

**GEORGE TY BENG TAN AND RODOLFO L. MARTINEZ, PETITIONERS,
VS. NATIONAL LABOR RELATIONS COMMISSION (4TH DIVISION),
FERRO CHEMICALS/ PHILIPPINE MINERALS AND ALLOY
CORPORATION/ DIVE...**

Ponente: SORONGON, E.D., J.

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SORONGON, E.D., J.

This is a petition for certiorari under Rule 65 of the Rules of Court filed by George Ty Beng Tan and Rodolfo Martinez (petitioners) assailing the Decision[1] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 04-000794-10 promulgated on November 30, 2010 dismissing petitioners' appeal of the Labor Arbiter's decision and its subsequent Resolution[2] dated March 11, 2011, denying their motion for reconsideration.

From the records we found:

Petitioners were employees of private respondent Diversified Plastic Film System Inc. (DPFSI) seeking separation pay and 13[th] month pay equivalent to their years of service from the period of their employment to respondent Ferro Chemicals (Ferro Chem) up to the time they were dismissed by DPFSI.

In their position paper[3] it was alleged that petitioner George Ty Beng Tan (Ty Beng Tan) was initially employed by Ferro Chem as Sales Manager/ Purchasing Manager in May of 1972 while petitioner Rodolfo Martinez (Martinez) was hired as an Export Coordinator and Export Document Assistant in 1989. In July of 1992, Ferro Chem announced that it would merge with respondent Philippine Minerals and Alloy Association (Phil-MAC) transferring all its assets and liabilities to the latter. The merger likewise included the absorption of Ferro Chem's employees without loss or diminution of pay or service record. In 2004, Phil-MAC was absorbed further by DPFSI, which included the absorption of both petitioners, who was then being paid a monthly basic salary of P 23,000.00 plus monthly allowance of P10,000.00 (Ty Beng Tan); and P 10,310.00 (Martinez). Per letter[4] dated August 1, 2005, retrenchment was contemplated by DPFSI who, thru its Executive Officer Carlos De Castro (De Castro), offered a separation pay of Php368,000.00 to petitioner Ty Beng Tan to which the latter did not accede. In March of 2008, petitioners received a letter from DPFSI stating that forced leave will be implemented to its employees beginning on April 1, 2008 due to financial reverses. Finally, in June of 2008, petitioners were informed by DPFSI that their employment is effectively terminated.

Petitioners further contended that respondents failed to establish that the cessation of business operation was justified under Art. 283 of the Labor Code, hence their termination tantamounts to constructive dismissal.

Respondent De Castro admitted that petitioners were employees of DPFSI and that their employment was indeed terminated by reason of cessation of operation which is a recognized valid ground for termination of employment. The business was forced to close due to DPFSI's "Capital Deficiency" of Php837,495,902.00 as shown in its Audited Financial Statement[5] dated December 31, 2006 and its 2005 and 2006 Financial Statements[6]

In the same vein, DPFSI recognized petitioners' employment status and services rendered to the former, hence,

despite business closure, it offered separation pay and 13[th] month pay equivalent to their years of service to DPFSI[7]. Thru its president, Ramon Garcia, DPFSI substantially denied petitioners' contention of 'absorption' of Ferro Chem by Phil-MAC, and later on, of Phil-MAC by DPFSI.

DPFSI and De Castro further asserted that they complied with Art. 283 of the Labor Code as petitioners were notified that the company will be implementing a forced leave scheme starting April 1, 2008 due to proven financial reversals which is an authorized cause under said provision of law; and in June 2008, they were asked to stop reporting for work at least thirty (30) days prior the effectivity of the termination. A copy of said notice was furnished to the DOLE-Region III Office.

By Decision[8] dated November 25, 2009, the Labor Arbiter dismissed petitioners' complaint, the dispositive portion whereof reads:

“WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the complaint for illegal dismissal for lack of merit. Respondent Diversified Plastic Film Systems Inc. is however ordered to pay the complainants the following, to wit:

NAME

NOMINAL DAMAGES

13TH MONTH PAY

GEORGE TY BENG TAN

P50,000.00

P11,500.00

RODOLFO MARTINEZ

P50,000.00

P5,155.00

X X X

X X X

X X X

All other claims are ordered dismissed for lack of merit.

SO ORDERED.

Petitioners sought the reversal of the foregoing pronouncement of the Labor Arbiter thru an appeal to the NLRC. In a Decision[9] dated November 30, 2010 the NLRC ruled:

WHEREFORE. Premises considered, appeal is DENIED for lack of merit and the appealed Decision is, accordingly, AFFIRMED in toto.

SO ORDERED.

A Motion for Reconsideration was subsequently filed but the NLRC denied the same in a Resolution[10] dated March 11, 2011. Hence, this petition for certiorari anchored on the following issues; viz:

WHETHER PUBLIC RESPONDENT NLRC ACTED WITH GRAVE ABUSE OF DISCRETION IN AFFIRMING THE DECISION OF THE LABOR ARBITER AND ITS ORIGINAL DECISION FINDING AUTHORIZED CAUSE FOR TERMINATION OF EMPLOYMENT WITHOUT STATUTORY RIGHT TO SEPARATION PAY UNDER ART. 283 OF THE LABOR CODE.

WHETHER PUBLIC RESPONDENT NLRC CAPRICIOUSLY AND WHIMSICALLY REFUSED TO RULE ON THE ALLEGATION OF ORCHESTRATED MERGERS VIS-A-VIS THE RIGHT OF PETITIONERS TO SEPARATION PAY FROM ALL THREE RESPONDENT COMPANIES.

We deny.

Closure or cessation of an employer's business operations is governed by Article 283 of the Labor Code, as amended. It states:

Article 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 Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. 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 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.

The grant of separation pay, as an incidence of termination of employment under Article 283, is a statutory obligation on the part of the employer and a demandable right on the part of the employee, except only where the closure or cessation of operations was due to serious business losses or financial reverses and there is sufficient proof of this fact or condition.[11]

The rule therefore is, when the closure of business or cessation of operations is due to serious business losses or financial reverses; duly proved, in which case, the right of affected employees to separation pay is lost.[12]

In the case at hand, DPFSI squarely convinced the NLRC that the company has lawfully closed its business operations pursuant to Art. 283 of the Labor Code, due to serious business losses and critical financial reverses. As fairly established by DPFSI thru its audited financial statements prepared by SGV & Co.[13], it had a capital deficiency of P842,259,198.00 and P837,495,902.00 for the years 2005 and 2006, respectively.

As cogently observed by the NLRC:

xxx To our mind, respondent DPFSI had more than amply discharged said evidentiary burden with the presentation of the Independent Auditor's Report and its 2005/2006 Financial Statements which included the following documents, viz: (a) Balance Sheets; (b) Statements of Income; (c) Statements of Changes in Capital Deficiency; (d) Statements of Cash Flow; and (e) Notes to Financial Statements (pp. 37-65, Record).

Collectively, the foregoing documents support the Labor Arbiter's finding that the cessation of respondent DPFSI's business operations was, indeed, attributable to serious business losses and reverses. Nowhere is this

more evident than the following observations made in the Independent Auditor's Report submitted by Ramon D. Dizon of Sycip Gorres Velayo & Co. (pp. 38-40, Ibid.) which reflected respondent DPFSI's dire financial condition, to wit:

"We draw attention to Note 1 of the financial statements that the Company incurred significant loss of P7.11 million in 2005 resulting in capital deficiency of P837.50 million and P842.26 million as of December 31, 2006 and 2005, respectively. Furthermore, the Company's current liabilities exceeded its current assets by P1.84 billion and P1.95 billion as of December 31, 2006 and 2005 respectively. These factors along with other matters as set forth in Note 1 of the financial statements, indicate the existence of material uncertainty which may cast significant doubt about the Company's ability to continue as a going concern."(p.40 Id.)

Being the case, the Labor Arbiter and the NLRC both found that respondent company validly exercised their management prerogatives recognized under Article 283 of the Labor Code, and has profoundly discharged its burden in proving it incurred substantial loss. It is neither the function of the law nor its intent to supplant the prerogative of management in running its business, such as, to compel the latter to operate at a continuing loss simply because it has to maintain its workers in employment. Such an act would be tantamount to a taking of property without due process of law.[14]

Consequently, DPFSI is relieved from the payment of separation pay to petitioners. In *North Davao Mining Corporation v. National Labor Relations Commission*, [15] the Supreme Court held that Article 283 governs the grant of separation benefits "in case of closures or cessation of operation" of business establishments "NOT due to serious business losses or financial reverses . . ." Where, the closure then is due to serious business losses, the Labor Code does not impose any obligation upon the employer to pay separation benefits.

The denial of petitioners' claim for separation pay by both labor tribunals was thus in order.

While the closure of the DPFSI is indisputable, it remains a fact that the latter failed to comply with the one (1) month notice requirement prior to the date of the intended termination. The letter dated March 19, 2008 informing all employees of DPFSI of the implementation of forced leave starting April 1, 2008, is not the contemplated termination notice required by Art. 283 of the Labor Code. Neither is the copy of said notice furnished to the Director of DOLE, Region III a sufficient compliance thereof.

In *Business Services of the Future Today, Inc. v. Court of Appeals*, [16] which reiterated the ruling in *Agabon v. National Labor Relations Commission*, [17] the Supreme Court held that where the dismissal is for an authorized cause, the lack of statutory due process should not nullify the dismissal, or render it illegal, or ineffectual. However, the employer should indemnify the employee, in the form of nominal damages, for the violation of his right to statutory due process. The amount of damages to be awarded the employee is addressed to the sound discretion of the court, taking into account the relevant circumstances. Under the facts and circumstances attendant to the case, the amount of P50,000 in nominal damages is reasonable and sufficient to vindicate each petitioners' right to due process.

Ultimately, it is settled that factual findings of quasi-judicial bodies like the NLRC, particularly when they coincide with those of the Labor Arbiter and if supported by substantial evidence, are accorded great respect and even finality. In this case, the Labor Arbiter and the NLRC were consistent in ruling that DPFSI's closure or cessation of business operations was due to serious business losses or is suffering from economic reversals, and not merely to avoid payment of separation pay to petitioners. As such, we find no reason to deviate therefrom.

Now on the issue of orchestrated mergers. The validity of DPFSI's closure due to serious business reversals, to our mind, correspondingly renders petitioners' allegation of merger inconsequential.

The NLRC observed and ruled on such issue in this wise:

xxx our perusal of the record shows that complainants have no cause to hold respondent DPFSI liable for separation pay corresponding to their supposed continuous employment with respondent corporations. While it is true that the July 31, 1992 letter from respondent FC categorically informed complainants Tan and Martinez that their service record will be credited upon their absorption by respondent PMAC (p. 139, Record), the record is bereft of any showing that the same condition was likewise applicable to their employment with respondent DPFSI. xxx All in all, these unaccounted hiatuses in complainants' evidence lends credence to respondent DPFSI's claim that it cannot be held liable for separation pay corresponding to said employees' service with respondents FC and PMAC.[18]

Merger is one where a corporation absorbs another corporation and remains in existence while the other is dissolved. Strict compliance with Sections 76-79 of the Corporation Code is essential. As an application of the fact of merger to labor laws pertinent in the present case is that - succession of employment rights and obligations occur between the absorbing corporation and the employees of the absorbed corporation. Not only must the absorbing corporation retain the employees; it should likewise recognize the length of service in the previous employer. In merger, like in sale in bad faith, the "successor employer" principle applies.[19]

Assuming for the sake of argument that the allegation of merger between Ferro Chem and Phil-MAC, and the subsequent merger between Phil-MAC and DPFSI had been duly proven, still petitioners' claim for separation pay cannot pass judicial muster. This is because dissolution results upon the entities merged to another. Ergo, even if the claim of merger is sustained, DPFSI being the lone existing entity would nevertheless remain absolved from the payment of petitioners' separation pay due to the validity of its business closure. Hence, the NLRC found it irrelevant to further dwell on the matter.

Absent finding of merger between Phil-MAC and DPFSI and the validity of non-payment of separation pay by the latter being sustained, the question on whether petitioners may still claim separation pay for their years of loyal and faithful service may arise; and if so, to whom. In our opinion, if petitioners' claim is warranted by the statutory parameters of the Labor Code, the same should prosper as against Ferro Chem and/or Phil-MAC – depending on the circumstances surrounding such entities' business cessation. Unfortunately, evidence on record is scant, if not totally lacking, in establishing such claim against said entity or entities. It even failed to show that jurisdiction against Ferro Chem and/or Phil-MAC was acquired. Omissions in this regard is futile in this petition for review on certiorari. As such, we abstain to rule on issues to which factual antecedents and evidentiary matters should have been first examined by the Labor Arbiter and the NLRC.

Finally, the claims of personal liability against private respondents Carlo De Castro and Ramon Garcia has no evidentiary basis as correctly ruled by the Labor Arbiter and affirmed by the NLRC. As a general rule established by legal fiction, the corporation has a personality separate and distinct from its officers, stockholders and members. Accordingly, officers of a corporation are not personally liable for their official acts unless it is shown that they have exceeded their authority. This fictional veil, however, can be pierced by the very same law which created it when "the notion of the legal entity is used as a means to perpetrate fraud, an illegal act, as a vehicle for the evasion of an existing obligation, and to confuse legitimate issues". This, in the present case, the petitioners miserably failed to substantiate.

WHEREFORE, the instant petition is DENIED for lack of merit. The November 30, 2010 Decision and March 11, 2011 Resolution of the National Labor Relations Commission in NLRC LAC No. 04-000794-10 are hereby SUSTAINED in all respects.

SO ORDERED.**C E R T I F I C A T I O N**

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Carandang, R.D., Chairman and Gonzales-Sison, M., JJ., concur.

[1] Rollo, Annex “A”, pp. 32-45.

[2] Rollo, Annex “B”, pp. 45-48.

[3] Rollo, Annex “F”, pp. 78-85.

[4] Rollo, Annex “M”, p. 175.

[5] Rollo, Annex “G”, pp. 90-118.

[6] Id.

[7] Id., pp. 119-120.

[8] Rollo, Annex “C”, pp. 50-64.

[9] Supra, note 1.

[10] Supra, note 2.

[11] Reahs Corporation et. al. v. NLRC et.al., G.R. No. 117473 April 15, 1997.

[12] Id.

[13] Rollo. pp. 94-96.

[14] Industrial Timber Corporation v. NLRC, 339 Phil. 395 (1997) citing San Pedro Hospital of Digos, Inc. v. Secretary of Labor, et al., G.R. No. 104624, October 11, 1996.

[15] 325 Phil. 202 (1996).

[16] G.R. No. 157133, January 30, 2006, 480 SCRA 571.

[17] G.R. No. 158693, November 17, 2004, 442 SCRA 573.

[18] Rollo, Annex “A”, p. 40.

[19] The Labor Code vol. II, 6th edition, Azucena p. 796

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