

TEGIMENTA CHEMICAL PHILS./VIVIAN D. GARCIA PETITIONER, VS. ROLAN E. BUENSALIDA, RESPONDENT.

G.R. No. 176466. June 17, 2008

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

This is a petition for review on certiorari of the November 28, 2006 Decision[1] of the Court of Appeals in CA-G.R. SP No. 92810, which reversed and set aside the Resolutions[2] of the National Labor Relations Commission (NLRC) in NLRC-NCR CA No. 041042-04, affirming the Order[3] of Labor Arbiter Antonio A. Cea dismissing the complaint filed by respondent Rolan E. Buensalida for constructive illegal dismissal on the ground of forum-shopping.

Tegimenta Chemical Philippines is a sole proprietorship owned by petitioner Vivian D. Garcia. It is engaged in the business of providing manpower for the servicing and maintenance of air conditioning and air handling units that it likewise provides to its clients. On September 8, 1997, petitioner hired respondent Buensalida as an aircon maintenance technician.

On February 26, 2003, respondent injured his left ring finger while repairing the air handling units at the SM Department Store in Davao City. As a result, respondent underwent a surgical debridgement procedure and was confined in the hospital for two days.

SM Prime Holdings initially shouldered respondent's hospitalization expenses which amounted to P30,331.61 but it subsequently collected the amount from petitioner who, in turn, informed respondent that the amount would be deducted from his salary. Thus, on April 20, 2003, petitioner began deducting P300.00 from respondent's weekly earnings or a monthly deduction of P1,200.00.

According to respondent, he wanted to avail of the SSS benefits thus he accomplished an Employee Notification Form (SSS Form B-300 [8/75]) which he mailed to petitioner for completion but the latter did not send it back because it was allegedly filed beyond the allowable period. Petitioner also ignored respondent's PhilHealth Form 1 which the latter sent together with the SSS form.[4]

Thereafter, respondent demanded for the restoration of the deducted amounts but was denied by petitioner; hence, on May 16, 2003, he filed a complaint[5] for "constructive dismissal with money claims" against petitioner before the Regional Arbitration Branch No. XI of the NLRC-Davao City docketed as NLRC Case No. RAB-XI-05-00537-03 ("Davao case").

Meanwhile, respondent was recalled to the Head Office at Quezon City per Memorandum[6] dated September 25, 2003. Respondent averred that his transfer was purposely done by petitioner to harass him, in view of their estranged relationship brought about by the filing of the Davao case. He was not advanced any travel fare in going back to Manila. He was also instructed to attend seminars conducted by the SSS and Philhealth to be held on October 21, 2003.

On October 3, 2003, petitioner issued another Memorandum[7] informing respondent that he would be re-assigned to Manila as night shift supervisor effective October 6, 2003. However, respondent refused the new assignment because it would allegedly affect his gross income and other benefits.[8] The night shift had no fixed work schedule in contrast to respondent's previous six-days-a-week schedule. Respondent would then be deprived of a fixed or regular income.

On October 16, 2003, petitioner again issued a Memorandum[9] stating that respondent's re-assignment was "for the good interest of the company." The move was allegedly "aimed to stop the increasing polarization among the personnel in Davao City" and the "result of cost-cutting measures implemented by the company in all SM branches and establishments."

Thus, on October 27, 2003, respondent filed another Complaint[10] for constructive illegal dismissal against petitioner before the NLRC-NCR-North Sector in Quezon City, docketed as NLRC-NCR NORTH SEC Case No. 00-01-12481-03 ("NCR case").

Subsequently, respondent amended his Complaint[11] in the NCR case to include underpayment or non-payment of salaries, service incentive leave, 13th month pay and boarding house rental. He claimed that petitioner failed to pay his boarding expenses arising from his assignment to Davao City, contrary to the promise of petitioner. His ECOLA, 13th month pay and service incentive leave pay were also not paid in the manner provided by law.

Thereafter, respondent submitted his Position Paper[12] in the NCR case. Petitioner filed a Motion to Dismiss[13] the NCR case on the ground of forum-shopping. Petitioner alleged that the Davao case was a pending case similar to the NCR case and that the latter should be dismissed pursuant to Section 14 (a) of the NLRC Rules of Procedure as well as Supreme Court Administrative Circular No. 04-94.

Respondent opposed the motion to dismiss contending that the two cases had different causes of action. While the Davao case was for illegal deduction, the NCR case was for constructive illegal dismissal as shown by the distinct issues raised by respondent in his position papers filed in the two cases.[14]

On July 15, 2004, Labor Arbiter Antonio A. Cea dismissed respondent's complaint in the NCR case on the ground that the cause of action therein was embraced in the Davao case.[15] The NLRC affirmed the decision of the Labor Arbiter in a resolution dated July 7, 2005.[16]

On appeal, the Court of Appeals reversed and set aside the NLRC resolution in a Decision[17] dated November 28, 2006. It held that respondent was not guilty of forum-shopping considering that the two cases had distinct causes of action; that while the complaints in the two cases appeared to allege on its face the same cause of action, respondent's position papers in the two cases show that the causes of action are actually different; that in determining the cause of action in NLRC cases, reliance on the face of the complaint is insufficient since the same consists only of a printed blank form that does not contain specific allegations and prayers, unlike those filed before the regular courts. Thus, an evaluation of the position paper is necessary in ascertaining the cause of action raised in a complaint before the NLRC.

Petitioner filed a motion for reconsideration but was denied by the appellate court in a Resolution[18] dated January 29, 2007. Hence, the instant petition alleging that the Court of Appeals abused its discretion in allowing the simultaneous prosecution of the two cases, as it "would expose the parties to unnecessary expenses by attending in Quezon City and in Davao City" and there is a "great danger in dispensing two decisions which are contradictory to each other and are prejudicial to the parties." [19]

The petition lacks merit.

The Court of Appeals correctly relied not only on the face of the complaints, but also on the position papers submitted by respondent in determining the causes of action raised in the two cases. It correctly observed that a complaint in a case filed before the NLRC consists only of a blank form which provides a checklist of possible causes of action that the employee may have against the employer. The check list was designed to facilitate the filing of complaints by employees and laborers even without the intervention of counsel. It allows the complainant to expediently set forth his grievance in a general manner, but is not solely determinative of the ultimate cause of action that he may have against the employer.

Section 3, Rule V of the New Rules of Procedure of the NLRC, as amended by NLRC Resolution No. 01-02 (Series of 2002),^[20] provides:

SECTION 4. SUBMISSION OF POSITION PAPERS/MEMORANDA. Without prejudice to the provisions of the last paragraph, Section 2 of this Rule, the Labor Arbiter shall direct both parties to submit simultaneously their position papers with supporting documents and affidavits within an inextendible period of ten (10) days from notice of termination of the mandatory conference.

These verified position papers to be submitted shall cover only those claims and causes of action raised in the complaint excluding those that may have been amicably settled, and shall be accompanied by all supporting documents including the affidavits of their respective witnesses which shall take the place of the latter's direct testimony. The parties shall thereafter not be allowed to allege facts, or present evidence to prove facts, not referred to and any cause or causes of action not included in the complaint or position papers, affidavits and other documents.

Thus, the complaint is not the only document from which the complainant's cause of action is determined in a labor case. Any cause of action that may not have been included in the complaint or position paper, can no longer be alleged after the position paper is submitted by the parties. In other words, the filing of the position paper is the operative act which forecloses the raising of other matters constitutive of the cause of action. This necessarily implies that the cause of action is finally ascertained only after both the complaint and position paper are properly evaluated.

A cause of action is the delict or wrongful act or omission committed by the defendant in violation of the primary right of the plaintiff.^[21] A complaint before the NLRC does not contain specific allegations of these wrongful acts or omissions which constitute the cause of action. All that it contains is the term by which such acts or omissions complained of are generally known. It cannot therefore be considered as the final determinant of the cause of action.

The complaint in the Davao case shows that respondent indicated, as causes of action, constructive illegal dismissal, illegal deductions, non-payment of premium pay, holiday pay and service incentive leave pay. On the other hand, the complaint in the NCR case had, for its cause of action, constructive illegal dismissal only. Later, the complaint in the NCR case was amended to include underpayment of salaries and wages, service incentive leave and 13th month pay as well as non-payment of boarding house rental fees. At face value, it would seem that the causes of action set forth in the two complaints are indeed similar, if not, identical.

However, the position papers filed in the two cases raise distinct causes of action, issues and prayers for relief. In respondent's position paper in the Davao case, the following issues were clearly spelled out: (1) whether the injury sustained by respondent was work-related; (2) whether the salary deductions made by petitioner was proper; and (3) whether petitioner was justified in refusing to complete respondent's SSS and Philhealth forms.^[22] While the complaint in the Davao case also indicated constructive illegal dismissal, non-payment of premium pay, holiday pay and service incentive leave pay as causes of action, these were not mentioned or discussed in respondent's position paper.

In contrast, the amended complaint in the NCR case is one for constructive illegal dismissal and underpayment of monetary benefits. The issues raised therein are: (1) whether complainant was illegally dismissed; (2) whether complainant is entitled to all his monetary claims; (3) whether complainant is entitled to full backwages and separation pay; and (4) whether complainant is entitled to moral and exemplary damages.[23]

Thus, the causes of action pleaded in the two cases are not the same. The Davao case was clearly one for illegal deductions and the NCR case was for constructive illegal dismissal and money claims. The issue of respondent's alleged constructive illegal dismissal could not have been subsumed in the first case considering that the facts constitutive of this offense arose only after the first complaint was filed. In fact, respondent alleged in the Davao case that he was informed through a phone call of his re-assignment to Manila but did "not know whether he will be terminated soon."

Needless to say, the factual allegations that support the causes of action in the two cases are likewise dissimilar. The Davao case involved factual circumstances related to petitioner's refusal to shoulder respondent's hospitalization costs as well as the validity of the salary deductions made by the former.[24] On the other hand, the NCR case pertained to alleged facts dealing with the aftermath of the filing of the Davao case, particularly the tactics petitioner allegedly employed to harass respondent and ease him out of his regular employment, as well as averments involving underpayment of monetary benefits.[25]

The two cases are not founded on the same set of facts, although the factual circumstances of the Davao case are undoubtedly related to the matters asserted in the NCR case. The two cases would require the appreciation of factual matters that are connected, but are not necessarily alike. The evidence required to prove the first case would not be the same as that needed to substantiate the second case, such that the outcome of either case will not automatically decide the result of the other.

Thus, respondent was not guilty of forum shopping when he filed the NCR case despite the pendency of the Davao case. Forum shopping consists of filing multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment.[26] There is forum shopping where the elements of *litis pendentia* are present, namely: (a) there is identity of parties, or at least such parties as represent the same interest in both actions; (b) there is identity of rights asserted and relief prayed for, the relief being founded on the same set of facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful would amount to *res judicata* in the other.[27] While the first requisite concededly exists in the instant case, the second and third requisites do not.

We are not unaware of the provision in Section 1 (b), Rule 3 of the NLRC Rules of Procedure which states that "a party having more than one cause of action against the other party arising out of the same relationship shall include all of them in one complaint or petition." As stated earlier, however, the inclusion of respondent's cause of action for constructive illegal dismissal in the Davao case could not have been possible since the same arose only after the latter case was filed. At the time of the filing of the Davao case, respondent could not have yet claimed that petitioner committed acts that would amount to constructive illegal dismissal. Thus, the aforementioned rule has no application in this case.

Finally, it would be more in keeping with the orderly and efficient disposition of respondents' complaints to order the consolidation of the two cases; however, Section 3, Rule IV of the NLRC Rules of Procedure states:

SECTION 3. CONSOLIDATION OF CASES/COMPLAINTS. Where there are two or more cases/complaints pending before different Labor Arbiters in the same Regional Arbitration Branch involving the same employer and common principal causes of action or the same parties with different causes of action, the subsequent

cases/complaints shall be consolidated with the first to avoid unnecessary costs or delay. Such consolidated cases/complaints shall be disposed of by the Labor Arbiter to whom the first case was assigned.

In case of objection to the consolidation, the same shall be resolved by the Executive Labor Arbiter. An order resolving the motion shall be inappealable.

Based on the above, it is plain that the two cases here cannot be consolidated because they were filed and are pending before different regional arbitration branches of the NLRC - the first, in Davao City and the second, in the National Capital Region. Considering that respondent was recalled to Manila from his former station in Davao City, it is understandable that he would seek to ventilate his claim of constructive illegal dismissal in Manila, as it would be costly and impractical to go all the way back to Davao City where he merely rented boarding space and had no means of employment. Besides, it appears that the material acts and events complained of as constituting constructive illegal dismissal transpired in Manila.

All told, the Court of Appeals did not err in reversing the resolution of the NLRC affirming the Labor Arbiter's order for the dismissal of the NCR case. Respondent did not commit forum shopping as the two cases he filed against petitioner pertained to different causes of action and involved related but distinct sets of factual circumstances. The NLRC's Rules of Procedure also sanction the filing of the NCR case independently of the Davao case.

WHEREFORE, based on the foregoing, the instant petition is DENIED. The Decision of the Court of Appeals in CA-G.R. SP No. 92810 which reversed and set aside the resolutions of the National Labor Relations Commission in NLRC-NCR CA No. 041042-04 is hereby AFFIRMED. The complaint of respondent for constructive illegal dismissal in NLRC-NCR North Sector Case No. 00-10-12481-03 is REINSTATED. Labor Arbiter Antonio A. Cea is thus ordered to DECIDE the said case without further delay.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Reyes, and Brion, JJ., concur.

* Designated in lieu of Associate Justice Antonio Eduardo B. Nachura, who is on official leave under the Court's Wellness Program, per Special Order No. 507 dated May 28, 2008, signed by Chief Justice Reynato S. Puno.

[1] Rollo, pp. 67-77; penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Noel G. Tijam and Arturo G. Tayag.

[2] Id. at 36-47; dated July 7, 2005 and October 25, 2005; penned by Commissioner Angelita A. Gacutan and concurred in by Commissioners Raul T. Aquino and Victoriano R. Calaycay.

[3] Id. at 29-30.

[4] Id. at 68-69.

[5] Id. at 23.

[6] CA rollo, p. 048.

[7] Id. at 050.

[8] Id. at 051.

[9] Id. at 052.

[10] Rollo, p. 18.

[11] CA rollo, p. 054.

[12] Id. at 055.

[13] Rollo, p. 20.

[14] Id. at 24-28.

[15] Id. at 29-30.

[16] Id. at 36.

[17] Id. at 67-76.

[18] Id. at 80.

[19] Id. at 13.

[20] These rules of procedure were applicable at the time that respondent filed the two complaints against petitioner. In 2005, the NLRC promulgated its Revised Rules of Procedure which incorporates the amendments introduced by NLRC Resolution No. 01-02 (Series of 2002) that are material to the instant case.

[21] RULES OF COURT, Rule 2, Sec. 2.

[22] CA rollo, p. 040.

[23] Id. at 058.

[24] Id. at 038-040.

[25] Id. at 057-058.

[26] *Guaranteed Hotels, Inc. v. Baltao*, G.R. No. 164338, January 17, 2005, 448 SCRA 738, 743.

[27] *Mondragon Leisure and Resorts Corporation v. Court of Appeals*, G.R. No. 154188, June 15, 2005, 460 SCRA 279, 285-286.

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