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SO ORDERED.

Bellosillo, Vitug, and *Kapunan, JJ.,* concur.

Hermosisima, Jr., J., on leave.

FIRST DIVISION

[G.R. No. 117473. April 15, 1997]

REAHS CORPORATION, SEVERO CASTULO, ROMEO PASCUA, and DANIEL VALENZUELA, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION, BONIFACIO RED, VICTORIA PADILLA, MA. SUSAN R. CALWIT, SONIA DELA CRUZ, SUSAN DE LA CRUZ, EDNA WAHINGON, NANCY B. CENITA and BENEDICTO A. TULABING,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; GRANT OF SEPARATION PAY AS AN INCIDENT THEREOF; EXCEPTIONS; CASE AT BENCH.**— The grant of separation pay, as an incidence of termination of employment under Article 283, is a statutory obligation on the part of the employer and a demandable right on the part of the employee, except only where the closure or cessation of operations was due to serious business losses or financial reverses and there is sufficient proof of this fact or condition. In the absence of such proof of serious business losses or financial reverses, the employer closing his business is obligated to pay his employees and workers their separation pay. The rule, therefore, is that in all cases of business closure or cessation of operation or undertaking of the employer, the affected employee is entitled to separation pay. This is consistent with the state policy of

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treating labor as a primary social economic force, affording full protection to its rights as well as its welfare. The exception is when the closure of business or cessation of operations is due to serious business losses or financial reverses; duly proved, in which case, the right of affected employees to separation pay is lost for obvious reasons. In the case at bar, the corporation's alleged serious business losses and financial reverses were not amply shown or proved.

2. **COMMERCIAL LAW; CORPORATION CODE; DOCTRINE OF SEPARATE PERSONALITY OF A CORPORATION; EXCEPTIONS.**— As a general rule established by legal fiction, the corporation has a personality separate and distinct from its officers, stockholders and members. Hence, officers of a corporation are not personally liable for their official acts unless it is shown that they have exceeded their authority. This fictional veil, however, can be pierced by the very same law which created it when "the notion of the legal entity is used as a means to perpetrate fraud, an illegal act, as a vehicle for the evasion of an existing obligation, and to confuse legitimate issues."

3. **ID.; ID.; ID.; ID.; OFFICERS, WHEN SOLIDARILY LIABLE WITH CORPORATION.**— x x x At the very least, as what we held in *Pabalan v. NLRC*, to justify solidary liability, "there must be an allegation or showing that the officers of the corporation deliberately or maliciously designed to evade the financial obligation of the corporation to its employees," or a showing that the officers indiscriminately stopped its business to perpetrate an illegal act, *as a vehicle for the evasion of existing obligations*, in circumvention of statutes, and to confuse legitimate issues.

4. **ID.; ID.; ID.; ID.; ID.; CASE AT BENCH.**— In the case at bar, the thrust of petitioners' arguments was aimed at confining liability solely to the corporation, as if the entity were an automaton designed to perform functions at the push of a button. The issue, however, is not limited to payment of separation pay under Article 283 but also payment of labor standard benefits such as underpayment of wages, holiday pay and 13th month pay to two of the private respondents. While there is no sufficient evidence to conclude that petitioners have indiscriminately stopped the entity's business, at the same time, petitioners have opted to abstain from presenting sufficient

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evidence to establish the serious and adverse financial condition of the company. x x x This uncaring attitude on the part of the officers of Reah's gives credence to the supposition that they simply ignored the side of the workers who, more or less, were only demanding what is due them in accordance with law. In fine, these officers were conscious that the corporation was violating labor standard provisions but they did not act to correct these violations; instead, they abruptly closed business. Neither did they offer separation pay to the employees as they conveniently resorted to a lame excuse that they suffered serious business losses, knowing fully well that they had no substantial proof in their hands to prove such losses. Under these circumstances, we cannot allow labor to go home with an empty victory. Neither would it be oppressive to capital to hold petitioners Castulo, Pascua and Valenzuela solidarily liable with Reah's Corporation because the law presumes that they have acted in the latter's interest when they obstinately refused to grant the labor standard benefits and separation pay due private respondent-employees.

5. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; AWARD OF 10% ATTORNEY'S FEES WITHOUT FACTUAL AND LEGAL BASIS CONSTITUTES GRAVE ABUSE OF DISCRETION; CASE AT BENCH.**— The last issue raised by petitioners is whether there is legal basis for the payment of 10% attorney's fees out of the total amount awarded to private respondents Red and Tulabing. The Court finds this portion of the assailed decision to have been rendered with grave abuse of discretion as both the labor arbiter and the NLRC failed to make an express finding of fact and cite the applicable law to justify the grant of such award. Under Article 111 of the Labor Code, 10% attorneys fees may be assessed only in cases where there is an unlawful withholding of wages, or under Article 222 — those arising from collective bargaining negotiations that may be charged against union funds in an amount to be agreed upon by the parties. None of these situations exists in the case at bar.

APPEARANCES OF COUNSEL

Antonio C. Amor for petitioners.
Roberto B. Awid for private respondents.

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DECISION

PADILLA, *J.*:*

This is a petition for *certiorari* under Rule 65 of the Rules of Court to annul and set aside the decision dated 29 April 1994 rendered by the National Labor Relations Commission (NLRC) in NLRC Case No. 005024-93 entitled "*Bonifacio Red, et al., v. Reah's Corporation, et. al.*," which affirmed the decision of the Labor arbiter holding individual petitioners jointly and severally liable with petitioner Reah's Corporation to pay private respondents' claims for underpayment of wages, holiday pay, 13th month pay and separation pay.

The facts, as culled by the labor arbiter from the position papers of both parties, are as follows:

"Complainant Bonifacio Red alleges that he started working as a supervisor at the health and sauna parlor of respondents from September 5, 1977 to November 6, 1990, with a salary of P50.00, that the said establishment was closed by respondents on November 6, 1990, without any notice and without paying his wages, separation pay and other benefits under the law; and that he works a minimum of twelve (12) hours a day without being paid overtime.

Complainant Benedicto Tulabing alleges that he started on December 16, 1986 up to November 6, 1990 in the same establishment with a salary of P26.00 a day; that he works thirteen (13) hours a day without payment of overtime pay.

Complainant Nancy Cenita and Susan Calwit alleges [sic] that they were hired as waitresses on May 20, 1990 up to November 6, 1990 and paid on commission basis at P0.25 per bottle of beer sold to or consumed by the customers and that they work ten (10) hours a day without being paid overtime.

Complainants Edna Wahingon, Susan dela Cruz, Sonia dela Cruz and Victoria Padilla claims [sic] working as attendants and were hired on different dates until November 6, 1990. All were paid on commission basis at the rate of twenty (20%) percent of the service fee paid by the customers, P90.00 and P110.00 respectively, for ordinary and VIP service; that they render(ed) eleven (11) hours of

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* Chairman, First Division.

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work a day without being paid overtime; and that the closure of the health parlor was illegal as they were not notified.

On the other hand, respondents allege that sometime in 1986, a certain Ms. Soledad Domingo, the sole proprietress and operator of Rainbow Sauna located at 316 Araneta Avenue, Quezon City, offered to sell her business to respondent Reah's Corporation. After the sale, all the assets of Ms. Domingo were turned over to respondent Reah's, which put a sing-along coffee shop and massage clinic; that complainant Red started his employment on the first week of December 1988 as a roomboy at P50.00/day and was given living quarters inside the premises as he requested; that sometime in March 1989, complainant Red asked permission to go to Bicol for a period of ten (10) days, which was granted, and was given an advance money of P1,200.00 to bring some girls from the province to work as attendants at the respondent's massage clinic; that it was only on January 1, 1990 that complainant Red returned and was re-hired under the same terms and conditions of his previous employment with the understanding that he will have to refund the P1,200.00 cash advance given to him; that due to poor business, increase in the rental cost and the failure of Meralco to reconnect the electrical services in the establishment, it suffered losses leading to its closure."[1]

On 6 May 1993, the labor arbiter rendered judgment dismissing private respondents' complaints for unfair labor practice and illegal dismissal but upholding the claims for separation pay, underpayment of wages, holiday pay and 13*th* month pay. All eight (8) private respondents were awarded separation pay. However, only Bonifacio Red and Benedicto Tulabing were declared entitled to the claimed labor standard benefits as the rest were found to have been employed on commission basis. The labor arbiter further awarded attorney's fees to private respondents Bonifacio Red and Benedicto Tulabing amounting to ten (10%) percent of their adjudged money claims.

Petitioners appealed the labor arbiter's decision to the NLRC, contending mainly that Article 283 of the Labor Code, "exempts establishment(s) from payment of termination pay when the closure of business is due to serious business losses or financial reverses"; that petitioners Castulo, Pascua and Valenzuela, while

[1] *Rollo*, pp. 40-42.

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admittedly the acting chairman of the board, board member and accountant — acting manager respectively of Reah's Corporation, cannot be held jointly and severally liable with Reah's "unless there is evidence to show that the cause of the closure of the business was due to the criminal negligence of the [respondent] officers."

The NLRC dismissed the appeal based on the following dispositions:

"Anent the issue on separation pay, Article 283 of the Labor Code provides that '[T]he employer may x x x terminate the employment of any employee due to x x x the closing or cessation of operation of the establishment or undertaking x x x 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. x x x.' This, respondents failed to comply. Neither did respondents present any evidence to prove that Reah's closure was really due to SERIOUS business losses or financial reverses. We only have respondents' mere say-so on the matter.

The Supreme Court held in *Basilio Balasbas vs. NLRC, et. al.* (G.R. No. 85286, August 24, 1992, 3rd Division, Romero, *J.*) that —

> 'Under Article 283 of the Labor Code, the closure of a business establishment or reduction of personnel is a ground for the termination of the services of any employee unless the closing or retrenching is for the purpose of circumventing the provision of the law. But while business reverses can be a just cause for terminating employees, these must be sufficiently proved by the employer. (Indino *vs.* NLRC, G.R. No. 80352, September 29, 1989, 178 SCRA 168).'

Thus, we cannot but agree that complainants are entitled to the payment of separation pay."[2]

Petitioners filed a motion for reconsideration but this was denied by the NLRC on 30 August 1994. In the present petition, petitioners raise three (3) issues which, for brevity and clarity, may be simplified as follows:

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[2] *Rollo*, pp. 35-36.

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I.

WHETHER OR NOT PETITIONERS-OFFICERS CAN BE HELD JOINTLY AND SEVERALLY LIABLE WITH THE CORPORATION IN THE PAYMENT OF SEPARATION PAY TO PRIVATE RESPONDENTS UNDER ARTICLE 283 OF THE LABOR CODE.

II.

WHETHER OR NOT THE OFFICERS OF REAH'S CORPORATION CAN BE HELD JOINTLY AND SEVERALLY LIABLE WITH THE CORPORATION IN PAYMENT OF THE MONETARY CLAIMS AWARDED PRIVATE RESPONDENTS IN THE ABSENCE OF ANY FINDING OF UNFAIR LABOR PRACTICES OR ILLEGAL DISMISSAL.

III.

WHETHER OR NOT THERE IS LEGAL BASIS FOR THE NLRC TO AFFIRM THE AWARD OF 10% ATTORNEY'S FEES TO PRIVATE RESPONDENTS.

Petitioners argue that since the charges of illegal dismissal and unfair labor practices were dismissed by the labor arbiter, they cannot be held solidarily liable with the corporation for the payment of separation pay and labor standard benefits to private respondents, when they used their business judgment to close the establishment because of serious business losses. They contend that even if they were the top corporate officers of Reah's corporation at the time they closed the business, the corporation has a personality that is separate and distinct from its officers and stockholders. Since there was no finding that they violated Sec. 31 of the Corporation Code[3] they cannot be

[3] "Directors or trustees who wilfully and knowingly vote for or assent to the 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 shall be liable *jointly and severally* for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons." (Italics supplied)

"Their duty as such shall be liable *jointly and severally* for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons." (Italics supplied)

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held solidarily liable with the corporation. Petitioners further maintain that the corporation also cannot be held liable because Article 283 of the Labor Code "orders payment of separation pay only when the closure of the business is due to causes other than serious business losses or financial reverses."

Petitioners have obviously resorted to a misreading of the last sentence of Article 283 which provides that —

"x x x 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 (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year."

It is not the function of the law nor its intent to supplant the prerogative of management in running its business, such as, to compel the latter to operate at a continuing loss. Thus, Article 283 provides as an authorized cause in the termination of employment the "closing or cessation of operation of the establishment or undertaking." However, the burden of proving that the termination was for a valid or authorized cause shall rest on the employer.[4] If the business closure is due to serious losses or financial reverses, the employer must present sufficient proof of its actual or imminent losses; it must show proof that the cessation of or withdrawal from business operations was *bona fide* in character.[5]

The grant of separation pay, as an incidence of termination of employment under Article 283, is a statutory obligation on the part of the employer and a demandable right on the part of the employee, except only where the closure or cessation of operations was due to serious business losses or financial reverses and there is sufficient proof of this fact or condition. In the absence of such proof of serious business losses or financial

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[4] Article 277, Labor Code.

[5] *Catalista v. NLRC*, G.R. No. 102422, August 3, 1995. (247 SCRA 46), *Maya Farms Employees' Organization v. NLRC*, G.R. 106256, December 28, 1994 (239 SCRA 508).

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reverses, the employer closing his business is obligated to pay his employees and workers their separation pay.

The rule, therefore, is that in all cases of business closure or cessation of operation or undertaking of the employer, the affected employee is entitled to separation pay. This is consistent with the state policy of treating labor as a primary social economic force, affording full protection to its rights as well as its welfare.[6] The exception is when the closure of business or cessation of operations is due to serious business losses or financial reverses; duly proved, in which case, the right of affected employees to separation pay is lost for obvious reasons. In the case at bar, the corporation's alleged serious business losses and financial reverses were not amply shown or proved.

We now proceed to rule on the corollary issue of whether or not individual petitioners Castulo, Pascua and Valenzuela should be held liable *in solidum* with the corporation (REAH's) in the payment to private respondents of separation pay and labor standard benefits.

As a general rule established by legal fiction, the corporation has a personality separate and distinct from its officers, stockholders and members. Hence, officers of a corporation are not personally liable for their official acts unless it is shown that they have exceeded their authority. This fictional veil, however, can be pierced by the very same law which created it when "the notion of the legal entity is used as a means to perpetrate fraud, an illegal act, as a vehicle for the evasion of an existing obligation, and to confuse legitimate issues." Under the Labor Code, for instance, when a corporation violates a provision declared to be penal in nature, the penalty shall be imposed upon the guilty officer or officers of the corporation.[7]

The Solicitor General, in behalf of private respondents, argues that the doctrine laid down in the case of *A.C. Ransom Labor Union — CCLU v. NLRC*[8] should be applied to the case at bar.

[6] See Article II, Sec. 18, 1987 Constitution; Article 3, Labor Code.

[7] Articles 288, 289, Labor Code.

[8] L-69494, June 10, 1986 (142 SCRA 269).

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In that case, a judgment against a corporation (A.C. Ransom) to reinstate its dismissed employees with back wages was declared to be a continuing solidary liability of the company president and all who may have thereafter succeeded to said office after the records failed to identify the officer or agents directly responsible for failure to pay the back wages of its employees. The Court noted Ransom's subterfuge in organizing another family corporation while the case was on litigation with the intent to phase out the existing corporation in case of an adverse decision, as what actually happened when it ceased operations a few months after the labor arbiter ruled in favor of Ransom's employees.

The basis, said the Court, is found in Article 212(c) of the Labor Code which provides that "an employer includes any person acting in the interest of an employer, directly or indirectly." "Since Ransom is an artificial person, it must have an officer who can be presumed to be the employer, x x x The corporation only in the technical sense is the employer."

This ruling was eventually applied by the Court in the following cases: *Maglutac v. NLRC*[9] an illegal dismissal case, where the most ranking officer of Commart, petitioner therein, was held solidarily liable with the corporation which thereafter became insolvent and suspended operations; *Chua v. NLRC*,[10] also an illegal dismissal case, where the vice-president of a corporation was held solidarily liable with the corporation for the payment of the unpaid salaries of its president; and in *Gudez v. NLRC*,[11] where the president and treasurer were held solidarily liable with the corporation which had ceased operations but failed to pay the wage and money claims of its employees.

These cases, however, should be construed still as exceptions to the doctrine of separate personality of a corporation which should remain as the guiding rule in determining corporate liability to its employees. At the very least, as what we held

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[9] G.R. No. 78345, September 21, 1990 (189 SCRA 767).

[10] G.R. No. 81450, February 15, 1995.

[11] G.R. No. 83023, March 23, 1990 (183 SCRA 845).

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in *Pabalan v. NLRC*,[12] to justify solidary liability, "there must be an allegation or showing that the officers of the corporation deliberately or maliciously designed to evade the financial obligation of the corporation to its employees," or a showing that the officers indiscriminately stopped its business to perpetrate an illegal act, *as a vehicle for the evasion of existing obligations*, in circumvention of statutes, and to confuse legitimate issues.

In the case at bar, the thrust of petitioners' arguments was aimed at confining liability solely to the corporation, as if the entity were an automaton designed to perform functions at the push of a button. The issue, however, is not limited to payment of separation pay under Article 283 but also payment of labor standard benefits such as underpayment of wages, holiday pay and 13th month pay to two of the private respondents. While there is no sufficient evidence to conclude that petitioners have indiscriminately stopped the entity's business, at the same time, petitioners have opted to abstain from presenting sufficient evidence to establish the serious and adverse financial condition of the company.

As the NLRC aptly stated:

"Neither did respondents (petitioners) present any evidence to prove that Reah's closure was really due to SERIOUS business losses or financial reverses. We only have respondents mere say-so on the matter."[13]

This uncaring attitude on the part of the officers of Reah's gives credence to the supposition that they simply ignored the side of the workers who, more or less, were only demanding what is due them in accordance with law. In fine, these officers were conscious that the corporation was violating labor standard provisions but they did not act to correct these violations; instead, they abruptly closed business. Neither did they offer separation pay to the employees as they conveniently resorted to a lame excuse that they suffered serious business losses, knowing fully

[12] G.R. No. 89879, April 20, 1990 (184 SCRA 495).

[13] NLRC Decision, p. 7; *Rollo*, p. 35.

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well that they had no substantial proof in their hands to prove such losses.

The findings of the NLRC did not indicate whether or not Reah's Corporation has continued its personality after it had stopped operations when it closed its sing-along, coffee shop, and massage clinic in November 1990. But in its petition, petitioners aver, among others, that the "*company totally folded* for lack of patrons, (disconnection of) light and discontinuance of the leased premises [sic] for failure to pay the increased monthly rentals from P8,000 to P20,000."[14] Under the Rules of Evidence, petitioners are bound by the allegations contained in their pleading. Since petitioners themselves have admitted that they have dissolved the corporation *de facto*, the Court presumes that Reah's Corporation had become insolvent and therefore would be unable to satisfy the judgment in favor of its employees. Under these circumstances, we cannot allow labor to go home with an empty victory. Neither would it be oppressive to capital to hold petitioners Castulo, Pascua and Valenzuela solidarily liable with Reah's Corporation because the law presumes that they have acted in the latter's interest when they obstinately refused to grant the labor standard benefits and separation pay due private respondent-employees.

The last issue raised by petitioners is whether there is legal basis for the payment of 10% attorney's fees out of the total amount awarded to private respondents Red and Tulabing. The Court finds this portion of the assailed decision to have been rendered with grave abuse of discretion as both the labor arbiter and the NLRC failed to make an express finding of fact and cite the applicable law to justify the grant of such award. Under Article 111 of the Labor Code, 10% attorneys fees may be assessed only in cases where there is an unlawful withholding of wages,[15] or under Article 222 — those arising from collective bargaining negotiations that may be charged against union funds in an amount to be agreed upon by the parties. None of these situations exists in the case at bar.

[14] *Rollo*, p. 12.

[15] Lantion *v.* NLRC, G.R. No. 82028, January 29, 1990 (181 SCRA 513).

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WHEREFORE, the decision of respondent National Labor Relations Commission is hereby AFFIRMED in so far as it holds petitioners Castulo, Pascua, and Valenzuela jointly and severally liable with Reah's Corporation to pay all private respondents separation pay and private respondents Red and Tulabing other monetary benefits but the award of ten percent (10%) attorneys fees is hereby DELETED for lack of factual and legal basis.

SO ORDERED.

Bellosillo, Vitug, and *Kapunan, JJ.*, concur.

Hermosisima, Jr., J., is on leave.

FIRST DIVISION

[G.R. No. 115879. April 16, 1997]

PURE BLUE INDUSTRIES, INC., *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION and EMPLOYEES OF PURE BLUE INDUSTRIES, INC.**, represented by **SABADO SANTOS**, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; FINDINGS OF FACT OF ADMINISTRATIVE AGENCIES; RULE; THE ISSUE OF WHETHER OR NOT AN EMPLOYEE HAS ABANDONED HIS JOB IS ESSENTIALLY A FACTUAL ISSUE; CASE AT BAR.**— The real issue for our determination is whether or not private respondents abandoned their employment as alleged by petitioner. It is elementary that a special civil action for *certiorari* is limited to correcting errors of jurisdiction or grave abuse of discretion. Accordingly, borne out of this principle, is the time-tested rule that findings of facts of administrative agencies (in this case the NLRC), when supported by substantial evidence, are final and binding upon this Court.