Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ERIC GODFREY STANLEY LIVESEY, Petitioner,	**G.R. No. 177493** Present:
- versus -	CARPIO, *J.*, *Chairperson*, BRION, DEL CASTILLO, PEREZ, and REYES,* *JJ.*
BINSWANGER PHILIPPINES, INC. and KEITH ELLIOT, Respondents.	Promulgated: MAR 19 2014

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DECISION

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.

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* Designated as Acting Member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1650 dated March 13, 2014.

1 *Rollo*, pp. 3-44; filed pursuant to Rule 45 of the Rules of Court.

2 Id. at 49-61; penned by Associate Justice Magdangal M. de Leon, and concurred in by Associate Justices Godardo A. Jacinto and Juan Q. Enriquez, Jr.

3 Id. at 513-514.

4 Id. at 98.

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 ₱75,000.00/month), and thereafter, he became President (at ₱1,200,000.00/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

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5 Id. at 89.
6 Id. at 455-465.
7 Id. at 537-539.
8 Id. at 540.

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

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9 Id. at 542-543.
10 Id. at 544-551.
11 Id. at 545.
12 Id. at 546.
13 Id. at 492-496.
14 Id. at 74-85; penned by Commissioner Angelita A. Gacutan, and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay.
15 *Supra* note 6.
16 *Rollo*, pp. 88-95.
17 Id. at 86-87.

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

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18 *Supra* note 2.
19 *Supra* note 14.
20 *Supra* note 13.
21 *Supra* note 3.

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.

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22 263 Phil. 654 (1990).

23 Id. at 660.

24 *Rollo*, p. 62.

25 Id. at 842; Corporate Counsels Philippines, Law Offices filed its notice of withdrawal as the respondents' counsel only on April 28, 2006.

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

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26 Id. at 449; Internal Memo dated December 21, 2001 from Livesey to Lina Serra.
27 Id. at 580-584.
28 Id. at 761.
29 Id. at 592.
30 Id. at 593.

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 corporation ceases operations, should apply to his situation.

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31 Id. at 594.
32 Id. at 595-597.
33 Id. at 882-893.
34 G.R. No. 96354, June 8, 1993, 223 SCRA 261.
35 212 Phil. 355 (1984).
36 209 Phil. 523 (1983).
37 226 Phil. 199 (1986).

The Respondents' Position

Through their comment[38] and memorandum,[39] the respondents pray that the petition be denied for the following reasons:

1. The NLRC had no jurisdiction over the dispute between Livesey and CBB/Dwyer as it involved an intra-corporate controversy; under Republic Act No. 8799, the Regional Trial Court exercises jurisdiction over the case.

As shown by the records, Livesey was appointed as CBB's Managing Director during the relevant period and was also a shareholder, making him a corporate officer.

2. There was no employer-employee relationship between Livesey and Binswanger. Under Article 217 of the Labor Code, the labor arbiters and the NLRC have jurisdiction only over disputes where there is an employer-employee relationship between the parties.

3. The NLRC erred in applying the doctrine of piercing the veil of corporate fiction to the case based only on mere assumptions. Point by point, they take exception to Livesey's submissions as follows:

a. The e-mail statement in reply to an online query of Young (CBB's Web Editor) that CBB is known as Chesterton Blumenauer Binswanger or Chesterton Petty. Ltd. to establish a connection between CBB and Binswanger is inconclusive as there was no mention in the statement of Binswanger Philippines, Inc.

b. The affidavit of De Guzman, former CBB Associate Director, who also resigned from the company like Livesey, has no probative value as it was self-serving and contained only misrepresentation of facts, conjectures and surmises.

c. When Binswanger was organized and incorporated, CBB had already been abandoned by its Board of Directors and no longer subsidized by CBB-Hongkong; it had no business operations to work with.

d. The mere transfer of Elliot and Catral from CBB to Binswanger is not a ground to pierce the corporate veil in the present case absent a clear evidence supporting the application of the

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38 *Rollo*, pp. 940-945; filed on October 15, 2007.

39 Id. at 1054-1066; dated May 15, 2008.

doctrine. The NLRC applied the doctrine on the basis only of LA Guerrero's decision in the De Guzman case.

e. The respondents' petition for *certiorari* was filed on time. Atty. Jacosalem, who was presumed to have been engaged as the respondents' counsel, was deemed to have received a copy of the NLRC resolution (denying the motion for reconsideration) on March 17, 2006 when he requested and secured a copy from the NLRC. The petition was filed on May 15, 2006 or fifty-nine (59) days from March 17, 2006. Atty. Jacosalem may have failed to indicate his address on the motion for reconsideration he filed but that is not a reason for him to be deprived of the notices and processes of the case.

The Court's Ruling

The procedural question

The respondents' petition for *certiorari* before the CA was filed out of time. The sixty (60)-day filing period under Rule 65 of the Rules of Court should have been counted from January 19, 2006, the date of receipt of a copy of the NLRC resolution denying the respondents' motion for reconsideration by the Corporate Counsels Philippines, Law Offices which was the respondents' counsel of record at the time. The respondents cannot insist that Atty. Jacosalem's receipt of a copy of the resolution on March 17, 2006 as the reckoning date for the filing of the petition as we shall discuss below.

The CA chided the NLRC for serving a copy of the resolution on the Corporate Counsels Philippines, Law Offices, instead of on Atty. Jacosalem as it believed that the labor tribunal impliedly recognized Atty. Jacosalem as the respondents' counsel when it acted on the motion for reconsideration that he signed. As we see it, the fault was not on the NLRC but on Atty. Jacosalem himself as he left no forwarding address with the NLRC, a serious lapse that even he admitted.[40] This is a matter that cannot just be taken for granted as it betrays a careless legal representation that can cause adverse consequences to the other party.

To our mind, Atty. Jacosalem's non-observance of a simple, but basic requirement in the practice of law lends credence to Livesey's claim that the lawyer did not formally enter his appearance before the NLRC as the respondents' new counsel; if it had been otherwise, he would have supplied his office address to the NLRC. Also, had he exercised due diligence in the performance of his duty as counsel, he could have inquired earlier with the NLRC and should not have waited as late as March 17, 2006 about the

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40 Id. at 941-942.

outcome of the respondents' motion for reconsideration which was filed as early as October 28, 2005.

To reiterate, the filing of the respondents' petition for *certiorari* should have been reckoned from January 19, 2006 when a copy of the subject NLRC resolution was received by the Corporate Counsels Philippines, Law Offices, which, as of that date, had not been discharged or had withdrawn and therefore remained to be the respondents' counsel of record. Clearly, the petition for *certiorari* was filed out of time. Section 6(a), Rule III of the NLRC Revised Rules of Procedure provides that "[f]or purposes of appeal, the period shall be counted from receipt of such decisions, resolutions, or orders by the counsel or representative of record."

We now come to the issue of whether the NLRC had jurisdiction over the controversy between Livesey and CBB/Dwyer on the ground that it involved an intra-corporate dispute.

Based on the facts of the case, we find this issue to have been rendered academic by the compromise agreement between Livesey and CBB and approved by LA Reyno.[41] That CBB reneged in the fulfillment of its obligation under the agreement is no reason to revive the issue and further frustrate the full settlement of the obligation as agreed upon.

The substantive aspect of the case

Even if we rule that the respondents' appeal before the CA had been filed on time, we believe and so hold that the appellate court committed a reversible error of judgment in its challenged decision.

The NLRC committed no grave abuse of discretion in reversing LA Laderas' ruling as there is substantial evidence in the records that Livesey was prevented from fully receiving his monetary entitlements under the compromise agreement between him and CBB, with Elliot signing for CBB as its President and CEO. *Substantial evidence* is more than a scintilla; it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[42]

Shortly after Elliot forged the compromise agreement with Livesey, CBB ceased operations, a corporate event that was not disputed by the respondents. Then Binswanger suddenly appeared. It was established almost simultaneously with CBB's closure, with no less than Elliot as its President and CEO. Through the confluence of events surrounding CBB's closure and Binswanger's sudden emergence, a reasonable mind would arrive at the

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41 *Supra* note 8.

42 *Gelmart Industries (Phils.), Inc. v. Hon. Leogardo, Jr.*, 239 Phil. 386, 391 (1987); citing *Ang Tibay v. Court of Industrial Relations,* 69 Phil. 635 (1940).

conclusion that Binswanger is CBB's *alter ego* or that CBB and Binswanger are one and the same corporation. There are also indications of badges of fraud in Binswanger's incorporation. It was a business strategy to evade CBB's financial liabilities, including its outstanding obligation to Livesey.

The respondents impugned the probative value of Livesey's documentary evidence and insist that the NLRC erred in applying the doctrine of piercing the veil of corporate fiction in the case to avoid liability. They consider the NLRC conclusions as mere assumptions.

We disagree.

It has long been settled that the law vests a corporation with a personality distinct and separate from its stockholders or members. In the same vein, a corporation, by legal fiction and convenience, is an entity shielded by a protective mantle and imbued by law with a character alien to the persons comprising it.[43] Nonetheless, the shield is not at all times impenetrable and cannot be extended to a point beyond its reason and policy. Circumstances might deny a claim for corporate personality, under the "**doctrine of piercing the veil of corporate fiction**."

Piercing the veil of corporate fiction is an equitable doctrine developed to address situations where the separate corporate personality of a corporation is abused or used for wrongful purposes.[44] Under the doctrine, the corporate existence may be disregarded where the entity is formed or used for non-legitimate purposes, such as to evade a just and due obligation, or to justify a wrong, to shield or perpetrate fraud or to carry out similar or inequitable considerations, other unjustifiable aims or intentions,[45] in which case, the fiction will be disregarded and the individuals composing it and the two corporations will be treated as identical.[46]

In the present case, we see an indubitable link between CBB's closure and Binswanger's incorporation. CBB ceased to exist only in name; it re-emerged in the person of Binswanger for an urgent purpose — to avoid payment by CBB of the last two installments of its monetary obligation to Livesey, as well as its other financial liabilities. Freed of CBB's liabilities, especially that owing to Livesey, Binswanger can continue, as it did continue, CBB's real estate brokerage business.

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43 Jose C. Vitug (Retired Supreme Court Associate Justice), Commercial Law and Jurisprudence, Volume II, 2006 ed., p. 9; citing *Lim v. Court of Appeals*, 380 Phil. 60, 76 (2000).

44 Ibid., citing *Philippine National Bank v. Ritratto Group, Inc.* 414 Phil. 494, 505 (2001).

45 Ibid., citing *National Federation of Labor Union (NAFLU) v. Ople*, No. L-68661, July 22, 1986, 143 SCRA 124; and *Commissioner of Internal Revenue v. Norton & Harrison Company,* No. L-17618, August 31, 1964, 11 SCRA 714.

46 Hector S. de Leon and Hector M. De Leon, Jr., The Corporation Code of the Philippines, 9th ed., 2006, p. 26.

Livesey's evidence, whose existence the respondents never denied, converged to show this continuity of business operations from CBB to Binswanger. It was not just coincidence that Binswanger is engaged in the same line of business CBB embarked on: (1) it even holds office in the very same building and on the very same floor where CBB once stood; (2) CBB's key officers, Elliot, no less, and Catral moved over to Binswanger, performing the tasks they were doing at CBB; (3) notwithstanding CBB's closure, Binswanger's Web Editor (Young), in an e-mail correspondence, supplied the information that Binswanger is "now known" as either CBB (Chesterton Blumenauer Binswanger or as Chesterton Petty, Ltd., in the Philippines; (4) the use of Binswanger of CBB's paraphernalia (receiving stamp) in connection with a labor case where Binswanger was summoned by the authorities, although Elliot claimed that he bought the item with his own money; and (5) Binswanger's takeover of CBB's project with the PNB.

While the ostensible reason for Binswanger's establishment is to continue CBB's business operations in the Philippines, which by itself is not illegal, the close proximity between CBB's disestablishment and Binswanger's coming into existence points to an unstated but urgent consideration which, as we earlier noted, was to evade CBB's unfulfilled financial obligation to Livesey under the compromise agreement.[47]

This underhanded objective, it must be stressed, can only be attributed to Elliot as it was apparent that Binswanger's stockholders had nothing to do with Binswanger's operations as noted by the NLRC and which the respondents did not deny.[48] Elliot was well aware of the compromise agreement between Livesey and CBB, as he "agreed and accepted" the terms of the agreement[49] for CBB. He was also well aware that the last two installments of CBB's obligation to Livesey were due on June 30, 2003 and September 30, 2003. These installments were not met and the reason is that after the alleged sale of the majority of CBB's shares of stock, it closed down.

With CBB's closure, Livesey asked why people would buy into a corporation and simply close it down immediately thereafter?[50] The answer — to pave the way for CBB's reappearance as Binswanger. Elliot's "guiding hand," as Livesey puts it, is very much evident in CBB's demise and Binswanger's creation. Elliot knew that CBB had not fully complied with its financial obligation under the compromise agreement. He made sure

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47 *Supra* note 7.
48 *Rollo*, p. 875.
49 Id. at 539.
50 Id. at 546.

that it would not be fulfilled when he allowed CBB's closure, despite the condition in the agreement that "unless and until the Compromise Amount has been fully settled and paid by the Company in favor of Mr. Livesey, the Company shall not x x x suspend, discontinue, or cease its entire or a substantial portion of its business operations[.]"[51]

What happened to CBB, we believe, supports Livesey's assertion that De Guzman, CBB's former Associate Director, informed him that at one time Elliot told her of CBB's plan to close the corporation and organize another for the purpose of evading CBB's liabilities to Livesey and its other financial liabilities.[52] This wrongful intent we cannot and must not condone, for it will give a premium to an iniquitous business strategy where a corporation is formed or used for a non-legitimate purpose, such as to evade a just and due obligation.[53] We, therefore, find Elliot as liable as Binswanger for CBB's unfulfilled obligation to Livesey.

WHEREFORE, premises considered, we hereby **GRANT** the petition. The decision dated August 18, 2006 and the Resolution dated March 29, 2007 of the Court of Appeals are **SET ASIDE**. Binswanger Philippines, Inc. and Keith Elliot (its President and CEO) are declared jointly and severally liable for the second and third installments of CBB's liability to Eric Godfrey Stanley Livesey under the compromise agreement dated October 14, 2002. Let the case record be remanded to the National Labor Relations Commission for execution of this Decision.

Costs against the respondents.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

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51 Id. at 539.

52 Id. at 596.

53 Jose C. Vitug (Retired Supreme Court Associate Justice), Commercial Law and Jurisprudence, Volume II, 2006 ed., p. 9; citing *National Federation of Labor Union v. Ople*, 227 Phil. 113 (1986).

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice