

JOHN F. MCLEOD, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION), FILIPINAS SYNTHETIC FIBER CORPORATION (FILSYN), FAR EASTERN TEXTILE MILLS, INC., STA. ROSA ...

G.R. NO. 146667. January 23, 2007

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review[1] to set aside the Decision[2] dated 15 June 2000 and the Resolution[3] dated 27 December 2000 of the Court of Appeals in CA-G.R. SP No. 55130. The Court of Appeals affirmed with modification the 29 December 1998 Decision[4] of the National Labor Relations Commission (NLRC) in NLRC NCR 02-00949-95.

The Facts

The facts, as summarized by the Labor Arbiter and adopted by the NLRC and the Court of Appeals, are as follows:

On February 2, 1995, John F. McLeod filed a complaint for retirement benefits, vacation and sick leave benefits, non-payment of unused airline tickets, holiday pay, underpayment of salary and 13th month pay, moral and exemplary damages, attorney's fees plus interest against Filipinas Synthetic Corporation (Filsyn), Far Eastern Textile Mills, Inc., Sta. Rosa Textiles, Inc., Patricio Lim and Eric Hu.

In his Position Paper, complainant alleged that he is an expert in textile manufacturing process; that as early as 1956 he was hired as the Assistant Spinning Manager of Universal Textiles, Inc. (UTEX); that he was promoted to Senior Manager and worked for UTEX till 1980 under its President, respondent Patricio Lim; that in 1978 Patricio Lim formed Peggy Mills, Inc. with respondent Filsyn having controlling interest; that complainant was absorbed by Peggy Mills as its Vice President and Plant Manager of the plant at Sta. Rosa, Laguna; that at the time of his retirement complainant was receiving P60,000.00 monthly with vacation and sick leave benefits; 13[th] month pay, holiday pay and two round trip business class tickets on a Manila-London-Manila itinerary every three years which is convertible to cas[h] if unused; that in January 1986, respondents failed to pay vacation and leave credits and requested complainant to wait as it was short of funds but the same remain unpaid at present; that complainant is entitled to such benefit as per CBA provision (Annex "A"); that respondents likewise failed to pay complainant's holiday pay up to the present; that complainant is entitled to such benefits as per CBA provision (Annex "B"); that in 1989 the plant union staged a strike and in 1993 was found guilty of staging an illegal strike; that from 1989 to 1992 complainant was entitled to 4 round trip business class plane tickets on a Manila-London-Manila itinerary but this benefit not (sic) its monetary equivalent was not given; that on August 1990 the respondents reduced complainant's monthly salary of P60,000.00 by P9,900.00 till November 1993 or a period of 39 months; that in 1991 Filsyn sold Peggy Mills, Inc. to Far Eastern Textile Mills, Inc. as per agreement (Annex "D") and this was renamed

as Sta. Rosa Textile with Patricio Lim as Chairman and President; that complainant worked for Sta. Rosa until November 30 that from time to time the owners of Far Eastern consulted with complainant on technical aspects of reoperation of the plant as per correspondence (Annexes “D-1” and “D-2”); that when complainant reached and applied retirement age at the end of 1993, he was only given a reduced 13th month pay of P44,183.63, leaving a balance of P15,816.87; that thereafter the owners of Far Eastern Textiles decided for cessation of operations of Sta. Rosa Textiles; that on two occasions, complainant wrote letters (Annexes “E-1” to “E-2”) to Patricio Lim requesting for his retirement and other benefits; that in the last quarter of 1994 respondents offered complainant compromise settlement of only P300,000.00 which complainant rejected; that again complainant wrote a letter (Annex “F”) reiterating his demand for full payment of all benefits and to no avail, hence this complaint; and that he is entitled to all his money claims pursuant to law.

On the other hand, respondents in their Position Paper alleged that complainant was the former Vice-President and Plant Manager of Peggy Mills, Inc.; that he was hired in June 1980 and Peggy Mills closed operations due to irreversible losses at the end of July 1992 but the corporation still exists at present; that its assets were acquired by Sta. Rosa Textile Corporation which was established in April 1992 but still remains non-operational at present; that complainant was hired as consultant by Sta. Rosa Textile in November 1992 but he resigned on November 30, 1993; that Filsyn and Far Eastern Textiles are separate legal entities and have no employer relationship with complainant; that respondent Patricio Lim is the President and Board Chairman of Sta. Rosa Textile Corporation; that respondent Eric Hu is a Taiwanese and is Director of Sta. Rosa Textiles, Inc.; that complainant has no cause of action against Filsyn, Far Eastern Textile Ltd., Sta. Rosa Textile Corporation and Eric Hu; that Sta. Rosa only acquired the assets and not the liabilities of Peggy Mills, Inc.; that Patricio Lim was only impleaded as Board Chairman of Sta. Rosa Textile and not as private individual; that while complainant was Vice President and Plant Manager of Peggy Mills, the union staged a strike up to July 1992 resulting in closure of operations due to irreversible losses as per Notice (Annex “1”); that complainant was relied upon to settle the labor problem but due to his lack of attention and absence the strike continued resulting in closure of the company; and losses to Sta. Rosa which acquired its assets as per their financial statements (Annexes “2” and “3”); that the attendance records of complainant from April 1992 to November 1993 (Annexes “4” and “5”) show that he was either absent or worked at most two hours a day; that Sta. Rosa and Peggy Mills are interposing counterclaims for damages in the total amount of P36,757.00 against complainant; that complainant’s monthly salary at Peggy Mills was P50,495.00 and not P60,000.00; that Peggy Mills, does not have a retirement program; that whatever amount complainant is entitled should be offset with the counterclaims; that complainant worked only for 12 years from 1980 to 1992; that complainant was only hired as a consultant and not an employee by Sta. Rosa Textile; that complainant’s attendance record of absence and two hours daily work during the period of the strike wipes out any vacation/sick leave he may have accumulated; that there is no basis for complainant’s claim of two (2) business class airline tickets; that complainant’s pay already included the holiday pay; that he is entitled to holiday pay as consultant by Sta. Rosa; that he has waived this benefit in his 12 years of work with Peggy Mills; that he is not entitled to 13th month pay as consultant; and that he is not entitled to moral and exemplary damages and attorney’s fees.

In his Reply, complainant alleged that all respondents being one and the same entities are solidarily liable for all salaries and benefits and complainant is entitled to; that all respondents have the same address at 12/F B.A. Lepanto Building, Makati City; that their counsel holds office in the same address; that all respondents have the same offices and key personnel such as Patricio Lim and Eric Hu; that respondents’ Position Paper is verified by Marialen C. Corpuz who knows all the corporate officers of all respondents; that the veil of corporate fiction may be pierced if it is used as a shield to perpetuate fraud and confuse legitimate issues; that complainant never accepted the change in his position from Vice-President and Plant Manager to consultant and it is incumbent upon respondents to prove that he was only a consultant; that the Deed of Dation in Payment with Lease (Annex “C”) proves that Sta. Rosa took over the assets of Peggy Mills as early as June 15, 1992 and not 1995 as alleged by respondents; that complainant never resigned from his job but applied for retirement as per letters (Annexes “E-1”, “E-2” and “F”); that documents “G”, “H” and “I” show that Eric Hu is a top official of Peggy Mills that the closure of Peggy Mills cannot be the fault of complainant; that the

strike was staged on the issue of CBA negotiations which is not part of the usual duties and responsibilities as Plant Manager; that complainant is a British national and is prohibited by law in engaging in union activities; that as per Resolution (Annex "3") of the NLRC in the proper case, complainant testified in favor of management; that the alleged attendance record of complainant was lifted from the logbook of a security agency and is hearsay evidence; that in the other attendance record it shows that complainant was reporting daily and even on Saturdays; that his limited hours was due to the strike and cessation of operations; that as plant manager complainant was on call 24 hours a day; that respondents must pay complainant the unpaid portion of his salaries and his retirement benefits that cash voucher No. 17015 (Annex "K") shows that complainant drew the monthly salary of P60,000.00 which was reduced to P50,495.00 in August 1990 and therefore without the consent of complainant; that complainant was assured that he will be paid the deduction as soon as the company improved its financial standing but this assurance was never fulfilled; that Patricio Lim promised complainant his retirement pay as per the latter's letters (Annexes "E-1", "E-2" and "F"); that the law itself provides for retirement benefits; that Patricio Lim by way of Memorandum (Annex "M") approved vacation and sick leave benefits of 22 days per year effective 1986; that Peggy Mills required monthly paid employees to sign an acknowledgement that their monthly compensation includes holiday pay; that complainant was not made to sign this undertaking precisely because he is entitled to holiday pay over and above his monthly pay; that the company paid for complainant's two (2) round trip tickets to London in 1983 and 1986 as reflected in the complainant's passport (Annex "N"); that respondents claim that complainant is not entitled to 13th month pay but paid in 1993 and all the past 13 years; that complainant is entitled to moral and exemplary damages and attorney's fees; that all doubts must be resolved in favor of complainant; and that complainant reserved the right to file perjury cases against those concerned.

In their Reply, respondents alleged that except for Peggy Mills, the other respondents are not proper persons in interest due to the lack of employer-employee relationship between them and complainant; that undersigned counsel does not represent Peggy Mills, Inc.

In a separate Position Paper, respondent Peggy Mills alleged that complainant was hired on February 10, 1991 as per Board Minutes (Annex "A"); that on August 19, 1987, the workers staged an illegal strike causing cessation of operations on July 21, 1992; that respondent filed a Notice of Closure with the DOLE (Annex "B"); that all employees were given separation pay except for complainant whose task was extended to December 31, 1992 to wind up the affairs of the company as per vouchers (Annexes "C" and "C-1"); that respondent offered complainant his retirement benefits under RA 7641 but complainant refused; that the regular salaries of complainant from closure up to December 31, 1992 have offset whatever vacation and sick leaves he accumulated; that his claim for unused plane tickets from 1989 to 1992 has no policy basis, the company's formula of employees monthly rate x 314 days over 12 months already included holiday pay; that complainant's unpaid portion of the 13th month pay in 1993 has no basis because he was only an employee up to December 31, 1992; that the 13th month pay was based on his last salary; and that complainant is not entitled to damages.[5]

On 3 April 1998, the Labor Arbiter rendered his decision with the following dispositive portion:

WHEREFORE, premises considered, We hold all respondents as jointly and solidarily liable for complainant's money claims as adjudicated above and computed below as follows:

Retirement Benefits (one month salary for every year of service)

6/80 - 11/30/93 = 14 years

P60,000 x 14.0 mos.

P 840,000.00

Vacation and Sick Leave (3 yrs.)

P2,000.00 x 22 days x 3 yrs.

132,000.00

Underpayment of Salaries (3 yrs.)

P60,000 - P50,495 = P9,505

P 9,505 x 36.0 mos.

342,180.00

Holiday Pay (3 yrs.)

P2,000 x 30 days

60,000.00

Underpayment of 13th month pay (1993)... 15,816.87

Moral Damages

3,000,000.00

Exemplary Damages

1,000,000.00

10% Attorney's Fees

138,999.68

TOTAL

P5,528,996.55

Unused Airline Tickets (3 yrs.)

(To be converted in Peso upon payment)

\$2,450.00 x 3.0 [yrs.]

\$7,350.00

SO ORDERED.[6]

Filipinas Synthetic Fiber Corporation (Filsyn), Far Eastern Textile Mills, Inc. (FETMI), Sta. Rosa Textiles, Inc. (SRTI), Patricio L. Lim (Patricio), and Eric Hu appealed to the NLRC. The NLRC rendered its decision on 29 December 1998, thus:

WHEREFORE, the Decision dated 3 April 1998 is hereby REVERSED and SET ASIDE and a new one is entered ORDERING respondent Peggy Mills, Inc. to pay complainant his retirement pay equivalent to 22.5 days for every year of service for his twelve (12) years of service from 1980 to 1992 based on a salary rate of P50,495.00 a month.

All other claims are DISMISSED for lack of merit.

SO ORDERED.[7]

John F. McLeod (McLeod) filed a motion for reconsideration which the NLRC denied in its Resolution of 30 June 1999.[8] McLeod thus filed a petition for certiorari before the Court of Appeals assailing the decision and resolution of the NLRC.[9]

The Ruling of the Court of Appeals

On 15 June 2000, the Court of Appeals rendered judgment as follows:

WHEREFORE, the decision dated December 29, 1998 of the NLRC is hereby AFFIRMED with the MODIFICATION that respondent Patricio Lim is jointly and solidarily liable with Peggy Mills, Inc., to pay the following amounts to petitioner John F. McLeod:

- retirement pay equivalent to 22.5 days for every year of service for his twelve (12) years of service from 1980 to 1992 based on a salary rate of P50,495, a month;
- moral damages in the amount of one hundred thousand (P100,000.00) Pesos;
- exemplary damages in the amount of fifty thousand (P50,000.00) Pesos; and
- attorney's fees equivalent to 10% of the total award.

No costs is awarded.

SO ORDERED.[10]

The Court of Appeals rejected McLeod's theory that all respondent corporations are the same corporate entity which should be held solidarily liable for the payment of his monetary claims.

The Court of Appeals ruled that the fact that (1) all respondent corporations have the same address; (2) all were represented by the same counsel, Atty. Isidro S. Escano; (3) Atty. Escano holds office at respondent corporations' address; and (4) all respondent corporations have common officers and key personnel, would not justify the application of the doctrine of piercing the veil of corporate fiction.

The Court of Appeals held that there should be clear and convincing evidence that SRTI, FETMI, and Filsyn were being used as alter ego, adjunct or business conduit for the sole benefit of Peggy Mills, Inc. (PMI), otherwise, said corporations should be treated as distinct and separate from each other.

The Court of Appeals pointed out that the Articles of Incorporation of PMI show that it has six incorporators, namely, Patricio, Jose Yulo, Jr., Carlos Palanca, Jr., Cesar R. Concio, Jr., E. A. Picasso, and Walter Euyang. On the other hand, the Articles of Incorporation of Filsyn show that it has 10 incorporators, namely, Jesus Y. Yujuico, Carlos Palanca, Jr., Patricio, Ang Beng Uh, Ramon A. Yulo, Honorio Poblador, Jr., Cipriano Azada, Manuel Tomacruz, Ismael Maningas, and Benigno Zialcita, Jr.

The Court of Appeals pointed out that PMI and Filsyn have only two interlocking incorporators and directors, namely, Patricio and Carlos Palanca, Jr.

Reiterating the ruling of this Court in *Laguio v. NLRC*,^[11] the Court of Appeals held that mere substantial identity of the incorporators of two corporations does not necessarily imply fraud, nor warrant the piercing of the veil of corporate fiction.

The Court of Appeals also pointed out that when SRTI and PMI executed the Dation in Payment with Lease, it

was clear that SRTI did not assume the liabilities PMI incurred before the execution of the contract.

The Court of Appeals held that McLeod failed to substantiate his claim that all respondent corporations should be treated as one corporate

entity. The Court of Appeals thus upheld the NLRC's finding that no employer-employee relationship existed between McLeod and respondent corporations except PMI.

The Court of Appeals ruled that Eric Hu, as an officer of PMI, should be exonerated from any liability, there being no proof of malice or bad faith on his part. The Court of Appeals, however, ruled that McLeod was entitled to recover from PMI and Patricio, the company's Chairman and President.

The Court of Appeals pointed out that Patricio deliberately and maliciously evaded PMI's financial obligation to McLeod. The Court of Appeals stated that, on several occasions, despite his approval, Patricio refused and ignored to pay McLeod's retirement benefits. The Court of Appeals stated that the delay lasted for one year prompting McLeod to initiate legal action. The Court of Appeals stated that although PMI offered to pay McLeod his retirement benefits, this offer for P300,000 was still below the "floor limits" provided by law. The Court of Appeals held that an employee could demand payment of retirement benefits as a matter of right.

The Court of Appeals stated that considering that PMI was no longer in operation, its "officer should be held liable for acting on behalf of the corporation."

The Court of Appeals also ruled that since PMI did not have a retirement program providing for retirement benefits of its employees, Article 287 of the Labor Code must be followed. The Court of Appeals thus upheld the NLRC's finding that McLeod was entitled to retirement pay equivalent to 22.5 days for every year of service from 1980 to 1992 based on a salary rate of P50,495 a month.

The Court of Appeals held that McLeod was not entitled to payment of vacation, sick leave and holiday pay because as Vice President and Plant Manager, McLeod is a managerial employee who, under Article 82 of the Labor Code, is not entitled to these benefits.

The Court of Appeals stated that for McLeod to be entitled to payment of service incentive leave and holidays, there must be an agreement to that effect between him and his employer.

Moreover, the Court of Appeals rejected McLeod's argument that since PMI paid for his two round-trip tickets Manila-London in 1983 and 1986, he was also "entitled to unused airline tickets." The Court of Appeals stated that the fact that PMI granted McLeod "free transport to and from Manila and London for the year 1983 and 1986 does not ipso facto characterize it as regular that would establish a prevailing company policy."

The Court of Appeals also denied McLeod's claims for underpayment of salaries and his 13th month pay for the year 1994. The Court of Appeals upheld the NLRC's ruling that it could be deducted from McLeod's own narration of facts that he agreed to the reduction of his compensation from P60,000 to P50,495 in August 1990 to November 1993.

The Court of Appeals found the award of moral damages for P50,000 in order because of the "stubborn refusal" of PMI and Patricio to respect McLeod's valid claims.

The Court of Appeals also ruled that attorney's fees equivalent to 10% of the total award should be given to McLeod under Article 2208, paragraph 2 of the Civil Code.[12]

Hence, this petition.

The Issues

McLeod submits the following issues for our consideration:

- Whether the challenged Decision and Resolution of the 14th Division of the Court of Appeals promulgated on 15 June 2000 and 27 December 2000, respectively, in CA-G.R. SP No. 55130 are in accord with law and jurisprudence;
- Whether an employer-employee relationship exists between the private respondents and the petitioner for purposes of determining employer liability to the petitioner;
- Whether the private respondents may avoid their financial obligations to the petitioner by invoking the veil of corporate fiction;
- Whether petitioner is entitled to the relief he seeks against the private respondents;
- Whether the ruling of [this] Court in *Special Police and Watchman Association (PLUM) Federation v. National Labor Relations Commission* cited by the Office of the Solicitor General is applicable to the case of petitioner; and
- Whether the appeal taken by the private respondents from the Decision of the labor arbiter meets the mandatory requirements recited in the Labor Code of the Philippines, as amended.[13]

The Court's Ruling

The petition must fail.

McLeod asserts that the Court of Appeals should not have upheld the NLRC's findings that he was a managerial employee of PMI from 20 June 1980 to 31 December 1992, and then a consultant of SRTI up to 30 November 1993. McLeod asserts that if only for this "brazen assumption," the Court of Appeals should not have sustained the NLRC's ruling that his cause of action was only against PMI.

These assertions do not deserve serious consideration.

Records disclose that McLeod was an employee only of PMI.[14] PMI hired McLeod as its acting Vice President and General Manager on 20 June 1980.[15] PMI confirmed McLeod's appointment as Vice President/Plant Manager in the Special Meeting of its Board of Directors on 10 February 1981.[16] McLeod himself testified during the hearing before the Labor Arbiter that his "regular employment" was with PMI.[17]

When PMI's rank-and-file employees staged a strike on 19 August 1989 to July 1992, PMI incurred serious business losses.[18] This prompted PMI to stop permanently plant operations and to send a notice of closure to the Department of Labor and Employment on 21 July 1992.[19]

PMI informed its employees, including McLeod, of the closure.[20] PMI paid its employees, including managerial employees, except McLeod, their unpaid wages, sick leave, vacation leave, prorated 13th month pay, and separation pay. Under the compromise agreement between PMI and its employees, the employer-employee relationship between them ended on 25 November 1992.[21]

Records also disclose that PMI extended McLeod's service up to 31 December 1992 "to wind up some affairs" of the company.[22] McLeod testified on cross-examination that he received his last salary from PMI in December 1992.[23]

It is thus clear that McLeod was a managerial employee of PMI from 20 June 1980 to 31 December 1992.

However, McLeod claims that after FETMI purchased PMI in January 1993, he "continued to work at the same plant with the same responsibilities" until 30 November 1993. McLeod claims that FETMI merely renamed PMI

as SRTI. McLeod asserts that it was for this reason that when he reached the retirement age in 1993, he asked all the respondents for the payment of his benefits.[24]

These assertions deserve scant consideration.

What took place between PMI and SRTI was dation in payment with lease. Pertinent portions of the contract that PMI and SRTI executed on 15 June 1992 read:

WHEREAS, PMI is indebted to the Development Bank of the Philippines (“DBP”) and as security for such debts (the “Obligations”) has mortgaged its real properties covered by TCT Nos. T-38647, T-37136, and T-37135, together with all machineries and improvements found thereat, a complete listing of which is hereto attached as Annex “A” (the “Assets”);

WHEREAS, by virtue of an inter-governmental agency arrangement, DBP transferred the Obligations, including the Assets, to the Asset Privatization Trust (“APT”) and the latter has received payment for the Obligations from PMI, under APT’s Direct Debt Buy-Out (“DDBO”) program thereby causing APT to completely discharge and cancel the mortgage in the Assets and to release the titles of the Assets back to PMI;

WHEREAS, PMI obtained cash advances from SRTC in the total amount of TWO HUNDRED TEN MILLION PESOS (P210,000,000.00) (the “Advances”) to enable PMI to consummate the DDBO with APT, with SRTC subrogating APT as PMI’s creditor thereby;

WHEREAS, in payment to SRTC for PMI’s liability, PMI has agreed to transfer all its rights, title and interests in the Assets by way of a dation in payment to SRTC, provided that simultaneous with the dation in payment, SRTC shall grant unto PMI the right to lease the Assets under terms and conditions stated hereunder;

x x x x

NOW THEREFORE, for and in consideration of the foregoing premises, and of the terms and conditions hereinafter set forth, the parties hereby agree as follows:

1. CESSION. In consideration of the amount of TWO HUNDRED TEN MILLION PESOS (P210,000,000.00), PMI hereby cedes, conveys and transfers to SRTC all of its rights, title and interest in and to the Assets by way of a dation in payment.[25](Emphasis supplied)

As a rule, a corporation that purchases the assets of another will not be liable for the debts of the selling corporation, provided the former acted in good faith and paid adequate consideration for such assets, except when any of the following circumstances is present: (1) where the purchaser expressly or impliedly agrees to assume the debts, (2) where the transaction amounts to a consolidation or merger of the corporations, (3) where the purchasing corporation is merely a continuation of the selling corporation, and (4) where the selling corporation fraudulently enters into the transaction to escape liability for those debts.[26]

None of the foregoing exceptions is present in this case.

Here, PMI transferred its assets to SRTI to settle its obligation to SRTI in the sum of P210,000,000. We are not convinced that PMI fraudulently transferred these assets to escape its liability for any of its debts. PMI had already paid its employees, except McLeod, their money claims.

There was also no merger or consolidation of PMI and SRTI.

Consolidation is the union of two or more existing corporations to form a new corporation called the consolidated corporation. It is a combination by agreement between two or more corporations by which their rights, franchises, and property are united and become those of a single, new corporation, composed generally, although not necessarily, of the stockholders of the original corporations.

Merger, on the other hand, is a union whereby one corporation absorbs one or more existing corporations, and the absorbing corporation survives and continues the combined business.

The parties to a merger or consolidation are called constituent corporations. In consolidation, all the constituents are dissolved and absorbed by the new consolidated enterprise. In merger, all constituents, except the surviving corporation, are dissolved. In both cases, however, there is no liquidation of the assets of the dissolved corporations, and the surviving or consolidated corporation acquires all their properties, rights and franchises and their stockholders usually become its stockholders.

The surviving or consolidated corporation assumes automatically the liabilities of the dissolved corporations, regardless of whether the creditors have consented or not to such merger or consolidation.[27]

In the present case, there is no showing that the subject dation in payment involved any corporate merger or consolidation. Neither is there any showing of those indicative factors that SRTI is a mere instrumentality of PMI.

Moreover, SRTI did not expressly or impliedly agree to assume any of PMI's debts. Pertinent portions of the subject Deed of Dation in Payment with Lease provide, thus:

2. WARRANTIES AND REPRESENTATIONS. PMI hereby warrants and represents the following:

x x x x

(e) PMI shall warrant that it will hold SRTC or its assigns, free and harmless from any liability for claims of PMI's creditors, laborers, and workers and for physical injury or injury to property arising from PMI's custody, possession, care, repairs, maintenance, use or operation of the Assets except ordinary wear and tear;[28] (Emphasis supplied)

Also, McLeod did not present any evidence to show the alleged renaming of "Peggy Mills, Inc." to "Sta. Rosa Textiles, Inc."

Hence, it is not correct for McLeod to treat PMI and SRTI as the same entity.

Respondent corporations assert that SRTI hired McLeod as consultant after PMI stopped operations.[29] On the other hand, McLeod asserts that he was respondent corporations' employee from 1980 to 30 November 1993.[30] However, McLeod failed to present any proof of employer-employee relationship between him and Filsyn, SRTI, or FETMI. McLeod testified, thus:

ATTY. ESCANO:

Do you have any employment contract with Far Eastern Textile?

WITNESS:

It is my belief up the present time.

ATTY. AVECILLA:

May I request that the witness be allowed to go through his Annexes, Your Honor.

ATTY. ESCANO:

Yes, but I want a precise answer to that question. If he has an employment contract with Far Eastern Textile?

WITNESS:

Can I answer it this way, sir? There is not a valid contract but I was under the impression taking into

consideration that the closeness that I had at Far Eastern Textile is enough during that period of time of the development of Peggy Mills to reorganize a staff. I was under the basic impression that they might still retain my status as Vice President and Plant Manager of the company.

ATTY. ESCANO:

But the answer is still, there is no employment contract in your possession appointing you in any capacity by Far Eastern?

WITNESS:

There was no written contract, sir.

x x x x

ATTY. ESCANO:

So, there is proof that you were in fact really employed by Peggy Mills?

WITNESS:

Yes, sir.

ATTY. ESCANO:

Of course, my interest now is to whether or not there is a similar document to present that you were employed by the other respondents like Filsyn Corporation?

WITNESS:

I have no document, sir.

ATTY. ESCANO:

What about Far Eastern Textile Mills?

WITNESS:

I have no document, sir.

ATTY. ESCANO:

And Sta. Rosa Textile Mills?

WITNESS:

There is no document, sir.[31]

x x x x

ATTY. ESCANO:

Q Yes. Let me be more specific, Mr. McLeod. Do you have a contract of employment from Far Eastern Textiles, Inc.?

A No, sir.

Q What about Sta. Rosa Textile Mills, do you have an employment contract from this company?

A No, sir.

x x x x

Q And what about respondent Eric Hu. Have you had any contract of employment from Mr. Eric Hu?

A Not a direct contract but I was taken in and I told to take over this from Mr. Eric Hu. Automatically, it confirms that Mr. Eric Hu, in other words, was under the control of Mr. Patricio Lim at that period of time.

Q No documents to show, Mr. McLeod?

A No. No documents, sir.[32]

McLeod could have presented evidence to support his allegation of employer-employee relationship between him and any of Filsyn, SRTI, and FETMI, but he did not. Appointment letters or employment contracts, payrolls, organization charts, SSS registration, personnel list, as well as testimony of co-employees, may serve as evidence of employee status.[33]

It is a basic rule in evidence that parties must prove their affirmative allegations. While technical rules are not strictly followed in the NLRC, this does not mean that the rules on proving allegations are entirely ignored. Bare allegations are not enough. They must be supported by substantial evidence at the very least.[34]

However, McLeod claims that “for purposes of determining employer liability, all private respondents are one and the same employer” because: (1) they have the same address; (2) they are all engaged in the same business; and (3) they have interlocking directors and officers.[35]

This assertion is untenable.

A corporation is an artificial being invested by law with a personality separate and distinct from that of its stockholders and from that of other corporations to which it may be connected.[36]

While a corporation may exist for any lawful purpose, the law will regard it as an association of persons or, in case of two corporations, merge them into one, when its corporate legal entity is used as a cloak for fraud or illegality. This is the doctrine of piercing the veil of corporate fiction. The doctrine applies only when such corporate fiction is used to defeat public convenience, justify wrong, protect fraud, or defend crime,[37] or when it is made as a shield to confuse the legitimate issues, or where a corporation is the 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.[38]

To disregard the separate juridical personality of a corporation, the wrongdoing must be established clearly and convincingly. It cannot be presumed.[39]

Here, we do not find any of the evils sought to be prevented by the doctrine of piercing the corporate veil.

Respondent corporations may be engaged in the same business as that of PMI, but this fact alone is not enough reason to pierce the veil of corporate fiction.[40]

In *Indophil Textile Mill Workers Union v. Calica*,[41] the Court ruled, thus:

In the case at bar, petitioner seeks to pierce the veil of corporate entity of Acrylic, alleging that the creation of the corporation is a devise to evade the application of the CBA between petitioner Union and private respondent Company. While we do not discount the possibility of the similarities of the businesses of private respondent and Acrylic, neither are we inclined to apply the doctrine invoked by petitioner in granting the relief sought. The fact that the businesses of private respondent and Acrylic are related, that some of the employees of the private respondent are the same persons manning and providing for auxiliary services to the units of Acrylic, and that the physical plants, offices and facilities are situated in the same compound, it is our

considered opinion that these facts are not sufficient to justify the piercing of the corporate veil of Acrylic.[42]
(Emphasis supplied)

Also, the fact that SRTI and PMI shared the same address, i.e., 11/F BA-Lepanto Bldg., Paseo de Roxas, Makati City,[43] can be explained by the two companies' stipulation in their Deed of Dation in Payment with Lease that "simultaneous with the dation in payment, SRTC shall grant unto PMI the right to lease the Assets under terms and conditions stated hereunder."[44]

As for the addresses of Filsyn and FETMI, Filsyn held office at 12[th] Floor, BA-Lepanto Bldg., Paseo de Roxas, Makati City,[45] while FETMI held office at 18F, Tun Nan Commercial Building, 333 Tun Hwa South Road, Sec. 2, Taipei, Taiwan, R.O.C.[46] Hence, they did not have the same address as that of PMI.

That respondent corporations have interlocking incorporators, directors, and officers is of no moment.

The only interlocking incorporators of PMI and Filsyn were Patricio and Carlos Palanca, Jr.[47] While Patricio was Director and Board Chairman of Filsyn, SRTI, and PMI,[48] he was never an officer of FETMI.

Eric Hu, on the other hand, was Director of Filsyn and SRTI.[49] He was never an officer of PMI.

Marielen C. Corpuz, Filsyn's Finance Officer,[50] testified on cross-examination that (1) among all of Filsyn's officers, only she was the one involved in the management of PMI; (2) only she and Patricio were the common officers between Filsyn and PMI; and (3) Filsyn and PMI are "two separate companies."[51]

Apolinario L. Posio, PMI's Chief Accountant, testified that "SRTI is a different corporation from PMI."[52]

At any rate, the existence of interlocking incorporators, directors, and officers is not enough justification to pierce the veil of corporate fiction, in the absence of fraud or other public policy considerations.[53]

In *Del Rosario v. NLRC*,[54] the Court ruled that substantial identity of the incorporators of corporations does not necessarily imply fraud.

In light of the foregoing, and there being no proof of employer-employee relationship between McLeod and respondent corporations and Eric Hu, McLeod's cause of action is only against his former employer, PMI.

On Patricio's personal liability, it is settled that in the absence of malice, bad faith, or specific provision of law, a stockholder or an officer of a corporation cannot be made personally liable for corporate liabilities.[55]

To reiterate, a corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. The rule is that obligations incurred by the corporation, acting through its directors, officers, and employees, are its sole liabilities.[56]

Personal liability of corporate directors, trustees or officers attaches only when (1) they assent to a patently unlawful act of the corporation, or when they are guilty of bad faith or gross negligence in directing its affairs, or when there is a conflict of interest resulting in damages to the corporation, its stockholders or other persons; (2) they consent to the issuance of watered down stocks or when, having knowledge of such issuance, do not forthwith file with the corporate secretary their written objection; (3) they agree to hold themselves personally and solidarily liable with the corporation; or (4) they are made by specific provision of law personally answerable for their corporate action.[57]

Considering that McLeod failed to prove any of the foregoing exceptions in the present case, McLeod cannot hold Patricio solidarily liable with PMI.

The records are bereft of any evidence that Patricio acted with malice or bad faith. Bad faith is a question of fact

and is evidentiary. Bad faith does not connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious wrongdoing. It means breach of a known duty through some ill motive or interest. It partakes of the nature of fraud.[58]

In the present case, there is nothing substantial on record to show that Patricio acted in bad faith in terminating McLeod's services to warrant Patricio's personal liability. PMI had no other choice but to stop plant operations. The work stoppage therefore was by necessity. The company could no longer continue with its plant operations because of the serious business losses that it had suffered. The mere fact that Patricio was president and director of PMI is not a ground to conclude that he should be held solidarily liable with PMI for McLeod's money claims.

The ruling in *A.C. Ransom Labor Union-CCLU v. NLRC*,[59] which the Court of Appeals cited, does not apply to this case. We quote pertinent portions of the ruling, thus:

(a) Article 265 of the Labor Code, in part, expressly provides:

"Any worker whose employment has been terminated as a consequence of an unlawful lockout shall be entitled to reinstatement with full backwages."

Article 273 of the Code provides that:

"Any person violating any of the provisions of Article 265 of this Code shall be punished by a fine of not exceeding five hundred pesos and/or imprisonment for not less than one (1) day nor more than six (6) months."

(b) How can the foregoing provisions be implemented when the employer is a corporation? The answer is found in Article 212 (c) of the Labor Code which provides:

"(c) 'Employer' includes any person acting in the interest of an employer, directly or indirectly. The term shall not include any labor organization or any of its officers or agents except when acting as employer."The foregoing was culled from Section 2 of RA 602, the Minimum Wage Law. Since RANSOM is an artificial person, it must have an officer who can be presumed to be the employer, being the "person acting in the interest of (the) employer" RANSOM. The corporation, only in the technical sense, is the employer.

The responsible officer of an employer corporation can be held personally, not to say even criminally, liable for non-payment of back wages. That is the policy of the law.

x x x x

(c) If the policy of the law were otherwise, the corporation employer can have devious ways for evading payment of back wages. In the instant case, it would appear that RANSOM, in 1969, foreseeing the possibility or probability of payment of back wages to the 22 strikers, organized ROSARIO to replace RANSOM, with the latter to be eventually phased out if the 22 strikers win their case. RANSOM actually ceased operations on May 1, 1973, after the December 19, 1972 Decision of the Court of Industrial Relations was promulgated against RANSOM.[60] (Emphasis supplied)

Clearly, in *A.C. Ransom*, RANSOM, through its President, organized ROSARIO to evade payment of backwages to the 22 strikers. This situation, or anything similar showing malice or bad faith on the part of Patricio, does not obtain in the present case. In *Santos v. NLRC*,[61] the Court held, thus:

It is true, there were various cases when corporate officers were themselves held by the Court to be personally accountable for the payment of wages and money claims to its employees. In *A.C. Ransom Labor Union-CCLU vs. NLRC*, for instance, the Court ruled that under the Minimum Wage Law, the responsible officer of an employer corporation could be held personally liable for nonpayment of backwages for "(i)f the policy of the law were otherwise, the corporation employer (would) have devious ways for evading payment of backwages." In the absence of a clear identification of the officer directly responsible for failure to pay the

backwages, the Court considered the President of the corporation as such officer. The case was cited in Chua vs. NLRC in holding personally liable the vice-president of the company, being the highest and most ranking official of the corporation next to the President who was dismissed for the latter's claim for unpaid wages.

A review of the above exceptional cases would readily disclose the attendance of facts and circumstances that could rightly sanction personal liability on the part of the company officer. In *A.C. Ransom*, the corporate entity was a family corporation and execution against it could not be implemented because of the disposition posthaste of its leviable assets evidently in order to evade its just and due obligations. The doctrine of "piercing the veil of corporate fiction" was thus clearly appropriate. Chua likewise involved another family corporation, and this time the conflict was between two brothers occupying the highest ranking positions in the company. There were incontrovertible facts which pointed to extreme personal animosity that resulted, evidently in bad faith, in the easing out from the company of one of the brothers by the other.

The basic rule is still that which can be deduced from the Court's pronouncement in *Sunio vs. National Labor Relations Commission*; thus:

We come now to the personal liability of petitioner, Sunio, who was made jointly and severally responsible with petitioner company and CIPI for the payment of the backwages of private respondents. This is reversible error. The Assistant Regional Director's Decision failed to disclose the reason why he was made personally liable. Respondents, however, alleged as grounds thereof, his being the owner of one-half (½) interest of said corporation, and his alleged arbitrary dismissal of private respondents.

Petitioner Sunio was impleaded in the Complaint in his capacity as General Manager of petitioner corporation. There appears to be no evidence on record that he acted maliciously or in bad faith in terminating the services of private respondents. His act, therefore, was within the scope of his authority and was a corporate act.

It is basic that 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. 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. Petitioner Sunio, therefore, should not have been made personally answerable for the payment of private respondents' back salaries.[62] (Emphasis supplied)

Thus, the rule is still that the doctrine of piercing the corporate veil applies only when the corporate fiction is used to defeat public convenience, justify wrong, protect fraud, or defend crime. In the absence of malice, bad faith, or a specific provision of law making a corporate officer liable, such corporate officer cannot be made personally liable for corporate liabilities. Neither Article 212(c) nor Article 273 (now 272) of the Labor Code expressly makes any corporate officer personally liable for the debts of the corporation. As this Court ruled in *H.L. Carlos Construction, Inc. v. Marina Properties Corporation*:[63]

We concur with the CA that these two respondents are not liable. Section 31 of the Corporation Code (Batas Pambansa Blg. 68) provides:

"Section 31. Liability of directors, trustees or officers. - Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith ... shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders and other persons."

The personal liability of corporate officers validly attaches only when (a) they assent to a patently unlawful act of the corporation; or (b) they are guilty of bad faith or gross negligence in directing its affairs; or (c) they incur conflict of interest, resulting in damages to the corporation, its stockholders or other persons.

The records are bereft of any evidence that Typoco acted in bad faith with gross or inexcusable negligence, or that he acted outside the scope of his authority as company president. The unilateral termination of the Contract during

the existence of the TRO was indeed contemptible – for which MPC should have merely been cited for contempt of court at the most – and a preliminary injunction would have then stopped work by the second contractor. Besides, there is no showing that the unilateral termination of the Contract was null and void.[64]

McLeod is not entitled to payment of vacation leave and sick leave as well as to holiday pay. Article 82, Title I, Book Three of the Labor Code, on Working Conditions and Rest Periods, provides:

Coverage. ? The provisions of this title shall apply to employees in all establishments and undertakings whether for profit or not, but not to government employees, managerial employees, field personnel, members of the family of the employer who are dependent on him for support, domestic helpers, persons in the personal service of another, and workers who are paid by results as determined by the Secretary of Labor in appropriate regulations.

As used herein, “managerial employees” refer to those whose primary duty consists of the management of the establishment in which they are employed or of a department or subdivision thereof, and to other officers or members of the managerial staff. (Emphasis supplied)

As Vice President/Plant Manager, McLeod is a managerial employee who is excluded from the coverage of Title I, Book Three of the Labor Code. McLeod is entitled to payment of vacation leave and sick leave only if he and PMI had agreed on it. The payment of vacation leave and sick leave depends on the policy of the employer or the agreement between the employer and employee.[65] In the present case, there is no showing that McLeod and PMI had an agreement concerning payment of these benefits.

McLeod’s assertion of underpayment of his 13[th] month pay in December 1993 is unavailing.[66] As already stated, PMI stopped plant operations in 1992. McLeod himself testified that he received his last salary from PMI in December 1992. After the termination of the employer-employee relationship between McLeod and PMI, SRTI hired McLeod as consultant and not as employee. Since McLeod was no longer an employee, he was not entitled to the 13[th] month pay.[67] Besides, there is no evidence on record that McLeod indeed received his alleged “reduced 13[th] month pay of P44,183.63” in December 1993.[68]

Also unavailing is McLeod’s claim that he was entitled to the “unpaid monetary equivalent of unused plane tickets for the period covering 1989 to 1992 in the amount of P279,300.00.”[69] PMI has no company policy granting its officers and employees expenses for trips abroad.[70] That at one time PMI reimbursed McLeod for his and his wife’s plane tickets in a vacation to London[71] could not be deemed as an established practice considering that it happened only once. To be considered a “regular practice,” the giving of the benefits should have been done over a long period, and must be shown to have been consistent and deliberate.[72]

In *American Wire and Cable Daily Rated Employees Union v. American Wire and Cable Co., Inc.*,[73] the Court held that for a bonus to be enforceable, the employer must have promised it, and the parties must have expressly agreed upon it, or it must have had a fixed amount and had been a long and regular practice on the part of the employer.

In the present case, there is no showing that PMI ever promised McLeod that it would continue to grant him the benefit in question. Neither is there any proof that PMI and McLeod had expressly agreed upon the giving of that benefit.

McLeod’s reliance on Annex M[74] can hardly carry the day for him. Annex M, which is McLeod’s letter addressed to “Philip Lim, VP Administration,” merely contains McLeod’s proposals for the grant of some benefits to supervisory and confidential employees. Contrary to McLeod’s allegation, Patricio did not sign the letter. Hence, the letter does not embody any agreement between McLeod and the management that would entitle McLeod to his money claims.

Neither can McLeod's assertions find support in Annex U.[75] Annex U is the Agreement which McLeod and Universal Textile Mills, Inc. executed in 1959. The Agreement merely contains the renewal of the service agreement which the parties signed in 1956.

McLeod cannot successfully pretend that his monthly salary of P60,000 was reduced without his consent.

McLeod testified that in 1990, Philip Lim explained to him why his salary would have to be reduced. McLeod said that Philip told him that "they were short in finances; that it would be repaid." [76] Were McLeod not amenable to that reduction in salary, he could have immediately resigned from his work in PMI.

McLeod knew that PMI was then suffering from serious business losses. In fact, McLeod testified that PMI was not able to operate from August 1989 to 1992 because of the strike. Even before 1989, as Vice President of PMI, McLeod was aware that the company had incurred "huge loans from DBP." [77] As it happened, McLeod continued to work with PMI. We find it pertinent to quote some portions of Apolinario Posio's testimony, to wit:

Q You also stated that before the period of the strike as shown by annex "K" of the reply filed by the complainant which was I think a voucher, the salary of Mr. McLeod was roughly P60,000.00 a month?

A Yes, sir.

Q And as shown by their annex "L" to their reply, that this was reduced to roughly P50,000.00 a month?

A Yes, sir.

Q You stated that this was indeed upon the instruction by the Vice-President of Peggy Mills at that time and that was Mr. Philip Lim, would you not?

A Yes, sir.

Q Of your own personal knowledge, can you say if this was, in fact, by agreement between Mr. Philip Lim or any other officers of Peggy Mills and Mr. McLeod?

A If I recall it correctly, I assume it was an agreement, verbal agreement with, between Mr. Philip Lim and Mr. McLeod, because the voucher that we prepared was actually acknowledged by Mr. McLeod, the reduced amount was acknowledged by Mr. McLeod thru the voucher that we prepared.

Q In other words, Mr. Witness, you mean to tell us that Mr. McLeod continuously received the reduced amount of P50,000.00 by signing the voucher and receiving the amount in question?

A Yes, sir.

Q As far as you remember, Mr. Posio, was there any complaint by Mr. McLeod because of this reduced amount of his salary at that time?

A I don't have any personal knowledge of any complaint, sir.

Q At least, that is in so far as you were concerned, he said nothing when he signed the voucher in question?

A Yes, sir.

Q Now, you also stated that the reason for what appears to be an agreement between Peggy Mills and Mr. McLeod in so far as the reduction of his salary from P60,000.00 to P50,000.00 a month was because he would have a reduced number of working days in view of the strike at Peggy Mills, is that right?

A Yes, sir.

Q And that this was so because on account of the strike, there was no work to be done in the company?

A Yes, sir.[78]

x x x x

Q Now, you also stated if you remember during the first time that you testified that in the beginning, the monthly salary of the complainant was P60,000.00, is that correct?

A Yes, sir.

Q And because of the long period of the strike, when there was no work to be done, by agreement with the complainant, his monthly salary was adjusted to only P50,495 because he would not have to report for work on Saturday. Do you remember having made that explanation?

A Yes, sir.

Q You also stated that the complainant continuously received his monthly salary in the adjusted amount of P50,495.00 monthly signing the necessary vouchers or pay slips for that without complaining, is that not right, Mr. Posio?

A Yes, sir.[79]

Since the last salary that McLeod received from PMI was P50,495, that amount should be the basis in computing his retirement benefits. McLeod must be credited only with his service to PMI as it had a juridical personality separate and distinct from that of the other respondent corporations.

Since PMI has no retirement plan,[80] we apply Section 5, Rule II of the Rules Implementing the New Retirement Law which provides:

5.1 In the absence of an applicable agreement or retirement plan, an employee who retires pursuant to the Act shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

5.2 Components of One-half (1/2) Month Salary. ? For the purpose of determining the minimum retirement pay due an employee under this Rule, the term “one-half month salary” shall include all of the following:

(a) Fifteen (15) days salary of the employee based on his latest salary rate. x x x

With McLeod having worked with PMI for 12 years, from 1980 to 1992, he is entitled to a retirement pay equivalent to ½ month salary for every year of service based on his latest salary rate of P50,495 a month.

There is no basis for the award of moral damages.

Moral damages are recoverable only if the defendant has acted fraudulently or in bad faith, or is guilty of gross negligence amounting to bad faith, or in wanton disregard of his contractual obligations. The breach must be wanton, reckless, malicious, or in bad faith, oppressive or abusive.[81] From the records of the case, the Court finds no ultimate facts to support a conclusion of bad faith on the part of PMI.

Records disclose that PMI had long offered to pay McLeod his money claims. In their Comment, respondents assert that they offered to pay McLeod the sum of P840,000, as “separation benefits, and not P300,000, if only to buy peace and to forestall any complaint” that McLeod may initiate before the NLRC. McLeod admitted at the hearing before the Labor Arbiter that PMI has made this offer ?

ATTY. ESCANO:

x x x According to your own statement in your Position Paper and I am referring to page 8, your unpaid retirement benefit for fourteen (14) years of service at P60,000.00 per year is P840,000.00, is that correct?

WITNESS:

That is correct, sir.

ATTY. ESCANO:

And this amount is correct P840,000.00, according to your Position Paper?

WITNESS:

That is correct, sir.

ATTY. ESCANO:

The question I want to ask is, are you aware that this amount was offered to you sometime last year through your own lawyer, my good friend, Atty. Avecilla, who is right here with us?

WITNESS:

I was aware, sir.

ATTY. ESCANO:

So this was offered to you, is that correct?

WITNESS:

I was told that a fixed sum of P840,000.00 was offered.

ATTY. ESCANO:

And , of course, the reason, if I may assume, that you declined this offer was that, according to you, there are other claims which you would like to raise against the Respondents which, by your impression, they were not willing to pay in addition to this particular amount?

WITNESS:

Yes, sir.

ATTY. ESCANO:

The question now is, if the same amount is offered to you by way of retirement which is exactly what you stated in your own Position Paper, would you accept it or not?

WITNESS:

Not on the concept without all the basic benefits due me, I will refuse.[82]

x x x x

ATTY. ROXAS:

Q You mentioned in the cross-examination of Atty. Escano that you were offered the separation pay in 1994, is that correct, Mr. Witness?

WITNESS:

A I was offered a settlement of P300,000.00 for complete settlement and that was I think in January or February 1994, sir.

ATTY. ESCANO:

No. What was mentioned was the amount of P840,000.00.

WITNESS:

What did you say, Atty. Escano?

ATTY. ESCANO:

The amount that I mentioned was P840,000.00 corresponding to the

WITNESS:

May I ask that the question be clarified, your Honor?

ATTY. ROXAS:

Q You mentioned that you were offered for the settlement of your claims in 1994 for P840,000.00, is that right, Mr. Witness?

A During that period in time, while the petition in this case was ongoing, we already filed a case at that period of time, sir. There was a discussion. To the best of my knowledge, they are willing to settle for P840,000.00 and based on what the Attorney told me, I refused to accept because I believe that my position was not in anyway due to a compromise situation to the benefits I am entitled to.[83]

Hence, the awards for exemplary damages and attorney's fees are not proper in the present case.[84]

That respondent corporations, in their appeal to the NLRC, did not serve a copy of their memorandum of appeal upon PMI is of no moment. Section 3(a), Rule VI of the NLRC New Rules of Procedure provides:

Requisites for Perfection of Appeal. ? (a) The appeal shall be filed within the reglementary period as provided in Section 1 of this Rule; shall be under oath with proof of payment of the required appeal fee and the posting of a cash or surety bond as provided in Section 5 of this Rule; shall be accompanied by a memorandum of appeal x x x and proof of service on the other party of such appeal. (Emphasis supplied)

The "other party" mentioned in the Rule obviously refers to the adverse party, in this case, McLeod. Besides, Section 3, Rule VI of the Rules which requires, among others, proof of service of the memorandum of appeal on the other party, is merely a rundown of the contents of the required memorandum of appeal to be submitted by the appellant. These are not jurisdictional requirements.[85]

WHEREFORE, we DENY the petition and AFFIRM the Decision of the Court of Appeals in CA-G.R. SP No. 55130, with the following MODIFICATIONS: (a) the retirement pay of John F. McLeod should be computed at ½ month salary for every year of service for 12 years based on his salary rate of P50,495 a month; (b) Patricio L. Lim is absolved from personal liability; and (c) the awards for moral and exemplary damages and attorney's fees are deleted. No pronouncement as to costs.

SO ORDERED.

Quisumbing, (Chairperson), Tinga, and Velasco, Jr., JJ., concur.

Carpio-Morales, J., no part. Concurred in assailed decision.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Teodoro P. Regino, with Associate Justices Conchita Carpio Morales (now

Associate Justice of this Court) and Mercedes Gozo-Dadole, concurring. Rollo, pp. 278-303.

[3] Id. at 329-330.

[4] Penned by Presiding Commissioner Rogelio I. Rayala. Id. at 182-203.

[5] Id. at 158-165.

[6] Id. at 167-168.

[7] Id. at 202.

[8] Id. at 224-225.

[9] Id. at 226-250.

[10] Id. at 302-303.

[11] G.R. No. 108936, 4 October 1996, 262 SCRA 715.

[12] Rollo, p. 302.

[13] Id. at 28. Internal citation omitted.

[14] TSN, 8 March 1996, p. 63; TSN, 10 December 1996, p. 55.

[15] Rollo, p. 144.

[16] Id. at 153.

[17] TSN, 2 April 1996, p. 49.

[18] Rollo, p. 145; TSN, 15 April 1996, pp. 13-14, 16-17.

[19] Rollo, p. 93.

[20] TSN, 10 December 1996, pp. 11-13.

[21] Rollo, p. 242; TSN, 18 March 1997, pp. 19-22, 26-27; TSN, 26 August 1996, p. 24.

[22] Rollo, p. 145; TSN, 26 August 1996, pp. 25-26.

[23] TSN, 15 April 1996, p. 31. See rollo, pp. 156 and 157.

[24] Rollo, pp. 45-46.

[25] Records, pp. 49-50.

[26] PNB v. Andrada Electric & Engineering Company, 430 Phil. 882 (2002).

[27] II J. CAMPOS AND M.C. LOPEZ-CAMPOS, THE CORPORATION CODE: COMMENTS, NOTES AND SELECTED CASES 440-441 (1990 ed.).

[28] Records, p. 50.

[29] Rollo, pp. 359 and 386.

[30] Id. at 43-46.

[31] TSN, 8 March 1996, pp. 49-51, 63-64.

[32] TSN, 2 April 1996, pp. 56-58.

[33] C.A. AZUCENA, EVERYONE'S LABOR CODE 57 (2001 ed.).

[34] Gerlach v. Reuters Limited, Phils., G.R. No. 148542, 17 January 2005, 448 SCRA 535; Stolt-Nielsen Marine Services, Inc. v. NLRC, 360 Phil. 881 (1998).

[35] Rollo, pp. 29-30.

[36] Martinez v. Court of Appeals, G.R. No. 131673, 10 September 2004, 438 SCRA 130.

[37] Jardine Davies, Inc. v. JRB Realty, Inc., G.R. No. 151438, 15 July 2005, 463 SCRA 555; Development Bank of the Philippines v. Court of Appeals, 415 Phil. 538 (2001).

[38] Indophil Textile Mill Workers Union v. Calica, G.R. No. 96490, 3 February 1992, 205 SCRA 697.

[39] Lim v. Court of Appeals, 380 Phil. 60 (2000); Del Rosario v. National Labor Relations Commission, G.R. No. 85416, 24 July 1990, 187 SCRA 777.

[40] Complex Electronics Employees Association v. NLRC, 369 Phil. 666 (1999).

[41] Supra.

[42] Supra at 704.

[43] Rollo, p. 59.

[44] Id.

[45] Rollo, p. 359; TSN, 10 December 1996, p. 58.

[46] Rollo, p. 64.

[47] Records, pp. 178, 281-282.

[48] Rollo, p. 360; Records, pp. 106-109 and 172.

[49] Rollo, pp. 360 and 362; Records, pp. 106-109.

[50] TSN, 21 June 1996, p. 6.

[51] Id. at 54-57.

[52] TSN, 10 December 1996, pp. 46 and 55.

[53] Jardine Davies, Inc. v. JRB Realty, Inc., supra note 37; Velarde v. Lopez, Inc., G.R. No. 153886, 14 January 2004, 419 SCRA 422.

[54] Supra note 39.

[55] Land Bank of the Philippines v. Court of Appeals, 416 Phil. 774 (2001); Complex Electronics Employees Association v. NLRC, supra note 40.

[56] Malayang Samahan ng mga Manggagawa sa M. Greenfield v. Ramos, G.R. No. 113907, 20 April 2001, 357 SCRA 77.

[57] H.L. Carlos Construction, Inc. v. Marina Properties Corporation, G.R. No. 147614, 29 January 2004, 421 SCRA 428; Powton Conglomerate, Inc. v. Agcolicol, 448 Phil. 643 (2003); Malayang Samahan ng mga

Manggagawa sa M. Greenfield v. Ramos, supra.

[58] Malayang Samahan ng mga Manggagawa sa M. Greenfield v. Ramos, supra.

[59] 226 Phil. 199 (1986).

[60] Id. at 204-205.

[61] 325 Phil. 145 (1996).

[62] Id. at 158-160

[63] Supra note 57.

[64] Id. at 442-443.

[65] St. Michael Academy v. NLRC, 354 Phil. 491 (1998).

[66] Rollo, p. 13.

[67] The pertinent portion of the Revised Guidelines on the Implementation of the 13[th] Month Pay reads:

“Section 1 of Presidential Decree No. 851 is hereby modified to the extent that all employers are hereby required to pay all their rank-and-file employees a 13[th] month pay not later than December 24 of every year.”

Before its modification by the aforecited Memorandum Order, P.D. No. 851 excludes from entitlement to the 13[th] month pay those employees who were receiving a basic salary of more than P1,000.00 a month. With the removal of the salary ceiling of P1,000.00, all rank-and-file employees are now entitled to a 13[th] month pay regardless of the amount of basic salary that they receive in a month if their employers are not otherwise exempted from the application of P.D. No. 851. (Emphasis supplied)

[68] TSN, 8 March 1996, p. 121.

[69] Rollo, p. 15.

[70] TSN, 10 December 1996, pp. 21-22 and 68; TSN, 26 August 1996, pp. 66-67.

[71] TSN, 10 December 1996, pp. 68-70; TSN, 26 August 1996, p. 17.

[72] See Philippine Appliance Corporation (PHILACOR) v. Court of Appeals, G.R. No. 149434, 3 June 2004, 430 SCRA 525.

[73] G.R. No. 155059, 29 April 2005, 457 SCRA 684.

[74] Records, pp. 124-125.

[75] Rollo, pp. 338-343.

[76] TSN, 15 April 1996, pp. 22-23.

[77] Id. at 13-17.

[78] TSN, 26 August 1996, pp. 17-21.

[79] TSN, 10 December 1996, pp. 77-79.

[80] TSN, 18 March 1997, p. 23.

[81] Philippine National Bank v. Pike, G.R. No. 157845, 20 September 2005, 470 SCRA 328.

[82] TSN, 8 March 1996, pp. 42-45.

[83] TSN, 15 April 1996, pp. 65-67.

[84] Special Police and Watchmen Asso. (PLUM) Federation v. NLRC, 344 Phil. 384 (1997).

[85] Del Mar Domestic Enterprises v. NLRC, 347 Phil. 277 (1997).

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