MARC II MARKETING, INC. AND LUCILA V. JOSON, PETITIONERS, VS. ALFREDO M. JOSON, RESPONDENT.

G.R. No. 171993. December 12, 2011

Ponente: PEREZ, J.

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PEREZ, J.:

In this Petition for Review on Certiorari under Rule 45 of the Rules of Court, herein petitioners Marc II Marketing, Inc. and Lucila V. Joson assailed the Decision [1] dated 20 June 2005 of the Court of Appeals in CA-G.R. SP No. 76624 for reversing and setting aside the Resolution [2] of the National Labor Relations Commission (NLRC) dated 15 October 2002, thereby affirming the Labor Arbiter's Decision [3] dated 1 October 2001 finding herein respondent Alfredo M. Joson's dismissal from employment as illegal. In the questioned Decision, the Court of Appeals upheld the Labor Arbiter's jurisdiction over the case on the basis that respondent was not an officer but a mere employee of petitioner Marc II Marketing, Inc., thus, totally disregarding the latter's allegation of intra-corporate controversy. Nonetheless, the Court of Appeals remanded the case to the NLRC for further proceedings to determine the proper amount of monetary awards that should be given to respondent.

Assailed as well is the Court of Appeals Resolution [4] dated 7 March 2006 denying their Motion for Reconsideration.

Petitioner Marc II Marketing, Inc. (petitioner corporation) is a corporation duly organized and existing under and by virtue of the laws of the Philippines. It is primarily engaged in buying, marketing, selling and distributing in retail or wholesale for export or import household appliances and products and other items. [5] It took over the business operations of Marc Marketing, Inc. which was made non-operational following its incorporation and registration with the Securities and Exchange Commission (SEC). Petitioner Lucila V. Joson (Lucila) is the President and majority stockholder of petitioner corporation. She was also the former President and majority stockholder of the defunct Marc Marketing, Inc.

Respondent Alfredo M. Joson (Alfredo), on the other hand, was the General Manager, incorporator, director and stockholder of petitioner corporation.

The controversy of this case arose from the following factual milieu:

Before petitioner corporation was officially incorporated, [6] respondent has already been engaged by petitioner Lucila, in her capacity as President of Marc Marketing, Inc., to work as the General Manager of petitioner corporation. It was formalized through the execution of a Management Contract [7] dated 16 January 1994 under the letterhead of Marc Marketing, Inc. [8] as petitioner corporation is yet to be incorporated at the time of its execution. It was explicitly provided therein that respondent shall be entitled to 30% of its net income for his work as General Manager. Respondent will also be granted 30% of its net profit to compensate for the possible loss of opportunity to work overseas. [9]

Pending incorporation of petitioner corporation, respondent was designated as the General Manager of Marc

Marketing, Inc., which was then in the process of winding up its business. For occupying the said position, respondent was among its corporate officers by the express provision of Section 1, Article IV [10] of its by-laws. [11]

On 15 August 1994, petitioner corporation was officially incorporated and registered with the SEC. Accordingly, Marc Marketing, Inc. was made non-operational. Respondent continued to discharge his duties as General Manager but this time under petitioner corporation.

Pursuant to Section 1, Article IV [12] of petitioner corporation's by-laws, [13] its corporate officers are as follows: Chairman, President, one or more Vice-President(s), Treasurer and Secretary. Its Board of Directors, however, may, from time to time, appoint such other officers as it may determine to be necessary or proper.

Per an undated Secretary's Certificate, [14] petitioner corporation's Board of Directors conducted a meeting on 29 August 1994 where respondent was appointed as one of its corporate officers with the designation or title of General Manager to function as a managing director with other duties and responsibilities that the Board of Directors may provide and authorized. [15]

Nevertheless, on 30 June 1997, petitioner corporation decided to stop and cease its operations, as evidenced by an Affidavit of Non-Operation [16] dated 31 August 1998, due to poor sales collection aggravated by the inefficient management of its affairs. On the same date, it formally informed respondent of the cessation of its business operation. Concomitantly, respondent was apprised of the termination of his services as General Manager since his services as such would no longer be necessary for the winding up of its affairs. [17]

Feeling aggrieved, respondent filed a Complaint for Reinstatement and Money Claim against petitioners before the Labor Arbiter which was docketed as NLRC NCR Case No. 00-03-04102-99.

In his complaint, respondent averred that petitioner Lucila dismissed him from his employment with petitioner corporation due to the feeling of hatred she harbored towards his family. The same was rooted in the filing by petitioner Lucila's estranged husband, who happened to be respondent's brother, of a Petition for Declaration of Nullity of their Marriage. [18]

For the parties' failure to settle the case amicably, the Labor Arbiter required them to submit their respective position papers. Respondent complied but petitioners opted to file a Motion to Dismiss grounded on the Labor Arbiter's lack of jurisdiction as the case involved an intra-corporate controversy, which jurisdiction belongs to the SEC [now with the Regional Trial Court (RTC)]. [19] Petitioners similarly raised therein the ground of prescription of respondent's monetary claim.

On 5 September 2000, the Labor Arbiter issued an Order [20] deferring the resolution of petitioners' Motion to Dismiss until the final determination of the case. The Labor Arbiter also reiterated his directive for petitioners to submit position paper. Still, petitioners did not comply. Insisting that the Labor Arbiter has no jurisdiction over the case, they instead filed an Urgent Motion to Resolve the Motion to Dismiss and the Motion to Suspend Filing of Position Paper.

In an Order [21] dated 15 February 2001, the Labor Arbiter denied both motions and declared final the Order dated 5 September 2000. The Labor Arbiter then gave petitioners a period of five days from receipt thereof within which to file position paper, otherwise, their Motion to Dismiss will be treated as their position paper and the case will be considered submitted for decision.

Petitioners, through counsel, moved for extension of time to submit position paper. Despite the requested extension, petitioners still failed to submit the same. Accordingly, the case was submitted for resolution.

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On 1 October 2001, the Labor Arbiter rendered his Decision in favor of respondent. Its decretal portion reads as follows:

> WHEREFORE, premises considered, judgment is hereby rendered declaring [respondent's] dismissal from employment illegal. Accordingly, [petitioners] are hereby ordered:
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> - To reinstate [respondent] to his former or equivalent position without loss of seniority rights, benefits, and privileges;
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> - Jointly and severally liable to pay [respondent's] unpaid wages in the amount of P450,000.00 per month from [26 March 1996] up to time of dismissal in the total amount of P6,300,000.00;
>
> - Jointly and severally liable to pay [respondent's] full backwages in the amount of P450,000.00 per month from date of dismissal until actual reinstatement which at the time of promulgation amounted to P21,600,000.00;
>
> - Jointly and severally liable to pay moral damages in the amount of P100,000.00 and attorney's fees in the amount of 5% of the total monetary award. [22] [Emphasis supplied.]

In the aforesaid Decision, the Labor Arbiter initially resolved petitioners' Motion to Dismiss by finding the ground of lack of jurisdiction to be without merit. The Labor Arbiter elucidated that petitioners failed to adduce evidence to prove that the present case involved an intra-corporate controversy. Also, respondent's money claim did not arise from his being a director or stockholder of petitioner corporation but from his position as being its General Manager. The Labor Arbiter likewise held that respondent was not a corporate officer under petitioner corporation's by-laws. As such, respondent's complaint clearly arose from an employer-employee relationship, thus, subject to the Labor Arbiter's jurisdiction.

The Labor Arbiter then declared respondent's dismissal from employment as illegal. Respondent, being a regular employee of petitioner corporation, may only be dismissed for a valid cause and upon proper compliance with the requirements of due process. The records, though, revealed that petitioners failed to present any evidence to justify respondent's dismissal.

Aggrieved, petitioners appealed the aforesaid Labor Arbiter's Decision to the NLRC.

In its Resolution dated 15 October 2002, the NLRC ruled in favor of petitioners by giving credence to the Secretary's Certificate, which evidenced petitioner corporation's Board of Directors' meeting in which a resolution was approved appointing respondent as its corporate officer with designation as General Manager. Therefrom, the NLRC reversed and set aside the Labor Arbiter's Decision dated 1 October 2001 and dismissed respondent's Complaint for want of jurisdiction. [23]

The NLRC enunciated that the validity of respondent's appointment and termination from the position of General Manager was made subject to the approval of petitioner corporation's Board of Directors. Had respondent been an ordinary employee, such board action would not have been required. As such, it is clear that respondent was a corporate officer whose dismissal involved a purely intra-corporate controversy. The NLRC went further by stating that respondent's claim for 30% of the net profit of the corporation can only emanate from his right of ownership therein as stockholder, director and/or corporate officer. Dividends or profits are paid only to stockholders or directors of a corporation and not to any ordinary employee in the absence of any profit sharing scheme. In addition, the question of remuneration of a person who is not a mere employee but a stockholder and officer of a corporation is not a simple labor problem. Such matter comes within the ambit of corporate affairs and management and is an intra-corporate controversy in contemplation of the Corporation Code. [24]

When respondent's Motion for Reconsideration was denied in another Resolution [25] dated 23 January 2003, he

filed a Petition for Certiorari with the Court of Appeals ascribing grave abuse of discretion on the part of the NLRC.

On 20 June 2005, the Court of Appeals rendered its now assailed Decision declaring that the Labor Arbiter has jurisdiction over the present controversy. It upheld the finding of the Labor Arbiter that respondent was a mere employee of petitioner corporation, who has been illegally dismissed from employment without valid cause and without due process. Nevertheless, it ordered the records of the case remanded to the NLRC for the determination of the appropriate amount of monetary awards to be given to respondent. The Court of Appeals, thus, decreed:

> WHEREFORE, the petition is by us PARTIALLY GRANTED. The Labor Arbiter is DECLARED to have jurisdiction over the controversy. The records are REMANDED to the NLRC for further proceedings to determine the appropriate amount of monetary awards to be adjudged in favor of [respondent]. Costs against the [petitioners] in solidum. [26]

Petitioners moved for its reconsideration but to no avail. [27]

Petitioners are now before this Court with the following assignment of errors:

> I.
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> THE COURT OF APPEALS ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN DECIDING THAT THE NLRC HAS THE JURISDICTION IN RESOLVING A PURELY INTRA-CORPORATE MATTER WHICH IS COGNIZABLE BY THE SECURITIES AND EXCHANGE COMMISSION/REGIONAL TRIAL COURT.
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> II.
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> ASSUMING, GRATIS ARGUENDO, THAT THE NLRC HAS JURISDICTION OVER THE CASE, STILL THE COURT OF APPEALS SERIOUSLY ERRED IN NOT RULING THAT THERE IS NO EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN [RESPONDENT] ALFREDO M. JOSON AND MARC II MARKETING, INC. [PETITIONER CORPORATION].
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> III.
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> ASSUMING GRATIS ARGUENDO THAT THE NLRC HAS JURISDICTION OVER THE CASE, THE COURT OF APPEALS ERRED IN NOT RULING THAT THE LABOR ARBITER COMMITTED GRAVE ABUSE OF DISCRETION IN AWARDING MULTI-MILLION PESOS IN COMPENSATION AND BACKWAGES BASED ON THE PURPORTED GROSS INCOME OF [PETITIONER CORPORATION].
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> IV.
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> THE COURT OF APPEALS SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN NOT MAKING ANY FINDINGS AND RULING THAT [PETITIONER LUCILA] SHOULD NOT BE HELD SOLIDARILY LIABLE IN THE ABSENCE OF EVIDENCE OF MALICE AND BAD FAITH ON HER PART. [28]

Petitioners fault the Court of Appeals for having sustained the Labor Arbiter's finding that respondent was not a corporate officer under petitioner corporation's by-laws. They insist that there is no need to amend the corporate by-laws to specify who its corporate officers are. The resolution issued by petitioner corporation's Board of Directors appointing respondent as General Manager, coupled with his assumption of the said position, positively made him its corporate officer. More so, respondent's position, being a creation of petitioner corporation's Board of Directors pursuant to its by-laws, is a corporate office sanctioned by the Corporation Code and the doctrines previously laid down by this Court. Thus, respondent's removal as petitioner corporation's General Manager involved a purely intra-corporate controversy over which the RTC has jurisdiction.

Petitioners further contend that respondent's claim for 30% of the net profit of petitioner corporation was anchored on the purported Management Contract dated 16 January 1994. It should be noted, however, that said Management Contract was executed at the time petitioner corporation was still nonexistent and had no juridical personality yet. Such being the case, respondent cannot invoke any legal right therefrom as it has no legal and binding effect on petitioner corporation. Moreover, it is clear from the Articles of Incorporation of petitioner corporation that respondent was its director and stockholder. Indubitably, respondent's claim for his share in the profit of petitioner corporation was based on his capacity as such and not by virtue of any employer-employee relationship.

Petitioners further avow that even if the present case does not pose an intra-corporate controversy, still, the Labor Arbiter's multi-million peso awards in favor of respondent were erroneous. The same was merely based on the latter's self-serving computations without any supporting documents.

Finally, petitioners maintain that petitioner Lucila cannot be held solidarily liable with petitioner corporation. There was neither allegation nor iota of evidence presented to show that she acted with malice and bad faith in her dealings with respondent. Moreover, the Labor Arbiter, in his Decision, simply concluded that petitioner Lucila was jointly and severally liable with petitioner corporation without making any findings thereon. It was, therefore, an error for the Court of Appeals to hold petitioner Lucila solidarily liable with petitioner corporation.

From the foregoing arguments, the initial question is which between the Labor Arbiter or the RTC, has jurisdiction over respondent's dismissal as General Manager of petitioner corporation. Its resolution necessarily entails the determination of whether respondent as General Manager of petitioner corporation is a corporate officer or a mere employee of the latter.

While Article 217(a)2 [29] of the Labor Code, as amended, provides that it is the Labor Arbiter who has the original and exclusive jurisdiction over cases involving termination or dismissal of workers when the person dismissed or terminated is a corporate officer, the case automatically falls within the province of the RTC. The dismissal of a corporate officer is always regarded as a corporate act and/or an intra-corporate controversy. [30]

Under Section 5 [31] of Presidential Decree No. 902-A, intra-corporate controversies are those controversies arising out of intra-corporate or partnership relations, between and among stockholders, members or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the State insofar as it concerns their individual franchise or right to exist as such entity. It also includes controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations. [32]

Accordingly, in determining whether the SEC (now the RTC) has jurisdiction over the controversy, the status or relationship of the parties and the nature of the question that is the subject of their controversy must be taken into consideration. [33]

In Easycall Communications Phils., Inc. v. King, this Court held that in the context of Presidential Decree No. 902-A, corporate officers are those officers of a corporation who are given that character either by the Corporation Code or by the corporation's by-laws. Section 25 [34] of the Corporation Code specifically enumerated who are these corporate officers, to wit: (1) president; (2) secretary; (3) treasurer; and (4) such other officers as may be provided for in the by-laws. [35]

The aforesaid Section 25 of the Corporation Code, particularly the phrase "such other officers as may be provided for in the by-laws," has been clarified and elaborated in this Court's recent pronouncement in Matling Industrial

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and Commercial Corporation v. Coros, where it held, thus:

> Conformably with Section 25, a position must be expressly mentioned in the [b]y-[l]aws in order to be considered as a corporate office. Thus, the creation of an office pursuant to or under a [b]y-[l]aw enabling provision is not enough to make a position a corporate office. [In] Guerrea v. Lezama [citation omitted] the first ruling on the matter, held that the only officers of a corporation were those given that character either by the Corporation Code or by the [b]y-[l]aws; the rest of the corporate officers could be considered only as employees or subordinate officials. Thus, it was held in Easycall Communications Phils., Inc. v. King [citation omitted]:
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> An "office" is created by the charter of the corporation and the officer is elected by the directors or stockholders. On the other hand, an employee occupies no office and generally is employed not by the action of the directors or stockholders but by the managing officer of the corporation who also determines the compensation to be paid to such employee.
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> x x x x
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> This interpretation is the correct application of Section 25 of the Corporation Code, which plainly states that the corporate officers are the President, Secretary, Treasurer and such other officers as may be provided for in the [b]y-[l]aws. Accordingly, the corporate officers in the context of PD No. 902-A are exclusively those who are given that character either by the Corporation Code or by the corporation's [b]y[l]aws.
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> A different interpretation can easily leave the way open for the Board of Directors to circumvent the constitutionally guaranteed security of tenure of the employee by the expedient inclusion in the [b]y-[l]aws of an enabling clause on the creation of just any corporate officer position.
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> It is relevant to state in this connection that the SEC, the primary agency administering the Corporation Code, adopted a similar interpretation of Section 25 of the Corporation Code in its Opinion dated November 25, 1993 [citation omitted], to wit:
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> Thus, pursuant to the above provision (Section 25 of the Corporation Code), whoever are the corporate officers enumerated in the by-laws are the exclusive Officers of the corporation and the Board has no power to create other Offices without amending first the corporate [b]y-laws. However, the Board may create appointive positions other than the positions of corporate Officers, but the persons occupying such positions are not considered as corporate officers within the meaning of Section 25 of the Corporation Code and are not empowered to exercise the functions of the corporate Officers, except those functions lawfully delegated to them. Their functions and duties are to be determined by the Board of Directors/Trustees. [36] [Emphasis supplied.]

A careful perusal of petitioner corporation's by-laws, particularly paragraph 1, Section 1, Article IV, [37] would explicitly reveal that its corporate officers are composed only of: (1) Chairman; (2) President; (3) one or more Vice-President; (4) Treasurer; and (5) Secretary. [38] The position of General Manager was not among those enumerated.

Paragraph 2, Section 1, Article IV of petitioner corporation's by-laws, empowered its Board of Directors to appoint such other officers as it may determine necessary or proper. [39] It is by virtue of this enabling provision that petitioner corporation's Board of Directors allegedly approved a resolution to make the position of General Manager a corporate office, and, thereafter, appointed respondent thereto making him one of its corporate officers. All of these acts were done without first amending its by-laws so as to include the General Manager in its roster of corporate officers.

With the given circumstances and in conformity with Matling Industrial and Commercial Corporation v. Coros, this Court rules that respondent was not a corporate officer of petitioner corporation because his position as

General Manager was not specifically mentioned in the roster of corporate officers in its corporate by-laws. The enabling clause in petitioner corporation's by-laws empowering its Board of Directors to create additional officers, i.e., General Manager, and the alleged subsequent passage of a board resolution to that effect cannot make such position a corporate office. Matling clearly enunciated that the board of directors has no power to create other corporate offices without first amending the corporate by-laws so as to include therein the newly created corporate office. Though the board of directors may create appointive positions other than the positions of corporate officers, the persons occupying such positions cannot be viewed as corporate officers under Section 25 of the Corporation Code. [40] In view thereof, this Court holds that unless and until petitioner corporation's by-laws is amended for the inclusion of General Manager in the list of its corporate officers, such position cannot be considered as a corporate office within the realm of Section 25 of the Corporation Code.

This Court considers that the interpretation of Section 25 of the Corporation Code laid down in Matling safeguards the constitutionally enshrined right of every employee to security of tenure. To allow the creation of a corporate officer position by a simple inclusion in the corporate by-laws of an enabling clause empowering the board of directors to do so can result in the circumvention of that constitutionally well-protected right. [41]

It is also of no moment that respondent, being petitioner corporation's General Manager, was given the functions of a managing director by its Board of Directors. As held in Matling, the only officers of a corporation are those given that character either by the Corporation Code or by the corporate by-laws. It follows then that the corporate officers enumerated in the by-laws are the exclusive officers of the corporation while the rest could only be regarded as mere employees or subordinate officials. [42] Respondent, in this case, though occupying a high ranking and vital position in petitioner corporation but which position was not specifically enumerated or mentioned in the latter's by-laws, can only be regarded as its employee or subordinate official. Noticeably, respondent's compensation as petitioner corporation's General Manager was set, fixed and determined not by the latter's Board of Directors but simply by its President, petitioner Lucila. The same was not subject to the approval of petitioner corporation's Board of Directors. This is an indication that respondent was an employee and not a corporate officer.

To prove that respondent was petitioner corporation's corporate officer, petitioners presented before the NLRC an undated Secretary's Certificate showing that corporation's Board of Directors approved a resolution making respondent's position of General Manager a corporate office. The submission, however, of the said undated Secretary's Certificate will not change the fact that respondent was an employee. The certification does not amount to an amendment of the by-laws which is needed to make the position of General Manager a corporate office.

Moreover, as has been aptly observed by the Court of Appeals, the board resolution mentioned in that undated Secretary's Certificate and the latter itself were obvious fabrications, a mere afterthought. Here we quote with conformity the Court of Appeals findings on this matter stated in this wise:

> The board resolution is an obvious fabrication. Firstly, if it had been in existence since [29 August 1994], why did not [herein petitioners] attach it to their [M]otion to [D]ismiss filed on [26 August 1999], when it could have been the best evidence that [herein respondent] was a corporate officer? Secondly, why did they report the [respondent] instead as [herein petitioner corporation's] employee to the Social Security System [(SSS)] on [11 October 1994] or a later date than their [29 August 1994] board resolution? Thirdly, why is there no indication that the [respondent], the person concerned himself, and the [SEC] were furnished with copies of said board resolution? And, lastly, why is the corporate [S]ecretary's [C]ertificate not notarized in keeping with the customary procedure? That is why we called it manipulative evidence as it was a shameless sham meant to be thrown in as a wild card to muddle up the [D]ecision of the Labor Arbiter to the end that it be overturned as the latter had firmly pointed out that [respondent] is not a corporate officer under [petitioner

> corporation's by-laws]. Regrettably, the [NLRC] swallowed the bait hook-line-and sinker. It failed to see through its nature as a belatedly manufactured evidence. And even on the assumption that it were an authentic board resolution, it did not make [respondent] a corporate officer as the board did not first and properly create the position of a [G]eneral [M]anager by amending its by-laws.
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> (2) The scope of the term "officer" in the phrase "and such other officers as may be provided for in the by-laws[“] (Sec. 25, par. 1), would naturally depend much on the provisions of the by-laws of the corporation. (SEC Opinion, [4 December 1991.]) If the by-laws enumerate the officers to be elected by the board, the provision is conclusive, and the board is without power to create new offices without amending the by-laws. (SEC Opinion, [19 October 1971.])
>
> (3) If, for example, the general manager of a corporation is not listed as an officer, he is to be classified as an employee although he has always been considered as one of the principal officers of a corporation [citing De Leon, H. S., The Corporation Code of the Philippines Annotated, 1993 Ed., p. 215.] [43] [Emphasis supplied.]

That respondent was also a director and a stockholder of petitioner corporation will not automatically make the case fall within the ambit of intra-corporate controversy and be subjected to RTC's jurisdiction. To reiterate, not all conflicts between the stockholders and the corporation are classified as intra-corporate. Other factors such as the status or relationship of the parties and the nature of the question that is the subject of the controversy [44] must be considered in determining whether the dispute involves corporate matters so as to regard them as intra-corporate controversies. [45] As previously discussed, respondent was not a corporate officer of petitioner corporation but a mere employee thereof so there was no intra-corporate relationship between them. With regard to the subject of the controversy or issue involved herein, i.e., respondent's dismissal as petitioner corporation's General Manager, the same did not present or relate to an intra-corporate dispute. To note, there was no evidence submitted to show that respondent's removal as petitioner corporation's General Manager carried with it his removal as its director and stockholder. Also, petitioners' allegation that respondent's claim of 30% share of petitioner corporation's net profit was by reason of his being its director and stockholder was without basis, thus, self-serving. Such an allegation was tantamount to a mere speculation for petitioners' failure to substantiate the same.

In addition, it was not shown by petitioners that the position of General Manager was offered to respondent on account of his being petitioner corporation's director and stockholder. Also, in contrast to NLRC's findings, neither petitioner corporation's by-laws nor the Management Contract stated that respondent's appointment and termination from the position of General Manager was subject to the approval of petitioner corporation's Board of Directors. If, indeed, respondent was a corporate officer whose termination was subject to the approval of its Board of Directors, why is it that his termination was effected only by petitioner Lucila, President of petitioner corporation? The records are bereft of any evidence to show that respondent's dismissal was done with the conformity of petitioner corporation's Board of Directors or that the latter had a hand on respondent's dismissal. No board resolution whatsoever was ever presented to that effect.

With all the foregoing, this Court is fully convinced that, indeed, respondent, though occupying the General Manager position, was not a corporate officer of petitioner corporation rather he was merely its employee occupying a high-ranking position.

Accordingly, respondent's dismissal as petitioner corporation's General Manager did not amount to an intra-corporate controversy. Jurisdiction therefor properly belongs with the Labor Arbiter and not with the RTC.

Having established that respondent was not petitioner corporation's corporate officer but merely its employee, and that, consequently, jurisdiction belongs to the Labor Arbiter, this Court will now determine if respondent's dismissal from employment is illegal.

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It was not disputed that respondent worked as petitioner corporation's General Manager from its incorporation on 15 August 1994 until he was dismissed on 30 June 1997. The cause of his dismissal was petitioner corporation's cessation of business operations due to poor sales collection aggravated by the inefficient management of its affairs.

In termination cases, the burden of proving just and valid cause for dismissing an employee from his employment rests upon the employer. The latter's failure to discharge that burden would necessarily result in a finding that the dismissal is unjustified. [46]

Under Article 283 of the Labor Code, as amended, one of the authorized causes in terminating the employment of an employee is the closing or cessation of operation of the establishment or undertaking. Article 283 of the Labor Code, as amended, reads, thus:

> ART. 283. Closure of establishment and reduction of personnel. – The employer may also terminate the employment of any employee due to the installation of labor saving-devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Department of Labor and Employment at least one (1) month before the intended date thereof. x x x In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or to at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year. [Emphasis supplied.]

From the afore-quoted provision, the closure or cessation of operations of establishment or undertaking may either be due to serious business losses or financial reverses or otherwise. If the closure or cessation was due to serious business losses or financial reverses, it is incumbent upon the employer to sufficiently and convincingly prove the same. If it is otherwise, the employer can lawfully close shop anytime as long as it was bona fide in character and not impelled by a motive to defeat or circumvent the tenurial rights of employees and as long as the terminated employees were paid in the amount corresponding to their length of service. [47]

Accordingly, under Article 283 of the Labor Code, as amended, there are three requisites for a valid cessation of business operations: (a) service of a written notice to the employees and to the Department of Labor and Employment (DOLE) at least one month before the intended date thereof; (b) the cessation of business must be bona fide in character; and (c) payment to the employees of termination pay amounting to one month pay or at least one-half month pay for every year of service, whichever is higher.

In this case, it is obvious that petitioner corporation's cessation of business operations was not due to serious business losses. Mere poor sales collection, coupled with mismanagement of its affairs does not amount to serious business losses. Nonetheless, petitioner corporation can still validly cease or close its business operations because such right is legally allowed, so long as it was not done for the purpose of circumventing the provisions on termination of employment embodied in the Labor Code. [48] As has been stressed by this Court in Industrial Timber Corporation v. Ababon, thus:

> Just as no law forces anyone to go into business, no law can compel anybody to continue the same. It would be stretching the intent and spirit of the law if a court interferes with management's prerogative to close or cease its business operations just because the business is not suffering from any loss or because of the desire to provide the workers continued employment. [49]

A careful perusal of the records revealed that, indeed, petitioner corporation has stopped and ceased business operations beginning 30 June 1997. This was evidenced by a notarized Affidavit of Non-Operation dated 31

August 1998. There was also no showing that the cessation of its business operations was done in bad faith or to circumvent the Labor Code. Nevertheless, in doing so, petitioner corporation failed to comply with the one-month prior written notice rule. The records disclosed that respondent, being petitioner corporation's employee, and the DOLE were not given a written notice at least one month before petitioner corporation ceased its business operations. Moreover, the records clearly show that respondent's dismissal was effected on the same date that petitioner corporation decided to stop and cease its operation. Similarly, respondent was not paid separation pay upon termination of his employment.

As respondent's dismissal was not due to serious business losses, respondent is entitled to payment of separation pay equivalent to one month pay or at least one-half month pay for every year of service, whichever is higher. The rationale for this was laid down in Reahs Corporation v. National Labor Relations Commission, [50] thus:

> The grant of separation pay, as an incidence of termination of employment under Article 283, is a statutory obligation on the part of the employer and a demandable right on the part of the employee, except only where the closure or cessation of operations was due to serious business losses or financial reverses and there is sufficient proof of this fact or condition. In the absence of such proof of serious business losses or financial reverses, the employer closing his business is obligated to pay his employees and workers their separation pay.
>
> The rule, therefore, is that in all cases of business closure or cessation of operation or undertaking of the employer, the affected employee is entitled to separation pay. This is consistent with the state policy of treating labor as a primary social economic force, affording full protection to its rights as well as its welfare. The exception is when the closure of business or cessation of operations is due to serious business losses or financial reverses duly proved, in which case, the right of affected employees to separation pay is lost for obvious reasons. [51] [Emphasis supplied.]

As previously discussed, respondent's dismissal was due to an authorized cause, however, petitioner corporation failed to observe procedural due process in effecting such dismissal. In Culili v. Eastern Telecommunications Philippines, Inc., [52] this Court made the following pronouncements, thus:

> x x x there are two aspects which characterize the concept of due process under the Labor Code: one is substantive — whether the termination of employment was based on the provision of the Labor Code or in accordance with the prevailing jurisprudence; the other is procedural — the manner in which the dismissal was effected.
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> Section 2(d), Rule I, Book VI of the Rules Implementing the Labor Code provides:
>
> (d) In all cases of termination of employment, the following standards of due process shall be substantially observed:
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> x x x x
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> For termination of employment as defined in Article 283 of the Labor Code, the requirement of due process shall be deemed complied with upon service of a written notice to the employee and the appropriate Regional Office of the Department of Labor and Employment at least thirty days before effectivity of the termination, specifying the ground or grounds for termination.

In Mayon Hotel & Restaurant v. Adana, [citation omitted] we observed:

> The requirement of law mandating the giving of notices was intended not only to enable the employees to look for another employment and therefore ease the impact of the loss of their jobs and the corresponding income, but more importantly, to give the Department of Labor and Employment (DOLE) the opportunity to ascertain the verity of the alleged authorized cause of termination. [53] [Emphasis supplied].

The records of this case disclosed that there was absolutely no written notice given by petitioner corporation to the respondent and to the DOLE prior to the cessation of its business operations. This is evident from the fact that petitioner corporation effected respondent's dismissal on the same date that it decided to stop and cease its business operations. The necessary consequence of such failure to comply with the one-month prior written notice rule, which constitutes a violation of an employee's right to statutory due process, is the payment of indemnity in the form of nominal damages. [54] In Culili v. Eastern Telecommunications Philippines, Inc., this Court further held:

> In Serrano v. National Labor Relations Commission [citation omitted], we noted that "a job is more than the salary that it carries." There is a psychological effect or a stigma in immediately finding one's self laid off from work. This is exactly why our labor laws have provided for mandating procedural due process clauses. Our laws, while recognizing the right of employers to terminate employees it cannot sustain, also recognize the employee's right to be properly informed of the impending severance of his ties with the company he is working for. x x x.
>
> x x x Over the years, this Court has had the opportunity to reexamine the sanctions imposed upon employers who fail to comply with the procedural due process requirements in terminating its employees. In Agabon v. National Labor Relations Commission [citation omitted], this Court reverted back to the doctrine in Wenphil Corporation v. National Labor Relations Commission [citation omitted] and held that where the dismissal is due to a just or authorized cause, but without observance of the due process requirements, the dismissal may be upheld but the employer must pay an indemnity to the employee. The sanctions to be imposed however, must be stiffer than those imposed in Wenphil to achieve a result fair to both the employers and the employees.
>
> In Jaka Food Processing Corporation v. Pacot [citation omitted], this Court, taking a cue from Agabon, held that since there is a clear-cut distinction between a dismissal due to a just cause and a dismissal due to an authorized cause, the legal implications for employers who fail to comply with the notice requirements must also be treated differently:
>
> Accordingly, it is wise to hold that: (1) if the dismissal is based on a just cause under Article 282 but the employer failed to comply with the notice requirement, the sanction to be imposed upon him should be tempered because the dismissal process was, in effect, initiated by an act imputable to the employee; and (2) if the dismissal is based on an authorized cause under Article 283 but the employer failed to comply with the notice requirement, the sanction should be stiffer because the dismissal process was initiated by the employer's exercise of his management prerogative. [55] [Emphasis supplied.]

Thus, in addition to separation pay, respondent is also entitled to an award of nominal damages. In conformity with this Court's ruling in Culili v. Eastern Telecommunications Philippines, Inc. and Shimizu Phils. Contractors, Inc. v. Callanta, both citing Jaka Food Processing Corporation v. Pacot, [56] this Court fixed the amount of nominal damages to P50,000.00.

With respect to petitioners' contention that the Management Contract executed between respondent and petitioner Lucila has no binding effect on petitioner corporation for having been executed way before its incorporation, this Court finds the same meritorious.

Section 19 of the Corporation Code expressly provides:

> Sec. 19. Commencement of corporate existence. - A private corporation formed or organized under this Code commences to have corporate existence and juridical personality and is deemed incorporated from the date the Securities and Exchange Commission issues a certificate of incorporation under its official seal; and thereupon the incorporators, stockholders/members and their successors shall constitute a body politic and corporate under the name stated in the articles of incorporation for the period of time mentioned therein, unless said period is extended or the corporation is sooner dissolved in accordance with law. [Emphasis supplied.]

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Logically, there is no corporation to speak of prior to an entity's incorporation. And no contract entered into before incorporation can bind the corporation.

As can be gleaned from the records, the Management Contract dated 16 January 1994 was executed between respondent and petitioner Lucila months before petitioner corporation's incorporation on 15 August 1994. Similarly, it was done when petitioner Lucila was still the President of Marc Marketing, Inc. Undeniably, it cannot have any binding and legal effect on petitioner corporation. Also, there was no evidence presented to prove that petitioner corporation adopted, ratified or confirmed the Management Contract. It is for the same reason that petitioner corporation cannot be considered estopped from questioning its binding effect now that respondent was invoking the same against it. In no way, then, can it be enforced against petitioner corporation, much less, its provisions fixing respondent's compensation as General Manager to 30% of petitioner corporation's net profit. Consequently, such percentage cannot be the basis for the computation of respondent's separation pay. This finding, however, will not affect the undisputed fact that respondent was, indeed, the General Manager of petitioner corporation from its incorporation up to the time of his dismissal.

Accordingly, this Court finds it necessary to still remand the present case to the Labor Arbiter to conduct further proceedings for the sole purpose of determining the compensation that respondent was actually receiving during the period that he was the General Manager of petitioner corporation, this, for the proper computation of his separation pay.

As regards petitioner Lucila's solidary liability, this Court affirms the same.

As a rule, corporation has a personality separate and distinct from its officers, stockholders and members such that corporate officers are not personally liable for their official acts unless it is shown that they have exceeded their authority. However, this corporate veil can be pierced when the notion of the legal entity is used as a means to perpetrate fraud, an illegal act, as a vehicle for the evasion of an existing obligation, and to confuse legitimate issues. Under the Labor Code, for instance, when a corporation violates a provision declared to be penal in nature, the penalty shall be imposed upon the guilty officer or officers of the corporation. [57]

Based on the prevailing circumstances in this case, petitioner Lucila, being the President of petitioner corporation, acted in bad faith and with malice in effecting respondent's dismissal from employment. Although petitioner corporation has a valid cause for dismissing respondent due to cessation of business operations, however, the latter's dismissal therefrom was done abruptly by its President, petitioner Lucila. Respondent was not given the required one-month prior written notice that petitioner corporation will already cease its business operations. As can be gleaned from the records, respondent was dismissed outright by petitioner Lucila on the same day that petitioner corporation decided to stop and cease its business operations. Worse, respondent was not given separation pay considering that petitioner corporation's cessation of business was not due to business losses or financial reverses.

WHEREFORE, premises considered, the Decision and Resolution dated 20 June 2005 and 7 March 2006, respectively, of the Court of Appeals in CA-G.R. SP No. 76624 are hereby AFFIRMED with the MODIFICATION finding respondent's dismissal from employment legal but without proper observance of due process. Accordingly, petitioner corporation, jointly and solidarily liable with petitioner Lucila, is hereby ordered to pay respondent the following; (1) separation pay equivalent to one month pay or at least one-half month pay for every year of service, whichever is higher, to be computed from the commencement of employment until termination; and (2) nominal damages in the amount of P50,000.00.

This Court, however, finds it proper to still remand the records to the Labor Arbiter to conduct further proceedings for the sole purpose of determining the compensation that respondent was actually receiving during

the period that he was the General Manager of petitioner corporation for the proper computation of his separation pay.

Costs against petitioners.

SO ORDERED.

Carpio, Brion, Sereno, and Reyes, JJ., concur.

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[1] Penned by Associate Justice Salvador J. Valdez, Jr. with Associate Justices Mariano C. Del Castillo (now a member of this Court) and Magdangal M. De Leon, concurring. Rollo, pp. 34-52.

[2] Penned by Commissioner Victoriano R. Calaycay with Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan, concurring. Id. at 124-133.

[3] Penned by Labor Arbiter Pablo C. Espiritu, Jr. Id. at 81-88.

[4] Penned by Associate Justice Magdangal M. De Leon with Associate Justices Edgardo P. Cruz and Mariano C. Del Castillo (now a Member of this Court), concurring. Id. at 54-55.

[5] Articles of Incorporation of Marc II Marketing, Inc. Id. at 59.

[6] As evidenced by its Certificate of Incorporation bearing S.E.C. Reg. No. AS094-007318. Id. at 58.

[7] Id. at 56-57.

[8] It was incorporated on 24 July 1984 as evidenced by its Certificate of Incorporation bearing S.E.C. Reg. No. 121722. CA rollo, p. 228.

[9] Per Management Contract dated 16 January 1994. Rollo, pp. 56-57.

[10] CA rollo, p. 239.

[11] Id. at 235-242.

[12] Id. at 183.

[13] Id. at 177-190.

[14] Per Secretary’s Certificate. Rollo, p. 69.

[15] Id.

[16] Id. at 70.

[17] NLRC Resolution dated 15 October 2002. CA rollo, p. 20.

[18] Court of Appeals Decision dated 20 June 2005. Rollo, p. 39.

[19] This is pursuant to Section 5.2 of Republic Act No. 8799, known as “Securities Regulation Code,” which was signed into law on 19 July 2000. It expressly provides that: “The Commission’s jurisdiction over all cases enumerated under section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: Provided, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over the cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final

resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payment/rehabilitation cases filed as of 30 June 2000 until finally disposed. [Emphasis supplied.]

[20] Penned by Labor Arbiter Pablo C. Espiritu, Jr. CA rollo, pp. 191-192.

[21] Id. at 193-194.

[22] Labor Arbiter's Decision dated 1 October 2001. Rollo, pp. 87-88.

[23] Id. at 132.

[24] NLRC Resolution dated 15 October 2002. CA rollo, pp. 23-24.

[25] Penned by Presiding Commissioner Victoriano R. Calaycay with Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan, concurring. Id. at 27-28.

[26] Rollo, pp. 51-52.

[27] Per Court of Appeals Resolution dated 7 March 2006. Id. at 54-55.

[28] Petition for Review. Id. at 10-11.

[29] Article 217. Jurisdiction of the Labor Arbiters and the Commission. – (a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

1. x x x.
2. Termination disputes; [Emphasis supplied.]

[30] Easycall Communications Phils., Inc. v. King, 514 Phil. 296, 302 (2005).

[31] Sec. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

(a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partnership, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organizations registered with the Commission;

(b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity; and

(c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.

[32] Matling Industrial and Commercial Corporation v. Coros, G.R. No. 157802, 13 October 2010, 633 SCRA 12, 21-22.

[33] Nacpil v. International Broadcasting Corporation, 429 Phil. 410, 416 (2002); Union Motors Corporation v. The National Labor Relations Commission, 373 Phil. 310, 319 (1999).

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[34] Sec. 25. Corporate officers, quorum. - Immediately after their election, the directors of a corporation must formally organize by the election of a president, who shall be a director, a treasurer who may or may not be a director, a secretary who shall be a resident and citizen of the Philippines, and such other officers as may be provided for in the by-laws. Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time.

The directors or trustees and officers to be elected shall perform the duties enjoined on them by law and the by-laws of the corporation. Unless the articles of incorporation or the by-laws provide for a greater majority, a majority of the number of directors or trustees as fixed in the articles of incorporation shall constitute a quorum for the transaction of corporate business, and every decision of at least a majority of the directors or trustees present at a meeting at which there is a quorum shall be valid as a corporate act, except for the election of officers which shall require the vote of a majority of all the members of the board.

Directors or trustees cannot attend or vote by proxy at board meetings.

[35] Easycall Communications Phils., Inc. v. King, supra note 30 at 302.

[36] Matling Industrial and Commercial Corporation v. Coros, supra note 32 at 26-27.

[37] ARTICLE IV

OFFICERS

Section 1. Election/Appointment – Immediately after their election, the Board of Directors shall formally organize by electing the Chairman, the President, one or more Vice-President, the Treasurer, and the Secretary, at said meeting.

The Board may, from time to time, appoint such other officers as it may determine to be necessary or proper.

Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as President and Treasurer or Secretary at the same time.

[38] CA rollo, pp. 183-186.

[39] Id.

[40] Matling Industrial and Commercial Corporation v. Coros, supra note 32 at 27.

[41] Id. at 27.

[42] Id.

[43] Rollo, pp. 48-49.

[44] Nacpil v. International Broadcasting Corporation, supra note 33 at 416; Union Motors Corporation v. The National Labor Relations Commission, supra note 33 at 319.

[45] Real v. Sangu Philippines, Inc. and/or Kiichi Abe, G.R. No. 168757, 19 January 2011.

[46] Eastern Overseas Employment Center, Inc. v. Bea, 512 Phil. 749, 759 (2005).

[47] Industrial Timber Corporation v. Ababon, 515 Phil. 805, 819 (2006).

[48] Id. at 818.

[49] Id. at 819. See also Alabang Country Club, Inc. v. National Labor Relations Commission, 503 Phil. 937, 952-953 (2005).

[50] G.R. No. 117473, 15 April 1997, 271 SCRA 247.

[51] Id. at 254.

[52] G.R. No. 165381, 9 February 2011.

[53] Id.

[54] Shimizu Phils. Contractors, Inc. v. Callanta, G.R. No. 165923, 29 September 2010, 631 SCRA 529, 542-543.

[55] Culili v. Eastern Telecommunications Philippines, Inc., supra note 53.

[56] 494 Phil. 114, 122-123 (2005).

[57] Reahs Corporation v. National Labor Relations Commission, supra note 51 at 255.

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