Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MARICALUM MINING CORPORATION,
Petitioner,

- versus -

ELY G. FLORENTINO, GLENN BUENVIAJE, RUDY J. GOMEZ, represented by his heir THELMA GOMEZ, ALEJANDRO H. SITCHON, NENET ARITA, FERNANDO SIGUAN, DENNIS ABELIDA, NOEL S. ACCOLADOR, WILFREDO TAGANILE, SR., MARTIR S. AGSOY, SR., MELCHOR APUCAY, DOMINGO LAVIDA, JESUS MOSQUEDA, RUELITO A. VILLARMIA, SOFRONIO M. AYON, EFREN T. GENISE, ALQUIN A. FRANCO, PABLO L. ALEMAN, PEPITO G. HEPRIANA, ELIAS S. TRESPECES, EDGAR SOBRINO,
Respondents,

x -- -- -- -- -- -- -- -- -- -- -- -- -- -- x

ELY FLORENTINO, GLENN BUENVIAJE, RUDY J. GOMEZ, represented by his heir THELMA GOMEZ, FERNANDO SIGUAN, DENNIS ABELIDA, NOEL S. ACCOLADOR, WILFREDO TAGANILE, SR., MARTIR S. AGSOY, SR., MELCHOR APUCAY, DOMINGO LAVIDA, JESUS MOSQUEDA, RUELITO

G.R. No. 221813

Present:

VELASCO, JR., *J.*, *Chairperson*,
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, *JJ.*

G.R. No. 222723

A. VILLARMIA, SOFRONIO M. AYON, EFREN T. GENISE, ALQUIN A. FRANCO, PABLO L. ALEMAN, PEPITO G. HEPRIANA, ELIAS S. TRESPECES, EDGAR SOBRINO, ALEJANDRO H. SITCHON, NENET ARITA, WELILMO T. NERI, ERLINDA FERNANDEZ, and EDGARDO PEÑAFLORIDA,
Petitioners,

- versus -

NATIONAL LABOR RELATIONS COMMISSION - 7th DIVISION, CEBU CITY, "G" HOLDINGS, INC., and TEODORO G. BERNARDINO, ROLANDO DEGOJAS, MARICALUM MINING CORPORATION.
Respondents.

Promulgated:

July 23, 2018

x -- x

DECISION

GESMUNDO, *J.*:

A subsidiary company's separate corporate personality may be disregarded only when the evidence shows that such separate personality was *being used* by its parent or holding corporation to perpetrate a fraud or evade an existing obligation. Concomitantly, employees of a corporation have no cause of action for labor-related claims against another unaffiliated corporation, which does not exercise control over them.

The subjects of the instant consolidated cases are two (2) petitions for appeal by *certiorari* filed by the following petitioners:

1) Maricalum Mining Corporation *(Maricalum Mining)* in **G.R. No. 221813**; and

2) Ely Florentino, Glenn Buenviaje, Rudy J. Gomez,[1] Fernando Siguan, Dennis Abelida, Noel S. Acollador, Wilfredo C. Taganile, Sr., Martir S. Agsoy, Sr., Melchor B. Apucay, Domingo Lavida, Jesus Mosqueda, Ruelito A. Villarmia, Sofronio M. Ayon, Efren T. Genise, Alquin A. Franco, Pabio L. Aleman, Pepito G. Hepriana, Elias S. Trespeces, Edgar M. Sobrino, Alejandro H. Sitchon, Nenet Arita, Dr. Welilmo T. Neri, Erlinda L. Fernandez, and Edgardo S. Peñaflorida *(complainants)* in **G.R. No. 222723**.

Both of these petitions are assailing the propriety of the October 29, 2014 Decision[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 06835. The CA upheld the November 29, 2011 Decision[3] and January 31, 2012 Resolution[4] of the National Labor Relations Commission *(NLRC)* in NLRC Case No. VAC-05-000412-11. In the present petitions, complainants seek to **reinstate** the April 20, 2011 Decision[5] of the Labor Arbiter *(LA)* in consolidated cases NLRC RAB VI CASE No. 09-10755-10, NLRC RAB VI CASE No. 12-10915-10, NLRC RAB VI CASE No. 12-10916-10 and NLRC RAB VI CASE No. 12-10917-10, which granted their joint complaints for monetary claims against G Holdings, Inc. *(G Holdings)*; while Maricalum Mining seeks to have the case **remanded** to the LA for proper computation of its total monetary liability to the complainants.

The Antecedents

The dispute traces its roots back to when the Philippine National Bank (*PNB*, a former government-owned-and-controlled corporation) and the Development Bank of the Philippines *(DBP)* transferred its ownership of Maricalum Mining to the National Government for disposition or privatization because it had become a non-performing asset.[6]

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[1] *Rollo* (G.R. No. 222723) p. 12, represented by his heir Thelma G. Gomez, et al.

[2] Id. (G.R. No. 221813, Vol. 1) at 67-80; penned by Associate Justice Marie Christine Azcarraga-Jacob and concurred by Associate Justices Ramon Paul L. Hernando and Ma. Luisa C. Quijano-Padilla.

[3] Id. at 381; penned by Presiding Commissioner Violeta Ortiz-Bantug and concurred by Commissioner Julie C. Rendoque.

[4] Id. at 440.

[5] Id. at 250; penned by Labor Arbiter Romulo P. Sumalinog.

[6] See *"G" Holdings, Inc. v. National Mines and Allied Workers Union Local 103 (NAMAWU), et al.*, 619 Phil. 69, 78 (2009).

On October 2, 1992, the National Government thru the Asset Privatization Trust *(APT)* executed a Purchase and Sale Agreement *(PSA)* with G Holdings, a domestic corporation primarily engaged in the business of owning and holding shares of stock of different companies. G Holding bought 90% of Maricalum Mining's shares and financial claims in the form of company notes. In exchange, the PSA obliged G Holdings to pay APT the amount of ₱673,161,280.00, with a down payment of ₱98,704,000.00 and with the balance divided into four tranches payable in installment over a period of ten years.[7] Concomitantly, G Holdings also assumed Maricalum Mining's liabilities in the form of company notes. The said financial liabilities were converted into three (3) Promissory Notes *(PNs)* totaling ₱550,000,000.00 (₱114,715,360.00, ₱186,550,560.00 and ₱248,734,080.00), which were secured by mortgages over some of Maricalum Mining's properties.[8] These PNs obliged Maricalum Mining to pay G Holdings the stipulated amount of ₱550,000,000.00.

Upon the signing of the PSA and paying the stipulated down payment, G Holdings immediately took physical possession of Maricalum Mining's Sipalay Mining Complex, as well as its facilities, and took full control of the latter's management and operations.[9]

On January 26, 1999, the Sipalay General Hospital, Inc. *(Sipalay Hospital)* was duly incorporated to provide medical services and facilities to the general public.[10]

Afterwards, some of Maricalum Mining's employees retired and formed several manpower cooperatives,[11] as follow:

COOPERATIVE	DATE OF REGISTRATION
San Jose Multi-Purpose Cooperative *(SJMPC)*	December 8, 1998
Centennial Multi-Purpose Cooperative *(CeMPC)*	April 5, 1999
Sipalay Integrated Multi-Purpose Cooperative *(SIMPC)*	April 5, 1999
Allied Services Multi-Purpose Cooperative *(ASMPC)*	July 23, 1999
Cansibit Multi-Purpose Cooperative *(CaMPC)*	September 16, 1999

[7] See *Republic of the Philippines v. "G" Holdings, Inc.*, 512 Phil. 253, 258 (2005).
[8] Supra note 5.
[9] Id.
[10] *Rollo* (G.R. No. 222723), pp. 437, 447.
[11] Id. (G.R. No. 221813, Vol. II), pp. 553, 557.

In 2000, each of the said cooperatives executed identical sets of Memorandum of Agreement [12] with Maricalum Mining wherein they undertook, among others, to provide the latter with a steady supply of workers, machinery and equipment for a monthly fee.

On June 1, 2001, Maricalum Mining's Vice President and Resident Manager Jesus H. Bermejo wrote a Memorandum [13] to the cooperatives informing them that Maricalum Mining has decided to stop its mining and milling operations effective July 1, 2001 in order to avert continuing losses brought about by the low metal prices and high cost of production.

In July 2001, the properties of Maricalum Mining, which had been mortgaged to secure the PNs, were extrajudicially foreclosed and eventually sold to G Holdings as the highest bidder on December 3, 2001.[14]

On September 23, 2010, some of Maricalum Mining's workers, including complainants, and some of Sipalay General Hospital's employees jointly filed a Complaint[15] with the LA against G Holdings, its president, and officer-in-charge, and the cooperatives and its officers for illegal dismissal, underpayment and nonpayment of salaries, underpayment of overtime pay, underpayment of premium pay for holiday, nonpayment of separation pay, underpayment of holiday pay, nonpayment of service incentive leave pay, nonpayment of vacation and sick leave, nonpayment of 13th month pay, moral and exemplary damages, and attorneys fees.

On December 2, 2010, complainants and CeMPC Chairman Alejandro H. Sitchon surprisingly filed his complaint for illegal dismissal and corresponding monetary claims with the LA against G Holdings, its officer-in-charge and CeMPC.[16]

Thereafter, the complaints were consolidated by the LA.

During the hearings, complainants presented the affidavits of Alejandro H. Sitchon and Dennis Abelida which attested that, prior to the formation of the manpower cooperatives, their services were terminated by Maricalum Mining as part of its retrenchment program.[17] They claimed that, in 1999, they were called by the top executives of Maricalum Mining and G

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[12] Id. at 527-552.
[13] Id. (G.R. No. 222723) at 112.
[14] Supra note 5.
[15] *Rollo* (G.R. No. 221813, Vol. I), pp. 500-504.
[16] Id. at 508-509; *rollo* (G.R. No. 221813, Vol. II), pp. 510-511.
[17] Id. (G.R. No. 222723) at 171-175.

Holdings and informed that they will have to form a cooperative for the purpose of providing manpower services in view of the retrenchment program. Thus, they were "rehired" only after their respective manpower cooperative services were formed. Moreover, they also submitted the following documents: (a) Cash Vouchers[18] representing payments to the manpower cooperatives; (b) a Payment Schedule[19] representing G Holdings' payment of social security contributions in favor of some Sipalay Hospital employees (c) Termination Letters[20] written by representatives of G Holdings, which were addressed to complainants including those employed by Sipalay Hospital; and (d) Caretaker Schedules[21] prepared by G Holdings to prove the existence of employment relations.

After the hearings were concluded, complainants presented their Position Paper[22] claiming that: they have not received any increase in wages since they were allegedly rehired; except for Sipalay Hospital's employees, they worked as an augmentation force to the security guards charged with securing Maricalum Mining's assets which were acquired by G Holdings; Maricalum Mining's assets have been exposed to pilferage by some of its rank-and-file employees whose claims for collective bargaining benefits were undergoing litigation; the Sipalay Hospital is purportedly "among the assets" of Maricalum Mining acquired by G Holdings; the payrolls for their wages were supposedly prepared by G Holdings' accounting department; since the second half of April 2007, they have not been paid their salary; and some of their services were dismissed without any due process.

Based on these factual claims, complainants posited that: the manpower cooperatives were mere alter egos of G Holdings organized to subvert the "tenurial rights" of the complainants; G Holdings implemented a retrenchment scheme to dismiss the caretakers it hired before the foreclosure of Maricalum Mining's assets; and G Holdings was their employer because it allegedly had the power to hire, pay wages, control working methods and dismiss them.

Correspondingly, G Holdings filed its Position Paper[23] maintaining that: it was Maricalum Mining who entered into an agreement with the manpower corporations for the employment of complainants' services for auxiliary or seasonal mining activities; the manpower cooperatives were the ones who paid the wages, deducted social security contributions, withheld taxes, provided medical benefits and had control over the working means

[18] Id. at 154-166; 233-245, 251-297, 308-314.
[19] Id. at 167.
[20] Id. at 168-169.
[21] Id. at 207-232.
[22] Id. at 175-190.
[23] Id. (G.R. No. 221813, Vol. 1) at 143-159.

and methods of complainants; despite Maricalum Mining's decision to stop its mining and milling operations, complainants still continued to render their services for the orderly winding down of the mines' operations; Maricalum Mining should have been impleaded because it is supposed to be the indispensable party in the present suit; (e) Maricalum Mining, as well as the manpower cooperatives, each have distinct legal personalities and that their individual corporate liabilities cannot be imposed upon each other; and there was no employer-employee relationship between G Holdings and complainants.

Likewise, the manpower cooperatives jointly filed their Position Paper[24] arguing that: complainants had exhibited a favorable response when they were properly briefed of the nature and benefits of working under a cooperative setup; complainants received their fair share of benefits; complainants were entitled to cast their respective votes in deciding the affairs of their respective cooperatives; complainants, as member of the cooperatives, are also co-owners of the said cooperative and they cannot bargain for higher labor benefits with other co-owners; and the LA has no jurisdiction over the case because there is no employer-employee relationship between a cooperative and its members.

The LA Ruling

In its decision dated April 28, 2011, the LA ruled in favor of complainants. It held that G Holdings is guilty of labor-only contracting with the manpower cooperatives thereby making all of them solidarily and directly liable to complainants. The LA reasoned that: G Holdings connived with Marcalum Mining in orchestrating the formation of manpower cooperatives to circumvent complainants' labor standards rights; it is highly unlikely that complainants (except Sipalay Hospital's employees) would spontaneously form manpower cooperatives on their own and in unison without the guidance of G Holdings and Maricalum Mining; and complainants effectively became the employees of G Holdings because their work had changed from assisting in the mining operations to safeguarding the properties in the Sipalay Mining Complex, which had already been acquired by G Holding. On the other hand, the LA denied the claims of complainants Nenet Arita and Domingo Lavida for lack of factual basis. The *fallo* of the LA decision reads:

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[24] Id. at 162-173.

WHEREFORE, premises considered, judgment is hereby rendered DIRECTING respondent "G" HOLDINGS, INC. to pay complainants as follows:

		Unpaid Salaries/ Wages	13th Month Pay
(1)	Salvador Arceo	₱81,418.08	₱6,784.84
(2)	Sofronio Ayon	79,158.50	6,596.54
(3)	Glenn Buenviaje	105,558.40	8,796.53
(4)	Ely Florentino	102,325.28	8,527.11
(5)	Rogelio Fulo	99,352.23	8,279.35
(6)	Efren Genise	161,149.18	13,429.10
(7)	Rudy Gomez	72,133.41	6,011.12
(8)	Jessie Magallanes	239,251.94	19,937.66
(9)	Freddie Masicampo	143,415.85	11,951.32
(10)	Edgardo Penaflorida	146,483.60	12,206.97
(11)	Noel Acollador	89,163.46	7,430.29
(12)	Gorgonio Baladhay	220,956.10	18,413.01
(13)	Jesus Mosqueda	48,303.22	4,025.27
(14)	Alquin Franco	180,281.25	15,023.44
(15)	Fabio Aleman	30,000.00	2,500.00
(16)	Elias Trespeces	180,000.00	15,000.00
(17)	Pepito Hedriana	18,000.00	1,500.00
(18)	Dennis Abelida	149,941.00	12,945.08
(19)	Melchor Apucay	371,587.01	30,965.58
(20)	Martin Agsoy	128,945.08	10,745.42
(21)	Ruelito Villarmia	224,486.95	18,707.25
(22)	Fernando Siguan	417,039.32	34,753.28
(23)	Alejandro Sitchon	380,423.16	31,701.93
(24)	Welilmo Neri	456,502.36	38,041.86
(25)	Erlinda Fernandez	125,553.88	10,462.82
(26)	Edgardo Sobrino	112,521.40	9,376.78
(27)	Wildredo Taganile	52,386.82	4,365.57
(28)	Bartholomew Jamboy	68,000.00	5,666.67
		₱4,484,337.48	₱373,694.79

and the amount of ₱485,803.23 as attorney's fees, or the total amount of FIVE MILLION THREE HUNDRED FORTY-THREE THOUSAND EIGHT HUNDRED THIRTY-FIVE and 50/100 PESOS (₱5,343,835.50).

The other claims are DISMISSED for lack of merit.

Further, the complaints against respondents SIPALAY INTEGRATED MULTI-PURPOSE COOPERATIVE, ALLIED SERVICES MULTI-COOPERATIVE, SAN JOSE MULTI-PURPOSE COOPERATIVE, CANSIBIT MULTI-PURPOSE COOPERATIVE, and CENTENNIAL MULTI-PURPOSE COOPERATIVE, being mere agents of respondent "G" HOLDINGS, INC., are hereby DISMISSED.

SO ORDERED.[25]

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[25] Id. at 277-278.

The parties filed their respective appeals to the NLRC.

On July 18, 2011, Maricalum Mining filed its Appeal-in-Intervention[26] seeking to: (a) reverse and set aside the Labor Arbiter's Decision; (b) declare Maricalum Mining as the true and proper party-in-interest; (c) remand the case back to the Labor Arbiter for proper computation of the money claims of the complainants; and (d) give Maricalum Mining the opportunity to settle with the complainants.

The NLRC Ruling

In its decision dated November 29, 2011, the NLRC modified the LA ruling. It held that Dr. Welilmo T. Neri, Erlinda L. Fernandez and Edgar M. Sobrino are not entitled to the monetary awards because they were not able to establish the fact of their employment relationship with G Holdings or Maricalum Mining because Sipalay Hospital has a separate and distinct corporate personality. As to the remaining complainants, it found that no evidence was adduced to prove that the salaries/wages and the 13th month pay had been paid.

However, the NLRC imposed the liability of paying the monetary awards imposed by the LA against Maricalum Mining, instead of G Holdings, based on the following observations that: it was Maricalum Mining—not G Holdings—who entered into service contracts by way of a Memorandum of Agreement with each of the manpower cooperatives; complainants continued rendering their services at the insistence of Maricalum Mining through their cooperatives; Maricalum Mining never relinquished possession over the Sipalay Mining Complex; Maricalum Mining continuously availed of the services of complainants through their respective manpower cooperatives; in *G Holdings, Inc. v. National Mines and Allied Workers Union Local 103 (NAMAWU), et al.*[27] (NAMAWU Case), the Court already held that G Holdings and Maricalum Mining have separate and distinct corporate personalities. The dispositive portion of the NLRC ruling states:

> WHEREFORE, premises considered, the Decision rendered by the Labor Arbiter on 20 April 2011 is hereby MODIFIED, to wit:

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[26] *Rollo* (G.R. No. 221813, Vol. I), pp. 284-325.
[27] 619 Phil. 69, 78 (2009).

> 1) the monetary award adjudged to complainants Jessie Magallanes, Rogelio E. Fulo, Salvador J. Arceo, Freddie Masicampo, Welilmo Neri, Erlinda Fernandez and Edgar Sobrino are CANCELLED;
>
> 2) the award of ten percent (10%) attorney's fees is ADJUSTED commensurate to the award of unpaid salaries/wages and 13th month pay of the remaining complainants;
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> 3) the directive for respondent "G" Holdings, Inc. to pay complainants the monetary awards adjudged by the Labor Arbiter is CANCELLED;
>
> 4) it is intervenor that is, accordingly, directed to pay the remaining complainants their respective monetary awards.
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> In all other respects the Decision STANDS.
>
> SO ORDERED.[28]

Complainants and Maricalum Mining filed their respective motions for reconsideration before the NLRC. On January 31, 2012, it issued a resolution modifying its previous decision. The dispositive portion of the NLRC resolution state:

> WHEREFORE, premises considered, intervenor's Motion for Reconsideration is only PARTIALLY GRANTED. The Decision promulgated by the Commission on 29 November 2011 modifying the Labor Arbiter's decision as stated therein, is further MODIFIED to the effect that the monetary awards adjudged in favor of complainants Wilfredo Taganile and Bartholomew T. Jamboy are CANCELLED.
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> SO ORDERED.[29]

Undaunted, the parties filed their respective petitions for *certiorari* before the CA.

The CA Ruling

In its decision dated October 29, 2014, the CA denied the petitions and affirmed the decision of the NLRC. It ratiocinated that factual issues are

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[28] *Rollo* (G.R. No. 221813, Vol. I), pp. 405-406.
[29] Id. at 451.

not fit subjects for review via the extraordinary remedy of *certiorari*. The CA emphasized that the NLRC's factual findings are conclusive and binding on the appellate courts when they are supported by substantial evidence. Thus, it maintained that it cannot review and re-evaluate the evidence all over again because there was no showing that the NLRC's findings of facts were reached arbitrarily. The decretal portion of the CA decision states:

> WHEREFORE, premises considered, the instant petition for certiorari is DENIED, and the assailed Decision dated 29 December 2011 and two Resolutions both dated 31 January 2012 of the National Labor Relations Commission are hereby AFFIRMED in all respects.
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> Costs against petitioners.
>
> SO ORDERED.[30]

Hence, these consolidated petitions essentially raising the following issues:

> I
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> WHETHER THE COURT OF APPEALS ERRED IN REFUSING TO RE-EVALUATE THE FACTS AND IN FINDING NO GRAVE ABUSE OF DISCRETION ON THE PART OF THE NLRC;
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> II
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> WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE NLRC'S FINDING OF SUBSTANTIAL EVIDENCE IN GRANTING THE COMPLAINANTS' MONETARY AWARD AS WELL AS ITS REFUSAL TO REMAND THE CASE BACK TO THE LABOR ARBITER FOR RE-COMPUTATION OF SUCH AWARD;
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> III
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> WHETHER THE COURT OF APPEALS ERRED IN DISREGARDING THAT THE NLRC ALLOWED MARICALUM MINING TO INTERVENE IN THE CASE ONLY ON APPEAL;
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> IV
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> WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE NLRC'S RULING WHICH ALLOWED THE PIERCING OF THE CORPORATE VEIL AGAINST MARICALUM MINING BUT NOT AGAINST SIPALAY HOSPITAL.

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[30] Id. at 27.

Complainants argue that the CA committed several reversible errors because: (a) it refused to re-evaluate the facts of the case even if the factual findings of the NLRC and the LA were conflicting; (b) it failed to consider that G Holdings had already acquired all of Maricalum Mining's assets and that Teodoro G. Bernardino *(Bernardino)* was now the president and controlling stockholder of both corporations; (c) it failed to take into account that Maricalum Mining was allowed to intervene only on appeal even though it was not a real party-in-interest; (d) it failed to appreciate the LA's findings that Maricalum Mining could not have hired complainants because G Holdings had already acquired in an auction sale all the assets in the Sipalay Mining Complex; (e) it failed to consider that all resident managers of the Sipalay Mining Complex were employed by G Holdings; (f) the foreclosure of the assets in the Sipalay Mining Complex was intended to bring the said properties outside the reach of complainants; (g) the Sipalay Hospital had been existing as a hospital for Maricalum Mining's employees long before G Holdings arrived; (h) Dr. Welilmo T. Neri, Erlinda L. Fernandez, Edgar M. Sobrino and Wilfredo C. Taganile, Sr. were all hired by Maricalum Mining but were dismissed by G Holdings; (i) Sipalay Hospital existed without a board of directors and its employees were receiving orders from Maricalum Mining and, later on, replaced by G Holdings' officer-in-charge; and (j) Maricalum Mining and G Holdings controlled the affairs of Sipalay Hospital.

Maricalum Mining contends that the CA committed grave abuse of discretion because the monetary awards were improperly computed. It claims that complainants had stopped rendering their services since September 23, 2010, hence, their monetary claims covering the second half of April 2007 up to July 2007 have already prescribed as provided pursuant to Article 291 of the Labor Code. Moreover, it also stressed that the NLRC should have remanded the case to the LA for the determination of the manpower cooperatives' net surpluses and how these amounts were distributed to their members to aid the proper determination of the total amount of the monetary award. Finally, Maricalum Mining avers that the awards in favor of some of the complainants are "improbable" and completely unfounded.

On the other hand, G Holdings argues that piercing the corporate veil of Maricalum Mining is not proper because: (a) it did not acquire all of Maricalum Mining's assets; (b) it is primarily engaged in the business of owning and holding shares of stocks of different companies—not participating in the operations of its subsidiaries; (c) Maricalum Mining, the actual employers of complainants, had already manifested its willingness to settle the correct money claims; (d) Bernardino is not a controlling stockholder of Maricalum Mining because the latter's corporate records

show that almost all of its shares of stock are owned by the APT; (e) Joost Pekelharing—not Bernardino—is G Holdings' president; (f) in the NAMAWU Case, it was already held that control over Maricalum Mining was exercised by the APT and not G Holdings; (g) the NLRC did not commit any grave abuse of discretion when it allowed Maricalum Mining to intervene after the LA's decision was promulgated; (h) the cash vouchers, payment schedule, termination letters and caretaker schedules presented by complainants do not prove the employment relationship with G Holdings because the signatories thereto were either from Maricalum Mining or the manpower cooperatives; (i) this Court's pronouncements in the NAMAWU Case and in *Republic v. G Holdings, Inc.*[31] prove that Maricalum Mining never relinquished possession of the Sipalay Mining Complex in favor of G Holdings; and (j) Dr. Welilmo T. Neri, Erlinda L. Fernandez, Edgar M. Sobrino and Wilfredo C. Taganile, Sr. were employees of the Sipalay Hospital, which is a separate business entity, and were not members in any of the manpower cooperatives, which entered into a labor-only arrangement with Maricalum Mining.

The Court's Ruling

It is basic that only pure questions of law should be raised in petitions for review on *certiorari* under Rule 45 of the Rules of Court.[32] It will not entertain questions of fact as the factual findings of appellate courts are final, binding or conclusive on the parties and upon this court when supported by substantial evidence.[33] In labor cases, however, the Court has to examine the CA's Decision from the prism of whether the latter had correctly determined the presence or absence of grave abuse of discretion in the NLRC's Decision.[34]

In this case, the principle that this Court is not a trier of facts applies with greater force in labor cases.[35] Grave abuse must have attended the evaluation of the facts and evidence presented by the parties.[36] This Court is keenly aware that the CA undertook a Rule 65 review—not a review on appeal—of the NLRC decision challenged before it.[37] It follows that this Court will not re-examine conflicting evidence, reevaluate the credibility of witnesses, or substitute the findings of fact of the NLRC, an administrative

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[31] Supra, note 7.
[32] *Far Eastern Surety and Insurance Co., Inc. v. People*, 721 Phil. 760, 770 (2013), citations omitted.
[33] *Villarama v. Atty. De Jesus*, G.R. No. 217004, April 17, 2017, citations omitted.
[34] *Quebral, et al. v. Angbus Construction, Inc., et al.*, G.R. No. 221897, November 7, 2016, citations omitted.
[35] *Noblado, et al. v. Alfonso*, 773 Phil. 271, 279 (2015), citations omitted.
[36] *Pascual v. Burgos, et al.*, 776 Phil. 167, 186 (2016), citations omitted.
[37] *Philippine National Bank v. Gregorio*, G.R. No. 194944, September 18, 2017, citations omitted.

body that has expertise in its specialized field.[38] It may only examine the facts only for the purpose of resolving allegations and determining the existence of grave abuse of discretion.[39] Accordingly, with these procedural guidelines, the Court will now proceed to determine whether or not the CA had committed any reversible error in affirming the NLRC's Decision.

Propriety of the Monetary Awards

Ordinarily, when there is sufficient evidence before the Court to enable it to resolve fundamental issues, it will dispense with the regular procedure of remanding the case to the lower court or appropriate tribunal in order to avoid a further delay in the resolution of the case.[40] A remand is only necessary when the proceedings below *are grossly inadequate to settle factual issues*.[41] This is in line with the Court's power to issue a process in order to enforce its own decrees and thus avoid circuitous actions and vexatious litigation.[42]

In the case at bench, Maricalum Mining is seeking to have the case remanded because the LA allegedly miscomputed the amount of the monetary awards. However, **it failed to offer any reasonable argument or explanation why the proceedings conducted before the NLRC or LA were "grossly inadequate to settle factual issues,"** especially as regards the computation of monetary awards. Its bare allegations – that the monetary awards were improperly computed because prescribed claims have been granted, that the net surpluses of the manpower cooperative were not properly distributed, and that the awards in favor of some of the complainants were improbable – do not warrant the invocation of this Court's power to have the case remanded back to the LA. Bare and unsubstantiated allegations do not constitute substantial evidence and have no probative value.[43]

Besides, it is not imperative for the Court to remand the case to the LA for the determination of the amounts of net surpluses that each of the manpower cooperatives had received from Maricalum Mining. The records show that Maricalum Mining was guilty of entering into a labor-only contracting arrangement with the manpower cooperatives, thus, **all of them**

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[38] *Protective Maximum Security Agency, Inc. v. Fuentes*, 753 Phil. 482, 504 (2015), citations omitted.
[39] *United Coconut Planters Bank v. Looyuko, et al.*, 560 Phil. 581, 590 (2007), citations omitted.
[40] *Simon, et al. v. Canlas*, 521 Phil. 558, 575 (2006), citations omitted.
[41] *Tacloban II Neighborhood Association, Inc. v. Office of the President, et al.*, 588 Phil. 177, 195 (2008), citations omitted.
[42] *Cf. De Ortega v. Natividad, etc., et al.*, 71 Phil. 340, 342 (1941), citations omitted.
[43] *LNS International Manpower Services v. Padua, Jr.*, 628 Phil. 223, 224 (2010).

are solidarily liable to the complainants by virtue of Article 106[44] of the Labor Code. In *DOLE Philippines, Inc. v. Esteva, et al.*[45] it was ruled that a cooperative, despite having a personality separate from its members,[46] is engaged in a labor-only contracting arrangement based on the following indicators:

> 1) The cooperative had a measly paid-up capital of ₱6,600.00 and had only managed to increase the same by continually engaging in labor-only contracting with its client;
>
> 2) The cooperative *did not carry out an independent business from its client* and its own office and equipment were mainly used for administrative purposes;
>
> 3) The cooperative's members had to undergo instructions and pass the training provided by the client's personnel before they could start working alongside regular employees;
>
> 4) The cooperative was *not engaged to perform a specific and special job or service*; and
>
> 5) The cooperative's members *performed activities directly related and vital to the principal business* of its client.

Here, the virtually identical sets of memorandum of agreement with the manpower cooperatives state among others that: (a) the services covered shall consist of operating loading, drilling and various auxiliary equipments; and (b) the cooperative members shall abide by the norms and standards of the Maricalum Mining. These services and guidelines are essential to the operations of Maricalum Mining. Thus, since the cooperative members perform the work vital to the operation of the Sipalay Mining Complex, the they were being contracted in a labor-only arrangement. Moreover, the burden of proving the supposed status of the contractor rests on the

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[44] Article 106. *Contractor or subcontractor.* Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

xxxx

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him. (emphasis supplied)

[45] 538 Phil. 817, 867-869 (2006).

[46] See *Republic v. Asiapro Cooperative*, 563 Phil. 979, 1002 (2007).

principal[47] and Maricalum Mining, being the principal, also failed to present any evidence before the NLRC that each of the manpower cooperatives had an independent viable business.

Propriety of Maricalum Mining's Intervention

Intervention is a remedy by which a third party, who is not originally impleaded in a proceeding, becomes a litigant for purposes of protecting his or her right or interest that may be affected by the proceedings.[48] The factors that should be reckoned in determining whether or not to allow intervention are whether intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether the intervenors rights may be fully protected in a separate proceeding.[49] A motion to intervene may be entertained or allowed **even if filed after judgment was rendered** by the trial court, especially in cases where the intervenors are indispensable parties.[50] Parties may be added by order of the court on motion of the party or on its own initiative at any stage of the action and/or at such times as are just.[51]

In this case, it was never contested by complainants that it was Maricalum Mining—not G Holdings—who executed several sets of memorandum of agreement with the manpower cooperatives. The contractual connection between Maricalum Mining and the manpower cooperatives is crucial to the determination of labor-related liabilities especially when it involves a labor-only contracting arrangement. Accordingly, Maricalum Mining will eventually be held solidarily liable with the manpower cooperatives. In other words, it stands to be injured by the incontrovertible fact that it entered into a labor-only arrangement with the manpower cooperatives. Thus, Maricalum Mining is an indispensable party and worthy of being allowed to intervene in this case.[52]

In order to properly analyze G Holdings's role in the instant dispute, the Court must discuss its peculiar relationship (or lack thereof) with Maricalum Mining and Sipalay Hospital.

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[47] *Petron Corporation v. Caberte, et al.*, 759 Phil. 353, 367 (2015), citations omitted.
[48] *Neptune Metal Scrap Recycling, Inc. v. Manila Electric Company, et al.*, 789 Phil. 30, 37 (2016), citations omitted.
[49] *Salandanan v. Spouses Mendez*, 600 Phil. 229, 241.
[50] *Galicia, et al. v. Manliquez vda. de Mindo, et al.*, 549 Phil. 595, 605 (2007), citations omitted.
[51] *Plasabas, et al. v. Court of Appeals, et al.*, 601 Phil. 669, 675-676 (2009).
[52] *Cf. In the Matter of the Heirship (Intestate Estates) of the Late Hermogenes Rodriguez, et al. v. Robles*, 653 Phil. 396, 404-405 (2010), citations omitted.

G Holdings and Maricalum Mining

The doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: (a) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; (b) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or (c) alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation. [53] This principle is basically applied only to determine established liability.[54] However, piercing of the veil of corporate fiction is frowned upon and must be done with caution. [55] This is because 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.[56]

A parent[57] or holding company[58] is a corporation which owns or is organized to own a substantial portion of another company's voting[59] shares of stock enough to control[60] or influence the latter's management, policies or affairs thru election of the latter's board of directors or otherwise. However, the term "holding company" is customarily used interchangeably with the term "investment company" which, in turn, is defined by Section 4 (a) of Republic Act *(R.A.)* No. 2629[61] as "any issuer (corporation) which is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities."

In other words, a "holding company" is organized and is basically conducting its business by investing substantially in the equity securities[62] of another company for the purposes of controlling their policies (as opposed to directly engaging in operating activities) and "holding" them in a conglomerate or umbrella structure along with other subsidiaries. Significantly, the holding company itself—being a separate entity—does not

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[53] *General Credit Corporation v. Alsons Development and Investment Corporation, et al.*, 542 Phil. 219, 232 (2007), citations omitted.
[54] *Kukan International Corporation v. Reyes, et al.*, 646 Phil. 210, 234 (2010), citations omitted.
[55] *Reynoso, IV v. Court of Appeals, et al.*, 399 Phil. 38, 50 (2000).
[56] *Ever Electrical Manufacturing, Inc., et al. v. Samahang Manggagawa ng Ever Electrical, et al.*, 687 Phil. 529, 538 (2012).
[57] *See* Section 3 (x) of Republic Act No. 9856 (The Real Estate Investment Trust Act of 2009).
[58] *See* Section 3 (g) of Republic Act No. 2629 (Investment Company Act).
[59] *See* Section 3 (ff) of Republic Act No. 2629 (Investment Company Act).
[60] *See* Section 3 (h) of Republic Act No. 2629 (Investment Company Act); supra note 58.
[61] The Investment Company Act (June 18, 1960).
[62] Equity securities represent ownership in a company (Stice, et al., *Intermediate Accounting*, 17th Ed. [2010], p. 839).

own the assets of and does not answer for the liabilities of the subsidiary[63] or affiliate.[64] The management of the subsidiary or affiliate still rests in the hands of its own board of directors and corporate officers. It is in keeping with the basic rule a corporation is a juridical entity which is vested with a legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it.[65] The corporate form was created to allow shareholders to invest without incurring personal liability for the acts of the corporation.[66]

While the veil of corporate fiction may be pierced under certain instances, mere ownership of a subsidiary does not justify the imposition of liability on the parent company.[67] **It must further appear that to recognize a parent and a subsidiary as separate entities would aid in the consummation of a wrong.[68] Thus, a holding corporation has a separate corporate existence and is to be treated as a separate entity; unless the facts show that such separate corporate existence is a mere sham, or has been used as an instrument for concealing the truth.**[69]

In the case at bench, complainants mainly harp their cause on the alter ego theory. Under this theory, piercing the veil of corporate fiction may be allowed only if the following elements concur:

> 1) Control—not mere stock control, but complete domination—not only of finances, but of policy and business practice in respect to the transaction attacked, must have been such that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own;
>
> 2) Such control must have been used by the defendant to commit a fraud or a wrong, to perpetuate the violation of a statutory or other positive legal duty, or a dishonest and an unjust act in contravention of plaintiffs legal right; and
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> 3) The said control and breach of duty must have proximately caused the injury or unjust loss complained of.[70]

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[63] Section 3 (kk) of Republic Act No. 9856 (The Real Estate Investment Trust Act of 2009).
[64] *See* Section 3 (b) of Republic Act No. 9856 (The Real Estate Investment Trust Act of 2009); *cf.* Section 3 (c) of Republic Act No. 2629 (Investment Company Act).
[65] *Aratea, et al. v. Suico, et al.*, 547 Phil. 407, 415 (2007), citations omitted.
[66] *Pearson, et al. v. Component Technology Corporation, et al.*, 247 F.3d 471 (2001), citations omitted.
[67] *Parkinson, et al. v. Guidant Corporation, et al.*, 315 F.Supp.2d 741 (2004), citations omitted.
[68] *Cf. Pacific Rehouse Corporation v. Court of Appeals, et al.*, 730 Phil. 325, 351 (2014), citations omitted.
[69] 18 C.J.S. *Corporations* § 5 (1939).
[70] *Philippine National Bank, et al. v. Andrada Electric & Engineering Company*, 430 Phil. 882, 895 (2002), citations omitted.

The elements of the alter ego theory were discussed in *Philippine National Bank v. Hydro Resources Contractors Corporation,*[71] to wit:

> The first prong is the **"instrumentality" or "control" test**. This test requires that the subsidiary be completely under the control and domination of the parent. It examines the parent corporation's relationship with the subsidiary. It inquires whether a subsidiary corporation is so organized and controlled and its affairs are so conducted as to make it a mere instrumentality or agent of the parent corporation such that its separate existence as a distinct corporate entity will be ignored. It seeks to establish whether the subsidiary corporation has no autonomy and the parent corporation, though acting through the subsidiary in form and appearance, "is operating the business directly for itself."
>
> The second prong is the **"fraud" test**. This test requires that the parent corporation's conduct in using the subsidiary corporation be unjust, fraudulent or wrongful. It examines the relationship of the plaintiff to the corporation. It recognizes that piercing is appropriate only if the parent corporation uses the subsidiary in a way that harms the plaintiff creditor. As such, it requires a showing of "an element of injustice or fundamental unfairness."
>
> The third prong is the **"harm" test**. This test requires the plaintiff to show that the defendant's control, exerted in a fraudulent, illegal or otherwise unfair manner toward it, caused the harm suffered. A causal connection between the fraudulent conduct committed through the instrumentality of the subsidiary and the injury suffered or the damage incurred by the plaintiff should be established. The plaintiff must prove that, unless the corporate veil is pierced, it will have been treated unjustly by the defendant's exercise of control and improper use of the corporate form and, thereby, suffer damages.
>
> To summarize, piercing the corporate veil based on the *alter ego* theory **requires the concurrence of three elements**: control of the corporation by the stockholder or parent corporation, fraud or fundamental unfairness imposed on the plaintiff, and harm or damage caused to the plaintiff by the fraudulent or unfair act of the corporation. **The absence of any of these elements prevents piercing the corporate veil.** (emphases and underscoring supplied)

Again, all these three elements must concur before the corporate veil may be pierced under the alter ego theory. Keeping in mind the parameters, guidelines and indicators for proper piercing of the corporate veil, the Court now proceeds to determine whether Maricalum Mining's corporate veil may be pierced in order to allow complainants to enforce their monetary awards against G Holdings.

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[71] 706 Phil. 297, 310-312 (2013), citations omitted.

I. Control or Instrumentality Test

In *Concept Builders, Inc. v. National Labor Relations Commission, et al.*,[72] the Court first laid down the first set of probative factors of identity that will justify the application of the doctrine of piercing the corporate veil, *viz*:

> 1) Stock ownership by one or common ownership of both corporations.
>
> 2) Identity of directors and officers.
>
> 3) The manner of keeping corporate books and records.
>
> 4) Methods of conducting the business.

Later, in *Philippine National Bank v. Ritratto Group Inc., et al.*,[73] the Court expanded the aforementioned probative factors and enumerated a combination of any of the following common circumstances that may also render a subsidiary an instrumentality, to wit:

> 1) The parent corporation **owns all or most of the capital stock** of the subsidiary;
>
> 2) The parent and subsidiary corporations have common directors or officers;
>
> 3) The parent corporation finances the subsidiary;
>
> 4) The parent corporation subscribes to all the capital stock of the subsidiary or otherwise causes its incorporation;
>
> 5) The subsidiary has grossly inadequate capital;
>
> 6) The **parent corporation pays the salaries and other expenses** or losses of the subsidiary;
>
> 7) The subsidiary has substantially no business except with the parent corporation or no assets except those conveyed to or by the parent corporation;
>
> 8) In the papers of the parent corporation or in the statements of its officers, the subsidiary is described as a department or division of the parent corporation, or its business or financial responsibility is referred to as the parent corporation's own;

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[72] 326 Phil. 955, 965 (1996), citations omitted.
[73] 414 Phil. 494, 504-505 (2001).

9) The parent corporation uses the property of the subsidiary as its own;

10) The directors or executives of the subsidiary do not act independently in the interest of the subsidiary but take their orders from the parent corporation; and

11) The formal legal requirements of the subsidiary are not observed.

In the instant case, there is no doubt that G Holdings—being the majority and controlling stockholder—had been exercising significant control over Maricalum Mining. This is because this Court had already upheld the validity and enforceability of the PSA between the APT and G Holdings. It was stipulated in the PSA that APT shall transfer 90% of Maricalum Mining's equity securities to G Holdings and it establishes the presence of absolute control of a subsidiary's corporate affairs. Moreover, the Court evinces its observation that Maricalum Mining's corporate name appearing on the heading of the cash vouchers issued in payment of the services rendered by the manpower cooperatives is being superimposed with G Holding's corporate name. Due to this observation, it can be reasonably inferred that G Holdings is paying for Maricalum Mining's salary expenses. Hence, the presence of both circumstances of dominant equity ownership and provision for salary expenses may adequately establish that Maricalum Mining is an instrumentality of G Holdings.

However, mere presence of control and full ownership of a parent over a subsidiary is not enough to pierce the veil of corporate fiction. It has been reiterated by this Court time and again that **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.**[74]

II. Fraud Test

The corporate veil may be lifted only if it has been used to shield fraud, defend crime, justify a wrong, defeat public convenience, insulate bad faith or perpetuate injustice.[75] To aid in the determination of the presence or

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[74] *Zambrano, et al. v. Philippine Carpet Manufacturing Corporation, et al.*, G.R. No. 224099, June 21, 2017, citations omitted; *Francisco, et al. v. Mejia, et al.*, 415 Phil. 153, 170 (2001).

[75] *See San Juan Structural and Steel Fabricators, Inc. v. Court of Appeals, et al.*, 357 Phil. 631, 648-649 (1998).

absence of fraud, the following factors in the "Totality of Circumstances Test"[76] may be considered, *viz*:

1) **Commingling of funds and other assets of the corporation with those of the individual shareholders**;

2) Diversion of the corporation's funds or assets to non-corporate uses (to the personal uses of the corporation's shareholders);

3) Failure to maintain the corporate formalities necessary for the issuance of or subscription to the corporation's stock, such as formal approval of the stock issue by the board of directors;

4) An individual shareholder representing to persons outside the corporation that he or she is personally liable for the debts or other obligations of the corporation;

5) Failure to maintain corporate minutes or adequate corporate records;

6) Identical equitable ownership in two entities;

7) Identity of the directors and officers of two entities who are responsible for supervision and management (a partnership or sole proprietorship and a corporation owned and managed by the same parties);

8) Failure to adequately capitalize a corporation for the reasonable risks of the corporate undertaking;

9) Absence of separately held corporate assets;

10) Use of a corporation as a mere shell or conduit to operate a single venture or some particular aspect of the business of an individual or another corporation;

11) Sole ownership of all the stock by one individual or members of a single family;

12) Use of the same office or business location by the corporation and its individual shareholder(s);

13) Employment of the same employees or attorney by the corporation and its shareholder(s);

14) Concealment or misrepresentation of the identity of the ownership, management or financial interests in the corporation, and concealment of personal business activities of the shareholders

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[76] *Laya v. Erin Homes, Inc., et al.*, 352 S.E.2d 93 (1986), cited in: *Kinney Shoe Corporation v. Polan*, 939 F.2d 209 (1991).

(sole shareholders do not reveal the association with a corporation, which makes loans to them without adequate security);

15) Disregard of legal formalities and failure to maintain proper arm's length relationships among related entities;

16) Use of a corporate entity as a conduit to procure labor, services or merchandise for another person or entity;

17) Diversion of corporate assets from the corporation by or to a stockholder or other person or entity to the detriment of creditors, or the manipulation of assets and liabilities between entities to concentrate the assets in one and the liabilities in another;

18) **Contracting by the corporation with another person with the *intent to avoid the risk of nonperformance* by use of the corporate entity; or the use of a corporation as a subterfuge for illegal transactions;** and

19) The formation and use of the corporation to assume the existing liabilities of another person or entity.

Aside from the aforementioned circumstances, it must be determined whether the transfer of assets from Maricalum Mining to G Holdings is enough to invoke the equitable remedy of piercing the corporate veil. The same issue was resolved in *Y-I Leisure Phils., Inc., et al. v. Yu*[77] where this Court applied the "Nell Doctrine"[78] regarding the **transfer of all the assets of one corporation to another**. It was discussed in that case that as a general rule that where one corporation sells or otherwise transfers *all* of its assets to another corporation, the latter is not liable for the debts and liabilities of the transferor, except:

1) Where the purchaser expressly or impliedly agrees to assume such debts;

2) Where the transaction amounts to a consolidation or merger of the corporations;

3) Where the purchasing corporation is merely a continuation of the selling corporation; and

4) **Where the transaction is entered into fraudulently in order to escape liability for such debts.**

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[77] 769 Phil. 279, 293 (2015).

[78] *The Edward J. Nell Company v. Pacific Farms, Inc.*, 122 Phil. 825, 827 (1965), citations omitted.

If any of the above-cited exceptions are present, then the transferee corporation shall assume the liabilities of the transferor.[79]

In this case, G Holdings cannot be held liable for the satisfaction of labor-related claims against Maricalum Mining under the fraud test for the following reasons:

First, the transfer of some Maricalum Mining's assets in favor G Holdings was by virtue of the PSA as part of an official measure to dispose of the government's non-performing assets—not to evade its monetary obligations to the complainants. Even before complainants' monetary claims supposedly existed in 2007, some of Maricalum Mining's assets had already been validly extrajudicially foreclosed and eventually sold to G Holdings in 2001. Thus, G Holdings could not have devised a scheme to avoid a non-existent obligation. No fraud could be attributed to G Holdings because the transfer of assets was pursuant to a previously perfected valid contract.

Settled is the rule that where one corporation sells or otherwise transfers all its assets to another corporation for value, the latter is not, by that fact alone, liable for the debts and liabilities of the transferor.[80] In other words, control or ownership of substantially all of a subsidiary's assets is not by itself an indication of a holding company's fraudulent intent to alienate these assets in evading labor-related claims or liabilities. As discussed earlier, the PSA was not designed to evade the monetary claims of the complainants. Although there was proof that G Holdings has an office in Maricalum Mining's premises and that that some of their assets have been commingled due to the PSA's unavoidable consequences, there was no fraudulent diversion of corporate assets to another corporation for the sole purpose of evading complainants' claim.

Besides, it is evident that the alleged continuing depletion of Maricalum Mining's assets is due to its disgruntled employees' own acts of pilferage, which was beyond the control of G Holdings. More so, complainants also failed to present any clear and convincing evidence that G Holdings was grossly negligent and failed to exercise the required degree of diligence in ensuring that Maricalum Mining's assets would be protected from pilferage.[81] Hence, no fraud can be imputed against G Holdings

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[79] Supra note 77 at 293.

[80] *Pantranco Employees Association, et al. v. National Labor Relations Commission, et al.*, 600 Phil. 645, 660 (2009).

[81] See *Heirs of Fe Tan Uy v. International Exchange Bank*, 703 Phil. 477, 486 (2013).

considering that there is no evidence in the records that establishes it systematically tried to alienate Maricalum Mining's assets to escape the liabilities to complainants.

Second, it was not proven that all of Maricalum Mining's assets were transferred to G Holdings or were totally depleted. Complainants never offered any evidence to establish that Maricalum Mining had absolutely no substantial assets to cover for their monetary claims. Their allegation that their claims will be reduced to a mere "paper victory" has not confirmed with concrete proof. At the very least, substantial evidence should be adduced that the subsidiary company's "net realizable value"[82] of "current assets" [83] and "fair value" [84] of "non-current assets" [85] are collectively insufficient to cover the whole amount of its liability subject in the instant litigation.

Third, G Holdings purchased Maricalum Mining's shares from the APT not for the purpose of continuing the latter's existence and operations but for the purpose of investing in the mining industry without having to directly engage in the management and operation of mining. As discussed earlier, a holding company's primary business is merely to invest in the equity of another corporation for the purpose of earning from the latter's endeavors. It generally does not undertake to engage in the daily operating activities of its subsidiaries that, in turn, have their own separate sets of directors and officers. Thus, there should be proof that a holding company had indeed fraudulently used the separate corporate personality of its subsidiary to evade an obligation before it can be held liable. Since G Holdings is a holding company, the corporate veil of its subsidiaries may only be pierced based on fraud or gross negligence amounting to bad faith.

Lastly, no clear and convincing evidence was presented by the complainants to conclusively prove the presence of fraud on the part of G Holdings. Although the quantum of evidence needed to establish a claim for

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[82] Net realizable value is the estimated selling price in the ordinary course of business less the estimated costs of completion and the estimated costs necessary to make the sale (International Financial Reporting Standards No. 2.6).

[83] Current assets are assets that a company expects to convert to cash or use up within one year or its operating cycle, whichever is longer (Weygandt, et al., *Accounting Principles*, 10th Ed. [2012], p. 172).

[84] Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction in the principal (or most advantageous) market at the measurement date under current market conditions (ie an exit price) regardless of whether that price is directly observable or estimated using another valuation technique (International Financial Reporting Standards No. 19.24).

[85] Non-current assets are those which are not likely to be converted into unrestricted cash within a year of the balance sheet date (see: https://www.accountingcoach.com/blog/what-is-a-noncurrent-asset [last visited: May 28, 2018]).

illegal dismissal in labor cases is substantial evidence,[86] the quantum need to establish the presence of fraud is clear and convincing evidence.[87] Thus, to disregard the separate juridical personality of a corporation, the wrongdoing must be established clearly and convincingly—it cannot be presumed.[88]

Here, the complainants did not satisfy the requisite quantum of evidence to prove fraud on the part of G Holdings. They merely offered allegations and suppositions that, since Maricalum Mining's assets appear to be continuously depleting and that the same corporation is a subsidiary, G Holdings could have been guilty of fraud. As emphasized earlier, **bare allegations do not prove anything**. There must be proof that fraud—not the inevitable effects of a previously executed and valid contract such as the PSA—was the cause of the latter's total asset depletion. To be clear, the presence of control *per se* is not enough to justify the piercing of the corporate veil.

III. Harm or Casual Connection Test

In *WPM International Trading, Inc., et al. v. Labayen,*[89] the Court laid down the criteria for the harm or casual connection test, to wit:

> In this connection, we stress that the control necessary to invoke the instrumentality or *alter ego* rule is not majority or even complete stock control but such domination of finances, policies and practices that the controlled corporation has, so to speak, no separate mind, will or existence of its own, and is but a conduit for its principal. The control must be shown to have been exercised at the time the acts complained of took place. Moreover, the control and breach of duty **must *proximately cause* the injury or unjust loss** for which the complaint is made. (emphases and underscoring supplied)

Proximate cause is defined as that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.[90] More comprehensively, the proximate legal cause is that "acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final

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[86] *Functional, Inc. v. Granfil*, 676 Phil. 279, 287 (2011).
[87] *Republic v. Guerrero*, 520 Phil. 296, 311 (2006).
[88] *McLeod v. National Labor Relations Commission, et al.*, 541 Phil. 214, 239 (2007).
[89] 743 Phil. 192, 201-202 (2014).
[90] *Mendoza, et al. v. Spouses Gomez*, 736 Phil. 460, 475 (2014).

event in the chain immediately effecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinary prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom."[91] Hence, for an act or event to be considered as proximate legal cause, it should be shown that such act or event had indeed caused injury to another.

In the case at bench, complainants **have not yet even suffered any monetary injury. They have yet to enforce their claims against Maricalum Mining.** It is apparent that complainants are merely anxious that their monetary awards will not be satisfied because the assets of Maricalum Mining were allegedly transferred surreptitiously to G Holdings. However, as discussed earlier, since complainants failed to show that G Holdings's mere exercise of control had a clear hand in the depletion of Maricalum Mining's assets, no proximate cause was successfully established. The transfer of assets was pursuant to a valid and legal PSA between G Holdings and APT.

Accordingly, complainants failed to satisfy the second and third tests to justify the application of the alter ego theory. This inevitably shows that the CA committed no reversible error in upholding the NLRC's Decision declaring Maricalum Mining as the proper party liable to pay the monetary awards in favor of complainants.

G Holdings and Sipalay Hospital

Sipalay Hospital was incorporated by Romulo G. Zafra, Eleanore B. Gutierrez, Helen Grace B. Fernandez, Evelyn B. Badajos and Helen Grace L. Arbolario.[92] However, there is absence of indication that G Holdings subsequently acquired the controlling interests of Sipalay Hospital. There is also no evidence that G Holdings entered into a contract with Sipalay Hospital to provide medical services for its officers and employees. This lack of stockholding or contractual connection signifies that Sipalay Hospital is not affiliated[93] with G Holdings. Thus, due to this absence of affiliation,

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[91] *Ramos v. C.O.L. Realty Corporation*, 614 Phil. 169, 177 (2009).

[92] *Rollo* (G.R. No. 222723), p. 441.

[93] *See* Section 3 (c) of Republic Act No. 2629 (Investment Company Act).

(c) "Affiliated person" of another person means (1) any person directly or indirectly owning, controlling or holding with power to vote, ten per centum or more of the outstanding voting securities of such other person; (2) any person ten per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (3) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (4) any officer,

the Court must apply the tests used to determine the existence of an employee-employer relationship; rather than piercing the corporate veil.

Under the **four-fold test**, the employer-employee relationship is determined if the following are present: a) the selection and engagement of the employee; b) the payment of wages; c) the power of dismissal; and d) the power to control the employee's conduct, or the so-called "control test."[94] Here, the "control test" is the most important and crucial among the four tests.[95] However, in cases where there is no written agreement to base the relationship on and where the various tasks performed by the worker bring complexity to the relationship with the employer, the better approach would therefore be to adopt a **two-tiered test** involving: a) the putative employer's power to control the employee with respect to the means and methods by which the work is to be accomplished; and b) the underlying economic realities of the activity or relationship.[96]

In applying the second tier, the determination of the relationship between employer and employee depends upon the circumstances of the whole economic activity (**economic reality or multi-factor test**), such as: a) the extent to which the services performed are an integral part of the employer's business; b) the extent of the worker's investment in equipment and facilities; c) the nature and degree of control exercised by the employer; d) the worker's opportunity for profit and loss; e) the amount of initiative, skill, judgment or foresight required for the success of the claimed independent enterprise; f) the permanency and duration of the relationship between the worker and the employer; and g) the degree of dependency of the worker upon the employer for his continued employment in that line of business.[97] Under all of these tests, the burden to prove by substantial evidence all of the elements or factors is incumbent on the employee for he or she is the one claiming the existence of an employment relationship.[98]

In light of the present circumstances, **the Court must apply the four-fold test** for lack of relevant data in the case records relating to the underlying economic realities of the activity or relationship of Sipalay Hospital's employees.

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director, partner, copartner, or employee of such other person; and (5) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof. (emphasis supplied)

[94] *South East International Rattan, Inc., et al. v. Coming*, 729 Phil. 298, 306 (2014).

[95] *Alba v. Espinosa, et al.*, G.R. No. 227734, August 9, 2017, citations omitted.

[96] *Valeroso, et al. v. Skycable Corporation*, 790 Phil. 93, 103 (2016).

[97] *Francisco v. National Labor Relations Commission, et al.*, 532 Phil. 399, 408-409 (2006).

[98] See *Valencia v. Classique Vinyl Products Corporation, et al.*, G.R. No. 206390, January 30, 2017, 816 SCRA 144, 156, citations omitted.

To prove the existence of their employment relationship with G Holdings, complainants Dr. Welilmo T. Neri, Erlinda L. Fernandez, Edgar M. Sobrino and Wilfredo C. Taganile, Sr. presented the following documents:

1) Affidavit[99] of Dr. Welilmo T. Neri attesting among others that he was the Medical Director of Sipalay Hospital which is allegedly owned and operated by G Holdings/Maricalum Mining;

2) Several cash vouchers[100] issued by G Holdings/Maricalum Mining representing Dr. Welilmo T. Neri's payment for services rendered to "various" personnel;

3) Schedules of social security premium payments[101] in favor of Dr. Welilmo T. Neri, Edgar M. Sobrino and Wilfredo C. Taganile, Sr. stamped paid by G Holdings;

4) Notice of termination[102] dated July 3, 2010 issued by Rolando G. Degojas (OIC of G-Holdings Inc.) issued to Dr. Welilmo T. Neri and some of his companions who are not complainants in this case;

5) Notice of termination[103] addressed to Dr. Welilmo T. Neri, Erlinda L. Fernandez, Edgar M. Sobrino and some of their co-employees who are not complainants in this case with a *collatilla* stating that the services of Dr. Welilmo T. Neri and nurse Erlinda L. Fernandez will be engaged on per call basis; and

6) A "Statement of Unpaid Salaries of Employees of G Holdings, Inc. Assigned to the Sipalay General Hospital"[104] prepared by Dr. Welilmo T. Neri which included his own along with complainants Erlinda L. Fernandez, Wilfredo C. Taganile, [Sr.] and Edgar M. [Sobrino].

A perusal of the aforementioned documents fails to show that the services of complainants Dr. Welilmo T. Neri, Erlinda L. Fernandez, Edgar M. Sobrino and Wilfredo C. Taganile, Sr. were indeed selected and engaged by either Maricalum Mining or G Holdings. **This gap in evidence clearly shows that the first factor of the four-fold test, or the selection and engagement of the employee, was not satisfied and not supported by substantial evidence.**

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[99] *Rollo* (G.R. No. 222723), p. 153.
[100] Id. at 154-165.
[101] Id. at 166-167.
[102] Id. at 168.
[103] Id. at 169.
[104] Id. at 170.

However, the same cannot be said as to the second and third factors of the four-fold test (the payment of wages and the power of dismissal). Since substantial evidence is defined as that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion,[105] the cash vouchers, social security payments and notices of termination are reasonable enough to draw an inference that G Holdings and Maricalum Mining may have had a hand in the complainants' payment of salaries and dismissal.

Notwithstanding the absence of the first factor and the presence of the second and third factors of the four-fold test, the Court still deems it best to examine the fourth factor—the presence of control—in order to determine the employment connection of complainants Dr. Welilmo T. Neri, Erlinda L. Fernandez, Edgar M. Sobrino and Wilfredo C. Taganile, Sr. with G Holdings.

Under the control test, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end achieved, but also the manner and means to be used in reaching that end.[106] As applied in the healthcare industry, an employment relationship exists between a physician and a hospital if the hospital controls both the means and the details of the process by which the physician is to accomplish his task.[107] But where a person who works for another performs his job more or less at his own pleasure, in the manner he sees fit, not subject to definite hours or conditions of work, and is compensated according to the result of his efforts and not the amount thereof, no employer-employee relationship exists.[108]

A corporation may only exercise its powers within the definitions provided by law and its articles of incorporation.[109] Accordingly, in order to determine the presence or absence of an employment relationship between G Holdings and the employees of Sipalay Hospital by using the control test, the Court deems it essential to examine the salient portion of Sipalay Hospital's Articles of Incorporation imparting its 'primary purpose,'[110] to wit:

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[105] *Skippers United Pacific, Inc. v. National Labor Relations Commission, et al.*, 527 Phil. 248, 257 (2006).
[106] *Atok Big Wedge Company, Inc. v. Gison*, 670 Phil. 615, 627 (2011).
[107] *Calamba Medical Center, Inc. v. National Labor Relations Commission, et al.*, 592 Phil. 318, 326 (2008).
[108] *Orozco v. Court of Appeals, et al.*, 584 Phil. 35, 52 (2008).
[109] See *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas, et al.*, 776 Phil. 401, 428 (2016).
[110] *Rollo* (G.R. No. 222723), p. 438.

> To own, manage, lease or operate hospitals or clinics offering and providing medical services and facilities to the **general public**, provided that purely professional, medical or surgical services shall be performed by duly qualified physicians or surgeons who may or **may not be connected with** the corporation and who shall be freely and individually contracted by patients. (emphasis supplied)

It is immediately apparent that Sipalay Hospital, even if its facilities are located inside the Sipalay Mining Complex, does not limit its medical services only to the employees and officers of Maricalum Mining and/or G Holdings. Its act of holding out services to the public reinforces the fact of its independence from either Maricalum Mining or G Holdings because it is free to deal with any client without any legal or contractual restriction. Moreover, G Holdings is a holding company primarily engaged in investing substantially in the stocks of another company—not in directing and managing the latter's daily business operations. Because of this corporate attribute, **the Court can reasonably draw an inference that G Holdings does not have a considerable ability to control means and methods of work of Sipalay Hospital employees**. Markedly, the records are simply bereft of any evidence that G Holdings had, in fact, used its ownership to control the daily operations of Sipalay Hospital as well as the working methods of the latter's employees. There is no evidence showing any subsequent transfer of shares from the original incorporators of Sipalay Hospital to G Holdings. Worse, it appears that complainants Dr. Welilmo T. Neri, Erlinda L. Fernandez, Wilfredo C. Taganile, Sr. and Edgar M. Sobrino are trying to derive their employment connection with G Holdings merely on an assumed premise that the latter owns the controlling stocks of Maricalum Mining.

On this score, the CA committed no reversible error in allowing the NLRC to delete the monetary awards of Dr. Welilmo T. Neri, Erlinda L. Fernandez, Wilfredo C. Taganile, Sr. and Edgar M. Sobrino imposed by the Labor Arbiter against G Holdings.

Conclusion

A holding company may be held liable for the acts of its subsidiary only when it is adequately proven that: a) there was control over the subsidiary; (b) such control was used to protect a fraud (or gross negligence amounting to bad faith) or evade an obligation; and c) fraud was the proximate cause of another's existing injury. Further, an employee is duly-burdened to prove the crucial test or factor of control thru substantial

evidence in order to establish the existence of an employment relationship—especially as against an unaffiliated corporation alleged to be exercising control.

In this case, complainants have not successfully proven that G Holdings fraudulently exercised its control over Maricalum Mining to fraudulently evade any obligation. They also fell short of proving that G Holdings had exercised operational control over the employees of Sipalay Hospital. Due to these findings, the Court sees no reversible error on the part of the CA, which found no grave abuse of discretion and affirmed *in toto* the factual findings and legal conclusions of the NLRC.

WHEREFORE, the Court **AFFIRMS *in toto*** the October 29, 2014 Decision of the Court of Appeals in CA-G.R. SP No. 06835.

No pronouncement as to costs.

SO ORDERED.

ALEXANDER G. GESMUNDO
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

I dissent. See separate opinion

LUCAS P. BERSAMIN
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

SAMUEL R. MARTIRES
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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify 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
Senior Associate Justice
(Per Section 12, R.A. 296,
The Judiciary Act of 1948, as amended)

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

AUG 13 2018