Republic of the Philippines
SUPREME COURT
Manila

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DEC 14 2017

THIRD DIVISION

VETERANS FEDERATION OF THE PHILIPPINES, Petitioner,	**G.R. No. 184819** Present:
- versus -	VELASCO, JR., *J.*, Chairperson, BERSAMIN, LEONEN, MARTIRES, and GESMUNDO,* *JJ.*
EDUARDO L. MONTENEJO, MYLENE M. BONIFACIO, EVANGELINE E. VALVERDE, DEANA N. PAGAL, and VFP MANAGEMENT DEVELOPMENT CORPORATION, Respondents.	Promulgated: November 29, 2017

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DECISION

VELASCO, JR., *J.*:

This case is an appeal[1] from the Decision dated July 29, 2008[2] and Resolution dated October 2, 2008[3] of the Court of Appeals (CA) in CA-G.R. SP No. 101041.

The Facts

VFP, VFPIA and the VMDC

Petitioner Veteran's Federation of the Philippines (VFP) is a national federation of associations of Filipino war veterans. It was created in 1960 by virtue of Republic Act No. 2640.[4]

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* On leave.

[1] *Rollo*, pp. 10-50. The appeal was filed as a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

[2] Id. at 56-75. The decision was penned by Associate Justice Jose Catral Mendoza (now a retired Associate Justice of this Court) with Associate Justices Andres B. Reyes, Jr. (now an Associate Justice of this Court) and Ramon M. Bato, Jr., concurring.

[3] Id. at 77.

[4] Entitled "*An Act To Create a Public Corporation To Be Known as the Veterans Federation of the Philippines, Defining Its Powers, And For Other Purposes.*"

In 1967, through the government's Proclamation No. 192, VFP was able to obtain control and possession of a vast parcel of land located in Taguig. VFP eventually developed said land into an industrial complex, which is now known as the VFP Industrial Area (VFPIA).

Respondent VFP Management and Development Corporation (VMDC), on the other hand, is a private management company organized in 1990 pursuant to the general incorporation law.

The Management Agreement and its Termination

On January 4, 1991, VFP entered into a *management agreement*[5] with VMDC. Under the said agreement, VMDC was to assume exclusive management and operation of the VFPIA in exchange for forty percent (40%) of the lease rentals generated from the area.

In managing and operating the VFPIA, VMDC hired its own personnel and employees. Among those hired by VMDC were respondents Eduardo L. Montenejo, Mylene M. Bonifacio, Evangeline E. Valverde and Deana N. Pagal (hereafter collectively referred to as "Montenejo, et al.").[6]

The management agreement between VFP and VMDC had a term of five (5) years, or up to 4 January 1996, and is renewable for another five (5) years.[7] Subsequently, both parties acceded to extend the agreement up to 1998.[8] After 1998, the agreement was again extended by VFP and VMDC albeit only on a month-to-month basis.

Then, in November 1999, the VFP board passed a resolution terminating the management agreement effective December 31, 1999.[9] VMDC conceded to the termination and eventually agreed to turn over to VFP the possession of all buildings, equipment and other properties necessary to the operation of the VFPIA.[10]

On January 3, 2000, the President of VMDC[11] issued a *memorandum*[12] informing the company's employees of the termination of their services effective at the close of office hours on January 31, 2000 "[*i*]*n view of the termination of the* [management agreement]." True to the memorandum's words, on January 31, 2000, VMDC dismissed all of its employees and paid each his or her separation pay.

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[5] Denominated as *Memorandum of Agreement*, *rollo*, pp. 130-133.

[6] Id. at 226. VFP-MDC hired Eduardo L. Montenejo as vice-president of operations in 1991; Evangeline E. Valverde as cashier in 1991; Deana N. Pagal as accountant in 1991; and Mylene M. Bonifacio as accounting clerk in 1993.

[7] Id. at 130-133.

[8] Second Whereas Clause of *Closing Agreement* between VFP and VMDC, id. at 100-102, 100.

[9] Id. at 99.

[10] See *Closing Agreement* between VFP and VMDC, id. at 100-102.

[11] Then one Col. Vicente O. Novales (Ret.).

[12] *Rollo*, p. 136.

The Illegal Dismissal Complaint

Contending in the main that their dismissals had been effected without cause and observance of due process, Montenejo, et al. filed before the Labor Arbiter (LA) a complaint for illegal dismissal,[13] money claims and damages. They impleaded both VMDC and VFP as defendants in the complaint.

VMDC, for its part, denied the contention. It argued that the dismissals of Montenejo, et al. were valid as they were due to an authorized cause—the cessation or closure of its business. VMDC claimed that the cessation of its operations was but the necessary consequence of the termination of such agreement.

VFP, on the other hand, seconded the arguments of VMDC. In addition, however, VFP asserted that it could not, at any rate, be held liable under the complaint because it is not the employer of Montenejo, et al.

The Ruling of the LA

On November 7, 2005, the LA rendered a decision[14] disposing of the illegal dismissal complaint as follows:

> WHEREFORE, judgment is hereby made dismissing as lacking in merit the [Montenejo *et al.*'s] charge of illegal dismissal but ordering [VFP] and [VMDC] to pay, solidarily, each complainant his/her salaries for eleven (11) months. [VFP and VMDC] are so ordered to recompute their separation pay with the date January 4, 2001 as their last day of service and accordingly pay them their balance.
>
> [VFP and VMDC] are also ordered to pay, solidarily, [Montenejo *et al.*'s] proportionate 13th month pay for the year 2000.
>
> Other claims are dismissed for lack of merit.
>
> SO ORDERED.

The LA hinged its disposition on the following findings:[15]

1. Montenejo, et al. were not illegally dismissed. Their separation was the result of the closure of VMDC, an authorized cause. Hence, Montenejo, et al. are not entitled to reinstatement and backwages.

2. Montenejo, et al. were contractual employees; they were hired for a definite term that is similar to the maximum term of the management agreement between VFP and VMDC. As the management agreement between VFP and VMDC can have a maximum term of ten (10) years from

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[13] Docketed as NLRC Case No. 30-01-00494-02.
[14] *Rollo*, pp. 203-212. The decision is penned by Labor Arbiter Arthur L. Amansec.
[15] Id.

January 4, 1991, or until January 4, 2001, the employments of Montenejo, et al. also have terms of up to January 4, 2001.

In this case, however, Montenejo, et al. were dismissed on January 3, 2000—which is eleven (11) months short of their January 4, 2001 contract date. Accordingly, Montenejo, et al. are each entitled: (a) to their salary corresponding to the unexpired portion of their contract and (b) also to a separation pay computed with January 4, 2001 as their last day of employment.

3. Montenejo, et al. are not entitled to recover damages. Their dismissals were not shown to be tainted with bad faith.

4. VFP and VMDC are solidarily liable for the monetary awards in favor of Montenejo, et al. The basis of VFP's liability is the fact that it is an indirect employer of Montenejo, et al.

Montenejo, et al. and VFP filed separate appeals[16] with the National Labor Relations Commission (NLRC).

The Ruling of the NLRC

On appeal, the NLRC reversed and set aside[17] the decision of the LA. It decreed:

> WHEREFORE, premises considered, the appeal is GRANTED. The Decision of [the LA] dated November 7, 2005 is hereby REVERSED[,] SET ASIDE and a NEW ONE entered declaring that [VFP and VMDC] ILLEGALLY DISMISSED [Montenejo *et al.*]. [VFP and VMDC] are therefore ordered to pay [Montenejo *et al.*'s] separation pay in lieu of reinstatement and to pay them full backwages, 13th month pay and SLIP (*sic*), as computed below:
>
> **A. EDUARDO L. MONTENEJO-**
> **Rate: *P 30,000.00*** ***Pd: 1/1/91-1/4/01(GIVEN)***
> *VP for Operation
> Cut-off date: 8/7/06
>
> 1) **SEP. PAY (1 MO.)**:
> 1/1/91-8/7/06
> P 30,000.00 x 16 yrs. = P 480,000.00
>
> 2) **BACKWAGES**:
> 1/4/01-8/7/06
> P 30,000.00 x 67.10 = P 2,013,000.00

[16] Docketed as NLRC NCR Case Nos. 30-01-00494-02 and 048927-06.

[17] *Via* a Decision dated May 16, 2007 of the NLRC. The decision was penned by Presiding Commissioner Gerardo C. Nograles for the First Division of the NLRC, with Commissioners Perlita B. Velasco and Romeo L. Go concurring. *Rollo*, pp. 223-236.

13th MO. PAY:
P 2,013,000/12 = 167,750.00 2,180,750.00
P 2,660,750.00

Less: Amt. already rcvd. (See, Annexes "2-5," pp. 358-361, Vol. II, Records) 175,000

TOTAL: ***P 2,485,750.00***

B. MYLENE M. BONIFACIO-
Rate: ***P 6,798.15*** ***Pd: 1/1/91-1/4/01(GIVEN)***
Cut-off date: 8/7/06

1) **SEP. PAY (1 MO.)**:
1/1/93-8/7/06
P 300 x 26 x 14 yrs. = P 109,200.00

2) **BACKWAGES**:
1/4/01-8/7/06

1/4/01-6/15/05
P 6,789.15 x 53.37 = P 362,817.26

6/16/05-7/10/06
P 275 x 26 x 12.80 = 91,520.00
7/11/06-8/7/06
P 300 x 26 x .90 7,020.00
P 461,357.26

13th MO. PAY:
P 461,357.26/12 = 38,446.43

SILP:
P 6,789.15 / 26 = P 261.46

1/4/01-6/15/05
P 261.46 x 5/12 x 53.37 =P 362,817.26

6/16/05-7/10/06
P 275 x 5/12 x 12.80 = 1,466.67

7/11/06-8/7/06
P 300 x 5/12 x .90 = 112.50
7,393.38

COLA:

11/5/01-1/31/02
P 15 x 26 x 2.87 = P 1,119.30

2/1/02-7/9/04
P 30 x 26 x 29.27 = 22,830.60

7/10/04-7/10/06
P 50 x 26 x 24 = 31,200.00
55,149.90 P 523,900.54
P 633,100.54

Less: Amt. already rcvd. (See, Annexes "6-7," pp. 362-363, Vol. II, Records) 53,661.87

TOTAL: ***P 579,438.67***

C. EVANGELINE E. VALVERDE-
Rate: ***P 10,000.00*** ***Pd: 1/1/91-1/4/01(GIVEN)***
Cut-off date: 8/7/06

1) **SEP. PAY (1 MO.)**:
1/1/91-8/7/06
P 10,000.00 x 16 yrs. = P 160,000.00

2) **BACKWAGES**:
1/4/01-8/7/06
P 10,000.00 x 67.10 = P 671,000.00

13th MO. PAY:
P671,000.00/12 = 55,916.67

SILP:
P 10,000 / 26 = P 384.61

1/4/01-8/7/06
P 384.61 x 5/12 x 67.10 = 10,753.05 737,669.72
P 897,669.72

Less: Amt. already rcvd. (See, Annex "17" pp. 358-361, Vol. II, Records) 32,172.61

TOTAL: ***P 865,497.11***

D. DEANA N. PAGAL
Rate: ***P 15,000.00*** ***Pd: 1/1/91-1/4/01(GIVEN)***
Cut-off date: 8/7/06

1) **SEP. PAY (1 MO.)**:
1/1/91-8/7/06
P 15,000.00 x 16 yrs. = P 240,000.00

2) **BACKWAGES**:
1/4/01-8/7/06
P 15,000.00 x 67.10 = P 1,060,000.00

13th MO. PAY:
P1,006,500.00/12 = 83,875.00

SILP:
P 15,000 / 26 = P 576.92

1/4/01-8/7/06
P 576.92 x 5/12 x 67.10 = 16, 129.72 1,106,504.72
P 1,346,504.72

Less: Amt. already rcvd. (See, Annex "11-15" pp. 344-350, Vol. II, Records) 199.803.96

TOTAL: ***P 1,146,700.76***

SUMMARY OF COMPUTATION:	
A. EDUARDO A. MONTENEJO	**P 2,485,750.00**
B. MYLENE BONIFACIO	**579,438.67**
C. EVANGELINE F. VALVERDE	**865,497.11**
D. DEANA N. PAGAL	**1,146,700.76**
TOTAL AWARD:	**P 5,077,386.54**

The claim for damages is dismissed for lack of substantial evidence that respondents acted in bad faith.

SO ORDERED.

The reversal was premised on the NLRC's disagreement with the first two findings of the LA. For the NLRC, the dismissals of Montenejo, et al. were illegal and the latter were not merely contractual employees:[18]

1. Montenejo, et al. were illegally dismissed. Accordingly, Montenejo, et al. should be paid full backwages, separation pay *in lieu* of reinstatement, 13th month pay and service incentive leave pay (SILP). In addition, petitioner Mylene M. Bonifacio should also be awarded with cost of living allowance (COLA).

   The dismissals of Montenejo, et al. were not valid because—

   a. VMDC was not able to establish that the dismissals were based on an authorized cause. VMDC presented no evidence that it had formally closed shop and a closure cannot be inferred from the mere termination of the management agreement between it and VFP. The claim of VMDC that its very existence hinges on the management agreement is belied by its own Articles of Incorporation.[19] Under VMDC's Articles of Incorporation, VMDC is authorized, as part of its primary purpose, to "*manage, operate, lease, develop, organize,* ***any*** *and* ***all kinds*** *of business enterprises.*"[20] Hence, the existence of VMDC cannot be regarded as exclusively dependent on its management agreement with VFP.

   b. Further compromising VMDC's claim of closure is the fact that it had never filed a notice of closure or cessation of its operations with the Department of Labor and Employment (DOLE).

2. Montenejo, et al. are not contractual employees but regular employees of VMDC. The management agreement between VFP and VMDC is not the contract of employment of Montenejo, et al. One cannot be applied to or equated with the other.

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[18] Id.
[19] Id. at 121-126.
[20] Id. at 121.

The NLRC, however, concurred with the third finding of the LA. Like the LA, the NLRC was of the view that Montenejo, et al. are not entitled to recover any damages for the reason that there is not enough evidence showing that their dismissals were tainted with bad faith.

The NLRC also agreed with the LA regarding the solidary liability of VFP and VMDC for the monetary awards due to Montenejo, et al. However, the NLRC proffered a different opinion as to the legal basis of VFP's liability. According to the NLRC, the liability of VFP was not due to the latter being an indirect employer of Montenejo, et al. but is based on the application of the doctrine of piercing the veil of corporate fiction. The NLRC noted that there are circumstances present in the instant case that warrant a disregard of the separate personalities of VFP and VMDC insofar as the claims of Montenejo, et al. were concerned.

Aggrieved, VFP filed a *certiorari* petition[21] with the CA.

The Ruling of the CA and the Present Appeal

On July 29, 2008, the CA rendered a decision dismissing VFP's *certiorari* petition.[22] In doing so, the CA essentially agreed with the ratiocinations of the NLRC. VFP moved for reconsideration, but the CA remained steadfast.

Hence, this appeal by VFP.

VFP, in substance, raises two qualms in this appeal:[23]

First. VFP first questions the finding that Montenejo, et al. had been illegally dismissed, viz:

a. VFP insists that the dismissals of Montenejo, et al. were based on the closure of VMDC that was, in turn, occasioned by the termination of the management agreement. It maintains the decision to close shop was an exercise by VMDC's management of its prerogative, which ought to be upheld as valid in the absence of showing that the same was implemented in bad faith and/or to circumvent the rights of its employees.

b. VFP also argues that the failure of VMDC to file a notice of closure with the DOLE did not invalidate the former's closure. In support of such argument, VFP cites the ruling in *Sebuguero v. NLRC*.[24]

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[21] Id. at 254-289.

[22] Id. at 56-75, 74. The *fallo* of the Decision of the CA reads: "*WHEREFORE, the petition is DENIED. SO ORDERED.*"

[23] Id. at 10-50.

[24] G.R. No. 115394, September 27, 1995, 248 SCRA 532.

Second. VFP also challenges the finding that it may be held solidarily liable with VMDC for any monetary award that may be adjudged in favor of Montenejo, et al. It submits that liability for any award ought to rest exclusively on VMDC, the latter being the sole employer of Montenejo, et al. In this connection, VFP contends that it cannot be treated as one and the same corporation as VMDC. It denies the existence of circumstances in the case at bench that may justify the application of the doctrine of piercing the veil of corporate fiction.

Our Ruling

We grant the appeal.

I

The first qualm of VFP is justified. The NLRC and the CA erred in ruling that Montenejo, et al. were illegally dismissed.

Montenejo, et al. were dismissed as a result of the closure of VMDC. Contrary to the ruling of the NLRC and the CA, there is ample support from the records to establish that VMDC did, in fact, close its operations. VMDC's closure, more importantly, qualifies as a *bona fide* cessation of operations or business as contemplated under *Article 298* of the *Labor Code*.[25]

The dismissals of Montenejo, et al. were, therefore, premised on an authorized cause. Being so, such dismissals are valid and remain to be valid even though they suffer from a procedural defect. Consequently, Montenejo, et al. are not entitled to the monetary awards (*i.e.*, full backwages, separation pay *in lieu* of reinstatement, 13th month pay, SILP and COLA) granted to them by the NLRC, but only to nominal damages on top of the separation pay under Article 298 of the Labor Code.

Concept of Illegal Dismissal; Closure of Business as an Authorized Cause for the Termination of Employment

We begin with the basics.

In our jurisdiction, the right of an employer to terminate employment is regulated by law. Both the Constitution[26] and our laws guarantee security of tenure to labor and, thus, an employee can only be validly dismissed from work if the dismissal is predicated upon any of the *just* or *authorized causes* allowed under the Labor Code.[27] Correspondingly, a dismissal that is not

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[25] Presidential Decree (PD) No. 442, as amended. Article 298 of the Labor Code was originally Article 283, before being renumbered by DOLE Department Advisory No. 1, series of 2015.

[26] *See* Article XIII, Section 3 of the 1987 CONSTITUTION.

[27] *See* Article 294 of PD No. 442, as amended. Article 294 of the Labor Code was originally Article 279, before being renumbered by DOLE Department Advisory No. 1, series of 2015.

based on either of the said causes is regarded as illegal and entitles the dismissed employee to the payment of backwages and, in most cases, to reinstatement.[28]

One of the authorized causes for dismissal recognized under the Labor Code is the *bona fide* cessation of business or operations by the employer. Article 298 of the Labor Code explicitly sanctions terminations due to the employer's cessation of business or operations—as long as the cessation is *bona fide* or is not made "*for the purpose of circumventing the [employees' right to security of tenure]*":

> *Art. 298. Closure of establishment and reduction of personnel.* **The employer may also terminate the employment of any employee due to** the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the **closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title**, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

As stated in the provision, an employer's closure or cessation of business or operations is regarded as an invalid ground for the termination of employment *only* when the closure or cessation is **made for the purpose of circumventing the tenurial rights of the employees**. A survey of relevant jurisprudence can shed light on what can be considered as an *invalid* cessation of business or operations:

1. In *Me-Shurn Corporation v. Me-Shurn Workers Union-FSM*,[29] a company that supposedly closed due to financial losses was discovered to have revived its operations barely a month after it closed. Some of the employees who were dismissed as a consequence of the company's closure challenged their terminations on the ground that such closure is not *bona fide* and claimed that the same was only made to forestall the formation of their union. When the issue reached us, we sided with the employees—ratiocinating that the company's unusual and immediate resumption of operations had lent credence to the employees' claim that the company's earlier closure had been done in bad faith.

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[28] *See* Article 279 of PD No. 442, as amended.
[29] G.R. No. 156292, January 11, 2005, 448 SCRA 41.

2. *Danzas Intercontinental, Inc. v. Daguman*,[30] on the other hand, featured a company which apparently closed one of its departments. However, in the ensuing illegal dismissal case filed by the employees terminated in the closure, it had been established that the company did not actually stop operating the concerned department as it even hired a new set of staff for the same. On these premises, we declared that the company's earlier closure of the subject department as not *bona fide* and ordered the reinstatement of the terminated employees.

3. A cross between *Me-Shurn* and *Danzas* is the case of *St. John Colleges, Inc. v. St. John Academy Faculty and Employees Union*.[31] In *St. John*, a deadlock in the Collective Bargaining Agreement negotiations between a school and its faculty union prompted the former to close its high school department and effect a mass lay-off. But barely one year after it announced such closure, the school reopened its high school department. The employees who lost their jobs in the closure of the high school department lodged an illegal dismissal complaint hinged on the argument that said closure is invalid and made in bad faith. We favored the employees and observed that the timing and the reason of both the closure of the high school department and its reopening were indicative of the school's bad faith in effecting the closure.

4. And finally, the case of *Eastridge Golf Club, Inc. v. East Ridge Golf Club, Inc. Labor Union-Super*.[32] *Eastridge* involved a company which closed one of its departments by allegedly transferring its operations to a concessionaire. However, in the illegal dismissal case filed by the employees laid off in the closure, it was proven that the company did not actually transfer the operations of the subject department to a concessionaire and that the former remained to be the employer of all the workers in the department. On this score, we ruled that the company's closure of its department was simulated and that the employees' dismissal by reason thereof was illegal.

All of the instances of invalid closures of business or operations discussed above have a common and telling characteristic—**all of them were not genuine closures or cessations of businesses; they are mere simulations which make it appear that the employer intended to close its business or operations when the latter, in truth, had no such intention**. To unmask the true intent of an employer when effecting a closure of business, it is important to consider not only the measures adopted by the employer prior to the purported closure but also the actions taken by the latter *after* the fact. For, as can be seen from the examples in the cited cases, the employer's subsequent acts of *suddenly reviving a business it had just closed* or *surreptitiously continuing with its operation after announcing a shutdown* are telltale badges that the employer had no real intent to cease its

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[30] G.R. No. 154368, April 15, 2005, 456 SCRA 382.
[31] G.R. No. 167892, October 27, 2006, 505 SCRA 764.
[32] G.R. No. 166760, August 22, 2008, 563 SCRA 93.

business or operations and only seeks an excuse to terminate employees capriciously.

Guided by the foregoing, we shall now address the issue at hand.

VMDC's Closure Was Established; The Closure Is Bona Fide; The Dismissals of Montenejo, et al. Are Based on an Authorized Cause

In this case, the NLRC and the CA both ruled against the validity of the dismissals of Montenejo, et al. for the reason that the dismissals were not proven to be based on any valid cause. The NLRC and the CA were disapproving of the claim that the dismissals were due to the closure of VMDC, lamenting the lack of any evidence showing that VMDC had formally closed its business.

We disagree.

Though not proclaimed in any formal document, the closure of VMDC was still duly proven in this case. The closure can be inferred from *other facts* that were established by the records and/or were not refuted by the parties. These facts are:

1. The fact that VMDC, on January 3, 2000, had **turned over possession of all buildings, equipment and other properties necessary to the operation of the VFPIA** to VFP;[33] *and*

2. The fact that, on January 31, 2000, **VMDC had dismissed *all* of its officials and employees**, which included Montenejo, et al.[34]

The confluence of the above facts, to our mind, indicates that VMDC indeed closed shop or ceased operations following the termination of its management agreement with VFP. The acts of VMDC in *relinquishing all properties* required for its operations and in *dismissing its entire workforce* would have indubitably compromised its ability to continue on with its operations and are, thus, the practical equivalents of a business closure. Hence, in these regards, we hold that the closure of VMDC had been established.

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[33] This fact is established by the *Closing Agreement* between VFP and VMDC, *rollo*, pp. 100-102.

[34] This fact can be derived from the *memorandum* dated January 3, 2000 of the President of VMDC (id. at 136) wherein the latter informed "*all the company's officials and employees*" of the termination of their services effective at the close of office hours on January 31, 2000. Montenejo, et al. were among those dismissed on January 31, 2000.

Moreover, we find VMDC's cessation of operations to be *bona fide*. None of the telltale badges of bad faith in closures of business, as illustrated in our jurisprudence, was shown to be present in this case. Here, there is no evidence on record that shows that VMDC—after dismissing its entire workforce and ceasing to operate—had revived its business or had hired new employees to replace those dismissed. Thus, it cannot be reasonably said that VMDC's cessation of operations was just a ruse or had been implemented merely as an excuse to terminate its employees.

The mere fact that VMDC could have chosen to continue operating despite the termination of its management agreement with VFP is also of no consequence. The decision of VMDC to cease its operations after the termination of the management agreement is, under the law, a lawful exercise by the company's leadership of its management prerogative that must perforce be upheld where, as in this case, there is an absence of showing that the cessation was made for prohibited purposes.[35] As *Alabang Country Club, Inc. v. NLRC* reminds:[36]

> For any bona fide reason, an employer can lawfully close shop anytime. Just as no law forces anyone to go into business, no law can compel anybody to continue the same. It would be stretching the intent and spirit of the law if a court interferes with management's prerogative to close or cease its business operations just because the business is not suffering from any loss or because of the desire to provide the workers continued employment.

The validity of the closure of VMDC necessarily validates the dismissals of Montenejo, et al. that resulted therefrom. The dismissals cannot be regarded as illegal because they were predicated upon an authorized cause recognized by law.

Montenejo, et al. Are Not Entitled to Monetary Awards Adjudged in Their Favor by the NLRC; They Are Only Entitled to Separation Pay Under Article 298 of the Labor Code

Since Montenejo, et al. had been validly dismissed, it becomes apparent that the monetary awards granted to them by the NLRC, and affirmed by the CA, were not proper. We substantiate:

1. The awards for full backwages and separation pay *in lieu* of reinstatement cannot be sustained as these awards are reserved by law, and jurisprudence, for employees who were illegally dismissed.[37]

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[35] *Alabang Country Club, Inc. v. NLRC*, G.R. No. 157611, August 9, 2005, 466 SCRA 329.
[36] Id.
[37] *See* Article 279 of PD No. 442, as amended.

2. The awards for 13th month pay, SILP and COLA, on the other hand, must also be invalidated as these are mere components of the award for backwages and were, thus, made by the NLRC and the CA **in consideration of the illegality of the dismissals of Montenejo, et al.** The 13th month pay, SILP and COLA that were awarded by the NLRC and the CA refer to the benefits that Montenejo, et al. would be entitled to *had they not been illegally dismissed* and are computed from the time of their dismissals up to the time the judgment declaring their dismissals illegal becomes final.[38] The awards, in other words, were not due to any failure on the part of VMDC to pay 13th month pay, SILP and COLA to Montenejo, et al. during the subsistence of their employer-employee relationship.

For having been terminated by reason of the employer's closure of operations that was not due to serious business losses or financial reverses, Montenejo, et al. are, however, entitled to be paid *separation pay* pursuant to Article 298 of the Labor Code. The records in this regard, though, reveal that Montenejo, et al. have already received their respective separation pays from VMDC.[39]

Failure of VMDC to File a Notice of Closure with the DOLE Does Not Invalidate the Dismissals of Montenejo, et al.; Such Procedural Lapse Only Gives Rise to Liability for Nominal Damages

Anent the failure of VMDC to file a notice of closure with the DOLE, we find our rulings in *Agabon v. NLRC*[40] and *Jaka Food Processing Corporation v. Pacot*[41] to be apt.

To recall, *Agabon* laid out the rule that when a dismissal is based on a *just* cause but is implemented without observance of the statutory notice requirements, the dismissal should be upheld as valid but the employer must thereby pay an indemnity to the employee in the amount of ₱30,000. *Jaka*, on the other hand, expounded on *Agabon* in two (2) ways:

1. First, *Jaka* extended the application of the *Agabon* doctrine to dismissals that were based on *authorized* causes but have been effected without observance of the notice requirements. Thus, similar to *Agabon*, the dismissals under such circumstances will also be regarded as valid while the employer shall likewise be required to pay an indemnity to the employee; and

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[38] See *rollo*, pp. 233-235. The computation of the awards by the NLRC was reckoned from the dismissals up to a certain cut-off date.

[39] See Decision of the LA dated November 7, 2005, *rollo*, pp. 203-212, 208-209.

[40] G.R. No. 158693, November 17, 2004, 442 SCRA 573.

[41] G.R. No. 151378, March 28, 2005, 454 SCRA 119.

2. Second, *Jaka* increased the amount of indemnity payable by the employer in cases where the dismissals are based on *authorized* causes but have been effected without observance of the notice requirements. It fixed the amount of indemnity in the mentioned scenario to ₱50,000.

Verily, the failure of VMDC to file a notice of closure with the DOLE does not render the dismissals of Montenejo, et al., which were based on an authorized cause, illegal. Following *Agabon* and *Jaka*, such failure only entitles Montenejo, et al. to recover *nominal damages* from VMDC in the amount of ₱50,000 each, on top of the separation pay they already received.

II

The NLRC and the CA also erred in ruling that VFP may be held solidarily liable with VMDC for any monetary award that may be found due to Montenejo, et al. We find that, contrary to the holding of the NLRC and the CA, the application of the doctrine of piercing the veil of corporate fiction is not justified by the facts of this case.

Accordingly, the liability for the award of nominal damages—the only award that Montenejo, et al. are entitled to in this case—ought to rest exclusively upon their employer, VMDC.

Doctrine of Piercing the Veil of Corporate Fiction Does Not Apply to This Case

The NLRC and the CA's stance is based on their submission that the doctrine of piercing the veil of corporate fiction is applicable to this case, i.e., that VFP and VMDC could, for purposes of satisfying any monetary award that may be due to Montenejo, et al., be treated as one and the same entity. According to the two tribunals, the doctrine may be applied to this case because VFP apparently owns almost all of the shares of stock of VMDC. In this regard, both the NLRC and the CA cite the *Closing Agreement*[42] of VFP and VMDC which states that:

> NOW THEREFORE, for and in consideration of the foregoing premises the [VFP] and the [VMDC] hereby agree to terminate the [management agreement] for the development and management of the [VFPIA] in Taguig effective on 3 January 2000, subject to the following conditions:
>
> 1. **The [VMDC] agrees that the [VFP] is the majority stockholder of the [VMDC] and that all its original incorporators have endorsed all their shares of stock to the [VFP] except one (1) qualifying share each to be able to sit as Director in the Board of Directors of the [VMDC]**. (Emphasis supplied)

[42] *Rollo*, pp. 100-102.

We disagree with the submission.

The doctrine of piercing the veil of corporate fiction is a legal precept that allows a corporation's separate personality to be disregarded under certain cirumstances, so that a corporation and its stockholders or members, or a corporation and another related corporation could be treated as a single entity. The doctrine is an equitable principle, it being meant to apply only in situations where the separate corporate personality of a corporation is being abused or being used for wrongful purposes.[43] As *Manila Hotel Corporation v. NLRC*[44] explains:

> Piercing the veil of corporate entity is an equitable remedy. It is resorted to when the corporate fiction is used to defeat public convenience, justify wrong, protect fraud or defend a crime. It is done only when a corporation is a mere alter ego or business conduit of a person or another corporation. (Citations omitted)

In *Concept Builders, Inc. v. NLRC*,[45] we laid down the following test to determine when it would be proper to apply the doctrine of piercing the veil of corporate fiction:

> 1. **Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice** in respect to the transaction attacked so 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 fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiff's legal rights**; and
>
> 3. The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.
>
> **The absence of any one of these elements prevents piercing the 0corporate veil**. In applying the instrumentality or alter ego doctrine, the courts are concerned with reality and not form, with how the corporation operated and the individual defendant's relationship to that operation. (Emphasis supplied and citations omitted).

Relative to the *Concept Builders* test are the following critical ruminations from *Rufina Luy Lim v. CA*:[46]

> 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 a sufficient reason for disregarding the fiction of separate corporate personalities.

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[43] *Livesy v. Binswanger, Philippines, Inc.*, G.R. No. 177493, March 19, 2014.
[44] G.R. No. 120077, October 13, 2000, 343 SCRA 1.
[45] G.R. No. 108734, May 29, 1996, 257 SCRA 149.
[46] G.R. No. 124715, January 24, 2000, 323 SCRA 102.

> Moreover, to disregard the separate juridical personality of a corporation, the wrong-doing must be clearly and convincingly established. It cannot be presumed. (Citations omitted)

Utilizing the foregoing standards, it becomes clear that the NLRC and the CA were mistaken in their application of the doctrine to the case at bench. The sole circumstance used by both to justify their disregard of the separate personalities of VFP and VMDC is the former's alleged status as the majority stockholder of the latter. Completely absent, however, both from the decisions of the NLRC and the CA as well as from the records of the instant case itself, is any circumstance which establishes that VFP had complete control or domination over the "*finances[,]... policy and business practice*" of VMDC. Worse, even assuming that VFP had such kind of control over VMDC, there is likewise no evidence that the former had used the same to "*commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of* [another's] *legal rights.*"

Given the absence of any convincing proof of misuse or abuse of the corporate shield, we, thus, find the application of the doctrine of piercing the veil of corporate fiction to the present case to be unwarranted, if not utterly improper. Consequently, we must also reject, for being erroneous, the pronouncement that VFP may be held solidarily liable with VMDC for any monetary award that may be adjudged in favor of Montenejo, et al. in this case.

Application: Exclusive Liability for Nominal Damages Rests on VMDC

As established in the previous discussion, the only award to which Montenejo, et al. are entitled in the instant case is for nominal damages pursuant to the *Agabon* and *Jaka* doctrines. Considering that the doctrine of piercing the veil of corporate fiction does not apply, the liability for the satisfaction of this award must be deemed to rest exclusively on the employer of Montenejo, et al., VMDC.

III

In fine—

Our finding upholding the validity of the dismissals of Montenejo, et al. warranted the nullification of the awards of full backwages, separation pay *in lieu* of reinstatement, 13th month pay, SILP and COLA that were originally adjudged in their favor by the NLRC. Thus, the assailed CA decision and resolution, for sustaining such awards, ought to be reversed and set aside. Necessarily, the NLRC decision must also be set aside *except* with respect to the finding that Montenejo, et al. were regular employees of VMDC. The statuses of Montenejo, et al. as regular employees of VMDC were not challenged in the present appeal of VFP.

In light of the failure of VMDC to file a notice of closure with the DOLE, however, we must adjudge VMDC to pay nominal damages to Montenejo, et al. pursuant to the *Agabon* and *Jaka* doctrines. The amount of the nominal damages is ₱50,000 per person and the satisfaction thereof is the exclusive liability of VMDC, the employer of Montenejo, et al. VFP is absolved from any further liability to Montenejo, et al.

WHEREFORE, premises considered, the instant petition is **GRANTED**. The Decision dated July 29, 2008 and Resolution dated October 2, 2008 of the Court of Appeals in CA-G.R. SP No. 101041 are **REVERSED** and **SET ASIDE**. Except as to the finding that respondents Eduardo L. Montenejo, Mylene M. Bonifacio, Evangeline E. Valverde and Deana N. Pagal were regular employees of the VFP Management and Development Corporation, the Decision dated May 16, 2007 of the National Labor Relations Commission in NLRC NCR Case Nos. 30-01-00494-02 and 048927-06 is **SET ASIDE**.

Judgment is hereby made directing the VFP Management and Development Corporation to **PAY** respondents Eduardo L. Montenejo, Mylene M. Bonifacio, Evangeline E. Valverde and Deana N. Pagal the sum of ₱50,000 each as **NOMINAL DAMAGES**.

SO ORDERED.

PRESBITERO J. VELASCO, JR.
Associate Justice

WE CONCUR:

LUCAS P. BERSAMIN
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

(On Leave)
ALEXANDER G. GESMUNDO
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

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.

MARIA LOURDES P. A. SERENO
Chief Justice

DEC 14 2017