



Republic of the Philippines  
**SUPREME COURT**

SECOND DIVISION

**G.R. No. 163981. August 12, 2005**

**CONSTRUCTION & DEVELOPMENT CORPORATION OF THE PHILIPPINES (now PHILIPPINE NATIONAL CONSTRUCTION CORPORATION),** Petitioners,

vs.

**RODOLFO M. CUENCA and MALAYAN INSURANCE CO., INC.,** Respondent.

DECISION

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

Before this Court is a petition for review on *certiorari* of the Decision<sup>1</sup> 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<sup>2</sup> 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.<sup>3</sup>

To protect MICI's interests, UITC, Edilberto Cuenca, and Rodolfo Cuenca, herein respondent, executed an Indemnity Agreement<sup>4</sup> 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<sup>5</sup> 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.<sup>6</sup> UITC, Edilberto and Rodolfo failed to settle the account with Goodyear. Thus, on April 25, 1983, MICI paid Goodyear P600,000.00.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup> UITC was a subsidiary of petitioner PNCC,<sup>10</sup> with the latter owning around 78% of the former's shares of stock.<sup>11</sup> UITC requested MICI to delay the filing of any suit against it, to give it time to work out an acceptable repayment plan.<sup>12</sup> MICI agreed and gave UITC until May 20, 1983 to come up with an offer.<sup>13</sup>

However, UITC, Edilberto and Rodolfo still failed to pay MICI. On July 1, 1983, MICI filed a Complaint<sup>14</sup> 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.<sup>15</sup>

In the meantime, Rodolfo filed motion for leave to file a third-party complaint which the trial court granted.<sup>16</sup> The third-party complaint<sup>17</sup> 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

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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.<sup>18</sup>

On August 26, 1983, UITC remitted to MICI P150,000.00 as partial payment of its obligation.<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup>

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.<sup>22</sup> 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.<sup>23</sup>

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.<sup>24</sup> 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.<sup>25</sup>

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.<sup>26</sup>

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 Cuenca's should be liable, but were absolved of their liabilities because MICI had waived the cause of action against them.<sup>27</sup> Assuming that it has assumed the liability of respondent Cuenca, such liability is now extinguished after MICI waived its claim against the said respondent.<sup>28</sup>

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.<sup>29</sup>

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 and the petitioner solidarily liable for the payment of attorney's fees had factual and legal basis.<sup>30</sup>

On the other hand, respondent MICI avers that the petition is fatally defective for failure to implead as co-respondent, UITC, an indispensable party to the case. It, likewise, asserts that the petition raises no new issues of law, and that the CA and the trial court have amply ruled upon the issues raised in the petition. Further, MICI contends that, since the petitioner has assumed the liability of the UITC officers, it cannot now invoke the doctrine of separate personality.<sup>31</sup>

The petition is impressed with merit.

At the outset, we note that the petitioner became a party to this case only when respondent Cuenca, as defendant, filed a third-party complaint against it on the allegation that it had assumed his liability. Section 11, Rule 6 of the Rules of Court defines a third-party complaint as follows:

SEC. 11. *Third (fourth, etc.)-party complaint.* – A third (fourth, etc.)-party complaint is a claim that a defending party may, with leave of court, file against a person not a party to the action, called the third (fourth, etc.)-party defendant, for contribution, indemnity, subrogation or any other relief, in respect of his opponent's claim.

In *Firestone Tire and Rubber Company of the Philippines v. Tempongko*,<sup>32</sup> we emphasized the nature of a third-party complaint, particularly its independence from the main case:

The third-party complaint is, therefore, a procedural device whereby a "third party" who is neither a party nor privy to the act or deed complained of by the plaintiff, may be brought into the case with leave of court, by the defendant, who acts as third-party plaintiff to enforce against such third-party defendant a right for contribution, indemnity, subrogation or any other relief, in respect of the plaintiff's claim. *The third-party complaint is actually independent of and separate and distinct from the plaintiff's complaint.* Were it not for this provision of the Rules of Court, it would have to be filed independently and separately from the original complaint by the defendant against the third-party. But the Rules permit defendant to bring in a third-party defendant or so to speak, to litigate his separate cause of action in respect of plaintiff's claim against a third party in the original and principal case with the object of avoiding circuitry of action and unnecessary proliferation of lawsuits and of disposing expeditiously in one litigation the entire subject matter arising from one particular set of facts. ... When leave to file the third-party complaint is properly granted, the Court renders in effect two judgments in the same case, one on the plaintiff's complaint and the other on the third-party complaint. When he finds favorably on both complaints, as in this case, he renders judgment on the principal complaint in favor of plaintiff against defendant and renders another judgment on the third-party complaint in favor of defendant as third-party plaintiff, ordering the third-party defendant to reimburse the defendant whatever amount said defendant is ordered to pay plaintiff in the case. *Failure of any of said parties in such a case to appeal the judgment as against him makes such judgment final and executory....*<sup>33</sup>

It follows then that the plaintiff in the main action may not be regarded as a party to the third-party complaint;<sup>34</sup> nor may the third-party defendant be regarded as a party to the main action. As for the defendant, he is party to both the main action and the third-party complaint but in different capacities – in the main action, he is the defendant; in the third-party complaint, he is the plaintiff.

In the present case, the petitioner PNCC which was the third-party defendant appealed before this Court from the decision of the CA. Case law is that if only the third-party defendant files an appeal, the decision in the main case becomes final.<sup>35</sup> Therefore, the CA's decision in the main action, holding UITC liable to MICI and dismissing the case as against the Cuenca, became final and executory when none of the said parties filed an appeal with this Court.

We do not agree with the CA ruling that the petitioner is liable under the indemnity agreement. On this point, the CA ratiocinated that the petitioner is liable, considering that it is the majority stockholder of UITC and the materials from Goodyear were purchased by UITC for and in its behalf.

This is clearly erroneous. The petitioner cannot be made directly liable to MICI under the indemnity agreement on the ground that it is UITC's majority stockholder. It bears stressing that the petitioner was not a party defendant in the main action. MICI did not assert any claim against the petitioner, nor was the petitioner impleaded in the third-party complaint on the ground of its direct liability to MICI. In the latter case, it would be as if the third-party defendant was itself directly impleaded by the plaintiff as a defendant.<sup>36</sup> In the present case, petitioner PNCC was brought into the action by respondent Cuenca simply for a "remedy over."<sup>37</sup> No cause of action was asserted by MICI against it. The petitioner's liability could only be based on its alleged assumption of respondent Cuenca's liability under the indemnity agreement.

In any case, petitioner PNCC, as majority stockholder, may not be held liable for UITC's obligation. A corporation, upon coming into existence, is invested by law with a personality separate and distinct from those persons composing it as well as from any other legal entity to which it may be related.<sup>38</sup> The veil of corporate fiction may only be disregarded in cases where the corporate vehicle is being used to defeat public convenience, justify a wrong, protect fraud, or defend a crime.<sup>39</sup> Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality.<sup>40</sup> To disregard the separate juridical personality of a corporation, the wrongdoing must be clearly and convincingly established.<sup>41</sup>

Neither can the petitioner be made liable under the indemnity agreement on the ground that it had assumed the personal liability of respondent Cuenca. To reiterate, the decision of the CA dismissing the case against respondent Cuenca has already become final and executory. The Court has, likewise, pointed out that respondent Cuenca impleaded the petitioner as a remedy over, and not as one directly liable to MICI. Since the petitioner's liability is grounded on that of respondent Cuenca's, it is imperative that the latter be first adjudged liable to MICI before the petitioner may be held liable. Indeed, the Court ruled in *Samala v. Victor*,<sup>42</sup> thus:

... It is not indispensable in the premises that the defendant be first adjudged liable to the plaintiff before the third-party defendant may be held liable to the plaintiff, as precisely, the theory of defendant is that it is the third party defendant, and not he, who is directly liable to plaintiff. The situation contemplated by appellants would properly pertain to situation (a) above wherein the third party defendant is being sued for contribution, indemnity or subrogation, or simply stated, for a defendant's "remedy over".<sup>43</sup>

**WHEREFORE**, premises considered, the petition is GRANTED. The decision of the Court of Appeals is MODIFIED

in that petitioner PNCC is absolved from any liability under the indemnity agreement. The third-party complaint against the petitioner is DISMISSED for lack of merit.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

### Footnotes

<sup>1</sup> Penned by Associate Justice Buenaventura J. Guerrero, with Associate Justices Andres B. Reyes, Jr. and Regalado E. Maambong, concurring; *Rollo*, pp. 9-21.

<sup>2</sup> Records, pp. 6-7.

<sup>3</sup> *Id.* at 129-138.

<sup>4</sup> *Id.* at 9-10.

<sup>5</sup> *Id.* at 141.

<sup>6</sup> *Id.* at 142-147.

<sup>7</sup> *Id.* at 152-153.

<sup>8</sup> Records, pp. 155-156.

<sup>9</sup> *Id.* at 158.

<sup>10</sup> TSN, 24 September 1985, pp. 29-30.

<sup>11</sup> TSN, 13 August 1985, p. 14.

<sup>12</sup> Records, p. 158.

<sup>13</sup> *Id.* at 157.

<sup>14</sup> *Id.* at 1-5.

<sup>15</sup> *Id.* at 159.

<sup>16</sup> Records, p. 41.

<sup>17</sup> *Id.* at 28-29.

<sup>18</sup> *Id.* at 371.

<sup>19</sup> *Id.* at 160.

<sup>20</sup> *Rollo*, pp. 86-88.

<sup>21</sup> *Id.* at 88.

<sup>22</sup> *Id.* at 73.

<sup>23</sup> *Rollo*, pp. 69-72.

<sup>24</sup> *Id.* at 76-77.

<sup>25</sup> *Rollo*, p. 43.

<sup>26</sup> *Id.* at 46-51.

<sup>27</sup> *Rollo*, pp. 52-53.

- <sup>28</sup> *Id.* at 126.
- <sup>29</sup> *Id.* at 54-57.
- <sup>30</sup> *Rollo*, pp. 97-101.
- <sup>31</sup> *Id.* at 110.
- <sup>32</sup> No. L-24399, 28 March 1969, 27 SCRA 418.
- <sup>33</sup> *Id.* at 422-424.
- <sup>34</sup> *Rogers v. Huggins*, 106 A.D.2d 621, 483 N.Y.S.2d 110 (1984).
- <sup>35</sup> See *Singapore Airlines Limited v. Court of Appeals*, G.R. No. 107356, 31 March 1995, 243 SCRA 143.
- <sup>36</sup> See *Samala v. Victor*, G.R. No. 53969, 21 February 1989, 170 SCRA 453, citing *Viluan v. Court of Appeals*, 16 SCRA 742 (1966), where the Court held that if the third-party defendant is brought in as directly liable to plaintiff, then the plaintiff and third party are at issue as to their rights respecting the claim and the third party is bound by the adjudication as between him and the plaintiff.
- <sup>37</sup> See *Samala v. Victor*, *supra*, where the Court differentiated between a third-party defendant being brought into the action as directly liable to the plaintiff and one who is being sued simply as the defendant's "remedy over."
- <sup>38</sup> *Land Bank of the Philippines v. Court of Appeals*, G.R. No. 127181, 4 September 2001, 364 SCRA 375.
- <sup>39</sup> *Padilla v. Court of Appeals*, G.R. No. 123893, 22 November 2001, 370 SCRA 208.
- <sup>40</sup> *Francisco v. Mejia*, G.R. No. 141617, 14 August 2001, 362 SCRA 738.
- <sup>41</sup> *Marubeni Corporation v. Lirag*, G.R. No. 130998, 10 August 2001, 362 SCRA 620.
- <sup>42</sup> *Supra*.
- <sup>43</sup> *Id.* at 460.