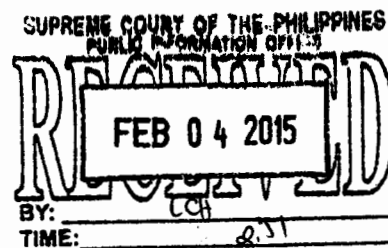




Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **December 3, 2014** which reads as follows:*

**“G.R. No. 177984 – OPTYMAN MANUFACTURING CORPORATION, Petitioner, v. SECURITY BANK CORPORATION, Respondent.**

Under review is the decision promulgated on January 31, 2007,<sup>1</sup> whereby the Court of Appeals (CA) reversed the dismissal of the action filed against the petitioner on demurrer to evidence by Regional Trial Court, Branch 148, in Makati City (RTC).

Macford Garments MFG., Inc. (Macford), a domestic corporation, entered into a continuing suretyship agreement through its President Eduardo Tan (Tan), Vice-President for Operations Clayford Tesalona (Tesalona), and Vice-President for Finance Consorcia Rejano with Security Bank Corporation (Security Bank) for the purpose of availing of the latter’s credit facilities.<sup>2</sup> Under the agreement, Security Bank extended several letters of credit to Macford. In behalf of Macford, Tan signed trust receipts in favor of Security Bank between January and February 1996.<sup>3</sup> Macford’s Finance Manager Allan Rejano (Rejano) likewise obtained a ₱500,000.00 loan from Security Bank.<sup>4</sup>

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<sup>1</sup> *Rollo*, pp. 17-25; penned by Associate Justice Rosmari D. Carandang, and concurred in by Associate Justice Martin S. Villarama, Jr. (now a Member of this Court) and Associate Justice Mariflor P. Punzalan Castillo.

<sup>2</sup> *Id.* at 18.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

Macford did not turn over the proceeds of the sale of the goods or the goods themselves upon the maturity of the trust receipts.<sup>5</sup> It was also remiss in paying the ₱500,000.00 loan because its Metrobank Check No. 0425340 dated December 5, 1996 was dishonored due to insufficiency of funds.<sup>6</sup>

In a related development, on December 28, 1995, Macford's officers, namely: Executive Vice-President Luciano H. Tan, Vice-President Lester S. Tan, Corporate Secretary Clayford Tesalona and Finance Manager Allan Rejano, and one Leroy Tan organized petitioner Optyman Corporation (Optyman) to also engage in the garments business.<sup>7</sup> On January 23, 1996, Macford executed through Tan a deed of sale in favor of Optyman who was represented by its President Leroy Tan regarding the sale of 90 units of sewing machines for ₱1,500,000.00.<sup>8</sup>

Security Bank made several demands upon Macford to settle its standing obligations under the trust receipts and the loan agreement, but was surprised to discover that Optyman had taken over the premises of Macford. Security Bank sent its final demand to Macford through Tan and Rejano, neither of whom gave any affirmative response. Hence, Security Bank instituted a complaint for sum of money against Macford, Optyman, and the officers of the two companies.<sup>9</sup>

After Security Bank rested its case, Optyman filed a demurrer to evidence which the RTC granted in its February 18, 2003 order.<sup>10</sup>

After Security Bank's motion for reconsideration was denied, it appealed to the CA raising the sole issue that:

THE LOWER COURT ERRED IN GRANTING OPTYMAN'S DEMURRER TO EVIDENCE AND IN DISMISSING THE CASE AGAINST THE LATTER.<sup>11</sup>


On January 31, 2007, the CA reversed the dismissal, ratiocinating:

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<sup>5</sup> Id.  
<sup>6</sup> Id. at 18-19.  
<sup>7</sup> Id. at 19.  
<sup>8</sup> Id. at 19.  
<sup>9</sup> Id. at 19-20.  
<sup>10</sup> Id.  
<sup>11</sup> Id. at 20.



In this case, the trial court ruled against the piercing of the corporate veil of OPTYMAN primarily because it was organized prior to the execution of the Trust Receipts being claimed by SBC. This is too simple, to say the least. A more thorough appreciation of the evidence at hand would reveal otherwise.

First of all, the record shows that four of the five incorporators of OPTYMAN were officers of MACFORD, namely: Luciano H. Tan – as the latter’s Executive Vice-President, Lester S. Tan – as Vice-President, Clayford Tesalona – as Corporate Secretary and Allan Rejano – as Finance Manager. Accordingly, 4/5 of Optyman’s subscribed capital stocks are owned by these four officers. And the remaining 1/5 belongs to Leroy S. Tan, a son of Luciano H. Tan. Clearly, the people that ran MACFORD controlled OPTYMAN. Next, it cannot be denied that OPTYMAN was organized to venture into the garments business, the same as MACFORD.

What is more glaring however, is the fact that barely a month into OPTYMAN’s juridical inception, it bought ninety (90) units of sewing machines from MACFORD. Not only that, under the same deed covering the sale of the said sewing machines, MACFORD accorded OPTYMAN the option to continue the lease on the premises/factory occupied/used by MACFORD. And OPTYMAN did in fact continue the lease for when SBC sought out MACFORD to collect, the former was already occupying the premises/factory. Under these circumstances, it is nothing short of obvious that OPTYMAN had continued the operation of MACFORD.

The fact that OPTYMAN was organized ahead of MACFORD’s execution of the Trust Receipts being claimed by SBC will not operate to excuse the former. While this is true, the timing of OPTYMAN’s creation was conveniently near to the time when MACFORD was already having problems with its creditors. Quite telling is Luciano Tan’s testimony/admission, to wit: x x x

All these considered, OPTYMAN is nothing but an adjunct, a business conduit or an alter ego of MACFORD. The creation of the former was skillfully orchestrated merely for the purpose of evading the obligations of the latter with SBC. As such, OPTYMAN’s veil of corporate fiction is lifted and both corporations are treated/considered as one.<sup>12</sup>

In this appeal, therefore, Optyman asserts that the CA erred in reversing the order of the RTC.<sup>13</sup> It argues that Security Bank did not show that Optyman had been organized to defraud the creditors of Macford,<sup>14</sup>

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<sup>12</sup> Id. at 21-24.

<sup>13</sup> Id. at 9.

<sup>14</sup> Id. at 12.

that when Security Bank filed its complaint for sum of money against Optyman and Macford, Optyman had already been in existence for one and a half years,<sup>15</sup> and prior to when the trust receipts had been entered into by Security Bank and Macford;<sup>16</sup> and that since the trust receipts were entered into after the incorporation of Optyman, Security Bank could not validly claim that Optyman had been organized as a business conduit or alter ego of Macford.<sup>17</sup>

In its comment,<sup>18</sup> Security Bank counters that the petition for review raises factual issues;<sup>19</sup> that the attending circumstances show that the application of the doctrine of piercing the veil of corporate fiction was warranted because it was sufficiently established that Optyman had been used to defraud Security Bank on its claims against Macford;<sup>20</sup> that the incorporation of Optyman was exceedingly dubious considering that it was organized only when Macford was already in huge debt with Security Bank;<sup>21</sup> that the fact could not be denied that Macford had sold to Optyman its assets that included, among others, 90 units of sewing machines was a tool to place the assets beyond the reach of creditors;<sup>22</sup> that the continued lease of the premises occupied and used by Optyman after the cessation of Macford's business proved that Optyman had been used as a business conduit or alter ego of Macford;<sup>23</sup> that the articles of incorporation of the two corporations showed that four out of the five incorporators of Optyman were officers of Macford;<sup>24</sup> and that having the same line of business as that of Macford which subsequently ceased its business operations immediately upon Optyman's incorporation, combined with other facts, warranted the conclusion that Optyman was merely continuing the business of Macford.<sup>25</sup>


Optyman submitted its reply to comment,<sup>26</sup> declaring therein that it is not questioning the findings of fact of the CA but is rather challenging the legal conclusion arrived at by the CA;<sup>27</sup> and that it maintained that it was not a business conduit or alter ego of Macford.

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<sup>15</sup> Id. at 11.  
<sup>16</sup> Id.  
<sup>17</sup> Id.  
<sup>18</sup> Id. at 61-80.  
<sup>19</sup> Id. at 70.  
<sup>20</sup> Id. at 71.  
<sup>21</sup> Id.  
<sup>22</sup> Id. at 71-72.  
<sup>23</sup> Id. at 72.  
<sup>24</sup> Id. at 73.  
<sup>25</sup> Id. at 75.  
<sup>26</sup> Id. at 83-87.  
<sup>27</sup> Id. at 84.



**Issue**

Should Macford and Optyman be treated as one and the same corporation?

**Ruling**

The petition is without merit.

A corporation, upon coming into existence, is invested by law with a personality separate and distinct from those of the persons composing it as well as from any other legal entity to which it may be related. For this reason, a stockholder of the corporation is generally not made to answer for the acts or liabilities of the corporation, and vice versa. However, the separate and distinct personality of the corporation is a mere fiction established by law for convenience and to promote the ends of justice. It may not be used or invoked for ends that subvert the policy and purpose behind its establishment, or intended by law to which the corporation owes its being. This is true particularly when the fiction is used to defeat public convenience, to justify wrong, to protect fraud, to defend crime, to confuse legitimate legal or judicial issues, to perpetrate deception or otherwise to circumvent the law. This is likewise true where the corporate entity is being used as an alter ego, adjunct, or business conduit for the sole benefit of the stockholders or of another corporate entity. In such instances, the veil of corporate entity will be pierced or disregarded with reference to the particular transaction involved.<sup>28</sup>

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 perpetrate a fraud or like wrongdoings.<sup>29</sup> The Court also held that the confluence of the following factors will justify the piercing of the corporate veil, to wit: (a) a first corporation is dissolved; (b) the assets of the first corporation is transferred to a second corporation to avoid a financial liability of the first corporation; and (c) 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.<sup>30</sup>

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<sup>28</sup> *Commissioner of Customs v. Oilink International Corporation*, G.R. No. 161759, July 2, 2014.

<sup>29</sup> *Kukan International Corporation v. Reyes*, G.R. No. 182729, September 29, 2010, 631 SCRA 596.

<sup>30</sup> *Id.* at 623.

The aforestated factors obtain herein.

Firstly, Macford's sale to Optyman, its sister company, of all of the machineries necessary and integral to its business of garments manufacturing was dubious. There might not be an actual dissolution of Macford as contemplated in the Corporation Code but the transfer of virtually all of its assets rendered it a mere shell corporation. Secondly, there was an apparent attempt of the two conniving companies to continue operations while trying to evade a contractual indebtedness of one of them. This is bolstered by Optyman even physically occupying the premises previously occupied by Macford by virtue of a supposed lease agreement entered into by them. And, thirdly, four of the five incorporators of Optyman were officers of Macford, while 80% of Optyman's subscribed capital stocks were owned by the four officers, with the remaining 20% being owned by the son of one of the four officers. Thereby, the control of the operation of Optyman being vested in the same set of officers became established.

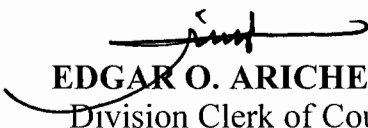
Under the circumstances, Optyman merely continued the operations of Macford, and the sole purpose for its existence is to prevent creditors from reaching its conduit company's assets. The veil of corporate existence is not intended to be used as a tool to commit, condone or conceal wrongdoings. A corporation organized by a conduit corporation for the purpose of evading lawful obligations, defeat public convenience, and perpetrate fraud may not invoke its separate juridical personality to hide this intent. Taken together, thus circumstances strengthen the belief that Optyman and Macford are one and the same.

**WHEREFORE**, the Court **DENIES** the petition for review; **AFFIRMS** the decision of the Court of Appeals promulgated on January 31, 2007; and **DIRECTS** the petitioner to pay the costs of suit.

The letter dated July 17, 2014 of the Judicial Records Division, Court of Appeals, Manila, transmitting the Court of Appeals rollo with 169 pages, one (1) folder of original records and one (1) folder of transcript of stenographic notes is **NOTED**.

**SO ORDERED."**

Very truly yours,

  
**EDGAR O. ARICHETA**  
Division Clerk of Court

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