

FRANCISCO V. DEL ROSARIO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND LEONARDO V. ATIENZA, RESPONDENTS.

G.R. No. 85416. July 24, 1990

Ponente: CORTES, J.

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CORTES, J.:

In POEA Case No. 85-06-0394, the Philippine Overseas Employment Administration (POEA) promulgated a decision on February 4, 1986 dismissing the complaint for money claims for lack of merit. The decision was appealed to the National Labor Relations Commission (NLRC), which on April 30, 1987 reversed the POEA decision and ordered Philsa Construction and Trading Co., Inc. (the recruiter) and Arie Enterprises (the foreign employer) to jointly and severally pay private respondent the peso equivalent of \$16,039.00, as salary differentials, and \$2,420.03, as vacation leave benefits. The case was elevated to the Supreme Court, but the petition was dismissed on August 31, 1987 and entry of judgment was made on September 24, 1987.

A writ of execution was issued by the POEA but it was returned unsatisfied as Philsa was no longer operating and was financially incapable of satisfying the judgment. Private respondent moved for the issuance of an alias writ against the officers of Philsa. This motion was opposed by the officers, led by petitioner, the president and general manager of the corporation.

On February 12, 1988, the POEA issued a resolution, the dispositive portion of which read:

WHEREFORE, premises considered, let an alias Writ of Execution be issued and the handling sheriff is ordered to execute against the properties of Mr. Francisco V. del Rosario and if insufficient, against the cash and/or surety bond of Bonding Company concerned for the full satisfaction of the judgment awarded.

Petitioner appealed to the NLRC. On September 23, 1988, the NLRC dismissed the appeal. On October 21, 1988, petitioner's motion for reconsideration was denied.

Thus, this petition was filed on October 28, 1988, alleging that the NLRC gravely abused its discretion. On November 10, 1988, the Court issued a temporary restraining order enjoining the enforcement of the NLRC's decision dated September 23, 1988 and resolution dated October 21, 1988. The petition was given due course on June 14, 1989.

After considering the undisputed facts and the arguments raised in the pleadings, the Court finds grave abuse of discretion on the part of the NLRC.

The action of the NLRC affirming the issuance of an alias writ of execution against petitioner, on the theory that the corporate personality of Philsa should be disregarded, was founded primarily on the following findings of the POEA -

* * *

6. Per the certification issued by the Licensing Division of this Office, it appears that Philsa Construction & Trading Co., Inc., with office address at 126 Pioneer St., Mandaluyong, Metro Manila, represented by Mr. Francisco V. del Rosario, President and General Manager, was formerly a registered construction contractor whose authority was originally issued on July 21, 1978 but was already delisted from the list of agencies/entities on August 15, 1986 for inactivity;

7. Per another certification issued by the Licensing Division of this Office, it also appears that another corporation, Philsa International Placement & Services Corp, composed of practically the same set of incorporators/stockholders, was registered as a licensed private employment agency whose license was issued on November 5, 1981, represented by the same Mr. Francisco V. del Rosario as its President/General Manager.

and an application of the ruling of the Court in *A.C. Ransom Labor Union-CCLU v. NLRC*, G.R. No. 69494, June 10, 1986, 142 SCRA 269.

However, we find that the NLRC's reliance on the findings of the POEA and the ruling in *A.C. Ransom* is totally misplaced.

1. Under the law a corporation is bestowed juridical personality, separate and distinct from its stockholders [Civil Code, Art. 44; Corporation Code, sec. 2.] But when the juridical personality of the corporation is used to defeat public convenience, justify wrong, protect fraud or defend crime, the corporation shall be considered as a mere association of persons [Koppel (Phil.), Inc. v. Yatco, 77 Phil. 496 (1946), citing 1 Fletcher, Cyclopedia of Corporations, 135-136; see also *Palay, Inc. v. Clave*, G.R. No. 56076, September 21, 1983, 124 SCRA 638], and its responsible officers and/or stockholders shall be held individually liable [*Namarco v. Associated Finance Co., Inc.*, G.R. No. L-20886, April 27, 1967, 19 SCRA 962.] For the same reasons, a corporation shall be liable for the obligations of a stockholder [*Palacio v. Fely Transportation Company*, G.R. No. L-15121, August 31, 1962, 5 SCRA 1011; *Emilio Cano Enterprises, Inc. v. Court of Industrial Relations*, G.R. No. L-20502, February 26, 1965, 13 SCRA 290], or a corporation and its successor-in-interest shall be considered as one and the liability of the former shall attach to the latter [Koppel v. Yatco, supra; *Liddell & Co. v. Collector of Internal Revenue*, G.R. No. L-9687, June 30, 1961, 2 SCRA 632.]

But for the separate juridical personality of a corporation to be disregarded, the wrongdoing must be clearly and convincingly established. It cannot be presumed.

In this regard we find the NLRC's decision wanting. The conclusion that Philsa allowed its license to expire so as to evade payment of private respondent's claim is not supported by the facts. Philsa's corporate personality therefore remains inviolable.

Consider the following undisputed facts:

- (1) Private respondent filed his complaint with the POEA on June 4, 1985;
- (2) The last renewal of Philsa's license expired on October 12, 1985;
- (3) The POEA dismissed private respondent's complaint on February 4, 1986;
- (4) Philsa was delisted for inactivity on August 15, 1986;*
- (5) The dismissal of the complaint was appealed to the NLRC and it was only on April 30, 1987 that the judgment awarding differentials and benefits to private respondent was rendered.

Thus, at the time Philsa allowed its license to lapse in 1985 and even at the time it was delisted in 1986, there was yet no judgment in favor of private respondent. An intent to evade payment of his claims cannot therefore be implied from the expiration of Philsa's license and its delisting.

Neither will the organization of Philsa International Placement and Services Corp. and its registration with the POEA as a private employment agency imply fraud since it was organized and registered in 1981, several years before private respondent filed his complaint with the POEA in 1985. The creation of the second corporation could not therefore have been in anticipation of private respondent's money claims and the consequent adverse judgment against Philsa.

Likewise, substantial identity of the incorporators of the two corporations does not necessarily imply fraud.

The circumstances of this case distinguish it from those in earlier decisions of the Court in labor cases where the veil of corporate fiction was pierced.

In *La Campana Coffee Factory, Inc. v. Kaisahan ng Manggagawa sa La Campana (KKM)*, 93 Phil. 160 (1953), *La Campana Coffee Factory, Inc. and La Campana Gaugau Packing* were substantially owned by the same person. They had one office, one management, and a single payroll for both businesses. The laborers of the gaugau factory and the coffee factory were also interchangeable, i.e., the workers in one factory worked also in the other factory.

In *Claparols v. Court of Industrial Relations*, G.R. No. L-30822, July 31, 1975, 65 SCRA 613, the *Claparols Steel and Nail Plant*, which was ordered to pay its workers backwages, ceased operations on June 30, 1957 and was succeeded on the next day, July 1, 1957 by the *Claparols Steel Corporation*. Both corporations were substantially owned and controlled by the same person and there was no break or cessation in operations. Moreover, all the assets of the steel and nail plant were transferred to the new corporation.

2. As earlier stated, we also find that, contrary to the NLRC'S holding, the ruling in *A.C. Ransom* is inapplicable to this case.

In *A.C. Ransom*, the Court said:

. . . 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. [At p. 274.]

The distinguishing marks of fraud were therefore clearly apparent in *A.C. Ransom*. A new corporation was created, owned by the same family, engaging in the same business and operating in the same compound.

Thus, considering that the non-payment of the workers was a continuing situation, the Court adjudged its President, the "responsible officer" of the corporation, personally liable for the backwages awarded, he being the chief operation officer or "manager" who could be held criminally liable for violations of Republic Act No. 602 (the old Minimum Wage Law.)

In the case now before us, not only has there been a failure to establish fraud, but it has also not been shown that petitioner is the corporate officer responsible for private respondent's predicament. It must be emphasized that the claim for differentials and benefits was actually directed against the foreign employer. Philsa became liable only because of its undertaking to be jointly and severally bound with the foreign employer, an undertaking required by the rules of the POEA [Rule II, sec. 1(d) (3)], together with the filing of cash and surety bonds [Rule II, sec. 4], in order to ensure that overseas workers shall find satisfaction for awards in their favor.

At this juncture, the Court finds it appropriate to point out that a judgment against a recruiter should initially be enforced against the cash and surety bonds filed with the POEA. As provided in the POEA Rules and Regulations

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. . . The bonds shall answer for all valid and legal claims arising from violations of the conditions for the grant and use of the license or authority and contracts of employment. The bonds shall likewise guarantee compliance with the provisions of the Labor Code and its implementing rules and regulations relating to recruitment and placement, the rules of the Administration and relevant issuances of the Ministry and all liabilities which the Administration may impose. . . . [Rule II, sec. 4.]

Quite evidently, these bonds do not answer for a single specific liability, but for all sorts of liabilities of the recruiter to the worker and to the POEA. Moreover, the obligations guaranteed by the bonds are continuing. Thus, the bonds are subject to replenishment when they are garnished, and failure to replenish shall cause the suspension or cancellation of the recruiter's license [Rule II, sec. 19.] Furthermore, a cash bond shall be refunded to a recruiter who surrenders his license only upon posting of a surety bond of similar amount valid for three (3) years [Rule II, sec. 20.] All these, to ensure recovery from the recruiter.

It is therefore surprising why the POEA ordered execution "against the properties of Mr. Francisco V. del Rosario and if insufficient, against the cash and/or surety bond of Bonding Company concerned for the full satisfaction of the judgment awarded" in complete disregard of the scheme outlined in the POEA Rules and Regulations. On this score alone, the NLRC should not have affirmed the POEA.

WHEREFORE, the petition is GRANTED and the decision and resolution of the NLRC, dated September 23, 1988 and October 21, 1988, respectively, in POEA Case No. 85-06-0394 are SET ASIDE. The temporary restraining order issued by the Court on November 10, 1988 is MADE PERMANENT.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

* Under the POEA Rules and Regulations, "[a]ny agency or entity which fails to renew its license or authority shall, upon expiration thereof, be immediately delisted and disallowed from conducting recruitment and placement." [Rule II, sec. 17.]

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