

TOTAL OFFICE PRODUCTS, INC. v. JOHN CHARLES CHANG, JR., ET AL.

G.R. Nos. 200070-71, 06 December 2021, *EN BANC*, (Inting, J.)

DOCTRINE OF THE CASE

The elements of doctrine of corporate opportunity are:

- (1) The corporation is financially able to exploit the opportunity;*
- (2) The opportunity is within the corporate's line of business;*
- (3) The corporation has an interest or expectancy in the opportunity; and*
- (4) By taking the opportunity for his own, the corporate fiduciary will be placed in a position inimical to his duties to the corporation.*

The Court ruled that even if the incorporation of TOPGOLD, et.al. were with the full knowledge of the members of the Ty Family, this does not equate to consent to the prejudicial transfer and acquisition of properties and opportunities of TOPROS which Chang, through his corporations, has shown to have committed. Indeed, TOPROS was correct in pointing out that the doctrine of "corporate opportunity" applies in the case.

FACTS

Total Office Products, Inc. (TOPROS) filed before the Securities and Exchange Commission (SEC) a Petition for Injunction, Mandatory Injunction, and Damages (With Urgent Motion for Issuance of Writ of Preliminary Attachment), which was later refiled as an Amended Petition for Accounting and Damages with Prayer for the Issuance of a Writ of Preliminary Attachment (Amended Petition) against TOPGOLD Philippines, Inc. (TOPGOLD), Golden Exim Trading and Commercial Corporation (Golden Exim), Identic International Corp. (Identic) (TOPGOLD, *et.al.*), John Charles Chang, Jr. (Chang), Saul Mari Chang, Hector Katigbak (Hector), Cecilia Katigbak (Cecilia), Rosario Sarah Fernando, and Elizabeth Jay (Elizabeth) (Chang, *et.al.*), who are all incorporators of the TOPGOLD, *et.al.*

Spouses Ramon (Ramon) and Yaona Ang Ty (Yaona) (Spouses Ty) wanted to establish a corporation that would be the sole distributor of Minolta plain paper copiers in the Philippines. Chang, a former employee of Pantrade, Inc., (Pantrade), a company also owned by the Ty Family, was given the duty to manage the new corporation. The Ty Family gave Chang 10% shares in the corporation with the assurance from Chang that he would render competent, exclusive, and loyal service. TOPROS was incorporated with an authorized capital stock of P4,000,000.00. Among the incorporators, Chang was the only one who is not a member of the Ty Family.

The Ty Family elected Chang as President and General Manager and entrusted to him the management and the funds of TOPROS. Meanwhile, Yaona served as Treasurer and Jennifer Ty (Jennifer) stood as Corporate Secretary. Upon Chang's request, Elizabeth, Hector, and Cecilia Katigbak (Cecilia), all Pantrade employees, were transferred to TOPROS.

TOPROS grew into a multi-million enterprise; thus, Spouses Ty increased its authorized capital stock to P10,000,000.00 and Chang's share to 20%. TOPROS included in its line of business the distribution of various office equipment and supplies. However, despite its success, no substantial cash dividends were distributed to the stockholders because, according to Chang, the corporation was investing its funds in several real properties in Metro Manila, Visayas, and Mindanao.

The Ty Family sensed irregularities in Chang's dealings when their friends and relatives began questioning the manner in which products and services from TOPROS were issued receipts and vouchers from TOPGOLD, *et.al.* The Ty Family requested Chang to return all corporate records of TOPROS. However, Chang offered to buy them out of their interest at TOPROS. This prompted the Ty Family to conduct an investigation which revealed that Chang, *et.al.* incorporated the TOPGOLD, *et.al.* to siphon the assets, funds, goodwill, equipment, and resources of TOPROS. According to TOPROS, Chang used its properties in organizing the TOPGOLD, *et.al.* and obtained opportunities properly belonging to it and its stockholders to their damage and prejudice. Chang was, thereafter, ousted as Corporate Director and officer of TOPROS.

The Regional Trial Court (RTC) rendered a Decision in favor of TOPROS. The CA reversed and set aside the RTC Decision.

ISSUES

Did Chang violate the “doctrine of corporate opportunity”?

RULING

YES. The elements of doctrine of corporate opportunity are:

- (1) The corporation is financially able to exploit the opportunity;
- (2) The opportunity is within the corporate’s line of business;
- (3) The corporation has an interest or expectancy in the opportunity; and
- (4) By taking the opportunity for his own, the corporate fiduciary will be placed in a position inimical to his duties to the corporation.

There is no dispute that Chang established TOPGOLD, *et.al.* which were in the same line of business and while still an officer and director of TOPROS. The Articles of Incorporation of Golden Exim and TOPGOLD showed that Chang owned 80% of the Golden Exim shares and 99.76 of the TOPGOLD shares. The General Information Sheet of Identic also showed that Chang owned 65% of Identic.

The service report of Linde, as well as the provisional receipts issued by Golden Exim, showed that Golden Exim entered into a service contract with the same client at the same time that TOPROS was servicing it. TOPGOLD published printed advertisements which were strikingly similar to those previously printed by TOPROS.

Chang, as President and General Manager of TOPGOLD, signed a deed of assignment with Hector as Service and Operations Manager of TOPROS which made it appear that TOPROS assigned its

rights under several rental agreements with different entities for the lease of various kinds of office equipment to TOPGOLD. It also authorized the corresponding rental payments on the rental agreements to be paid to TOPGOLD. Furthermore, TOPGOLD used the same address as TOPROS which not only gave it the opportunity to use TOPROS' resources but led the public to believe that they are one and the same entity.

Even if admitted, the circumstances cited by Chang, which suggest of knowledge, tolerance, or even acquiescence of TOPROS to his establishment of the TOPGOLD, *et.al.* which are in the same business as TOPROS, do not amount to the compliance required of Section 34 of the Corporation Code to absolve a director of disloyalty. The law explicitly requires that where a director, by virtue of his office, acquires for himself a business opportunity which should belong to the corporation, he must account to the latter for all profits by refunding them, unless his act has been ratified by a vote of the stockholders owning or representing at least two-thirds of the outstanding capital stock.

The Court ruled that even if the incorporation of TOPGOLD, *et.al.* were with the full knowledge of the members of the Ty Family, this does not equate to consent to the prejudicial transfer and acquisition of properties and opportunities of TOPROS which Chang, through his corporations, has shown to have committed. Indeed, TOPROS was correct in pointing out that the doctrine of "corporate opportunity" applies in the case.

To determine the exact liability of Chang, however, the instant case should be remanded to the trial court for the reception of additional evidence and the reevaluation of evidence already submitted, guided by the parameters aforementioned. That is, TOPROS as claimant bears the burden of proving the specific business opportunities that gave rise to its claim of damages under Section 34 of the Corporation Code.