FIRST DIVISION

[G. R. No. 120077. October 13, 2000]

THE MANILA HOTEL CORP. AND MANILA HOTEL INTL. LTD. *petitioners, vs.* NATIONAL LABOR RELATIONS COMMISSION, ARBITER CEFERINA J. DIOSANA AND MARCELO G. SANTOS, *respondents.*

D E C I S I O N

PARDO, *J.*:

The case before the Court is a petition for *certiorari*[1] to annul the following orders of the National Labor Relations Commission (hereinafter referred to as NLRC) for having been issued without or with excess jurisdiction and with grave abuse of discretion:[2]

(1) **Order of May 31, 1993**.[3] Reversing and setting aside its earlier resolution of August 28, 1992.[4] The questioned order declared that the NLRC, not the Philippine Overseas Employment Administration (hereinafter referred to as POEA), had jurisdiction over private respondents complaint;

(2) **Decision of December 15, 1994**.[5] Directing petitioners to jointly and severally pay private respondent twelve thousand and six hundred dollars (US$12,600.00) representing salaries for the unexpired portion of his contract; three thousand six hundred dollars (US$3,600.00) as extra four months salary for the two (2) year period of his contract, three thousand six hundred dollars (US$3,600.00) as 14th month pay or a total of nineteen thousand and eight hundred dollars (US$19,800.00) or its peso equivalent and attorneys fees amounting to ten percent (10%) of the total award; and

(3) **Order of March 30, 1995**.[6] Denying the motion for reconsideration of the petitioners.

In May, 1988, private respondent Marcelo Santos (hereinafter referred to as Santos) was an overseas worker employed as a printer at the Mazoon Printing Press, Sultanate of Oman. Subsequently, in June 1988, he was directly hired by the Palace Hotel, Beijing, Peoples Republic of China and later terminated due to retrenchment.

Petitioners are the Manila Hotel Corporation (hereinafter referred to as MHC) and the Manila Hotel International Company, Limited (hereinafter referred to as MHICL).

When the case was filed in 1990, MHC was still a government-owned and controlled corporation duly organized and existing under the laws of the Philippines.

MHICL is a corporation duly organized and existing under the laws of Hong Kong.[7] MHC is an incorporator of MHICL, owning 50% of its capital stock.[8]

By virtue of a management agreement[9] with the Palace Hotel (Wang Fu Company Limited), MHICL[10] trained the personnel and staff of the Palace Hotel at Beijing, China.

Now the facts.

During his employment with the Mazoon Printing Press in the Sultanate of Oman, respondent Santos received a letter dated May 2, 1988 from Mr. Gerhard R. Shmidt, General Manager, Palace Hotel, Beijing, China. Mr. Schmidt informed respondent Santos that he was recommended by one Nestor Buenio, a friend of his.

Mr. Shmidt offered respondent Santos the same position as printer, but with a higher monthly salary and increased benefits. The position was slated to open on October 1, 1988.[11]

On May 8, 1988, respondent Santos wrote to Mr. Shmidt and signified his acceptance of the offer.

On May 19, 1988, the Palace Hotel Manager, Mr. Hans J. Henk mailed a ready to sign employment contract to respondent Santos. Mr. Henk advised respondent Santos that if the contract was acceptable, to return the same to Mr. Henk in Manila, together with his passport and two additional pictures for his visa to China.

On May 30, 1988, respondent Santos resigned from the Mazoon Printing Press, effective June 30, 1988, under the pretext that he was needed at home to help with the familys piggery and poultry business.

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On June 30, 1988, respondent Santos was deemed resigned from the Mazoon Printing Press.

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On November 5, 1988, respondent Santos left for Beijing, China. He started to work at the Palace Hotel.[14]

Subsequently, respondent Santos signed an amended employment agreement with the Palace Hotel, effective November 5, 1988. In the contract, Mr. Shmidt represented the Palace Hotel. The Vice President (Operations and Development) of petitioner MHICL Miguel D. Cergueda signed the employment agreement under the word noted.

From June 8 to 29, 1989, respondent Santos was in the Philippines on vacation leave. He returned to China and reassumed his post on July 17, 1989.

On July 22, 1989, Mr. Shmidts Executive Secretary, a certain Joanna suggested in a handwritten note that respondent Santos be given one (1) month notice of his release from employment.

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On October 3, 1989, respondent Santos was repatriated to the Philippines.

On October 24, 1989, respondent Santos, through his lawyer, Atty. Ednave wrote Mr. Shmidt, demanding full compensation pursuant to the employment agreement.

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In closing, when Mr. Santos received the letter of notice, he hardly showed up for work but still enjoyed free accommodation/laundry/meals up to the day of his departure.

On February 20, 1990, respondent Santos filed a complaint for illegal dismissal with the Arbitration Branch, National Capital Region, National Labor Relations Commission

(NLRC). He prayed for an award of nineteen thousand nine hundred and twenty three dollars (US$19,923.00) as actual damages, forty thousand pesos (P40,000.00) as exemplary damages and attorneys fees equivalent to 20% of the damages prayed for. The complaint named MHC, MHICL, the Palace Hotel and Mr. Shmidt as respondents.

The Palace Hotel and Mr. Shmidt were not served with summons and neither participated in the proceedings before the Labor Arbiter.[18]

On June 27, 1991, Labor Arbiter Ceferina J. Diosana, decided the case against petitioners, thus:[19]

WHEREFORE, judgment is hereby rendered:

1. directing all the respondents to pay complainant jointly and severally;

a) $20,820 US dollars or its equivalent in Philippine currency as unearned salaries;

b) P50,000.00 as moral damages;

c) P40,000.00 as exemplary damages; and

d) Ten (10) percent of the total award as attorneys fees.

SO ORDERED.

On July 23, 1991, petitioners appealed to the NLRC, arguing that the POEA, not the NLRC had jurisdiction over the case.

On August 28, 1992, the NLRC promulgated a resolution, stating:[20]

WHEREFORE, let the appealed Decision be, as it is hereby, declared null and void for want of jurisdiction. Complainant is hereby enjoined to file his complaint with the POEA.

SO ORDERED.

On September 18, 1992, respondent Santos moved for reconsideration of the afore-quoted resolution. He argued that the case was not cognizable by the POEA as he was not an overseas contract worker.[21]

On May 31, 1993, the NLRC granted the motion and reversed itself. The NLRC directed Labor Arbiter Emerson Tumanon to hear the case on the question of whether private respondent was retrenched or dismissed.[22]

On January 13, 1994, Labor Arbiter Tumanon completed the proceedings based on the testimonial and documentary evidence presented to and heard by him.[23]

Subsequently, Labor Arbiter Tumanon was re-assigned as trial arbiter of the National Capital Region, Arbitration Branch, and the case was transferred to Labor Arbiter Jose G. de Vera.[24]

On November 25, 1994, Labor Arbiter de Vera submitted his report.[25] He found that respondent Santos was illegally dismissed from employment and recommended that he be paid actual damages equivalent to his salaries for the unexpired portion of his contract.[26]

On December 15, 1994, the NLRC ruled in favor of private respondent, to wit:[27]

> WHEREFORE, finding that the report and recommendations of Arbiter de Vera are supported by substantial evidence, judgment is hereby rendered, directing the respondents to jointly and severally pay complainant the following computed contractual benefits: (1) US$12,600.00 as salaries for the un-expired portion of the parties contract; (2) US$3,600.00 as extra four (4) months salary for the two (2) years period (*sic*) of the parties contract; (3) US$3,600.00 as 14th month pay for the aforesaid two (2) years contract stipulated by the parties or a total of US$19,800.00 or its peso equivalent, plus (4) attorneys fees of 10% of complainants total award.
>
> SO ORDERED.

On February 2, 1995, petitioners filed a motion for reconsideration arguing that Labor Arbiter de Veras recommendation had no basis in law and in fact.[28]

On March 30, 1995, the NLRC denied the motion for reconsideration.[29]

Hence, this petition.[30]

On October 9, 1995, petitioners filed with this Court an urgent motion for the issuance of a temporary restraining order and/or writ of preliminary injunction and a motion for the annulment of the entry of judgment of the NLRC dated July 31, 1995.[31]

On November 20, 1995, the Court denied petitioners urgent motion. The Court required respondents to file their respective comments, without giving due course to the petition.[32]

On March 8, 1996, the Solicitor General filed a manifestation stating that after going over the petition and its annexes, they can not defend and sustain the position taken by the NLRC in its assailed decision and orders. The Solicitor General prayed that he be excused from filing a comment on behalf of the NLRC[33]

On April 30,1996, private respondent Santos filed his comment.[34]

On June 26, 1996, the Court granted the manifestation of the Solicitor General and required the NLRC to file its own comment to the petition.[35]

On January 7, 1997, the NLRC filed its comment.

The petition is meritorious.

I. *Forum Non-Conveniens*

The NLRC was a seriously inconvenient forum.

We note that the main aspects of the case transpired in two foreign jurisdictions and the case involves purely foreign elements. The only link that the Philippines has with the case is that respondent Santos is a Filipino citizen. The Palace Hotel and MHICL are foreign corporations. Not all cases involving our citizens can be tried here.

The employment contract.-- Respondent Santos was hired directly by the Palace Hotel, a foreign employer, through correspondence sent to the Sultanate of Oman, where respondent Santos was then employed. He was hired without the intervention of the POEA or any authorized recruitment agency of the government.[36]

Under the rule of *forum non conveniens*, a Philippine court or agency *may* assume jurisdiction over the case if it chooses to do so *provided*:(1) that the Philippine court is one to which the parties may conveniently resort to; (2) that the Philippine court is in a position to make an intelligent decision as to the law and the facts; and (3) that the Philippine court has or is likely to have power to enforce its decision.[37] The conditions are unavailing in the case at bar.

Not Convenient.-- We fail to see how the NLRC is a convenient forum given that all the incidents of the case - from the time of recruitment, to employment to dismissal occurred outside the Philippines. The inconvenience is compounded by the fact that the proper defendants, the Palace Hotel and MHICL are not nationals of the Philippines. Neither are they doing business in the Philippines. Likewise, the main witnesses, Mr. Shmidt and Mr. Henk are non-residents of the Philippines.

No power to determine applicable law.-- Neither can an intelligent decision be made as to the law governing the employment contract as such was perfected in foreign soil. This calls to fore the application of the principle of *lex loci contractus* (the law of the place where the contract was made).[38]

The employment contract was not perfected in the Philippines. Respondent Santos signified his acceptance by writing a letter while he was in the Republic of Oman. This letter was sent to the Palace Hotel in the Peoples Republic of China.

No power to determine the facts.-- Neither can the NLRC determine the facts surrounding the alleged illegal dismissal as all acts complained of took place in Beijing, Peoples Republic of China. The NLRC was not in a position to determine whether the Tiannamen Square incident truly adversely affected operations of the Palace Hotel as to justify respondent Santos retrenchment.

Principle of effectiveness, no power to execute decision.-- Even assuming that a proper decision could be reached by the NLRC, such would not have any binding effect against the employer, the Palace Hotel. The Palace Hotel is a corporation incorporated under the laws of China and was not even served with summons. Jurisdiction over its person was not acquired.

This is not to say that Philippine courts and agencies have no power to solve controversies involving foreign employers. Neither are we saying that we do not have

power over an employment contract executed in a foreign country. **If Santos were an overseas contract worker, a Philippine forum, specifically the POEA, not the NLRC, would protect him.**[39] He is not an overseas contract worker a fact which he admits with conviction.[40]

Even assuming that the NLRC was the proper forum, even on the merits, the NLRCs decision cannot be sustained.

II. MHC Not Liable

Even if we assume two things: (1) that the NLRC had jurisdiction over the case, and (2) that MHICL was liable for Santos retrenchment, still MHC, as a separate and distinct juridical entity cannot be held liable.

True, MHC is an incorporator of MHICL and owns fifty percent (50%) of its capital stock. However, this is not enough to pierce the veil of corporate fiction between MHICL and MHC.

Piercing the veil of corporate entity is an equitable remedy. It is resorted to when the corporate fiction is used to defeat public convenience, justify wrong, protect fraud or defend a crime.[41] It is done only when a corporation is a mere alter ego or business conduit of a person or another corporation.

In *Traders Royal Bank v. Court of Appeals*,[42] we held that the mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself a sufficient reason for disregarding the fiction of separate corporate personalities.

The tests in determining whether the corporate veil may be pierced are: **First**, the defendant must have control or complete domination of the other corporations finances, policy and business practices with regard to the transaction attacked. There must be proof that the other corporation had no separate mind, will or existence with respect the act complained of. **Second**, control must be used by the defendant to commit fraud or wrong. **Third**, the aforesaid control or breach of duty must be the proximate cause of the injury or loss complained of. The absence of any of the elements prevents the piercing of the corporate veil.[43]

It is basic that a corporation has a personality separate and distinct from those composing it as well as from that of any other legal entity to which it may be related.[44] Clear and convincing evidence is needed to pierce the veil of corporate fiction.[45] In this case, we find no evidence to show that MHICL and MHC are one and the same entity.

III. MHICL not Liable

Respondent Santos predicates MHICLs liability on the fact that MHICL signed his employment contract with the Palace Hotel. This fact fails to persuade us.

First, we note that the Vice President (Operations and Development) of MHICL, Miguel D. Cergueda signed the employment contract as a mere witness. He merely signed under the word noted.

When one notes a contract, one is not expressing his agreement or approval, as a party would.[46] In *Sichangco v. Board of Commissioners of Immigration*,[47] the Court recognized that the term noted means that the person so noting has merely taken cognizance of the existence of an act or declaration, without exercising a judicious deliberation or rendering a decision on the matter.

Mr. Cergueda merely signed the witnessing part of the document. The witnessing part of the document is that which, in a deed or other formal instrument is that part which comes after the recitals, or where there are no recitals, after the parties (*emphasis ours*).[48] As opposed to a party to a contract, a witness is simply one who, being present, personally sees or perceives a thing; a beholder, a spectator, or eyewitness.[49]One who notes something just makes a brief written statement[50] a memorandum or observation.

Second, and more importantly, there was no existing employer-employee relationship between Santos and MHICL. In determining the existence of an employer-employee relationship, the following elements are considered:[51]

(1) the selection and engagement of the employee;

(2) the payment of wages;

(3) the power to dismiss; and

(4) the power to control employees conduct.

MHICL did not have and did not exercise any of the aforementioned powers. It did not select respondent Santos as an employee for the Palace Hotel. He was referred to the Palace Hotel by his friend, Nestor Buenio. MHICL did not engage respondent Santos to work. The terms of employment were negotiated and finalized through correspondence between respondent Santos, Mr. Schmidt and Mr. Henk, who were officers and representatives of the Palace Hotel and not MHICL. Neither did respondent Santos adduce any proof that MHICL had the power to control his conduct. Finally, it was the Palace Hotel, through Mr. Schmidt and not MHICL that terminated respondent Santos services.

Neither is there evidence to suggest that MHICL was a labor-only contractor.[52] There is no proof that MHICL supplied respondent Santos or even referred him for employment to the Palace Hotel.

Likewise, there is no evidence to show that the Palace Hotel and MHICL are one and the same entity. The fact that the Palace Hotel is a member of the Manila Hotel Group is not enough to pierce the corporate veil between MHICL and the Palace Hotel.

IV. Grave Abuse of Discretion

Considering that the NLRC was *forum non-conveniens* and considering further that no employer-employee relationship existed between MHICL, MHC and respondent

Santos, Labor Arbiter Ceferina J. Diosana clearly had no jurisdiction over respondents claim in NLRC NCR Case No. 00-02-01058-90.

Labor Arbiters have exclusive and original jurisdiction only over the following:[53]

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 employer-employee relations;

5. Cases arising from any violation of Article 264 of this Code, including questions involving 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 (P5,000.00) regardless of whether accompanied with a claim for reinstatement.

In all these cases, an employer-employee relationship is an indispensable jurisdictional requirement.

The jurisdiction of labor arbiters and the NLRC under Article 217 of the Labor Code is limited to disputes arising from an employer-employee relationship which can be resolved by reference to the Labor Code, or other labor statutes, or their collective bargaining agreements.[54]

To determine which body has jurisdiction over the present controversy, we rely on the sound judicial principle that jurisdiction over the subject matter is conferred by law and is determined by the allegations of the complaint irrespective of whether the plaintiff is entitled to all or some of the claims asserted therein.[55]

The lack of jurisdiction of the Labor Arbiter was obvious from the allegations of the complaint. His failure to dismiss the case amounts to grave abuse of discretion.[56]

V. The Fallo

WHEREFORE, the Court hereby GRANTS the petition for *certiorari* and ANNULS the orders and resolutions of the National Labor Relations Commission dated May 31, 1993, December 15, 1994 and March 30, 1995 in NLRC NCR CA No. 002101-91 (NLRC NCR Case No. 00-02-01058-90).

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and *Ynares-Santiago, JJ.,* concur.

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[1] Under Rule 65, 1964 Revised Rules of Court.

[2] *Rollo*, pp. 2-6.

[3] In NLRC NCR CA No. 002101-91 (NLRC NCR Case No. 00-02-01058-90), Commissioner Vicente S. E. Veloso, ponente, concurred in by Commissioners Edna Bonto Perez and Alberto R. Quimpo.

[4] Penned by Commissioner V. S. E. Veloso and concurred in by Commissioners Bartolome S. Carale and Romeo B. Putong.

[5] Penned by Commissioner V. S. E. Veloso and concurred in by Commissioners B. S. Carale and A. R. Quimpo.

[6] *Ibid*.

[7] With principal office at 18094 Swire House Charter Road, Hongkong, as shown by its Articles of Association dated May 23, 1986.

[8] MHC represented by its President Victor Sison and the Philippine Agency Limited represented by its Director, Francis Cheung Kwoh-Nean are MHICLs incorporators (*Rollo*, p. 76).

[9] The management agreement was terminated on April 1, 1990.

[10] *Rollo*, p. 71.

[11] *Ibid*., p. 65.

[12] *Ibid*., p. 96.

[13] *Rollo*, p. 65.

[14] *Ibid*., p. 97.

[15] *Rollo*, pp. 8-14.

[16] *Rollo*, p. 66.

[17] *Ibid*., pp. 66-67.

[18] *Rollo*, p. 72.

[19] *Ibid*., p. 126.

[20] *Rollo*, p. 99.

[21] *Ibid*., pp. 91-92.

[22] *Ibid*., pp. 81-83.

[23] *Rollo*, p. 52.

[24] *Ibid*., p. 63.

[25] *Ibid*.

[26] *Ibid*., pp. 78-79.

[27] *Ibid*., pp. 79-80.

[28] *Rollo*, pp. 51-62.

[29] *Rollo*, pp. 49-50.

[30] Filed on May 22, 1995, Rollo, pp. 2-48. On October 7, 1997, we resolved to give due course to the petition (*Rollo*, p. 217). Petitioners filed their memorandum on December 1, 1997. The petition involves pure questions of law; thus, we except this case from the ruling in San Martin Funeral Homes *vs*. NLRC, 295 SCRA 494 [1998].Rather than refer the case to the Court of Appeals, whose decision would be appealable to the Supreme Court, our ruling would finally put an end to the litigation.

[31] *Rollo*, pp. 127-133.

[32] *Rollo*, p. 140.

[33] *Rollo*, pp. 148-149.

[34] *Rollo*, pp. 156.

[35] *Rollo*, p. 157.

[36] *Rollo*, p. 82.

[37] Communication Materials and Design, Inc. *v*. Court of Appeals, 260 SCRA 673, 695 (1996).

[38] Triple Eight Integrated Services, Inc. *v*. NLRC, 299 SCRA 608, 618 (1998).

[39] Eastern Shipping Lines, Inc. *v*. POEA, 170 SCRA 54, 57 (1989), There we stated that, the POEA shall have original and exclusive jurisdiction over all cases, including money claims, involving employer-employee relationship arising out of or by virtue of any law or contract involving Filipino workers for overseas employment, including seamen.

[40] *Rollo*, pp. 91-92.

[41] San Juan Structural and Steel Fabricators, Inc. v. Court of Appeals, 296 SCRA 631, 649-650 (1998); Complex Electronics Employees Association v. NLRC, 310 SCRA 403, 417-418 (1999).

[42] 269 SCRA 15, 29-30 (1997).

[43] Rufina Luy Lim *v*. Court of Appeals, G. R. No. 124715, January 24, 2000.

[44] ARB Construction Co., Inc. *v*. Court of Appeals, G. R. No. 126554, May 31, 2000.

[45] Laguio *v*. National Labor Relations Commission, 262 SCRA 715, 720-221 (1996); De La Salle University v. De La Salle University Employees Association, G. R. Nos. 109002 and 110072, April 12, 2000.

[46] Halili *v*. Court of Industrial Relations, 140 SCRA 73, 91 (1985).

[47] 94 SCRA 61, 69 (1979).

[48] Blacks Law Dictionary, Fifth Edition (1979), p. 1438.

[49] *Ibid*.

[50] *Supra*, p. 956.

[51] Philippine Airlines, Inc. v. NLRC, 263 SCRA 642, 654 (1996).

[52] (a) the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machinery, work premises, among others; and (b) the workers recruited and placed by such person are performing activities which are directly related to the principal business of the employer. Asia Brewery, Inc. *v*. NLRC, 259 SCRA 185, 189-190 (1996).

[53] Labor Code of the Philippines, Article 217.

[54] Coca Cola Bottlers Phils., Inc. *v*. Jose S. Roque, 308 SCRA 215, 220 (1999).

[55] Marcina Saura *v*. Ramon Saura, Jr., 313 SCRA 465, 472 (1999).

[56] Philippine Airlines, Inc. *v*. NLRC, *supra*, p. 657.

FIRST DIVISION

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When going through the latest performance ratings, please also be advised that his performance was below average and a Chinese National who is doing his job now shows a better approach.

In closing, when Mr. Santos received the letter of notice, he hardly showed up for work but still enjoyed free accommodation/laundry/meals up to the day of his departure.

On February 20, 1990, respondent Santos filed a complaint for illegal dismissal with the Arbitration Branch, National Capital Region, National Labor Relations Commission (NLRC). He prayed for an award of nineteen thousand nine hundred and twenty three dollars (US$19,923.00) as actual damages, forty thousand pesos (P40,000.00) as exemplary damages and attorneys fees equivalent to 20% of the damages prayed for. The complaint named MHC, MHICL, the Palace Hotel and Mr. Shmidt as respondents.

The Palace Hotel and Mr. Shmidt were not served with summons and neither participated in the proceedings before the Labor Arbiter.[18]

On June 27, 1991, Labor Arbiter Ceferina J. Diosana, decided the case against petitioners, thus:[19]

WHEREFORE, judgment is hereby rendered:

1. directing all the respondents to pay complainant jointly and severally;

a) $20,820 US dollars or its equivalent in Philippine currency as unearned salaries;

b) P50,000.00 as moral damages;

c) P40,000.00 as exemplary damages; and

d) Ten (10) percent of the total award as attorneys fees.

SO ORDERED.

On July 23, 1991, petitioners appealed to the NLRC, arguing that the POEA, not the NLRC had jurisdiction over the case.

On August 28, 1992, the NLRC promulgated a resolution, stating:[20]

WHEREFORE, let the appealed Decision be, as it is hereby, declared null and void for want of jurisdiction. Complainant is hereby enjoined to file his complaint with the POEA.

SO ORDERED.

On September 18, 1992, respondent Santos moved for reconsideration of the afore-quoted resolution. He argued that the case was not cognizable by the POEA as he was not an overseas contract worker.[21]

On May 31, 1993, the NLRC granted the motion and reversed itself. The NLRC directed Labor Arbiter Emerson Tumanon to hear the case on the question of whether private respondent was retrenched or dismissed.[22]

On January 13, 1994, Labor Arbiter Tumanon completed the proceedings based on the testimonial and documentary evidence presented to and heard by him.[23]

Subsequently, Labor Arbiter Tumanon was re-assigned as trial arbiter of the National Capital Region, Arbitration Branch, and the case was transferred to Labor Arbiter Jose G. de Vera.[24]

On November 25, 1994, Labor Arbiter de Vera submitted his report.[25] He found that respondent Santos was illegally dismissed from employment and recommended that he be paid actual damages equivalent to his salaries for the unexpired portion of his contract.[26]

On December 15, 1994, the NLRC ruled in favor of private respondent, to wit:[27]

> WHEREFORE, finding that the report and recommendations of Arbiter de Vera are supported by substantial evidence, judgment is hereby rendered, directing the respondents to jointly and severally pay complainant the following computed contractual benefits: (1) US$12,600.00 as salaries for the un-expired portion of the parties contract; (2) US$3,600.00 as extra four (4) months salary for the two (2) years period (*sic*) of the parties contract; (3) US$3,600.00 as 14th month pay for the aforesaid two (2) years contract stipulated by the parties or a total of US$19,800.00 or its peso equivalent, plus (4) attorneys fees of 10% of complainants total award.
>
> SO ORDERED.

On February 2, 1995, petitioners filed a motion for reconsideration arguing that Labor Arbiter de Veras recommendation had no basis in law and in fact.[28]

On March 30, 1995, the NLRC denied the motion for reconsideration.[29]

Hence, this petition.[30]

On October 9, 1995, petitioners filed with this Court an urgent motion for the issuance of a temporary restraining order and/or writ of preliminary injunction and a motion for the annulment of the entry of judgment of the NLRC dated July 31, 1995.[31]

On November 20, 1995, the Court denied petitioners urgent motion. The Court required respondents to file their respective comments, without giving due course to the petition.[32]

On March 8, 1996, the Solicitor General filed a manifestation stating that after going over the petition and its annexes, they can not defend and sustain the position taken by

the NLRC in its assailed decision and orders. The Solicitor General prayed that he be excused from filing a comment on behalf of the NLRC[33]

On April 30,1996, private respondent Santos filed his comment.[34]

On June 26, 1996, the Court granted the manifestation of the Solicitor General and required the NLRC to file its own comment to the petition.[35]

On January 7, 1997, the NLRC filed its comment.

The petition is meritorious.

I. *Forum Non-Conveniens*

The NLRC was a seriously inconvenient forum.

We note that the main aspects of the case transpired in two foreign jurisdictions and the case involves purely foreign elements. The only link that the Philippines has with the case is that respondent Santos is a Filipino citizen. The Palace Hotel and MHICL are foreign corporations. Not all cases involving our citizens can be tried here.

The employment contract.-- Respondent Santos was hired directly by the Palace Hotel, a foreign employer, through correspondence sent to the Sultanate of Oman, where respondent Santos was then employed. He was hired without the intervention of the POEA or any authorized recruitment agency of the government.[36]

Under the rule of *forum non conveniens*, a Philippine court or agency *may* assume jurisdiction over the case if it chooses to do so *provided*:(1) that the Philippine court is one to which the parties may conveniently resort to; (2) that the Philippine court is in a position to make an intelligent decision as to the law and the facts; and (3) that the Philippine court has or is likely to have power to enforce its decision.[37] The conditions are unavailing in the case at bar.

Not Convenient.-- We fail to see how the NLRC is a convenient forum given that all the incidents of the case - from the time of recruitment, to employment to dismissal occurred outside the Philippines. The inconvenience is compounded by the fact that the proper defendants, the Palace Hotel and MHICL are not nationals of the Philippines. Neither are they doing business in the Philippines. Likewise, the main witnesses, Mr. Shmidt and Mr. Henk are non-residents of the Philippines.

No power to determine applicable law.-- Neither can an intelligent decision be made as to the law governing the employment contract as such was perfected in foreign soil. This calls to fore the application of the principle of *lex loci contractus* (the law of the place where the contract was made).[38]

The employment contract was not perfected in the Philippines. Respondent Santos signified his acceptance by writing a letter while he was in the Republic of Oman. This letter was sent to the Palace Hotel in the Peoples Republic of China.

No power to determine the facts.-- Neither can the NLRC determine the facts surrounding the alleged illegal dismissal as all acts complained of took place in Beijing, Peoples Republic of China. The NLRC was not in a position to determine whether the

Tiannamen Square incident truly adversely affected operations of the Palace Hotel as to justify respondent Santos retrenchment.

Principle of effectiveness, no power to execute decision.-- Even assuming that a proper decision could be reached by the NLRC, such would not have any binding effect against the employer, the Palace Hotel. The Palace Hotel is a corporation incorporated under the laws of China and was not even served with summons. Jurisdiction over its person was not acquired.

This is not to say that Philippine courts and agencies have no power to solve controversies involving foreign employers. Neither are we saying that we do not have power over an employment contract executed in a foreign country. **If Santos were an overseas contract worker, a Philippine forum, specifically the POEA, not the NLRC, would protect him.**[39] He is not an overseas contract worker a fact which he admits with conviction.[40]

Even assuming that the NLRC was the proper forum, even on the merits, the NLRCs decision cannot be sustained.

II. MHC Not Liable

Even if we assume two things: (1) that the NLRC had jurisdiction over the case, and (2) that MHICL was liable for Santos retrenchment, still MHC, as a separate and distinct juridical entity cannot be held liable.

True, MHC is an incorporator of MHICL and owns fifty percent (50%) of its capital stock. However, this is not enough to pierce the veil of corporate fiction between MHICL and MHC.

Piercing the veil of corporate entity is an equitable remedy. It is resorted to when the corporate fiction is used to defeat public convenience, justify wrong, protect fraud or defend a crime.[41] It is done only when a corporation is a mere alter ego or business conduit of a person or another corporation.

In *Traders Royal Bank v. Court of Appeals*,[42] we held that the mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself a sufficient reason for disregarding the fiction of separate corporate personalities.

The tests in determining whether the corporate veil may be pierced are: **First**, the defendant must have control or complete domination of the other corporations finances, policy and business practices with regard to the transaction attacked. There must be proof that the other corporation had no separate mind, will or existence with respect the act complained of. **Second**, control must be used by the defendant to commit fraud or wrong. **Third**, the aforesaid control or breach of duty must be the proximate cause of the injury or loss complained of. The absence of any of the elements prevents the piercing of the corporate veil.[43]

It is basic that a corporation has a personality separate and distinct from those composing it as well as from that of any other legal entity to which it may be related.[44] Clear and convincing evidence is needed to pierce the veil of corporate

fiction.[45] In this case, we find no evidence to show that MHICL and MHC are one and the same entity.

III. MHICL not Liable

Respondent Santos predicates MHICLs liability on the fact that MHICL signed his employment contract with the Palace Hotel. This fact fails to persuade us.

First, we note that the Vice President (Operations and Development) of MHICL, Miguel D. Cergueda signed the employment contract as a mere witness. He merely signed under the word noted.

When one notes a contract, one is not expressing his agreement or approval, as a party would.[46] In *Sichangco v. Board of Commissioners of Immigration*,[47] the Court recognized that the term noted means that the person so noting has merely taken cognizance of the existence of an act or declaration, without exercising a judicious deliberation or rendering a decision on the matter.

Mr. Cergueda merely signed the witnessing part of the document. The witnessing part of the document is that which, in a deed or other formal instrument is that part which comes after the recitals, or where there are no recitals, after the parties (*emphasis ours*).[48] As opposed to a party to a contract, a witness is simply one who, being present, personally sees or perceives a thing; a beholder, a spectator, or eyewitness.[49]One who notes something just makes a brief written statement[50] a memorandum or observation.

Second, and more importantly, there was no existing employer-employee relationship between Santos and MHICL. In determining the existence of an employer-employee relationship, the following elements are considered:[51]

(1) the selection and engagement of the employee;

(2) the payment of wages;

(3) the power to dismiss; and

(4) the power to control employees conduct.

MHICL did not have and did not exercise any of the aforementioned powers. It did not select respondent Santos as an employee for the Palace Hotel. He was referred to the Palace Hotel by his friend, Nestor Buenio. MHICL did not engage respondent Santos to work. The terms of employment were negotiated and finalized through correspondence between respondent Santos, Mr. Schmidt and Mr. Henk, who were officers and representatives of the Palace Hotel and not MHICL. Neither did respondent Santos adduce any proof that MHICL had the power to control his conduct. Finally, it was the Palace Hotel, through Mr. Schmidt and not MHICL that terminated respondent Santos services.

Neither is there evidence to suggest that MHICL was a labor-only contractor.[52] There is no proof that MHICL supplied respondent Santos or even referred him for employment to the Palace Hotel.

Likewise, there is no evidence to show that the Palace Hotel and MHICL are one and the same entity. The fact that the Palace Hotel is a member of the Manila Hotel Group is not enough to pierce the corporate veil between MHICL and the Palace Hotel.

IV. Grave Abuse of Discretion

Considering that the NLRC was *forum non-conveniens* and considering further that no employer-employee relationship existed between MHICL, MHC and respondent Santos, Labor Arbiter Ceferina J. Diosana clearly had no jurisdiction over respondents claim in NLRC NCR Case No. 00-02-01058-90.

Labor Arbiters have exclusive and original jurisdiction only over the following:[53]

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 employer-employee relations;

5. Cases arising from any violation of Article 264 of this Code, including questions involving 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 (P5,000.00) regardless of whether accompanied with a claim for reinstatement.

In all these cases, an employer-employee relationship is an indispensable jurisdictional requirement.

The jurisdiction of labor arbiters and the NLRC under Article 217 of the Labor Code is limited to disputes arising from an employer-employee relationship which can be resolved by reference to the Labor Code, or other labor statutes, or their collective bargaining agreements.[54]

To determine which body has jurisdiction over the present controversy, we rely on the sound judicial principle that jurisdiction over the subject matter is conferred by law

and is determined by the allegations of the complaint irrespective of whether the plaintiff is entitled to all or some of the claims asserted therein.[55]

The lack of jurisdiction of the Labor Arbiter was obvious from the allegations of the complaint. His failure to dismiss the case amounts to grave abuse of discretion.[56]

V. The Fallo

WHEREFORE, the Court hereby GRANTS the petition for *certiorari* and ANNULS the orders and resolutions of the National Labor Relations Commission dated May 31, 1993, December 15, 1994 and March 30, 1995 in NLRC NCR CA No. 002101-91 (NLRC NCR Case No. 00-02-01058-90).

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and *Ynares-Santiago, JJ.,* concur.

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[1] Under Rule 65, 1964 Revised Rules of Court.

[2] *Rollo*, pp. 2-6.

[3] In NLRC NCR CA No. 002101-91 (NLRC NCR Case No. 00-02-01058-90), Commissioner Vicente S. E. Veloso, ponente, concurred in by Commissioners Edna Bonto Perez and Alberto R. Quimpo.

[4] Penned by Commissioner V. S. E. Veloso and concurred in by Commissioners Bartolome S. Carale and Romeo B. Putong.

[5] Penned by Commissioner V. S. E. Veloso and concurred in by Commissioners B. S. Carale and A. R. Quimpo.

[6] *Ibid*.

[7] With principal office at 18094 Swire House Charter Road, Hongkong, as shown by its Articles of Association dated May 23, 1986.

[8] MHC represented by its President Victor Sison and the Philippine Agency Limited represented by its Director, Francis Cheung Kwoh-Nean are MHICLs incorporators (*Rollo*, p. 76).

[9] The management agreement was terminated on April 1, 1990.

[10] *Rollo*, p. 71.

[11] *Ibid*., p. 65.

[12] *Ibid*., p. 96.

[13] *Rollo*, p. 65.

[14] *Ibid*., p. 97.

[15] *Rollo*, pp. 8-14.

[16] *Rollo*, p. 66.

[17] *Ibid*., pp. 66-67.

[18] *Rollo*, p. 72.

[19] *Ibid*., p. 126.

[20] *Rollo*, p. 99.

[21] *Ibid*., pp. 91-92.

[22] *Ibid*., pp. 81-83.

[23] *Rollo*, p. 52.

[24] *Ibid*., p. 63.

[25] *Ibid*.

[26] *Ibid*., pp. 78-79.

[27] *Ibid*., pp. 79-80.

[28] *Rollo*, pp. 51-62.

[29] *Rollo*, pp. 49-50.

[30] Filed on May 22, 1995, Rollo, pp. 2-48. On October 7, 1997, we resolved to give due course to the petition (*Rollo*, p. 217). Petitioners filed their memorandum on December 1, 1997. The petition involves pure questions of law; thus, we except this case from the ruling in San Martin Funeral Homes *vs*. NLRC, 295 SCRA 494 [1998].Rather than refer the case to the Court of Appeals, whose decision would be appealable to the Supreme Court, our ruling would finally put an end to the litigation.

[31] *Rollo*, pp. 127-133.

[32] *Rollo*, p. 140.

[33] *Rollo*, pp. 148-149.

[34] *Rollo*, pp. 156.

[35] *Rollo*, p. 157.

[36] *Rollo*, p. 82.

[37] Communication Materials and Design, Inc. *v*. Court of Appeals, 260 SCRA 673, 695 (1996).

[38] Triple Eight Integrated Services, Inc. *v*. NLRC, 299 SCRA 608, 618 (1998).

[39] Eastern Shipping Lines, Inc. *v*. POEA, 170 SCRA 54, 57 (1989), There we stated that, the POEA shall have original and exclusive jurisdiction over all cases, including money claims, involving employer-employee relationship arising out of or by virtue of any law or contract involving Filipino workers for overseas employment, including seamen.

[40] *Rollo*, pp. 91-92.

[41] San Juan Structural and Steel Fabricators, Inc. v. Court of Appeals, 296 SCRA 631, 649-650 (1998); Complex Electronics Employees Association v. NLRC, 310 SCRA 403, 417-418 (1999).

[42] 269 SCRA 15, 29-30 (1997).

[43] Rufina Luy Lim *v*. Court of Appeals, G. R. No. 124715, January 24, 2000.

[44] ARB Construction Co., Inc. *v*. Court of Appeals, G. R. No. 126554, May 31, 2000.

[45] Laguio *v*. National Labor Relations Commission, 262 SCRA 715, 720-221 (1996); De La Salle University v. De La Salle University Employees Association, G. R. Nos. 109002 and 110072, April 12, 2000.

[46] Halili *v*. Court of Industrial Relations, 140 SCRA 73, 91 (1985).

[47] 94 SCRA 61, 69 (1979).

[48] Blacks Law Dictionary, Fifth Edition (1979), p. 1438.

[49] *Ibid*.

[50] *Supra*, p. 956.

[51] Philippine Airlines, Inc. v. NLRC, 263 SCRA 642, 654 (1996).

[52] (a) the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machinery, work premises, among others; and (b) the workers recruited and placed by such person are performing activities which are directly related to the principal business of the employer. Asia Brewery, Inc. *v*. NLRC, 259 SCRA 185, 189-190 (1996).

[53] Labor Code of the Philippines, Article 217.

[54] Coca Cola Bottlers Phils., Inc. *v*. Jose S. Roque, 308 SCRA 215, 220 (1999).

[55] Marcina Saura *v*. Ramon Saura, Jr., 313 SCRA 465, 472 (1999).

[56] Philippine Airlines, Inc. *v*. NLRC, *supra*, p. 657.