

EASTERN HAWAII LEISURE COMPANY LIMITED, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER PATRICIO LIBO-ON, OFFICE OF THE SHERIFF NLRC AND JOHN AGUYAOY, RESPOND...

Ponente: VELOSO, J.

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VELOSO, J.:

The Case

Assailed by Eastern Hawaii Leisure Company Limited and Kim Wong in this Petition for Certiorari[2] that was filed under Rule 65 of the 1997 Rules of Civil Procedure, is the Order[3] of Labor Arbiter Patricio P. Libo-on dated January 7, 2013 in NLRC NCR-00-04-06632-09, entitled “John C. Aguyaoy, Complainant -versus- Eastern Hawaii Leisure Co. Ltd./Kim Wong, Respondents”, the dispositive portion of which reads:

“WHEREFORE, premises considered, let an Alias Writ of Execution be issued against the respondent.

SO ORDERED”. [4]

The Facts

Private respondent John Aguyaoy was employed by petitioner company as its liason officer on March 1, 2007. [5]

Claiming that he was illegally dismissed on July 9, 2009 by petitioner's Office Manager, Ms. Rowena Chan, private respondent filed, on April 30, 2009, a complaint for actual illegal dismissal, underpayment of salary, non-payment of Service Incentive Leave, Moral and Exemplary damages, and Attorney's fees against petitioner Eastern Hawaii. Impleaded as co-respondent was Kim Wong, the company “Owner/Manager/President”.

After “Summons to (then) respondents (was) properly served, both parties were directed to submit their respective position papers”. [6] Also, the case was scheduled for mandatory conference. While private respondent appeared in said conferences, nobody appeared for petitioner company and Mr. Kim Wong. [7] And while private respondent submitted his position paper, both petitioner and Mr. Kim Wong failed to submit one.

On December 23, 2009, Labor Arbiter Corazon C. Borbolla, to whom the case was assigned, rendered her decision. [8] In resolving the “two issues” of “whether or not (petitioner) was illegally dismissed and whether or not (he) is entitled to his money claims”, [9] the Arbiter held:

“As the respondents failed to submit their position paper to rebut complainant's charge and money claims, this Office is constrained to resolve the two issues in the affirmative.

Under Article 279 of the Labor Code, as amended, an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full back wages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. (Robert C. Casol and Nagsama-Purefoods-Pulo v. Purefoods Corp., G.R. No. 166550, 18 November 2005)

However, since reinstatement is no longer feasible, complainant is entitled to separation pay of one (1) month salary for every year of service, in lieu of reinstatement.

BACKWAGES: From 10 July 2009 to 23 December 2009

Salary x No. of mos.

P10,000 x 5.46 = P54,600.00

SEPARATION PAY: (1 mo. salary for every year of service from 01 March 2007 to 23 December 2009)

Salary x No. of years

P10,000 x 3 years = P30,000.00

Due to the respondents' failure to show proof of payment of complainant's claims, he shall be entitled to the same from 01 March 2007 to 23 December 2009." [10] (emphasis supplied)

The petitioner did not appeal therefrom. And while the private respondent partially appealed from said decision, the same was however dismissed for non-perfection by the NLRC on 27 April 2010. [11]

On August 20, 2010, the NLRC issued an Entry of Judgment certifying that the decision had become final and executory. [12]

On November 12, 2010, the Labor Arbiter issued a Writ of Execution, viz.:

“WRIT OF EXECUTION

TO: MR. MANOLITO G. MANUEL

Sheriff

NLRC NCR

G R E E T I N G S:

WHEREAS, on 23 December 2009, this Office rendered a decision in the above-entitled case, the dispositive portion of which reads:

'WHEREFORE, in the light of the foregoing, complainant is found to have been illegally dismissed is [sic]. Respondents EASTERN HAWAII LEISURE CO., LTD. and KIM WONG are hereby ordered to pay complainant jointly and severally the total amount of P84,600.00 as computed in the body of this decision.

All other claims are hereby dismissed for lack of merit.

SO ORDERED.'

WHEREAS, respondents were notified of the above decision through registered notices, which they failed to claim as certified by Ms. Fe P. Gaoiran, Records Unit of the Office of the Postmaster Central Post Office Manila;

WHEREAS, complainant filed a Partial Appeal, which was dismissed by the Seventh Division of this Commission on 27 April 2010;

WHEREAS, on 01 September 2010, complainant filed a Motion for the Issuance of a Writ of Execution;

WHEREAS, a pre-execution conference was held on 22 September 2010, which was not attended by the respondents despite due notice as certified by the Post Office of Manila.

NOW THEREFORE, you are hereby commanded together with the complainant to proceed to the premises of respondents EASTERN HAWAII LEISURE CO., LTD. and KIM WONG at Century Park Hotel, P. Ocampo Street, Malate, Manila or anywhere within the Philippine jurisdiction and there and then to collect the sum of

EIGHTY-FOUR THOUSAND SIX HUNDRED PESOS (P84,600) plus the P800.00 execution fee.

You are further directed to turn over the said amounts with the NLRC Cashier for proper disposition.

In case you fail to collect the said amounts in cash, you are further ordered to cause the satisfaction thereof from the movable goods or chattels or in the absence thereof from the immovable properties of respondents not exempt from execution.

Return this Writ of Execution within 180 days from receipt, together with the corresponding report of the proceedings taken thereon.

SO ORDERED.

Quezon City, Philippines, November 12, 2010.

(SGD.)

CORAZON C. BORBOLLA

Labor Arbiter"[13]

(emphasis supplied)

Served upon petitioner, it filed, on December 20, 2010 a Motion to Quash Writ of Execution. The petitioner argued that it never received summons and decision of the Labor Arbiter "as the same was addressed to a non-existent person named KIM WONG who is neither connected with the company nor is an officer or director or employee or stockholder of the company".[14]

Opposed by private respondent,[15] Labor Arbiter Borbolla issued, on September 12, 2011 an Order, viz.:

"This treats of Respondents' Motion to Quash the Writ of Execution issued on 12 November 2010.

Respondents anchor their Motion to Quash on the grounds of lack of due notice and that individual respondent Kim Wong is not at all connected with respondent company.

The Sheriff's Report, dated 15 June 2011, shows that the issued Writ has remained unsatisfied that its life span has already lapsed. (emphasis Ours)

WHEREFORE, in the light of the foregoing, the instant Motion to Quash Writ of Execution has been rendered moot and academic.

SO ORDERED."[16] (emphasis supplied)

On September 23, 2011, private respondent filed a Motion for Issuance of Alias Writ of Execution.[17]

On the same day, September 23, 2011, Labor Arbiter Borbolla issued an Alias Writ of Execution.[18]

On November 8, 2011, the petitioner filed a Motion to Quash Alias Writ of Execution and/or Motion for Nullification of Proceedings With Motion For Inhibition.[19]

On November 23, 2011, Labor Arbiter Borbolla issued an Order granting petitioner's motion for inhibition.[20]

On October 18, 2011, the private respondent filed a Motion for Issuance of 3rd Alias Writ of Execution.[21]

On January 7, 2013, Labor Arbiter Patricio P. Libo-on issued an Order, viz.:

"For resolution is the Motion for Issuance of 3rd Alias Writ of Execution filed by the complainant against respondent Eastern Hawaii Leisure Co. Ltd./Mr. Kim Wong.

After a careful review of the records of the case, this Office finds merit in the 'Motion' under consideration. Respondent opposes the grant of this motion on the ground that there was no proper service of notice and summons on respondent. In the meantime, before this case was re-raffled to this Office 'for execution', Writs have been issued by the then handling Labor Arbiter. On account of these things, this Office makes the following disposition:

First – Jurisdiction over the case is lost after the case became final and executory. After a case becomes final and executory, the Court exercising jurisdiction over the case, loses the same and have nothing more to do but perform its ministerial function of 'enforcing' the judgment.

Second – It is the submission of the respondent that this Office never acquired jurisdiction over the respondent. This Office is not the proper forum to raise this issue. This should have been raised on appeal with the Commission.

WHEREFORE, premises considered, let an Alias Writ of Execution be issued against the respondent.

SO ORDERED.”[22]

Hence, this petition, which argues:

“Public respondent Libo-on likewise acted without jurisdiction and/or gravely abused its discretion amounting to lack or excess of jurisdiction when it ruled that the said issues should have been brought or raised with the Commission by way of appeal. Again, we beg to disagree.

First, the petitioner-corporation did not at any time received [sic] a copy of the decision, hence, could not in any way appeal the said decision.

Second, the petitioner-corporation learned of the instant labor complaint filed by the private respondent only when it was served personally by the sheriff of the first writ of execution. When the petitioner-corporation learned of the instant case, the same is already in the execution stage. And since, a writ of execution of the case is already being implemented, the proper remedy is to file a motion to quash.

Third, appeal to the public respondent Commission is no longer an available remedy as it is prohibited by the rules of procedure of the Commission as the case is already in the execution stage. The new rules is explicit that no appeal from the orders issued by the Labor Arbiter in the course of execution proceedings shall be allowed or acted upon nor elevated to the Commission.

'SECTION 5. PROHIBITED PLEADINGS AND MOTIONS. - The following pleadings and motions shall not be allowed and acted upon nor elevated to the Commission:

x x x

i) Appeal from orders issued by the Labor Arbiter in the course of execution proceedings.

x x x'

What is being questioned in the Motion to Quash and/or Motion for Nullification of Proceedings relate to an order or incident relative to the execution proceedings and not a decision, hence, appeal to the public respondent Commission is not proper.”[23]

On July 2, 2013, private respondent filed his verified Comment to the petition arguing:

“VALID SERVICE OF SUMMONS:

That Petitioner claims that there was no valid service of summons;

That a certification issued by the Post Office a copy of which was attached to the records would show that

Petitioner failed to claim the Summons issued by the Labor Arbiter despite several notice to claim the same;

That Petitioner claims that the summons issued by the Labor Arbiter was only directed to Kim Wong and not to Petitioner Corporation is completely wrong and not supported by the evidence in the records;

The records would show that the Summons was addressed to both Kim Wong and Petitioner Corporation; because Private Respondent's employer is Petitioner Corporation and not Kim Wong in his private capacity;

That if Petitioner Corporation had the mistake of interpreting as they argue now before the Honorable Court of Appeals that the summons was addressed only to Kim Wong then they have to suffer the consequences of their acts.

That if we go along with the erroneous interpretation of Petitioner Corporation, then any Corporation can disregard and evade judicial processes by simply claiming that the Officer to whom the summons was addressed is no longer connected to the Corporation.

That even granting without admitting that Kim Wong is not connected with Petitioner Corporation then the Officer in charge and or any responsible Officer of Petitioner Corporation should have taken the responsibility of getting the summons from the Post Office and not have completely disregarded the judicial process. Petitioner Corporations' act of disregarding judicial process only shows their disrespect to the Courts.

That Johnson Yu, the signatory of this Petition is his Brother-In-Law of Mr. Kim Wong.

That Kim Wong is the real owner of Petitioner Corporation and Mr. Johnson Yu is merely his dummy.

That Kim Wong has held himself in public as the owner of Petitioner Corporation and the police, the public, his employees such as herein Private Respondents were all made to believe that he is the owner because he was in control of all the activities of Petitioner Corporation.

That this is not the first time that Kim Wong had used corporations to evade his obligations, in the same way that he is using Petitioner-Corporation to evade his obligations;

It had been reported in the news that Kim Wong is the Owner of Seafood Wharf located at the former Army Navy Club, Luneta, City of Manila and the police, the public, his employees thereat were all made to believe that he is the owner because he was in control of all the activities of said Restaurant.

VERIFIED PETITION WITH THE NLRC WAS THE PROPER REMEDY NOT PETITION FOR CERTIORARI:

As correctly held by the Honorable Labor Arbiter Patricio Lobo [sic] who in an Order denied the Motion to Quash filed by Petitioner Corporation, what should have been filed was an Appeal with the NLRC;

More importantly as provided by the 2011 NLRC Rules Of Procedure, Petitioner Corporation should have filed a Verified Petition with the NLRC and not this instant Petition for Certiorari pursuant to the principle in law of exhaustion of administrative remedies;

That the instant Petition is merely a dilatory tactic on the part of Petitioner thus that Private Respondent be entitled to legal interest from the time his benefits have been illegally withheld from him.”[24]

In its Reply dated November 3, 2013, the petitioner argued:

“3. The said Summons dated May 5, 2009 was returned to sender for being UNCLAIMED as certified by the post office simply because there is no KIM WONG who will receive the same at petitioner-corporation's address in Manila. The said summons was not addressed to the petitioner-corporation's resident agent or any of its officers/directors or any of its employee for that matter as evidenced by the Registry Return Receipt (Annex 'I' of the Petition). There is no KIM WONG connected with the petitioner-corporation who would actually receive the

said registered mail no. 5896 containing the summons.

4. The Certification dated May 29, 2009 issued by the Postmaster would likewise prove that the Registered Mail No. 5896 containing the Summons was addressed to one KIM WONG with address at Eastern Hawaii Leisure Co., Inc. Century Park Hotel, P. Ocampo, Manila and posted at NLRC PO and was returned to sender for being unclaimed.

5. The petitioner-corporation cannot accept nor receive a letter which is not properly addressed to it or to any of its officer or employees. Kim Wong, the addressee of the summons and the registered mail no. 5896, is not in any way connected with the petitioner-corporation. He is not the resident agent nor is he the president, general manager or owner or majority stockholder of the petitioner-corporation.”[25]

Issues

Submitted therefore as issues for Our resolution are:

- Whether or not petitioner was validly served with Summons; and
- Whether or not this Court can validly entertain a petition for certiorari under Rule 65 to nullify the subject writ of execution.

Our Ruling

Resolving the first issue, petitioner itself admits that under Section 7, Rule III of the then 2005 Revised Rules of Procedure of the NLRC, service of summons is completed “if the addressee fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster”, as “service shall take effect after such time”. Thus, service of the summons on petitioner would be deemed completed if We are to treat the service on “General Manager/President” Kim Wong as service on petitioner corporation.

In this regard, private respondent categorically pointed out in his Comment that: (1) “Johnson Yu, the signatory of this Petition” is the “Brother-In-Law of Mr. Kim Wong”; (2) “Kim Wong” is the real owner of petitioner corporation and Mr. Johnson Yu is merely his dummy”; (3) “Kim Wong has held himself in public as the owner of petitioner corporation”; (4) “the police, the public, his employees such as herein Private Respondent(s) were all made to believe that he is the owner because he was in control of all the activities of petitioner corporation”; and (5) “this is not the first time that Kim Wong had used corporations to evade his obligations, in the same way that he is using petitioner corporation to evade his obligations” as “(i)t had been reported in the news that Kim Wong is the Owner of Seafood Wharf located at the former Army Navy Club, Luneta, City of Manila, and the police, the public, his employees thereat were all made to believe that he is the owner because he was in control of all the activities of said Restaurant”.[26]

Such serious accusations deserved a denial from petitioner corporation if the same were not true. However, in its Reply (to Comment), petitioner, pertinently, merely argued:

“3. The said Summons dated May 5, 2009 was returned to sender for being UNCLAIMED as certified by the post office simply because there is no KIM WONG who will receive the same at petitioner-corporation's address in Manila. The said summons was not addressed to the petitioner-corporation's resident agent or any of its officers/directors or any of its employee for that matter as evidenced by the Registry Return Receipt (Annex 'I' of the Petition). There is no KIM WONG connected with the petitioner-corporation who would actually receive the said registered mail no. 5896 containing the summons.

4. The Certification dated May 29, 2009 issued by the Postmaster would likewise prove that the Registered Mail No. 5896 containing the Summons was addressed to one KIM WONG with address at Eastern Hawaii

Leisure Co., Inc. Century Park Hotel, P. Ocampo, Manila and posted at NLRC PO and was returned to sender for being unclaimed.

5. The petitioner-corporation cannot accept nor receive a letter which is not properly addressed to it or to any of its officer or employees. Kim Wong, the addressee of the summons and the registered mail no. 5896, is not in any way connected with the petitioner-corporation. He is not the resident agent nor is he the president, general manager or owner or majority stockholder of the petitioner-corporation.”[27]

It is thus evident that petitioner's defense on the question of service of summons is a ruse. Service on Kim Wong has effectively been service on petitioner-corporation.

Anent the second issue, the High Tribunal already held in City Trust Banking Corporation vs. NLRC[28] that while a Writ of Execution is no longer appealable, an aggrieved party is not without recourse at the level of the NLRC. An aggrieved party's remedy therefrom is its filing a petition for injunction with the NLRC under Article 218 (e) of the Labor Code.

Petitioner's filing of the instant petition for certiorari under Rule 65 of the Rules of Court is therefore jurisdictionally improper. For, Section 1, Rule 65 of said Rules, provides:

“SECTION 1. Petition for certiorari. When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.” (emphasis supplied)

The presence of a “plain, speedy and adequate remedy in the ordinary course of law” which it did not avail of as afore-discussed, foreclosed petitioner's recourse to the instant petition for certiorari.

WHEREFORE, the petition is DISMISSED for lack of merit.

SO ORDERED.

Lantion, and Antonio-Valenzuela, JJ., concur.

[1] The caption of the petition shows that Kim Wong is a co-petitioner in this case. However, the body of the petition alleges, in page 1 thereof, that only “Petitioner-Corporation, Eastern Hawaii Leisure Limited” is the petitioner in this case.

[2] Rollo, pp. 3-25.

[3] Ibid., pp. 27-28.

[4] Rollo, p. 28.

[5] Ibid., p. 56.

[6] Ibid., pp. 55-56.

[7] Ibid., p. 55.

[8] Ibid., pp. 55-58.

[9] Ibid., p. 56.

[10] Rollo, p. 57.

[11] Ibid., pp. 61 and 63.

[12] Ibid., p. 10.

[13] Rollo, pp. 62-64.

[14] Ibid., p. 10; pp. 65-71.

[15] Ibid., pp. 78-80.

[16] Rollo, p. 81.

[17] Ibid., p. 83.

[18] Ibid., pp. 87-90.

[19] Ibid., pp. 91-100.

[20] Ibid., pp. 107-108.

[21] Ibid., pp. 109-110.

[22] Rollo, pp. 27-28.

[23] Rollo, p. 20.

[24] Rollo, pp. 122-125.

[25] Rollo, p. 136.

[26] Rollo, pp. 124-125.

[27] Ibid., p. 136.

[28] 258 SCRA 621, 629-630 (1996).

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