

SIEMENS PHILIPPINES, INC. AND MR. ERNST H. BEHRENS, PETITIONERS, VS. ENRICO A. DOMINGO, RESPONDENT.

G.R. No. 150488. July 28, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

On appeal via petition for review on certiorari under Rule 45 of the Rules of Court are the Decision[1] and Resolution[2] of the Court of Appeals dated March 12, 2001 and October 18, 2001, respectively, in CA-G.R. SP No. 58512 entitled *Enrico A. Domingo versus National Labor Relations Commission (First Division) and Siemens Philippines, Inc., and/or Mr. E. H. Behrens*.

This is an offshoot of an illegal dismissal case filed by Enrico A. Domingo (Domingo) against Siemens Philippines, Inc., Manila (Siemens Philippines) in July 1995 wherein Domingo got a favorable decision from the Labor Arbiter (LA). On appeal, however, the National Labor Relations Commission (NLRC) reversed the decision of the LA and dismissed the case. Aggrieved, Domingo filed a petition for review on certiorari[3] with the Court of Appeals (CA). Finding merit in his petition, the CA reversed the judgment of the NLRC and reinstated the decision of the LA.

The Facts

On March 16, 1987, Domingo signed an Employment Contract with Maschinen & Technik, Inc. (MATEC) as a consultant, with a compensation package of Php8,000.00/month salary and an allowance of Php400.00/month. MATEC is a subsidiary of Siemens Philippines.[4] Thereafter, Domingo was given additional work by MATEC, in which he was paid DM1,800.00/month on top of his original salary. The extra work was the result of a contract entered into by MATEC and Siemens Aktiengesellschaft[5] (Siemens Germany), whereby MATEC, at the request of Siemens Germany, hired Domingo to handle the operation of OEN OEV TD.[6] Siemens Germany is a German company which has an investment in Siemens Philippines.[7]

On January 28, 1992, Electronic Telephone System Industries, Inc. (ETSI) availed of Domingo's services as assistant manager. ETSI, like MATEC is a subsidiary of Siemens Philippines.[8] The Contract of Employment[9] of Domingo with ETSI provides that the latter shall have the right to assign the said contract in favor of Siemens Philippines, which is a corporation to be incorporated under the laws of the Philippines.[10]

On March 16, 1992, while still an assistant manager of ETSI, Domingo was hired as a consultant by Siemens Germany in the field of text and data networks for a period of twelve (12) months.[11] As compensation, he received DM20,000.00, payable once for every twelve-month period.[12]

On March 31, 1992, Siemens Germany sent a letter to ETSI guaranteeing the consultancy agreement between Siemens Germany and Domingo. The pertinent portion of the letter reads:

Under Item 7.1, the consultancy agreement is valid for 12 months. To give Mr. R. Domingo the necessary security, we guarantee you that we will extend the Consultancy Agreement with Mr. R. Domingo for as long as he

has an employment relationship with you.

Please tell him that you (ETSI) will ensure that the [sic] Siemens AG will extend the Consultancy Agreement for as long as an employment relationship exists between ETSI and Mr. R. Domingo.[13]

On June 1, 1992, Domingo signed a Contract of Employment with Siemens Philippines. The relevant portions of the contract read:

WITNESSETH : That

WHEREAS, the COMPANY, is taking over the greater part of the business activities, of ELECTRONIC TELEPHONE SYSTEMS INDUSTRIES, INC. (ETSI),

WHEREAS, the COMPANY has offered to engage the services of the EMPLOYEE as Assistant Manager and the EMPLOYEE has agreed to accept such employment under the terms and conditions mutually acceptable to both parties.

NOW THEREFORE, for and in consideration of the foregoing premises and the mutual covenants hereinafter contained, the parties hereto have agreed as follows:

- The COMPANY hereby engages the services of the EMPLOYEE as Assistant Manager - Public Communications Systems and the EMPLOYEE hereby accepts such employment, as a regular employee of the COMPANY in accordance with the terms and conditions of this contract. The term of the EMPLOYEE's employment shall begin on 01 June 1992. The EMPLOYEE shall cease from this date to be an employee of ETSI and the EMPLOYEE's contract of employment with ETSI is thereby deemed terminated and superseded by this Contract.

x x x x

- The EMPLOYEE shall suffer no diminution in salary, benefits and privileges that he enjoyed as a former employee of ETSI. It is hereby agreed that the EMPLOYEE's length of service with ETSI shall be credited and recognized by the COMPANY. For this purpose, the COMPANY acknowledges that the EMPLOYEE's hiring date with ETSI is 01 January 1992.

- The COMPANY shall pay the EMPLOYEE a salary of Twenty-Four Thousand One Hundred Fifty Pesos (P24,150.00) per month. The payments will be made [during] the 15 and 30 of each month.

- During the period of his employment, the EMPLOYEE shall not be connected in any other work capacity or employments, nor be otherwise involved, directly or indirectly, with any other business or concern whatsoever without first having obtained the written consent of the COMPANY. It is the COMPANY's intention that the EMPLOYEE devote[s] all of his efforts towards the fulfillment of his obligations under this contract.[14]

On March 11, 1993, while Domingo was already in the employ of Siemens Philippines, Siemens Germany extended the consultancy agreement with Domingo for another twelve (12) months. Again, on March 16, 1994, Siemens Germany renewed the consultancy agreement with Domingo for another six (6) months.[15] Domingo's consultancy contract expired in September 1994.[16] Complacent that the consultancy agreement would be renewed in accordance with the guarantee letter, Domingo continued to render service as a consultant despite the absence of a formal notice of renewal.[17] He had every reason to feel secure because, in January 1995, without his contract being renewed, he was even made to accompany to Hong Kong the General Manager of Siemens Germany and the Division Manager of Siemens Philippines to seal an agreement between Siemens Philippines and Philippine Long Distance Telephone Company involving a US\$1.09M Packet Switching Contract.[18]

Earlier, on October 31, 1994, Siemens Philippines sent a letter[19] to Domingo proposing a new incentive scheme. The letter was signed by Sepp E. Tietze, General Manager, VS Regional Manager Singapore; and by

Ernst H. Behrens (Behrens), President and Chief Operating Officer of Siemens Philippines Inc., Manila. The relevant portions of the letter read:

We refer to your special arrangement with VS Munich (formally OEN VD) which expired September 1994.

It is the VS policy to let all sales-related employees contribute on the success of the group.

Consequently, an incentive scheme will shortly be introduced for all VS Divisions in South East (sic) Asia. As already discussed with you and agreed upon[,] you will receive a new contract incorporating the incentive scheme adapted to the conditions within the Philippines.[20]

The incentive scheme was, in effect, a replacement of his consultancy contract with Siemens Germany. Under the scheme, Domingo would receive a sales compensation package of 20% of his peso salary, or a maximum of about Php70,000.00 per annum, whereas under the consultancy agreement, he was receiving a fixed salary of Php370,000.00 (DM20,000.00) per annum. Feeling humiliated by the diminution of his salary, Domingo was forced to resign. On February 27, 1995, Domingo tendered his Resignation Letter[21] to Siemens Philippines, the pertinent portion of which reads:

Under the present circumstances and with the result of our discussions with Mr. Tietze and Mr. Behrens, I am tendering my resignation effective close of office on March 31, 1995. I regret that I have to make this decision but I hope you will understand that I am forced to do it. I wish you good luck in the VS Division and hope to see you again in the future.

On July 6, 1995, Domingo filed a complaint for illegal dismissal and prayed for the payment of salaries, 13[th] month pay, backwages, damages, separation pay and attorney's fees.[22] Domingo alleged that he was forced to resign because of the act of Siemens Philippines of not renewing the consultancy agreement.[23] Siemens Philippines countered that Domingo's resignation was voluntary and that they were not privy to the consultancy agreement between Domingo and Siemens Germany.[24]

On May 28, 1997, the Labor Arbiter rendered a Decision,[25] disposing, as follows:

WHEREFORE, judgment is hereby rendered finding complainant [Domingo] to have been illegally dismissed and the respondent[s] are ordered, jointly and severally, to pay complainant his backwages and other benefits from April 1, 1995 up to October 5, 1995, consultancy fees of DM20,000.00 from October 1, 1994 to October 5, 1995 but rounded up to one year, or its peso equivalent at the time [of] payment, moral damages of Five Hundred Thousand Pesos (P500,000.00); exemplary damages of Five Hundred Thousand Pesos P500,000.00, separation pay equivalent to two months pay per year of service and attorney's fees of 10% of whatever amount complainant will recover in this case. Complainant's consultancy fee shall be included in the computation of his separation pay using the following formula: DM20,000.00 over 12 multiplied by 2 and the product multiplied by 3.

SO ORDERED.[26]

On appeal, the NLRC reversed the ruling of the LA in a Decision[27] dated August 25, 1999, and declared that Domingo was not illegally terminated. The fallo of the said Decision reads:

WHEREFORE, the appealed decision is set aside. The complaint below is dismissed for being without merit.

SO ORDERED.

Domingo filed a Motion for Reconsideration, but the same was denied by the NLRC in an Order[28] dated January 26, 2000.

Hard pressed, Domingo filed a petition for certiorari[29] before the CA assailing the NLRC for grave abuse of

discretion in declaring that Domingo was not forced to resign, and for its erroneous appreciation of the evidence on record that resulted in the reversal of the Decision of the LA.[30]

On March 12, 2001, the CA rendered a Decision[31] declaring that Domingo was constructively dismissed. His resignation was adjudged to be involuntary, the substantial decrease in compensation having made Domingo's employment with Siemens Philippines unbearable. The decretal portion of the Decision reads:

WHEREFORE, premises considered, the petition is granted. The appealed decisions of the NLRC are hereby REVERSED and SET

ASIDE. In lieu thereof, the decision of the Labor Arbiter is hereby reinstated.

SO ORDERED.[32]

A motion for reconsideration was filed by Siemens Philippines and Behrens, but the same was denied in a Resolution[33] dated October 18, 2001.

On December 13, 2001, Siemens Philippines and Behrens filed the present petition for review on certiorari. They raise the following arguments:

Siemens, Inc. was not a party to the consultancy agreement, hence, it could not guarantee its extension/renewal.

The non-extension/renewal of respondent's consultancy agreement with Siemens AG may not be taken as a circumstance leaving respondent with no alternative but to resign.

Since respondent's resignation was purely voluntary, Siemens, Inc. did not commit illegal dismissal. Hence, there is absolutely no basis in holding petitioners liable to respondent for backwages, consultancy fee, separation pay, damages and attorney's fees.[34]

The Issue

The crucial issue in this case is whether there was constructive dismissal that would entitle Domingo to his monetary claims.

The Ruling of the Court

I. On Illegal Dismissal

We believe, and so hold, that Domingo was constructively dismissed from employment.

A diminution of pay is prejudicial to the employee and amounts to constructive dismissal.[35] The gauge for constructive dismissal is whether a reasonable person in the employee's position would feel compelled to give up his employment under the prevailing circumstances. Constructive dismissal is defined as quitting when continued employment is rendered impossible, unreasonable or unlikely as the offer of employment involves a demotion in rank or diminution in pay.[36] It exists when the resignation on the part of the employee was involuntary due to the harsh, hostile and unfavorable conditions set by the employer. It is brought about by the clear discrimination, insensibility or disdain shown by an employer which becomes unbearable to the employee. An employee who is forced to surrender his position through the employer's unfair or unreasonable acts is deemed to have been illegally terminated and such termination is deemed to be involuntary.[37]

We have, under the law's mandate, consistently resolved this situation in favor of the employee in order to protect his rights and interests from the coercive acts of the employer.

In the instant case, Domingo's resignation was brought about by the decision of the management of Siemens

Philippines not to renew — or work for the renewal of — his consultancy contract with Siemens Germany which clearly resulted in the substantial diminution of his salary. The situation brought about the feeling of oppression which compelled Domingo to resign. The diminution in pay created an adverse working environment that rendered it impossible for Domingo to continue working for Siemens Philippines. His resignation from the company was in reality not his choice but a situation created by the company, thereby amounting to constructive dismissal.

The argument of Siemens Philippines that it is not privy to the consultancy agreement between Domingo and Siemens Germany is unacceptable. By virtue of its employment contract with Domingo, Siemens Philippines stepped into the shoes of ETSI as Domingo's employer. The stipulation in the contract that Domingo shall suffer no diminution in salary, benefits and privileges that he enjoyed as employee of ETSI is, in effect, assumption by Siemens Philippines of ETSI's obligations and commitments. This included the guarantee that Domingo's consultancy contract with Siemens Germany would be renewed. After all, there was a commitment by Siemens Germany that the consultancy contract would continue as long as Domingo remained an employee of ETSI; and Domingo's employment with Siemens Philippines was merely a continuation of his employment with ETSI.

While admittedly, Siemens Philippines is not a party to the arrangement between Siemens Germany, ETSI and Domingo, knowledge of and acquiescence to - if not actual concurrence in - the arrangement can be imputed to Siemens Philippines as to bind it to the arrangement. This conclusion finds support in the following:

First, based on the findings of facts of the LA, NLRC and CA — MATEC, ETSI, Siemens Philippines and Siemens Germany are related companies, the first three being subsidiaries of the parent company, and the fourth, Siemens Germany, having an investment in Siemens Philippines. Short of piercing the veil of corporate fiction, we note the intimate corporate relationship of Siemens Germany and Siemens Philippines, including the practice of the two companies of integrating their workforce.

Second, in Domingo's contract of employment with Siemens Philippines, it is provided that Domingo shall not be connected in any other work capacity or employment or be otherwise involved, directly or indirectly, with any other business or concern without first having obtained the written consent of the company. Yet, Siemens Philippines never questioned the continued consultancy work of Domingo with Siemens Germany, not even when the consultancy agreement was renewed twice during the lifetime of Domingo's contract of employment with Siemens Philippines.

Third, the guarantee letter issued by Siemens Germany in favor of Domingo was never questioned, much less revoked by Siemens Philippines when it assumed the employment of Domingo. The Guarantee Letter was a security given to Domingo by Siemens Germany assuring Domingo that Siemens Philippines would ensure that Siemens Germany would extend the consultancy agreement as long as Domingo was under its employ.

Fourth, the consultancy agreement was a form of benefit or privilege given to Domingo by ETSI, a privilege that was allowed by Siemens Philippines to continue when it took over the majority of the business activities of ETSI and, consequently, became Domingo's employer. The outright removal of the privilege contravenes the law, because it resulted in the effective diminution of Domingo's salary.

II. On Domingo's Monetary Claims

As stated above, Domingo's work as a consultant for Siemens Germany was a privilege or benefit, if not actually granted, at least acquiesced in by Siemens Philippines. However, this does not mean that the latter corporation also assumes the responsibility of compensating Domingo for his work as a consultant, even if, by stepping into the shoes of ETSI, it effectively sealed the guarantee of Siemens Germany for the renewal of Domingo's

consultancy contract. In other words, what Siemens Philippines granted to Domingo was only the privilege to work in another corporation, but it did not undertake to compensate him for such work.

Before a corporation can be held accountable for the corporate liabilities of another, the veil of corporate fiction must first be pierced. Thus, before Siemens Philippines can be held answerable for the obligations of Siemens Germany to its employees, it must be sufficiently established that the two companies are actually a single corporate entity, such that the liability of one is the liability of the other. On this aspect, Domingo has failed to present the proof necessary to pierce the corporate veil between the two companies.

Ordinarily, when there is constructive dismissal, which is a form of illegal dismissal, the employer is liable for the full amount of backwages, if reinstatement is no longer possible, and separation pay. In the case at bar, we cannot hold Siemens Philippines liable for the monetary obligations of Siemens Germany. The circumstances surrounding this case necessitate a different treatment in the award of backwages and separation pay, since the companies involved are separate and distinct from each other. However, by Siemens Philippines' failure to work for the renewal of Domingo's consultancy contract with Siemens Germany, Siemens Philippines may be held answerable in damages to Domingo.

Consequently, Domingo's constructive dismissal entitles him to his monetary claims, subject to the following modifications:

First, we are not in accord with the Decision of the LA finding Behrens, the President and Chief Executive Officer of Siemens Philippines, solidarily liable with the company. A corporation, being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, while acting as corporate agents, are not their personal liability but the direct accountability of the corporation they represent. As a rule, they are only solidarily liable with the corporation for the termination of employees if they acted with malice or bad faith.[38] In the case at bar, malice or bad faith on the part of Behrens in the constructive dismissal of Domingo was not sufficiently proven to justify a ruling holding him solidarily liable with Siemens Philippines.

Second, an illegally or constructively dismissed employee is entitled to: (1) either reinstatement, if viable, or separation pay if reinstatement is no longer viable; and (2) backwages. These two reliefs are separate and distinct from each other and are awarded conjunctively.[39]

As a rule, separation pay is awarded to an illegally dismissed employee, computed at the rate of one month pay per year of service. Accordingly, the LA decision granting separation pay equivalent to two months salary per year of service must be modified. There is nothing on record that even remotely suggests that it is the company policy of Siemens Philippines to grant its employees separation pay of two months' salary for every year of service. Thus, in consonance with our previous rulings,[40] Domingo shall be awarded separation pay in the amount of one month pay for every year of service, but consultancy fees shall not be included in the computation of his separation pay. As discussed above, the evidence presented by Domingo is not sufficient to pierce the veil of corporate fiction between Siemens Philippines and Siemens AG, which would make Siemens Philippines liable for the monetary obligations of Siemens AG.

Third, the backwages that should be awarded to Domingo shall be reckoned from the time his constructive dismissal took effect until the finality of this decision. This is in conformity with Article 279 of the Labor Code which provides that an employee who is unjustly dismissed from work shall be entitled to full backwages, 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. Since reinstatement of Domingo is no longer possible due to his strained relations with the management of Siemens Philippines, and considering the position he held in the company, he is lawfully entitled to receive backwages. For the same reason cited

above, consultancy fees shall be excluded in the computation of Domingo's backwages.

Finally, moral damages may be recovered when the dismissal of the employee was tainted by bad faith or fraud; or when it constituted an act oppressive to labor or done in a manner contrary to morals, good customs or public policy. Exemplary damages are recoverable if the dismissal was done in a wanton, oppressive, or malevolent manner.[41] In this case, we have found that there was bad faith in the failure or refusal of Siemens Philippines to work for the renewal of Domingo's consultancy contract with Siemens Germany. But while we affirm Domingo's entitlement to these damages, they are not intended to enrich the dismissed employee. Consequently, we find the amount of P50,000.00 for moral damages and P50,000.00 for exemplary damages sufficient to allay the sufferings experienced by Domingo and by way of example or correction for public good, respectively.

WHEREFORE, the Decision of the Court of Appeals, dated March 12, 2001, is hereby **AFFIRMED WITH THE MODIFICATION** that petitioner Siemens Philippines, Inc. is hereby ordered to pay respondent Enrico A. Domingo the following:

- (1) separation pay equivalent to one month pay per year of service;
- (2) full backwages and other benefits from the date of his constructive dismissal up to the finality of this Decision;
- (3) moral damages of fifty thousand pesos (P50,000.00);
- (4) exemplary damages of fifty thousand pesos (P50,000.00); and
- (5) attorney's fees.

This case is **REMANDED** to the Labor Arbiter for computation of the separation pay, backwages, and other monetary awards due respondent.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.

[1] Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Ramon A. Barcelona and Alicia L. Santos, concurring; rollo, pp. 44-55.

[2] Rollo, p. 57.

[3] RULES OF COURT, Rule 65.

[4] Rollo, p. 177.

[5] Appears in some parts of the records as Aktiengesellschaft.

[6] Rollo, pp. 92-94.

[7] Id. at 44.

[8] Id. at 178.

[9] Id. at 100-101.

[10] Id.

[11] Id. at 70.

- [12] Id. at 72.
- [13] Id. at 75.
- [14] Id. at 67-68.
- [15] Id. at 180.
- [16] Id. at 403.
- [17] Id. at 181, 403.
- [18] Id. at 181.
- [19] Id. at 119.
- [20] Id.
- [21] Id. at 77.
- [22] Id. at 46.
- [23] Id. at 200.
- [24] Id. at 183.
- [25] Penned by Labor Arbiter Vladimir P. L. Sampang; rollo, pp. 177-192.
- [26] Id. at 191-192.
- [27] Penned by Commissioner Vicente S.E. Veloso, with Presiding Commissioner Rogelio I. Rayala and Commissioner Alberto R. Quimpo, concurring; rollo, pp. 255-269.
- [28] Id. at 282-283.
- [29] RULES OF COURT, Rule 65.
- [30] Rollo, p. 47.
- [31] Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Ramon A. Barcelona and Alicia L. Santos, concurring; rollo, pp. 44-55.
- [32] Id. at 54.
- [33] Id. at 57.
- [34] Rollo, pp. 23-24.
- [35] Francisco v. NLRC, G.R. No. 170087, August 31, 2006, 500 SCRA 690, 702.
- [36] New Ever Marketing, Inc. v. Court of Appeals, G.R. No. 140555, July 14, 2005, 463 SCRA 284, 297.
- [37] Aguilar v. Burger Machine Holdings Corporation, G.R. No. 172062, October 30, 2006, 506 SCRA 266, 273.
- [38] MAM Realty Development Corporation v. NLRC, 314 Phil. 838, 844 (1995).
- [39] Aurora Land Projects Corporation v. NLRC, 344 Phil. 44, 58 (1997); Torillo v. Leogardo, Jr., G.R. No. 77205, May 27, 1991, 197 SCRA 471, 477.
- [40] Rutaquio v. NLRC, 375 Phil. 405 (1999); Gaco v. NLRC, G.R. No. 104690, February 23, 1994, 230 SCRA

261, citing *Pepsi-Cola Bottling Co v. NLRC*, 210 SCRA 277 (1992); *De Vera v. NLRC*, G.R. No. 93212, November 22, 1990, 191 SCRA 632; *Carandang v. Dulay*, G.R. No. 90492, August 20, 1990, 188 SCRA 792; *Quezon Electric Cooperative v. NLRC*, G.R. Nos. 79718-22, April 12, 1989, 172 SCRA 89.

[41] *Norkis Trading Co., Inc. v. NLRC*, G.R. No. 168159, August 19, 2005, 467 SCRA 461, 473; *Garcia v. NLRC*, G.R. No. 110518, August 1, 1994, 234 SCRA 632, 638.

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