

**GENUINO AGRO-INDUSTRIAL DEVELOPMENT CORPORATION,
PETITIONER, VS. ARMANDO G. ROMANO, JAY A. CABRERA AND
MOISES V. SARMIENTO, RESPONDENTS.***G.R. No. 204782. September 18, 2019*

Ponente: REYES, J. JR., J.

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Before this Court is a Petition for Review on Certiorari[1] filed by petitioner Genuino Agro-Industrial Development Corporation, seeking to annul and set aside the May 31, 2012 Decision[2] and December 12, 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 103337 which found no grave abuse of discretion on the part of the National Labor Relations Commission (NLRC) in affirming the ruling of the Labor Arbiter finding the respondents to be the regular employees of the petitioner whom it had illegally dismissed; and ordering the petitioner to reinstate them and Respondents Armando G. Romano (Romano), Jay A. Cabrera (Cabrera) and Moises V. Sarmiento (Sarmiento) claimed that they work as brine men at Genuino Ice Company Inc.'s (Genuino Ice) ice plant in Turbina, Calamba, Laguna branch. Romano was hired through the man power agency, Vicar General Contractor and Management Services (Vicar), while Sarmiento and Cabrera were hired through L.C. Moreno General Contractor and Management Services (L.C. Moreno). Vicar was the last agency that supplied all the employees to Genuino Ice.[4]

Respondents averred that sometime in September 2004, the workers were given a work schedule where one worker was not made to report for work for 15 consecutive days while the six other workers report for work on their regular schedules. In other words, each worker does not work for 15 days for a period of 90 days. When Romano reported back to work on June 25, 2005 after his 15 days forced leave, he was told then and there that his employment was already terminated. Sarmiento and Cabrera also suffered the same fate. They were dismissed from work on July 10, 2005.[5] Thus, on August 3, 2005, respondents filed a complaint for illegal dismissal with prayer for separation pay against Genuino Ice and Vicar before the Department of Labor and Employment (DOLE).[6]

Genuino Ice, for its part, claimed that respondents charged the wrong party as they were never its employees but of petitioner, its affiliate company. They were contractual employees of Vicar and L.C. Moreno which deployed them to work at petitioner's ice plant at Turbina, Calamba City. Due to the continuous and tremendous decline in the demand for ice products being produced by the petitioner, it shut down its block ice production plant facilities. Its six workers were reduced to two. Among those affected were the respondents who were relieved from their posts by Vicar and L.C. Moreno.[7]

By reason of Genuino Ice's contention that respondents charged the wrong party, they amended their complaint by impleading the petitioner, including the relief of reinstatement, and asking for attorney's fees.[8]

In his Decision[9] dated December 29, 2006, the Labor Arbiter held that respondents were regular employees of

the petitioner since they were performing functions that were necessary and desirable to the operations of the ice plant. The continuous work of the respondents as brine men in the plant for several years (since 1988 in the case of Romano and Sarmiento, and since 1992 in Cabrera's case) rendered dubious the proposition that their respective employments were fixed for a specific period or that they were seasonal employees. The contention that petitioner did not exercise any form of control over the work performance of the respondents was found by the Labor Arbiter hard to believe considering that they were suffered to work at the ice plant. The Labor Arbiter also found Vicar to be without substantial capital and equipment to qualify as an independent contractor, and thus treated it as a labor-only contractor, and held accountable as such.

While the Labor Arbiter recognized that the company has the prerogative to close its department, the Labor Arbiter still found respondents' dismissal from employment as illegal inasmuch as the petitioner failed to adduce any evidence showing that the closure of its block ice production facility had some basis and that their dismissal was for an authorized cause. The Labor Arbiter disposed the case in this wise:

WHEREFORE, judgment is hereby rendered:

- Declaring that [respondents] were regular employees of [petitioner];
- Declaring that [respondents] were illegally dismissed by [petitioner]; and as such should be immediately reinstated to their former positions without loss of seniority rights. [Petitioner] should report compliance with this directive within ten (10) days from receipt hereof;
- Adjudging [petitioner] and [Vicar] jointly and severally liable to pay [respondents] the amount of [P] 133,395.51 each as backwages, as of the date of this decision for a total amount of [P]400,186.53. This is only partial payment, full satisfaction of which shall be reckoned to the date of the actual reinstatement of [respondents].

SO ORDERED.[10]

On appeal before the NLRC, petitioner stressed that respondents never questioned its prerogative to retrench them due to partial closure of its plant and reduction of its personnel, but only questioned the propriety of their termination for non-compliance with the notice requirement laid down in Article 283 (now Article 298) of the Labor Code. Considering that respondents were laid-off for an authorized cause (the partial shut-down of its ice plant), only that they were not properly notified thereof, petitioner contended that respondents are not entitled to reinstatement, backwages and separation pay, but only to nominal damages.[11]

Meanwhile, in compliance with the reinstatement aspect of the Labor Arbiter's Decision, the petitioner served upon the respondents a Notice of Compliance informing them that they could no longer be reinstated to their former posts at its ice plant in Turbina, Calamba City, due to the closure of its block ice production facilities. Thus, they were directed to report at petitioner's main office within five days from receipt of the said notice of compliance for their reinstatement/placement at petitioner's other branches or affiliate companies, particularly at its ice plant in Navotas.[12] By virtue of the said directive, respondents reported at petitioner's main office on March 6, 2007. However, they were simply made to wait the whole day and were not given any job assignments. When respondents inquired on their work assignments on March 8 and 12, 2007, they were told that there were still no available work assignments for them, prompting them to file a motion for the issuance of a writ of partial execution ordering their reinstatement in the payroll effective March 6, 2007.[13]

Petitioner opposed the motion for partial execution. It argued that it could not be forced to reinstate the respondents whether in their previous positions or in the payroll because the department where they used to work had already closed and there were no other equivalent positions available in petitioner's only branch in Navotas.[14]

In an Order dated July 5, 2007, the Labor Arbiter granted the motion and issued a writ of partial execution. Since the writ of partial execution was returned unsatisfied,[15] petitioner moved for the issuance of an alias writ of partial execution reiterating their prayer to be reinstated in the payroll.[16] After the petitioner filed its opposition to the motion, the Labor Arbiter issued an Order on September 28, 2007 granting the issuance of an alias writ of partial execution. Petitioner appealed the said September 28, 2007 Order and prayed that the same be lifted and set aside pending resolution of the main case on appeal.[17]

On November 29, 2007, the NLRC rendered its Decision[18] finding that the Labor Arbiter did not err in holding the petitioner and Vicar guilty of illegal dismissal, and ordering respondents' reinstatement with full backwages. The NLRC held that they could not justify respondents' dismissal on the ground of retrenchment considering that petitioner and Vicar totally disregarded the requirements laid down in Article 298 of the Labor Code and failed to adduce documentary proof, like an audited financial statement, to substantiate their claim.

Not accepting defeat, petitioner moved for the reconsideration of the NLRC Decision. Petitioner stressed that as it had explained in its Notice of Compliance, respondents could no longer be reinstated to their former positions due to the closure of its block ice production facilities. There were also no equivalent positions available at its other branch where the respondents may be placed. As such, petitioner reiterated that in view of the situation, it could not be forced to reinstate the respondents to their former positions or even in the payroll. The closure of its ice plants one after the other must be treated as a supervening event that warrants the modification of the order of reinstatement with payment of full backwages, to the payment of separation pay.[19]

Finding the motion for reconsideration filed by the petitioner to have raised no new matters of substance, the NLRC denied the same in a Resolution[20] dated February 26, 2008.

Undaunted, the petitioner sought recourse before the CA via a Petition for Certiorari alleging grave abuse of discretion on the part of the NLRC in: (1) not finding that respondents were retrenched from employment and that they are not entitled to reinstatement and backwages, but only to nominal damages; (2) not modifying the Labor Arbiter's Decision which ordered respondents' reinstatement and payment of full backwages to the payment of separation pay.[21]

In the interim, or on September 26, 2011, the Labor Arbiter issued a Writ of Execution commanding the sheriff to proceed to the premises of the petitioner and Vicar, and collect from them the amount of P1,392,579.93 representing respondents' backwages, inclusive of 13th month pay and service incentive leave pay, for the period of July 10, 2005 to April 30, 2010, among others.[22]

In a Decision[23] dated May 31, 2012, the CA found no grave abuse of discretion on the part of the NLRC in deciding the case as it did and denied the petition. It held that while retrenchment is one of the recognized authorized causes for the dismissal of an employee, petitioner failed to discharge its burden of proving that respondents' retrenchment was valid for the reason that petitioner not only failed to notify them and the DOLE of the retrenchment, it also failed to prove that it was losing financially. Thus, respondents' dismissal was clearly illegal. Petitioner cannot also claim that it is liable only for nominal damages considering that retrenchment was shown not to be justified. The CA also found no reason to modify the award of reinstatement and full backwages for failure of the petitioner to sufficiently prove that the department where respondents' used to work had indeed closed, or that there were no other similar unfilled posts available at its other branch.

Its motion for reconsideration having been denied,[24] petitioner is now before this Court via the present petition. Respondents filed their Comment with Motion[25] thereto, praying that Genuino Ice be declared solidarity liable with the petitioner to pay respondents the monetary awards granted to them by the Labor Arbiter, to which the petitioner has filed its Opposition.[26] In a Resolution[27] dated January 14, 2015, the Court required the parties

to submit their respective memoranda.[28]

The Issues Presented

Petitioner raised the following issues for this Court's consideration:

- THE HONORABLE COURT OF APPEALS ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN AFFIRMING THE NLRC'S DECISION IN NOT RULING FOR THE RETRENCHMENT OF THE RESPONDENTS WITHOUT PROPER NOTICE AND DUE PROCESS, THAT THEY ARE NOT ENTITLED TO REINSTATEMENT AND PAYMENT OF BACKWAGES, BUT TO NOMINAL DAMAGES PURSUANT TO RULING HELD IN "JAKA FOOD PROCESSING CORP. VERSUS PACOT," GR. No. 151378, March 28, 2005."
- THE HONORABLE COURT OF APPEALS ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN NOT MODIFYING THE NLRC'S DECISION AFFIRMING THE LABOR ARBITER'S DECISION ORDERING REINSTATEMENT AND PAYMENT OF FULL BACKWAGES TO THE RESPONDENTS, TO PAYMENT OF SEPARATION PAY RECKONED FROM DATE OF THEIR INITIAL EMPLOYMENT, UP TO DECEMBER 29, 2006, THE DATE OF THE LABOR ARBITER'S DECISION.
- [RESPONDENTS'] MOTION PRAYING THAT GENUINO ICE COMPANY, INC. BE HELD SOLIDARILY LIABLE WITH PETITIONER GENUINO AGRO DEVELOPMENT CORPORATION FOR THE PAYMENT OF MONETARY AWARDS OF THE LABOR ARBITER IS OUT OF CONTEXT, AND HAS NO FACTUAL AND LEGAL BASIS.[29]

The Arguments of the Parties

Echoing substantially the same arguments put forward before the Labor Arbiter, the NLRC and the CA, petitioner avers that the respondents do not question its right to lay off its workers on account of serious business losses, but only questions the propriety of their termination for non-compliance with the notice requirement and non-payment of separation pay under Article 298 of the Labor Code. Respondents also bewail that their termination was discriminatory since they were not informed why their services were terminated instead of the other workers. Since respondents admitted that the closure of petitioner's business was brought about by serious business losses, respondents are considered to have been terminated for cause, but without according them due process, entitling them to the payment of nominal damages.[30]

Petitioner reiterates that the closure of its ice plants was a supervening event which rendered it impossible for it to reinstate the respondents to their former positions or even in the payroll, since their former positions are no longer existing and no equivalent positions are also available in its other branch. Thus, instead of directing it to reinstate the respondents and pay them their full backwages, petitioner must instead be ordered to pay respondents their separation pay.[31]

Anent the motion of the respondents to declare Genuino Ice solidarity liable with it, petitioner avers that the same has no factual and legal basis because Genuino Ice is not a party in this case. Moreover, the Decision of the Labor Arbiter which held only the petitioner liable to the respondents, had already become final and immutable as to the respondents, they having not appealed the same. Thus, they cannot at this stage of the proceedings seek to alter the Decision to make Genuino Ice solidarity liable.[32]

Respondents counter that the petitioner is raising the very same grounds it raised before the CA, and this Court in *Genuino Ice Company, Inc. v. Lava*[33] has resolved exactly the same issues and exactly the same facts involving co-employees of the respondents against Genuino Ice, where the latter was found guilty of illegal dismissal. Consistent with the Court's ruling in the said case, the Court must likewise affirm the ruling of the CA finding the petitioner guilty of illegal dismissal and liable for the monetary awards prayed for by the respondents.[34]

Respondents contend further that they could not be precluded from asking the Court to pierce the veil of corporate fiction of Genuino Ice to make it solidarity liable with the petitioner given that their actuations would lead one to believe that they are one and the same company inasmuch as the verification portion of the Memorandum of Appeal filed by the petitioner was signed by Edgar A. Carriaga (Carriaga), Genuino Ice's authorized representative, and it was Genuino Ice that posted the appeal bond on its behalf. When respondents tried to collect from the surety bond the amount of P401,000.00 by virtue of the writ of partial execution and notice of garnishment that were issued, they failed to get a single centavo as the same was opposed by Carriaga, claiming that the amount was intended as a collateral security for Genuino Ice and not for the petitioner (despite the latter's representation that it had duly perfected its appeal before the NLRC).[35]

The Ruling of the Court

Limits of review under Rule 45 from

the CA's Decision in a labor case

A perusal of the present petition inevitably shows that the petitioner reiterated substantially the same arguments and assailed congruent factual findings of the Labor Arbiter, the NLRC and the CA. A petition for review on certiorari under Rule 45 is a mode of appeal where the issue is limited only to questions of law.[36] In labor cases, a Rule 45 petition is limited to reviewing whether the CA correctly determined the presence or absence of grave abuse of discretion and deciding other jurisdictional errors of the NLRC,[37] and not on the basis of whether the latter's decision on the merits of the case was strictly correct.[38]

By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.[39] The abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility. The abuse must also be so patent and gross as would amount to an evasion of a positive duty or to a virtual refusal to perform the duty required, or to act at all in contemplation of law, as to be equivalent to having acted without jurisdiction.[40]

In *Career Philippines Shipmanagement, Inc. v. Serna*,[41] this Court laid down the parameters of an appeal taken under Rule 45 from the CA's Rule 65 Decision in a labor case, viz:

In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for certiorari it ruled upon was presented to it; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. x x x

Accordingly, we do not re-examine conflicting evidence, re-evaluate the credibility of witnesses, or substitute the findings of fact of the NLRC, an administrative body that has expertise in its specialized field. Nor do we substitute our "own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible." The factual findings of the NLRC, when affirmed by the CA, are generally conclusive on this Court.

There are, however, recognized exceptions to this general rule where the Court, in the exercise of its discretionary appellate jurisdiction, may look into factual issues raised in Rule 45 petition. These exceptions are enumerated in *Sia Tio v. Abayata*[42] To wit:

(1)

when the findings are grounded entirely on speculation, surmises or conjectures;

(2)

when the inference made is manifestly mistaken, absurd or impossible;

(3)

when there is grave abuse of discretion;

(4)

when the judgment is based on a misapprehension of facts;

(5)

when the findings of fact are conflicting;

(6)

when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;

(7)

when the findings are contrary to the trial court;

(8)

when the findings are conclusions without citation of specific evidence on which they are based;

(9)

when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent;

(10)

when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and

(11)

when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

None of the exceptions enumerated above are obtaining in this case.

Respondents were illegally

dismissed from employment,

retrenchment not being duly

proved

Article 298 of the Labor Code laid down the authorized causes where the employer may validly terminate the employment of its employees. It provides:

ART. 298. 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 Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. 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 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.

Petitioner is correct in saying that retrenchment is a management prerogative to downsize its work force to avert business losses, which could either be already incurred or impending. Where appropriate and where conditions are in accord with law and jurisprudence, the Court has authorized valid reductions in the work force to forestall business losses, the hemorrhaging of capital, or even to recognize an obvious reduction in the volume of business which has rendered certain employees redundant.[43] However, for retrenchment to be valid, certain requisites must first be satisfied. In *Perez v. Compartis Industries, Inc.*[44] this Court held:

The complete designation of this authorized cause is retrenchment to prevent losses precisely to save a financially ailing business establishment from eventually collapsing. Without the purpose to prevent losses, the termination becomes illegal. However, the employer or the company need not be incurring losses already; the requirement is that there may be impending losses hence the resort to retrenchment:

[T]he three (3) basic requirements are: (a) proof that the retrenchment is necessary to prevent losses or impending losses; (b) service of written notices to the employees and to the Department of Labor and Employment at least one (1) month prior to the intended date of retrenchment; and (c) payment of separation pay equivalent to one (1) month pay, or at least one-half (1/2) month pay for every year of service, whichever is higher. In addition, jurisprudence has set the standards for losses which may justify retrenchment, thus: (1) the losses incurred are substantial and not de minimis; (2) the losses are actual or reasonably imminent; (3) the retrenchment is reasonably necessary and is likely to be effective in preventing the expected losses; and (4) the alleged losses, if already incurred, or the expected imminent losses sought to be forestalled, are proven by sufficient and convincing evidence.

To justify retrenchment, petitioner claims serious business losses leading to the shutdown of its block ice plant facilities to which respondents belong. There is, however, dearth of evidence showing that the petitioner was indeed suffering from business losses or financial reverses as it staunchly claimed. Petitioner could have easily proved its dire financial state by submitting its financial statements duly audited by independent external auditors, but it did not.[45] Its failure to prove these reverses or losses necessarily means that respondents' dismissal was not justified.[46] In addition, records would bear out, as in fact petitioner never denied, that it failed to satisfy the notice requirement under Article 298 of the Labor Code. Neither was the required separation pay to effect a valid retrenchment given to the respondents. For these reasons, the Court must uphold the ruling of the CA that there was absence of grave abuse of discretion on the part of the NLRC when it upheld the ruling of Labor Arbiter finding the respondents to have been illegally dismissed by the petitioner inasmuch as retrenchment was not duly proven by the latter.

Respondents are entitled to backwages

and separation pay

Article 294 of the Labor Code provides for the reliefs of an illegally dismissed employee. The provision states:

ART. 294. 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.

In *Advan Motor, Inc. v. Veneration*,^[47] the Court explained the reliefs of reinstatement and backwages. Thus:

The two reliefs of reinstatement and backwages have been discussed in *Reyes v. RP Guardians Security Agency, Inc.* in the following manner:

Backwages and reinstatement are separate and distinct reliefs given to an illegally dismissed employee in order to alleviate the economic damage brought about by the employee's dismissal. "Reinstatement is a restoration to a state from which one has been removed or separated" while "the payment of backwages is a form of relief that restores the income that was lost by reason of the unlawful dismissal." Therefore, the award of one does not bar the other.

In the case of *Aliling v. Feliciano*, citing *Golden Ace Builders v. Talde*, the Court explained:

Thus, an illegally dismissed employee is entitled to two reliefs: backwages and reinstatement. The two reliefs provided are separate and distinct. In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay is granted. In effect, an illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages.

The normal consequences of respondents' illegal dismissal, then, are reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of backwages.

Since respondents' termination was illegal, they are entitled to reinstatement without loss of seniority rights and to their full backwages pursuant to the said article.

However, reinstatement presupposes that the previous position from which the employee has been removed is still in existence or there is an unfilled position of a nature, more or less, similar to the one previously occupied by said employee.^[48] While the CA was correct in its assessment that the NLRC did not abuse its discretion when it ordered respondents' reinstatement, the Court, in the exercise of its equity jurisdiction may still modify the affirmed judgment in order to conform to law and justice.

Equity jurisdiction aims to do complete justice in cases where a court of law is unable to adapt its judgments to the special circumstances of a case because of the inflexibility of its statutory or legal jurisdiction.^[49] Since it has been 14 years since the time respondents were removed from work, it is unlikely that the former positions held by them or their equivalent are still existing or are presently unoccupied; thus, making their reinstatement no longer viable. On this score, the CA decision must accordingly be modified in this respect. In lieu of reinstatement and full backwages, an award of separation pay, equivalent to one (1) month salary for every year of service, and full backwages is ordered instead.^[50]

Bases for computation of backwages

and separation pay

The basis for computing separation pay is usually the length of the employee's past service, while that for

backwages is the actual period when the employee was unlawfully prevented from working.[51] Backwages represent compensation that should have been earned but were not collected because of the unjust dismissal.[52] Separation pay, on the other hand, is that amount which an employee receives at the time of his severance from employment, designed to provide the employee with the wherewithal during the period that he is looking for another employment,[53] and is a proper substitute for reinstatement.[54]

Under Article 279 (now Article 294) of the Labor Code, backwages is computed from the time of dismissal until the employee's reinstatement. However, when separation pay is ordered in lieu of reinstatement, backwages is computed from the time of dismissal until the finality of the decision ordering separation pay.[55] Anent the computation of separation pay, the same shall be equivalent to one month salary for every year of service[56] and should not go beyond the date an employee was deemed to have been actually separated from employment, or beyond the date when reinstatement was rendered impossible.[57] In the present case, in allowing separation pay, the final decision effectively declares that the employment relationship ended so that separation pay and backwages are to be computed up to that point.[58]

Applied here, Romano's backwages shall be computed from June 25, 2005, while the backwages of Sarmiento and Cabrera shall be reckoned from July 10, 2005, the time they were illegally dismissed until finality of this Decision. As regards their separation pay, the same shall be computed from their first day of employment until the finality of this decision, at the rate of one month pay per year of service.

Genuino Ice should be held solidarity

liable with petitioner Genuino Agro

It is an elementary and fundamental principle of corporation law that a corporation is an artificial being invested by law with a personality separate and distinct from its stockholders and from other corporations to which it may be connected.[59] However, the corporate mask may be lifted and the corporate veil may be pierced when a corporation is just but the alter ego of a person or of another corporation.[60] Moreover, piercing the corporate veil may also be resorted to by the courts or quasi-judicial bodies when "[the separate personality of a corporation] is used as a means to perpetrate fraud or an illegal act, or as a vehicle for the evasion of an existing obligation, the circumvention of statutes, or to confuse legitimate issues." [61] Furthermore, the veil of corporate fiction may also be pierced as when the same is made as a shield to confuse legitimate issues.[62] As such, in *Zambrano v. Philippine Carpet Manufacturing Corporation*, [63] the Court held:

The doctrine of piercing the corporate veil applies 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.

Furthermore, once the veil of corporate fiction is pierced, the separate but related corporation becomes solidarity liable in labor cases. Thus, the Court in *Symex Security Services, Inc. v. Rivera, Jr.*, [64] pronounced:

The common thread running among the aforementioned cases, however, is that the veil of corporate fiction can be pierced, and responsible corporate directors and officers or even a separate but related corporation, may be impleaded and held answerable solidarily in a labor case, even after final judgment and on execution, so long as it is established that such persons have deliberately used the corporate vehicle to unjustly evade the judgment obligation, or have resorted to fraud, bad faith or malice in doing so. When the shield of a separate corporate identity is used to commit wrongdoing and opprobriously elude responsibility, the courts and the legal authorities in a labor case have not hesitated to step in and shatter the said shield and deny the usual

protections to the offending party, even after final judgment. The key element is the presence of fraud, malice or bad faith. Bad faith, in this instance, does not connote bad judgment or negligence but imparts a dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of a known duty through some motive or interest or ill will; it partakes of the nature of fraud.

Thus, for purposes of determining whether to pierce Genuino Ice's separate corporate personality and hold it solidarily liable with the petitioner to pay the monetary claims due to the respondents, the following factual circumstances have to be considered:

(1)

Petitioner and its supposed affiliate Genuino Ice have the same address, sets of officers, and representative to this suit.[65]

(2)

The Calamba City ice plant where respondents used to work appears to be owned and operated by both the petitioner and Genuino Ice.[66]

(3)

Genuino Ice, after being sued for illegal dismissal before the Labor Arbiter, claimed that the respondents were actually employees of its affiliate company, which is the petitioner.[67]

(4)

Genuino Ice, despite claiming that employer, manifested during the proceedings that it is willing to re-hire the respondents.[68]

(5)

Respondents impleaded petitioner in the proceedings before the Labor Arbiter.[69]

(6)

Genuino Ice filed all the pleadings in the proceedings before the Labor Arbiter while the petitioner stood idly by despite having been already impleaded by the respondents.[70]

(7)

The Labor Arbiter found the petitioner jointly liable with Vicar for illegally dismissing the respondents.

(8)

Petitioner, after the Labor Arbiter handed its verdict, filed the appeal before the NLRC with Genuino Ice posting its appeal bond.[71]

(9)

Genuino Ice, by virtue of the surety bond it posted, acknowledged its obligation to pay the monetary claims awarded to the respondents on account of the December 29, 2006 Decision of the Labor Arbiter, should the same not be reversed on appeal, despite the fact that the one adjudged liable therein was not Genuino Ice but the petitioner.[72]

(10)

Respondents tried to collect from the appeal bond that was posted by Genuino Ice (and which the petitioner had previously assured was sufficient) but failed to do so due to the opposition of Genuino Ice where it invoked its separate corporate personality.[73]

(11)

Petitioner insists before this Court that, since the Labor Arbiter's Decision adjudged it liable to pay the respondents' monetary claims, its affiliate, Genuino Ice, cannot be declared as solidarily liable to pay the same claims for lack of factual and legal basis.[74]

A deep scrutiny of the aforementioned circumstances necessitates the application of the doctrine of piercing the veil of corporate fiction. The circumstances indubitably establish that both Genuino Ice and the petitioner are using their respective distinct corporate personalities in bad faith and to confuse legitimate issues in the hope of evading its obligation to the respondents.

The aforementioned circumstances show that both Genuino Ice and the petitioner have taken turns in representing each other's common cause and in pursuing remedies to protect its common interest in repelling the respondents' monetary claims. Whenever a claim is directed against one of them, the other admits the monetary liability so that the former may be shielded and vice versa. This was demonstrated, for example, when Genuino Ice posted a bond for the appeal filed by the petitioner with the NLRC. In the said surety bond, Genuino Ice acknowledged its obligation to satisfy the monetary awards granted to the respondents notwithstanding the fact that it was not the one found liable for illegal dismissal, but the petitioner. Petitioner, for its part, assured the respondents that the bond it posted was sufficient to answer for their monetary claims in the event that the decision rendered in their favor becomes final and executory. However, despite their assurances, when the respondents went for the appeal bond to satisfy their claims, Genuino Ice opposed the move and through Carriaga, its manager and who also happened to be the personnel manager of the petitioner, argued that the funds cannot be pursued for it belongs to Genuino Ice. Such evasive maneuver clearly demonstrates bad faith on the part of the petitioner and Genuino Ice, and is clearly indicative of using the veil of corporate fiction to unjustly elude the monetary obligation due to respondents as adjudged.

As observed, when an "affiliate company" takes the cudgels for another, it means that both have a common interest. If indeed there was no commonality or intertwining of an interest in frustrating the respondents' monetary claims, the petitioner and not Genuino Ice would have posted a bond for its own appeal. The Court cannot allow its intelligence to be insulted by Genuino Ice's representation that it has a corporate personality which is separate and distinct from the petitioner because both companies have pursued legal remedies and measures for the benefit of each other, and made representations that clearly defrauded the respondents. Hence, for purposes of this litigation and for the satisfaction of the respondents' monetary claims, both Genuino Ice and the petitioner shall be treated as one and the same entity, and held liable solidarity for the same.

WHEREFORE, premises considered, the petition is partially GRANTED. The assailed May 31, 2012 Decision and December 12, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 103337 are AFFIRMED with MODIFICATION in that, Genuino Ice Company, Inc. is adjudged solidarity liable with petitioner Genuino Agro-Industrial Development Corporation and Vicar General Contractor and Management Services to pay the monetary claims due to the respondents as follows:

(1)

Backwages computed from June 25, 2005 with respect to respondent Armando G. Romano, and July 10, 2005 with respect to respondents Moises V. Sarmiento and Jay A. Cabrera, the time they were illegally dismissed, until

the finality of this Decision; and

(2)

In lieu of reinstatement, separation pay computed from respondents' first day of employment until the finality of this Decision, at the rate of one month pay per year of service.

The monetary awards granted shall earn legal interest at the rate of six percent per annum from the date of the finality of this Decision until fully paid.

The case is REMANDED to the Labor Arbiter for the proper computation of the monetary benefits awarded.

SO ORDERED.

Carpio,[*] (Chairperson), Caguioa, Lazaro-Javier, and Zalameda, JJ., concur.

[*]Acting Chief Justice per Special Order No. 2703 dated September 10, 2019.

[1] Rollo, pp. 9-30.

[2] Penned by Associate Justice Michael P. Elbinias, with Associate Justices Japar B. Dimaampao and Socorro B. Inting, concurring; id. at 180-190.

[3] Id. at 194-195.

[4] Id. at 54, 65-76, 181.

[5] Id. at 55, 181.

[6] Id. at 241, 299.

[7] Id. at 60-62.

[8] Id. at 241-246.

[9] Id. 91-97.

[10] Id. at 97.

[11] Id. at 17, 105-111; 276.

[12] Id. at 131.

[13] Id. at 132-134.

[14] Id. at 135-138.

[15] Id. at 143.

[16] Id. at 142-145.

[17] Id. at 183.

[18] Id. at 116-121.

[19] Id. at 122-130.

[20] Id. at 140.

- [21] Id. at 20, 278-279.
- [22] Id. at 279, 330-334
- [23] Supra note 2.
- [24] Supra note 3.
- [25] Id. at 216-234.
- [26] Id. at 208-210.
- [27] Id. at 266-267.
- [28] Id. at 268-289; 297-325.
- [29] Id. at 279-280.
- [30] Id. at 21-22; 280-281.
- [31] Id. at 22-26; 281-286.
- [32] Id. at 208-209; 286-287.
- [33] 661 Phil. 729 (2011).
- [34] Rollo, pp. 216-226; 304-314.
- [35] Id. at 226-233; 316-318.
- [36] *Manggagawa ng Komunikasyon sa Pilipinas v. Philippine Long Distance Telephone Co., Inc.*, 809 Phil. 106, 120 (2017).
- [37] *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388, 415 (2014).
- [38] *Protective Maximum Security Agency, Inc. v. Fuentes*, 753 Phil. 482, 503 (2015), citing *Bani Rural Bank, Inc. v. De Guzman*, 721 Phil. 84, 99 (2013).
- [39] *Pascual v. Burgos*, 776 Phil. 167, 185 (2016).
- [40] *Biñan Rural Bank v. Carlos*, 759 Phil. 416, 421 (2015).
- [41] 700 Phil. 1, 9-10 (2012).
- [42] 578 Phil. 731, 741-742 (2008).
- [43] *Manatad v. Philippine Telegraph and Telephone Corp.*, 571 Phil. 494, 512 (2008).
- [44] 796 Phil. 643, 660-661 (2016).
- [45] *Sanoh Fulton Phils., Inc. v. Bernardo*, 716 Phil. 378, 389 (2013).
- [46] *Emcor, Inc. v. Sienes*, 615 Phil. 33, 50 (2009), citing *Flight Attendants and Stewards Association of the Philippines v. Philippine Airlines, Inc.*, 581 Phil. 228, 251 (2008).

[47] 848 SCRA 421, 434 (2017).

[48] Olympia Housing, Inc. v. Lapastora, 778 Phil. 189, 205 (2016), citing Galindez v. Rural Bank of Llanera, Inc., 256 Phil. 585, 591 (1989).

[49] Reyes v. Lim, 456 Phil. 1, 10 (2003).

[50] See San Miguel Properties Philippines, Inc. v. Gucaban, 669 Phil. 288, 302-303 (2011).

[51] Divine Word College of Laoag v. Mina, 784 Phil. 546, 558 (2016).

[52] Golden Ace Builders v. Talde, 634 Phil. 364, 369 (2010).

[53] Goodyear Phils., Inc. v. Angus, 746 Phil. 668, 681 (2014).

[54] SME Bank, Inc. v. De Guzman, 719 Phil. 103, 136 (2013).

[55] Bani Rural Bank, Inc. v. De Guzman, 721 Phil. 84, 101-102 (2013).

[56] Supra note 47.

[57] Capin-Cadiz v. Brent Hospital and Colleges, Inc., 781 Phil. 610, 629 (2016).

[58] Nacar v. Gallery Frames, 716 Phil. 267, 278 (2013).

[59] Zaragoza v. Tan, G.R. No. 225544, December 4, 2017, 847 SCRA 437, 449.

[60] Concept Builders, Inc. v. National Labor Relations Commission, 326 Phil. 955, 958 (1996).

[61] International Academy of Management and Economics v. Litton and Company, Inc., G.R. No. 191525, December 13, 2017, 848 SCRA 437, 445 (citations omitted).

[62] Reynolds Philippine Corporation v. Court of Appeals, 251 Phil. 196, 201 (1989), citations omitted.

[63] 811 Phil. 569, 585 (2017), citations omitted.

[64] G.R. No. 202613, November 8, 2017 844 SCRA 416, 440-441, citing Guillermo v. Uson, 782 Phil 215, 225 (2016).

[65] Rollo, pp. 60-61; 111, 115; 251; 319.

[66] Id. at 158.

[67] Id. at 61-62.

[68] Id. at 114.

[69] Id. at 87; 227, 315.

[70] Id.

[71] Id. at 98-111; 247.

[72] Id. at 91-97; 247.

[73] Id. at 172, 251, 316.

[74] Id. at 208, 286.

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