

MANDAUE DINGHOW DIMSUM HOUSE, CO., INC. and/or HENRY UYTENGUSU, Petitioners, vs. NATIONAL LABOR RELATIONS COMMISSION-FOURTH DIVISION, FELIX PACALDO, IMELDA MONTELLANO, LUZVIMINDA...

G.R. No. 161134. March 03, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

Before this Court is a Petition[1] for Review on Certiorari under Rule 45 of the Rules of Civil Procedure, seeking the reversal of the Court of Appeals (CA) Resolution[2] dated July 22, 2003 and Resolution[3] dated October 30, 2003.

Petitioner Henry Uytengsu[4] (Uytengsu) was the President and the former General Manager of the Mandaue Dinghow Dimsum House Co., Inc. (Mandaue Dinghow), a duly organized corporation which used to engage in the restaurant business. Mandaue Dinghow used to operate the Mandaue Dinghow Dimsum House (the restaurant) which was located along A.C. Cortes Avenue, Mandaue City.

In the course of this restaurant business, private respondents Felix Pacaldo, Imelda Montellano, Luzviminda Cuenca, Anamay Delarmente,[5] Rema Ramos, Pedro Dayagmil,[6] Serina Casquejo,[7] Ricky Nano, Erwin Limatog, Leila Rosales, Ranulfo General, Nestor Camia and Anesia Blanca (private respondents) were employed, on various dates, by Mandaue Dinghow as food handlers, waiters, helpers and checkers among others, all with a daily wage of P160.00.

However, due to business losses, the establishment of numerous malls in Cebu City, the gradual dwindling of the number of customers, the rising cost of operations, the great increase in rentals and the lack of a viable alternative location, the restaurant closed down. On August 31, 1998, private respondents were terminated from the service as a result of this closure. The restaurant filed a Notice of Retrenchment with the Department of Labor and Employment (DOLE) on September 8, 1998.[8] Consequently, private respondents filed a case for Illegal Dismissal before the Labor Arbiter (LA) against Mandaue Dinghow and/or Uytengsu, praying for the payment of separation pay, medical allowance, penalty for failure to notify the DOLE and attorney's fees.[9]

In his Decision[10] dated June 10, 1999, the LA absolved Uytengsu from any liability, holding that the latter did not act in bad faith and in excess of his authority. Nevertheless, the LA found Mandaue Dinghow liable, ordering the same to pay private respondents their respective separation pay in the total amount of P122,720.00.[11] Private respondents filed their Motion for Reconsideration[12] claiming, among others, that Mandaue Dinghow was only made to pay without including Uytengsu; that some[13] of them were not awarded separation pay in the said decision; and that Mandaue Dinghow and Uytengsu deliberately intended to dismiss the private respondents. Private respondents prayed that Mandaue Dinghow and Uytengsu be ordered, jointly and severally, to pay all the private respondents' separation pay, medical allowance, attorney's fees and the penalty for failure to file notice of closure. Thus, in an Order dated June 10, 1999, the LA awarded an additional amount of P104,377.00 as

separation pay to the other private respondents.

Private respondents appealed to the National Labor Relations Commission (NLRC).[14] On October 24, 2000, the NLRC rendered its Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the decision of Labor Arbiter Dominador A. Almirante dated 10 June 1999 and his Order dated 22 July 1999 are MODIFIED, to wit:

Ordering respondent Mandaue Dinghow Dimsum House Co., Inc. to pay the complainants their separation pay in the aggregate amount of Two Hundred Thirty-Six Thousand Five Hundred Forty-Six and 86/100 (P236,546.86), broken down as follows:

1 Blanca, Anesia -

P20,933.35

2 Camia, Nestor -

20,933.35

3. Casquejo, Sesina -

20,933.35

4. Cuenca, Luzviminda -

20,933.35

5. Dayagnil, Pedro -

12,560.01

6. Delarmente, Anamae -

14,653.35

7. General, Ranulfo -

8,373.34

8. Limatog., Erwin -

20,933.35

9. Montellano, Imelda -

20,933.35

10. Nano, Ricky -

12,560.01

11. Pacaldo, Felix -

20,933.35

12. Ramos, Rema -

20,933.35

13. Rosales, Lilia -

20,933.35

Total

-

P236,546.86

=====

SO ORDERED.

On February 9, 2001, the NLRC issued an Entry of Judgment[15] certifying that the aforementioned decision had become final and executory on December 4, 2000. On May 28, 2001, a Writ of Execution[16] was issued by the LA. However, in their Manifestation[17] dated October 28, 2001, private respondents averred that the said writ could not be executed, as Mandaue Dinghow could no longer be found and had transferred elsewhere; that both Mandaue Dinghow and Uytengsu were impleaded as respondents, although in the NLRC decision, Uytengsu's name was omitted; that clearly, Uytengsu is the President and majority stockholder of Mandaue Dinghow; and that it would be a mockery of justice if, despite the finality of the NLRC decision, the same could not be executed on a mere technicality. Invoking the doctrine of piercing the veil of corporate fiction, private respondents moved that the LA, in the exercise of his equity jurisdiction, issue an alias writ of execution directing the Sheriff to execute the judgment against Mandaue Dinghow and Uytengsu. Thereafter, pertinent pleadings were filed by both parties.[18]

Thus, on February 18, 2002, the LA issued an Order decreeing that a writ of execution be issued against the properties of the officers/stockholders of Mandaue Dinghow. On April 16, 2002, an Alias Writ of Execution was issued. On April 24, 2002, Mandaue Dinghow and Uytengsu filed a Motion to Quash the Writ of Execution. On May 14, 2002, the Sheriff submitted his Report manifesting that the said Alias Writ was served on Mandaue Dinghow and Uytengsu, and Notices of Garnishment were served on the banks. Thus, Uytengsu's bank deposits were frozen. On May 20, 2002, the LA denied Uytengsu's Motion to Quash the Writ of Execution. Uytengsu filed a Motion for Reconsideration and/or Appeal[19] from the said Order before the NLRC. In its Decision[20] dated March 12, 2003, the NLRC denied the said appeal, holding that Uytengsu is jointly and severally liable with Mandaue Dinghow on the ground that he is the President/Chairman of Mandaue Dinghow and that the latter is no longer existing.

Aggrieved, Uytengsu went to the CA via a petition[21] for certiorari under Rule 65 of the Rules of Civil Procedure without filing any motion for reconsideration assailing the NLRC Decision.

In its Resolution dated July 22, 2003, the CA dismissed the said petition for certiorari on the following grounds: (1) the petition failed to indicate the full names of all private respondents and their respective complete addresses; (2) the certificate of non-forum shopping attached to the petition was merely signed by Uytengsu without attaching the appropriate board resolution or secretary's certificate showing his authority to file the said petition in behalf of Mandaue Dinghow; and (3) Mandaue Dinghow and Uytengsu failed to file a motion for reconsideration of the NLRC decision before going to the CA on certiorari, without justifying the reasons for such failure.

On August 25, 2003, Uytengsu filed his Motion for Reconsideration[22] claiming that the petition's failure to indicate the full names of all private respondents and their respective addresses was not intentional but due merely

to inadvertence. Moreover, the petition indicated the complete address of said respondents' counsel; hence, it substantially complied with the rules. Uytengsu also manifested that he is the lone petitioner before the CA and that the petition did not include Mandaue Dinghow anymore as the decision against the latter had long become final and executory. Thus, Uytengsu submitted that there was no need for any board resolution or secretary's certificate authorizing him to file the said petition. Finally, Uytengsu claimed that direct resort to certiorari was justified because despite the finality of the decision holding Mandaue Dinghow solely liable and the Writ of Execution issued against the same, the Labor Arbiter in excess of his authority issued an Alias Writ of Execution making Uytengsu liable for the private respondents' claims, as a result of which Uytengsu's bank accounts in different banks were garnished. Uytengsu prayed that technicalities be waived in order to serve the ends of justice.

In a Resolution dated October 30, 2003, the CA denied the motion for reconsideration. Although the CA found that the certificate of forum shopping attached to the petition was sufficient and that Uytengsu indicated all the names of private respondents, it held that Uytengsu still failed to indicate the respective complete addresses of the private respondents and to justify the non-filing of the required motion for reconsideration assailing the NLRC decision before resorting to certiorari.

Hence, this Petition based on the following grounds:

I.

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AND SERIOUS ERROR IN DISMISSING THE PETITION FOR CERTIORARI PURELY ON TECHNICAL GROUNDS AND IN NOT GIVING DUE COURSE TO THE SAME.

II.

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AND SERIOUS ERROR IN DISMISSING THE PETITION FOR CERTIORARI WITHOUT DELVING INTO THE MERITS BECAUSE THE PUBLIC RESPONDENT HAS DECIDED A QUESTION OF SUBSTANCE CONTRARY TO LAW AND/OR BINDING PRECEDENTS.

In addition to the arguments he proffered on his non-filing of a motion for reconsideration, Uytengsu posited that a corporation has a separate legal personality from its corporate officers, therefore, the latter are not personally liable for money claims against it unless said officers acted with evident malice and bad faith; that the LA in his Decision dated June 10, 1999, absolved Uytengsu from any liability for want of bad faith and excess in authority; that private respondents did not question such particular finding, hence, the same attained finality; that they belatedly invoked the doctrine of piercing the veil of corporate fiction;^[23] that it is clear from the NLRC decision dated October 24, 2000, which is already final, that it is Mandaue Dinghow alone which is liable for the payment of private respondents' separation pay; and that a decision which is final and executory can no longer be changed, altered or modified, particularly in this case in which the alteration or modification is material and substantial.^[24]

On the other hand, private respondents argued that the CA did not err in dismissing the petition for certiorari for being substantially infirm, as Uytengsu failed to reasonably justify the non-filing of the required motion for reconsideration and to indicate in full the complete addresses of the private respondents for the CA to acquire jurisdiction over them; that the instant petition raises questions of fact and law in disregard of the rules; and that the NLRC did not commit any reversible error when it held that Uytengsu is jointly and severally liable as President and majority stockholder of Mandaue Dinghow in order to protect laborers and serve the ends of substantial justice.^[25]

In fine, there are three issues which require resolution in this case:

1

Whether the non-filing of the motion for reconsideration before resorting to certiorari is justified;

2)

Whether the Alias Writ of Execution was validly issued despite the finality of the NLRC Decision dated October 24, 2000; and

3)

Whether the Doctrine of Piercing the Veil of Corporate Fiction was properly invoked.

The first issue we resolve in the affirmative.

Section 1, Rule 65 of the Rules of Civil Procedure clearly states that in order to avail oneself of the special civil action for certiorari, one must be left with no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, to wit:

SECTION 1. Petition for certiorari. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

A motion for reconsideration of an assailed decision is deemed a plain and adequate remedy expressly available under the law. The well-established rule is that a motion for reconsideration is an indispensable condition before an aggrieved party can resort to the special civil action for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended. The purpose of such rule is to afford the erring court or agency an opportunity to rectify the error/s it may have committed without the intervention of a higher court. The requisite motion is not only an expeditious remedy of an aggrieved party but it also obviates an improvident and unnecessary recourse to appellate proceedings.[26] Failure to file a motion for reconsideration with the NLRC before availing oneself of the special civil action for certiorari is a fatal infirmity. However, this rule is subject to certain recognized exceptions, to wit:

a)

where the order is a patent nullity, as where the court a quo has no jurisdiction;

b)

where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;

c)

where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the petition is perishable;

d)

where, under the circumstances, a motion for reconsideration would be useless;

e)

where petitioner was deprived of due process and there is extreme urgency for relief;

f)

where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;

g)

where the proceedings in the lower court are a nullity for lack of due process;

h)

where the proceeding was ex parte or in which the petitioner had no opportunity to object; and,

i)

where the issue raised is one purely of law or where public interest is involved.[27]

The instant case falls squarely within the first of the enumerated exceptions because the NLRC decision dated March 12, 2003 is a patent nullity considering that the LA and the NLRC were devoid of any jurisdiction to alter or modify the NLRC Decision dated October 24, 2000, which already attained finality.

Correlatively, we answer the second issue in the negative.

The Order and the Alias Writ of Execution issued by the LA are null and void for lack of jurisdiction and for altering the tenor of the NLRC decision dated October 24, 2000 which directed Mandaue Dinghow alone to pay the private respondents' separation pay. The private respondents did not assail this ruling. Thus, the same became final and executory. Even granting that the NLRC committed a mistake in failing to indicate in the dispositive portion that Uytengsu was solidarily liable with Mandaue Dinghow, the correction — which is substantial — can no longer be allowed in this case because the judgment has already become final and executory. Our ruling in *Industrial Management International Development Corporation v. National Labor Relations Commission*[28] is instructive:

It is an elementary principle of procedure that the resolution of the court in a given issue as embodied in the dispositive part of a decision or order is the controlling factor as to settlement of rights of the parties. Once a decision or order becomes final and executory, it is removed from the power or jurisdiction of the court which rendered it to further alter or amend it. It thereby becomes immutable and unalterable and any amendment or alteration which substantially affects a final and executory judgment is null and void for lack of jurisdiction, including the entire proceedings held for that purpose. An order of execution which varies the tenor of the judgment or exceeds the terms thereof is a nullity.

Lastly, on the third issue, we rule in the negative.

It must be emphasized that a corporation is invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other legal entity to which it may be related.[29] Because of this, the doctrine of piercing the veil of corporate fiction must be exercised with caution.

In *Malayang Samahan ng mga Manggagawa sa M. Greenfield v. Ramos*,[30] this Court reiterated the rule that corporate directors and officers are solidarily liable with the corporation for the termination of employees done with malice or bad faith. It has been held that bad faith does not connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of a known duty

through some motive or interest or ill will; it partakes of the nature of fraud. In this case, it is worth mentioning that the LA in his Decision dated June 10, 1999, expressly absolved Uytengsu from any liability, holding that the latter did not act in bad faith and in excess of his authority. Such finding was not assailed by the private respondents nor did the NLRC in its Decision dated October 24, 2000 overrule the same. The liability of Uytengsu was never discussed in the said NLRC decision which, to the detriment of the private respondents, had lapsed into finality.

WHEREFORE, the Petition is GRANTED. The Court of Appeals Resolutions dated July 22, 2003 and October 30, 2003 are hereby REVERSED and SET ASIDE. The Order of Executive Labor Arbiter Reynoso A. Belarmino, dated February 18, 2002, is ANNULLED and the Alias Writ of Execution is QUASHED. Nonetheless, the Labor Arbiter is hereby DIRECTED to implement the final and executory Decision of the National Labor Relations Commission, dated October 24, 2000, against all the assets of Mandaue Dinghow Dimsum House Co., Inc. with utmost dispatch.

SO ORDERED.

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

[1] Dated January 5, 2004; rollo, pp. 11-31.

[2] Particularly docketed as CA-G.R. SP No. 77603, penned by Associate Justice Rodrigo V. Cosico with Associate Justices Juan Q. Enriquez, Jr. and Arturo D. Brion (now Secretary of DOLE), concurring; id. at 33.

[3] Id. at 35.

[4] Also referred to as Henry Uytengsu in other pleadings and documents.

[5] Also referred to as Anamae Delarmente in other pleadings and documents.

[6] Also referred to as Pedro Dayagnil in other pleadings and documents.

[7] Also referred to as Sesina Casquejo in other pleadings and documents.

[8] DOLE Certification dated November 20, 1998; rollo, p. 43.

[9] Particularly docketed as NLRC Case Nos. RAB VII-09-1550-98 and RAB VII-10-1722-98; id. at 45-51.

[10] Id.

[11] The said private respondents are Pedro Dayagmil (P12,480.00), Anamay Delarmente (P14,560.00), Imelda Montellano (P20,800.00), Rema Ramos (P20,800.00), Luzviminda Cuenca (P20,800.00), Lilia Rosales (P20,800.00) and Ricky Nano (P12,480.00).

[12] Dated July 15, 1999; CA rollo, pp. 47-50.

[13] These private respondents are Felix Pacaldo, Serina Casquejo, Erwin Limatog, Ranulfo General, Nestor Camia and Anesia Blanca.

[14] Rollo, p. 59.

[15] Id. at 67-68.

[16] Id. at 69.

[17] Id. at 70-71.

[18] Mandaue Dinghow and Uytengsu filed an Opposition/Comment to the Manifestation of private respondents on January 8, 2002, and private respondents filed their Reply to the said Opposition/Comment on February 1, 2002.

[19] Rollo, pp. 52-58.

[20] CA rollo, pp. 23-30, citing *Restaurante Las Conchas v. Llego*, 314 SCRA 24 (1999).

[21] Dated May 22, 2003; id. at 2-21.

[22] Id. at 95-102.

[23] *Supra* note 1.

[24] Reply dated March 1, 2005; rollo, pp. 131-137.

[25] Notice of Compliance with Prayer for Leave to Admit Delayed Comment, dated June 8, 2004; id. at 110-113.

[26] *Audi AG v. Mejia*, G.R. No. 167533, July 27, 2007, 528 SCRA 378, 384, citing *Zapata v. National Labor Relations Commission*, 175 SCRA 56 (1989).

[27] *Philippine Long Distance Telephone Company v. Belinda D. Buna*, G. R. No. 143688, August 17, 2007, 530 SCRA 444, 452-453, citing *Cruz, Jr. v. Court of Appeals*, 494 SCRA 643 (2006) (Emphasis supplied).

[28] G.R. No. 101723, May 11, 2000, 331 SCRA 640, 647-648 (Emphasis supplied).

[29] *Elcee Farms Inc. v. National Labor Relations Commission*, G.R. No. 126428, January 25, 2007, 512 SCRA 602, 616.

[30] G.R. No. 113907, 20 April 2001, 357 SCRA 77, 93-94.

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