P10

Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

HAYDEN KHO, SR.,
Petitioner,

- versus -

DOLORES G. MAGBANUA, MARILYN S. MERCADO,* ARCHIMEDES B. CALUB, MARIA E. ONGOTAN, FRANCISCO J. DUQUE, MERLE*** G. RIVERA, DOLORES A. PULIDO, PAULINO R. BALANGATAN, JR., ANAFEL L. ESCROPOLO, PERCIVAL A. DEINLA,**** JERRY C. ZABALA, ROGELIO C. ONGONION, JR., HELEN B. DELA CRUZ, CENON JARDIN, and ROVILLA L. CATALAN,*******
Respondents.

G.R. No. 237246

Present:

CARPIO, *J.*, Chairperson,
PERLAS-BERNABE,
CAGUIOA,
REYES, J., JR., and
LAZARO-JAVIER, *JJ.*

Promulgated:

29 JUL 2019

x----------x

D E C I S I O N

PERLAS-BERNABE, *J.*:

---

* "Mercardo" in some parts of the records.
** "Archimides" in some parts of the records.
*** "Melre" in some parts of the records.
**** "Deinia" in some parts of the records.
***** Five (5) respondents herein, namely: (1) Rowena F. Santillan, (2) Jose R. Balgos, Jr., (3) Randy Armero, (4) Marilou D. Adra, and (5) Ruben Galapate, were dropped as parties in this case during the CA proceedings; see *rollo*, p. 25.

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated July 19, 2017 and the Resolution[3] dated January 4, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 141821, which reversed and set aside the Decision[4] dated May 7, 2015 and the Resolution[5] dated June 16, 2015 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 04-001356-12(4), and accordingly, reinstated the Decision[6] dated November 9, 2011 of the Labor Arbiter (LA) holding respondent Hayden Kho, Sr. (Kho) solidarily liable to pay respondents Dolores G. Magbanua, Marilyn S. Mercado, Archimedes B. Calub, Maria E. Ongotan, Francisco J. Duque, Merle G. Rivera, Dolores A. Pulido, Paulino R. Balangatan, Jr., Anafel L. Escropolo, Percival A. Deinla, Jerry C. Zabala, Rogelio C. Ongonion, Jr., Helen B. Dela Cruz, Cenon Jardin, and Rovilla L. Catalan (respondents) separation pay, nominal damages, and attorney's fees, among others.

The Facts

A complaint[7] for illegal dismissal was filed by respondents before the LA against Holy Face Cell Corporation (Corporation), Tres Pares Fast Food (Tres Pares), and the Corporation's stockholders, including its alleged President/Manager, Kho, and the latter's wife, Irene S. Kho (Irene; collectively Spouses Kho).[8] Respondents claimed that they were employed by the Corporation in the Tres Pares as cooks, cashiers, or dishwashers.[9] They posited that on January 14, 2011, Spouses Kho's daughter, Sheryl Kho, posted a notice in the company premises that the restaurant would close down on January 19, 2011.[10] Fearing the loss of their jobs, they tried to seek an audience with Kho about the closure, but to no avail.[11] The restaurant closed as scheduled; thus respondents filed the complaint for illegal dismissal with payment of separation pay, salary differentials, nominal damages, differentials on overtime pay, service incentive leave pay, and holiday pay, including damages, as well as attorney's fees.[12]

---

1 Id. at 3-19.
2 Id. at 25-37. Penned by Associate Justice Jhosep Y. Lopez with Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan, concurring.
3 Id. at 39-41.
4 Id. at 105-115. Penned by Presiding Commissioner Gregorio O. Bilog, III with Commissioners Erlinda T. Agus and Alan A. Ventura, concurring.
5 CA *rollo*, pp. 343-345.
6 In NLRC NCR Case No. NCR-01-01191-11, penned by Labor Arbiter Arthur L. Amansec. *Rollo*, pp. 72-93.
7 Dated January 20, 2011. Id. at 42-46. See also Complainants' position paper dated May 26, 2011; id. at 48-63.
8 See id. at 27 and 72-74.
9 See id. at 26-27 and 72-75.
10 See id. at 27 and 75.
11 See id. at 27.
12 Id. at 42. See also id. at 27.

For their part, Spouses Kho argued that they had no employer-employee relationship with respondents, as the latter's employer was the Corporation, and that they cannot be held liable for the acts of the Corporation, the same having been imbued with a personality separate and distinct from its stockholders, directors, and officers.[13]

The LA Ruling

In a Decision[14] dated November 9, 2011, the LA ruled in favor of respondents, and accordingly, ordered the Corporation and Kho to solidarily pay respondents separation pay, salary and 13th month pay differentials, nominal damages, and attorney's fees in the aggregate amount of ₱3,254,466.60.[15]

The LA found that not only did the Corporation fail to prove that it closed down its business due to financial distress as it did not offer financial documents to corroborate its claim, it also failed to comply with the notice requirement prior to such closure as laid down under Article 298 (formerly Article 283)[16] of the Labor Code. As such, respondents are entitled to the aforementioned awards. On this note and citing various jurisprudence,[17] the LA ruled that Kho – whom respondents alleged to be the President of the Corporation at the time of the closure and which allegation was not denied by Kho[18] – should be held solidarily liable for respondents' claims.[19]

---

13 See id. at 27. They further argued that the case should be dismissed for want of service to the Corporation as the indispensable party and that solidary liability cannot be presumed (see id. at 98-99). See also Spouses Kho's position paper dated April 26, 2011; id. at 64-69.

14 Id. at 72-93.

15 Id. at 86-92.

16 Article 298 [283] of the Labor Code reads:

> Article 298 [283]. Closure of Establishment and Reduction of Personnel. – The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the 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 a 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.

17 See *Gudez v. NLRC*, 262 Phil. 703 (1990); *Maglutac v. NLRC*, 267 Phil. 816 (1990); and *Carmelcraft Corporation v. NLRC*, 264 Phil. 763 (1990).

18 See *rollo*, pp. 79-80.

19 See id. at 85.

Aggrieved, Kho appealed before the NLRC, particularly contesting the finding that he should be held solidarily liable with the Corporation.[20]

The NLRC Ruling

In a Decision[21] dated May 7, 2015, the NLRC reversed and set aside the LA Decision and dismissed the complaint as against Kho.[22] It ruled that Kho cannot be held solidarily liable with the Corporation, absent any allegation and proof from respondents that he committed any act that would justify piercing the veil of corporate fiction.[23] It stressed that mere failure to comply with the procedural due process does not constitute an unlawful act that would render Kho personally liable. Lastly, and contrary to the finding of the LA, it pointed out that per the Corporation's latest General Information Sheet (GIS), Kho was not the Corporation's President at the time of the closure, but a certain "Domingo M. Ifurung."[24]

Aggrieved, respondents moved for reconsideration,[25] which was denied in a Resolution[26] dated June 16, 2015; hence, they filed a petition for *certiorari*[27] before the CA.

The CA Ruling

In a Decision[28] dated July 19, 2017, the CA reversed and set aside the NLRC ruling, and accordingly, held the Corporation and Kho solidarily liable for the payment of respondents' separation pay equivalent to one (1) month pay for every year of service, as well as nominal damages of ₱50,000.00 each and attorney's fees.[29]

---

20 See Memorandum of Appeal dated December 7, 2011 (id. at 94-100). Kho filed his Memorandum of Appeal and a Motion to Reduce Appeal Bond dated December 7, 2011 (id. at 101-102), but was only able to pay the appeal bond three (3) days after. Thus, the NLRC initially dismissed Kho's appeal due to his failure to pay the appeal bond on time. Subsequently, however, the CA, in its December 6, 2014 Decision, annulled the NLRC's ruling and remanded the case to the latter to resolve Kho's motion to reduce bond and/or his appeal on the merits. When the case was remanded, the NLRC eventually resolved the case on the merits in the May 7, 2015 Decision (see id. at 28-29 and 106).

21 Id. at 105-115.

22 Erroneously referred to as "Hayden Kho, Jr." (id. at 114). On motion for reconsideration, the NLRC reversed its November 21, 2014 Decision as regards the sufficiency of the bond posted. It explained that the clear intent of the CA ruling was to accept the bond posted by Kho as substantial compliance and to have the appeal decided on the merits (see id. at 106-108.)

23 See id. at 110-111.

24 See id. at 111-112.

25 See motion for reconsideration dated May 25, 2015; CA *rollo*, pp. 329-340.

26 See id. at 343-345.

27 Dated August 20, 2015. Id. at 3-25.

28 *Rollo*, pp. 25-37.

29 Id. at 37. On the procedural aspect, the CA deemed acceptable the reduced bond posted by Kho since it amounted to at least 30% of the total assailed award (see id. at 30-31).

On the merits, the CA agreed with the LA in awarding separation pay and nominal damages to respondents following Article 298 (formerly Article 283) of the Labor Code, as amended, and jurisprudence.[30] As regards Kho's liability, the CA noted that Kho effectively admitted that: (*i*) he managed the Corporation; (*ii*) his daughter posted the notice of closure; and (*iii*) respondents sought an audience with him to discuss the closure.[31] Based on these observations, the CA, citing *Marc II Marketing, Inc. v. Joson*,[32] concluded that Kho acted in bad faith when he assented to the sudden and abrupt closure of the restaurant despite the absence of a board resolution authorizing the closure. As such, he should be held solidarily liable with the Corporation.[33]

Dissatisfied, Kho moved for reconsideration[34] but was denied in a Resolution[35] dated January 4, 2018; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA correctly ascribed grave abuse of discretion on the part of the NLRC, and accordingly held Kho solidarily liable with the Corporation for the payment of respondents' money claims.

The Court's Ruling

The petition is meritorious.

Preliminarily, the Court stresses the distinct approach in reviewing a CA's ruling in a labor case. In a Rule 45 review, the Court examines the correctness of the CA Decision in contrast with the review of jurisdictional errors under Rule 65. Furthermore, Rule 45 limits the review to questions of law. In ruling for legal correctness, the Court views the CA Decision in the same context that the petition for *certiorari* was presented to the CA. Hence, the Court has to examine the CA Decision from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC Decision.[36]

---

30 See id. at 31-35.
31 See id. at 36.
32 678 Phil. 232 (2011).
33 See *rollo*, pp. 35-36.
34 See motion for reconsideration dated August 10, 2017; CA *rollo*, pp. 414-425.
35 *Rollo*, pp. 39-41.
36 See *Pelagio v. Philippine Transmarine Carriers, Inc.*, G.R. No. 231773, March 11, 2019, citing *University of Santo Tomas (UST) v. Samahang Manggagawa ng UST*, G.R. No. 184262, April 24, 2017, 824 SCRA 52, 60.

Case law states that grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[37]

In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare, and accordingly, dismiss the petition.[38]

Guided by the foregoing considerations, the Court finds that the CA erred in ascribing grave abuse of discretion on the part of the NLRC, as the tribunal correctly found that Kho should not be held solidarily liable with the Corporation, considering that his claims are in accord with the evidence on record, as well as settled legal principles of labor law.

It is settled that a corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it.[39] As a juridical entity, a corporation may act only through its directors, officers, and employees. As such, obligations incurred by the corporation, acting through its directors, officers, and employees, are its sole liabilities,[40] and these persons should not be held jointly and solidarily liable with the corporation.[41] However, being a mere fiction of law, this corporate veil can be pierced when such corporate fiction is used: (*a*) to defeat public convenience or as a vehicle for the evasion of an existing obligation; (*b*) to justify wrong, protect or perpetuate fraud, defend crime, or as a shield to confuse legitimate issues;[42] or (*c*) as a mere alter ego or business conduit of a person, or 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.[43]

---

37 See *Pelagio v. Philippine Transmarine Carriers, Inc.*, id., citing *University of Santo Tomas (UST) v. Samahang Manggagawa ng UST*, id. at 60-61.

38 See *Pelagio v. Philippine Transmarine Carriers, Inc.*, id., citing *University of Santo Tomas (UST) v. Samahang Manggagawa ng UST*, id. at 61.

39 *Mcleod v. NLRC*, 541 Phil. 214, 242 (2007). See also *Harpoon Marine Services, Inc. v. Francisco*, 659 Phil. 453, 470 (2011); and *Carag v. NLRC*, 548 Phil. 581, 607 (2007).

40 *Mcleod v. NLRC*, id.; and *Santos v. NLRC*, 325 Phil. 145, 156 (1996).

41 See *Mcleod v. NLRC*, id. at 242-243. See also *Harpoon Marine Services, Inc. v. Francisco*, supra note 38, at 469; *David v. National Federation of Labor Unions*, 604 Phil. 31, 41 (2009); and *Carag v. NLRC*, supra note 39, at 608-609.

42 See *Marc II Marketing, Inc. v. Joson*, supra note 32, at 263-264; *Santos v. NLRC*, supra note 40, at 156-157; and *Reahs Corporation v. NLRC*, 337 Phil. 698, 706 (1997).

43 See *Guillermo v. Uson*, 782 Phil. 215, 224 (2016); and *Francisco v. Mallen, Jr.*, 645 Phil. 369, 376-377 (2010), citing *Mcleod v. NLRC*, supra note 39, at 239.

Fundamental in the realm of labor law that corporate directors, trustees, or officers can be held solidarily liable with the corporation when they assent to a patently unlawful act of the corporation, or when they are guilty of bad faith or gross negligence in directing its affairs, or when there is a conflict of interest resulting in damages to the corporation, its stockholders, or other persons.[44] However, it bears emphasis that a finding of personal liability against a director, trustee, or a corporate officer requires the concurrence of these two (2) requisites, namely: (*a*) a clear allegation in the complaint of gross negligence, bad faith or malice, fraud, or any of the enumerated exceptional instances; and (*b*) clear and convincing proof of said grounds relied upon in the complaint[45] sufficient to overcome the burden of proof borne by the complainant.[46]

In this case, the evidence on record do not support the findings of both the LA and the CA that Kho was the Corporation's President at the time of its closure, and that he assented to a patently unlawful act, thereby exposing him to solidary liability with the Corporation. A plain reading of the Corporation's GIS for the years 2007[47] and 2008[48] show that Kho was not the Corporation's President as he was merely its Treasurer, while the GIS for the year 2009[49] indicates that he is no longer a corporate officer of the Corporation. More importantly, aside from respondents' bare allegations, there is a dearth of evidence on record that would indicate that Kho was a corporate officer at the time the restaurant, where respondents worked, closed down.

On this score, even assuming *arguendo* that Kho was a corporate officer, nowhere in the complaint nor in the respondents' submissions before the labor tribunals did they allege that Kho committed bad faith, fraud, negligence, or any of the aforementioned exceptions to warrant his personal liability. The fact that it was Kho's daughter who posted the closure notice and with whom respondents requested for an audience with Kho to tackle the issue of closure – which notice was not even presented in evidence – is no proof that he orchestrated the closure or assented to the same, let alone in bad faith.[50] Relatedly, bad faith cannot be ascribed on any of the Corporation's officers by the mere fact that the Corporation failed to comply with the notice

---

44 See Section 31 of the "CORPORATION CODE OF THE PHILIPPINES," *Batas Pambansa* Blg. 68 (May 1, 1980).

45 See *Zaragoza v. Tan*, G.R. No. 225544, December 4, 2017, 847 SCRA 437, 454; *Polymer Rubber Corporation v. Salamuding*, 715 Phil. 141, 150 (2013); and *Francisco v. Mallen, Jr.*, supra note 43, at 374-375.

46 See *Pioneer Insurance & Surety Corporation v. Morning Star Travel & Tours, Inc.*, 763 Phil. 428, 430-431 (2015).

47 CA *rollo*, pp. 94-99.

48 Id. at 44-49.

49 Id. at 112-117.

50 It is settled that bad faith is never presumed. It is a question of fact and is evidentiary such that the records must first bear evidence of malice before a finding of such may be made. Bad faith does not connote bad judgment or negligence, as it imports a dishonest purpose, a breach of a known duty through some ill motive or interest and partakes of a nature of fraud. (See *Pioneer Insurance & Surety Corporation v. Morning Star Travel & Tours, Inc.*, supra note 46, at 444, citing *Carag v. NLRC*, supra note 39, at 602 and *McLeod v. NLRC*, supra note 39, at 242-243.)

requirement before closing down the restaurant. Case law instructs that "[n]either does bad faith arise automatically just because a corporation fails to comply with the notice requirement of labor laws on company closure or dismissal of employees. The failure to give notice is not an unlawful act because the law does not define such failure as unlawful. Such failure to give notice is a violation of procedural due process but does not amount to an unlawful or criminal act. Such procedural defect is called illegal dismissal because it fails to comply with mandatory procedural requirements, but it is not illegal in the sense that it constitutes an unlawful or criminal act."[51]

Verily, absent any finding that Kho was a corporate officer of the Corporation who willfully and knowingly assented to patently unlawful acts of the latter, or who is guilty of bad faith or gross negligence in directing its affairs, or is guilty of conflict of interest resulting in damages thereto, he cannot be held personally liable for the corporate liabilities arising from the instant case. In *Guillermo v. Uson*,[52] the Court held:

> In the earlier labor cases of *Claparols v. Court of Industrial Relations* [460 Phil. 624 (1975] and *A.C. Ransom Labor Union-CCLU v. NLRC* [226 Phil. 199 (1986)], persons who were not originally impleaded in the case were, even during execution, held to be solidarily liable with the employer corporation for the latter's unpaid obligations to complainant-employees. These included a newly-formed corporation which was considered a mere conduit or alter ego of the originally impleaded corporation, and/or the officers or stockholders of the latter corporation. Liability attached, especially to the responsible officers, even after final judgment and during execution, when there was a failure to collect from the employer corporation the judgment debt awarded to its workers. In *Naguiat v. NLRC* [336 Phil. 545 (1997)], the president of the corporation was found, for the first time on appeal, to be solidarily liable to the dismissed employees. Then, in *Reynoso v.* [*CA*] [339 Phil. 38 (2000)], the veil of corporate fiction was pierced at the stage of execution, against a corporation not previously impleaded, when it was established that such corporation had dominant control of the original party corporation, which was a smaller company, in such a manner that the latter's closure was done by the former in order to defraud its creditors, including a former worker.
>
> The rulings of this Court in *A.C. Ransom, Naguiat,* and *Reynoso*, however, have since been tempered, at least in the aspects of the lifting of the corporate veil and the assignment of personal liability to directors, trustees[,] and officers in labor cases. The subsequent cases of *McLeod v. NLRC*, *Spouses Santos v. NLRC* and *Carag v. NLRC*, have all established, save for certain exceptions, the primacy of Section 31 of the Corporation Code in the matter of assigning such liability for a corporation's debts, including judgment obligations in labor cases. According to these cases, a **corporation is still an artificial being invested by law with a personality separate and distinct from that of its stockholders and from that of other corporations to which it may be connected. It is not in every instance of inability to collect from a corporation that the veil of**

---

51 *Carag v. NLRC*, id. at 602.

52 Supra note 43.

> **corporate fiction is pierced, and the responsible officials are made liable. Personal liability attaches only when, as enumerated by the said Section 31 of the Corporation Code, there is a [willful] and knowing assent to patently unlawful acts of the corporation, there is gross negligence or bad faith in directing the affairs of the corporation, or there is a conflict of interest resulting in damages to the corporation**. x x x.
>
> It also bears emphasis that in cases where personal liability attaches, not even all officers are made accountable. Rather, only the "responsible officer," *i.e.*, the person directly responsible for and who "acted in bad faith" in committing the illegal dismissal or any act violative of the Labor Code, is held solidarily liable, in cases wherein the corporate veil is pierced. In other instances, such as cases of so-called corporate tort of a close corporation, it is the person "actively engaged" in the management of the corporation who is held liable. In the absence of a clearly identifiable officer(s) directly responsible for the legal infraction, the Court considers the president of the corporation as such officer.
>
> 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 imports 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.[53] (Emphases and underscoring supplied)

In sum, the CA erred in ascribing grave abuse of discretion on the part of the NLRC and in ruling that Kho should be held solidarily liable with the corporate liabilities of the Corporation. Hence, the NLRC ruling must be reinstated.

WHEREFORE, the petition is **GRANTED**. The Decision dated July 19, 2017 and the Resolution dated January 4, 2018 of the Court of Appeals in CA-G.R. SP No. 141821 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Decision dated May 7, 2015 and the Resolution dated June 16, 2015 of the National Labor Relations Commission in NLRC LAC No. 04-001356-12(4) are **REINSTATED**.

---

53 Id. at 222-225; other citations omitted.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

JOSE C. REYES, JR.
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

I attest 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.

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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.

LUCAS P. BERSAMIN
Chief Justice