

GENETIC FARM, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, ABAQUIN SECURITY & DETECTIVE AGENCY, INC., ATANACIO DAGALEA, ARMANDO BALLON, ROMMEL GALAN, ENRICO GARCIA...

CA-G.R. SP NO. 109291, May 28, 2010

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Court of Appeals

Before the Court is a Petition for Certiorari and Prohibition with prayer for issuance of temporary restraining order and/or preliminary injunction under Rules 65 of the Rules of Court seeking the nullification of the Decision dated July 16, 2007 and Resolution dated March 31, 2009 of the National Labor Relations Commission (“NLRC”) in NLRC NCR CA No. 039119-04 (NCR-00-00065-02).

The antecedents:

Armando Ballon, Enrico Garcia, Garry dela Cruz and Rommel Galan were hired as security guards by Abaquin Security & Detective Agency (“Abaquin”) from 1999 to 2001 and were posted at Genetic Farms from 1999 to 2002. They filed a complaint against Abaquin and Genetic Farms, Inc. (“petitioner”)/Soledad Agbayani and Atanacio Dagalea claiming that they were not paid full wages, legal holiday pay, 13th month and service incentive leave pay. Abaquin admitted liability but claimed that it was limited only to the extent of its computation. Petitioner and Agbayani meanwhile averred that they have complied with the provisions of their contract with Abaquin and that they have fully paid the latter the full contract price as shown by the official receipt issued by the agency (Rollo, pp. 40-41).

On November 25, 2003, Labor Arbiter Melquiades Sol D. Del Rosario rendered his Decision dismissing the case against petitioner on the ground that it has complied with the payment of the mandated minimum wage in favor of Ballon et al., thus:

CONFORMABLY WITH THE FOREGOING, judgment is hereby rendered ordering Abaquin Security and Atanacio Dagal[e]a only to pay the complainants the following:

1. Armando Ballon - P 25,112.90
2. Garry dela Cruz - 21,833.72
3. Rommel Galan - 30,991.56 and
4. Enrico Garcia - 20,075.00

Respondent Genetic Farms and Ms. Soledad Agbayani are exculpated from liability.

SO ORDERED. (Rollo, 154-155)

Abaquin appealed to the NLRC arguing that under Art. 109 of the Labor Code, petitioner should also be held solidarily liable for the award in favor of Ballon et al. The NLRC found merit in the appeal and on July 16, 2007

rendered its Decision holding petitioner jointly and severally liable to the security guards (Rollo, pp. 39-43).

The NLRC ruled that such joint and several liability of the contractor and the principal is mandated by the Labor Code to assure compliance with the provisions therein including the statutory minimum wage. The contractor is liable by virtue of his status as direct employer while the principal is liable as indirect employer for purposes of paying the employees' wages should the contractor be unable to pay them. It further ruled that an indirect employer cannot escape liability even if it has paid the workers' wage rates in accordance with their contract (Rollo, pp. 41-42).

The NLRC then disposed of the appeal in this wise:

WHEREFORE, premises considered, instant appeal us (sic) hereby GRANTED. The assailed decision dated November 25, 2003 is hereby MODIFIED, declaring co-respondents Abaquin Security Agency, Inc. and Genetic Farms jointly and severally liable for monetary [a]wards of complainants as decreed in the decision.

SO ORDERED. (Rollo, p. 43).

Petitioner filed a motion for reconsideration contending that the July 16, 2007 Decision is null and void since petitioner was not served a copy of Abaquin's Memorandum of Appeal. Assuming also that the appeal was served on the correct address, there was no proof of service submitted by Abaquin (Rollo, pp. 46-47). On March 31, 2009, the NLRC issued its Resolution denying the motion for reconsideration on the ground that the motion was filed beyond the reglementary period of 10 days provided under the NLRC Rules. It also noted that an Entry of Judgment has already been issued declaring the July 16, 2007 Decision final and executory on October 5, 2007 and that the Labor Arbiter has already conducted pre-execution conference. The failure to serve on petitioner a copy of Abaquin's Memorandum of Appeal was also resolved when copies of the Notice of Decision were sent to petitioner and counsel and were received by them on March 31, 2008 and April 1, 2008 respectively (Rollo, p. 48).

Petitioner now comes before the Court with the following assignment of errors:

I

ENTERTAINING ABAQUIN SECURITY'S MEMORANDUM OF APPEAL WHILE COPY OF THE SAME HAS NOT BEEN PREVIOUSLY SERVED ON THE PETITIONER'S COUNSEL AND HENCE, THE PETITIONER WAS NOT GIVEN OPPORTUNITY TO FILE ITS ANSWER OR REPLY-MEMORANDUM, RESULTING IN THE DEPRIVATION OF ITS CONSTITUTIONAL RIGHT TO DUE PROCESS. ACCORDINGLY, THE PUBLIC RESPONDENT'S JULY 16, 2007 DECISION HAS NOT BEEN VALIDLY RENDERED AGAINST PETITIONER FOR LACK OF JURISDICTION AND/OR DUE PROCESS.

II

DENYING PETITIONER'S MOTION FOR RECONSIDERATION DUE TO THE PRINCIPAL REASON THAT THE FILING OF SAID MOTION WAS OUT OF TIME, WHEN LIBERALITY IN THE APPLICATION OF THE RULES SHOULD HAVE PREVAILED IN ORDER TO HAVE THE CASE RESOLVED BASED MORE, AND SUBSTANTIALLY, ON ITS MERITS.

III

NOT DISMISSING THE PRIVATE RESPONDENT'S [ABAQUIN SECURITY AND ATANACIO DAGALEA] APPEAL DESPITE DEFECTIVE VERIFICATION AND CERTIFICATION ON FORUM SHOPPING.

IV

GRANTING THE APPEAL OF PRIVATE RESPONDENTS ABAQUIN SECURITY AND ATANACIO DAGALEA FOR THE APPLICATION OF THE LAW ON JOINT AND SOLIDARY LIABILITY AGAINST THE PETITIONER, WHILE SAID RESPONDENTS DID NOT COME TO COURT WITH CLEAN HANDS, SINCE THE PROVISIONS OF SAID LAW ARE INTENDED FOR THE BENEFIT AND PROTECTION OF THE AGGRIEVED EMPLOYEES AND NOT FOR THEIR ERRANT EMPLOYER THAT CAUSED THE GRIEF.

V

FINDING PETITIONER TO BE JOINTLY AND SOLIDARILY LIABLE, TOGETHER WITH ABAQUIN SECURITY, WHEN PETITIONER HAD COMPLIED WITH THE PAYMENT OF MINIMUM WAGE LAW AND MORE IMPORTANTLY, THE JUDGMENT AWARD IN FAVOR OF THE GALAN, ET AL. HAS BEEN AMPLY SECURED OR PROTECTED WITH THE CASH BOND POSTED BY ABAQUIN SECURITY AND THUS, PUBLIC RESPONDENT'S RULING IS CONTRARY TO THE SUPREME COURT'S CLEAR PRONOUNCEMENT IN MERALCO VS. LANDRITO CASE. (Rollo, pp. 14-15).

Petitioner argues that the July 16, 2007 Decision and March 31, 2009 Resolution of the NLRC are null and void since it was not furnished a copy of Abaquin's Memorandum of Appeal, thereby depriving it of an opportunity to assail the same. While it is true that petitioner's motion for reconsideration before the NLRC was filed a day late, the NLRC should have given weight to substantial justice instead of dismissing the motion on technicality. In any event, the verification and certification against forum shopping of Abaquin's Memorandum of Appeal with the NLRC was defective as there was no Secretary's Certificate or Board Resolution showing the signatory's authority to sign the same (Rollo, pp. 15-27).

Petitioner further argues that the provisions of Arts. 106, 107 and 109 of the Labor Code on joint and solidary liability are intended for the benefit and protection of the aggrieved employees and not for their employer. Abaquin meanwhile appealed the case to the NLRC in order to have petitioner held jointly and solidarily liable with it, despite the fact that petitioner has already complied with the payment of minimum wage to the the employees. In effect, Abaquin wants petitioner to be liable for the obligations it has already complied with and which Abaquin has unjustly failed to fulfill. Petitioner also argues that there is no need to make it liable under the law because the Labor Arbiter's judgment award in favor of the employees has already been amply protected by the cash bond posted by Abaquin. In *Meralco v. NLRC* (548 SCRA 315 [2008]), it was held that where the employer has already posted a surety bond, thereby meeting the purpose of the Labor Code of protecting the interest of the employees, it is deemed futile to still continue holding the indirect employer jointly and solidarily liable with the employer for the judgment awards for underpayment of wages and non-payment of overtime pay (Rollo, pp. 27-31).

Abaquin in its Comment meanwhile avers that it furnished petitioner's counsel a copy of its Memorandum of Appeal to the NLRC through registered mail at his last known address in Makati. While no proof of service was attached to the memorandum of appeal, Abaquin has complied with the requirements for the perfection of appeal when the proof of service to the counsel for Genetic Farm was attached to the "Compliance" dated February 9, 2004 (Rollo, pp. 221-222).

Ballon et al., likewise filed their Comment reiterating the NLRC ruling that the joint and solidary liability of the contractor-employer and the principal-indirect employer was enacted to ensure compliance with the Labor Code principally anent the minimum wage. In any event, the indirect employer can recover whatever amount it paid from the direct employer in accordance with the terms of the service contract between itself and the latter (Rollo, pp. 237-246).

Petitioner filed Replies refuting Abaquin and the security guards' contentions (Rollo, pp. 226-231,253-256).

The Court finds merit in the petition.

It is true that in certiorari proceedings under Rule 65 of the Rules of Court, the appellate court generally does not assess and weigh the sufficiency of evidence upon which the Labor Arbiter and the NLRC based their conclusion. The query in this proceeding is limited in the determination of whether the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its decision (*Soriano v. NLRC*, 521 SCRA 526, 537-538 [2007]).

However, when the findings of the Labor Arbiter differ from those of the NLRC, the door to a review is opened to the higher court (*Flight Attendants and Stewards Association v. NLRC*, 559 SCRA 252, 272 [2008]).

Such is the case at bar.

There is no question that petitioner has already complied with the payment of the mandated minimum wage in favor of the security guards. The only question that remains, and which is presently the crux of the herein petition, is whether petitioner should still be held jointly and solidarily liable with Abaquin.

The Court agrees with petitioner that the answer is No.

It is true that when petitioner contracted with Abaquin, for the latter to hire security guards for it, petitioner became an indirect employer of Ballon et al. pursuant to Art. 107 of the Labor Code, which pertains to “any person, partnership, association or corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task or project.” It is equally true that when an independent contractor, fails to pay the the employees, petitioner as principal and indirect employer becomes jointly and solidarily for the individual employees' wages, following Art. 106 and 109 of the Labor Code (*Meralco v. Benamira*, 463 SCRA 331, 355 [2005]; *Mariveles Shipyard Corp. v. Court of Appeals*, 415 SCRA 573, 586-587 [2003]). This joint and solidary liability facilitates, if not guarantees, payment of the employees' performance of any work, task job or project, giving such workers ample protection as mandated by the Constitution (*Eparwa Security and Janitorial Services v. Liceo De Cagayan University*, 508 SCRA 370, 379 [2006]).

Likewise settled is the principle that the solidary liability of the indirect employer does not preclude its right to be reimbursed by the direct employer following Article 1217 of the Civil Code on the right of reimbursement from a co-debtor (*Meralco v. Benamira*, supra, p. 356; *Mariveles Shipyard Corp. v. Court of Appeals*, supra, p. 588).

This much, the Court agrees with the NLRC. But the petitioner is correct in invoking *Meralco v. NLRC*, (supra, p. 315) which takes the present case away from the application of the general rule.

In said case, the highest court explained that with the posting of the direct employer of a surety bond in an amount sufficient to cover all the judgment awards due the employees, the purpose of the Labor Code provision on the solidary liability of the indirect employer is already accomplished since the interest of the employees are already adequately protected. Consequently, it is futile to continuously hold petitioner jointly and solidarily liable with the direct employer for the judgment awards for underpayment of wages and non-payment of overtime pay (*Meralco v. NLRC*, supra, pp. 334-335).

Here, petitioner has shown, and Abaquin did not deny, that Abaquin has posted a bond in the amount of P98,013.18 that is sufficient to answer for the judgment rendered by the Labor Arbiter in favor of the security guards (Rollo, pp. 202-204, Annexes “T”, “T-1” and “T-2”).

The Supreme Court also noted in *Meralco*, that the indirect employer had already handed to the direct employer the wages and other benefits of the employees; a finding of fact made by the Labor Arbiter that was untouched by

the NLRC. Just like in the case at bar. Thus, having already received from petitioner the correct amount of wages and benefits, but having failed to turn them over to the employees, the direct employer should now solely bear the liability for the underpayment of wages and other benefits (*Meralco v NLRC*, supra, pp. 335-336).

On the matter of petitioner having filed the motion for reconsideration before the NLRC a day late and the failure of Abaquin to attach proof of authority of signatory to sign the verification, suffice it to state that technical rules are not binding on labor cases. The Labor Code allows for the liberal application of the rules so that technicality should not stand in the way of equitably and completely resolving the rights and obligations of the parties (*ABSCBN v. Nazareno*, 503 SCRA 204, 221-222 [2006]).

The Court also finds a discussion, on the supposed failure of petitioner to receive a copy of Abaquin's Memorandum of Appeal, to be no longer necessary in view of the Court's ruling granting the herein petition.

WHEREFORE, the petition is GRANTED. The Decision dated July 16, 2007 and Resolution dated March 31, 2009 of the National Labor Relations Commission in NLRC NCR CA No. 039119-04 (NCR-00-00065-02) are hereby SET ASIDE and the Decision of the Labor Arbiter dated November 25, 2003 is hereby REINSTATED. SO ORDERED.

Villamor, A. L., and Macalino[*], JJ. concur

[*] Acting Junior Member per Office Order No. 115-10-ABR dated May 18, 2010.

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