

BUSINESS SERVICES OF THE FUTURE TODAY, INC. AND RAMON F. ALLADO, PETITIONERS, VS. COURT OF APPEALS, GILBERT C. VERUASA AND MA. CELESTINA A. VERUASA, RESPONDENTS.

G.R. NO. 157133. January 30, 2006

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review on certiorari is the Decision[1] dated April 16, 2002, as well as the Resolution[2] dated January 15, 2003, of the Court of Appeals in CA-G.R. SP No. 66733. The appellate court had reversed the Resolution[3] dated March 15, 2001, of the National Labor Relations Commission in NLRC CA No. M-005830-2000, which earlier reversed the Decision[4] dated June 1, 2000, of the Labor Arbiter in Case No. RAB-11-09-01053-99.

These are the antecedent facts:

Mailboxes, Etc. (Davao) is the local franchisee of Mailboxes, Etc. (MBE), a US-based corporation operating business support and communication service centers worldwide. It is operated locally by petitioner Business Services of the Future Today, Inc. (BSFTI), whose stockholders are petitioner Ramon Allado and his nominees.

On January 8, 1996, Allado hired private respondents, spouses Gilbert and Ma. Celestina Veruasa, as manager and assistant manager, respectively, of Mailboxes, Etc. (Davao) for a compensation package of P15,000 monthly. Due to lack of funds from BSFTI, however, they were not paid their salaries amounting to P142,613.93 from March 1997 to January 8, 1998.

On January 8, 1998, Allado personally gave notices of termination effective immediately to the spouses. They gave as reason, the negative cashflow and BSFTI's failure to infuse additional capital to the business. No written notice of closure of business was given to the Department of Labor and Employment (DOLE). Allado then padlocked the offices of Mailboxes, Etc. (Davao), confiscated all its business records, and appropriated for himself all the transferable rights and equipment of the office.

On or about March 20, 1998, Allado gave the spouses P13,125 as partial payment of their salaries. Despite repeated demands, the petitioners did not pay the balance of P129,488.93 due to the spouses.

On their part, petitioners had a different story. They claim that on or about April 5, 1995, Allado and Leo G. Dominguez invited Gilbert Veruasa to invest in a business under the franchise of MBE. At that time, Allado had already organized BSFTI although its registration was still pending with the Securities and Exchange Commission (SEC). Gilbert submitted his counter-proposal stating, among others, that he would: (1) manage the business; and (2) contribute as equity, the assets and goodwill of his former business enterprise, Fax Business Shop, worth P300,000. Allado and Dominguez accepted the counter-proposal.

According to petitioners, Gilbert Veruasa then laid the groundwork and periodically submitted reports of his activities, accomplishments, and concerns to Allado and Dominguez. On September 26 and October 13, 1995, Gilbert submitted a report seeking confirmation of his investment in BSFTI. The parties then signed a

Shareholders' Agreement which recognized Gilbert's P300,000 contribution. Petitioners, however, aver that all signed copies, which were entrusted to Gilbert, could no longer be located. The parties also agreed that Gilbert's wife, Celestina, would assist in the management of the business for which they would receive compensation of P15,000 monthly.

During its first year of operations, BSFTI suffered losses amounting to P1,145,461.43. The following year, it experienced further cash problems. The owners failed to attract other investors. As the owners were no longer willing to infuse additional capital, Gilbert Veruasa and petitioners decided to close shop.

Although all employees were informed of the company's closure and their termination, Gilbert failed to inform the DOLE. Instead, he took possession of important company records as well as the properties which he contributed earlier to BSFTI.

Thereafter, the Veruasa spouses instituted a complaint for illegal dismissal. The Labor Arbiter ruled the dismissal of the spouses illegal. The Labor Arbiter ruled that the spouses were employees of BSFTI since all the elements of an employer-employee relationship were present. Neither was there any showing that the spouses were stockholders. Further, the Labor Arbiter said it was unlikely that petitioners did not have a copy of the alleged Shareholders' Agreement, if indeed there was such an agreement evidencing the spouses' participation in the business. Nor did BSFTI's articles of incorporation show that the spouses were incorporators. Thus, their dismissal of the spouses should have been in accordance with the Labor Code. Although the employees were given notices of termination, DOLE was not provided a notice of closure. The Labor Arbiter awarded the spouses P496,897.46 representing their separation pay, backwages, and 13th month pay, plus 10% attorney's fees.

Upon appeal by both parties, the National Labor Relations Commission (NLRC) dismissed the case[5] and ruled that, (1) Gilbert was both a BSFTI employee and stockholder as evidenced by his communications to BSFTI's other stockholders; (2) BSFTI was not obliged to pay separation benefits to the spouses since there was a valid closure of business due to serious financial losses; (3) the spouses were not entitled to backwages since as manager, it was Gilbert's duty to notify the DOLE of the closure; (4) there was no basis for awarding 13th month pay; and (5) there was no basis for the claim for unpaid salaries since there were petty cash vouchers showing full payment of the spouses' salaries.

On appeal, the Court of Appeals reversed[6] the NLRC and reinstated the decision of the Labor Arbiter with modification. The decretal portion of the decision reads:

WHEREFORE, the assailed resolutions dated March 15, 2001 and August 22, 2001 issued by public respondent National Labor Relations Commission, 5[th] Division, in NLRC CA No. M-0055830-2000 are hereby REVERSED and SET ASIDE, and the decision dated June 1, 2000 of Labor Arbiter Miriam A. Libron-Barroso in NLRC RAB 11-09-001053-99 is AFFIRMED with MODIFICATION, to delete the award of separation pay, to wit:

1. 13[th] Month pay

-

P 12,787.50

2. Backwages

-

467,512.50

TOTAL

-

P480,300.00

Less: Excess in advance

P 18,084.05.

PARTIAL NET

-

P462,215.95

Add: 10% of total award as attorney's fees

-

P 46,221.59

TOTAL NET

-

P508,437.54

SO ORDERED.[7]

The appellate court held that the spouses were employees of BSFTI since all the essential elements of an employer-employee relationship were present. According to the appellate court, there was no evidence that Gilbert was a stockholder other than the petitioners' bare allegation that the parties had entered into a Shareholders' Agreement. It likewise ruled that it was not Gilbert's duty, but petitioners' to notify the DOLE of the closure. Absent such notice, the dismissal was without effect. Nevertheless, it disallowed the payment of separation pay since the closure was due to serious financial losses. Instead, it ordered the payment of backwages and unpaid salaries, for lack of proof that the salaries were paid.

The petitioners now come to this Court alleging that:

- 1) The requirement of filing of written notice of closure of business with the Department of Labor and Employment is not applicable and unnecessary in the case of respondents because they were stockholders and managers of petitioner corporation who took part in the decision to close the business;
- 2) Even assuming arguendo the dismissal of respondents was ineffectual, they are not entitled to backwages and 13th month pay from the time of their dismissal until finality of the decision because the business of petitioner ceased to operate simultaneously with their dismissal; and
- 3) Petitioner submitted documents to prove that respondents were paid their salaries in full and were even overpaid.[8]

Briefly, the key issues in this petition are: (1) Were the spouses employees or stockholders of BSFTI? (2) If they were employees, were they validly dismissed? and (3) Are they entitled to 13th month pay, backwages, separation pay as well as unpaid salaries?

Preliminarily, it bears stressing that the prior existence of an employer-employee relationship is an indispensable precondition for a claim of illegal dismissal to prosper.[9] Here, both parties admitted that Gilbert and Celestina were hired as BSFTI's manager and assistant manager, respectively, with P15,000 monthly salary. The petitioners

would have us believe, however, that Gilbert was also a stockholder, hence, there was no need to notify DOLE of the closure since as stockholder, he was presumed to have taken part in the decision to close the business.

Notice of closure to the DOLE is mandatory. It allows the DOLE to ascertain whether the closure and/or dismissals were done in good faith and not a pretext for evading obligations to the employees. This requirement protects the workers' right to security of tenure. Failure to comply with this requirement taints the dismissal.[10] This rule, however, admits of exceptions. If the employee consented to his retrenchment due to the closure or cessation of operation, the required prior notice to the DOLE is not necessary as the employee thereby acknowledges the existence of a valid cause for termination of his employment.[11]

Did respondent Gilbert Veruasa consent to his dismissal?

The evidence shows that he did not. Although only his correspondences with the petitioners suggest that he was a stockholder of BSFTI,[12] there is no showing that he participated in the alleged stockholders' meeting where the company's closure was discussed. The self-serving Joint Affidavit of Allado and Dominguez attesting that Gilbert participated in the meeting discussing the closure is insufficient.[13] The minutes of such meeting would have been better. Further, the SEC certification dated November 9, 1999, provided that BSFTI did not submit any communication signifying the termination of its corporate life nor its non-operation for 1998,[14] giving rise to serious doubts that such meeting ever took place. Hence, there is no convincing evidence to show that Gilbert consented to his dismissal and for these reasons the petitioners should have submitted a written notice of BSFTI's closure to the DOLE.

Were private respondents validly dismissed?

Article 283 of the Labor Code is the applicable law. It states,

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 worker 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 as one (1) whole year.

For the cessation of business operations due to serious business losses or financial reverses to be valid, the employer must give the employee and the DOLE written notices 30 days prior to the effectivity of his separation.

In *Agabon v. National Labor Relations Commission*,^[15] we ruled 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.^[16] The amount of such damages is addressed to the sound discretion of the Court, taking into account the relevant circumstances.^[17] In *Jaka Food Processing Corporation v. Pacot*,^[18] we noted that the sanction should be stiffer because the dismissal process was initiated by the employer's exercise of its management prerogative.

The NLRC and the Court of Appeals were unanimous in finding that BSFTI's closure was bona fide. The records before us revealed that it suffered losses from 1996 to 1998.^[19] Uxaposing the facts of this case vis the

applicable law and jurisprudence, P40,000 as nominal damages would be sufficient to vindicate each respondent's right to due process. A violation of that right suffices to support an award of nominal damages[.][20]]

In view of the valid dismissal, there is, thus, no basis for awarding the spouses P12,787.50 as 13th month pay.

Lastly, the Labor Arbiter[21] and the NLRC[22] found that the spouses' advances exceeded their unpaid salaries by P43,402.54. The NLRC even noted that Annexes 18 to 341 of the petitioners' Position Paper contained the petty cash vouchers evidencing payment of their salaries up to December 29, 1997.[23] Interestingly, the spouses argued in their Position Paper[24] that they were not paid their monthly salary of P15,000 from March 1997 to January 8, 1998. Their total claim for unpaid salaries therefore amounted to P129,488.93, minus the P13,125 which Allado paid to them. Yet, in their Motion for Partial Clarification/Reconsideration,[25] they admitted that their total advances amounted to P178,075.95. Hence, based on their admitted advances, they were overpaid by P48,587.02. This is even a larger amount than what was arrived at by the Labor Arbiter and the NLRC. Said amount of P48,587.02 should be paid back to petitioners, to prevent unjust enrichment.

WHEREFORE, the instant petition is **PARTIALLY GRANTED**. Accordingly, the assailed Decision dated April 16, 2002, as well as the Resolution dated January 15, 2003, of the Court of Appeals in CA-G.R. SP No. 66733, are **SET ASIDE**, and a new one entered upholding the legality of the dismissal. Petitioners are **ORDERED** to pay each of the private respondents the amount of P40,000, or a total of P80,000 for the spouses representing nominal damages. Private respondents, however, are also **ORDERED** to refund to petitioners the amount of P48,587.02, which is the amount of admitted advances taken by the Veruasa spouses exceeding the amount of their unpaid salaries.

SO ORDERED.

Carpio, Carpio-Morales, and Tinga, JJ., concur

[1]Rollo, pp. 29-41. Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Perlita J. Tria-Tirona, and Eliezer R. Delos Santos concurring.

[2]Id. at 43-44.

[3] Id. at 118-125.

[4] Id. at 76-85.

[5]Rollo, pp. 118-125.

[6]Id. at 29-41.

[7]Id. at 40.

[8]Id. at 530.

[9]Palomado v. National Labor Relations Commission, G.R. No. 96520, 28 June 1996, 257 SCRA 680, 695.

[10] Me-Shurn Corporation v. Me-Shurn Workers Union-FSM, G.R. No. 156292, 11 January 2005, 448 SCRA 41, 54; See Guerrero v. National Labor Relations Commission, G.R. No. 119842, 30 August 1996, 261 SCRA 301, 307.

[11] Dole Philippines, Inc. v. National Labor Relations Commission, G.R. No. 120009, 13 September 2001, 365 SCRA 124, 136; See International Hardware, Inc. v. NLRC, G.R. No. 80770, 10 August 1989, 176 SCRA 256, 260.

[12]The letter dated May 6, 1995, contained his proposals regarding the parties' equity contribution; the letters dated January 29, February 15, March 23, and May 14, 1996, outlined the details of the capital call made by the Board of Directors where he was enumerated as one of the stockholders; and the letters dated March 4, March 20, and April 21, 1998, contained his demands for the reimbursement of his capital infusion after the business was closed.

[13]Rollo, p. 196.

[14]Id. at 263.

[15]G.R. No. 158693, 17 November 2004, 442 SCRA 573, 616.

[16]Philippine Pizza, Inc. v. Bungabong, G.R. No. 154315, 9 May 2005, 458 SCRA 288, 300.

[17] Ibid.

[18]G.R. No. 151378, 28 March 2005, 454 SCRA 119, 125-126.

[19] Rollo, pp. 208, 215.

[20] Almeda v. Cariño, G.R. No. 152143, 13 January 2003, 395 SCRA 144, 149-150.

[21]Rollo, p. 84.

[22]Id. at 124-125.

[23] Id. at 125.

[24]Id. at 344.

[25]Id. at 449.

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