

SECOND DIVISION

[G.R. No. 177493, March 19, 2014]

**ERIC GODFREY STANLEY LIVESEY, PETITIONER, VS.
BINSWANGER PHILIPPINES, INC. AND KEITH ELLIOT,
RESPONDENTS.**

D E C I S I O N

BRION, J.:

We resolve this petition for review on *certiorari*^[1] assailing the decision^[2] dated August 18, 2006 and the resolution^[3] dated March 29, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 94461.

The Antecedents

In December 2001, petitioner Eric Godfrey Stanley Livesey filed a complaint for illegal dismissal with money claims^[4] against CBB Philippines Strategic Property Services, Inc. (CBB) and Paul Dwyer. CBB was a domestic corporation engaged in real estate brokerage and Dwyer was its President.

Livesey alleged that on April 12, 2001, CBB hired him as Director and Head of Business Space Development, with a monthly salary of US\$5,000.00; shareholdings in CBB's offshore parent company; and other benefits. In August 2001, he was appointed as Managing Director and his salary was increased to US\$16,000.00 a month. Allegedly, despite the several deals for CBB he drew up, CBB failed to pay him a significant portion of his salary. For this reason, he was compelled to resign on December 18, 2001. He claimed CBB owed him US\$23,000.00 in unpaid salaries.

CBB denied liability. It alleged that it engaged Livesey as a corporate officer in April 2001: he was elected Vice-President (with a salary of P75,000.00/month), and thereafter, he became President (at P1,200,000.00/year). It claimed that Livesey was later designated as Managing Director when it became an extension office of its principal in Hongkong.^[5]

On December 17, 2001, Livesey demanded that CBB pay him US\$25,000.00 in unpaid salaries and, at the same time, tendered his resignation. CBB posited that the labor arbiter (LA) had no jurisdiction as the complaint involved an intra-corporate dispute.

In his decision dated September 20, 2002,^[6] LA Jaime M. Reyno found that Livesey had been illegally dismissed. LA Reyno ordered CBB to reinstate Livesey to his former position as Managing Director and to pay him US\$23,000.00 in accrued salaries (from July to December 2001), and US\$5,000.00 a month in back salaries

from January 2002 until reinstatement; and 10% of the total award as attorney's fees.

Thereafter, the parties entered into a compromise agreement^[7] which LA Reyno approved in an order dated November 6, 2002.^[8] Under the agreement, Livesey was to receive US\$31,000.00 in full satisfaction of LA Reyno's decision, broken down into US\$13,000.00 to be paid by CBB to Livesey or his authorized representative upon the signing of the agreement; US\$9,000.00 on or before June 30, 2003; and US\$9,000.00 on or before September 30, 2003. Further, the agreement provided that unless and until the agreement is fully satisfied, CBB shall not: (1) sell, alienate, or otherwise dispose of all or substantially all of its assets or business; (2) suspend, discontinue, or cease its entire, or a substantial portion of its business operations; (3) substantially change the nature of its business; and (4) declare bankruptcy or insolvency.

CBB paid Livesey the initial amount of US\$13,000.00, but not the next two installments as the company ceased operations. In reaction, Livesey moved for the issuance of a writ of execution. LA Eduardo G. Magno granted the writ,^[9] but it was not enforced. Livesey then filed a motion for the issuance of an alias writ of execution,^[10] alleging that in the process of serving respondents the writ, he learned "that respondents, in a clear and willful attempt to avoid their liabilities to complainant x x x have organized another corporation, [Binswanger] Philippines, Inc."^[11] He claimed that there was evidence showing that CBB and Binswanger Philippines, Inc. (*Binswanger*) are one and the same corporation, pointing out that CBB stands for **Chesterton Blumenauer Binswanger**.^[12] Invoking the doctrine of *piercing the veil of corporate fiction*, Livesey prayed that an alias writ of execution be issued against respondents Binswanger and Keith Elliot, CBB's former President, and now Binswanger's President and Chief Executive Officer (CEO).

The Compulsory Arbitration Rulings

In an order^[13] dated March 22, 2004, LA Catalino R. Laderas denied Livesey's motion for an alias writ of execution, holding that the doctrine of piercing the corporate veil was inapplicable in the case. He explained that the stockholders of the two corporations were not the same. Further, LA Laderas stressed that LA Reyno's decision had already become final and could no longer be altered or modified to include additional respondents.

Livesey filed an appeal which the National Labor Relations Commission (NLRC) granted in its decision^[14] dated September 7, 2005. It reversed LA Laderas' March 22, 2004 order and declared the respondents jointly and severally liable with CBB for LA Reyno's decision^[15] of September 20, 2002 in favor of Livesey. The respondents moved for reconsideration, filed by an Atty. Genaro S. Jacosalem,^[16] not by their counsel of record at the time, Corporate Counsels Philippines, Law Offices. The NLRC denied the motion in its resolution of January 6, 2006.^[17] The respondents then sought relief from the CA through a petition for certiorari under Rule 65 of the Rules of Court.

The respondents charged the NLRC with grave abuse of discretion for holding them liable to Livesey and in exercising jurisdiction over an intra-corporate dispute. They

maintained that Binswanger is a separate and distinct corporation from CBB and that Elliot signed the compromise agreement in CBB's behalf, not in his personal capacity. It was error for the NLRC, they argued, when it applied the doctrine of piercing the veil of corporate fiction to the case, despite the absence of clear evidence in that respect.

For his part, Livesey contended that the petition should be dismissed outright for being filed out of time. He claimed that the respondents' counsel of record received a copy of the NLRC resolution denying their motion for reconsideration as early as January 19, 2006, yet the petition was filed only on May 15, 2006. He insisted that in any event, there was ample evidence supporting the application of the doctrine of piercing the veil of corporate fiction to the case.

The CA Decision

The CA granted the petition,^[18] reversed the NLRC decision^[19] of September 7, 2005 and reinstated LA Laderas' order^[20] of March 22, 2004. The CA found untenable Livesey's contention that the petition for certiorari was filed out of time, stressing that while there was no valid substitution or withdrawal of the respondents' former counsel, the NLRC impliedly recognized Atty. Jacosalem as their new counsel when it resolved the motion for reconsideration which he filed.

On the merits of the case, the CA disagreed with the NLRC finding that the respondents are jointly and severally liable with CBB in the case. It emphasized that the mere fact that Binswanger and CBB have the same President is not in itself sufficient to pierce the veil of corporate fiction of the two entities, and that although Elliot was formerly CBB's President, this circumstance alone does not make him answerable for CBB's liabilities, there being no proof that he was motivated by malice or bad faith when he signed the compromise agreement in CBB's behalf; neither was there proof that Binswanger was formed, or that it was operated, for the purpose of shielding fraudulent or illegal activities of its officers or stockholders or that the corporate veil was used to conceal fraud, illegality or inequity at the expense of third persons like Livesey.

Livesey moved for reconsideration, but the CA denied the motion in its resolution dated March 29, 2007.^[21] Hence, the present petition.

The Petition

Livesey prays for a reversal of the CA rulings on the basis of the following arguments:

1. The CA erred in not denying the respondents' petition for *certiorari* dated May 12, 2006 for being filed out of time.

Livesey assails the CA's reliance on the Court's pronouncement in *Rinconada Telephone Co., Inc. v. Hon. Buenviaje*^[22] to justify its ruling that the receipt on March 17, 2006 by Atty. Jacosalem of the NLRC's denial of the respondents' motion for reconsideration was the reckoning date for the filing of the petition for *certiorari*, not the receipt of a copy of the same resolution on January 19, 2006 by the respondents' counsel of record, the Corporate Counsels Philippines, Law Offices. The

cited Court's pronouncement reads:

In view of respondent judge's recognition of Atty. Santos as new counsel for petitioner without even a valid substitution or withdrawal of petitioner's former counsel, said new counsel logically awaited for service to him of any action taken on his motion for reconsideration. Respondent judge's sudden change of posture in insisting that Atty. Maggay is the counsel of record is, therefore, a whimsical and capricious exercise of discretion that prevented petitioner and Atty. Santos from taking a timely appeal[.][²³]

With the above citation, Livesey points out, the CA opined that a copy of the NLRC resolution denying the respondents' motion for reconsideration should have been served on Atty. Jacosalem and no longer on the counsel of record, so that the **sixty (60)-day period** for the filing of the petition should be reckoned from March 17, 2006 when Atty. Jacosalem secured a copy of the resolution from the NLRC (the petition was filed by a Jeffrey Jacosalem on May 15, 2006).^[24] Livesey submits that the CA's reliance on *Rinconada* was misplaced. He argues that notwithstanding the signing by Atty. Jacosalem of the motion for reconsideration, it was only proper that the NLRC served a copy of the resolution on the Corporate Counsels Philippines, Law Offices as it was still the respondents' counsel at the time.^[25] He adds that Atty. Jacosalem never participated in the NLRC proceedings because he did not enter his appearance as the respondents' counsel before the labor agency; further, he did not even indicate his office address on the motion for reconsideration he signed.

2. The CA erred in not applying the doctrine of piercing the veil of corporate fiction to the case.

Livesey bewails the CA's refusal to pierce Binswanger's corporate veil in his bid to make the company and Elliot liable, together with CBB, for the judgment award to him. He insists that CBB and Binswanger are one and the same corporation as shown by the "overwhelming evidence" he presented to the LA, the NLRC and the CA, as follows:

a. CBB stands for "Chesterton Blumenauer Binswanger."^[26]

b. After executing the compromise agreement with him, through Elliot, CBB ceased operations following a transaction where a substantial amount of CBB shares changed hands. Almost simultaneously with CBB's closing (in July 2003), Binswanger was established with its headquarters set up beside CBB's office at Unit 501, 5/F Peninsula Court Building in Makati City.^[27]

c. Key CBB officers and employees moved to Binswanger led by Elliot, former CBB President who became Binswanger's President and CEO; Ferdie Catral, former CBB Director and Head of Operations; Evangeline Agcaoili and Janet Pei.

d. Summons served on Binswanger in an earlier labor case was received by Binswanger using CBB's receiving stamp.^[28]

e. A Leslie Young received on August 23, 2003 an online query on whether CBB was the same as Blumaneuver Binswanger (BB). Signing as Web Editor, Binswanger/CBB, Young replied *via* e-mail:[29]

We are known as either CBB (Chesterton Blumenauer Binswanger) or as Chesterton Petty Ltd. in the Philippines. Contact info for our office in Manila is as follows:

Manila Philippines
CBB Philippines
Unit 509, 5th Floor
Peninsula Court, Paseo de Roxas corner
Makati Avenue
1226 Makati City
Philippines
Contact: Keith Elliot

f. In a letter dated August 21, 2003,[30] Elliot noted a Binswanger bid solicitation for a project with the Philippine National Bank (PNB) which was actually a CBB project as shown by a CBB draft proposal to PNB dated January 24, 2003.[31]

g. The affidavit[32] dated October 1, 2003 of Hazel de Guzman, another former CBB employee who also filed an illegal dismissal case against the company, attested to the existence of Livesey's documentary evidence in his own case and who deposed that at one time, Elliot told her of CBB's plan to close the corporation and to organize another for the purpose of evading CBB's liabilities.

h. The findings[33] of facts of LA Veneranda C. Guerrero who ruled in De Guzman's favor that bolstered his own evidence in the present case.

3. The CA erred in not holding Elliot liable for the judgment award.

Livesey questions the CA's reliance on *Laperal Development Corporation v. Court of Appeals*, [34] *Sunio, et al. v. NLRC, et al.*, [35] and *Palay, Inc., et al. v. Clave, etc., et al.*, [36] in support of its ruling that Elliot is not liable to him for the LA's award. He argues that in these cases, the Court upheld the separate personalities of the corporations and their officers/employees because there was no evidence that the individuals sought to be held liable were in bad faith or that there were badges of fraud in their actions against the aggrieved party or parties in said cases. He reiterates his submission to the CA that the circumstances of the present case are different from those of the cited cases. He posits that the closure of CBB and its immediate replacement by Binswanger could not have been possible without Elliot's guiding hand, such that when CBB ceased operations, Elliot (CBB's President and CEO) moved to Binswanger in the same position. More importantly, Livesey points out, as signatory for CBB in the compromise agreement between him (Livesey) and CBB, Elliot knew that it had not been and would never be fully satisfied.

Livesey thus laments Elliot's devious scheme of leaving him an unsatisfied award, stressing that Elliot was the chief orchestrator of CBB and Binswanger's fraudulent act of evading the full satisfaction of the compromise agreement. In this light, he submits that the Court's ruling in *A.C. Ransom Labor Union-CCLU v. NLRC*, [37] which deals with the issue of who is liable for the worker's backwages when a