

SUSAN R. ROQUEL, PETITIONER, VS. PHILIPPINE NATIONAL BANK AND PNB GLOBAL REMITTANCE AND FINANCIAL CO. (HK) LTD., RESPONDENTS.

G.R. No. 246270. June 30, 2021

Ponente: CARANDANG, J.

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CARANDANG, J.:

This a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated May 30, 2018 and the Resolution[3] dated March 15, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 144604. The said Decision and Resolution denied the Petition for Certiorari petitioner Susan R. Roquel (Roquel), thereby affirming the dismissal by the National Labor Relations Commission (NLRC) of Roquel's complaint for illegal dismissal.

Facts of the Case

On May 16, 1990, PNB International Finance Ltd. (PNB-IFL) – a subsidiary of respondent Philippine National Bank (PNB) – hired Roquel as a general clerk. In May 2002, PNB-IFL temporarily transferred its operations to PNB's Hong Kong Branch (PNB-HK) and PNB's Remittance Center Limited (PNB-RCL). PNB-RCL is a wholly-owned subsidiary of PNB. As a result of this arrangement, Roquel was assigned to PNB-HK on June 1, 2002 as a supervisor and was later designated as an officer-in-charge.[4]

PNB-IFL resumed its operations in December 2004 but on January 1, 2005, PNB-RCL designated Roquel as its branch manager until April 19, 2010. From January 1, 2005 to April 19, 2010, Roquel was assigned to the following PNB-RCL branches: (1) Northpoint Branch from January 1, 2005 to April 30, 2005; (2) Worldwide House Shop 101 from May 1, 2005 to April 5, 2006; and (3) Worldwide House Shop 122 from April 6, 2006 to April 19, 2010.[5]

On February 12, 2010, PNB-IFL was renamed to respondent PNB Global Remittance and Finance Co. (HK) Ltd. (PNB Global).[6]

On April 20, 2010, PNB-RCL transferred Roquel to PNB-HK as a trainee for the "Accounts Management Group HK Branch". Less than three months later (or on July 1, 2020), PNB-RCL merged with PNB Global – with PNB Global emerging as the surviving corporation. PNB Global thus absorbed PNB-RCL's employees, including Roquel. Nevertheless, Roquel stayed in PNB-HK.[7]

Upon the completion of her training in PNB-HK on August 16, 2011, Roquel was transferred back to PNB Global to assume officer-in-charge duties at PNB Global's branches. On September 14, 2011, Roquel was notified that she will be assigned as a reliever of PNB Global's absent or on-leave branch managers.[8] On December 23, 2011, PNB Global issued a termination letter[9] to Roquel, who was given a month's compensation in lieu of a 1-month notice, a portion of which reads:

Please be advised that we are terminating your employment with PNB Global Remittance and Financial

Company (HK) Limited effective at the close of the business hours of 31st of December 2011.

In this regard, a cheque is enclosed for HK\$51,896.60 equivalent to one-month salary in lieu of the one-month notice as prescribed in your employment contract with the company and HK Employment Ordinance on termination, your remaining salary for December 2011, overtime pay, money value of your leave credits, and other payables of the company per attached final computation sheet.

Please acknowledge receipt.[10]

Roquel deferred the receipt of the termination letter and its enclosed check. From March 2012 up to February 2013, Roquel sent several letters[11] to respondent's officers in Hong Kong and the Philippines asking for the reason for her termination and requesting to avail herself of an early retirement package. On June 16, 2014, PNB's Global General Manager replied by stating that: (1) a contract of employment may be terminated through a notice or by paying the terminated employee's wages in lieu of such notice and (2) management is not offering any early retirement programs at that moment.[12] Unsatisfied with PNB Global's response, Roquel filed a Complaint[13] for illegal dismissal against PNB with the NLRC Regional Arbitration Branch III, San Fernando, Pampanga on August 8, 2014. PNB moved to dismiss the complaint for lack of jurisdiction and averred that Roquel was never PNB's employee but was an employee of PNB Global.[14] Roquel alleged that PNB Global was a mere instrumentality of PNB.[15]

Ruling of the Labor Arbiter

In a Decision[16] dated November 28, 2014, the Labor Arbiter (LA) granted Roquel's complaint, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered finding complainant Susan R. Roquel to have been illegally dismissed.

Respondent Philippine National Bank is ORDERED to pay her the following:

1. Separation Pay

-

Php 1,891,707.84

2. Backwages

-

Php 3,025,872.68

3. Moral Damages

-

Php 30,000.00

4. Exemplary Damages

-

Php 30,000.00

5. 10% Attorney's Fees

-

Php 497,758.05

GRAND TOTAL
Php5,275,338.57[17]

The rest of the money claims is (sic) denied for lack of merit.

The attached computation prepared by the Fiscal Examiner shall form an integral part of this Decision.

SO ORDERED.[18] (Emphasis in the original)

The LA explained that while PNB Global has a separate and distinct juridical personality from PNB, PNB Global acted as a mere instrumentality of PNB "at least with regard to the employment of complainant Roquel." [19] Based on the evidence presented before it, the LA concluded that PNB exercised control and supervision over the policy and personal affairs of PNB Global and all member-corporations under the umbrella organization of the PNB Hong Kong Group of Companies (PNB Hong Kong Group). Proof of PNB's control was Roquel's assignment to PNB-HK, by the latter's Senior Vice President. Since the transfer was "in connection with the streamlining and reorganization of the PNB Hong Kong Group", [20] it evinced PNB's ability to control and implement policy decisions over PNB's subsidiary companies. The LA noted that Roquel was even nominated to represent PNB in the Board of Directors of the Philippine Association of Hong Kong. Roquel's transfer between PNB-HK and PNB Global demonstrated that the corporations acted as one entity. [21]

Given PNB's control over Roquel's employment, the LA ruled that it had jurisdiction over Roquel's complaint. As to the legality of Roquel's dismissal, Roquel was found to be illegally dismissed since PNB failed to prove any valid basis for Roquel's termination. It was also held that Roquel was not afforded any due process. However, the LA clarified that Roquel is not an overseas Filipino worker. Following Article 279 [22] of the Labor Code, the LA awarded Roquel (1) separation pay of one month for every year of service, in lieu of restatement; (2) backwages from December 23, 2011 until the date of the decision; (3) moral damages because Roquel was dismissed in an oppressive and malevolent manner; (4) exemplary damages; and (5) attorney's fees. Roquel's prayer for retirement benefits and incentives under the mandatory provident fund were denied for lack of basis. [23]

Aggrieved, respondents appealed the LA's Decision with the NLRC.

Ruling of the National Labor Relations Commission

In its Decision dated June 26, 2015, the NLRC initially agreed with the LA's findings of illegal dismissal. It held that PNB Global was a mere alter ego of PNB with the companies maintaining an "intimate corporate relationship" [24] by integrating their workforce and acting as employers of Roquel. The NLRC observed that the officers of the PNB Hong Kong Group acted for or in behalf of PNB Global and PNB where the officers of the former were also officers of the latter companies. The NLRC emphasized that letters and memoranda issued to Roquel notifying her of her transfers within the PNB Hong Kong Group were issued by PNB Global, PNB-HK, and PNB HK Group. Therefore, "the operations and officers of PNB Global and PNB are so intertwined or so meshed together as to make each company indistinguishable from the other." [25] In fact, PNB admitted to such relationship when it stated in its position paper that Roquel's transfer to PNB-HK on April 20, 2010 was in line with "the provisions of her appointment as Branch Manager of PNB-RCL where the change of assignments from one entity to the other PNB affiliates/subsidiaries is explicitly stipulated." [26]

However, the NLRC granted respondent's Motion for Reconsideration [27] and dismissed Roquel's complaint due

to a lack of jurisdiction over the case. The NLRC reversed itself and held that there was no sufficient evidence to disregard the separate and distinct entities of PNB Global and PNB. According to the NLRC, PNB had no hand in hiring, transferring, and dismissing Roquel. The NLRC concluded that PNB-HK is separate and distinct from PNB even if PNB-HK is a branch of PNB. Roquel's transfer to PNB-HK did not merit piercing the veil of PNB-HK's corporate fiction because Roquel's transfer was temporary and her duties were to carry out the operations of PNB Global from June 2002 to December 2004.[28]

With Roquel's Motion for Reconsideration denied in a Resolution[29] dated December 22, 2015, Roquel elevated the matter to the CA via a Petition for Review on Certiorari[30] under Rule 65 of the Rules of Court.

Ruling of the Court of Appeals

In its Decision[31] dated May 30, 2018, the CA found no grave abuse of discretion on the part of the NLRC. Thus, it affirmed the NLRC's pronouncement of PNB Global being Roquel's sole employer.[32]

The CA observed that Roquel's assignment to PNB-HK was only "for her training which she would use in her new assignment in PNB Global." [33] Thus, Roquel's stint with PNB-HK did not make PNB her employer. Following the alter ego doctrine, the three elements of (1) control by PNB, (2) fraud or fundamental unfairness imposed on Roquel, and (3) harm or damage caused to Roquel were absent.[34]

Proceedings before this Court

Petitioner's Arguments

As Roquel's Motion for Reconsideration[35] was denied by the CA in its Resolution[36] dated March 15, 2019, Roquel filed the instant Petition for Review on Certiorari under Rule 45 of the Rules of Court. Roquel maintained that she and PNB have an employee-employer relationship because Roquel was a "shared personnel or employee"[37] of the PNB Hong Kong Group. Her employee ID indicates that she is an employee of PNB-HK, PNB-RCL, and PNB-IFL. Lastly, a Memorandum dated May 31, 2002 revealed PNB-HK's act of: (1) re-appointing her as supervisor of PNB-HK's branches; and (2) paying her salary. Therefore, as PNB's employee, her dismissal is cognizable by the LA. She was thus illegally dismissed from her employment following the Labor Code.[38]

Respondents' Comment

In its Comment[39] dated October 3, 2019, PNB insisted that it never exercised control over Roquel as PNB only trained her in 2002. During her training, PNB-RCL paid Roquel's salary. Being an employee of PNB's Hong Kong subsidiaries, Hong Kong laws apply in the instant case, not the Labor Code.[40]

Petitioner's Reply

Roquel filed Reply[41] dated November 14, 2019. She reiterated that PNB-HK and PNB-Global's operations were controlled and supervised by PNB. In fact, three members of PNB-HK are part of PNB Hong Kong Group's Joint Management Committee. PNB-HK's Chairman and General Manager, a certain Romulo Rodel C. Bicol, was also PNB's Country Head for Hong Kong and was the Chairman of PNB Global's Senior Management Committee.[42]

Issue

The sole issue to be determined is the applicability of the doctrine on piercing the veil of corporate fiction in order to bring this case under the jurisdiction of the LA, NLRC, and the courts.

Ruling of the Court

The petition is meritorious. We agree with the findings of the LA and the initial findings of the NLRC. PNB was Roquel's employer and is liable for the illegal dismissal of Roquel following Section 294[43] of the Labor Code.

The existence of the employer-employee relationship is essentially a question of fact. While factual findings of quasi-judicial agencies like the NLRC are generally accorded respect and finality if supported by substantial evidence, considering the conflicting decisions of the LA, NLRC, and CA, this Court must now make its own evaluation of the facts of the case.

Roquel was able to prove – through clear and convincing evidence – that PNB was her employer on the basis of the alter ego theory.

The alter ego theory is one way to pierce the veil of a corporation's legal fiction – the other two ways being in cases of fraud or in cases when public convenience is defeated. Following the nomenclature of the alter ego theory, a corporation's separate juridical personality is selectively disregarded because the "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." [44] The existence or non-existence of fraud is immaterial under this theory because "the doctrine of alter ego is based upon the misuse of a corporation by an individual [or another corporation] for wrongful or inequitable purposes." [45] Unlike in cases of fraud, there is no need to determine whether the defendants intended to deceive the plaintiff. What is analyzed is "how the corporation operated and the individual defendant's relationship to that operation" [46] that led to injustice or resulted in the disregard of a third party's (i.e., plaintiff's) rights. [47] Rather than focusing on the intent of the defendants, it is the result of their actions that is subject to careful scrutiny.

It is undisputed that during Roquel's 21 years and seven months' length of service, Roquel was transferred several times within the PNB Hong Kong Group. It is also uncontested that Roquel's numerous transfers between the companies did not sever her employment. The corporate structures of PNB Hong Kong Group's entities were so intertwined to the point that streamlining and reorganization was done as one unit. This was never refuted by PNB. Note, too, that all memoranda [48] sent to Roquel after the restructuring used PNB's letterhead which, at the very least, gave the impression that Roquel's transfers were made with the authority of PNB. These circumstances muddle the separate corporate fiction between the PNB Hong Kong Group.

There was no clear delineation of authority over Roquel. Although PNB-IFL resumed operations in December 2004, it was still PNB-RCL who transferred Roquel to its own branches. PNB acknowledged the arrangement of using the same employees when PNB stated in its position paper that Roquel's transfer to PNB-HK on April 20, 2010 was in line with "the provisions of her appointment as Branch Manager of PNB-RCL where the change of assignments from one entity to the other PNB affiliates/subsidiaries is explicitly stipulated." [49]

PNB's admission that Roquel was transferred to PNB-HK in 2002 (during the temporary cessation of PNB-IFL's operations) and in 2010 (during Roquel's training) militates against PNB's claim of independence from its subsidiaries. Otherwise, PNB-IFL would have transferred Roquel to PNB--RCL in 2002 and not to PNB-HK. If PNB's subsidiaries truly operated independently from PNB-HK, training would have been conducted by the said subsidiaries. However, PNB provided the training through its branch, PNB--HK.

To highlight the interconnected within the entities comprising the PNB Hong Kong Group, below is a table showing the entities which effected Roquel's transfers from 2002:

Effectivity Date

Entity effecting transfer

Entity where Roquel was transferred

June 1, 2002 PNB Hong Kong Group PNB-HK

January 1, 2005 PNB-RCL PNB-RCL's Northpoint Branch

May 1, 2005 PNB Hong Kong Group PNB-RCL's WWW Shop 101 Branch

April 6, 2006 PNB-RCL PNB-RCL's WWW Shop 122 Branch

April 20, 2010 PNB-RCL PNB-HK

August 16, 2011 PNB-HK PNB Global

Note that even without a separate personality, the transfers effective June 1, 2002 and May 1, 2005 were by the PNB Hong .Kong Group. These circumstances, taken together, bolster Roquel's claim that the PNB Hong Kong Group shared its personnel.

It would be unjust to relieve PNB of any liability against Roquel's monetary claims when circumstances clearly show that PNB – through its branch, PNB-HK – exercised control and supervision over Roquel. To disregard the reality of how PNB and PNB Hong Kong Group interchangeably transferred Roquel from one department to another as if they were all one unit would mean that each transfer would merely be treated as a constant severance and reinstatement of Roquel's employment during the 22 years Roquel served PNB Hong Kong Group. This absurd conclusion behooves this Court to treat PNB's subsidiaries as PNB's alter egos in order to uphold Roquel's Constitutional right to security of tenure.

In all, PNB's active participation in the streamlining operations of the PNB Hong Kong Group and Roquel's constant transfer between the PNB-HK and PNB's subsidiaries clearly show that PNB benefitted from Roquel's service. It does not escape this Court's attention that Roquel was even nominated to represent PNB as a Director of the Philippine Association of Hong Kong.[50] Therefore, it would be unjust – if not cruel – to absolve PNB of any liability just because Roquel was formally under PNB Global for most of her nearly 22 years of service.

Lastly, following this Court's ruling in *Nacar v. Gallery Frames*, legal interest of 6% per annum shall be imposed on the instant Decision awarding sum of money once this Decision becomes final and executory.

WHEREFORE, the Petition for Review on Certiorari is GRANTED. The Decision dated May 30, 2018 and the Resolution dated March 15, 2019 of the Court of Appeals in CA-G.R. SP No. 144604 are REVERSED and SET ASIDE. The Decision dated June 26, 2015 of the National Labor Relations Commission, which affirmed the Decision dated November 28, 2014 of the Labor Arbiter is REINSTATED. Petitioner Susan R. Roquel was illegally dismissed and is entitled to the following amounts:

1. Backwages computed from December 23, 2011 (the date petitioner was illegally dismissed) until the finality of this Decision;
2. Separation pay of one month for every year of service – with petitioner's number of years in service computed from May 16, 1990 until the finality of this Decision;
3. Moral damages of P30,000.00;
4. Exemplary damages of P30,000.00; and
5. Attorney's fees equivalent to 10% of the total monetary awards.

All amounts shall earn legal interest of six percent (6%) per annum from the finality of this Decision until full payment.

The case is hereby REMANDED to the Labor Arbiter for the recomputation of the total monetary awards due to petitioner.

SO ORDERED.

Gesmundo, C.J., (Chairperson) and Inting,[*] JJ., concur.

Caguioa, J., See Dissenting Opinion.

Zalameda, J., with concurring Opinion.

[*] Designated as additional Member.

[1]Rollo, pp. 12-42.

[2]Penned by Associate Justice Samuel H. Gaerlan (now a Member of this Court), with the concurrence of Associate Justices Celia C. Librea-Leagogo and Germano Franciso D. Legaspi.

[3]Id. at 90-91.

[4]Id. at 190, 206.

[5]Id. at 207, 352-353.

[6]Id. at 352.

[7]Id. at 353.

[8]Id.

[9]Id. at 166.

[10]Id.

[11]Id. at 167-177 and 179-182.

[12]Id. at 184.

[13]Id. at 92.

[14]Id. at 207.

[15]Id. at 208.

[16]Penned by Labor Arbiter Roderick Q. Almeyda; id. at 206-216.

[17]Should be P5,475,338.57.

[18]Rollo, p. 216.

[19]Id. at 210.

[20]Id. at 211.

[21]Id. at 210-213.

[22]Renumbered to Article 294 by DOLE Department Advisory No. 1, series of 2015.

Article 294. [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.

[23]Rollo, pp. 213-216.

[24]Id. at 233.

[25]Id. at 236.

[26]Id. at 237.

[27]Id. at 239-259.

[28]Resolution dated September 30, 2015; id. at 276-283.

[29]Id. at 298-308

[30]Id. at 94-114.

[31]Supra note 2.

[32]Rollo, p. 59.

[33]Id. at 61.

[34]Id. at 62.

[35]Id. at 64-87.

[36]Supra note 3.

[37]Rollo, p. 23.

[38]Id. at 21-27.

[39]Id. at 368-381.

[40]Id. at 373-377.

[41]Id. at 392-411.

[42]Id. at 393-399.

[43]Article 294. [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.

[44]General Credit Corp. v. Alsons Dev't. and Investment Corp., 542 Phil. 219, 232 (2007).

[45]I/AME v. Litton and Co., Inc., 822 Phil. 610, 623 (2017).

[46]Concept Builders, Inc. v. NLRC, 326 Phil. 955, 966 (1996).

[47]PNB v. Andrada Electric & Engineering Company, 430 Phil. 882, 894 (2002).

[48]Rollo, pp. 150-159, 165-166, 184.

[49]Id. at 237.

[50]Id. at 211.

DISSENTING OPINION

CAGUIOA, J.:

The Decision[1] dated May 30, 2018 and Resolution[2] dated March 15, 2019 of the Court of Appeals (CA) affirmed the Resolution[3] dated September 30, 2015 of the National Labor Relations Commission (NLRC) which, in turn, ordered the dismissal of petitioner Susan R. Roquel's (Roquel) complaint for illegal dismissal on the ground of lack of jurisdiction. According to the CA, there is no basis to pierce the separate corporate personality of respondent Philippine National Bank (PNB) because the three elements of control, fraud, and harm, have not been established in this case.[4] Furthermore, the CA, applying the four-fold test, found that respondent PNB Global Remittance and Financial Co. (HK) Ltd. (PNB Global) is the employer of Roquel.[5]

The ponencia, however, reverses the CA Decision and finds PNB liable for illegal dismissal as the employer of Roquel. In arriving at this conclusion, the ponencia applied the doctrine of piercing the veil of corporate fiction under the alter ego theory in view of the circumstances showing that PNB, through its Hong Kong branch (PNB-HK), exercised control and supervision over Roquel.[6] The ponencia explains that under the alter ego theory the existence or non-existence of fraud is immaterial because the application of the theory is based on the misuse of a corporation by an individual or another corporation for wrongful or inequitable purposes.[7] Gauged against this standard, the analysis, according to the ponencia, should, instead of focusing on the intent of respondents, determine how the corporation operated and respondents' relationship to that operation that led to injustice.[8]

I dissent.

The relationships between and among the various PNB entities involved in this case are as follows: PNB International Finance Ltd. (PNB--IFL) and PNB Remittance Center Ltd. (PNB-RCL) are wholly-owned subsidiaries of PNB that are organized under Hong Kong laws. PNB-HK is a branch of PNB operating in Hong Kong under the supervision and regulation of the Hong Kong Monetary Authority.[9] On February 12, 2010, PNB-IFL was renamed to PNB Global.[10] Then, in 2010, PNB-RCL merged with PNB Global, with the latter subsidiary as the surviving company.[11] PNB Global (formerly PNB-IFL), PNB-RCL, and PNB-HK make up the PNB Hong Kong Group of Companies (PNB HK Group).[12]

Roquel was hired by PNB-IFL as a general clerk on May 16, 1990.[13] In 2002, the operations of PNB-IFL were transferred to PNB-HK and PNB-RCL.[14] Thus, on May 31, 2002, Roquel was re-appointed as a supervisor in PNB-HK.[15] In 2004, PNB-IFL resumed its operations.[16] On December 31, 2004, Roquel was designated as branch manager of PNB-RCL, and was assigned to its various branches.[17] Then, on April 20, 2010, Roquel was assigned as a trainee in PNB-HK's Accounts Management Group.[18] In 2010, PNB-RCL merged with PNB Global, with the latter as the surviving company.[19] On August 16, 2011, following the completion of her training at PNB-HK, Roquel was assigned to PNB Global to handle Officer-in-Charge (OIC) duties.[20] At the time of her dismissal on December 23, 2011, Roquel was working for PNB Global.[21]

In the course of Roquel's 21 years and 7 months of employment, she was with PNB-HK only (1) from May 31, 2002 to December 31, 2004 when PNB-IFL temporarily ceased its operations, and (2) from April 10, 2010 to August 16, 2011 as a trainee at the Accounts Management Group of PNB-HK. While she was with PNB-HK as a trainee, PNB-RCL, the entity to which Roquel was previously assigned, continued to pay her salaries.[22]

Case law teaches that the doctrine of piercing the corporate veil applies only in three basic instances, namely: (a) when the separate distinct corporate personality defeats public convenience, as when the corporate fiction is used

as a vehicle for the evasion of an existing obligation; (b) in fraud cases, or when the corporate entity is used to justify a wrong, protect a fraud, or defend a crime; or (c) is used in alter ego cases, i.e., where a corporation is essentially 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 conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.[23]

Relevantly, the applicability of the alter ego or instrumentality theory is determined through the three-pronged test of control test, fraud test, and harm test:

In this connection, case law lays down a three-pronged test to determine the application of the alter ego theory, which is also known as the instrumentality theory, namely:

- (1) Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own;
- (2) Such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiff's legal right; and
- (3) The aforesaid control and breach of duty must have proximately caused the injury or unjust loss complained of.

The first prong is the "instrumentality" or "control" test. This test requires that the subsidiary be completely under the control and domination of the parent. It examines the parent corporation's relationship with the subsidiary. It inquires whether a subsidiary corporation is so organized and controlled and its affairs are so conducted as to make it a mere instrumentality or agent of the parent corporation such that its separate existence as a distinct corporate entity will be ignored. It seeks to establish whether the subsidiary corporation has no autonomy and the parent corporation, though acting through the subsidiary in form and appearance, "is operating the business directly for itself."

The second prong is the "fraud" test. This test requires that the parent corporation's conduct in using the subsidiary corporation be unjust, fraudulent or wrongful. It examines the relationship of the plaintiff to the corporation. It recognizes that piercing is appropriate only if the parent corporation uses the subsidiary in a way that harms the plaintiff creditor. As such, it requires a showing of "an element of injustice or fundamental unfairness."

The third prong is the "harm" test. This test requires the plaintiff to show that the defendant's control, exerted in a fraudulent, illegal or otherwise unfair manner toward it, caused the harm suffered. A causal connection between the fraudulent conduct committed through the instrumentality of the subsidiary and the injury suffered or the damage incurred by the plaintiff should be established. The plaintiff must prove that, unless the corporate veil is pierced, it will have been treated unjustly by the defendant's exercise of control and improper use of the corporate form and, thereby, suffer damages.

To summarize, piercing the corporate veil based on the alter ego theory requires the concurrence of three elements: control of the corporation by the stockholder or parent corporation, fraud or fundamental unfairness imposed on the plaintiff, and harm or damage caused to the plaintiff by the fraudulent or unfair act of the corporation. The absence of any of these elements prevents piercing the corporate veil.[24]

In *Maricalum Mining Corporation v. Florentino*,^[25] the Court, insofar as the application of the three-prong test is concerned, enumerated the following probative factors that will aid the courts in its application:

I. Control or Instrumentality Test

In *Concept Builders, Inc. v. National Labor Relations Commission, et al.*, the Court first laid down the first set of probative factors of identity that will justify the application of the doctrine of piercing the corporate veil, viz.:

1)

Stock ownership by one or common ownership of both corporations.

2)

Identity of directors and officers.

3)

The manner of keeping corporate books and records.

4)

Methods of conducting the business.

Later, in *Philippine National Bank v. Ritratto Group, Inc., et al.*, the Court expanded the aforementioned probative factors and enumerated a combination of any of the following common circumstances that may also render a subsidiary an instrumentality, to wit:

1)

The parent corporation owns all or most of the capital stock of the subsidiary;

2)

The parent and subsidiary corporations have common directors or officers;

3)

The parent corporation finances the subsidiary;

4)

The parent corporation subscribes to all the capital stock of the subsidiary or otherwise causes its incorporation;

5)

The subsidiary has grossly inadequate capital;

6)

The parent corporation pays the salaries and other expenses or losses of the subsidiary;

7)

The subsidiary has substantially no business except with the parent corporation or no assets except those conveyed to or by the parent corporation;

8)

In the papers of the parent corporation or in the statements of its officers, the subsidiary is described as a department or division of the parent corporation, or its business or financial responsibility is referred to as the parent corporation's own;

9)

The parent corporation uses the property of the subsidiary as its own;

10)

The directors or executives of the subsidiary do not act independently in the interest of the subsidiary but take their orders from the parent corporation; and

11)

The formal legal requirements of the subsidiary are not observed.

x x x x

II. Fraud Test

The corporate veil may be lifted only if it has been used to shield fraud, defend crime, justify a wrong, defeat public convenience, insulate bad faith or perpetuate injustice. To aid in the determination of the presence or absence of fraud, the following factors in the "Totality of Circumstances Test" may be considered, viz.:

1)

Commingle of funds and other assets of the corporation with those of the individual shareholders;

2)

Diversion of the corporation's funds or assets to non--corporate uses (to the personal uses of the corporation's shareholders);

3)

Failure to maintain the corporate formalities necessary for the issuance of or subscription to the corporation's stock, such as formal approval of the stock issue by the board of directors;

4)

An individual shareholder representing to persons outside the corporation that he or she is personally liable for the debts or other obligations of the corporation;

5)

Failure to maintain corporate minutes or adequate corporate records;

6)

Identical equitable ownership in two entities;

7)

Identity of the directors and officers of two entities who are responsible for supervision and management (a partnership or sole proprietorship and a corporation owned and managed by the same parties);

8)

Failure to adequately capitalize a corporation for the reasonable risks of the corporate undertaking;

9)

Absence of separately held corporate assets;

10)

Use of a corporation as a mere shell or conduit to operate a single venture or some particular aspect of the business of an individual or another corporation;

11)

Sole ownership of all the stock by one individual or members of a single family;

12)

Use of the same office or business location by the corporation and its individual shareholder(s);

13)

Employment of the same employees or attorney by the corporation and its shareholder(s);

14)

Concealment or misrepresentation of the identity of the ownership, management or financial interests in the corporation, and concealment of personal business activities of the shareholders (sole shareholders do not reveal the association with a corporation, which makes loans to them without adequate security);

15)

Disregard of legal formalities and failure to maintain proper arm's length relationships among related entities;

16)

Use of a corporate entity as a conduit to procure labor, services or merchandise for another person or entity;

17)

Diversion of corporate assets from the corporation by or to a stockholder or other person or entity to the detriment of creditors, or the manipulation of assets and liabilities between entities to concentrate the assets in one and the liabilities in another;

18)

Contracting by the corporation with another person with the intent to avoid the risk of nonperformance by use of the corporate entity; or the use of a corporation as a subterfuge for illegal transactions; and

19)

The formation and use of the corporation to assume the existing liabilities of another person or entity.

x x x x

III. Harm or Causal Connection Test

In *WPM International Trading, Inc., et al. v. Labayen*, the Court laid down the criteria for the harm or causal connection test, to wit:

In this connection, we stress that the control necessary to invoke the instrumentality or alter ego rule is not majority or even complete stock control but such domination of finances, policies and practices that the controlled corporation has, so to speak, no separate mind, will or existence of its own, and is but a conduit for its principal. The control must be shown to have been exercised at the time the acts complained of took place. Moreover, the control and breach of duty must proximately cause the injury or unjust loss for which the complaint is made. x x x

Proximate cause is defined as that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred. More comprehensively, the proximate legal cause is that "acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events each having a close causal connection with its immediate predecessor, the final event in the chain immediately effecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinary prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom." Hence, for an act or event to be considered as proximate legal cause, it should be shown that such act or event had indeed caused injury to another.[26]

It should be emphasized that the absence of any of these elements — control, fraud, and harm — prevents the piercing of the corporate veil.[27]

"Control" is the most important element because the exercise of control by one entity over the other determines the existence of the two other elements. To satisfy the control test there must be "complete domination[,] not only of finances but of policy and business practice in respect to the transaction attacked [so] that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own[.]"[28]

Whether the separate personality of the corporation should be pierced hinges on facts properly pleaded and proved, and this "piercing" must be done with caution.[29] To disregard the separate juridical personality of a corporation, the wrongdoing must be clearly and convincingly established.[30] For this reason, although regular rules of evidence are applied liberally in labor proceedings, the allegations that a corporation is being used as a mere alter ego of another must still be proven by substantial evidence.[31]

Here, Roquel argues that PNB exercised control over PNB Global through PNB-HK. According to her, both PNB-HK and PNB Global are under the control and supervision of the PNB HK Group, whose Management Committee consists of officers simultaneously holding positions in different entities under the PNB HK Group.[32] Because of this, she claims that PNB controlled not only the operations of PNB-HK but also the entities under the PNB HK Group.[33] Furthermore, Roquel also claims that it can be inferred from the August 15, 2011 Memorandum which directed her transfer to PNB Global following the completion of her training in PNB-HK that PNB-HK's Romulo Rodel C. Bicol (Bicol) had authority over PNB Global's General Manager, thereby demonstrating PNB's exercise of control over PNB Global with respect to her employment.[34] Roquel also points out that the PNB HK Group shares the same office address.[35]

For its part, the ponencia notes that the corporate structures under the umbrella of the PNB HK Group are so intertwined that streamlining and reorganization was done as one unit.[36] Moreover, after the restructuring, all the memoranda sent to Roquel used the letterhead of PNB which gave the impression that her transfers were made with authority of PNB.[37] Also, even after PNB-IFL had resumed its operations, Roquel was not transferred back to PNB-IFL, its original employer, but was instead transferred to PNB-RCL.[38] It also appears that the PNB HK Group shares its personnel because it effected Roquel's transfer to PNB-HK in 2002, and to PNB-RCL in 2005. Meanwhile, her transfer to PNB-HK for a training program was effected by PNB-RCL and her transfer to PNB Global after the completion of said training was effected by PNB-HK.[39] The ponencia further points to the fact that Roquel's training was provided by another subsidiary as supposedly negating respondents' assertion that the subsidiaries operated independently.[40] In addition, the ponencia also adverts to the fact that Roquel was nominated to represent PNB as a Director in the Philippine Association of Hong Kong.[41] These circumstances, according to the ponencia, justify treating the PNB subsidiaries as mere alter egos of PNB.

As stated at the outset, I disagree. These circumstances, put simply, do not satisfy the "control test." Apart from sharing common officers who are likewise members of the PNB HK Group, there is no showing that the other probative factors required by case law respecting the determination of control are present in this case.

What the undisputed facts have established is that the PNB HK Group, through its Joint Management Committee, oversees the affairs of the entities under it — PNB Global, PNB-RCL, and PNB-HK. Although some of the members of the Joint Management Committee are simultaneously holding different positions in different entities, this does not, by itself, warrant the piercing of the veil of corporate fiction among the entities under the PNB HK Group,[42] especially in the absence of other circumstances which may raise doubts as to the independence of the corporations. Even Roquel's transfers across the PNB HK Group entities were not proven to be tainted with fraud. The fact that two of her transfers were shown to have been effected by the PNB HK Group does not necessarily mean that PNB itself exercised control over said transfers.

With respect to the August 15, 2011 Memorandum sent to Roquel, although it was signed by Bicol, PNB-HK's General Manager, it is not enough to conclude that the directive to report to PNB Global contained therein was under the control of PNB-HK or PNB. After all, Bicol is also the Chairman of the PNB HK Group's Joint Management Committee.[43] Relevantly then, the use of PNB-HK's letterhead in the memoranda sent to Roquel is of little significance.

To be sure, Roquel's assertion that PNB-HK controlled her employment remains unsubstantiated. Roquel was only with PNB-HK for a relatively short time during her 21 years and 7 months of employment — the last one as a trainee at PNB-HK's Accounts Management Group, during which her salaries were even paid for by PNB-RCL. Even if we concede PNB HK Group's use of the same office address, this still does not bolster Roquel's position.[44] Roquel failed to prove precisely how PNB exercised control and supervision over her through PNB-HK even during the times that she was working for other entities under the PNB HK Group.

As correctly pointed out by the CA in its Decision —

Taking these facts into consideration, herein petitioner was hired in Hong Kong by PNB-RCL and not PNB itself. Petitioner's short assignment in PNB Hongkong Branch, the only corporation which can be connected to private respondent, cannot be considered as employment therein as the memorandum clearly stated that such was for her training which she would use in her new assignment in PNB-Global. Further, documents presented show that instructions to move or transfer herein petitioner came from PNB Global and none from private respondent, thus, no control was ever exercised by PNB over petitioner's employment.[45]

In other words, it was not clearly demonstrated, by either the ponencia or the evidence of Roquel, how PNB, or PNB-HK, controlled the affairs of the other PNB subsidiaries insofar as Roquel's employment is concerned to the extent that these subsidiaries merely acted as an adjunct, instrumentality, or alter ego of PNB. It has not been shown that the subsidiaries lacked autonomy. In my opinion, a more direct proof of PNB or PNB-HK's exercise of control over Roquel, rather than inferences from documents and circumstances, is needed to support the application of the doctrine.

Having failed the "control test," there is already no basis to apply the alter ego theory and pierce the separate corporate personality of PNB. Yet, apart from the absence of control, it should also be noted that the elements of fraud and harm are totally wanting in this case.

The "fraud test" seeks to determine whether the corporation is being used to perpetuate unjust, fraudulent, wrongful, or unfair objectives.[46] Piercing the veil of corporate fiction will only be appropriate if the parent company controls or uses its subsidiary in a way that harms the complainant. Ultimately, there must be bad faith. As a rule, however, good faith is always presumed and it is incumbent upon the party who alleges bad faith to

prove the same. Accordingly, the requirement that for the separate juridical personality of a corporation to be disregarded, the wrongdoing must be clearly and convincingly established. This is not the case here.

Relevantly, bad faith is also the court's consideration in awarding moral and exemplary damages. Exemplary damages are recoverable in contractual relations if the defendant acted in a "wanton, fraudulent, reckless, oppressive, or malevolent manner."^[47] Meanwhile, moral damages are recoverable in case of abuse of rights under Article 19, in relation to Article 21.^[48] A finding of abuse of rights requires the concurrence of the following elements: (1) there is a legal right or duty; (2) the right is exercised or the duty is performed in bad faith; and (3) the sole intent of the exercise or performance is to prejudice or injure another.^[49] In other words, it must be shown that the exercise of the right or performance of the duty was done with bad faith which, in turn, is described as follows:

Malice or bad faith is at the core of Article 19 of the Civil Code. Good faith refers to the state of mind which is manifested by the acts of the individual concerned. It consists of the intention to abstain from taking an unconscionable and unscrupulous advantage of another. It is presumed. Thus, he who alleges bad faith has the duty to prove the same. Bad faith does not simply connote bad judgment or simple negligence; it involves a dishonest purpose or some moral obloquy and conscious doing of a wrong, a breach of known duty due to some motives or interest or ill will that partakes of the nature of fraud. Malice connotes ill will or spite and speaks not in response to duty. It implies an intention to do ulterior and unjustifiable harm. Malice is bad faith or bad motive.^[50]

Here, Roquel alleged that her transfer to PNB Global was a scheme to prevent the application of Philippine Labor Laws.^[51] Since it was PNB Global that terminated her, she only received one month salary in lieu of one month notice, her remaining salaries for the month, overtime pay, monetized accrued leave, and other payables of the company.^[52] She lamented that she would have been entitled to a separation pay of at least one (1) month pay for every year of her almost 22 years of service, as prescribed under Philippine Labor Laws, if her termination was carried out by PNB-HK.^[53] Yet, she did not offer any proof that her transfer to PNB Global from PNB-HK was tainted with illegality or intended to deprive her of any rights. On the contrary, her transfer from PNB-HK to PNB Global in 2011 was an expected consequence following the completion of her training with PNB-HK and the fact that PNB-RCL, the entity to which she was assigned prior to her training, had already been absorbed by PNB Global during the merger in 2010. It does not appear that her transfer to PNB Global was implemented to evade obligations under Philippines Labor Laws, or motivated by a dishonest purpose, or was in breach of a known duty.

It is also relevant to point out that the records reveal that Roquel was first hired by PNB-IFL (now PNB Global) in Hong Kong, the employment contract between Roquel and PNB-IFL was executed in Hong Kong, and Roquel performed services pursuant to said employment contract in Hong Kong. In other words, the material aspects of the dispute in this case all occurred in Hong Kong. The fact that PNB-HK is a branch of PNB does not automatically mean that Philippine Labor Laws will apply. Viewed this way, Roquel's argument is anchored on a mere supposition. To be sure, Roquel did not even question her transfer from PNB-HK to PNB Global, and even reported to the latter as directed.

The foregoing circumstances, even taken in totality with the attending probative factors for the "fraud test," i.e., identity of officers and sharing the same office address, still fail to demonstrate how PNB, through PNB-HK, controlled PNB Global when Roquel was transferred to the latter, and how such transfer could have amounted to bad faith.

Under the "harm test" it must be shown that the exercise of control and breach of some duty is the proximate cause of the injury or unjust loss for which the complaint was made.^[54] For such conduct to be considered as the

proximate cause, it should be shown that it had indeed caused the injury to another.[55]

Without clear and convincing proof that Roquel's transfer was only intended to evade Philippine Labor Laws — which, I submit, is belied by the established facts showing that all the material aspects of Roquel's employment all occurred in Hong Kong — it cannot even be determined whether she suffered any injury by reason of her dismissal. Under the "harm test," Roquel argues that she suffered injury when she received a sum less than what she would have been entitled to under Philippine Labor Laws. Thus, the determination of whether she indeed suffered injury is anchored on the question of whether her transfer to PNB Global was intended to evade obligations under Philippine Labor Laws. Yet, as discussed above, her employment was done in HK, her transfer to PNB Global was a consequence of the completion of her training in PNB-HK, and the fact was that PNB-RCL had already merged with PNB Global. Hence, there is no basis to conclude that Roquel suffered any harm.

Given the absence of any of the elements of control, fraud, and harm, the Court has no basis to pierce the veil of corporate fiction of PNB and hold it liable for the alleged illegal dismissal of Roquel. PNB is not the employer of Roquel. As such, the labor tribunals are without jurisdiction to entertain Roquel's complaint for illegal dismissal lodged against PNB.

Although PNB Global may arguably be Roquel's true employer, the Court, as well as the labor tribunals, is bereft of jurisdiction to render judgment as between Roquel and PNB Global in this case. As correctly pointed out by respondents in their Comment,[56] the NLRC made a finding that PNB Global was not summoned and the labor tribunal did not acquire jurisdiction over it.[57]

It must be emphasized at this point that courts must "always presume good faith, and for that reason accord prime importance to the separate personality of the corporation, disregarding the corporate personality only after the wrongdoing is first clearly and convincingly established." [58]

In light of the foregoing discussion, the CA was correct in upholding NLRC's dismissal of the complaint for lack of jurisdiction.

[1]Rollo, pp. 53-63.

[2]Id. at 90-91.

[3]Id. at 276-283.

[4]Id. at 61-62.

[5]Id. at 62.

[6]Ponencia, p. 9.

[7]Id. at 7.

[8]Id.

[9]Rollo, p. 60.

[10]Id. at 54.

[11]Id.

[12]Id.

[13]Id.

[14]Id.

[15]Id.

[16]Id.

[17]Id.

[18]Id.

[19]Id.

[20]Id. at 55.

[21]Id.

[22]Id. at 62.

[23]Gesolgon v. CyberOne PH, Inc., G.R. No. 210741, October 14, 2020, p. 7, accessed at < <https://sc.judiciary.gov.ph/15363/>> .

[24]Philippine National Bank v. Hydro Resources Contractors Corporation, G.R. Nos. 167530, 167561 & 167603, March 13, 2013, 693 SCRA 294, 307-310. Emphasis in the original; citations omitted.

[25]G.R. Nos. 221813 & 222723, July 23, 2018, 872 SCRA 573.

[26]Id. at 612-621. Citations and emphasis omitted.

[27]Id. at 611.

[28]Id. at 610.

[29]Pantranco Employees Association (PEA-PTGWO) v. National Labor Relations Commission, G.R. Nos. 170689 & 170705, March 17, 2009, 581 SCRA 598, 614.

[30]Marubeni Corporation v. Lirag, G.R. No. 130998, August 10, 2001, 362 SCRA 620, 630.

[31]Zambrano v. Philippine Carpet Manufacturing Corporation, G.R. No. 224099, June 21, 2017, 828 SCRA 144, 166.

[32]Rollo, pp. 29-34.

[33]Id. at 35.

[34]Id. at 36-37.

[35]Id. at 35.

[36]Ponencia, p. 8.

[37]Id. at 7-8. Records show that the letterheads used were that of PNB-HK, not PNB.

[38]Id. at 8.

[39]Id.

[40]Id.

[41]Id. at 9.

[42]See *McLeod v. National Labor Relations Commission*, G.R. No. 146667, January 23, 2007, 512 SCRA 222.

[43]*Rollo*, p. 31.

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

[45]*Rollo*, p. 61.

[46]*Maricalum Mining Corporation v. Florentino*, *supra* note 25, at 610.

[47]CIVIL CODE, Art. 2232 provides:

Art. 2232. In contracts and quasi-contracts, the courts may award exemplary damages if the defendant acted in wanton, fraudulent, reckless, oppressive, or malevolent manner.

[48]*Id.*, Art. 2219(10) provides:

Art. 2219. Moral damages may be recovered in the following and analogous cases:

x x x x

(10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

x x x x

[49]*Mercado v. Ongpin*, G.R. No. 207324, September 30, 2020, p. 8, accessed at <<https://sc.judiciary.gov.ph/19072/>>.

[50]*Id.*, citing *Dart Philippines, inc. v. Spouses Calogcog*, 613 Phil. 224, 234 (2009).

[51]*Rollo*, p. 38.

[52]*Id.*

[53]*Id.* at 38-39.

[54]*Maricalum Mining Corporation v. Florentino*, *supra* note 25, at 620-621.

[55]*Id.*

[56]*Rollo*, p. 368-382

[57]*Id.* at 378.

[58]*Halley v. Printwell, Inc.*, G.R. No. 157549, May 30, 2011, 649 SCRA 166, 133.

CONCURRING OPINION

ZALAMEDA, J.:

The State is bound under the Constitution to afford full protection to labor. When conflicting interests of labor and capital are to be weighed on the scales of social justice, the heavier influence of the latter should be counterbalanced with the sympathy and compassion the law accords the less privileged workingman. Labor is not a mere employee of capital but its active and equal partner.[1]

In this petition, petitioner seeks to be properly compensated for her illegal dismissal. In connection thereto, she alleges that PNB should be considered her employer because she was a shared employee of the corporations belonging to the PNB Hongkong group.

I concur with the ponencia that PNB should be held accountable for petitioner's claims. The supposed separate personalities of PNB and PNB Global should not bar petitioner from asserting her claims against the former. The three-pronged test in determining the applicability of the doctrine of piercing the veil of corporate fiction should be tempered with our evidentiary rules in labor cases. Equally settled is the rule that in illegal dismissal cases, the burden of proof is upon the employer to prove that the employee's dismissal from service is for a just and valid cause.[2] In other words, the determination of the issue on piercing of corporate veil must be undertaken with careful consideration of the State policy affording full protection to labor.

In this case, aside from the uncontested fact of petitioner's termination from work, I find that she adequately established her claim that PNB Global was a mere instrumentality of PNB. Her transfers within the PNB Hongkong group, and the use of the PNB letterhead, among others, constitute, at least, a prima facie proof justifying the treatment of these entities as one. It is my belief that after the introduction of these pieces of evidence, it became incumbent upon PNB to establish its alleged separate and independent operations from PNB Global, as well as its supposed lack of intent to evade labor law obligations.

Interestingly, instead of presenting a contrary evidence, PNB, in its position paper, admitted that "the provisions of [petitioner's] appointment as Branch Manager of PNB-RCL where the change of assignments from one entity to other PNB affiliates/subsidiaries is explicitly stipulated." This statement supports the conclusion that insofar as petitioner's employment, PNB itself considered its related corporations as one.

Given the foregoing, I do not find that the case of *Maricalum Mining Corp. v. Florentino*,^[3] (*Maricalum case*) squarely applies as to deprive petitioner a recourse against PNB. In the *Maricalum case*, there is a contractual agreement clearly identifying the mining company as the employer. However, complainants therein hypothesized that since the assets of the subsidiary company, *Maricalum Mining*, appear to be continuously depleting, the holding company, *G Holdings, Inc.*, was guilty of fraud and should be held liable for their claims. Indeed, in the *Maricalum case*, the separate personalities of *G Holdings Inc.*, and the mining company were clearly substantiated by a contractual agreement and even judicially affirmed in a prior case, *G Holdings, Inc. v. National Mines and Allied Workers Union Local 103*.^[4] In that case, this Court considered relevant the Government's intervention in *G Holding's* acquisition of 90% of *Maricalum Mining's* shares and financial claims. The National Government's sale of the mining company's share to *G Holdings, Inc.*, accorded the transaction a presumption of regularity, necessarily the lack of intent to evade labor law liabilities, viz:

It may be remembered that APT acquired the MMC from the PNB and the DBP. Then, in compliance with its mandate to privatize government assets, APT sold the aforesaid MMC shares and notes to GHI. To repeat, this Court has recognized this Purchase and Sale Agreement in *Republic, etc. v. "G" Holdings, Inc.*

The participation of the Government, through APT, in this transaction is significant. Because the Government had actively negotiated and, eventually, executed the agreement, then the transaction is imbued with an aura of official authority, giving rise to the presumption of regularity in its execution. This presumption would cover all related transactional acts and documents needed to consummate the privatization sale, inclusive of the Promissory Notes. It is obvious, then, that the Government, through APT, consented to the "establishment and constitution" of the mortgages on the assets of MMC in favor of GHI as provided in the notes. Accordingly, the notes (and the stipulations therein) enjoy the benefit of the same presumption of regularity accorded to government actions. Given the Government consent thereto and clothed with the presumption of regularity, the mortgages cannot be characterized as sham, fictitious or fraudulent.

xxx

The negotiations between the GHI and the Government — through APT, dating back to 1992 — culminating in the Purchase and Sale Agreement, cannot be depicted as a contrived transaction. In fact, in the said *Republic, etc. v. "G" Holdings, Inc.*, this Court adjudged that GHI was entitled to its rightful claims — not just to the

shares of MMC itself, or just to the financial notes that already contained the mortgage clauses over MMCs disputed assets, but also to the delivery of those instruments. Certainly, we cannot impute to this Court's findings on the case any badge of fraud. Thus, we reject the CA's conclusion that it was right to pierce the veil of corporate fiction, because the foregoing circumstances belie such an inference. Furthermore, we cannot ascribe to the Government, or the APT in particular, any undue motive to participate in a transaction designed to perpetrate fraud. Accordingly, we consider the CA interpretation unwarranted.

Since the factual antecedents of this case do not warrant a finding that the mortgage and loan agreements between MMC and GHI were simulated, then their separate personalities must be recognized. To pierce the veil of corporate fiction would require that their personalities as creditor and debtor be conjoined, resulting in a merger of the personalities of the creditor (GHI) and the debtor (MMC) in one person, such that the debt of one to the other is thereby extinguished. But the debt embodied in the 1992 Financial Notes has been established, and even made subject of court litigation (Civil Case No. 95-76132, RTC Manila). This can only mean that GHI and MMC have separate corporate personalities.

Such is not the case here. At the outset, petitioner's narration of her employment history clearly revealed that she was tossed among various corporations related to PNB as if they were just departments of a single entity. Further, there is no showing of demarcation of authority among the corporations belonging to the PNB Hongkong group, at least insofar as petitioner's employment is concerned. Likewise, as stated above, PNB acknowledged the internal arrangement of sharing employees among its related corporations.

Thus, considering that PNB failed to controvert petitioner's account of her employment and dismissal, or even explain the regularity and validity of the aforesaid practice of using the same employees, I agree with the ponencia that petitioner was able to support her argument that PNB should be considered her employer. She should not be burdened further by presenting a more precise or direct proof of commingling of authority between PNB and those of the PNB Hongkong group. Neither should her failure to timely question her transfers during the time of her employment be considered prejudicial to her cause. Courts must remain cognizant of the plight and vulnerabilities of employees, who are likely to agree with various working arrangements to preserve their means of livelihood.

In all, I am of the opinion that in labor cases where the piercing of corporate veil becomes an issue, employees must be given a certain latitude in establishing their cause. Similar to our evidentiary rules shifting the burden to the employer in case of claims of non-payment of monetary benefits, the application of the three-pronged test should not be too stringently applied without regard to the nature of evidence needed to justify the lifting of corporate veil.

It may not be amiss to point out that unequivocal evidence showing corporate relations may, oftentimes, be elusive, too technical or even non-existent to the ordinary employee. Documents establishing corporate structures, operating protocols and other internal corporate agreements may not always be readily available, especially to employees who seek claims against their corporate employers. On the other hand, any legitimate corporation who wishes to establish its separate identity from its alleged conduits could effortlessly introduce corporate documents and records in support thereof. Thus, it is my view that while the burden to produce proof rests on the party proposing to pierce the veil of corporate fiction, such rule should not relieve the employer, in illegal dismissal cases, its responsibility of proving the validity of the termination. In other words, if the policy is to treat labor as partner and not subordinate of capital, both employer and employee should be obliged to present countervailing evidence in order to give courts a complete and accurate grasp of their conflicting rights and claims.

WHEREFORE, I vote to GRANT the petition.

[1]Fuentes v. National Labor Relations Commission, 334 Phil. 22 (1997) [Per J. Belosillo]

[2]Geraldo v. The Bill Sender Corp., G.R. No. 222219, 03 October 2018 [Per J. Peralta].

[3]G.R. Nos. 221813 & 222723, 23 July 2018 [Per CJ Gesmundo].

[4]G.R. No. 160236, 619 Phil. 69 (2009) [Per J. Nachura].

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