

SECOND DIVISION

[G.R. No. 123307, November 29, 1999]

**SAMUEL BARANGAN, PETITIONER, VS. COURT OF APPEALS AND
LEOVINO JOSE, RESPONDENTS.**

D E C I S I O N

BELLOSILLO, J.:

Put not your trust in money; rather, put your money in trust.^[1] Perhaps this concept was unknown to private respondent Leovino Jose and his townmates when they invested their hard-earned money in a *paluwagan* that would "treble in fifteen (15) days." To their endless consternation however they could only sense their money fast dissipating like a bubble bursting in mid-air.

Sometime in 1989 the San Mateo Small Town Multi-Purpose Cooperative (SMSTMC) was organized "to uplift the economic condition of its members." The officers were Federico Castillo, Chairman; Atty. Samuel Barangan, Vice-Chairman; and Rolando Remigio, Efigenia Marquez, Federico Sison Jr. and Esperanza Garcia as Members of the Board of Directors. The cooperative was short-lived as it was dissolved for engaging in a *paluwagan*. Undeterred, the officers of the SMSTMC lost no time in organizing the Biyaya Foundation (BIYAYA) and had the Foundation duly registered with the Securities and Exchange Commission. Apparently, the formation of the new corporation was a mere subterfuge to perpetuate their illegal activity as it continued operating as a *paluwagan*. Plainly, the BIYAYA was the "same dog with a different collar," so to speak. As explained by Samuel Barangan, the mechanics of the *paluwagan* follow:^[2] For any amount invested, after the expiration of fifteen (15) working days, the investor will be able to withdraw three (3) times the amount of his investment. Specifically, Barangan testified

Q. Will you further explain to the Court the scheme of plan to pay the supposed last investor considering that the receipt of the investment would be consumed before the last investor? How will he be paid?

A: What the manager explained to us is that this is a continuing process so there is always money that will be returned to any investor. Aside from that, we put up a business, that is the marketing branch, we can also derive income aside from the bank interests, sir x x x x

Q: All right, you are a lawyer. They claim that it is a scheme of pyramiding. In other words, the original investment comes from small investors, you get the payments of these small investors from a big investor. Now comes a time that the bigger investor could not be paid because there was no money to pay them. Will you explain how the Biyaya Foundation plans to pay the larger investments?

A: When we asked that during the deliberation in the Board meeting, Federico Castillo explained to us that in every investment, say of P1,000.00, it will be two management slots. sir.

Q: So you mean to say that when a matured investment is paid, the money to pay it comes from other investors which you refer to as "slots"?

A: Yes, your honor.

Akin to any pyramiding scam, in no time the BIYAYA office was raided by the NBI and the military taking with them stacks of documents and other incriminatory evidence. Consequently, the operations of BIYAYA were stopped leaving its numerous investors - two (2) of whom being John Gatmen and Leovino Jose - like a school of fish gasping for breath in a just emptied lagoon.

On 22 August 1989 a criminal complaint for estafa was filed against BIYAYA's Chairman Federico Castillo, Vice-Chairman Samuel Barangan, and Board Members Efigenia Marquez, Merlinda Topinio, Gualberto Ola, Federico Sison Jr. and Rolando Remigio. The complaint alleged that these seven (7) accused feloniously solicited investments from John Gatmen in the sum of P31,200.00 where he would be paid 300% in dividends after (15) fifteen days plus another 200% in dividends after (21) twenty-one days, and on such dates the capital would be returned. But, despite repeated demands, John Gatmen was never paid his investment and guaranteed profits.^[3] On 30 August 1989 another complaint for estafa was filed by Leovino Jose similarly alleging that he was defrauded by the same accused by convincing him to part with P43,500.00 and to deposit the amount with the Biyaya Foundation. But far from complying with their promise, the money was misappropriated and misapplied to their own use and benefit.^[4] Thus, Leovino Jose never recovered what he invested, much less its promised returns.

On 6 September 1989 a warrant of arrest was issued against the seven (7) accused. Atty. Samuel Barangan, Merlinda Topinio and Efigenia Marquez were thereafter apprehended and detained, while Federico Castillo and Gualberto Ola up to this day remain at large. As regards Federico Sison Jr, and Rolando Remegio, the records are not clear although they appear to have subsequently participated in the trial and even took the witness stand.

In a Resolution dated 14 September 1989 the trial court ordered the filing of formal charges against Federico Castillo, Samuel V. Barangan, Efigenia Marquez, Gualberto Ola, Federico Sison, Jr., and Rolando Remegio but dropped the charge against Merlinda G. Topinio for the reason that she was a mere employee of BIYAYA.

On 6 November 1989 two (2) separate Informations were filed against the herein mentioned accused, one by complainant John Gatmen, and the other by Leovino Jose. In the joint hearing subsequently conducted, the prosecution failed to present evidence in Crim. Case No. 20-251 for failure of complaining witness therein, John Gatmen, and his witnesses to appear during the trial. Hence, only testimonies of the witnesses in Crim. Case No. Br. 20-252, more prominently that of Leovino Jose, were offered in evidence.

On 26 November 1990 the trial court in both cases acquitted Samuel Barangan,

Efigenia Marquez, Federico Sison, Jr., and Rolando Remigio on reasonable doubt. They were however ordered to pay jointly and severally the amount of P43,000.00 to Leovino Jose. As adverted to earlier, accused Federico Castillo and Gualberto Ola were not apprehended hence were never arraigned, much less tried.

In acquitting the four (4) accused the trial court^[5] opined that there was nothing in the testimonies of the prosecution witnesses to support the allegation that they, singly or collectively, induced or convinced Leovino Jose to invest in the *paluwagan*. Nor was there evidence to show that they represented to him before or at the time he made the investment that it would earn 300% in fifteen (15) days and 200% in twenty-one (21) days. In fact, what appears clear from the testimonies of the prosecution witnesses is that they were induced to invest only after learning that there were those who already received the guaranteed dividends.

As regards the civil liability of the accused, the trial court observed^[6]-

Leovino Jose did not give his money to the accused: he gave it to the BF through its employees. As the BF has a juridical personality separate and distinct from that of its stockholders and officers, it is the one, not the accused, who is liable to Leovino Jose for the return of his P43,5000.00.

This is the rule under normal circumstances x x x x But when the corporate entity is used to defeat public convenience, justify a wrong, protect fraud or defend crime or when it is used as a shield to confuse issues, the fiction that the corporation has a separate and distinct personality from its stockholders and officers may be discarded. In such a case, the corporation is considered as a mere association of persons and the stockholders or members of the corporation are considered as the corporation. This is called "piercing the veil of corporate fiction" or "looking at the substance rather than form" x x x x Compelling and valid reasons exist warranting the lifting of the veil of corporate fiction of BF and hold its officers, the accused herein, liable for its obligation to Leovino Jose. BF was engaged in an illegal activity by operating a *paluwagan*. BF is practically dissolved and abandoned when its officers went into hiding after the military raided it to stop its operation. Unless its officers are held liable for the obligation of BF to Leovino Jose, the wrong committed against him will be perpetuated as recourse to the BF is futile.

Within the reglementary period accused Samuel Barangan together with his co-accused Efigenia Marquez, Federico Sison, Jr. and Rolando Remigio appealed their civil liability to the Court of Appeals which on 17 November 1995 rendered the assailed Decision^[7] which affirmed that of the trial court except that Efigenia Marquez was absolved from any liability to Leovino Jose. Thus -

It is also well to stress that neither Biyaya nor its officers can evade the demands of justice by the simple expedient of invoking the illegality of the contract for which they themselves are responsible. In this case, the principle of estoppel would step in to prevent one party from going back upon his own acts to the prejudice of the other party who relied upon them.

In their last assignment of error, the appellants assail the decision of the lower court in holding them jointly and severally liable to Leovino Jose and in not dismissing the complaint. They claim that Efigenia Marquez cannot be liable because she was not