. The court issued an order granting the motion and the sheriff levied on the properties of Skyline. The latter filed, on December 19, 1975, a third-party claim, alleging that the properties levied were its personal properties and not those of Pastor, who was only one of its stockholders. The private respondent filed a motion to quash Skyline's claim, which the court granted.

Skyline filed a petition for *certiorari* with prayer for temporary restraining order before the Court of Appeals for the nullification of the order of the trial court quashing the third-party claim. The case was docketed as CA-G.R. No. 05312 (SP). The appellate court issued a temporary restraining order on April 27, 1976. On June 23, 1976, the Court of Appeals rendered a decision dismissing the petition, thus, lifting the restraining order. [5] The appellate court ruled as follows:

While it is recognized as "lawful to obtain a corporation charter, even with a single substantial stockholder, to engage in a specific activity, and such activity may co-exist with other private activities of the stockholder" (*Liddel & Co., Inc. vs. Collector of Internal Revenue*, L-9687, June 30, 1961, 2 SCRA 632), the corporation's distinct personality will be disregarded when it is so "controlled and its affairs so conducted as to make it merely an instrumentality, agency or conduit of another" (*NAMARCO vs. Associated Finance Company, supra*).

It is not disputed that petitioner Skyline International, Inc. was a conjugal enterprise (p. 2, Decision) before its incorporation in December 1970 (p. 10, *id.*), when it was still a proprietorship. Petitioner Skyline International, Inc. is still engaged in the sale of automotive parts and dealership of Firestone Rubber and Tires which business it was already doing when it was still a proprietorship. Respondent Court found that the only assets of petitioner corporation are the conjugal properties. Thus, respondent Court concludes that "it is safe to assume that Skyline International Corporation is another name for Mr. and Mrs. Pastor Y. Lim in person." In fact, Pastor Y. Lim admitted that the other incorporators are their former employees and their respective shares are nominal (Decision, pp. 14-15).

The above facts are more than enough justification for respondent Court to pierce the veil of corporate fiction. Consequently, we find the questioned orders to be in order. [6]

Skyline, then, filed a petition for review before this Court, but the petition was dismissed in a Resolution dated August 6, 1976. [7]

On August 21, 1987, the Speed Distributing Corporation (Speed, for brevity), was registered with the Securities and Exchange Commission, with Pastor Lim as one of the incorporators. He owned ten shares, valued at P100.00 per share. The following were the names of the incorporators, the number of shares respectively subscribed to by them and the amount paid up:

	<u>Shares</u>	<u>Subscribed</u>	<u>Paid</u>
Lita T. Lim	11,200	P 1,120,000.00	P 280,000.00
Leonard L. Lim	1,000	100,000.00	25,000.00
Lina S. Lim	150	15,000.00	3,750.00
Larry S. Lim	140	14,000.00	3,500.00
Pastor Y. Lim	10	1,000.00	250.00
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	12,500	P1,250,000.00	P 312,500.00 <sup>[8]</sup>

Petitioner Lita Lim-Marcelo was elected treasurer of the corporation.

On June 21, 1991, the Leslim Corporation (Leslim, for brevity), was registered with the Securities and Exchange Commission with a capital stock of P12,000,000.00, divided into 120,000 shares at par value of P100.00 per share. Pastor Lim subscribed to 95,700 shares valued at P9,570,000.00. The incorporators, the number of shares they subscribed to and the amounts paid for were indicated in the articles of incorporation as follows:

<u>Name</u>	<u>No. of Share</u>	<u>Amount Subscribed</u>
Teresa T. Lim	24,000	P2,400,000.00
Leonard L. Lim	100	10,000.00
Larry S. Lim	100	10,000.00
Lina L. Lim	100	10,000.00
Pastor Y. Lim	95,700	9,570,000.00
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	120,000	P12,000,000.00

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The following persons have paid on the shares of the capital stock for which they have subscribed the amount set after their names respectively:

Name	Amount Paid
Teresa T. Lim	P600,000.00

Leonard L. Lim	2,500.00
Larry S. Lim	2,500.00
Lina L. Lim	2,500.00
Pastor Y. Lim	P2,392,500.00
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	P3,000,000.00 <sup>[9]</sup>

Under the articles of incorporation, Pastor Lim was the treasurer-in-trust of the corporation.<sup>[10]</sup> The Vice-President and Treasurer of the corporation was petitioner Lita Lim-Marcelo, now married to petitioner Ireneo Marcelo.

On August 26, 1994, Leslim Corporation executed a deed of absolute sale in favor of the Speed, represented by its Vice-President, petitioner Ireneo Marcelo, over the parcel of lot located at Diliman Quezon City, covered by TCT No. 36617 for the price of P3,900,000.00.<sup>[11]</sup> Petitioner Lita Lim-Marcelo, the Vice-President of Leslim<sup>[12]</sup> signed in the deed for and in behalf of the corporation. She was authorized by the Board of Directors in a Resolution August 19, 1994 to sign the said deed and to receive the purchase price for and in behalf of Leslim. The said Resolution was certified by corporate secretary Pedro Aquino on August 22, 1994.<sup>[13]</sup> Consequently, TCT No. 36617 which was in the name of Leslim, was cancelled and a new one, TCT No. T-116716, was issued to and in the name of Speed.<sup>[14]</sup>

On June 11, 1994, Pastor Lim died intestate and was survived by his wife, the private respondent. On March 17, 1995, the private respondent, through her nephew and attorney-in-fact George Luy, filed a petition for the administration of the estate of her deceased husband before the Regional Trial Court of Quezon City, docketed as Special Proceedings No. Q-95-23334.<sup>[15]</sup> The case was raffled to Branch 93. The private respondent filed a motion praying for the annotation of a notice of *lis pendens* at the dorsal portion of all titles over the properties in the name of Pastor. Included in the said properties were those registered in the name of other corporations of which Pastor was a stockholder, including that parcel of land covered by TCT No. T-116717 registered under the name of Speed. The court granted the motion. The affected corporations, including Speed, filed motions to cancel the notices of *lis pendens* and motions for exclusion of certain properties from Pastor's estate. On June 8, 1995, the Court granted the motions and ordered the exclusion of certain properties from the estate of Pastor and the cancellation of the notices of *lis pendens* on properties registered in the name of the said corporations, including that covered by TCT No. T-116716 under the name of Speed.

On June 27, 1995, the private respondent filed a verified amended petition in SP No. Q-95-23334 alleging, among others, that during his lifetime, Pastor substantially owned the following business entities: Skyline Sales Corporation, Speed Distributing, Inc., and Leslim Corporation:

5. That the following real properties, although registered in the name of the above entities, were actually acquired by Pastor Y. Lim during his marriage with petitioner, to wit:

CORPORATION	TITLE	LOCATION
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b. LeslimTCT No.Quezon  
Corp. 36617 City  
but now illegally transferred to and  
registered in the name of Speed  
Distributing, Inc. under TCT No.  
116716.<sup>[16]</sup>

On July 4, 1995, the probate court issued an Order setting aside its June 8, 1995 Order and directed the Register of Deeds to reinstate the notice of *lis pendens* on TCT No. T-116716. The court denied the motion for the reconsideration of the said order.

Speed filed a petition for *certiorari* with the Court of Appeals for the nullification of the July 4, 1995 and September 12, 1995 Orders of the trial court, docketed as CA-G.R. No. 38617 (SP).

Meanwhile, on August 1, 1995, the private respondent filed a complaint against Speed, and the petitioners with the RTC of Quezon City, for the nullification of the Deed of Absolute Sale executed by Leslim in favor of Speed over the property covered by TCT No. T-36617, and the cancellation of TCT No. T-11676, with damages before the RTC of Quezon City. The case was raffled to Branch 222, and was docketed as Q-95-24588. The private respondent alleged, *inter alia*, that:

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6. Plaintiff is the surviving spouse of the late Pastor Y. Lim who died intestate on June 11, 1994, but leaving several properties, real and personal, situated in Quezon City, Makati City, Rizal Province, Las Piñas, Valenzuela, Manila, Cavite, Masbate and other parts of the country. ...
7. During the existence of the marriage of plaintiff and Pastor Y. Lim, the latter formed, among others, Leslim Corporation, and he actually owned the same as in fact he had in his name 95,700 out of the 120,000 shares of the authorized capital stock. The remaining shares of stocks were listed in the name of some persons who were actually his dummies, and were made to appear as stockholders of Leslim Corporation only for purposes of registration with the Securities and Exchange Commission....
8. Leslim Corporation, in turn, is a registered owner of a certain parcel of land located in Diliman, Quezon City, as evidenced by TCT No. 36617, issued by defendant Register of Deeds, copy of which is hereto attached as Annex "C."
9. Plaintiff initiated an intestate proceedings on the estate of her deceased husband in order to lay claim on her conjugal share thereon. She then started to verify the various TCTs of the real property in the name of her deceased husband, including those in the name of Leslim Corporation, and she discovered that TCT No. 36617 had already been canceled and in lieu thereof, TCT No. 116716 was issued by defendant Register of Deeds in the name of defendant Corporation...
10. Upon further verification, plaintiff discovered that the basis of the cancellation of TCT No. 36617 in favor of TCT No. 116716 is a Deed of Sale signed and executed by defendant Lita Marcelo who misrepresented herself as Vice