

FONTANA DEVELOPMENT CORPORATION, PETITIONER, VS. THE SECRETARY OF LABOR AND EMPLOYMENT, BUREAU OF LABOR RELATIONS AND THE ASSOCIATION OF FONTANA RESORT EMPLOYEES (AFRE) RESPONDE...

SP No. 110770, March 30, 2010

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Court of Appeals

Before this Court is a Petition for Certiorari[1] (With Application For Preliminary Injunction and/or Temporary Restraining Order) under Rule 65 of 1997 Revised Rules of Civil Procedure seeking to annul the Resolution[2] dated August 19, 2009 of the public respondent Labor Secretary through Undersecretary, Romeo C. Lagman, in OS-A-14-6-09 (RO300-0811-RU-002) entitled "In Re: Petition For Certification Election Among the Regular Rank-And-File Employees of Fontana Leisure Parks. Association of Fontana Resort Employees (AFRE), Petitioner-Appellee, Fontana Leisure Parks, Employer-Appellant", the dispositive portion of which reads:

"Wherefore, the appeals are hereby dismissed and the 13 May 2009 Order of the Mediator-Arbiter is hereby affirmed.

SO ORDERED."[3]

The facts are:

Petitioner Fontana Development Corporation (FDC for brevity) is a corporation engaged in the development of real estate property located at the Clubhouse B. Fontana Leisure Parks, CM. Recto Highway, Clark Special Economic Zone, Clarkfield, Angeles City, Pampanga. Private respondent Association of Fontana Resort Employees (AFRE for brevity), on the other hand, is the legitimate labor organization which represents the rank-and-file employees of Fontana Resort and Country Club, Body Bliss Spa, Amazingly Clean Inc., New Hongkong Golden Castle Restaurant Corporation and petitioner FDC.

Sometime on February 11, 2009, an order for the conduct of a certification election was issued by the Designate Mediator-Arbiter among the rank-and-file employees of Fontana Leisure Parks located at CM. Recto Highway, Clarkfield, Pampanga with private respondent AFRE and "No Union" as choices. On March 23, 2009, the certification election was conducted with private respondent AFRE receiving 166 votes out of the total votes cast of 167. Thereafter, special protests were filed by four establishments, namely; 1) Fontana Resort and Country Club; 2) petitioner FDC; 3) Fontana Leisure Park; and 4) Body Bliss Spa.

Fontana Resort and Country Club argued that: Fontana Leisure Parks is composed of several companies that run separate and distinct businesses; the conduct of a certification election without clarifying which employees should participate, is unfair, illegal and ultimately detrimental to the interests of its employees; and the election would mingle employees of different employers and would result in industrial unrest.

Petitioner FDC, on the other hand, argued that it is not a respondent to the petition nor is it an alter-ego, agent or representative of Fontana Leisure Parks. It further argued that the Med-Arbiter failed to acquire jurisdiction over

it so that any order issued relative thereto is void and unenforceable.

Body Bliss, Spa, through a letter from its owner Anita Alvarado, objected to the holding of a certification election on the ground that it included persons from different employers. Amazingly Clean, Inc., however, objected to the conduct of certification election on the ground that jurisdiction was never acquired over it because it did not receive summons or notification for the conduct of the certification election.

On April 17, 2009, private respondent AFRE filed a motion to dismiss on the ground that the protesters failed to furnish it with copies of their respective protest.

On May 13, 2009, Med-Arbiter Maria Consuelo S. Bacay denied the protest of petitioner FDC and the other protesters and at the same time, certified private respondent AFRE as the sole and exclusive bargaining agent of the regular rank and file employees of "Fontana Leisure Parks".

On May 29, 2009, petitioner FDC filed its Special Appearance With Notice And Memorandum of Appeal⁴ arguing in the main that the Med-Arbiter seriously erred in dismissing the protests and in certifying private respondent AFRE as the sole and exclusive bargaining agent of the regular rank-and-file employees of Fontana Leisure Parks. It further argued that the members of private respondent AFRE are employees of different businesses and different interests.

On August 19, 2009, public respondent Labor Secretary, through the Undersecretary, issued the assailed resolution. Hence, this petition based on the following grounds:

THE PUBLIC RESPONDENT SECRETARY ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN DISMISSING PETITIONER'S APPEAL AND AFFIRMING THE MED-ARBITER'S CERTIFICATION CONSIDERING THAT:

- THE CERTIFICATION OF AFRE AS THE SOLE BARGAINING AGENT OF THE EMPLOYEES OF PETITIONER AND OTHER SEPARATE ENTITIES BLATANTLY VIOLATES THE RULE THAT EMPLOYEES IN TWO OR MORE CORPORATIONS CANNOT BE TREATED AS A SINGLE BARGAINING UNIT;
- THE PROVISIONS OF DOLE DEPARTMENT ORDER 40-03 ON MULTI-EMPLOYER BARGAINING ARE COMPLETELY INAPPLICABLE;
- FONTANA LEISURE PARK IS NOT A JURIDICAL ENTITY NOR A "CORPORATION BY ESTOPPEL";
- PETITIONER FDC WAS NOT PROPERLY SERVED WITH NOTICE OF THE PRELIMINARY CONFERENCE, SINCE THE SAME WAS ADDRESSED ONLY TO FONTANA LEISURE PARK.

The petition is impressed with merit.

Petitioner FDC argues that: present jurisprudence prohibits several employers from being joined together under a single bargaining unit and conversely, the employees of different companies cannot be lumped together in a single bargaining unit; the employees of the four companies (i.e. Amazingly Clean, Inc., petitioner FDC, New Hongkong Golden Castle and Body Bliss Spa) have widely different jobs and have no commonality or mutuality of interest.

Private respondent AFRE, on the other hand, argues that: Fontana Leisure Parks is the one and only name prominently used and displayed by the company in representing itself to the general public; there is only one accounting department of the different companies and in fact, all the companies have a common work pool from which workers can be designated for assignment to any establishment in the park as needed; likewise, there is

only one HRD Director and company President; the company represents itself as Fontana Leisure Parks to its employees, its guests, visitors, clients and the general public.

This Court finds for petitioner FDC.

Private respondent AFRE's contention that Fontana Leisure Parks is the one and only name prominently used by the company in representing itself to the general public is untenable. While it is true that Fontana Leisure Parks is being prominently used by the company in dealing with the public, it does not, however, automatically mean that these four companies, i.e. Amazingly Clean, Inc petitioner FDC, New Hongkong Golden Castle and Body Bliss Spa, should be treated as one entity only.

The issue in this kind of scenario was earlier settled by the Supreme Court in the case of Diatogon Labor Federation vs. Ople[5], and was subsequently reiterated in the case of Indophil Textile Mill Workers Union vs. Calica[6], wherein it was held that:

"The fact that the businesses of private respondent and Acrylic are related, that some of the employees of private respondent are the same persons manning and providing for auxiliary services to the units of Acrylic, and that the physical plants, offices and facilities are situated in the same compound, it is our considered opinion that these facts are not sufficient to justify the piercing of the corporate veil of Acrylic.

In the same case of Umali, et al., v. Court of Appeals, We already emphasized that the "legal corporate entity is disregarded only if it is sought to hold the officers and stockholders directly liable for debt or obligation. In the instant case petitioner does not seek to impose a claim against the members of Acrylic.

Furthermore, We already ruled in the case of Diatogon Labor Federation Local 110 of the ULGWP, v. Ople that it is grave abuse of discretion to treat two companies as a single bargaining unit when these companies are indubitably distinct entities with separate juridical personalities."

This ruling was again reiterated in the case of Dela Salle University vs. Dela Salle University Employees Association[7], wherein it was held that:

"The Court also affirms the findings of the voluntary arbitrator that the employees of the College of Saint Benilde should be excluded from then bargaining unit of the rank and file employees of Dela Salle University, because the two educational institutions have their own separate, juridical personality and no sufficient evidence was shown to justify the piercing the veil of corporate fiction."

In this case, it appears that the four companies, i.e. Amazingly Clean, Inc., petitioner FDC, New Hongkong Golden Castle and Body Bliss Spa have their own separate and distinct personalities. To lump together their employees in one single bargaining unit to bargain collectively with petitioner FDC is definitely grave abuse of discretion pursuant to the ruling in the Indophil Textile case.

The joining of these workers into a single bargaining unit is prohibited pursuant to the ruling laid down in the case of San Miguel Corporation vs. Laguesma[8], wherein it was held that the employees sought to be represented by the bargaining agent must have substantial mutual interests in terms of employment and working conditions as evidenced by the type of work they perform. The Supreme Court further held that:

The fundamental factors in determining the appropriate collective bargaining unit are: 1) the will of the employees (Globe Doctrine); 2) affinity and unity of the employees' interest, such as substantial similarity of work and duties, or similarity or compensation and working conditions (substantial Mutual Interests Rule); 3) prior collective bargaining history; and (4) similarity of employment status.

* * * * *

Indeed, the test of grouping is mutuality or commonality of interests. The employees sought to be represented by the collective bargaining agent must have substantial mutual interests in terms of employment and working conditions as evinced by the type of work they perform.[9]

In this particular case, there appears no substantial mutual interests in the terms of employment and working conditions between the workers sought to be represented by private respondent AFRE. Hence, the Mid-Arbitrer clearly gravely abused his discretion in ordering the conduct of a certification election.

Petitioner FDC further argues that the provisions of DOLE Department Order 40-03 on Multi-Employer Bargaining are inapplicable.

This Court finds this argument meritorious.

Granting *arguendo* that there are indeed four separate and distinct companies operating inside Fontana Leisure Parks, still, the procedure in the instant case due to the fact that consent of the participating employers is required. The procedure thereof is provided under Section 5 and 6 of DOLE Order No. 40-03, Rule XVI, which provide:

SEC. 5. When Multi-Employer Bargaining Available.— A legitimate labor union(s) and employers may agree in writing to come together for the purpose of collective bargaining provided:

(a) only legitimate labor unions who are incumbent exclusive bargaining agents may participate and negotiate in multi-employer bargaining;

(b) only employers with counterpart legitimate labor unions who are incumbent bargaining agents may participate and negotiate in multi-employer bargaining; and

(c) only those legitimate labor unions who pertain to employer units who consent to multi-employer bargaining may participate in multi-employer bargaining.

SEC. 6. Procedure in Multi-Employer Bargaining.—Multi-Employer bargaining may be initiated by the labor unions or by the employers.

(a) Legitimate labor unions who desire to negotiate with their employers collectively shall execute a written agreement among themselves, which shall contain the following:

1)

the names of the labor unions who desire to avail of multi-employer bargaining;

2)

each labor union in the employer unit;

3)

the fact that each of the labor unions are the incumbent exclusive bargaining agents for their respective employer units;

4)

the duration of the collective bargaining agreements, if any, entered into by each labor union with their respective employers. Legitimate labor unions who are members of the same registered federation, national, or

industry union are exempt from execution of this written agreement.

(b) The legitimate labor unions who desire to bargain with multi-employers shall send a written notice to this effect to each employer concerned.

The written agreement stated in the preceding paragraph, or the certificates of registration of the federation, national, or industry union, shall accompany said notice.

Employers who agree to group themselves or use their existing associations to engage in multi-employer bargaining shall send a written notice to each of their counterpart legitimate labor unions indicating their desire to engage in multi-employer bargaining. Said notice shall indicate the following:

1)

the names of the employers who desire to avail of multi-employer bargaining;

2)

their corresponding legitimate labor organizations;

3)

the fact that each corresponding legitimate union is any incumbent exclusive bargaining agent;

4)

the duration of the current collective bargaining agreement, if any, entered into by each employer with the counterpart legitimate labor union.

(c) Each employer or concerned labor union shall express its willingness or refusal to participate in multi-employer bargaining in writing, addressed to its corresponding exclusive bargaining agent or employer. Negotiations may commence only with regard to respective employers and labor unions who consent to participate in multi-employer bargaining;

(d) During the course of negotiations, consenting employers and the corresponding legitimate labor unions shall discuss and agree on the following:

1)

the manner by which negotiations shall proceed;

2)

the scope and coverage of the negotiations and the agreement; and

3)

where appropriate, the effect of the negotiations on current agreements or conditions of employment among the parties."

In this case, consent of the purported employers is wanting which is an important element for multi-employer bargaining.

Petitioner FDC further argues that Fontana Leisure Park is only a registered trademark and business name used by it; while the registration of a trademark vests certain rights to its owners, the same does not grant it a separate and distinct personality; and being a trademark, it has no juridical personality.

Private respondent AFRE, on the other hand, argues that: there is every reason to consider "Fontana Leisure Park" (now "Fontana Hot Spring Leisure Park") as the employer itself of the members of the union considering the extensive and continued use thereof by petitioner FDC.

This Court is not persuaded.

While indeed, "Fontana Leisure Park" (now "Fontana Hot Spring Leisure Park") is being prominently used by petitioner FDC as its tradename, nonetheless, the same is just a mere tradename and has no juridical personality. Basic is the rule that only a juridical person has a legal existence and susceptible of rights and obligations under the law. As such, it can have no legal right or obligation as contemplated under the law. It cannot be equated with that of the petitioner FDC.

In justifying its ruling, the Undersecretary of Labor ratiocinated that "due to its representation, Fontana Leisure Park is, by law, a corporation by estoppel having assumed such personality in its dealings with the employees and with the general public."

This Court is not convinced.

Section 21 of the Corporation Code of the Philippines defines corporation by estoppel as:

"Sec. 21. Corporation by estoppel.—All persons who assume to act as a corporation knowing it to be without authority to do so shall be liable as general partners for all debts, liabilities and damages incurred or arising as a result thereof; Provided however, That when any such ostensible corporation is sued on any transaction entered by it as a corporation or on any tort committed by its as such, it shall not be allowed to use as a defense its lack of corporate personality.

"One who assumes an obligation to an ostensible corporation as such, cannot resist performance thereof on the ground that there was in fact no corporation."

Corporation by estoppel is founded on principles of equity and is designed to prevent injustice and unfairness. It applies when persons assume to form a corporation and exercise corporate functions and enter into business relations with third persons. Where there is no third person involved and the conflict arises only among those assuming the form of a corporation, who therefore know that it has not been registered, there is no corporation by estoppel.[10]

In this case, "Fontana Leisure Park" should not be considered a corporation by estoppel. The language of Section 21 of the Corporation Code of the Philippines is unmistakable in that a corporation by estoppel is applicable only to person or individuals who have not formed themselves into a corporation but act as if they were a corporation. Furthermore, there is no third person involved in this case in order for the doctrine to be applicable.

Petitioner FDC further argues that it was not properly served with notice of the preliminary conference, since the same was addressed only to Fontana Leisure Park.

Private respondent AFRE, on the other hand, argues that: petitioner FDC failed to attend the first preliminary conference on December 1, 2008 despite receipt of notice by Executive Secretary Leah Bautista. Petitioner FDC again disregarded the second preliminary conference on January 26, 2009 despite receipt of the notice by a certain

Luzviminda Caday.

Records of the case show that the notices sent were addressed to "Fontana Leisure Park" which, as earlier stated, is not a juridical entity for being a mere trademark or tradename.

Under Section 11, Rule 14 of the 1997 Rules of Civil Procedure, service to a corporation organized under the law of the Philippines may be made to its president, managing partner, general manager, corporate secretary, treasurer or in-house counsel.

Facts reveal that none of the persons enumerated above were served with the notice of the preliminary conference. There was no valid service of these notices to petitioner FDC, hence, the proceedings held thereon have no valid effect. Proper notice is vital and indispensable ingredient of due process.[11]

WHEREFORE, in view of the foregoing, petition is hereby GRANTED.

The assailed resolution dated August 19, 2009 of the Secretary of Labor through his Undersecretary in OS-A-14-6-09 (RO300-0811-RU-002) is hereby reversed and set aside.

SO ORDERED.

Dimaampad and Acosta, JJ., concur.

[1] Rollo p. 3.

[2] Rollo pp. 42-47.

[3] *ibid*.

[4] Rollo pp. 48-56.

[5] G.R. Nos. L-44493 and L-44494, December 3, 1980.

[6] 205 SCRA 697.

[7] 330 SCRA 363.

[8] G.R. No. 100485, September 21, 1994, 236 SCRA 595.

[9] *ibid*.

[10] *Lozano vs. Hon. Judge delos Santos, et. al.*, G.R. No. 125221. June 19, 1997.

[11] *PNCC vs. Ferrer-Calleja*, G.R. No. 80485, November 11, 1988.

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