THIRD DIVISION

G.R. No. 221813 –MARICALUM MINING CORPORATION, *petitioner* **v. 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.*

G.R. No. 222723 - ELY G. 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 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* **v. 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

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DISSENTING OPINION

LEONEN, *J.:*

This case involves two (2) Petitions for Review questioning the Court of Appeals October 29, 2014 Decision in CA-G.R. SP No. 06835.

In G.R. No. 221813, Maricalum Mining Corporation (Maricalum Mining) is questioning the computation of its total monetary liability.

In G.R. No. 222723, Ely G. 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 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 (collectively, complainants) are insisting that G Holdings, Inc. (G Holdings) should be held liable with Maricalum Mining for their labor claims.

The following are the antecedent facts:

The Philippine National Bank and the Development Bank of the Philippines previously owned Maricalum Mining. When Maricalum Mining became a non-performing asset, both banks transferred their ownership of Maricalum Mining to the National Government for disposition or privatization.[1]

On October 2, 1992, the National Government, through the Asset Privatization Trust, sold 90% of Maricalum Mining's shares and financial claims to G Holdings, a domestic corporation engaged in owning and holding shares of stock of different companies.[2]

The Asset Privatization Trust and G Holdings executed a Purchase and Sale Agreement. It provided for the purchase price for Maricalum Mining's shares. As for the value of Maricalum Mining's financial claims, Maricalum Mining executed promissory notes in favor of G Holdings. The notes were secured by Maricalum Mining's properties.[3]

When G Holdings had paid the down payment, it immediately took possession of Maricalum Mining's mine site, facilities, and took full control of the latter's management and operations.[4]

In 1999, several Maricalum Mining employees retired and formed manpower cooperatives.[5]

In 2000, the cooperatives executed separate but identical Memoranda of Agreement with Maricalum Mining, undertaking to supply the latter with workers, machinery, and equipment in exchange for a monthly fee.[6]

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1 *Ponencia*, p. 3.
2 Id. at 4.
3 Id.
4 Id.
5 Id.
6 Id. at 5.

On June 1, 2001, Maricalum Mining informed the cooperatives that it was undergoing continuing losses because of high cost of production and low metal prices. Consequently, it would cease its mining and milling operations beginning July 1, 2001.[7]

In July 2001, Maricalum Mining's properties mortgaged in favor of G Holdings were extra-judicially foreclosed. On December 3, 2001, the properties were sold to G Holdings as the highest bidder.[8]

On September 23, 2010, the complainants filed an illegal dismissal case against G Holdings and the cooperatives. They also sought payment for several money claims, damages, and attorney's fees.[9]

The Labor Arbiter ruled that G Holdings, Maricalum Mining, and the manpower cooperatives were guilty of labor-only contracting, and thus, are liable for the money claims and attorney's fees.[10]

On appeal, the National Labor Relations Commission modified the ruling. It found that only Maricalum Mining was liable to the employees because Maricalum Mining and G Holdings had separate and distinct corporate personalities.[11]

The Court of Appeals affirmed the ruling of the National Labor Relations Commission.[12]

The complainants filed a Petition for Review with this Court, asserting that G Holdings should be held liable for their claims because the doctrine of piercing the corporate veil applies.

The *ponencia* affirmed the Court of Appeals' ruling. It held that the corporate veil should not be pierced because there is no evidence of fraud on the part of G Holdings.[13]

It explained that the corporate veil must be lifted only if it was used to shield fraud, defend crime, justify a wrong, defeat public convenience, insulate bad faith, or perpetuate injustice.[14] Control and ownership of all assets of another corporation is not an indication of a fraudulent intent to

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7 Id.
8 Id.
9 Id.
10 Id. at 8.
11 Id. at 10.
12 Id. at 11.
13 Id. at 30.
14 Id. at 25.

evade labor claims and liabilities.[15] The *ponencia* ruled that the employees must present clear and convincing evidence to prove that the holding company is guilty of fraud or gross negligence amounting to bad faith to evade the obligation.[16]

It held that the transfer of Maricalum Mining's assets to G Holdings does not indicate fraud, as it was done pursuant to the Purchase and Sale Agreement executed in 1992. It noted that some of the assets had been foreclosed as early as 2001, even before the labor claims existed, and thus, there was no evidence that the transfer was done to evade their obligations.[17]

The *ponencia* also lent credence to the allegation that the continuing depletion of Maricalum Mining's assets is due to its employees' pilferage, and that there is no evidence that G Holdings was negligent in that aspect.[18]

It further ruled that there is no showing that all of Maricalum Mining's assets have been depleted such that it is insufficient to meet the employees' claims.[19]

It also concluded that G Holdings is a holding company that merely purchased Maricalum Mining's shares to invest in the mining industry, not to continue its existence and operations.[20]

Moreover, it ruled that there is no showing that the employees have suffered any monetary injury, as they have yet to enforce their claims against Maricalum Mining.[21]

I dissent. I opine that the corporate veil should be pierced and that G Holdings should be held solidarily liable with Maricalum Mining.

A corporation has a separate and distinct personality from that of its stockholders, officers, or any other legal entity to which it is related.[22] It is presumed to be a bona fide legal entity that has its own powers and attributes. Its assets and properties are its own, and it is liable for its own acts and obligations.

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15 Id. at 28.
16 Id. at 30.
17 Id. at 28.
18 Id.
19 Id. at 28–29.
20 Id. at 29.
21 Id. at 31.
22 CIVIL CODE, art. 44 provides:
Article 44. The following are juridical persons:
. . . .
(3) Corporations, partnerships and associations for private interest or purpose to which the law grants a juridical personality, separate and distinct from that of each shareholder, partner or member.

> A corporation is an artificial being created by operation of law. It possesses the right of succession and such powers, attributes, and properties expressly authorized by law or incident to its existence. It has a personality separate and distinct from the persons composing it, as well as from any other legal entity to which it may be related. This is basic. [23]

This is the rule even if a single stockholder or a single corporation wholly owns all the capital stock of the corporation.[24] In *MR Holdings, Ltd. v. Bajar*:[25]

> *[T]he mere fact that a corporation owns all of the stocks of another corporation, taken alone is not sufficient to justify their being treated as one entity.* If used to perform legitimate functions, a subsidiary's separate existence shall be respected, and the liability of the parent corporation as well as the subsidiary will be confined to those arising in their respective business.[26] (Emphasis in the original, citation omitted)

The exception to this rule is when the separate personality of the corporation is used to "defeat public convenience, justify wrong, protect fraud or defend crime."[27] It is done when the separate personality of the corporation is being abused or used for wrongful purposes,[28] such as a shield for fraud, illegality, or inequity committed against third persons.[29] It applies when it is used in defrauding creditors or evading obligations and liabilities.

The corporation's separate personality is "a fiction created by law for convenience and to prevent injustice."[30] Thus, when it is used in such a way that injustice prevails, the corporate veil is instead pierced to protect the rights of innocent third persons.[31] It is an equitable remedy, done in the interest of justice and to protect public policy.[32]

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23 *Philippine National Bank v. Andrada Electric & Engineering Co.*, 430 Phil. 882, 894 (2002) [Per J. Panganiban, Third Division].

24 *See Sunio v. National Labor Relations Commission*, 212 Phil. 355 (1984) [Per J. Melencio- Herrerra, First Division].

25 430 Phil. 443 (2002) [Per J. Sandoval-Gutierrez, Third Division].

26 Id. at 469–470.

27 *Philippine National Bank v. Ritratto Group Inc.*, 414 Phil. 494, 505 (2001) [Per J. Kapunan, First Division].

28 Id. at 503.

29 *Philippine National Bank v. Andrada Electric & Engineering Co.*, 430 Phil. 882, 895 (2002) [Per J. Panganiban, Third Division].

30 *Pantranco Employees Association v. National Labor Relations Commission,* 600 Phil. 645, 660 (2009) [Per J. Nachura, Third Division].

31 *See Pantranco Employees Association v. National Labor Relations Commission,* 600 Phil. 645 (2009) [Per J. Nachura, Third Division] and *Traders Royal Bank v. Court of Appeals*, 336 Phil. 15 (1997) [Per J. Torres, Jr., Second Division].

32 *See Philippine National Bank v. Andrada Electric & Engineering Co.*, 430 Phil. 882 (2002) [Per J. Panganiban, Third Division]; *Philippine National Bank v. Ritratto Group Inc.*, 414 Phil. 494 (2001) [Per J. Kapunan, First Division]. *Traders Royal Bank v. Court of Appeals*, 336 Phil. 15 (1997) [Per J. Torres, Jr., Second Division].

The party alleging that the corporate veil must be pierced has the burden to prove it by clear and convincing evidence.[33] The wrongdoing alleged is never presumed.[34] In *Philippine National Bank v. Andrada Electric & Engineering Co.*:[35]

> Equally well-settled is the principle that the corporate mask may be removed or the corporate veil pierced when the corporation is just an alter ego of a person or of another corporation. For reasons of public policy and in the interest of justice, the corporate veil will justifiably be impaled only when it becomes a shield for fraud, illegality or inequity committed against third persons.
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> Hence, any application of the doctrine of piercing the corporate veil should be done with caution. A court should be mindful of the milieu where it is to be applied. It must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of its rights. The wrongdoing must be clearly and convincingly established; it cannot be presumed. Otherwise, an injustice that was never unintended may result from an erroneous application.
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> This Court has pierced the corporate veil to ward off a judgment credit, to avoid inclusion of corporate assets as part of the estate of the decedent, to escape liability arising from a debt, or to perpetuate fraud and/or confuse legitimate issues either to promote or to shield unfair objectives or to cover up an otherwise blatant violation of the prohibition against forum-shopping. Only in these and similar instances may the veil be pierced and disregarded.[36] (Citations omitted)

When the separate personality of the corporation is pierced, the corporation is not seen as one (1) entity. Instead, its acts, assets, and liabilities become the direct responsibility of the individuals owning, controlling, and conducting its business. In *Pantranco Employees Association v. National Labor Relations Commission*:[37]

> The general rule is that a corporation has a personality separate and distinct from those of its stockholders and other corporations to which it may be connected. This is a fiction created by law for convenience and to prevent injustice . . .
>
> Under the doctrine of "piercing the veil of corporate fiction", the court looks at the corporation as a mere collection of individuals or an aggregation of persons undertaking business as a group, disregarding the separate juridical personality of the corporation unifying the group. Another formulation of this doctrine is that when two business enterprises

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33 *Philippine National Bank v. Andrada Electric & Engineering Co.*, 430 Phil. 882 (2002) [Per J. Panganiban, Third Division]; *Luxuria Homes, Inc. v. Court of Appeals*, 361 Phil. 989 (1999) [Per J. Martinez, First Division].

34 *Luxuria Homes, Inc. v. Court of Appeals*, 361 Phil. 989 (1999) [Per J. Martinez, First Division].

35 430 Phil. 882 (2002) [Per J. Panganiban, Third Division].

36 Id. at 894–895.

37 600 Phil. 645 (2009) [Per J. Nachura, Third Division].

> are owned, conducted and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that two corporations are distinct entities and treat them as identical or as one and the same.
>
> Whether the separate personality of the corporation should be pierced hinges on obtaining facts appropriately pleaded or proved. However, any piercing of the corporate veil has to be done with caution, albeit the Court will not hesitate to disregard the corporate veil when it is misused or when necessary in the interest of justice. After all, the concept of corporate entity was not meant to promote unfair objectives.[38] (Citations omitted)

The doctrine of piercing the corporate veil applies in three (3) instances:

(i) When the corporation's separate personality is being used to defeat public convenience, such as in evading existing obligations;

(ii) In *fraud cases*, when it is used to justify a wrong, protect fraud, or defend a crime; and

(iii) In *alter-ego cases*, where the corporation's separate personality is not bona fide, such that it is only a conduit of another person, or its business is controlled or maintained as a mere agency or adjunct of another, that it has no mind or will of its own.

In all instances, *malice and bad faith* are necessary to pierce the corporate veil. Thus, in *Pantranco Employees Association v. National Labor Relations Commission*:[39]

> Clearly, what can be inferred from the earlier cases is that the doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or 3) *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. In the absence of malice, bad faith, or a specific provision of law making a corporate officer liable, such corporate officer cannot be made personally liable for corporate liabilities.[40] (Citations omitted)

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38 Id. at 660–661.

39 600 Phil. 645 (2009) [Per J. Nachura, Third Division].

40 Id. at 663.

In *Philippine National Bank v. Andrada Electric & Engineering Co.*,[41] the elements of piercing the corporate veil were enumerated as follows:

> (1) [C]ontrol — 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 plaintiff's legal right; and (3) the said control and breach of duty must have proximately caused the injury or unjust loss complained of.[42] (Citation omitted)

Thus, the elements are control, the commission of a wrong, and injury.

Control is particularly relevant in alter-ego cases. In *Philippine National Bank v. Ritratto Group Inc.*,[43] this Court laid down several indicators of full control:

> (a) The parent corporation owns all or most of the capital stock of the subsidiary.
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> (b) The parent and subsidiary corporations have common directors or officers.
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> (c) The parent corporation finances the subsidiary.
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> (d) The parent corporation subscribes to all the capital stock of the subsidiary or otherwise causes its incorporation.
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> (e) The subsidiary has grossly inadequate capital.
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> (f) The parent corporation pays the salaries and other expenses or losses of the subsidiary.
>
> (g) The subsidiary has substantially no business except with the parent corporation or no assets except those conveyed to or by the parent corporation.
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> (h) 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.
>
> (i) The parent corporation uses the property of the subsidiary as its own.

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41 430 Phil. 882 (2002) [Per J. Panganiban, Third Division].
42 Id. at 895.
43 414 Phil. 494 (2001) [Per J. Kapunan, First Division].

(j) 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.

(k) The formal legal requirements of the subsidiary are not observed.[44]

However, there is particular emphasis in the element of fraud or commission of a wrong.

Previously, the piercing of the veil was allowed whenever there is a similarity in the personnel, officers, resources, and place of work of two (2) entities. Ownership and control of two (2) entities by the same parties is sufficient to disregard the legal fiction. Thus, in *Sibagat Timber Corp. v. Garcia*:[45]

> The circumstances that: (1) petitioner and Del Rosario & Sons Logging Enterprises, Inc. hold office in the same building; (2) the officers and directors of both corporations are practically the same; and (3) the Del Rosarios assumed management and control of Sibagat and have been acting for and managing its business . . . , bolster the conclusion that petitioner is an alter ego of the Del Rosario & Sons Logging Enterprises, Inc.
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> The rule is that the veil of corporate fiction may be pierced when made as a shield to perpetrate fraud and/or confuse legitimate issues . . . The theory of corporate entity was not meant to promote unfair objectives or otherwise, to shield them . . . Likewise, where it appears that two business enterprises are owned, conducted, and controlled by the same parties, both law and equity will, when necessary to protect the rights of third persons, disregard the legal fiction that two corporations are distinct entities, and treat them as identical . . .
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> . . . .
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> Assuming *arguendo* that this Court in G.R. No. 84497 held that petitioner is the owner of the properties levied under execution, that circumstance will not be a legal obstacle to the piercing of the corporate fiction. As found by both the trial and appellate courts, petitioner is just a conduit, if not an adjunct of Del Rosario & Sons Logging Enterprises, Inc. In such a case, the real ownership becomes unimportant and may be disregard for the two entities may/can be treated as only one agency or instrumentality.
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> > The corporate entity is disregarded where a corporation is the 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.[46] (Citations omitted)

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[44] Id. at 504–505.
[45] 290-A Phil. 241 (1992) [Per J. Grino-Aquino, First Division].
[46] Id. at 245–247.

Likewise, the corporate veil was pierced in *Philippine Bank of Communications v. Court of Appeals*,[47] where a parcel of land could not be levied upon because the property had already been transferred to another corporation controlled by the liable person.

> The well settled principle is that a corporation "is invested by law with a separate personality, separate and distinct from that of the person composing it as well as from any other legal entity to which it may be related." . . . However, the separate personality of the corporation may be disregarded, or the veil of corporate fiction pierced when the corporation is used "as a cloak or cover for fraud or illegality, or to work an injustice, or where necessary to achieve equity or when necessary for the protection of creditors." . . .
>
> In the instant case, the evidence clearly shows that Chua and his immediate family control JALECO. The Deed of Exchange executed by Chua and JALECO had for its subject matter the sale of the only property of Chua at the time when Chua's financial obligations became due and demandable. The records also show that despite the "sale", respondent Chua continued to stay in the property, subject matter of the Deed of Exchange.
>
> These circumstances tend to show that the Deed of Exchange was not what it purports to be. Instead, they tend to show that the Deed of Exchange was executed with the sole intention to defraud Chua's creditor - the petitioner. It was not a *bona fide transaction* between JALECO and Chua. Chua entered a sham or simulated transaction with JALECO for the sole purpose of transferring the title of the property to JALECO without really divesting himself of the title and control of the said property.
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> Hence, JALECO's separate personality should be disregarded and the corporation veil pierced. In this regard, the transaction leading to the execution of the Deed of Exchange between Chua and JALECO must be considered a transaction between Chua and himself and not between Chua and JALECO. Indeed, Chua took advantage of his control over JALECO to execute the Deed of Exchange to defraud his creditor, the petitioner herein. JALECO was but a mere *alter ego* of Chua.[48] (Citations omitted)

In *Tomas Lao Construction v. National Labor Relations Commission*,[49] the veils of corporate fiction of three (3) companies owned, controlled, and managed by one (1) family were pierced to hold them all liable for monetary awards granted to illegally dismissed workers.

> Finally, public respondent NLRC did not err in disregarding the veil of separate corporate personality and holding petitioners jointly and severally liable for private respondents' back wages and separation pay. The records disclose that the three (3) corporations were in fact

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47 272-A Phil. 565 (1991) [Per J. Gutierrez, Jr., Third Division].

48 Id. at 578–579.

49 344 Phil. 268 (1997) [Per J. Belosillo, First Division].

> substantially owned and controlled by members of the Lao family composed of Lao Hian Beng alias Tomas Lao, Chiu Siok Lian (wife of Tomas Lao), Andrew C. Lao, Lao Y. Heng, Vicente Lao Chua, Lao E. Tin, Emmanuel Lao and Ismaelita Maluto. A majority of the outstanding shares of stock in LVM and T&J is owned by the Lao family. T&J is 100% owned by the Laos as reflected in its Articles of Incorporation. The Lao Group of Companies therefore is a closed corporation where the incorporators and directors belong to a single family. Lao Hian Beng is the same Tomas Lao who owns Tomas Lao Corporation and is the majority stockholder of T&J. Andrew C. Lao is the Managing Director of LVM Construction, and President and Managing Director of the Lao Group of Companies. Petitioners are engaged in the same line of business under one management and use the same equipment including manpower services. Where it appears that [three] business enterprises are owned, conducted and controlled by the same parties, both law and equity will, when necessary to protect the rights of third persons, disregard the legal fiction that the [three] corporations are distinct entities, and treat them as identical.
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> Consonant with our earlier ruling, we hold that the liability of petitioners extends to the responsible officers acting in the interest of the corporations. In view of the peculiar circumstances of this case, we disregard the separate personalities of the three (3) corporations and at the same time declare the members of the corporations jointly and severally liable with the corporations for the monetary awards due to private respondents. It should always be borne in mind that the fiction of law that a corporation as a juridical entity has a distinct and separate personality was envisaged for convenience and to serve justice; therefore it should not be used as a subterfuge to commit injustice and circumvent labor laws.[50] (Citations omitted)

Later, this Court became stricter in the application of the instrumentality rule. It laid down requisites before the corporate veil may be pierced in alter-ego cases. It required that the control must have been used "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 plaintiff's legal right."[51] In *Philippine National Bank v. Andrada Electric & Engineering Co.*:[52]

> The question of whether a corporation is a mere alter ego is one of fact. 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 plaintiff's legal right; and (3) the said control and breach

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50 Id. at 286–287.

51 *Philippine National Bank v. Andrada Electric & Engineering Co.*, 430 Phil. 882, 895 (2002) [Per J. Panganiban, Third Division].

52 430 Phil. 882 (2002) [Per J. Panganiban, Third Division].

> of duty must have proximately caused the injury or unjust loss complained of.
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> We believe that the absence of the foregoing elements in the present case precludes the piercing of the corporate veil. *First*, other than the fact that petitioners acquired the assets of [Pampanga Sugar Mill], there is no showing that their control over it warrants the disregard of corporate personalities. *Second,* there is no evidence that their juridical personality was used to commit a fraud or to do a wrong; or that the separate corporate entity was farcically used as a mere alter ego, business conduit or instrumentality of another entity or person. *Third,* respondent was not defrauded or injured when petitioners acquired the assets of [Pampanga Sugar Mill].
>
> Being the party that asked for the piercing of the corporate veil, respondent had the burden of presenting clear and convincing evidence to justify the setting aside of the separate corporate personality rule. However, it utterly failed to discharge this burden; it failed to establish by competent evidence that petitioner's separate corporate veil had been used to conceal fraud, illegality or inequity.[53] (Citations omitted)

This Court further ruled that similarities are not sufficient to pierce the corporate veil, especially if there is a plausible business purpose for the existence of the corporate fiction. In *Padilla v. Court of Appeals,*[54] respondent Susana Realty, Inc. sought to enforce an alias writ of execution against the properties of petitioner Phoenix-Omega Development and Management Corporation to satisfy a monetary award, based on the finding that Phoenix-Omega Development and Management Corporation was the sister company of the liable corporation, PKA Development and Management Corporation. This Court ruled that it was not proper to pierce the corporate veil as there was no showing that it was used to defeat public convenience, justify wrong, protect fraud, or defend crime:

> This veil of corporate fiction may only be disregarded in cases where the corporate vehicle is being used to defeat public convenience, justify wrong, protect fraud, or defend crime. (PKA Development and Management Corporation) and Phoenix-Omega are admittedly sister companies, and may be sharing personnel and resources, but we find in the present case no allegation, much less positive proof, that their separate corporate personalities are being used to defeat public convenience, justify wrong, protect fraud, or defend crime. "For the separate juridical personality of a corporation to be disregarded, the wrongdoing must be clearly and convincingly established. It cannot be presumed." We find no reason to justify piercing the corporate veil in this instance. [55] (Citations omitted)

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[53] Id. at 895–896.
[54] 421 Phil. 883 (2001) [Per J. Quisimbing, Second Division].
[55] Id. at 895.

In *Development Bank of the Philippines v. Court of Appeals*,[56] Remington Corporation (Remington) sought payment for construction materials purchased by Marinduque Mining and Industrial Corporation (Marinduque Mining). The Philippine National Bank and the Development Bank of the Philippines foreclosed and acquired the mortgaged properties of Marinduque Mining, and assigned their rights to the properties to three (3) newly created mining corporations. Remington then filed a collection case against Marinduque Mining, and impleaded the Philippine National Bank, the Development Bank of the Philippines, and the three (3) mining companies. It argued that the transfer of Marinduque Mining's properties to the three (3) mining corporations were made in fraud of creditors considering that the Philippine National Bank and the Development Bank of the Philippines practically wholly own the three (3) newly created entities. This Court ruled that the piercing of the corporate veil is not warranted because the transfer was done in good faith and in accordance with law and sound business practice:

> [T]his Court has disregarded the separate personality of the corporation where the corporate entity was used to escape liability to third parties. In this case, however, we do not find any fraud on the part of Marinduque Mining and its transferees to warrant the piercing of the corporate veil.
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> It bears stressing that [the Philippine National Bank] and [the Development Bank of the Philippines] are mandated to foreclose on the mortgage when the past due account had incurred arrearages of more than 20% of the total outstanding obligation. . .
>
> Thus, [the Philippine National Bank] and [the Development Bank of the Philippines] did not only have a right, but the duty under said law, to foreclose upon the subject properties. The banks had no choice but to obey the statutory command.
>
> . . . .
>
> Neither do we discern any bad faith on the part of [the Development Bank of the Philippines] by its creation of Nonoc Mining, Maricalum and Island Cement. As Remington itself concedes, [the Development Bank of the Philippines] is not authorized by its charter to engage in the mining business. The creation of the three corporations was necessary to manage and operate the assets acquired in the foreclosure sale lest they deteriorate from non-use and lose their value. In the absence of any entity willing to purchase these assets from the bank, what else would it do with these properties in the meantime? Sound business practice required that they be utilized for the purposes for which they were intended.
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> Remington also asserted in its third amended complaint that the use of Nonoc Mining, Maricalum and Island Cement of the premises of Marinduque Mining and the hiring of the latter's officers and personnel also constitute badges of bad faith.

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[56] 415 Phil. 538 (2001) [Per J. Kapunan, First Division].

> Assuming that the premises of Marinduque Mining were not among those acquired by [the Development Bank of the Philippines] in the foreclosure sale, convenience and practicality dictated that the corporations so created occupy the premises where these assets were found instead of relocating them. No doubt, many of these assets are heavy equipment and it may have been impossible to move them. The same reasons of convenience and practicality, not to mention efficiency, justified the hiring by Nonoc Mining, Maricalum and Island Cement of Marinduque Mining's personnel to manage and operate the properties and to maintain the continuity of the mining operations.
>
> To reiterate, the doctrine of piercing the veil of corporate fiction applies only when such corporate fiction is used to defeat public convenience, justify wrong, protect fraud or defend crime. To disregard the separate juridical personality of a corporation, the wrongdoing must be clearly and convincingly established. It cannot be presumed. In this case, the Court finds that Remington failed to discharge its burden of proving bad faith on the part of Marinduque Mining and its transferees in the mortgage and foreclosure of the subject properties to justify the piercing of the corporate veil.[57] (Citations omitted)

In *Jardine Davies, Inc. v. JRB Realty, Inc.*,[58] respondent JRB Realty, Inc. filed an action against the parent corporation, Jardine Davies, Inc. for the replacement of air-conditioning units purchased from its subsidiary, Aircon and Refrigeration Industries, Inc. (Aircon). This Court refused to pierce the corporate veil:

> The rationale behind piercing a corporation's identity is to remove the barrier between the corporation from the persons comprising it to thwart the fraudulent and illegal schemes of those who use the corporate personality as a shield for undertaking certain proscribed activities.
>
> While it is true that Aircon is a subsidiary of the petitioner, it does not necessarily follow that Aircon's corporate legal existence can just be disregarded. In *Velarde v. Lopez, Inc.*, the Court categorically held that a subsidiary has an independent and separate juridical personality, distinct from that of its parent company; hence, any claim or suit against the latter does not bind the former, and *vice versa*. In applying the doctrine, the following requisites must be established: (1) control, not merely majority or complete stock control; (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 acts 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 records bear out that Aircon is a subsidiary of the petitioner only because the latter acquired Aircon's majority of capital stock. It, however, does not exercise complete control over Aircon; nowhere can it be gathered that the petitioner manages the business affairs of Aircon. Indeed, no management agreement exists between the petitioner and Aircon, and the latter is an entirely different entity from the petitioner.

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[57] Id. at 546–549.

[58] 502 Phil. 129 (2005) [Per J. Callejo, Sr., Second Division].

> Jardine Davies, Inc., incorporated as early as June 28, 1946, is primarily a financial and trading company. . .
>
> On the other hand, Aircon, incorporated on December 27, 1952, is a manufacturing firm. Its Articles of Incorporation states that its purpose is mainly —
>
> > To carry on the business of manufacturers of commercial and household appliances and accessories of any form, *particularly to manufacture, purchase, sell or deal in air conditioning and refrigeration products of every class and description* as well as accessories and parts thereof, or other kindred articles; and to erect, or buy, lease, manage, or otherwise acquire manufactories, warehouses, and depots for manufacturing, assemblage, repair and storing, buying, selling, and dealing in the aforesaid appliances, accessories and products. . .
>
> The existence of interlocking directors, corporate officers and shareholders . . . is not enough justification to pierce the veil of corporate fiction, in the absence of fraud or other public policy considerations. But even when there is dominance over the affairs of the subsidiary, the doctrine of piercing the veil of corporate fiction applies only when such fiction is used to defeat public convenience, justify wrong, protect fraud or defend crime. To warrant resort to this extraordinary remedy, there must be proof that the corporation is being used as a cloak or cover for fraud or illegality, or to work injustice. Any piercing of the corporate veil has to be done with caution. The wrongdoing must be clearly and convincingly established. It cannot just be presumed.
>
> In the instant case, there is no evidence that Aircon was formed or utilized with the intention of defrauding its creditors or evading its contracts and obligations. There was nothing fraudulent in the acts of Aircon in this case. Aircon, as a manufacturing firm of air conditioners, complied with its obligation of providing two air conditioning units for the second floor of the Blanco Center in good faith, pursuant to its contract with the respondent.[59] (Emphasis supplied, citations omitted)

Thus, it is not enough that there is dominance over the subsidiary company. The rule is there must be "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 plaintiff's legal right."[60]

It must be emphasized, however, that *fraud* is not the only basis for the piercing of the corporate veil. Any act which involves the commission of a wrong or the evasion of a duty may be a ground to apply the doctrine. Thus, this Court has applied the doctrine of piercing the corporate veil in cases when a corporation denies the existence of an employer-employee

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[59] Id. at 138–140.

[60] *Philippine National Bank v. Andrada Electric & Engineering Co.*, 430 Phil. 882, 895 (2002) [Per J. Panganiban, Third Division].

relationship to avoid paying retirement benefits or to avoid any liability for illegal dismissal.

In *Enriquez Security Services, Inc. v. Cabotaje*,[61] respondent Victor A. Cabotaje was a security guard in Enriquez Security and Investigation Agency since 1979. In 1985, Enriquez Security Services, Inc. was incorporated and respondent continued to work for it. Both Enriquez Security and Investigation Agency and Enriquez Security Services, Inc. were owned by the Enriquez family and the latter held office where the former used to previously hold office. Respondent's employment with both security agencies was continuous and uninterrupted. When he reached the age of 60, he applied for retirement benefits. Enriquez Security Services, Inc. claimed that his benefits may only be reckoned from 1985, when it was incorporated. This Court ruled to pierce the corporate veil, finding that "[t]he attempt to make the security agencies appear as two separate entities, when in reality they were but one, was a devise to defeat the law."[62] It ruled that the separate entity of a corporation may be disregarded when it is used as a means to perpetrate a social injustice or as a vehicle to evade obligations.

In *Azcor Manufacturing Inc. v. National Labor Relations Commission*,[63] this Court found that employee Candido Capulso (Capulso) was led into believing that while he was working with Filipinas Paso, his real employer was Azcor Manufacturing, Inc. (AZCOR), which never dealt with him openly or in good faith. It found that Capulso was not informed of the developments within the company, his transfer from AZCOR to Filipinas Paso, or the closure of AZCOR's manufacturing operations effective March 1, 1990. He continued to retain his AZCOR Identification Card, his pay slips contained the name of AZCOR, and he was paid the same salary. He likewise performed the same duties, worked in the same location and area under the same supervisor, and used the same tools. He worked from his hiring date until his last day of work. His employment contract was signed by an AZCOR personnel officer, and stated that he was being hired by AZCOR to do jobs for Filipinas Paso for a certain period. This Court ruled, thus:

> The doctrine that a corporation is a legal entity or a person in law distinct from the persons composing it is merely a legal fiction for purposes of convenience and to subserve the ends of justice. This fiction cannot be extended to a point beyond its reason and policy. Where, as in this case, the corporate fiction was used as a means to perpetrate a social injustice or as a vehicle to evade obligations or confuse the legitimate issues, it would be discarded and the two (2) corporations would be merged as one, the first being merely considered as the instrumentality, agency, conduit or adjunct of the other.

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61 528 Phil. 603 (2006) [Per J. Corona, Second Division],
62 Id. at 609.
63 362 Phil. 370 (1999) [Per J. Belosillo, Second Division].

. . . .

> In fine, we see in the totality of the evidence a veiled attempt by petitioners to deprive Capulso of what he had earned through hard labor by taking advantage of his low level of education and confusing him as to who really was his true employer — such a callous and despicable treatment of a worker who had rendered faithful service to their company.[64] (Citations omitted)

In *De Leon v. National Labor Relations Commission*,[65] Fortune Tobacco Corporation (Fortune Tobacco) contracted Fortune Integrated Services, Inc. (Fortune Integrated) to provide security guards. Around 11 years later, Fortune Integrated's incorporators and stockholders sold out their shares lock, stock, and barrel. Fortune Integrated's corporate name in the Articles of Incorporation was amended to read as Magnum Integrated Services, Inc. (Magnum Integrated). Fortune Tobacco then terminated its contract for security services with Fortune Integrated and engaged the services of two (2) other security agencies, thus, displacing 582 security guards who were originally assigned to it. Several security guards, through their labor union, filed a complaint for illegal dismissal and unfair labor practice, alleging that they were regular employees of Fortune Tobacco, which also used the corporate names Fortune Integrated and Magnum Integrated. In this case, this Court pierced the corporate veil:

> We are not persuaded by the argument of respondent [Fortune Tobacco] denying the presence of an employer-employee relationship. We find that the Labor Arbiter correctly applied the doctrine of piercing the corporate veil to hold all respondents liable for unfair labor practice and illegal termination of petitioners' employment. It is a fundamental principle in corporation law that a corporation is an entity separate and distinct from its stockholders and from other corporations to which it is connected. However, when the concept of separate legal entity is used to defeat public convenience, justify wrong, protect fraud or defend crime, the law will regard the corporation as an association of persons, or in case of two corporations, merge them into one. The separate juridical personality of a corporation may also be disregarded when such corporation is a mere alter ego or business conduit of another person. In the case at bar, it was shown that [Fortune Integrated] was a mere adjunct of [Fortune Tobacco]. [Fortune Integrated], by virtue of a contract for security services, provided [Fortune Tobacco] with security guards to safeguard its premises. However, records show that [Fortune Integrated] and [Fortune Tobacco] have the same owners and business address, and [Fortune Integrated] provided security services only to [Fortune Tobacco] and other companies belonging to the Lucio Tan group of companies. The purported sale of the shares of the former stockholders to a new set of stockholders who changed the name of the corporation to Magnum Integrated Services, Inc. appears to be part of a scheme to terminate the services of [Fortune Integrated]'s security guards posted at the premises of [Fortune Tobacco] and bust their newly-organized union which was then

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64 Id. at 380–382.

65 410 Phil. 523 (2001) [Per J. Puno, First Division].

> beginning to become active in demanding the company's compliance with Labor Standards laws. Under these circumstances, the Court cannot allow [Fortune Tobacco] to use its separate corporate personality to shield itself from liability for illegal acts committed against its employees.[66] (Citation omitted)

In *Reynoso IV v. Court of Appeals*,[67] a former resident manager employee sought the enforcement of an alias writ of execution against the mother corporation of a subsidiary:

> The defense of separateness will be disregarded where the business affairs of a subsidiary corporation are so controlled by the mother corporation to the extent that it becomes an instrument or agent of its parent. But even when there is dominance over the affairs of the subsidiary, the doctrine of piercing the veil of corporate fiction applies only when such fiction is used to defeat public convenience, justify wrong, protect fraud or defend crime.
>
> . . . .
>
> Factually and legally, the [Commercial Credit Corporation] had dominant control of the business operations of CCC-QC. The exclusive management contract insured that [Commercial Credit Corporation-Quezon City] would be managed and controlled by [Commercial Credit Corporation] and would not deviate from the commands of the mother corporation. In addition to the exclusive management contract, [Commercial Credit Corporation] appointed its own employee, petitioner, as the resident manager of [Commercial Credit Corporation-Quezon City].
>
> . . . .
>
> There are other indications in the record which attest to the applicability of the identity rule in this case, namely: the unity of interests, management, and control; the transfer of funds to suit their individual corporate conveniences; and the dominance of policy and practice by the mother corporation insure that [Commercial Credit Corporation-Quezon City] was an instrumentality or agency of [Commercial Credit Corporation].
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> . . . .
>
> A court judgment becomes useless and ineffective if the employer, in this case [Commercial Credit Corporation] as a mother corporation, is placed beyond the legal reach of the judgment creditor[.][68] (Citation omitted)

Thus, the corporate veil may be pierced when it is used to evade obligations or perpetrate a social injustice.

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[66] Id. at 533–534.
[67] 399 Phil. 38 (2000) [Per J. Ynares-Santiago, First Division].
[68] Id. at 39.

In the case at bar, it is correct that this Court already ruled on the validity of the acquisition by G Holdings of Maricalum Mining's properties in *G Holdings, Inc. v. National Mines and Allied Workers Union Local 103*.[69] This Court ruled that the transfer pursuant to the Purchase and Sale Agreement was valid, considering it was entered into by the Philippine government, thus, giving rise to the presumption of its regularity. Moreover, the mortgages had existed since 1992, and thus, cannot be said to have been executed to evade labor claims, which arose later on:

> It may be remembered that [the Asset Privatization Trust] acquired the [Maricalum Mining] from the [the Philippine National Bank] and the [the Development Bank of the Philippines]. Then, in compliance with its mandate to privatize government assets, [the Asset Privatization Trust] sold the aforesaid [Maricalum Mining] shares and notes to [G Holdings]. To repeat, this Court has recognized this Purchase and Sale Agreement in *Republic, etc., v. "G" Holdings, Inc.*
>
> The participation of the Government, through [the Asset Privatization Trust], in this transaction is significant. Because the Government had actively negotiated and, eventually, executed the agreement, then the transaction is imbued with an aura of official authority, giving rise to the presumption of regularity in its execution. This presumption would cover all related transactional acts and documents needed to consummate the privatization sale, inclusive of the Promissory Notes. It is obvious, then, that the Government, through [the Asset Privatization Trust], consented to the "establishment and constitution" of the mortgages on the assets of [Maricalum Mining] in favor of [G Holdings], as provided in the notes. Accordingly, the notes (and the stipulations therein) enjoy the benefit of the same presumption of regularity accorded to government actions. Given the Government consent thereto, and clothed with the presumption of regularity, the mortgages cannot be characterized as sham, fictitious or fraudulent.
>
> . . . .
>
> It is difficult to conceive that these mortgages, already existing in 1992, almost four (4) years before [the National Mines and Allied Workers Union Local 103] filed its notice of strike, were a "fictitious" arrangement intended to defraud [the National Mines and Allied Workers Union Local 103]. After all, they were agreed upon long before the seeds of the labor dispute germinated.
>
> While it is true that the Deed of Real Estate and Chattel Mortgage was executed only on September 5, 1996, it is beyond cavil that this formal document of mortgage was merely a derivative of the original mortgage stipulations contained in the Promissory Notes of October 2, 1992. The execution of this Deed in 1996 does not detract from, but instead reinforces, the manifest intention of the parties to "establish and constitute" the mortgages on [Maricalum Mining]'s real and personal properties.
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> . . . .

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[69] 619 Phil. 69 (2009) [Per J. Nachura, Third Division].

The execution of the subsequent Deed of Real Estate and Chattel Mortgage on September 5, 1996 was simply the formal documentation of what had already been agreed in the seminal transaction (the Purchase and Sale Agreement) between [the Asset Privatization Trust] and [G Holdings]. It should not be viewed in isolation, apart from the original agreement of October 2, 1992. And it cannot be denied that this original agreement was supported by an adequate consideration. The [Asset Privatization Trust] was even ordered by the court to deliver the shares and financial notes of [Maricalum Mining] in exchange for the payments that [G Holdings] had made.

It was also about this time, in 1996, that [the National Mines and Allied Workers Union Local 103] filed a notice of strike to protest non-payment of its rightful labor claims. But, as already mentioned, the outcome of that labor dispute was yet unascertainable at that time, and [the National Mines and Allied Workers Union Local 103] could only have hoped for, or speculated about, a favorable ruling. To paraphrase *MR Holdings,* we cannot see how [the National Mines and Allied Workers Union Local 103]'s right was prejudiced by the Deed of Real Estate and Chattel Mortgage, or by its delayed registration, when substantially all of the properties of [Maricalum Mining] were already mortgaged to [G Holdings] as early as October 2, 1992. Given this reality, the Court of Appeals had no basis to conclude that this Deed of Real Estate and Chattel Mortgage, by reason of its late registration, was a simulated or fictitious contract.

. . . .

Under the Torrens system, registration is the operative act which gives validity to the transfer or creates a lien upon the land. Further, entrenched in our jurisdiction is the doctrine that registration in a public registry creates constructive notice to the whole world. . .

But, there is nothing in Act No. 496, as amended by P.D. No. 1529, that imposes a period within which to register annotations of "conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land". If liens were not so registered, then it "shall operate only as a contract between the parties and as evidence of authority to the Registry of Deeds to make registration". If registered, it "shall be the operative act to convey or affect the land insofar as third persons are concerned". The mere lapse of time from the execution of the mortgage document to the moment of its registration does not affect the rights of a mortgagee.

Neither will the circumstance of [G Holdings]'s foreclosure of [Maricalum Mining]'s properties on July 31, 2001, or after the [Department of Labor and Employment] had already issued a Partial Writ of Execution on May 9, 2001 against [Maricalum Mining], support the conclusion of the [Court of Appeals] that [G Holdings]'s act of foreclosing on [Maricalum Mining]'s properties was *"effected to prevent satisfaction of the judgment award"*. [G Holdings]'s mortgage rights, constituted in 1992, antedated the Partial Writ of Execution by nearly ten (10) years. [G Holdings]'s resort to foreclosure was a legitimate enforcement of a right to liquidate a *bona fide* debt. It was a reasonable option open to a mortgagee which, not being a party to the labor dispute between [the National Mines

> and Allied Workers Union Local 103] and [Maricalum Mining], stood to suffer a loss if it did not avail itself of the remedy of foreclosure.
>
> The well-settled rule is that a mortgage lien is inseparable from the property mortgaged. While it is true that [G Holdings]'s foreclosure of [Maricalum Mining]'s mortgaged properties may have had the "effect to prevent satisfaction of the judgment award against the specific mortgaged property that first answers for a mortgage obligation ahead of any subsequent creditors", that same foreclosure does not necessarily translate to having been *"effected to prevent satisfaction of the judgment award"* against [Maricalum Mining].
>
> . . . .
>
> We also observe the error in the [Court of Appeals]'s finding that the 1996 Deed of Real Estate and Chattel Mortgage was not supported by any consideration since at the time the deed was executed, "*all the real and personal property of* [Maricalum Mining] *had already been transferred in the hands of G Holdings*". It should be remembered that the Purchase and Sale Agreement between [G Holdings] and [the Asset Privatization Trust] involved large amounts (P550M) and even spawned a subsequent court action (Civil Case No. 95-76132, RTC of Manila). Yet, nowhere in the Agreement or in the RTC decision is there any mention of real and personal properties of [Maricalum Mining] being included in the sale to [G Holdings] in 1992. These properties simply served as mortgaged collateral for the 1992 Promissory Notes. The Purchase and Sale Agreement and the Promissory Notes themselves are the best evidence that there was ample consideration for the mortgage.
>
> Thus, we must reject the conclusion of the [Court of Appeals] that the Deed of Real Estate and Chattel Mortgage executed in 1996 was a simulated transaction.[70] (Emphasis in the original, citations omitted)

In the same case, the separate and distinct personalities of Maricalum Mining and G Holdings in relation to the mortgage and transfer of the properties were also ruled on:

> The negotiations between the [G Holdings] and the Government — through [the Asset Privatization Trust], dating back to 1992 — culminating in the Purchase and Sale Agreement, cannot be depicted as a contrived transaction. In fact, in the said *Republic, etc. v. "G" Holdings, Inc.*, this Court adjudged that [G Holdings] was entitled to its rightful claims — not just to the shares of [Maricalum Mining] itself, or just to the financial notes that already contained the mortgage clauses over [Maricalum Mining's] disputed assets, but also to the delivery of those instruments. Certainly, we cannot impute to this Court's findings on the case any badge of fraud. Thus, we reject the [Court of Appeals]'s conclusion that it was right to pierce the veil of corporate fiction, because the foregoing circumstances belie such an inference. Furthermore, we cannot ascribe to the Government, or the [Asset Privatization Trust] in particular, any undue motive to participate in a transaction designed to perpetrate fraud. Accordingly, we consider the [Court of Appeals] interpretation unwarranted.

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[70] Id. at 88–100.

We also cannot agree that the presumption of fraud in Article 1387 of the Civil Code relative to property conveyances, when there was already a judgment rendered or a writ of attachment issued, authorizes piercing the veil of corporate identity in this case. We find that Article 1387 finds less application to an involuntary alienation such as the foreclosure of mortgage made before any final judgment of a court. We thus hold that when the alienation is involuntary, and the foreclosure is not fraudulent because the mortgage deed has been previously executed in accordance with formalities of law, and the foreclosure is resorted to in order to liquidate a *bona fide* debt, it is not the alienation by onerous title contemplated in Article 1387 of the Civil Code wherein fraud is presumed.

Since the factual antecedents of this case do not warrant a finding that the mortgage and loan agreements between [Maricalum Mining] and [G Holdings] were simulated, then their separate personalities must be recognized. To pierce the veil of corporate fiction would require that their personalities as creditor and debtor be conjoined, resulting in a merger of the personalities of the creditor ([G Holdings]) and the debtor ([Maricalum Mining]) in one person, such that the debt of one to the other is thereby extinguished. But the debt embodied in the 1992 Financial Notes has been established, and even made subject of court litigation (Civil Case No. 95-76132, RTC Manila). This can only mean that [G Holdings] and [Maricalum Mining] have separate corporate personalities.

Neither was [Maricalum Mining] used merely as an alter ego, adjunct, or business conduit for the sole benefit of [G Holdings], to justify piercing the former's veil of corporate fiction so that the latter could be held liable to claims of third-party judgment creditors, like [the National Mines and Allied Workers Union Local 103]. In this regard, we find American jurisprudence persuasive. In a decision by the Supreme Court of New York bearing upon similar facts, the Court denied piercing the veil of corporate fiction to favor a judgment creditor who sued the parent corporation of the debtor, alleging fraudulent corporate asset-shifting effected after a prior final judgment. Under a factual background largely resembling this case at bar, *viz.:*

. . . .

This doctrine is good law under Philippine jurisdiction.

In *Concept Builders, Inc. v. National Labor Relations Commission,* we laid down the test in determining the applicability of the doctrine of piercing the veil of corporate fiction, to wit:

1. Control, not mere majority or complete 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 plaintiffs legal rights; and,

> 3. The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.
>
> . . . .
>
> Time and again, we have reiterated 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, by itself, a sufficient ground for disregarding a separate corporate personality. It is basic that a corporation has a personality separate and distinct from that composing it as well as from that of any other legal entity to which it may be related. Clear and convincing evidence is needed to pierce the veil of corporate fiction.
>
> In this case, the mere interlocking of directors and officers does not warrant piercing the separate corporate personalities of [Maricalum Mining] and [G Holdings]. Not only must there be a showing that there was majority or complete 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. The mortgage deed transaction attacked as a basis for piercing the corporate veil was a transaction that was an offshoot, a derivative, of the mortgages earlier constituted in the Promissory Notes dated October 2, 1992. But these Promissory Notes with mortgage were executed by [G Holdings] with [the Asset Privatization Trust] in the name of [Maricalum Mining], in a full privatization process. It appears that if there was any control or domination exercised over [Maricalum Mining], it was [the Asset Privatization Trust], not [G Holdings], that wielded it. Neither can we conclude that the constitution of the loan nearly four (4) years prior to [the National Mines and Allied Workers Union Local 103]'s notice of strike could have been the proximate cause of the injury of [the National Mines and Allied Workers Union Local 103] for having been deprived of [Maricalum Mining]'s corporate assets.[71] (Citations omitted)

However, I maintain that the application or non-application of the doctrine of piercing the corporate veil in a particular case is not a fixed and permanent ruling on the subject corporations' legal personalities. The ruling applies only to the particular instance for which that doctrine was applied. Thus, in *Koppel (Phils.), Inc. v. Yatco*,[72]

> I. In its first assignment of error appellant submits that the trial court erred in not holding that it is a domestic corporation distinct and separate from and not a mere branch of Koppel Industrial Car and Equipment Company. It contends that its corporate existence as a Philippine corporation [cannot] be collaterally attacked and that the Government is estopped from so doing. As stated above, the lower court did not deny legal personality to appellant for any and all purposes, but held in effect that in the transactions involved in this case the public interest and convenience would be defeated and what would amount to tax evasion perpetrated, unless resort is had to the doctrine of "disregard of the corporate fiction." In other words, in looking through the corporate form to the ultimate person or corporation behind that form, in the

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71 Id. at 104–110.

72 77 Phil. 496 (1946) [Per J. Hilado, En Banc].

> particular transactions which were involved in the case submitted to its determination and judgment, the court did so in order to prevent the contravention of the local internal revenue laws, and the perpetration of what would to a play evasion, inasmuch as it considered — and in our opinion, correctly — that appellant Koppel (Philippines) Inc. . . . as a mere branch or agency or dummy ("*hechura*") of Koppel Industrial Car and Equipment Co. *The court did not hold that the corporate personality of Koppel (Philippines), Inc., would also be disregarded in other cases or for other purposes. It would have had no power to so hold. The courts' action in this regard must be confined to the transactions involved in the case at bar "for the purpose of adjudging the rights and liabilities of the parties in the case. They have no jurisdiction to do more."* . . .
>
> A leading and much cited case puts it as follows:
>
> > "If any general rule can be laid down, in the present state of authority, it is that a corporation will be looked upon as a legal entity as a general rule, and until sufficient reason to the contrary appears, but, when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons."[73] (Citations omitted, emphasis supplied)

Thus, while the corporate veil cannot be pierced as to the mortgage and transfer of Maricalum Mining's properties to G Holdings, the corporate veil may still be pierced for other acts in which the elements for the application of the doctrine are present.

It is my position that it cannot be said that G Holdings had no participation in the labor-only contracting arrangement with the complainants.

As the *ponencia* stated, G Holdings immediately took physical possession of Maricalum Mining's mine site and facilities, and took full control of its management and operations upon signing the Purchase and Sale Agreement and fully paying the down payment for the shares.[74]

It also found that G Holdings exercised absolute control over Maricalum Mining since it held 90% of its equity securities, and paid for the latter's salary expenses. It noted that Maricalum Mining's corporate name is superimposed with G Holding's corporate name on the heading of the cash vouchers issued in payment of the services rendered by the manpower cooperatives.[75]

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[73] Id. at 504–505.
[74] *Ponencia*, p. 4.
[75] Id. at 24.

It also recognized that there is proof that G Holdings has an office in Maricalum Mining's premises and some of its assets have commingled due to the Purchase and Sale Agreement.[76]

There is even an allegation by the employees that their payrolls were prepared by the accounting department of G Holdings. Likewise, they asserted that it was both Maricalum Mining and G Holdings that advised the employees to form the manpower cooperatives after the retrenchment program.

Moreover, as stated by the *ponencia*, the Labor Arbiter also ruled in favor of the employees on the following grounds:

> (a) G Holdings connived with Mar[i]calum Mining in orchestrating the formation of manpower cooperatives to circumvent the complainants' labor standards rights; (b) 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 (c) the complainants effectively became the employees of G Holdings because their work had changed from assisting in the mining and milling operations to caretaking and safeguarding the properties in the Sipalay Mining Complex which had already been acquired from Maricalum Mining. Additionally it denied the claims of complainants Nenet Arita and Domingo Lavida for lack of factual basis.[77]

G Holdings did not merely own Maricalum Mining as a holding company. It had a say in its processes and procedures. Thus, it cannot claim to be innocent. It cannot participate in the illegal dismissal of employees and thereafter hide behind its separate corporate personality to avoid the liability arising from it.

It likewise cannot be said that no injury arose from the arrangement. While the *ponencia* found that there is no *monetary* injury to the employees, it still held that the employees were illegally dismissed. Thus, it cannot be denied that they suffered an injury, albeit not a monetary one.

The elements of control, bad faith, and injury are present in the case at bar.

Moreover, assuming that the case does not fall within the purview of fraud or alter-ego cases, the doctrine of piercing the corporate veil still applies when the separate personality of the corporation is being used to "defeat . . . public convenience as when the corporate fiction is used as a

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[76] Id. at 28.
[77] Id. at 9.

vehicle for the evasion of an existing obligation."[78] Likewise, it applies when recognizing a parent company and its subsidiary as separate entities would aid in the consummation of a wrong, such as illegal dismissal and avoiding labor claims.

Labor contracts operate on a higher plane in light of the social justice provisions in the Constitution. The State's social justice policy mandates a compassionate attitude toward the working class and strives for the full protection of labor.[79] It is established that the relations between capital and labor are impressed with public interest, with the working class usually at a disadvantage. Thus, in case of doubt, courts rule in favor of labor.

> It must be underscored that no less than our Constitution looks with compassion on the workingman and protects his rights not only under a general statement of a state policy, but under the Article on Social Justice and Human Rights, thus placing labor contracts on a higher plane and with greater safeguards. Verily, relations between capital and labor are not merely contractual. They are impressed with public interest and labor contracts must, perforce, yield to the common good.[80] (Citations omitted)

Thus, I **DISSENT** as to the ruling that the corporate veil should not be pierced. I maintain that the doctrine of piercing the corporate veil properly applies and that G Holdings, Inc. should be held liable with Maricalum Mining Corporation.

CERTIFIED TRUE COPY
WILLIAM V. [illegible]
Division Clerk of Court
Third Division

MARVIC M.V.F. LEONEN
Associate Justice

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78 *Pantranco Employees Association v. National Labor Relations Commission*, 600 Phil. 645, 663 (2009) [Per J. Nachura, Third Division].

79 CONST., art. II, sec. 18 provides:
Section 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.
CONST., art. XIII, sec. 3 provides:
Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.
It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.
The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.
The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

80 *Brew Master International Inc. v. National Federation of Labor Unions*, 337 Phil. 728, 737 (1997) [Per J. Davide, Jr., Third Division].