Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

EMILIO D. MONTILLA, JR.,
Petitioner,

- *versus* -

G HOLDINGS, INC.,
Respondent.

G.R. No. 194995

Present:

GESMUNDO, *CJ, Chairperson*,
CAGUIOA,
LAZARO-JAVIER,
LOPEZ, M.,* *and*
LOPEZ, J., *JJ.*

Promulgated:
NOV 18 2021

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DECISION

LOPEZ, J., *J.*:

Through this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, Emilio D. Montilla, Jr. (*petitioner*) assails the July 30, 2010 Decision[2] and December 8, 2010 Resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 88261, which affirmed the July 9, 2004 Amended Order[4] of the Regional Trial Court (*RTC*) of Kabankalan City, Branch 61, Negros Occidental, in Civil Case No. 142 (96-5488) that denied his motion for the issuance of an amended writ of execution.

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* On wellness leave.

1 *Rollo*, pp. 63-A.

2 Penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Portia A. Hormachuelos and Edwin D. Sorongon; *id.* at 110-123.

3 *Id.* at 126-128.

4 *Id.* at 792-795.

Factual and Procedural Antecedents

On April 12, 2002, RTC of Kabankalan City, Branch 61, issued a Decision[5] granting Emilio D. Montilla, Jr.'s Demanda for Complimiento de Contrator, Rendecion de Cuentas con Daños y Perjuicios[6] (Compliance for Contracts, Submission of Accounts with Damages)[7] docketed as Civil Case No. 142 (96-5488), and ordered San Remigio Mines Inc., Ricardo Genora, and Jesus Domingo to do certain acts, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgement is hereby rendered as follows:
>
> 1. Declaring as rescinded the "1938 Contract" entered into by and between San Remigio and Real Copper, on the one hand, and Don Emilio Montilla Sr., on the other hand, on 4 November 1938.
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> 2. Ordering San Remigio and Real Copper and Marinduque to render an accounting of all payments made by Marinduque in favor of San Remigio and Real Copper for the exploitation of the "Binulig", "Manghal", "Negros", Cartagena", and "Cauayan" groups of claims.
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> 3. Ordering San Remigio and Real Copper to deliver to plaintiff Emilio Montilla, Jr., by himself and in his capacity as sole heir of his mother, Catalina Domingo, and legatee and administrator of the estate of his father, Don Emilio Montilla, Sr., 30% of all the amount already received by San Remigio and Real Copper from Marinduque, particularly in "Binulig 1, 2, 9, and 10", as well as 30% of the P50,000.00 already paid by Sipalay Mines in favor of San Remigio and Real Copper;
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> 4. Ordering San Remigio and Real Copper to deliver to Emilio Montilla, Jr. the 30% of all amounts received by them as well as future receipts of payments from Marinduque as regards the exploitation of the "Lolong", "Herminia" and "Doming" claims which are within the "Binulig Group".
>
> 5. Ordering San Remigio, Real Copper and Marinduque to return in favor of plaintiff Emilio Montilla, Jr., all mining rights fraudulently acquired by San Remigio and Real Copper, mover the mining claims "Binulig 1,2,9, and 10", "Lolong", "Luri", "Herminia" and "Doming", without prejudice to the 10% to be delivered to Wenceslao Endencia, Jose Domingo and Mansuela Nala.
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> 6. Declaring as null and void the contracts marked as Annexes "E", "G", and "H" of the Complaint of Emilio Montilla, Jr., for having been fraudulently obtained from Jose Domingo and Mansuela Nala.
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> 7. Declaring as null and void Annex "F" of the Complaint for being fraudulently obtained from Wenceslao Endencia.

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5 Penned by Presiding Judge Henry D. Arles; *id.* at 203-211.
6 *Id.* at 627-672.
7 Complaint translated in English; *id.* at 673-724.

8. Declaring as null and void Annexes "A" and "J", executed by Ricardo Genora in favor of San Remigio.

9. Declaring as null and void Annexes "K", "L", and "M", executed by San Remigio, Real Copper, Sipalay Mines and Marinduque to the extent that said contracts affect the 50 mining claims over the "Binulig Group", particularly "Binulig 1, 2, 9, and 10" and "Loleng", "Luri", "Herminia", and "Doming".

10. Ordering Marinduque to cease and desist from further exploiting the claims and to return the possession thereof to plaintiff Emilio Montilla, Jr.

11. Declaring as valid and subsisting the contract marked Annex "N" which refers to the "Cansibit" and "Panlubongan" groups.

12. Ordering defendants San Remigio, Real Copper and Marinduque to render an accounting of all payments by Marinduque in favor of San Remigio and Real Copper in relation to the exploitation of the claims included in the "Cansibit" and "Panlubongan" groups of mining claims.

13. Ordering defendants San Remigio, Real Copper and Marinduque to pay directly to Emilio Montilla, Jr. 15% of all payments to be made by Marinduque in favor of San Remigio and Real Copper in relation to the exploitation of the claims Cebu City, Bacolod City, Salvador, Palma, Yakal, Magdo, Ipil, Baolao, Pili-pili, Alomic, Lucky, Souvenir Security and Courage, all within the "Cansibit" and "Panlubongan" groups of mining claims.

14. Ordering Marinduque to pay royalty in favor of Emilio Montilla, Jr. for the exploitation and development of all claims included in the "Cansibit" and "Panlubongan" groups, equivalent to 23% of the gross of all gold molidbinum and other minerals which have already been extracted and which may be extracted in the future from the said claims.

15. Ordering defendants San Remigio and Real Copper to pay, jointly and severally, to plaintiffs a sum equivalent to 10% of the whole amount already received and which may be received in the future from Marinduque as moral and exemplary damages.

16. Ordering defendants to pay, jointly and severally, to plaintiffs 35% of the amounts already received and which may be received in the future, for attorney's fees.

17. Ordering defendants to pay the expenses and costs of the suit.

SO ORDERED.

The aforementioned Decision attained finality, which prompted Montilla, Jr. to move for its execution.[8] Accordingly, the RTC ordered the issuance of a writ of execution.[9]

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8 *Id.* at 212-219.

9 *Id.* at 223.

In a Sheriff's Report[10] dated April 30, 2003, Sheriff Roberto O. Repique informed the court that Marinduque Mining and Industrial Corporation (*MMIC*) had no more properties at Sipalay City, Negros Occidental, as the properties found on site were already acquired by respondent "G" Holdings, Inc. (*GHI*) from Maricalum Mining Corporation (*Maricalum*) pursuant to a foreclosure sale in December 2001.

On June 12, 2003, Montilla, Jr. moved for the issuance of an amended writ of execution, praying, among others, for the court issue a writ to direct the court sheriff to take properties belonging to San Remigio Mines Inc. and its assigns/successors, including, but not limited to, GHI, to satisfy the judgment provided in the April 12, 2002 RTC Decision.[11]

After due hearing on the motion, the RTC issued an Amended Order[12] dated July 9, 2004, the pertinent portion of which reads:

> "G" Holdings, Inc. does not appear to be a privy of defendant Marinduque for the decision to be enforced against the former. It got hold of the subject properties and mining claims under a badge of regularity by way of foreclosure sale and mortgagee and highest bidder from Maricalum Mining Corporation, an entity owned and controlled by the government organized by PNP and DBP after the latter had earlier acquired said properties and mining claims as mortgagees and highest bidders from defendant Maricalum in a foreclosure sale. "G" Holdings, Inc. did not derive its rights and interest over said properties and mining claims directly from defendant Maricalum nor was its immediate successor in interest. To enforce the subject decision which is already final and executory against "G" Holdings, Inc. which is not a party to the case and which was not heard would be in violation of due process of law. It would also materially and substantially alter the decision which the Court is bereft of jurisdiction to do. As held by the Supreme Court, any amendment made which substantially affects the final and executory decision in the case is null and void for lack of jurisdiction, including the entire proceedings held for that purpose. The liability of "G" Holdings, Inc. should be ventilated in a separate and independent civil action.

Montilla, Jr. filed a Motion for Reconsideration[13] but the same was denied in an Order[14] dated November 8, 2004.

Aggrieved, Montilla, Jr. elevated the case to the CA by way of a petition for *certiorari*,[15] which was denied in a Decision[16] dated July 30, 2010 based on the following:

> GHI was not a party to the case where the assets of MMC are disputed; as a consequence, the lower court cannot enforce its judgment against GHI. To

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10 *Id.* at 224.
11 *Id.* at 226-234.
12 *Id.* at 829.
13 *Id.* at 796-806.
14 *Id.* at 829.
15 *Id.* at 159-202.
16 *Id.* at 110-123.

> enforce the subject decision which has become final and executory against GHI, that is not a party to the case, and was not heard thereon, would be a violation of due process of law. As the lower court succinctly put, such amended writ of execution would materially and substantially alter the decision which the court is bereft of jurisdiction.[17]

The CA disregarded Montilla, Jr.'s assertion that GHI and the defunct MMIC are one and the same person as the mere presence of interlocking directors is not by itself a ground to pierce the corporate fiction. The CA said that the mortgage deed transaction made as a basis to pierce the corporate veil was a transaction that was a derivative of the mortgages earlier constituted by GHI with Asset Privatization Trust (*APT*) in the name of MMIC, in a full privatization process. The CA concluded that if there was any control exercised over MMIC, it was APT, not GHI, that wielded it.[18]

In the end,[19] the CA reminded the parties of the finality of the issue of the validity of the mortgage and foreclosure sale as well as the issue on the separate and distinct personalities of GHI and MMIC by citing Our ruling in the case of *"G" Holdings Inc. v. National Mines and Allied Workers Union*.[20]

In time, Montilla, Jr. moved for reconsideration[21] essentially arguing that GHI, as transferee of interest *pendente lite*, is bound by the judgment rendered by the trial court against the transferor, regardless of whether GHI was substituted in the case or joined with the original party. He added that GHI had actual and constructive knowledge of his claims, therefore, it is not an innocent purchaser or mortgagee in good faith. According to Montilla, Jr., GHI, as a purchaser at public auction of a foreclosed property, acquired not only the right, title, interest and claim of the judgment debtor or mortgagor to the property under the principle of *caveat emptor*, but also assumed the risks involved when it agreed to become a transferee *pendente lite*. He also insisted that GHI is a mere alter ego of Maricalum and therefore the veil of corporate fiction between GHI and Maricalum must be pierced.

In a Resolution[22] dated December 8, 2010, the CA denied Montilla, Jr.'s motion.

Undaunted, Montilla, Jr. went to this Court *via* a petition for review on *certiorari*.[23] In seeking this Court's discretionary appellate jurisdiction, petitioner reiterates his arguments below and additionally argues that respondent is a mere transferee *pendente lite* whose title is subject to the incidents and results of the pending case, and the transfer of title affords it no

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17 *Id.* at 119.
18 *Id.* at 120.
19 *Id.* at 121-122.
20 619 Phil. 69 (2009).
21 *Id.* at 130-152.
22 *Id.* at 126-128.
23 *Supra* note 1.

special protection.[24] Briefly, petitioner recalls that the Development Bank of the Philippines (*DBP*) and Philippine National Bank (*PNB*) acquired the mining claims from MMIC, one of the original parties in Civil Case No. 142 (96-5488) when it foreclosed the latter's mortgage. In turn, DBP and PNB incorporated Maricalum purposely to own, manage, and operate the foreclosed properties. Later on, respondent acquired the mining claims from Maricalum.[25] By its acquisition of Maricalum's mining rights, respondent stepped into the shoes of its transferor which clearly binds it to the judgment against its predecessor.[26]

Petitioner emphasizes that even if respondent was not a party to the case, law and jurisprudence dictate that a transferee *pendente lite* is bound by the proceedings involved before the property was transferred to it, and respondent, as a transferee *pendente lite*, cannot evade its liability.[27]

Issue

The primordial issue for resolution in this case is whether the CA committed a reversible error in dismissing the petition for *certiorari* filed by the petitioner to assail the Amended Order dated July 9, 2004 and Order dated November 8, 2004, rendered by the RTC.

Our Ruling

In praying for the reversal of the assailed CA rulings, petitioner seeks the amendment of the dispositive portion of the April 12, 2002 RTC Decision that rendered judgment only against San Remigio, Real Copper, and MMIC, for it to include respondent, which is a party not impleaded in the original case.

By law, once a judgment becomes final, the prevailing party is entitled as a matter of right to a writ of execution as mandated by Section 1, Rule 39 of the 1997 Rules of Civil Procedure, to wit:

> Section 1. *Execution upon judgments or final orders.* — Execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected. (Emphasis supplied)[28]

The rule is clear that when a decision attains finality, it is the ministerial duty of the court to issue a writ to enforce a judgment which has become executory.

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24 *Id.* at 84.
25 *Id.* at 85.
26 *Id.* at 87.
27 *Id.* at 85-86.
28 See *Mindanao Terminal and Brokerage Service, Inc. v. Court of Appeals*, 693 Phil. 25, 40 (2012).

However, the power of the court in executing judgments covers only that which has been settled[29] and courts are barred from modifying the rights and obligations of the parties, which had been adjudicated upon,[30] save in cases where there is a need to correct clerical errors, *nunc pro tunc* entries which cause no prejudice to any party, void judgments, or whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.

In addition, the court's authority to enforce a writ extends only to properties unquestionably belonging to the judgment debtor alone. An execution can be issued only against a party and not against one who did not have his/ her day in court.[31] This is evident under Section 10, Rule 39 of the Rules of Court which provides:

> SECTION 10. Execution of Judgments for Specific Act. —
>
> x x x x
>
> (c) Delivery or Restitution of Real Property. — The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him to peaceably vacate the property within three (3) working days, and restore possession thereof to the judgment obligee; otherwise, the officer shall oust all such persons therefrom with the assistance, if necessary, of appropriate peace officers, and employing such means as may be reasonably necessary to retake possession, and place the judgment obligee in possession of such property. Any costs, damages, rents or profits awarded by the judgment shall be satisfied in the same manner as a judgment for money.

Truly, it is doctrinal that the execution of any judgment for a specific act cannot extend to persons who were never parties to the main proceeding.[32] To enforce the effects of a judgment to persons who are strangers to the case certainly offends the constitutional guarantee as enshrined in Section 1, Article III of the 1987 Constitution that no person shall be deprived of life, liberty, or property without due process of law. As explained in *Muñoz v. Yabut, Jr.*.[33]

> The rule is that: (1) a judgment *in rem* is binding upon the whole world, such as a judgment in a land registration case or probate of a will; and (2) a judgment *in personam* is binding upon the parties and their successors-in-interest but not upon strangers. A judgment directing a party to deliver possession of a property to another is *in personam*; it is binding only against the parties and their successors-in-interest by title subsequent to the commencement of the action. An action for declaration of nullity of title and recovery of ownership of real property, or re-conveyance, is a real action but it is an action *in personam*, for it binds a particular individual only although

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29 See *PSALM v. Maunlad Homes*, 805 Phil. 544, 553 (2017).
30 *Mercury Drug Corporation, et al. v. Spouses Huang, et al.*, 817 Phil. 434, 445 (2017).
31 *PSALM v. Maunlad Homes, supra.*
32 *Bayani v. Leonora*, G.R. No. 203076-77 July 10, 2019.
33 665 Phil. 488 (2011).

> it concerns the right to a tangible thing. Any judgment therein is binding only upon the parties properly impleaded.[34]

Here, an amendment of the writ of execution by including respondent, a party not impleaded in the original case, will effectively expand the coverage of the said writ and necessarily modify the RTC's April 12, 2002 Decision that has already attained finality. Also, being a non-party, respondent cannot be bound by the judgment rendered in the original case even with the amendment of the writ of execution. To emphasize, no man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by any judgment rendered by the court. In the same manner, a writ of execution can be only issued only against a party and not against one who did not have his day in court. Only real parties in interest in an action are bound by the judgment therein and by writs of execution issued pursuant thereto.[35]

Petitioner, however, insists that respondent is a successor-in-interest of Maricalum. According to petitioner, with respondents's purchase of Maricalum's mining claims and properties, the former has effectively acquired not only the rights to the properties but likewise assumed the risks involved pursuant to the principle of *caveat emptor*.

In *Maricalum Mining Corp. v. Florentino*,[36] We had the occasion to explain that the transfer of all assets of one corporation to another does not make the transferee liable for the debts and liabilities of the transferor except when there is an express or implied assumption of obligation, corporate merger or consolidation, where the transfer is merely a continuation of the existence of the transferor, and fraud is employed to escape liability.[37]

By way of background, the transfer of some of Maricalum's assets in favor of respondent was by virtue of a purchase service agreement (*PSA*) as part of an official measure to dispose the government's non-performing assets. Thereat, respondent bought 90% of Maricalum's mining shares and financial claims in the form of company notes. In exchange, the PSA obliged respondent to pay APT a certain amount. Concomitantly, respondent also assumed Maricalum's liabilities in the form of promissory notes, which were secured by mortgages over some of Maricalum's properties. These notes obliged Maricalum to pay respondent a stipulated amount.[38] However, in July 2001, the properties of Maricalum, which had been mortgaged to secure the notes, were extrajudicially foreclosed and eventually sold to respondent as the highest bidder.[39] Since then, respondent had been the controlling stockholder of Maricalum.

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34 *Id.* at 509-510.
35 *Id.* at 510.
36 836 Phil. 655 (2018).
37 *Id.* at 690-691.
38 *Id.* at 666.
39 *Id.* at 667.

Settled is the rule that where one corporation sells or otherwise transfers all its assets to another corporation for value, the latter is not, by that fact alone, liable for the debts and liabilities of the transferor.[40]

Here, when respondent purchased Maricalum's shares from the APT, it did so not for the purpose of continuing Maricalum's existence/operations or evading liability to creditors, but for the purpose of investing in the mining industry without having to directly engage in the management and operation of mining. As a holding company, respondent's acquisition of Maricalum's properties was merely to invest in the equity of another corporation for the purpose of earning from the latter's endeavors.[41] Hence, in the absence of clear and convincing evidence that GHI committed fraud in taking over the assets of Maricalum, the former cannot be held automatically liable for the satisfaction of claims against Maricalum.

At this point, We deem it necessary to point out that the transfer of Maricalum's mining claims and properties to GHI does not automatically shift the former's liabilities to the latter. To restate, where one corporation sells or otherwise transfers all its assets to another corporation for value, the latter is not, *by that fact alone,* liable for the debts and liabilities of the transferor.[42]

Neither can We find for petitioner's argument that respondent is a mere alter ego of Maricalum to support the piercing of corporate veil between these two entities and ultimately enforce the judgment award against respondent.

The matter of separate corporate personality between respondent and Maricalum has already been resolved as early as the case of *"G" Holdings, Inc. v. National Mines and Allied Workers Union*[43] where We explained that:

> [t]he mere interlocking of directors and officers does not warrant piercing the separate corporate personalities of MMC and GHI. Not only must there be a showing that there was majority or complete control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked, so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own. The mortgage deed transaction attacked as a basis for piercing the corporate veil was a transaction that was an offshoot, a derivative, of the mortgages earlier constituted in the Promissory Notes dated October 2, 1992. But these Promissory Notes with mortgage were executed by GHI with APT in the name of MMC, in a full privatization process. It appears that if there was any control or domination exercised over MMC, it was APT, not GHI, that wielded it.[44]

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40 *Id.* at 691-692.
41 *Id.* at 693.
42 *Zambrano v. Philippine Carpet Manufacturing*, 811 Phil. 569, 587 (2017).
43 619 Phil. 69 (2009).
44 *Id.* at 109.

The above-mentioned ruling was reinforced in the more recent case of *Maricalum*[45] where We discussed the parameters, guidelines and indicators for proper piercing of the corporate veil. Therein, We said:

> The doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: (a) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; (b) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or (c) alter ego cases, where a corporation is merely a farce since it is a 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. This principle is basically applied only to determine established liability. However, piercing of the veil of corporate fiction is frowned upon and must be done with caution. This is because a corporation is invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other legal entity to which it may be related.
>
> A parent or holding company is a corporation which owns or is organized to own a substantial portion of another company's voting shares of stock enough to control or influence the latter's management, policies or affairs thru election of the latter's board of directors or otherwise. However, the term "holding company" is customarily used interchangeably with the term "investment company" which, in turn, is defined by Section 4 (a) of Republic Act *(R.A.)* No. 2629 as "any issuer (corporation) which is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities."
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> In other words, a "holding company" is organized and is basically conducting its business by investing substantially in the equity securities of another company for the purposes of controlling their policies (as opposed to directly engaging in operating activities) and "holding" them in a conglomerate or umbrella structure along with other subsidiaries. Significantly, the holding company itself-being a separate entity-does not own the assets of and does not answer for the liabilities of the subsidiary or affiliate. The management of the subsidiary or affiliate still rests in the hands of its own board of directors and corporate officers. It is in keeping with the basic rule a corporation is a juridical entity which is vested with a legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. The corporate form was created to allow shareholders to invest without incurring personal liability for the acts of the corporation.
>
> While the veil of corporate fiction may be pierced under certain instances, mere ownership of a subsidiary does not justify the imposition of liability on the parent company. **It must further appear that to recognize a parent and a subsidiary as separate entities would aid in the consummation of a wrong. Thus, a holding corporation has a separate corporate existence and is to be treated as a separate entity; unless the facts show that such separate corporate existence is a mere sham, or has been used as an instrument for concealing the truth.**
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> In the case at bench, complainants mainly harp their cause on the alter ego theory. Under this theory, piercing the veil of corporate fiction may be allowed only if the following elements concur:

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45 *Supra* note 35.

> 1) Control – not mere stock control, but complete domination – not only of finances, but of policy and business practice in respect to the transaction attacked, must have been such that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own;
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> 2) Such control must have been used by the defendant to commit a fraud or a wrong, to perpetuate the violation of a statutory or other positive legal duty, or a dishonest and an unjust act in contravention of plaintiffs legal right; and
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> 3) The said control and breach of duty must have proximately caused the injury or unjust loss complained of.
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> In the instant case, there is no doubt that G Holdings – being the majority and controlling stockholder – had been exercising significant control over Maricalum Mining. This is because this Court had already upheld the validity and enforceability of the PSA between the APT and G Holdings. It was stipulated in the PSA that APT shall transfer 90% of Maricalum Mining's equity securities to G Holdings and it establishes the presence of absolute control of a subsidiary's corporate affairs. Moreover, the Court evinces its observation that Maricalum Mining's corporate name appearing on the heading of the cash vouchers issued in payment of the services rendered by the manpower cooperatives is being superimposed with G Holding's corporate name. Due to this observation, it can be reasonably inferred that G Holdings is paying for Maricalum Mining's salary expenses. Hence, the presence of both circumstances of dominant equity ownership and provision for salary expenses may adequately establish that Maricalum Mining is an instrumentality of G Holdings.
>
> However, mere presence of control and full ownership of a parent over a subsidiary is not enough to pierce the veil of corporate fiction. It has been reiterated by this Court time and again that **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.**[46]

Indeed, in the absence of proof necessary to puncture respondent's corporate cover, its separate corporate personality must be respected.

The foregoing considered, We see no reversible error committed by the CA in issuing the assailed decision and resolution, which found no grave abuse of discretion in the legal conclusions reached by the RTC.

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46 *Supra* note 36, at 688. (Emphasis in the original)

WHEREFORE, the instant petition is **DENIED**. The Court **AFFIRMS** ***in toto*** the July 30, 2010 Decision and December 8, 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 88261.

No pronouncement as to costs.

SO ORDERED.

JHOSEP Y. LOPEZ
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

On wellness leave
MARIO V. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice