

**ECONOMIC DEVELOPMENT
LOAN FUND**

vs.

Leo S. PANGELINAN, et al.

**Appellate No. 84-9009
Civil Action No. 81-388
District Court NMI
Appellate Division**

Decided January 30, 1986

1. Appeal and Error - Standard of Review - Factual Findings

When reviewing the findings of fact of the trial court the appellate court uses the clearly erroneous standard.

2. Appeal and Error - Standard of Review - Factual Findings

A finding is clearly erroneous when the entire record produces the definite and firm conviction that the court below committed a mistake.

3. Appeal and Error - Standard of Review - Conflicting Evidence

On appeal, the appellate court accords particular weight to the trial judge's assessment of conflicting and ambiguous evidence.

4. Appeal and Error - Standard of Review - Legal Conclusions

Conclusions of law made by the trial court are freely reviewable on appeal.

5. Corporations - Shareholders - Liabilities

The general rule is that a corporation and its shareholders are separate entities and, consequently, shareholders are not liable to third persons for corporate debts beyond their investment in stock of the corporation.

6. Corporations - Shareholder - Liabilities

The alter ego doctrine in the law of corporations exists for those instances where the stockholders no longer treat the corporation as a separate entity but instead as an instrument to conduct their own personal business.

7. Corporations - Disregard of Corporate Entity

In determining whether to pierce the corporate veil courts consider: undercapitalization, failure to observe corporate formalities, nonpayment of dividends, siphoning of corporate funds by dominant stockholders, nonfunctioning of other officers or directors, absence of corporate records, use of the corporation as a facade for the operations of the dominant stockholders, and use of the corporate entity in promoting injustice or fraud.

8. Corporations - Disregard of Corporate Entity

In determining whether to pierce the corporate veil courts must determine if (1) the interests of the dominant stockholders are so intertwined with those of the corporation that separate entities no longer exist, and (2) whether injustice or fraud would result if the fiction of separate entities was upheld.

9. Corporations - Disregard of Corporate Entity

The alter ego doctrine is an equitable one and the court is called upon to balance the equities.

10. Corporations - Disregard of Corporate Entity

Where defendant director/ shareholder used corporate funds to satisfy personal debts and otherwise treated the corporation as his personal business, and corporate formalities were not observed, the trial

court properly allowed plaintiff creditor to pierce the corporate veil and seek repayment of the debt from the director/shareholder's personal assets.

11. Corporations - Disregard of Corporate Entity

Where creditor produced no evidence that defendant, a former director of the corporation, ever used or authorized the use of corporate funds for non-corporate purposes, alter ego doctrine would not be applied to hold former director personally liable for corporate debt.

12. Statutes - Construction - Plain Meaning

If the language of a statute is plain the sole function of the court is to enforce it according to its terms.

13. Foreclosure - Notice of Default

Trial court erred in not invalidating notice of default which was not written in the local vernacular as required by statute notwithstanding amply supported finding that the mortgagor was well versed in English.

IN THE DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS
APPELLATE DIVISION

ECONOMIC DEVELOPMENT LOAN FUND,)	DCA NO. 84-9009
Plaintiff/Appellee,)	CTC NO. 81-388
vs.)	
LEO S. PANGELINAN, <u>et. al.</u> ,)	FILED Clerk <u>OPINION</u> District Court
Defendants/Appellants.)	JAN 30 1986

FILED OPINION
Clerk
District Court

JAN 3 0 1986

For The Northern Mariana Islands
By B. McPhee Clerk

Attorney for Appellee/Appellant,
Economic Development Loan Fund:

Jesus C. Borja
Attorney-at-Law
Torres Building
San Jose Village
Saipan, CM 96950

15 Attorney for Appellant, Leo S.
Pangelinan:

Michael A. White
White and Novo-Gradac
P. O. Box 222 CHRB
Saipan, CM 96950

17 Attorney for Appellee, John S.
18 Bengalinan.

Randall T. Fennell
Attorney-at-Law
Pangelinan Building
Susupe Village
Saipan, CM 96950

20

BEFORE: LAURETA DUNAS and WATERS*. District Judges

22 LAURETA. District Judge:

24

*The Honorable Laughlin E. Waters, United States District Court,
Central District of California, sitting by designation.

1 The Economic Development Loan Fund Board (EDLF) brought
2 suit to foreclose on two lots pledged as security for a loan to
3 Pangelinan Family, Ltd. (Pangelinan Ltd.) and in addition to hold
4 John S., Susan R. and Leo S. Pangelinan personally liable for the
5 corporate debts of Pangelinan Ltd. The trial court held that
6 Leo S. Pangelinan was the alter ego of Pangelinan Ltd. and
7 therefore, personally liable for its debts. As a result the
8 court ruled EDLF could foreclose on the lots pledged as security.
9 The court found that John S. Pangelinan and Susan R. Pangelinan
10 were not personally liable for the corporate debts of Pangelinan
11 Ltd.

We now affirm those portions of the judgment holding
Leo S. Pangelinan personally liable for the corporate debts of
Pangelinan Ltd. and holding John S. Pangelinan not personally
liable for these same debts. We reverse that portion of the
judgment holding the untranslated notice of default effective and
remand this case to the Commonwealth Trial Court for a judgment
consistent with this opinion.

1

FACTS

22 Pangelinan Ltd. was incorporated under the laws of the
23 Commonwealth on May 22, 1979. John S., Leo S. and Susan R.
24 Pangelinan were listed as the initial incorporators, officers and
25 directors. All of the initial stocks were also issued in their
26 names.

1 The corporation conducted little or no business during
2 its first year. Pangelinan Ltd. submitted a loan application to
3 EDLF on January 23, 1980. The money, \$115,000, was to be used by
4 Tropicana U-Drive (Tropicana), a division of Pangelinan Ltd., to
5 purchase new cars which Tropicana intended to commercially lease
6 under an exclusive arrangement with the Saipan Grand Hotel. The
7 loan application was signed by John S. Pangelinan as president of
8 Pangelinan Ltd.

9 EDLF granted Pangelinan Ltd. a loan for \$99,000. The
10 loan agreement was signed on June 18, 1980, by John S.
11 Pangelinan, president; Leo S. Pangelinan, vice-president; and
12 Susan R. Pangelinan, secretary/treasurer. Paragraph 6 and
13 attachment A of the loan agreement refer to two lots, 003 H 46
14 and 47, which were purportedly pledged as security for the loan.
15 At all relevant times Leo S. Pangelinan owned lots 003 H 46 and
16 47. He signed the mortgage agreement which apparently encumbered
17 these lots as the vice-president of Pangelinan Ltd. Less than
18 two months later, on August 30, 1980, John S. Pangelinan resigned
19 as an officer and a director of Pangelinan Ltd., sold his stock
20 back to the company and ceased all involvement with Pangelinan
21 Ltd.

22 After John left Leo assumed full control of the opera-
23 tions of Pangelinan Ltd. He regularly used corporate funds to
24 satisfy personal obligations and personal assets, namely lots 46
25 and 47, to secure corporate funds. At no time were regular
26 meetings of stockholders or directors held. Records were non-

1 existent in most instances and where records were kept they were
2 inadequate.

3 Pangelinan Ltd. fell behind in its loan payments to
4 EDLF. EDLF sent a notice of default, drafted only in English, on
5 September 21, 1981. In this action, filed November 25, 1981,
6 EDLF sought to foreclose on lots 003 H 46 and 47. Additionally,
7 they requested that the court pierce the corporate veil and hold
8 Leo S., John S. and Susan R. Pangelinan personally liable for the
9 debts of Pangelinan Ltd..

10 Initially, the trial court found that though Pangelinan
11 Ltd. had defaulted on the loan EDLF would be precluded from
12 foreclosing on the loan because the mortgage note was signed by
13 the corporation and it did not hold title to the land. Ultimately,
14 however, the court found that Leo S. Pangelinan was the alter
15 ego of Pangelinan Ltd. and personally liable for the corporate
16 debts allowing EDLF to foreclose on lots 003 H 46 and 47 in spite
17 of the fact that no translated notice of default was ever sent.
18 The court also held that neither John S. nor Susan R. Pangelinan
19 were personally liable for the corporate debts of Pangelinan Ltd.

20
21 II.

22 ISSUES

- 23 1. WHETHER THE EVIDENCE SUPPORTS THE TRIAL
24 COURT'S FINDING THAT LEO S. PANGELINAN
25 WAS THE ALTER EGO OF PANGELINAN LTD. AND
THEREFORE, PERSONALLY LIABLE FOR THE
CORPORATE DEBTS.
- 26 2. WHETHER THE EVIDENCE SUPPORTS THE TRIAL

COURT'S FINDING THAT JOHN S. PANGELINAN WAS NOT THE ALTER EGO OF PANGELINAN LTD. AND THEREFORE, NOT PERSONALLY LIABLE FOR THE CORPORATE DEBTS.

3. WHETHER § 4534 REQUIRING THAT ALL NOTICES OF DEFAULT BE TRANSLATED INTO CHAMORRO OR CAROLINIAN CAN BE AVOIDED WHEN THE COURT DETERMINES THE MORTGAGOR COMPREHENDS THE NOTICE IN ENGLISH ALONE.

三

DISCUSSION

1. Standard of Review.

[1,2,3,4] When reviewing the findings of fact of the trial court the appellate court uses the clearly erroneous standard. Schenk v. Government of Guam, 609 F.2d 387, 390 (9th Cir. 1979). A finding is clearly erroneous when the entire record produces the definite and firm conviction that the court below committed a mistake. The appellate court accords particular weight to the trial judge's assessment of conflicting and ambiguous evidence. South Seas Corp. v. Sablan, 525 F.Supp. 1033 (D.N.M.I. 1981); aff'd. mem., 691 F.2d 508 (9th Cir. 1982). On the other hand, conclusions of law made by the trial court are freely reviewable and are not binding upon a court of review. Official Creditors' Committee of Fox Markets, Inc. v. Ely, 337 F.2d 461 (9th Cir. 1964); cert. denied, 380 U.S. 978, 85 S.Ct. 1342, 14 L.Ed.2d 272 (1965).

2. Piercing the Corporate Veil.

[5,6,7] The general rule is that a corporation and its shareholders are separate entities and consequently, shareholders are

1 not liable to third persons for corporate debts beyond their
2 investment in stock of the corporation. Ramsey v. Adams, 4
3 Kan.App.2d 184, 603 P.2d 1025 (1979). However, in some cases,
4 where the protection of the separate corporate entity has been
5 abused by the stockholders courts have adopted the equitable
6 doctrine of alter ego. This doctrine exists for those instances
7 where the stockholders no longer treat the corporation as a
8 separate entity but instead as an instrument to conduct their own
9 personal business. Though courts differ as to when the corporate
10 veil should be pierced the common significant factors are:
11 undercapitalization, failure to observe corporate formalities,
12 nonpayment of dividends, siphoning of corporate funds by dominant
13 stockholders, nonfunctioning of other officers or directors,
14 absence of corporate records, use of the corporation as a facade
15 for the operations of the dominant stockholders, and use of the
16 corporate entity in promoting injustice or fraud. Fletcher Cyc.
17 Corp., § 41.10 et. seq. (Permanent Edition Rev. 1983).

18 [8] The test that has been adopted by most courts in
19 determining whether to pierce the corporate veil is a two prong
20 test:

- 21 1. Whether the interests of the dominant
22 stockholders are so intertwined with
23 those of the corporation that separate
entities no longer exist, and
- 24 2. Whether injustice or fraud would result
25 if the fiction of separate entities was
upheld. Id.

1 A. Leo S. Pangelinan.

2 Corporate formalities were not observed by Pangelinan
3 Ltd. No regular shareholders meetings were held. Leo S.
4 Pangelinan used corporate funds to pay personal debts and used
5 personal funds to secure corporate debts (e.g., the mortgage on
6 lots 003 H 46 and 47). Records were not kept in most instances
7 and where they were kept they were inadequate. Though Leo
8 testified he repaid all the "loans" from the corporation his
9 testimony was not supported by any evidence produced at trial.
10 The facts indicated that Leo S. Pangelinan was using Pangelinan
11 Ltd. to further his personal interests.

12 Leo S. Pangelinan argues that even if this court were
13 to decide that his interests were so intertwined with those of
14 Pangelinan Ltd. that a separate corporate entity no longer
15 existed, the court is precluded from finding that he is the alter
16 ego of Pangelinan Ltd. without a showing of fraud or injustice.
17 To do this, he argues, EDLF must show that the assets of
18 Pangelinan Ltd. are insufficient to satisfy the balance on the
19 loan from EDLF.

20 The facts indicate there has been an injustice here.
21 Pangelinan Ltd. has received what amounts to be an unsecured loan
22 for \$99,000 from EDLF. Leo S. Pangelinan has used money from
23 this loan to satisfy personal debts and obligations. The corpo-
24 ration either cannot or will not repay the loan. Pangelinan Ltd.
25 has benefitted at the expense of EDLF, and Pangelinan Ltd. is now
26 "defunct."

1 [¶10,11] The alter ego doctrine is an equitable one. Fletcher
2 Cyc. Corp., § 41.25. The court is called upon to balance the
3 equities. The scale clearly tips in favor of EDLF in this case.
4 By piercing the corporate veil Leo S. Pangelinan will become
5 personally liable for the debts of Pangelinan Ltd. and be forced
6 to repay the loan. He treated Pangelinan Ltd. as his personal
7 business while he operated it and now he is being called upon to
8 answer for the debts of that venture. If, as Leo says, the
9 corporate assets can cover the outstanding balance to EDLF then
10 Leo will only have to liquidate those assets and turn over the
11 money. If not, he will be forced to use some of his personal
12 assets to satisfy this debt, but this is nothing more than this
13 court would ask from a sole proprietor and that is exactly the
14 way Leo Pangelinan operated Pangelinan Ltd.

15 B. John S. Pangelinan.

16 John S. Pangelinan resigned as officer and director of
17 Pangelinan Ltd. on August 13, 1980, less than two months after
18 the EDLF loan agreement was signed. The notice of default was
19 sent on September 23, 1983. There is no evidence that there was
20 any failure on the part of Pangelinan Ltd. to live up to the
21 terms of the loan agreement prior to the resignation of John S.
22 Pangelinan. EDLF produced no evidence that John S. Pangelinan
23 ever used corporate funds for personal matters. Nor did EDLF
24 produce evidence that John S. Pangelinan authorized the use of
25 corporate funds for other than corporate purposes.

26 The alter ego doctrine is an equitable one. With

1 regards to EDLF's case against John S. Pangelinan the equities
2 are in favor of John S. Pangelinan.

3. Strict Compliance with § 4534.

4 [12] If the language of a statute is plain "the sole function
5 of the courts is to enforce it according to its terms."
6 Caminetti v. United States, 242 U.S. 470, 485; 37 S.Ct. 192, 485;
7 61 L.Ed. 442, 453 (1916).

8 Chapter 5 of the Commonwealth code dealing with real
9 estate mortgage law contains § 4534 entitled "Notice of Default"
10 which states in pertinent part:

11 Not less than 30 days prior to the
12 commencement of any action or proceeding
13 seeking foreclosure of a mortgage,
14 written notice of default shall be
15 served as provided in Section 4524. The
notice shall be written in the English
language and in either Chamorro or
Carolinian and shall contain the
following: ... (emphasis added.)

16 Notice of default was sent by EDLF in English only.
17 The trial court found that the Pangelinans were well versed in
18 English and that § 4534 was intended to protect individuals who
19 were not well versed in English. The court concluded that
20 failure to strictly comply with the translation requirement did
21 not invalidate the notice of default.

22 On appeal Leo S. Pangelinan argues that the trial
23 court erred in concluding that strict compliance with § 4534 was
24 unnecessary in this case. EDLF answers this argument by repeating
25 ing the logical conclusion of the trial court, namely, defendants
understood English and therefore there was no need to translate

1 this notice.

2 Section 4534 states that notice of default shall be
3 sent in English and Chamorro or Carolinian. The language is
4 plain. The court is not being called upon to interpret a statute
5 it is being asked to enforce a statute that by its very terms
6 requires a translated notice of default prior to the commencement
7 of a suit for foreclosure.

8 Additionally, EDLF contends that since the purpose of
9 this chapter has been satisfied strict compliance should not be
10 required. Section 4511 outlines the purpose of Chapter 5:

11 The purpose of this Chapter is to
12 establish a system of mortgage law in the
13 Commonwealth which will induce lenders to
14 make secured commercial and residential
15 loans, while at the same time insuring that
16 residents of the Commonwealth who execute
17 mortgages will have a full comprehension of
18 the nature and consequences of their act.
19 All provisions of this Chapter shall be
20 construed in such a manner as to best eff-
21 fectuate its purposes.

22 There was sufficient evidence for this court to find that
23 defendants understood the notice of default. The purpose of
24 Chapter 5 was satisfied; EDLF lent Pangelinan Ltd. money and
25 Pangelinan Ltd. had full comprehension of the nature and
26 consequences of its act. But the language of § 4534 was ignored
by EDLF, a commonwealth agency.

27 EDLF also argues that to require a translated notice of
28 default in this case would give credence to the lesser of two
29 possible "interpretations" of this statute. Once again it should
30 be pointed out that when the language of a statute is plain and

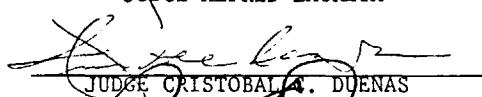
1 the meaning is clear the court does not interpret the statute, it
2 enforces it. Caminetti, 242 U.S. at 485.

3 [13] The language translation requirement is a legitimate
4 one. Many of the local inhabitants of the Commonwealth are not
5 fluent in English and the legislature decided it was essential
6 that they be protected. The language of the statute imposes a
7 translation requirement for all notices of default. The language
8 of § 4534 is mandatory and we find no reason to second-guess the
9 legislature. The untranslated notice of default is unenforceable
10 and therefore we reverse that portion of the judgment holding
11 that it was effective.

12 For these reasons we affirm those portions of the
13 judgment holding Leo S. Pangelinan personally liable for the
14 debts of Pangelinan Ltd. and holding John S. Pangelinan not
15 liable for the debts of Pangelinan Ltd. We reverse that portion
16 of the judgment holding the untranslated notice of default
17 effective and remand the case to the trial court for a judgment
18 consistent with this opinion.

19 AFFIRMED in part; REVERSED in part; and REMANDED.

20 
21 _____
22 JUDGE ALFRED LAURETA

23 
24 _____
25 JUDGE CRISTOBAL A. DUEÑAS

26 
27 _____
28 JUDGE LAUGHLIN E. WATERS