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"An acknowledgment in a policy or contract of insurance of the receipt of premium is conclusive evidence of its payment, *so far as to make the policy binding, notwithstanding any stipulation therein that it shall not be binding until the premium is actually paid.*" (Italics supplied.) —

which like the aforequoted Section 77 of the Code, is *not* dependent on how much premium has been paid.

It seems quite clear to me that on the day premium payment is made by the insured, *albeit* only a portion of it, so long as it is accepted by the insurer, the insurance coverage becomes effective and binding, any stipulation in the policy to the contrary notwithstanding. The insurer is not without recourse; all that it needs is not to accept, if it wants to, any premium payment of less than full. But if it does accept payment, reason dictates that it should not be allowed to deny the insurance contract upon which very existence that payment is predicated.

Accordingly, I vote for the reversal of the decision appealed from and the reinstatement of the ruling of the trial court.

FIRST DIVISION

[G.R. No. 108734. May 29, 1996]

CONCEPT BUILDERS, INC., *petitioner, vs.* THE NATIONAL LABOR RELATIONS COMMISSION, (First Division); and Norberto Marabe, Rodolfo Raquel, Cristobal Riego, Manuel Gillego, Palcronio Giducos, Pedro Aboigar, Norberto Comendador, Rogelio Salut, Emilio Garcia, Jr., Mariano Rio, Paulina Basea, Alfredo Albera, Paquito Salut, Domingo Guarino, Romeo Galve, Dominador

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Sabina, Felipe Radiana, Gavino Sualibio, Moreno Escares, Ferdinand Torres, Felipe Basilan, and Ruben Robalos, *respondents*.

SYLLABUS

1. **COMMERCIAL LAW; CORPORATION LAW; DOCTRINE OF PIERCING THE VEIL OF CORPORATE ENTITY; WHEN APPLICABLE.** — It is a fundamental principle of corporation law that a corporation is an entity separate and distinct from its stockholders and from other corporations to which it may be connected. But, this separate and distinct personality of a corporation is merely a fiction created by law for convenience and to promote justice. So, when the notion of separate juridical personality is used to defeat public convenience, justify wrong, protect fraud or defend crime, or is used as a device to defeat the labor laws, this separate personality of the corporation may be disregarded or the veil of corporate fiction pierced. This is true likewise when the corporation is merely an adjunct, a business conduit or an alter ego of another corporation.

2. **ID.; ID.; ID.; PROBATIVE FACTORS OF IDENTITY THAT WILL JUSTIFY THE APPLICATION THEREOF.** — The conditions under which the juridical entity may be disregarded vary according to the peculiar facts and circumstances of each case. No hard and fast rule can be accurately laid down, but certainly, there are some probative factors of identity that will justify the application of the doctrine of piercing the corporate veil, to wit: "1. Stock ownership by one or common ownership of both corporations. 2. Identity of directors and officers. 3. The manner of keeping corporate books and records. 4. Methods of conducting the business."

3. **ID.; ID.; ID.; TEST IN DETERMINING THE APPLICABILITY THEREOF.** — The test in determining the applicability of the doctrine of piercing the veil of corporation fiction is as follows: *"1. Control, not mere majority or complete stock control, but*

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complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; 2. Such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiff's legal rights; and 3. The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of. The absence of any one of these elements prevent `piercing the corporate veil.' In applying the `instrumentality' or `alter ego' doctrine, the courts are concerned with reality and not form, with how the corporation operated and the individual defendant's relationship to that operation."

4. ID.; ID.; ID.; APPLICABLE IN CASE AT BAR. — In this case, the NLRC noted that, while petitioner claimed that it ceased its business operations on April 29, 1986, it filed an Information Sheet with the Securities and Exchange Commission on May 15, 1987, stating that its office address is at 355 Maysan Road, Valenzuela, Metro Manila. On the other hand, HPPI, the third-party claimant, submitted on the same day, a similar information sheet stating that its office address is at 355 Maysan Road, Valenzuela, Metro Manila. Furthermore, the NLRC stated that: "*Both information sheets were filed by the same Virgilio O. Casiño as the corporate secretary of both corporations. It would also not be amiss to note that both corporations had the same president, the same board of directors, the same corporate officers, and substantially the same subscribers. From the foregoing, it appears that, among other things, the respondent (herein petitioner) and the third-party claimant shared the same address and/or premises. Under this circumstances, (sic) it cannot be said that the property levied upon by the sheriff were not of respondents.* Clearly, petitioner ceased its business operations in order to evade the payment to private respondents of backwages and to bar their reinstatement to their former positions.

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HPPI is obviously a business conduit of petitioner corporation and its emergence was skillfully orchestrated to avoid the financial liability that already attached to petitioner corporation.

5. ID.; NATIONAL LABOR RELATIONS COMMISSION MANUAL OF EXECUTION OF JUDGMENT; SECTION 3, RULE VII THEREOF; PROPERLY OBSERVED IN CASE AT BAR. — In view of the failure of the sheriff, in the case at bar, to effect a levy upon the property subject of the execution, private respondents had no other recourse but to apply for a break-open order after the third-party claim of HPPI was dismissed for lack of merit by the NLRC. This is in consonance with Section 3, Rule VII of the NLRC Manual of Execution of Judgment which provides that: "*Should the losing party, his agent or representative, refuse or prohibit the Sheriff or his representative entry to the place where the property subject of execution is located or kept, the judgment creditor may apply to the Commissioner or Labor Arbiter concerned for a break-open order.*"

APPEARANCES OF COUNSEL

Law Firm of Araullo and *Raymundo* for petitioner.
Ciriaco S. Cruz for private respondents.

DECISION

HERMOSISIMA, JR., *J.*:

The corporate mask may be lifted and the corporate veil may be pierced when a corporation is just but the alter ego of a person or of another corporation. Where badges of fraud exist; where public convenience is defeated; where a wrong is sought to be justified thereby, the corporate fiction or the notion of legal entity should come to naught. The law in these instances will regard the corporation as a mere association of persons and, in case of two corporations, merge them into one.

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Thus, where a sister corporation is used as a shield to evade a corporation's subsidiary liability for damages, the corporation may not be heard to say that it has a personality separate and distinct from the other corporation. The piercing of the corporate veil comes into play.

This special civil action ostensibly raises the question of whether the National Labor Relations Commission committed grave abuse of discretion when it issued a "break-open order" to the sheriff to be enforced against personal property found in the premises of petitioner's sister company.

Petitioner Concept Builders, Inc., a domestic corporation, with principal office at 355 Maysan Road, Valenzuela, Metro Manila, is engaged in the construction business. Private respondents were employed by said company as laborers, carpenters and riggers.

On November, 1981, private respondents were served individual written notices of termination of employment by petitioner, effective on November 30, 1981. It was stated in the individual notices that their contracts of employment had expired and the project in which they were hired had been completed.

Public respondent found it to be, the fact, however, that at the time of the termination of private respondent's employment, the project in which they were hired had not yet been finished and completed. Petitioner had to engage the services of sub-contractors whose workers performed the functions of private respondents.

Aggrieved, private respondents filed a complaint for illegal dismissal, unfair labor practice and non-payment of their legal holiday pay, overtime pay and thirteenth-month pay against petitioner.

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On December 19, 1984, the Labor Arbiter rendered judgment[1] ordering petitioner to reinstate private respondents and to pay them back wages equivalent to one year or three hundred working days.

On November 27, 1985, the National Labor Relations Commission (NLRC) dismissed the motion for reconsideration filed by petitioner on the ground that the said decision had already become final and executory.[2]

On October 16, 1986, the NLRC Research and Information Department made the finding that private respondents' backwages amounted to P199,800.00.[3]

On October 29, 1986, the Labor Arbiter issued a writ of execution directing the sheriff to execute the Decision, dated December 19, 1984. The writ was partially satisfied through garnishment of sums from petitioner's debtor, the Metropolitan Waterworks and Sewerage Authority, in the amount of P81,385.34. Said amount was turned over to the cashier of the NLRC.

On February 1, 1989, an Alias Writ of Execution was issued by the Labor Arbiter directing the sheriff to collect from herein petitioner the sum of P117,414.76, representing the balance of the judgment award, and to reinstate private respondents to their former positions.

On July 13, 1989, the sheriff issued a report stating that he tried to serve the alias writ of execution on petitioner through the security guard on duty but the service was refused on the ground that petitioner no longer occupied the premises.

On September 26, 1986, upon motion of private respondents, the Labor Arbiter issued a second alias writ of execution.

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[1] *Rollo*, pp. 11-12.
[2] *Id.*, at 12.
[3] *Ibid.*

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The said writ had not been enforced by the special sheriff because, as stated in his progress report, dated November 2, 1989:

1. All the employees inside petitioner's premises at 355 Maysan Road, Valenzuela, Metro Manila, claimed that they were employees of Hydro Pipes Philippines, Inc. (HPPI) and not by respondent;

2. Levy was made upon personal properties he found in the premises;

3. Security guards with high-powered guns prevented him from removing the properties he had levied upon.[4]

The said special sheriff recommended that a "break-open order" be issued to enable him to enter petitioner's premises so that he could proceed with the public auction sale of the aforesaid personal properties on November 7, 1989.

On November 6, 1989, a certain Dennis Cuyegkeng filed a third-party claim with the Labor Arbiter alleging that the properties sought to be levied upon by the sheriff were owned by Hydro (Phils.), Inc. (HPPI) of which he is the Vice-President.

On November 23, 1989, private respondents filed a "Motion for Issuance of a Break-Open Order," alleging that HPPI and petitioner corporation were owned by the same incorporator/stockholders. They also alleged that petitioner temporarily suspended its business operations in order to evade its legal obligations to them and that private respondents were willing to post an indemnity bond to answer for any damages which petitioner and HPPI may suffer because of the issuance of the break-open order.

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[4] *Rollo*, p. 14.

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In support of their claim against HPPI, private respondents presented duly certified copies of the General Informations Sheet, dated May 15, 1987, submitted by petitioner to the Securities and Exchange Commission (SEC) and the General Information Sheet, dated May 15, 1987, submitted by HPPI to the Securities and Exchange Commission.

The General Information Sheet submitted by the petitioner revealed the following:

"1. Breakdown of Subscribed Capital

Name of Stockholder	Amount Subscribed
HPPI	P6,999,500.00
Antonio W. Lim	2,900,000.00
Dennis S. Cuyegkeng	300.00
Elisa C. Lim	100,000.00
Teodulo R. Dino	100.00
Virgilio O. Casino	100.00

2. Board of Directors

Antonio W. Lim	Chairman
Dennis S. Cuyegkeng	Member
Elisa C. Lim	Member
Teodulo R. Dino	Member
Virgilio O. Casino	Member

3. Corporate Officers

Antonio W. Lim	President
Dennis S. Cuyegkeng	Assistant to the President
Elisa O. Lim	Treasurer
Virgilio O. Casino	Corporate Secretary

4. Principal Office
355 Maysan Road
Valenzuela, Metro Manila."[5]

[5] *Rollo*, pp. 16-17.

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On the other hand, the General Information Sheet of HPPI revealed the following:

"1. Breakdown of Subscribed Capital

Name of Stockholder	Amount Subscribed
Antonio W. Lim	P400,000.00
Elisa C. Lim	57,700.00
AWL Trading	455,000.00
Dennis S. Cuyegkeng	40,100.00
Teodulo R. Dino	100.00
Virgilio O. Casino	100.00

2. Board of Directors

Antonio W. Lim	Chairman
Elisa C. Lim	Member
Dennis S. Cuyegkeng	Member
Virgilio O. Casino	Member
Teodulo R. Dino	Member

3. Corporate Officers

Antonio W. Lim	President
Dennis S. Cuyegkeng	Assistant to the President
Elisa C. Lim	Treasurer
Virgilio O. Casino	Corporate Secretary

4. Principal Office
355 Maysan Road, Valenzuela, Metro Manila."[6]

On February 1, 1990, HPPI filed an Opposition to private respondents' motion for issuance of a break-open order, contending that HPPI is a corporation which is separate and distinct from petitioner. HPPI also alleged that the two corporations are engaged in two different kinds of businesses, i.e., HPPI is a manufacturing firm while petitioner was then engaged in construction.

[6] *Id.*, at 17-18.

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On March 2, 1990, the Labor Arbiter issued an Order which denied private respondents' motion for break-open order.

Private respondents then appealed to the NLRC. On April 23, 1992, the NLRC set aside the order of the Labor Arbiter, issued a break-open order and directed private respondents to file a bond. Thereafter, it directed the sheriff to proceed with the auction sale of the properties already levied upon. It dismissed the third-party claim for lack of merit.

Petitioner moved for reconsideration but the motion was denied by the NLRC in a Resolution, dated December 3, 1992.

Hence, the resort to the present petition.

Petitioner alleges that the NLRC committed grave abuse of discretion when it ordered the execution of its decision despite a third-party claim on the levied property. Petitioner further contends, that the doctrine of piercing the corporate veil should not have been applied, in this case, in the absence of any showing that it created HPPI in order to evade its liability to private respondents. It also contends that HPPI is engaged in the manufacture and sale of steel, concrete and iron pipes, a business which is distinct and separate from petitioner's construction business. Hence, it is of no consequence that petitioner and HPPI shared the same premises, the same President and the same set of officers and subscribers.[7]

We find petitioner's contention to be unmeritorious.

It is a fundamental principle of corporation law that a corporation is an entity separate and distinct from its stockholders and from other corporations to which it may be connected.[8] But, this separate and distinct personality of a

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[7] *Rollo*, pp. 7-8.

[8] Emilio Cano Enterprises, Inc. *v.* Court of Industrial Relations, 13 SCRA 290 (1965); Yutivo Sons Hardware Company *v.* Court of Tax Appeals, 1 SCRA 160 (1961).

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corporation is merely a fiction created by law for convenience and to promote justice.[9] So, when the notion of separate juridical personality is used to defeat public convenience, justify wrong, protect fraud or defend crime, or is used as a device to defeat the labor laws,[10] this separate personality of the corporation may be disregarded or the veil of corporate fiction pierced.[11] This is true likewise when the corporation is merely an adjunct, a business conduit or an alter ego of another corporation.[12]

The conditions under which the juridical entity may be disregarded vary according to the peculiar facts and circumstances of each case. No hard and fast rule can be accurately laid down, but certainly, there are some probative factors of identity that will justify the application of the doctrine of piercing the corporate veil, to wit:

"1. Stock ownership by one or common ownership of both corporations.

2. Identity of directors and officers.

3. The manner of keeping corporate books and records.

4. Methods of conducting the business."[13]

The SEC en banc explained the "instrumentality rule" which the courts have applied in disregarding the separate juridical personality of corporations as follows:

"Where one corporation is so organized and controlled and its affairs are conducted so that it is, in fact, a mere

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[9] Laguna Transportation Company, Inc. *v.* Social Security System, 107 SCRA 833 (1960).

[10] La Campana Coffee Factory, Inc. *vs.* Kaisahan Ng Mga Manggagawa sa La Campana (KMM), 93 Phil. 160 (1953).

[11] Sulo ng Bayan, Inc. *v.* Araneta, 72 SCRA 347 (1976).

[12] Tan Boon Bee and Co. *v.* Jarencio, 163 SCRA 205 (1988).

[13] 4 Minn L. Rev, pp. 219-227; cited in R. Lopez, The Corporation Code of the Philippines, Annotated p. 19 (1994).

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instrumentality or adjunct of the other, the fiction of the corporate entity of the 'instrumentality' may be disregarded. The control necessary to invoke the rule is not majority or even complete stock control but such domination of finances, policies and practices that the controlled corporation has, so to speak, no separate mind, will or existence of its own, and is but a conduit for its principal. It must be kept in mind that the control must be shown to have been exercised at the time the acts complained of took place. Moreover, the control and breach of duty must proximately cause the injury or unjust loss for which the complaint is made."

The test in determining the applicability of the doctrine of piercing the veil of corporate fiction is as follows:

"1. Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own;

2. Such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiff's legal rights; and

3. The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.

The absence of any one of these elements prevents 'piercing the corporate veil.' In applying the 'instrumentality' or 'alter ego' doctrine, the courts are concerned with reality and not form, with how the corporation operated and the individual defendant's relationship to that operation."[14]

Thus, the question of whether a corporation is a mere alter ego, a mere sheet or paper corporation, a sham or a subterfuge is purely one of fact.[15]

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[14] 1 Fletcher Cyc. Corp., p. 490; Avelina G. Ramoso et al. *v.* General Credit Corporation et al., SEC AC No. 295, October 6, 1992.

[15] Phoenix Safety Inc. Co. *v.* James, 28 Ariz 514, 237, p. 958.

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In this case, the NLRC noted that, while petitioner claimed that it ceased its business operations on April 29, 1986, it filed an Information Sheet with the Securities and Exchange Commission on May 15, 1987, stating that its office address is at 355 Maysan Road, Valenzuela, Metro Manila. On the other hand, HPPI, the third-party claimant, submitted on the same day, a similar information sheet stating that its office address is at 355 Maysan Road, Valenzuela, Metro Manila.

Furthermore, the NLRC stated that:

"Both information sheets were filed by the same Virgilio O. Casiño as the corporate secretary of both corporations. It would also not be amiss to note that both corporations had the same president, the same board of directors, the same corporate officers, and substantially the same subscribers.

From the foregoing, it appears that, among other things, the respondent (herein petitioner) and the third-party claimant shared the same address and/or premises. Under this circumstances, (sic) it cannot be said that the property levied upon by the sheriff were not of respondents.[16]

Clearly, petitioner ceased its business operations in order to evade the payment to private respondents of backwages and to bar their reinstatement to their former positions. HPPI is obviously a business conduit of petitioner corporation and its emergence was skillfully orchestrated to avoid the financial liability that already attached to petitioner corporation.

The facts in this case are analogous to *Claparols v. Court of Industrial Relations*,[17] where we had the occasion to rule:

"Respondent court's findings that indeed the Claparols Steel and Nail Plant, which ceased operation of June 30,

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[16] *Rollo*, pp. 19-20.
[17] 65 SCRA 613 (1975).

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1957, was SUCCEEDED by the Claparols Steel Corporation effective the next day, July l, 1957, up to December 7, 1962, when the latter finally ceased to operate, were not disputed by petitioner. It is very clear that the latter corporation was a continuation and successor of the first entity x x x. Both predecessors and successor were owned and controlled by petitioner Eduardo Claparols and there was no break in the succession and continuity of the same business. This `avoiding-the-liability' scheme is very patent, considering that 90% of the subscribed shares of stock of the Claparols Steel Corporation (the second corporation) was owned by respondent x x x Claparols himself, and all the assets of the dissolved Claparols Steel and Nail Plant were turned over to the emerging Claparols Steel Corporation.

It is very obvious that the second corporation seeks the protective shield of a corporate fiction whose veil in the present case could, and should, be pierced as it was deliberately and maliciously designed to evade its financial obligation to its employees."

In view of the failure of the sheriff, in the case at bar, to effect a levy upon the property subject of the execution, private respondents had no other recourse but to apply for a break-open order after the third-party claim of HPPI was dismissed for lack of merit by the NLRC. This is in consonance with Section 3, Rule VII of the NLRC Manual of Execution of Judgment which provides that:

"Should the losing party, his agent or representative, refuse or prohibit the Sheriff or his representative entry to the place where the property subject of execution is located or kept, the judgment creditor may apply to the Commission or Labor Arbiter concerned for a break-open order."

Furthermore, our perusal of the records shows that the twin requirements of due notice and hearing were complied with. Petitioner and the third-party claimant were given the opportunity to submit evidence in support of their claim.

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Hence, the NLRC did not commit any grave abuse of discretion when it affirmed the break-open order issued by the Labor Arbiter.

Finally, we do not find any reason to disturb the rule that factual findings of quasi-judicial agencies supported by substantial evidence are binding on this Court and are entitled to great respect, in the absence of showing of grave abuse of a discretion.[18]

WHEREFORE, the petition is DISMISSED and the assailed resolutions of the NLRC, dated April 23, 1992 and December 3, 1992, are AFFIRMED.

SO ORDERED.

Padilla (Chairman), Bellosillo,, Vitug, and *Kapunan, JJ.,* concur.

FIRST DIVISION

[G.R. No. 112331. May 29, 1996]

ANASTACIA QUIMEN, *petitioner, vs.* COURT OF APPEALS and YOLANDA Q. OLIVEROS, *respondents.*

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[18] Maya Farms Employees Organization *v.* National Labor Relations Commission, 239 SCRA 508 (1994); Capitol Industrial Construction Groups *v.* National Labor Relations Commission, 221 SCRA 469 (1993); Sunset View Condominium Corporation *v.* National Labor Relations Commission, 228 SCRA 466 (1993).