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SECOND DIVISION

[G.R. No. 173169. September 22, 2010]

IRENE MARTEL FRANCISCO, *petitioner, vs.* **NUMERIANO MALLEN, JR.,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATION CODE; BOARD OF DIRECTORS AND OFFICERS; WHEN MAY BE HELD PERSONALLY LIABLE FOR CORPORATE OBLIGATIONS; REQUISITES.— In *Santos v. National Labor Relations Commission*, the Court held that "A corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. The rule is that obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities." 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.**

2. ID.; ID.; ID.; ID.; BAD FAITH, CONSTRUED; NOT PRESENT IN CASE AT BAR.— 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. Bad faith is never presumed. Bad faith does not connote bad judgment or negligence. Bad faith imports a dishonest purpose. Bad faith means breach of a known duty through some ill motive or interest. Bad faith partakes of the nature of fraud. x x x Based on the records, respondent failed to allege either in his complaint or position paper that petitioner, as Vice-President of VIPS Coffee Shop and Restaurant, acted in bad faith. Neither did respondent clearly and convincingly prove that petitioner, as Vice-President of VIPS Coffee Shop and Restaurant, acted

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in bad faith. **In fact, there was no evidence whatsoever to show petitioner's participation in respondent's alleged illegal dismissal.** Clearly, the twin requisites of allegation and proof of bad faith, necessary to hold petitioner personally liable for the monetary awards to respondent, are lacking. In view of the foregoing, the Court deems it unnecessary to determine whether respondent was constructively dismissed. Besides, it appears from the records that VIPS Coffee Shop and Restaurant did not challenge the adverse Court of Appeals' decision in CA-G.R. SP No. 72115, rendering such decision final insofar as VIPS Coffee Shop and Restaurant is concerned.

APPEARANCES OF COUNSEL

Paredes Lopez & Garcia for petitioner.
Cezar F. Maravilla, Jr. for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 16 September 2005 Decision[2] of the Court of Appeals in CA-G.R. SP No. 72115. The Court of Appeals set aside the 21 December 2001 Decision[3] of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 022641-00 and reinstated the 25 August 1999 Decision[4] of the Labor Arbiter in NLRC-NCR Case No. 00-07-05608-98.

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[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 23-33. Penned by Associate Justice Regalado E. Maambong, with Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Lucenito N. Tagle concurring.

[3] *Id.* at 35-39. Penned by Commissioner Alberto R. Quimpo, with Commissioner Vicente S.E. Veloso concurring. Presiding Commissioner Roy V. Señeres was on leave.

[4] *Id.* at 40-46.

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The Facts

On 5 April 1994, respondent Numeriano Mallen, Jr. was hired as a waiter for VIPS Coffee Shop and Restaurant, a fine dining restaurant which used to operate at the Harrison Plaza Commercial Complex in Manila.

On 30 January 1998 to 1 February 1998, respondent took an approved sick leave. On 15 February 1998, respondent took a vacation leave. Thereafter, he availed of his paternity leave.

On 18 April 1998, respondent suffered from tonsillitis, forcing him to take a three-day sick leave from 18 April 1998 to 20 April 1998. However, instead of his applied three-day sick leave, respondent was given three months leave. The memorandum dated 28 April 1998 reads:

TO	:	Mr. Numeriano Mallen, Jr.
FROM	:	VIPS Dining Head
DATE	:	28 April 1998
RE	:	AS STATED

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After a thorough review of your performance and the series of Vacation Leaves (8 days), Paternity Leave (7 days) and Sick Leave (7 days) due to several illness within the first quarter of the year, we have concluded that you are not physically fit and needs to recharge to enable you to regain your physical fitness.

As such, we are awarding to you the rest of your Vacation/Sick Leave plus Two and a half (2 ½) months (without pay) to rest and regain your physical health within the prescribed vacation.

During your vacation, you are not allowed to loiter within the premises of VIPS RESTAURANT; but instead to rest and do some health exercise and medical check-up for your physical fitness recovery program.

Moreover, when you report back to work, you are to present to the management a certificate indicating that you are fit to work regularly.

Your vacation shall take effect on April 30, 1998 up to August 1, 1998.

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For your information and guidance.

Sgd.

Mr. Patty C. Bocar

Noted By:

Sgd.
Ms. Ma. Theresa Linaja[5]

On 5 May 1998, respondent filed before the Department of Labor and Employment-National Capital Region (DOLE-NCR) a complaint for underpayment of wages and non-payment of holiday pay.

Sometime in June 1998, respondent reported back to work with a medical certificate stating he was fit to work but he was refused work.

On 22 June 1998, the DOLE-NCR endorsed respondent's complaint to the NLRC when it determined that the issue of constructive dismissal was involved. On 23 July 1998, respondent filed a complaint for illegal dismissal before the NLRC-NCR. On 3 August 1998, respondent again attempted to return to work but was refused again.

The Ruling of the Labor Arbiter

On 25 August 1999, Labor Arbiter Madjayran H. Ajan rendered a decision in favor of respondent. The Labor Arbiter found that "complainant's dismissal was the price of his having filed a case with DOLE-NCR against the respondents, plus his perennial absences, which nevertheless is not a just cause. We likewise agree that the gesture of respondents to reinstate or re-employ complainant unconditionally during the proceedings did not cure the illegality of complainant's dismissal."

The dispositive portion of the Labor Arbiter's decision reads:

WHEREFORE, premises above considered a decision is hereby issued declaring the dismissal of the complainant illegal.

[5] *Id.* at 55.

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Consequently, respondents VIP's Coffee Shop & Restaurant and/or Irene Francisco are ordered to reinstate complainant to his former or equivalent position without loss of seniority rights, and to pay complainant jointly and severally his backwages hereby fixed at ₱88,000.00 as of August 31, 1999, plus his paternity pay, and attorney's fees equivalent to the monetary award, all in the aggregate of ninety nine thousand three hundred fifty pesos and 90/100 centavos (₱99,350.90).

Respondents are likewise ordered to pay complainant ₱50,000.00 for moral damages and ₱20,000.00 for exemplary damages.

SO ORDERED.[6]

The Ruling of the NLRC

The NLRC found respondent's filing of a complaint for illegal dismissal premature. The NLRC stated "[t]his conclusion is supported by the fact that in respondent's memorandum to complainant directing him to avail of his vacation/sick leave, the same is to last from April 30, 1998 to August 1, 1998. The complaint therefore filed on May 5, 1998 has no legal basis to support itself. When he filed his complaint on May 5, 1998, his cause of action based on illegal dismissal has not yet accrued."

Nevertheless, the NLRC noted, "a supervening event occurred during the pendency of the instant case which is the closure of VIPS Coffee Shop and Restaurant effective 26 August 1999, as evidenced by the Notice and report to the Department of Labor and Employment (Annexes "1" and "2" of Appeal). x x x This being the case, and in the spirit of compassion, respondents are directed to pay complainant his separation pay equivalent to one half month pay for every year of service x x x."

The dispositive portion of the NLRC's decision reads:

WHEREFORE, the Decision of the Labor Arbiter dated August 25, 1999 is hereby **MODIFIED** and respondents are instead directed to pay the complainant separation pay in the amount of ₱13,750.00 plus his paternity leave pay in the amount of ₱1,519.00 (₱217.00

[6] *Id.* at 43-46.

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x 7 days). The award for moral and exemplary damages are deleted and set aside for lack of merit.

SO ORDERED.[7]

The Ruling of the Court of Appeals

The Court of Appeals found respondent constructively dismissed for having been granted an increased three months leave instead of the three days leave he applied for.

The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, the petition is hereby **GRANTED**. The decision of the NLRC, First Division, dated December 21, 2001, is hereby **SET ASIDE** and the decision of Labor Arbiter Madjayran H. Ajan dated August 25, 1999 is hereby **REINSTATED**.

SO ORDERED.[8]

The Issue

The main issue in this case is whether petitioner is personally liable for the monetary awards granted in favor of respondent arising from his alleged illegal termination.

The Ruling of this Court

The petition has merit.

In *Santos v. National Labor Relations Commission*,[9] the Court held that "A corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. The rule is that obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities."[10]

To hold a director or officer personally liable for corporate obligations, two requisites must concur: (1) **complainant must**

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[7] *Id.* at 38-39.

[8] *Id.* at 33.

[9] 325 Phil. 145 (1996).

[10] *Id.* at 156.

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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;[11] and (2) **complainant must clearly and convincingly prove such unlawful acts, negligence or bad faith.**[12]

In *Carag v. National Labor Relations Commission*,[13] the Court did not hold a director personally liable for corporate obligations because the two requisites are lacking, to wit:

Complainants did not allege in their complaint that Carag willfully and knowingly voted for or assented to any patently unlawful act of MAC. Complainants did not present any evidence showing that Carag willfully and knowingly voted for or assented to any patently unlawful act of MAC. Neither did Arbiter Ortiguerra make any finding to this effect in her Decision.

Complainants did not also allege that Carag is guilty of gross negligence or bad faith in directing the affairs of MAC. Complainants did not present any evidence showing that Carag is guilty of gross negligence or bad faith in directing the affairs of MAC. Neither did Arbiter Ortiguerra make any finding to this effect in her Decision.

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[11] See Section 31 of the Corporation Code, which 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.

When a director, trustee or officer attempts to acquire or acquires, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.

See also *Ramoso v. Court of Appeals*, 400 Phil. 1260 (2000).

[12] See *Ramoso v. Court of Appeals*, 400 Phil. 1260 (2000).

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

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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. Bad faith is never presumed. Bad faith does not connote bad judgment or negligence. Bad faith imports a dishonest purpose. Bad faith means breach of a known duty through some ill motive or interest. Bad faith partakes of the nature of fraud. In *Businessday Information Systems and Services, Inc. v. NLRC*, we held:

> There is merit in the contention of petitioner Raul Locsin that the complaint against him should be dismissed. **A corporate officer is not personally liable for the money claims of discharged corporate employees unless he acted with evident malice and bad faith in terminating their employment. There is no evidence in this case that Locsin acted in bad faith or with malice** in carrying out the retrenchment and eventual closure of the company (*Garcia vs. NLRC*, 153 SCRA 640), hence, he may not be held personally and solidarily liable with the company for the satisfaction of the judgment in favor of the retrenched employees.[14] (Emphasis supplied)

In *McLeod v. NLRC*,[15] the Court did not hold a director, an officer, and other corporations personally liable for corporate obligations of the employer because the second requisite was lacking. The Court held:

A corporation is an artificial being invested by law with a personality **separate and distinct from that of its stockholders and from that of other corporations to which it may be connected.**

While a corporation may exist for any lawful purpose, the law will regard it as an association of persons or, in case of two corporations, merge them into one, when its corporate legal entity is used as a cloak for fraud or illegality. This is the doctrine of piercing the veil of corporate fiction. The doctrine applies only when such corporate fiction is used to defeat public convenience, justify wrong, protect fraud, or defend crime, or when it is made as a shield to confuse the legitimate issues, or where a corporation is the mere

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[14] *Id.* at 48-50.

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

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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.

To disregard the separate juridical personality of a corporation, the wrongdoing must be established clearly and convincingly. It cannot be presumed.[16] (Emphasis supplied)

In *Lowe, Inc. v. Court of Appeals*,[17] the Court did not hold the officers personally liable for corporate obligations because the second requisite was lacking, thus:

It is settled that in the absence of malice, bad faith, or specific provision of law, a director or an officer of a corporation cannot be made personally liable for corporate liabilities.

x x x x x x x x x

Gustilo and Castro, as corporate officers of Lowe, have personalities which are distinct and separate from that of Lowe's. **Hence, in the absence of any evidence showing that they acted with malice or in bad faith in declaring Mutuc's position redundant, Gustilo and Castro are not personally liable for the monetary awards to Mutuc.**[18] (Emphasis supplied)

In *David v. National Federation of Labor Unions*,[19] the Court did not hold an officer liable for corporate obligations because the second requisite was lacking. The Court held that "There was no showing of David willingly and knowingly voting for or assenting to patently unlawful acts of the corporation, or that David was guilty of gross negligence or bad faith."[20]

In this case, the Labor Arbiter, whose decision was reinstated by the Court of Appeals, stated that petitioner acted with malice and bad faith in constructively dismissing respondent. Thus, the

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[16] *Id.* at 245-246.

[17] G.R. Nos. 164813 and 174590, 14 August 2009, 596 SCRA 140.

[18] *Id.* at 155.

[19] G.R. Nos. 148263 and 148271-72, 21 April 2009, 586 SCRA 100.

[20] *Id.* at 110.

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Labor Arbiter held petitioner personally liable for the monetary awards to respondent.

This finding lacks basis. Based on the records, respondent failed to allege either in his complaint or position paper that petitioner, as Vice-President of VIPS Coffee Shop and Restaurant, acted in bad faith.[21] Neither did respondent clearly and convincingly prove that petitioner, as Vice-President of VIPS Coffee Shop and Restaurant, acted in bad faith. **In fact, there was no evidence whatsoever to show petitioner's participation in respondent's alleged illegal dismissal.** Clearly, the twin requisites of allegation and proof of bad faith, necessary to hold petitioner personally liable for the monetary awards to respondent, are lacking.

In view of the foregoing, the Court deems it unnecessary to determine whether respondent was constructively dismissed. Besides, it appears from the records that VIPS Coffee Shop and Restaurant did not challenge the adverse Court of Appeals' decision in CA-G.R. SP No. 72115, rendering such decision final insofar as VIPS Coffee Shop and Restaurant is concerned.[22]

WHEREFORE, we *GRANT* the petition. We *MODIFY* the Court of Appeals' Decision, dated 16 September 2005, in CA-G.R. SP No. 72115 by holding petitioner Irene Martel Francisco not liable for the monetary awards specified in the reinstated Labor Arbiter's Decision, dated 25 August 1999, in NLRC-NCR Case No. 00-07-05608-98.

SO ORDERED.

Velasco, Jr.,[*] *Peralta, Bersamin,*[**] and *Abad, JJ.,* concur.

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[21] *Rollo,* p. 134.

[22] See *Firestone Tire and Rubber Company of the Philippines v. Tempongko*, 137 Phil. 239, 244 (1969), where the Court held "failure of any of the parties in x x x a case to appeal the judgment as against him makes such judgment final and executory."

[*] Designated additional member per Special Order No. 883 dated 1 September 2010.

[**] Designated additional member per Special Order No. 886 dated 1 September 2010.