

**QUINTIN ROBLEDO, MARIO SINLAO, LEONARDO SAAVEDRA
VICENTE SECAPURI, DANIEL AUSTRIA, ET AL., PETITIONERS, VS.
THE NATIONAL LABOR RELATIONS COMMISSION, BACANI
SECURITY AND ALLIED S...**

G.R. No. 110358. November 09, 1994

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review of the decision of the First Division[1] of the National Labor Relations Commission, setting aside the decision of the Labor Arbiter which held private respondents jointly and severally liable to the petitioners for overtime and legal holiday pay.

The facts of this case are as follows:

Petitioners were former employees of Bacani Security and Protective Agency (BSPA, for brevity). They were employed as security guards at different times during the period 1969 to December 1989 when BSPA ceased to operate.

BSPA was a single proprietorship owned, managed and operated by the late Felipe Bacani. It was registered with the Bureau of Trade and Industry as a business name in 1957. Upon its expiration, the registration was renewed on July 1, 1987 for a term of five (5) years ending 1992.

On December 31, 1989, Felipe Bacani retired the business name and BSPA ceased to operate effective on that day. At that time, respondent Alicia Bacani, daughter of Felipe Bacani, was BSPA's Executive Directress.

On January 15, 1990 Felipe Bacani died. An intestate proceeding was instituted for the settlement of his estate before the Regional Trial Court, National Capital Region, Branch 155, Pasig, Metro Manila.

Earlier, on October 26, 1989, respondent Bacani Security and Allied Services Co., Inc. (BASEC, for brevity) had been organized and registered as a corporation with the Securities and Exchange Commission. The following were the incorporators with their respective shareholdings:

ALICIA BACANI - 25,250 shares

LYDIA BACANI - 25,250 shares

AMADO P. ELEDA - 25,250 shares

VICTORIA B. AURIGUE - 25,250 shares

FELIPE BACANI - 20,000 shares

The primary purpose of the corporation was to "engage in the business of providing security" to persons and entities. This was the same line of business that BSPA was engaged in. Most of the petitioners, after losing their

jobs in BSPA, were employed in BASEC.

On July 5, 1990, some of the petitioners filed a complaint with the Department of Labor and Employment, National Capital Region, for underpayment of wages and nonpayment of overtime pay, legal holiday pay, separation pay and/or retirement/resignation benefits, and for the return of their cash bond which they posted with BSPA. Made respondents were BSPA and BASEC. Petitioners were subsequently joined by the rest of the petitioners herein who filed supplementary complaints.

On March 1, 1992, the Labor Arbiter rendered a decision upholding the right of the petitioners. The dispositive portion of his decision reads:

CONFORMABLY WITH THE FOREGOING, the judgment is hereby rendered finding complainants entitled to their money claims as herein above computed and to be paid by all the respondents herein in solidum except BSPA which has already been retired from business.

Respondents are further ordered to pay attorney's fees equivalent to five (5) percent of the awarded money claims.

All other claims are hereby dismissed for lack of merit.

SO ORDERED.

On appeal the National Labor Relations Commission, reversed. In a decision dated March 30, 1993, the NLRC's First Division declared the Labor Arbiter without jurisdiction and instead suggested that petitioners file their claims with the Regional Trial Court, Branch 155, Pasig, Metro Manila, where an intestate proceeding for the settlement of Bacani's estate was pending. Petitioners moved for a reconsideration but their motion was denied for lack of merit. Hence this petition for review.

No appeal lies to review decisions of the NLRC. Nonetheless the petition in this case was treated as a special civil action of certiorari to determine whether the NLRC did not commit a grave abuse of its discretion in reversing the Labor Arbiter's decision.

The issues in this case are two fold: first, whether Bacani Security and Allied Services Co. Inc. (BASEC) and Alicia Bacani can be held liable for claims of petitioners against Bacani Security and Protective Agency (BSPA) and, second, if the claims were the personal liability of the late Felipe Bacani, as owner of BSPA, whether the Labor Arbiter had jurisdiction to decide the claims.

Petitioners contend that public respondent erred in setting aside the Labor Arbiter's judgment on the ground that BASEC is the same entity as BSPA the latter being owned and controlled by one and the same family, namely the Bacani family. For this reason they urge that the corporate fiction should be disregarded and BASEC should be held liable for the obligations of the defunct BSPA.

We find the petition to be without merit.

As correctly found by the NLRC, BASEC is an entity separate and distinct from that of BSPA. BSPA is a single proprietorship owned and operated by Felipe Bacani. Hence its debts and obligations were the personal obligations of its owner. Petitioners' claim which are based on these debts and personal obligations, did not survive the death of Felipe Bacani on January 15, 1990 and should have been filed instead in the intestate proceedings involving his estate.

Indeed, the rule is settled that unless expressly assumed labor contracts are not enforceable against the transferee of an enterprise. The reason for this is that labor contracts are in personam.[2] Consequently, it has been held that

claims for backwages earned from the former employer cannot be filed against the new owners of an enterprise.[3] Nor is the new operator of a business liable for claims for retirement pay of employees.[4]

Petitioners claim however, that BSPA was intentionally retired in order to allow expansion of its business and even perhaps an increase in its capitalization for credit purpose. According to them, the Bacani family merely continued the operation of BSPA by creating BASEC in order to avoid the obligations of the former. Petitioners anchor their claim on the fact that Felipe Bacani, after having ceased to operate BSPA, became an incorporator of BASEC together with his wife and daughter. Petitioners urge piercing the veil of corporate entity in order to hold BASEC liable for BSPA's obligations.

The doctrine of piercing the veil of corporate entity is used whenever a court finds that the corporate fiction is being used to defeat public convenience, justify wrong, protect fraud, or defend crime, or to confuse legitimate issues, or that a corporation is the mere alter ego or business conduit of a person or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.[5] It is apparent, therefore, that the doctrine has no application to this case where the purpose is not to hold the individual stockholders liable for the obligations of the corporation but, on the contrary, to hold the corporation liable for the obligations of a stockholder or stockholders. Piercing the veil of corporate entity means looking through the corporate form to the individual stockholders composing it. Here there is no reason to pierce the veil of corporate entity because there is no question that petitioners' claims, assuming them to be valid, are the personal liability of the late Felipe Bacani. It is immaterial that he was also a stockholder of BASEC.

Indeed, the doctrine is stood on its head when what is sought is to make a corporation liable for the obligations of a stockholder. But there are several reasons why BASEC is not liable for the personal obligations of Felipe Bacani. For one, BASEC came into existence before BSPA was retired as a business concern. BASEC was incorporated on October 26, 1989 and its license to operate was released on May 28, 1990, while BSPA ceased to operate on December 31, 1989. Before, BSPA was retired, BASEC was already existing. It is, therefore, not true that BASEC is a mere continuity of BSPA.

Second, Felipe Bacani was only one of the five (5) incorporators of BASEC. He owned the least number of shares in BASEC, which included among its incorporators persons who are not members of his family. That his wife Lydia and daughter Alicia were also incorporators of the same company is not sufficient to warrant the conclusion that they hold their shares in his behalf.

Third, there is no evidence to show that the assets of BSPA were transferred to BASEC. If BASEC was a mere continuation of BSPA, all or at least a substantial part of the latter's assets should have found their way to BASEC.

Neither can respondent Alicia Bacani be held liable for BSPA's obligations. Although she was Executive Directress of BSPA, she was merely an employee of the BSPA, which was a single proprietorship.

Now, the claims of petitioners are actually money claims against the estate of Felipe Bacani. They must be filed against his estate in accordance with sec. 5 of Rule 86 which provides in part:

SEC. 5. Claims which must be filed under the notice. If not filed, barred; exceptions. - All claims for money against the decedent, arising from contract, express or implied, whether the same be due, not due, or contingent, all claims for funeral expenses and expenses for the last sickness of the decedent, and judgment for money against the decedent, must be filed within the time limited in the notice; otherwise they are barred forever, except that they may be set forth as counterclaims in any action that the executor or administrator may bring against the claimants . . .

The rationale for the rule is that upon the death of the defendant, a testate or intestate proceeding shall be instituted in the proper court wherein all his creditors must appear and file their claims which shall be paid proportionately out of the property left by the deceased. The objective is to avoid duplicity of procedure. Hence the ordinary actions must be taken out from the ordinary courts[6]. Under art. 110 of the Labor Code, money claims of laborers enjoy preference over claims of other creditors in case of bankruptcy or liquidation of the employer's business.

WHEREFORE, the petition for certiorari is DISMISSED.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, and Puno, JJ., concur.

[1] Per Commissioner Vicente Veloso, with Presiding Commissioner Bartolome S. Carale concurring.

[2] Sundowner Development Corp. v. Drilon, 180 SCRA 14 (1989); Filipinas Port Services, Inc. v. NLRC, 177 SCRA 203 (1989).

[3] Sundowner Development Corp. v. Dillon, supra, note 2.

[4] Filipinas Port Services, Inc. v. NLRC, supra note 2.

[5] Indophil Textile Mill Workers Union v. Calica, 205 SCRA 697 (1992).

[6] Malolos v. Asia Pacific Corp., 147 SCRA 61 (1987).

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