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SECOND DIVISION

[G.R. No. 141926. July 14, 2004]

CONRADO TAN, *petitioner, vs.* **RESTITUTO TIMBAL, JR.,** *respondent.*

SYNOPSIS

In the illegal dismissal case filed by Restituto Timbal, Jr. and Ernesto Valenciano against the Nationwide Steel Corporation (NSC) and Conrado Tan as its general manager, the Labor Arbiter found only the respondent company guilty as charged and ordered the company to reinstate complainants to their former or equivalent positions without loss of seniority rights and to pay them full backwages and other benefits. The said decision became final and executory. Later, upon motion of complainants, the Labor Arbiter issued an order directing the officers/stockholders of the company to pay to the respondent company, through the Office of the Labor Arbiter, their unpaid subscribed capital stock in the total amount of ₱135,514.05 in order that the same may be applied to satisfy the complainants' backwages, failing which an *alias* writ of execution would be issued against their assets. Thereafter, the labor arbiter issued an *alias* writ of execution. Accordingly, Conrado Tan and William Ang filed with the National Labor Relations Commission (NLRC) a petition for the issuance of a writ of preliminary injunction which was granted by the latter. It ruled that a stockholder who has an unpaid subscription is not automatically held liable in case of judgment against the corporation where he has an unpaid subscription. The said decision was affirmed by the Court of Appeals. Thus, Conrado Tan filed the instant petition.

In granting this petition, the Court ruled that the Labor Arbiter did not make any finding in his decision in NLRC Case No. NCR-00-08-03596-89 that the petitioner acted with malice or bad faith in ordering the suspension of the respondent. Neither did he hold the petitioner liable, either jointly or severally with the NSC, for the monetary award in favor of the complainants therein, including the respondent herein. The Court of Appeals had no jurisdiction to delve into and resolve an issue already passed upon

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by the Labor Arbiter with finality. For the Court of Appeals to do so in a petition for *certiorari* from the decision of the NLRC, by granting the petitioner's petition for a writ of injunction, is to do indirectly what it is proscribed from doing directly.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; ONCE A DECISION OR ORDER BECOMES FINAL AND EXECUTORY, IT IS REMOVED FROM THE POWER OR JURISDICTION OF THE COURT WHICH RENDERED IT. — Irrefragably, under the decision of the Labor Arbiter in NLRC Case No. NCR-00-08-03596-89, only the NSC was found liable for the monetary awards in favor of the complainants therein, including the herein respondent. The petitioner, although the general manager of NSC, was not ordered to pay for the monetary award in favor of the complainants, jointly or severally, with the NSC. The decision of the Labor Arbiter had become final and executory; hence, immutable. As we held in *Industrial Management International Development Corporation vs. NLRC*: It is an elementary principle of procedure that the resolution of the court in a given issue as embodied in the dispositive part of a decision or order is the controlling factor as to settlement of rights of the parties. Once a decision or order becomes final and executory, it is removed from the power or jurisdiction of the court which rendered it to further alter or amend it. It thereby becomes immutable and unalterable and any amendment or alteration which substantially affects a final and executory judgment is null and void for lack of jurisdiction, including the entire proceedings held for that purpose. An order of execution which varies the tenor of the judgment or exceeds the terms thereof is a nullity. None of the parties in the case before the Labor Arbiter appealed the Decision dated March 10, 1987; hence the same became final and executory. It was, therefore, removed from the jurisdiction of the Labor Arbiter or the NLRC to further alter or amend it. Thus, the proceedings held for the purpose of amending or altering the dispositive portion of the said decision are null and void for lack of jurisdiction. Also, the *Alias* Writ of Execution is null and void because it varied the tenor of the judgment. x x x Not even the NLRC, the Court of Appeals and this Court has any appellate jurisdiction to alter or reverse the decision of the Labor Arbiter.

2. LABOR AND SOCIAL LEGISLATIONS; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CORPORATE

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DIRECTORS AND OFFICERS ARE SOLIDARILY LIABLE WITH THE CORPORATION FOR THE TERMINATION OF EMPLOYEES COMMITTED WITH MALICE OR BAD FAITH. — The Court of Appeals correctly cited our ruling in *MAM Realty Development Corporation vs. NLRC*, that in labor cases, corporate directors and officers are solidarily liable with the corporation for the termination of employment of corporate employees committed with malice or bad faith. The ruling applies in a case where a corporate officer acts with malice or bad faith in suspending an employee. Whether or not the petitioner acted with malice or bad faith in ordering the suspension of the respondent is a question of fact submitted by the parties to the Labor Arbiter for resolution.

APPEARANCES OF COUNSEL

Rafael S. Declaro, Jr. for petitioner.
Napoleo Banzuela, Jr. for respondent.

D E C I S I O N

CALLEJO, SR., *J.*:

Before us is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals in CA-G.R. SP No. 51404 which affirmed with modification the decision of the National Labor Relations Commission (NLRC) in NLRC Case No. NCR-00-08-03596-89.

The antecedents are as follows:

On July 17, 1989, Restituto Timbal, Jr. and Ernesto Valenciano received a letter from their employer, Nationwide Steel Corporation (NSC), through Conrado Tan, its general manager, informing them that they were found to be among those employees who filed a complaint with the Social Security System (SSS) in which they claimed that NSC was not remitting its employees' SSS premiums. Tan required the two to explain their side on the matter within 24 hours.

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[1] Penned by Associate Justices Conrado M. Vasquez, Jr., with Associate Justices Salome A. Montoya (retired) and Teodoro P. Regino (retired), concurring.

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After submitting their explanation, Timbal, Jr. and Valenciano were instructed by Tan to report the following day for the resolution of the matter. However, when Timbal, Jr. and Valenciano arrived the following day, they were not allowed entry by the security guard. Both were handed a memorandum signed by Tan stating that they were being suspended indefinitely. Timbal, Jr. and Valenciano refused to receive the memorandum and tried to report for work the next day. Again, they were refused entry by the security guard.

Aggrieved, Timbal, Jr. and Valenciano filed, on August 3, 1989, a complaint for illegal dismissal with the NLRC, against NSC, and impleaded Conrado Tan as respondent, in his capacity as general manager of the said corporation.[2] The case was docketed as NLRC-NCR-00-08-03596-89.

The respondents alleged in their position papers that the complainants falsely charged NSC of not paying the SSS premium contributions of its employees, and that both complainants were indefinitely suspended as a result of the criminal case filed by Benny Sy against them for their false charge.

At the conclusion of the proceedings, the Labor Arbiter rendered his decision on August 9, 1990 in favor of the complainants and against the NSC only, the decretal portion of which reads as follows:

> WHEREFORE, finding the respondent company guilty of illegal dismissal as charged, judgment is hereby rendered ordering it to reinstate complainants to their former or equivalent positions without loss of seniority rights and to pay them full backwages and other benefits.
>
> SO ORDERED.[3]

Labor Arbiter Cornelio L. Linsangan found that the respondents failed to substantiate the charge that Timbal, Jr. and Valenciano falsely accused NSC of not paying the SSS premium contributions of its employees and failing to remit the said contributions. He also declared that the evidence on record showed that the legal officer of the SSS[4] cleared the complainants, through his letter, in which he

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[2] *Rollo*, p. 26.

[3] *Rollo*, p. 29.

[4] Atty. Olimpio R. Datu.

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stated that the SSS complaints against the NSC were the result of an investigation conducted by their field representative, and not by any of the employees of the NSC.

The decision became final and executory as no appeal from the decision was filed by any of the parties.

On October 10, 1990, the Labor Arbiter issued a Writ of Execution directing the sheriff to effect the complainants' reinstatement and to collect from the respondent NSC the accrued backwages, and remit the same to the complainants. The sheriff served a notice of garnishment on the Philippine Banking Corporation. However, the Bank did not respond to the notice, and the decision of the labor arbiter remained unsatisfied.[5]

The complainants filed an omnibus motion, praying that they be paid separation pay instead of being reinstated, as part of the monetary award in their favor. They also prayed for the issuance of an *alias* writ of execution enforceable against the respondent NSC and its officers/stockholders. Appended to their motion was a copy of the Articles of Incorporation of the NSC showing that Conrado Tan was one of its incorporators and member of the Board of Directors. They averred that all of the incorporators had unpaid subscribed capital stock, and that they had the right to collect their monetary claim from Conrado Tan's unpaid subscribed capital stock under the trust fund doctrine as provided in the Corporation Code.

The Labor Arbiter granted the motion and issued his Order dated January 16, 1991, ordering Conrado D. Tan, Joseph O. Tiu, Rudy D. Ang, Pablo C. King and William T. Ang to pay to the respondent corporation, through the Office of the Labor Arbiter, their unpaid subscribed capital stock in the total amount of ₱135,514.05 in order that the same may be applied to satisfy the complainants' backwages, failing which, an *alias* writ of execution would be issued by his Office against their assets.[6] The Arbiter, thereafter, issued an *alias* writ of execution.

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[5] *Rollo*, p. 31.

[6] *Id.* at 33.

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On March 7, 1991, the respondent NSC filed an Urgent Motion to Set Aside the *Alias* Writ of Execution filed by the complainants. However, the Labor Arbiter denied the said motion in his Order dated May 2, 1991.[7]

Conrado Tan and William Ang filed with the NLRC a petition for the issuance of a writ of preliminary injunction and a temporary restraining order to enjoin the implementation of the *alias* writ of execution issued by the Labor Arbiter. They alleged that they were never furnished copies of the omnibus motion filed by Timbal, Jr. and Valenciano; that they were not notified of any hearing on the matter; and, that the Labor Arbiter acted in excess or lack of jurisdiction when he issued an *alias* writ of execution ordering the sheriff to collect from the respondent NSC their unpaid subscriptions.

On June 18, 1997, the NLRC rendered a Decision granting the motion of Tan and Ang and setting aside the assailed order and *alias* writ of execution of the Labor Arbiter. The NLRC ruled as follows:

> It may be true that the petitioners were/are stockholders of Nation Wide (*sic*) Steel Corp. and that accordingly, they have unpaid subscription to the letter but the records likewise, readily show that petitioners were not impleaded as party respondents in NLRC Case No. 08-3596-80 (*sic*). A stockholder who has an unpaid subscription is not automatically held liable in case of judgment against the corporation where he has an unpaid subscription. A separate complaint for the payment of the unpaid subscription should be filed so that unpaid subscriptions of stockholders be made answerable and liable to the obligations and debts of the corporation.
>
> This Commission has not acquired jurisdiction over the stockholders of the respondent corporation.[8]

The NLRC denied the complainants' motion for reconsideration of the said decision.

Aggrieved, Restituto Timbal, Jr., filed his petition for *certiorari* under Rule 65, with this Court for the nullification of the decision of the NLRC, asserting that the NLRC committed a grave abuse

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[7] *Id.* at 34.

[8] *Id.* at 40-41.

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of its discretion in setting aside the order and *alias* writ of execution issued by the Labor Arbiter.[9]

On January 20, 1999, this Court issued a Resolution referring the case to the Court of Appeals conformably to its ruling in *St. Martin Funeral Homes vs. NLRC*.[10]

After due proceedings, the Court of Appeals rendered a Decision on September 24, 1999, affirming the decision of the NLRC as far as William Ang was concerned, but granting the petition and affirming the Order and *Alias* Writ of Execution of the Labor Arbiter against Conrado Tan. The decretal portion of the decision reads:

> IN VIEW OF ALL THE FOREGOING, the assailed NLRC decision dated June 18, 1997 is AFFIRMED insofar as Joseph O. Tiu, Rudy D. Ang, Pablo C. King and William T. Ang are concerned. However, as regard (*sic*) Conrado D. Tan, the Orders of Labor Arbiter Cornelio L. Linsangan dated January 16 and May 2, 1991, are REINSTATED, SUSTAINED and UPHELD. No pronouncement as to costs.
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> SO ORDERED.[11]

After the CA denied petitioner Tan's motion for reconsideration, the latter filed the petition at bar contending that the Court of Appeals erred in finding him, jointly and severally, liable with the NSC for the Labor Arbiter's monetary award in favor of the respondent on its finding that he acted in bad faith and with malice in suspending the respondent.

The sole issue in this case is whether the petitioner is liable, either jointly or severally with the NSC, for the monetary award in favor of the respondent herein in NLRC Case No. NCR-00-08-03596-89.

The petitioner avers that under his decision, the Labor Arbiter found the NSC solely liable for the monetary award issued in favor of the respondent. Hence, the *alias* writ of execution issued by the Labor Arbiter should be directed only against the NSC and not against him. As such, his property, real and personal, should not be burdened

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[9] CA *Rollo*, p. 3.

[10] G.R. No. 130866, September 16, 1998.

[11] *Rollo*, p. 61.

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by the said award. For his part, the respondent contends that the Court of Appeals did not err in holding the petitioner, jointly and severally, liable with NSC for the monetary award in his favor on its finding that the petitioner acted in bad faith and with malice in suspending him.

The petition is meritorious.

Irrefragably, under the decision of the Labor Arbiter in NLRC Case No. NCR-00-08-03596-89, only the NSC was found liable for the monetary awards in favor of the complainants therein, including the herein respondent. The petitioner, although the general manager of NSC, was not ordered to pay for the monetary award in favor of the complainants, jointly or severally, with the NSC. The decision of the Labor Arbiter had become final and executory; hence, immutable. As we held in *Industrial Management International Development Corporation vs. NLRC*:[12]

> It is an elementary principle of procedure that the resolution of the court in a given issue as embodied in the dispositive part of a decision or order is the controlling factor as to settlement of rights of the parties. Once a decision or order becomes final and executory, it is removed from the power or jurisdiction of the court which rendered it to further alter or amend it. It thereby becomes immutable and unalterable and any amendment or alteration which substantially affects a final and executory judgment is null and void for lack of jurisdiction, including the entire proceedings held for that purpose. An order of execution which varies the tenor of the judgment or exceeds the terms thereof is a nullity.

None of the parties in the case before the Labor Arbiter appealed the Decision dated March 10, 1987; hence the same became final and executory. It was, therefore, removed from the jurisdiction of the Labor Arbiter or the NLRC to further alter or amend it. Thus, the proceedings held for the purpose of amending or altering the dispositive portion of the said decision are null and void for lack of jurisdiction. Also, the *Alias* Writ of Execution is null and void because it varied the tenor of the judgment in that it sought to enforce the final judgment against "Antonio Gonzales/Industrial Management Development Corp. (INIMACO) and/or Filipinas Carbon and Mining Corp. and Gerardo Sicat," which makes the liability solidary.[13]

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[12] 331 SCRA 640 (2000).

[13] *Id.* at 647-648.

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Not even the NLRC, the Court of Appeals and this Court has any appellate jurisdiction to alter or reverse the decision of the Labor Arbiter.

The Court of Appeals correctly cited our ruling in *MAM Realty Development Corporation vs. NLRC,*[14] that in labor cases, corporate directors and officers are solidarily liable with the corporation for the termination of employment of corporate employees committed with malice or bad faith. The ruling applies in a case where a corporate officer acts with malice or bad faith in suspending an employee. Whether or not the petitioner acted with malice or bad faith in ordering the suspension of the respondent is a question of fact submitted by the parties to the Labor Arbiter for resolution.

In the instant case, the Labor Arbiter did not make any finding in his decision in NLRC Case No. NCR-00-08-03596-89 that the petitioner acted with malice or bad faith in ordering the suspension of the respondent. Neither did he hold the petitioner liable, either jointly or severally with the NSC, for the monetary award in favor of the complainants therein including the respondent herein. The Court of Appeals had no jurisdiction to delve into and resolve an issue already passed upon by the Labor Arbiter with finality. For the Court of Appeals to do so in a petition for *certiorari* from the decision of the NLRC, by granting the petitioner's petition for a writ of injunction, is to do indirectly what it is proscribed from doing directly.

Far from committing a grave abuse of its discretion amounting to excess or lack of jurisdiction, the NLRC acted in accordance with law and current jurisprudence.

IN LIGHT OF ALL THE FOREGOING, the petition is *GRANTED*. The decision of the Court of Appeals in CA-G.R. SP No. 51404 is *REVERSED* and *SET ASIDE*. The assailed decision of the NLRC is *AFFIRMED*. No costs.

SO ORDERED.

Puno (Chairman), Quisumbing, Austria-Martinez, and *Tinga, JJ.*, concur.

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[14] 244 SCRA 797 (1995).