

**RESTAURANTE LAS CONCHAS AND/OR DAVID GONZALES,
PETITIONERS, VS. LYDIA LLEGO, SERGIO DANO, EDWARD
ARDIANTE, FEDERICO DE LA CRUZ, SHERILITA ANIEL, LORNA
AZUELA, ZENaida HERMOCILLA...**

G.R. No. 119085. September 09, 1999

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

The Petition for Certiorari before us seeks the reversal of the Decision of the National Labor Relations Commission (NLRC) in favor of private respondents and its resolution denying petitioners' motion for reconsideration of said decision.

The facts which gave rise to this petition are as follows:

Private respondents were employees of petitioner Restaurante Las Conchas which was allegedly operated by the Restaurant Services Corporation and by petitioners David Gonzales and Elizabeth Anne Gonzales who are members of the board of directors and officers of the corporation.

While private respondents were being employed by petitioners, the Restaurant Services Corporation got involved in a legal battle with the Ayala Land, Inc. over the land allegedly being occupied by petitioners for their restaurant.

Ayala Land, Inc. obtained a favorable judgment in the case filed against Restaurant Services Corporation for unlawful detainer and the latter were ordered to vacate the premises. The case was appealed to the Court of Appeals and ultimately to this Court which affirmed the decision of the trial court.[1]

Petitioners attempted to look for a suitable place for their restaurant business at the Ortigas Center but to no avail, thus, on February 28, 1994, they shut down their business. This resulted in the termination of employment of private respondents.

Private respondents filed a complaint with the Labor Arbiter for payment of separation pay and 13th month pay. This was, however, dismissed by the Labor Arbiter prompting the private respondents to appeal the case to the respondent NLRC. On November 29, 1994, the NLRC rendered a Decision favorable to private respondents, the dispositive portion of which reads:

WHEREFORE, the Decision of the Labor Arbiter a quo is hereby Set Aside and that respondents are ordered to pay the separation benefits of the following complainants, namely:

1. Lydia Llego

-

P 46,426.25

2.Carlos Sangco

-

29,026.40

3.Sergio Dano

-

27,545.00

4. Sherlita Aniel

-

52,000.00

5. Eduardo Ardiente

-

30,906.85

6. Luz Baldelemar

-

40,855.10

7. Lorna Azuela

-

34,468.85

8. Felicidad Roldan

-

34,468.85

9. Zenaida Hermocilla

-

34,468.85

10. Felicidad Mendoza

-

27,212.25

11. Dolores Requizo

-

40,855.10

12. Rodolfo Bas

-

51,997.40

13. Ciriaco Batites

-

22,105.20

Total

P472,336.10

SO ORDERED.[2]

A motion for reconsideration was filed by petitioners but this was denied by the respondent NLRC in its Resolution dated January 25, 1995.

Hence, this petition with petitioner raising the following issues, to wit:

1. WHETHER OR NOT PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN REVERSING THE DECISION OF THE LABOR ARBITER A QUO.
2. WHETHER OR NOT PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT GIVING CONSIDERATION TO THE EVIDENCE PRESENTED BY HEREIN PETITIONERS IN SUPPORT OF THEIR DEFENSE.[3]

The petition is bereft of merit.

Petitioners claim that the private respondents were not entitled to separation pay because under the law, the payment of separation benefits is mandated only when the closure of business or cessation of its operations was not due to serious business losses or reverses.[4] In this case, they contend that the restaurant was encountering serious business losses, thus, private respondents were not entitled to the separation benefits provided for under Art. 283 of the Labor Code.

We are not persuaded.

Art.283 of the Labor Code provides:

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 Ministry of Labor and Employment (now Secretary 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 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 closure 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. (Underscoring supplied).

While it is true that the law does not obligate an employer to pay separation benefits when the closure is due to losses,[5] petitioners have the burden to prove that such losses actually exists.[6]

In the present case, petitioners mentioned for the first time that they were suffering serious business losses when they filed their appeal with the NLRC. Such issue was never raised during the hearing with the Labor Arbiter. This belated act of petitioners clearly shows that the main reason for closing the restaurant was not due to losses. The allegation of business losses was a mere afterthought and a last ditch effort to evade their obligation under the law.

Moreover, the evidence presented by petitioners to prove that they are suffering business losses consists merely of statements of the corporation's assets and liabilities which were not even certified by a certified public accountant or an accounting firm. Neither were the corporation's Income Tax Return (ITR) which they submitted in evidence duly certified by the Bureau of Internal Revenue (BIR) as true copies of the original. They were mere self-serving declarations[7] which under the law are inadmissible as evidence.[8]

While it may be true that the rules of evidence prevailing in courts of law or equity are not controlling in proceedings before the NLRC, still, we cannot admit the self-serving evidence presented by petitioners since there is no way of ascertaining the truth of their contents. To admit them would open the floodgates to violations of employers of the provisions of the Labor Code to the detriment of labor which, under the Constitution is to be protected.

In *Uichico vs. National Labor Relations Commission*,[9] we ruled that:

xxx. It is true that administrative and quasi-judicial bodies like the NLRC are not bound by the technical rules of procedure in the adjudication of cases. However, this procedural rule should not be construed as a license to disregard certain fundamental evidentiary rules. While the rules of evidence prevailing in the courts of law or equity are not controlling in proceedings before the NLRC, the evidence presented before it must at least have a modicum of admissibility for it to be given some probative value. The Statement of Profit and Losses submitted by Crispa, Inc. to prove its alleged losses, without the accompanying signature of a certified public accountant or audited by an independent auditor, are nothing but self-serving documents which ought to be treated as a mere scrap of paper devoid of any probative value. xxx (Underscoring supplied).

Petitioners also posit that since private respondents failed to refute the aforesaid financial statements and income tax returns, they are deemed to have waived their right to object to the admissibility thereof.[10]

We disagree.

Well-settled is the rule that while lack of objection to a hearsay testimony or evidence results in the admittance thereof as evidence, said evidence cannot be given any credence and probative values unless it is shown that it falls within the exceptions to the hearsay rule.[11] In the present case, petitioners failed miserably to show that the financial statements and income tax returns are exceptions to the hearsay rule, thus, their contents have no probative value whatsoever.

Going now to the issue of the personal liability of petitioners David Gonzales and Elizabeth Ann Gonzales, it is argued that they were mere officers and members of the board of directors of petitioner corporation which has a separate and distinct personality from those of its members and officers, hence, the Gonzales couple cannot be

held to answer for the corporation's liabilities. They insist that personally, they had nothing to do with the separation of herein private respondents from petitioner corporation and therefore, should not be made personally liable for their alleged separation pay.[12]

We are not persuaded.

Records reveal that the Restaurant Services Corporation was not a party respondent in the complaint filed before the Labor Arbiter. The complaint was filed only against the Restaurante Las Conchas and the spouses David Gonzales and Elizabeth Anne Gonzales as owner, manager and president.[13] The Restaurant Services Corporation was mentioned for the first time in the Motion to Dismiss filed by petitioners David Gonzales and Elizabeth Anne Gonzales[14]who did not even bother to adduce any evidence to show that the Restaurant Services Corporation was really the owner of the Restaurante Las Conchas. On the other hand, if indeed, the Restaurant Services Corporation was the owner of the Restaurante Las Conchas and the employer of the private respondents, it should have filed a motion to intervene[15] in the case. The records, however, show that no such motion to intervene was ever filed by the said corporation. The only conclusion that can be derived is that the Restaurant Services Corporation, if it still exists, has no legal interest in the controversy. Notably, the corporation was only included in the decision of the Labor Arbiter and the NLRC as respondent because of the mere allegation of petitioners David Gonzales and Elizabeth Gonzales, albeit without proof, that it is the owner of the Restaurante Las Conchas. Thus, petitioners David Gonzales and Elizabeth Anne Gonzales cannot rightfully claim that it is the corporation which should be made liable for the claims of private respondents.

Assuming that indeed, the Restaurant Services Corporation was the owner of the Restaurante Las Conchas and the employer of private respondents, this will not absolve petitioners David Gonzales and Elizabeth Anne Gonzales from their liability as corporate officers. Although as a rule, the officers and members of a corporation are not personally liable for acts done in the performance of their duties, this rule admits of exceptions, one of which is when the employer corporation is no longer existing and is unable to satisfy the judgment in favor of the employee, the officers should be held liable for acting on behalf of the corporation. Here, the corporation does not appear to exist anymore.

In *A.C. Ransom Labor Union – CCLU vs. National Labor Relations Commission*,[16] this Court declared that:

x x x. Since RANSOM is an artificial person, it must have an officer who can be presumed to be the employer, being the "person acting in the interest of (the) employer" RANSOM. The corporation, only in the technical sense, is the employer.

The responsible officer of an employer corporation can be held personally, not to say even criminally, liable for non-payment of back wages. This is the policy of the law. x x x.

x x x

(c) If the policy of the law were otherwise, the corporation employer can have devious ways of evading payment of backwages. In the instant case, it would appear that RANSOM, in 1969, foreseeing the possibility or probability of payment of back wages to the 22 strikers, organized ROSARIO to replace RANSOM, with the latter to be eventually phased out if the 22 strikers win their case. RANSOM actually ceased operations on May 1, 1973, after the December 19, 1972 Decision of the Court of Industrial Relations was promulgated against RANSOM.

In *Gudez vs. National Labor Relations Commission*,[17] the Court ruled in this wise:

There is no dispute herein that respondent Crisologo is in fact the president of respondent corporation, RAPSA. Neither is there any doubt that respondent RAPSA had closed its business upon the order of the Philippine Constabulary and that as a consequence thereof the services of petitioner employees were terminated without

awarding them separation pay as required under the Labor Code. It is significant to note that the respondent corporation had ceased to exist when the Labor Arbiter rendered its decision holding respondent Crisologo jointly and severally liable with respondent corporation for the money claims of its employees. Moreover, records show that on September 25, 1987, which is the same day when the Labor Arbiter's decision was promulgated, RAPSA filed a petition for voluntary insolvency with the Regional Trial Court of Makati. The foregoing circumstances make it more necessary to hold respondent Crisologo liable for the claims due to petitioners; otherwise, any decision that would be rendered in favor of the latter would be useless and ineffective for there would be no one against whom it can be enforced. Thus, where the employer corporation is no longer existing and unable to satisfy the judgment in favor of the employee, the officers should be held liable for acting on behalf of the corporation. (see *Lim v. NLRC*, G.R. 79907 and *Sweet Lines, inc. v. NLRC*, G.R. 79975, March 16, 1989). (Underscoring supplied.)

Similarly, in *Carmelcraft Corporation vs. National Labor Relations Commission*,^[18] we ruled as follows:

We find also untenable the contention of Carmen Yulo that she is not liable for the acts of the petitioner company, assuming it had acted illegally, because the Carmelcraft Corporation is a distinct and separate entity with a legal personality of its own. Yulo claims she is only an agent of the company carrying out the decisions of its board of directors. We do not agree. Our finding is that she is in fact and legal effect the corporation, being not only its president and general manager but also its owner.

In *Valderrama vs. National Labor Relations Commission*,^[19] it was held that:

A corporation can only act through its officers and agents. That is why the cease and desist order was directed to the "officers and agents" of A.C. Ransom, which was actually found guilty of unfair labor practice. But that case clearly also holds that any decision against the company can be enforced against the officers in their personal capacities should the corporation fail to satisfy the judgment against it. The quoted portion of that decision explaining the basis for such ruling makes that clear. Agreeably with the ruling in *A.C. Ransom Labor Union – CCLU* it was held in another case that where the employer corporation is no longer existing and [is] unable to satisfy the judgment in favor of the employee, the officer should be held liable for acting on behalf of the corporation." (Underscoring supplied.)

In the present case, the employees can no longer claim their separation benefits and 13th month pay from the corporation because it has already ceased operation. To require them to do so would render illusory the separation and 13th month pay awarded to them by the NLRC. Their only recourse is to satisfy their claim from the officers of the corporation who were, in effect, acting in behalf of the corporation. It would appear that, originally, *Restaurante Las Conchas* was a single proprietorship put up by the parents of Elizabeth Anne Gonzales, who together with her husband, petitioner David Gonzales, later took over its management. Private respondents claim, and rightly so, that the former were the real owners of the restaurant. The conclusion is bolstered by the fact that petitioners never revealed who were the other officers of the Restaurant Services Corporation, if only to pinpoint responsibility in the closure of the restaurant that resulted in the dismissal of private respondents from employment. Petitioners David Gonzales and Elizabeth Anne Gonzales are, therefore, personally liable for the payment of the separation and 13th month pay due to their former employees.

WHEREFORE, premises considered, the petition is hereby DISMISSED and the decision of the respondent National Labor Relations Commission is AFFIRMED in toto.

SO ORDERED.

Puno, Pardo, and Ynares-Santiago, JJ., concur. Davide, Jr., C.J., (Chairman), on official leave.

[1] Rollo, p. 22.

[2] Id., at 24

[3] Id, at 6.

[4] Id., at 8.

[5] North Davao Mining Corp. vs. NLRC, 254 SCRA 721 (1996); State Investment House, Inc. vs. Court of Appeals, 206 SCRA 348, (1992); Mindanao Terminal and Brokerage Services, Inc. vs. The Hon. Minister of Labor and Employment, 238 SCRA 77 (1994).

[6] San Miguel Jeepney Service vs. National Labor Relations Commission, 265 SCRA 35 (1996); Salonga vs. National Labor Relations Commission, 254 SCRA 111 (1996).

[7] Self-serving declaration are unsworn statements made by the declarant out of court and which are favorable to his interest. It is one made by a party in his own interest at some place and time out of court and it does not include testimony which he gives as a witness at the trial. Self-serving declarations maybe oral or written, or acts and conducts. (FRANCISCO, R.J., The Revised Rules of Court in the Philippines, Vol. VII, part I, 1997 Ed., pp. 320-321.)

[8] Self-serving declarations are not admissible in evidence as proof of the facts asserted, whether they arose by implications from acts and conduct or were made orally or hearsay character. Furthermore, such declarations are untrustworthy, to permit their introduction in evidence would open the door to frauds and perjuries. (Id., at 321.)

[9] 273 SCRA 35 (1997); citing Article 221 LABOR CODE OF THE PHILIPPINES; Garcia Machine Shop and Auto Supply, Inc. v. National Labor Relations Commission, 266 SCRA 97 (1997).

[10] Surrejoinder, Rollo, p. 134.

[11] People vs. Cabintoy, 247 SCRA 442 (1995); JRS Business Corporation vs. National Labor Relations Commission, 246 SCRA 445 (1995); Eugenio vs. Court of Appeals, 239 SCRA 207 (1994); Baguio vs. Court of Appeals, 226 SCRA 366 (1993).

[12] Rollo, p. 11.

[13] Records, pp. 2-5; 7; 40-43; 57-61.

[14] Id., at 20.

[15] Intervention is a remedy by which a third party, not originally impleaded in a proceeding, becomes a litigant therein to enable him to protect or preserve a right or interest which may be affected by such proceeding. Its purpose is to settle one action and by a single judgment the whole controversy among the persons involved. [First Philippine Holdings Corporation vs. Sandiganbayan, 253 SCRA 30 (1996)].

[16] 142 SCRA 269 (1986).

[17] 183 SCRA 644 (1990).

[18] 186 SCRA 393 (1990)

[19] 256 SCRA 466 (1996).

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