

**ANTONIO M. VILLANUEVA AND FULGENCIO B. LAVAREZ,
PETITIONERS, VS. HONORABLE ABEDNEGO O. ADRE, PRESIDING
JUDGE, REGIONAL TRIAL COURT, BRANCH 22, 11TH JUDICIAL
REGION, AND LUCIO VE...**

G.R. No. 80863. April 27, 1989

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The central question in the petition at bar is whether or not the regular courts may stay an execution decreed by the labor arbiters and what the consequences are of such a recourse to the courts.

The case began from a complaint, dated January 6, 1977, for recovery of unpaid thirteenth-month pay filed by the Sarangani Marine and General Workers Union-ALU with the Department of Labor (Regional Office No. XI, General Santos City) against the South Cotabato Integrated Port Services, Inc. (SCIPSI), a Philippine corporation. Later, thirty-seven SCIPSI employees, non-union members apparently, filed their own complaint. The labor arbiter consolidated the twin complaints and after hearing, ordered a dismissal on December 29, 1977. On appeal, however the National Labor Relations Commission, on June 9, 1981, reversed and accordingly, ordered the private respondents, SCIPSI and its president and general manager, Lucio Velayo, to pay the thirteenth-month pays demanded. The private respondents' motion for reconsideration was denied, and the decision has since attained finality.

Thereafter, the parties, on orders of the labor arbiter, were made to appear before a corporate auditing examiner to determine the private respondents' exact liability. On October 24, 1986, the corporate auditing examiner submitted an accounting and found the private respondents liable in the total sum of P1,134,000.00. Thereupon, the private respondents interposed an objection and prayed for a revision. It appears, however, that the private respondents never pursued their exceptions.[1]

On January 16, 1987, the union moved for execution and pursuant thereto, the labor arbiter issued a writ of execution. As a result, the sheriff levied on two parcels of land, both registered in Lucio Velayo's name, with an area of 400 and 979 square meters.

On February 14, 1987, both SCIPSI and Velayo petitioned this Court[2] on certiorari with injunction on the ground, fundamentally, that the Department of Labor's examiner erred in her determination of the private respondents pecuniary liabilities.

On February 16, 1987, Velayo alone filed a petition with the respondent court (Special Case No. 227) on a cause of action based on an alleged irregular execution, on the ground that he "was never a party to the labor case"[3] and that "a corporation (that is, SCIPSI) has a separate and distinct personality from incorporators, stockholders and officers." [4]

On February 17, 1987, the respondent court issued a temporary restraining order enjoining execution of the

judgment in the aforementioned labor cases. On March 5, 1987, the petitioner moved for dismissal for lack of jurisdiction and *litis pendentia*.

On the strength of this Court's decision in *National Mines and Allied Workers Union v. Vera*,^[5] the trial judge denied the motion to dismiss. Reconsideration having been likewise denied, the union as well as the labor arbiter (Antonio Villanueva) and the sheriff (Fulgencio Lavarez) themselves, on October 22, 1987, instituted these certiorari proceedings.^[6]

Meanwhile, on April 27, 1988, the parties (in G.R. Nos. 77300-01) submitted a Compromise Agreement whereby the private respondents agreed to pay, in installments, the reduced sum of P637,400.00 to the workers. On May 11, 1988, we issued a Resolution approving the Compromise Agreement, and considering the cases (G.R. Nos. 77300-01) closed and terminated.^[7]

At the same time, we issued (in this petition) a Resolution requiring the private respondents and/or counsel, Atty. Oscar Dinopol, to show cause why they should not be held in contempt for forum-shopping. On December 9, 1988, Atty. Dinopol filed a manifestation praying for dismissal "not because it has become moot and academic in view of the compromise agreement executed by the parties in G.R. Nos. 77300-01 [but because] the subject or cause of action [thereof] is totally different from the cause of action in the above-entitled case."^[8]

On whether or not this case has become moot and academic in view of the compromise reached in G.R. Nos. 77300-01, the Court rules in the affirmative. It should be noted that the instant petition has been brought as a result of the execution of the judgment rendered below, and since the parties, by virtue of the compromise, have spelled out the manner by which payment shall be made, execution by means of levy, the question confronting the court herein, may no longer be carried out. Nevertheless, because of the ethical implications of the acts of the private respondents, the Court is constrained to render its judgment if only to forestall future similar acts and for the guidance of the bench and the bar.

We likewise render judgment notwithstanding Atty. Oscar Dinopol's pending prayer for extension of time to file his comment to our show cause Resolution of November 7, 1988. We consider his manifestation, dated November 29, 1988, urging us not to dismiss this case for having become moot and academic but because the petition lacks merit as his comment. We do so for one because it has been the position of the private respondents that Special Case No. 227 and G.R. Nos. 77300-01 could stand together and for another, because of the compelling need to dispose of labor cases with utmost dispatch. We take this as his defense to that show-cause Resolution. Parenthetically, we find him mistaken for supposing that our Resolution is based on the simultaneous commencement of Special Case No. 227 and G.R. Nos. 77300-01. This is not the act that forced suspicions on our part of efforts by the private respondents to "shop for a friendly forum". Rather, it is the institution of Special Case No. 227, despite the pendency of the labor proceedings below, that led us to those suspicions. G.R. Nos. 77300-01, on the other hand, were brought primarily on the question of the exact amount SCIPSI is liable to pay. It is on its face, a legitimate ground for certiorari, and for this reason we accepted the parties' compromise reached there, instead of dismissing it.

There is forum-shopping whenever, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or certiorari) in another. The principle applies not only with respect to suits filed in the courts but also in connection with litigations commenced in the courts while an administrative proceeding is pending, as in this case, in order to defeat administrative processes and in anticipation of an unfavorable administrative ruling and a favorable court ruling. This is specially so, as in this case, where the court in which the second suit was brought, has no jurisdiction.

Accordingly, the respondent court must be held to be in error assuming jurisdiction over Special Case No. 227. It

is well-established that the courts cannot enjoin execution of judgment rendered by the National Labor Relations Commission.[9]

The respondent Lucio Velayo's reliance upon *National Mines and Allied Workers Union v. Vera*[10] is not well-taken. In that case, the properties involved belonged to third persons, a development that provided a civil dimension to the labor case, and a development that gave the courts the jurisdiction. In the case at bar, however, Velayo cannot be said to be a stranger to the proceedings for a number of reasons. First, and as pointed out by the Solicitor General, and as the records will amply show, he, Velayo, was a party to the proceedings below where he took part actively in defense of his case. We quote:

x x x

It is not true that Lucio Velayo was not a party in the labor cases. The caption of the labor cases shows he was a respondent. The records of the labor cases show that he participated in the proceedings therein, without raising the issue that he was not a party nor the employer of the complainants. Thus, the Motion for Reconsideration dated August 7, 1981 attached to the Petition as Annex B was filed by both SCIPS and Lucio Velayo. SCIPS and Velayo discussed the merits of the cases in said motion and there was nary a mention of the allegation of Velayo now that he was not a party in the cases nor an employer of the complainants. Likewise, the Exception and/or Opposition to Report of Examiner dated November 13, 1986, attached to the Petition as Annex F, was also filed by both SCIPS and Velayo and, like the Motion for Reconsideration aforementioned, it does not mention anything about Velayo not being a party and not being an employer of complainants.[11]

Certainly, he cannot now be heard to say that he was no party to the controversy.

The fact that he was never mentioned in the pleadings before the petitioner-labor arbiter is of no moment. The fact is that he himself had questioned the findings of the corporate auditor (in G.R. Nos. 77300-01) and this is enough evidence that he admits personal liability, although he does not agree with the amount supposedly due from him. His remonstrances came too late in the day.

But other than estoppel, the law itself stands as a formidable obstacle to Velayo's claims. In *A.C. Ransom Labor Union-CCLU v. NLRC*[12] we held that in case of corporations it is the president who responds personally for violation of the labor pay laws. We quote:

Article 273 of the Code provides that:

"Any person violating any of the provisions of Article 265 of this Code shall be punished by a fine of not exceeding five hundred pesos and/or imprisonment for not less than one (1) day nor more than six (6) months."

(b) How can the foregoing provisions be implemented when the employer is a corporation? The answer is found in Article 212(c) of the Labor Code which provides:

"(c) Employer' includes any person acting in the interest of an employer, directly or indirectly. The term shall not include any labor organization or any of its officers or agents except when acting as employer."

The foregoing was culled from Section 2 of RA 602, the Minimum Wage Law. Since RANSOM is an artificial person, it must have an officer who can be presumed to be the employer, being the "person acting in the interest of (the) employer" RANSOM. The corporation, only in the technical sense is the employer.

The responsible officer of an employer corporation can be held personally, hot to say even criminally, liable for non-payment of back wages. That is the policy of the law. In the Minimum Wage Law, Section 15(b) provided:

"(b) If any violation of this Act is committed by a corporation, trust, partnership or association, the manager or

in his default, the person acting as such when the violation took place, shall be responsible. In the case of a government corporation, the managing head shall be made responsible, except when shown that the violation was due to an act or commission of some other person, over whom he has no control, in which case the latter shall be held responsible."

In PD 525, where a corporation fails to pay the emergency allowance therein provided, the prescribed penalty "shall be imposed upon the guilty officer or officers" of the corporation.

(c) If the policy of the law were otherwise, the corporation employer can have devious ways for evading payment of back wages. In the instant case, it would appear that RANSOM, in 1969, foreseeing the possibility or probability of payment of back wages to the 22 strikers, organized ROSARIO to replace RANSOM, with the latter to be eventually phased out if the 22 strikers win their case. RANSOM actually ceased operations on May 1, 1973, after the December 19, 1972 Decision of the Court of Industrial Relations was promulgated against RANSOM.

(d) The record does not clearly identify "the officer or officers" of RANSOM directly responsible for failure to pay the back wages of the 22 strikers. In the absence of definite proof in that regard, we believe it should be presumed that the responsible officer is the President of the corporation who can be deemed the chief operation officer thereof. Thus, in RA 602, criminal responsibility is with the "Manager or in his default, the person acting as such." In RANSOM, the President appears to be the Manager.

(e) considering that non-payment of the back wages of the 22 strikers has been a continuing situation, it is our opinion that the personal liability of the RANSOM President at the time the back wages were ordered to be paid should also be a continuing joint and several personal liabilities of all who may have thereafter succeeded to the office of president; otherwise, the 22 strikers may be deprived of their rights by the election of a president without leviable assets.[13]

Accordingly, Velayo cannot be excused from payment of SCIPS's liability by mere reason of SCIPSI's separate corporate existence. The theory of corporate entity, in the first place, was not meant to promote unfair objectives or otherwise, to shield them. This Court has not hesitated in penetrating the veil of corporate fiction when it would defeat the ends envisaged by law,[14] not to mention the clear decree of the Labor Code.

And if Velayo truly had a valid objection (to the levy on his properties), he could have raised it at the earliest hour, and in the course of the labor proceedings themselves. But, as we earlier indicated, he raised nary a finger there, and he cannot raise it now, much less in a separate proceeding. He is not only estopped, *litis pendencia* is a bar to such a separate action.[15]

While the instant case has been rendered moot and academic by reason of the out-of-court settlement between the parties, that development will not absolve Velayo and/or his counsel, Atty. Oscar Dinopol[16] from charges of forum-shopping. In *Buan v. Lopez, Jr.*, *supra*, we declared that forum-shopping is an act of malpractice that constitutes contempt of court.

In this connection, we reject Atty. Dinopol's pretense that no identity exists between Special Case No. 227 and the labor case that had precipitated it. The fact remains that in Special Case no. 227, he assails the execution of the judgment of the National Labor Relations Commission, the same relief he could have asked for in the very labor proceeding. The fact that he likewise prayed for damages therein will not alter the essence of the petition -- to stay execution -- and in which the claim for damages is but an incidental relief.

Clearly, both Velayo and Atty. Dinopol must account for forum-shopping.

WHEREFORE, judgment is rendered: (1) DISMISSING the petition for having become moot and academic; (2) ORDERING the respondent judge to dismiss Special Case No. 227; (3) DECLARING the respondent, Lucio

Velayo and Atty. Oscar Dinopol IN CONTEMPT and ORDERING them to pay a fine of P1,000.00 each within five (5) days from notice; and (4) SUSPENDING Atty. Oscar Dinopol, for a period of three (3) months effective from notice, from the practice of law. Let a copy of this Decision be entered in his record.

THIS DECISION IS IMMEDIATELY EXECUTORY.

IT IS SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] See rollo, 10.

[2] South Cotabato Integrated Port Services, Inc. and/or Lucio Velayo v. Hon. Antonio Villanueva, etc., et al., G.R. Nos. 77300-01.

[3] Rollo, id., 113.

[4] Id., 114.

[5] No. L-44230, November 19, 1984. 133 SCRA 259.

[6] The union was impleaded on December 11, 1987. The original petition named the labor arbiter and the sheriff alone as petitioners.

[7] G.R. Nos. 77300-01, rollo, 200.

[8] Rollo (this case), id., 287.

[9] Ambrosio v. Salvador, No. L-47651, December 11, 1978, 87 SCRA 217; see also Associated Labor Unions (ALU-TUCP) v. Borromeo, G.R. No. 75736, September 29, 1988.

[10] Supra.

[11] Rollo, id., 281-282.

[12] No. L-69494, June 10, 1986, 142 SCRA 269.

[13] Supra, 273-275.

[14] Laguna Transportation Co., Inc. v. SSS, 107 Phil. 833 (1960).

[15] Buan v. Lopez, Jr., No. L-70513, October 13, 1986, 145 SCRA 34.

[16] It was Atty. Dinopol who filed the petition with the respondent judge. See rollo, id., 112-118.

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