

## **LOCKHEED DETECTIVE AND WATCHMAN AGENCY, INC., PETITIONER, VS. UNIVERSITY OF THE PHILIPPINES, RESPONDENT.**

*G.R. No. 185918. April 18, 2012*

Ponente: VILLARAMA, JR., J.

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### **VILLARAMA, JR., J.:**

Before us is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the August 20, 2008 Amended Decision[1] and December 23, 2008 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 91281.

The antecedent facts of the case are as follows:

Petitioner Lockheed Detective and Watchman Agency, Inc. (Lockheed) entered into a contract for security services with respondent University of the Philippines (UP).

In 1998, several security guards assigned to UP filed separate complaints against Lockheed and UP for payment of underpaid wages, 25% overtime pay, premium pay for rest days and special holidays, holiday pay, service incentive leave pay, night shift differentials, 13<sup>th</sup> month pay, refund of cash bond, refund of deductions for the Mutual Benefits Aids System (MBAS), unpaid wages from December 16-31, 1998, and attorney's fees.

On February 16, 2000, the Labor Arbiter rendered a decision as follows:

WHEREFORE, premises considered, respondents Lockheed Detective and Watchman Agency, Inc. and UP as job contractor and principal, respectively, are hereby declared to be solidarily liable to complainants for the following claims of the latter which are found meritorious.

Underpaid wages/salaries, premium pay for work on rest day and special holiday, holiday pay, 5 days service incentive leave pay, 13<sup>th</sup> month pay for 1998, refund of cash bond (deducted at P50.00 per month from January to May 1996, P100.00 per month from June 1996 and P200.00 from November 1997), refund of deduction for Mutual Benefits Aids System at the rate of P50.00 a month, and attorney's fees; in the total amount of P1,184,763.12 broken down as follows per attached computation of the Computation and [E]xamination Unit of this Commission, which computation forms part of this Decision:

1. JOSE SABALAS

P77,983.62

2. TIRSO DOMASIAN

76,262.70

3. JUAN TAPEL

80,546.03

4. DINDO MURING

80,546.03

5. ALEXANDER ALLORDE

80,471.78

6. WILFREDO ESCOBAR

80,160.63

7. FERDINAND VELASQUEZ

78,595.53

8. ANTHONY GONZALES

76,869.97

9. SAMUEL ESCARIO

80,509.78

10. PEDRO FAILORINA

80,350.87

11. MATEO TANELA

70,590.58

12. JOB SABALAS

59,362.40

13. ANDRES DACANAYAN

77,403.73

14. EDDIE OLIVAR

\_\_\_\_77,403.73

P1,077,057.38

plus 10% attorney's fees

107,705.74

GRAND TOTAL AWARD

P1,184,763.12

Third party respondent University of the Philippines is hereby declared to be liable to Third Party Complainant and cross claimant Lockheed Detective and Watchman Agency for the unpaid legislated salary increases of the latter's security guards for the years 1996 to 1998, in the total amount of P13,066,794.14, out of which amount the amounts due complainants here shall be paid.

The other claims are hereby DISMISSED for lack of merit (night shift differential and 13th month pay) or for having been paid in the course of this proceedings (salaries for December 15-31, 1997 in the amount of P40,140.44).

The claims of Erlindo Collado, Rogelio Banjao and Amor Banjao are hereby DISMISSED as amicably settled for and in consideration of the amounts of P12,315.72, P12,271.77 and P12,819.33, respectively.

SO ORDERED.[3]

Both Lockheed and UP appealed the Labor Arbiter's decision. By Decision[4] dated April 12, 2002, the NLRC modified the Labor Arbiter's decision. The NLRC held:

WHEREFORE, the decision appealed from is hereby modified as follows:

- Complainants' claims for premium pay for work on rest day and special holiday, and 5 days service incentive leave pay, are hereby dismissed for lack of basis.

- The respondent University of the Philippines is still solidarily liable with Lockheed in the payment of the rest of the claims covering the period of their service contract.

The Financial Analyst is hereby ordered to recompute the awards of the complainants in accordance with the foregoing modifications.

SO ORDERED.[5]

The complaining security guards and UP filed their respective motions for reconsideration. On August 14, 2002, however, the NLRC denied said motions.

As the parties did not appeal the NLRC decision, the same became final and executory on October 26, 2002.[6] A writ of execution was then issued but later quashed by the Labor Arbiter on November 23, 2003 on motion of UP due to disputes regarding the amount of the award. Later, however, said order quashing the writ was reversed by

the NLRC by Resolution[7] dated June 8, 2004, disposing as follows:

WHEREFORE, premises considered, we grant this instant appeal. The Order dated 23 November 2003 is hereby reversed and set aside. The Labor Arbiter is directed to issue a Writ of Execution for the satisfaction of the judgment award in favor of Third-Party complainants.

SO ORDERED.[8]

UP moved to reconsider the NLRC resolution. On December 28, 2004, the NLRC upheld its resolution but with modification that the satisfaction of the judgment award in favor of Lockheed will be only against the funds of UP which are not identified as public funds.

The NLRC order and resolution having become final, Lockheed filed a motion for the issuance of an alias writ of execution. The same was granted on May 23, 2005.[9]

On July 25, 2005, a Notice of Garnishment[10] was issued to Philippine National Bank (PNB) UP Diliman Branch for the satisfaction of the award of P12,142,522.69 (inclusive of execution fee).

In a letter[11] dated August 9, 2005, PNB informed UP that it has received an order of release dated August 8, 2005 issued by the Labor Arbiter directing PNB UP Diliman Branch to release to the NLRC Cashier, through the assigned NLRC Sheriff Max L. Lago, the judgment award/amount of P12,142,522.69. PNB likewise reminded UP that the bank only has 10 working days from receipt of the order to deliver the garnished funds and unless it receives a notice from UP or the NLRC before the expiry of the 10-day period regarding the issuance of a court order or writ of injunction discharging or enjoining the implementation and execution of the Notice of Garnishment and Writ of Execution, the bank shall be constrained to cause the release of the garnished funds in favor of the NLRC.

On August 16, 2005, UP filed an Urgent Motion to Quash Garnishment.[12] UP contended that the funds being subjected to garnishment at PNB are government/public funds. As certified by the University Accountant, the subject funds are covered by Savings Account No. 275-529999-8, under the name of UP System Trust Receipts, earmarked for Student Guaranty Deposit, Scholarship Fund, Student Fund, Publications, Research Grants, and Miscellaneous Trust Account. UP argued that as public funds, the subject PNB account cannot be disbursed except pursuant to an appropriation required by law. The Labor Arbiter, however, dismissed the urgent motion for lack of merit on August 30, 2005.[13]

On September 2, 2005, the amount of P12,062,398.71 was withdrawn by the sheriff from UP's PNB account.[14]

On September 12, 2005, UP filed a petition for certiorari before the CA based on the following grounds:

I.

The concept of "solidary liability" by an indirect employer notwithstanding, respondent NLRC gravely abused its discretion in a manner amounting to lack or excess of jurisdiction by misusing such concept to justify the garnishment by the executing Sheriff of public/government funds belonging to UP.

II.

Respondents NLRC and Arbiter LORA acted without jurisdiction or gravely abused their discretion in a manner amounting to lack or excess of jurisdiction when, by means of an Alias Writ of Execution against petitioner UP, they authorized respondent Sheriff to garnish UP's public funds. Similarly, respondent LORA gravely abused her discretion when she resolved petitioner's Motion to Quash Notice of Garnishment addressed to, and intended for, the NLRC, and when she unilaterally and arbitrarily disregarded an official Certification that the funds garnished are public/government funds, and thereby allowed respondent Sheriff to

withdraw the same from PNB.

III.

Respondents gravely abused their discretion in a manner amounting to lack or excess of jurisdiction when they, despite prior knowledge, effected the execution that caused paralyzation and dislocation to petitioner's governmental functions.[15]

On March 12, 2008, the CA rendered a decision[16] dismissing UP's petition for certiorari. Citing *Republic v. COCOFED*,[17] which defines public funds as moneys belonging to the State or to any political subdivisions of the State, more specifically taxes, customs, duties and moneys raised by operation of law for the support of the government or the discharge of its obligations, the appellate court ruled that the funds sought to be garnished do not seem to fall within the stated definition.

On reconsideration, however, the CA issued the assailed Amended Decision. It held that without departing from its findings that the funds covered in the savings account sought to be garnished do not fall within the classification of public funds, it reconsiders the dismissal of the petition in light of the ruling in the case of *National Electrification Administration v. Morales*[18] which mandates that all money claims against the government must first be filed with the Commission on Audit (COA).

Lockheed moved to reconsider the amended decision but the same was denied in the assailed CA Resolution dated December 23, 2008. The CA cited *Manila International Airport Authority v. Court of Appeals*[19] which held that UP ranks with MIAA, a government instrumentality exercising corporate powers but not organized as a stock or non-stock corporation. While said corporations are government instrumentalities, they are loosely called government corporate entities but not government-owned and controlled corporations in the strict sense.

Hence this petition by Lockheed raising the following arguments:

- RESPONDENT UP IS A GOVERNMENT ENTITY WITH A SEPARATE AND DISTINCT PERSONALITY FROM THE NATIONAL GOVERNMENT AND HAS ITS OWN CHARTER GRANTING IT THE RIGHT TO SUE AND BE SUED. IT THEREFORE CANNOT AVAIL OF THE IMMUNITY FROM SUIT OF THE GOVERNMENT. NOT HAVING IMMUNITY FROM SUIT, RESPONDENT UP CAN BE HELD LIABLE AND EXECUTION CAN THUS ENSUE.
- MOREOVER, IF THE COURT LENDS IT ASSENT TO THE INVOCATION OF THE DOCTRINE OF STATE IMMUNITY, THIS WILL RESULT [IN] GRAVE INJUSTICE.
- FURTHERMORE, THE PROTESTATIONS OF THE RESPONDENT ARE TOO LATE IN THE DAY, AS THE EXECUTION PROCEEDINGS HAVE ALREADY BEEN TERMINATED.[20]

Lockheed contends that UP has its own separate and distinct juridical entity from the national government and has its own charter. Thus, it can be sued and be held liable. Moreover, Executive Order No. 714 entitled "Fiscal Control and Management of the Funds of UP" recognizes that "as an institution of higher learning, UP has always granted full management and control of its affairs including its financial affairs." [21] Therefore, it cannot shield itself from its private contractual liabilities by simply invoking the public character of its funds. Lockheed also cites several cases wherein it was ruled that funds of public corporations which can sue and be sued were not exempt from garnishment.

Lockheed likewise argues that the rulings in the NEA and MIAA cases are inapplicable. It contends that UP is not similarly situated with NEA because the jurisdiction of COA over the accounts of UP is only on a post-audit basis. As to the MIAA case, the liability of MIAA pertains to the real estate taxes imposed by the City of Paranaque while the obligation of UP in this case involves a private contractual obligation. Lockheed also argues

that the declaration in MIAA specifically citing UP was mere obiter dictum.

Lockheed moreover submits that UP cannot invoke state immunity to justify and perpetrate an injustice. UP itself admitted its liability and thus it should not be allowed to renege on its contractual obligations. Lockheed contends that this might create a ruinous precedent that would likely affect the relationship between the public and private sectors.

Lastly, Lockheed contends that UP cannot anymore seek the quashal of the writ of execution and notice of garnishment as they are already fait accompli.

For its part, UP contends that it did not invoke the doctrine of state immunity from suit in the proceedings a quo and in fact, it did not object to being sued before the labor department. It maintains, however, that suability does not necessarily mean liability. UP argues that the CA correctly applied the NEA ruling when it held that all money claims must be filed with the COA.

As to alleged injustice that may result for invocation of state immunity from suit, UP reiterates that it consented to be sued and even participated in the proceedings below. Lockheed cannot now claim that invocation of state immunity, which UP did not invoke in the first place, can result in injustice.

On the fait accompli argument, UP argues that Lockheed cannot wash its hands from liability for the consummated garnishment and execution of UP's trust fund in the amount of P12,062,398.71. UP cites that damage was done to UP and the beneficiaries of the fund when said funds, which were earmarked for specific educational purposes, were misapplied, for instance, to answer for the execution fee of P120,123.98 unilaterally stipulated by the sheriff. Lockheed, being the party which procured the illegal garnishment, should be held primarily liable. The mere fact that the CA set aside the writ of garnishment confirms the liability of Lockheed to reimburse and indemnify in accordance with law.

The petition has no merit.

We agree with UP that there was no point for Lockheed in discussing the doctrine of state immunity from suit as this was never an issue in this case. Clearly, UP consented to be sued when it participated in the proceedings below. What UP questions is the hasty garnishment of its funds in its PNB account.

This Court finds that the CA correctly applied the NEA case. Like NEA, UP is a juridical personality separate and distinct from the government and has the capacity to sue and be sued. Thus, also like NEA, it cannot evade execution, and its funds may be subject to garnishment or levy. However, before execution may be had, a claim for payment of the judgment award must first be filed with the COA. Under Commonwealth Act No. 327,[22] as amended by Section 26 of P.D. No. 1445,[23] it is the COA which has primary jurisdiction to examine, audit and settle "all debts and claims of any sort" due from or owing the Government or any of its subdivisions, agencies and instrumentalities, including government-owned or controlled corporations and their subsidiaries. With respect to money claims arising from the implementation of Republic Act No. 6758,[24] their allowance or disallowance is for COA to decide, subject only to the remedy of appeal by petition for certiorari to this Court.[25]

We cannot subscribe to Lockheed's argument that NEA is not similarly situated with UP because the COA's jurisdiction over the latter is only on post-audit basis. A reading of the pertinent Commonwealth Act provision clearly shows that it does not make any distinction as to which of the government subdivisions, agencies and instrumentalities, including government-owned or controlled corporations and their subsidiaries whose debts should be filed before the COA.

As to the fait accompli argument of Lockheed, contrary to its claim that there is nothing that can be done since the

funds of UP had already been garnished, since the garnishment was erroneously carried out and did not go through the proper procedure (the filing of a claim with the COA), UP is entitled to reimbursement of the garnished funds plus interest of 6% per annum, to be computed from the time of judicial demand to be reckoned from the time UP filed a petition for certiorari before the CA which occurred right after the withdrawal of the garnished funds from PNB.

WHEREFORE, the petition for review on certiorari is DENIED for lack of merit. Petitioner Lockheed Detective and Watchman Agency, Inc. is ordered to REIMBURSE respondent University of the Philippines the amount of P12,062,398.71 plus interest of 6% per annum, to be computed from September 12, 2005 up to the finality of this Decision, and 12% interest on the entire amount from date of finality of this Decision until fully paid.

No pronouncement as to costs.

**SO ORDERED.**

Leonardo-De Castro, (Acting Chairperson), Peralta,[\*] Bersamin, and Reyes,\*\*] JJ., concur.

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[\*] Designated additional member per Raffle dated April 2, 2012.

[\*\*] Designated additional member per Raffle dated April 16, 2012.

[1] Rollo, pp. 47-50. Penned by Associate Justice Arcangelita M. Romilla-Lontok with Associate Justices Mariano C. Del Castillo (now a member of this Court) and Romeo F. Barza concurring.

[2] Id. at 52-53.

[3] CA rollo, pp. 23-24.

[4] Id. at 22-38.

[5] Id. at 37.

[6] Id. at 44, citing NLRC records, p. 868.

[7] Id. at 39-56.

[8] Id. at 55.

[9] Id. at 57-64.

[10] Id. at 65.

[11] Id. at 74.

[12] Id. at 66-73.

[13] Id. at 79-81.

[14] Id. at 10.

[15] Id.

[16] Id. at 122-134.

[17] G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462, 481.

[18] G.R. No. 154200, June 24, 2007, 528 SCRA 79, 90-91.

[19] G.R. No. 155650, July 20, 2006, 495 SCRA 591, 618-619.

[20] Rollo, p. 17.

[21] Id. at 24-25.

[22] AN ACT FIXING THE TIME WITHIN WHICH THE AUDITOR GENERAL SHALL RENDER HIS DECISIONS AND PRESCRIBING THE MANNER OF APPEAL THEREFROM.

[23] ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES. Section 26 thereof provides:

Section 26. General jurisdiction. – The authority and powers of the Commission shall extend to and comprehend all matters relating to auditing procedures, systems and controls, the keeping of the general accounts of the Government, the preservation of vouchers pertaining thereto for a period of ten years, the examination and inspection of the books, records, and papers relating to those accounts; and the audit and settlement of the accounts of all persons respecting funds or property received or held by them in an accountable capacity, as well as the examination, audit, and settlement of all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities. The said jurisdiction extends to all government-owned or controlled corporations, including their subsidiaries, and other self-governing boards, commissions, or agencies of the Government, and as herein prescribed, including non-governmental entities subsidized by the government, those funded by donations through the government, those required to pay levies or government share, and those for which the government has put up a counterpart fund or those partly funded by the government.

[24] Compensation and Position Classification Act of 1989.

[25] National Electrification Administration v. Morales, *supra* note 18, at 89-91.

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