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THIRD DIVISION

[G.R. No. 159460. November 15, 2010.]

SOLIDBANK CORPORATION (now known as FIRST METRO INVESTMENT CORPORATION), *petitioner, vs.* **ERNESTO U. GAMIER, ELENA R. CONDEVILLAMAR, JANICE L. ARRIOLA and OPHELIA C. DE GUZMAN,** *respondents.*

[G.R. No. 159461. November 15, 2010.]

SOLIDBANK CORPORATION and/or its successor-in-interest, FIRST METRO INVESTMENT CORPORATION, DEOGRACIAS N. VISTAN AND EDGARDO MENDOZA, JR., *petitioners, vs.* **SOLIDBANK UNION AND ITS DISMISSED OFFICERS AND MEMBERS, namely: EVANGELINE J. GABRIEL, TERESITA C. LUALHATI, ISAGANI P. MAKISIG, REY S. PASCUA, EVELYN A. SIA, MA. VICTORIA M. VIDALLON, AUREY A. ALJIBE, REY ANTHONY M. AMPARADO, JOSE A. ANTENOR, AUGUSTO D. ARANDIA, JR., JANICE L. ARRIOLA, RUTH SHEILA MA. BAGADIONG, STEVE D. BERING, ALAN ROY I. BUYCO, MANALO T. CABRERA, RACHE M. CASTILLO, VICTOR O. CHUA, VIRGILIO Y. CO, JR., LEOPOLDO S. DABAY, ARMAND V. DAYANG-HIRANG, HUBERT V. DIMAGIBA, MA. LOURDES CECILIA B. EMPARADOR, FELIX D. ESTACIO, JR., JULIETA T. ESTRADA, MARICEL G. EVALLA, JOSE G. GUISADIO, JOSE RAINARIO C. LAOANG, ALEXANDER A. MARTINEZ, JUAN ALEX C. NAMBONG, JOSEPHINE M. ONG, ARMANDO B. OROZCO, ARLENE R. RODRIGUEZ, NICOMEDES P. RUIZO, JR., DON A. SANTANA, ERNESTO R. SANTOS, JR., EDNA M. SARONG, GREGORIO S. SECRETARIO, ELLEN M. SORIANO, ROSIE C. UY, ARVIN D. VALENCIA, FERMIN JOSSEPH B. VENTURA, JR., EMMANUEL C. YAPTANCO,**

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ERNESTO C. ZUNIGA, ARIEL S. ABENDAN, EMMA R. ABENDAN, PAULA AGNES A. ANGELES, JACQUILINE B. BAQUIRAN, JENNIFER S. BARCENAS, ALVIN E. BARICANOSA, GEORGE MAXIMO P. BARQUEZ, MA. ELENA G. BELLO, RODERICK M. BELLO, MICHAEL MATTHEW B. BILLENA, LEOPE L. CABENIAN, NEPTALI A. CADDARAO, FERDINAND MEL S. CAPULING, MARGARETTE B. CORDOVA, MA. EDNA V. DATOR, RANIEL C. DAYAO, RAGCY L. DE GUZMAN, LUIS E. DELOS SANTOS, CARMINA M. DEGALA, EPHRAIM RALPH A. DELFIN, KAREN M. DEOCERA, CAROLINA C. DIZON, MARCHEL S. ESQUEJJO, JOCELYN I. ESTROBO, MINERVA S. FALLARME, HERNANE C. FERMOCIL, RACHEL B. FETIZANAN, SAMUEL A. FLORENTINO, MENCHIE R. FRANCISCO, ERNESTO U. GAMIER, MACARIO RODOLFO N. GARCIA, JOEL S. GARMINO, LESTER MARK Z. GATCHALIAN, MA. JINKY P. GELERA, MA. TERESA G. GONZALES, GONZALO G. GUINIT, EMILY H. GUINO-O, FERDINAND S. HABIJAN, JUN G. HERNANDEZ, LOURDES D. IBEAS, MA. ANGELA L. JALANDONI, JULIE T. JORNACION, MANUEL C. LIM, MA. LOURDES A. LIM, EMERSON V. LUNA, NOLASCO B. MACATANGAY, NORMAN C. MANACO, CHERRY LOU B. MANGROBANG, MARASIGAN G. EDMUNDO, ALLEN M. MARTINEZ, EMELITA C. MONTANO, ARLENE P. NOBLE, SHIRLEY A. ONG, LOTIZ E. ORTIZ LUIS, PABLITO M. PALO, MARY JAINE D. PATINO, GEOFFREY T. PRADO, OMEGA MELANIE M. QUINTANO, ANES A. RAMIREZ, RICARDO D. RAMIREZ, DANIEL O. RAQUEL, RAMON B. REYES, SALVACION N. ROGADO, ELMOR R. ROMANA, JR., LOURDES U. SALVADOR, ELMER S. SAYLON, BENHARD E. SIMBULAN, MA. TERESA S. SOLIS, MA. LOURDES ROCEL E. SOLIVEN, EMILY C. SUY AT, EDGAR

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ALLAN P. TACSUAN, RAYMOND N. TANAY, JOCELYN Y. TAN, CANDIDO G. TISON, MA. THERESA O. TISON, EVELYN T. UYLANGCO, CION E. YAP, MA. OPHELIA C. DE GUZMAN, MA. HIDELISA P. IRA, RAYMUND MARTIN A. ANGELES, MERVIN S. BAUTISTA, ELENA R. CONDEVILLAMAR, CHERRY T. CO, LEOPOLDO V. DE LA ROSA, DOROTEO S. FROILAN, EMMANUEL B. GLORIA, JULIETEL JUBAC AND ROSEMARIE L. TANG, *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; STRIKE AND LABOR DISPUTE; ELUCIDATED.— Article 212 of the Labor Code, as amended, defines strike as *any* temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute. A labor dispute includes any controversy or matter concerning terms and conditions of employment or the association or representation of persons in negotiating, fixing, maintaining, changing or arranging the terms and conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employers and employees. The term "strike" shall comprise not only *concerted work stoppages*, but also slowdowns, *mass leaves*, sitdowns, attempts to damage, destroy or sabotage plant equipment and facilities and similar activities. Thus, the fact that the conventional term "strike" was not used by the striking employees to describe their common course of action is inconsequential, since the substance of the situation, and not its appearance, will be deemed to be controlling.

2. ID.; ID.; STRIKE; WHEN STRIKE IS A PROHIBITED ACTIVITY.— The right to strike, while constitutionally recognized, is not without legal constrictions. Article 264 (a) of the Labor Code, as amended, provides: Art. 264. Prohibited activities. – (a) x x x No strike or lockout shall be declared **after assumption of jurisdiction by the President or the Secretary** or after certification or submission of the dispute to compulsory or voluntary arbitration **or during the pendency of cases involving the same grounds for the strike**

or lockout. x x x The Court has consistently ruled that once the Secretary of Labor assumes jurisdiction over a labor dispute, such jurisdiction should not be interfered with by the application of the coercive processes of a strike or lockout. A strike that is undertaken despite the issuance by the Secretary of Labor of an assumption order and/or certification is a prohibited activity and thus illegal. Article 264 (a) of the Labor Code, as amended, also considers it a prohibited activity to declare a strike "during the pendency of cases involving the same grounds for the same strike."

3. ID.; ID.; PROHIBITED ACTIVITIES; ILLEGAL STRIKE; LIABILITY DISTINGUISHED BETWEEN UNION OFFICERS AND MEMBERS AND THEIR PARTICIPATION; ELUCIDATED.— The liabilities of individual respondents must be determined under Article 264 (a) of the Labor Code, as amended: Art. 264. Prohibited activities.— x x x Any worker whose employment has been terminated as a consequence of an unlawful lockout shall be entitled to reinstatement with full back wages. **Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status: Provided, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment**, even if a replacement had been hired by the employer during such lawful strike. x x x The foregoing shows that the law makes a distinction between union officers and members. For knowingly participating in an illegal strike or participating in the commission of illegal acts during a strike, the law provides that a union officer may be terminated from employment. The law grants the employer the option of declaring a union officer who participated in an illegal strike as having lost his employment. It possesses the right and prerogative to terminate the union officers from service. However, a worker merely participating in an illegal strike may not be terminated from employment. It is only when he commits illegal acts during a strike that he may be declared to have lost employment status. We have held that the responsibility of union officers, as main players in an illegal strike, is greater than that of the members and, therefore, limiting the penalty

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of dismissal only for the former for participation in an illegal strike is in order. Hence, with respect to respondents who are union officers, the validity of their termination by petitioners cannot be questioned. Being fully aware that the proceedings before the Secretary of Labor were still pending as in fact they filed a motion for reconsideration of the March 24, 2000 Order, they cannot invoke good faith as a defense. For the rest of the individual respondents who are union members, the rule is that an ordinary striking worker cannot be terminated for mere participation in an illegal strike. There must be proof that he or she committed illegal acts during a strike. In all cases, the striker must be identified. But proof beyond reasonable doubt is not required. Substantial evidence available under the attendant circumstances, which may justify the imposition of the penalty of dismissal, may suffice. Liability for prohibited acts is to be determined on an individual basis.

4. ID.; ID.; ID.; ID.; ID.; ILLEGAL ACTS THAT MAY BE COMMITTED BY UNION MEMBERS.— Petitioners have not adduced evidence on such illegal acts committed by each of the individual respondents who are union members [to warrant dismissal from employment]. x x x [T]he acts which were held to be prohibited activities are the following: x x x where the strikers shouted slanderous and scurrilous words against the owners of the vessels; where the strikers used unnecessary and obscene language or epithets to prevent other laborers to go to work, and circulated libelous statements against the employer which show actual malice; where the protestors used abusive and threatening language towards the patrons of a place of business or against co-employees, going beyond the mere attempt to persuade customers to withdraw their patronage; where the strikers formed a human cordon and blocked all the ways and approaches to the launches and vessels of the vicinity of the workplace and perpetrated acts of violence and coercion to prevent work from being performed; and where the strikers shook their fists and threatened non-striking employees with bodily harm if they persisted to proceed to the workplace. x x x

5. ID.; ID.; ILLEGAL DISMISSAL; AWARD OF BACKWAGES NOT PROPER IN VIEW OF PARTICIPATION IN "ILLEGAL" STRIKE.— The award of backwages is a legal consequence of a finding of illegal dismissal. Assuming that respondent-union members have indeed reported back to work

at the end of the concerted mass actions, but were soon terminated by petitioners who found their explanation unsatisfactory, they are not entitled to backwages in view of the illegality of the said strike. Thus, we held in *G & S Transport Corporation v. Infante* — It can now therefore be concluded that the acts of respondents do not merit their dismissal from employment because it has not been substantially proven that they committed any illegal act while participating in the illegal strike. x x x With respect to backwages, the principle of a "fair day's wage for a fair day's labor" remains as the basic factor in determining the award thereof. **If there is no work performed by the employee there can be no wage or pay unless, of course, the laborer was able, willing and ready to work but was illegally** locked out, suspended **or dismissed** or otherwise illegally prevented from working. While it was found that respondents expressed their intention to report back to work, the latter exception cannot apply in this case. In *Philippine Marine Officers' Guild v. Compañia Maritima*, as affirmed in *Philippine Diamond Hotel and Resort v. Manila Diamond Hotel Employees Union*, **the Court stressed that for this exception to apply, it is required that the strike be legal, a situation that does not obtain in the case at bar**. Under the circumstances, respondents' reinstatement without backwages suffices for the appropriate relief.

6. ID.; ID.; ID.; REINSTATEMENT; AS THE SAME IS NO LONGER POSSIBLE, IN LIEU THEREOF, AWARD OF SEPARATION PAY ON ONE (1) MONTH SALARY FOR EACH YEAR OF SERVICE IS IN ORDER.— But since reinstatement is no longer possible, given the lapse of considerable time from the occurrence of the strike, not to mention the fact that Solidbank had long ceased its banking operations, the award of separation pay of one (1) month salary for each year of service, in lieu of reinstatement, is in order.

7. ID.; ID.; ID.; LIABILITY OF CORPORATION EMPLOYER CANNOT BE CHARGED AGAINST ITS OFFICERS WHO ARE NOT GUILTY OF BAD FAITH.— Article 212 (e) does not state that corporate officers are 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. It is basic that a corporation is invested by law with a personality

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separate and distinct from those of the persons composing it as well as from that of any other legal entity to which it may be related. Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality. In labor cases, in particular, the Court has held corporate directors and officers solidarily liable with the corporation for the termination of employment of corporate employees done with malice or in bad faith. Bad faith is never presumed. Bad faith does not simply connote bad judgment or negligence — it imports a dishonest purpose or some moral obliquity and conscious doing of wrong. It means a breach of a known duty through some motive or interest or ill-will that partakes of the nature of fraud.

APPEARANCES OF COUNSEL

Esteban Y. Mendoza & Calvin L. Kohchet-Chua Mendoza Pangan for Solidbank Corporation.

Antonio B. Fidelino for respondents.

Eulogio Leram for Ernesto U. Gamier.

Potenciano A. Flores, Jr. for respondents in CA SP 67730.

Lizardo Carlos & Associates for E. Condevillamar & Ariola.

Thomas M. Valmonte for Ma. Ophelia C. De Guzman.

D E C I S I O N

VILLARAMA, JR., *J.*:

The consolidated petitions before us seek to reverse and set aside the Decision[1] dated March 10, 2003 of the Court of Appeals (CA) in CA-G.R. SP Nos. 67730 and 70820 which denied the petitions for *certiorari* filed by Solidbank Corporation (Solidbank) and ordered the reinstatement of the above-named individual respondents to their former positions.

[1] *Rollo*, Vol. I, pp. 128-142. Penned by Associate Justice Romeo A. Brawner (deceased) and concurred in by Associate Justices Bienvenido L. Reyes and Danilo B. Pine.

The Antecedents

Sometime in October 1999, petitioner Solidbank and respondent Solidbank Employees' Union (Union) were set to renegotiate the economic provisions of their 1997-2001 Collective Bargaining Agreement (CBA) to cover the remaining two years thereof. Negotiations commenced on November 17, 1999 but seeing that an agreement was unlikely, the Union declared a deadlock on December 22, 1999 and filed a Notice of Strike on December 29, 1999.[2] During the collective bargaining negotiations, some Union members staged a series of mass actions. In view of the impending actual strike, then Secretary of Labor and Employment Bienvenido E. Laguesma assumed jurisdiction over the labor dispute, pursuant to Article 263 (g) of the Labor Code, as amended. The assumption order dated January 18, 2000 directed the parties "to cease and desist from committing any and all acts that might exacerbate the situation."[3]

In his Order[4] dated March 24, 2000, Secretary Laguesma resolved all economic and non-economic issues submitted by the parties, as follows:

> WHEREFORE, premises considered, judgment is hereby issued:
>
> a. Directing Solidbank Corporation and Solidbank Union to conclude their Collective Bargaining Agreement for the years 2000 and 2001, incorporating the dispositions above set forth;
>
> b. Dismissing the unfair labor practice charge against Solidbank Corporation;
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> c. Directing Solidbank to deduct or check-off from the employees' lump sum payment an amount equivalent to seven percent (7%) of their economic benefits for the first (1st) year, inclusive of signing bonuses, and to remit or turn over the said sum to the Union's authorized representative, subject to the requirements of check-off;

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[2] *Id.* at 214.

[3] *Id.* at 212-213.

[4] *Id.* at 214-220.

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d. Directing Solidbank to recall the show-cause memos issued to employees who participated in the mass actions if such memos were in fact issued.

SO ORDERED.[5]

Dissatisfied with the Secretary's ruling, the Union officers and members decided to protest the same by holding a rally infront of the Office of the Secretary of Labor and Employment in Intramuros, Manila, simultaneous with the filing of their motion for reconsideration of the March 24, 2000 Order. Thus, on April 3, 2000, an overwhelming majority of employees, including the individual respondents, joined the "mass leave" and "protest action" at the Department of Labor and Employment (DOLE) office while the bank's provincial branches in Cebu, Iloilo, Bacolod and Naga followed suit and "boycotted regular work."[6] The union members also picketed the bank's Head Office in Binondo on April 6, 2000, and Paseo de Roxas branch on April 7, 2000.

As a result of the employees' concerted actions, Solidbank's business operations were paralyzed. On the same day, then President of Solidbank, Deogracias N. Vistan, issued a memorandum[7] addressed to all employees calling their absence from work and demonstration infront of the DOLE office as an illegal act, and reminding them that they have put their jobs at risk as they will be asked to show cause why they should not be terminated for participating in the union-instigated concerted action. The employees' work abandonment/boycott lasted for three days, from April 3 to 5, 2000.

On the third day of the concerted work boycott (April 5, 2000), Vistan issued another memorandum,[8] this time declaring that the bank is prepared to take back employees who will report

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[5] *Id.* at 219-220.

[6] *Id.* at 224.

[7] *Id.* at 246.

[8] *Id.* at 247-248.

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for work starting April 6, 2000 "provided these employees were/ are not part of those who led or instigated or coerced their co-employees into participating in this illegal act." Out of the 712 employees who took part in the three-day work boycott, a total of 513 returned to work and were accepted by the bank. The remaining 199 employees insisted on defying Vistan's directive, which included herein respondents Ernesto U. Gamier, Elena R. Condevillamar, Janice L. Arriola and Ophelia C. De Guzman. For their failure to return to work, the said 199 employees were each issued a show-cause memo directing them to submit a written explanation within twenty-four (24) hours why they should not be dismissed for the "illegal strike x x x in defiance of x x x the Assumption Order of the Secretary of Labor x x x resulting [to] grave and irreparable damage to the Bank," and placing them under preventive suspension.[9]

The herein 129 individual respondents were among the 199 employees who were terminated for their participation in the three-day work boycott and protest action. On various dates in June 2000, twenty-one (21) of the individual respondents executed Release, Waiver and Quitclaim in favor of Solidbank.[10]

On May 8, 2000, Secretary Laguesma denied the motions for reconsideration filed by Solidbank and the Union.[11]

The Union filed on May 11, 2000 a Motion for Clarification of certain portions of the Order dated March 24, 2000, and on May 19, 2000 it filed a Motion to Resolve the Supervening Issue of Termination of 129 Striking Employees. On May 26, 2000, Secretary Laguesma granted the first motion by clarifying that the contract-signing bonus awarded in the new CBA should likewise be based on the adjusted pay. However, the Union's second motion was denied,[12] as follows:

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[9] *Id.* at 249 and 294.

[10] *Id.* at 871, 914-954.

[11] *Id.* at 254-255.

[12] *Id.* at 903-904.

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This Office cannot give due course to the Union's second motion. The labor dispute arising from the termination of the Bank employees is an issue that ought to be entertained in a separate case. The assumption order of January 18, 2000 covered only the bargaining deadlock between the parties and the alleged violation of the CBA provision on regularization. We have already resolved both the deadlock and the CBA violation issues. The only motion pending before us is the motion for clarification, which we have earlier disposed of in this Order. Thus, the only option left is for the Union to file a separate case on the matter.[13]

In the meantime, the Monetary Board on July 28, 2000 approved the request of Metropolitan Bank and Trust Company (Metrobank) to acquire the existing non-real estate assets of Solidbank in consideration of assumption by Metrobank of the liabilities of Solidbank, and to integrate the banking operations of Solidbank with Metrobank. Subsequently, Solidbank was merged with First Metro Investment Corporation, and Solidbank, the surviving corporation, was renamed the First Metro Investment Corporation (FMIC).[14] By August 31, 2000, Solidbank ceased banking operations after surrendering its expanded banking license to the Bangko Sentral ng Pilipinas. Petitioners duly filed a Termination Report with the DOLE and granted separation benefits to the bank's employees.[15]

Respondents Gamier, Condevillamar, Arriola and De Guzman filed separate complaints for illegal dismissal, moral and exemplary damages and attorney's fees on April 28, May 15 and May 29, 2000, respectively (NLRC NCR Case Nos. [S]30-04-01891-00, 30-05-03002-00 and 30-05-02253-00). The cases were consolidated before Labor Arbiter Potenciano S. Cañizares, Jr. Respondent Union joined by the 129 dismissed employees filed a separate suit against petitioners for illegal dismissal, unfair labor practice and damages (NLRC NCR Case No. 30-07-02920-00 assigned to Labor Arbiter Luis D. Flores).

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[13] *Id.* at 904.

[14] *Id.* at 256-282.

[15] *Id.* at 48-49, 1074.

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Labor Arbiters' Rulings

In his Decision dated November 14, 2000, Labor Arbiter Potenciano S. Cañizares, Jr. dismissed the complaints of Gamier, Condevillamar, Arriola and De Guzman. It was held that their participation in the illegal strike violated the Secretary of Labor's return to work order upon the latter's assumption of the labor dispute and after directing the parties to execute their new CBA.[16]

On March 16, 2001, Labor Arbiter Luis D. Flores rendered a decision[17] in favor of respondents Union and employees, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered declaring complainants' dismissal as illegal and unjustified and ordering the respondents Solidbank Corporation and/or its successor-in-interest First Metro Investment Corporation and/or Metropolitan Bank and Trust Company and/or Deogracias Vistan and/or Edgardo Mendoza to reinstate complainants to their former positions. Concomitantly, said respondents are hereby ordered to jointly and severally pay the complainants their full backwages and other employee's benefits from the time of their dismissal up to the date of their actual reinstatement; payment of ten (10%) percent attorney's fees; payment of ONE HUNDRED FIFTY THOUSAND PESOS (₱150,000.00) each as moral damages and ONE HUNDRED THOUSAND PESOS (₱100,000.00) each as exemplary damages which are computed, at the date of this decision in the amount of THIRTY THREE MILLION SEVEN HUNDRED NINETY FOUR THOUSAND TWO HUNDRED TWENTY TWO PESOS and 80/100 (₱33,794,222.80), by the Computation and Examination Unit of this branch and becomes an integral part of this Decision.
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> SO ORDERED.[18]

Respondents Gamier, Condevillamar, Arriola and De Guzman appealed the decision of Labor Arbiter Cañizares, Jr. to the National Labor Relations Commission (NLRC NCR CA

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[16] *Id.* at 312-313.

[17] *Id.* at 609-626.

[18] *Id.* at 625-626.

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No. 027342-01). Petitioners likewise appealed from the decision of Labor Arbiter Flores (NLRC NCR CA No. 028510-01).

Rulings of the NLRC

On July 23, 2001, the NLRC's Second Division rendered a Decision[19] reversing the decision of Labor Arbiter Flores, as follows:

> WHEREFORE, premises considered, the decision of the Labor Arbiter is hereby VACATED and SET ASIDE and a new one entered dismissing the complaint for illegal dismissal and unfair labor practice for lack of merit. As equitable relief, respondents are hereby ordered to pay complainants separation benefits as provided under the CBA at least one (1) month pay for every year of service whichever is higher.
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> SO ORDERED.[20]

The Second Division ruled that the mass action held by the bank employees on April 3, 2000 infront of the Office of the Secretary of Labor was not a legitimate exercise of the employees' freedom of speech and assembly. Such was a strike as defined under Article 212 (o) of the Labor Code, as amended, which does not distinguish as to whom the action of the employees is directed against, nor the place/location where the concerted action of the employees took place. Complainants Gamier, Condevillamar, Arriola and De Guzman did not report for work and picketed the DOLE premises on April 3, 2000; they continuously refused to report back to work until April 7, 2000 when they were issued a Notice of Termination. It was stressed that the mass action of the bank employees was an incident of a labor dispute, and hence the concerted work abandonment was a prohibited activity contemplated under Article 264 (a) of the Labor Code, as amended, upon assumption of jurisdiction by the Secretary of Labor. Citing this Court's ruling in the case of *Telefunken Semiconductors Employees Union-FFW v. Court*

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[19] *Id.* at 633-647. Penned by Commissioner Victoriano R. Calaycay and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan.

[20] *Id.* at 646.

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of Appeals,[21] the Second Division found there was just and valid cause for the dismissal of complainants.[22]

On the charge of forum shopping with respect to twenty-one (21) individual complainants who have voluntarily settled their claims against Solidbank, the said cases not having been dismissed by the Labor Arbiter despite proper motion,[23] the Second Division found that complainants admitted in their Answer that the said employees preferred to pursue their own independent action against the bank and their names were stricken out from the original complaint; hence, the Labor Arbiter erred in granting relief to said employees. Nevertheless, it held that the complaint will not be dismissed on this ground as the issue of forum shopping should have been raised in the proceedings before the Labor Arbiter.[24]

Respondents filed a motion for reconsideration while the petitioners filed a partial motion for reconsideration. Both motions were denied under Resolution[25] dated September 28, 2001.

As to respondents' appeal, the NLRC's Third Division by Decision[26] dated January 31, 2002, reversed the decision of Labor Arbiter Cañizares, Jr., as follows:

> WHEREFORE, the decision appealed from is hereby SET ASIDE and a new one entered finding the respondent Solidbank Corporation liable for the illegal dismissal of complainants Ernesto U. Gamier, Elena P. Condevillamar, Janice L. Arriola and Maria Ophelia C. de Guzman, and ordering the respondent bank to reinstate the complainants to their former positions without loss of seniority rights and to pay full backwages reckoned from the time of their illegal dismissal up to the time of their actual/payroll reinstatement.

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[21] G.R. Nos. 143013-14, December 18, 2000, 348 SCRA 565.

[22] *Rollo*, Vol. I, pp. 643-646.

[23] *Id.* at 864-886.

[24] *Id.* at 642-643.

[25] *Id.* at 650-654.

[26] *Id.* at 403-418. Penned by Commissioner Ireneo B. Bernardo and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo.

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Should reinstatement not be feasible, respondent bank is further ordered to pay complainants their separation pay in accordance with the provisions of the subsisting Collective Bargaining Agreement.

All other claims are DISMISSED for lack of merit.

SO ORDERED.[27]

The Third Division held that the protest action staged by the bank's employees before the DOLE did not amount to a strike but rather an exercise of their right to express frustration and dissatisfaction over the decision rendered by the Secretary of Labor. Hence, it cannot be concluded that the activity is per se illegal or violative of the assumption order considering that at the time, both parties had pending motions for reconsideration of the Secretary's decision. Moreover, it was found that Gamier, Condevillamar, Arriola and De Guzman were not fully investigated on the charge that they had instigated or actively participated in an illegal activity; neither was it shown that the explanations submitted by them were considered by the management. Since said employees had presented evidence of plausible and acceptable reasons for their absence at the workplace at the time of the protest action, their termination based on such alleged participation in the protest action was unjustified.[28]

Respondents filed a "partial motion" while the petitioners filed a motion for reconsideration of the Decision dated January 31, 2002. Both motions were denied under Resolution[29] dated March 8, 2002.

On November 20, 2001, petitioners filed a petition for *certiorari* before the CA assailing the July 23, 2001 Decision and Resolution dated September 28, 2001 of the NLRC's Second Division insofar as it ordered the payment of separation benefits to the 129 terminated employees of Solidbank who participated in the mass action/strike (**CA-G.R. SP No. 67730**).[30]

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[27] *Id.* at 417-418.

[28] *Id.* at 413-417.

[29] *Id.* at 420-421.

[30] CA *rollo* (CA-G.R. SP No. 67730), pp. 2-43.

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On May 23, 2002, petitioners filed a separate petition in the CA (**CA-G.R. SP No. 70820**) seeking the reversal of the January 31, 2002 Decision and Resolution dated March 8, 2002 of the NLRC's Third Division and praying for the following reliefs: (1) immediate issuance of a TRO and writ of preliminary injunction to restrain/enjoin the NLRC from issuing a writ of execution in NLRC CA No. 027342-01; (2) the petition be consolidated with CA-G.R. SP No. 67730 before the Thirteenth Division and CA-G.R. SP No. 68054 before the Third Division, or if consolidation is no longer possible, that the petition be resolved independently of the aforesaid cases; and (3) granting the petition by annulling and setting aside the January 31, 2002 Decision of the NLRC, and reinstating the November 14, 2000 Decision of Labor Arbiter Cañizares, Jr.[31]

On August 9, 2002, petitioners filed a Manifestation before the Fifteenth Division (CA-G.R. SP No. 67730) attaching thereto a copy of the Decision[32] (dated July 26, 2002) rendered by the CA's Special Third Division in CA-G.R. SP No. 68998, a petition for *certiorari* separately filed by Metrobank which also sought to annul and set aside the July 23, 2001 Decision of the NLRC's Second Division insofar as it ordered the payment of separation benefits to the dismissed employees of Solidbank. In the said decision, the CA's Fourteenth Division gave due course to the petition of Metrobank and affirmed the July 23, 2001 decision of the NLRC but reversed and set aside the portion of the decision ordering the payment of separation benefits.[33]

On September 11, 2002, respondents filed an Omnibus Motion and Counter-Manifestation arguing that petitioners' Manifestation constitutes a judicial admission that Metrobank engaged in forum shopping; it was thus prayed that CA-G.R. SP No. 68998 be consolidated with CA-G.R. SP No. 67730, the latter having a lower case number. Further, respondents attached a copy of

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[31] CA *rollo* (CA-G.R. SP No. 70820), pp. 2-43.

[32] CA *rollo* (CA-G.R. SP No. 67730), pp. 457-467. Penned by Associate Justice Bernardo P. Abesamis and concurred in by Associate Justices Josefina Guevara-Salonga and Amelita G. Tolentino.

[33] *Id.* at 467.

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the Decision[34] dated August 29, 2002 rendered by the CA's Second Division in CA-G.R. SP No. 68054, the petition separately filed by the Union and the 129 terminated employees of Solidbank from the July 23, 2001 Decision of the NLRC's Second Division. The CA's Second Division granted the petition in CA-G.R. SP No. 68054 and reinstated the March 16, 2001 Decision of Labor Arbiter Flores.

CA-G.R. SP Nos. 67730 and 70820 were consolidated before the Twelfth Division.

Court of Appeals' Ruling

On March 10, 2003, the CA rendered its Decision[35] the dispositive portion of which reads:

> WHEREFORE, the twin petitions are hereby DENIED. The dismissal of private respondents are hereby declared to be illegal. Consequently, petitioner is ordered to reinstate private respondents to their former position, consonant with the Decision of this Court in CA-G.R. SP No. 68054.
>
> SO ORDERED.[36]

First, on the issue of forum shopping, the CA found that while there were indeed two cases filed respecting the same matter of illegality of the dismissal of certain employees of Solidbank, it appears that the individual complainants have no hand in initiating the case before the Labor Arbiter for which the Union filed the complaint in behalf of its members. Hence, the individual complainants cannot be said to have deliberately or consciously sought two different fora for the same issues and causes of action. Petitioners, moreover, failed to call the attention of the Labor Arbiter as to the fact of filing of similar complaints by four employees.

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[34] *Id.* at 480-491. Penned by Associate Justice Rodrigo V. Cosico and concurred in Associate Justices Buenaventura J. Guerrero and Perlita J. Tria Tirona.

[35] *Supra* note 1.

[36] *Id.* at 141.

As to the nature of the mass action resorted to by the employees of Solidbank, the CA ruled that it was a legitimate exercise of their right to free expression, and not a strike proscribed when the Secretary of Labor assumed jurisdiction over the impassé between Solidbank and the Union in the collective bargaining negotiations. The CA thus reasoned:

> … while conceding that the aggregated acts of the private respondents may have resulted in a stoppage of work, such was the necessary result of the exercise of a Constitutional right. It is beyond cavil that **the mass action was done, not to exert any undue pressure on the petitioner with regard to wages or other economic demands, but to express dissatisfaction over the decision of the Labor Secretary subsequent to his assumption of jurisdiction. Surely, this is one course of action that is not enjoined even when a labor dispute is placed under the assumption of the said Labor Secretary.** To allow an act of the Labor Secretary – one man in the Executive Department – to whittle down a freedom guaranteed by the Bill of Rights would be to place upon that freedom a limitation never intended by the several framers of our Constitution. In effect, it would make a right enshrined in the Fundamental Law that was ratified by the Sovereign People, subordinate to a prerogative granted by the Labor Code, a statutory enactment made by mere representatives of the People. This anomaly We cannot allow.
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> xxx xxx xxx
>
> Was private respondents' act of massing in front of the DOLE Building calculated by them to cause work stoppage, or were they merely airing their grievance over the ruling of the Labor Secretary in exercise of their civil liberties? Who can divine the motives of their hearts? But when two different interpretations are possible, the courts must lean towards that which gives meaning and vitality to the Bill of Rights. x x x[37] (Emphasis supplied.)

On April 2, 2003, petitioners filed a motion for reconsideration but this was denied by the CA in its Resolution[38] dated August 7, 2003.

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[37] *Id.* at 139-141.

[38] *Id.* at 144-145.

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The Petitions

G.R. No. 159460

Petitioners argued that the CA erred in holding that the mass action of April 3, 2000 infront of the Office of the Secretary of Labor was not a strike considering that it had all the elements of a strike and the respondents judicially admitted that it was a strike. The CA deemed the mass action as an exercise of the respondents' freedom of expression but such constitutional right is not absolute and subject to certain well-defined exceptions. Moreover, a mass action of this nature is considered a strike and not an exercise of one's freedom of expression, considering further that the Secretary's Order dated January 18, 2000 is a valid exercise of police power.

Petitioners assail the CA in not considering the damage and prejudice caused to the bank and its clients by respondents' illegal acts. Respondents' mass actions crippled banking operations. Over-the-counter transactions were greatly undermined. Checks for clearing were significantly delayed. On-line transactions were greatly hampered, causing inestimable damage to the nationwide network of automated teller machines. Respondent Union's actions clearly belie its allegation that its mass action was merely intended to protest and express their dissatisfaction with the Secretary's Order dated March 24, 2000.

In view of the illegal strike conducted in violation of the Secretary's assumption order, petitioners maintain that the dismissal of respondents was not illegal, as consistently ruled by this Court in many cases. Even granting *arguendo* that their termination was illegal, the CA erred in ordering the reinstatement of respondents and holding that Solidbank, FMIC and Metrobank are solidarily liable to the respondents. Lastly, the CA erred in not finding that respondents were guilty of forum shopping as respondents' claim that they did not know the Union had filed a complaint was unbelievable under the circumstances.[39]

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[39] *Rollo,* Vol. II, pp. 1729-1730.

G.R. No. 159461

Petitioners contend that the CA erred in ruling that the dismissal of respondents Gamier, Condevillamar, Arriola and De Guzman was illegal, considering that this was not an issue raised in the petition for *certiorari* before the appellate court. What was raised by petitioners was only the propriety of the award of separation pay by the NLRC which in fact declared their dismissal to be valid and legal.

Petitioners maintain that respondents are not entitled to separation pay even if the dismissal was valid because they committed serious misconduct and/or illegal act in defying the Secretary's assumption order. Moreover, the CA also erred in disregarding the Release, Waiver and Quitclaim executed by twenty-one (21) individual respondents who entered into a compromise agreement with Solidbank.[40]

Issues

The fundamental issues to be resolved in this controversy are: (1) whether the protest rally and concerted work abandonment/boycott staged by the respondents violated the Order dated January 18, 2000 of the Secretary of Labor; (2) whether the respondents were validly terminated; and (3) whether the respondents are entitled to separation pay or financial assistance.

Our Ruling

Article 212 of the Labor Code, as amended, defines strike as *any* temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute. A labor dispute includes any controversy or matter concerning terms and conditions of employment or the association or representation of persons in negotiating, fixing, maintaining, changing or arranging the terms and conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employers and employees.[41] The term "strike" shall comprise not only

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[40] *Id.* at 1730-1730-A.

[41] *Gold City Integrated Port Service, Inc. v. National Labor Relations Commission*, G.R. Nos. 103560 & 103599, July 6, 1995, 245 SCRA 627, 635-636.

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concerted work stoppages, but also slowdowns, *mass leaves*, sitdowns, attempts to damage, destroy or sabotage plant equipment and facilities and similar activities.[42] Thus, the fact that the conventional term "strike" was not used by the striking employees to describe their common course of action is inconsequential, since the substance of the situation, and not its appearance, will be deemed to be controlling.[43]

After a thorough review of the records, we hold that the CA patently erred in concluding that the concerted mass actions staged by respondents cannot be considered a strike but a legitimate exercise of the respondents' right to express their dissatisfaction with the Secretary's resolution of the economic issues in the deadlocked CBA negotiations with petitioners. It must be stressed that the concerted action of the respondents was not limited to the protest rally infront of the DOLE Office on April 3, 2000. Respondent Union had also picketed the Head Office and Paseo de Roxas Branch. About 712 employees, including those in the provincial branches, boycotted and absented themselves from work in a concerted fashion for three continuous days that virtually paralyzed the employer's banking operations. Considering that these mass actions stemmed from a bargaining deadlock and an order of assumption of jurisdiction had already been issued by the Secretary of Labor to avert an impending strike, there is no doubt that the concerted work abandonment/boycott was the result of a labor dispute.

In *Toyota Motor Phils. Corp. Workers Association (TMPCWA) v. National Labor Relations Commission*,[44] petitioners union and members held similar protest rallies infront of the offices of BLR and DOLE Secretary and at the company plants. We declared that said mass actions constituted illegal strikes:

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[42] *Samahang Manggagawa sa Sulpicio Lines, Inc.-NAFLU v. Suplicio Lines, Inc.*,G.R. No. 140992, March 25, 2004, 426 SCRA 319, 326, citing Sec. 2, P.D. No. 823, as amended by P.D. No. 849.

[43] *Bangalisan v. Hon. CA*, 342 Phil. 586, 594 (1997) cited in *Gesite v. Court of Appeals*, G.R. Nos. 123562-65, November 25, 2004, 444 SCRA 51, 57.

[44] G.R. Nos. 158786 & 158789, October 19, 2007, 537 SCRA 171, 200-202.

Petitioner Union contends that the protests or rallies conducted on February 21 and 23, 2001 are not within the ambit of strikes as defined in the Labor Code, since they were legitimate exercises of their right to peaceably assemble and petition the government for redress of grievances. Mainly relying on the doctrine laid down in the case of *Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co., Inc.*, it argues that the protest was not directed at Toyota but towards the Government (DOLE and BLR). It explains that the protest is not a strike as contemplated in the Labor Code. The Union points out that in *Philippine Blooming Mills Employees Organization*, the mass action staged in Malacañang to petition the Chief Executive against the abusive behavior of some police officers was a proper exercise of the employees' right to speak out and to peaceably gather and ask government for redress of their grievances.

The Union's position fails to convince us.

While the facts in *Philippine Blooming Mills Employees Organization* are similar in some respects to that of the present case, the Union fails to realize one major difference: there was no labor dispute in *Philippine Blooming Mills Employees Organization.* **In the present case, there was an on-going labor dispute arising from Toyota's refusal to recognize and negotiate with the Union, which was the subject of the notice of strike filed by the Union on January 16, 2001**. Thus, the Union's reliance on *Philippine Blooming Mills Employees Organization* is misplaced, as it cannot be considered a precedent to the case at bar.

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Applying pertinent legal provisions and jurisprudence, we rule that the protest actions undertaken by the Union officials and members on February 21 to 23, 2001 are not valid and proper exercises of their right to assemble and ask government for redress of their complaints, but are illegal strikes in breach of the Labor Code. The Union's position is weakened by the lack of permit from the City of Manila to hold "rallies." **Shrouded as demonstrations, they were in reality temporary stoppages of work perpetrated through the concerted action of the employees who deliberately failed to report for work on the convenient excuse that they will hold a rally at the BLR and DOLE offices in Intramuros, Manila, on February 21 to 23, 2001**. x x x (Emphasis supplied.)

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Moreover, it is explicit from the directive of the Secretary in his January 18, 2000 Order that the Union and its members shall refrain from committing "any and all acts that might exacerbate the situation,"[45] which certainly includes concerted actions. For all intents and purposes, therefore, the respondents staged a strike ultimately aimed at realizing their economic demands. Whether such pressure was directed against the petitioners or the Secretary of Labor, or both, is of no moment. All the elements of strike are evident in the Union-instigated mass actions.

The right to strike, while constitutionally recognized, is not without legal constrictions.[46] Article 264 (a) of the Labor Code, as amended, provides:

> Art. 264. Prohibited activities. – (a) x x x
>
> No strike or lockout shall be declared **after assumption of jurisdiction by the President or the Secretary** or after certification or submission of the dispute to compulsory or voluntary arbitration **or during the pendency of cases involving the same grounds for the strike** or lockout.
>
> xxx xxx xxx (Emphasis supplied.)

The Court has consistently ruled that once the Secretary of Labor assumes jurisdiction over a labor dispute, such jurisdiction should not be interfered with by the application of the coercive processes of a strike or lockout.[47] A strike that is undertaken despite the issuance by the Secretary of Labor of an assumption order and/or certification is a prohibited activity and thus illegal.[48]

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[45] *Supra* note 3.

[46] *Philcom Employees Union v. Philippine Global Communications,* G.R. No. 144315, July 17, 2006, 495 SCRA 214, 244.

[47] *Telefunken Semiconductors Employees Union-FFW v. Court of Appeals, supra* note 21 at 582.

[48] *Philcom Employees Union v. Philippine Global Communications, supra* note 46 at 243. See also *Philippine Airlines, Inc. v. Brillantes,* G.R. No. 119360, October 10, 1997, 280 SCRA 515, 516, citing *Phil. Airlines, Inc. v. Secretary of Labor and Employment,* G.R. No. 88210, January 23, 1991, 193 SCRA 223; *Union of Filipro Employees v. Nestle Philippines,*

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Article 264 (a) of the Labor Code, as amended, also considers it a prohibited activity to declare a strike "during the pendency of cases involving the same grounds for the same strike."[49] There is no dispute that when respondents conducted their mass actions on April 3 to 6, 2000, the proceedings before the Secretary of Labor were still pending as both parties filed motions for reconsideration of the March 24, 2000 Order. Clearly, respondents knowingly violated the aforesaid provision by holding a strike in the guise of mass demonstration simultaneous with concerted work abandonment/boycott.

Notwithstanding the illegality of the strike, we cannot sanction petitioners' act of indiscriminately terminating the services of individual respondents who admitted joining the mass actions and who have refused to comply with the offer of the management to report back to work on April 6, 2000. The liabilities of individual respondents must be determined under Article 264 (a) of the Labor Code, as amended:

> Art. 264. Prohibited activities.— x x x
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> xxx xxx xxx
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> Any worker whose employment has been terminated as a consequence of an unlawful lockout shall be entitled to reinstatement with full back wages. **Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status**: Provided, That **mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment**, even if a replacement had been hired by the employer during such lawful strike.
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Inc., G.R. Nos. 88710-13, December 19, 1990, 192 SCRA 396; *Federation of Free Workers v. Inciong*, G.R. No. 49983, April 20, 1992, 208 SCRA 157; and *St. Scholastica's College v. Torres*, G.R. No. 100158, June 29, 1992, 210 SCRA 565.

[49] *Philcom Employees Union v. Philippine Global Communications, id.* at 246.

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The foregoing shows that the law makes a distinction between union officers and members. For knowingly participating in an illegal strike or participating in the commission of illegal acts during a strike, the law provides that a union officer may be terminated from employment. The law grants the employer the option of declaring a union officer who participated in an illegal strike as having lost his employment. It possesses the right and prerogative to terminate the union officers from service.[50]

However, a worker merely participating in an illegal strike may not be terminated from employment. It is only when he commits illegal acts during a strike that he may be declared to have lost employment status.[51] We have held that the responsibility of union officers, as main players in an illegal strike, is greater than that of the members and, therefore, limiting the penalty of dismissal only for the former for participation in an illegal strike is in order.[52] Hence, with respect to respondents who are union officers, the validity of their termination by petitioners cannot be questioned. Being fully aware that the proceedings before the Secretary of Labor were still pending as in fact they filed a motion for reconsideration of the March 24, 2000 Order, they cannot invoke good faith as a defense.[53]

For the rest of the individual respondents who are union members, the rule is that an ordinary striking worker cannot be terminated for mere participation in an illegal strike. There must

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[50] *Steel Corporation of the Philippines v. SCP Employees Union-National Federation of Labor Unions,* G.R. Nos. 169829-30, April 16, 2008, 551 SCRA 594, 612, citing *Santa Rosa Coca-Cola Plant Employees Union v. Coca-Cola Bottlers Phils, Inc.*, G.R. Nos. 164302-03, January 24, 2007, 512 SCRA 437, 458-459 and *Stamford Marketing Corp. v. Julian,* G.R. No. 145496, February 24, 2004, 423 SCRA 633, 648.

[51] *Id.*

[52] *Nissan Motors Philippines, Inc. v. Secretary of Labor and Employment,* G.R. Nos. 158190-91, 158276 and 158283, June 21, 2006, 491 SCRA 604, 624, citing *Association of Independent Unions in the Philippines v. NLRC,* G.R. No. 120505, March 25, 1999, 305 SCRA 219.

[53] See *Sukhothai Cuisine and Restaurant v. Court of Appeals,* G.R. No. 150437, July 17, 2006, 495 SCRA 336, 348, citing *First City Interlink Transportation Co., Inc. v. Sec. Confesor,* 338 Phil. 635, 644 (1997).

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be proof that he or she committed illegal acts during a strike. In all cases, the striker must be identified. But proof beyond reasonable doubt is not required. Substantial evidence available under the attendant circumstances, which may justify the imposition of the penalty of dismissal, may suffice. Liability for prohibited acts is to be determined on an individual basis.[54]

Petitioners have not adduced evidence on such illegal acts committed by each of the individual respondents who are union members. Instead, petitioners simply point to their admitted participation in the mass actions which they knew to be illegal, being in violation of the Secretary's assumption order. However, the acts which were held to be prohibited activities are the following:

> … where the strikers shouted slanderous and scurrilous words against the owners of the vessels; where the strikers used unnecessary and obscene language or epithets to prevent other laborers to go to work, and circulated libelous statements against the employer which show actual malice; where the protestors used abusive and threatening language towards the patrons of a place of business or against co-employees, going beyond the mere attempt to persuade customers to withdraw their patronage; where the strikers formed a human cordon and blocked all the ways and approaches to the launches and vessels of the vicinity of the workplace and perpetrated acts of violence and coercion to prevent work from being performed; and where the strikers shook their fists and threatened non-striking employees with bodily harm if they persisted to proceed to the workplace. x x x[55]

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[54] *Id.* at 355-356, citing *Samahang Manggagawa sa Sulpicio Lines, Inc.-NAFLU v. Sulpicio Lines, Inc., supra* note 42 at 328 and *Asso. of Independent Unions in the Phil. v. NLRC,* 364 Phil. 697, 708-709 (1999).

[55] *Id.* at 351, citing *United Seamen's Union of the Phil. v. Davao Shipowners Association,* G.R. Nos. L-18778 and L-18779, August 31, 1967, 20 SCRA 1226, 1240; *Cromwell Commercial Employees and Laborers Union (PTUC) v. Court of Industrial Relations,* G.R. No. L-19778, September 30, 1964, 12 SCRA 124, 132; *Liberal Labor Union v. Phil. Can Co.,* 91 Phil. 72, 78 (1952); *Linn v. United Plan Guard Workers,* 15 L.Ed 2d 582; 31 AM. JUR. § 245, p. 954; 116 A.L.R. 477, 505; 32 A.L.R. 756; 27 A.L.R. 375; *cited in* 2 C.A. AZUCENA, The Labor Code With Comments and Cases p. 500 (1999) and *Asso. of Independent Unions in the Phil. v. NLRC, id.* at 706-707.

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The dismissal of herein respondent-union members are therefore unjustified in the absence of a clear showing that they committed specific illegal acts during the mass actions and concerted work boycott.

Are these dismissed employees entitled to backwages and separation pay?

The award of backwages is a legal consequence of a finding of illegal dismissal. Assuming that respondent-union members have indeed reported back to work at the end of the concerted mass actions, but were soon terminated by petitioners who found their explanation unsatisfactory, they are not entitled to backwages in view of the illegality of the said strike. Thus, we held in *G & S Transport Corporation v. Infante*[56]—

> It can now therefore be concluded that the acts of respondents do not merit their dismissal from employment because it has not been substantially proven that they committed any illegal act while participating in the illegal strike. x x x
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> xxx xxx xxx
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> With respect to backwages, the principle of a "fair day's wage for a fair day's labor" remains as the basic factor in determining the award thereof. **If there is no work performed by the employee there can be no wage or pay unless, of course**, **the laborer was able, willing and ready to work but was illegally** locked out, suspended **or dismissed** or otherwise illegally prevented from working. While it was found that respondents expressed their intention to report back to work, the latter exception cannot apply in this case. In *Philippine Marine Officers' Guild v. Compañia Maritima*, as affirmed in *Philippine Diamond Hotel and Resort v. Manila Diamond Hotel Employees Union*, **the Court stressed that for this exception to apply, it is required that the strike be legal, a situation that does not obtain in the case at bar.** (Emphasis supplied.)

Under the circumstances, respondents' reinstatement without backwages suffices for the appropriate relief. But since reinstatement is no longer possible, given the lapse of considerable time from the occurrence of the strike, not to mention the fact

[56] G.R. No. 160303, September 13, 2007, 533 SCRA 288, 301-302.

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that Solidbank had long ceased its banking operations, the award of separation pay of one (1) month salary for each year of service, in lieu of reinstatement, is in order.[57] For the twenty-one (21) individual respondents who executed quitclaims in favor of the petitioners, whatever amount they have already received from the employer shall be deducted from their respective separation pay.

Petitioners contended that in view of the blatant violation of the Secretary's assumption order by the striking employees, the award of separation pay is unjust and unwarranted. That respondent-members themselves knowingly participated in the illegal mass actions constitutes serious misconduct which is a just cause under Article 282 for terminating an employee.

We are not persuaded.

As we stated earlier, the Labor Code protects an ordinary, rank-and-file union member who participated in such a strike from losing his job, provided that he did not commit an *illegal act* during the strike.[58] Article 264 (e) of the Labor Code, as amended, provides for such acts which are generally prohibited during concerted actions such as picketing:

> No person engaged in picketing shall commit any act of **violence, coercion or intimidation or obstruct the free ingress to or egress from the employer's premises for lawful purposes, or obstruct public thoroughfares.** (Emphasis supplied.)

Petitioners have not adduced substantial proof that respondent-union members perpetrated any act of violence, intimidation, coercion or obstruction of company premises and public thoroughfares. It did not submit in evidence photographs, police reports, affidavits and other available evidence.

As to the issue of solidary liability, we hold that Metrobank cannot be held solidarily liable with Solidbank for the claims of the latter's dismissed employees. There is no showing that

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[57] *Id.* at 304.

[58] *Id.* at 300.

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Metrobank is the successor-in-interest of Solidbank. Based on petitioners' documentary evidence, Solidbank was merged with FMIC, with Solidbank as the surviving corporation, and was later renamed as FMIC. While indeed Solidbank's banking operations had been integrated with Metrobank, there is no showing that FMIC has ceased business operations. FMIC as successor-in-interest of Solidbank remains solely liable for the sums herein adjudged against Solidbank.

Neither should individual petitioners Vistan and Mendoza be held solidarily liable for the claims adjudged against petitioner Solidbank. Article 212 (e)[59] does not state that corporate officers are 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[60] of the Corporation Code.

It is basic that a corporation is invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other legal entity to which it may be related. Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality.[61] In labor cases, in particular, the Court has held corporate directors and officers solidarily liable with the corporation for the termination of employment of corporate

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[59] Art. 212. x x x

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(e) "Employer" includes any person acting in the interest of an employer, directly or indirectly. The term shall not include any labor organization or any of its officers or agents except when acting as employer.

[60] 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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[61] *Carag v. National Labor Relations Commission*, G.R. No. 147590, April 2, 2007, 520 SCRA 28, 55.

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employees done with malice or in bad faith.[62] Bad faith is never presumed.[63] Bad faith does not simply connote bad judgment or negligence — it imports a dishonest purpose or some moral obliquity and conscious doing of wrong. It means a breach of a known duty through some motive or interest or ill-will that partakes of the nature of fraud.[64]

Respondents have not satisfactorily proven that Vistan and Mendoza acted with malice, ill-will or bad faith. Hence, said individual petitioners are not liable for the separation pay of herein respondents-union members.

WHEREFORE, the petitions are *PARTLY GRANTED*. The Decision dated March 10, 2003 of the Court of Appeals in CA-G.R. SP Nos. 67730 and 70820 is hereby *SET ASIDE*. Petitioner Solidbank Corporation (now FMIC) is hereby *ORDERED* to pay each of the above-named individual respondents, except union officers who are hereby declared validly dismissed, separation pay equivalent to one (1) month salary for every year of service. Whatever sums already received from petitioners under any release, waiver or quitclaim shall be deducted from the total separation pay due to each of them.

The NLRC is hereby directed to determine who among the individual respondents are union members entitled to the separation pay herein awarded, and those union officers who were validly dismissed and hence excluded from the said award.

No costs.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Bersamin, and *Sereno, JJ.,* concur.

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[62] *Malayang Samahan ng mga Manggagawa sa M. Greenfield v. Ramos,* G.R. No. 113907, April 20, 2001, 357 SCRA 77, 93-94.

[63] See *McLeod v. NLRC,* G.R. No. 146667, January 23, 2007, 512 SCRA 222, 246, citing *Lim v. Court of Appeals,* 380 Phil. 60 (2000) and *Del Rosario v. National Labor Relations Commission,* G.R. No. 85416, July 24, 1990, 187 SCRA 777.

[64] *Ford Philippines, Inc. v. Court of Appeals,* G.R. No. 99039, February 3, 1997, 267 SCRA 320, 328.