SECOND DIVISION

[G.R. No. 237246, July 29, 2019]

HAYDEN KHO, SR., PETITIONER, VS. DOLORES G. MAGBANUA, MARILYN S. MERCADO,* ARCHIMEDES** B. CALUB, MARIA E. ONGOTAN, FRANCISCO J. DUQUE, MERLE*** G. RIVERA, DOLORES A. PULIDO, PAULINO R. BALANGATAN, JR., ANAFEL L. ESCROPOLO, PERCIVAL A. DEINLA,**** JERRY C. ZABALA, ROGELIO C. ONGONION, JR., HELEN B. DELA CRUZ, CENON JARDIN, AND ROVILLA L. CATALAN, ***** RESPONDENTS.

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated July 19, 2017 and the Resolution[3] dated January 4, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 141821, which reversed and set aside the Decision[4] dated May 7, 2015 and the Resolution[5] dated June 16, 2015 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 04-001356-12(4), and accordingly, reinstated the Decision[6] dated November 9, 2011 of the Labor Arbiter (LA) holding respondent Hayden Kho, Sr. (Kho) solidarity liable to pay respondents Dolores G. Magbanua, Marilyn S. Mercado, Archimedes B. Calub, Maria E. Ongotan, Francisco J. Duque, Merle G. Rivera, Dolores A. Pulido, Paulino R. Balangatan, Jr., Anafel L. Escropolo, Percival A. Deinla, Jerry C. Zabala, Rogelio C. Ongonion, Jr., Helen B. Dela Cruz, Cenon Jardin, and Rovilla L. Catalan (respondents) separation pay, nominal damages, and attorney's fees, among others.

The Facts

A complaint[7] for illegal dismissal was filed by respondents before the LA against Holy Face Cell Corporation (Corporation), Tres Pares Fast Food (Tres Pares), and the Corporation's stockholders, including its alleged President/Manager, Kho, and the latter's wife, Irene S. Kho (Irene; collectively Spouses Kho).[8] Respondents claimed that they were employed by the Corporation in the Tres Pares as cooks, cashiers, or dishwashers.[9] They posited that on January 14, 2011, Spouses Kho's daughter, Sheryl Kho, posted a notice in the company premises that the restaurant would close down on January 19, 2011.[10] Fearing the loss of their jobs, they tried to seek an audience with Kho about the closure, but to no avail.[11] The restaurant closed as scheduled; thus respondents filed the complaint for illegal dismissal with payment of separation pay, salary differentials, nominal damages, differentials on overtime pay, service incentive leave pay, and holiday pay, including damages, as well as attorney's fees.[12]

For their part, Spouses Kho argued that they had no employer-employee relationship with respondents, as the latter's employer was the Corporation, and that they cannot be held liable for the acts of the Corporation, the same having been imbued with a personality separate and distinct from its stockholders, directors, and officers.[13]

The LA Ruling

In a Decision[14] dated November 9, 2011, the LA ruled in favor of respondents, and accordingly, ordered the Corporation and Kho to solidarity pay respondents separation pay, salary and 13th month pay differentials, nominal damages, and attorney's fees in the aggregate amount of P3,254,466.60.[15]

The LA found that not only did the Corporation fail to prove that it closed down its business due to financial distress as it did not offer financial documents to corroborate its claim, it also failed to comply with the notice requirement prior to such closure as laid down under Article 298 (formerly Article 283)[16] of the Labor Code. As such, respondents are entitled to the aforementioned awards. On this note and citing various jurisprudence,[17] the LA ruled that Kho – whom respondents alleged to be the President of the Corporation at the time of the closure and which allegation was not denied by Kho[18] – should be held solidarity liable for respondents' claims.[19]

Aggrieved, Kho appealed before the NLRC, particularly contesting the finding that he should be held solidarily liable with the Corporation.[20]

The NLRC Ruling

In a Decision[21] dated May 7, 2015, the NLRC reversed and set aside the LA Decision and dismissed the complaint as against Kho.[22] It ruled that Kho cannot be held solidarily liable with the Corporation, absent any allegation and proof from respondents that he committed any act that would justify piercing the veil of corporate fiction.[23] It stressed that mere failure to comply with the procedural due process does not constitute an unlawful act that would render Kho personally liable. Lastly, and contrary to the finding of the LA, it pointed out that per the Corporation's latest General Information Sheet (GIS), Kho was not the Corporation's President at the time of the closure, but a certain "Domingo M. Ifurung."[24]

Aggrieved, respondents moved for reconsideration,[25] which was denied in a Resolution[26] dated June 16, 2015; hence, they filed a petition for *certiorari*[27] before the CA.

The CA Ruling

In a Decision[28] dated July 19, 2017, the CA reversed and set aside the NLRC ruling, and accordingly, held the Corporation and Kho solidarily liable for the

payment of respondents' separation pay equivalent to one (1) month pay for every year of service, as well as nominal damages of P50,000.00 each and attorney's fees.[29]

On the merits, the CA agreed with the LA in awarding separation pay and nominal damages to respondents following Article 298 (formerly Article 283) of the Labor Code, as amended, and jurisprudence.[30] As regards Kho's liability, the CA noted that Kho effectively admitted that: (*i*) he managed the Corporation; (*ii*) his daughter posted the notice of closure; and (*iii*) respondents sought an audience with him to discuss the closure.[31] Based on these observations, the CA, citing *Marc II Marketing, Inc. v. Joson*,[32] concluded that Kho acted in bad faith when he assented to the sudden and abrupt closure of the restaurant despite the absence of a board resolution authorizing the closure. As such, he should be held solidarity liable with the Corporation.[33]

Dissatisfied, Kho moved for reconsideration[34] but was denied in a Resolution[35] dated January 4, 2018; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA correctly ascribed grave abuse of discretion on the part of the NLRC, and accordingly held Kho solidarity liable with the Corporation for the payment of respondents' money claims.

The Court's Ruling

The petition is meritorious.

Preliminarily, the Court stresses the distinct approach in reviewing a CA's ruling in a labor case. In a Rule 45 review, the Court examines the correctness of the CA Decision in contrast with the review of jurisdictional errors under Rule 65. Furthermore, Rule 45 limits the review to questions of law. In ruling for legal correctness, the Court views the CA Decision in the same context that the petition for *certiorari* was presented to the CA. Hence, the Court has to examine the CA Decision from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC Decision.[36]

Case law states that grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[37]

In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the

applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare, and accordingly, dismiss the petition.[38]

Guided by the foregoing considerations, the Court finds that the CA erred in ascribing grave abuse of discretion on the part of the NLRC, as the tribunal correctly found that Kho should not be held solidarity liable with the Corporation, considering that his claims are in accord with the evidence on record, as well as settled legal principles of labor law.

It is settled that a corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it.[39] As a juridical entity, a corporation may act only through its directors, officers, and employees. As such, obligations incurred by the corporation, acting through its directors, officers, and employees, are its sole liabilities,[40] and these persons should not be held jointly and solidarity liable with the corporation.[41] However, being a mere fiction of law, this corporate veil can be pierced when such corporate fiction is used: (*a*) to defeat public convenience or as a vehicle for the evasion of an existing obligation; (*b*) to justify wrong, protect or perpetuate fraud, defend crime, or as a shield to confuse legitimate issues;[42] or (*c*) as a mere alter ego or business conduit of a person, or 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.[43]

Fundamental in the realm of labor law that corporate directors, trustees, or officers can be held solidarity liable with the corporation when 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.[44] However, it bears emphasis that a finding of personal liability against a director, trustee, or a corporate officer requires the concurrence of these two (2) requisites, namely: (*a*) a clear allegation in the complaint of gross negligence, bad faith or malice, fraud, or any of the enumerated exceptional instances; and (*b*) clear and convincing proof of said grounds relied upon in the complaint[45] sufficient to overcome the burden of proof borne by the complainant.[46]

In this case, the evidence on record do not support the findings of both the LA and the CA that Kho was the Corporation's President at the time of its closure, and that he assented to a patently unlawful act, thereby exposing him to solidary liability with the Corporation. A plain reading of the Corporation's GIS for the years 2007[47] and 2008[48] show that Kho was not the Corporation's President as he was merely its Treasurer, while the GIS for the year 2009[49] indicates that he is no longer a corporate officer of the Corporation. More importantly, aside from respondents' bare allegations, there is a dearth of evidence on record that would indicate that Kho was a corporate officer at the time the restaurant, where respondents worked, closed down.

On this score, even assuming *arguendo* that Kho was a corporate officer, nowhere in the complaint nor in the respondents' submissions before the labor tribunals did they allege that Kho committed bad faith, fraud, negligence, or any of the

aforementioned exceptions to warrant his personal liability. The fact that it was Kho's daughter who posted the closure notice and with whom respondents requested for an audience with Kho to tackle the issue of closure – which notice was not even presented in evidence – is no proof that he orchestrated the closure or assented to the same, let alone in bad faith.[50] Relatedly, bad faith cannot be ascribed on any of the Corporation's officers by the mere fact that the Corporation failed to comply with the notice requirement before closing down the restaurant. Case law instructs that "[n]either does bad faith arise automatically just because a corporation fails to comply with the notice requirement of labor laws on company closure or dismissal of employees. The failure to give notice is not an unlawful act because the law does not define such failure as unlawful. Such failure to give notice is a violation of procedural due process but does not amount to an unlawful or criminal act. Such procedural defect is called illegal dismissal because it fails to comply with mandatory procedural requirements, but it is not illegal in the sense that it constitutes an unlawful or criminal act."[51]

Verily, absent any finding that Kho was a corporate officer of the Corporation who willfully and knowingly assented to patently unlawful acts of the latter, or who is guilty of bad faith or gross negligence in directing its affairs, or is guilty of conflict of interest resulting in damages thereto, he cannot be held personally liable for the corporate liabilities arising from the instant case. In *Guillermo v. Uson*,[52] the Court held:

> In the earlier labor cases of *Claparols v. Court of Industrial Relations* [460 Phil. 624 (1975] and *A.C. Ransom Labor Union-CCLU v. NLRC* [226 Phil. 199 (1986)], persons who were not originally impleaded in the case were, even during execution, held to be solidarity liable with the employer corporation for the latter's unpaid obligations to complainant-employees. These included a newly-formed corporation which was considered a mere conduit or alter ego of the originally impleaded corporation, and/or the officers or stockholders of the latter corporation. Liability attached, especially to the responsible officers, even after final judgment and during execution, when there was a failure to collect from the employer corporation the judgment debt awarded to its workers. in *Naguiat v. NLRC* [336 Phil. 545 (1997)], the president of the corporation was found, for the first time on appeal, to be solidarity liable to the dismissed employees. Then, in *Reynoso v.* [*CA*] [339 Phil. 38 (2000)], the veil of corporate fiction was pierced at the stage of execution, against a corporation not previously impleaded, when it was established that such corporation had dominant control of the original party corporation, which was a smaller company, in such a manner that the latter's closure was done by the former in order to defraud its creditors, including a former worker.
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> The rulings of this Court in *A.C. Ransom, Naguiat*, and *Reynoso*, however, have since been tempered, at least in the aspects of the lifting of the corporate veil and the assignment of personal liability to directors, trustees[,] and officers in labor cases. The subsequent cases of *McLeod v. NLRC, Spouses Santos v. NLRC* and *Carag v. NLRC*, have all established, save for certain exceptions, the primacy of Section 31 of the