Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

EDWARD C. DE CASTRO and MA. GIRLIE F. PLATON,	**G.R. No. 204261**
Petitioners,	Present:
- versus -	CARPIO, *J.*, *Chairperson*, BRION,* DEL CASTILLO, MENDOZA, and LEONEN, *JJ.*
COURT OF APPEALS, NATIONAL LABOR RELATIONS COMMISSION, SILVERICON, INC., and/or NUVOLAND PHILS., INC., and/or RAUL MARTINEZ, RAMON BIENVENIDA, and the BOARD OF DIRECTORS OF NUVOLAND,	Promulgated:
Respondents.	05 OCT 2016

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DECISION

MENDOZA, *J.*:

This is a Petition for *Certiorari* under Rule 65 of the Rules of Court assailing the June 1, 2012 Decision[1] and the September 21, 2012 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 122415, for having been issued with grave abuse of discretion, when it affirmed the July 29, 2011 Decision[3] and the September 22, 2011 Resolution[4] of the National Labor Relations Commission (NLRC) in NLRC –NCR Case Nos. 11-16356-09 and 12-17308-09, consolidated cases for illegal dismissal filed against

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* On Leave.

[1] *Rollo*, pp. 36-53. Penned by Associate Justice Franchito N. Diamante, with Associate Justice Mariflor P. Punzalan-Castillo and Associate Justice Ramon A. Cruz, concurring.

[2] Id. at 89-91.

[3] Id. at 232-250.

[4] Id. at 290-292.

respondent corporations, Nuvoland Phils., Inc. *(Nuvoland)* and Silvericon, Inc. *(Silvericon)*.

The July 29, 2011 NLRC Decision, in turn, *reversed* the March 15 2011 Decision[5] of the Labor Arbiter *(LA)*, finding that the petitioners were illegally dismissed.

The Antecedents

Nuvoland, a corporation formed primarily "to own, use, improve, develop, subdivide, sell, exchange, lease and hold for investment or otherwise, real estate of all kinds, including buildings, houses, apartments and other structures," was registered with the Securities and Exchange Commission *(SEC)* on August 9, 2006.[6] Respondent Ramon Bienvenida *(Bienvenida)* was the principal stockholder and member of the Board of Directors while Raul Martinez *(Martinez)* was its President.

Silvericon, on the other hand, was registered with the SEC on December 19, 2006. Its Articles of Incorporation described it as a "corporation organized 'to own, use, improve, develop, subdivide, sell, exchange, lease and hold for investment or otherwise, real estate of all kinds, including buildings, houses, apartments and other structures.'"[7]

Sometime in 2007, Martinez recruited petitioner Edward de Castro *(De Castro)*, a sales and marketing professional in the field of real estate, to handle its sales and marketing operations, including the hiring and supervision of the sales and marketing personnel. To formalize this undertaking, De Castro was made to sign a Memorandum of Agreement *(MOA)*, denominated as Shareholders Agreement,[8] wherein Martinez proposed to create a new corporation, through which the latter's compensation, benefits and commissions, including those of other sales personnel, would be coursed. It was stipulated in the said MOA that the new corporation[9] would have an authorized capital stock of ₱4,000,000.00, of which ₱1,000,000.00 was subscribed and paid equally by the Martinez Group and the De Castro Group.[10]

As it turned out, the supposedly new corporation contemplated was Silvericon. De Castro was appointed the President and majority stockholder of Silvericon while Bienvenida and Martinez were named as stockholders and incorporators thereof, each owning one (1) share of subscribed capital stock.

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[5] Id. at 217-229.
[6] Id. at 56.
[7] Id. at 56-57.
[8] Id. at 158-162.
[9] Denominated therein as "NEWCO".
[10] *Rollo*, p. 57.

In the same MOA, Martinez was designated as Chairman of the new corporation to whom De Castro, as President and Chief Operating Officer, would directly report. De Castro was tasked to manage the day to day operations of the new corporation based on policies, procedures and strategies set by Martinez. For their respective roles, Martinez was to receive a monthly allowance of ₱125,000.00, while De Castro's monthly salary was ₱400,000.00, with car plan and project income bonus, among other perks. Both Martinez and De Castro were stipulated to receive override commissions at 1% each, based on the net contract price of each condominium unit sold.

During De Castro's tenure as Chief Operating Officer of the newly created Silvericon, he recruited forty (40) sales and marketing personnel. One of them was petitioner Ma. Girlie F. Platon *(Platon)* who occupied the position of Executive Property Consultant. De Castro and his team of sales personnel were responsible for the sale of 100% of the projects owned and developed by Nuvoland.[11]

Thereafter, the Sales and Marketing Agreement[12] *(SMA),* dated February 26, 2008, was purportedly executed by Nuvoland and Silvericon, stipulating that all payments made for the condominium projects of Nuvoland were to be given *directly* to it. Clients secured by the sales and marketing personnel would issue *checks payable to Nuvoland* while the cash payments, as the case may be, were *deposited to Nuvoland's account.* Meanwhile, the corresponding sales commission of the sales personnel were issued to them by Nuvoland, with Martinez signing on behalf of the said company.

In a Letter,[13] dated December 12, 2008 and signed by Bienvenida, Nuvoland terminated the SMA on the ground that Silvericon personnel committed an unauthorized walkout and abandonment of the Nuvo City Showroom for two (2) days. In the same letter, Nuvoland demanded that Silvericon make a full accounting of all its uses of the marketing advances from Nuvoland. It, however, assured that all sales commissions earned by Silvericon personnel would be released as per existing policy.

After the issuance of the said termination letter, De Castro and all the sales and marketing personnel of Silvericon were barred from entering the office premises. Nuvoland, eventually, was able to secure the settlement of all sales and marketing personnel's commissions and wages with the exception of those of De Castro and Platon. The claims of one of

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[11] Id.
[12] Id. at 184-187.
[13] Id. at 200.

Silvericon's senior manager were settled during the pendency of a complaint with the LA.[14]

Aggrieved, De Castro and Platon filed a complaint for illegal dismissal before the LA, demanding the payment of their unpaid wages, commissions and other benefits with prayer for the payment of moral and exemplary damages and attorney's fees against Silvericon, Nuvoland, Martinez, Bienvenida, and the Board of Directors of Nuvoland.

Nuvoland and its directors and officers denied a direct contractual relationship with De Castro and Platon, and contended that if there was any dispute at all, it was merely between the complainants and Silvericon.

For its part, Silvericon admitted that it had employed De Castro as President and COO. It, however, asserted the application of Presidential Decree *(P.D.)* No. 902-A to the case, arguing that the claims come within the purview of corporate affairs and management, thus, falling within the jurisdiction of the regular courts.[15]

The Ruling of the Labor Arbiter

On March 15, 2011, after the filing of the parties' respective position papers, the LA handed down his decision in favor of De Castro and Platon. He concluded that Silvericon was a mere labor-only contractor and, therefore, a mere agent of Nuvoland. Thus:

> It should be noted that in the Sales and Marketing Agreement between Silvericon and Nuvoland, the latter committed to advance all the necessary amount of money up to the extent of ₱30 million per building to fund the marketing expenses for the project. This alone disqualifies respondent Silvericon as an independent contractor as it could not undertake the contracted sales and marketing work under its own account and under its own responsibility. Not only that, that respondent Nuvoland has to bankroll the marketing expenses of respondent Silvericon up to the extent of ₱30 million per building means that the latter does not have substantial capital to undertake the contract work on its own account and under its own responsibility. Thus, the argument by the respondents that the paid-up capital of respondent Silvericon in the amount of ₱1 million as shown by its Articles of Incorporation to be substantial capital is simply puerile. If it were true that said amount of ₱1 million would be substantial enough for Silvericon to carry out its undertaking under Sales and Marketing Agreement, then there was no need for respondent Nuvoland to advance the amount of ₱30,000,000.00 for the marketing expenses of Silvericon. Moreover, as argued by complainants, how can ₱1,000,000.00 be deemed as substantial capitalization if

[14] Id. at 219.
[15] Id. at 220-221.

> complainant De Castro's salary per month alone is already about almost half of Silvericon's paid-up capitalization. This is not to mention the salaries of the more than forty sales and marketing staff. This means that after only one (1) month in operation, Silvericon's capitalization would not have been enough to pay even the salaries of its employees.
>
> To be added to the foregoing findings is the admitted fact that it was respondent Nuvoland which paid the sales commissions of the sales personnel of respondent Silvericon. Even the power to dismiss the complainants and the other sales personnel of Silvericon was exercised by respondent Nuvoland. If indeed there was an unauthorized walkout and abandonment by the sales personnel of the Nuvo City showroom for a period of two (2) days, then what Nuvoland could have done was to notify Silvericon to institute appropriate disciplinary action against the erring personnel, and not to take the cudgels for Silvericon in abruptly terminating the entire sales force including the complainants herein.[16]

Nuvoland was adjudged as the direct employer of De Castro and Platon and, thus, liable to pay their money claims as a consequence of their illegal dismissal. According to the LA, the ground relied upon for the termination of the employment of De Castro and Platon - abandonment of the Nuvo City Showroom - was not at all proven. Mere suspicion that De Castro instigated the walkout did not discharge the burden of proof which heavily rested on the employer. Without an unequivocal showing that an employee deliberately and unjustifiably refused his employment *sans* any intention to return to work, abandonment as a cause for dismissal could not stand. Worse, procedural due process could not be said to have been observed through the expediency of a letter in contravention to Article 277, paragraph 2 of the Labor Code.[17] Hence, the LA disposed:

> WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered ordering respondent Nuvoland Phils. Inc. and/or Raul Martinez and Ramon Bienvenida to pay jointly and solidarily the awarded claims in favor of the complainants, as follows:

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[16] Id. at 223-224.

[17] Art. 277 Par.2: Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. The Secretary of the Department of Labor and Employment may suspend the effects of the termination pending resolution of the dispute in the event of a prima facie finding by the appropriate official of the Department of Labor and Employment before whom such dispute is pending that the termination may cause a serious labor dispute or is in implementation of a mass lay-off. (As amended by Section 33, Republic Act No. 6715, March 21, 1989)

EDWARD DE CASTRO

Backwages	₱10,800,000.00
Separation pay	1,600,000.00
Unpaid Salaries	146,667.00
13th Month Pay	380,000.00
Unpaid Override Commissions	26,454,839.88
TOTAL	₱39,381,506.88

MA. GIRLIE PLATON

Backwages	₱405,000.00
Separation pay	60,000.00
Unpaid Salaries	5,500.00
13th Month Pay	14,250.00
Unpaid Override Commissions	530,231.93
TOTAL	₱1,014,981.93

Not in conformity, Nuvoland, Bienvenida and Martinez interposed an appeal before the NLRC, arguing that the LA gravely abused his discretion in ruling that: 1) Silvericon was a labor-only contractor; 2) the case did not involve an intra-corporate dispute; and 3) Martinez and Bienvenida were solidarily liable for illegal dismissal.

The Ruling of the NLRC

In its July 29, 2011 Decision, the NLRC *reversed* the LA decision, finding that Silvericon was an independent contractor, thus, the direct employer of De Castro and Platon. In its view, in the SMA, Silvericon had full discretion on how to perform and conduct its marketing and sales tasks; and there was no showing that Nuvoland had exercised control over the method of sales and marketing strategies used by Silvericon. The NLRC further concluded that Silvericon had substantial capital. It pointed out that in several cases decided by the Court, even an amount less than One Million Pesos was sufficient to constitute substantial capital; and so to require Silvericon to prove that it had investments in the form of tools, equipment, machinery, and work premises would be going beyond what the law and jurisprudence required. Hence, it could not consider Silvericon as a dummy corporation of Nuvoland organized to effectively evade the latter's obligation of providing employment benefits to its sales and marketing agents. This being the case, the NLRC ruled that no employer-employee relationship existed between Nuvoland, on one hand, and De Castro and Platon, on the other. There was no evidence showing that Nuvoland hired, paid wages, dismissed or controlled De Castro and Platon, or anyone of Silvericon's employees. Resultantly, Martinez and Bienvenida could not be held liable for they merely acted as officers of Nuvoland.

Unfazed, De Castro and Platon assailed the decision of the NLRC via a petition for *certiorari* under Rule 65 with the CA.

The Ruling of the CA

In its June 1, 2012 Decision, the CA affirmed the findings of the NLRC, pointing out that what was terminated was the SMA. As such, the employment of the forty (40) personnel hired by Silvericon, as well as the petitioners' employment, was not affected. Considering that there was no employer-employee relationship between the petitioners and Nuvoland, the CA deemed that the latter could not be held liable for the claim of illegal dismissal. Even assuming that De Castro was illegally dismissed, the CA opined that the NLRC was correct in refraining from taking cognizance of the complaint because De Castro's employment with Silvericon put him within the ambit of Section 5.2 of Republic Act *(R.A.)* No. 8799, otherwise known as The Securities Regulation Code. As such, his claim should have been brought before the Regional Trial Court *(RTC)* instead.

Upon the denial of their motion for reconsideration, the petitioners filed this petition on the following

GROUNDS

I

THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION WHEN IT AGREED WITH THE NLRC THAT SILVERICON IS NOT A LABOR-ONLY CONTRACTOR

II

THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION WHEN IT AGREED WITH THE NLRC THAT THE INSTANT CASE INVOLVES AN INTRA-CORPORATE DISPUTE

III

THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION WHEN IT HELD THAT NO BAD FAITH WAS ESTABLISHED ON THE PART OF RESPONDENTS RAUL MARTINEZ AND RAMON BIENVENIDA.[18]

Essentially, petitioners De Castro and Platon argue that Silvericon, far from being an independent contractor, was engaged in labor-only contracting as shown by: 1) its lack of a substantial capital necessary in the conduct of its business; 2) its lack of investment on tools, equipment, machineries, work premises, and other materials; and 3) its failure to secure a certificate of authority to act as an independent contractor issued by the

[18] *Rollo*, p. 21.

Department of Labor and Employment *(DOLE)*; and 4) its services to Nuvoland being exclusive in nature.

According to De Castro and Platon, the evaluation of the authorized capital stock of Silvericon against the marketing and sales activities of its sales personnel would readily show that it needed a huge amount of funds for salaries and operating expenses, not to mention the funds for promotions and advertisements for the Aspire Condominium Project and Infinity Office and Residential Condominium Project. Suffice it to say, Silvericon's authorized or paid up capital was deficient to cover its operations. This is the reason why Nuvoland made advancements amounting to ₱30 Million per building.

The petitioners contend that the CA gravely erred when it relied on the eventual deduction of the said advances from the earned marketing fee of Silvericon pursuant to the SMA. The advancements, whether or not at cost on the part of Silvericon, only proved that the latter had no substantial capital necessary for its business. Although jurisprudence was replete with rulings considering an amount less than the paid-up capital of Silvericon as substantial, the industry in which the respondent corporations were engaged, that is, the sale and marketing of enormous condominium projects, should be taken into account. In other words, the test of a substantial paid-up capital for purposes of identifying an entity as an independent contractor should be evaluated in light of the business it is undertaking. In the case of Silvericon, the paid-up capital of ₱1 Million Pesos could hardly be considered substantial.

Further, Silvericon had no investment in the form of tools and equipment necessary in the conduct of its business, the sales and marketing activities of which were conducted in the premises of Nuvoland. The latter itself designed and constructed the model units used for the sales and marketing of the condominium projects.

More significantly, the petitioners explained that Nuvoland created Silvericon to serve, not any other clientele, but its creator. If Nuvoland really wanted to engage a truly independent contractor to undertake its sales and marketing needs, it should have engaged a more experienced one, not a two-year old untested company. But then, they are one and the same. The services of Silvericon were exclusively for Nuvoland. Hence, there was no need for Nuvoland to require Silvericon to secure a certificate of authority from the DOLE. Undeniably, De Castro was merely engaged to facilitate the recruitment of sales and marketing personnel, who then performed functions which were directly related to the main business of the principal, Nuvoland.

Position of the Respondents

In their Comment,[19] respondents Nuvoland, Martinez and Bienvenida argued that the subject petition should be dismissed outright for having been filed under a wrong mode of appeal. In other words, instead of being captioned as a petition under Rule 45, the petitioners availed of the special civil action under Rule 65, setting forth grave abuse of discretion on the part of the CA as a main ground. The respondents pointed out that the petitioners may not utilize a petition for *certiorari* as a pretext for a belated filing of a petition for review.

Respondent Silvericon for its part, submitted its Manifestation,[20] dated December 12, 2013, praying that it be excused from filing a comment as it did not see any need to be part of the appeal.

Reply of Petitioners

In their Reply,[21] the petitioners asserted that their petition was strongly grounded on grave abuse of discretion due to the CA's deliberate failure to consider material and undisputed facts showing that Silvericon was indeed a labor-only contractor. They hinged their choice of remedy on their view that the NLRC, as affirmed by the CA, acted in total disregard of the evidence decisive of the present controversy.

The Court's Ruling

Initially, because of the divergence in the conclusions of the LA and the NLRC, it appears that the issues surrounding the legal arrangements between and among the parties are complicated. After a perusal of the records, however, the Court comes to view the case as a simple question of whether Silvericon was engaged in independent contracting or a labor-only scheme. The answer to this issue would necessarily shape the conclusions as to respondents' other contentions like jurisdiction. Before delving into these matters, though, there is a need to first resolve the procedural issues.

Procedural Issues

After a careful review of the records, the Court decides to apply a tempered relaxation of the procedural rules in accord with substantial justice.

It is elementary that parties seeking the review of NLRC decisions should file a Rule 65 petition for *certiorari* in the CA on the ground of grave

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[19] Id. at 327-346.
[20] Id. at 457-458.
[21] Id. at 434-450.

abuse of discretion amounting to lack or excess of jurisdiction. Thereafter, the remedy of the aggrieved party from the CA decision is an appeal via a Rule 45 petition for review on *certiorari*.[22] It is equally true, however, that the Court, on several occasions, has relaxed the procedural application in accordance with the liberal spirit and in the interest of substantial justice. Where the exigencies of the case are such that the ordinary methods of appeal may not prove adequate - either in point of promptness or completeness, so that a partial if not a total failure of justice could result - a writ of *certiorari* may still be issued.[23]

In the broader interest of justice, the Court deems it proper to suspend the rules and allow due course to the petition as one for *certiorari* under Rule 65. As will be discussed hereafter, the Court has determined points of contention that were disregarded by the authorities *a quo,* the outright conclusion of which stripped off the petitioners of a remedy to demand their claims which were founded on a legal obligation. The propriety of the mode of appeal used by the petitioners pales in comparison with the alleged grave errors of judgment committed by the CA. For said reason, matters deserving clear resolution by the Court of last resort cannot be ignored lest a miscarriage of justice come to pass.

Substantive Issues

As to the substantive issues, the Court is faced with divergent views in the arguments raised. On one hand, the petitioners strongly urge the Court to consider numerous factors that would justify the piercing of the corporate veil showing that Silvericon was just a business conduit of Nuvoland. On the other, the respondents vehemently deny the existence of an employer-employee relationship between Nuvoland and the petitioners. This absence of a juridical tie, according to Nuvoland, necessarily directs the claims of the petitioners to Silvericon as their employer, being an independent contractor.

Pertinently, Article 106 of the Labor Code provides:

> Article 106. *Contractor or subcontractor.* – Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.
>
> In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

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[22] *St. Martin Funeral Homes v. National Labor Relations Commission,* 537 Phil. 656, 661-662 (2006).
[23] *Land Bank of the Philippines v. Court of Appeals,* 456 Phil. 755, 786 (2003).

> The Secretary of Labor and Employment may, by appropriate regulations, restrict or prohibit the contracting-out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and jobcontracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.
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> There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, **the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.** [Emphasis and underscoring supplied]

Corollary thereto, DOLE Department Order No. 18-02, Series of 2002 *(D.O. 18-02),* implements the above provision of law:

> *Section 5. Prohibition against labor-only contracting.* - Labor-only contracting is hereby declared prohibited x x x labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present:
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> i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or
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> ii) The contractor does not exercise the right to control over the performance of the work of the contractual-employee.
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> x x x x
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> **"Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools or equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out.**
>
> The "right to control" shall refer to the right reserved to the person for whom the services of the contractual parties are performed to determine, not only the end to be achieved, but also the manner and means to be used in reaching that end. [Emphasis and underscoring supplied]

At the outset it should be noted that a real estate company like Nuvoland may opt to advertise and sell its real estate assets on its own, or allow an independent contractor to market these developments in a manner that does not violate aforesaid regulations. Basically, a legitimate job contractor complies with the requirements on sufficient capitalization and equipment to undertake the needs of its client. Although this is not the sole determining factor of legitimate contracting, independent contractors are likewise **required to register with the DOLE**. This is required by D.O. 18-02. Thus:

> Section 11. *Registration of Contractors or Subcontractors.* - Consistent with the authority of the Secretary of Labor and Employment to restrict or prohibit the contracting out of labor through appropriate regulations, a registration system to govern contracting arrangements and to be implemented by the Regional Offices is hereby established.
>
> The registration of contractors and subcontractors shall be necessary for purposes of establishing an effective labor market information and monitoring.
>
> **Failure to register shall give rise to the presumption that the contractor is engaged in labor-only contracting.** [Emphasis and underscorings supplied]

In the present case, the Court is hounded by nagging doubts in its review of the assailed decision. Several factors showing that Silvericon was *not* an independent contractor were conveniently brushed aside resulting in an unjust outcome. For clarity, the Court lists down these factors, most of which were left unexplained by the respondents.

First. As earlier pointed out, D.O. 18-02 expressly provides for a registration requirement. Remarkably, the respondents do not deny the apparent non-compliance with the rules governing independent contractors.

This failure on the part of Silvericon reinforces the Court's view that it was engaged in labor-only contracting. Nuvoland did not even bother to make Silvericon comply with this vital requirement had it really entered into a legitimate contracting arrangement with a truly independent outfit. The efforts which the two corporations have put into the drafting of the SMA belie mere inadvertence and heedlessness on this matter.

That the NLRC and the CA failed to consider this fact of non-compliance confounds the Court. The tribunals below should have looked into the cited provision, as non-compliance thereto gives rise to a presumption completely opposite to their claim. The presumption finds more

significance especially when the respondents have nothing but silence to rebut the same.

All they could say was that what Nuvoland terminated was the SMA, the termination of which produced no effect whatsoever on the personnel of Silvericon. The sweeping conclusion might have been the simplest and easiest way to dismiss the case but this certainly failed to rebut the fact that Silvericon was a labor-only contracting entity. To the Court's mind, this is a clear attribute of grave abuse of discretion on the part of the CA.

Second. D.O. No. 18-A, series of 2011, defines substantial capital as the paid-up capital stocks/shares of at least ₱3,000,000.00 in the case of corporations, partnerships and cooperatives. This amount was set with specifity to avoid the subterfuge resorted to by entities with the intention to circumvent the law. As things now stand, even the subscribed capital of Silvericon was a far cry from the amount set by the rules. It is important to note that at the time Nuvoland engaged the services of Silvericon, the latter's authorized stock capital was ₱4,000,000.00, out of which only ₱1,000,000.00 was subscribed.

In *Vinoya v. National Labor Relations Commission*,[24] the Court tackled the insufficiency of paid-in capitalization taking into account the "current economic atmosphere in the country."[25] In other words, the determination of sufficient capital stock for independent contractors must be assessed in a broad and extensive manner with consideration of the industry involved.

In this case, the sufficiency of a subscribed capital of ₱1,000,000.00 for independent contracting must be assessed taking into consideration the extent of the undertaking relative to the nature of the industry in which Nuvoland was engaged.

Nuvoland was one of the prominent corporations in the real estate industry. It is safe to assume then that the marketing of its condominium projects would entail a substantially high amount in what was typically a capital intensive industry. The undertaking covered not just one but two considerably huge condominium projects located in prime spots in the metropolis.

For the sale and marketing of two condominium buildings, it would require massive funds for promotions, advertisements, shows, salaries, and operating expenses of its more or less 40 personnel. In light of this vast business undertaking, it is obvious that the ₱1 million subscribed capital of Silvericon would hardly suffice to satisfy this huge engagement. **Nuvoland**

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[24] 381 Phil. 460 (2000).
[25] Id. at 475-476.

was apparently aware of this that it **had to fund the marketing expenses** of the project in an amount not exceeding **₱30 million per building**. This was even provided in paragraph 6 of the SMA.

This being the case, the paid-in capitalization of Silvericon amounting to ₱1 million was woefully inadequate to be considered as substantial capital. Thus, Silvericon could not qualify as an independent contractor.

The CA finding that Silvericon's capital was sufficient for independent contracting due to the agreement that Nuvoland would advance the amount of ₱30,000,000.00 for marketing expenses, though deductible from Silvericon's earned marketing fees at a later time, was a strained reasoning. The Court agrees with the observation of the LA that this set-up would not have been resorted to if Silvericon's capital was substantial enough from the start of the business venture. It is logical to presume that an established corporation like Nuvoland would select an independent contractor, which had the financial resources to adequately undertake its marketing and advertising requirements, and not an under capitalized company like Silvericon. It perplexes the Court that the CA disregarded this set-up as it certainly shows that Silvericon, from the beginning, did not have substantial capital to service the needs of Nuvoland.

Third. Silvericon had no substantial equipment in the form of tools, equipment, machinery, and work premises. Records reveal that Nuvoland itself designed and constructed the model units used in the sales and marketing of its condominium units. This indisputably proves that at the time of its engagement, Silvericon had no such investment necessary for the conduct of its business.

Fourth. Although it is true that the respondents had explicitly assailed the authenticity of the MOA attached with the petition, their faint denial fails to explain the exclusivity which had characterized the relationship between Nuvoland and Silvericon. If Silvericon was an independent contractor, it is only but logical that it should have also offered its services to the public.

The respondents claim that they had presented a contract tending to show that Silvericon had catered its services to one LNC (SPV-AMC) Corporation in 2007. In their own words, the respondents assert that the relationship of Nuvoland with Silvericon, particularly as to its contractual rights and obligations, was exactly the same as the transaction of Silvericon with LNC (SPV-AMC) Corporation. Unfortunately for the respondents, this allegation alone could not override the other tell-tale indicators of labor-only contracting present in this case.

Fifth. The respondents do not deny that Nuvoland and Silvericon shared the same officers and employees: respondents Bienvenida and

Martinez were stockholders and incorporators thereof while De Castro was the President and majority stockholder of Silvericon. At the same time, Bienvenida was a principal stockholder and member of the Board of Directors of Nuvoland while Martinez was Nuvoland's President. Admittedly, this fact alone does not give rise to an inference that Nuvoland and Silvericon are one and the same. It effectively sows doubt, however, when taken together with the other indicators of labor-only contracting, as previously discussed.

If Nuvoland and Silvericon were indeed separate entities, out of all other Nuvoland officers, why did Bienvenida, as an incorporator of ***both*** corporations, choose to authorize the purported termination of the SMA without at least calling for an investigation of the incident? As a stockholder of Silvericon, he possessed an interest in the said corporation. Curiously though, Nuvoland's decision to part with Silvericon as expressed in Bienvenida's letter was reached without consultation or, at the least, a preliminary notice. Had there really been a breach of contract, Nuvoland would have demanded an explanation from Silvericon before barring the personnel's entry in their work premises to think that the latter was engaged in an important aspect of its business.

Further, with Nuvoland having advanced a huge amount of money for Silvericon, it could have at least exercised caution before terminating the SMA with a meager request for an accounting of funds. A closer scrutiny of the events that transpired would show that the termination of the SMA was one and the same with the termination of all Silvericon personnel. This conclusion proceeded from the irrefutable fact that Silvericon was actually a creation of Nuvoland. As a labor-only contractor, for all intents and purposes, Silvericon was a mere mock-up.

In truth, the termination of the SMA was actually a ***ruse*** to make it appear that Silvericon was an independent entity. It was simply a way to terminate the employment of several employees altogether and escape liability as an employer. True enough, Nuvoland insisted that the petitioners direct their claims to Silvericon.

The conclusion that Silvericon was a mere labor-only contractor and a business conduit of Nuvoland warrants the piercing of its corporate veil. At this point, it is apt to restate the Court's ruling in *Sarona v. National Labor Relations Commission:*[26]

> 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

[26] 679 Phil. 394 (2012).

> 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.

As ruled in *Prince Transport, Inc. v. Garcia,* [27] it is the act of hiding behind the separate and distinct personalities of juridical entities to perpetuate fraud, commit illegal acts and evade one's obligations, that the equitable piercing doctrine was formulated to address and prevent: Thus:

> x x x A settled formulation of the doctrine of piercing the corporate veil is that when 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 parties, disregard the legal fiction that these two entities are distinct and treat them as identical or as one and the same. xxx However, petitioners' attempt to isolate themselves from and hide behind the supposed separate and distinct personality of Lubas so as to evade their liabilities is precisely what the classical doctrine of piercing the veil of corporate entity seeks to prevent and remedy.[28]

Consequently, the piercing of the corporate veil disregards the seemingly separate and distinct personalities of Nuvoland and Silvericon with the aim of preventing the anomalous situation abhorred by prevailing labor laws. That Silvericon was independent from Nuvoland's personality could not be given legal imprimatur as the same would pave the way for Nuvoland's complete exoneration from liability after a circumvention of the law. Besides, a contrary proposition would leave the petitioners without any recourse notwithstanding the unquestioned fact that Nuvoland eventually assented to the settlement of all the sales and marketing personnel's commissions and wages before the LA, except the petitioners. The respondents in their comment were strikingly silent on this point.

In the interest of justice and equity, that veil of corporate fiction must be pierced, and Nuvoland and Silvericon be regarded as one and the same entity to prevent a denial of what the petitioners are entitled to. In a situation like this, an employer-employee relationship between the principal and the dismissed employees arises by operation of law. Silvericon being merely an agent, its employees were in fact those of Nuvoland. Stated differently, Nuvoland was the principal employer of the petitioners.

Sixth. As additional basis of this outcome, the Court highlights the presence of the elements of an employer-employee relationship between the parties. In determining the presence or absence of an employer-employee

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[27] 654 Phil. 296 (2011).
[28] Id. at 312

relationship, the Court has consistently looked for the following incidents, to wit: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee on the means and methods by which the work is accomplished. The last element, the so-called control test, is the most important element.[29] Jurisprudentially speaking, there is no hard and fast rule designed to establish the aforesaid elements. It depends on the peculiar facts of each case.[30] Here, the Court acknowledges the findings of the LA since the inception of this legal controversy -

> To be added to the foregoing findings is the admitted fact that it was respondent Nuvoland which paid the sales commissions of the sales personnel of respondent Silvericon. Even the power to dismiss the complainants and the other sales personnel of Silvericon was exercised by respondent Nuvoland. If indeed there was an unauthorized walkout and abandonment by the sales personnel of the Nuvo City showroom for a period of two (2) days, then what Nuvoland could have done was to notify Silvericon to institute appropriate disciplinary action against the erring personnel, and not to take the cudgels for Silvericon in abruptly terminating the entire sales force including the complainants herein.[31]

Not to be excluded from this pronouncement is the observation that the subject termination letter itself mentioned the release of *all* the commissions earned by Silvericon personnel after the impetuous decision of Nuvoland to physically bar the personnel from entry to their workplace. If these are not indicators of the power of engagement, payment of wages and power of dismissal, the Court is at a loss as to what to call this authority. Astonishingly, Nuvoland did not refute its conformity to the payment of commissions, as if it was oblivious to an admission that all commissions were taken directly from Nuvoland, and not from Silvericon. Verily, this reflects Nuvoland's exercise of the power to compensate Silvericon personnel. The power to terminate employees had also been exercised by Nuvoland when it clearly dispensed with the cancellation clause in the SMA providing a 30-day period for grievance resolution. Instead, Nuvoland utilized the alleged abandonment of the showroom as a ground for unilateral termination of the simulated agreement.

As regards the power of control, the only argument raised by the respondents was the inclusion of a provision in the SMA which stated that Silvericon, as its agent, "shall be responsible for all advertisements, promotions, public relations, special events, marketing collaterals, road shows, open houses, etc. as part of its marketing efforts."[32] For Nuvoland,

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[29] *Jao v. BCC Products Sales, Inc.*, 686 Phil. 36, 45 (2012), citing *Abante, Jr. v. Lamadrid Bearing & Parts Corp.*, 474 Phil. 414, 426 (2004).
[30] *Meteoro v. Creative Creatures, Inc.*, 610 Phil. 150 162 (2009).
[31] *Rollo*, pp. 210-211.
[32] Id. at 223-224.

this provision in the SMA showed that Silvericon exercised full and exclusive control over all levels of work, especially as to the means thereof.[33] Regrettably, the existence of the subject provision would not cause an automatic proposition that Silvericon exercised control over the work of its personnel. A clear showing of Silvericon's control over its day-to-day operations and ultimate work performance would have dispelled any doubt, but Nuvoland fell short on this score. Worse, it again opted for silence when the petitioners alleged that Nuvoland provided the work premises of the sales and marketing personnel of Silvericon; that Nuvoland dictated the end result of the undertaking, that is, to sell at least eighty percent of the condominium project within a period of twenty-four months; that Nuvoland decided on the models, designs and prices of the units; that Nuvoland was the ultimate recipient of all amounts collected by the sales and marketing team; and lastly, Nuvoland determined the maximum amount of marketing expenses for the accomplishment of the goal.

On Jurisdiction

Anent the issue on jurisdiction, Article 217 of the Labor Code, as amended by Section 9 of R.A. No. 6715 is instructive:

> ART. 217. Jurisdiction of the Labor Arbiters and the Commission-- (a) Except as otherwise provided under this Code, the Labor Arbiter shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or nonagricultural:
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> 1. Unfair labor practice cases;
> 2. **Termination disputes;**
> 3. If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;
> 4. Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;
> 5. Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; and
> 6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, **all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (₱5,000.00) regardless of whether accompanied**

[33] Id. at 337.

> **with a claim for reinstatement.** [Emphases and underscoring supplied]

Taking the foregoing into consideration, the Court finds that the LA properly took cognizance of the existence of an employer-employee relationship between the parties. The NLRC's position that the case belonged to the RTC as an "intra-corporate dispute" could not be applied to Platon as she was merely a rank-and-file personnel raising illegal dismissal as her main cause of action.

With respect to De Castro, the Court recalls the pronouncement in *Viray v. Court of Appeals,*[34] which provided for the policy in determining jurisdiction in similar cases. In order to determine whether a dispute constitutes an intra-corporate controversy or not, the Court considers two elements instead, namely: (a) the status or relationship of the parties; and (b) the nature of their controversy. Concurrence of these two renders a case as an intra-corporate dispute.

Under the nature-of-the-controversy test, the dispute must not only be rooted in the existence of an intra-corporate relationship, but must also refer to the enforcement of the parties' correlative rights and obligations under the Corporation Code, as well as the internal and intra-corporate regulatory rules of the corporation.[35] The combined application of the relationship test and the nature-of-the-controversy test has, consequently, become the norm in determining whether a case is an intra-corporate controversy or purely civil in character.[36] In the absence of any one of these factors, the case cannot be considered an intra-corporate dispute and the RTC acting as a special commercial court cannot acquire any jurisdiction. The criteria for distinguishing between corporate officers who may be ousted from office at will, on one hand, and ordinary corporate employees, who may only be terminated for just cause, on the other hand, do not depend on the nature of the services performed, but on the manner of creation of the office.

As it had been determined that Silvericon was a mere subterfuge for Nuvoland's sales and marketing activities, the circumstances surrounding the nature of De Castro's hiring and the very nature of his claims must be fully considered to determine jurisdiction. It must be remembered that De Castro was hired by Martinez and Bienvenida to be the President and COO of Silvericon. This appears in the SMA, which the Court has interpreted as a ruse to conceal Nuvoland's labor-contracting activities. As previously discussed, the contrived cancellation of the SMA was, in effect, a termination of its personnel assigned to Silvericon.

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[34] 269 Phil. 324 (1990).
[35] *Reyes v. Regional Trial Court of Makati, Branch 142*, 583 Phil. 591, 608 (2008).
[36] *Strategic Alliance Development Corporation v. Star Infrastructure Development Corporation,* 649 Phil. 669, 681 (2010).

Equally important for contemplation is the nature of the petitioners' claims and arguments which not only demonstrates a firm avowal of labor-only contracting on the part of Nuvoland and Silvericon but also shows that the ultimate issue to be resolved is ***not*** rooted in a corporate issue governed by the Corporation Code and its implementing rules, but a labor problem, the resolution of which is covered by labor laws and DOLE issuances.

The Court reiterates the odd silence that pervaded Nuvoland despite the allegation that it was able to settle the payment of all the sales and marketing personnel's commissions and wages with the exception of the petitioners and one Amy Rose Palileo, whose claims were settled during the pendency of her complaint with LA Fe Cellan.[37] This information raised serious doubts as to Nuvoland's refutation of the jurisdiction of the LA over the case. The Court, in fact, expected a denial or, at the least, an explanation of this matter on the part of Nuvoland but all it got was silence. Certainly, this distinctive treatment of the petitioners influences the Court to take a position against any attempt to sidestep legal obligations under a pretense of a jurisdictional challenge.

In view of the foregoing, the complete resolution of this case now boils down to the determination of the: 1) corporate liability of Nuvoland as the principal employer of the petitioners; and 2) individual liabilities of the respondents, as officers thereof, if any.

Solidary liability is imposed by law on the principal who is deemed as the direct employer of the employees as provided in Section 19 of D.O. No. 18-02—

> Section 19. Solidary liability. – The principal shall be deemed as the direct employer of the contractual employees and therefore, solidarily liable with the contractor or subcontractor for whatever monetary claims the contractual employees may have against the former in the case of violations as provided for in Sections 5 (Labor-Only contracting), 6 (Prohibitions), 8 (Rights of Contractual Employees) and 16 (Delisting) of these Rules. In addition, the principal shall also be solidarily liable in case the contract between the principal and contractor or subcontractor is preterminated for reasons not attributable to the fault of the contractor or subcontractor.

Based on the said provision, Nuvoland is solidarily liable with Silvericon for the monetary claims of the petitioners who were clearly their employees. Further, the application of law and jurisprudence on illegal dismissal becomes relevant. In *Skippers United Pacific, Inc. v. Doza*,[38] the Court held that for a worker's dismissal to be considered valid, it must comply with both procedural and substantive due process, viz.:

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[37] *Rollo*, p. 18.
[38] 681 Phil. 427(2012).

> For a worker's dismissal to be considered valid, it must comply with both procedural and substantive due process. **The legality of the manner of dismissal constitutes procedural due process, while the legality of the act of dismissal constitutes substantive due process.**[39] [Emphasis and underscoring supplied]

Procedural due process in dismissal cases consists of the *twin requirements of notice and hearing.* The employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first notice apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second notice informs the employee of the employer's decision to dismiss him. Before the issuance of the second notice, the requirement of a hearing must be complied with by giving the worker an opportunity to be heard. It is not necessary though that an actual hearing be conducted.[40] Substantive due process, on the other hand, requires that the dismissal by the employer be made for a just or authorized cause under Articles 282 to 284 of the Labor Code.[41]

As correctly observed by the LA, the respondents failed to show any valid or just cause under the Labor Code on which it may justify the termination of services of the petitioners. There was no iota of evidence to substantiate their story of staged walkout and abandonment which caused them to terminate the employment of the petitioners. After the issuance of the termination letter, De Castro and all the sales and marketing personnel of Nuvoland were barred from entering the premises of their office and payment of wages, commissions and all other benefits were withheld. The respondents also failed to comply with the rudimentary requirement of notifying the petitioners why they were being dismissed, as well as giving them ample opportunity to contest the legality of their dismissal. Failing to show compliance with the requirements of termination of employment under the Labor Code, the respondents were found liable for illegal dismissal. A contrary ruling would serve as a wallop on the very principles of labor – justice and equity for a man to be made to work and thereafter be denied of his due as to the fruits of his labor.

Corporate Directors and Officers, Not Liable

A corporation, being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, acting as such corporate agents, are not theirs but the direct accountabilities of the corporation they represent.[42] Pursuant to this principle, a director, officer or

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[39] Id. at 439.
[40] *First Philippine Industrial Corporation v. Calimhas*, 713 Phil. 608, 621-622 (2013).
[41] Id. at 622.
[42] *Peñaflor v. Outdoor Clothing Manufacturing Corporation*, 632 Phil. 219 (2010).

employee of a corporation is generally not held personally liable for obligations incurred by the corporation; it is only in exceptional circumstances that solidary liability will attach to them.[43] Thus, in labor cases, the Court has held that corporate directors and officers are solidarily liable with the corporation for the employee's termination only when the same is done with malice or in bad faith.[44]

"Xxx. Bad faith is never presumed. Bad faith does not simply connote bad judgment or negligence - it imports a dishonest purpose or some moral obliquity and conscious doing of wrong. It means a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud."[45]

The records are bereft of any evidence at all that respondents Martinez and Bienvenida acted with malice, ill will or bad faith when the SMA was terminated. Hence, the said individual officers cannot be held solidarily liable for the money claims due the petitioners.

WHEREFORE, the petition is **GRANTED**. The June 1, 2012 Decision and the September 21, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 122415 are **REVERSED** and **SET ASIDE**.

The March 15, 2011 Decision of the Labor Arbiter declaring Nuvoland as a labor-only contractor is **REINSTATED,** but the pronouncement on the solidary liability of Ramon Bienvenida and Raul Martinez is ordered **DELETED**.

The case is hereby **REMANDED** to the Labor Arbiter for the computation of the separation pay, back wages and other monetary awards that the petitioners deserve to receive.

No pronouncement as to costs.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

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[43] *WPM International Trading, Inc. v. Labayen*, G.R. No. 182770, September 17, 2014, 735 SCRA 297.
[44] *MAM Realty Development Corporation v. NLRC*, 314 Phil. 838, 845 (1995); *Polymer Rubber Corporation vs. Salamuding*, 715 Phil. 141, 150 (2013).
[45] *Solidbank Corp. v. Gamier*, 649 Phil. 54 (2010).

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

(On Leave)
ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Acting Chief Justice