

MANDAUE GALLEON TRADE, INC. AND GAMALLOSONS TRADERS, INC., REPRESENTED BY FAUSTO B. GAMALLO, PETITIONERS, VS. BIENVENIDO ISIDTO, ERWIN BA-AY, VICTORIANO BENDANILLA, EDUVIGIS GUT...

G.R. No. 181051. July 05, 2010

Ponente: NACHURA, J.

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NACHURA, J.:

Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court, assailing the Decision[1] dated January 31, 2007 and the Resolution[2] dated December 14, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 86209.

The facts of the case are as follows:

Respondents, alleging that they were employees of petitioners, filed a case for illegal dismissal and non-payment of overtime pay, holiday pay, thirteenth (13th) month pay, and service incentive leave pay against petitioners, Manuel Jose Oyson III and Simonette C. Abao before the Regional Arbitration Branch VII, Cebu City of the National Labor Relations Commission (NLRC). Petitioners are engaged in making rattan furniture in Mandaue City.

Respondents averred that they started working at Gamallo Sons, Inc. in 1977 and 1978. In 1980, the firm name was changed to Gamallosos Traders, Inc. and eventually it became Mandaue Galleon Trade, Inc. The employees suspected that the adoption and substitution of many firm names was intended to subvert the labor standard benefits, status, terms, and conditions of employment.

They claimed that, in order to ensure their availability for possible twenty-four (24) hour service, respondents were extended loans to build their houses in petitioners' compound. Thus, they were on call any time, day or night.

On July 22, 1978, respondents were notified that the company adopted a policy of voluntary retrenchment, offering employees separation pay equivalent to one (1) month pay for every year of service. However, respondents did not avail of the said plan. They asserted that, on March 5, 2001, they were dismissed from employment without just cause and without due process.

On the other hand, petitioners averred that respondents were not their employees but were independent contractors who received various orders from many other furniture manufacturers, and that respondents constructed their houses and workplaces in the compound owned by another corporation, the Galleon Agro Realty Development Corporation.

On April 3, 2002, the Labor Arbiter rendered a decision,[3] finding respondents illegally dismissed from employment. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering the respondents Mandaue Galleon Trade, Inc. and Gamallosons Traders, Inc. to pay jointly and severally the complainants as follows:

1.

Bienvenido Isidto

P 95,200.00

2.

Erwin Ba-ay

P 57,500.00

3.

Victoriano Bendanilla

P 75,000.00

4.

Eduveges Gutib

P 90,000.00

5.

Julito Gutib

P 90,000.00

6.

Gregorio Ordanisa

P 85,000.00

7.

Damian Rabanal

P 85,000.00

8.

Rosita Rabanal

P 85,000.00

9.

Eustaquia Siglos

P 85,000.00

10.

Primitivo Siglos

P 85,000.00

11.

Rodolfo Torres

P 85,000.00

Total

P917,700.00

The other claims and the case against respondents Manuel Jose Oyson and Simonette Abao are dismissed for lack of merit.

SO ORDERED.[4]

The Labor Arbiter ruled that respondents were indeed employees of petitioners. He ratiocinated that aside from the bare allegations of petitioners that respondents were independent contractors and had contracted work from other furniture manufacturers, no proof was presented to establish the same. By petitioners' own admission, it was proven that respondents were provided with houses and workplaces in the compound of the sister company of petitioners. Illegal dismissal was established by the fact that respondents were not given work by petitioners and by the demand of the general manager of petitioners for respondents to vacate the place where they constructed their houses.

Petitioners filed an appeal before the NLRC. However, they failed to attach a certification of non-forum shopping to their notice of appeal, as required by Section 4, Rule VI of the NLRC Rules of Procedure. Thus, on December 4, 2003, the NLRC issued a resolution[5] dismissing petitioners' appeal for being fatally defective, and the decision of the Labor Arbiter was affirmed in toto with finality. Petitioners filed a motion for reconsideration. However, the same was denied in a resolution[6] dated May 27, 2004.

On March 15, 2005, an Entry of Judgment was issued by the NLRC, stating that, pursuant to the Internal Rules of the Commission, the December 4, 2003 NLRC resolution had become final and executory on July 17, 2004.

Aggrieved, petitioners filed a petition for certiorari under Rule 65 of the Rules of Court before the CA. On January 31, 2007, the CA rendered a Decision,[7] the dispositive portion of which reads:

WHEREFORE, in the light of the foregoing, the instant petition is hereby DISMISSED. Consequently, the assailed Resolutions dated December 4, 2003 and May 27, 2004, respectively of public respondent NLRC are hereby AFFIRMED.[8]

Petitioners filed a motion for reconsideration. But the same was denied by the CA in a Resolution dated December 14, 2007.

Hence, this petition.

Petitioners present this sole issue for our resolution:

WHETHER OR NOT THE COURT OF APPEALS COMMITTED A GRAVE AND REVERSIBLE ERROR IN AFFIRMING THE DECISION OF THE NLRC DENYING PETITIONERS' APPEAL ON MERE TECHNICALITY DESPITE THE EXISTENCE OF MERITORIOUS CASE OF THE PETITIONERS.[9]

The appeal is devoid of merit.

Section 4(a), Rule VI of The New Rules of Procedure of the NLRC[10] prescribes, viz.:

SECTION 4. REQUISITES FOR PERFECTION OF APPEAL. - (a) The Appeal shall be filed within the

reglementary period as provided in Section 1 of this Rule; shall be verified by appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, with proof of payment of the required appeal fee and the posting of a cash or surety bond as provided in Section 6 of this Rule; shall be accompanied by memorandum of appeal in three (3) legibly typewritten copies which shall state the grounds relied upon and the arguments in support thereof; the relief prayed for; and a statement of the date when the appellant received the appealed decision, resolution or order and a certificate of non-forum shopping with proof of service on the other party of such appeal. A mere notice of appeal without complying with the other requisites aforesaid shall not stop the running of the period for perfecting an appeal.

Based on the foregoing, a certificate of non-forum shopping is a requisite for the perfection of an appeal, and non-compliance therewith shall not stop the running of the period for perfecting an appeal.

In the instant case, petitioners aver that the CA should have granted the petition and decided the case on the merits, considering that petitioners complied, albeit belatedly, with the requirement of a certificate of non-forum shopping.[11] Petitioners pray for a reversal of the Decision of the CA, without presenting any special circumstances or compelling reasons why the Court should liberally apply the Rules in their favor. Petitioners do not offer any valid or justifiable excuse for their failure to file the certificate on non-forum shopping together with the notice of appeal.

Administrative Circular No. 28-91, dated February 8, 1994, issued by the Supreme Court requires that every petition filed with the Supreme Court or the CA must be accompanied by a certificate of non-forum shopping. Later, Administrative Circular No. 04-94 was issued and made effective on April 1, 1994. It expanded the certification requirement to include cases filed in court and in quasi-judicial agencies. The Court adopted paragraphs (1) and (2) of Administrative Circular No. 04-94 to become Section 5, Rule 7 of the 1997 Rules of Civil Procedure. Significantly, to curb the malpractice of forum shopping, the rule ordains that a violation thereof would constitute contempt of court and be a cause for the summary dismissal of the petition, without prejudice to the taking of appropriate action against the counsel of the party concerned.[12]

The filing of a certificate of non-forum shopping is mandatory in initiatory pleadings. The subsequent compliance with the requirement does not excuse a party's failure to comply therewith in the first instance. In those cases where the Court excused non-compliance with the requirement to submit a certificate of non-forum shopping, it found special circumstances or compelling reasons which made the strict application of the Circular clearly unjustified or inequitable. In this case, however, the petitioners offered no valid justification for their failure to comply with the Circular.[13]

In *Spouses Ong v. CA*,[14] we ruled that non-compliance with the required certification is fatal. The filing of the same is not waived by failing to immediately assert the defect, and neither is it cured by its belated submission on the ground that the party was not in any way guilty of actual forum shopping. In cases where the Court tolerated the deficiency, special circumstances or compelling reasons made the strict application distinctly unjustified.

In *Altres v. Empleo*,[15] the Court en banc issued guidelines based on jurisprudential pronouncements respecting non-compliance with the requirements on, or submission of defective, verification and certification against forum shopping. The portions thereof which are pertinent to the instant case are the following:

- 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.
- 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of

justice may be served thereby.

3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.

4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."

Finally, it bears stressing that while it is true that litigation is not a game of technicalities and that rules of procedure shall not be strictly enforced at the cost of substantial justice, it does not mean that the Rules of Court may be ignored at will and at random to the prejudice of the orderly presentation and assessment of the issues and their just resolution. It must be emphasized that procedural rules should not be belittled or dismissed simply because their non-observance might have resulted in prejudice to a party's substantial rights. Like all rules, they are required to be followed, except only for the most persuasive of reasons.

WHEREFORE, in view of the foregoing, the Decision dated January 31, 2007 and the Resolution dated December 14, 2007 of the Court of Appeals in CA-G.R. SP No. 86209 are hereby AFFIRMED.

Costs against petitioners.

SO ORDERED.

Carpio, (Chairperson), Peralta, Abad, and Mendoza, JJ., concur.

[1] Penned by Executive Justice Arsenio J. Magpale, with Associate Justices Romeo F. Barza and Priscilla Baltazar-Padilla, concurring; rollo, pp. 264-272.

[2] Penned by Associate Justice Priscilla Baltazar-Padilla, with Associate Justices Isaias P. Dicdican and Franchito N. Diamante, concurring; rollo, pp. 56-57.

[3] Penned by Labor Arbiter Ernesto F. Carreon; rollo, pp. 74-81.

[4] Id. at 81.

[5] Penned by Commissioner Oscar S. Uy, with Commissioner Edgardo M. Enerlan and Presiding Commissioner Gerardo C. Nograles, concurring; rollo, pp. 84-86.

[6] Id. at 100-101.

[7] Supra note 1.

[8] Id. at 271.

[9] Rollo, p. 18.

[10] The New Rules of Procedure of the NLRC, as amended by NLRC Resolution No. 01-02, Series of 2002, was the rule of procedure in effect at the time of the promulgation of the NLRC Resolutions assailed in the instant petition. At present, the 2005 Revised Rules of Procedure of the NLRC is observed in cases filed before the NLRC.

[11] Rollo, p. 19.

[12] Land Car, Inc. v. Bachelor Express, Inc., G.R. No. 154377, December 8, 2003, 417 SCRA 307, 311.

[13] Batoy v. Regional Trial Court, Branch 50, Loay, Bohol, G.R. No. 126833, February 17, 2003, 397 SCRA 506.

[14] 433 Phil. 490 (2002).

[15] G.R. No. 180986, December 11, 2008, 573 SCRA 583.

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