646 Phil. 210

FIRST DIVISION

[G.R. No. 182729, September 29, 2010]

KUKAN INTERNATIONAL CORPORATION, PETITIONER, VS. HON. AMOR REYES, IN HER CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MANILA, BRANCH 21, AND ROMEO M. MORALES, DOING BUSINESS UNDER THE NAME AND STYLE "RM MORALES TROPHIES AND PLAQUES," RESPONDENTS.

D E C I S I O N

VELASCO JR., J.:

The Case

This Petition for Review on Certiorari under Rule 45 seeks to nullify and reverse the January 23, 2008 Decision[1] and the April 16, 2008 Resolution[2] rendered by the Court of Appeals (CA) in CA-G.R. SP No. 100152.

The assailed CA decision affirmed the March 12, 2007[3] and June 7, 2007[4] Orders of the Regional Trial Court (RTC) of Manila, Branch 21, in Civil Case No. 99-93173, entitled *Romeo M. Morales, doing business under the name and style RM Morales Trophies and Plaques v. Kukan, Inc*. In the said orders, the RTC disregarded the separate corporate identities of Kukan, Inc. and Kukan International Corporation and declared them to be one and the same entity. Accordingly, the RTC held Kukan International Corporation, albeit not impleaded in the underlying complaint of Romeo M. Morales, liable for the judgment award decreed in a Decision dated November 28, 2002[5] in favor of Morales and against Kukan, Inc.

The Facts

Sometime in March 1998, Kukan, Inc. conducted a bidding for the supply and installation of signages in a building being constructed in Makati City. Morales tendered the winning bid and was awarded the PhP 5 million contract. Some of the items in the project award were later excluded resulting in the corresponding reduction of the contract price to PhP 3,388,502. Despite his compliance with his contractual undertakings, Morales was only paid the amount of PhP 1,976,371.07, leaving a balance of PhP 1,412,130.93, which Kukan, Inc. refused to pay despite demands. Shortchanged, Morales filed a Complaint[6] with the RTC against Kukan, Inc. for a sum of money, the case

docketed as Civil Case No. 99-93173 and eventually raffled to Branch 17 of the court.

Following the joinder of issues after Kukan, Inc. filed an answer with counterclaim, trial ensued. However, starting November 2000, Kukan, Inc. no longer appeared and participated in the proceedings before the trial court, prompting the RTC to declare Kukan, Inc. in default and paving the way for Morales to present his evidence *ex parte*.

On November 28, 2002, the RTC rendered a Decision finding for Morales and against Kukan, Inc., disposing as follows:

WHEREFORE, consistent with Section 5, Rule 18 of the 1997 Rules of Civil Procedure, and by preponderance of evidence, judgment is hereby rendered in favor of the plaintiff, ordering Kukan, Inc.:

1. to pay the sum of ONE MILLION TWO HUNDRED ONE THOUSAND SEVEN HUNDRED TWENTY FOUR PESOS (P1,201,724.00) with legal interest at 12% per annum from February 17, 1999 until full payment;

2. to pay the sum of FIFTY THOUSAND PESOS (P50,000.00) as moral damages;

3. to pay the sum of TWENTY THOUSAND PESOS, (P20,000.00) as reasonable attorney's fees; and

4. to pay the sum of SEVEN THOUSAND NINE HUNDRED SIXTY PESOS and SIX CENTAVOS (P7,960.06) as litigation expenses.

For lack of factual foundation, the counterclaim is DISMISSED.

IT IS SO ORDERED.[7]

After the above decision became final and executory, Morales moved for and secured a writ of execution[8] against Kukan, Inc. The sheriff then levied upon various personal properties found at what was supposed to be Kukan, Inc.'s office at Unit 2205, 88 Corporate Center, Salcedo Village, Makati City. Alleging that it owned the properties thus levied and that it was a different corporation from Kukan, Inc., Kukan International Corporation (KIC) filed an Affidavit of Third-Party Claim. Notably, KIC was incorporated in August 2000, or shortly after Kukan, Inc. had stopped participating in Civil Case No. 99-93173.

In reaction to the third party claim, Morales interposed an Omnibus Motion dated April 30, 2003. In it, Morales prayed, applying the principle of piercing the veil of corporate fiction, that an order be issued for the satisfaction of the judgment debt of Kukan, Inc. with the properties under the name or in the possession of KIC, it being alleged that both corporations are but one and the same entity. KIC opposed Morales' motion. By Order of May 29, 2003[9] as reiterated in a subsequent order, the court denied the omnibus motion.

In a bid to establish the link between KIC and Kukan, Inc., and thus determine the true relationship between the two, Morales filed a Motion for Examination

of Judgment Debtors dated May 4, 2005. In this motion Morales sought that subponae be issued against the primary stockholders of Kukan, Inc., among them Michael Chan, a.k.a. Chan Kai Kit. This too was denied by the trial court in an Order dated May 24, 2005.[10]

Morales then sought the inhibition of the presiding judge, Eduardo B. Peralta, Jr., who eventually granted the motion. The case was re-raffled to Branch 21, presided by public respondent Judge Amor Reyes.

Before the Manila RTC, Branch 21, Morales filed a Motion to Pierce the Veil of Corporate Fiction to declare KIC as having no existence separate from Kukan, Inc. This time around, the RTC, by Order dated March 12, 2007, granted the motion, the dispositive portion of which reads:

WHEREFORE, premises considered, the motion is hereby GRANTED. The Court hereby declares as follows:

1. defendant Kukan, Inc. and newly created Kukan International Corp. as one and the same corporation;

2. the levy made on the properties of Kukan International Corp. is hereby valid;

3. Kukan International Corp. and Michael Chan are jointly and severally liable to pay the amount awarded to plaintiff pursuant to the decision of November [28], 2002 which has long been final and executory.

SO ORDERED.

From the above order, KIC moved but was denied reconsideration in another Order dated June 7, 2007.

KIC went to the CA on a petition for certiorari to nullify the aforesaid March 12 and June 7, 2007 RTC Orders.

On January 23, 2008, the CA rendered the assailed decision, the dispositive portion of which states:

WHEREFORE, premises considered, the petition is hereby DENIED and the assailed Orders dated March 12, 2007 and June 7, 2007 of the court *a quo* are both AFFIRMED. No costs.

SO ORDERED.[11]

The CA later denied KIC's motion for reconsideration in the assailed resolution.

Hence, the instant petition for review, with the following issues KIC raises for the Court's consideration:

1. There is no legal basis for the [CA] to resolve and declare that petitioner's Constitutional Right to Due Process was not violated by the public respondent in rendering the Orders dated March 12, 2007 and June 7, 2007 and in declaring petitioner to be liable for the judgment

obligations of the corporation "Kukan, Inc." to private respondent - as petitioner is a stranger to the case and was never made a party in the case before the trial court nor was it ever served a summons and a copy of the complaint.

2. There is no legal basis for the [CA] to resolve and declare that the Orders dated March 12, 2007 and June 7, 2007 rendered by public respondent declaring the petitioner liable to the judgment obligations of the corporation "Kukan, Inc." to private respondent are valid as said orders of the public respondent modify and/or amend the trial court's final and executory decision rendered on November 28, 2002.

3. There is no legal basis for the [CA] to resolve and declare that the Orders dated March 12, 2007 and June 7, 2007 rendered by public respondent declaring the petitioner [KIC] and the corporation "Kukan, Inc." as one and the same, and, therefore, the Veil of Corporate Fiction between them be pierced - as the procedure undertaken by public respondent which the [CA] upheld is not sanctioned by the Rules of Court and/or established jurisprudence enunciated by this Honorable Supreme Court.[12]

In gist, the issues to be resolved boil down to the question of, *first*, whether the trial court can, after the judgment against Kukan, Inc. has attained finality, execute it against the property of KIC; *second*, whether the trial court acquired jurisdiction over KIC; and *third*, whether the trial and appellate courts correctly applied, under the premises, the principle of piercing the veil of corporate fiction.

The Ruling of the Court

The petition is meritorious.

First Issue: Against Whom Can a Final and Executory Judgment Be Executed

The preliminary question that must be answered is whether or not the trial court can, after adjudging Kukan, Inc. liable for a sum of money in a final and executory judgment, execute such judgment debt against the property of KIC.

The poser must be answered in the negative.

In *Carpio v. Doroja*,[13] the Court ruled that the deciding court has supervisory control over the execution of its judgment:

A case in which an execution has been issued is regarded as still pending so that all proceedings on the execution are proceedings in the suit. There is no question that the court which rendered the judgment has a general supervisory control over its process of execution, and this power carries with it the right to determine every question of fact and law which may be involved in the execution.

We reiterated the above holding in *Javier v. Court of Appeals*[14] in this wise:

"The said branch has a general supervisory control over its processes in the execution of its judgment with a right to determine every question of fact and law which may be involved in the execution."

The court's supervisory control does not, however, extend as to authorize the alteration or amendment of a final and executory decision, save for certain recognized exceptions, among which is the correction of clerical errors. Else, the court violates the principle of finality of judgment and its immutability, concepts which the Court, in *Tan v. Timbal*,[15] defined:

As we held in *Industrial Management International Development Corporation vs. NLRC*:

It is an elementary principle of procedure that the resolution of the court in a given issue as embodied in the dispositive part of a decision or order is the controlling factor as to settlement of rights of the parties. **Once a decision or order becomes final and executory, it is removed from the power or jurisdiction of the court which rendered it to further alter or amend it. It thereby becomes immutable and unalterable and any amendment or alteration which substantially affects a final and executory judgment is null and void for lack of jurisdiction, including the entire proceedings held for that purpose. An order of execution which varies the tenor of the judgment or exceeds the terms thereof is a nullity.** (Emphasis supplied.)

Republic v. Tango[16] expounded on the same principle and its exceptions:

Deeply ingrained in our jurisprudence is the principle that **a decision that has acquired finality becomes immutable and unalterable.** As such, **it may no longer be modified** in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land. x x x

The doctrine of finality of judgment is grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final on some definite date fixed by law. **The only exceptions** to the general rule are the correction of clerical errors, the so-called *nunc pro tunc* entries which cause no prejudice to any party, void judgments, and whenever circumstances transpire after the finality of the decision which render its execution unjust and inequitable. None of the exceptions obtains here to merit the review sought. (Emphasis added.)

So, did the RTC, in breach of the doctrine of immutability and inalterability of judgment, order the execution of its final decision in a manner as would amount to its prohibited alteration or modification?

We repair to the dispositive portion of the final and executory RTC decision. Pertinently, it provides:

WHEREFORE, consistent with Section 5, Rule 18 of the 1997 Rules of Civil Procedure, and by preponderance of evidence, judgment is hereby rendered in favor of the plaintiff, ordering **Kukan, Inc.**:

1. to pay the sum of ONE MILLION TWO HUNDRED ONE THOUSAND SEVEN HUNDRED TWENTY FOUR PESOS (P1,201,724.00) with legal interest at 12% per annum from February 17, 1999 until full payment;

2. to pay the sum of FIFTY THOUSAND PESOS (P50,000.00) as moral damages;

3. to pay the sum of TWENTY THOUSAND PESOS (P20,000.00) as reasonable attorney's fees; and

4. to pay the sum of SEVEN THOUSAND NINE HUNDRED SIXTY PESOS and SIX CENTAVOS (P7,960.06) as litigation expenses.

x x x x (Emphasis supplied.)

As may be noted, the above decision, in unequivocal terms, directed Kukan, Inc. to pay the aforementioned awards to Morales. Thus, making KIC, thru the medium of a writ of execution, answerable for the above judgment liability is a clear case of altering a decision, an instance of granting relief not contemplated in the decision sought to be executed. And the change does not fall under any of the recognized exceptions to the doctrine of finality and immutability of judgment. It is a settled rule that a writ of execution must conform to the *fallo* of the judgment; as an inevitable corollary, a writ beyond the terms of the judgment is a nullity.[17]

Thus, on this ground alone, the instant petition can already be granted. Nonetheless, an examination of the other issues raised by KIC would be proper.

Second Issue: Propriety of the RTC Assuming Jurisdiction over KIC

The next issue turns on the validity of the execution the trial court authorized against KIC and its property, given that it was neither made a party nor impleaded in Civil Case No. 99-93173, let alone served with summons. In other words, did the trial court acquire jurisdiction over KIC?

In the assailed decision, the appellate court deemed KIC to have voluntarily submitted itself to the jurisdiction of the trial court owing to its filing of four (4) pleadings adverted to earlier, namely: (a) the Affidavit of Third-Party Claim;[18] (b) the Comment and Opposition to Plaintiff's Omnibus Motion;[19] (c) the Motion for Reconsideration of the RTC Order dated March 12, 2007;[20] and (d) the Motion for Leave to Admit Reply.[21] The CA, citing Section 20, Rule 14 of the Rules of Court, stated that "the procedural rule on service of summons can be waived by voluntary submission to the court's jurisdiction through any form of appearance by the party or its counsel."[22]

We cannot give imprimatur to the appellate court's appreciation of the thrust of Sec. 20, Rule 14 of the Rules in concluding that the trial court acquired jurisdiction over KIC.

Orion Security Corporation v. Kalfam Enterprises, Inc.[23] explains how courts acquire jurisdiction over the parties in a civil case:

> Courts acquire jurisdiction over the plaintiffs upon the filing of the complaint. **On the other hand, jurisdiction over the defendants in a civil case is acquired either through the service of summons upon them or through their voluntary appearance in court and their submission to its authority.** (Emphasis supplied.)

In the fairly recent *Palma v. Galvez*,[24] the Court reiterated its holding in *Orion Security Corporation*, stating: "[I]n civil cases, the trial court acquires jurisdiction over the person of the defendant either by the service of summons or by the latter's voluntary appearance and submission to the authority of the former."

The court's jurisdiction over a party-defendant resulting from his voluntary submission to its authority is provided under Sec. 20, Rule 14 of the Rules, which states:

> Section 20. *Voluntary appearance*. - The defendant's voluntary appearance in the actions shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance.

To be sure, the CA's ruling that any form of appearance by the party or its counsel is deemed as voluntary appearance finds support in the kindred *Republic v. Ker & Co., Ltd.*[25] and *De Midgely v. Ferandos*.[26]

Republic and *De Midgely*, however, have already been modified if not altogether superseded[27] by *La Naval Drug Corporation v. Court of Appeals*,[28] wherein the Court essentially ruled and elucidated on the current view in our jurisdiction, to wit: "[A] special appearance before the court--challenging its jurisdiction over the person through a motion to dismiss even if the movant invokes other grounds--is not tantamount to estoppel or a waiver by the movant of his objection to jurisdiction over his person; and such is not constitutive of a voluntary submission to the jurisdiction of the court."[29]

In the instant case, KIC was not made a party-defendant in Civil Case No. 99-93173. Even if it is conceded that it raised affirmative defenses through its aforementioned pleadings, KIC never abandoned its challenge, however implicit, to the RTC's jurisdiction over its person. The challenge was subsumed in KIC's primary assertion that it was not the same entity as Kukan, Inc. Pertinently, in its Comment and Opposition to Plaintiff's Omnibus Motion dated May 20, 2003, KIC entered its "**special but not voluntary appearance**" alleging therein that it was a different entity and has a separate legal personality from Kukan, Inc. And KIC would consistently reiterate this assertion in all its pleadings, thus effectively resisting all along the RTC's jurisdiction of its person. It cannot be overemphasized that KIC could not file before the RTC a motion to dismiss and its attachments in Civil Case No. 99-93173, precisely because KIC was neither impleaded nor served with summons. Consequently, KIC could only assert and claim through its affidavits, comments, and motions filed by special appearance before the RTC that it is separate and distinct from Kukan, Inc.

Following *La Naval Drug Corporation*,[30] KIC cannot be deemed to have waived its objection to the court's lack of jurisdiction over its person. It would defy logic to say that KIC unequivocally submitted itself to the jurisdiction of the RTC when it strongly asserted that it and Kukan, Inc. are different entities. In the scheme of things obtaining, KIC had no other option but to insist on its separate identity and plead for relief consistent with that position.

Third Issue: Piercing the Veil of Corporate Fiction

The third and main issue in this case is whether or not the trial and appellate courts correctly applied the principle of piercing the veil of corporate entity--called also as disregarding the fiction of a separate juridical personality of a corporation--to support a conclusion that Kukan, Inc. and KIC are but one and the same corporation with respect to the contract award referred to at the outset. This principle finds its context on the postulate that a corporation is an artificial being invested with a personality separate and distinct from those of the stockholders and from other corporations to which it may be connected or related.[31]

In *Pantranco Employees Association (PEA-PTGWO) v. National Labor Relations Commission*,[32] the Court revisited the subject principle of piercing the veil of corporate fiction and wrote:

> Under the doctrine of "piercing the veil of corporate fiction," the court looks at the corporation as a mere collection of individuals or an aggregation of persons undertaking business as a group, disregarding the separate juridical personality of the corporation unifying the group. **Another formulation** of this doctrine **is that when two business enterprises are owned, conducted and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that two corporations are distinct entities and treat them as identical or as one and the same.**
>
> Whether the **separate personality of the corporation should be pierced hinges on obtaining facts appropriately pleaded or proved**. However, any piercing of the corporate veil has to be done with caution, albeit the Court will not hesitate to disregard the corporate veil when it is misused or when necessary in the interest of justice. x x x (Emphasis supplied.)

The same principle was the subject and discussed in *Rivera v. United Laboratories, Inc.*:

> While a corporation may exist for any lawful purpose, the law will regard it as an association of persons or, **in case of two corporations, merge them into one, when its corporate legal entity is used as a cloak for fraud or illegality. This is the doctrine of piercing the veil of corporate fiction. The doctrine applies only when such corporate fiction is used to defeat public convenience, justify wrong, protect fraud, or defend crime, or when it is made as a shield to confuse the legitimate issues**, or where a corporation is the mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.

To disregard the separate juridical personality of a corporation, the wrongdoing must be established clearly and convincingly. It cannot be presumed.[33] (Emphasis supplied.)

Now, as before the appellate court, petitioner KIC maintains that the RTC violated its right to due process when, in the execution of its November 28, 2002 Decision, the court authorized the issuance of the writ against KIC for Kukan, Inc.'s judgment debt, albeit KIC has never been a party to the underlying suit. As a counterpoint, Morales argues that KIC's specific concern on due process and on the validity of the writ to execute the RTC's November 28, 2002 Decision would be mooted if it were established that KIC and Kukan, Inc. are indeed one and the same corporation.

Morales' contention is untenable.

The principle of piercing the veil of corporate fiction, and the resulting treatment of two related corporations as one and the same juridical person with respect to a given transaction, is basically applied only to determine established liability;[34] it is not available to confer on the court a jurisdiction it has not acquired, in the first place, over a party not impleaded in a case. Elsewise put, a corporation not impleaded in a suit cannot be subject to the court's process of piercing the veil of its corporate fiction. In that situation, the court has not acquired jurisdiction over the corporation and, hence, any proceedings taken against that corporation and its property would infringe on its right to due process. Aguedo Agbayani, a recognized authority on Commercial Law, stated as much:

23. Piercing the veil of corporate entity applies to determination of liability not of jurisdiction. x x x

This is so because the doctrine of piercing the veil of corporate fiction comes to play <u>only during the trial of the case after the court has already acquired jurisdiction over the corporation</u>. Hence, before this doctrine can be applied, based on the evidence presented, it is imperative that the court must first have jurisdiction over the corporation.[35] x x x (Emphasis supplied.)

The implication of the above comment is twofold: (1) the court must first acquire jurisdiction over the corporation or corporations involved before its or their separate personalities are disregarded; and (2) the doctrine of piercing the veil of corporate entity can only be raised during a full-blown trial over a cause of action duly commenced involving parties duly brought under the authority of the court by way of service of summons or what passes as such service.

The issue of jurisdiction or the lack of it over KIC has already been discussed. Anent the matter of the time and manner of raising the principle in question, it is undisputed that no full-blown trial involving KIC was had when the RTC disregarded the corporate veil of KIC. The reason for this actuality is simple and undisputed: KIC was not impleaded in Civil Case No. 99-93173 and that the RTC did not acquire jurisdiction over it. It was dragged to the case after it reacted to the improper execution of its properties and veritably hauled to court, not thru the usual process of service of summons, but by mere motion

of a party with whom it has no privity of contract and after the decision in the main case had already become final and executory. As to the propriety of a plea for the application of the principle by mere motion, the following excerpts are instructive:

Generally, a motion is appropriate only in the absence of remedies by regular pleadings, and is not available to settle important questions of law, or to dispose of the merits of the case. A motion is usually a proceeding incidental to an action, but it may be a wholly distinct or independent proceeding. A motion in this sense is not within this discussion even though the relief demanded is denominated an "order."

A motion generally relates to procedure and is often resorted to in order to correct errors which have crept in along the line of the principal action's progress. Generally, where there is a procedural defect in a proceeding and no method under statute or rule of court by which it may be called to the attention of the court, a motion is an appropriate remedy. In many jurisdictions, the motion has replaced the common-law pleas testing the sufficiency of the pleadings, and various common-law writs, such as writ of error coram nobis and audita querela. In some cases, a motion may be one of several remedies available. For example, in some jurisdictions, a motion to vacate an order is a remedy alternative to an appeal therefrom.

Statutes governing motions are given a liberal construction.[36] (Emphasis supplied.)

The bottom line issue of whether Morales can proceed against KIC for the judgment debt of Kukan, Inc.--assuming hypothetically that he can, applying the piercing the corporate veil principle--resolves itself into the question of whether a mere motion is the appropriate vehicle for such purpose.

Verily, Morales espouses the application of the principle of piercing the corporate veil to hold KIC liable on theory that Kukan, Inc. was out to defraud him through the use of the separate and distinct personality of another corporation, KIC. In net effect, Morales' adverted motion to pierce the veil of corporate fiction dated January 3, 2007 stated a new cause of action, i.e., for the liability of judgment debtor Kukan, Inc. to be borne by KIC on the alleged identity of the two corporations. This new cause of action should be properly ventilated in another complaint and subsequent trial where the doctrine of piercing the corporate veil can, if appropriate, be applied, based on the evidence adduced. Establishing the claim of Morales and the corresponding liability of KIC for Kukan Inc.'s indebtedness could hardly be the subject, under the premises, of a mere motion interposed after the principal action against Kukan, Inc. alone had peremptorily been terminated. After all, a complaint is one where the plaintiff alleges causes of action.

In any event, the principle of piercing the veil of corporate fiction finds no application to the instant case.

As a general rule, courts should be wary of lifting the corporate veil between corporations, however related. *Philippine National Bank v. Andrada Electric Engineering Company*[37] explains why:

A corporation is an artificial being created by operation of law. x x x It has a personality separate and distinct from the persons composing it, as well as from any other legal entity to which it may be related. This is basic.

Equally well-settled is the principle that the corporate mask may be removed or the corporate veil pierced when the corporation is just an alter ego of a person or of another corporation. For reasons of public policy and in the interest of justice, the corporate veil will justifiably be impaled only when it becomes a shield for fraud, illegality or inequity committed against third persons.

Hence, any application of the doctrine of piercing the corporate veil should be done with caution. A court should be mindful of the milieu where it is to be applied. **It must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of its rights. The wrongdoing must be clearly and convincingly established; it cannot be presumed. Otherwise, an injustice that was never unintended may result from an erroneous application.**

This Court has pierced the corporate veil to ward off a judgment credit, to avoid inclusion of corporate assets as part of the estate of the decedent, to escape liability arising from a debt, or to perpetuate fraud and/or confuse legitimate issues either to promote or to shield unfair objectives or to cover up an otherwise blatant violation of the prohibition against forum-shopping. **Only in these and similar instances may the veil be pierced and disregarded**. (Emphasis supplied.)

In fine, to justify the piercing of the veil of corporate fiction, it must be shown by clear and convincing proof that the separate and distinct personality of the corporation was purposefully employed to evade a legitimate and binding commitment and perpetuate a fraud or like wrongdoings. To be sure, the Court has, on numerous occasions,[38] applied the principle where a corporation is dissolved and its assets are transferred to another to avoid a financial liability of the first corporation with the result that the second corporation should be considered a continuation and successor of the first entity.

In those instances when the Court pierced the veil of corporate fiction of two corporations, there was a confluence of the following factors:

1. A first corporation is dissolved;

2. The assets of the first corporation is transferred to a second corporation to avoid a financial liability of the first corporation; and

3. Both corporations are owned and controlled by the same persons such that the second corporation should be considered as a continuation and successor of the first corporation.

In the instant case, however, the second and third factors are conspicuously absent. There is, therefore, no compelling justification for disregarding the fiction of corporate entity separating Kukan, Inc. from KIC. In applying the principle, both the RTC and the CA miserably failed to identify the presence of the abovementioned factors. Consider:

The RTC disregarded the separate corporate personalities of Kukan, Inc. and KIC based on the following premises and arguments:

While it is true that a corporation has a separate and distinct personality from its stockholder, director and officers, the law expressly provides for an exception. When Michael Chan, the Managing Director of defendant Kukan, Inc. (majority stockholder of the newly formed corporation [KIC]) confirmed the award to plaintiff to supply and install interior signages in the Enterprise Center he (Michael Chan, Managing Director of defendant Kukan, Inc.) knew that there was no sufficient corporate funds to pay its obligation/account, thus implying bad faith on his part and fraud in contracting the obligation. Michael Chan neither returned the interior signages nor tendered payment to the plaintiff. This circumstance may warrant the piercing of the veil of corporation fiction. **Having been guilty of bad faith in the management of corporate matters the corporate trustee, director or officer may be held personally liable.** x x x

Since fraud is a state of mind, it need not be proved by direct evidence but may be inferred from the circumstances of the case. x x x [A]nd the circumstances are: the signature of Michael Chan, Managing Director of Kukan, Inc. appearing in the confirmation of the award sent to the plaintiff; signature of Chan Kai Kit, a British National appearing in the Articles of Incorporation and signature of Michael Chan also a British National appearing in the Articles of Incorporation [of] Kukan International Corp. give the impression that they are one and the same person, that Michael Chan and Chan Kai Kit are both majority stockholders of Kukan International Corp. and Kukan, Inc. holding 40% of the stocks; that Kukan International Corp. is practically doing the same kind of business as that of Kukan, Inc.[39] (Emphasis supplied.)

As is apparent from its disquisition, the RTC brushed aside the separate corporate existence of Kukan, Inc. and KIC on the main argument that Michael Chan owns 40% of the common shares of both corporations, obviously oblivious that overlapping stock ownership is a common business phenomenon. It must be remembered, however, that KIC's properties were the ones seized upon levy on execution and not that of Kukan, Inc. or of Michael Chan for that matter. Mere ownership by a single stockholder or by another corporation of a substantial block of shares of a corporation does not, standing alone, provide sufficient justification for disregarding the separate corporate personality.[40] For this ground to hold sway in this case, there must be proof that Chan had control or complete dominion of Kukan and KIC's finances, policies, and business practices; he used such control to commit fraud; and the control was the proximate cause of the financial loss complained of by Morales. The absence of any of the elements prevents the piercing of the corporate veil.[41] And indeed, the records do not show the presence of these elements.

On the other hand, the CA held:

In the present case, the facts disclose that Kukan, Inc. entered into a contractual obligation x x x worth more than three million pesos although it had only Php5,000.00 paid-up capital; [KIC] was incorporated shortly before Kukan, Inc. suddenly ceased to appear and participate in the trial; [KIC's] purpose is related and somewhat akin to that of Kukan, Inc.; and in [KIC] Michael Chan, a.k.a., Chan Kai Kit, holds forty percent of the outstanding stocks, while he formerly held the same amount of stocks in Kukan Inc. **These would lead to the inescapable conclusion that Kukan, Inc. committed fraudulent representation by awarding to the private respondent the contract with full knowledge that it was not in**

a position to comply with the obligation it had assumed because of inadequate paid-up capital. It bears stressing that shareholders should in good faith put at the risk of the business, unencumbered capital reasonably adequate for its prospective liabilities. The capital should not be illusory or trifling compared with the business to be done and the risk of loss.

Further, it is clear that [KIC] is a continuation and successor of Kukan, Inc. Michael Chan, a.k.a. Chan Kai Kit has the largest block of shares in both business enterprises. The emergence of the former was cleverly timed with the hasty withdrawal of the latter during the trial to avoid the financial liability that was eventually suffered by the latter. The two companies have a related business purpose. **Considering these circumstances, the obvious conclusion is that the creation of Kukan International Corporation served as a device to evade the obligation incurred by Kukan, Inc. and yet profit from the goodwill attained by the name "Kukan" by continuing to engage in the same line of business with the same list of clients.**[42] (Emphasis supplied.)

Evidently, the CA found the meager paid-up capitalization of Kukan, Inc. and the similarity of the business activities in which both corporations are engaged as a jumping board to its conclusion that the creation of KIC "served as a device to evade the obligation incurred by Kukan, Inc." The appellate court, however, left a gaping hole by failing to demonstrate that Kukan, Inc. and its stockholders defrauded Morales. In fine, there is no showing that the incorporation, and the separate and distinct personality, of KIC was used to defeat Morales' right to recover from Kukan, Inc. Judging from the records, no serious attempt was made to levy on the properties of Kukan, Inc. Morales could not, thus, validly argue that Kukan, Inc. tried to avoid liability or had no property against which to proceed.

Morales further contends that Kukan, Inc.'s closure is evidenced by its failure to file its 2001 General Information Sheet (GIS) with the Securities and Exchange Commission. However, such fact does not necessarily mean that Kukan, Inc. had altogether ceased operations, as Morales would have this Court believe, for it is stated on the face of the GIS that it is only upon a failure to file the corporate GIS for **five (5) consecutive years** that non-operation shall be presumed.

The fact that Kukan, Inc. entered into a PhP 3.3 million contract when it only had a paid-up capital of PhP 5,000 is not an indication of the intent on the part of its management to defraud creditors. Paid-up capital is merely seed money to start a corporation or a business entity. As in this case, it merely represented the capitalization **upon incorporation in 1997** of Kukan, Inc. Paid-up capitalization of PhP 5,000 is not and should not be taken as a reflection of the firm's capacity to meet its recurrent and long-term obligations. It must be borne in mind that the equity portion cannot be equated to the viability of a business concern, for the best test is the working capital which consists of the liquid assets of a given business relating to the nature of the business concern.

Neither should the level of paid-up capital of Kukan, Inc. upon its incorporation be viewed as a badge of fraud, for it is in compliance with Sec. 13 of the Corporation Code,[43] which only requires a minimum paid-up capital of PhP 5,000.

The suggestion that KIC is but a continuation and successor of Kukan, Inc., owned and controlled as they are by the same stockholders, stands without factual basis. It is true that Michael Chan, a.k.a. Chan Kai Kit, owns 40% of the outstanding capital stock of both corporations. But such circumstance, standing alone, is insufficient to establish identity. There must be at least a substantial identity of stockholders for both corporations in order to consider this factor to be constitutive of corporate identity.

It would not avail Morales any to rely[44] on *General Credit Corporation v. Alsons Development and Investment Corporation.*[45] *General Credit Corporation* is factually not on all fours with the instant case. There, the common stockholders of the corporations represented **90%** of the outstanding capital stock of the companies, unlike here where Michael Chan merely represents 40% of the outstanding capital stock of both KIC and Kukan, Inc., not even a majority of it. In that case, moreover, evidence was adduced to support the finding that the funds of the second corporation came from the first. Finally, there was proof in *General Credit Corporation* of complete control, such that one corporation was a mere dummy or alter ego of the other, which is absent in the instant case.

Evidently, the aforementioned case relied upon by Morales cannot justify the application of the principle of piercing the veil of corporate fiction to the instant case. As shown by the records, the name Michael Chan, the similarity of business activities engaged in, and incidentally the word "Kukan" appearing in the corporate names provide the nexus between Kukan, Inc. and KIC. As illustrated, these circumstances are insufficient to establish the identity of KIC as the alter ego or successor of Kukan, Inc.

It bears reiterating that piercing the veil of corporate fiction is frowned upon. Accordingly, those who seek to pierce the veil must clearly establish that the separate and distinct personalities of the corporations are set up to justify a wrong, protect fraud, or perpetrate a deception. In the concrete and on the assumption that the RTC has validly acquired jurisdiction over the party concerned, Morales ought to have proved by convincing evidence that Kukan, Inc. was collapsed and thereafter KIC purposely formed and operated to defraud him. Morales has not to us discharged his burden.

WHEREFORE, the petition is hereby **GRANTED**. The CA's January 23, 2008 Decision and April 16, 2008 Resolution in CA-G.R. SP No. 100152 are hereby **REVERSED** and **SET ASIDE**. The levy placed upon the personal properties of Kukan International Corporation is hereby ordered lifted and the personal properties ordered returned to Kukan International Corporation. The RTC of Manila, Branch 21 is hereby directed to execute the RTC Decision dated November 28, 2002 against Kukan, Inc. with reasonable dispatch.

No costs.

SO ORDERED.

Corona, C.J., (Chairperson), Carpio,* Velasco, Jr., Leonardo-De Castro, and

Perez, JJ., concur.

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[*] Additional member per September 22, 2010 raffle.

[1] *Rollo*, pp. 62-76. Penned by Associate Justice Mariano C. Del Castillo (now a member of this Court) and concurred in by Associate Justices Arcangelita Romilla-Lontok and Romeo F. Barza.

[2] Id. at 78-79.

[3] Id. at 171-173.

[4] Id. at 216-217.

[5] Id. at 89-91.

[6] Id. at 80-88.

[7] Id. at 90-91.

[8] Id. at 97, dated February 7, 2003.

[9] Id. at 127.

[10] Id. at 141.

[11] Id. at 75.

[12] Id. at 28-29. Original in upper case.

[13] G.R. No. 84516, December 5, 1989, 180 SCRA 1, 7.

[14] G.R. No. 97795, February 16, 2004, 423 SCRA 11, 33.

[15] G.R. No. 141926, July 14, 2004, 434 SCRA 381, 386.

[16] G.R. No. 161062, July 31, 2009, 594 SCRA 560, 568.

[17] *B.E. San Diego, Inc. v. Alzul*, G.R. No. 169501, June 8, 2007, 524 SCRA 402, 433; citing *Villoria v. Piccio, et al.*, 95 Phil. 802, 805-806 (1954).

[18] *Rollo*, pp. 98-101.

[19] Id. at 117-126.

[20] Id. at 174-187.

[21] Id. at 198-200.

[22] Id. at 69-70.

[23] G.R. No. 163287, April 27, 2007, 522 SCRA 617, 622.

[24] G.R. No. 165273, March 10, 2010.

[25] No. L-21609, September 29, 1966, 18 SCRA 207, 213-214. The Court ruled:

We observed that the motion to dismiss filed on April 14, 1962, aside from disputing the lower court's jurisdiction over defendant's person, prayed for dismissal of the complaint on the ground that plaintiff's cause of action had prescribed. By interposing such second ground in its motion to dismiss, Ker & Co., Ltd. availed of an affirmative defense on the basis of which it prayed the court to resolve controversy in its favor. For the court to validly decide the said plea of defendant Ker & Co., Ltd., it necessarily had to acquire jurisdiction upon the latter's person, who, being the proponent of the affirmative defense, should be deemed to have abandoned its special appearance and voluntarily submitted itself to the jurisdiction of the court.

Voluntary appearance cures defects of summons, if any x x x. A defendant can not be permitted to speculate upon the judgment of the court by objecting to the court's jurisdiction over its person if the

judgment is adverse to it, and acceding to jurisdiction over its person if and when the judgment sustains its defenses.

[26] No. L-34313, May 13, 1975, 64 SCRA 23, 31. The Court also ruled:

When the appearance is by motion for the purpose of objecting to the jurisdiction of the court over the person, it must be for the sole and separate purpose of objecting to the jurisdiction of the court. If his motion is for any other purpose than to object to the jurisdiction of the court over his person, he thereby submits himself to the jurisdiction of the court. A special appearance by motion made for the purpose of objecting to the jurisdiction of the court over the person will be held to be a general appearance, if the party in said motion should, for example, ask for a dismissal of the action upon the further ground that the court had no jurisdiction over the subject matter.

[27] *Perkin Elmer Singapore Pte Ltd. v. Dakila Trading Corporation*, G.R. No. 172242, August 14, 2007, 530 SCRA 170.

[28] G.R. No. 103200, August 31, 1994, 236 SCRA 78, 87-88. The Court held, thus:

The doctrine of estoppel is predicated on, and has its origin in, equity which, broadly defined, is justice according to natural law and right. It is a principle intended to avoid a clear case of injustice. The term is hardly distinguishable from a waiver of right. Estoppel, like its said counterpart, must be unequivocal and intentional for, when misapplied, it can easily become a most convenient and effective means of injustice. Estoppel is not understood to be a principle that, as a rule, should prevalently apply but, such as it concededly is, as a mere exception from the standard legal norms of general application that can be invoked only in highly exceptional and justifiable cases.

Tested by the above criteria, the Court sees it propitious to re-examine specifically the question of **whether or not the submission of other issues in a motion to dismiss, or of an affirmative defense (as distinguished from an affirmative relief) in an answer, would necessarily foreclose, and have the effect of a waiver of, the right of a defendant to set up the court's lack of jurisdiction over the person of the defendant**.

Not inevitably.

Section 1, Rule 16, of the Rules of Court, provides that a motion to dismiss may be made on the following grounds:

(a) That the court has no jurisdiction over the person of the defendant or over the subject of the action or suit;

(b) That the court has no jurisdiction over the nature of the action or suit;

(c) The venue is improperly laid;

(d) That the plaintiff has no legal capacity to sue;

(e) That there is another action pending between the same parties for the same cause;

(f) That the cause of action is barred by a prior judgment or by statute of limitations;

(g) That the complaint states no cause of action;

(h) That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;

(i) That the claim on which the action or suit is founded is unenforceable under the provisions of the statute of frauds;

(j) That the suit is between members of the same family and no earnest efforts towards a compromise have been made.

Any ground for dismissal in a motion to dismiss, except improper venue, may, as further set forth in Section 5 of the same rule, be pleaded as an affirmative defense and a preliminary hearing may be had thereon as if a motion to dismiss had been filed. An answer itself contains the negative, as well as affirmative, defenses upon which the defendant may rely (Section 4, Rule 6, Rules of Court). A negative defense denies the material facts averred in the complaint essential to establish the plaintiff's cause of action, while an affirmative defense in an allegation of a new matter which, while admitting the material allegations of the complaint, would, nevertheless, prevent or bar recovery by the plaintiff. Inclusive of these defenses are those mentioned in Rule 16 of the Rules of Court which would permit the filing of a motion to dismiss.

In the same manner that the plaintiff may assert two or more causes of action in a court suit, a defendant

is likewise expressly allowed, under Section 2, Rule 8, of the Rules of Court, to put up his own defenses alternatively or even hypothetically. Indeed, under Section 2, Rule 9, of the Rules of Court, defenses and objections not pleaded either in a motion to dismiss or in an answer, except for the failure to state a cause of action, are deemed waived. We take this to mean that a defendant may, in fact, feel enjoined to set up, along with his objection to the court's jurisdiction over his person, all other possible defenses. It thus appears that it is not the invocation of any of such defenses, but the failure to so raise them, that can result in waiver or estoppel. By defenses, of course, we refer to the grounds provided for in Rule 16 of the Rules of Court that must be asserted in a motion to dismiss or by way of affirmative defenses in an answer. (Emphasis supplied.)

[29] *Garcia v. Sandiganbayan*, G.R. Nos. 170122 & 171381, October 12, 2009, 603 SCRA 348, 367.

[30] Supra note 28.

[31] *Jardine Davies, Inc. v. JRB Realty, Inc.*, G.R. No. 151438, July 15, 2005, 463 SCRA 555, 563.

[32] G.R. No. 170689, March 17, 2009, 581 SCRA 598, 613-614.

[33] G.R. No. 155639, April 22, 2009, 586 SCRA 269, 300.

[34] *Heirs of the Late Panfilo V. Pajarillo v. Court of Appeals*, G.R. Nos. 155056-57, October 19, 2007, 537 SCRA 96, 112.

[35] 3 A. Agbayani, COMMENTARIES AND JURISPRUDENCE ON THE COMMERCIAL LAWS OF THE PHILIPPINES 18 (1991).

[36] 56 AmJur 2d, Motions, Rules, and Orders, § 4, p. 5 (citations omitted).

[37] G.R. No. 142936, April 17, 2002, 381 SCRA 244, 254-255.

[38] *Concept Builders, Inc. v. National Labor Relations Commission*, G.R. No. 108734, May 29, 1996, 257 SCRA 149; *Avon Dale Garments, Inc. v. National Labor Relations Commission*, G.R. No. 117932, July 20, 1995, 246 SCRA 733; *Pepsi-Cola Bottling Co. v. National Labor Relations Commission*, G.R. No. 101900, June 23, 1992, 210 SCRA 277; *Philippine Bank of Communications v. Court of Appeals*, G.R. No. 92067, March 22, 1991, 195 SCRA 567; *Cagayan Valley Enterprises, Inc. v. Court of Appeals*, G.R. No. 78413, November 8, 1989, 179 SCRA 218; *A.C. Ransom Labor Union CCLU v. National Labor Relations Commission*, G.R. No. 69494, May 29, 1987, 150 SCRA 498; *National Federation of Labor Unions (NAFLU) v. Ople*, G.R. No. 68661, July 22, 1986, 143 SCRA 128; *Claparols v. Court of Industrial Relations*, No. L-30822, July 31, 1975, 65 SCRA 613.

[39] *Rollo*, p. 173.

[40] *Francisco v. Mejia*, G.R. No. 141617, August 14, 2001, 362 SCRA 738.

[41] *Manila Hotel Corp. v. National Labor Relations Commission*, G.R. No. 120077, October 13, 2000, 343 SCRA 1, 15.

[42] *Rollo*, p. 74.

[43] Sec. 13. *Amount of capital stock to be subscribed and paid for the purposes of incorporation.*--At least twenty-five percent (25%) of the authorized capital stock as stated in the articles of incorporation must be subscribed at the time of incorporation, and at least twenty-five (25%) per cent of the total subscription must be paid upon subscription, the balance to be payable on a date or dates fixed in the contract of subscription without need of call, or in the absence of a fixed date or dates, upon call for payment by the board of directors: Provided, however, **That in no case shall the paid-up capital be less than five thousand (P5,000.00) pesos.** (Emphasis supplied.)

[44] *Rollo*, p. 305.

[45] G.R. No. 154975, January 29, 2007, 513 SCRA 225.
