SECOND DIVISION

VARORIENT SHIPPING CO., INC., G.R. No. 164940
Petitioner,
Present:

SANDOVAL-GUTIERREZ,[*] *J.,*
- versus - CARPIO,[**]
CARPIO MORALES,
TINGA, and
VELASCO, JR., *JJ.*

NATIONAL LABOR RELATIONS
COMMISSION (SECOND DIVISION)
and ROLANDO M. PEREZ, Promulgated:
Respondents.
November 28, 2007

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D E C I S I O N

TINGA, *J.*:

Before us is a petition for review on certiorari under Rule 45 filed by petitioner Varorient Shipping Co., Inc. (Varorient) seeking the reversal of the 25 May 2004 Resolution[1] of the Court of Appeals in CA-G.R. SP No. 83881 which dismissed its petition for certiorari and injunction and the 9 August 2004 Resolution[2] of the same court which denied its motion for reconsideration.

The basic facts necessary for the resolution of the issues before this Court are not disputed. Varorient, acting in behalf of Lagoa Shipping Corporation (Lagoa), employed private respondent Rolando Perez (Perez) as a fitter on board the vessel M/V Sparrow. Perez and Varorient, the latter acting in the capacity as the local

manning agent of its foreign principal, executed a Contract of Employment dated 2 December 1998.[3]

Once deployed on the M/V Sparrow, Perez started to suffer from persistent back pains. Aboard the vessel, a foreign doctor who treated Perez issued a medical report certifying that the latter was already fit for continued employment, but recommending nonetheless that Perez be assigned to light work only. Perez was thus repatriated to the Philippines as he could no longer perform his duties as a fitter.[4]

Once back in the Philippines, Perez was diagnosed with lumbosacral instability, a condition treatable by physical therapy. The persistent back pains were caused by an injury in the lower spine causing Perezs lumbar curve to be abnormally exaggerated due to his lifting and carrying of heavy objects as a fitter.[5] At the expense of Varorient, Perez was placed by company-designated physicians under a physical therapy program consisting of 10-20 sessions. After having completed 10 sessions, Perez abruptly discontinued his medical evaluation and treatment.[6] Instead, on 9 September 1999, he filed a Complaint with the National Labor Relations Commission (NLRC)[7] praying for disability benefits, illness allowance, reimbursement of medical and medicine expenses, damages, and attorneys fees. Named as respondents to the complaint were Varorient, Margarita Colarina (Colarina), and Lagoa.

The case was assigned to Labor Arbiter Antonio Cea and the parties duly filed their position papers. Eventually, the Labor Arbiter rendered a Decision[8] dated 20 January 2003 ordering the dismissal of the case for lack of merit. Perez appealed the decision to the NLRC which, on 30 October 2003, rendered a Decision[9] vacating and setting aside the Labor Arbiters ruling. The NLRC ratiocinated that Perez had already complied with the requirements to claim compensation for his injury pursuant to the POEA Standard Employment Contract when he presented himself to the company-designated physician for medical treatment within 120 days from the date of his repatriation, and that he was not to

be blamed for the failure of Varorient to make a disability assessment despite the fact that he had already completed 10 physical therapy sessions.[10]

After its motion for reconsideration was denied by the NLRC, Varorient filed with the Court of Appeals a Petition for Certiorari and Injunction[11] under Rule 65 of the Rules of Court.

On 18 June 2004, Varorient received a copy of the first assailed Resolution dated 25 May 2004 dismissing its petition. The Court of Appeals held:

> There are three (3) petitioners in this petition for certiorari[:] Varorient Shipping Co., Inc., Margarita Colarina and Lagoa Shipping Corporation. However, the verification and certification of non-forum shopping certification [were] signed by a certain Ma. Luisa C. Isuga, Managing Director and Corporate Secretary of Petitioner Varorient Shipping Co., Inc., without showing any authority to act for and in behalf of any of the petitioners. Absent such authority, the petition is fatally flawed.
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> *ACCORDINGLY*, this petition is ordered **DISMISSED**.
>
> **SO ORDERED**.[12]

On 4 July 2004, Varorient filed a Motion for Reconsideration[13] with the Court of Appeals. Attached to the motion is the Secretarys Certificate[14] dated 7 May 2004, evincing the authority of Ma. Luisa C. Isuga, Varorients managing director and corporate secretary, to represent Varorient in the certiorari proceedings before the Court of Appeals, and to sign for and in behalf of Varorient all pertinent documents, papers, pleadings, motions, petitions, and other related incidents, in connection with the case against it, its President, Margarita Colarina, and its foreign principal, Lagoa Shipping Corporation filed by Perez.[15]

On 24 August 2004, Varorient received a copy of the second assailed Resolution[16] dated 9 August 2004, denying its motion for reconsideration. The Court of Appeals ruled:

x x x In the motion for reconsideration filed by the petitioners, it is insisted that Isuga, being the Managing Director and Secretary of ***Varorient*** is duly authorized to represent and act in behalf of the corporation, its foreign principal Lagoa and President Margarita Colarina. It is further alleged that even if there is no express authorization from ***Varorient*** and the other petitioners, still Isuga is impliedly authorized to file the petition and sign the verification and certification of non-forum shopping. The motion, nonetheless, attached a Secretarys Certificate datedMay 7, 2004 which petitioners claim to have been inadvertently omitted in the course of filing the petition.

We cannot agree with the petitioners. Neither do [w]e find consistency in their ratiocination that even without authorization, Isuga is authorized to act for the three (3) petitioners, and at the same time, presenting a Secretarys Certificate on a supposed Board of Directors meeting of ***Varorient*** on May 5, 2004. It would seem to [o]ur mind, that the Board Resolution and the Secretarys Certificate was just an afterthought. Otherwise, Ma. Luisa C. Isuga, the Corporate Secretary who was allegedly given authority by the Board to act for and in behalf of ***Varorient***could not have missed to append or even mention it in the petition at bar. Moreover, the Secretarys Certificate is issued by the Board of Directors of ***Varorient*** and not the two (2) other petitioners, Lagoa and its President, Margarita Colarina. *Apropos*, the foregoing circumstances only confirm that Isuga was not duly authorized when she signed the verification and non-forum shopping certification at the time the instant petition was filed.

Petitioner is hereby reminded that the power of a corporation to sue and be sued in any court is lodged with the board of directors that exercises its corporate powers. In the absence of any authority from the board of directors, no person, not even the officers of the corporation, can validly bind the corporation. [***Premium Marble Resources, Inc. v. Court of Appeals****, 264 SCRA 11 (1996);* ***Esteban, Jr. v. Vda. de Ocampo****, 360 SCRA 230 (2002);* ***Social Security System v. Commission on Audit****, 384 SCRA 548 (2002)*].

x x x x

ACCORDINGLY, petitioners Motion for Reconsideration dated June 29, 2004 is DENIED.

SO ORDERED.[17]

Hence, the present petition.

Varorient argues that there is substantial compliance with Section 3, Rule 46, considering the submission of the secretarys certificate showing the authority of Ma. Luisa C. Isuga to act for and in behalf of petitioner. Petitioner further

argues that the Court of Appeals should have upheld the primacy of substantial justice over technical rules of procedure.

There are three issues before us. The first, whether Varorient has substantially complied with the verification and certification requirement, is ultimately less than decisive to this case. The more worthy questions for consideration pertain to the effect of the respective failures to execute the prescribed verification and certification of Colarina, as a corporate officer solidarily bound with Varorient in the payment of employment claims, and Lagoa, as the foreign principal of Varorient.

There is sufficient jurisprudential justification to hold that Varorient has substantially complied with the verification and certification requirements. We have held in a catena of cases[18] with similar factual circumstance that there is substantial compliance with the Rules of Court when there is a belated submission or filing of the secretarys certificate through a motion for reconsideration of the Court of Appeals decision dismissing the petition for certiorari.

The Court is not unmindful of the necessity for a certification of non-forum shopping in filing petitions for certiorari as this is required under Section 1, Rule 65,in relation to Section 3, Rule 46 of the 1997 Rules of Civil Procedure. When the petitioner is a corporation, the certification should obviously be executed by a natural person to whom the power to execute such certification has been validly conferred by the corporate board of directors and/or duly authorized officers and agents. Generally, the petition is subject to dismissal if a certification was submitted unaccompanied by proof of the signatorys authority.[19]

Still, a distinction must be made between non-compliance with the requirements for certificate of non-forum shopping and verification and substantial compliance with the requirements as provided in the Rules of Court. The Court has allowed the belated filing of the certification on the justification that such act constitutes substantial compliance. In *Roadway Express, Inc. v. CA*,[20] the Court

allowed the filing of the certification fourteen (14) days before the dismissal of the petition. In*Uy v. LandBank*,[21] the Court reinstated a petition on the ground of substantial compliance even though the verification and certification were submitted only after the petition had already been originally dismissed. In *Havtor Management Philippines Inc. v. NLRC*,[22] we acknowledged substantial compliance when the lacking secretarys certificate was submitted by the petitioners as an attachment to the motion for reconsideration seeking reversal of the original decision dismissing the petition for its earlier failure to submit such requirement.

As with *Havtor*, Varorient rectified its failure to submit proof of its Corporate Secretarys authority to sign the verification/certification on non-forum shopping on its behalf when the necessary document was attached to its motion for reconsideration before the Court of Appeals. The admission of these documents, and consequently, the petition itself, is in line with the cases we have cited. It must be kept in mind that while the requirement of the certificate of non-forum shopping is mandatory, nonetheless the requirements must not be interpreted too literally and thus defeat the objective of preventing the undesirable practice of forum shopping. [23]

We now turn to the more crucial and ultimately determinative issues.

The Court of Appeals, in dismissing the petition, cited the failure of Colarina, president of Varorient, to execute a separate certification. We hold that this ground ultimately does not justify the dismissal of the petition by the Court of Appeals.

The POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers (POEA Rules) makes clear that the corporate officers, directors and partners are required to execute a verified undertaking that they would be jointly and severally liable with the company over claims arising from

the employer-employee relationship.[24] By legal mandate, the interest of Colarina in this case, arising as it does from the employer-employee relationship, is intertwined with that of Varorient.

We must examine the legal nature of the obligation for which Colarina is being held liable in the present case. The POEA Rules holds her, as a corporate officer, solidarily liable with the local licensed manning agency. Her liability is inseparable from those of Varorient and Lagoa. If anyone of them is held liable then all of them would be liable for the same obligation. Each of the solidary debtors, insofar as the creditor/s is/are concerned, is the debtor of the entire amount; it is only with respect to his co-debtors that he/she is liable to the extent of his/her share in the obligation.[25] Such being the case, the Civil Code allows each solidary debtor, in actions filed by the creditor/s, to avail himself of all defenses which are derived from the nature of the obligation and of those which are personal to him, or pertaining to his share.[26] He may also avail of those defenses personally belonging to his co-debtors, but only to the extent of their share in the debt.[27] Thus, Varorient may set up all the defenses pertaining to Colarina and Lagoa; whereas Colarina and Lagoa are liable only to the extent to which Varorient may be found liable by the court. The complaint against Varorient, Lagoa and Colarina is founded on a common cause of action; hence, the defense or the appeal by anyone of these solidary debtors would redound to the benefit of the others.[28]

De Leon v. Court of Appeals[29] featured a husband and wife who were sued jointly for a sum of money. After the trial court had ruled against the spouses, the husband through counsel timely filed a notice of appeal, while the wife, through another counsel, attempted to submit a separate notice of appeal which was belatedly filed. The wifes notice of appeal was denied by the Court of Appeals on account of its belatedness. Commenting on these circumstances, the Court, through Justice Quisumbing, observed:

> x x x Respondent spouses having been jointly sued under a common cause of action, an appeal made by the husband inures to the benefit of the wife. The

> notice of appeal filed by Estelita was a superfluity, the appeal having been perfected earlier by her husband.[30]

The passage finds persuasive application to the case at bar. As in this case, Varorient and Colarina were jointly sued under a common cause of action. By virtue of the requisite undertaking under the POEA Rules, Colarina is solidarily bound to Varorient for whatever liabilities may arise in this case. In *De Leon*, the timely filing by the husband of the notice of appeal was deemed to have inured to the benefit of his wife, who had filed a tardy notice of appeal of her own. Thus, in this case the substantial compliance by Varorient should likewise redound to the benefit of the other solidary obligors, such as Colarina, who may have been independently deficient in the execution of their own requirements.

The Court is ready to arrive at such a conclusion because it sees that Colarinas participation in this case is ultimately dispensable to its resolution. If Varorient were to be found liable and made to pay pursuant thereto, the entire obligation would already be extinguished[31] even if no attempt was made to enforce the judgment against Colarina. Because there existed a common cause of action against the three solidary obligors, as the acts and omissions imputed against them are one and the same, an ultimate finding that Varorient was not liable would, under these circumstances, logically imply a similar exoneration from liability for Colarina and Lagoa, whether or not they interposed any defense.

The other contentious issue is whether the certificate of non-forum shopping filed by Varorient as a local manning agent is sufficient to cover and benefit its foreign principal, Lagoa. On that score, the Court of Appeals again erred in dismissing the petition since a very specific line of jurisprudence has emerged precisely to the effect that the foreign principal need not execute a separate verification and certification from that of the local agent.

That issue was squarely resolved in the case of *MC Engineering, Inc. v. NLRC*.[32] As in this case, the Court of Appeals had dismissed a special civil action for certiorari on account of the failure of the foreign principal to execute a separate verification and certification against forum shopping from that submitted by the local private employment agency. The holding of the Court in *MC Engineering* may very well apply to this case, thus:

> In the case at bar, the petition for *certiorari* filed by petitioners before the Court of Appeals contains a certification against forum shopping. However, the said certification was signed only by the corporate secretary of petitioner MCEI. No representative of petitioner Hanil signed the said certification. As such, the issue to be resolved is **whether or not a certification signed by one but not all of the parties in a petition constitutes substantial compliance with the requirements regarding the certification of non-forum shopping.**
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> x x x x
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> In the case at bar, the Court of Appeals should have taken into consideration the fact that **petitioner Hanil is being sued by private respondent in its capacity as the foreign principal of petitioner MCEI**. It was petitioner MCEI, as the local private employment agency, who entered into contracts with potential overseas workers on behalf of petitioner Hanil.
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> **It must be borne in mind that local private employment agencies, before they can commence recruiting workers for their foreign principal, must submit with the POEA a formal appointment or agency contract executed by the foreign based employer empowering the local agent to sue and be sued jointly and solidarily with the principal or foreign-based employer for any of the violations of the recruitment agreement and contract of employment. Considering that the local private employment agency may sue on behalf of its foreign principal on the basis of its contractual undertakings submitted to the POEA, there is no reason why the said agency cannot likewise sign or execute a certification of non-forum shopping for its own purposes and/or on behalf of its foreign principal.**
>
> It must likewise be stressed that the rationale behind the requirement that the petitioners or parties to the action themselves must execute the certification of non-forum shopping is that the said petitioners or parties are in the best position to know of the matters required by the Rules of Court in the said certification. **Such requirement is not circumvented and is substantially complied with when, as in this case, the local private employment agency signs the said certification alone. It is the local private employment agency, in this case petitioner MCEI, who is in the best position to know of the matters required in a certification of non-forum shopping.**[33]

The conclusions reached by the Court in *MC Engineering, Inc. v. NLRC*[34] are further supported by the relevant rules and regulations adopted by the POEA, which establish in essence that the foreign principal does not have personality in the Philippines unless it acts through a licensed local manning agent as its accredited principal. The POEA Rules specifically ordains that the local manning agent is solidarily liable for every obligation that the foreign principal may incur against the local worker:

> Part I General Provisions
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> x x x Rule II Definition of Terms:
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> **Joint and Solidary Liability refers to the nature of liability of the principal and the manning agency, for any and all claims arising out of the implementation of the employment contract involving Filipino seafarers.** It shall likewise refer to the nature of liability of officers, directors, partners or sole proprietors with the company over claims arising from employer-employee relationship.
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> x x x x
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> Part II Licensing and Regulation
> RULE II Issuance of License
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> Section 1. Requirements for Licensing.
>
> x x x x
>
> e. A verified undertaking stating that the applicant shall: xxx xxx xxx 8. **Assume joint and solidary liability with the employer for all claims and liabilities** which may arise in connection with the implementation of the employment contract, including but not limited to wages, death and disability compensation and their repatriation;
>
> x x x x
>
> f. In case of corporation or partnership, verified undertaking by officers, directors and partners that they will be jointly and severally liable with the company over claims arising from employer-employee relationship.

Further perusal of the POEA Rules indicates that the relationship between the local manning agent and the foreign principal is so intertwined. Indeed, the foreign principal does not have any capacity to act in the Philippines, unless through its accredited local manning agent. For example, an accredited foreign principal can only engage and employ Filipino seafarers for specific ship/s through a licensed local manning agency; and foreign principals/employers who wish to advertise job requirements using Philippine print media, broadcast, or television may do so only through a POEA licensed local manning agency. Moreover, only duly licensed local manning agencies may file an application for registration of principals; while registered foreign principals are required to enroll ships through their agencies.

We thus re-stress that a foreign principal that is acting only through its local manning agent has no need to file a separate certificate of non-forum shopping.[35]

Clearly then, following *stare decisis* and even a cursory look at the POEA rules and regulations, the Court of Appeals committed a reversible error of law when it dismissed the petition because of the failure of Colarina and Lagoa to execute the verification and certification of non-forum shopping independently of Varorient.

WHEREFORE, the petition is GRANTED. The Resolutions of the Court of Appeals dated 15 May 2004 and 09 August 2004 are SET ASIDE. Let the case be REMANDED to the Court of Appeals for adjudication on the merits.

SO ORDERED.

DANTE O. TINGA
Associate Justice

WE CONCUR:

ANGELINA SANDOVAL-GUTIERREZ
Associate Justice

ANTONIO T.CARPIO CONCHITA CARPIO MORALES
Associate Justice Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Courts Division.

ANTONIO T. CARPIO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting Chairpersons Attestation, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Courts Division.

CONSUELO YNARES-SANTIAGO
Acting Chief Justice

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[*] As replacement of Justice Leonardo A. Quisumbing who is on official leave per Administrative Circular No. 84-2007.

[**] Acting Chairperson.

[1] *Rollo* p. 32. Penned by Associate Justice Conrado M. Vasquez, Jr., concurred in by Associate Justices Eliezer de los Santos and Rosalinda Asuncion-Vicente.

[2] Id. at 34-36.

[3] Id. at 69.

[4] Id. at 59.

[5] Id. at 60.

[6] Id. at 11.

[7] Id. at 70.

[8] Id. at 125-134.

[9] Id. at 59-66.

[10] Id. at 152-161.

[11] Id. at 37-56.

[12] Id. at 32.

[13] Id. at 168-176.

[14] Id. at 177.

[15]Id.

[16]Supra note 1.

[17]Id.

[18]See *e.g., China Banking Corporation v. Mondragon International Philippines, Inc. and Antonio Gonzales*, G.R. No. 164798, 17 November 2005; *Vicar International Construction, Inc. v. FEB Leasing and Finance Corporation (now BPI Leasing Corporation)*, G.R. No. 157195, 22 April 2005, 456 SCRA 588; *Wack Wack Golf and Country Club v. NLRC,* G.R. No. 149793, 15 April 2005, 456 SCRA 280; *General Milling Corp. v. NLRC,* 442 Phil. 425 (2002).

[19]*Shipside Incorporated v. Court of Appeals*, 404 Phil. 981 (2001).

[20]332 Phil. 733 (1996).

[21]391 Phil. 303 (2000).

[22]The Court notes that while petitioners may have initially failed to submit a secretary's certificate showing that Adorable was authorized by the Havtor Management (Philippines), Inc.'s board of directors to file the petition, they substantially complied with this requirement when they filed their motion for reconsideration. *Havtor Management Philippines, Inc. v. NLRC*, 423 Phil. 509, 513 (2001).

[23]*Bernardo v. NLRC*, 325 Phil. 371 (1996).

[24]See POEA Rules, Part II, Sec. 1(f).

[25]3 CASTAN, 7th Ed., p. 73. Cited in JURADO, COMMENTS AND JURISPRUDENCE IN OBLIGATIONS AND CONTRACTS (2002 Ed.), 184.

[26]See CIVIL CODE, Art. 1222.

[27]Id.

[28]*De Leon v. Court of Appeals*, 432 Phil. 775 (2002).

[29]Id.

[30]Id. at 788.

[31]Art. 1217. **Payment made by one of the solidary debtors extinguishes the obligation**. If two or more solidary debtors offer to pay, the creditor may choose which offer to accept.

He who made the payment may claim from his co-debtors only the share which corresponds to each, with the interest for the payment already made. If the payment is made before the debt is due, no interest for the intervening period may be demanded.

When one of the solidary debtors cannot, because of his insolvency, reimburse his share to the debtor paying the obligation, such share shall be borne by all his co-debtors, in proportion to the debt of each. (Emphasis supplied).

[32]412 Phil. 614 (2001).

[33]Id. at 622-623.

[34] Supra.

[35]Supra note 20.