

TIMOTEO H. SARONA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, ROYALE SECURITY AGENCY (FORMERLY SCEPTRE SECURITY AGENCY) AND CESAR S. TAN, RESPONDENTS.*G.R. No. 185280. January 18, 2012*

Ponente: REYES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-185280/>**REYES, J.:**

This is a petition for review under Rule 45 of the Rules of Court from the May 29, 2008 Decision^[1] of the Twentieth Division of the Court of Appeals (CA) in CA-G.R. SP No. 02127 entitled “Timoteo H. Sarona v. National Labor Relations Commission, Royale Security Agency (formerly Sceptre Security Agency) and Cesar S. Tan” (Assailed Decision), which affirmed the National Labor Relations Commission’s (NLRC) November 30, 2005 Decision and January 31, 2006 Resolution, finding the petitioner illegally dismissed but limiting the amount of his backwages to three (3) monthly salaries. The CA likewise affirmed the NLRC’s finding that the petitioner’s separation pay should be computed only on the basis of his length of service with respondent Royale Security Agency (Royale). The CA held that absent any showing that Royale is a mere alter ego of Sceptre Security Agency (Sceptre), Royale cannot be compelled to recognize the petitioner’s tenure with Sceptre. The dispositive portion of the CA’s Assailed Decision states:

WHEREFORE, in view of the foregoing, the instant petition is PARTLY GRANTED, though piercing of the corporate veil is hereby denied for lack of merit. Accordingly, the assailed Decision and Resolution of the NLRC respectively dated November 30, 2005 and January 31, 2006 are hereby AFFIRMED as to the monetary awards.

SO ORDERED.^[2]

Factual Antecedents

On June 20, 2003, the petitioner, who was hired by Sceptre as a security guard sometime in April 1976, was asked by Karen Therese Tan (Karen), Sceptre’s Operation Manager, to submit a resignation letter as the same was supposedly required for applying for a position at Royale. The petitioner was also asked to fill up Royale’s employment application form, which was handed to him by Royale’s General Manager, respondent Cesar Antonio Tan II (Cesar).^[3]

After several weeks of being in floating status, Royale’s Security Officer, Martin Gono (Martin), assigned the petitioner at Highlight Metal Craft, Inc. (Highlight Metal) from July 29, 2003 to August 8, 2003. Thereafter, the petitioner was transferred and assigned to Wide Wide World Express, Inc. (WWWE, Inc.). During his assignment at Highlight Metal, the petitioner used the patches and agency cloths of Sceptre and it was only when he was posted at WWWE, Inc. that he started using those of Royale.^[4]

On September 17, 2003, the petitioner was informed that his assignment at WWWE, Inc. had been withdrawn because Royale had allegedly been replaced by another security agency. The petitioner, however, shortly

discovered thereafter that Royale was never replaced as WWWE, Inc.'s security agency. When he placed a call at WWWE, Inc., he learned that his fellow security guard was not relieved from his post.[5]

On September 21, 2003, the petitioner was once again assigned at Highlight Metal, albeit for a short period from September 22, 2003 to September 30, 2003. Subsequently, when the petitioner reported at Royale's office on October 1, 2003, Martin informed him that he would no longer be given any assignment per the instructions of Aida Sabalones-Tan (Aida), general manager of Sceptre. This prompted him to file a complaint for illegal dismissal on October 4, 2003.[6]

In his May 11, 2005 Decision, Labor Arbiter Jose Gutierrez (LA Gutierrez) ruled in the petitioner's favor and found him illegally dismissed. For being unsubstantiated, LA Gutierrez denied credence to the respondents' claim that the termination of the petitioner's employment relationship with Royale was on his accord following his alleged employment in another company. That the petitioner was no longer interested in being an employee of Royale cannot be presumed from his request for a certificate of employment, a claim which, to begin with, he vehemently denies. Allegation of the petitioner's abandonment is negated by his filing of a complaint for illegal dismissal three (3) days after he was informed that he would no longer be given any assignments. LA Gutierrez ruled:

In short, respondent wanted to impress before us that complainant abandoned his employment. We are not however, convinced.

There is abandonment when there is a clear proof showing that one has no more interest to return to work. In this instant case, the record has no proof to such effect. In a long line of decisions, the Supreme Court ruled:

"Abandonment of position is a matter of intention expressed in clearly certain and unequivocal acts, however, an interim employment does not mean abandonment." (Jardine Davis, Inc. vs. NLRC, 225 SCRA 757).

"In abandonment, there must be a concurrence of the intention to abandon and some overt acts from which an employee may be declared as having no more interest to work." (C. Alcontin & Sons, Inc. vs. NLRC, 229 SCRA 109).

"It is clear, deliberate and unjustified refusal to severe employment and not mere absence that is required to constitute abandonment." x x x" (De Ysasi III vs. NLRC, 231 SCRA 173).

Aside from lack of proof showing that complainant has abandoned his employment, the record would show that immediate action was taken in order to protest his dismissal from employment. He filed a complaint [for] illegal dismissal on October 4, 2004 or three (3) days after he was dismissed. This act, as declared by the Supreme Court is inconsistent with abandonment, as held in the case of Pampanga Sugar Development Co., Inc. vs. NLRC, 272 SCRA 737 where the Supreme Court ruled:

"The immediate filing of a complaint for [i]llegal [d]ismissal by an employee is inconsistent with abandonment." [7]

The respondents were ordered to pay the petitioner backwages, which LA Gutierrez computed from the day he was dismissed, or on October 1, 2003, up to the promulgation of his Decision on May 11, 2005. In lieu of reinstatement, the respondents were ordered to pay the petitioner separation pay equivalent to his one (1) month salary in consideration of his tenure with Royale, which lasted for only one (1) month and three (3) days. In this regard, LA Gutierrez refused to pierce Royale's corporate veil for purposes of factoring the petitioner's length of service with Sceptre in the computation of his separation pay. LA Gutierrez ruled that Royale's corporate personality, which is separate and distinct from that of Sceptre, a sole proprietorship owned by the late Roso Sabalones (Roso) and later, Aida, cannot be pierced absent clear and convincing evidence that Sceptre and Royale

share the same stockholders and incorporators and that Sceptre has complete control and dominion over the finances and business affairs of Royale. Specifically:

To support its prayer of piercing the veil of corporate entity of respondent Royale, complainant avers that respondent Royal (sic) was using the very same office of SCEPTRE in C. Padilla St., Cebu City. In addition, all officers and staff of SCEPTRE are now the same officers and staff of ROYALE, that all [the] properties of SCEPTRE are now being owned by ROYALE and that ROYALE is now occupying the property of SCEPTRE. We are not however, persuaded.

It should be pointed out at this juncture that SCEPTRE, is a single proprietorship. Being so, it has no distinct and separate personality. It is owned by the late Roso T. Sabalones. After the death of the owner, the property is supposed to be divided by the heirs and any claim against the sole proprietorship is a claim against Roso T. Sabalones. After his death, the claims should be instituted against the estate of Roso T. Sabalones. In short, the estate of the late Roso T. Sabalones should have been impleaded as respondent of this case.

Complainant wanted to impress upon us that Sceptre was organized into another entity now called Royale Security Agency. There is however, no proof to this assertion. Likewise, there is no proof that Roso T. Sabalones, organized his single proprietorship business into a corporation, Royale Security Agency. On the contrary, the name of Roso T. Sabalones does not appear in the Articles of Incorporation. The names therein as incorporators are:

Bruno M. Kuizon –

[P]150,000.00

Wilfredo K. Tan –

100,000.00

Karen Therese S. Tan –

100,000.00

Cesar Antonio S. Tan –

100,000.00

Gabeth Maria K. Tan –

50,000.00

Complainant claims that two (2) of the incorporators are the granddaughters of Roso T. Sabalones. This fact even give (sic) us further reason to conclude that respondent Royal (sic) Security Agency is not an alter ego or conduit of SCEPTRE. It is obvious that respondent Royal (sic) Security Agency is not owned by the owner of “SCEPTRE”.

It may be true that the place where respondent Royale hold (sic) office is the same office formerly used by “SCEPTRE.” Likewise, it may be true that the same officers and staff now employed by respondent Royale

Security Agency were the same officers and staff employed by "SCEPTRE." We find, however, that these facts are not sufficient to justify to require respondent Royale to answer for the liability of Sceptre, which was owned solely by the late Roso T. Sabalones. As we have stated above, the remedy is to address the claim on the estate of Roso T. Sabalones.[8]

The respondents appealed LA Gutierrez's May 11, 2005 Decision to the NLRC, claiming that the finding of illegal dismissal was attended with grave abuse of discretion. This appeal was, however, dismissed by the NLRC in its November 30, 2005 Decision,[9] the dispositive portion of which states:

WHEREFORE, premises considered, the Decision of the Labor Arbiter declaring the illegal dismissal of complainant is hereby AFFIRMED.

However[,] We modify the monetary award by limiting the grant of backwages to only three (3) months in view of complainant's very limited service which lasted only for one month and three days.

1. Backwages

-

[P]15,600.00

2. Separation Pay

-

5,200.00

3. 13[th] Month Pay

-

583.34

[P]21,383.34

Attorney's Fees-

2,138.33

Total

[P]23,521.67

The appeal of respondent Royal (sic) Security Agency is hereby DISMISSED for lack of merit.

SO ORDERED.[10]

The NLRC partially affirmed LA Gutierrez's May 11, 2005 Decision. It concurred with the latter's finding that

the petitioner was illegally dismissed and the manner by which his separation pay was computed, but modified the monetary award in the petitioner's favor by reducing the amount of his backwages from P95,600.00 to P15,600.00. The NLRC determined the petitioner's backwages as limited to three (3) months of his last monthly salary, considering that his employment with Royale was only for a period for one (1) month and three (3) days, thus:[11]

On the other hand, while complainant is entitled to backwages, We are aware that his stint with respondent Royal (sic) lasted only for one (1) month and three (3) days such that it is Our considered view that his backwages should be limited to only three (3) months.

Backwages:

[P]5,200.00 x 3 months = [P]15,600.00[12]

The petitioner, on the other hand, did not appeal LA Gutierrez's May 11, 2005 Decision but opted to raise the validity of LA Gutierrez's adverse findings with respect to piercing Royale's corporate personality and computation of his separation pay in his Reply to the respondents' Memorandum of Appeal. As the filing of an appeal is the prescribed remedy and no aspect of the decision can be overturned by a mere reply, the NLRC dismissed the petitioner's efforts to reverse LA Gutierrez's disposition of these issues. Effectively, the petitioner had already waived his right to question LA Gutierrez's Decision when he failed to file an appeal within the reglementary period. The NLRC held:

On the other hand, in complainant's Reply to Respondent's Appeal Memorandum he prayed that the doctrine of piercing the veil of corporate fiction of respondent be applied so that his services with Sceptre since 1976 [will not] be deleted. If complainant assails this particular finding in the Labor Arbiter's Decision, complainant should have filed an appeal and not seek a relief by merely filing a Reply to Respondent's Appeal Memorandum.[13]

Consequently, the petitioner elevated the NLRC's November 30, 2005 Decision to the CA by way of a Petition for Certiorari under Rule 65 of the Rules of Court. On the other hand, the respondents filed no appeal from the NLRC's finding that the petitioner was illegally dismissed.

The CA, in consideration of substantial justice and the jurisprudential dictum that an appealed case is thrown open for the appellate court's review, disagreed with the NLRC and proceeded to review the evidence on record to determine if Royale is Sceptre's alter ego that would warrant the piercing of its corporate veil.[14] According to the CA, errors not assigned on appeal may be reviewed as technicalities should not serve as bar to the full adjudication of cases. Thus:

In Cuyco v. Cuyco, which We find application in the instant case, the Supreme Court held:

"In their Reply, petitioners alleged that their petition only raised the sole issue of interest on the interest due, thus, by not filing their own petition for review, respondents waived their privilege to bring matters for the Court's review that [does] not deal with the sole issue raised.

Procedurally, the appellate court in deciding the case shall consider only the assigned errors, however, it is equally settled that the Court is clothed with ample authority to review matters not assigned as errors in an appeal, if it finds that their consideration is necessary to arrive at a just disposition of the case."

Therefore, for full adjudication of the case, We have to primarily resolve the issue of whether the doctrine of piercing the corporate veil be justly applied in order to determine petitioner's length of service with private respondents.[15] (citations omitted)

Nonetheless, the CA ruled against the petitioner and found the evidence he submitted to support his allegation that

Royale and Sceptre are one and the same juridical entity to be wanting. The CA refused to pierce Royale's corporate mask as one of the "probative factors that would justify the application of the doctrine of piercing the corporate veil is stock ownership by one or common ownership of both corporations" and the petitioner failed to present clear and convincing proof that Royale and Sceptre are commonly owned or controlled. The relevant portions of the CA's Decision state:

In the instant case, We find no evidence to show that Royale Security Agency, Inc. (hereinafter "Royale"), a corporation duly registered with the Securities and Exchange Commission (SEC) and Sceptre Security Agency (hereinafter "Sceptre"), a single proprietorship, are one and the same entity.

Petitioner, who has been with Sceptre since 1976 and, as ruled by both the Labor Arbiter and the NLRC, was illegally dismissed by Royale on October 1, 2003, alleged that in order to circumvent labor laws, especially to avoid payment of money claims and the consideration on the length of service of its employees, Royale was established as an alter ego or business conduit of Sceptre. To prove his claim, petitioner declared that Royale is conducting business in the same office of Sceptre, the latter being owned by the late retired Gen. Roso Sabalones, and was managed by the latter's daughter, Dr. Aida Sabalones-Tan; that two of Royale's incorporators are grandchildren [of] the late Gen. Roso Sabalones; that all the properties of Sceptre are now owned by Royale, and that the officers and staff of both business establishments are the same; that the heirs of Gen. Sabalones should have applied for dissolution of Sceptre before the SEC before forming a new corporation.

On the other hand, private respondents declared that Royale was incorporated only on March 10, 2003 as evidenced by the Certificate of Incorporation issued by the SEC on the same date; that Royale's incorporators are Bruino M. Kuizon, Wilfredo Gracia K. Tan, Karen Therese S. Tan, Cesar Antonio S. Tan II and [Gabeth] Maria K. Tan.

Settled is the tenet that allegations in the complaint must be duly proven by competent evidence and the burden of proof is on the party making the allegation. Further, Section 1 of Rule 131 of the Revised Rules of Court provides:

"SECTION 1. Burden of proof. – Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law."

We believe that petitioner did not discharge the required burden of proof to establish his allegations. As We see it, petitioner's claim that Royale is an alter ego or business conduit of Sceptre is without basis because aside from the fact that there is no common ownership of both Royale and Sceptre, no evidence on record would prove that Sceptre, much less the late retired Gen. Roso Sabalones or his heirs, has control or complete domination of Royale's finances and business transactions. Absence of this first element, coupled by petitioner's failure to present clear and convincing evidence to substantiate his allegations, would prevent piercing of the corporate veil. Allegations must be proven by sufficient evidence. Simply stated, he who alleges a fact has the burden of proving it; mere allegation is not evidence.[16] (citations omitted)

By way of this Petition, the petitioner would like this Court to revisit the computation of his backwages, claiming that the same should be computed from the time he was illegally dismissed until the finality of this decision.[17] The petitioner would likewise have this Court review and examine anew the factual allegations and the supporting evidence to determine if the CA erred in its refusal to pierce Royale's corporate mask and rule that it is but a mere continuation or successor of Sceptre. According to the petitioner, the erroneous computation of his separation pay was due to the CA's failure, as well as the NLRC and LA Gutierrez, to consider evidence conclusively demonstrating that Royale and Sceptre are one and the same juridical entity. The petitioner claims that since Royale is no more than Sceptre's alter ego, it should recognize and credit his length of service with Sceptre.[18]

The petitioner claimed that Royale and Sceptre are not separate legal persons for purposes of computing the amount of his separation pay and other benefits under the Labor Code. The piercing of Royale's corporate personality is justified by several indicators that Royale was incorporated for the sole purpose of defeating his right to security of tenure and circumvent payment of his benefits to which he is entitled under the law: (i) Royale was holding office in the same property used by Sceptre as its principal place of business;[19] (ii) Sceptre and Royal have the same officers and employees;[20] (iii) on October 14, 1994, Roso, the sole proprietor of Sceptre, sold to Aida, and her husband, Wilfredo Gracia K. Tan (Wilfredo),[21] the property used by Sceptre as its principal place of business;[22] (iv) Wilfredo is one of the incorporators of Royale;[23] (v) on May 3, 1999, Roso ceded the license to operate Sceptre issued by the Philippine National Police to Aida;[24] (vi) on July 28, 1999, the business name "Sceptre Security & Detective Agency" was registered with the Department of Trade and Industry (DTI) under the name of Aida;[25] (vii) Aida exercised control over the affairs of Sceptre and Royale, as she was, in fact, the one who dismissed the petitioner from employment;[26] (viii) Karen, the daughter of Aida, was Sceptre's Operation Manager and is one of the incorporators of Royale;[27] and (ix) Cesar Tan II, the son of Aida was one of Sceptre's officers and is one of the incorporators of Royale.[28]

In their Comment, the respondents claim that the petitioner is barred from questioning the manner by which his backwages and separation pay were computed. Earlier, the petitioner moved for the execution of the NLRC's November 30, 2005 Decision[29] and the respondents paid him the full amount of the monetary award thereunder shortly after the writ of execution was issued.[30] The respondents likewise maintain that Royale's separate and distinct corporate personality should be respected considering that the evidence presented by the petitioner fell short of establishing that Royale is a mere alter ego of Sceptre.

The petitioner does not deny that he has received the full amount of backwages and separation pay as provided under the NLRC's November 30, 2005 Decision.[31] However, he claims that this does not preclude this Court from modifying a decision that is tainted with grave abuse of discretion or issued without jurisdiction.[32]

ISSUES

Considering the conflicting submissions of the parties, a judicious determination of their respective rights and obligations requires this Court to resolve the following substantive issues:

- a. Whether Royale's corporate fiction should be pierced for the purpose of compelling it to recognize the petitioner's length of service with Sceptre and for holding it liable for the benefits that have accrued to him arising from his employment with Sceptre; and
- b. Whether the petitioner's backwages should be limited to his salary for three (3) months.

OUR RULING

Because his receipt of the proceeds of the award under the NLRC's November 30, 2005 Decision is qualified and without prejudice to the CA's resolution of his petition for certiorari, the petitioner is not barred from exercising his right to elevate the decision of the CA to this Court.

Before this Court proceeds to decide this Petition on its merits, it is imperative to resolve the respondents' contention that the full satisfaction of the award under the NLRC's November 30, 2005 Decision bars the petitioner from questioning the validity thereof. The respondents submit that they had paid the petitioner the amount of P21,521.67 as directed by the NLRC and this constitutes a waiver of his right to file an appeal to this Court.

The respondents fail to convince.

The petitioner's receipt of the monetary award adjudicated by the NLRC is not absolute, unconditional and unqualified. The petitioner's May 3, 2007 Motion for Release contains a reservation, stating in his prayer that: "it is respectfully prayed that the respondents and/or Great Domestic Insurance Co. be ordered to RELEASE/GIVE the amount of P23,521.67 in favor of the complainant TIMOTEO H. SARONA without prejudice to the outcome of the petition with the CA." [33]

In *Leonis Navigation Co., Inc., et al. v. Villamater, et al.*, [34] this Court ruled that the prevailing party's receipt of the full amount of the judgment award pursuant to a writ of execution issued by the labor arbiter does not close or terminate the case if such receipt is qualified as without prejudice to the outcome of the petition for certiorari pending with the CA.

Simply put, the execution of the final and executory decision or resolution of the NLRC shall proceed despite the pendency of a petition for certiorari, unless it is restrained by the proper court. In the present case, petitioners already paid Villamater's widow, Sonia, the amount of P3,649,800.00, representing the total and permanent disability award plus attorney's fees, pursuant to the Writ of Execution issued by the Labor Arbiter. Thereafter, an Order was issued declaring the case as "closed and terminated". However, although there was no motion for reconsideration of this last Order, Sonia was, nonetheless, estopped from claiming that the controversy had already reached its end with the issuance of the Order closing and terminating the case. This is because the Acknowledgment Receipt she signed when she received petitioners' payment was without prejudice to the final outcome of the petition for certiorari pending before the CA. [35]

The finality of the NLRC's decision does not preclude the filing of a petition for certiorari under Rule 65 of the Rules of Court. That the NLRC issues an entry of judgment after the lapse of ten (10) days from the parties' receipt of its decision [36] will only give rise to the prevailing party's right to move for the execution thereof but will not prevent the CA from taking cognizance of a petition for certiorari on jurisdictional and due process considerations. [37] In turn, the decision rendered by the CA on a petition for certiorari may be appealed to this Court by way of a petition for review on certiorari under Rule 45 of the Rules of Court. Under Section 5, Article VIII of the Constitution, this Court has the power to "review, revise, reverse, modify, or affirm on appeal or certiorari as the law or the Rules of Court may provide, final judgments and orders of lower courts in x x x all cases in which only an error or question of law is involved." Consistent with this constitutional mandate, Rule 45 of the Rules of Court provides the remedy of an appeal by certiorari from decisions, final orders or resolutions of the CA in any case, i.e., regardless of the nature of the action or proceedings involved, which would be but a continuation of the appellate process over the original case. [38] Since an appeal to this Court is not an original and independent action but a continuation of the proceedings before the CA, the filing of a petition for review under Rule 45 cannot be barred by the finality of the NLRC's decision in the same way that a petition for certiorari under Rule 65 with the CA cannot.

Furthermore, if the NLRC's decision or resolution was reversed and set aside for being issued with grave abuse of discretion by way of a petition for certiorari to the CA or to this Court by way of an appeal from the decision of the CA, it is considered void ab initio and, thus, had never become final and executory. [39]

A Rule 45 Petition should be confined to questions of law. Nevertheless, this Court has the power to resolve a question of fact, such as whether a corporation is a mere alter ego of another entity or whether the corporate fiction was invoked for fraudulent or malevolent ends, if the findings in assailed decision is not supported by the evidence on record or based on a misapprehension of facts.

The question of whether one corporation is merely an alter ego of another is purely one of fact. So is the question of whether a corporation is a paper company, a sham or subterfuge or whether the petitioner adduced the requisite quantum of evidence warranting the piercing of the veil of the respondent's corporate personality.[40]

As a general rule, this Court is not a trier of facts and a petition for review on certiorari under Rule 45 of the Rules of Court must exclusively raise questions of law. Moreover, if factual findings of the NLRC and the LA have been affirmed by the CA, this Court accords them the respect and finality they deserve. It is well-settled and oft-repeated that findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but finality when affirmed by the CA.[41]

Nevertheless, this Court will not hesitate to deviate from what are clearly procedural guidelines and disturb and strike down the findings of the CA and those of the labor tribunals if there is a showing that they are unsupported by the evidence on record or there was a patent misappreciation of facts. Indeed, that the impugned decision of the CA is consistent with the findings of the labor tribunals does not per se conclusively demonstrate the correctness thereof. By way of exception to the general rule, this Court will scrutinize the facts if only to rectify the prejudice and injustice resulting from an incorrect assessment of the evidence presented.

A resolution of an issue that has supposedly become final and executory as the petitioner only raised it in his reply to the respondents' appeal may be revisited by the appellate court if such is necessary for a just disposition of the case.

As above-stated, the NLRC refused to disturb LA Gutierrez's denial of the petitioner's plea to pierce Royale's corporate veil as the petitioner did not appeal any portion of LA Gutierrez's May 11, 2005 Decision.

In this respect, the NLRC cannot be accused of grave abuse of discretion. Under Section 4(c), Rule VI of the NLRC Rules,[42] the NLRC shall limit itself to reviewing and deciding only the issues that were elevated on appeal. The NLRC, while not totally bound by technical rules of procedure, is not licensed to disregard and violate the implementing rules it implemented.[43]

Nonetheless, technicalities should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties. Technical rules are not binding in labor cases and are not to be applied strictly if the result would be detrimental to the working man.[44] This Court may choose not to encumber itself with technicalities and limitations consequent to procedural rules if such will only serve as a hindrance to its duty to decide cases judiciously and in a manner that would put an end with finality to all existing conflicts between the parties.

Royale is a continuation or successor of Sceptre.

A corporation is an artificial being created by operation of law. It possesses the right of succession and such powers, attributes, and properties expressly authorized by law or incident to its existence. It has a personality separate and distinct from the persons composing it, as well as from any other legal entity to which it may be related. This is basic.[45]

Equally well-settled is the principle that the corporate mask may be removed or the corporate veil pierced when the corporation is just an alter ego of a person or of another corporation. For reasons of public policy and in the interest of justice, the corporate veil will justifiably be impaled only when it becomes a shield for fraud, illegality or inequity committed against third persons.[46]

Hence, any application of the doctrine of piercing the corporate veil should be done with caution. A court should be mindful of the milieu where it is to be applied. It must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of rights. The wrongdoing must be clearly and convincingly established; it cannot be presumed. Otherwise, an injustice that was never unintended may result from an erroneous application.[47]

Whether the separate personality of the corporation should be pierced hinges on obtaining facts appropriately pleaded or proved. However, any piercing of the corporate veil has to be done with caution, albeit the Court will not hesitate to disregard the corporate veil when it is misused or when necessary in the interest of justice. After all, the concept of corporate entity was not meant to promote unfair objectives.[48]

The doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or 3) alter ego cases, where a corporation is merely a farce since it is a 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.[49]

In this regard, this Court finds cogent reason to reverse the CA's findings. Evidence abound showing that Royale is a mere continuation or successor of Sceptre and fraudulent objectives are behind Royale's incorporation and the petitioner's subsequent employment therein. These are plainly suggested by events that the respondents do not dispute and which the CA, the NLRC and LA Gutierrez accept as fully substantiated but misappreciated as insufficient to warrant the use of the equitable weapon of piercing.

As correctly pointed out by the petitioner, it was Aida who exercised control and supervision over the affairs of both Sceptre and Royale. Contrary to the submissions of the respondents that Roso had been the only one in sole control of Sceptre's finances and business affairs, Aida took over as early as 1999 when Roso assigned his license to operate Sceptre on May 3, 1999.[50] As further proof of Aida's acquisition of the rights as Sceptre's sole proprietor, she caused the registration of the business name "Sceptre Security & Detective Agency" under her name with the DTI a few months after Roso abdicated his rights to Sceptre in her favor.[51] As far as Royale is concerned, the respondents do not deny that she has a hand in its management and operation and possesses control and supervision of its employees, including the petitioner. As the petitioner correctly pointed out, that Aida was the one who decided to stop giving any assignments to the petitioner and summarily dismiss him is an eloquent testament of the power she wields insofar as Royale's affairs are concerned. The presence of actual common control coupled with the misuse of the corporate form to perpetrate oppressive or manipulative conduct or evade performance of legal obligations is patent; Royale cannot hide behind its corporate fiction.

Aida's control over Sceptre and Royale does not, by itself, call for a disregard of the corporate fiction. There must be a showing that a fraudulent intent or illegal purpose is behind the exercise of such control to warrant the piercing of the corporate veil.[52] However, the manner by which the petitioner was made to resign from Sceptre and how he became an employee of Royale suggest the perverted use of the legal fiction of the separate corporate personality. It is undisputed that the petitioner tendered his resignation and that he applied at Royale at the instance of Karen and Cesar and on the impression they created that these were necessary for his continued employment. They orchestrated the petitioner's resignation from Sceptre and subsequent employment at Royale, taking advantage of their ascendancy over the petitioner and the latter's lack of knowledge of his rights and the consequences of his actions. Furthermore, that the petitioner was made to resign from Sceptre and apply with Royale only to be unceremoniously terminated shortly thereafter leads to the ineluctable conclusion that there was intent to violate the petitioner's rights as an employee, particularly his right to security of tenure. The

respondents' scheme reeks of bad faith and fraud and compassionate justice dictates that Royale and Sceptre be merged as a single entity, compelling Royale to credit and recognize the petitioner's length of service with Sceptre. The respondents cannot use the legal fiction of a separate corporate personality for ends subversive of the policy and purpose behind its creation^[53] or which could not have been intended by law to which it owed its being.^[54]

For the piercing doctrine to apply, it is of no consequence if Sceptre is a sole proprietorship. As ruled in *Prince Transport, Inc., et al. v. Garcia, et al.*,^[55] it is the act of hiding behind the separate and distinct personalities of juridical entities to perpetuate fraud, commit illegal acts, evade one's obligations that the equitable piercing doctrine was formulated to address and prevent:

A settled formulation of the doctrine of piercing the corporate veil is that when two business enterprises are owned, conducted and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that these two entities are distinct and treat them as identical or as one and the same. In the present case, it may be true that Lubas is a single proprietorship and not a corporation. However, petitioners' attempt to isolate themselves from and hide behind the supposed separate and distinct personality of Lubas so as to evade their liabilities is precisely what the classical doctrine of piercing the veil of corporate entity seeks to prevent and remedy.^[56]

Also, Sceptre and Royale have the same principal place of business. As early as October 14, 1994, Aida and Wilfredo became the owners of the property used by Sceptre as its principal place of business by virtue of a Deed of Absolute Sale they executed with Roso.^[57] Royale, shortly after its incorporation, started to hold office in the same property. These, the respondents failed to dispute.

The respondents do not likewise deny that Royale and Sceptre share the same officers and employees. Karen assumed the dual role of Sceptre's Operation Manager and incorporator of Royale. With respect to the petitioner, even if he has already resigned from Sceptre and has been employed by Royale, he was still using the patches and agency cloths of Sceptre during his assignment at Highlight Metal.

Royale also claimed a right to the cash bond which the petitioner posted when he was still with Sceptre. If Sceptre and Royale are indeed separate entities, Sceptre should have released the petitioner's cash bond when he resigned and Royale would have required the petitioner to post a new cash bond in its favor.

Taking the foregoing in conjunction with Aida's control over Sceptre's and Royale's business affairs, it is patent that Royale was a mere subterfuge for Aida. Since a sole proprietorship does not have a separate and distinct personality from that of the owner of the enterprise, the latter is personally liable. This is what she sought to avoid but cannot prosper.

Effectively, the petitioner cannot be deemed to have changed employers as Royale and Sceptre are one and the same. His separation pay should, thus, be computed from the date he was hired by Sceptre in April 1976 until the finality of this decision. Based on this Court's ruling in *Masagana Concrete Products, et al. v. NLRC, et al.*,^[58] the intervening period between the day an employee was illegally dismissed and the day the decision finding him illegally dismissed becomes final and executory shall be considered in the computation of his separation pay as a period of "imputed" or "putative" service:

Separation pay, equivalent to one month's salary for every year of service, is awarded as an alternative to reinstatement when the latter is no longer an option. Separation pay is computed from the commencement of employment up to the time of termination, including the imputed service for which the employee is entitled to backwages, with the salary rate prevailing at the end of the period of putative service being the basis for computation.^[59]

It is well-settled, even axiomatic, that if reinstatement is not possible, the period covered in the computation of backwages is from the time the employee was unlawfully terminated until the finality of the decision finding illegal dismissal.

With respect to the petitioner's backwages, this Court cannot subscribe to the view that it should be limited to an amount equivalent to three (3) months of his salary. Backwages is a remedy affording the employee a way to recover what he has lost by reason of the unlawful dismissal.[60] In awarding backwages, the primordial consideration is the income that should have accrued to the employee from the time that he was dismissed up to his reinstatement[61] and the length of service prior to his dismissal is definitely inconsequential.

As early as 1996, this Court, in *Bustamante, et al. v. NLRC, et al.*, [62] clarified in no uncertain terms that if reinstatement is no longer possible, backwages should be computed from the time the employee was terminated until the finality of the decision, finding the dismissal unlawful.

Therefore, in accordance with R.A. No. 6715, petitioners are entitled on their full backwages, inclusive of allowances and other benefits or their monetary equivalent, from the time their actual compensation was withheld on them up to the time of their actual reinstatement.

As to reinstatement of petitioners, this Court has already ruled that reinstatement is no longer feasible, because the company would be justly prejudiced by the continued employment of petitioners who at present are overage, a separation pay equal to one-month salary granted to them in the Labor Arbiter's decision was in order and, therefore, affirmed on the Court's decision of 15 March 1996. Furthermore, since reinstatement on this case is no longer feasible, the amount of backwages shall be computed from the time of their illegal termination on 25 June 1990 up to the time of finality of this decision.[63] (emphasis supplied)

A further clarification was made in *Javellana, Jr. v. Belen*: [64]

Article 279 of the Labor Code, as amended by Section 34 of Republic Act 6715 instructs:

Art. 279. Security of Tenure. - In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

Clearly, the law intends the award of backwages and similar benefits to accumulate past the date of the Labor Arbiter's decision until the dismissed employee is actually reinstated. But if, as in this case, reinstatement is no longer possible, this Court has consistently ruled that backwages shall be computed from the time of illegal dismissal until the date the decision becomes final.[65] (citation omitted)

In case separation pay is awarded and reinstatement is no longer feasible, backwages shall be computed from the time of illegal dismissal up to the finality of the decision should separation pay not be paid in the meantime. It is the employee's actual receipt of the full amount of his separation pay that will effectively terminate the employment of an illegally dismissed employee.[66] Otherwise, the employer-employee relationship subsists and the illegally dismissed employee is entitled to backwages, taking into account the increases and other benefits, including the 13th month pay, that were received by his co-employees who are not dismissed.[67] It is the obligation of the employer to pay an illegally dismissed employee or worker the whole amount of the salaries or wages, plus all other benefits and bonuses and general increases, to which he would have been normally entitled had he not been dismissed and had not stopped working.[68]

In fine, this Court holds Royale liable to pay the petitioner backwages to be computed from his dismissal on October 1, 2003 until the finality of this decision. Nonetheless, the amount received by the petitioner from the respondents in satisfaction of the November 30, 2005 Decision shall be deducted accordingly.

Finally, moral damages and exemplary damages at P25,000.00 each as indemnity for the petitioner's dismissal, which was tainted by bad faith and fraud, are in order. Moral damages may be recovered where the dismissal of the employee was tainted by bad faith or fraud, or where it constituted an act oppressive to labor, and done in a manner contrary to morals, good customs or public policy while exemplary damages are recoverable only if the dismissal was done in a wanton, oppressive, or malevolent manner.[69]

WHEREFORE, premises considered, the Petition is hereby GRANTED. We REVERSE and SET ASIDE the CA's May 29, 2008 Decision in C.A.-G.R. SP No. 02127 and order the respondents to pay the petitioner the following minus the amount of (P23,521.67) paid to the petitioner in satisfaction of the NLRC's November 30, 2005 Decision in NLRC Case No. V-000355-05:

- a) full backwages and other benefits computed from October 1, 2003 (the date Royale illegally dismissed the petitioner) until the finality of this decision;
- b) separation pay computed from April 1976 until the finality of this decision at the rate of one month pay per year of service;
- c) ten percent (10%) attorney's fees based on the total amount of the awards under (a) and (b) above;
- d) moral damages of Twenty-Five Thousand Pesos (P25,000.00); and
- e) exemplary damages of Twenty-Five Thousand Pesos (P25,000.00).

This case is REMANDED to the labor arbiter for computation of the separation pay, backwages, and other monetary awards due the petitioner.

SO ORDERED.

Carpio, (Chairperson), Perez, Sereno, and Bernabe, JJ.[*], concur.

[*]Additional Member in lieu of Associate Justice Arturo D. Brion per Special Order No. 1174 dated January 9, 2012.

[1] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Amy C. Lazaro-Javier and Florito S. Macalino, concurring; rollo, pp. 19-30.

[2] Id. at 29.

[3] Id. at 3, 4 and 21.

[4] Id. at 4-5, 21.

[5] Id. at 5-6.

[6] Id. at 5-6, 21.

[7] Id. at 55.

[8] Id. at 53-54.

- [9] Id. at 58-65.
- [10] Id. at 64-65.
- [11] Id. at 64.
- [12] Id.
- [13] Id.
- [14] Id. at 24-25.
- [15] Id.
- [16] Id. at 26-27.
- [17] Id. at 13-15.
- [18] Id. at 7-13.
- [19] Id. at 5, 6 and 9.
- [20] Id. at 8-9.
- [21] Id. at 74-80.
- [22] Id. at 82.
- [23] Id. at 44.
- [24] Id. at 73-79.
- [25] Id. at 73-80.
- [26] Id. at 12.
- [27] Id. at 8, 44, 73-74.
- [28] Id.
- [29] Id. at 58-65.
- [30] Id. at 49.
- [31] Id. at 77.
- [32] Id.
- [33] Id. at 67.
- [34] G.R. No. 179169, March 3, 2010, 614 SCRA 182.
- [35] Id. at 193-194.
- [36] 2011 NLRC Rules of Procedure, Rule VII, Section 14.
- [37] Id.
- [38] Cua, Jr. v. Tan, G.R. No. 181455-56, December 4, 2009, 607 SCRA , 686-687.
- [39] Leonis Navigation Co., Inc. v. Villamater, supra note 34 at 192.

- [40] China Banking Corporation v. Dyne-Sem Electronics Corporation, 527 Phil 80 (2006).
- [41] Reyes v. National Labor Relations Commission, G.R. No. 160233, August 8, 2007, 529 SCRA 499.
- [42] New Rules of Procedure of the National Labor Relations Commission (as amended by NLRC Resolution No. 01-02, Series of 2002).
- [43] Del Monte Philippines, Inc. v. NLRC, G.R. No. 87371, August 6, 1990, 188 SCRA 370.
- [44] Government Service Insurance System v. NLRC, G.R. No. 180045, November 17, 2010, 635 SCRA 258.
- [45] General Credit Corporation v. Alsons Development and Investment Corporation, G.R. No. 154975, January 29, 2007, 513 SCRA 237-238.
- [46] Philippine National Bank v. Andrada Electric Engineering Company, 430 Phil 894 (2002).
- [47] Id. at 894-895; citations omitted.
- [48] Supra note 45 at 238.
- [49] Id. at 238-239.
- [50] Rollo, p. 79.
- [51] Id. at 80.
- [52] NASECO Guards Association-PEMA (NAGA-PEMA) v. National Service Corporation, G.R. No. 165442, August 25, 2010, 629 SCRA 101.
- [53] Cf. Emiliano Cano Enterprises, Inc. v. CIR, et al., 121 Phil 276 (1965).
- [54] Land Bank of the Philippines v. Court of Appeals, 416 Phil 774, 783 (2001).
- [55] G.R. No. 167291, January 12, 2011, 639 SCRA 312.
- [56] Id. at 328.
- [57] Rollo, pp. 5, 54, 74 and 82.
- [58] 372 Phil 459 (1999).
- [59] Id. at 481.
- [60] De Guzman v. National Labor Relations Commission, 371 Phil 202 (1999).
- [61] Velasco v. NLRC, et al., 525 Phil 749, 761-762, (2006).
- [62] 332 Phil 833 (1996).
- [63] Id. at 843.
- [64] G.R. No. 181913, March 5, 2010, 614 SCRA 342.
- [65] Id. at 350-351.
- [66] Rasonable v. NLRC, 324 Phil 191, 200 (1996).
- [67] Id.
- [68] St. Louis College of Tuguegarao v. NLRC, 257 Phil 1008 (1989), citing East Asiatic Co., Ltd. v. Court of

Industrial Relations, 148-B Phil 401, 429 (1971).

[69] Norkis Trading Co., Inc. v. NLRC, 504 Phil 709, 719-720 (2005).

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