325 Phil. 145

FIRST DIVISION

[G.R. No. 101699, March 13, 1996]

BENJAMIN A. SANTOS, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, HON. LABOR ARBITER FRUCTUOSO T. AURELLANO AND MELVIN D. MILLENA, RESPONDENTS.

D E C I S I O N

VITUG, J.:

In a petition for *certiorari* under Rule 65 of the Rules of Court, petitioner Benjamin A. Santos, former President of the Mana Mining and Development Corporation ("MMDC"), questions the resolution of the National Labor Relations Commission ("NLRC") affirming the decision of the Labor Arbiter Fructouso T. Aurellano who, having held illegal the termination of employment of private respondent Melvin D. Millena, has ordered petitioner MMDC, as well as its president (herein petitioner) and the executive vice-president in their personal capacities, to pay Millena his monetary claims.

Private respondent, on 01 October 1985, was hired to be the project accountant for MMDC's mining operations in Gatbo, Bacon, Sorsogon. On 12 August 1986, private respondent sent to Mr. Gil Abaño, the MMDC corporate treasurer, a memorandum calling the latter's attention to the failure of the company to comply with the withholding tax requirements of, and to make the corresponding monthly remittances to, the Bureau of Internal Revenue ("BIR") on account of delayed payments of accrued salaries to the company's laborers and employees.[1]

In a letter, dated 08 September 1986, Abano advised private respondent thusly:

> "Regarding Gatbo operations, as you also are aware, the rainy season is now upon us and the peace and order condition in Sorsogon has deteriorated. It is therefore, the board's decision that it would be useless for us to continue operations, especially if we will always be in the 'hole,' so to speak. Our first funds receipts will be used to pay all our debts. We will stop production until the advent of the dry season, and until the insurgency problem clears. We will undertake only necessary maintenance and repair work and will keep our overhead down to the minimum manageable level. Until we resume full-scale operations, we will not need a project accountant as there will be very little paper work at the site, which can be easily handled at Makati.
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> "We appreciate the work you have done for Mana and we will not hesitate to take you back when we resume work at Gatbo. However it would be unfair to you if we kept you in the payroll and deprive you of the opportunity to earn more, during this period of Mana's crisis."[2]

Private respondent expressed "shock" over the termination of his employment. He complained that he would not have resigned from the Sycip, Gorres & Velayo accounting firm, where he was already a senior staff auditor, had it not been for the assurance of a "continuos job" by MMDC's Engr. Rodillano E. Velasquez. Private respondent requested that he be reimbursed the "advances" he had made for the company and be paid his "accrued salaries/claims."[3]

The claim was not heeded; on 20 October 1986, private respondent filed with the NLRC Regional Arbitration, Branch No. V, in Legazpi City, a complaint for illegal dismissal, unpaid salaries, 13th month pay, overtime pay, separation pay and incentive leave pay against MMDC and its two top officials, namely, herein petitioner Benjamin A. Santos (the President) and Rodillano A. Velasquez (the executive vice-president). In his complaint-affidavit (position paper), submitted on 27 October 1986, Millena alleged, among other things, that his dismissal was merely an offshoot of his letter of 12 August 1986 to Abaño about the company's inability to pay its workers and to remit withholding taxes to the BIR.[4]

A copy of the notice and summons was served on therein respondent (MMDC, Santos and Velasquez) on 29 October 1986.[5] At the initial hearing on 14 November 1986 before the Labor Arbiter, only the complaint, Millena, appeared; however, Atty. Romeo Perez, in representation of the respondents, requested by telegram that the hearing be reset to 01 December 1986. Although the request was granted by the Labor Arbiter, private respondent was allowed, nevertheless, to present his evidence ex-parte at that initial hearing.

The scheduled 01st December 1986 hearing was itself later reset to 19 December 1986. On 05 December 1986, the NLRC in Legazpi City again received a telegram from Atty. Perez asking for fifteen (15) days within which to submit the respondents' position paper. On 19 December 1986, Atty. Perez sent yet another telegram seeking a further postponement of the hearing and asking for a period until 15 January 1987 within which to submit the position paper.

On 15 January 1987, Atty. Perez advised the NLRC in Legazpi City that the position paper had finally been transmitted through the mail and that he was submitting the case for resolution without further hearing. The position paper was received by the Legazpi City NLRC office on 19 January 1987. Complainant Millena filed, on 26 February 1987, his rejoinder to the position paper.

On 27 July 1988, Labor Arbiter Fructouso T. Aurellano, finding no valid cause for terminating complainant's employment, ruled, citing this Court's pronouncement in Construction & Development Corporation of the Philippines vs. Leogardo, Jr.[6] that a partial closure of an establishment due to losses was a retrenchment measure that rendered the employer liable for unpaid salaries and other monetary claims. The Labor Arbiter adjudged:

> "WHEREFORE, the respondents are hereby ordered to pay the petitioner the amount of P37,132.25 corresponding to the latter's unpaid salaries and advances: P5,400.00 for petitioner's 13th month pay; P3,340.95 as service incentive leave pay; and P5,400.00 as separation pay. The

respondents are further ordered to pay the petitioner 10% of the monetary awards as attorney's fees.

"All other claims are dismissed for lack of sufficient evidence.

"SO ORDERED."[7]

Alleging abuse of discretion by the Labor Arbiter, the company and its co-respondents filed a "motion for reconsideration and/or appeal."[8] The motion/ appeal was forthwith indorsed to the Executive Director of the NLRC in Manila.

In a resolution, dated 04 September 1989, the NLRC[9] affirmed the decision of the Labor Arbiter. It held that the reasons relied upon by MMDC and its co-respondents in the dismissal of Millena, i.e., the rainy season, deteriorating peace and order situation and little paperwork, were "not causes mentioned under Article 282 of the Labor Code of the Philippines" and that Millena, being a regular employee, was "shielded by the tenurial clause mandated under the law."[10]

A writ of execution correspondingly issued; however, it was returned unsatisfied for the failure of the sheriff to locate the offices of the corporation in the address indicated. Another writ of execution and an order of garnishment was thereupon served on petitioner at his residence.

Contending that he had been denied due process, petitioner filed a motion for reconsideration of the NLRC' s resolution along with a prayer for the quashal of the writ of execution and order of garnishment. He averred that he had never received any notice, summons or even a copy of the complaint; hence, he said, the Labor Arbiter at no time had acquired jurisdiction over him.

On 16 August 1991, the NLRC[11] dismissed the motion for reconsideration. Citing Section 2, Rule 13,[12] and Section 13, Rule 14,[13] of the Rules of Court, it ruled that the Regional Arbitration office had not, in fact, been remiss in the observance of the legal processes for acquiring jurisdiction over the case and over the persons of the respondents therein. The NLRC was also convinced that Atty. Perez had been the authorized counsel of MMDC and its two most ranking officers.

In holding petitioner personally liable for private respondent's claim, the NLRC cited Article 289[14] of the Labor Code and the ruling in *A.C. Ransom Labor Union-CCLU vs. NLRC*[15] to the effect that "(t)he responsible officer of an employer corporation (could) be held personally, not to say even criminally, liable for non-payment of backwages," and that of *Gudez vs. NLRC*[16] which amplified that "where the employer corporation (was) no longer existing and unable to satisfy the judgment in favor of the employee, the officer should be liable for acting on behalf of the corporation."

In the instant petition for *certiorari,* petitioner Santos reiterates that he should not have been adjudged personally liable by public respondents, the latter not having validly acquired jurisdiction over his person whether by personal service of summons or by substituted service under Rule 19 of the Rules of Court.

Petitioner' s contention is unacceptable. The fact that Atty. Romeo B. Perez has been able to timely ask for a deferment of the initial hearing on 14 November 1986, coupled with his subsequent active participation in the proceedings, should disprove the supposed want of service of legal process. Although as a rule, modes of service of summons are strictly followed in order that the court may acquire jurisdiction over the person of a defendant,[17] such procedural modes, however, are liberally construed in quasi-judicial proceedings, substantial compliance with the same being considered adequate.[18] Moreover, jurisdiction over the person of the defendant in civil cases is acquired not only by service of summons but also by voluntary appearance in court and submission to its authority.[19] "Appearance" by a legal advocate is such "voluntary submission to a court's jurisdiction."[20] It may be made not only by actual physical appearance but likewise by the submission of pleadings in compliance with the order of the court or tribunal.

To say that petitioner did not authorize Atty. Perez to represent him in the case[21] is to unduly tax credulity. Like the Solicitor General, the Court likewise considers it unlikely that Atty. Perez would have been so irresponsible as to represent petitioner if he were not, in fact, authorized.[22] Atty. Perez is an officer of the court, and he must be presumed to have acted with due propriety. The employment of a counsel or the authority to employ an attorney, it might be pointed out, need not be proved in writing; such fact could inferred from circumstantial evidence.[23] Petitioner was not just an ordinary official of the MMDC; he was the President of the company.

Petitioner, in any event, argues that public respondents have gravely abused their discretion "in finding petitioner solidarily liable with MMDC even (in) the absence of bad faith and malice on his part."[24] There is merit in this plea.

A corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. The rule is that obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities. Nevertheless, being a mere fiction of law, peculiar situations or valid grounds can exist to warrant, albeit done sparingly, the disregard of its independent being and the lifting of the corporate veil.[25] As a rule, this situation might arise when a corporation is used to evade a just and due obligation or to justify a wrong,[26] to shield or perpetrate fraud,[27] to carry out similar other unjustifiable aims or intentions, or as a subterfuge to commit injustice and so circumvent the law.[28] In Tramat Mercantile, Inc., vs. Court of Appeals,[29] the Court has collated the settled instances when, without necessarily piercing the veil of corporate fiction, personal civil liability can also be said to lawfully attach to a corporate director, trustee or officer; to wit: When"

> "(1) He assents (a) to a patently unlawful act of the corporation, or (b) for bad faith or gross negligence in directing its affairs, or (c) for conflict of interest, resulting in damages to the corporation, its stockholders or other persons;
>
> "(2) He consents to the issuance of watered stocks or who, having knowledge thereof, does not forthwith file with the corporate secretary his written objection thereto;