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SECOND DIVISION

[G.R. No. 225544. December 4, 2017]

ROGEL N. ZARAGOZA, *petitioner, vs.* **KATHERINE L. TAN and EMPERADOR DISTILLERS, INC.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; THE WRIT OF EXECUTION MUST CONFORM TO THE JUDGMENT WHICH IS TO BE EXECUTED.—** The writ of execution must conform to the judgment which is to be executed, as it may not vary the terms of the judgment it seeks to enforce. Nor may it go beyond the terms of the judgment which is sought to be executed. Where the execution is not in harmony with the judgment which gives it life and exceeds it, it has *pro tanto* no validity. To maintain otherwise would be to ignore the constitutional provision against depriving a person of his property without due process of law.

2. **ID.; ID.; ID.; EXECUTION OF A JUDGMENT CAN ONLY BE ISSUED AGAINST ONE WHO IS A PARTY TO THE ACTION.—** It is basic that no man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by judgment rendered by the court. A decision of a court will not operate to divest the rights of a person who has not and has never been a party to a litigation, either as plaintiff or as defendant. Execution of a judgment can only be issued against one who is a party to the action, and not against one who, not being a party to the action, has not yet had his day in court. That execution may only be effected against the property of the judgment debtor, who must necessarily be a party to the case. Accordingly, the LA's Order against respondents who were not parties to the case is a deprivation of property without due process of law.

3. **COMMERCIAL LAW; CORPORATION LAW; DOCTRINE OF PIERCING THE VEIL OF CORPORATE FICTION; TO DISREGARD THE SEPARATE JURIDICAL PERSONALITY OF A CORPORATION, THE**

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WRONGDOING MUST BE ESTABLISHED CLEARLY AND CONVINCINGLY.— [I]t is an elementary and fundamental principle of corporation law that a corporation is an artificial being invested by law with a personality separate and distinct from its stockholders and from other corporations to which it may be connected. A corporation, as a juridical entity, may act only through its directors, officers and employees. Obligations incurred as a result of the acts of the directors and officers as the corporate agents are not their personal liability but the direct responsibility of the corporation they represent. 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 which 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. x x x [Thus], where one corporation sells or otherwise transfers all its assets to another corporation for value, the latter is not, by that fact alone, liable for the debts and liabilities of the transferor. x x x Also, the existence of interlocking directors, corporate officers and shareholders, which the LA considered, without more, is not enough justification to pierce the veil of corporate fiction in the absence of fraud or other public policy considerations.

4. **ID.; ID.; CORPORATE OFFICERS; REQUISITES TO HOLD A DIRECTOR OR OFFICER PERSONALLY LIABLE FOR CORPORATE OBLIGATIONS.—** [T]o 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.

APPEARANCES OF COUNSEL

Leandro M. Millano for petitioner.
Angara Abello Concepcion Regala & Cruz for respondents.

D E C I S I O N

PERALTA, *J.*:

Before us is a petition for review on *certiorari* seeking to annul and set aside the Decision[1] dated January 27, 2016 and the Resolution[2] dated May 26, 2016 of the Court of Appeals (*CA*) issued in CA-G.R. SP No. 135572.

The antecedent facts are as follows:

Petitioner Rogel N. Zaragoza was the Area Sales Manager of Consolidated Distillers of the Far East Incorporated (*Condis*) in the Bicol Region. He was dismissed on December 3, 2007. On February 18, 2008, he filed an illegal dismissal case with money claims against Condis, Winston Co and Dominador D. Hidalgo. On March 3, 2009, the Labor Arbiter (*LA*) issued his Decision[3] finding that petitioner was illegally dismissed, the dispositive portion of which reads:

> WHEREFORE, finding merit on the causes of action set forth by complainant ROGEL N. ZARAGOZA, judgment is hereby rendered declaring his termination or dismissal from employment by respondents CONSOLIDATED DISTILLERS OF THE FAR EAST, INC./ DOMINADOR D. HIDALGO, as illegal, thus:
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> > a. ordering respondents to reinstate complainant, which reinstatement is immediately executory, to his former position without loss of seniority rights and other privileges, and under the same terms and conditions prevailing prior to his dismissal, and by reason thereof, directing respondents to submit a report of compliance within ten (10) days from receipt of this decision;

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[1] Penned by Associate Justice Jhosep Y. Lopez, concurred in by Associate Justices Ramon R. Garcia and Leoncia R. Dimagiba, *rollo*, pp 55-71.

[2] *Id.* at 73-74.

[3] *Id.* at 166-174.

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b. ordering respondents to pay complainant, jointly and severally, full backwages, computed from the date of his unlawful dismissal up to the time of actual reinstatement, which as of the date of this decision amount to Php362,692.25;

c. ordering respondents, jointly and severally, to pay the total amount of Php36,043.69, representing complainant's monthly incentive; vacation/sick leave; 13th month pay; and operational expenses; and

d. ordering respondents, jointly and severally, to pay complainant moral and exemplary damages of Php 100,000.00; [and]

e. ordering respondents, jointly and severally, to pay complainant nominal damages of Php50,000.00 (please see attached computation of monetary award forming an integral part of this decision).

Other claims and charges are ordered DISMISSED finding no legal and tactual basis thereof.[4]

On May 11, 2009, Condis filed its Manifestation[5] by way of compliance with the LA alleging that petitioner can no longer be reinstated as his former sales position no longer existed and there was no equivalent position to which he could be reinstated pending appeal as the company was no longer engaged in the manufacturing, selling and marketing of Emperador Brandy and other liquor products; and that the Services Agreement which Condis entered with Emperador Distillers, Inc. (*EDI*), the company that bought the former, to market, sell and make logistic services was also terminated on June 1, 2008.

Condis and Hidalgo appealed the LA decision to the National Labor Relations Commission (*NLRC*). On April 13, 2010, the NLRC affirmed[6] with modification the LA decision by deleting the award of nominal damages and reducing to ₱50,000.00 the award of moral and exemplary damages. Their motion for

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[4] *Id.* at 173-174.

[5] *Id.* at 331-333.

[6] *Id.* at 176-186.

reconsideration was denied in a Resolution dated July 30, 2010. They filed a petition for *certiorari* with the CA which issued its Decision[7] dated November 22, 2010, partly granting the petition. The CA affirmed with modification the NLRC Decision and Resolution, and absolved Hidalgo of liability and deleted the award of moral and exemplary damages. The CA denied the motion for reconsideration in a Resolution[8] dated March 7, 2011.

Condis filed a petition for review with the Court, which denied it in a Resolution[9] dated June 22, 2011. The motion for reconsideration was denied in a Resolution[10] dated January 18, 2012. The Resolution became final and executory on March 30, 2012 and an entry of judgment was made.

Meanwhile, petitioner had already received a total amount of ₱454,986.98.[11] He then filed a motion[12] for issuance of alias writ of execution with notice of appearance, arguing that he is likewise entitled to accrued salaries by reason of the order of reinstatement, which as of December 3, 2012 amounted to ₱2,294,897.47. He prayed that respondent Tan, as President of Condis, should be held personally liable for the awards; and that respondent EDI should also be held jointly and solidarily liable with Condis for the judgment award as the transfer of manufacturing business of the latter to the former was done in bad faith in order to evade payment/satisfaction of their liabilities in the labor case, applying the doctrine of piercing the veil of corporate fiction.

On August 3, 2013, the LA issued a Resolution,[13] the decretal portion of which reads:

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[7] *Id.* at 188-A-210; Docketed as CA-G.R. SP No. 115824.

[8] *Id.* at 211-213.

[9] *Id.* at 217; Docketed as G.R. No. 196038.

[10] *Id.* at 218.

[11] *Id.* at 216-216-A.

[12] *Id.* at 223-236.

[13] *Id.* at 154-161.

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WHEREFORE, premises considered and as prayed for, let an alias writ of execution issue against CONSOLIDATED DISTILLERS OF THE FAR EAST, INC.,/EMPERADOR DISTILLERS, INC., doing business under the name and style of EDI International, jointly and severally, and in the alternative, against Katherine L. Tan, in her capacity as President of Consolidated Distillers of the Far East, Inc., for P2,135,256.45, representing backwages/reinstatement salaries, inclusive of allowances, and to his other benefits or their monetary equivalent, covering the period December 3, 2007 until August 3, 2013.[14]

In adjudging respondents Katherine Tan and EDI to be jointly and severally liable with Condis, the LA found that the execution of the Asset Purchase Agreement and the termination of the Services Agreement were purposely done by Condis and respondent EDI to defraud petitioner as shown by the following: While the January 16, 2007 Asset Purchase Agreement was executed earlier than petitioner's dismissal on December 3, 2007, Condis was still operational for the period convenient to its purpose; the Asset Purchase Agreement and the letter terminating the Services Agreement were signed by Co as the Managing Director of EDI, and Co used to be Condis' Senior Vice-President prior to its alleged cessation of operation; both companies were represented by one and the same lawyer when they filed their respective Comment/Opposition; and Condis raised the issue of cessation of operation and separate corporate personality only in the course of the execution of the decision in the illegal dismissal case. Thus, the corporate fiction is pierceable by reason of fraud.

Respondents then filed with the NLRC a Petition for Annulment of the Resolution dated 3 August 2013 of the Executive Labor Arbiter Jess Orlando M. Quinones *Ex Abundante Ad Cautelam* (with an Extremely Urgent Motion for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction).

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[14] *Id.* at 160.

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On January 17, 2014, the NLRC issued its Decision,[15] the decretal portion of which reads:

> WHEREFORE, premises considered, the instant petition is GRANTED. The 03 August 2013 Resolution holding petitioners Emperador Distillers Inc. and Katherine Tan liable for the claims of private respondent Rogel Zaragoza is declared null and void.[16]

In granting the petition, the NLRC found that respondents were never made parties in the illegal dismissal case filed by petitioner; that they were merely dragged into the proceedings when petitioner filed a motion for issuance of alias writ of execution with notice of appearance; that an order of execution can only be issued against a party and not against one who did not have his day in court. The LA did not acquire jurisdiction over the respondents, since they were neither summoned nor voluntarily appeared before the LA, and not being impleaded in the case, respondent EDI cannot be subject to the LA's process of piercing the veil of corporate fiction, and respondent Tan cannot also be subject to the LA's process of determining bad faith which would make an officer personally liable for the claims of a dismissed employee.

Petitioner's motion for reconsideration was denied in a Resolution[17] dated February 28, 2014.

Petitioner filed a petition for *certiorari* with the CA. The CA rendered its assailed Decision dated January 27, 2016 which dismissed the petition and affirmed the NLRC decision. Petitioner's motion for reconsideration was denied in a Resolution dated May 26, 2016.

Hence this petition for review where petitioner raises the issue of:

> WHETHER OR NOT THE MONETARY AWARD IN FAVOR OF PETITIONER IN NLRC CASE NO. SRAB V-07-00089-08 CAN

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[15] *Id.* at 95-115.

[16] *Id.* at 115.

[17] *Id.* at 117-119.

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STILL BE ENFORCED AGAINST RESPONDENT TAN IN HER CAPACITY AS PRESIDENT OF CONDIS AND AGAINST RESPONDENT EDI, EVEN THOUGH THEY WERE NOT IMPLEADED IN SAID LABOR CASE.[18]

We find no merit in this petition.

Under the final and executory decision in petitioner's illegal dismissal case, only Condis was found liable for the judgment awarded to him. However, in petitioner's motion for the issuance of alias writ of execution with notice of appearance, petitioner alleged that should Condis fail to pay the judgment award, respondent Tan, as its President and as a stockholder of respondent EDI, should be held personally liable for the awards; and that respondent EDI should also be held jointly and severally liable with Condis. The LA granted the motion and issued the alias writ of execution where respondents were ordered to solidarity pay the judgment award with Condis. The NLRC, however, reversed the LA Order, which reversal was affirmed by the CA.

We agree with the CA.

The LA Resolution dated August 3, 2013, which directed the issuance of an alias writ of execution against respondents had the effect of amending the final and executory decision which made Condis the only one liable to petitioner. This cannot be done. The writ of execution must conform to the judgment which is to be executed,[19] as it may not vary the terms of the judgment it seeks to enforce. Nor may it go beyond the terms of the judgment which is sought to be executed. Where the execution is not in harmony with the judgment which gives it life and exceeds it, it has *pro tanto* no validity. To maintain otherwise would be to ignore the constitutional provision

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[18] *Id.* at 39.

[19] *QBE Insurance Phils., Inc. v. Judge Lavina*, 562 Phil. 355, 369 (2007), citing *Buan v. Court of Appeals*, G.R. No. 101614, August 17, 1994, 235 SCRA 424, 432.

against depriving a person of his property without due process of law.[20]

Moreover, it bears stressing that respondents were never mentioned in the illegal dismissal proceedings, *i.e.*, from the LA, the NLRC, the CA or up to this Court, since the party-respondents therein were Condis, Co and Hidalgo. It is undisputed that respondents were involved in the case only when petitioner filed a motion for issuance of alias writ of execution which prayed for their inclusion, and which the LA granted; thus, they were unexpectedly ordered to be jointly and severally liable with Condis to pay the judgment award. It is basic that no man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by judgment rendered by the court.[21] A decision of a court will not operate to divest the rights of a person who has not and has never been a party to a litigation, either as plaintiff or as defendant.[22] Execution of a judgment can only be issued against one who is a party to the action, and not against one who, not being a party to the action, has not yet had his day in court.[23] That execution may only be effected against the property of the judgment debtor, who must necessarily be a party to the case.[24] Accordingly, the LA's Order against respondents who were not parties to the case is a deprivation of property without due process of law.

More importantly, since respondents were never impleaded in the illegal dismissal case, they were never served with summons nor did they voluntarily appear in the arbitration level;

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[20] *Id.*, citing *Matuguina Integrated Wood Products, Inc. v. Court of Appeals*, 331 Phil. 795, 811 (1996).

[21] *National Housing Authority v. Evangelista*, 497 Phil. 762, 770 (2005), citing *Heirs of Antonio Pael v. CA*, 382 Phil. 222, 249 (2000).

[22] *Matuguina Integrated Wood Products, Inc. v. Court of Appeals*, *supra* note 20, at 810.

[23] *Id.*, citing *St. Dominic Corp. v. Intermediate Appellate Court, etc.*, 235 Phil. 583, 590 (1887).

[24] *QBE Insurance Phils., Inc. v. Lavina*, *supra* note 19.

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thus, the LA never acquired jurisdiction over them as to order the piercing of the veil of corporate fiction, and to make them jointly and severally liable with Condis for the judgment award to petitioner. We find apropros the case of *Pacific Rehouse Corporation v. Court of Appeals*[25] which was cited by the CA in its decision, thus:

The Court already ruled in *Kukan International Corporation v. Reyes* that compliance with the recognized modes of acquisition of jurisdiction cannot be dispensed with even in piercing the veil of corporate fiction, to wit:

> The principle of piercing the veil of corporate fiction, and the resulting treatment of two related corporations as one and the same juridical person with respect to a given transaction, is basically applied only to determine established liability; it is not available to confer on the court a jurisdiction it has not acquired, in the first place, over a party not impleaded in a case. Elsewise put, a corporation not impleaded in a suit cannot be subject to the court's process of piercing the veil of its corporate fiction. In that situation, the court has not acquired jurisdiction over the corporation and, hence, any proceedings taken against that corporation and its property would infringe on its right to due process. Aguedo Agbayani, a recognized authority on Commercial Law, stated as much:
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> > 23. Piercing the veil of corporate entity applies to determination of liability not of jurisdiction. x x x

This is so because the doctrine of piercing the veil of corporate fiction comes to play only during the trial of the case after the court has already acquired jurisdiction over the corporation. Hence, before this doctrine can be applied, based on the evidence presented, it is imperative that the court must first have jurisdiction over the corporation. x x x" (Citations omitted)

From the preceding, it is therefore correct to say that the court must first and foremost acquire jurisdiction over the parties; and only then would the parties be allowed to present evidence for and/or against piercing the veil of corporate fiction. If the court has no jurisdiction over the corporation, it follows that the court has no

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[25] 730 Phil. 325 (2014).

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business in piercing its veil of corporate fiction because such action offends the corporation's right to due process.

"Jurisdiction over the defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court. When the defendant does not voluntarily submit to the court's jurisdiction or when there is no valid service of summons, 'any judgment of the court which has no jurisdiction over the person of the defendant is null and void.'" "The defendant must be properly apprised of a pending action against him and assured of the opportunity to present his defenses to the suit. Proper service of summons is used to protect one's right to due process."[26]

In any event, it is an elementary and fundamental principle of corporation law that a corporation is an artificial being invested by law with a personality separate and distinct from its stockholders and from other corporations to which it may be connected.[27] A corporation, as a juridical entity, may act only through its directors, officers and employees. Obligations incurred as a result of the acts of the directors and officers as the corporate agents are not their personal liability but the direct responsibility of the corporation they represent.[28] 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.[29] This is the doctrine of piercing the veil of corporate fiction which applies only when such corporate fiction is used to defeat public convenience, justify wrong, protect fraud or defend crime,[30] or when it is made as

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[26] *Id.* at 343-344.

[27] *McLeod v. NLRC*, 541 Phil. 214, 238 (2007), citing *Martinez v. Court of Appeals,* 481 Phil. 450, 471 (2004).

[28] *Lozada v. Mendoza*, G.R. No. 196134, October 12, 2016, citing *Polymer Rubber Corporation v. Salamuding*, 715 Phil. 141, 150 (2013).

[29] *McLeod v. NLRC*, *supra* note 27, at 239.

[30] *Id.*, citing *Jardine Davies, Inc. v. JRB Realty, Inc.*, 502 Phil. 129, 138 (2005); *Development Bank of the Philippines v. Court of Appeals*, 415 Phil. 538, 549 (2001); *Kukan International Corporation v. Reyes*, 646 Phil. 210, 233 (2010).

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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.[31] To disregard the separate juridical personality of a corporation, the wrongdoing must be established clearly and convincingly. It cannot be presumed.[32]

Petitioner argues that respondent Tan, as President of Condis, can be held solidarily liable for the judgment award despite not being impleaded as a party in the illegal dismissal case relying on *A.C. Ransom Labor Union-CCLU v. NLRC.*[33]

We are not impressed.

In *A.C. Ransom*, Ransom was found guilty of unfair labor practice; thus, it was ordered, together with its officers and agents, to reinstate the 22 union members to their respective positions with backwages, which decision became final and executory but the writ of execution could not be implemented against Ransom because of the disposition posthaste of its leviable assets. We found that Ransom put up another corporation, the Rosario Industrial Corporation (*Rosario*), while the ULP case was pending with the Court of Industrial Relations and that both corporations were closed corporations, owned and managed by the members of the Hernandez family; and that Rosario was established to phase out Ransom if an unfavorable decision would be rendered against the latter, hence, Ransom's operation was discontinued few months after the LA ruled in the employees' favor. As Ransom had the intention of evading its just and due obligations to the employees, We allowed the piercing of the veil of corporate fiction by making the officers of Ransom personally liable for the debts of the latter. We said that since

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[31] *Id.*, citing *Indophil Textile Mill Workers Union v. Calica*, 282 Phil. 725, 732 (1992).

[32] *Id.*, citing *Lim v. Court of Appeals*, 380 Phil. 60 (2000); *Del Rosario v. National Labor Relations Commission*, 265 Phil. 805, 809 (1990).

[33] 226 Phil. 199 (1986).

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Ransom is a corporation, an artificial person, it must have an officer who can be presumed to be the employer, which as defined under Article 212(c) (now Article 212 [e]) of the Labor Code, 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.

The factual milieu of *A.C. Ransom* case is different from the instant case. As the CA correctly found, in *A.C. Ransom*, the officers and agents were already held liable in the final and executory decision as they were named individual respondents in the case. Here, respondents were included in this case only in petitioner's motion for issuance of alias writ of execution.

Moreover, in *Carag v. NLRC*,[34] where the employees therein sought to hold Carag, the company's Chairman of the Board, personally liable for the separation pay owed by the company to them on the basis of Article 212 (e) of the Labor Code, We made this clarification and held:

> Indeed, complainants seek to hold Carag personally liable for the debts of MAC based solely on Article 212(e) of the Labor Code. This is the specific legal ground cited by complainants, and used by Arbiter Ortiguerra, in holding Carag personally liable for the debts of MAC.
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> We have already ruled in *McLeod v. NLRC* and *Spouses Santos v. NLRC* that Article 212(e) of the Labor Code, by itself, does not make a corporate officer personally liable for the debts of the corporation. The governing law on personal liability of directors for debts of the corporation is still Section 31 of the Corporation Code. Thus, we explained in *McLeod*:
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> > Personal liability of corporate directors, trustees or officers attaches only when (1) they assent to a patently unlawful act of the corporation, or when they are guilty of bad faith or gross negligence in directing its affairs, or when there is a conflict of interest resulting in damages to the corporation, its stockholders or other persons; (2) they consent to the issuance of watered down stocks or when, having knowledge of such

[34] 548 Phil. 581 (2007).

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> issuance, do not forthwith file with the corporate secretary their written objection; (3) they agree to hold themselves personally and solidarity liable with the corporation; or (4) they are made by specific provision of law personally answerable for their corporate action.[35]

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Thus, the rule is still that the doctrine of piercing the corporate veil applies only when the corporate fiction is used to defeat public convenience, justify wrong, protect fraud, or defend crime. 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. Neither Article 212[e] nor Article 273 (now 272) of the Labor Code expressly makes any corporate officer personally liable for the debts of the corporation. As this Court ruled in *H.L. Carlos Construction, Inc. v. Marina Properties Corporation*:

> We concur with the CA that these two respondents are not liable. Section 31 of the Corporation Code (Batas Pambansa Blg. 68) provides:
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> > Section 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 ... shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders and other persons.
>
> The personal liability of corporate officers validly attaches only when (a) they assent to a patently unlawful act of the corporation; or (b) they are guilty of bad faith or gross negligence in directing its affairs; or (c) they incur conflict of interest, resulting in damages to the corporation, its stockholders or other persons.

Thus, it was error for Arbiter Ortiguerra, the NLRC, and the Court of Appeals to hold Carag personally liable for the separation pay owed by MAC to complainants based alone on Article 212(e) of the Labor Code. Article 212(e) does not state that corporate officers are

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[35] *Id.* at 604-605.

personally liable for the unpaid salaries or separation pay of employees of the corporation. The liability of corporate officers for corporate debts remains governed by Section 31 of the Corporation Code.[36]

Thus, to hold a director or officer personally liable for corporate obligations, two requisites must concur:[37] (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.

To stress, respondent Tan was not at all impleaded in the illegal dismissal case; thus, her participation in petitioner's dismissal was never established in any of the proceedings therein. Consequently, it was not shown at all that she assented to patently unlawful acts of the corporation, or that she was guilty of gross negligence or bad faith. In fact, the LA Resolution granting the alias writ of execution against the respondents did not make any finding as to why respondent Tan was ordered to pay the judgment award in the alternative, with Condis and respondent EDI, other than his reliance on our ruling in *A.C. Ransom*, which as we found is misplaced.

Petitioner contends that he must be protected against the corporate maneuverings of Condis to evade the full satisfaction of the award in the labor case by selling its manufacturing and sales business to respondent EDI through the execution of the Asset Purchase Agreement; that there was a valid justification to pierce the corporate veil of these two corporations as found by the LA.

We are not convinced.

In justifying the piercing of the veil of corporate fiction of respondent EDI and Condis, the LA found that the execution of the Asset Purchase Agreement and the termination of the Service Agreement between the two companies were purposely

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[36] *Id.* at 608-609.

[37] *Francisco v. Mallen, Jr.*, 645 Phil. 369, 374-375 (2010).

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done to defraud petitioner; that the Asset Purchase Agreement and the letter terminating the Services Agreement were signed by Co as the Managing Director of respondent EDI, and that he used to be Condis' Senior Vice-President prior to its alleged cessation of operation; and both companies were represented by the same counsel; and that Condis raised the issue of cessation of operation and separate corporate personality only in the course of the execution of the decision in the illegal dismissal case. We find these reasons to be insufficient to justify the doctrine's application.

Notably, respondent EDI was incorporated in 2006. It entered into an Asset Purchase Agreement with Condis on January 16, 2007 whereby all the latter's assets in the manufacturing and selling of Emperador Brandy were sold to the former. On even date, they also executed a Services Agreement where Condis' employees would provide assistance to respondent EDI until the latter was already capable. These agreements were executed prior to petitioner's dismissal on December 3, 2007 and the LA Decision dated March 3, 2009 finding him illegally dismissed. Hence, it could not be alleged that respondent EDI was organized with the intention of evading Condis' obligations to petitioner. Moreover, where one corporation sells or otherwise transfers all its assets to another corporation for value, the latter is not, by that fact alone, liable for the debts and liabilities of the transferor.[38] In fact, the Asset Purchase Agreement provides for non-assumption of liability, to wit:

> Non assumption of liabilities
>
> Except as otherwise agreed expressly in writing, Buyer does not and shall not assume or agree to pay any of Seller's or, where applicable any shareholder's, partners' or members' liabilities or obligations, of any nature or kind. Seller and, where applicable, any shareholder, partner, member, shall each remain responsible for their respective debts and obligations.[39]

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[38] *China Banking Corporation v. Dyne Sem Electronics Corporation*, 527 Phil. 74, 83 (2006).

[39] *Rollo*, p. 335.

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Also, the existence of interlocking directors, corporate officers and shareholders, which the LA considered, without more, is not enough justification to pierce the veil of corporate fiction in the absence of fraud or other public policy considerations.[40] Any piercing of the corporate veil has to be done with caution.[41] The wrongdoing must be clearly and convincingly established. It cannot just be presumed.[42]

It is significant to note that even if petitioner has sufficiently proven the factual bases for the application of the said doctrine, it cannot still be validly applied against respondents since, as we have discussed above, the LA never acquired jurisdiction over them.

WHEREFORE, the petition for review is **DENIED**. The Decision dated January 27, 2016 and the Resolution dated May 26, 2016 of the Court of Appeals are hereby **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Perlas-Bernabe, Caguioa, and *Reyes, Jr., JJ.*, concur.

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[40] See *Jardine Davies v. JRB Realty*, 502 Phil. 129, 140 (2005), citing *Velarde v. Lopez, Inc.*, 464 Phil. 525, 538 (2004).

[41] *Id.*, citing *Reynoso IV v. Court of Appeals*, 399 Phil. 38, 50 (2000).

[42] *Id.*, *Development Bank of the Philippines v. Court of Appeals*, 415 Phil. 538, 549 (2000), citing *Complex Electronics Employees Association v. NLRC*, 369 Phil. 666, 682 (1999); *Luxuria Homes, Inc. v. Court of Appeals*, 361 Phil. 989, 1003 (1999); and *Matuguina Integrated Wood Product v. Court of Appeals*, *supra* note 20, at 814.