RAMON S. MANUEL, JOSE I. DRUECO, JR., ARTURO O. ANACTA AND MANUELA G. MALAPIT, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION), UTILITY HARDWARE AND ELECT...

Ponente: YBAÑEZ, J.

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YBAÑEZ, J.:

Petitioners filed the instant petition for certiorari[1] accusing public respondent National Labor Relations Commission (NLRC for brevity) of gravely abusing its discretion amounting to lack or excess of jurisdiction in issuing its two (2) Resolutions promulgated on 14 September 2010[2] and 24 March 2011[3] in NLRC LAC Case No. 02-000262-10 (NLRC NCR Case No. 00-10-14573-08).

The Antecedents

The facts as found by the labor arbiter are as follows:

Petitioners Ramon S. Manuel (Manuel), Jose I. Drueco, Jr. (Drueco), Arturo O. Anacta (Anacta) and Manuela G. Malapit (Malapit) were employed by private respondent Utility Hardware and Electrical Supply (UHES for brevity)/Utility Electrical Wire Supply Trading, Inc. (UEWSTI likewise brevity) on different dates and different positions. Private respondent is a domestic corporation with principal office at No. 1130, Rizal Avenue, Sta. Cruz, Manila. During the course of their employment with private respondent, they were not paid their proper salaries, overtime, holiday, service incentive leave, and 13th month pays.[4]

On 28 June 2008, private respondent UHES, through its counsel, served petitioners their respective notice of termination of employment,[5] informed them that they will be given their respective separation pays which if they accept, they need not report for work anymore for the whole month of July 2008 although they will still be paid their respective salaries.[6] On 8 July 2008 petitioners' counsel wrote a letter to private respondent Peter Ng Quimson (hereinafter referred to as Peter), proprietor of UHES with the appeal that the employment of the petitioners be considered continuous/absorbed by the establishment which opted to change its legal personality from a mere single proprietorship into a corporation to protect these employees, particularly their right to a security of tenure, among others.[7]

On 30 July 2008, UHES asked petitioners to sign an Affidavit of Quitclaim and Release which they refused. They were then told that if they still want to continue working, they will have to re-apply as casual employees. Further, they were informed that that day, 30 July 2008, would be the last day of work for them as the company would cease operating. Petitioners furthermore allege that contrary to the information given them by private respondents' counsel, the establishment did not close but continued its operation.[8]

UHES admitted that petitioners are its former employees. Petitioner Manuel was employed from June 1978 to 31 July 2008, Drueco from 1987 to 31 July 2008, Anacta from 1993 to 31 July 2008 and Malapit from 1991 to 31 July 2008 to 31 July 2008, in various capacities from sales clerk, helper and checker, respectively. According to

UHES, petitioners were paid above minimum wage since it is the policy of its proprietor to comply with all lawful orders of the Department of Labor and Employment. As proof of its compliance, UHES enumerated petitioners' respective wages as follows: Manuel was receiving P533.66 per day; Drueco P408.00 per day; Anacta P391. 97 per day; and Malapit P395.20 per day, all at the time of their termination effective 31 July 2008.[9]

On 26 June 2008, private respondent Peter Ng Quimson, owner/proprietor of UHES, informed through a letter the DOLE, through its NCR Regional Director, that UHES is closing its business at the close of business hours on 31 July 2008.[10] The letter included a list of employees that will be affected by the closure and together with a request for the DOLE NCR to send an observer during the scheduled release of the individual notice of termination and distribution of separation pay. The individual notice of termination was served to the seventeen (17) affected employees, including the four (4) petitioners, on 28 June 2008.[11]

On 30 June 2008, two representatives from the DOLE NCR Manila Field Office came to the UHES office to witness the release of separation payment to the employees. However, not one of the employees availed of the option and every one decided to continue reporting for work during the notice period (28 June to 30 July 2008).[12]

On the scheduled closure of UHES on 30 July 2008, all the employees were called to a meeting for distribution of their respective separation pays and signing of the Affidavit of Quitclaim and Release. Individual checks for each of the employees were distributed representing their separation pays less their respective advances. The separation pay was computed at one-half (1/2) month salary for every year of service plus 13th month pay plus five (5) days service incentive leave pay.[13]

Of the seventeen (17) terminated employees of UHES, only the four petitioners refused to receive their separation pay. No check was prepared for petitioner Malapit after her statement of account showed that she still owed UHES the amount of P6,906.73, a fact already known to her since 28 June 2008.[14]

Petitioners filed their complaint against the respondents docketed as NLRC NCR Case No. 07-10888-08 on 31 July 2008 and the case was assigned to Labor Arbiter Enrique Flores, Jr.[15] On 15 September 2008, petitioners filed a Motion for Inhibition[16] of the labor arbiter.[17]

On 10 October 2008, petitioners filed a Motion to Withdraw Case (Without Prejudice)[18] even before the previous motion for inhibition could be resolved. The complaint was re-filed two (2) days later on 17 October 2008 and was docketed as NLRC NCR Case No. 10-14573-08 and assigned to Labor Arbiter Joel S. Lustria.[19]

On 27 November 2009, the labor arbiter rendered a decision[20] with this dispositive portion, viz:

> WHEREFORE, foregoing premises considered, judgment is hereby rendered declaring respondents guilty of illegal dismissal. Accordingly, respondents are ordered jointly and several (sic) liable:
>
> 1. To pay complainants, the amount of which opposite their respective names, representing their backwages and separation pay:
>
> NAMES
>
> BACKWAGES
>
> SEPARATION PAY

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Ramon Manuel

P242,239.54

P430,129.96

Jose Drueco, Jr.

P185,425.80

P233,376.00

Arturo Anacta

P178,140.55

P163,059.52

Manuel (sic) Malapit

P179,608.51

P123,302.40

2. To pay complainants an amount equivalent to ten (10%) percent of the judgment award, as and for attorney's fees.

Other claims are dismissed or lack of merit.

SO ORDERED.[21]

In arriving at the above-quoted figures, the labor arbiter computed the backwages of the petitioners from 30 July 2008 up to 27 November 2009,[22] the date of his decision, while their respective separation pays were computed at one (1) month pay for every year of service.[23] Both parties appealed before the public respondent NLRC: petitioners on the issues of reinstatement and damages;[24] private respondent UHES praying that the decision of the labor arbiter be reversed and set aside.[25]

On 14 September 2010, the NLRC ruled in favor of private respondents UHES and Peter Ng Quimson, computing the separation pay of the petitioners at one-half (1/2) month for every year of service, viz:

CONFORMABLY, complainants-appellants are hereby declared validly dismissed for authorized cause. Respondents-appellants Utility Hardware and Electrical Supply and Peter Ng Quimson are, however, ordered to pay them their respective separation pay as follows:

1. RAMON S. MANUEL

P 208,127.40

2. JOSE I. DRUECO, JR.

P 116,688.00

3. ARTURO O. ANACTA

P 81,529.76

P 406,345.16

> The rest of respondents are hereby DROPPED as not proper parties to this case.
>
> SO ORDERED.[26]

The motion for reconsideration filed by petitioners was denied by public respondent for lack of merit in its resolution of 24 March 2011;[27] hence, this petition.

Assignment of Errors

Petitioners attributed the following errors to the public respondent:[28]

> I
>
> THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING THAT THE PETITIONERS WERE VALIDLY DISMISSED.
>
> II
>
> THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DROPPING THE OTHER PRIVATE RESPONDENTS IN THIS CASE.

The Ruling of This Court

The petition is impressed with merit.

Anent the first issue, petitioners lament that the NLRC merely limited itself to the minimum requirements for the cessation of business operations under Article 283 of the Labor Code in reversing the decision of the labor arbiter. They argue that the termination of their employment on the respondent's pretext of closure of business was to circumvent the provisions of the Labor Code since there was no actual closure, not even a lull, in the business operations of the private respondent. In fact, only seventeen (17) of the twenty-three (23) employees of the private respondent were reported to the DOLE and served with notice of termination. The rest continued their employment with UHES uninterrupted.[29]

Private respondent disputed this allegation of petitioners and alleged that the business which Peter Ng Quimson single-handedly managed for 54 years was closed in good faith owing to his inability to continue managing the same due to his advanced years of 84 at the time of its closure.[30] Quimson alleged further that he joined a corporation, Utility Electrical Wire Supply Trading, Inc., where he is a stockholder after the closure of UHES. Thus, his being a stockholder of UEWSTI, which has a separate and distinct personality from UHES, does not necessarily mean that he closed the latter in bad faith to get rid of petitioners. They further argue that petitioners failed to prove by clear and convincing evidence that the closure of UHES was in bad faith and that there was no such closure but in fact a continuation of its business albeit in corporate form. They also maintain that the petitioners must prove that the closure of UHES was undertaken to circumvent the provisions of the labor laws.[31]

This argument fails to persuade.

There is no dispute that private respondent UHES ceased its operation as a result of co-respondent Peter

Quimson’s decision to form a new corporation, UEWSTI, after operating the former as a single proprietorship. Under Article 283 of the Labor Code, closure or cessation of operation of the establishment is an authorized cause for terminating an employee, viz:

> ART. 283. Closure of establishment and reduction of personnel. — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Department of Labor and Employment at least one (1) month before the intended date thereof. . . . In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or to at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

While the decision of a business owner to cease operations is a business judgment which the Court has no business interfering with,[32] the owner's exercise of this prerogative to close his business or shop will be upheld only as long as it is done in good faith to advance the employer's interest and not for the purpose of defeating or circumventing the rights of employees under the law or a valid agreement.[33] In the instant case, the closure of UHES to give way to a new corporation was undoubtedly a valid exercise of management prerogative. However, jurisprudence provides that three requirements must be satisfied in order for the respondent to be considered to have acted in good faith to advance its interest and did not close its business to defeat or circumvent the rights of employees under the law or a valid agreement. These requirements are: (a) service of a written notice to the employees and to the DOLE at least one (1) month before the intended date thereof; (b) the cessation of business must be bona fide in character; and (c) payment to the employees of termination pay amounting to at least one-half (1/2) month pay for every year of service, or one (1) month pay, whichever is higher.[34]

UHES admitted that all the petitioners were its former employees. Petitioner Manuel was employed from June 1978 to 31 July 2008 or about thirty (30) years, Drueco from 1987 to 31 July 2008 or about twenty-one (21) years, Anacta from 1993 to 31 July 2008 or about fifteen (15) years and Malapit from 1991 to 31 July 2008 or seventeen (17) years. The record will also show that respondents complied with the first legal requirement of at least one month notice to both the affected employees and the DOLE. On 26 June 2008, UHES owner/proprietor Peter Ng Quimson informed the DOLE, through its NCR Regional Director, that UHES is closing its business at the close of business hours on 31 July 2008[35] through a letter, including a list of employees that will be affected by the closure, together with a request for the DOLE NCR to send an observer during the scheduled release of the individual notice of termination and distribution of separation pay. On 28 June 2008, UHES, through counsel, served petitioners their respective notice of termination of employment[36] with the information that they will be given their respective separation pays which if they accept, they need not report for work anymore for the whole month of July 2008 although they will still be paid their respective salaries.[37] On 30 July 2008, UHES told petitioners that if they still want to continue working with the new corporation, they will have to re-apply as casual employees and that same day would be the last day of work for them as the company would cease operating.

The third requisite, that the affected employees will be paid their termination pay amounting to at least one-half (1/2) month pay for every year of service, or one (1) month pay, whichever is higher, was likewise complied with by respondents. They in fact even submitted photocopies of the three (3) Banco de Oro checks[38] they purportedly prepared for petitioners Manuel, Drueco and Anacta which the latter allegedly refused to accept.

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But the ultimate test of the validity of closure or cessation of establishment or undertaking is that it must be bona fide in character. It is basic that the company's exercise of its prerogative to close its business will be upheld as long as it is done in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the law or a valid agreement. Such exercise cannot be an unbridled prerogative to suit the whims of the employer. And the case of the employer must stand or fall on its own merits and not on the weakness of the employee's defense.[39]

The record will bear that other than claiming good faith in ceasing the operation of the hardware, no other proof was adduced by respondents to prove such claim. It is true that good faith is presumed and whoever alleges bad faith has the burden of proving the same.[40] Nevertheless, the burden of proving that the closure of the business was not for the purpose of defeating or circumventing the rights of employees falls squarely upon the employer[41] with sufficient and convincing evidence.[42] The rationale behind this dictum was explained by the Supreme Court in the case of Somerville Stainless Steel Corporation vs. NLRC:[43]

> Considering the severe consequences occasioned by retrenchment on the livelihood of the employee(s) to be dismissed, and the avowed policy of the State — under Sec. 3, Art. XIII of the Constitution, and Art. 3 of the Labor Code — to afford full protection to labor and to assure the employee's right to enjoy security of tenure, . . . (I)t is the duty of the employer to prove with clear and satisfactory evidence that legitimate business reasons exist to justify retrenchment. Failure to do so "inevitably results in a finding that the dismissal is unjustified".

The respondents failed to prove with convincing evidence a bona fide cessation of their operations in the present case. More telling is the undisputed allegation of petitioners that they were told during a meeting on 30 July 2008 called by the respondents that if they still want to continue working, they will have to re-apply to the corporation as casual employees.[44] In other words, petitioners were required to sign a new employment contract with their new employer UEWSTI which will consider petitioners' employment as to have commenced only on the day of its takeover on a casual basis. This will indubitably render to naught the four (4) petitioners’ more than twenty (20) years combined average employment with respondent UHES. With the foregoing circumstances and the respondents’ failure to prove their good faith, no other conclusion could be had but that there was illegal dismissal of the petitioners.

The NLRC computation of the separation pay of each of the petitioners was also erroneous. Recall that it computed at one-half (1/2) month salary for every year of service plus 13th month pay plus five (5) days service incentive leave pay the separation pay of the petitioners in its resolution reversing the decision of the labor arbiter.[45] This is in accord with the computation made by UHES with regard to the separation pay of all its other employees. However, Article 283 of the Labor Code clearly provides that in case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or to at least one-half (1/2) month pay for every year of service, whichever is higher (emphasis supplied). A fraction of at least six (6) months shall be considered one (1) whole year. Since respondents never alleged serious business losses as the cause for the closure of UHES, the separation pay of the petitioners should have been computed at one (1) month pay for every year of service as what the labor arbiter did.[46] This requirement of Article 283 of the Labor Code was totally disregarded by the NLRC.

On the issue of whether or not the public respondent erred in dropping the other parties, petitioners contend that since only respondents UHES and Peter Ng Quimson interposed an appeal on the decision of the labor arbiter, the NLRC should not have dropped co-respondents UEWSTI and Joyce M. Quimson from this case. They argue that the reversal of the judgment on appeal is binding only on the parties in the appealed case and does not affect or

inure to the benefit of those who did not join or were not made parties to the appealed case. Private respondents argue on the other hand that UEWSTI as a corporation has a personality separate and distinct from the persons comprising it, including its officers, and from any other legal entity to which it may be related. Considering further that UEWSTI and Joyce Quimson are not the employers of the petitioners, they have no cause of action against the former, not being real parties in interest in this case.[47]

Petitioners included Utility Electrical Wire Supply Trading, Inc. and Joyce Quimson as respondents in the case it filed against Utility Hardware and Electrical Supply and Peter Ng Quimson before the NLRC for illegal dismissal. As could be gleaned from this act of petitioners, they were of the impression that UEWSTI, the corporation, is one and the same as UHES, the single proprietorship. Note that respondent Peter Ng Quimson still used the word "utility" in the name of the new corporation he formed. The use of a similar sounding or almost identical name is an obvious device to capitalize on the goodwill which Utility has built over the years.[48]

It is basic that a corporation is invested by law with a personality separate and distinct from those of the persons that comprise it as well as from that of any other legal entity to which it may be related.[49] However, this separate and distinct personality of a corporation is merely a fiction created by law for convenience and to promote justice. Hence, when the notion of separate juridical personality is used to defeat public convenience, justify wrong, protect fraud or defend crime, or is used as a device to defeat labor laws, this separate personality of the corporation may be disregarded or the veil of the corporate fiction pierced. This is true likewise when the corporation is merely an adjunct, a business conduit or an alter ego of another corporation.[50]

Respondents did not deny that UEWSTI was formed by the owner of UHES, there is, thus, communality of ownership and management to support the contention that UHES and UEWSTI are one firm or are closely related. It is also quite obvious therefrom that Quimson transformed his sole proprietorship into a corporation in a surreptitious attempt to evade the obligations of UHES to its long time employees like the petitioners. Likewise clear from the foregoing is that UEWSTI was a mere continuation and successor of UHES, the sole proprietorship of Quimson. Given these considerations, UHES and UEWSTI should be treated as one and the same entity for purposes of liability.[51]

Moreover, the well-settled rule that militates against the respondents is that a party who does not appeal from the decision may not obtain any affirmative relief from the appellate court other than what he has obtained from the lower court, if any, whose decision is brought up on appeal.[52] The rule is clear that no modification of judgment could be granted to a party who did not appeal[53] like UEWSTI and Joyce Quimson in the instant case. Stated differently, the failure of any of the parties in such a case to appeal the judgment as against him makes such judgment final and executory. By the same token, an appeal by one party from such judgment does not inure to the benefit of the other party who has not appealed nor can it be deemed to be an appeal of such other party from the judgment against him.[54]

WHEREFORE, premises considered, the instant petition is GRANTED. The assailed 14 September 2010 and 24 March 2011 Resolutions of the NLRC in LAC Case No. 02-000262-10 (NLRC NCR Case No. 00-10-14573-08) are hereby REVERSED and SET ASIDE and the 27 November 2009 Decision of the labor arbiter REINSTATED.

SO ORDERED.

Dimaampao, (Chairperson), and Sadang, JJ., concur.

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[1] Under Rule 65 of the 1997 Rules of Court.

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[2] Rollo, Annex “A,” pp.23-34.

[3] Id., Annex “B,” pp. 35-36.

[4] Id., p. 38.

[5] Id., Annexes “4,” “6,” “8” and “10,” pp. 134, 136, 138 and 140, respectively.

[6] Id., p. 24.

[7] Id., Annex “I,” p. 283.

[8] Id.

[9] Id., p. 40.

[10] Id., pp. 335-336.

[11] Id., p. 40.

[12] Id., p. 42.

[13] Id.

[14] Id.

[15] Id., Annex “H,” pp. 280-282.

[16] Id., Annex “J,” pp. 284-288.

[17] Id., p. 43.

[18] Id., Annex “L,” pp. 297-301.

[19] Id., Annex “N,” pp. 304-306.

[20] Id., Annex “C,” pp. 37-48

[21] Id., p. 48.

[22] Id., p. 46.

[23] Id., p. 47.

[24] Id., p. 55

[25] Id., Annex “E,” pp. 58-93, 93.

[26] Id., Annex “A,” pp. 23-32, 32

[27] Id., Annex “B,” pp. 35-36,

[28] Id., p. 10.

[29] Id., pp. 508-509.

[30] Id., p. 538.

[31] Rollo, p. 539.

[32] Rolando Angeles, Pepito de Guzman, Imelda Carrera, Jimmy Eliang, Liberato Flores, Leonilo Bacani,

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Marissa San Pedro and Delfin San Pedro, Jr. vs. Polytex Design, Inc. and/or Michael Cua and Rudy Gabiola, G.R. No. 157673, 15 October 2007, 536 SRA 159.

[33] Alabang Country Club, Inc. vs. National Labor Relations Commission, et al., G.R. No. 157611, 9 August 2005, 466 SCRA 329, 345.

[34] J.A.T. General Services and Jesusa Adlawan Torobu vs. NLRC and Jose F. Mascariñas, G.R. No. 148340, 26 January 2004, 421 SCRA 78.

[35] Id., pp. 335-336.

[36] Id., Annexes “4,” “6,” “8” and “10,” pp. 134, 136, 138 and 140, respectively.

[37] Id., p. 24.

[38] Id., Annexes “16,” “17,” “18,” pp. 352-353.

[39] Baltazar L. Payno vs. Orizon Trading Corp./Orata Trading and Flordeliza Legaspi, G.R. No. 175345. 19 August 2009, 596 SCRA 460, citing the case of Cabalen Management Co., Inc. vs. Quiambao, G.R. No. 169494, 24 July 2007, 528 SCRA 153.

[40] Arra Realty Corporation and Spouses Carlos Arguelles and Remedios dela Rama Arguelles vs. Guarantee Development Corporation and Insurance Agency and Engr. Erlinda Peñaloza, G.R. No. 142310, 20 September 2004, 438 SCRA 441.

[41] Capitol Medical Center, Inc. and Dr. Thelma Navarette-Clemente vs. Dr. Cesar E. Meris, G.R. No. 155098, 16 September 2005, 470 SCRA 125.

[42] Nasipit Lumber vs. NOWM, supra.

[43] 287 SCRA 420 (1998), cited in Nasipit Lumber vs. NOWM, supra.

[44] Rollo, p. 504.

[45] Id, pp. 31-32

[46] Id., p. 47.

[47] Id., pp. 544-545.

[48] James Yu and Wilson Young vs. NLRC, Labor Arbiter Daniel C. Cueto, Tanduay Distillery Inc., Fernando Duran, Eduardo Paliwan, Roque Estoce and Rodrigo Santos, G.R. Nos. 111810-11, 16 June 1995

[49] Yu and Young vs. NLRC, et al., supra, citing Palay, Inc., et al. vs. Clave, et al., 124 SCRA 641 [1983])

[50] The Heirs of The Late Panfilo V. Pajarillo vs. The Hon. Court of Appeals, NLRC and Samahan ng mga Manggagawa ng Panfilo V. Pajarillo, et al. .G.R. No. 155056-57, 19 October 2007, 537 SCRA 96, citing the case of Concept Builders, Inc. vs. NLRC, et al., 326 Phil. 955, 964-965 (1996).

[51] Heirs of Pajarillo vs. CA, et al., citing Jacinto vs. Court of Appeals, et al., G.R. No. 80043, 6 June 1991, 198 SCRA 211, 214.

[52] Go vs. Court of Appeals, 188 Phil. 540, 543 (1980).

[53] Jose Feliciano Loy, Jr., Raymundo Hipolito III, and Edgardo Ridao vs. San Miguel Corporation Employees Union-Philippine Transport and General Workers Organization (SMCEU-PTGWO), as represented by its

President Ma. Pilar B. Aquino and San Miguel Corporation Credit Cooperative, Inc., as represented by its President Daniel Borbon, G.R. No. 164886, 24 November 2009, 605 SCRA 212, citing Pepsi Cola Products (Phils) vs. Patan, Jr., 464 Phil. 517, 523 (2004).

[54] Singapore Airlines Limited vs. Court of Appeals and Philippine Airlines, G.R. No. 107356, 31 March 1995, 243 SCRA 143.

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