

ABELARDO SALAZAR, PETITIONER, VS. ALBINA SIMBAJON, GEMMA MAGAHIS, REBECCA OBOZA, MARILOU MARCELINO, FLORIAN EMPREMIADO, JOEBANE ASOMBRADO, ARNOLD LIGOY LIGOY, RAUL GALONIA, LITO...*G.R. No. 202374. June 30, 2021*

Ponente: LOPEZ, M., J.

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The compliance with the requirement of appeal bond in Labor cases and the existence of employment relationship are the main issues in this Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Court of Appeals' Decision dated December 29, 2011 in CA-G.R. SP No. 112399.[1]

ANTECEDENTS

Albina Simbajon, Gemma Magahis, Rebecca Oboza, Marilou Marcelino, Florian Empreariado, Joebane Asombrado, Arnold Ligoy Ligoy, Raul Galonia, Lito Espejon, Marino Gamalong, Melody Cagnayo, Wilma Tan, Analyn Cagnayo, Annaliza Caliwag and Tirso Ligoy Ligoy (Simbajon, et al.) filed a Complaint for Unfair Labor Practice, Illegal Dismissal, Underpayment of Salaries, and Non-Payment of Benefits against Q.S.O. Disco Pub & Restaurant and/or Abelardo Salazar (Abelardo), Quirino Ortega (Quirino), and Lucia Bayang (Lucia) before the Labor Arbiter. Allegedly, the restaurant employed Simbajon, et al. as lady keeper, waitress, receptionist, dispatcher, bus boy, DJ, entertainer, cook, and cashier for various years. In June 2006, however, the management began harassing Simbajon, et al. after they formed a union. On June 30, 2006, Lucia informed Simbajon, et al. regarding the last day of their employment as the business is closing due to bankruptcy. Yet, Simbajon, et al. were not convinced because the restaurant is financially stable. The claim of serious business losses was merely a ruse to terminate them.[2]

On the other hand, Abelardo denied employment relationship with Simbajon, et al. and claimed that Lucia and Quirino are the owners of the restaurant. Abelardo argued that he is merely the lessor of the building where the business operates. As supporting evidence, Abelardo submitted Contracts of Lease and Tax Returns showing his income solely on building rentals. Abelardo likewise presented the Certificate of Registration of Business Name, Mayor's Permit, and Certificate of Registration with the Bureau of Internal Revenue which were all issued in Lucia's name.[3]

On February 28, 2007, the Labor Arbiter held Abelardo, Lucia, and Quirino solidarily liable for Simbajon, et al.'s Illegal Dismissal and Money Claims in the total amount of P3,683,394.45. The Arbiter ratiocinated that the contracts of the lease are inconclusive to disavow any employment relationship between Abelardo and Simbajon, et al.[4] Aggrieved, Abelardo appealed to the National Labor Relations Commission (NLRC) and posted a cash bond of P500,000.00. Abelardo then moved to reduce the bond. Meantime, Abelardo posted a P3,100,000.00 surety bond issued by Visayan Surety & Insurance Corporation.[5] Thereafter, Abelardo moved to substitute the

P500,000.00 cash bond with a surety bond of the same amount. In due course, the NLRC granted the Motion and directed Abelardo to post the surety bond within ten (10) days from Notice.[6] On November 7, 2008, Abelardo received the NLRC's Order and posted the surety bond on November 13, 2008, also issued by Visayan Surety & Insurance Corporation.[7]

On March 31, 2009, the NLRC exonerated Abelardo from liability absent substantial evidence of employment relationship with Simbajon, et al.,[8] thus:

WHEREFORE, the appeal of respondent Abelardo Salazar is hereby GRANTED, in that, he is hereby excluded as respondent in the instant case for lack of employer-employee relations between complainants and him. The appeal of other respondents Lucia Bayang and Quirino Ortega is GRANTED in Part, in that, they are held jointly and severally liable to pay the total award of [P]890,398.22 as computed in this Decision and 10% thereon as attorney's fees.

x x x x

SO ORDERED.[9]

Unsuccessful at a Reconsideration, Simbajon, et al. elevated the case to the Court of Appeals (CA) through a Petition for Certiorari docketed as CA-G.R. SP No. 112399. Simbajon, et al.[10] averred that the NLRC committed Grave Abuse of Discretion in giving due course to Abelardo's Appeal despite his failure to post a bond equivalent to the monetary award. On December 29, 2011, the CA granted the Petition and ruled that Abelardo did not perfect his Appeal to the NLRC, to wit:

In contrariety to respondent Salazar's claim and the findings of public respondent NLRC noted in its Order dated 27 October 2008 that a surety bond in the amount of [P]3,100,000.00 was posted on 2 April 2007, a careful perusal of the records revealed that only [P]500,000.00 in a Philippine Savings Bank cashier's check was posted and made payable to the National Labor Relations Commission.

Worthy it is to note as well that NLRC having the discretion to grant Motion to Reduce Bond based on meritorious grounds left unacted - tantamount to a denial - private respondents' motion filed on 30 March 2008 praying for the reduction of cash bond to an amount not more than [P]500,000.00. Similarly, we find that no meritorious ground is obtained in this case.

That being so, the fact remained that for the perfection of the private respondents' appeal the full amount should have been posted. The cash bond of [P]500,000.00 was considerably a small amount compared to the supposed total appeal bond of more than 3 million pesos. For their failure to comply with the mandatory and jurisdictional appeal bond requirement and in the absence of substantial proof to the contrary, we stand in congruity with the petitioners' assertion that their appeals were never perfected and the public respondent NLRC did not acquire jurisdiction over them. x x x.

x x x x

WHEREFORE, the Petition is GRANTED. The assailed 27 October 2008 Order and the Decisions dated 31 March 2009 and 12 November 2009 in NLRC NCR CA No. 052431-07 are VACATED and

SET ASIDE. Accordingly, the Decision of the Labor Arbiter dated 20 February 2007 is hereby REINSTATED.

SO ORDERED.[11] (Emphases in the original.)

Abelardo sought Reconsideration but was denied.[12] Hence, this Petition, Abelardo maintains that the CA erred in finding that he did not comply with the bond requirement to perfect his Appeal. Abelardo contends that he

posted a cash bond of P500,000.00 on March 30, 2007, within the period to file an Appeal, evidenced by Official Receipt No. 0701343.[13] The cash bond was subsequently substituted by a surety bond of the same amount. On April 2, 2007, Abelardo posted a surety bond in the amount of P3,100,000.00. Moreover, the CA erred in reinstating the Labor Arbiter's Decision considering that Simbajon, et al. failed to establish the existence of the employer-employee relationship. Simbajon, et al. even alleged in their consolidated position paper that it was Lucia who dismissed them.

In their comment, Simbajon, et al. argue that there is no evidence that Abelardo posted the appeal bond within the reglementary period. The indemnity agreement between Abelardo and the bonding company did not provide the effectivity period and the amount of premium paid. Further, Simbajon, et al. pointed to the affidavit of Bayani Ocampo, the restaurant's former manager, stating that Abelardo has the final authority in the hiring of employees and their work assignments.[14]

RULING

The Petition is meritorious.

Prefatorily, it should be stressed that the right to appeal is a mere statutory privilege exercised only in the manner and in accordance with the requirements of the law.[15] In Labor Cases, Article 223 of the Labor Code set forth the Rules on Appeal to the NLRC from the Decisions, Awards or Orders of the Labor Arbiter. The rules specifically provide that "[i]n case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from." Similarly, Sections 4 and 6 of Rule VI of the 2005 Revised Rules of Procedure of the NLRC, the law at the time Abelardo questioned the Labor Arbiter's Decision, laid down the requisites on perfection of Appeal, viz.:

SECTION 4. Requisites for Perfection of Appeal. - a) The appeal shall be: 1) filed within the reglementary period provided in Section 1 of this Rule; 2) verified by the appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, as amended; 3) in the form of a [M]emorandum of [A]ppeal which shall state the grounds relied upon and the arguments in support thereof, the relief prayed for, and with a statement of the date the appellant received the appealed [D]ecision, resolution or order; 4) in three (3) legibly typewritten or printed copies; and 5) accompanied by i) proof of payment of the required appeal fee; ii) posting of a cash or surety bond as provided in Section 6 of this Rule; iii) a certificate of non-forum shopping; and iv) proof of service upon the other parties.

x x x x

SECTION 6. Bond. - In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent in amount to the monetary award, exclusive of damages and attorney's fees.

x x x x

No [M]otion to [R]educe [B]ond shall be entertained except on meritorious grounds, and only upon the posting of a bond in a reasonable amount in relation to the monetary award.

The mere filing of a [M]otion to [R]educe [B]ond without complying with the requisites in the preceding paragraph shall not stop the running of the period to perfect an appeal. (Emphasis supplied.)

Clearly, Appeals involving monetary awards are perfected only upon compliance with the following mandatory requisites, namely: (1) payment of the appeal fees; (2) filing of the Memorandum of Appeal; and (3) payment of

the required cash or surety bond.[16] For the posting of cash or surety bond, its purpose is to assure the employees that they will receive the monetary award granted them if they finally prevail in the case. The bond also serves to discourage employers from using the Appeal to delay, or even evade, their obligation to satisfy the judgment.[17] Notably, the posting of Appeal Bond is not only mandatory but jurisdictional as well. As *Philippine Transmarine Carriers, Inc. v. Cortina*[18] holds, non-compliance with the bond requirement is fatal and has the effect of rendering the judgment final and executory in exceptional cases, however, the bond requirement may be relaxed in line with the desired objective of Labor Laws to resolve controversies on their merits, provided there is substantial compliance with the rules governing Appeal to the NLRC.[19] In *Rosewood Processing, Inc. v. NLRC*,[20] the Court held that there was substantial compliance when the Petitioner filed a Motion to Reduce Appeal Bond and posted a partial surety bond of P50,000, albeit not in the amount equivalent to the monetary award of P789,154.39. Also, in *Postigo v. Philippine Tuberculosis Society, Inc. (PTSI)*[21] the Court sustained the CA's ruling that the respondent substantially complied with the required posting of a cash or surety bond not only because the filing of its Motion for Reduction of the Bond was justified, but also because it immediately submitted a bond attached to its Motion for Reconsideration of the NLRC Resolution dismissing the Appeal. The above cases reiterated earlier pronouncements in *Blancaflor v. NLRC*,[22] *Rada v. NLRC*,[23] and *YBL v. NLRC*[24] in which the NLRC was cautioned to give Article 223 of the Labor Code, particularly the provisions on requiring a Bond on Appeals involving monetary awards, a liberal interpretation. As *Nicol v. Footjoy Industrial Corporation*[25] aptly summarized:

ALL TOLD, the bond requirement on appeals involving monetary awards has been and may be [sic] relaxed in meritorious cases. These cases include instances in which (1) there was substantial compliance with the Rules, (2) surrounding facts and circumstances constitute meritorious grounds to reduce the bond, (3) a liberal interpretation of the requirement of an appeal bond would serve the desired objective of resolving controversies on the merits, or (4) the appellants, at the very least, exhibited their willingness and/or good faith by posting a partial bond during the reglementary period.

Conversely, the reduction of the bond is not warranted when no meritorious ground is shown to justify the same; the appellant absolutely failed to comply with the requirement of posting a bond, even if partial or when circumstances show the employer's unwillingness to ensure the satisfaction of its workers' valid claims. (Emphases supplied.)

Applying these jurisprudential precepts, we hold that the CA erred in dismissing Abelardo's Appeal for Non-Perfection. Here, the records reveal that Abelardo received on March 23, 2007 the Labor Arbiter's Decision[26] and had ten (10) days or until April 2, 2007 to file an Appeal. On March 30, 2007, Abelardo appealed[27] and moved to reduce the bond.[28] At the same time, Abelardo deposited a cashier's check in the amount of P500,000.00 in favor of Simbajon, et al. On April 2, 2007 or the last day of the period to appeal, Abelardo posted a surety bond in the amount of P3,100,000.00.[29] Subsequently with the NLRC's approval, Abelardo replaced the P500,000.00 check deposit with a surety bond of the same amount. In sum, Abelardo posted a total of P3,600,000.00 within the reglementary period, which substantially covers the total monetary award of P3,683,394.45. As discussed earlier, these constitute substantial compliance and demonstrate willingness on the part of Abelardo to abide with the Rules on Perfection of Appeal.

Contrary to Simbajon, et al.'s argument, the failure of the indemnity agreement to indicate the effectivity period and the amount of premium paid do not affect the validity of the surety bond. To be sure, the NLRC Rules of Procedure does not require such formalities with respect to the contents of the indemnity agreement.[30] In any case, the rules are explicit that "[a] cash or surety bond shall be valid and effective from the date of deposit or posting, until the case is finally decided, resolved or terminated, or the award satisfied. This condition shall be deemed incorporated in the terms and conditions of the surety bond, and shall be binding on the appellants and the

bonding company."

Accordingly, the CA should have considered the merits of the case given that the labor adjudication system rests on the norm that Rules of Technicality must yield to the broader interest of substantial justice.[31] Ordinarily, the Court remands the case to the CA for proper disposition on the merits. Nevertheless, to avoid further delay, we deem it more appropriate and practical to resolve the question on whether there is employment relationship between Abelardo and Simbajon, et al.

In this case, applying the four-fold test of employment relationship, namely: (1) the selection and engagement of the employee or the power to hire; (2) the payment of wages; (3) the power to dismiss; and (4) the power to control the employee,[32] would disclose that Abelardo is not the employer of Simbajon, et al. First, with regard to the power to hire, there was no substantial evidence that Abelardo participated in the selection of the restaurant employees. The affidavit of the restaurant's former manager, standing alone, does not constitute substantial proof absent supporting evidence such as Pre-employment Records, Appointment Letters or Engagement Contracts indicating Abelardo's involvement in the recruitment process. Mere allegation is not tantamount to evidence.[33] Second, with respect to the payment of wages, it was not shown that Simbajon, et al. directly received their premiums and salaries from Abelardo. In fact, Simbajon, et al. did not submit their pay slips and related documents. Third, as to the power to dismiss, Simbajon, et al. admitted that it was Lucia who terminated their services. There is no evidence that Abelardo wielded such authority. Lastly, concerning the power of control, there is no proof that Abelardo issued orders and instructions to Simbajon, et al. or that he supervised and monitored the proper performance of their work.

In contrast, Abelardo substantiated his claim that he is a mere lessor of the restaurant. To recall, Abelardo submitted Contracts of Lease and Tax Returns showing his income solely on building rentals. Abelardo likewise presented the Certificate of Registration of the Business Name, Mayor's Permit, and Certificate of Registration with the Bureau of Internal Revenue which were all issued in Lucia's name. These certifications were executed in the performance of official duty of the government agencies concerned and can be relied upon as evidence of the facts stated therein. These documents also enjoy the presumption of regularity unless the contrary is proved.[34] Thus, Simbajon, et al.'s idle implication that Abelardo used these documents as subterfuge to evade liability deserves scant consideration.

On this point, the Court reiterates that the quantum of proof in Labor Cases is substantial evidence or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. The burden of proof rests upon the party who asserts the affirmative of an issue.[35] Simbajon et al. utterly failed to establish with substantial evidence their supposed employment relationship with Abelardo. As such, a case for Illegal Dismissal cannot prosper absent employment relationship between the parties.[36]

FOR THESE REASONS, the Petition is GRANTED. The Court of Appeals' Decision dated December 29, 2011 in CA-G.R. SP No. 112399 is REVERSED. The National Labor Relations Commission's Decision dated March 31, 2009 dismissing the Complaint against Abelardo Salazar is REINSTATED.

SO ORDERED.

Perlas-Bernabe, Lazaro-Javier, Rosario, and J. Lopez,[*] JJ., concur.

[*] Designated as additional member per Special Order No. 2822 dated April 7, 2021.

[1] Rollo, pp. 44-52. Penned by Associate Justice Samuel H. Gaerlan (now a member of the Court), with

concurrence of Associate Justices Amelita G. Tolentino and Ramon R. Garcia.

[2] Id. at 152-160.

[3] Id. at 141-145.

[4] Id. at 165-175.

[5] Id. at 207-208.

[6] Id. at 246-247.

[7] Id. at 248, 250.

[8] Id. at 56-65.

[9] Id. at 64.

[10] Id. at 44-52.

[11] Id. at 50-51.

[12] Id. at 54-55.

[13] Id.

[14] Id. at 431-441.

[15] *Colby Construction and Management Corporation v. National Labor Relations Commission*, 564 Phil. 145, 154 (2007).

[16] *Ciudad Fernandina Food Corporation Employees Union-Associate Labor Unions v. Court of Appeals*, 528 Phil. 415, 424-425 (2006); cited in *Lopez, et al. v. Quezon City Sports Club, Inc.*, 596 Phil. 204, 214 (2009).

[17] *Petok Integrated Services, Inc. v. NLRC*, 355 Phil. 247, 253 (1998).

[18] 461 Phil. 422, 428 (2003); cited in *Ong v. Court of Appeals*, 482 Phil. 170, 180 (2004).

[19] *Soliman Security Services, Inc. v. Court of Appeals*, 433 Phil. 902, 909 (2002); citing *Alcosero vs. NLRC*, 351 Phil. 368, 379-380 (1998).

[20] 352 Phil. 1013, 1020-1021 (1998).

[21] 515 Phil. 601, 608 (2006).

[22] 291-A Phil. 398, 405 (1993).

[23] 282 Phil. 80, 88-89 (1992).

[24] 268 Phil. 169, 171-172 (1990).

[25] 555 Phil. 275, 292 (2007).

[26] *Rollo*, p. 179.

[27] Id. at 176-187.

[28] Id. at 197-199.

[29] Id. at 101-102.

[30] Rule VI, Section 6 provides that: [i]n case of surety bond, the same shall be issued by a reputable bonding company duly accredited by the Commission or the Supreme Court, and shall be accompanied by original or certified true copies of the following: a) a joint declaration under oath by the employer, his counsel, and the bonding company, attesting that the bond posted is genuine, and shall be in effect until final disposition of the case; b) and indemnity agreement between the employer-appellant and bonding company; c) proof of security deposit or collateral securing the bond: provided, that a check shall not be considered as an acceptable security; d) a certificate of authority from the Insurance Commission; e) certificate of registration from the Securities and Exchange Commission; f) certificate of authority to transact surety business from the Office of the President; g) certificate of accreditation and authority from the Supreme Court; and h) notarized board resolution or secretary's certificate from the bonding company showing its authorized signatories and their specimen signatures.

[31] *Lamsan Trading, Inc. v. Leogardo, Jr.*, 228 Phil. 524, 549 (1986).

[32] *Rhone-Poulenc Agrochemicals Inc. v. NLRC, et al.*, 291 Phil. 251, 259 (1993); *Manila Water Company Inc. v. Dalumpines, et al.*, 646 Phil. 383, 398 (2010); *Lakas Sa Industriya ng Kapatirang Haligi ng Alyansa Pinagbuklod Ng Manggagawang Promo Ng Burlingame v. Burlingame Corporation*, 552 Phil. 58, 63 (2007); *Cecilio P. De Los Santos and Buklod Manggagawa ng Camara (BUMACA) v. NLRC*, 423 Phil. 1020, 1029 (2001).

[33] *Bernard A. Tenazas, et al. v. R. Villegas Taxi Transport, et al.*, 731 Phil. 217, 231 (2014).

[34] Rule 132, Section 23 of the Rules of Court. See also *People v. Abella*, 778 Phil. 747, 759 (2016), and *Dava v. People*, 279 Phil. 65, 77-78 (1991).

[35] *Jack C. Valencia v. Classique Vinyl Products Corporation*, 804 Phil. 492, 504 (2017).

[36] *Reyes v. Glaucoma Research Foundation, Inc.*, 760 Phil. 779, 789 (2015).

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