

**A.N. BOLINAO, JR., JUAN A. AGSALON, JR., ZOSIMO L. CARREON AND
REYNOLD P. DANNUG, PETITIONERS, VS. HON. MANUEL S.
PADOLINA, PHELPS DODGE (PHILS.) INC., BANK OF AMERICA, AND
DEPU...**

G.R. No. 81415. June 06, 1990

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for certiorari with preliminary injunction which seeks to reverse and to set aside the order of the Regional Trial Court of Pasig, Metro Manila, dated January 5, 1988 in Civil Case No. 50936 entitled "Phelps Dodge (Phils.) Inc. v. Sabena Mining Corporation" denying the motion to intervene and dismissing the third party claim filed by herein petitioners.

As gathered from the records, the facts of the case are as follows:

Petitioners A.N. Bolinao, Jr., Reynold P. Dannug, Juan A. Agsalon, Jr. and Zosimo L. Carreon were all former employees of Sabena Mining Corporation, which had a copper and gold project in operation, located in New Bataan, Davao del Norte. In 1982 and 1983 they were laid off without being recalled (Rollo, Petition, pp. 3-4).

In September, 1983, petitioners filed a formal complaint for collection of unpaid salaries, unused accrued vacation and sick leave benefits, 13th month pay and separation pay before the National Labor Relations Commission (NLRC) against Sabena Mining Corporation and Development Bank of the Philippines docketed as NCR Case No. 9-4178-83 (Rollo, Petition, p. 5).

On May 29, 1984, a compromise agreement was entered into by the parties, wherein petitioners were to be paid on a staggered basis the collective amount of P385,583.95 (Rollo, Petition, Annex "A", pp. 22-24). The company faithfully complied with the scheduled payments only up to March, 1985 because it ceased operations effective April 1, 1985. With this development, petitioners moved for the issuance of a writ of execution in June, 1985 (Rollo, Petition, p. 6).

In an order dated June 21, 1985, the Labor Arbiter issued a writ of execution against the company to collect the balance of P311,580.14 (Rollo, Annex "B", pp. 25-26). On June 27, 1985 Deputy Sheriff Antonio P. Soriano garnished the remaining amount of P150,279.64 in the savings account of the company at the Development Bank of the Philippines (DBP) (Rollo, Annex "B-1", p. 27). However, the same amount was previously garnished by two creditors of the company; namely, Bank of America and Phelps Dodge (Phils.), Inc. Bank of America garnished the amount in April, 1982 in Civil Case No. 45452 (Rollo, Petition, pp. 4-5 while Phelps Dodge garnished the amount in June, 1984 in Civil Case No. 50936 (Rollo, Petition, p. 5). Both cases were filed in different branches of the Regional Trial Court in Pasig (Ibid.)

In an order dated September 30, 1987, the respondent court directed the DBP to release to its Deputy Sheriff, herein respondent Carlos G. Maog, the amount of P150,279.64 declaring that the writ of preliminary attachment

made by Bank of America thru Deputy Sheriff Norberto Doblado in Civil Case No. 45452 by the Pasig Regional Trial Court cannot prevail over the garnishment pursuant to a writ of execution issued in Civil Case No. 50936 in favor of respondent Phelps Dodge (Phils.) Inc., for failure of Bank of America to prosecute its lien (Rollo, Petition, Annex "C", pp. 29-31).

The order came to the attention of the petitioners who then filed a "Motion to Intervene and to Lift Order of September 30, 1987" on October 13, 1987 and a third party claim with the deputy sheriff on October 19, 1987 (Rollo, Annex "D", p. 32-36; Annex "D-1", pp. 38-42).

DBP did not interpose any objection to the motion to intervene and the third party claim (Rollo, Annex "E", pp. 44-45). But respondent Phelps Dodge, Phils., Inc. opposed said Motion to Intervene/Third Party Claim, on the ground among others:

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b) That the rights of preference and first lien of petitioners, as former employees of Sabena Mining Corporation, as provided for in Art. 110 of the Labor Code and Art. 2244 of the Civil Code, are operative only in insolvency court and in a bankruptcy case;

(Rollo, Annex "F", pp. 47-53; Annex "F-1", pp. 54-57).

Petitioners filed their reply to the opposition and at the same time filed a motion to resolve the third party claim (Rollo, Annex "G", pp. 58-62; Annex "G-1", pp. 63-67).

On January 5, 1988 the respondent court issued an order denying the motion to intervene and dismissing the third party claim, declaring that the garnishment made by its Deputy Sheriff in favor of respondent Phelps Dodge, Phils., Inc. superior to the rights of petitioners (Rollo, Annex "I", pp. 70-77).

Hence, the petition.

The Second Division of this Court in its resolution dated August 10, 1989, gave due course to the petition (Rollo, Petition, pp. 2-19; Resolution, p. 309).

The main thrust in this petition is whether or not petitioners enjoy preferential right or claim over the funds of Sabena Mining Corporation as provided for under the provisions of Article 110 of the New Labor Code, as amended, and Section 10, Rule VIII, Book III of the Implementing Rules and Regulations of the Labor Code.

The petitioners contend that under Article 110 and its implementing rules and regulations of the Labor Code, the claims of the laborers for unpaid wages and other monetary benefits due them for services rendered prior to bankruptcy enjoy first preference in the satisfaction of credits against a bankrupt company.

On the other hand, the respondent maintains that the rights of preference and first lien of petitioners, as former employees of Sabena Mining Corporation, under aforesaid law and rules, are operative only in an insolvency court and in a bankrupt case.

The petition is without merit.

It is quite clear from the provisions of Article 110 of the Labor Code and Section 10, Rule VIII, Book II of the Revised Rules and Regulations Implementing the Labor Code, that a declaration of bankruptcy or a judicial liquidation must be present before the worker's preference may be enforced. Thus, it was held that Article 110 of the Labor Code and its implementing rule cannot be invoked absent a formal declaration of bankruptcy or a liquidation order (*Development Bank of the Philippines v. Labor Arbiter*, G.R. Nos. 78261-62, March 8, 1989). (Underscoring supplied)

In the case at bar, there was no showing of any insolvency proceeding or declaration of bankruptcy or judicial liquidation that was being filed by Sabena Mining Corporation. It is only an extra-judicial foreclosure that was being enunciated as when DBP extra-judicially foreclosed the assets of Sabena Mining Corporation.

Conversely, to hold that Article 110 is also applicable in extra-judicial proceedings would be putting the worker in a better position than the State which could only assert its own prior preference in case of a judicial proceeding. Article 110 must not be viewed in isolation and must always be reckoned with the provisions of the Civil Code (DBP v. Labor Arbiter, supra).

Quite recently, the rule enunciated in *Republic v. Peralta* (150 SCRA 37 [1987]) reads:

"Article 110 of the Labor Code, in determining the reach of its terms, cannot be viewed in isolation. Rather, Article 110 must be read in relation to the provisions of the Civil Code concerning the classification, concurrence and preference of credits, which provisions find particular application in insolvency proceedings where the claims of all creditors, preferred or non-preferred, may be adjudicated in a binding manner. x x x"

The reason behind the necessity for a judicial proceeding or a proceeding in rem before the concurrence and preference of credits may be applied is to bind all interested persons whether known to the parties or not. The claims of all credits whether preferred or non preferred, the identification of the preferred ones and the totality of the employer's assets should be brought into the picture. There can then be an authoritative, fair and binding adjudication instead of the piece meal settlement which would result from the questioned decision in this case[1] (DBP v. Labor Arbiter, supra).

PREMISES CONSIDERED, the petition is hereby DISMISSED for lack of merit and the questioned Order dated January 5, 1988 issued by the respondent court is hereby AFFIRMED.

SO ORDERED.

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

Padilla, J., dissents for the same reasons stated in his dissent in DBP vs. NLRC, G.R. Nos. 82763-64, 19 March 1990.

Sarmiento, J., see dissenting opinion.

[1] This was also the doctrine in the case of *Development Bank of the Philippines versus National Labor Relations Commission, Labor Arbiter Isabel P. Ortiguerra, and Labor Alliance For National Development*, G.R. Nos. 82763-64, Promulgated on March 19, 1990.

Bolinao Jr vs Padolina : 81415 : June 6, 1990 : J. Sarmiento : Second Division : Dissenting Opinion Normal Clean
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DISSENTING OPINION

SARMIENTO, J.:

I reiterate my dissent in *Development Bank of the Philippines vs. National Labor Relations Commission*.^[1] I also adopt Mr. Justice Teodoro Padilla's dissent therein, insofar as he holds that under Article 110 of the Labor Code, as amended by Republic Act No. 6715, workers enjoy "absolute preference"^[2] as and for unpaid wages and other monetary claims, over and above taxes due to the government and claims of creditors, and subject to no prior declaration of bankruptcy or judicial order of liquidation. I find his opinion to be not only accord with the explicit language of Republic Act No. 6715, but, as I held in my own dissent, consistent with the express decree of the Constitution affording full protection to labor.^[3]

While I agree that prior to its amendment, Article 110 was couched in arguable terms,^[4] that is, a declaration of insolvency was necessary before labor may claim preference, Republic Act No. 6715 has laid the debate to rest. The very language of the Act:

SECTION 1. Article 110 of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines, is hereby further amended to read as follows:

"ART. 110. Worker preference in case of bankruptcy. -- In the event of bankruptcy or liquidation of an employer's business, his workers shall enjoy first preference as regards their unpaid wages and other monetary claims, any provision of law to the contrary notwithstanding. Such unpaid wages and monetary claims shall be paid in full before the claims at the Government and other creditors may be paid."^[5]

convinces this writer that the Congressional intent was precisely to settle the argument--in favor of absolute worker preference.

Indeed, to say that the amendment of Article 110 by Republic Act No. 6715 wrought no change, and the Article should be read as it was read prior to amendment:

Article 110. Workers preference in case of bankruptcy. -- In the event of bankruptcy or liquidation of an employer's business, his workers shall enjoy first preference as regards wages due them for services rendered during the period prior to the bankruptcy or liquidation, any provision of law to the contrary notwithstanding. Unpaid wages shall be paid in full before other creditors may establish any claim to a share in the assets of the employer.^[6]

is to say that the legislature engaged in an exercise in futility, a proposition I am not prepared to accept. Clearly, the legislative will, in working the amendment, was to change the law--it could not have been for any other purpose--and I do not believe that the Supreme Court is empowered to override the intent of the lawmakers.

Once more, constitutional policy is to give full protection to labor. It also means exactly what it says--labor above capital. The Charter is evidently not neutral, it is partial to the workingman. I am afraid that with the holding my brethren will leave in this case, the working class would find itself at the receiving end.

[1] G.R. Nos. 82763-64, March 19, 1990.

[2] *Supra*, Padilla, J., Dissenting, 4.

[3] CONST., art. XIII, sec. 3.

[4] In his dissent in *Development Bank v. National Labor Relations Commission*, *supra*, Mr. Justice Isagani Cruz, reiterating his dissent in *Republic v. Peralta*, No. L-56568, May 20, 1987, 150 SCRA 37, insists that worker preference is nonetheless absolute under article 110, whether in its original or amended form.

[5] Rep. Act No. 6715, sec. 1.

[6] LABOR CODE, art. 110, prior to amendment.

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