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Temporary Restraining Order issued by the Court of Appeals enjoining the implementation of the writ.

Here, not only was there a long delay in the full implementation of the writs of execution issued in Civil Case Nos. 192-L, 193-L, 194-L and 197-L but there was likewise an utter failure to implement the writs issued in Civil Case Nos. 195-L and 198-L. Hence, the Court deems it appropriate to impose on respondent sheriff a penalty of suspension from office for three (3) months.

WHEREFORE, respondent Tyrone V. Tan, Sheriff IV of the OCC, RTC, Malaybalay City, Bukidnon, is found *GUILTY* of neglect of duty and is *SUSPENDED* for Three (3) Months from office. He is *STERNLY WARNED* that a repetition of the same or similar acts in the future shall be dealt with more severely. Let a copy of the decision be attached to his personal record.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Corona, and *Bersamin, JJ.,* concur.

FIRST DIVISION

[G.R. Nos. 148263 and 148271-72. April 21, 2009]

ARMANDO DAVID, *petitioner, vs.* **NATIONAL FEDERATION OF LABOR UNIONS and MARIVELES APPAREL CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; ABSENCE THEREOF; KNOWLEDGE THAT A CASE IS FILED DOES NOT SERVE THE SAME PURPOSE AS SERVING SUMMONS;

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EXEMPLIFIED.— Like Carag, David was "not issued summons, not accorded a conciliatory conference, not ordered to submit a position paper, not accorded a hearing, not given an opportunity to present his evidence, and not notified that the case was submitted for resolution." Unlike Carag, David did not even know that Arbiter Ortiguerra issued a decision against him. David was not even able to file an appeal before the NLRC. David's participation in the present case, albeit belated, questioned his inclusion in the decisions of the tribunals below. David's protestations are not without basis, as can be seen from Sections 2, 3, 4, 5(b), and 11(c) of Rule V of the New Rules of Procedure of the NLRC. The records of the case show that NAFLU and MACLU moved to implead Carag and David for the first time only in their position paper dated 3 January 1994. Arbiter Ortiguerra's decision shows that MACLU, NAFLU, and MAC were the only parties summoned to a conference for a possible settlement. Therefore, at the time of the conference, David was not yet a party to the case. The position paper subsequently filed by MAC was filed at a time when David had already resigned from MAC. David's knowledge of a labor case against MAC did not serve the same purpose as a summons. David did not receive any summons and had no knowledge of the decision against him. The Labor Arbiter and the NLRC did not have jurisdiction over David. This utter lack of jurisdiction voids any liability of David for any monetary award or judgment in favor of MACLU and NAFLU.

2. MERCANTILE LAW; CORPORATION CODE; GOVERNED THE LIABILITY OF CORPORATE OFFICER; SUSTAINED.— Arbiter Ortiguerra held David liable for MAC's debts pursuant to Article 212(e) of the Labor Code, which reads: 'Employer' includes any person acting in the interest of an employer, directly or indirectly. The term shall not include any labor organization or any of its officers or agents except when acting as employer. However, Article 212(e) of the Labor Code, by itself, does not make a corporate officer personally liable for the debts of the corporation because Section 31 of the Corporation Code is still the governing law on personal liability of officers for the debts of the corporation. Section 31 of the Corporation Code provides: *Liability of directors, trustees or officers.* — Directors or trustees who willfully

and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors, or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons. x x x There was no showing of David willingly and knowingly voting for or assenting to patently unlawful acts of the corporation, or that David was guilty of gross negligence or bad faith.

APPEARANCES OF COUNSEL

Carag Caballes Jamora & Somera Law Offices for petitioner.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review on *certiorari*[1] assailing the Joint Decision[2] dated 29 February 2000 and the Resolution[3] dated 27 March 2001 of the Court of Appeals (appellate court) in CA-G.R. SP Nos. 54404-06. The appellate court affirmed the Decision[4] dated 17 June 1994 of Labor Arbiter Isabel Panganiban-Ortiguerra (Arbiter Ortiguerra) in RAB-III-08-5198-93 where petitioner Armando David (David) was held solidarily liable, along with Mariveles Apparel Corporation (MAC) and MAC Chairman of the Board Antonio Carag (Carag), for money claims of the employees of MAC.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 34-55. Penned by Associate Justice Teodoro P. Regino with Associate Justices Conchita Carpio Morales (now Associate Justice of this Court) and Jose L. Sabio, Jr., concurring.

[3] *Id.* at 57-58. Penned by Associate Justice Teodoro P. Regino with Associate Justices Conchita Carpio Morales (now Associate Justice of this Court) and Jose L. Sabio, Jr., concurring.

[4] *Id.* at 59-65.

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The Facts

The present case arose from the same circumstances as *Antonio C. Carag v. National Labor Relations Commission, et al.*[5]

MAC hired David as IMPEX and Treasury Manager on 16 September 1988. David began serving as MAC's President in May 1990. David served as President in the nature of a nominee as he did not own any of MAC's shares. David tendered his irrevocable resignation from MAC on 30 September 1993. David's resignation was made effective on 15 October 1993.

In a complaint for illegal dismissal dated 12 August 1993, National Federation of Labor Unions (NAFLU) and Mariveles Apparel Corporation Labor Union (MACLU) alleged that MAC ceased operations on 8 July 1993 without prior notice to its employees. MAC allegedly gave notice of its closure on the same day that it ceased operations. MACLU and NAFLU further alleged that, at the time of MAC's closure, employees who had rendered one to two weeks work were not paid their corresponding salaries.

Arbiter Ortiguerra immediately summoned the parties for settlement of the case. However, MAC failed to appear before Arbiter Ortiguerra. MAC's non-appearance compelled Arbiter Ortiguerra to declare the case submitted for resolution based on the pleadings.

On 3 January 1994, MACLU and NAFLU filed their position paper wherein MACLU and NAFLU also moved to implead Carag and David to guarantee satisfaction of any judgment award in MACLU and NAFLU's favor.

Atty. Joshua Pastores, as MAC's counsel, submitted a position paper dated 21 February 1994 and argued that Carag and David should not be held liable because MAC is owned by a consortium of banks. Carag's and David's ownership of MAC shares only served to qualify them to serve as officers in MAC.

The Ruling of the Labor Arbiter

Arbiter Ortiguerra proceeded to render her Decision on 17 June 1994 without further proceedings or submissions from

[5] G.R. No. 147590, 2 April 2007, 520 SCRA 28.

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the parties. Arbiter Ortiguerra granted MACLU and NAFLU's motion to implead Carag and David, as well as declared Carag and David solidarily liable with MAC to complainants. Pertinent portions of Arbiter Ortiguerra's decision are quoted below:

> The complainants claim that Atty. Antonio Carag and Mr. Armando David should be held jointly and severally liable with respondent corporation [MAC]. This bid is premised on the belief that the impleader of the aforesaid officers will guarantee payment of whatever may be adjudged in complainants' favor by virtue of this case. It is a basic principle in law that corporations have personality [sic] distinct and separate from the stockholders. This concept is known as corporate fiction. Normally, officers acting for and in behalf of a corporation are not held personally liable for the obligation of the corporation. In instances where corporate officers dismissed employees in bad faith or wantonly violate labor standard laws or when the company had already ceased operations and there is no way by which a judgment in favor of employees could be satisfied, corporate officers can be held jointly and severally liable with the company. This Office after a careful consideration of the factual backdrop of the case is inclined to grant complainants' prayer for the impleader of Atty. Antonio Carag and Mr. Armando David, to assure that valid claims of employees would not be defeated by the closure of [MAC].
>
> x x x x x x x x x
>
> WHEREFORE, premises considered, judgment is hereby rendered declaring respondents jointly and severally guilty of illegal closure and they are hereby ordered as follows:
>
> 1. To pay complainants' separation pay computed on the basis of one (1) month for every year of service, a fraction of six (6) months to be considered as one (1) year in the total amount of ₱49,101,621.00; and
>
> 2. To pay complainants attorney's fees in an amount equivalent to 10% of the judgment award.
>
> The claims for moral, actual and exemplary damages are dismissed for lack of evidence.
>
> SO ORDERED.[6]

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[6] *Rollo,* pp. 63-64.

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David claimed that he was not notified of Arbiter Ortiguerra's decision. David alleged that it was only during a chance encounter with Carag that he learned of Arbiter Ortiguerra's decision against him. Neither did David know that MAC filed an appeal on his behalf before the NLRC.

David then filed a petition for *certiorari* under Rule 65, docketed as G.R. No. 118880, before this Court. We also consolidated David's petition with that of MACLU and NAFLU (G.R. No. 118880) and of MAC and Carag (G.R. No. 118820). On 12 July 1999, after all the parties had filed their memoranda, we referred the consolidated cases to the appellate court in accordance with our decision in *St. Martin Funeral Home v. NLRC*.[7] MAC, Carag, and David filed separate petitions before the appellate court.

David asked the appellate court to rule on whether the labor arbiter acquired jurisdiction over his person. David emphasized that he was impleaded as a party respondent not in a separate order prior to the promulgation of the decision, but in the decision itself. David also questioned his solidary liability with his co-respondents.

The Ruling of the Appellate Court

In its Joint Decision dated 29 February 2000, the appellate court affirmed the decision of Arbiter Ortiguerra and the resolution of the NLRC. The appellate court stated that "petitioner DAVID cannot just evade his liability by the simple expedien[ce] of alleging that he had not affirmed nor adopted the position paper filed by petitioner MAC."[8] David's resignation from MAC took place only on 15 October 1993, long after MAC's closure took place. According to the appellate court, this meant that David willfully and knowingly assented to the unlawful closure of the company without any notice to the employees. David was thus solidarily liable, along with MAC and Carag, for the unpaid wages of MAC's employees.

The dispositive portion of the appellate court's decision reads as follows:

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[7] 356 Phil. 811 (1998).

[8] *Id.* at 46.

IN VIEW WHEREOF, the petitions are DISMISSED. The decision of Labor Arbiter Isabel Panganiban-Ortiguerra dated June 17, 1994, and the Resolution dated January 5, 1995, issued by the National Labor Relations Commission are hereby AFFIRMED. As a consequence of dismissal, the temporary restraining order issued on March 2, 1995, by the Third Division of the Supreme Court is LIFTED. Costs against petitioners.

SO ORDERED.[9]

The appellate court denied David's motion for reconsideration in a Resolution promulgated on 27 March 2001.

The Issues

David raises the following issues before this Court:

1. Whether or not in finding petitioner guilty of illegal closure and making him personally liable for payment of private respondent's claims, petitioner had been afforded due process of law as guaranteed by the 1987 Constitution?
2. Whether or not the Labor Court has acquired jurisdiction over the person of petitioner by ordering him to be impleaded as a party respondent in the course of the proceedings not through a separate order prior to the promulgation of its decision, but through the decision itself, under which, petitioner was adjudged to be jointly and severally liable to pay the monetary award with the original respondent?
3. Whether or not the Labor Arbiter has acted with grave abuse of discretion in adjudging petitioner to be jointly and severally liable with his co-respondents on the sole ground that the valid claims of the employees should not be defeated by the closure of the corporation?[10]

The Ruling of the Court

The petition has merit. The issues raised by David can be limited to denial of due process and the propriety of David's solidary liability.

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[9] *Id.* at 54.

[10] *Id.* at 11.

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Denial of Due Process

The proceedings before the Labor Arbiter deprived David of due process. MACLU and NAFLU filed their complaint against MAC on 12 August 1993. Arbiter Ortiguerra's decision shows that MACLU, NAFLU, and MAC were the only parties summoned to a conference for a possible settlement. Because of MAC's failure to appear, Arbiter Ortiguerra deemed the case submitted for resolution. David's resignation from MAC took effect on 15 October 1993. NAFLU and MACLU moved to implead Carag and David for the first time only in their position paper dated 3 January 1994. David did not receive any summons and had no knowledge of the decision against him. The records of the present case fail to show any order from Arbiter Ortiguerra summoning David to attend the preliminary conference. Despite this lack of summons, in her Decision dated 17 June 1994, Arbiter Ortiguerra not only granted MACLU and NAFLU's motion to implead Carag and David, she also held Carag and David solidarily liable with MAC.

Arbiter Ortiguerra's zeal to rule in favor of MACLU and NAFLU should have been tempered by observance of due process. Like Carag, David was "not issued summons, not accorded a conciliatory conference, not ordered to submit a position paper, not accorded a hearing, not given an opportunity to present his evidence, and not notified that the case was submitted for resolution."[11] Unlike Carag, David did not even know that Arbiter Ortiguerra issued a decision against him. David was not even able to file an appeal before the NLRC. David's participation in the present case, albeit belated, questioned his inclusion in the decisions of the tribunals below. David's protestations are

[11] *Supra* note 5 at 47-48.

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not without basis, as can be seen from Sections 2,[12] 3,[13] 4,[14] 5(b),[15] and 11(c)[16] of Rule V of the New Rules of Procedure of the NLRC.[17]

[12] Section 2. *Mandatory Conference/Conciliation.* — Within two (2) days from receipt of an assigned case, the Labor Arbiter shall summon the parties to a conference for the purpose of amicably settling the case upon a fair compromise or determining the real parties in interest, defining and simplifying the issues in the case, entering into admissions and/or stipulations of facts, and threshing out all other preliminary matters. The notice or summons shall specify the date, time and place of the preliminary conference/pretrial and shall be accompanied by a copy of the complaint.

Should the parties arrive at any agreement as to the whole or any part of the dispute, the same shall be reduced to writing and signed by the parties and their respective counsels, if any, before the Labor Arbiter. The settlement shall be approved by the Labor Arbiter after being satisfied that it was voluntarily entered into by the parties and after having explained to them the terms and consequences thereof.

A compromise agreement entered into by the parties not in the presence of the Labor Arbiter before whom the case is pending shall be approved by him if, after confronting the parties, particularly the complainants, he is satisfied that they understand the terms and conditions of the settlement and that it was entered into freely and voluntarily by them and the agreement is not contrary to law, morals, and public policies.

A compromise agreement duly entered into in accordance with this Section shall be final and binding upon the parties and the Order approving it shall have the effect of a judgment rendered by the Labor Arbiter in the final disposition of the case.

The number of conferences shall not exceed three (3) settings and shall be terminated within thirty (30) calendar days from the date of the first conference.

[13] Section 3. *Submission of Position Papers/Memorandum.* — Should the parties fail to agree upon an amicable settlement, either in whole or in part, during the conferences, the Labor Arbiter shall issue an order stating therein the matters taken up and agreed upon during the conferences and directing the parties to simultaneously file their respective verified position papers.

These verified position papers shall cover only those claims and causes of action raised in the complaint excluding those that may have been amicably settled, and shall be accompanied by all supporting documents including the affidavits of their respective witnesses which shall take the place of the latter's direct testimony. The parties shall thereafter not be allowed to allege facts, or present evidence to prove facts, not referred to and any cause or causes of action not included in the complaint or position papers, affidavits and other documents. Unless otherwise requested in writing by both parties, the Labor Arbiter shall direct both parties to submit simultaneously their position papers/memorandum with the supporting

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The records of the case show that NAFLU and MACLU moved to implead Carag and David for the first time only in their position paper dated 3 January 1994. Arbiter Ortiguerra's decision shows that MACLU, NAFLU, and MAC were the only parties summoned to a conference for a possible settlement. Therefore, at the time of the conference, David was not yet a party to the case. The position paper subsequently filed by MAC was filed at a time when David had already resigned from MAC. David's knowledge of a labor case against MAC did not serve the same purpose as a summons. David did not receive any summons and had no knowledge of the decision against him.

The Labor Arbiter and the NLRC did not have jurisdiction over David. This utter lack of jurisdiction voids any liability of David for any monetary award or judgment in favor of MACLU and NAFLU.

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documents and affidavits within fifteen (15) calendar days from the date of the last conference, with proof of having furnished each other with copies thereof.

[14] Section 4. *Determination of Necessity of Hearing.* — Immediately after the submission by the parties of their position papers/memorandum, the Labor Arbiter shall *motu proprio* determine whether there is need for a formal trial or hearing. At this stage, he may, at his discretion and for the purpose of making such determination, ask clarificatory questions to further elicit facts or information, including but not limited to the subpoena of relevant documentary evidence, if any, from any party or witness.

[15] Section 5. *Period to Decide Case.* — x x x

b) If the Labor Arbiter finds no necessity of further hearing after the parties have submitted their position papers and supporting documents, he shall issue an Order to that effect and shall inform the parties, stating the reasons therefor. In any event, he shall render his decision in the case within the same period provided in paragraph (a) hereof.

[16] Section 11. *Non-appearance of Parties at Conference/Hearings.* — x x x x x x x x x

c) In case of two (2) successive unjustified non-appearances by the respondent during his turn to present evidence, despite due notice, the case shall be considered submitted for decision on the basis of the evidence so far presented.

[17] Promulgated on 31 August 1990 and took effect on 9 October 1990.

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Corporate President's Solidary Liability

Assuming *arguendo* that the NLRC and the Labor Arbiter had jurisdiction over David, we rule that it was still improper to hold David liable for MAC's obligations to its employees.

Arbiter Ortiguerra held David liable for MAC's debts pursuant to Article 212(e) of the Labor Code, which reads:

> 'Employer' includes any person acting in the interest of an employer, directly or indirectly. The term shall not include any labor organization or any of its officers or agents except when acting as employer.

However, Article 212(e) of the Labor Code, by itself, does not make a corporate officer personally liable for the debts of the corporation because Section 31 of the Corporation Code is still the governing law on personal liability of officers for the debts of the corporation. Section 31 of the Corporation Code provides:

> *Liability of directors, trustees or officers.* — Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors, or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons. x x x

There was no showing of David willingly and knowingly voting for or assenting to patently unlawful acts of the corporation, or that David was guilty of gross negligence or bad faith.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the Joint Decision dated 29 February 2000 and the Resolution dated 27 March 2001 of the Court of Appeals in CA-G.R. SP Nos. 54404-06.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Leonardo-de Castro, and *Bersamin, JJ.,* concur.