Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MARIA LEA JANE I. GESOLGON and MARIE STEPHANIE N. SANTOS,
Petitioners,

- *versus* -

CYBERONE PH., INC., MACIEJ MIKRUT, and BENJAMIN JUSON,
Respondents.

G.R. No. 210741

Present:

PERLAS-BERNABE, *J.*,
Chairperson,
HERNANDO,
INTING,
DELOS SANTOS, and
BALTAZAR-PADILLA,* *JJ.*

Promulgated:
14 OCT 2020

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DECISION

HERNANDO, *J.*:

Challenged in this petition[1] is the September 2, 2013 Decision[2] and January 10, 2014 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 128807 which set aside the November 26, 2012 Decision[4] and January 21, 2013 Resolution[5] of the National Labor Relations Commission (NLRC) and dismissed the complaint for illegal dismissal filed by petitioners Maria Lea Jane I. Gesolgon (Gesolgon) and Marie Stephanie N. Santos (Santos) against

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* On leave.
[1] *Rollo*, pp. 3-35.
[2] CA *rollo*, pp. 450-462; penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Celia C. Librea-Leagogo and Melchor Q. C. Sadang.
[3] Id. at 516-518.
[4] *Rollo*, pp. 59-78.
[5] Id. at 55-57.

respondents CyberOne PH., Inc. (CyberOne PH), Maciej Mikrut (Mikrut) and Benjamin Juson (Juson).

The Antecedents

In their Complaint dated May 5, 2011[6], Gesolgon and Santos alleged that they were hired on March 3, 2008 and April 5, 2008, respectively, by Mikrut as part-time home-based remote Customer Service Representatives of CyberOne Pty. Ltd. (CyberOne AU), an Australian company.[7] Thereafter, they became full time and permanent employees of CyberOne AU and were eventually promoted as Supervisors.

Sometime in October 2009, Mikrut, the Chief Executive Officer (CEO) of both CyberOne AU and CyberOne PH, asked petitioners, together with Juson, to become dummy directors and/or incorporators of CyberOne PH to which petitioners agreed. As a result, petitioners were promoted as Managers and were given increases in their salaries. The salary increases were made to appear as paid for by CyberOne PH.

However, in the payroll for November 16 to 30, 2010, Mikrut reduced petitioners' salaries from ₱50,000.00 to ₱36,000.00, of which ₱26,000.00 was paid by CyberOne AU while the remaining ₱10,000.00 was paid by CyberOne PH. Aside from the decrease in their salaries, petitioners were only given ₱20,000.00 each as 13th month pay for the year 2010.

Sometime in March 2011, Mikrut made petitioners choose one from three options: (a) to take an indefinite furlough and be placed in a manpower pool to be recalled in case there is an available position; (b) to stay with CyberOne AU but with an entry level position as home-based Customer Service Representative; or (c) to tender their irrevocable resignation. Petitioners alleged that they were constrained to pick the first option in order to save their jobs. In April 2011, petitioners received ₱13,000.00 each as their last salary.

Hence, petitioners filed a case against respondents and CyberOne AU for illegal dismissal. They likewise claimed for non-payment or underpayment of their salaries and 13th month pay; moral and exemplary damages; and attorney's fees.

On the other hand, CyberOne PH, Mikrut and Juson denied that any employer-employee relationship existed between petitioners and CyberOne PH. They insisted that petitioners were incorporators or directors and not regular employees of CyberOne PH. They claimed that petitioners were

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[6] Id. at 88-91.
[7] Id. at 108-109.

employees of CyberOne AU and that the NLRC had no jurisdiction over CyberOne AU because it is a foreign corporation not doing business in the Philippines.

Ruling of the Labor Arbiter (LA):

In his March 30, 2012 Decision,[8] the LA held that petitioners are not employees of CyberOne PH as the latter did not exercise control over them. Also, since there was no evidence showing that CyberOne PH and CyberOne AU are one and the same entity, the presumption that they have personalities separate and distinct from one another stands. The LA ruled that petitioners are merely shareholders or directors of CyberOne PH and not its regular employees.

Also, since CyberOne AU is a foreign corporation not doing business in the Philippines, then the LA has no jurisdiction over it. Hence, petitioners' complaint had to be dismissed for lack of merit.

Ruling of the National Labor Relations Commission:

In its November 26, 2012 Decision,[9] the NLRC ruled that petitioners are employees of CyberOne AU and CyberOne PH. The fact that petitioners are nominal shareholders of CyberOne PH does not preclude them from being employees of CyberOne PH.

Moreover, the NLRC noted that for January 2010 to April 2011, CyberOne PH paid petitioners their ₱20,000.00 monthly salary and ₱1,000.00 monthly allowance net of withholding tax and other mandatory government deductions. Respondents did not present any proof of payment of director's fee to petitioners. Similarly, CyberOne AU was shown to have previously paid petitioners' salaries for services actually rendered including allowance and phone CSR allowance as per the terms of employment and pay slips presented by petitioners.

The NLRC also found that petitioners were illegally dismissed from service. It ratiocinated that due to respondents' allegations that petitioners had not made enough progress on their leadership skills and failed to follow the directives of the management which resulted in the issuance of several warnings by CyberOne AU, they effectively admitted they they indeed terminated or eventually dismissed petitioners, although on unsubstantiated grounds as it turned out. Also, the NLRC held that respondents' claim that they received a number of complaints and non-compliance reports from call center customers which prompted them to terminate petitioners' services but

[8] Id. at 79-87.
[9] Id. at 59-78.

later on decided to give them furlough status, is additional proof that they had indeed terminated petitioners.

The NLRC noted that the Furlough Notifications dated March 30, 2011 issued by CyberOne AU to petitioners were, in fact, notices of dismissal. Petitioners were informed that respondent CyberOne AU was unable to provide them with work but that it may engage their services again in the future. The NLRC concluded that petitioners were dismissed without valid cause and due process.

Lastly, the NLRC noted that CyberOne AU is doing business in the Philippines due to its participation in the management, supervision or control of CyberOne PH which is indicative of a continuity of commercial dealings or arrangements. Thus, the doctrine of piercing the corporate veil must be applied as to it.

The NLRC thus reversed and set aside the LA's March 30, 2012 Decision, to wit:

> WHEREFORE, all of the foregoing premises considered, judgment is hereby rendered finding merit in the instant appeal; the appealed Decision is hereby VACATED and SET ASIDE, and a new one rendered declaring complainants to have been ILLEGALLY DISMISSED by Respondents who are hereby ordered to reinstate complainants to their previous or equivalent position without loss of seniority rights and privileges, and to solidarily pay complainant (1) their backwages from the time of their dismissal up to the time of their reinstatement, and (2) their respective 13th month and service incentive leave pays in the sums P1,175,113.64 (Maria Lea Jane Gesolgon) and P1,175,113.64 (Marie Stephanie N. Santos) or P2,350,227.28 as of October 30, 2012.
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> The computation of this Commission's Computation and Examination Unit (CEU) forms part of this Decision.
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> SO ORDERED.[10]

Respondents moved for reconsideration of the NLRC's November 26, 2012 Decision but this was denied by the NLRC in its January 21, 2013 Resolution[11] for lack of merit.

Ruling of the Court of Appeals:

In its assailed September 2, 2013 Decision,[12] the appellate court reversed the findings of the NLRC and ruled that no employer-employee relationship

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[10] Id. at 75-76.
[11] Id. at 55-57.

existed between petitioners, on one hand, and respondent CyberOne PH, on the other hand. First, the appellate court found no evidence that CyberOne PH hired petitioners as its employees. It held that the NLRC's reliance on the pay slips presented by petitioners as proof that they were employees of respondent CyberOne PH was flawed.

On the contrary, the CA found no substantial evidence that petitioners were under the payroll account of CyberOne PH. The CA noted that the pay slips presented by petitioners were mere photocopies and not the original duplicates of computerized pay slips. In particular, the pay slips for the period October 1, 2009 to March 16, 2011, the period within which petitioners were allegedly hired by CyberOne PH, indicated that the salaries were paid in Australian dollars. The CA pointed out that it was unusual for a Philippine corporation to pay its employees' wages in foreign currency. For the CA, this only served to highlight the fact that petitioners were employees of CyberOne AU and not CyberOne PH.

The appellate court also stressed that the Furlough Notifications were issued by CyberOne AU and not by CyberOne PH. This means that CyberOne PH did not have the power of termination over the petitioners. The Resignation Letters of petitioners also showed that they resigned as directors of CyberOne PH and not as employees.

Lastly, there was no evidence that CyberOne PH exercised control over the means and method by which petitioners performed their job. Petitioners also failed to present evidence as regards their duties and responsibilities as employees of CyberOne PH.

The appellate court also held that the NLRC misapplied the doctrine of piercing the corporate veil. It ruled that although it was established that Mikrut and CyberOne AU owned majority of the shares of CyberOne PH, such fact may not be a basis for disregarding the independent corporate status of CyberOne PH. Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not in itself sufficient reason for disregarding the fiction of separate corporate personalities. There was no evidence on record to show that the polices, corporate finances, and business practices of CyberOne PH were completely controlled by CyberOne AU. Also, no evidence was presented to show that CyberOne PH was organized and controlled, and its affairs conducted, in a manner that made it merely an instrumentality, agency, conduit or adjunct of CyberOne AU or that it was established to defraud third persons, including herein petitioners. Hence, the appellate court concluded that CyberOne AU and CyberOne PH are two distinct and separate entities.

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[12] CA *rollo*, pp. 450-462.

The *fallo* of the CA's Decision dated September 2, 2013 reads:

> WHEREFORE, the petition is GRANTED. The assailed Decision dated November 26, 2012 and Resolution dated January 21, 2013 of the public respondent National Labor Relations Commission (NLRC), Second Division, in NLRC LAC No. 05-001446-12 (NLRC NCR No. 05-07138-11), are hereby SET ASIDE. Accordingly, the Complaint for Illegal Dismissal against petitioners in NLRC-NCR Case No. 05-07138-11 is hereby DISMISSED.
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> SO ORDERED.[13]

Petitioners moved for reconsideration of the CA's September 2, 2013 Decision but it was consequently denied by the appellate court in its January 10, 2014 Resolution.[14]

Hence, petitioners filed this Petition for Review on *Certiorari* under Rule 45.

Issue

The issues to be resolved in this case are the following:

1. Whether or not petitioners were employees of CyberOne PH and CyberOne AU.

2. Whether or not petitioners were illegally dismissed.

Our Ruling

We find the Petition without merit.

A perusal of the records reveals that Gesolgon and Santos were hired on March 3, 2008 and April 5, 2008, respectively, as home-based Customer Service Representatives of CyberOne AU, a corporation organized and existing under the laws of Australia.[15] However, on March 30, 2011 petitioners were notified by CyberOne AU of their dismissal through Furlough Notifications[16] placing their employment on hold in view of the company's cost-cutting measure. The Furlough Notifications showed that CyberOne AU was actually terminating the services of petitioners effective April 15, 2011. Petitioners were required to return, on or before April 1, 2011, any company

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[13] Id. at 462.
[14] Id. at 516-518.
[15] *Rollo*, pp. 108-109.
[16] Id. at 176-177.

assets, documents, laptop computers, VPN router, office keys and identification tags that were in their possession.

At the outset, since there is an issue involving the piercing of the corporate veils of CyberOne PH and CyberOne AU, it must be emphasized that the records are bereft of any showing that this Court has acquired jurisdiction over CyberOne AU, a foreign corporation, through a valid service of summons, although respondent CyberOne PH, Mikrut and Juson were validly served with summons.

Notably, CyberOne AU is a foreign corporation organized and existing under the laws of Australia and is not licensed to do business in the Philippines. CyberOne AU did not appoint and authorize respondents CyberOne PH, a domestic corporation, and Mikrut, the Managing Director of CyberOne AU and a stockholder of CyberOne PH, as its agents in the Philippines to act in its behalf. Also, it was not shown that CyberOne AU is doing business in the Philippines.

While it is true that CyberOne AU owns majority of the shares of CyberOne PH, this, nonetheless, does not warrant the conclusion that CyberOne PH is a mere conduit of CyberOne AU. The doctrine of piercing the corporate veil applies only in three basic instances, namely: (a) when the separate distinct corporate personality defeats public convenience, as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; (b) in fraud cases, or when the corporate entity is used to justify a wrong, protect a fraud, or defend a crime; or (c) is used in alter ego cases, *i.e.*, where a corporation is essentially 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 conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.[17]

We find that the application of the doctrine of piercing the corporate veil is unwarranted in the present case. First, no evidence was presented to prove that CyberOne PH was organized for the purpose of defeating public convenience or evading an existing obligation. Second, petitioners failed to allege any fraudulent acts committed by CyberOne PH in order to justify a wrong, protect a fraud, or defend a crime. Lastly, the mere fact that CyberOne PH's major stockholders are CyberOne AU and respondent Mikrut does not prove that CyberOne PH was organized and controlled and its affairs conducted in a manner that made it merely an instrumentality, agency, conduit or adjunct of CyberOne AU. In order to disregard the separate corporate personality of a corporation, the wrongdoing must be clearly and convincingly established.

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[17] *Prisma Construction and Development Corporation v. Menchavez*, 628 Phil. 495, 506-507 (2010).

Moreover, petitioners failed to prove that CyberOne AU and Mikrut, acting as the Managing Director of both corporations, had absolute control over CyberOne PH. Even granting that CyberOne AU and Mikrut exercised a certain degree of control over the finances, policies and practices of CyberOne PH, such control does not necessarily warrant piercing the veil of corporate fiction since there was not a single proof that CyberOne PH was formed to defraud petitioners or that CyberOne PH was guilty of bad faith or fraud.

Hence, the doctrine of piercing the corporate veil cannot be applied in the instant case. This means that CyberOne AU cannot be considered as doing business in the Philippines through its local subsidiary CyberOne PH. This means as well that CyberOne AU is to be classified as a non-resident corporation not doing business in the Philippines.

Considering the foregoing, We now go back to the issue of whether this Court has acquired jurisdiction over CyberOne AU.

Sections 12 and 15, Rule 14, of the Rules of Court suppletorily apply:

> Sec. 12. *Service upon foreign private juridical entity.* – When the defendant is a foreign private juridical entity which has transacted business in the Philippines, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines.
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> Sec. 15. *Extraterritorial service.* – When the defendant does not reside and is not found in the Philippines, and the action affects the personal status of the plaintiff or relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been attached within the Philippines, service may, by leave of court, be effected out of the Philippines by personal service as under section 6; or by publication in a newspaper of general circulation in such places and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by registered mail to the last known address of the defendant, or in any other manner the court may deem sufficient. Any order granting such leave shall specify a reasonable time, which shall not be less than sixty (60) days after notice, within which the defendant must answer.

Applying the foregoing, CyberOne AU, as a non-resident foreign corporation which is not doing business in the Philippines, may be served with summons by extraterritorial service, to wit: (1) when the action affects the

personal status of the plaintiffs; (2) when the action relates to, or the subject of which is property, within the Philippines, in which the defendant claims a lien or an interest, actual or contingent; (3) when the relief demanded in such action consists, wholly or in part, in excluding the defendant from any interest in property located in the Philippines; and (4) when the defendant non-resident's property has been attached within the Philippines. In these instances, service of summons may be effected by (a) personal service out of the country, with leave of court; (b) publication, also with leave of court; or (c) any other manner the court may deem sufficient.[18]

Extraterritorial service of summons applies only where the action is *in rem* or *quasi in rem* but not if an action is *in personam*[19]as in this case; hence, jurisdiction over CyberOne AU cannot be acquired unless it voluntarily appears in court.[20] Consequently, without a valid service of summons and without CyberOne AU voluntarily appearing in court, jurisdiction over CyberOne AU was not validly acquired. Consequently, no judgment can be issued against it, if any. Any such judgment will only bind respondents CyberOne PH, Mikrut, and Juson.

In any event, the determination of whether there exists an employer-employee relationship between petitioners and CyberOne PH is ultimately a question of fact. Generally, only errors of law are reviewed by this Court. Factual findings of administrative and quasi-judicial agencies specializing in their respective fields, especially when affirmed by the appellate court, are accorded high respect, if not finality.[21] However, in this case, the findings of the NLRC are in conflict with that of the LA and CA. Thus, as an exception to the rule, We now look into the factual issues involved in this case.

The four-fold test used in determining the existence of employer-employee relationship involves an inquiry into: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee with respect to the means and method by which the work is to be accomplished.[22]

Based on record, petitioners were requested by respondent Mikrut to become stockholders and directors of CyberOne PH with each one of them subscribing to one share of stock. However, petitioners contend that they were hired as employees of CyberOne PH as shown by the pay slips indicating that CyberOne PH paid them ₱10,000.00 monthly net of mandatory deductions. Other than the pay slips presented by petitioners, no other evidence was

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[18] *Banco Do Brasil v. Court of Appeals*, 389 Phil. 87, 99 (2000) cited in the case of *NM Rothschild & Sons (Australia) Ltd.v. Lepanto Consolidated Mining Co.*, 677 Phil. 351-375 (2011).
[19] *Perkin Elmer Singapore Pte Ltd. v. Dakila Trading Corporation*, 556 Phil. 822, 838 (2007).
[20] Id. at 843-845.
[21] *Basay v. Hacienda Consoloacion and/or Bouffard*, 632 Phil. 430, 444 (2010).
[22] *Bazar v. Ruizol*, 797 Phil. 656, 665 (2016), citing *Royale Homes Marketing Corporation v. Alcantara*, 739 Phil. 744 (2014).;

submitted to prove their employment by CyberOne PH. Petitioners failed to present any evidence that they rendered services to CyberOne PH as employees thereof. As correctly observed by the appellate court:[23]

> But as pointed out earlier, other than the payslips mentioned, no other documents tending to prove their employment with CyberOne PH., Inc., were submitted by the private respondents. It bears stressing that no employment contracts, or at least a job offer, was presented by the private respondents to bolster their claim. True, there is no requirement under the law that the contract of employment of the kind entered into by an employer and an employee should be in any particular form. Nevertheless, We emphasize the fact that the private respondents initially presented as evidence a copy of the Job Offer dated March 3, 2008, which showed that respondent Gesolgon was hired as Remote Customer Service Representative of CyberOne AU, and not CyberOne PH., Inc.

As to the power of dismissal, the records reveal that petitioners submitted letters of resignation as directors of CyberOne PH and not as employees thereof. This fact negates their contention that they were dismissed by CyberOne PH as its employees. Lastly, the power of control of CyberOne PH over petitioners is not supported by evidence on record. To reiterate, petitioners failed to prove the manner by which CyberOne PH alledgedly supervised and controlled their work. In fact, petitioners failed to mention their functions and duties as employees of CyberOne PH. They merely relied on their allegations that they were hired and paid by CyberOne PH without specifying the terms of their employment as well as the degree of control CyberOne PH had over the means and method by which their work would be accomplished.

As it is established that petitioners are not employees of CyberOne PH, there is no need for this Court to delve into the issues of petitioners' illegal dismissal, their monetary claims and the probative value of the pay slips presented by petitioners. Based on the foregoing, this Court is convinced that petitioners are not employees of CyberOne PH, but stockholders thereof.

To summarize, the Court did not acquire jurisdiction over CyberOne AU. CyberOne PH is neither the resident agent nor the conduit of CyberOne AU upon which summons may be served. Also, there existed no employer-employee relationship between petitioners and CyberOne PH. Hence, there is no dismissal to speak of, much more illegal dismissal.

WHEREFORE, the Petition is **DENIED.** The assailed September 2, 2013 Decision and January 10, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 128807 are hereby **AFFIRMED**. No cost.

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[23] CA *rollo*, pp. 450-462.

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:

ESTELA M. PERLAS-BERNABE
Senior Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

On leave.
PRISCILLA J. BALTAZAR-PADILLA
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.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

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.

DIOSDADO M. PERALTA
Chief Justice