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frighteningly similar. To do so would be to say that we discriminate one from the other, when all of these women have been the victims of unscrupulous people who capitalized on the poverty of others. While it is true that accused-appellant was not tried and convicted of the crime of trafficking in persons, this Court based its award of damages on the Civil Code, and not on the Anti-Trafficking in Persons Act, as clearly explained in *Lalli*.

WHEREFORE, in view of the foregoing, the Decision of the Court of Appeals in CA-G.R. CR-HC No. 00644-MIN dated 20 July 2010 is hereby **AFFIRMED** *with* **MODIFICATIONS**. Accused-appellant Bernadette Pansacala *a.k.a.* "Neneng Awid" is **ORDERED** to pay AAA and BBB the sum of ₱500,000 each as moral damages and ₱100,000 each as exemplary damages and to pay the costs.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), Brion, Perez, and *Reyes, JJ.*, concur.

THIRD DIVISION

[G.R. No. 194795. June 13, 2012]

EVER ELECTRICAL MANUFACTURING, INC., (EEMI) and VICENTE GO, *petitioners, vs.* **SAMAHANG MANGGAGAWA NG EVER ELECTRICAL/ NAMAWU LOCAL 224 represented by FELIMON PANGANIBAN,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; CLOSURE OF ESTABLISHMENT AND

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REDUCTION OF PERSONNEL; APPLICATION IN CASE AT BAR.— Article 283 of the Labor Code identifies closure or cessation of operation of the establishment as an authorized cause for terminating an employee. Similarly, the said provision mandates that employees who are laid off from work due to closures that are not due to business insolvency should be paid separation pay equivalent to one-month pay or to at least one-half month pay for every year of service, whichever is higher. A fraction of at least six months shall be considered one whole year. Although business reverses or losses are recognized by law as an authorized cause, it is still essential that the alleged losses in the business operations be proven convincingly; otherwise, this ground for termination of employment would be susceptible to abuse by conniving employers, who might be merely feigning business losses or reverses in their business ventures in order to ease out employees. In this case, EEMI failed to establish that the main reason for its closure was business reverses. As aptly observed by the CA, the cessation of EEMI's business was not directly brought about by serious business losses or financial reverses, but by reason of the enforcement of a judgment against it. Thus, EEMI should be required to pay separation pay to its affected employees.

2. ID.; ID.; ID.; PAYMENT OF SEPARATION PAY; CORPORATE OFFICERS ARE NOT SOLIDARILY LIABLE WITH THE CORPORATION UNLESS BAD FAITH IS PRESENT.— As a general rule, corporate officers should not be held solidarily liable with the corporation for separation pay for it is settled that a corporation is invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other legal entity to which it may be related. Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality. x x x In the present case, Go may have acted in behalf of EEMI but the company's failure to operate cannot be equated to bad faith. Cessation of business operation is brought about by various causes like mismanagement, lack of demand, negligence, or lack of business foresight. Unless it can be shown that the closure was deliberate, malicious and in bad faith,

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the Court must apply the general rule that a corporation has, by law, a personality separate and distinct from that of its owners. As there is no evidence that Go, as EEMI's President, acted maliciously or in bad faith in handling their business affairs and in eventually implementing the closure of its business, he cannot be held jointly and solidarily liable with EEMI.

APPEARANCES OF COUNSEL

Ruperto N. Listana for petitioners.
Padilla and Associates Law Office for respondent.

D E C I S I O N

MENDOZA, *J.*:

This petition for review on *certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure assails the August 31, 2010 Decision[2] and the December 16, 2010 Resolution[3] of the Court of Appeals *(CA)* in CA-G.R. SP No. 108978.

Petitioner Ever Electrical Manufacturing, Inc. *(EEMI)* is a corporation engaged in the business of manufacturing electrical parts and supplies. On the other hand, the respondents are members of Samahang Manggagawa ng Ever Electrical/ NAMAWU Local 224 *(respondents)* headed by Felimon Panganiban.

The controversy started when EEMI closed its business operations on October 11, 2006 resulting in the termination of the services of its employees. Aggrieved, respondents filed a complaint for illegal dismissal with prayer for payment of 13th month pay, separation pay, damages, and attorney's fees. Respondents alleged that the closure was made without any warning, notice or memorandum and in full disregard of the requirements of the Labor Code.

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[1] *Rollo*, pp. 9-40.

[2] *Id.* at 356-366.

[3] *Id.* at 368.

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In its defense, EEMI explained that it had closed the business due to various factors. In 1995, it invested in Orient Commercial Banking Corporation *(Orient Bank)* the sum of ₱500,000,000.00 and during the Asian Currency crises, various economies in the South East Asian Region were hurt badly. EEMI was one of those who suffered huge losses. In November 1996, it obtained a loan in the amount of ₱121,400,000.00 from United Coconut Planters Bank *(UCPB)*. As security for the loan, EEMI's land and its improvements, including the factory, were mortgaged to UCPB.

EEMI's business suffered further losses due to the continued entry of cheaper goods from China and other Asian countries. Adding to EEMI's financial woes was the closure of Orient Bank where most of its resources were invested. As a result, EEMI was not able to meet its loan obligations with UCPB.

In an attempt to save the company, EEMI entered into a *dacion en pago* arrangement with UCPB which, in effect, transferred ownership of the company's property to UCPB as reflected in TCT No. 429159. Originally, EEMI wanted to lease the premises to continue its business operation but under UCPB's policy, a previous debtor who failed to settle its loan obligation was not eligible to lease its acquired assets. Thus, UCPB agreed to lease it to an affiliate corporation, EGO Electrical Supply Co, Inc. *(EGO)*, for and in behalf of EEMI. On February 2, 2002, a lease agreement was entered into between UCPB and EGO.[4] The said lease came to a halt when UCPB instituted an unlawful detainer suit against EGO before the Metropolitan Trial Court, Branch 5, Makati City *(MeTC)* docketed as Civil Case No. 88602. On August 11, 2006, the MeTC ruled in favor of UCPB and ordered EGO to vacate the leased premises and pay rentals to UCPB in the amount of ₱21,473,843.65.[5] On September 19, 2006, a writ of execution was issued.[6] Consequently, on

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[4] *Id.* at 158-191.

[5] *Id.* at 195-200.

[6] *Id.* at 202-203.

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October 11, 2006, the Sheriff implemented the writ by closing the premises and, as a result, EEMI's employees were prevented from entering the factory.

On April 25, 2007, the Labor Arbiter *(LA)* ruled that respondents were not illegally dismissed. It, however, ordered EEMI and its President, Vicente Go *(Go)*, to pay their employees separation pay and 13th month pay respectively.[7] The decretal portion of the LA decision, reads:

> CONFORMABLY WITH THE FOREGOING, Judgment is hereby rendered ordering the respondent[s] in solidum to pay the complainants their separation pay, 13th month pay of the three (3) workers and the balance of their 13th month pay as computed which computation is made a part of this disposition.

On September 15, 2008, the NLRC reversed and set aside the decision of the LA. The NLRC dismissed the complaint for lack of merit and ruled that since EEMI's cessation of business operation was due to serious business losses, the employees were not entitled to separation pay.[8]

Respondents moved for reconsideration of the NLRC decision, but the NLRC denied the motion in its March 23, 2009 Resolution.[9]

Unperturbed, respondents elevated the case before the CA *via* a petition for *certiorari* under Rule 65.[10]

On August 31, 2010, the CA granted the petition.[11] It nullified the decision of the NLRC and reinstated the LA decision. The dispositive portion of the CA decision reads:

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[7] *Id.* at 242-261.

[8] *Id.* at 291-300.

[9] *Id.* at 303-304.

[10] *Id.* at 305-328.

[11] *Id.* at 356-366. Penned by Justice Amy C. Lazaro-Javier and concurred in by Associate Justice Rebecca De Guia-Salvador and Associate Justice Sesinando E. Villon.

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ACCORDINGLY, the petition is GRANTED. The Decision dated September 15, 2008 and Resolution dated March 23, 2009 of the National Labor Relations Commission are NULLIFIED and the Decision dated April 25, 2007 of Labor Arbiter Melquiades Sol Del Rosario, REINSTATED.

The CA held that respondents were entitled to separation pay and 13th month pay because the closure of EEMI's business operation was effected by the enforcement of a writ of execution and not by reason of business losses. The CA, citing *Restaurante Las Conchas v. Lydia Llego*,[12] upheld the solidary liability of EEMI and Go, declaring that "when the employer corporation is no longer existing and unable to satisfy the judgment in favor of the employees, the officers should be held liable for acting on behalf of the corporation."[13]

EEMI and Go filed a motion for reconsideration but it was denied in the CA Resolution dated December 16, 2010.[14]

Hence, this petition.[15]

Issues:

1. Whether the CA erred in finding that the closure of EEMI's operation was not due to business losses; and

2. Whether the CA erred in finding Vicente Go solidarily liable with EEMI.

The petition is partly meritorious.

Article 283 of the Labor Code provides:

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,

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[12] 372 Phil. 697, 707 (1999).

[13] *Rollo*, p. 365. Citing *Restaurante Las Conchas v. Lydia Llego*, 372 Phil. 697, 707 (1999), *Gudez v. NLRC*, 262 Phil. 703, 710 (1990).

[14] *Rollo*, p. 368.

[15] *Id.* at 9-40.

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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 (½) 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.

Article 283 of the Labor Code identifies closure or cessation of operation of the establishment as an authorized cause for terminating an employee. Similarly, the said provision mandates that employees who are laid off from work due to closures that are not due to business insolvency should be paid separation pay equivalent to one-month pay or to at least one-half month pay for every year of service, whichever is higher. A fraction of at least six months shall be considered one whole year.

Although business reverses or losses are recognized by law as an authorized cause, it is still essential that the alleged losses in the business operations be proven convincingly; otherwise, this ground for termination of employment would be susceptible to abuse by conniving employers, who might be merely feigning business losses or reverses in their business ventures in order to ease out employees.[16]

In this case, EEMI failed to establish that the main reason for its closure was business reverses. As aptly observed by the CA, the cessation of EEMI's business was not directly brought about by serious business losses or financial reverses, but by

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[16] *J.A.T. General Services v. National Labor Relations Commission,* 465 Phil. 785, 795 (2004).

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reason of the enforcement of a judgment against it. Thus, EEMI should be required to pay separation pay to its affected employees.

As to whether or not Go should be held solidarily liable with EEMI, the Court agrees with the petitioner.

As a general rule, corporate officers should not be held solidarily liable with the corporation for separation pay for it is settled that a corporation is invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other legal entity to which it may be related. Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality.[17]

The LA was of the view that Go, as President of the corporation, actively participated in the management of EEMI's corporate obligations, and, accordingly, rendered judgment ordering EEMI and Go "in solidum to pay the complainants"[18] their due. He explained that "[r]espondent Go's negligence in not paying the lease rental of the plant in behalf of the lessee EGO Electrical Supply, Inc., where EEMI was operating and reimburse expenses of UCPB for real estate taxes and the like, prompted the bank to file an unlawful detainer case against the lessee, EGO Electrical Supply Co. This evasion of an existing obligation, made respondent Go as liable as respondent EEMI, for complainants' money awards."[19] Added the LA, "being the President and the one actively representing respondent EEMI, in major contracts *i.e.* Real Estate Mortgage, loans, *dacion en pago*, respondent Go has to be liable in the case."[20] As earlier stated, the CA affirmed the LA decision citing the case of *Restaurante Las*

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[17] *Sunio v. National Labor Relations Commission*, 212 Phil. 355, 362-363 (1984).

[18] *Rollo*, pp. 242-261.

[19] *Id.* at 288.

[20] *Id.* at 259.

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Conchas v. Llego,[21] where it was held that "when the employer corporation is no longer existing and unable to satisfy the judgment in favor of the employees, the officers should be held liable for acting on behalf of the corporation."[22]

A study of *Restaurante Las Conchas* case, however, bares that it was an application of the exception rather than the general rule. As stated in the said case, "as a rule, the officers and members of a corporation are not personally liable for acts done in the performance of their duties."[23] The Court therein explained that it applied the exception because of the peculiar circumstances of the case. If the rule would be applied, the employees would end up in an empty victory because as the restaurant had been closed for lack of venue, there would be no one to pay its liability as the respondents therein claimed that the restaurant was owned by a different entity, not a party in the case.[24]

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[21] *Supra* note 12.

[22] *Supra* note 13.

[23] *Supra* note 12.

[24] "Records reveal that the Restaurant Services Corporation was not a party respondent in the complaint filed before the Labor Arbiter. The complaint was filed only against the Restaurante Las Conchas and the spouses David Gonzales and Elizabeth Anne Gonzales as owner, manager and president. The Restaurant Services Corporation was mentioned for the first time in the Motion to Dismiss filed by petitioners David Gonzales and Elizabeth Anne Gonzales who did not even bother to adduce any evidence to show that the Restaurant Services Corporation was really the owner of the Restaurante Las Conchas. On the other hand, if indeed, the Restaurant Services Corporation was the owner of the Restaurante Las Conchas and the employer of private respondents, it should have filed a motion to intervene in the case. The records, however, show that no such motion to intervene was ever filed by the said corporation. The only conclusion that can be derived is that the Restaurant Services Corporation, if it still exists, has no legal interest in the controversy. Notably, the corporation was only included in the decision of the Labor Arbiter and the NLRC as respondent because of the mere allegation of petitioners David Gonzales and Elizabeth Gonzales, albeit without proof, that it is the owner of the Restaurante Las Conchas. Thus, petitioners David Gonzales and Elizabeth Anne Gonzales cannot rightfully claim that it is the corporation which should be made liable for the claims of private respondents.

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In two subsequent cases, the Court's ruling in *Restaurante Las Conchas* was invoked but the Court refused to consider it reasoning out that it was the exception rather than the rule. The two cases were *Mandaue Dinghow Dimsum House, Co., Inc. and/or Henry Uytengsu v. National Labor Relations Commission*[25] and *Pantranco Employees Association (PEA-PTGWO) v. National Labor Relations Commission*.[26]

In *Mandaue Dinghow Dimsum House, Co., Inc.*, the Court declined to apply the ruling in *Restaurante Las Conchas* because there was no evidence that the respondent therein, Henry Uytrengsu, acted in bad faith or in excess of his authority. It stressed that a corporation is invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other legal entity to which it may be related. For said reason, the doctrine of piercing the veil of corporate fiction must be exercised with caution.[27] Citing *Malayang Samahan ng mga Manggagawa sa M. Greenfield v. Ramos*,[28] the Court explained that corporate directors and officers are solidarily liable with the corporation for the termination of employees done with malice or bad faith. It stressed that bad faith does not connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing

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Assuming that indeed, the Restaurant Services Corporation was the owner of the Restaurante Las Conchas and the employer of private respondents, this will not absolve petitioners David Gonzales and Elizabeth Anne Gonzales from their liability as corporate officers. Although as a rule, the officers and members of a corporation are not personally liable for acts done in the performance of their duties, this rule admits of exceptions, one of which is when the employer corporation is no longer existing and is unable to satisfy the judgment in favor of the employee, the officers should be held liable for acting on behalf of the corporation. Here, the corporation does not appear to exist anymore."

[25] G.R. No. 161134, March 3, 2008, 547 SCRA 402.

[26] G.R. Nos. 170689 and 170705, March 17, 2009, 581 SCRA 598.

[27] *Mandaue Dinghow Dimsum House, Inc. v. NLRC, 4th Division*, G.R. No. 161134, March 3, 2008, 547 SCRA 402, 414.

[28] 409 Phil. 75, 83 (2001).

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of wrong; it means breach of a known duty through some motive or interest or ill will; it partakes of the nature of fraud.

In *Pantranco Employees Association*, the Court also rejected the invocation of *Restaurante Las Conchas* and refused to pierce the veil of corporate fiction. It explained:

> As between PNB and PNEI, petitioners want us to disregard their separate personalities, and insist that because the company, PNEI, has already ceased operations and there is no other way by which the judgment in favor of the employees can be satisfied, corporate officers can be held jointly and severally liable with the company. Petitioners rely on the pronouncement of this Court in *A.C. Ransom Labor Union-CCLU v. NLRC* and subsequent cases.
>
> This reliance fails to persuade. We find the aforesaid decisions inapplicable to the instant case.
>
> For one, in the said cases, the persons made liable after the company's cessation of operations were the officers and agents of the corporation. The rationale is that, since the corporation is an artificial person, it must have an officer who can be presumed to be the employer, being the person acting in the interest of the employer. The corporation, only in the technical sense, is the employer. In the instant case, what is being made liable is another corporation (PNB) which acquired the debtor corporation (PNEI).
>
> Moreover, in the recent cases *Carag v. National Labor Relations Commission and McLeod v. National Labor Relations Commission*, the Court explained the doctrine laid down in AC Ransom relative to the personal liability of the officers and agents of the employer for the debts of the latter. In *AC Ransom*, the Court imputed liability to the officers of the corporation on the strength of the definition of an employer in Article 212(c) (now Article 212[e]) of the Labor Code. Under the said provision, employer includes any person acting in the interest of an employer, directly or indirectly, but does not include any labor organization or any of its officers or agents except when acting as employer. It was clarified in *Carag* and *McLeod* that Article 212(e) of the Labor Code, by itself, does not make a corporate officer personally liable for the debts of the corporation. It added that the governing law on personal liability of directors or officers for debts of the corporation is still Section 31 of the Corporation Code.

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More importantly, as aptly observed by this Court in *AC Ransom*, it appears that Ransom, foreseeing the possibility or probability of payment of backwages to its employees, organized Rosario to replace Ransom, with the latter to be eventually phased out if the strikers win their case. The execution could not be implemented against Ransom because of the disposition posthaste of its leviable assets evidently in order to evade its just and due obligations. Hence, the Court sustained the piercing of the corporate veil and made the officers of Ransom personally liable for the debts of the latter.

Clearly, what can be inferred from the earlier cases is that the doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or 3) alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation. **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.**[29] [Emphasis supplied]

Similarly, in the case at bench, the records do not warrant an application of the exception. The rule, which requires the presence of malice or bad faith, must still prevail. In the recent case of *Wensha Spa Center and/or Xu Zhi Jie v. Yung*,[30] the Court absolved the corporation's president from liability in the absence of bad faith or malice. In the said case, the Court stated:

In labor cases, corporate directors and officers may be held solidarily liable with the corporation for the termination of employment only if done with malice or in bad faith.[31] Bad faith does not connote

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[29] *Pantranco Employees Association (PEA-PTGWO) v. NLRC*, G.R. Nos. 170689 & 170705, March 17, 2009, 581 SCRA 598, 614, 616.

[30] G.R. No. 185122, August 16, 2010, 628 SCRA 311, 326.

[31] *Petron Corporation v. NLRC*, G. R. No. 154532, October 27, 2006, 505 SCRA 596, 614.

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bad judgment or negligence; it 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.[32]

In the present case, Go may have acted in behalf of EEMI but the company's failure to operate cannot be equated to bad faith. Cessation of business operation is brought about by various causes like mismanagement, lack of demand, negligence, or lack of business foresight. Unless it can be shown that the closure was deliberate, malicious and in bad faith, the Court must apply the general rule that a corporation has, by law, a personality separate and distinct from that of its owners. As there is no evidence that Go, as EEMI's President, acted maliciously or in bad faith in handling their business affairs and in eventually implementing the closure of its business, he cannot be held jointly and solidarily liable with EEMI.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The August 31, 2010 Decision of the Court of Appeals is **AFFIRMED** with **MODIFICATION** that Vicente Go is not solidarily liable with Ever Electrical Manufacturing, Inc.

SO ORDERED.

Peralta (Acting Chairperson),[*] *Abad, Villarama, Jr.,*[**] and *Perlas-Bernabe, JJ.*, concur.

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[32] *Elcee Farms v. NLRC,* G.R. No. 126428, January 25, 2007, 512 SCRA 602, 616-617.

[*] Per Special Order No. 1228 dated June 6, 2012.

[**] Designated Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1229 dated June 6, 2012.