

SECOND DIVISION

[G.R. No. 177498, January 18, 2012]

**STOLT-NIELSEN TRANSPORTATION GROUP, INC. AND CHUNG
GAI SHIP MANAGEMENT, PETITIONERS, VS. SULPECIO
MEDEQUILLO, JR., RESPONDENT.**

D E C I S I O N

PEREZ, J.:

Before the Court is a Petition for Review on *Certiorari*^[1] of the Decision^[2] of the First Division of the Court of Appeals in CA-G.R. SP No. 91632 dated 31 January 2007, denying the petition for *certiorari* filed by Stolt-Nielsen Transportation Group, Inc. and Chung Gai Ship Management (petitioners) and affirming the Resolution of the National Labor Relations Commission (NLRC). The dispositive portion of the assailed decision reads:

WHEREFORE, the petition is hereby **DENIED**. Accordingly, the assailed Decision promulgated on February 28, 2003 and the Resolution dated July 27, 2005 are **AFFIRMED**.^[3]

The facts as gathered by this Court follow:

On 6 March 1995, Sulpecio Madequillo (respondent) filed a complaint before the Adjudication Office of the Philippine Overseas Employment Administration (POEA) against the petitioners for illegal dismissal under a first contract and for failure to deploy under a second contract. In his complaint-affidavit,^[4] respondent alleged that:

1. On 6 November 1991(First Contract), he was hired by Stolt-Nielsen Marine Services, Inc on behalf of its principal Chung-Gai Ship Management of Panama as Third Assistant Engineer on board the vessel "Stolt Aspiration" for a period of nine (9) months;
2. He would be paid with a monthly basic salary of \$808.00 and a fixed overtime pay of \$404.00 or a total of \$1,212.00 per month during the employment period commencing on 6 November 1991;
3. On 8 November 1991, he joined the vessel MV "Stolt Aspiration";
4. On February 1992 or for nearly three (3) months of rendering service and while the vessel was at Batangas, he was ordered by the ship's master to disembark the vessel and repatriated back to Manila for no reason or explanation;
5. Upon his return to Manila, he immediately proceeded to the petitioner's office where he was transferred employment with

- another vessel named MV "Stolt Pride" under the same terms and conditions of the First Contract;
6. On 23 April 1992, the Second Contract was noted and approved by the POEA;
 7. The POEA, without knowledge that he was not deployed with the vessel, certified the Second Employment Contract on 18 September 1992.
 8. Despite the commencement of the Second Contract on 21 April 1992, petitioners failed to deploy him with the vessel MV "Stolt Pride";
 9. He made a follow-up with the petitioner but the same refused to comply with the Second Employment Contract.
 10. On 22 December 1994, he demanded for his passport, seaman's book and other employment documents. However, he was only allowed to claim the said documents in exchange of his signing a document;
 11. He was constrained to sign the document involuntarily because without these documents, he could not seek employment from other agencies.

He prayed for actual, moral and exemplary damages as well as attorney's fees for his illegal dismissal and in view of the Petitioners' bad faith in not complying with the Second Contract.

The case was transferred to the Labor Arbiter of the DOLE upon the effectivity of the Migrant Workers and Overseas Filipinos Act of 1995.

The parties were required to submit their respective position papers before the Labor Arbiter. However, petitioners failed to submit their respective pleadings despite the opportunity given to them.^[5]

On 21 July 2000, Labor Arbiter Vicente R. Layawen rendered a judgment^[6] finding that the respondent was constructively dismissed by the petitioners. The dispositive portion reads:

WHEREFORE, premises considered, judgment is hereby rendered, declaring the respondents guilty of constructively dismissing the complainant by not honoring the employment contract. Accordingly, respondents are hereby ordered jointly and solidarily to pay complainant the following:

1. \$12,537.00 or its peso equivalent at the time of payment.^[7]

The Labor Arbiter found the first contract entered into by and between the complainant and the respondents to have been novated by the execution of the second contract. In other words, respondents cannot be held liable for the first contract but are clearly and definitely liable for the breach of the second contract.^[8] However, he ruled that there was no substantial evidence to grant the prayer for

moral and exemplary damages.^[9]

The petitioners appealed the adverse decision before the National Labor Relations Commission assailing that they were denied due process, that the respondent cannot be considered as dismissed from employment because he was not even deployed yet and the monetary award in favor of the respondent was exorbitant and not in accordance with law.^[10]

On 28 February 2003, the NLRC affirmed with modification the Decision of the Labor Arbiter. The dispositive portion reads:

WHEREFORE, premises considered, the decision under review is hereby, MODIFIED BY DELETING the award of overtime pay in the total amount of Three Thousand Six Hundred Thirty Six US Dollars (US \$3,636.00).

In all other respects, the assailed decision so stands as, AFFIRMED.^[11]

Before the NLRC, the petitioners assailed that they were not properly notified of the hearings that were conducted before the Labor Arbiter. They further alleged that after the suspension of proceedings before the POEA, the only notice they received was a copy of the decision of the Labor Arbiter.^[12]

The NLRC ruled that records showed that attempts to serve the various notices of hearing were made on petitioners' counsel on record but these failed on account of their failure to furnish the Office of the Labor Arbiter a copy of any notice of change of address. There was also no evidence that a service of notice of change of address was served on the POEA.^[13]

The NLRC upheld the finding of unjustified termination of contract for failure on the part of the petitioners to present evidence that would justify their non-deployment of the respondent.^[14] It denied the claim of the petitioners that the monetary award should be limited only to three (3) months for every year of the unexpired term of the contract. It ruled that the factual incidents material to the case transpired within 1991-1992 or before the effectivity of Republic Act No. 8042 or the Migrant Workers and Overseas Filipinos Act of 1995 which provides for such limitation.^[15]

However, the NLRC upheld the reduction of the monetary award with respect to the deletion of the overtime pay due to the non-deployment of the respondent.^[16]

The Partial Motion for Reconsideration filed by the petitioners was denied by the NLRC in its Resolution dated 27 July 2005.^[17]

The petitioners filed a Petition for *Certiorari* before the Court of Appeals alleging grave abuse of discretion on the part of NLRC when it affirmed with modification the ruling of the Labor Arbiter. They prayed that the Decision and Resolution promulgated by the NLRC be vacated and another one be issued dismissing the complaint of the respondent.

Finding no grave abuse of discretion, the Court of Appeals AFFIRMED the Decision of

the labor tribunal.

The Court's Ruling

The following are the assignment of errors presented before this Court:

I.

THE COURT A QUO ERRED IN FINDING THAT THE SECOND CONTRACT NOVATED THE FIRST CONTRACT.

- A. THERE WAS NO NOVATION OF THE FIRST CONTRACT BY THE SECOND CONTRACT; THE ALLEGATION OF ILLEGAL DISMISSAL UNDER THE FIRST CONTRACT MUST BE RESOLVED SEPARATELY FROM THE ALLEGATION OF FAILURE TO DEPLOY UNDER THE SECOND CONTRACT.
- B. THE ALLEGED ILLEGAL DISMISSAL UNDER THE FIRST CONTRACT TRANSPIRED MORE THAN THREE (3) YEARS AFTER THE CASE WAS FILED AND THEREFORE HIS CASE SHOULD HAVE BEEN DISMISSED FOR BEING BARRED BY PRESCRIPTION.

II.

THE COURT A QUO ERRED IN RULING THAT THERE WAS CONSTRUCTIVE DISMISSAL UNDER THE SECOND CONTRACT.

- A. IT IS LEGALLY IMPOSSIBLE TO HAVE CONSTRUCTIVE DISMISSAL WHEN THE EMPLOYMENT HAS NOT YET COMMENCED.
- B. ASSUMING THERE WAS OMISSION UNDER THE SECOND CONTRACT, PETITIONERS CAN ONLY BE FOUND AS HAVING FAILED IN DEPLOYING PRIVATE RESPONDENT BUT WITH VALID REASON.

III.

THE COURT A QUO ERRED IN FAILING TO FIND THAT EVEN ASSUMING THERE WAS BASIS FOR HOLDING PETITIONER LIABLE FOR "FAILURE TO DEPLOY" RESPONDENT, THE POEA RULES PENALIZES SUCH OMISSION WITH A MERE "REPRIMAND."^[18]

The petitioners contend that the first employment contract between them and the private respondent is different from and independent of the second contract subsequently executed upon repatriation of respondent to Manila.

We do not agree.

Novation is the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one which extinguishes or modifies the first, either by

changing the object or principal conditions, or, by substituting another in place of the debtor, or by subrogating a third person in the rights of the creditor. In order for novation to take place, the concurrence of the following requisites is indispensable:

1. There must be a previous valid obligation,
2. There must be an agreement of the parties concerned to a new contract,
3. There must be the extinguishment of the old contract, and
4. There must be the validity of the new contract.^[19]

In its ruling, the Labor Arbiter clarified that novation had set in between the first and second contract. To quote:

xxx [T]his office would like to make it clear that the first contract entered into by and between the complainant and the respondents is deemed to have been novated by the execution of the second contract. In other words, respondents cannot be held liable for the first contract but are clearly and definitely liable for the breach of the second contract.^[20]

This ruling was later affirmed by the Court of Appeals in its decision ruling that:

Guided by the foregoing legal precepts, it is evident that novation took place in this particular case. The parties impliedly extinguished the first contract by agreeing to enter into the second contract to placate Medequillo, Jr. who was unexpectedly dismissed and repatriated to Manila. The second contract would not have been necessary if the petitioners abided by the terms and conditions of Madequillo, Jr.'s employment under the first contract. The records also reveal that the 2nd contract extinguished the first contract by changing its object or principal. These contracts were for overseas employment aboard different vessels. The first contract was for employment aboard the MV "Stolt Aspiration" while the second contract involved working in another vessel, the MV "Stolt Pride." Petitioners and Madequillo, Jr. accepted the terms and conditions of the second contract. Contrary to petitioners' assertion, the first contract was a "previous valid contract" since it had not yet been terminated at the time of Medequillo, Jr.'s repatriation to Manila. The legality of his dismissal had not yet been resolved with finality. Undoubtedly, he was still employed under the first contract when he negotiated with petitioners on the second contract. As such, the NLRC correctly ruled that petitioners could only be held liable under the second contract.^[21]

We concur with the finding that there was a novation of the first employment contract.

We reiterate once more and emphasize the ruling in *Reyes v. National Labor*