

SHOEMART, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COM-MISSION AND MORIS INDUSTRIES WORKERS UNION, RESPONDENTS.

G.R. Nos. 90795-96. August 13, 1993

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

Two main questions are raised in these consolidated petitions. The first is whether the Labor Arbiter's refusal to allow one party to resume and complete cross-examination of a vital witness -- and another party, even to commence cross-examination of the same witness -- constitutes a denial of due process. The second is whether a corporation may be held liable for acts of unfair labor practice and illegal dismissal of employees of a "sister corporation," engaged in a different line of business, on the theory that the latter is the former's alter ego or business conduit.

One of the corporations involved is Moris Industries, Inc. (MORIS, for short), a private corporation engaged in the manufacture of leather products, e.g., bags, belts, etc. It had in its employ seventy-three (73) workers, fifty-six (56) of whom are members of a labor organization known as Moris Industries Workers Union (UNION, for short).

On June 7, 1985 the UNION affiliated itself with the Philippine Association of Free Labor Unions (PAFLU). On June 15, 1985, the UNION, through PAFLU, sent a letter to MORIS informing it of the UNION's existence, and inviting the latter to enter into negotiations for a collective bargaining agreement (CBA). MORIS's reaction was as swift as it was unexpected. Within two days, it suddenly closed shop and ceased operations, claiming that such a closure had become inevitable because of business reverses.

On June 20, 1985, the UNION (PAFLU) filed a complaint for unfair labor practice against MORIS. A week later, it commenced another case against MORIS, this time for recovery of wage differentials and other monetary benefits (emergency cost of living allowance [ECOLA], sick leave, vacation leave benefits, etc.).

Shoemart, Inc., the other corporation involved in these cases, was impleaded by the UNION in both cases, together with the former's president, Mr. Henry Sy, on the stated theory that Shoemart, Inc. (hereafter, simply SHOEMART) and MORIS were one and the same juridical entity.

During the pendency of the two cases, the UNION disaffiliated itself from PAFLU and registered itself as an independent labor organization. The two cases were consolidated on motion of the UNION. The parties then submitted position papers.

SHOEMART's position paper set up the claim *inter alia* that its corporate personality was separate and distinct from that of MORIS, and there was no employer-employee relationship between it and the UNION's members.

At the hearing on the merits on July 7, 1986, before Labor Arbiter Romulo Lopez, cross-examination was allowed and was begun by MORIS' counsel of the UNION's witness, Cresencio Edic, based on the latter's affidavit. Edic's

affidavit (as summarized by respondent Commission in its Decision promulgated on July 10, 1989) was substantially to the effect that:

" * * he was first employed as sample maker, by the people who owned SM. His job was to make samples to be displayed on the window and only those which appealed to the customers were mass produced. When he was promoted to over-all supervisor, the factory was transferred to its present location and from then on, this production division was incorporated separately and has undergone many changes in name, yet all throughout, the known owners of the factory remain the same."

Cross-examination of witness Edic was, however, not completed by counsel for MORIS. The cases were postponed a number of times and transferred from one labor arbiter to the other on account of the reorganization of the Department of Labor and Employment in the aftermath of the 1986 Revolution.

On August 13, 1986, SHOEMART and Henry Sy, Sr. moved to dismiss the complaint against them on the ground of lack of jurisdiction, there being no employment relationship between SHOEMART and the UNION members, MORIS' employees. On February 18, 1987, MORIS moved that trial continue for cross-examination and further presentation of evidence. Other pleadings and motions were filed by the parties, the last being the UNION's manifestation and motion dated July 8, 1987 that the consolidated cases be resolved on the basis of the position papers and pleadings already on record.

The motions were eventually acted on by Labor Arbiter Cornelio Linsangan, the fourth arbiter to handle the case. By Order dated July 13, 1987 he denied SHOEMART's (and Henry Sy's) motion to dismiss for being "without merit," and because, at any rate, it could "be better discussed and resolved together with the merits of the complaint itself." As to the UNION's motion, Arbiter Linsangan ruled in the same order that although he had ascertained, "after painstakingly going over the records, that the case can be decided already based on the several pleadings filed * *," the parties should nevertheless be granted time (fifteen [15] days) "within which to file their last pleadings" after which "the case shall be considered submitted already for resolution." [1]

SHOEMART (and Henry Sy, Sr.) filed in this Court on October 29, 1987 a special action of certiorari to annul the Order of Labor Arbiter Linsangan, [2] and in the proceedings before the latter, a Manifestation and Motion to Defer Proceedings pending resolution of their certiorari action. [3]

At this time however, Arbiter Linsangan had already rendered a decision (dated October 26, 1987) in favor of the UNION, holding both MORIS and SHOEMART "equally liable" to the complaining UNION. [4] The dispositive portion of the judgment reads as follows:

"WHEREFORE, judgment is hereby rendered declaring respondent Moris Industries, Inc. guilty of unfair labor practice as charged.

The respondents are hereby ordered to pay complainants (a total of P365,150.52 for fifty-six [56] employees the amounts due them as discussed above.

Further, the respondents are ordered to pay each complainant the sum of P10,000.00 by way of damages."

The Linsangan decision declared "that indeed Moris Industries was but a conduit of SM Shoe Mart, Inc.," it appearing that the "payrolls used by the former bear the letterhead of the latter," and that "Moris Industries is a family corporation of the Sy's, * * the same family that owns and controls SM Shoe Mart, Incorporated * *." [5]

Both SHOEMART (and Henry Sy, Sr.) and MORIS appealed to the NLRC on or about November 11, 1987. [6]

Subsequently, SHOEMART's (and Henry Sy's) certiorari action above mentioned (G.R. No. 80312) was dismissed by this Court, by Resolution dated April 6, 1988, for being premature in view of the appeal filed with

the NLRC.

On July 10, 1989, the respondent NLRC rendered its decision on the consolidated cases, affirming the decision of the Labor Arbiter with modification.[7] It disposed of the cases as follows:

"WHEREFORE, premises considered, the appeals of respondents are hereby dismissed and the decision of Labor Arbiter Cornelio Linsangan is hereby modified in that, members of complainant union have the option to choose, in lieu of separation pay, reinstatement to their former positions, without loss of seniority rights; and the award of 13th month pay to comprise three (3) years instead of one (1) year. Furthermore, the award of damages is hereby reduced to Three Thousand Pesos (P3,000.00) for each worker. The rest of the Labor Arbiter's decision is affirmed in all other respects.

"SO ORDERED."

SHOEMART and the UNION respectively moved for reconsideration and clarification. The motions were resolved by a Resolution dated October 30, 1989, disposing as follows:

"WHEREFORE, premises considered, our decision dated July 19, 1989 is modified in that, respondents are ordered to pay members of complainant union, in addition to the previous awards, the equivalent of two (2) years as backwages, regardless of whether the employees elect to be reinstated or opt to receive separation pay; plus attorney's fees at the rate of 10% of the total award; with the further clarification that the award of 13th month pay shall be for the period of three (3) years. The Corporate Auditing Examiner is directed to make the necessary computation.

The motion for reconsideration of respondents is hereby dismissed for lack of merit."

Before this Court now are two petitions seeking, on different bases, modification of the NLRC decision of July 10, 1989, as modified by its Resolution of October 30, 1989. One, docketed as G.R. Nos. 90795-96, was filed by SHOEMART; the other, docketed as G.R. Nos. 91125-26, was filed by MORIS UNION. The cases were raffled to the First and Third Divisions respectively of this Court. The First Division granted SHOEMART's prayer for a restraining order, upon a bond of P600,000.00, by Resolution dated November 27, 1989.[8] After an exchange of pleadings by the parties, the Third Division issued a Resolution dated January 31, 1990, consolidating the two petitions.[9]

MORIS did not appeal. The modified judgment thus became final and executory, and its liability for unfair labor practice and for illegal dismissal of its employees, represented by the UNION, thus became incontestable.

The basic question involved in these appeals is whether or not the respondent NLRC gravely abused its discretion in (1) holding, on the one hand, SHOEMART "equally liable" with MORIS for unfair labor practice, illegal termination of employment and non-payment of mandated benefits to the latter's employees; and, on the other, (2) conceding to the UNION monetary awards less than those claimed by it.

SHOEMART contends that although in "the summary procedure adopted in labor cases ** the case is decided based on position paper," Labor Arbiters nevertheless have discretion to "themselves conduct trial on the merits when there are intricate questions of facts that need to be resolved;" and this is why the Union "presented Cresencio Edic, whose direct testimony was concluded" and whose cross-examination was begun but not finished by MORIS' counsel. According to SHOEMART, MORIS was unable to resume and conclude its cross-examination of Edic -- and SHOEMART itself "totally failed to cross-examine the said witness" -- because the Labor Arbiter (Linsangan) to whom the cases were finally assigned, in his Order dated July 10, 1987, declared that the cases could already be decided on the pleadings already presented, as well as on the "last pleadings" that the parties might additionally file within the period granted to them: fifteen (15) days from notice. SHOEMART

posits that both it and MORIS were thereby denied due process, specially considering the crucial character of the testimony of the witness, Edic.

The argument cannot be sustained. Whatever merit it might have in the context of ordinary civil actions, where the rules of evidence apply with more or less strictness, disappears when adduced in connection with proceedings before Labor Arbiters and the National Labor Relations Commission; for in said proceedings, the law is explicit that "the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the (law's) spirit and intention that the Commission and its members and the Labor arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process." [10] Indeed, it is not the Rules of Court enacted by the Supreme Court but rather the regulations promulgated by the National Labor Relations Commission which govern "the hearing and disposition of cases before it and its regional branches **." The "Revised Rules of Court of the Philippines and prevailing jurisprudence," the law says, may be applied to labor cases only under quite stringent limits, i.e., "in the absence of any applicable provision (in the Rules of the Commission), and in order to effectuate the objectives of the Labor Code **, in the interest of expeditious labor justice and whenever practicable and convenient, by analogy or in a suppletory character and effect." [11] Under these rules, the proceedings before a Labor Arbiter are "non-litigious in nature" in which, "subject to the requirements of due process, the technicalities of law and procedure and the rules obtaining in the courts of law ** (do not) strictly apply;" [12] "trial-type" hearings are not required; cases may be decided on the basis of verified position papers submitted by the parties, accompanied by the affidavits of their witnesses and such other authentic documents as are relevant. [13] Such a procedure has been sanctioned by this Court as not violative of due process. [14]

Now, whether or not a "formal trial or hearing" should be had is a matter lying in the discretion of the Labor Arbiter. [15] The Arbiter may opt to hold a hearing, e.g., where the affidavits "being actually hearsay and untested by cross-examination, are not enough to satisfy the quantum of proof required by law, especially where the statements of the affiants are controverted **." [16]

In this case, the first Labor Arbiter who took cognizance of the cases (Arbiter Romulo Lopez) evidently believed a hearing with cross-examination of witnesses would be of help in the determination of the merits of the cases. His view was not shared by the Labor Arbiter to whom the cases were ultimately assigned (Arbiter Cornelio Linsangan) who opined that after a thoroughgoing review of the records, "the case can be decided already based on the several pleadings filed * *." The Arbiter nevertheless gave the parties fifteen [15] days "within which to file their last pleadings," i.e., submit additional evidence and arguments, after which "the case shall be considered submitted already for resolution."

MORIS and SHOEMART were thus given ample opportunity to be heard, to adduce evidence in support of their version of the material factual occurrences and controvert the UNION's proofs, including the affidavit of Crescencio Edic. They both submitted position papers with supporting affidavits and documents; they presented arguments in support of their submissions through various pleadings and motions. Both MORIS and SHOEMART additionally pleaded their causes on appeal before the National Labor Relations Commission.

Under the circumstances, a claim of denial of due process on SHOEMART's part is completely unavailing. The essence of due process is that a party be afforded a reasonable opportunity to be heard and to submit any evidence he may have in support of his defense. [17] What is vital, in other words, is not the opportunity to cross-examine a particular witness, but the opportunity to be heard of which, as already stated, SHOEMART has extensively availed.

SHOEMART next impugns the public respondents' act of "piercing the veil of corporate fiction" as regards

MORIS -- separately registered as a juridical entity -- and pronouncing it to be a "mere conduit" of SHOEMART, and "equally liable" upon the former's liabilities to its employees.[18] The respondent Commission's conclusions on this point were drawn from the following facts, which it deemed to have been adequately established by the complainant UNION's evidence, to wit:[19]

- "1. In his affidavit, Mr. (Cresencio) Edic testified that he was first employed as sample maker, by the people who owned SM. His job was to make samples to be displayed on the window and only those which appealed to the customers were mass produced. When he was promoted to over-all supervisor, the factory was transferred to its present location and from then on, this production division was incorporated separately and has undergone many changes in name, yet all throughout, the known owners of the factory remain the same;
2. An examination of the Incorporation papers of SM Shoe Mart and Moris Manufacturing show (sic) that except for Elizabeth Sy -- all other five (5) incorporators and directors of Moris Industries are major stockholders of SM Shoe Mart as of July 20, 1985;
3. The SM Shoe Mart is the exclusive buyer of all of Moris' products;
4. Both are housed in one building and Moris for many years has been using the payrolls of SM Shoe Mart. SM glibly excuses this fact by alleging that this was done without its knowledge. We, however, considering the close relationship of the parties, find this incredible."

The Court fails to discern any indication in the record that these factual conclusions were reached by the respondent NLRC whimsically or capriciously. In truth, the respondent Commission is shown to have considered and analyzed the pertinent proofs of the complainant UNION in relation to the defenses set up by the private respondents. Even if it be theorized that there is room for some divergence of views regarding the objective validity of said conclusions, they may not be nullified and set aside on the theory that they had been rendered with grave abuse of discretion.

Much the same thing may be said respecting the reliefs complained of by the UNION as being less than those to which they are rightfully entitled. The Court perceives no whimsicality or capriciousness in the manner by which the NLRC arrived at its conclusions on the matter and will therefore decline to nullify or set them aside.

The only other question left for resolution is whether or not, upon the facts obtaining in the cases at bar, the employees of MORIS have the right to be "reinstated" or absorbed into the pool of employees of SHOEMART.

No claim is made that SHOEMART is other than a marketing company, or has ever engaged in manufacturing leather goods or products, or any other commodities. It seems undisputed, too, that MORIS has not been in operation for several years; its business is non-existent; it is a dead company, to all intents and purposes. It is a defunct company at this time, whatever might have been the original cause or motivation for its initial closure and cessation of operations. Its stockholders and officers have caused its extinguishment: a reality that cannot but be acknowledged. Under the circumstances, reinstatement of the employees to MORIS is no longer possible. Compulsion of the stockholders and officers to reopen for business is not a rational option. Some other sanction must be found.

Neither may SHOEMART be compelled to open a manufacturing company to engage in the same line of business as MORIS in order to accommodate the latter's former employees, numbering some seventy or so, or to absorb these seventy workers latter into its own business, considering the obvious difference and diversity in skills, experience and orientation, etc. between its employees and those of MORIS.

No reasonable alternative thus presents itself except to require the payment of separation pay in lieu of the reinstatement decreed by the judgment of the respondent Commission. That liability may in the premises properly

and justly be imposed on SHOEMART, as well as on MORIS and on the latter's president or executive head,[20] jointly and severally.

WHEREFORE, the petitions for certiorari are DENIED. The Decision of the respondent Commission of July 10, 1989, as modified by its Resolution of October 30, 1989, is AFFIRMED but further modified in that in lieu of the option of reinstatement or separation pay granted to the members of complainant union in addition to the other reliefs therein set out, they shall have the right only to separation pay, which shall be demandable from and payable by SM Shoemart, Inc., Moris Industries, Inc. and the latter's President, petitioner Henry T. Sy, Sr., jointly and severally. The temporary restraining order of November 27, 1989 is LIFTED AND SET ASIDE without prejudice to the enforcement of the liability against the bond posted in connection therewith.

SO ORDERED.

Padilla, Regalado, Nocon, and Puno, JJ., concur.

[1] Annex C, Rollo of G.R. Nos. 90795-96, pp. 38-29

[2] Docketed as G.R. No. 80312 (Annex E, petition)

[3] Annex F, Petition in G.R. Nos. 90795-96, Rollo, pp. 57-58

[4] Annex G, Petition in G.R. Nos. 90795-96, Rollo, pp. 59 et seq.

[5] Rollo of G.R. Nos. 90795-96, pp. 60-68.

[6] Annex D, Petition in G.R. Nos. 90795-96, Rollo, pp. 40 et seq.

[7] Annex A, Petition in G.R. 90795-96

[8] Rollo, p. 90

[9] G.R. No. 91125-26, Rollo, p. 85

[10] ART. 221, Labor Code, as amended

[11] New Rules of Procedure of the National Labor Relations Commission, Aug. 31, 1990, eff. "fifteen (15) days after their publication in two (2) newspapers of general circulation:" SEC. 3, Rule I

[12] Id.: SEC. 7, Rule V

[13] Id.: SEC. 3, Rule V

[14] *Commando Security Agency v. NLRC, et al.*, 211 SCRA 645 (1992), citing Sections 2 and 3 of the Revised Rules of the NLRC; *Manila Resource Development Corp. v. NLRC, et al.*, 213 SCRA 296 (1992), citing *Yap v. Inciong*, 186 SCRA 664 (1990) which, in turn, cites *B. Sta. Rita & Co., Inc. v. Arroyo and NLRC*, 168 SCRA 581 (1988); *Coca Cola Bottlers Phils. v. NLRC, et al.*, 180 SCRA 195 (1989), citing *Remerco Garment Manufacturing v. Minister of Labor & Employment, et al.*, 135 SCRA 165 (1985), *Manila Doctors Hospital v. NLRC, et al.*, 135 SCRA 262 (1985), and *Asia World Publishing House, Inc. v. Ople*, 152 SCRA 219 (1987), citing ART. 221, Labor Code; *Blue Bar Coconut Philippines, Inc. v. Minister of Labor*, 174 SCRA 25 (1989); *Cebu Institute of Technology v. Minister of Labor*, 113 SCRA 257 (1982)

[15] Id.: SEC. 4, Rule V

[16] *Coca-Cola Bottlers Philippines, Inc. v. NLRC*, 180 SCRA 195, 202

[17] *Rapid Manpower Consultants, Inc. v. NLRC, et al.*, G.R. No. 88683, Oct. 18, 1990

[18] The doctrine is explained in *Cease, et al. v. Court of Appeals, et al.*, 93 SCRA 483, invoked by respondent NLRC (rollo, pp. 27-28): "A rich store of jurisprudence has established the rule known as the doctrine of disregarding or piercing the veil of corporate fiction. Generally, a corporation is invested by law with a personality separate and distinct from that of the persons composing it as well as from that of any other legal entity to which it may be related. By virtue of this attribute, a corporation may not, generally, be made to answer for acts or liabilities of its stockholders or those of the legal entities to which it may be connected, and vice versa. This separate and distinct personality is, however, merely a fiction created by law for convenience and to promote the ends of justice (*Laguna Transport Company vs. Social Security System*, L-1406, April 28, 1960; *La Campana Factory, Inc. vs. Kaisahan ng mga Manggagawa sa La Campana*, L-5677, May 25, 1953). For this reason, it may not be used or invoked for ends subversive of the policy and purpose behind its creation (*Emiliano Cano Enterprises, Inc. vs. CIR*, L-20501, February 26, 1965) or which could not have been intended by law to which it owes its being (*McConnel vs. Court of Appeals*, L-10510, March 17, 1961, 1 SCRA 722). This is particularly true where the fiction is used to defeat public convenience, justify wrong, protect fraud, defend crime (*Yutivo Sons Hardware vs. Court of Tax Appeals*, L-13203, January 28, 1961, 1 SCRA 160), confuse legitimate legal or judicial issues (*R.F. Sugay & Co. vs. Reyes*, L-20451, December 28, 1964), perpetrate deception or otherwise circumvent the law (*Gregorio Araneta, Inc. vs. Tuazon de Paterno*, L-2886, August 22, 1952, 49 O.G. 721). This is likewise true where the corporate entity is being used as an alter ego, adjunct, or business conduit for the sole benefit of the stockholders or of another corporate entity (*McConnel vs. Court of Appeals*, supra; *Commissioner of Internal Revenue vs. Norton Harrison Co.*, L-7618, Augst 31, 1964).

In any of these cases, the notion of corporate entity will be pierced or disregarded, and the corporation will be treated merely as an association of persons or, where there are two corporations, they will be merged as one, the one being merely regarded as part or instrumentality of the other (*Koppel [Phil.] Inc. vs. Yatco*, 77 Phil. 496; *Yutivo Sons Hardware Company vs. Court of Tax Appeals*, supra)."

[19] Rollo, pp. 28-29

[20] *A.C. Ransom Labor Union-CCLU v. NLRC*, 42 SCRA 269; *Chua v. NLRC*, 182 SCRA 353; *Gudez v. NLRC*, 183 SCRA 644; *Maglutac v. NLRC*, 189 SCRA 767

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