The bank may have had its reasons to waive payment or the pursuit of its claims. For instance, it could have weighed that the costs of pursuing its litigation against respondents Spouses Genuino outweigh the potential benefits. It could be that their business with the bank was far more valuable than the incidental rupture in their relationship caused by this transaction. In all these possible cases, respondents Spouses Genuino and other debtors have a right to rely on the non-action of the plaintiff. In their view, the non-filing of the basic motion for setting of pre-trial would have been, at best, a reasonable economic signal that the bank was no longer interested. At worse, it was clearly negligence of an entity with enough institutional resources to maintain a large arsenal of in-house and external counsel. The bank's explanation for its own negligence is unavailing. While it is true that A.M. No. 03-1-09-SC does provide that the Clerk of Court set the date of pre-trial,[59] plaintiff should not be rewarded for his or her negligence.

WHEREFORE, the Petition is **DENIED**.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 211535. July 22, 2015]

BANK OF COMMERCE, *petitioner, vs.* **MARILYN P. NITE,** *respondent*.

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[59] A.M. No. 03-1-09-SC (2004), Sec. I, A, 1, last paragraph.

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SYLLABUS

1. **COMMERCIAL LAW; CORPORATIONS; DIRECTORS AND PERSONNEL ARE GENERALLY NOT PERSONALLY LIABLE FOR THE OBLIGATIONS OF THE CORPORATION.—** The general rule is that a corporation is invested by law with a personality separate and distinct from that of the persons composing it, or from any other legal entity that it may be related to. The obligations of a corporation, acting through its directors, officers, and employees, are its own sole liabilities. Therefore, the corporation's directors, officers, or employees are generally not personally liable for the obligations of the corporation.

2. **ID.; ID.; ID.; WHEN DIRECTOR OR OFFICER PERSONALLY LIABLE FOR CORPORATE OBLIGATIONS.—** To hold a director or officer personally liable for corporate obligations, two requisites must concur: (1) complainant must allege in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (2) complainant must clearly and convincingly prove such unlawful acts, negligence or bad faith. To hold a director personally liable for debts of the corporation, and thus pierce the veil of corporate fiction, the bad faith or wrongdoing of the director must be established clearly and convincingly.

APPEARANCES OF COUNSEL

Custodio Acorda Sicam De Castro & Panganiban Law Offices for petitioner.

Eleanor M. Cajigas-Cuenca for respondent.

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D E C I S I O N

CARPIO, *Acting C.J.*:

The Case

Before the Court is a petition for review on certiorari assailing the 22 November 2013 Decision[1] and 28 February 2014 Resolution[2] of the Court of Appeals in CA-G.R. CV No. 81500. The Court of Appeals affirmed *in toto* the Order dated 4 April 2003[3] and the Omnibus Order dated 5 January 2004[4] of the Regional Trial Court of Makati, Branch 150 (trial court) in Criminal Case Nos. 94-5267 and 94-5268.

The Antecedent Facts

Respondent Marilyn Nite (Nite) was charged, together with Nunelon Bradley (Bradley) and Victoria Magalona-Escalambre (Escalambre), with violation of Section 19 of Batas Pambansa Bilang 178[5] (BP Blg. 178) in an Information that reads:

> That on or about April 25, 1994, in the Municipality of Makati, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, doing business under the name and style of Bancapital Development Corporation (Bancap) did then and there, willfully and feloniously engage in the business of selling securities, particularly treasury bills (T-bills) with Bank of Commerce (Bancom) in the amount of Php250 Million without having been registered as a broker, dealer or salesman with the Securities and Exchange Commission, in violation of said law.
>
> CONTRARY TO LAW.[6]

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[1] *Rollo*, pp. 51-63. Penned by Presiding Justice Andres B. Reyes, Jr., with Associate Justices Ramon M. Bato, Jr. and Rodil V. Zalameda concurring.

[2] *Id*. at 64-65.

[3] *Id*. at 172-178. Penned by Judge Zeus C. Abrogar.

[4] *Id*. at 126-129. Penned by Acting Presiding Judge Reinato G. Quilala.

[5] Revised Securities Act.

[6] *Rollo*, p. 99.

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The case was docketed as Criminal Case No. 94-5267.

Nite was also charged, together with Bradley, Escalambre, and Eugene Yang (Yang), with Estafa in an Information that reads:

> That on or about April 25, 1994, in Makati, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, confederating together and mutually helping each other, by means of deceit, with unfaithfulness or abuse of confidence on the part of accused Eugene Yang and taking advantage of his position as senior manager of the Bank of Commerce (Bancom), did then and there willfully, unlawfully and feloniously defraud Bancom as follows: That Bancapital Development Corporation (Bancap) thru accused Nite, Bradley and Escalambre by means of fraudulent misrepresentations; offered and confirmed for sale Php250 Million worth of Treasury bills at a discounted price of Php243,215,972.52 to Bancom which was actually purchased and fully paid by Bancom, when in truth and in fact Bancap which was not authorized to trade security did not actually have such Treasury bills worth Php250 Million as only Php88 Million worth of Treasury bills was delivered to Bancom upon receipt by Bancap of the full payment thereof; that accused Eugene Yang, senior manager of Bancom, willfully, unlawfully and feloniously caused the preparation, issuance and signing of the manager's check in payment of the treasury bills in question on the basis of the trading order he himself approved and Bancap's confirmation of sale signed by accused Nite and Escalambre, and, once in possession of the full payment thereof, the above-named accused misappropriated, misapplied and converted the same to their own personal use and benefit and despite repeated demands failed to deliver the remaining Treasury bills worth Php162 Million, to the damage and prejudice of Bancom, its creditors and stockholders, in the amount of Php162 Million Pesos.
>
> CONTRARY TO LAW.[7]

The case was docketed as Criminal Case No. 94-5268. The two cases were tried jointly.

Since Bradley was still at large during the trial, and the proceedings against Escalambre and Yang were suspended

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[7] *Id*. at 100.

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pending their petition for certiorari and mandamus before the Court of Appeals in connection with the denial of their demurrer to evidence, a separate trial was conducted against Nite after she was arrested in the United States of America for overstaying and brought back to the Philippines.

In Criminal Case No. 94-5267, the thrust of the prosecution's argument was that Nite, as President of Bancapital Development Corporation (Bancap), violated Section 19 of BP Blg. 178 when Bancap sold ₱250 million worth of treasury bills to Bank of Commerce (Bancom) without being registered as broker, dealer, or salesman of securities. In Criminal Case No. 94-5268, the prosecution alleged that Nite defrauded Bancom by falsely pretending to possess and own ₱250 million worth of treasury bills that Bancap supposedly sold to Bancom when none of the treasury bills described in the Confirmation of Sale and Letter of Undertaking issued by Bancap were ever delivered to Bancom. The prosecution alleged that Bancom paid Bancap the amount of ₱243,215,972.52 as payment for the treasury bills but Bancap only delivered substitute bills in the amount of ₱88 million.

The Ruling of the Trial Court

In a Decision dated 6 December 2002,[8] the trial court ruled as follows:

> WHEREFORE, the foregoing considered, accused MARILYN NITE is hereby ACQUITTED of the charge of violating Sec. 19 of Batas Pambansa Bilang 178 under Criminal Case No. 94-5267 and likewise acquitted of the charge of Estafa under Criminal Case No. 94-5268.
>
> She, however, is hereby ordered to pay BANK OF COMMERCE the amount of Php162 million, representing the civil obligation of BANCAPITAL.
>
> Let, therefore, the cash bond of accused Nite be released to her by the Office of the Clerk of Court, RTC, Makati City, upon surrender of the original official receipt.

[8] *Id*. at 99-125. Penned by Judge Zeus C. Abrogar.

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SO ORDERED.[9]

The trial court ruled that in Criminal Case No. 94-5267, the prosecution was not able to establish that Bancap acted as a primary dealer that needed to be accredited. According to the trial court, Bancap acted as a secondary dealer and did not buy the treasury bills directly from the Central Bank. In Criminal Case No. 94-5268, the trial court ruled that the element of deceit was non-existent and that at the time of the transaction, Bancom was aware that Bancap was not in physical possession of the treasury bills subject of the sale.

However, the trial court ruled that Nite, being a responsible officer of Bancap, was civilly liable to Bancom in the amount of ₱162 million which represented the treasury bills that Bancap undertook to deliver to Bancom since only ₱88 million worth of substitute treasury bills had been delivered to and accepted by Bancom.

Nite filed a partial motion for reconsideration.

In the assailed 4 April 2003 Order, the trial court granted the partial motion for reconsideration. In resolving the motion, the trial court ruled that Bancap's charter allowed it to engage in the buying and selling of government securities as part of its secondary purpose. The trial court added that even if the buying and selling of securities were outside the scope of Bancap's primary purpose, the acts could only be considered as ultra vires and not illegal. The trial court could not disregard the rule on separate corporate identity absent any evidence that Bancap was used as a tool to commit fraud, injustice, or crime against Bancom. The dispositive portion of the Order reads:

WHEREFORE, premises considered, the Motion for Partial Reconsideration is hereby GRANTED. The DECISION dated December 6, 2002 insofar as the civil aspect of the case is concerned, finding accused Nite civilly liable to BANCOM in the amount of Php162 million, representing the treasury bills BANCAP failed to

[9] *Id*. at 125.

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deliver to BANCOM is hereby set aside. Accordingly, the dispositive portion of the said decision shall now read as follows:

> "WHEREFORE, the foregoing considered, accused MARILYN NITE is hereby acquitted of the charge of violating Sec. 19 of Batas Pambansa Bilang 178 under Criminal Case No. 94-5267 and likewise acquitted of the charge of Estafa under Criminal Case No. 94-5268.
>
> Let, therefore, the cash bond of accused Nite be released to her by the Office of the Clerk of Court, RTC, Makati City, upon surrender of the original official receipt.
>
> SO ORDERED."

SO ORDERED.[10]

It was the prosecution's turn to file a motion for reconsideration, alleging that the trial court erred in absolving Nite of her civil liability to Bancom. The prosecution alleged that the trial court erred in not piercing the corporate veil of Bancap when it was adequately shown that Nite used the company to perpetuate fraud and to evade an existing obligation.

In its Omnibus Order dated 5 January 2004, the trial court denied the motion for lack of merit.

Bancom sought relief from the Court of Appeals in CA-G.R. CV No. 81500.

The Ruling of the Court of Appeals

In its 22 November 2013 Decision, the Court of Appeals affirmed the trial court's Order dated 4 April 2003 and Omnibus Order dated 5 January 2004.

The Court of Appeals ruled that Bancom wanted to impose the civil liability of Bancap on Nite when the claim for the contractual obligation should have been against Bancap itself. The Court of Appeals agreed with the trial court that Bancap was only a secondary dealer and as such, there was no need for it to secure the license required for primary dealers under BP

[10] *Id*. at 178.

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Blg. 178. The Court of Appeals further ruled that the transaction between Bancom and Bancap was not patently unlawful. The Court of Appeals ruled that Bancom was aware of the risks it was taking when it entered into a contract with Bancap and agreed for the delivery of the treasury bills at a future particular time.

The Court of Appeals ruled that it could not automatically make Bancap's contractual obligation as the contractual obligation of Nite. Further, the doctrine of piercing the veil of corporate fiction imposed the burden of the corporation's obligations on its erring officers and shareholders. In this case, none of Bancap's other officers, and not even the corporation itself, were impleaded, and thus, the Court of Appeals could not make a complete determination of the corporation's liability. According to the Court of Appeals, the remedy of Bancom was to file a civil action impleading all the parties to the contract.

The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, the assailed Order of the Regional Trial Court of Makati City, Branch 150 dated 4 April 2003, and its subsequent Omnibus Order dated 5 January 2004 are hereby AFFIRMED IN TOTO.
>
> SO ORDERED.[11]

Bancom filed a motion for reconsideration. In its Resolution promulgated on 28 February 2014, the Court of Appeals denied the motion for lack of merit.

Hence, Bancom filed a petition for review before this Court.

The Issues

Bancom raises the following issues before this Court:

> I. The Court of Appeals gravely erred in ruling that the civil liability was only attributable to Bancap and not to respondent Nite despite the latter's active participation in

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[11] *Id*. at 63.

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the commission of patently unlawful acts against petitioner Bancom.

II. The Court of Appeals erred in not piercing the corporate veil of Bancap even though the same was being used to perpetuate fraud.

The Ruling of this Court

We deny the petition.

Nite was acquitted by the trial court of violation of Section 19 of BP Blg. 178 and estafa. Hence, the only issue here is Nite's civil liability after her acquittal.

Bancom asserts that the Court of Appeals erred in ruling that the civil liability it is claiming pertains to Bancap's and not to Nite's. Bancom cites Section 31 of the Corporation Code which provides:

> Section 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.
>
> xxx xxx xxx

Bancom insists that while the question raised is one of fact, the factual findings of the lower court, sustained by the Court of Appeals, are based on a misapprehension of facts. Bancom alleges that since Nite actively participated in the commission of a patently unlawful act, she is personally liable to Bancom for the amount of treasury bills undelivered by Bancap.

We do not agree.

The general rule is that a corporation is invested by law with a personality separate and distinct from that of the persons composing it, or from any other legal entity that it may be related

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to.[12] The obligations of a corporation, acting through its directors, officers, and employees, are its own sole liabilities.[13] Therefore, the corporation's directors, officers, or employees are generally not personally liable for the obligations of the corporation.[14]

Bancom alleges that this case falls under the exception to the general rule and that Nite should be held personally liable for Bancap's obligation. Bancom alleges that Nite signed the Confirmation of Sale knowing that Bancap did not have the treasury bills, and thus, the sale was illegal.

Bancom's arguments have no merit.

To hold a director or officer personally liable for corporate obligations, two requisites must concur: (1) complainant must allege in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (2) complainant must clearly and convincingly prove such unlawful acts, negligence or bad faith.[15] To hold a director personally liable for debts of the corporation, and thus pierce the veil of corporate fiction, the bad faith or wrongdoing of the director must be established clearly and convincingly.[16]

It is settled that the transaction between Bancom and Bancap is an ordinary sale. We give weight to the finding of both the trial court and the Court of Appeals that Bancap's liability arose from its contractual obligation to Bancom. The trial court and the Court of Appeals found that Bancom and Bancap had been dealing with each other as seller and buyer of treasury bills from December 1991 until the transaction subject of this case on 25 April 1994, which was no different from their previous transactions. Nite, as Bancap's President, cannot be held

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[12] *Garcia v. Social Security Commission Legal and Collection, SSS*, 565 Phil. 193 (2007).

[13] *Id*.

[14] *Id*.

[15] *Francisco v. Mallen, Jr.*, 645 Phil. 369 (2010).

[16] *Id*.

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personally liable for Bancap's obligation unless it can be shown that she acted fraudulently. However, the issue of fraud had been resolved with finality when the trial court acquitted Nite of estafa on the ground that the element of deceit is non-existent in the case. The acquittal had long become final and the finding is conclusive on this Court. The prosecution failed to show that Nite acted in bad faith. It is no longer open for review. Nite's act of signing the Confirmation of Sale, by itself, does not make the corporate liability her personal liability.

In addition, we consider the testimony of Lagrimas Nuqui, the Legal Officer in Charge of the Government Securities Department of the Bangko Sentral ng Pilipinas from 1994 to 1998, who explained that primary issues of treasury bills are supposed to be issued only to accredited dealers but these accredited banks can sell to anyone who need not be accredited, and such buyers, who may be corporations or individuals, are classified as the secondary market. The trial court and the Court of Appeals found that Bancap sold the treasury bills as a secondary dealer.[17] As such, Bancap's act of selling securities to Bancom is at most ultra vires and not patently unlawful.

Based on the foregoing, we cannot hold Nite personally liable for Bancap's corporate liability.

WHEREFORE, we **DENY** the petition.

SO ORDERED.

Brion, del Castillo, Mendoza, and *Leonen, JJ.,* concur.

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[17] *Rollo*, p. 119.