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FIRST DIVISION

[G.R. No. 182397. September 14, 2011]

ALERT SECURITY AND INVESTIGATION AGENCY, INC. AND/OR MANUEL D. DASIG, *petitioners, vs.* **SAIDALI PASAWILAN, WILFREDO VERCELES AND MELCHOR BULUSAN,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; EMPLOYERS' PREROGATIVE TO SHAPE THEIR OWN WORK FORCE MUST NOT CURTAIL THE BASIC RIGHT OF EMPLOYEES TO SECURITY OF TENURE; CASE AT BAR.— As a rule, employment cannot be terminated by an employer without any just or authorized cause. No less than the 1987 Constitution in Section 3, Article 13 guarantees security of tenure for workers and because of this, an employee may only be terminated for just or authorized causes that must comply with the due process requirements mandated by law. Hence, employers are barred from arbitrarily removing their workers whenever and however they want. The law sets the valid grounds for termination as well as the proper procedure to take when terminating the services of an employee. x x x Although we recognize the right of employers to shape their own work force, this management prerogative must not curtail the basic right of employees to security of tenure. There must be a valid and lawful reason for terminating the employment of a worker. Otherwise, it is illegal and would be dealt with by the courts accordingly. x x x In the case at bar, respondents were relieved from their posts because they filed with the Labor Arbiter a complaint against their employer for money claims due to underpayment of wages. This reason is unacceptable and illegal. Nowhere in the law providing for the just and authorized causes of termination of employment is there any direct or indirect reference to filing a legitimate complaint for money claims against the employer as a valid ground for termination. x x x Dismissing an employee on this ground

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amounts to retaliation by management for an employee's legitimate grievance without due process.

2. ID.; ID.; ID.; JUST CAUSES; ABANDONMENT OF WORK; ELEMENTS; THE FAILURE OF AN EMPLOYEE TO REPORT FOR WORK AT THE NEW LOCATION CANNOT BE TAKEN AGAINST HIM AS AN ELEMENT OF ABANDONMENT.— Petitioners aver that respondents were merely transferred to a new post wherein the wages are adjusted to the current minimum wage standards. They maintain that the respondents voluntarily abandoned their jobs when they failed to report for duty in the new location. Assuming this is true, we still cannot hold that the respondents abandoned their posts. For abandonment of work to fall under Article 282 (b) of the Labor Code, as amended, as gross and habitual neglect of duties there must be the concurrence of two elements. First, there should be a failure of the employee to report for work without a valid or justifiable reason, and second, there should be a showing that the employee intended to sever the employer-employee relationship, the second element being the more determinative factor as manifested by overt acts. As regards the second element of intent to sever the employer-employee relationship, the CA correctly ruled that: x x x the fact that petitioners filed a complaint for illegal dismissal is indicative of their intention to remain employed with private respondent considering that one of their prayers in the complaint is for re-instatement. As declared by the Supreme Court, a complaint for illegal dismissal is inconsistent with the charge of abandonment, because when an employee takes steps to protect himself against a dismissal, this cannot, by logic, be said to be abandonment by him of his right to be able to work. Further, according to Alert Security itself, respondents continued to report for work and loiter in the DOST after the alleged transfer order was issued. Such circumstance makes it unlikely that respondents have clear intention of leaving their respective jobs. In any case, there is no dispute that in cases of abandonment of work, notice shall be served at the worker's last known address. This petitioners failed to do. On the element of the failure of the employee to report for work, we also cannot accept the allegations of petitioners that respondents unjustifiably refused to report for duty in their new posts. A careful review of the records reveals that there is no showing that respondents were

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notified of their new assignments. Granting that the "Duty Detail Orders" were indeed issued, they served no purpose unless the intended recipients of the orders are informed of such. The employer cannot simply conclude that an employee is *ipso facto* notified of a transfer when there is no evidence to indicate that the employee had knowledge of the transfer order. Hence, the failure of an employee to report for work at the new location cannot be taken against him as an element of abandonment.

3. ID.; ID.; ID.; RIGHT OF EMPLOYER TO TRANSFER EMPLOYEES IN THE INTEREST OF THE SERVICE; FOR A TRANSFER TO BE VALID, THERE SHOULD BE PROPER AND EFFECTIVE NOTICE TO THE EMPLOYEE CONCERNED.— We acknowledge and recognize the right of an employer to transfer employees in the interest of the service. This exercise is a management prerogative which is a lawful right of an employer. However, like all rights, there are limitations to the right to transfer employees. As ruled in the case of *Blue Dairy Corporation v. NLRC*: x x x The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which that right is exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. In particular, the employer must be able to show that the transfer is not unreasonable, inconvenient or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. x x x In addition to these tests for a valid transfer, there should be proper and effective notice to the employee concerned. It is the employer's burden to show that the employee was duly notified of the transfer. Verily, an employer cannot reasonably expect an employee to report for work in a new location without first informing said employee of the transfer. Petitioners' insistence on the sufficiency of mere issuance of the transfer order is indicative of bad faith on their part. Besides, according to petitioners, the reason for the transfer to LRTA of the respondents was that the wages in LRTA were already adjusted to comply with the minimum wage rates. Now it is hard to believe that after being ordered to transfer to LRTA where the wages are better, the respondents would still refuse the transfer. That would mean that the respondents

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refused better wages and instead chose to remain in DOST, underpaid, and go through the lengthy process of claiming and asking for minimum wage. This proposed scenario of petitioners simply does not jibe with human logic and experience.

4. MERCANTILE LAW; CORPORATION CODE; PRINCIPLE OF PIERCING THE VEIL OF CORPORATE FICTION; NOT APPLICABLE IN CASE AT BAR.— Basic is the rule that a corporation has a separate and distinct personality apart from its directors, officers, or owners. In exceptional cases, courts find it proper to breach this corporate personality in order to make directors, officers, or owners solidarily liable for the companies' acts. Section 31, Paragraph 1 of the Corporation Code provides: Sec. 31. *Liability of directors, trustees or officers.* — Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors, or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons. x x x Jurisprudence has been consistent in defining the instances when the separate and distinct personality of a corporation may be disregarded in order to hold the directors, officers, or owners of the corporation liable for corporate debts. In *McLeod v. National Labor Relations Commission*, the Court ruled: Thus, the rule is still that the doctrine of piercing the corporate veil applies only when the corporate fiction is used to defeat public convenience, justify wrong, protect fraud, or defend crime. In the absence of malice, bad faith, or a specific provision of law making a corporate officer liable, such corporate officer cannot be made personally liable for corporate liabilities. x x x Further, in *Carag v. National Labor Relations Commission*, the Court clarified the *McLeod* doctrine as regards labor laws, to wit: We have already ruled in *McLeod v. NLRC* and *Spouses Santos v. NLRC* that **Article 212(e) of the Labor Code, by itself, does not make a corporate officer personally liable for the debts of the corporation**. The governing law on personal liability of directors for debts of the corporation is still Section 31 of the Corporation Code. x x x In the present case, there is no evidence to indicate that Manuel D. Dasig, as

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president and general manager of Alert Security, is using the veil of corporate fiction to defeat public convenience, justify wrong, protect fraud, or defend crime. Further, there is no showing that Alert Security has folded up its business or is reneging in its obligations. In the final analysis, it is Alert Security that respondents are after and it is also Alert Security who should take responsibility for their illegal dismissal.

APPEARANCES OF COUNSEL

Ramirez Law Office for petitioners.
Cabio Law Office & Associates for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

This petition for review on *certiorari* assails the Decision[1] dated February 1, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 99861. The appellate court reversed and set aside the January 31, 2007 Decision[2] and March 15, 2007 Resolution[3] of the National Labor Relations Commission (NLRC) and reinstated the Labor Arbiter's Decision[4] finding petitioners guilty of illegal dismissal.

The facts follow.

Respondents Saidali Pasawilan, Wilfredo Verceles and Melchor Bulusan were all employed by petitioner Alert Security and Investigation Agency, Inc. (Alert Security) as security guards beginning March 31, 1996, January 14, 1997, and January 24, 1997, respectively. They were paid 165.00 pesos a day as regular

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[1] *Rollo*, pp. 101-110. Penned by Associate Justice Vicente Q. Roxas with Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia, concurring.

[2] *Id.* at 74-79.

[3] *Id.* at 84-85.

[4] *Id.* at 44-54.

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employees, and assigned at the Department of Science and Technology (DOST) pursuant to a security service contract between the DOST and Alert Security.

Respondents aver that because they were underpaid, they filed a complaint for money claims against Alert Security and its president and general manager, petitioner Manuel D. Dasig, before Labor Arbiter Ariel C. Santos. As a result of their complaint, they were relieved from their posts in the DOST and were not given new assignments despite the lapse of six months. On January 26, 1999, they filed a joint complaint for illegal dismissal against petitioners.

Petitioners, on the other hand, deny that they dismissed the respondents. They claimed that from the DOST, respondents were merely detailed at the Metro Rail Transit, Inc. at the Light Rail Transit Authority (LRTA) Compound in Aurora Blvd. because the wages therein were already adjusted to the latest minimum wage. Petitioners presented "Duty Detail Orders"[5] that Alert Security issued to show that respondents were in fact assigned to LRTA. Respondents, however, failed to report at the LRTA and instead kept loitering at the DOST and tried to convince other security guards to file complaints against Alert Security. Thus, on August 3, 1998, Alert Security filed a "termination report"[6] with the Department of Labor and Employment relative to the termination of the respondents.

Upon motion of the respondents, the joint complaint for illegal dismissal was ordered consolidated with respondents' earlier complaint for money claims. The records of the illegal dismissal case were sent to Labor Arbiter Ariel C. Santos, but later returned to the Office of the Labor Arbiter hearing the illegal dismissal complaint because a Decision[7] has already been rendered in the complaint for money claims on July 14, 1999. In that decision, the complaint for money claims was

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[5] CA *rollo*, pp. 74, 78 and 81.

[6] *Id.* at 82.

[7] *Rollo*, pp. 128-138.

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dismissed for lack of merit but petitioners were ordered to pay respondents their latest salary differentials.

On July 28, 2000, Labor Arbiter Melquiades Sol D. Del Rosario rendered a Decision[8] on the complaint for illegal dismissal. The Labor Arbiter ruled:

> CONFORMABLY WITH THE FOREGOING, judgment is hereby rendered finding complainants to have been illegally dismissed. Consequently, each complainant should be paid in solidum by the respondents the individual awards computed in the body of the decision, which is hereto adopted as part of this disposition.
>
> SO ORDERED.[9]

Aggrieved, petitioners appealed the decision to the NLRC claiming that the Labor Arbiter erred in deciding a re-filed case when it was filed in violation of the prohibitions against *litis pendencia* and forum shopping. Further, petitioners argued that complainants were not illegally dismissed but were only transferred. They claimed that it was the respondents who refused to report for work in their new assignment.

On January 31, 2007, the NLRC rendered a Decision[10] ruling that Labor Arbiter Del Rosario did not err in taking cognizance of respondents' complaint for illegal dismissal because the July 14, 1999 Decision of Labor Arbiter Santos on the complaint for money claims did not at all pass upon the issue of illegal dismissal. The NLRC, however, dismissed the complaint for illegal dismissal after ruling that the fact of dismissal or termination of employment was not sufficiently established. According to the NLRC, "[the] sweeping generalization that the complainants were constructively dismissed is not sufficient to establish the existence of illegal dismissal."[11] The dispositive portion of the NLRC decision reads:

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[8] *Id.* at 44-54.

[9] *Id.* at 54.

[10] *Id.* at 74-79.

[11] *Id.* at 78.

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WHEREFORE, premises considered, the respondents' appeal is hereby given due course and the decision dated July 28, 2000 is hereby REVERSED and SET-ASIDE and a new one entered DISMISSING the complaint for illegal dismissal for lack of merit.

SO ORDERED.[12]

Unfazed, respondents filed a petition for *certiorari* with the CA questioning the NLRC decision and alleging grave abuse of discretion.

On February 1, 2008, the CA rendered the assailed Decision[13] reversing and setting aside the NLRC decision and reinstating the July 28, 2000 Decision of Labor Arbiter Del Rosario. The CA ruled that Alert Security, as an employer, failed to discharge its burden to show that the employee's separation from employment was not motivated by discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause. The CA also found that respondents were never informed of the "Duty Detail Orders" transferring them to a new post, thereby making the alleged transfer ineffective. The dispositive portion of the CA decision states:

WHEREFORE, premises considered, the January 31, 2007 decision of the NLRC is hereby **REVERSED** and **SET ASIDE** and the July 28, 2000 decision of the Labor Arbiter is hereby **REVIVED**.

SO ORDERED.[14]

Petitioners filed a motion for reconsideration, but the motion was denied in a Resolution[15] dated March 31, 2008.

Petitioners are now before this Court to seek relief by way of a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended.

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[12] *Id.* at 78-79.

[13] *Id.* at 101-110.

[14] *Id.* at 109.

[15] *Id.* at 119.

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Petitioners argue that the CA erred when it held that the NLRC committed grave abuse of discretion. According to petitioners, the NLRC was correct when it ruled that there was no sufficient basis to rule that respondents were terminated from their employment while there was proof that they were merely transferred from DOST to LRTA as shown in the "Duty Detail Orders." Verily, petitioners claim that there was no termination at all; instead, respondents abandoned their employment by refusing to report for duty at the LRTA Compound.

Further, petitioners argue that the CA erred when it reinstated the July 28, 2000 Decision of Labor Arbiter Del Rosario in its entirety. The dispositive portion of said decision ruled that respondents should be paid their monetary awards in *solidum* by Alert Security and Manuel D. Dasig, its President and General Manager. They argue that Alert Security is a duly organized domestic corporation which has a legal personality separate and distinct from its members or owners. Hence, liability for whatever compensation or money claims owed to employees must be borne solely by Alert Security and not by any of its individual stockholders or officers.

On the other hand, respondents claim that the NLRC committed a serious error in ruling that they failed to provide factual substantiation of their claim of constructive dismissal. Respondents aver that their Complaint Form[16] sufficiently constitutes the basis of their claim of illegal dismissal. Also, respondents aver that Alert Security itself admitted that respondents were relieved from their posts as security guards in DOST, albeit raising the defense that it was a mere transfer as shown by "Duty Detail Orders," which, however, were never received by respondents, as observed by the Labor Arbiter.

Essentially, the issue for resolution is whether respondents were illegally dismissed.

We rule in the affirmative.

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[16] *Id.* at 31.

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As a rule, employment cannot be terminated by an employer without any just or authorized cause. No less than the 1987 Constitution in Section 3, Article 13 guarantees security of tenure for workers and because of this, an employee may only be terminated for just[17] or authorized[18] causes that must comply

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[17] **ART. 282. Termination by employer. –** An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

[18] **ART. 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 Department 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.

ART. 284. Disease as ground for termination. – An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half [1/2] month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

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with the due process requirements mandated[19] by law. Hence, employers are barred from arbitrarily removing their workers whenever and however they want. The law sets the valid grounds for termination as well as the proper procedure to take when terminating the services of an employee.

ART. 287. Retirement. – Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: *Provided, however,* That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided herein.

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Unless the parties provide for broader inclusions, the term one-half (1/2) month salary shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

An underground mining employee upon reaching the age of fifty (50) years or more, but not beyond sixty (60) years which is hereby declared the compulsory retirement age for underground mine workers, who has served at least five (5) years as underground mine worker, may retire and shall be entitled to all the retirement benefits provided for in this Article.

Retail, service and agricultural establishments or operations employing not more than ten (10) employees or workers are exempted from the coverage of this provision.

Violation of this provision is hereby declared unlawful and subject to the penal provisions provided under Article 288 of this Code.

Nothing in this Article shall deprive any employee of benefits to which he may be entitled under existing laws or company policies or practices. (R.A. No. 8558, approved on February 26, 1998.)

[19] **ART. 277. Miscellaneous provisions.** – x x x

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized

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In *De Guzman, Jr. v. Commission on Elections*,[20] the Court, speaking of the Constitutional guarantee of security of tenure to all workers, ruled:

x x x It only means that an employee cannot be dismissed (or transferred) from the service for causes other than those provided by law and after due process is accorded the employee. **What it seeks to prevent is capricious exercise of the power to dismiss**. x x x (Emphasis supplied.)

Although we recognize the right of employers to shape their own work force, this management prerogative must not curtail the basic right of employees to security of tenure. There must be a valid and lawful reason for terminating the employment of a worker. Otherwise, it is illegal and would be dealt with by the courts accordingly.

As stated in *Bascon v. Court of Appeals*:[21]

x x x The employer's power to dismiss must be tempered with the employee's right to security of tenure. Time and again we have said that the preservation of the lifeblood of the toiling laborer comes before concern for business profits. Employers must be reminded

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cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. The Secretary of the Department of Labor may suspend the effects of the termination pending resolution of the dispute in the event of a *prima facie* finding by the appropriate official of the Department of Labor and Employment before whom such dispute is pending that the termination may cause a serious labor dispute or is in implementation of a mass lay-off.

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[20] G.R. No. 129118, July 19, 2000, 336 SCRA 188, 197-198.

[21] G.R. No. 144899, February 5, 2004, 422 SCRA 122, 133.

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to exercise the power to dismiss with great caution, for the State will not hesitate to come to the succor of workers wrongly dismissed by capricious employers.

In the case at bar, respondents were relieved from their posts because they filed with the Labor Arbiter a complaint against their employer for money claims due to underpayment of wages. This reason is unacceptable and illegal. Nowhere in the law providing for the just and authorized causes of termination of employment is there any direct or indirect reference to filing a legitimate complaint for money claims against the employer as a valid ground for termination.

The Labor Code, as amended, enumerates several just and authorized causes for a valid termination of employment. An employee asserting his right and asking for minimum wage is not among those causes. Dismissing an employee on this ground amounts to retaliation by management for an employee's legitimate grievance without due process. Such stroke of retribution has no place in Philippine Labor Laws.

Petitioners aver that respondents were merely transferred to a new post wherein the wages are adjusted to the current minimum wage standards. They maintain that the respondents voluntarily abandoned their jobs when they failed to report for duty in the new location.

Assuming this is true, we still cannot hold that the respondents abandoned their posts. For abandonment of work to fall under Article 282 (b) of the Labor Code, as amended, as gross and habitual neglect of duties there must be the concurrence of two elements. First, there should be a failure of the employee to report for work without a valid or justifiable reason, and second, there should be a showing that the employee intended to sever the employer-employee relationship, the second element being the more determinative factor as manifested by overt acts.[22]

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[22] *Metro Transit Organization, Inc. v. NLRC*, G.R. No. 119724, May 31, 1999, 307 SCRA 747, 753-754, citing *Premiere Development Bank v. NLRC*, G.R. No. 114695, July 23, 1998, 293 SCRA 49, 60.

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As regards the second element of intent to sever the employer-employee relationship, the CA correctly ruled that:

> x x x the fact that petitioners filed a complaint for illegal dismissal is indicative of their intention to remain employed with private respondent considering that one of their prayers in the complaint is for re-instatement. As declared by the Supreme Court, a complaint for illegal dismissal is inconsistent with the charge of abandonment, because when an employee takes steps to protect himself against a dismissal, this cannot, by logic, be said to be abandonment by him of his right to be able to work.[23]

Further, according to Alert Security itself, respondents continued to report for work and loiter in the DOST after the alleged transfer order was issued. Such circumstance makes it unlikely that respondents have clear intention of leaving their respective jobs. In any case, there is no dispute that in cases of abandonment of work, notice shall be served at the worker's last known address.[24] This petitioners failed to do.

On the element of the failure of the employee to report for work, we also cannot accept the allegations of petitioners that respondents unjustifiably refused to report for duty in their new posts. A careful review of the records reveals that there is no showing that respondents were notified of their new assignments. Granting that the "Duty Detail Orders" were indeed issued, they served no purpose unless the intended recipients of the orders are informed of such.

The employer cannot simply conclude that an employee is *ipso facto* notified of a transfer when there is no evidence to

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[23] *Rollo*, p. 108, citing *Cebu Marine Beach Resort v. National Labor Relations Commission*, G.R. No. 143252, October 23, 2003, 414 SCRA 173, 178 and *Samarca v. Arc-Men Industries, Inc.*, G.R. No. 146118, October 8, 2003, 413 SCRA 162, 168.

[24] *Coca-Cola Bottlers Philippines, Inc. v. Garcia*, G.R. No. 159625, January 31, 2008, 543 SCRA 364, 374, citing *Agabon v. National Labor Relations Commission*, G.R. No. 158693, November 17, 2004, 442 SCRA 573, 609; Section 2, Rule XIV, Book V of the Omnibus Implementing Rules and Regulations of the Labor Code.

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indicate that the employee had knowledge of the transfer order. Hence, the failure of an employee to report for work at the new location cannot be taken against him as an element of abandonment.

We acknowledge and recognize the right of an employer to transfer employees in the interest of the service. This exercise is a management prerogative which is a lawful right of an employer. However, like all rights, there are limitations to the right to transfer employees. As ruled in the case of *Blue Dairy Corporation v. NLRC*:[25]

> x x x The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which that right is exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. In particular, the employer must be able to show that the transfer is not unreasonable, inconvenient or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. x x x

In addition to these tests for a valid transfer, there should be proper and effective notice to the employee concerned. It is the employer's burden to show that the employee was duly notified of the transfer. Verily, an employer cannot reasonably expect an employee to report for work in a new location without first informing said employee of the transfer. Petitioners' insistence on the sufficiency of mere issuance of the transfer order is indicative of bad faith on their part.

Besides, according to petitioners, the reason for the transfer to LRTA of the respondents was that the wages in LRTA were already adjusted to comply with the minimum wage rates. Now it is hard to believe that after being ordered to transfer to LRTA where the wages are better, the respondents would still refuse

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[25] G.R. No. 129843, September 14, 1999, 314 SCRA 401, 408, citing *Phil. Telegraph and Telephone Corp. v. Laplana*, G.R. No. 76645, July 23, 1991, 199 SCRA 485, 492 and *Philippine Japan Active Carbon Corp. v. NLRC*, G.R. No. 83239, March 8, 1989, 171 SCRA 164, 168.

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the transfer. That would mean that the respondents refused better wages and instead chose to remain in DOST, underpaid, and go through the lengthy process of claiming and asking for minimum wage. This proposed scenario of petitioners simply does not jibe with human logic and experience.

On the question of the propriety of holding petitioner Manuel D. Dasig, president and general manager of Alert Security, solidarily liable with Alert Security for the payment of the money awards in favor of respondents, we find petitioners' arguments meritorious.

Basic is the rule that a corporation has a separate and distinct personality apart from its directors, officers, or owners. In exceptional cases, courts find it proper to breach this corporate personality in order to make directors, officers, or owners solidarily liable for the companies' acts. Section 31, Paragraph 1 of the Corporation Code[26] provides:

> Sec. 31. *Liability of directors, trustees or officers.* - Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors, or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.
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> x x x x x x x x x

Jurisprudence has been consistent in defining the instances when the separate and distinct personality of a corporation may be disregarded in order to hold the directors, officers, or owners of the corporation liable for corporate debts. In *McLeod v. National Labor Relations Commission*,[27] the Court ruled:

> Thus, the rule is still that the doctrine of piercing the corporate veil applies only when the corporate fiction is used to defeat public

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[26] Corporation Code of the Philippines, Batas Pambansa Bilang 68.

[27] G.R. No. 146667, January 23, 2007, 512 SCRA 222, 253.

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convenience, justify wrong, protect fraud, or defend crime. In the absence of malice, bad faith, or a specific provision of law making a corporate officer liable, such corporate officer cannot be made personally liable for corporate liabilities. x x x

Further, in *Carag v. National Labor Relations Commission*,[28] the Court clarified the *McLeod* doctrine as regards labor laws, to wit:

We have already ruled in *McLeod v. NLRC*[29] and *Spouses Santos v. NLRC*[30] that **Article 212(e)**[31] **of the Labor Code, by itself, does not make a corporate officer personally liable for the debts of the corporation**. The governing law on personal liability of directors for debts of the corporation is still Section 31 of the Corporation Code. x x x

In the present case, there is no evidence to indicate that Manuel D. Dasig, as president and general manager of Alert Security, is using the veil of corporate fiction to defeat public convenience, justify wrong, protect fraud, or defend crime. Further, there is no showing that Alert Security has folded up its business or is reneging in its obligations. In the final analysis, it is Alert Security that respondents are after and it is also Alert Security who should take responsibility for their illegal dismissal.

WHEREFORE, the petition for review on *certiorari* is *DENIED.* The Decision of the Court of Appeals in CA-G.R. SP No. 99861 and the Decision dated July 28, 2000 of the Labor

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[28] G.R. No. 147590, April 2, 2007, 520 SCRA 28, 52.

[29] *Supra* note 26.

[30] G.R. No. 120944, July 23, 1998, 293 SCRA 113.

[31] Article 212(e), Labor Code of the Philippines.

ART. 212. Definitions. – x x x

x x x x x x x x x

(e) "Employer" includes any person acting in the interest of an employer, directly or indirectly. The term shall not include any labor organization or any of its officers or agents except when acting as employer.

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Arbiter are *MODIFIED*. Petitioner Manuel D. Dasig is held not solidarily liable with petitioner Alert Security and Investigation, Inc. for the payment of the monetary awards in favor of respondents. Said Decision of the Court of Appeals in all other aspects is *AFFIRMED*.

With costs against the petitioners.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *del Castillo, JJ.,* concur.

THIRD DIVISION

[G.R. No. 183349. September 14, 2011]

F&E DE CASTRO CORPORATION, ELISA DE CASTRO and FEDERICO DE CASTRO, *petitioners, vs.* **ERNESTO G. OLASO and AMPARO M. OLASO,** *respondents*.

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; A STAY IN THE PROCEEDINGS IN CIVIL CASE NO. SPL-0991 IN ORDER TO GIVE WAY TO THE PROCEEDINGS IN CIVIL CASE NO. SPL-0356 IS NOT JUDICIOUS AS THERE IS NO PREJUDICIAL QUESTION; BOTH PROCEEDINGS CAN PROCEED INDEPENDENTLY OF EACH OTHER.— The Court finds no merit in the petition. A stay in the proceedings in Civil Case No. SPL-0991 in order to give way to the proceedings in Civil Case No. SPL-0356 is not judicious as there is no prejudicial question. *First*, the subject matter or *res* involved in Civil Case No. SPL-0991 is different from those in Civil Case No. SPL-0356. F&E Corporation seeks to recover subdivision lots located in Phase 1 and 1-A of Forfom's