

ELEVENTH DIVISION

[CA-G.R. SP. NO. 121888, March 10, 2014]

SAN ANTONIO HAULERS, INC., REP. BY BERNARDO L. ALMENDRALA, PRESIDENT & GENERAL MANAGER, PETITIONERS, VS. ATTY. RICARDO S. MARTINEZ, SR. ANDRHOEL F. JACOBO, REGIONAL DIRECTOR AND SHERIFF, RESPECTIVELY, REGION IV-A CALABARZON, DEPARTMENT OF LABOR AND EMPLOYMENT, RESPONDENTS.

D E C I S I O N

ANTONIO-VALENZUELA, J.:

This is the Petition For Certiorari With Prayer For The Issuance of A Temporary Restraining Order (TRO) and/or Preliminary Injunction^[1] filed by the "San Antonio Haulers Inc., represented by Bernardo L. Almendrala, President and General Manager"("petitioner"). Named as respondents are "Atty. Ricardo S. Martinez, Sr., and Rhoel F. Jacobo, Regional Director and Sheriff, respectively, Region IV-A CALABARZON, Department of Labor and Employment" ("respondents").

This Petition imputes grave abuse of discretion amounting to lack of jurisdiction on the part of the named respondents, and seeks to enjoin the implementation of the Alias Writ of Execution^[2] issued by respondent Atty. Martinez in LSED Case No. RO400-0901-CI-005-009, and the Notice of Levy Upon Personal Properties Pursuant To The Alias Writ of Execution dated 13 October 2011^[3] issued by respondent Sheriff Jacobo.

FACTS

On 5 January 2009, Marlon Aquino filed the Complaint docketed as LSED Case No. RO400-0901-CI-005-009^[4] before the Department of Labor And Employment Region IV-A CALABARZON for non payment of legal/special holiday pay, 13th month pay, overtime pay, and night shift differential, and underpayment of legal/special holiday pay, 13th month pay, and overtime pay. Named as respondents in LSED Case No. RO400-0901-CI-005-009 were "San Antonio Haulers/Bernardo Almendrala."

On 11 June 2009, the respondent Atty. Martinez issued the Order,^[5] the dispositive portion of which read:

WHEREFORE, premises considered, respondent SAN ANTONIO HAULERS, INC. is hereby ordered to pay the affected employees within ten (10) calendar days upon receipt hereof the aggregate amount of TWELVE MILLION THIRTY TWO THOUSAND SIX HUNDRED NINE PESOS AND 58/100 (P12,032,609.58) representing underpayment of wages, non-

payment of regular holiday pay, overtime pay, night shift differential pay, 13th month pay and salary, broken down as follows:

Not satisfied with the Order dated 11 June 2009, the "San Antonio Haulers Inc., represented by Bernardo L. Almendrala, Its President And General Manager," filed a petition for certiorari before the Court of Appeals, docketed as CA GR SP. 112503.

During the pendency of CA-GR SP. 112503, and when the efficacy of the temporary restraining order issued by the Sixteenth Division expired, the prevailing party in LSED Case No. R0400-0901-CI-005-009 moved for the execution of the Order dated 11 June 2009. Correspondingly, the DOLE issued the Writ of Execution on 3 August 2011, and subsequently, the Alias Writ of Execution.^[6]

On 2 November 2011, the petitioner filed this Petition For Certiorari, docketed as CA-G.R. SP. No. 121888. Essentially, this Petition questions the propriety of the writ issued to implement the DOLE Order of 11 June 2009, allegedly because the writ varied the judgment when it ordered the implementation of the judgment against Bernardo Almendrala, even if the Order dated 11 June 2009 did not include Almendrala.

On 24 February 2012, during the pendency of this case (CA-GR SP. 121888) the Sixteenth Division of this Court issued the Decision^[7] in CA-G.R. SP. 112503 which affirmed with modification the Order of 11 June 2009, and ordered the remand of LSED Case No. R0400-00901-CI-005-009 to the DOLE for the re-computation of the monetary awards.

COURT'S RULING

This Petition must be dismissed for the following reasons: the Sixteenth Division of this Court, in its Decision dated 24 February 2012 in CA-G.R. SP. 112503 has modified the Order of 11 June 2009, and ordered the DOLE to re-compute the monetary awards for the affected employees, thus the validity of the Alias Writ of Execution has become moot; the Petition did not comply with Rule 65, Section 5,^[8] and Rule 46, Section 3^[9] of the Rules of Court (i.e.: it did not join as party respondent, Marlon Aquino, the person(s) interested in sustaining the proceedings before the DOLE CALABARZON; it does not contain proof of service of a copy of the Petition on the indispensable party Marlon Aquino), thus pursuant to Rule 46, Section 3 of the Rules of Court, we dismiss this Petition; since the Petition failed to include the indispensable party Marlon Aquino, and the petitioner did not serve copy of the Petition on such indispensable party, this court did not serve on the indispensable party a copy of an order indicating our initial action on the petition, thereby this Court did not acquire jurisdiction over the person of the indispensable party Marlon Aquino (as provided in Rule 46, Section 4^[10] of the Rules of Court).

Upon these reasons, we **DISMISS** the Petition For Certiorari.

IT IS SO ORDERED.

Veloso (Chairperson) and Lantion, JJ., concur.

^[1] C.A. Rollo, p. 3.