

THIRD DIVISION

[G.R. No. 175371, April 30, 2008]

**BENITO J. BRIZUELA, PETITIONER, VS. ABRAHAM DINGLE AND
NICANDRO LEGASPI, RESPONDENTS.**

D E C I S I O N

CHICO-NAZARIO, J.:

Assailed in this Petition for *Certiorari* under Rule 65 of the Rules of Court is the Resolution^[1] dated 3 May 2006 of the Court of Appeals in CA-G.R. SP No. 94005 denying the prayer for the issuance of a Temporary Restraining Order (TRO) of petitioner Benito J. Brizuela; and the Resolution^[2] dated 20 September 2006 of the same court denying petitioner's Motion for Reconsideration.

Petitioner is the president and registered owner of 49% of the authorized capital stock of Philippine Media Post, Inc. (PMPI),^[3] the publisher of the newspaper Philippine Post. Respondent Abraham Dingle was hired by PMPI as Associate Editor under probation on 20 July 1999; and was eventually confirmed as a regular Associate Editor on 23 September 1999, with a salary of P22,000.00 per month. On the other hand, respondent Nicandro Legaspi started working at PMPI as City Editor on 9 November 1999, with a monthly salary of P22,000.00; and was eventually promoted as News Editor on 7 January 2000, with a monthly salary of P25,000.00.

On 19 May 2003,^[4] respondents filed a Complaint with the Labor Arbiter against PMPI and petitioner for nonpayment and/or underpayment of salaries, editorial fees, legal and holiday pay, premium pay for holiday pay, service incentive leave pay, 13th month pay, vacation and sick leave pay, separation pay, moral, exemplary, and actual damages, and attorney's fees. According to the Complaint:

4. As Associate Editor of the Post, [herein respondent] Dingle was tasked, among other things, to decide main news stories, edit some of the reporter's copies and supervise the making up of the front and jump pages of the newspaper until they are ready for the printing press. On his part, [herein respondent] Legaspi, as News Editor, was tasked, among other things, to distribute reporters' copies to sub-editors, suggests to top editors possible front page stories, check all news pages, help edit approved stories and puts them in the proper pages. Eventually, both [respondents], as editors, were also tasked to write editorials when this writing chore was transferred from non-staff writers to the editors;
5. Due to the demands of their work, [respondents] Dingle and Legaspi had a six (6) day week schedule and at times had to work even on Sundays and holidays (legal and special) but they were not paid for said overtime work at all;

x x x x

14. On 16 November 2000, Post employees (including [respondents] Dingle and Legaspi), did not put out an issue of the Post anymore since they refused to work any further as [PMPI and herein petitioner Brizuela] refused to pay them their salaries and other benefits contrary to what they have repeatedly promised earlier;
15. Sometime in December 2000, [respondents] Dingle and Legaspi visited [petitioner] Brizuela to find out what was happening to their unpaid salaries, editorial fees and other employment benefits but were informed by [petitioner] Brizuela that he owed them nothing as he had settled everything with Executive Editor Mariano. [Respondents] insisted that [petitioner] Brizuela still owed them a lot in terms of salaries, editorial fees and other benefits but the latter told them to prove their claims. When [respondents] asked to see the Post records, [petitioner] Brizuela lamely said he did not know where they were.^[5]

On the other hand, petitioner brought to the attention of the Labor Arbiter that PMPI had already stopped publishing Philippine Post and altogether ceased operations in the year 2000 because of grave financial losses. He averred that PMPI was in "deep financial trouble" and its publication turned out to be a losing venture.^[6]

Settlement efforts among the parties failed, for which reason, they were directed by the Labor Arbiter to file their respective position papers.

PMPI never appeared before nor filed any pleading with the Labor Arbiter.^[7] Respondents thus moved that PMPI be considered to have waived its right to present evidence in its defense.

The Labor Arbiter concluded that while closure of an establishment due to serious business losses is one of the authorized causes for termination of employment, under the Labor Code,^[8] nonetheless, she found that there is no conclusive factual and legal basis for PMPI to close its operations on the ground of serious business losses.^[9]

In a Decision dated 30 April 2004, Labor Arbiter Virginia T. Luyas-Azarraga held:

WHEREFORE, premises considered, [PMPI and herein petitioner] Benito Brizuela are hereby jointly and severally ordered to pay [herein respondents], as follows:

1. Abraham Dingle - P187,000.00
2. Nicandro Legaspi - P212,000.00

representing separation pay, unpaid salaries and 13th month pay plus 10% of the total award as Attorney's fees.

All other claims are dismissed.^[10]

Respondents and petitioner appealed the foregoing Decision of the Labor Arbiter to the National Labor Relations Commission (NLRC). Respondents appealed in view of the denial of the Labor Arbiter of their claim for editorial fees, overtime pay, premium pay for holiday and rest day, damages, legal and holiday pay, service incentive leave pay and vacation and sick leave pay. On the other hand, petitioner appealed the finding by the Labor Arbiter that he is personally liable, that PMPI failed to prove serious business losses, and that the respondents are entitled to separation pay.^[11]

In their Comment^[12] to petitioner's Notice of Appeal with Memorandum, respondents prayed for the dismissal of petitioner's appeal emphasizing that petitioner did not post the required *supersedeas* bond in the amount equivalent to the monetary award for the perfection of the appeal. Petitioner countered by filing a Motion for Additional Time to Post Appeal Bond, which respondents again opposed.^[13] Petitioner filed a Motion to Reduce Bond and posted a cash bond in the amount of P5,000.00.^[14] On 31 August 2004, the NLRC issued an Order directing petitioner to post additional bond^[15] in the amount of P394,000.00.^[16] Petitioner asked for an additional period of 15 days to comply with said NLRC Order in view of the short notice given to him.^[17] Petitioner then filed a Motion for Leave to Admit Additional Appeal Bond praying that "this Honorable Commission admit the herein attached supersedeas bond issued by the Premier Insurance & Surety Corporation dated 6 October 2004 in the amount of P394,000.00, along with supporting documents and, thereafter, give due course to petitioner's appeal."

Respondents objected to the additional appeal bond being posted by petitioner stating that it was grossly defective because said bond in the amount of P394,000.00 was issued by Premier Insurance Surety Corporation on behalf of the assured, PMPI, which had no legal standing in the appeal.

In its Decision dated 28 October 2005, the NLRC ruled as follows:

[Herein petitioner] Brizuela contends that [PMPI] is not liable to pay [herein respondents] their separation pay because [PMPI] closed its business due to serious financial losses. We do not agree. [Petitioner] presented the audited financial statements of [PMPI] for the years 2000 and 2001. A perusal of said audited financial statements reveals that [PMPI] had a net loss for the year 1999 and 2000 of P40,062,972.96 and P18,233,157.44 respectively while in the year 2001 [PMPI] suffered net loss in the amount of P2,925,003.45. Contrary to [petitioner's] allegations, the losses of income of [PMPI] is actually diminishing or abating indicating that the business is picking up and retrenchment being a drastic move should no longer be resorted to. (PSBA v. NLRC, 223 SCRA 305.)

Moreover, records do not show that [petitioner] complied with the requirements for valid closure because it failed to serve a written notice to the employees as well as to the Department of Labor and Employment at least one (1) month before the intended date of closure as required under Article 283 of the Labor Code. The notice to DOLE is necessary to enable the proper authorities to determine if such closure is being done in good faith or resorted to as a means to evade compliance with the

obligations of the employer to the employees affected. If indeed, closure of [PMPI] was done in good faith, the [petitioner] should have complied with the requirement of due notice to effect a valid closure.

However, we find [petitioner] Benito Brizuela not jointly and severally liable to [respondents] at this time. It is settled that corporations have a separate personality from its stockholders and officers. Said [petitioner] Brizuela is held liable in his official capacity.

[Respondents], on appeal, aver that the Labor Arbiter committed grave abuse of discretion and serious errors in law and findings of facts when she denied [respondents'] claims for editorial fees, overtime pay, holiday pay, premium pay for holidays and rest days as well as damages. We do not agree. The said claims, even if not specifically refuted by [petitioner] must nevertheless be proven by [respondents] to be entitled to the same. As correctly held by the Labor Arbiter, mere allegation is not enough. In this connection, the Supreme Court, in *Masagana Concrete Products v. NLRC*, G.R. No. 106916, promulgated 3 September 1999 citing *PNB v. CA* (266 SCRA 136) and *Martinez v. NLRC* (272 SCRA 793), has held that mere allegation is neither equivalent to proof nor evidence.

However, we find [respondents] entitled to their vacation and sick leave pay as shown by Annex "E" (pp. 36 to 39, Records) of their position paper which was duly prepared and signed by [PMPI's] Personnel Supervisor and Administrative Manager.

Lastly, the award of 10% attorney's fees shall be based on unpaid salaries, 13th month pay and vacation/sick leaves, follows Art. 111 of the Labor Code.

WHEREFORE, the decision dated 30 April 2004 is hereby MODIFIED. [PMPI] is held liable to pay [respondents] Abraham Dingle and Nicandro Legaspi additional amount of P8,407.64 and P6,568.48, respectively, representing their vacation and sick leave pay in addition to awards decreed in the Decision. The award of 10% attorney's fees shall be based on awards representing unpaid salaries, 13th month pay, vacation/sick leaves. [Petitioner] Benito Brizuela is liable in his official capacity.^[18]

Respondents and petitioner filed their respective Motions for Partial Reconsideration of the 28 October 2005 Decision of the NLRC. The motions of the parties were, however, denied by the NLRC in a Resolution dated 31 January 2006.^[19] Petitioner then filed a Petition for *Certiorari* under Rule 65 with the Court of Appeals, docketed as CA-G.R. SP No. 94005, assailing the Decision dated 28 October 2005 of the NLRC.^[20]

On 11 April 2006, respondents filed with the Labor Arbiter a Motion for the issuance of a Writ of Execution to implement the 28 October 2005 Decision of the NLRC.^[21]

Alarmed, petitioner filed an application for TRO and Writ of Preliminary Injunction with the Court of Appeals,^[22] in which he averred that:

1. On 11 April 2006, private respondents filed, with the Labor Arbiter *a quo*, a Motion for Issuance of Writ of Execution dated 3 April 2006 praying for the issuance of a writ of execution to implement public respondent NLRC's Decision dated 28 October 2005 which decision is subject of the instant petition.

2. Private Respondents' endeavor to execute public respondent's Decision dated 28 October 2006 is an attempt to pre-empt and to render moot whatever decision this Honorable Court may make in the instant case.

3. Execution of public respondent NLRC's Decision dated 28 October 2005 will work injustice, and cause grave and irreparable injury, to petitioner. Considering that private respondents are attempting to do exactly this, the matter of issuance of a temporary restraining order becomes one of utmost and absolute importance. Thus, it is prayed that a writ of preliminary injunction enjoining public respondent National Labor Relations Commission and the Labor Arbiter *a quo* from implementing the questioned resolution be issued by this Honorable Court.

4. Petitioner is ready and able to post a bond in such amount as this Honorable Court may fix, conditioned to answer for all damages that private respondents may directly suffer by the issuance by this Honorable Court of a restraining order or a preliminary injunction, should it be finally adjudged that petitioner was not entitled thereto.

PRAYER

WHEREFORE, petitioner respectfully prays that this Honorable Court:

1. Issue a temporary restraining order immediately upon the filing of this petition directing the public respondent NLRC and the Labor Arbiter *a quo* to cease and desist from implementing the Decision dated 28 October 2005 in NLRC CA No. 040868-04 (NLRC-NCR Case No. 00-05-05876-03);

2. Thereafter, issue a writ of preliminary injunction directing the public respondent NLRC and the Labor Arbiter *a quo* to cease and desist from implementing the Decision dated 28 October 2005 in NLRC CA No. 040868-04 (NLRC-NCR Case No. 00-05-05876-03).

The Court of Appeals denied petitioner's application for the issuance of a TRO in a Resolution^[23] dated 3 May 2006, ruling thus:

Petitioner's prayer for the issuance of a Temporary Restraining Order is hereby DENIED.

Petitioner filed a Motion for Reconsideration^[24] of the aforementioned Resolution, which the Court of Appeals again denied in another Resolution dated 20 September 2006,^[25] finding that: