# ALEX B. CARLOS, ABC SECURITY SERVICES, INC., AND HONEST CARE JANITORIAL SERVICES, INC., PETITIONERS, VS. COURT OF APPEALS, PERFECTO P. PIZARRO, JOEL B. DOCE, GUILLERMO F. SOLOMO...

*G.R. NO. 168096. August 28, 2007*

Ponente: CHICO-NAZARIO, J.

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**CHICO-NAZARIO, J.:**

Before this Court is a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court, filed by petitioners Alex B. Carlos (Carlos), ABC Security Services, Inc. (ABC Security), and Honest Care Janitorial Services, Inc. (Honest Care Janitorial), seeking to reverse and set aside the Decision,[1] dated 31 August 2004 and the Resolution,[2] dated 9 May 2005 of the Court of Appeals in CA-G.R. SP No. 74458. The appellate court, in its assailed Decision and Resolution affirmed the Decision dated 19 July 2002 and Resolution dated 30 August 2002 of the National Labor Relations Commission (NLRC) in NLRC NCR-06-04079-93 finding the petitioners jointly and severally liable for illegal dismissal, and ordering them to pay the private respondents backwages, separation pay, overtime pay, 13th month pay, premium pay for rest days and holidays, and service incentive leave pay. The dispositive portion of the assailed appellate court's Decision thus reads:

> WHEREFORE, for lack of merit, the instant petition is DENIED due course and, accordingly DISMISSED. Consequently, the decision dated July 19, 2002 of the National Labor Relations Commission is AFFIRMED in toto.[3]

The factual and procedural antecedents of the instant petition are as follows:

Petitioner ABC Security is a domestic corporation engaged in the business of job contracting by providing security services to its clientele. Petitioner Honest Care Janitorial is a domestic corporation likewise engaged in job contracting janitorial services. It appears that Honest Care Janitorial was consolidated with ABC Security and the consolidated corporations are represented in this action by its president, Alex B. Carlos.

Private respondents Perfecto P. Pizzaro (Pizzaro), Joel B. Doce (Doce), Francsico U. Corpus (Corpus) and Ronillo Gallego (Gallego) were employed by petitioner ABC Security as security guards and were assigned to Greenvalley Country Club at the time they were allegedly separated from employment. Private respondent Pizzaro was already with petitioner ABC Security since 1975, while private respondent Corpus was employed in 1990. Private respondents Doce and Gallego were both hired in 1987.[4] Private respondent Solomon was employed by Honest Care Janitorial as janitor supervisor since 1975 and was posted to different offices.[5]

On 22 July 1993, private respondents filed a Joint/Consolidated Complaint- Affidavit[6] against petitioners praying for the payment of minimum wage, 13th month pay, holiday pay, service incentive leave, cost of living allowance and clothing allowance.

As shown by the Registry Return Receipt,[7] petitioners received a copy of the complaint and the corresponding

summons on 16 July 1993. On the following day, private respondents Pizzaro, Solomon and Doce were allegedly relieved from their posts and were not given new assignments. Subsequently, private respondents Gallego and Corpus were also allegedly dismissed from employment.[8]

Private respondents claimed that every time they received their salaries, they were made to sign two sets of pay slips, one was written in ink while the other was written in pencil. These two pay slips showed the amount of salaries they actually received, which was below the minimum; but since the entries written on one of the pay slips they signed were in pencil, there was a possibility that petitioners could alter the said entries to make it appear that they were compliant with the labor laws.

For its part, petitioners averred that private respondents were not dismissed but voluntarily resigned from their respective employments as evidenced by the resignation letters bearing their signatures. Petitioners claimed that after private respondents' assignment to Greenvalley Country Club ended, they were reassigned to other posts as an exercise of management prerogative, but they refused to transfer and opted to resign. In addition, petitioners alleged that private respondents' resignations were prompted by the loss of bowling equipment in their custody, which they were obliged to pay.

Petitioners further asseverated that the private respondents were paid the minimum wage in accordance with the standards prescribed by the labor laws and received benefits including the overtime pay, cost of living allowance, night differential pay, premium pay and 13th month pay as evidenced by the General Payroll of the company. Private respondents' signatures appeared on the said General Payroll, signifying that they were able to receive the wages and benefits in accordance with the standard set by law.

On 31 August 1999, the Labor Arbiter found that petitioners submitted overwhelming documentary evidence to refute the bare allegations of the private respondents and thereby dismissed the complaint for lack of merit. The dispositive part of the Labor Arbiter's Decision[9] reads:

> WHEREFORE, premises all considered, the instant complaint is dismissed for lack of merit.

On appeal, the NLRC reversed the Labor Arbiter's findings by giving more evidentiary weight to private respondents' testimonies in light of the factual circumstances of the case and thus declared that there was illegal dismissal. It appears that petitioners received a copy of private respondents' complaint on 16 July 1993, and shortly thereafter, private respondents were dismissed from employment. The decretal portion of the NLRC Decision[10] reads:

> WHEREFORE, the decision appealed from is hereby REVERSED.
>
> The [herein petitioners], who are hereby declared to be jointly and severally liable for the monetary awards, are hereby ordered to pay the [herein private respondents] the following: (1) backwages (computed on the basis of the applicable minimum wage rate on July 17, 1990) from the said date up to the date of the promulgation of this decision; (2) separation pay equivalent to one month's salary for every year of service from the date of hiring to the date of the promulgation of this Decision; and (3) for the unexpired 3- year period, overtime pay of four (4) hours daily, 13th month pay, premium pay for restdays and holidays, and service incentive leave pay.

Both petitioners and private respondents moved for the reconsideration of the above- quoted NLRC Decision. Petitioners prayed for the NLRC to vacate its previous ruling finding them liable for illegal dismissal and for the monetary claims of the private respondents. On the other hand, private respondents prayed that, in addition to monetary awards, attorney's fees be also awarded in their favor.

In a Resolution[11] dated 30 August 2002, the NLRC denied the Motions for Reconsideration filed by the parties


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for lack of cogent reason or palpable error to disturb its earlier findings.

Aggrieved, petitioners elevated the matter to the Court of Appeals by filing a Petition for Certiorari, alleging that the NLRC abused its discretion in giving more credence to the empty allegations advanced by private respondents as against the overwhelming documentary evidence on record which was fully substantiated by the testimonial evidence they submitted during the proceedings before the Labor Arbiter.

On 31 August 2004, the Court of Appeals rendered a Decision affirming in toto the NLRC Decision. The appellate court declared that there was no grave abuse of discretion on the part of the NLRC in giving more evidentiary weight to the evidence submitted by the private respondents.

In addition, the Court of Appeals found that the defense posed by petitioners that private respondents were not dismissed from employment but voluntarily resigned therefrom, is not plausible in light of the prompt filing of the complaint for illegal dismissal. Indeed, resignation is inconsistent with the filing of action for illegal dismissal.

Similarly ill-fated was petitioners' Motion for Reconsideration which was denied by the Court of Appeals in its Resolution dated 9 May 2005.

Hence, this instant Petition for Review on Certiorari filed by petitioners assailing the foregoing Court of Appeals Decision and Resolution and raising the following issues:

> I.
> WHETHER OR NOT THE PRIVATE PETITIONER ALEX B. CARLOS SHOULD BE INCLUDED IN THE JUDGMENT.
>
> II.
> WHETHER OR NOT THE [PRIVATE RESPONDENTS] WERE IMPROPERLY PAID OF THEIR SALARIES AND WAGES AS WELL AS BENEFITS UNDER THE LAW.
>
> III.
> WHETHER OR NOT [PRIVATE RESPONDENTS] WERE ILLEGALLY DISMISSED BY [PETITIONERS].
>
> IV.
> WHETHER OR NOT THE WRIT OF EXECUTION ISSUED BY THE LABOR ARBITER AND IMPLEMENTED BY THE NLRC SHERIFF IS IMPROPER.
>
> V.
> WHETHER OR NOT THE PETITIONERS [RESPONDENTS] SHOULD BE ADJUDGED OF BACK WAGES DURING THE PENDENCY OF THE CASE.[12]

At the outset, we must stress that this Court is not a trier of facts and does not routinely undertake the re-examination of the evidence presented by the contending parties considering that, as general rule, the findings of facts of the Court of Appeals are conclusive and binding on the Court.[13] We have likewise held that factual findings of labor officials who are deemed to have acquired expertise in matters within their respective jurisdiction are generally accorded not only respect, but even finality, as long as they are supported by substantial evidence.[14]

Notably, the question of whether or not the private respondents were illegally dismissed from employment or voluntarily resigned therefrom, as well as the issue of whether or not they are entitled to the monetary awards they are claiming, are factual matters that should not be delved into by this Court.

As borne by the records, it appears that there is a divergence in the findings of facts of the Labor Arbiter on one

hand, from those of the NLRC, as affirmed by the Court of Appeals, on the other. For the purpose of clarity and intelligibility therefore, this Court will make a scrunity of the decisions of the labor officials and appellate court and ascertain whose findings are supported by evidence on record.

The Labor Arbiter found that the private respondents voluntarily resigned from employment, since they refused to be assigned to another work station. The new assignment effected by petitioners was in valid exercise of their management prerogative which should not take precedence over private respondents' personal interests. The NLRC and the Court of Appeals found otherwise.

In finding that private respondents were illegally dismissed, the Court of Appeals declared that the alleged resignations of the private respondents were inconsistent with their filing of the complaint for illegal dismissal. It decreed that it is illogical for private respondents to resign and then file a complaint for illegal dismissal thereafter.

For its part, the NLRC found that the confluence of the factual circumstances as to the date of the receipt by the petitioners of the copy of the complaint filed by private respondents, which was in close succession to the time when private respondents were relieved from their posts, leads to the reasonable conclusion that petitioners were indeed illegally dismissed in retaliation for their filing of a complaint for money claims.

We see merit in the findings and conclusions drawn by the NLRC and the Court of Appeals. They are more in accord with prudence, logic, common sense and sound judgment.

Time and again we have ruled that in illegal dismissal cases like the present one, the onus of proving that the employee was not dismissed or if dismissed, that the dismissal was not illegal, rests on the employer and failure to discharge the same would mean that the dismissal is not justified and therefore illegal.[15]

Thus, petitioners must not only rely on the weakness of private respondents' evidence, but must stand on the merits of their own defense. A party alleging a critical fact must support his allegation with substantial evidence, for any decision based on unsubstantiated allegation and unreliable documentary evidence cannot stand, as it will offend due process.

Petitioners failed to discharge this burden.

Petitioners' complete reliance on the alleged resignation letters to support their claim that private respondents voluntarily resigned is unavailing, as the filing of the complaint for illegal dismissal is inconsistent with resignation.[16] Resignation is the voluntary act of employees who are compelled by personal reasons to dissociate themselves from their employment. It must be done with the intention of relinquishing an office, accompanied by the act of abandonment.[17]

It is illogical for private respondents to resign and then file a complaint for illegal dismissal. We find it highly unlikely that private respondents would just quit their jobs because they refused to take new assignments or attempted to avoid any monetary liability for the purported loss of bowling equipment, after enduring long years of working for the petitioners, notwithstanding the meager salary they were receiving and the lack of the appropriate labor and social benefits. It would have been equally senseless for private respondents to file a complaint seeking payment of their salaries and benefits, as mandated by law, then abandon subsequently and immediately their work by resigning.

In the same breath, we agree with the NLRC that the General Payrolls submitted by petitioners cannot be given the stature of substantial evidence, not only because of evident inconsistencies of the entries therein with the factual circumstances surrounding their preparation, but also because there is a high possibility that they could

have been manipulated, given that the General Payrolls are within the complete control and custody of the petitioners. We thus quote with approval the findings of the NLRC:

> Not only were the [herein private respondents] one in testifying that they did not receive the salaries stated in the payrolls submitted by the [herein petitioners] " they were able to show that the payrolls in question were a sham because [private respondent] Doce, whose signature appears on the payroll for January 1-15, 1990, could not have signed the same, since at that time he was assigned, not in Greenvalley Country Club, but in Ajinomoto. Falsus in unius, falsus in omnibus. The payrolls may not be given any weight. As a result, full weight must be accorded to [private respondents'] testimonies to the effect that they worked twelve hours daily, and were not paid overtime pay, 13th month pay and premium pay for Sundays and holidays.[18]

The above-quoted NLRC Decision is anchored on the substantial evidence culled from the records that swayed the reasonable mind of this Court to adopt its conclusion. Surely, petitioners cannot expect this Court to sustain its stance and accord full evidentiary weight to the documentary and testimonial evidence they adduced in the absence of clear, convincing and untarnished proof to discharge the allegations of the private respondents. Having failed in this regard, we are constrained to sustain the findings of the NLRC as affirmed by the Court of Appeals in light of the time-honored dictum that should doubt exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter.[19]

Accordingly, this Court finds no reason to disturb the monetary awards for backwages, separation pay, overtime pay, 13th month pay, premium pay, holiday and service incentive leave pays ordered by the NLRC and the Court of Appeals. In addition to the monetary awards, we find that the grant of backwages was likewise proper, with some modification as to the computation of separation pay.

An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to full back wages, inclusive of allowances, and to other benefits or their monetary equivalents computed from the time compensation was withheld up to the time of actual reinstatement.[20]

In explaining the rationale of this rule, we thus held in De la Cruz v. National Labor Relations Commission that[21]:

> The provision gives meaning to the laborer's constitutional guaranty of security of tenure and finds solid basis on the universal principles of justice and equity. The grant of back wages allows the unjustly and illegally dismissed employee to recover from the employer that which the former lost by way of wages as a result of his dismissal from employment.

Undoubtedly, private respondents are entitled to the payment of full backwages, that is, without deducting their earnings elsewhere during the periods of their illegal dismissal. However, where, as in this case, reinstatement is no longer feasible due to strained relations between the parties, separation pay equivalent to one month's salary for every year of service shall be granted.[22]

The question now arises: when is the period for computation of backwages and separation pay supposed to end? This question was squarely addressed in Gaco v. National Labor Relations Commission[23]where it was held that in such circumstance, the computation shall be up to the time of finality of this Court's decision. Apparently, the justification is that along with the finality of this Court's decision, the issue of illegal dismissal is finally laid to rest.[24]

The petitioners' insistence that they cannot be held liable for backwages during the period of the pendency of this action for they cannot be faulted for the delay of the disposition of this case cannot take precedence over the long-standing and well- entrenched jurisprudential rule.


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Parenthetically, the award for separation pay equivalent to one-month pay for every year of service shall be computed from the time the private respondents were illegally separated from their employment up to the finality of this Court's Decision in the instant petition.

Furthermore, petitioners argue that the veil of corporate fiction of petitioners ABC Security and Honest Care Janitorial should not be pierced, because said corporations have personalities separate and distinct from their stockholders and from each other.

The petitioners must concede that they raised this issue belatedly, not having done so before the labor tribunals, but only before the appellate court. Fundamental is the rule that theories and arguments not brought to the attention of the trial court need not be, and ordinarily will not be, considered by a reviewing court, as they cannot be raised for the first time on appeal. However, even if this argument were to be addressed at this time, the Court still finds no reason to uphold it.[25]

Basic in corporation law is the principle that a corporation has a separate personality distinct from its stockholders and from other corporations to which it may be connected. This feature flows from the legal theory that a corporate entity is separate and distinct from its stockholders.[26]

However, the statutorily granted privilege of a corporate veil may be used only for legitimate purposes. On equitable considerations, the veil can be disregarded when it is utilized as a shield to commit fraud, illegality or inequity; defeat public convenience; confuse legitimate issues; or serve as a mere alter ego or business conduit of a person or an instrumentality, agency or adjunct of another corporation. The legal fiction of a separate corporate personality in those cited instances, for reasons of public policy and in the interest of justice, will be justifiably set aside.[27]

Petitioner Carlos admitted that he is not only the stockholder of petitioners ABC Security and Honest Care Janitorial, but the General Manager of said corporations as well. Being the General Manager of these corporations, it is assumed that petitioner Carlos possessed complete control of their affairs including matters pertaining to personnel management, which includes the rates of pay, hours of work, selection or engagement of the employees, manner of accomplishing their work, and their hiring and dismissal. It is highly plausible then that petitioner Carlos had a hand not only in unilaterally terminating the private respondents' employment, but also in paying private respondents' wages below minimum and denying them the benefits accorded by the Labor Standard Law which includes, but is not limited to, the payment of night-shift differential, overtime pay, premium pay and 13[th] month pay.

We cannot allow petitioner Carlos to hide behind the cloak of corporate fiction in order to evade liability. It bears repeating that the corporate veil must be pierced and disregarded when it is utilized to commit fraud, illegality or inequity.

Lastly, petitioners' contention that the execution of the NLRC Decision pending review of this case is detrimental to their interest is equally unavailing.

The pertinent provisions of the 2005 Revised Rules of Procedure of the National Labor Relations Commission provides:

> Rule VII Proceeding Before the Commission
> x x x x
>
> Section 14. Finality of Decision of the Commission and Entry of Judgment. -
>
> a) Finality of the Decisions, Resolutions or Orders of the Commission. - Except as provided in Section 9 of

> Rule X, the decisions, resolutions or orders of the Commission shall become final and executory after ten (10) calendar days from receipt thereof by the parties.
>
> b) Entry of Judgment. - Upon the expiration of the ten (10) calendar day period provided in paragraph (a) of this Section, the decision, resolution, or order shall be entered in a book of entries of judgment.
>
> The Executive Clerk or Deputy Executive Clerk shall consider the decision, resolution or order as final and executory after sixty (60) calendar days from the date of mailing in the absence of return cards, certifications from the post office, or other proof of service to parties.
>
> SECTION 15. MOTIONS FOR RECONSIDERATION. - Motion for reconsideration of any decision, resolution or order of the Commission shall not be entertained except when based on palpable or patent errors; provided that the motion is under oath and filed within ten (10) calendar days from receipt of decision, resolution or order, with proof of service that a copy of the same has been furnished, within the reglementary period, the adverse party; and provided further, that only such motion from the same party shall be entertained.
>
> Should a motion for reconsideration be entertained pursuant to this section, the resolution shall be executory after ten (10) calendar days from receipt thereof.
>
> RULE XI Execution Proceedings
> x x x x
>
> SECTION 10. Effect of Petition for Certiorari on Execution. - A petition for certiorari with the Court of Appeals or the Supreme Court shall not stay the execution of the assailed decision unless a restraining order is issued by said courts. (Emphasis supplied.)

Prescinding from the above, the private respondents had a clear right to move for the execution of the monetary award of the NLRC pending appeal. The rule is in harmony with the social justice principle that poor employees who have been deprived of their only source of livelihood should be provided the means to support their families.

Having said that, we need not further press that the proposition of the petitioners assailing the order granting execution pending appeal of the NLRC Decision should fail.

WHEREFORE, premises considered, the instant Petition is DENIED. The Court of Appeals Decision dated 31 August 2004 and its Resolution dated 9 May 2005 in CA-G.R. SP No. 74458 are hereby AFFIRMED with MODIFICATION as to the amount of backwages which shall be computed from the date of the private respondents' dismissal up to the finality of this judgment. Costs against the petitioners.

**SO ORDERED.**

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

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[1] Penned by Associate Justice Edgardo P. Cruz with Associate Justices Godardo A. Jacinto and Jose C. Mendoza, concurring. Rollo, pp. 5-10.

[2] Rollo, p. 11.

[3] Id. at 10.

[4] Records, p. 3.

[5] Id.

[6] Id. at 3-9.

[7] Id. at 18-19.

[8] Id. at 58.

[9] Id. at 450-457.

[10] Id. at 502-506.

[11] Id. at 543-547.

[12] Id. at 87-88.

[13] The Philippine American Life and General Insurance Co. v. Gramaje, G.R. No. 156963, 11 November 2004, 442 SCRA 275, 283.

[14] Limketkai Sons Milling, Inc. v. Llamera, G.R. No. 152514, 12 July 2005, 463 SCRA 254, 260-261.

[15] Great Southern Maritime Services Corporation v. Acuña, G.R. No. 140189, 28 February 2005, 452 SCRA 422, 437.

[16] Kay Products, Inc. v. Court of Appeals, G.R. No. 162472, 28 July 2005, 464 SCRA 544, 554-557.

[17] Domondon v. National Labor Relations Commission, G.R. No. 154376, 30 September 2005, 471 SCRA 559, 568-569.

[18] Records, p. 505.

[19] Gu-Miro v. Adorable, G.R. No. 160952, 20 August 2004, 437 SCRA 162, 168.

[20] Article 279, Labor Code of the Philippines.

[21] 359 Phil. 316, 329 (1998).

[22] Atlas Farms v. National Labor Relations Commission, 440 Phil. 620, 635-636 (2002).

[23] G.R. No. 104690, 23 February 1994, 230 SCRA 260, 269.

[24] Surima v. National Labor Relations Commission, 353 Phil. 461, 471 (1998).

[25] San Juan Structural and Steel Fabricators, Inc. v. Court of Appeals, 357 Phil. 631, 648 (1998).

[26] Id. at 644.

[27] Francisco Motors Corporation v. Court of Appeals, 368 Phil. 374, 384-385 (1999).


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