Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ERSON ANG LEE DOING BUSINESS as "SUPER LAMINATION SERVICES," Petitioner,	**G. R. No. 193816**
	Present:
- versus -	SERENO, CJ, Chairperson, LEONARDO-DE CASTRO, BERSAMIN, PERLAS-BERNABE,* and CAGUIOA, JJ.
SAMAHANG MANGGAGAWA NG SUPER LAMINATION (SMSLS-NAFLU-KMU), Respondent.	Promulgated: NOV 2 1 2016

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DECISION

SERENO, *CJ:*

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court on the Decision[1] and Resolution[2] of the Court of Appeals (CA) affirming the assailed Decision[3] of the Department of Labor and Employment (DOLE). DOLE allowed the conduct of certification election among the rank-and-file employees of Super Lamination Services (Super Lamination), Express Lamination Services, Inc. (Express Lamination), and Express Coat Enterprises, Inc. (Express Coat).

THE ANTECEDENT FACTS

Petitioner Erson Ang Lee (petitioner), through Super Lamination, is a duly registered entity principally engaged in the business of providing lamination services to the general public. Respondent Samahan ng mga Manggagawa ng Super Lamination Services (Union A) is a legitimate labor

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* On official leave.
[1] *Rollo,* pp. 28-38; dated 24 May 2010; penned by Associate Justice Rosmari D. Carandang, with Associate Justices Ricardo R. Rosario and Manuel M. Barrios concurring; docketed as CA-G.R. SP No. 109486.
[2] Id. at 39-41; dated 21 September 2010.
[3] Id. at 63-69; dated 8 May 2009; penned by DOLE Undersecretary Romeo C. Lagman by authority of the DOLE Secretary.

organization, which is also a local chapter affiliate of the National Federation of Labor Unions – Kilusang Mayo Uno.[4] It appears that Super Lamination is a sole proprietorship under petitioner's name,[5] while Express Lamination and Express Coat are duly incorporated entities separately registered with the Securities and Exchange Commission (SEC).[6]

On 7 March 2008, Union A filed a Petition for Certification Election[7] to represent all the rank-and-file employees of Super Lamination. [8]

Notably, on the same date, Express Lamination Workers' Union (Union B) also filed a Petition for Certification Election to represent all the rank-and-file employees of Express Lamination. [9]

Also on the same date, the Samahan ng mga Manggagawa ng Express Coat Enterprises, Inc. (Union C) filed a Petition for Certification Election to represent the rank-and-file employees of Express Coat. [10]

Super Lamination, Express Lamination, and Express Coat, all represented by one counsel, separately claimed in their Comments and Motions to Dismiss that the petitions must be dismissed on the same ground — lack of employer-employee relationship between these establishments and the bargaining units that Unions A, B, and C seek to represent as well as these unions' respective members.[11] Super Lamination, in its Motion, posited that a majority of the persons who were enumerated in the list of members and officers of Union A were not its employees, but were employed by either Express Lamination or Express Coat.[12] Interestingly, both Express Lamination and Express Coat, in turn, maintained the same argument – that a majority of those who had assented to the Petition for Certification Election were not employees of either company, but of one of the two other companies involved.[13]

All three Petitions for Certification Election of the Unions were denied. On 21 May 2008, an Order was issued by DOLE National Capital Region (NCR) Med-Arbiter Michael Angelo Parado denying the respective petitions of Unions B and C on the ground that there was no existing employer-employee relationship between the members of the unions and the companies concerned. On 23 May 2008, DOLE NCR Med-Arbiter Alma Magdaraog-Alba also denied the petition of respondent Union A on the same ground.[14]

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[4] Id. at 78.
[5] Id. at 129.
[6] Id. at 127-128.
[7] Id. at 75-77.
[8] Id. at 64.
[9] Id.
[10] Id.
[11] Id. at 65-66, 140.
[12] Id. at 32.
[13] Id. at 65.
[14] Id. 32-33.

The three unions filed their respective appeals before the Office of the DOLE Secretary, which consolidated the appeal because the involved companies alternately referred to one another as the employer of the members of the bargaining units sought to be represented.[15] The unions argued that their petitions should have been allowed considering that the companies involved were unorganized, and that the employers had no concomitant right to oppose the petitions. They also claimed that while the questioned employees might have been assigned to perform work at the other companies, they were all under one management's direct control and supervision.[16]

DOLE, through Undersecretary Romeo C. Lagman, rendered the assailed Decision, the dispositive portion of which reads as follows:

> **WHEREFORE**, premises considered, the appeals filed by Express Lamination Workers Union (ELWU-NAFLU-KMU), Samahang Manggagawa ng Express Coat Enterprises, Inc. (SMEC-NAFLU-KMU) and Samahang Manggagawa ng Super Lamination Services (SMSLS-NAFLU-KMU) are hereby **GRANTED** and the Orders dated 21 May 2008 of DOLE-NCR Mediator-Arbiter Michael Angelo T. Parado are hereby **REVERSED and SET ASIDE**. The Order dated 23 May 2008 of DOLE NCR Mediator-Arbiter Alma E. Magdaraog-Alba is likewise **REVERSED and SET ASIDE**.
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> Accordingly, let the entire records of this be remanded to the regional office of origin for the immediate conduct of certification election among the rank-and-file employees of Express Lamination Services, Inc., Super Lamination Services and Express Coat Enterprises Inc., after the conduct of pre-election conference/s, with the following as choices;
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> 1. Express Lamination Workers Union-NAFLU-KMU;
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> 2. Samahan ng mga Manggagawa ng Super Lamination Services-NAFLU-KMU;
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> 3. Samahang ng mga Manggagawa ng Express Coat Enterprises, Inc.-NAFLU-KMU; and
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> 4. "No Union."
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> The employer/s and/or contending union(s) are hereby directed to submit to the Regional Office of origin, within ten (10) days from receipt of this Decision, a certified list of employees in the bargaining unit or the payrolls covering the members of the bargaining unit for the last three (3) months prior to the issuance of the Decision.
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> SO DECIDED.[17](Emphases in the original)

DOLE found that Super Lamination, Express Lamination, and Express Coat were sister companies that had a common human resource department responsible for hiring and disciplining the employees of the three

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[15] Id. at 64.
[16] Id. at 66.
[17] Id. at 69.

companies. The same department was found to have also given them daily instructions on how to go about their work and where to report for work. It also found that the three companies involved constantly rotated their workers, and that the latter's identification cards had only one signatory.[18]

To DOLE, these circumstances showed that the companies were engaged in a work-pooling scheme, in light of which they might be considered as one and the same entity for the purpose of determining the appropriate bargaining unit in a certification election.[19] DOLE applied the concept of multi-employer bargaining under Sections 5 and 6 of DOLE Department Order 40-03, Series of 2003. Under that concept, the creation of a single bargaining unit for the rank-and-file employees of all three companies was not implausible and was justified under the given circumstances.[20] Thus, it considered these rank-and-file employees as one bargaining unit and ordered the conduct of a certification election as uniformly prayed for by the three unions.

Aggrieved, petitioner instituted an appeal before the CA, which denied his Petition and affirmed the Decision of DOLE. It sided with DOLE in finding that Super Lamination, Express Lamination, and Express Coat were sister companies that had adopted a work-pooling scheme. Therefore, it held that DOLE had correctly applied the concept of multi-employer bargaining in finding that the three companies could be considered as the same entity, and their rank-and-file employees as comprising one bargaining unit.[21]

Petitioner filed a Motion for Reconsideration of the CA Decision, but the motion was denied.[22] Therefore, he now comes to this Court through the present Petition.

ISSUES

From the established facts and arguments, we cull the issues as follows:

1. Whether the application of the doctrine of piercing the corporate veil is warranted

2. Whether the rank-and-file employees of Super Lamination, Express Lamination, and Express Coat constitute an appropriate bargaining unit

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[18] Id. at 67.
[19] Id. at 33-34.
[20] Id. at 68.
[21] Id. at 36.
[22] Id. at 39-41.

THE COURT'S RULING

We deny the petition.

An application of the doctrine of piercing the corporate veil is warranted.

Petitioner argues that separate corporations cannot be treated as a single bargaining unit even if their businesses are related,[23] as these companies are indubitably distinct entities with separate juridical personalities.[24] Hence, the employees of one corporation cannot be allowed to vote in the certification election of another corporation, lest the above-mentioned rule be violated.[25]

Petitioner's argument, while correct, is a general rule. This Court has time and again disregarded separate juridical personalities under the doctrine of piercing the corporate veil. It has done so in cases where a separate legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, among other grounds.[26] In any of these situations, the law will regard it as an association of persons or, in case of two corporations, merge them into one.[27]

A settled formulation of the doctrine of piercing the corporate veil is that when two business enterprises are owned, conducted, and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that these two entities are distinct and treat them as identical or as one and the same.[28]

This formulation has been applied by this Court to cases in which the laborer has been put in a disadvantageous position as a result of the separate

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[23] *Diatagon Labor Federation Local 110 of the ULGWP v. Ople*, 189 Phil. 396 (1980).

[24] *Indophil Textile Mill Workers Union-PTGWO v. Calica*, G.R. No. 96490, 205 SCRA 697, 3 February 1992; *Umali et al., v. CA*, 267 Phil. 553 (1990).

[25] A certification election, as defined in the Labor Code's Implementing Rules, is the process of determining, by secret ballot, the employees' sole and exclusive representative in an appropriate bargaining unit, for purposes of collective bargaining or negotiation (Book V, Rule I, Sec. 1[x]). A union's right to file a petition for certification election is founded on the existence of an employer-employee relationship. The workers whom the union intends to represent must therefore be employees of the enterprise in which an election is sought. (C.A. Azucena, Jr., THE LABOR CODE WITH COMMENTS AND CASES, 461 [Eighth Edition, 2013]). Otherwise, the petition must be dismissed.

[26] The veil of separate corporate personality may be lifted when such personality is used to defeat public convenience, justify wrong, protect fraud or defend crime; or used as a shield to confuse the legitimate issues; or when the corporation is merely an adjunct, a business conduit or an alter ego of another corporation 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; or when the corporation is used as a cloak or cover for fraud or illegality, or to work injustice, or where necessary to achieve equity or for the protection of the creditors. In such cases, the corporation will be considered as a mere association of persons. The liability will directly attach to the stockholders or to the other corporation. *(China Banking Corp. v. Dyne-Sem Electronics Corp.*, 527 Phil. 74 [2006]).

[27] *Villanueva v. Lorezo*, G.R. No. 179640, 18 March 2015; *Times Transportation Co. Inc. v. Sotelo*, 491 Phil. 756 (2005).

[28] *Prince Transport, Inc. v. Garcia*, 654 Phil. 296 (2011).

juridical personalities of the employers involved.[29] Pursuant to veil-piercing, we have held two corporations jointly and severally liable for an employee's back wages.[30] We also considered a corporation and its separately-incorporated branches as one and the same for purposes of finding the corporation guilty of illegal dismissal.[31] These rulings were made pursuant to the fundamental doctrine that the corporate fiction should not be used as a subterfuge to commit injustice and circumvent labor laws.[32]

Here, a certification election was ordered to be held for all the rank-and-file employees of Super Lamination, Express Lamination, and Express Coat. The three companies were supposedly distinct entities based on the fact that Super Lamination is a sole proprietorship while Express Lamination and Express Coat were separately registered with the SEC.[33] The directive was therefore, in effect, a piercing of the separate juridical personalities of the corporations involved. We find the piercing to be proper and in accordance with the law as will be discussed below.

The following established facts show that Super Lamination, Express Lamination, and Express Coat are under the control and management of the same party – petitioner Ang Lee. In effect, the employees of these three companies have petitioner as their common employer, as shown by the following facts:

1. Super Lamination, Express Lamination, and Express Coat were engaged in the same business of providing lamination services to the public as admitted by petitioner in his petition.[34]

2. The three establishments operated and hired employees through a common human resource department as found by DOLE in a clarificatory hearing.[35] Though it was not clear which company the human resource department was officially attached to, petitioner admits in his petition that such department was *shared* by the three companies for purposes of convenience.[36]

3. The workers of all three companies were constantly rotated and periodically assigned to Super Lamination or Express Lamination or Express Coat to perform the same or similar

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[29] See *Vicmar Development Corp. v. Elarcosa* (G.R. No. 202215, 9 December 2015); *Azcor Manufacturing, Inc. v. National Labor Relations Commission* (362 Phil. 370 [1999]); *Tomas Lao Construction v. National Labor Relations Commission* (344 Phil. 268 [1997]).

[30] *Azcor Manufacturing, Inc. v. National Labor Relations Commission*, id.; *Tomas Lao Construction v. National Labor Relations Commission*, id.

[31] *Vicmar Development Corp. v. Elarcosa*, supra note 29.

[32] *Tomas Lao Construction v. National Labor Relations Commission*, supra note 29 at 287.

[33] *Rollo*, pp. 127-129.

[34] Id. at 10-11.

[35] Id. at 36, 67

[36] Id. at 11.

tasks.[37] This finding was further affirmed when petitioner admitted in his petition before us that the Super Lamination had entered into a work-pooling agreement with the two other companies and shared a number of their employees.[38]

4. DOLE found and the CA affirmed that the common human resource department imposed disciplinary sanctions and directed the daily performance of all the members of Unions A, B, and C.[39]

5. Super Lamination included in its payroll and SSS registration not just its own employees, but also the supposed employees of Express Lamination and Express Coat. This much was admitted by petitioner in his Motion to Dismiss[40] which was affirmed by the Med-Arbiter in the latter's Order.[41]

6. Petitioner admitted that Super Lamination had issued and signed the identification cards of employees who were actually working for Express Lamination and Express Coat.[42]

7. Super Lamination, Express Lamination, and Express Coat were represented by the same counsel who interposed the same arguments in their motions before the Med-Arbiters and DOLE.[43]

Further, we discern from the synchronized movements of petitioner and the two other companies an attempt to frustrate or defeat the workers' right to collectively bargain through the shield of the corporations' separate juridical personalities. We make this finding on the basis of the motions to dismiss filed by the three companies. While similarly alleging the absence of an employer-employee relationship, they alternately referred to one another as the employer of the members of the bargaining units sought to be represented respectively by the unions. This fact was affirmed by the Med-Arbiters' Orders finding that indeed, the supposed employees of each establishment were found to be alternately the employees of either of the two other companies as well. This was precisely the reason why DOLE consolidated the appeals filed by Unions A, B, and C.[44]

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[37] Id.
[38] Id.
[39] Id. at 36, 67.
[40] Id. at 131.
[41] Id. at 141.
[42] Id. at 131.
[43] Id. at 64-65.
[44] Id. at 64.

Due to the finger-pointing by the three companies at one another, the petitions were dismissed. As a result, the three unions were not able to proceed with the conduct of the certification election. This also caused confusion among the employees as to who their real employer is, as Union A claims in its Comment.[45]

We hold that if we allow petitioner and the two other companies to continue obstructing the holding of the election in this manner, their employees and their respective unions will never have a chance to choose their bargaining representative. We take note that all three establishments were unorganized. That is, no union therein was ever duly recognized or certified as a bargaining representative.[46]

Therefore, it is only proper that, in order to safeguard the right of the workers and Unions A, B, and C to engage in collective bargaining, the corporate veil of Express Lamination and Express Coat must be pierced. The separate existence of Super Lamination, Express Lamination, and Express Coat must be disregarded. In effect, we affirm the lower tribunals in ruling that these companies must be treated as one and the same unit for purposes of holding a certification election.

Petitioner has cited *Diatagon Labor Federation Local v. Ople*[47] and *Indophil Textile Mill Worker Union v. Calica*[48] in which this Court refused to treat separate corporations as a single bargaining unit. Those cases, however, are not substantially identical with this case and would not warrant their application herein. Unlike in the instant case, the corporations involved were found to be completely independent or were not involved in any act that frustrated the laborers' rights.

In *Diatagon,*[49] we refused to include the 236 employees of Georgia Pacific International Corporation in the bargaining unit of the employees of Liangga Bay Logging Co., Inc. This Court's refusal was in light of the fact that the two corporations were indubitably distinct entities with separate corporate identities and origins. Moreover, there was no discernible attempt to frustrate any of their labor-related rights, as the only conflict was over which bargaining unit they belonged to.

In *Indophil,*[50] this Court refused to pierce the corporate veil of Indophil Textile Mill and Indophil Acrylic Manufacturing. We found that the creation of Indophil Acrylic was not a device to evade the application of

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[45] Id. at 147.
[46] Article 268, Labor Code; *Azucena*, supra note 25, p. 447.
[47] *Diatagon Labor Federation Local 110 of the ULGWP v. Ople*, supra note 23.
[48] *Indophil Textile Mill Workers Union-PTGWO v. Calica,* supra note 24.
[49] *Diatagon Labor Federation Local 110 of the ULGWP v. Ople*, supra note 23.
[50] *Indophil Textile Mill Workers Union-PTGWO v. Calica,* supra note 24.

the collective bargaining agreement (CBA) between petitioner union and Indophil Textile Mill. This Court further found that despite the similarity in their business operations, the separate personalities of the two corporations were maintained and were not used for any of the purposes specified under the law that would warrant piercing. It is also apparent in this case that the workers' rights were not being hampered by the employers concerned, as the only issue between them was the extent of the subject CBA's application.

In this case, not only were Super Lamination, Express Lamination, and Express Coat found to be under the control of petitioner, but there was also a discernible attempt to disregard the workers' and unions' right to collective bargaining.

The foregoing considered, we find no error in the CA's affirmance of the DOLE directive. We affirm DOLE's application by analogy of the concept of multi-employer bargaining to justify its Decision to treat the three companies as one. While the multi-employer bargaining mechanism is relatively new and purely optional under Department Order No. 40-03, it illustrates the State's policy to promote the primacy of free and responsible exercise of the right to collective bargaining.[51] The existence of this mechanism in our labor laws affirm DOLE's conclusion that its treatment of the employees of the three companies herein as a single bargaining unit is neither impossible nor prohibited.[52] It is justified under the circumstances discussed above.

Besides, it is an established rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded by the courts not only respect but even finality when supported by substantial evidence; *i.e.,* that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[53]

The bargaining unit of the rank-and-file employees of the three companies is appropriate.

Petitioner argues that there is no showing that the rank-and-file employees of the three companies would constitute an appropriate bargaining unit on account of the latter's different geographical locations.[54] This contention lacks merit. The basic test for determining the appropriate bargaining unit is the application of a standard whereby a unit is deemed

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[51] Book V, Rule XVI, Section 1. Policy. – It is the policy of the Sate to promote and emphasize the primacy of free and responsible exercise of the right to self-organization and collective bargaining, either through single enterprise level negotiations or through the creation of a mechanism by which different employers and recognized or certified labor union in their establishments bargain collectively.

[52] *Rollo*, p. 68.

[53] *Prince Transport, Inc. v. Garcia,* supra note 28.

[54] *Rollo*, p. 18

appropriate if it affects a grouping of employees who have substantial, mutual interests in wages, hours, working conditions, and other subjects of collective bargaining.[55] We have ruled that geographical location can be completely disregarded if the communal or mutual interests of the employees are not sacrificed. [56]

In the present case, there was communal interest among the rank-and-file employees of the three companies based on the finding that they were constantly rotated to all three companies, and that they performed the same or similar duties whenever rotated.[57] Therefore, aside from geographical location, their employment status and working conditions were so substantially similar as to justify a conclusion that they shared a community of interest. This finding is consistent with the policy in favor of a single-employer unit, unless the circumstances require otherwise.[58] The more solid the employees are, the stronger is their bargaining capacity.[59]

As correctly observed by the CA and DOLE, while there is no prohibition on the mere act of engaging in a work-pooling scheme as sister companies, that act will not be tolerated, and the sister companies' separate juridical personalities will be disregarded, if they use that scheme to defeat the workers' right to collective bargaining. The employees' right to collectively bargain with their employers is necessary to promote harmonious labor-management relations in the interest of sound and stable industrial peace.[60]

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 is **DENIED** for lack of merit. The Court of Appeals Decision[61] and Resolution[62] in CA-G.R. SP No. 109486 are hereby **AFFIRMED**.

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

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[55] *University of the Phils. v. Ferrer-Calleja*, G.R. No. 96189, 14 July 1992, 211 SCRA 464.
[56] *San Miguel Corp. Supervisors and Exempt Union v. Laguesma*, 343 Phil. 143 (1997).
[57] *Rollo*, p. 36.
[58] *General Rubber and Footwear Corp. v. Bureau of Labor Relations*, 239 Phil. 276 (1987).
[59] *Azucena*, supra note 25, p. 440.
[60] *Government Service Insurance System v. GSIS Supervisor's Union*, 160-A Phil. 1066 (1975).
[61] Dated 24 May 2010.
[62] Dated 21 September 2010.

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

(On official leave)
ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice