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REPUBLIC OF THE PHILIPPINES
REGIONAL TRIAL COURT
FOURTH JUDICIAL REGION
BRANCH 6, CITY OF TANAUAN
PROVINCE OF BATANGAS

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PMFTC INC.,

Petitioner,

-versus-

SP. CIVIL ACTION NO. 10-06-5232

THE DEPARTMENT OF HEALTH,
Respondent.

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2010/12/16

ORDER

THIS RESOLVES the Motion to Dismiss dated July 30, 2010 filed by the Department of Health ("DOH").

The DOH alleged that on June 3, 2010, Fortune Tobacco Corporation ("FTC") filed a petition for declaratory relief against it (DOH) assailing Administrative Order 2010-0013 and prayed that this order be declared void. The petition was filed with the Regional Trial Court of Marikina City, Branch 272, and docketed as SCA No. 2010-796-MK. The DOH argued that FTC and PMFTC are one and the same entity. PMFTC is a joint venture of FTC and Philip Morris Philippines Manufacturing Inc. ("PMPMI") wherein FTC owns 49.6% of the shares thereof. With this arrangement PMFTC handles the manufacture, distribution, sales and marketing of all brands of the two companies in the Philippines. Moreover, PMFTC's five (5) Board of Directors are intertwined with that of FTC. It concludes that with the integrated production and marketing arrangements between PMFTC and FTC, compounded by the substantial shareholdings of the latter in the former, and the commonality of shareholders, directors and executive officers as well as the unity of business purpose of both corporations, proves that there is no substantial difference between PMFTC and FTC. The DOH further argued that even PMFTC and FTC are not identical, the first requisite of *litis pendentia* is still present since both represent the same interest in having the Administrative Order 2010-00013 annulled in this petition and in Marikina case. The DOH also asserted that a judgment in Marikina case covers the very same subject matter and issues in the instant petition and/or vice versa-*res judicata* would set in. As a consequence of the existence of *litis pendentia*, the DOH so believed that PMFTC violated the rules against forum shopping, hence this petition must be dismissed.

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the law gives it a juridical personality separate and distinct from each joint-venturers. Further, the arguments that FTC owns 49.6% shares of stock in PMFTC and the two corporations share several common directors and officers are insufficient that the veil of corporate fiction be pierced. Hence, considering that there is no identity of parties, the judgment in this case or the Marikina case will not amount to *res judicata* in the other, and that PMFTC concluded that it did not violate the rule against forum-shopping.


The DOH urged this court to pierce PMFTC's corporate veil thereby regarding PMFTC and FTC as one and the same corporation for the purpose of dismissing this action on grounds of *litis pendentia* and violation of forum-shopping.

There is forum shopping when between the action pending now in Marikina court and in this court there exist (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful would amount to *res judicata* in the other. (*First Philippine International Bank vs. CA*, G.R. No. 115849, January 24, 1996).

A basic principle in corporation law is that a corporation is an entity separate and distinct from other corporations to which it is connected. However, this separate legal entity is disregarded if it is used to defeat public convenience, justify wrong, protect fraud or defend crime, the law will regard the two corporations as one. (*De Leon, et al vs. NLRC*, G.R. No. 112661, May 30, 2001). The corporate veil cannot likewise be used to shield an otherwise blatant violation of the prohibition against forum-shopping. (*First Philippine International Bank vs. CA*, *supra*).

The elements for the application of the doctrine of piercing the veil of corporate fiction are: (1) Control or complete domination of finances, 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; (2) Such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of the plaintiff's legal rights; and (3) The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of. (*Yamamoto vs. Nisho Leather Industries Inc.*, G.R. No. 150283, April 15, 2008).

As pointed out by the DOH, FTC's shareholding in the PMFTC is only 49.6%. It failed to take account the other shareholders - PMPMI (50%), Parity Packaging Corp. (0.21%), Dominium Realty & Construction Corp. (0.15%), and Northern Tobacco Redrying Co. Inc. (0.04%). (Annex



"2", Motion to Dismiss dated July 30, 2010). On this point alone, PMFTC's corporate veil cannot be pierced. And the fact that four members of PMFTC's board of directors are also members of FTC's board is not enough to treat both companies as one. The existence of interlocking directors, corporate officers and shareholders, is not enough justification to pierce the veil of corporate fiction, in the absence of fraud or other public policy considerations. (*Jardine Davies, Inc. v. JRB Realty, Inc.*, G.R. No. 151438, 15 July 2005).

The similarity of business interests or purpose of the two corporations cannot be concluded that PMFTC and FTC are one and the same corporate entity. The mere fact that the businesses of two or more corporations are interrelated is not a justification for disregarding their separate personalities, absent sufficient showing that the corporate entity was purposely used to circumvent the rules against forum-shopping. (*China Banking Corp. vs. Dyne-Sem Electronics*, G.R. No. 149237, June 11, 2006)

Notwithstanding of the above disquisition, the court finds that PMFTC represent the same interests in the Marikina case. In *City of Makati vs. Municipality (now City) of Taguig* (G.R. No. 163175, June 27, 2008) it was held that "the fact that there is no absolute identity of parties in both cases will not preclude the application of the rule of *litis pendencia*, since only substantial and not absolute identity of parties is required for *litis pendencia* to lie." As may be gleaned in the Articles of Incorporation of PMFTC and FTC, both are engaged in the manufacture and selling tobacco products. In Marikina case, PMFTC also have the same cause of action, i.e., AO 2010-0013 is illegal, and seeks similar relief i.e., the declaration of nullity of the challenged order.

To deny the motion of DOH would open the floodgates of confusion when this court and the Marikina court render contradictory decisions. Stated differently, should this court upholds the validity of AO 2010-0013, and the Marikina court rules otherwise or vice versa, these two incompatible decisions will wreak havoc on our judicial system. This is the very great evil which the rule against forum-shopping sought to avoid. (*Guaranteed Hotels Inc. vs. Baliao*, G.R. No. 164338, January 17, 2005).

WHEREFORE, premises considered, the Motion to Dismiss dated July 30, 2010 filed by the Department of Health is hereby GRANTED, and, therefore, this instant petition is DISMISSED. //

SO ORDERED.

City of Tanauan, Province of Batangas, September 28, 2010.


ARCADIO I. MANIGRAS
Judge