SUPREME COURT
SECOND DIVISION

TAN BOON BEE & CO., INC.,
***Petitioner*,**

-versus-

G.R. No. L-41337
June 30, 1988

THE HONORABLE HILARION U. JARENCIO, PRESIDING JUDGE OF BRANCH XXIII of the Court of First Instance of Manila, GRAPHIC PUBLISHING, INC., and PHILIPPINE AMERICAN DRUG COMPANY,
***Respondents*.**
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D E C I S I O N

PARAS, *J.*:

This is a Petition for *Certiorari*, with prayer for preliminary injunction, to annul and set aside the March 26, 1975 Order of the then Court of First Instance of Manila, Branch XXIII, setting aside the sale of "Heidelberg" cylinder press executed by the sheriff in favor of the herein petitioner, as well as the levy on the said property, and ordering the sheriff to return the said machinery to its owner, herein private respondent Philippine American Drug Company.

Petitioner herein, doing business under the name and style of Anchor Supply Co., sold on credit to herein private respondent Graphic Publishing, Inc. (GRAPHIC for short) paper products amounting to P55,214.73. On December 20, 1972, GRAPHIC made partial payment by check to petitioner in the total amount of P24,848.74; and on December 21, 1972, a promissory note was executed to cover the balance of P30,365.99. In the said promissory note, it was stipulated that the amount will be paid on monthly installments and that failure to pay any installment would make the amount immediately demandable with an interest of 12% per annum. On September 6, 1973, for failure of GRAPHIC to pay any installment, petitioner filed with the then Court of First Instance of Manila, Branch XXIII, presided over by herein respondent judge, Civil Case No. 91857 for a Sum of Money (Rollo, pp. 36-38). Respondent judge declared GRAPHIC in default for failure to file its answer within the reglementary period and plaintiff (petitioner herein) was allowed to present its evidence ex parte. In a Decision dated January 18, 1974 (Ibid., pp. 39-40), the trial court ordered GRAPHIC to pay the petitioner the sum of P30,365.99 with 12% interest from March 30, 1973 until fully paid, plus the costs of suit. On motion of petitioner, a writ of execution was issued by respondent judge; but the aforestated writ having expired without the sheriff finding any property of GRAPHIC, an alias writ of execution was issued on July 2, 1974.

Pursuant to the said issued alias writ of execution, the executing sheriff levied upon one (1) unit printing machine identified as "Original Heidelberg Cylinder Press" Type H 222, NR 78048, found in the premises of GRAPHIC. In a Notice of Sale of Execution of Personal Property dated July 29, 1974, said printing machine was scheduled for auction sale on July 26, 1974 at 10:00 o'clock at 14th St., Cor. Atlanta St., Port Area, Manila (Ibid., p. 45); but in a letter dated July 19, 1974, herein private respondent, Philippine American Drug Company (PADCO for short) had informed the sheriff that the printing machine is its property and not that of GRAPHIC, and accordingly, advised the sheriff to cease and desist from carrying out the scheduled auction sale on July 26, 1974. Notwithstanding the said letter, the sheriff proceeded with the scheduled auction sale, sold the property to the petitioner, it being the highest bidder, and issued a Certificate of Sale in favor of petitioner (Rollo, p. 48). More than five (5) hours after the auction sale and the issuance of the certificate of

sale, PADCO filed an "Affidavit of Third Party Claim" with the Office of the City Sheriff (ibid., p. 47). Thereafter, on July 30, 1974, PADCO filed with the Court of First Instance of Manila, Branch XXIII, a Motion to Nullify Sale on Execution (With Injunction) (Ibid., pp. 49-55), which was opposed by the petitioner (Ibid., pp. 56-68). Respondent judge, in an Order dated March 26, 1975 (Ibid., pp. 64-69), ruled in favor of PADCO. The decretal portion of the said order, reads:

> "WHEREFORE, the sale of the `Heidelberg' cylinder press executed by the Sheriff in favor of the plaintiff as well as the levy on the said property is hereby set aside and declared to be without any force and effect. The Sheriff is ordered to return the said machinery to its owner, the Philippine American Drug Co."

Petitioner filed a Motion For Reconsideration (Ibid., pp. 70-93) and an Addendum to Motion for Reconsideration (Ibid., pp. 94-108), but in an Order dated August 13, 1975, the same was denied for lack of merit (Ibid., p. 109). Hence, the instant petition.

In a Resolution dated September 12, 1975, the Second Division of this Court resolved to require the respondents to comment, and to issue a temporary restraining order (Rollo, p. 111). After submission of the parties' Memoranda, the case was submitted for decision in the Resolution of November 28, 1975 (Ibid., p. 275).

Petitioner, to support its stand, raised two (2) issues, to wit:

I

> THE RESPONDENT JUDGE GRAVELY EXCEEDED, IF NOT ACTED WITHOUT JURISDICTION WHEN HE ACTED UPON THE MOTION OF PADCO, NOT ONLY BECAUSE SECTION 17, RULE 39 OF THE RULES OF COURT WAS NOT COMPLIED WITH, BUT ALSO BECAUSE THE CLAIMS OF PADCO WHICH WAS NOT A PARTY TO THE CASE COULD NOT BE VENTILATED IN THE CASE BEFORE HIM BUT IN INDEPENDENT PROCEEDING.

II

THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION WHEN HE REFUSED TO PIERCE THE PADCO'S (IDENTITY) AND DESPITE THE ABUNDANCE OF EVIDENCE CLEARLY SHOWING THAT PADCO WAS CONVENIENTLY SHIELDING UNDER THE THEORY OF CORPORATE FICTION.

Petitioner contends that respondent judge gravely exceeded, if not, acted without jurisdiction, in nullifying the sheriff's sale not only because Section 17, Rule 39 of the Rules of Court was not complied with, but more importantly because PADCO could not have litigated its claim in the same case, but in an independent civil proceeding.

This contention is well-taken.

In the case of Bayer Philippines, Inc. vs. Agana (63 SCRA 355, 366-367 [1975]), this Court categorically ruled as follows:

> "In other words, construing Section 17 of Rule 39 of the Revised Rules of Court, the rights of third-party claimants over certain properties levied upon by the sheriff to satisfy the judgment should not be decided in the action where the third-party claims have been presented, but in the separate action instituted by the claimants.
>
> "Otherwise stated. the court issuing a writ of execution is supposed to enforce the authority only over properties of the judgment debtor, and should a third party appear to claim the property levied upon by the sheriff, the procedure laid down by the Rules is that such claim should be the subject of a separate and independent action.
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> x x x
>
> "This rule is dictated by reasons of convenience as 'intervention is more likely to inject confusion into the issues between the parties in the case with which the third-party claimant has nothing to do and thereby retard instead of facilitate the prompt

> dispatch of the controversy which is the underlying objective of the rules of pleading and practice.' Besides, intervention may not be permitted after trial has been concluded and a final judgment rendered in the case."

However, the fact that petitioner questioned the jurisdiction of the court during the initial hearing of the case but nevertheless actively participated in the trial, bars it from questioning now the court's jurisdiction. A party who voluntarily participated in the trial, like the herein petitioner, cannot later on raise the issue of the court's lack of jurisdiction (Philippine National Bank vs. Intermediate Appellate Court, 143 SCRA [1986]).

As to the second issue (the non-piercing of PADCO's corporate identity) the decision of respondent judge is as follows:

> "The plaintiff, however, contends that the controlling stockholders of the Philippine American Drug Co. are also the same controlling stockholders of the Graphic Publishing, Inc. and, therefore, the levy upon the said machinery which was found in the premises occupied by the Graphic Publishing, Inc. should be upheld. This contention cannot be sustained because the two corporations were duly incorporated under the Corporation Law and each of them has a juridical personality distinct and separate from the other and the properties of one cannot be levied upon to satisfy the obligation of the other. This legal preposition is elementary and fundamental."

It is true that a corporation, upon coming into being, is invested by law with a personality separate and distinct from that of the persons composing it as well as from any other legal entity to which it may be related (Yutivo & Sons Hardware Company vs. Court of Tax Appeals, 1 SCRA 160 [1961]; and Emilio Cano Enterprises, Inc. vs. CIR, 13 SCRA 290 [1965]). As a matter of fact, the doctrine that a corporation is a legal entity distinct and separate from the members and stockholders who compose it is recognized and respected in all cases which are within reason and the law (Villa Rey Transit, Inc. vs. Ferrer, 25 SCRA 845 [1968]). However, this separate and distinct personality is merely a fiction created by law for convenience and to promote justice (Laguna Transportation Company vs. SSS, 107 Phil.

833 {[1960]). Accordingly, this separate personality of the corporation may be disregarded, or the veil of corporate fiction pierced, in cases where it is used as a cloak or cover for fraud or illegality, or to work an injustice, or where necessary to achieve equity or when necessary for the protection of creditors (Sulo ng Bayan, Inc. vs. Araneta, Inc., 72 SCRA 347 [1976]). Corporations are composed of natural persons and the legal fiction of a separate corporate personality is not a shield for the commission of injustice and inequity (Chenplex, Philippines, Inc., et al. vs. Hon. Pamatian, et al., 57 SCRA 408 [1974]). Likewise, this is true when the corporation is merely an adjunct, business conduit or alter ego of another corporation. In such case, the fiction of separate and distinct corporation entities should be disregarded (Commissioner of Internal Revenue vs. Norton & Harrison, 11 SCRA 714 [1964]).

In the instant case, petitioner's evidence established that PADCO was never engaged in the printing business; that the board of directors and the officers of GRAPHIC and PADCO were the same; and that PADCO holds 50% share of stock of GRAPHIC. Petitioner likewise stressed that PADCO's own evidence shows that the printing machine in question had been in the premises of GRAPHIC since May, 1965, long before PADCO even acquired its alleged title on July 11, 1966 from Capitol Publishing. That the said machine was allegedly leased by PADCO to GRAPHIC on January 24, 1966, even before PADCO purchased it from Capital Publishing on July 11, 1966, only serves to show that PADCO's claim of ownership over the printing machine is not only farce and sham but also unbelievable.

Considering the aforestated principles and the circumstances established in this case, respondent judge should have pierced PADCO's veil of corporate identity.

Respondent PADCO argues that if respondent judge erred in not piercing the veil of its corporate fiction, the error is merely an error of judgment and not an error of jurisdiction correctable by appeal and not by *certiorari.*

To this argument of respondent, suffice it to say that the same is a mere technicality. In the case of Rubio vs. Mariano (52 SCRA 338, 343 [1973]), this Court ruled:

> "While We recognize the fact that these movants — the MBTC, the Phillips spouses, the Phillips corporation and the Hacienda Benito, Inc. — did raise in their respective answers the issue as to the propriety of the instant petition for *certiorari* on the ground that the remedy should have been appeal within the reglementary period, We considered such issue as a mere technicality which would have accomplished nothing substantial except to deny to the petitioner the right to litigate the matters he raised."

Litigations should, as much as possible, be decided on their merits and not on technicality (De las Alas vs. Court of Appeals, 83 SCRA 200, 216 [1978]). Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities (Heirs of Ceferino Morales vs. Court of Appeals, 67 SCRA 304, 310 [1975]).

PREMISES CONSIDERED, the March 26, 1975 Order of the then Court of First Instance of Manila, is **ANNULLED** and **SET ASIDE**, and the Temporary Restraining Order issued is hereby made permanent.

SO ORDERED.

Yap, *C.J.*, *(Chairman)*, Melencio-Herrera, Padilla and Sarmiento, *JJ.*, concur.