# COMPOSITE ENTERPRISES, INC., PETITIONER, VS. EMILIO M. CAPAROSO AND JOEVE QUINDIPAN, RESPONDENTS.

*G.R. NO. 159919. August 08, 2007*

Ponente: AUSTRIA-MARTINEZ, J.

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**AUSTRIA-MARTINEZ, J.:**

Before the Court is a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court assailing the Resolution[1] dated November 18, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 73791 which dismissed the Petition for Certiorari of Composite Enterprises, Inc. (petitioner) and the CA Resolution dated September 4, 2003 which denied petitioner's Motion for Reconsideration.[2]

The facts:

Petitioner is engaged in the distribution and/or supply of confectioneries to various retail establishments within the Philippines. Emilio Caparoso and Joeve P. Quindipan (respondents) were employed as its deliverymen until they were terminated on October 8, 1999.

Respondents filed a complaint for illegal dismissal against petitioner with the National Labor Relations Commission (NLRC). Petitioner denied that respondents were illegally dismissed, alleging that they were employed on a month-to-month basis and that they were terminated as a result of the expiration of their contracts of employment.

On June 15, 2000, Labor Arbiter Napoleon M. Menese (Labor Arbiter) rendered a Decision[3] in favor of the respondents, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered declaring complainants to have been illegally dismissed from employment and consequently, respondent COMPOSITE ENTERPRISES CORPORATION is hereby ordered to immediately reinstate complainants to their respective former position without loss of seniority rights and other privileges, with full backwages from the date of dismissal up to the actual date of reinstatement which, as of this date, amounts to P93,155.36, as above computed.
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> SO ORDERED.[4]

On July 6, 2000, petitioner filed its Appeal with the NLRC. It also filed a Manifestation with Motion manifesting that it cannot reinstate respondents to their former positions since their previous positions were no longer available. Accordingly, petitioner moved that it be allowed to pay respondents separation pay in lieu of reinstatement.[5]

On November 8, 2000, while petitioner's appeal was pending, respondents filed with the Labor Arbiter a Motion to Pay Complainants their Salary with Prayer for Issuance of A Writ of Execution.[6]

On December 19, 2000, petitioner filed with the NLRC a Motion to Resolve its motion to be allowed to pay separation pay in lieu of reinstatement.[7]

On January 26, 2001, the Labor Arbiter issued a Writ of Execution directing the Sheriff to effect respondent's reinstatement. Consistent with its stand that physical reinstatement was no longer possible, petitioner reinstated respondents into its payroll, conditioned on the NLRC's ruling on its motion to be allowed to pay separation pay in lieu of reinstatement.

On February 21, 2001, respondents filed an Ex-Parte Motion for Recomputation of Backwages with the Labor Arbiter.

Meanwhile, in a Decision dated May 9, 2001, the NLRC set aside the Decision of the Labor Arbiter, holding that there was no illegal dismissal since respondents' contracts of employment were for a fixed period.[8]

On May 15, 2001, petitioner filed an Ex-Parte Manifestation with the Labor Arbiter, manifesting that there was no basis to sustain respondents' claim for reinstatement in view of the NLRC's Decision dated May 9, 2001 finding no illegal dismissal.

In an Order dated June 14, 2001, the Labor Arbiter directed petitioner to pay respondents' accrued salaries amounting to P143,355.52, covering the period from June 26, 2000, the date petitioner received the Labor Arbiter's Decision, to May 9, 2001, the date of said decision's reversal by the NLRC.[9]

On July 23, 2001, petitioner filed an Appeal/Petition for Review For Issuance of Temporary Restraining Order and Preliminary Injunction before the NLRC, insisting on the payment of separation pay to respondents in lieu of reinstatement.

In an Order dated June 28, 2002, the NLRC affirmed the Labor Arbiter's Order dated June 14, 2001, holding that the reversal on appeal of the Labor Arbiter's Decision dated June 15, 2000 did not affect respondents' entitlement to accrued salaries pending appeal, pursuant to Article 223 of the Labor Code; that only respondent's entitlement to backwages was forfeited; and that there was no merit to petitioner's insistence on paying separation pay to respondents, since that there was no strong basis for petitioner's contention that reinstatement was physically impossible due to petitioner's implementation of a retrenchment program.[10]

Petitioner filed a Motion for Reconsideration[11] but it was denied by the NLRC in a Resolution dated September 26, 2002.[12] Petitioner received said Resolution on October 7, 2002.[13]

Four days later, or on October 11, 2002, petitioner filed a Petition for Certiorari with the CA, docketed as CA-G.R. SP No. 73269.

In a Resolution[14] dated October 24, 2002, the CA's Special Sixteenth Division[15] dismissed the petition for petitioner's failure to present proof that its General Manager was duly authorized to sign the petition's Verification and Certification of Non-Forum Shopping, in violation of Section 5, Rule 7 of the Revised Rules of Court.[16]

Within the 60-day reglementary period from date of receipt of the NLRC Resolution denying the motion for reconsideration, petitioner, instead of filing a motion for reconsideration with the CA's Special Sixteenth Division, filed on November 12, 2002, a second Petition for Certiorari, docketed as CA-G.R. SP No. 73791.[17]

In a Resolution dated November 18, 2002, the CA's Twelfth Division dismissed the petition for petitioner's failure to attach the required affidavit of service, pursuant to the last paragraph of Section 3, Rule 46 of the Revised Rules of Court.[18]

On November 26, 2002, petitioner filed a Motion for Reconsideration, attaching the affidavit of service which was omitted in the petition.[19]

In a Resolution[20] dated September 4, 2003, the CA denied petitioner's Motion for Reconsideration, holding that


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resort to the second petition for certiorari was no longer available due to res judicata, since the dismissal order dated October 24, 2002 in the first petition for certiorari had already become final and executory; that minute resolutions of the court denying due course to petitions, or dismissing cases summarily for failure to comply with the formal or substantial requirements laid down therefor by law, were actually dispositions on the merits constituting res judicata, citing Bernarte v. Court of Appeals.[21]

Hence, the present petition.

Petitioner contends that the dismissal of the first petition was not a judgment on the merits as to constitute res judicata; that Bernarte v. Court of Appeals finds no application to the instant case; and that the dismissal of the first petition was not a dismissal with prejudice as provided by Section 5, Rule 7 of the Revised Rules of Court.

Respondents, on the other hand, contend that petitioner's procedural lapses in filing the first and second special civil actions for certiorari are irreversible and there is nothing on record to show that the petitioner at least attempted or subsequently made a substantial compliance with the formal or substantial requirements laid down by law; and that petitioner's gross and utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction.

The petition is impressed with merit.

Contrary to the CA's ruling, failure to comply with the non-forum shopping requirements in Section 5, Rule 7 of the Revised Rules of Court, does not automatically warrant the dismissal of the case with prejudice. The second paragraph of Section 5, Rule 7, is pertinent:

> Section 5. Certification against forum shopping. - x x x
>
> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions. (Emphasis supplied)

The Rule clearly states that the dismissal is without prejudice unless otherwise stated by the court;[22] and the dismissal may be deemed with prejudice only upon proper motion and hearing. Since the dismissal was without prejudice, it did not bar petitioner from refiling the petition for so long as it was made within the 60-day reglementary period for filing the petition for certiorari.

Furthermore, Bernarte v. Court of Appeals finds no application to the instant case. Bernarte is cast under an entirely different factual milieu. There, the Court denied the first petition for non-compliance with Section 4 of Circular No. 1-88, which requires a verified statement of material dates; and the second petition was filed one year after the dismissal of the first petition. Unlike in Bernarte, the second petition in the present case was refiled immediately after the first petition was dismissed and within the 60-day reglementary period.

With respect to the non-attachment of the affidavit of service in the second petition, it was not fatal to the petition. The registry receipts attached to the petition clearly show that respondents were served copies of the petition and its annexes.[23] Thus, the demands of substantial justice were satisfied by the actual receipt of the petition.[24]

Verily, litigation is not a game of technicalities. While the swift unclogging of court dockets is a laudable objective, granting substantial justice is an even more urgent ideal.[25] Indeed, on numerous occasions, this Court has relaxed the rigid application of the rules to afford the parties the opportunity to fully ventilate their cases on

the merits. This is in line with the time-honored principle that cases should be decided only after giving all parties the chance to argue their causes and defenses. Technicality and procedural imperfection should thus not serve as basis of decisions.[26] Technicalities should never be used to defeat the substantive rights of the other party.[27] Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities.[28] In that way, the ends of justice would be better served.[29] For, indeed, the general objective of procedure is to facilitate the application of justice to the rival claims of contending parties, bearing always in mind that procedure is not to hinder but to promote the administration of justice.[30]

Ordinarily, the case should be remanded to the CA for proper disposition of the petition for certiorari on the merits;[31] but that would further delay the case. Considering that the lone issue raised can be readily resolved in this instance, the Court deems it more practical and in the greater interest of justice not to remand the case to the CA but, instead, to resolve this case once and for all.[32]

Petitioner anchored its Petition for Certiorari before the CA on the ground that the NLRC gravely abused its discretion in affirming the Order dated June 14, 2001 of the Labor Arbiter which directed petitioner to pay respondents' accrued salaries. Petitioner insists that the NLRC should have ordered the payment of separation pay since respondents' reinstatement to their former positions was physically impossible due to petitioner's implementation of a retrenchment program.

The Court is not persuaded.

Article 223 (3rd paragraph) of the Labor Code,[33] as amended by Section 12 of Republic Act (R.A.) No. 6715,[34] and Section 2 of the NLRC Interim Rules on Appeals under R.A. No. 6715, Amending the Labor Code,[35] provide that an order of reinstatement by the Labor Arbiter is immediately executory even pending appeal. The Court explained the rationale of the law in Aris (Phil.) Inc. v. National Labor Relations Commission:[36]

> In authorizing execution pending appeal of the reinstatement aspect of a decision of the Labor Arbiter reinstating a dismissed or separated employee, the law itself has laid down a compassionate policy which, once more, vivifies and enhances the provisions of the 1987 Constitution on labor and the working man.
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> These duties and responsibilities of the State are imposed not so much to express sympathy for the workingman as to forcefully and meaningfully underscore labor as a primary social and economic force, which the Constitution also expressly affirms with equal intensity. Labor is an indispensable partner for the nation's progress and stability.
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> x x x In short, with respect to decisions reinstating employees, the law itself has determined a sufficiently overwhelming reason for its execution pending appeal.
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> x x x Then, by and pursuant to the same power (police power), the State may authorize an immediate implementation, pending appeal, of a decision reinstating a dismissed or separated employee since that saving act is designed to stop, although temporarily since the appeal may be decided in favor of the appellant, a continuing threat or danger to the survival or even the life of the dismissed or separated employee and his family.[37]

Reinstatement is the restoration to a state or condition from which one has been removed or separated.[38] The

intent of the law in making a reinstatement order immediately executory is much like a return-to-work order, i.e., to restore the status quo in the workplace in the meantime that the issues raised and the proofs presented by the contending parties have not yet been finally resolved.[39] It is a legal provision which is fair to both labor and management because while execution of the order cannot be stayed by the posting of a bond by the employer, the workers also cannot demand their physical reinstatement if the employer opts to reinstate them only in the payroll.[40]

Payment of separation pay as a substitute for reinstatement is allowed only under exceptional circumstances, viz: (1) when reasons exist which are not attributable to the fault or are beyond the control of the employer, such as when the employer -- who is in severe financial strait, has suffered serious business losses, and has ceased operations -- implements retrenchment, or abolishes the position due to the installation of labor-saving devices; (2) when the illegally dismissed employee has contracted a disease and his reinstatement will endanger the safety of his co-employees; or, (3) where a strained relationship exists between the employer and the dismissed employee.[41]

As regards retrenchment, it is a management prerogative consistently recognized and affirmed by this Court. It is, however, subject to faithful compliance with the substantive and procedural requirements laid down by law and jurisprudence.[42] For retrenchment to be considered valid, the following substantial requirements must be met: (a) the losses expected should be substantial and not merely de minimis in extent; (b) the substantial losses apprehended must be reasonably imminent such as can be perceived objectively and in good faith by the employer; (c) the retrenchment must be reasonably necessary and likely to effectively prevent the expected losses; and (d) the alleged losses, if already incurred, and the expected imminent losses sought to be forestalled, must be proved by sufficient and convincing evidence.[43]

In the discharge of these requirements, it is the employer who has the onus, this being in the nature of an affirmative defense.[44] In other words, it is not enough for a company to merely declare that it has implemented a retrenchment program. It must produce adequate proof that such is the actual situation to justify the retrenchment of employees. Normally, the condition of business losses is shown by audited financial documents like yearly balance sheets, profit and loss statements and annual income tax returns. The financial statements must be prepared and signed by independent auditors, failing which these can be assailed as self-serving documents.[45]

In this case, petitioner sought to justify the payment of separation pay instead of reinstatement on the basis of its implementation of a retrenchment program for "serious and persistent financial difficulties."[46] However, petitioner only submitted as evidence the notice of its intention to implement a retrenchment program, which it sent to the Department of Labor and Employment on July 25, 2000.[47] It did not submit its financial statements duly audited by an independent external auditor. Its failure to do so seriously casts doubt on its claim of losses and insistence on the payment of separation pay.

The Court finds that the NLRC did not commit any grave abuse of discretion in issuing the Order dated June 28, 2002, affirming the Order of the Labor Arbiter dated June 14, 2001.

WHEREFORE, the petition is GRANTED insofar as the Resolutions of the Court of Appeals dated November 18, 2002 and September 4, 2003 are concerned, which are hereby REVERSED and SET ASIDE. However, in the absence of grave abuse of discretion, the Order dated June 28, 2002 of the National Labor Relations Commission affirming the Labor Arbiter's Order dated June 14, 2001 is REINSTATED.

No costs.


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**SO ORDERED.**

Ynares-Santiago, (Chairperson), Chico-Nazario, and Nachura, JJ., concur.

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[1]Penned by Associate Justice Romeo A. Brawner (retired) and concurred in by Associate Justices Bienvenido L. Reyes and Danilo B. Pine (retired), CA rollo, p. 122.

[2] Id. at 132.

[3] Id. at 33.

[4] Id. at 39.

[5] Id. at 40.

[6] Id. at 43.

[7] Id. at 46.

[8] Id. at 51-59.

[9] Id. at 68.

[10] Id. at 21-28.

[11] Id. at 92.

[12] Id. at 30.

[13] Id. at 2.

[14] Id. at 118.

[15] Penned by Justice Rebecca de Guia-Salvador and concurred in by Justices Bernardo P. Abesamis and Regalado E. Maambong.

[16] In Wack Wack Golf & Country Club v. National Labor Relations Commission, G.R. No. 149793, April 15, 2005, 456 SCRA 280, 293, citing Novelty Philippines, Inc. v. Court of Appeals, 458 Phil. 36, 46 (2003), the Court recognized the authority of the general manager to sue on behalf of the corporation and to sign the requisite verification and certification of non-forum shopping since he is one person who is in the best position to know the state of affairs of the corporation.

[17] CA rollo, p. 2.

[18] Id. at 98.

[19] Id. at 99.

[20] Id. at 132.

[21] 331 Phil. 643, 659 (1996).

[22] Barroso v. Ampig Jr., 385 Phil. 237, 244 (2000); Sto. Domingo-David v. Guerrero, 357 Phil. 279, 284-285 (1998).

[23] CA rollo, p. 20.


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[24] Philippine Amusement and Gaming Corporation v. Angara, G.R. No. 142937, November 15, 2005, 475 SCRA 41, 52. See also Gutierrez v. Secretary of the Department of Labor and Employment, G.R. No. 142248, December 16, 2004, 447 SCRA 107, 118; Añonuevo v. Court of Appeals, 458 Phil. 532, 539 (2003); Active Realty & Development Corporation v. Daroya, 431 Phil. 753, 758 (2002); Ace Navigation Co., Inc. v. Court of Appeals, 392 Phil. 606, 614 (2000).

[25] Heirs of Agapito T. Olarte v. Office of the President of the Philippines, G.R. No. 165821, June 21, 2005, 460 SCRA 561, 568; Donato v. Court of Appeals, 462 Phil. 676, 692 (2003).

[26] Crystal Shipping, Inc. v. Natividad, G.R. No. 154798, October 20, 2005, 473 SCRA 559, 565-566.

[27] Dalton-Reyes v. Court of Appeals, G.R. No. 149580, March 16, 2005, 453 SCRA 498, 508.

[28]Philippine Amusement and Gaming Corporation v. Angara, supra note 24, at 53.

[29]Heavylift Manila, Inc. v. Court of Appeals, G.R. No. 154410, October 20, 2005, 473 SCRA 541, 547.

[30]Asian Spirit Airlines (Airline Employees Cooperative) v. Bautista, G.R. No. 164668, February 14, 2005, 451 SCRA 294, 301.

[31] Garcia v. Philippine Airlines, Inc., G.R. No. 160798, June 8, 2005, 459 SCRA 768, 778; Vicar International Construction, Inc. v. FEB Leasing and Finance Corporation, G.R. No. 157195, April 22, 2005, 456 SCRA 588, 599; Donato v. Court of Appeals, supra note 25; BA Savings Bank v. Sia, 391 Phil. 370, 378 (2000).

[32] Philippine Amusement and Gaming Corporation v. Angara, supra note 24, at 54; Wack Wack Golf and Country Club v. National Labor Relations Commission, supra note 16, at 294.

[33] "In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein."

[34] March 21, 1989.

[35] "Section 2. Order of Reinstatement and Effect of Bond - Insofar as the reinstatement aspect is concerned, the decision of the Labor Arbiter reinstating a dismissed or separated employee shall immediately be executory even pending appeal. x x x.".

[36]G.R. No. 90501, August 5, 1991, 200 SCRA 246.

[37] Id. at 253-255. Reiterated in Roquero v. Philippine Airlines, Inc., 449 Phil. 437, 445 (2003).

[38] Pheschem Industrial Corporation v. Moldez, G.R. No. 161158, May 9, 2005, 458 SCRA 339, 346; Gold City Integrated Port Service, Inc. v. National Labor Relations Commission, 315 Phil. 698, 711 (1995).

[39] Philippine Airlines, Inc. v. National Labor Relations Commission, 327 Phil. 876, 880 (1996).

[40] Id.

[41] Pheschem Industrial Corporation v. Moldez, supra note 38; Pantranco North Express, Inc. v. National Labor Relations Commission, 322 Phil. 256, 265 (1996); Article 283 of the Labor Code; Section 4 (b), Rule 1, Book VI of the Implementing Rules and Regulations of the Labor Code; Oro Enterprises, Inc. v. National Labor Relations Commission, G.R. No. 110861, November 14, 1994, 238 SCRA 105, 110-111.

[42] San Miguel Corporation v. Aballa, G.R. No. 149011, June 28, 2005, 461 SCRA 392, 429; EMCO Plywood Corporation v. Abelgas, G.R. No. 148532, April 14, 2004, 427 SCRA 496, 511.

[43] San Miguel Corporation v. Aballa, id.; EMCO Plywood Corporation v. Abelgas, id.; Philippine Tobacco Flue-Curing & Redrying Corporation v. National Labor Relations Commission, 360 Phil. 218, 236-237 (1998); Somerville Stainless Steel Corporation v. National Labor Relations Commission, 350 Phil. 859, 869-870 (1998); Edge Apparel v. National Labor Relations Commission, 349 Phil. 972, 983-984 (1998); San Miguel Jeepney Service v. National Labor Relations Commission, 332 Phil. 804, 814 (1996); Catatista v. National Labor Relations Commission, 317 Phil. 54, 61 (1995).

[44] San Miguel Corporation v. Aballa, supra note 42; Somerville Stainless Steel Corporation v. National Labor Relations Commission, supra note 43, at 871; San Miguel Jeepney Service v. National Labor Relations Commission, supra note 43, at 815; Guerrero v. National Labor Relations Commission, 329 Phil. 1069, 1074-1075 (1996).

[45] Danzas Intercontinental, Inc. v. Daguman, G.R. No. 154368, April 15, 2005, 456 SCRA 382, 393; San Miguel Corporation v. Aballa, supra note 43, at 430; Asian Alcohol Corporation v. National Labor Relations Commission, 364 Phil. 912, 927-928 (1999); Polymart Paper Industries, Inc. v. National Labor Relations Commission, 355 Phil. 592, 602 (1998); Lopez Sugar Corporation v. Federation of Free Workers, G.R. Nos. 75700-01, August 30, 1990, 189 SCRA 179, 190.

[46] CA rollo, p. 48.

[47] Id.


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