

743 Phil. 457

FIRST DIVISION

[G.R. No. 206555, September 17, 2014]

**ATTY. FORTUNATO PAGDANGANAN, JR., ATTY. ABIGAIL D. SUAREZ,
AND EUGENIO A. VILLANUEVA, PETITIONERS, VS. FLORENTINO P.
SARMIENTO, RESPONDENT.**

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated October 23, 2012 and the Resolution^[3] dated March 26, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 118912 which reversed and set aside the Decision^[4] dated September 30, 2010 and the Resolution^[5] dated December 30, 2010 of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. OFW(M) 05-07119-09/NLRC LAC No. OFW(M) 03-000209-10 which, *inter alia*, absolved petitioners Atty. Fortunato Pagdanganan, Jr. (Atty. Pagdanganan), Atty. Abigail D. Suarez (Atty. Suarez), and Eugenio A. Villanueva (Villanueva) from any liability in connection with the labor complaint filed by respondent Florentino P. Sarmiento (Sarmiento).

The Facts

On May 8, 2008, Sea Gem Maritime International, Inc. (Sea Gem), on behalf of its foreign principal, Corinthian Maritime S. A. (Corinthian), hired Sarmiento as Chief Mate of the vessel *M/T Intuition*^[6] for an initial period of seven (7) months. On May 10, 2008, he boarded the said vessel.^[7] Upon the expiration of the contract on December 10, 2008, the same was extended for another two (2) months; thereafter, or on January 3, 2009, Sarmiento was transferred to the vessel *M/T Setubal I*^[8] where he was also assigned as its Chief Mate.^[9]

On January 14, 2009, while *M/T Setubal I* was docked at Nigeria, Sarmiento felt a loss of strength in his left arm and fingers. Upon examination at the Adeiza Clinic in Lagos, Nigeria, he was diagnosed to have Mild Cardiovascular Stroke, Disused Atrophy of the Left Hand, and Hypertension, for which his repatriation was recommended.^[10] Hence, on January 18, 2009, Sarmiento was repatriated to the Philippines and referred to the MRI Diagnosis Center.^[11]

Subsequently, or on July 7, 2009,^[12] Sarmiento filed a complaint against Sea Gem, Corinthian, Cielo B. Peñalosa (Peñalosa), Gracia P. Fernandez (Fernandez), Dulce P. Cruz (D. Cruz), Grace Ann C. Javier (Javier), Allan P. Cruz (A. Cruz), Abigail Torrefil (Torrefil), Joseph Stevenson B. Alican (Alican), and herein petitioners Atty.

Pagdanganan, Atty. Suarez, and Villanueva before the NLRC for the collection of: (a) his unpaid salaries in the sum of US\$24,821.74; (b) disability benefits; (c) sickness allowance; and (d) reimbursement of his medical expenses.^[13] However, only the petitioners and the group of Peñalosa, Fernandez, D. Cruz, Javier, and A. Cruz (Peñalosa Group) filed position papers to controvert Sarmiento's claims.^[14]

In their defense, petitioners denied any liability to Sarmiento, contending that they were no longer connected with Sea Gem when the latter filed his complaint. Villanueva resigned on February 5, 2008, or more than three (3) months before Sarmiento was hired on May 8, 2008, while on June 16, 2008, Attys. Pagdanganan and Suarez tendered their resignations as Sea Gem's President and Corporate Secretary, respectively.^[15]

For their part, the Peñalosa Group maintained that they have divested their respective shares of stock before Sea Gem engaged the services of Sarmiento. With the exception of Fernandez who resigned on January 9, 2007, the rest of the Peñalosa Group severed their ties with Sea Gem on August 8, 2007. Consequently, they argued that only the present directors and stockholders should be held liable for Sarmiento's money claims.^[16]

The LA Ruling

In a Decision^[17] dated January 19, 2010, the Labor Arbiter (LA) found petitioners, Sea Gem, Corinthian, the Peñalosa Group, Torrefil, and Alican liable for Sarmiento's money claims and directed them to jointly and severally pay him the aggregate sum of US\$32,821.00, representing his unpaid wages and sickness allowance.^[18]

In granting Sarmiento's unpaid wages, the LA found that he had indisputably proven that a portion of his salaries remained unpaid. Likewise, the LA found that he was entitled to sickness allowance, as he was repatriated on medical grounds and necessarily required medical treatment.^[19] However, the LA debunked Sarmiento's claim for disability benefits and medical expenses reimbursement, explaining that in the absence of a competent physician's declaration as to the degree of a seafarer's disability, disability benefits may not be awarded,^[20] and that mere allegations of medical expenses will not suffice to warrant a claim for reimbursement.^[21] Finally, the LA held petitioners, Sea Gem, Corinthian, the Peñalosa Group, Torrefil, and Alican liable under Section 10^[22] of Republic Act No. (RA) 8042,^[23] opining that corporate directors and officers cannot be relieved of their liabilities as such for the sole reason that they have resigned or ceased to become shareholders of Sea Gem.^[24]

Aggrieved, petitioners appealed to the NLRC, disclaiming liability for Sarmiento's claims and pointing out that the Philippine Overseas Employment Agency (POEA) itself never accredited or recognized them as directors of Sea Gem.^[25] However, records are bereft of any showing that the Peñalosa Group, Sea Gem, Corinthian, Torrefil, and Alican appealed the LA Decision, rendering the same final as to them.^[26]

The NLRC Proceedings

Pending petitioners' appeal, or on June 4, 2010, Atty. Jay T. Borromeo (Atty. Borromeo) **entered**^[27] his appearance as counsel for Sarmiento and simultaneously filed pleadings on his behalf.

In a Decision^[28] dated September 30, 2010, the NLRC affirmed the LA's Ruling with modification absolving petitioners from any liability in connection with Sarmiento's money claims, considering that they were no longer connected with Sea Gem at the time Sarmiento's cause of action arose. It likewise gave credence to the letter of the POEA stating that petitioners were never recognized as directors of Sea Gem.^[29] Nonetheless, the NLRC assured Sarmiento that he may still proceed against Sea Gem, Corinthian, the Peñalosa Group, Torrefil, and Alican who did not interpose an appeal.

Dissatisfied, Sarmiento moved for reconsideration which the NLRC denied in a Resolution^[30] dated December 30, 2010 (December 30, 2010 Resolution). **On January 12, 2011, Atty. Borromeo was duly notified of the said December 30, 2010 Resolution**, as evidenced by the registry return receipt issued by the Bureau of Posts.^[31]

The CA Proceedings

Subsequently, or **on April 7, 2011**, Sarmiento, personally and on his own behalf, filed a petition for *certiorari*^[32] before the CA, imputing grave abuse of discretion on the part of the NLRC in modifying the LA Decision by absolving petitioners from liability. In the said petition, Sarmiento claimed that he was personally notified of the December 30, 2010 Resolution only on **February 10, 2011**, thus, it was seasonably filed.^[33]

In their Comment^[34] dated May 4, 2011, petitioners pointed out that Sarmiento's petition was filed beyond the sixty (60)-day reglementary period within which to file a petition for *certiorari*, having been filed eighty-five (85) days from the time Sarmiento's counsel of record, Atty. Borromeo, received the December 30, 2010 Resolution on **January 12, 2011**.^[35] As there is dearth of evidence showing that Atty. Borromeo had been relieved of his duties as counsel at the time, petitioners averred that Sarmiento's petition should be dismissed outright, citing the rule that where a party is represented by counsel, service upon the latter is binding upon the client.^[36] Moreover, records disclose that Atty. Borromeo has not filed a formal withdrawal of appearance.^[37]

Thereafter, or on June 1, 2011, Atty. Borromeo filed a Manifestation with Notice of Withdrawal of Appearance,^[38] explaining that he had been long discharged of his duties as counsel of Sarmiento but due to personal problems and other professional commitments, he forgot to file a formal withdrawal of appearance in this case. Further, he denied receipt of the December 30, 2010 Resolution and claimed that it was his neighbor, a certain Roland Allan Lomentigar, who received it on January 12, 2011.^[39]

On even date, Sarmiento, again representing himself, submitted a Reply^[40] where he

admitted^[41] that he was not informed by Atty. Borrromeo that he received the December 30, 2010 Resolution on January 12, 2011.

In a Decision^[42] dated October 23, 2012, **the CA did not address the issue raised by petitioners regarding the timeliness of the filing of Sarmiento's CA petition.** Instead, it ascribed grave abuse of discretion on the part of the NLRC and thereby ordered the reinstatement of the LA Decision, effectively finding petitioners jointly and severally liable for Sarmiento's money claims.^[43] In line with the purpose of giving full protection to labor, the CA reasoned that corporate officers, directors, and/or partners shall remain solidarily liable for the claims and damages of the overseas contract worker, as long as they acted as officers during the effectivity of the employment contract,^[44] which in Sarmiento's case was from May 10, 2008 to **February 10, 2009.**^[45] As petitioners were already engaged as directors and officers of Sea Gem at the time,^[46] they may not simply avoid liability considering that their resignation circumvented Section 10 of RA 8042.^[47]

Petitioners moved for reconsideration^[48] which was, however, denied in a Resolution^[49] dated March 26, 2013. At odds with the CA's ruling, petitioners seek its reversal through the present petition, maintaining their stance that Sarmiento's petition for *certiorari* before the CA was filed out of time, hence, the CA did not acquire jurisdiction over the same and the NLRC Decision could no longer be assailed.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA erred when it found grave abuse of discretion on the part of the NLRC in absolving petitioners from liability in connection with Sarmiento's money claims notwithstanding the fact that Sarmiento's petition challenging the NLRC Decision was filed out of time.

The Court's Ruling

The petition is meritorious.

Under Section 4, Rule 65 of the Rules of Court (Rules), as amended by A.M. No. 07-7-12-SC, an aggrieved party has sixty (60) days from receipt of the assailed decision, order or resolution within which to file a petition for *certiorari*, viz.:

SEC. 4. *When and where to file petition.* – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, **the petition shall be filed not latter than sixty (60) days counted from the notice of the denial of the motion.**

x x x x (Emphasis supplied)

In the present case, and as correctly pointed out by petitioners, the 60-day reglementary period for the purpose of filing a petition for *certiorari* should be reckoned from **January 12, 2011**, the date Atty. Borrromeo, Sarmiento's then counsel of record, had the notice of the December 30, 2010 Resolution, and not February 10, 2011, the date when Sarmiento was personally notified thereof. This is in consonance with the well-settled rule that if a litigant is represented by counsel, notices of all kinds, including court orders and decisions, must be served on said counsel, and notice to him is considered notice to his client. As declared in the case of *GCP-Manny Transport Services, Inc. v. Hon. Principe*:^[50]

The rule is that when a party is represented by counsel in an action in court, notices of all kinds including motions, pleadings and orders must be served on the counsel. And notice to such counsel is notice to the client. Notice sent to counsel of record is binding upon the client and the neglect or failure of counsel to inform him of an adverse judgment resulting in the loss of his right to appeal is not a ground for setting aside a judgment, valid and regular on its face.^[51] (Emphasis supplied)

To this end, the Court cannot give credence to Sarmiento's contention that Atty. Borrromeo had been discharged as counsel even before Sarmiento received the December 30, 2010 Resolution, considering that Atty. Borrromeo **never** filed a formal withdrawal of appearance prior thereto, conformably with Section 26,^[52] Rule 138 of the Rules. For his failure to observe the proper legal formalities, Atty. Borrromeo remained as Sarmiento's counsel on record. Fundamental is the rule that until a counsel's dismissal or withdrawal is formally made, any court record sent to him binds the client, despite an internal arrangement between them terminating their professional relationship,^[53] as in this case.

Besides, on June 1, 2011, Atty. Borrromeo eventually filed a Manifestation with Notice of Withdrawal of Appearance^[54] before the CA, thus confirming that he was, in fact, Sarmiento's legal counsel at the time he received the December 30, 2010 Resolution.^[55] Accordingly, the 60-day period within which to file a petition for *certiorari* before the CA should be computed from **January 12, 2011**, the last day of which would be on **March 13, 2011**. As Sarmiento's petition was filed only on **April 7, 2011**, it was belatedly filed by twenty-five (25) days. Effectively, therefore, the CA did not acquire jurisdiction over Sarmiento's petition, hence, the NLRC Ruling could no longer be assailed.^[56]

WHEREFORE, the petition is **GRANTED**. The Decision dated October 23, 2012 and the Resolution dated March 26, 2013 of the Court of Appeals in CA-G.R. SP No. 118912 are hereby **REVERSED** and **SET ASIDE**. The Decision dated September 30, 2010 and the Resolution dated December 30, 2010 of the National Labor Relations Commission in NLRC NCR Case No. OFW(M) 05-07119-09/NLRC LAC No. OFW(M) 03-000209-10 are **REINSTATED**.

SO ORDERED.

Sereno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Perez, JJ., concur.

[1] *Rollo*, pp. 3-24.

[2] *Id.* at 32-50. Penned by Associate Justice Danton Q. Bueser with Associate Justices Amelita G. Tolentino and Ramon R. Garcia, concurring.

[3] *Id.* at 30-31.

[4] *Id.* at 255-263. Penned by Presiding Commissioner Gerardo C. Nograles with Commissioners Perlita B. Velasco and Romeo L. Go, concurring.

[5] *Id.* at 264-268.

[6] "MV Intuition" in some parts of the records.

[7] See *rollo*, pp. 32-33.

[8] "M/T Setubal" in some parts of the records.

[9] *Rollo*, p. 33.

[10] *Id.* at 33-34.

[11] *Id.* at 34.

[12] See Labor Arbiter's Decision; *id.* at 123.

[13] See *id.* at 123-124.

[14] Petitioners filed a joint position paper, while the Peñalosa Group, Fernandez, D. Cruz, Javier, and A. Cruz also filed their own joint position paper. (See *id.* at 34, 70-79, and 124.)

[15] See *id.* at 71-74.

[16] *Id.* at 35.

[17] CA *rollo*, pp. 63-69. Penned by LA Jose G. De Vera.

[18] *Id.* at 68.

[19] See id. at 66.

[20] Id. at 65.

[21] Id. at 66.

[22] Section 10 of RA 8042 reads:

Sec. 10. x x x.

The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provisions shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. **If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.**

Such liabilities shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment or modification made locally or in a foreign country of the said contract.

x x x x (Emphasis supplied)

[23] Entitled "AN ACT TO INSTITUTE THE POLICIES OF OVERSEAS EMPLOYMENT AND ESTABLISH A HIGHER STANDARD OF PROTECTION AND PROMOTION OF THE WELFARE OF MIGRANT WORKERS, THEIR FAMILIES AND OVERSEAS FILIPINOS IN DISTRESS, AND FOR OTHER PURPOSES"; OTHERWISE KNOWN AS THE "MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995."

[24] CA *rollo*, p. 67.

[25] *Rollo*, p. 259.

[26] Id. at 256.

[27] CA *rollo*, pp. 237-242.

[28] *Rollo*, pp. 255-263.

[29] Id. at 262.

[30] Id. at 264-268.

[31] Id. at 269.

[32] CA *rollo*, pp. 3-35.

[33] Id. at 7.

[34] Id. at 220-236.

[35] Id. at 226.

[36] See id.

[37] See id. at 227-228.

[38] Id. at 251-256.

[39] See id. at 252-253.

[40] Id. at 269-277.

[41] Id. at 274.

[42] *Rollo*, pp. 32-50.

[43] See id. at 41-50.

[44] See id. at 45.

[45] Records reveal that Sarmiento's employment contract was from May 10, 2008 to February 10, 2009, not 2008. (See id. at 32-33 and 46.)

[46] The CA noted that Villanueva and Attys. Pagdanganan and Suarez, respectively, only resigned on February 5, 2008 and June 16, 2008. (Id. at 46-47.)

[47] Id. at 47.

[48] Id. at 51-60.

[49] Id. at 30-31.

[50] G.R. No. 141484, November 11, 2005, 474 SCRA 555.

[51] Id. at 565.

[52] Section 26, Rule 138 of the Rules reads:

Sec. 26. *Change of attorneys.*— An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court. He may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court place of the former one, and written notice of the change shall be given to the adverse party.

x x x x

[53] See *Anastacio-Briones v. Atty. Zapanta*, 537 Phil. 218, 223 (2006).

[54] CA *rollo*, pp. 251-256.

[55] See *Elbiña v. Ceniza*, 530 Phil. 183, 188 (2006).

[56] See *Bello v. NLRC*, 559 Phil. 20, 28-29 (2007).



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