Republic of the Philippines
Supreme Court
Manila

EN BANC

SME BANK INC., ABELARDO P. SAMSON, OLGA SAMSON and AURELIO VILLAFLOR, JR.,
Petitioners,

- versus -

PEREGRIN T. DE GUZMAN, EDUARDO M. AGUSTIN, JR., ELICERIO GASPAR, RICARDO GASPAR JR., EUFEMIA ROSETE, FIDEL ESPIRITU, SIMEON ESPIRITU, JR., and LIBERATO MANGOBA,
Respondents.

G. R. No. 184517

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SME BANK INC., ABELARDO P. SAMSON, OLGA SAMSON and AURELIO VILLAFLOR, JR.,
Petitioners,

- versus -

ELICERIO GASPAR, RICARDO GASPAR, JR., EUFEMIA ROSETE, FIDEL ESPIRITU, SIMEON ESPIRITU, JR., and LIBERATO MANGOBA,
Respondents.

G. R. No. 186641

Present:

SERENO, *CJ*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,*
ABAD,
VILLARAMA, JR.,**
PEREZ,
MENDOZA,*
REYES,
PERLAS-BERNABE, and
LEONEN, *JJ.*

Promulgated:

October 8, 2013

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*Took no part. Concurred in the Court of Appeals Decision (CA-G.R. SP No. 97510).
**On leave.

D E C I S I O N

SERENO, *CJ*:

Security of tenure is a constitutionally guaranteed right.[1] Employees may not be terminated from their regular employment except for just or authorized causes under the Labor Code[2] and other pertinent laws. A mere change in the equity composition of a corporation is neither a just nor an authorized cause that would legally permit the dismissal of the corporation's employees *en masse*.

Before this Court are consolidated Rule 45 Petitions for Review on *Certiorari*[3] assailing the Decision[4] and Resolution[5] of the Court of Appeals (CA) in CA-G.R. SP No. 97510 and its Decision[6] and Resolution[7] in CA-G.R. SP No. 97942.

The facts of the case are as follows:

Respondent employees Elicerio Gaspar (Elicerio), Ricardo Gaspar, Jr. (Ricardo), Eufemia Rosete (Eufemia), Fidel Espiritu (Fidel), Simeon Espiritu, Jr. (Simeon, Jr.), and Liberato Mangoba (Liberato) were employees of Small and Medium Enterprise Bank, Incorporated (SME Bank). Originally, the principal shareholders and corporate directors of the bank were Eduardo M. Agustin, Jr. (Agustin) and Peregrin de Guzman, Jr. (De Guzman).

In June 2001, SME Bank experienced financial difficulties. To remedy the situation, the bank officials proposed its sale to Abelardo Samson (Samson).[8]

Accordingly, negotiations ensued, and a formal offer was made to Samson. Through his attorney-in-fact, Tomas S. Gomez IV, Samson then sent formal letters (Letter Agreements) to Agustin and De Guzman, demanding the following as preconditions for the sale of SME Bank's shares of stock:

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[1] CONSTITUTION, Art. XIII, Sec. 3.
[2] LABOR CODE, Art. 279.
[3] *Rollo* (G.R. No. 184517), pp. 17-53; Petition dated 22 September 2008; *rollo*, (G.R. No. 186641), pp. 3-46; Petition dated 10 March 2009.
[4] *Rollo* (G.R. No. 184517), pp. 58-71; CA Decision dated 13 March 2008, penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Mariano C. del Castillo (now a member of this Court) and Arcangelita M. Romilla-Lontok.
[5] Id. at 73-74; CA Resolution dated 1 September 2008.
[6] *Rollo* (G.R. No. 186641), pp. 54-66; CA Decision dated 15 January 2008, penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Marina L. Buzon and Mariflor P. Punzalan Castillo.
[7] *Rollo* (G.R. No. 186641), pp. 68-69; CA Resolution dated 19 February 2009, penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Mariflor P. Punzalan Castillo.
[8] *Rollo* (G.R. No. 186641), pp.11-12.

> 4. You shall guarantee the peaceful turn over of all assets as well as the peaceful transition of management of the bank and shall terminate/retire the employees we mutually agree upon, upon transfer of shares in favor of our group's nominees;
>
> x x x x
>
> 7. All retirement benefits, if any of the above officers/stockholders/board of directors are hereby waived upon cosummation [sic] of the above sale. The retirement benefits of the rank and file employees including the managers shall be honored by the new management in accordance with B.R. No. 10, S. 1997.[9]

Agustin and De Guzman accepted the terms and conditions proposed by Samson and signed the *conforme* portion of the Letter Agreements.[10]

Simeon Espiritu (Espiritu), then the general manager of SME Bank, held a meeting with all the employees of the head office and of the Talavera and Muñoz branches of SME Bank and persuaded them to tender their resignations,[11] with the promise that they would be rehired upon reapplication. His directive was allegedly done at the behest of petitioner Olga Samson.[12]

Relying on this representation, Elicerio,[13] Ricardo,[14] Fidel,[15] Simeon, Jr.,[16] and Liberato[17] tendered their resignations dated 27 August 2001. As for Eufemia, the records show that she first tendered a resignation letter dated 27 August 2001,[18] and then a retirement letter dated September 2001.[19]

Elicerio,[20] Ricardo,[21] Fidel,[22] Simeon, Jr.,[23] and Liberato[24] submitted application letters on 11 September 2001. Both the resignation letters and copies of respondent employees' application letters were transmitted by Espiritu to Samson's representative on 11 September 2001.[25]

On 11 September 2001, Agustin and De Guzman signified their conformity to the Letter Agreements and sold 86.365% of the shares of stock

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[9] *Rollo* (G.R. No. 184517), pp. 120, 122; Letter Agreements.
[10] Id. at 121, 123.
[11] *Rollo* (G.R. No. 186641), p. 13; Petition dated 10 March 2009.
[12] Id. at 126; Position Paper for Complainants dated 20 September 2002.
[13] *Rollo* (G.R. No. 186641), p. 134; Resignation Letter of Elicerio Gaspar.
[14] Id. at 135; Resignation Letter of Ricardo M. Gaspar, Jr..
[15] Id. at 136; Resignation Letter of Fidel E. Espiritu.
[16] Id. at 139; Resignation Letter of Simeon B. Espiritu, Jr. dated 27 August 2001.
[17] Id. at 137; Resignation Letter of Liberato B. Mangoba.
[18] Id. at 138; Resignation Letter of Eufemia E. Rosete.
[19] Id. at 171; Retirement Letter of Eufemia E. Rosete; *rollo* (G.R. No. G.R. No. 186641), p. 141; Letter of Simeon C. Espiritu to Jose A. Reyes transmitting, among others, the Retirement Letter of Eufemia E. Rosete.
[20] Id. at 145-146; *Sinumpaang Salaysay* of Elicerio Gaspar dated 20 September 2002.
[21] Id. at 147-148; *Sinumpaang Salaysay* of Ricardo Gaspar, Jr. dated 20 September 2002.
[22] Id. at 143-144; *Sinumpaang Salaysay* of Fidel E. Espiritu dated 20 September 2002.
[23] Id. at 149; Undated *Sinumpaang Salaysay* of Simeon B. Espiritu, Jr.
[24] Id. at 150-151; *Sinumpaang Salaysay* of Liberato B. Mangoba dated 20 September 2002.
[25] *Rollo* (G.R. No. 184517), pp. 543-544; Letters dated 11 September 2001.

of SME Bank to spouses Abelardo and Olga Samson. Spouses Samson then became the principal shareholders of SME Bank, while Aurelio Villaflor, Jr. was appointed bank president. As it turned out, respondent employees, except for Simeon, Jr.,[26] were not rehired. After a month in service, Simeon, Jr. again resigned on October 2001.[27]

Respondent-employees demanded the payment of their respective separation pays, but their requests were denied.

Aggrieved by the loss of their jobs, respondent employees filed a Complaint before the National Labor Relations Commission (NLRC)–Regional Arbitration Branch No. III and sued SME Bank, spouses Abelardo and Olga Samson and Aurelio Villaflor (the Samson Group) for unfair labor practice; illegal dismissal; illegal deductions; underpayment; and nonpayment of allowances, separation pay and 13th month pay.[28] Subsequently, they amended their Complaint to include Agustin and De Guzman as respondents to the case.[29]

On 27 October 2004, the labor arbiter ruled that the buyer of an enterprise is not bound to absorb its employees, unless there is an express stipulation to the contrary. However, he also found that respondent employees were illegally dismissed, because they had involuntarily executed their resignation letters after relying on representations that they would be given their separation benefits and rehired by the new management. Accordingly, the labor arbiter decided the case against Agustin and De Guzman, but dismissed the Complaint against the Samson Group, as follows:

> **WHEREFORE,** premises considered, judgment is hereby rendered ordering respondents Eduardo Agustin, Jr. and Peregrin De Guzman to pay complainants' separation pay in the total amount of ***₱339,403.00*** detailed as follows:
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> | | | |
> |---|---|---|
> | ***Elicerio B. Gaspar*** | = | ***₱5,837.00*** |
> | ***Ricardo B. Gaspar, Jr.*** | = | ***₱11,674.00*** |
> | ***Liberato B. Mangoba*** | = | ***₱64,207.00*** |
> | ***Fidel E. Espiritu*** | = | ***₱29,185.00*** |
> | ***Simeon B. Espiritu, Jr.*** | = | ***₱26,000.00*** |
> | ***Eufemia E. Rosete*** | = | ***₱202,510.00*** |
>
> All other claims including the complaint against Abelardo Samson, Olga Samson and Aurelio Villaflor are hereby DISMISSED for want of merit.
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> **SO ORDERED.**[30]

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[26] *Rollo* (G.R. No. 186641), p. 149; Undated *Sinumpaang Salaysay* of Simeon B. Espiritu, Jr.
[27] Id.
[28] *Rollo* (G.R. No. 184517), pp. 200-221; Labor Arbiter's Decision dated 27 October 2004, penned by Labor Arbiter Henry D. Isorena.
[29] Id. at 129-140; Amended Complaints dated 23 October 2002.
[30] Id. at 221.

Dissatisfied with the Decision of the labor arbiter, respondent employees, Agustin and De Guzman brought separate appeals to the NLRC. Respondent employees questioned the labor arbiter's failure to award backwages, while Agustin and De Guzman contended that they should not be held liable for the payment of the employees' claims.

The NLRC found that there was only a mere transfer of shares – and therefore, a mere change of management – from Agustin and De Guzman to the Samson Group. As the change of management was not a valid ground to terminate respondent bank employees, the NLRC ruled that they had indeed been illegally dismissed. It further ruled that Agustin, De Guzman and the Samson Group should be held jointly and severally liable for the employees' separation pay and backwages, as follows:

> **WHEREFORE**, premises considered, the Decision appealed from is hereby **MODIFIED**. Respondents are hereby Ordered to jointly and severally pay the complainants backwages from 11 September 2001 until the finality of this Decision, separation pay at one month pay for every year of service, ₱10,000.00 and ₱5,000.00 moral and exemplary damages, and five (5%) percent attorney's fees.
>
> Other dispositions are **AFFIRMED**
>
> **SO ORDERED.**[31]

On 28 November 2006, the NLRC denied the Motions for Reconsideration filed by Agustin, De Guzman and the Samson Group.[32]

Agustin and De Guzman filed a Rule 65 Petition for *Certiorari* with the CA, docketed as CA-G.R. SP No. 97510. The Samson Group likewise filed a separate Rule 65 Petition for *Certiorari* with the CA, docketed as CA-G.R. SP No. 97942. Motions to consolidate both cases were not acted upon by the appellate court.

On 13 March 2008, the CA rendered a Decision in CA-G.R. SP No. 97510 affirming that of the NLRC. The *fallo* of the CA Decision reads:

> **WHEREFORE,** in view of the foregoing, the petition is **DENIED**. Accordingly, the Decision dated May 8, 2006, and Resolution dated November 28, 2006 of the National Labor Relations Commission in NLRC NCR CA No. 043236-05 (NLRC RAB III-07-4542-02) are hereby **AFFIRMED.**
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> **SO ORDERED.**[33]

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[31] Id. at 334-342; NLRC Decision dated 8 May 2006, penned by Commissioner Angelita A. Gacutan and concurred in by Presiding Commissioner Raul T. Aquino. Commissioner Victoriano R. Calaycay was on leave.
[32] *Rollo* (G.R. No. 186641), pp. 112-113.
[33] *Rollo* (G.R. No. 184517), pp. 70-71; CA Decision dated 13 March 2008.

Subsequently, CA-G.R. SP No. 97942 was disposed of by the appellate court in a Decision dated 15 January 2008, which likewise affirmed that of the NLRC. The dispositive portion of the CA Decision states:

> **WHEREFORE,** premises considered, the instant Petition for Certiorari is denied, and the herein assailed May 8, 2006 Decision and November 28, 2006 Resolution of the NLRC are hereby **AFFIRMED.**
>
> **SO ORDERED.**[34]

The appellate court denied the Motions for Reconsideration filed by the parties in Resolutions dated 1 September 2008[35] and 19 February 2009.[36]

The Samson Group then filed two separate Rule 45 Petitions questioning the CA Decisions and Resolutions in CA-G.R. SP No. 97510 and CA-G.R. SP No. 97942. On 17 June 2009, this Court resolved to consolidate both Petitions. [37]

THE ISSUES

Succinctly, the parties are asking this Court to determine whether respondent employees were illegally dismissed and, if so, which of the parties are liable for the claims of the employees and the extent of the reliefs that may be awarded to these employees.

THE COURT'S RULING

The instant Petitions are partly meritorious.

I
Respondent employees were illegally dismissed.

As to Elicerio Gaspar, Ricardo Gaspar, Jr., Fidel Espiritu, Eufemia Rosete and Liberato Mangoba

The Samson Group contends that Elicerio, Ricardo, Fidel, and Liberato voluntarily resigned from their posts, while Eufemia retired from her position. As their resignations and retirements were voluntary, they were not dismissed from their employment.[38] In support of this argument, it

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[34] *Rollo* (G.R. No. 186641), p. 66.
[35] *Rollo* (G.R. No. 184517), pp. 73-74.
[36] *Rollo* (G.R. No. 186641), p. 68-69.
[37] *Rollo* (G.R. No. 184517), p. 623.
[38] *Rollo* (G.R. No. 186641), pp. 39-40; Petition dated 10 March 2009.

presented copies of their resignation and retirement letters,[39] which were couched in terms of gratitude.

We disagree. While resignation letters containing words of gratitude may indicate that the employees were not coerced into resignation,[40] this fact alone is not conclusive proof that they intelligently, freely and voluntarily resigned. To rule that resignation letters couched in terms of gratitude are, by themselves, conclusive proof that the employees intended to relinquish their posts would open the floodgates to possible abuse. In order to withstand the test of validity, resignations must be made voluntarily and with the intention of relinquishing the office, coupled with an act of relinquishment.[41] Therefore, in order to determine whether the employees truly intended to resign from their respective posts, we cannot merely rely on the tenor of the resignation letters, but must take into consideration the totality of circumstances in each particular case.

Here, the records show that Elicerio, Ricardo, Fidel, and Liberato only tendered resignation letters because they were led to believe that, upon reapplication, they would be reemployed by the new management.[42] As it turned out, except for Simeon, Jr., they were not rehired by the new management. Their reliance on the representation that they would be reemployed gives credence to their argument that they merely submitted courtesy resignation letters because it was demanded of them, and that they had no real intention of leaving their posts. We therefore conclude that Elicerio, Ricardo, Fidel, and Liberato did not voluntarily resign from their work; rather, they were terminated from their employment.

As to Eufemia, both the CA and the NLRC discussed her case together with the cases of the rest of respondent-employees. However, a review of the records shows that, unlike her co-employees, she did not resign; rather, she submitted a letter indicating that she was retiring from her former position.[43]

The fact that Eufemia retired and did not resign, however, does not change our conclusion that illegal dismissal took place.

Retirement, like resignation, should be an act completely voluntary on the part of the employee. If the intent to retire is not clearly established or if the retirement is involuntary, it is to be treated as a discharge.[44]

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[39] *Rollo* (G.R. No. 184517), pp. 545-550; Resignation letters of Elicerio Gaspar, Ricardo M. Gaspar, Jr., Fidel E. Espiritu, and Liberato B. Mangoba, all dated 27 August 2001; Retirement letter of Eufemia E. Rosete dated "September ___ 2001."

[40] *Globe Telecom v. Crisologo*, 556 Phil. 643, 652 (2007); *St. Michael Academy v. NLRC*, 354 Phil. 491, 509 (1998).

[41] *Magtoto v. NLRC*, 224 Phil. 210, 222-223 (1985), citing *Patten v. Miller*, 190 Ga. 123, 8 S.E. 2nd 757, 770; *Sadler v. Jester*, D.C. Tex., 46 F. Supp. 737, 740; and Black's Law Dictionary (Revised Fourth Edition, 1968).

[42] *Rollo* (G.R. No. 184517), pp. 202-204; Labor Arbiter's Decision dated 27 October 2004

[43] Id. at 549; Retirement letter of Eufemia E. Rosete dated "September ___ 2001."

[44] *De Leon v. NLRC*, 188 Phil. 666 (1980).

In this case, the facts show that Eufemia's retirement was not of her own volition. The circumstances could not be more telling. The facts show that Eufemia was likewise given the option to resign or retire in order to fulfill the precondition in the Letter Agreements that the seller should "terminate/retire the employees [mutually agreed upon] upon transfer of shares" to the buyers.[45] Thus, like her other co-employees, she first submitted a letter of resignation dated 27 August 2001.[46] For one reason or another, instead of resigning, she chose to retire and submitted a retirement letter to that effect.[47] It was this letter that was subsequently transmitted to the representative of the Samson Group on 11 September 2001.[48]

In *San Miguel Corporation v. NLRC*,[49] we have explained that involuntary retirement is tantamount to dismissal, as employees can only choose the means and methods of terminating their employment, but are powerless as to the status of their employment and have no choice but to leave the company. This rule squarely applies to Eufemia's case. Indeed, she could only choose between resignation and retirement, but was made to understand that she had no choice but to leave SME Bank. Thus, we conclude that, similar to her other co-employees, she was illegally dismissed from employment.

The Samson Group further argues[50] that, assuming the employees were dismissed, the dismissal is legal because cessation of operations due to serious business losses is one of the authorized causes of termination under Article 283 of the Labor Code.[51]

Again, we disagree.

The law permits an employer to dismiss its employees in the event of closure of the business establishment.[52] However, the employer is required to serve written notices on the worker and the Department of Labor at least one month before the intended date of closure.[53] Moreover, the dismissed employees are entitled to separation pay, except if the closure was due to serious business losses or financial reverses.[54] However, to be exempt from

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[45] *Rollo* (G.R. No. 184517), pp. 120, 122; Letter Agreements.
[46] *Rollo* (G.R. No. 186641), p. 138; Resignation letter of Eufemia E. Rosete dated 27 August 2001.
[47] Id. at 171; Retirement letter of Eufemia E. Rosete dated "September ___, 2001."
[48] Id. at 141.
[49] 354 Phil. 815 (1998).
[50] *Rollo* (G.R. No. 186641), p. 37; Petition dated 10 March 2009.
[51] Art. 283. *Closure of Establishment and Reduction of Personnel*. The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. x x x.
[52] LABOR CODE, Art. 283.
[53] Id.
[54] Id.; *North Davao Mining Corporation v. NLRC*, 325 Phil. 202, 209 (1996).

making such payment, the employer must justify the closure by presenting convincing evidence that it actually suffered serious financial reverses.[55]

In this case, the records do not support the contention of SME Bank that it intended to close the business establishment. On the contrary, the intention of the parties to keep it in operation is confirmed by the provisions of the Letter Agreements requiring Agustin and De Guzman to guarantee the "peaceful transition of management of the bank" and to appoint "a manager of [the Samson Group's] choice x x x to oversee bank operations."

Even assuming that the parties intended to close the bank, the records do not show that the employees and the Department of Labor were given written notices at least one month before the dismissal took place. Moreover, aside from their bare assertions, the parties failed to substantiate their claim that SME Bank was suffering from serious financial reverses.

In fine, the argument that the dismissal was due to an authorized cause holds no water.

Petitioner bank also argues that, there being a transfer of the business establishment, the innocent transferees no longer have any obligation to continue employing respondent employees,[56] and that the most that they can do is to give preference to the qualified separated employees; hence, the employees were validly dismissed.[57]

The argument is misleading and unmeritorious. Contrary to petitioner bank's argument, **there was no transfer of the business establishment to speak of, but merely a change in the new majority shareholders of the corporation.**

There are two types of corporate acquisitions: asset sales and stock sales.[58] In asset sales, the corporate entity[59] sells all or substantially all of its assets[60] to another entity. In stock sales, the individual or corporate shareholders[61] sell a controlling block of stock[62] to new or existing shareholders.

In asset sales, the rule is that the seller in good faith is authorized to dismiss the affected employees, but is liable for the payment of separation

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[55] *Indino v. NLRC*, 258 Phil. 792, 799 (1989).
[56] *Rollo* (G.R. No. 186641), p. 4; Petition dated 10 March 2009.
[57] Id. at 30.
[58] DALE A. OESTERLE, THE LAW OF MERGERS, ACQUISITIONS AND REORGANIZATIONS, 35 (1991).
[59] Id.
[60] Id. at 39.
[61] Id. at 35.
[62] Id. at 39.

pay under the law.[63] The buyer in good faith, on the other hand, is not obliged to absorb the employees affected by the sale, nor is it liable for the payment of their claims.[64] The most that it may do, for reasons of public policy and social justice, is to give preference to the qualified separated personnel of the selling firm.[65]

In contrast with asset sales, in which the assets of the selling corporation are transferred to another entity, the transaction in stock sales takes place at the shareholder level. Because the corporation possesses a personality separate and distinct from that of its shareholders, a shift in the composition of its shareholders will not affect its existence and continuity. Thus, notwithstanding the stock sale, the corporation continues to be the employer of its people and continues to be liable for the payment of their just claims. Furthermore, the corporation or its new majority shareholders are not entitled to lawfully dismiss corporate employees absent a just or authorized cause.

In the case at bar, the Letter Agreements show that their main object is the acquisition by the Samson Group of 86.365% of the shares of stock of SME Bank.[66] Hence, this case involves a stock sale, whereby the transferee acquires the controlling shares of stock of the corporation. Thus, following the rule in stock sales, respondent employees may not be dismissed except for just or authorized causes under the Labor Code.

Petitioner bank argues that, following our ruling in *Manlimos v. NLRC*,[67] even in cases of stock sales, the new owners are under no legal duty to absorb the seller's employees, and that the most that the new owners may do is to give preference to the qualified separated employees.[68] Thus, petitioner bank argues that the dismissal was lawful.

We are not persuaded.

Manlimos dealt with a stock sale in which a new owner or management group acquired complete ownership of the corporation at the shareholder level.[69] The employees of the corporation were later "considered terminated, with their conformity"[70] by the new majority shareholders. The employees then re-applied for their jobs and were rehired on a probationary basis. After about six months, the new management dismissed two of the employees for having abandoned their work, and it dismissed the rest for

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[63] *Central Azucarera del Danao v. Court of Appeals*, 221 Phil. 647 (1985).
[64] Id.
[65] Id.
[66] *Rollo* (G.R. No. 184517), pp. 120, 122; Letter Agreements.
[67] 312 Phil. 178 (1995).
[68] *Rollo* (G.R. No. 186641), p. 29; Petition dated 10 March 2009.
[69] *Manlimos v. NLRC*, supra note 67.
[70] Id. at 183.

committing "acts prejudicial to the interest of the new management."[71] Thereafter, the employees sought reinstatement, arguing that their dismissal was illegal, since they "remained regular employees of the corporation regardless of the change of management."[72]

In disposing of the merits of the case, we upheld the validity of the second termination, ruling that "the parties are free to renew the contract or not [upon the expiration of the period provided for in their probationary contract of employment]."[73] Citing our pronouncements in *Central Azucarera del Danao v. Court of Appeals*,[74] *San Felipe Neri School of Mandaluyong, Inc. v. NLRC*,[75] and *MDII Supervisors & Confidential Employees Association v. Presidential Assistant on Legal Affairs*,[76] we likewise upheld the validity of the employees' first separation from employment, pronouncing as follows:

> A change of ownership in a business concern is not proscribed by law. In *Central Azucarera del Danao vs. Court of Appeals*, this Court stated:
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> > There can be no controversy for it is a principle well-recognized, that it is within the employer's legitimate sphere of management control of the business to adopt economic policies or make some changes or adjustments in their organization or operations that would insure profit to itself or protect the investment of its stockholders. As in the exercise of such management prerogative, the employer may merge or consolidate its business with another, or sell or dispose all or substantially all of its assets and properties which may bring about the dismissal or termination of its employees in the process. Such dismissal or termination should not however be interpreted in such a manner as to permit the employer to escape payment of termination pay. For such a situation is not envisioned in the law. It strikes at the very concept of social justice.
> >
> > In a number of cases on this point, the rule has been laid down that the sale or disposition must be motivated by good faith as an element of exemption from liability. Indeed, an innocent transferee of a business establishment has no liability to the employees of the transfer or to continue employer them. Nor is the transferee liable for past unfair labor practices of the previous owner, except, when the liability therefor is assumed by the new employer under the contract of sale, or when liability arises because of the new owner's participation in thwarting or defeating the rights of the employees.

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[71] Id. at 184.
[72] Id. at 185.
[73] Id. at 192.
[74] Supra note 63, at 190-191.
[75] 278 Phil. 484 (1991).
[76] 169 Phil. 42 (1977).

> Where such transfer of ownership is in good faith, the transferee is under no legal duty to absorb the transferor's employees as there is no law compelling such absorption. The most that the transferee may do, for reasons of public policy and social justice, is to give preference to the qualified separated employees in the filling of vacancies in the facilities of the purchaser.
>
> Since the petitioners were effectively separated from work due to a *bona fide* change of ownership and they were accordingly paid their separation pay, which they freely and voluntarily accepted, the private respondent corporation was under no obligation to employ them; it may, however, give them preference in the hiring. x x x. (Citations omitted)

We take this opportunity to revisit our ruling in *Manlimos* insofar as it applied a doctrine on asset sales to a stock sale case. *Central Azucarera del Danao, San Felipe Neri School of Mandaluyong* and *MDII Supervisors & Confidential Employees Association* all dealt with asset sales, as they involved a sale of all or substantially all of the assets of the corporation. The transactions in those cases were not made at the shareholder level, but at the corporate level. Thus, applicable to those cases were the rules in asset sales: the employees may be separated from their employment, but the seller is liable for the payment of separation pay; on the other hand, the buyer in good faith is not required to retain the affected employees in its service, nor is it liable for the payment of their claims.

The rule should be different in *Manlimos*, as this case involves a stock sale. It is error to even discuss transfer of ownership of the business, as the business did not actually change hands. The transfer only involved a change in the equity composition of the corporation. To reiterate, **the employees are not transferred to a new employer, but remain with the original corporate employer, notwithstanding an equity shift in its majority shareholders.** This being so, the employment status of the employees should not have been affected by the stock sale. A change in the equity composition of the corporate shareholders should not result in the automatic termination of the employment of the corporation's employees. Neither should it give the new majority shareholders the right to legally dismiss the corporation's employees, absent a just or authorized cause.

The right to security of tenure guarantees the right of employees to continue in their employment absent a just or authorized cause for termination. This guarantee proscribes a situation in which the corporation procures the severance of the employment of its employees – who patently still desire to work for the corporation – only because new majority stockholders and a new management have come into the picture. This situation is a clear circumvention of the employees' constitutionally guaranteed right to security of tenure, an act that cannot be countenanced by this Court.

It is thus erroneous on the part of the corporation to consider the employees as terminated from their employment when the sole reason for so doing is a change of management by reason of the stock sale. The conformity of the employees to the corporation's act of considering them as terminated and their subsequent acceptance of separation pay does not remove the taint of illegal dismissal. Acceptance of separation pay does not bar the employees from subsequently contesting the legality of their dismissal, nor does it estop them from challenging the legality of their separation from the service.[77]

We therefore see it fit to expressly reverse our ruling in *Manlimos* insofar as it upheld that, in a stock sale, the buyer in good faith has no obligation to retain the employees of the selling corporation; and that the dismissal of the affected employees is lawful, even absent a just or authorized cause.

As to Simeon Espiritu, Jr.

The CA and the NLRC discussed the case of Simeon, Jr. together with that of the rest of respondent-employees. However, a review of the records shows that the conditions leading to his dismissal from employment are different. We thus discuss his circumstance separately.

The Samson Group contends that Simeon, Jr., likewise voluntarily resigned from his post.[78] According to them, he had resigned from SME Bank before the share transfer took place.[79] Upon the change of ownership of the shares and the management of the company, Simeon, Jr. submitted a letter of application to and was rehired by the new management.[80] However, the Samson Group alleged that for purely personal reasons, he again resigned from his employment on 15 October 2001.[81]

Simeon, Jr., on the other hand, contends that while he was reappointed by the new management after his letter of application was transmitted, he was not given a clear position, his benefits were reduced, and he suffered a demotion in rank.[82] These allegations were not refuted by the Samson Group.

We hold that Simeon, Jr. was likewise illegally dismissed from his employment.

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[77] *Sari-sari Group of Companies, Inc. v. Piglas Kamao*, G.R. No. 164624, 11 August 2008, 561 SCRA 569.
[78] *Rollo* (G.R. No. 186641), p. 11; Petition dated 10 March 2009.
[79] Id. at 139; Resignation Letter of Simeon B. Espiritu, Jr. dated 27 August 2001.
[80] Id.
[81] *Rollo* (G.R. No. 186641), p. 139; Resignation Letter of Simeon B. Espiritu, Jr. effective 15 October 2001.
[82] Id. at 149; Undated *Sinumpaang Salaysay* of Simeon B. Espiritu, Jr.

Similar to our earlier discussion, we find that his first courtesy resignation letter was also executed involuntarily. Thus, it cannot be the basis of a valid resignation; and thus, at that point, he was illegally terminated from his employment. He was, however, rehired by SME Bank under new management, although based on his allegations, he was not reinstated to his former position or to a substantially equivalent one.[83] Rather, he even suffered a reduction in benefits and a demotion in rank.[84] These led to his submission of another resignation letter effective 15 October 2001.[85]

We rule that these circumstances show that Simeon, Jr. was constructively dismissed. In *Peñaflor v. Outdoor Clothing Manufacturing Corporation*,[86] we have defined constructive dismissal as follows:

> Constructive dismissal is an involuntary resignation by the employee due to the harsh, hostile, and unfavorable conditions set by the employer and which arises when a clear discrimination, insensibility, or disdain by an employer exists and has become unbearable to the employee.[87]

Constructive dismissal exists where there is cessation of work, because "continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay" and other benefits.[88]

These circumstances are clearly availing in Simeon, Jr.'s case. He was made to resign, then rehired under conditions that were substantially less than what he was enjoying before the illegal termination occurred. Thus, for the second time, he involuntarily resigned from his employment. Clearly, this case is illustrative of constructive dismissal, an act prohibited under our labor laws.

II
SME Bank, Eduardo M. Agustin, Jr. and Peregrin de Guzman, Jr. are liable for illegal dismissal.

Having ruled on the illegality of the dismissal, we now discuss the issue of liability and determine who among the parties are liable for the claims of the illegally dismissed employees.

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[83] Id.
[84] Id.
[85] Id. at 139; Resignation Letter of Simeon B. Espiritu, Jr. effective 15 October 2001.
[86] G.R. No. 177114, 13 April 2010, 618 SCRA 208.
[87] Id.
[88] *Verdadero v. Barney Autolines Group of Companies Transport, Inc.*, G.R. No. 195428, 29 August 2012, 679 SCRA 545, 555.

The settled rule is that an employer who terminates the employment of its employees without lawful cause or due process of law is liable for illegal dismissal.[89]

None of the parties dispute that SME Bank was the employer of respondent employees. The fact that there was a change in the composition of its shareholders did not affect the employer-employee relationship between the employees and the corporation, because an equity transfer affects neither the existence nor the liabilities of a corporation. Thus, SME Bank continued to be the employer of respondent employees notwithstanding the equity change in the corporation. This outcome is in line with the rule that a corporation has a personality separate and distinct from that of its individual shareholders or members, such that a change in the composition of its shareholders or members would not affect its corporate liabilities.

Therefore, we conclude that, as the employer of the illegally dismissed employees before and after the equity transfer, petitioner SME Bank is liable for the satisfaction of their claims.

Turning now to the liability of Agustin, De Guzman and the Samson Group for illegal dismissal, at the outset we point out that there is no privity of employment contracts between Agustin, De Guzman and the Samson Group, on the one hand, and respondent employees on the other. Rather, the employment contracts were between SME Bank and the employees. However, this fact does not mean that Agustin, De Guzman and the Samson Group may not be held liable for illegal dismissal as corporate directors or officers. In *Bogo-Medellin Sugarcane Planters Association, Inc. v. NLRC*,[90] we laid down the rule as regards the liability of corporate directors and officers in illegal dismissal cases, as follows:

> Unless they have exceeded their authority, corporate officers are, as a general rule, not personally liable for their official acts, because a corporation, by legal fiction, has a personality separate and distinct from its officers, stockholders and members. However, this fictional veil may be pierced whenever the corporate personality is used as a means of perpetuating a fraud or an illegal act, evading an existing obligation, or confusing a legitimate issue. In cases of illegal dismissal, corporate directors and officers are solidarily liable with the corporation, where terminations of employment are done with malice or in bad faith.[91] (Citations omitted)

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[89] *Lambert Pawnbrokers and Jewelry Corp. v. Binamira*, G.R. No. 170464, 12 July 2010, 624 SCRA 705, 708.
[90] 357 Phil. 110 (1998).
[91] Id. at 127.

Thus, in order to determine the respective liabilities of Agustin, De Guzman and the Samson Group under the afore-quoted rule, we must determine, *first*, whether they may be considered as corporate directors or officers; and, *second*, whether the terminations were done maliciously or in bad faith.

There is no question that both Agustin and De Guzman were corporate directors of SME Bank. An analysis of the facts likewise reveals that the dismissal of the employees was done in bad faith. Motivated by their desire to dispose of their shares of stock to Samson, they agreed to and later implemented the precondition in the Letter Agreements as to the termination or retirement of SME Bank's employees. However, instead of going through the proper procedure, the bank manager induced respondent employees to resign or retire from their respective employments, while promising that they would be rehired by the new management. Fully relying on that promise, they tendered courtesy resignations or retirements and eventually found themselves jobless. Clearly, this sequence of events constituted a gross circumvention of our labor laws and a violation of the employees' constitutionally guaranteed right to security of tenure. We therefore rule that, as Agustin and De Guzman are corporate directors who have acted in bad faith, they may be held solidarily liable with SME Bank for the satisfaction of the employees' lawful claims.

As to spouses Samson, we find that nowhere in the records does it appear that they were either corporate directors or officers of SME Bank at the time the illegal termination occurred, except that the Samson Group had already taken over as new management when Simeon, Jr. was constructively dismissed. Not being corporate directors or officers, spouses Samson were not in legal control of the bank and consequently had no power to dismiss its employees.

Respondent employees argue that the Samson Group had already taken over and conducted an inventory before the execution of the share purchase agreement.[92] Agustin and De Guzman likewise argued that it was at Olga Samson's behest that the employees were required to resign from their posts.[93] Even if this statement were true, it cannot amount to a finding that spouses Samson should be treated as corporate directors or officers of SME Bank. The records show that it was Espiritu who asked the employees to tender their resignation and or retirement letters, and that these letters were actually tendered to him. [94] He then transmitted these letters to the representative of the Samson Group.[95] That the spouses Samson had to ask Espiritu to require the employees to resign shows that they were not in control of the corporation, and that the former shareholders – through

[92] *Rollo* (G.R. No. 184517), p. 441; Comment (To the Petition for Certiorari dated 14 February 2007) dated 20 April 2007.
[93] Id. at 396; Comment (re: Petition for Review under Rule 45) dated 19 December 2008.
[94] *Rollo* (G.R. No. 186641), pp. 134-140.
[95] Id. at 141; Letter dated 11 September 2001.

Espiritu – were still in charge thereof. As the spouses Samson were neither corporate officers nor directors at the time the illegal dismissal took place, we find that there is no legal basis in the present case to hold them in their personal capacities solidarily liable with SME Bank for illegally dismissing respondent employees, without prejudice to any liabilities that may have attached under other provisions of law.

Furthermore, even if spouses Samson were already in control of the corporation at the time that Simeon, Jr. was constructively dismissed, we refuse to pierce the corporate veil and find them liable in their individual steads. There is no showing that his constructive dismissal amounted to more than a corporate act by SME Bank, or that spouses Samson acted maliciously or in bad faith in bringing about his constructive dismissal.

Finally, as regards Aurelio Villaflor, while he may be considered as a corporate officer, being the president of SME Bank, the records are bereft of any evidence that indicates his actual participation in the termination of respondent employees. Not having participated at all in the illegal act, he may not be held individually liable for the satisfaction of their claims.

III
Respondent employees are entitled to separation pay, full backwages, moral damages, exemplary damages and attorney's fees.

The rule is that illegally dismissed employees are entitled to (1) either reinstatement, if viable, or separation pay if reinstatement is no longer viable; and (2) backwages.[96]

Courts may grant separation pay in lieu of reinstatement when the relations between the employer and the employee have been so severely strained; when reinstatement is not in the best interest of the parties; when it is no longer advisable or practical to order reinstatement; or when the employee decides not to be reinstated.[97] In this case, respondent employees expressly pray for a grant of separation pay in lieu of reinstatement. Thus, following a finding of illegal dismissal, we rule that they are entitled to the payment of separation pay equivalent to their one-month salary for every year of service as an alternative to reinstatement.

Respondent employees are likewise entitled to full backwages notwithstanding the grant of separation pay. In *Santos v. NLRC*,[98] we explained that an award of backwages restores the income that was lost by

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[96] *Robinsons Galleria/Robinsons Supermarket Corporation v. Ranchez*, G.R. No. 177937, 19 January 2011, 640 SCRA 135, 144.
[97] *DUP Sound Phils. v. Court of Appeals*, G.R. No. 168317, 21 November 2011, 660 SCRA 461, 473.
[98] 238 Phil. 161 (1987).

reason of the unlawful dismissal, while separation pay "provide[s] the employee with 'the wherewithal during the period that he is looking for another employment.'"[99] Thus, separation pay is a proper substitute only for reinstatement; it is not an adequate substitute for both reinstatement and backwages.[100] Hence, respondent employees are entitled to the grant of full backwages in addition to separation pay.

As to moral damages, exemplary damages and attorney's fees, we uphold the appellate court's grant thereof based on our finding that the forced resignations and retirement were fraudulently done and attended by bad faith.

WHEREFORE, premises considered, the instant Petitions for Review are **PARTIALLY GRANTED**.

The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 97510 dated 13 March 2008 and 1 September 2008, respectively, are hereby **REVERSED** and **SET ASIDE** insofar as it held **Abelardo P. Samson, Olga Samson and Aurelio Villaflor, Jr.** solidarily liable for illegal dismissal.

The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 97942 dated 15 January 2008 and 19 February 2009, respectively, are likewise **REVERSED** and **SET ASIDE** insofar as it held **Abelardo P. Samson, Olga Samson and Aurelio Villaflor, Jr.** solidarily liable for illegal dismissal.

We **REVERSE** our ruling in *Manlimos v. NLRC* insofar as it upheld that, in a stock sale, the buyer in good faith has no obligation to retain the employees of the selling corporation, and that the dismissal of the affected employees is lawful even absent a just or authorized cause.

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice

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[99] Id. at 167.
[100] Id.

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

(No part)
MARIANO C. DEL CASTILLO
Associate Justice

ROBERTO A. ABAD
Associate Justice

(On leave)
MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

NO PART
JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC MARIO VICTOR 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.

MARIA LOURDES P. A. SERENO
Chief Justice