

CARLO DE LEON, PETITIONER, VS. SOCIAL SECURITY SYSTEM, RESPONDENT.

Ponente: BUESER, J.

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BUESER, J.:

Before this Court is a Petition for Review seeking the nullification and reversal of the Resolution dated 22 December 2009[1] issued by the Social Security Commission (“Commission”) in the present case for the collection of delinquent SS contributions and corresponding penalties filed by the Social Security System (“SSS”) against petitioner Carlo De Leon (“Petitioner”) and his co-respondents below, i.e., Better Building, Inc. (“Better Building”), John Paul Anthony Warne, Paula Ann Warne, Orlando A. Zulueta and Robert Jaworski.

Granting said petition, the Commission ordered Better Building and its impleaded officers and directors to pay the unremitted SS contributions and penalties, the dispositive portion of which reads in this wise:

“WHEREFORE, the petition is granted.

Respondents are ordered to pay the SSS, within thirty (30) days from receipt hereof, the balance of the unremitted SS contributions of its seventy (70) complaining employees for the period January 1990 to February 2007 amounting to Five Hundred Twenty-Seven Thousand One Hundred Ninety-Seven Pesos (P527,197.00) and the 3% per month penalty imposed thereon for late remittance in the amount of One Million Three Hundred Fifty-One Thousand Nine Hundred Eighty-Three Pesos and 41/100 (P1,351,983.41) computed as of November 30, 2009, subject to a final computation of any penalty accruing after the said date, upon full payment of the contributions liability.

SO ORDERED.”

Likewise on review is the Commission’s Order dated 8 March 2012,[2] which denied the separate motions for reconsideration filed by petitioner and Better Building and the other impleaded corporate officers and directors.

The Facts

The pertinent facts and antecedent proceedings, as borne by the records, are as follows:

On 17 May 2007, the SSS, for and in behalf of the seventy (70) former employees of Better Building, filed before the Social Security Commission (“Commission”) a verified Petition dated 9 May 2007[3] against Better Building and its impleaded officers and directors including herein petitioner. Apparently, the former employees of Better Building executed a complaint-affidavit attesting to the non-remittance of their monthly SS contributions for the period January 1990 to February 2007.

A motion to dismiss was filed by Better Building and its officers, which was denied by the Commission. They then filed their Answer on 20 November 2007. Allegedly, Better Building is a domestic corporation engaged in the business of providing janitorial and allied services. In the main, it was argued that the complaining employees may have not been actually employed during the period alleged in the petition or they were unemployed for a certain period of time due to replacement, closure or reduction of personnel by the principals. They further

maintained that the impleaded officers and directors were no longer connected with the corporation and should thus be absolved of liability. If at all, considering that the impleaded officers assumed office only in 2004, they should not be held liable for the delinquency that started in 1990.

On 28 July 2008, it was manifested that Better Building and the SSS were exploring the possibility of settling the case amicably and that the corporation had already made partial payment amounting to Five Hundred Eighty-Five Thousand Pesos (P585,000.00) for their assessed principal obligation. However, said efforts for an amicable settlement were rendered futile considering that Better Building had failed to submit a written proposal to the SSS on how they intend to pay the balance of their monetary obligation.

Consequently, in an Order dated 27 November 2008, the Commission directed the parties to submit their respective position papers. Both parties submitted their position papers each reiterating their allegations and points of argument.

Meanwhile, the Eufemio Law Offices entered its appearance as counsel for petitioner on 12 January 2009.[4] In its Order dated 10 February 2009,[5] the Commission noted such appearance and ordered its Secretariat to serve upon petitioner's counsel a copy of the Order dated 27 November 2008 to ensure the filing of petitioner's position paper.

On 22 December 2009, sans petitioner's position paper, the assailed Resolution was issued by the Commission granting the petition a quo and ordering Better Building and the impleaded officers and directors to pay the balance of the unremitted SS contributions and penalties.

Aggrieved, petitioner moved for the reconsideration of the Resolution contending that he had been deprived of his right to submit his position paper. He further highlighted the fact that he was a mere nominal director and that he had no part in the operations of the corporation.[6] Better Building and the other officers and directors likewise moved for reconsideration of the adverse judgment arguing that the impleaded individuals should not be held solidarily liable considering that they were no longer part of the corporation at the time the demand letter had been served upon Better Building.

In its Order dated 8 March 2012, the Commission denied both motions for lack of merit. According to the Commission, petitioner was not deprived of due process considering that he had been given ample to be heard in light of the position paper that was submitted by his first counsel on record.

Undaunted, petitioner filed the present petition.

The Issues

The issues to be resolved in this petition may be summarized as follows:

1. Whether petitioner was deprived of his right to due process in light of the failure of the Commission to serve upon him the Order requiring him to submit his position paper.
2. Whether petitioner can be held solidarily liable with Better Building and the other impleaded corporate officers and directors for the payment of unremitted SS contributions.

The Court's Ruling

We find the present petition bereft of merit.

Questioning the factual and legal findings of the Commission, petitioner espouses the following points of contention: First, he was deprived of due process considering that he had not been given the opportunity to file his verified position paper; Second, he cannot be held personally liable for Better Building's alleged non-remittance

of SS contributions considering that said corporation is a business entity entirely separate and distinct from its corporate officers; and Third, he was not involved in the day to day operations of Better Building and there is no malice and bad faith on his part in so far as the alleged delinquency in the remittance is concerned.

We are not persuaded.

On procedural matters, there is no merit in petitioner's insistence that he had been deprived of his right to due process. True, the Commission failed to serve upon his person the Order dated 27 November 2008 as explicitly stated in the subsequent Order of 10 February 2009. However, given the attending circumstances, it cannot be denied that regardless of the omission made by the Commission, petitioner had been granted ample opportunity to be heard on his defenses and allegations.

To begin with, petitioner was given due opportunity to be heard in the administrative proceedings below. Not only was he given the chance to argue his defenses in the motion to dismiss and answer to the petition a quo that his earlier counsel on record had filed, petitioner had also filed a position paper in compliance with the Order dated 27 November 2008 prior to the entry of appearance of his new counsel.

More importantly, petitioner was given further opportunity to reassert his arguments in the motion for reconsideration of the assailed Resolution that his new counsel had filed. Emphasis should further be made that the arguments espoused by his new counsel in said motion are akin to the contentions that he had made through the pleadings filed by his earlier counsel on record.

Clearly so, petitioner cannot plausibly assert that he had been deprived of his right to due process when he had in fact been accorded every opportunity to do so. The fact that his new counsel had failed to submit a separate position paper does not diminish the amount of opportunity that had been given to him by the Commission.

In this regard, the case of *Ledesma vs. Court of Appeals*[7] is noteworthy as it elaborates on the well established doctrine of due process in administrative proceedings as follows:

"Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of." [8]

Besides, petitioner and his new counsel should have been more vigilant and prudent in their courses of action. Almost a year had passed since the issuance of the Order of 10 February 2009 and yet, they, specifically the new counsel, did not even bother to submit a position paper or at the very least, inquire on the supposed omission on the part of the Commission. Surely, given that the new counsel had already known the content and directive given in the Order of 10 February 2009, petitioner could have prudently filed a position paper in his own accord, especially so since the lapse of ten (10) months should have alerted him and his new counsel of the omission on the part of the Commission.

Equally unmeritorious are the substantive matters proffered by the petitioner. The Commission did not commit any reversible error in declaring that the impleaded corporate officers, through having a separate and distinct personality from the corporation, are solidarily liable for unremitted SS contributions under Section 28 (f) of the Republic Act No. 8282, otherwise known as the "Social Security Law." [9]

While it is settled that a corporation is invested by law with a personality separate and distinct from that of the

persons composing it and that obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities, there are peculiar situations or valid grounds that can exist to warrant the disregard of its independent being and the lifting of the corporate veil. This situation might arise, as it is in the present case, when a corporation is used to evade a just and due obligation or to justify a wrong, to shield or perpetrate fraud, to carry out other similar unjustifiable aims or intentions, or as a subterfuge to commit injustice and so circumvent the law.[10]

Thus, regardless of his tenure and the duties that he has undertaken for the corporation and the extent thereof, there is no question that petitioner breached the provisions of the Social Security Law and is, as stated, specifically liable under its penal clause. Simply put, whether there is no bad faith on his part, pursuant to the direct provision of the Social Security Law, petitioner is solidarily liable for the unremitted SS contributions of the corporation's complaining employees.

Emphatically, the sympathy of the law on social security is toward its beneficiaries. No less than the Supreme Court had enunciated that it will not turn a blind eye on the perpetration of injustice and that it cannot and will not allow itself to be made an instrument nor be privy to any attempt at the perpetration of injustice.[11]

WHEREFORE, the foregoing considered, the present petition is hereby DENIED and the assailed Resolution dated 22 December 2009 and Order dated 8 March 2012 AFFIRMED in toto. No costs.

SO ORDERED.

De Guia-Salvador (Chairman) and Garcia, JJ., concur.

[1] Rollo, pp. 24-31.

[2] Id. at pp. 32-34.

[3] Id. at pp. 44-48.

[4] Id. at pp. 42-43.

[5] Id. at p. 41.

[6] Id. at pp. 35-40.

[7] G.R. No. 166780, 27 December 2007.

[8] Underscoring supplied.

[9]“(f) If the act or omission penalized by this Act be committed by an association, partnership, corporation or any other institution, its managing head, directors or partners shall be liable for the penalties provided in this Act for the offense.”

[10] Garcia vs. Social Security Commission, G.R. No. 170735, 17 December 2007.

[11] Ibid.

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