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delicto in the act of selling two sachets of *shabu* to a police officer, who acted as a poseur-buyer. Thus, the guilt of the accused had been proven in the instant case beyond reasonable doubt.

Under Section 5, Article II of RA 9165, the crime of unauthorized sale of *shabu*, regardless of the quantity and purity thereof, is punishable with life imprisonment to death and a fine ranging from five hundred thousand pesos (₱500,000.00) to ten million pesos (₱10,000,000.00). Hence, the penalty of life imprisonment and a fine of ₱500,000.00 was correctly imposed by the RTC and the CA on accused Jose Almodiel *alias* "Dodong Astrobal" for illegal sale of *shabu*.

WHEREFORE, we **DISMISS** the appeal. We **AFFIRM** the Decision dated 14 November 2011 of the Court of Appeals in CA-G.R. CR HC No. 00632-MIN *in toto*.

SO ORDERED.

Brion, del Castillo, Perez, and *Perlas-Bernabe, JJ.*, concur.

THIRD DIVISION

[G.R. No. 171118. September 10, 2012]

PARK HOTEL, J's PLAYHOUSE BURGOS CORP., INC., and/or GREGG HARBUTT, General Manager, ATTY. ROBERTO ENRIQUEZ, President, and BILL PERCY, *petitioners, vs.* **MANOLO SORIANO, LESTER GONZALES, and YOLANDA BADILLA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; TWO (2) REQUISITES FOR A VALID DISMISSAL; BOTH ELEMENTS ARE

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COMPLETELY LACKING IN CASE AT BAR.— The requisites for a valid dismissal are: (a) the employee must be afforded due process, *i.e.*, he must be given an opportunity to be heard and defend himself; and (b) the dismissal must be for a valid cause as provided in Article 282 of the Labor Code, or for any of the authorized causes under Articles 283 and 284 of the same Code. In the case before us, both elements are completely lacking. Respondents were dismissed without any just or authorized cause and without being given the opportunity to be heard and defend themselves. The law mandates that the burden of proving the validity of the termination of employment rests with the employer. Failure to discharge this evidentiary burden would necessarily mean that the dismissal was not justified and, therefore, illegal. Unsubstantiated suspicions, accusations, and conclusions of employers do not provide for legal justification for dismissing employees. In case of doubt, such cases should be resolved in favor of labor, pursuant to the social justice policy of labor laws and the Constitution.

2. ID.; ID.; UNFAIR LABOR PRACTICE; COMMITTED IN CASE AT BAR; RESPONDENTS WERE UNCEREMONIOUSLY DISMISSED FROM WORK BY REASON OF THEIR INTENT TO FORM AND ORGANIZE A UNION.— Anent the unfair labor practice, Article 248 (a) of the Labor Code considers it an unfair labor practice when an employer interferes, restrains or coerces employees in the exercise of their right to self-organization or the right to form an association. In order to show that the employer committed unfair labor practice under the Labor Code, substantial evidence is required to support the claim. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. In the case at bar, respondents were indeed unceremoniously dismissed from work by reason of their intent to form and organize a union. As found by the LA: The immediate impulse of respondents (petitioners herein), as in the case at bar, was to terminate the organizers. Respondents (petitioners herein) have to cripple the union at sight, to frustrate attempts of employees from joining or supporting it, preventing them, at all cost and to frustrate the employees' bid to exercise their right to self-organization.

3. ID.; ID.; ID.; RIGHTS OF ILLEGALLY DISMISSED EMPLOYEES; RESPONDENTS ARE ENTITLED TO THE PAYMENT OF FULL

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BACKWAGES, INCLUSIVE OF ALLOWANCES, AND OTHER BENEFITS OR THEIR MONETARY EQUIVALENT AND SEPARATION PAY INSTEAD OF REINSTATEMENT; AWARDS OF SEPARATION PAY AND BACKWAGES ARE NOT MUTUALLY EXCLUSIVE, AND BOTH MAY BE AWARDED THE DISMISSED EMPLOYEES.— In cases when an employee is unjustly dismissed from work, he shall be entitled to reinstatement without loss of seniority rights and other privileges, inclusive of allowances, and other benefits or their monetary equivalent from the time the compensation was withheld up to the time of actual reinstatement. In the case at bar, the Court finds that it would be best to award separation pay instead of reinstatement, in view of the passage of a long period of time since respondents' dismissal. In *St. Luke's Medical Center, Inc. v. Notario*, the Court held that if reinstatement proves impracticable, and hardly in the best interest of the parties, due to the lapse of time since the employee's dismissal, the latter should be awarded separation pay in lieu of reinstatement. In view of the foregoing, respondents are entitled to the payment of full backwages, inclusive of allowances, and other benefits or their monetary equivalent, and separation pay in lieu of reinstatement equivalent to one month salary for every year of service. The awards of separation pay and backwages are not mutually exclusive, and both may be given to respondents.

4. ID.; ID.; ID.; ID.; AWARDS OF MORAL AND EXEMPLARY DAMAGES IN FAVOR OF RESPONDENTS ARE ALSO JUSTIFIED.— The awards of moral and exemplary damages in favor of respondents are also in order. Moral damages may be recovered where the dismissal of the employee was tainted by bad faith or fraud, or where it constituted an act oppressive to labor, and done in a manner contrary to morals, good customs or public policy, while exemplary damages are recoverable only if the dismissal was done in a wanton, oppressive, or malevolent manner. The grant of attorney's fees is likewise proper. Attorney's fees may likewise be awarded to respondents who were illegally dismissed in bad faith and were compelled to litigate or incur expenses to protect their rights by reason of the oppressive acts of petitioners. The unjustified act of petitioners had obviously compelled respondents to institute

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an action primarily to protect their rights and interests which warrants the granting of the award.

5. MERCANTILE LAW; CORPORATION CODE; DOCTRINE OF PIERCING THE VEIL OF CORPORATE FICTION; NOT APPLICABLE IN CASE AT BAR.— As to whether Park Hotel may be held solidarily liable with Burgos, the Court rules that before a corporation can be held accountable for the corporate liabilities of another, the veil of corporate fiction must first be pierced. Thus, before Park Hotel can be held answerable for the obligations of Burgos to its employees, it must be sufficiently established that the two companies are actually a single corporate entity, such that the liability of one is the liability of the other. 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 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. In the case at bar, respondents utterly failed to prove by competent evidence that Park Hotel was a mere instrumentality, agency, conduit or adjunct of Burgos, or that its separate corporate veil had been used to cover any fraud or illegality committed by Burgos against the respondents. Accordingly, Park Hotel and Burgos cannot be considered as one and the same entity, and Park Hotel cannot be held solidary liable with Burgos.

6. ID.; ID.; ID.; ALTHOUGH THE CORPORATE VEIL CANNOT BE PIERCED IN CASE AT BAR, THE CORPORATION AND ITS OWNERS AND OFFICERS CANNOT BE EXEMPT FROM

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LIABILITY; CORPORATE OFFICERS MAY BE DEEMED SOLIDARILY LIABLE WITH THE CORPORATION FOR THE TERMINATION OF EMPLOYEES IF THEY ACTED WITH MALICE OR BAD FAITH.— Nonetheless, although the corporate veil between Park Hotel and Burgos cannot be pierced, it does not necessarily mean that Percy and Harbutt are exempt from liability towards respondents. Verily, a corporation, being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, while acting as corporate agents, are not their personal liability but the direct accountability of the corporation they represent. However, corporate officers may be deemed solidarily liable with the corporation for the termination of employees if they acted with malice or bad faith. In the present case, the lower tribunals unanimously found that Percy and Harbutt, in their capacity as corporate officers of Burgos, acted maliciously in terminating the services of respondents without any valid ground and in order to suppress their right to self-organization. Section 31 of the Corporation Code makes a director personally liable for corporate debts if he willfully and knowingly votes for or assents to patently unlawful acts of the corporation. It also makes a director personally liable if he is guilty of gross negligence or bad faith in directing the affairs of the corporation. Thus, Percy and Harbutt, having acted in bad faith in directing the affairs of Burgos, are jointly and severally liable with the latter for respondents' dismissal.

APPEARANCES OF COUNSEL

Batino Law Offices for petitioners.
Legal Advocates for Workers' Interest for respondents.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to set aside the Decision[1]

[1] Penned by Associate Justice Noel G. Tijam, with Associate Justices Jose L. Sabio, Jr. and Edgardo P. Cruz, concurring; *rollo*, pp. 12-26.

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and the Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 67766.

The antecedents are as follows:

Petitioner Park Hotel[3] is a corporation engaged in the hotel business. Petitioners Gregg Harbutt[4] (Harbutt) and Bill Percy[5] (Percy) are the General Manager and owner, respectively, of Park Hotel. Percy, Harbutt and Atty. Roberto Enriquez are also the officers and stockholders of Burgos Corporation (Burgos),[6] a sister company of Park Hotel.

Respondent Manolo Soriano (Soriano) was hired by Park Hotel in July 1990 as Maintenance Electrician, and then transferred to Burgos in 1992. Respondent Lester Gonzales (Gonzales) was employed by Burgos as Doorman, and later promoted as Supervisor. Respondent Yolanda Badilla (Badilla) was a bartender of J's Playhouse operated by Burgos.

In October of 1997, Soriano, Gonzales and Badilla[7] were dismissed from work for allegedly stealing company properties. As a result, respondents filed complaints for illegal dismissal, unfair labor practice, and payment of moral and exemplary damages and attorney's fees, before the Labor Arbiter (LA). In their complaints, respondents alleged that the real reason for their dismissal was that they were organizing a union for the company's employees.

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[2] *Id.* at 10.

[3] Represented in this case by Mr. William Victor Percy, per Secretary's Certificate dated February 2, 2006, *rollo*, p. 8.

[4] Whose complete name is Gregory Robert Harbutt.

[5] Whose complete name is William Victor Percy.

[6] Represented in this case by Mr. William Victor Percy, per Secretary's Certificate dated February 2, 2006, *rollo*, p. 8.

[7] Gonzales and Badilla were dismissed on October 2, 1997 and Soriano was dismissed on October 6, 1997.

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On the other hand, petitioners alleged that aside from the charge of theft, Soriano and Gonzales have violated various company rules and regulations[8] contained in several memoranda issued to them. After dismissing respondents, Burgos filed a case for qualified theft against Soriano and Gonzales before the Makati City Prosecutor's Office, but the case was dismissed for insufficiency of evidence.

In his Affidavit,[9] Soriano claimed that on October 4, 1997, he was barred from entering the company premises and that the following day, Harbutt shouted at him for having participated in the formation of a union. He was later dismissed from work. For his part, Gonzales averred that he was coerced to resign by Percy and Harbutt in the presence of their goons. Badilla[10] claimed that she was also forced by Percy and Harbutt to sign a resignation letter, but she refused to do so because she was innocent of the charges against her. She was nevertheless dismissed from service.

The three (3) respondents averred that they never received the memoranda containing their alleged violation of company rules and they argued that these memoranda were fabricated to give a semblance of cause to their termination. Soriano and Gonzales further claimed that the complaint filed against them was only an afterthought as the same was filed after petitioners

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[8] Soriano's alleged violations include: (1) dereliction of duties, (2) loitering during work time, (3) taking unscheduled day-off, (4) persistently absenting himself without leave, (5) arriving late and leaving early, and (6) leaving the work premises to buy something not in relation to his duties. With respect to Gonzales, his alleged infractions include: (1) drinking while on duty, (2) switching his day-off without the company's consent, (3) using the store house for immoral purposes, (4) having his time record punched in and out by others to cover his absences, and (5) general neglect of duties.

[9] CA *rollo*, pp. 69-70.

[10] Who allegedly: (1) misrepresented her time of arrival at work, (2) changed her day-off without the knowledge of her supervisors, and (3) stole the company's table cloth.

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learned that a complaint for illegal dismissal was already instituted against them.

On September 27, 1998, the LA rendered a Decision[11] finding that respondents were illegally dismissed because the alleged violations they were charged with were not reduced in writing and were not made known to them, thus, denying them due process. The LA found that respondents did not actually receive the memoranda allegedly issued by petitioners, and that the same were mere afterthought to conceal the illegal dismissal. The dispositive portion of the Decision reads:

> WHEREFORE, premises all considered, respondents (petitioners herein) are hereby ordered, jointly and severally:
>
> a. To reinstate within ten (10) days herein complainants to their former positions without loss of seniority rights with full backwages from actual dismissal to actual reinstatement;
>
> b. To declare the respondents (petitioners herein) guilty of unfair labor practice for terminating complainants due to their union activities, which is union-busting, and to pay a fine of Ten Thousand Pesos (₱10,000.00) pursuant to Article 288 of the Labor Code, as amended, payable to the Commission;
>
> c. To pay the amount of One Hundred Fifty Thousand [Pesos] (₱150,000.00) each to complainants by way of moral and exemplary damages, plus ten percent (10%) attorney's fees of the total award, chargeable to the respondents (petitioners herein).
>
> SO ORDERED.[12]

Unsatisfied with the LA's decision, petitioners appealed to the National Labor Relations Commission (NLRC). On August 31, 1999, the NLRC, First Division, rendered a Decision[13] remanding the case to the arbitration branch of origin for further

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[11] *Rollo*, pp. 110-119.

[12] *Id.* at 119.

[13] *Id.* at 138-142.

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proceedings.[14] On August 3, 2000, the LA rendered a new Decision, the dispositive portion of which reads as follows:

> WHEREFORE, premises all considered, respondents (petitioners herein) are hereby ORDERED, jointly and severally:
>
> a. to reinstate within ten (10) days herein three (3) complainants to their former positions without loss of seniority rights with full backwages from actual dismissal to actual reinstatement; to pay complainant Soriano his unpaid wages for seven (7) days in the amount of ₱1,680.00, his five (5) days incentive leave pay in the amount of ₱1,200,00 (₱240x5), unpaid proportionate 13th month pay in the amount of ₱4,992.00, plus other benefits;
>
> b. to cease and desist from committing unfair labor practice against the complainant and to pay a fine of Ten Thousand (₱10,000.00) Pesos pursuant to Art. 288 of the Labor Code, payable to the Commission; and
>
> c. to pay the amount of ₱150,000.00[15] each to the complainants by way of moral and exemplary damages, plus ten percent (10%) attorney's fees of the total award, chargeable to the respondents (petitioners herein).
>
> SO ORDERED.[16]

Discontented with the LA's decision, petitioners again appealed to the NLRC. On February 1, 2001, the NLRC affirmed the LA's decision and dismissed the appeal for lack of merit.[17]

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[14] The NLRC ruled that there was no substantial evidence to support either the charge of theft against respondents or the LA's conclusion that petitioners are guilty of union-busting. The NLRC likewise required additional facts to be pleaded to justify the grant of moral and exemplary damages being claimed by respondents.

[15] Broken down as follows: ₱100,000.00 as moral damages and ₱50,000.00 as exemplary damages. (*Rollo*, p. 173.)

[16] CA *rollo*, pp. 161-174.

[17] *Rollo*, pp. 233-234.

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Petitioners filed a motion for reconsideration, but it was denied for lack of merit.[18]

Undaunted, Park Hotel, Percy, and Harbutt filed a petition for *certiorari* with the CA ascribing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC in holding Park Hotel, Harbutt and Percy jointly and severally liable to respondents.

On January 24, 2005, the CA rendered a Decision[19] dismissing the petition and affirming with modification the ruling of the NLRC, the dispositive portion of which states:

> WHEREFORE, the instant Petition is DISMISSED for lack of merit and the assailed Decision dated 1 February 2001 of the 1st Division of the NLRC is hereby AFFIRMED with MODIFICATION in that the award of damages is reduced to ₱100,000.00 in favor of each of the Private Respondents, including 10% of the total amount of wages to be received as attorney's fees.
>
> SO ORDERED.[20]

The CA ruled that petitioners failed to observe the mandatory requirements provided by law in the conduct of terminating respondents, *i.e.*, lack of due process and just cause. The CA also found that petitioners' primary objective in terminating respondents' employment was to suppress their right to self-organization.

Petitioners filed a Motion for Reconsideration, but was denied in the Resolution[21] dated January 13, 2006.

Hence, the instant petition assigning the following errors:

I

THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AND ACTED WITHOUT AUTHORITY IN FINDING

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[18] Resolution dated August 15, 2001, *id.* at 262.

[19] *Rollo*, pp. 12-26.

[20] *Id.* at 26.

[21] *Id.* at 10.

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PARK HOTEL, BILL PERCY AND [GREGORY] HARBUTT, TOGETHER WITH BURGOS CORPORATION AND ITS PRESIDENT, AS ONE AND THE SAME ENTITY.

II

THE HONORABLE COURT OF APPEALS COMMITTED ERROR WHEN IT OVERLOOKED MATERIAL CIRCUMSTANCES AND FACTS, WHICH IF TAKEN INTO ACCOUNT, WOULD ALTER THE RESULTS OF ITS DECISION, PARTICULARLY IN FINDING [THAT] THE SAID ENTITIES WERE FORMED IN PURSUANCE TO THE COMMISSION OF FRAUD.

III

THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AND ACTED WITHOUT AUTHORITY IN FINDING PARK HOTEL, BILL PERCY AND GREGORY HARBUTT, TOGETHER WITH BURGOS CORPORATION AND ITS PRESIDENT, GUILTY OF UNFAIR LABOR PRACTICE.[22]

For brevity and clarity, the issues in this case may be re-stated and simplified as follows: (1) whether the respondents were validly dismissed; and (2) if petitioners are liable, whether Park Hotel, Percy and Harbutt are jointly and severally liable with Burgos for the dismissal of respondents.

Park Hotel argued that it is not liable on the ground that respondents were not its employees. On the other hand, Percy and Harbutt argued that the CA committed error in piercing the corporate veil between them and respondent corporations, thereby making them all solidarily liable to the respondents.

To begin with, it is significant to note that the LA, the NLRC and the CA were unanimous in their findings that respondents were dismissed without just cause and due process. They were also in agreement that unfair labor practice was committed against respondents. We reiterate the rule that findings of fact of the Court of Appeals, particularly where it is in absolute agreement with that of the NLRC and the LA, as in this case,

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[22] *Id.* at 37.

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are accorded not only respect but even finality and are deemed binding upon this Court so long as they are supported by substantial evidence.[23] The function of this Court is limited to the review of the appellate court's alleged errors of law. It is not required to weigh all over again the factual evidence already considered in the proceedings below.[24] In any event, we found no compelling reason to disturb the unanimous findings and conclusions of the CA, the NLRC and the LA with respect to the finding of illegal dismissal.

The requisites for a valid dismissal are: (a) the employee must be afforded due process, *i.e.*, he must be given an opportunity to be heard and defend himself; and (b) the dismissal must be for a valid cause as provided in Article 282 of the Labor Code, or for any of the authorized causes under Articles 283 and 284 of the same Code.[25] In the case before us, both elements are completely lacking. Respondents were dismissed without any just or authorized cause and without being given the opportunity to be heard and defend themselves. The law mandates that the burden of proving the validity of the termination of employment rests with the employer. Failure to discharge this evidentiary burden would necessarily mean that the dismissal was not justified and, therefore, illegal. Unsubstantiated suspicions, accusations, and conclusions of employers do not provide for legal justification for dismissing employees. In case of doubt, such cases should be resolved in favor of labor, pursuant to the social justice policy of labor laws and the Constitution.[26]

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[23] *Hantex Trading Co., Inc. v. Court of Appeals,* 438 Phil. 737, 743 (2002).

[24] *Quezon City Government v. Dacara,* 460 SCRA 243, 251 (2005).

[25] *Estacio v. Pampanga I Electric Cooperative, Inc*., G.R. No. 183196, August 19, 2009, 596 SCRA 542, 563-564.

[26] *Times Transportation Co., Inc. v. National Labor Relations Commission,* G.R. Nos. 148500-01, November 29, 2006, 508 SCRA 435, 443.

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Anent the unfair labor practice, Article 248 (a) of the Labor Code[27] considers it an unfair labor practice when an employer interferes, restrains or coerces employees in the exercise of their right to self-organization or the right to form an association.[28] In order to show that the employer committed unfair labor practice under the Labor Code, substantial evidence is required to support the claim. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[29] In the case at bar, respondents were indeed unceremoniously dismissed from work by reason of their intent to form and organize a union. As found by the LA:

> The immediate impulse of respondents (petitioners herein), as in the case at bar, was to terminate the organizers. Respondents (petitioners herein) have to cripple the union at sight, to frustrate attempts of employees from joining or supporting it, preventing them, at all cost and to frustrate the employees' bid to exercise their right to self-organization. x x x[30]

Having settled that respondents were illegally dismissed and were victims of unfair labor practice, the question that comes to fore is who are liable for the illegal dismissal and unfair labor practice?

A perusal of the records would show that Burgos is the respondents' employer at the time they were dismissed. Notwithstanding, the CA held that despite Soriano's transfer to Burgos in 1992, he was still an employee of Park Hotel at the time of his dismissal in 1997. The Court, however, rules that the CA's finding is clearly contrary to the evidence presented.

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[27] Article 248. UNFAIR LABOR PRACTICE – It shall be unlawful for an employer to commit any of the following unfair labor practices: (a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization; x x x.

[28] *Standard Chartered Bank Employees Union v. Hon. Confesor*, 476 Phil. 346, 367 (2004).

[29] *Id*.

[30] LA decision dated August 3, 2000, CA *rollo*, p. 171.

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From the documents presented by Soriano, it appears that Soriano's payroll passbook[31] contained withdrawals and deposits, made in 1991, and that Soriano's payslip[32] issued by Park Hotel covered the period from September to October 1990. Hence, these documents merely show that Soriano was employed by Park Hotel before he was transferred to Burgos in 1992. Nowhere in these documents does it state that Soriano continued to work for Park Hotel in 1992 and onwards. Clearly therefore, Park Hotel cannot be made liable for illegal dismissal as it no longer had Soriano in its employ at the time he was dismissed from work.

As to whether Park Hotel may be held solidarily liable with Burgos, the Court rules that before a corporation can be held accountable for the corporate liabilities of another, the veil of corporate fiction must first be pierced.[33] Thus, before Park Hotel can be held answerable for the obligations of Burgos to its employees, it must be sufficiently established that the two companies are actually a single corporate entity, such that the liability of one is the liability of the other.[34]

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.[35] 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

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[31] With an indication that the addressee is Park Hotel. (CA *rollo*, p. 225.)

[32] CA *rollo*, p. 226.

[33] *Siemens Philippines, Inc. v. Domingo*, G.R. No. 150488, July 28, 2008, 560 SCRA 86, 99.

[34] *Id*.

[35] *McLeod v. National Labor Relations Commission*, G.R. No. 146667, January 23, 2007, 512 SCRA 222, 245.

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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 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.[36] To disregard the separate juridical personality of a corporation, the wrongdoing must be established clearly and convincingly. It cannot be presumed.[37]

In the case at bar, respondents utterly failed to prove by competent evidence that Park Hotel was a mere instrumentality, agency, conduit or adjunct of Burgos, or that its separate corporate veil had been used to cover any fraud or illegality committed by Burgos against the respondents. Accordingly, Park Hotel and Burgos cannot be considered as one and the same entity, and Park Hotel cannot be held solidary liable with Burgos.

Nonetheless, although the corporate veil between Park Hotel and Burgos cannot be pierced, it does not necessarily mean that Percy and Harbutt are exempt from liability towards respondents. Verily, a corporation, being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, while acting as corporate agents, are not their personal liability but the direct accountability of the corporation they represent.[38] However, corporate officers may be deemed solidarily liable with the corporation for the termination of employees if they acted with malice or bad faith.[39] In the present case, the lower tribunals unanimously found that Percy and Harbutt, in their capacity as corporate officers of Burgos, acted maliciously in terminating the services of respondents without any valid ground and in order to suppress their right to self-organization.

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[36] *Id.* at 246.

[37] *Lim v. Court of Appeals,* 380 Phil. 60, 77 (2000).

[38] *Siemens Philippines, Inc. v. Domingo, supra* note 33 at 100.

[39] *Id*.

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Section 31[40] of the Corporation Code makes a director personally liable for corporate debts if he willfully and knowingly votes for or assents to patently unlawful acts of the corporation. It also makes a director personally liable if he is guilty of gross negligence or bad faith in directing the affairs of the corporation. Thus, Percy and Harbutt, having acted in bad faith in directing the affairs of Burgos, are jointly and severally liable with the latter for respondents' dismissal.

In cases when an employee is unjustly dismissed from work, he shall be entitled to reinstatement without loss of seniority rights and other privileges, inclusive of allowances, and other benefits or their monetary equivalent from the time the compensation was withheld up to the time of actual reinstatement.[41]

In the case at bar, the Court finds that it would be best to award separation pay instead of reinstatement, in view of the passage of a long period of time since respondents' dismissal. In *St. Luke's Medical Center, Inc. v. Notario*,[42] the Court held that if reinstatement proves impracticable, and hardly in the best interest of the parties, due to the lapse of time since the employee's dismissal, the latter should be awarded separation pay in lieu of reinstatement.

In view of the foregoing, respondents are entitled to the payment of full backwages, inclusive of allowances, and other benefits

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

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[41] *Aliviado v. Procter & Gamble Philippines, Inc.*, G.R. No. 160506, March 9, 2010, 614 SCRA 563, 588.

[42] G.R. No. 152166, October 20, 2010, 634 SCRA 67, 80-81.

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or their monetary equivalent, and separation pay in lieu of reinstatement equivalent to one month salary for every year of service.[43] The awards of separation pay and backwages are not mutually exclusive, and both may be given to respondents.[44]

The awards of moral and exemplary damages[45] in favor of respondents are also in order. Moral damages may be recovered where the dismissal of the employee was tainted by bad faith or fraud, or where it constituted an act oppressive to labor, and done in a manner contrary to morals, good customs or public policy, while exemplary damages are recoverable only if the dismissal was done in a wanton, oppressive, or malevolent manner.[46] The grant of attorney's fees is likewise proper. Attorney's fees may likewise be awarded to respondents who were illegally dismissed in bad faith and were compelled to litigate or incur expenses to protect their rights by reason of the oppressive acts[47] of petitioners. The unjustified act of petitioners had obviously compelled respondents to institute an action primarily to protect their rights and interests which warrants the granting of the award.

WHEREFORE, the Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 67766, dated January 24, 2005 and January 13, 2006, respectively, are **AFFIRMED** with the

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[43] *Eastern Telecommunications Phils., Inc. v. Diamse*, G.R. No. 169299, June 16, 2006, 491 SCRA 239, 251.

[44] *Century Canning Corporation v. Ramil*, G.R. No. 171630, August 9, 2010, 627 SCRA 192, 206.

[45] The CA awarded the amount of PhP100,000.00 as moral and exemplary damages, in favor of each of the respondents, which is to be broken down as follows: PhP50,000.00 as moral damages and PhP50,000.00 as exemplary damages.

[46] *Timoteo H. Sarona v. National Labor Relations Commission, Royale Security Agency (Formerly Sceptre Security Agency) and Cesar S. Tan*, G.R. No. 185280, January 18, 2012.

[47] *Aliviado v. Procter & Gamble Philippines, Inc., supra* note 41.

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following **MODIFICATIONS**: (a) Petitioner Park Hotel is exonerated from any liability to respondents; and (b) The award of reinstatement is deleted, and in lieu thereof, respondents are awarded separation pay.

The case is **REMANDED** to the Labor Arbiter for the purpose of computing respondents' full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the date of their dismissal up to the finality of the decision, and separation pay in lieu of reinstatement equivalent to one month salary for every year of service, computed from the time of their engagement up to the finality of this Decision.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Perez,[*] and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 174982. September 10, 2012]

JOSE VICENTE ATILANO II, HEIRS OF CARLOS V. TAN represented by Conrad K. Tan, Carlos K. Tan, Camilo Karl K. Tan, Carisa Rosenda T. Go, NELIDA F. ATILANO and ISIDRA K. TAN, *petitioners, vs.* **HON. JUDGE TIBING A. ASAALI, Presiding Judge of the Regional Trial Court of Zamboanga City and ATLANTIC MERCHANDISING, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PAYMENT OF APPELLATE COURT DOCKET FEES; WHILE IT IS AN

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[*] Designated Acting Member, per Special Order No. 1299 dated August 28, 2012.