Supreme Court E-Library

SECOND DIVISION

[G.R. No. 174044. November 27, 2009]

GLORIA V. GOMEZ, *petitioner, vs.* **PNOC DEVELOPMENT AND MANAGEMENT CORPORATION (PDMC) — (formerly known as FILOIL DEVELOPMENT AND MANAGEMENT CORPORATION [FDMC]),** *respondent.*

SYLLABUS

1. LABOR LAW AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYEES; ORDINARY EMPLOYEES DIFFERENTIATED FROM CORPORATE OFFICERS.— Ordinary company employees are generally employed not by action of the directors and stockholders but by that of the managing officer of the corporation who also determines the compensation to be paid such employees. Corporate officers, on the other hand, are elected or appointed by the directors or stockholders, and are those who are given that character either by the Corporation Code or by the corporation's by-laws.

2. ID.; ID.; EMPLOYER-EMPLOYEE RELATIONSHIP CIRCUMSTANCES ESTABLISHING EXISTENCE OF A REGULAR EMPLOYER- EMPLOYEE RELATIONSHIP BETWEEN PETITIONER AND THE CORPORATION IN CASE AT BAR.— The relationship of a person to a corporation, whether as officer or agent or employee, is not determined by the nature of the services he performs but by the incidents of his relationship with the corporation as they actually exist. Here, respondent PDMC hired petitioner Gomez as an ordinary employee without board approval as was proper for a corporate officer. When the company got her the first time, it agreed to have her retain the managerial rank that she held with Petron. Her appointment paper said that she would be entitled to all the rights, privileges, and benefits that regular PDMC employees enjoyed. This is in sharp contrast to what the former PDMC president's appointment paper stated: he was elected to the position and his compensation depended on the will of the board of directors. What is more, respondent PDMC enrolled petitioner

Supreme Court E-Library

Gomez with the Social Security System, the Medicare, and the Pag-ibig Fund. It even issued certifications dated October 10, 2008, stating that Gomez was a permanent employee and that the company had remitted combined contributions during her tenure. The company also made her a member of the PDMC's savings and provident plan and its retirement plan. It grouped her with the managers covered by the company's group hospitalization insurance. Likewise, she underwent regular employee performance appraisals, purchased stocks through the employee stock option plan, and was entitled to vacation and emergency leaves. PDMC even withheld taxes on her salary and declared her as an employee in the official Bureau of Internal Revenue forms. These are all *indicia* of an employer-employee relationship which respondent PDMC failed to refute.

3. ID.; ID.; ID.; POSSIBLE FOR ONE TO HAVE A DUAL ROLE OF OFFICER AND EMPLOYEE.— A corporation is not prohibited from hiring a corporate officer to perform services under circumstances which will make him an employee. Indeed, it is possible for one to have a dual role of officer and employee. In *Elleccion Vda. De Lecciones v. National Labor Relations Commission*, the Court upheld NLRC jurisdiction over a complaint filed by one who served both as corporate secretary and administrator, finding that the money claims were made as an employee and not as a corporate officer.

4. CIVIL LAW; CIVIL CODE; ESTOPPEL; APPLIES TO CORPORATIONS; CASE AT BAR.— Estoppel, an equitable principle rooted on natural justice, prevents a person from rejecting his previous acts and representations to the prejudice of others who have relied on them. This principle of law applies to corporations as well. The PDMC in this case is estopped from claiming that despite all the appearances of regular employment that it weaved around petitioner Gomez's position it must have technically hired her only as a corporate officer. The board and its officers made her stay on and work with the company for years under the belief that she held a regular managerial position.

APPEARANCES OF COUNSEL

Puno and Associates Law Office for petitioner.
The Government Corporate Counsel for respondent.

Supreme Court E-Library

D E C I S I O N

ABAD, *J.*:

This case is about what distinguishes a regular company manager performing important executive tasks from a corporate officer whose election and functions are governed by the company's by-laws.

The Facts and the Case

Petitioner Gloria V. Gomez used to work as Manager of the Legal Department of Petron Corporation, then a government-owned corporation. With Petron's privatization, she availed of the company's early retirement program and left that organization on April 30, 1994. On the following day, May 1, 1994, however, Filoil Refinery Corporation (Filoil), also a government-owned corporation, appointed her its corporate secretary and legal counsel,[1] with the same managerial rank, compensation, and benefits that she used to enjoy at Petron.

But Filoil was later on also identified for privatization. To facilitate its conversion, the Filoil board of directors created a five-member task force headed by petitioner Gomez who had been designated administrator.[2] While documenting Filoil's assets, she found several properties which were not in the books of the corporation. Consequently, she advised the board to suspend the privatization until all assets have been accounted for.

With the privatization temporarily shelved, Filoil underwent reorganization and was renamed Filoil Development Management Corporation (FDMC), which later became the respondent PNOC Development Management Corporation (PDMC). When this happened, Gomez's task force was abolished and its members, including Gomez, were given termination notices on March 5, 1996.[3]

---

[1] *Rollo*, p. 206.

[2] *Id.* at 346-347.

[3] *Id.* at 221.

Supreme Court E-Library

The matter was then reported to the Department of Labor and Employment on March 7, 1996.[4]

Meantime, petitioner Gomez continued to serve as corporate secretary of respondent PDMC. On September 23, 1996 its president re-hired her as administrator and legal counsel of the company.[5] In accordance with company guidelines, it credited her the years she served with the Filoil task force. On May 24, 1998, the next president of PDMC extended her term as administrator beyond her retirement age,[6] pursuant to his authority under the PDMC Approvals Manual.[7] She was supposed to serve beyond retirement from August 11, 1998 to August 11, 2004. Meantime, a new board of directors for PDMC took over the company.

On March 29, 1999 the new board of directors of respondent PDMC removed petitioner Gomez as corporate secretary. Further, at the board's meeting on October 21, 1999 the board questioned her continued employment as administrator. In answer, she presented the former president's May 24, 1998 letter that extended her term. Dissatisfied with this, the board sought the advice of its legal department, which expressed the view that Gomez's term extension was an *ultra vires* act of the former president. It reasoned that, since her position was functionally that of a vice-president or general manager, her term could be extended under the company's by-laws only with the approval of the board. The legal department held that her "*de facto*" tenure could be legally put to an end.[8]

Sought for comment, the Office of the Government Corporate Counsel (OGCC) held the view that while respondent PDMC's

---

[4] *Id.* at 222.

[5] *Id.* at 223.

[6] *Id.* at 224.

[7] *Id.* at 225. Authority Item 17 (f), Subject 1, Section 4 of the Approvals Manual states that the president is authorized to waive company policy on extension of services of employees beyond normal retirement age.

[8] *Id.* at 515-517.

Supreme Court E-Library

board did not approve the creation of the position of administrator that Gomez held, such action should be deemed ratified since the board had been aware of it since 1994. But the OGCC ventured that the extension of her term beyond retirement age should have been made with the board's approval.[9]

Petitioner Gomez for her part conceded that as corporate secretary, she served only as a corporate officer. But, when they named her administrator, she became a regular managerial employee. Consequently, the respondent PDMC's board did not have to approve either her appointment as such or the extension of her term in 1998.

Pending resolution of the issue, the respondent PDMC's board withheld petitioner Gomez's wages from November 16 to 30, 1999, prompting her to file a complaint for non-payment of wages, damages, and attorney's fees with the Labor Arbiter on December 8, 1999.[10] She later amended her complaint to include other money claims.[11]

In a special meeting held on December 29, 1999 the respondent PDMC's board resolved to terminate petitioner Gomez's services retroactive on August 11, 1998, her retirement date.[12] On January 5, 2000 the board informed petitioner of its decision.[13] Thus, she further amended her complaint to include illegal dismissal.[14]

Respondent PDMC moved to have petitioner Gomez's complaint dismissed on ground of lack of jurisdiction. The Labor Arbiter granted the motion[15] upon a finding that Gomez was a corporate officer and that her case involved an intra-corporate dispute that fell under the jurisdiction of the Securities and

---

[9] *Id.* at 685-690.

[10] *Id.* at 226. Docketed as NLRC NCR (SOUTH) 30-12-00856-99.

[11] *Id.* at 227.

[12] *Id.* at 526-527.

[13] *Id.* at 523-525.

[14] *Id.* at 331.

[15] *Id.* at 332-342. Penned by Labor Arbiter Jose G. De Vera.

Supreme Court E-Library

Exchange Commission (SEC) pursuant to Presidential Decree (P.D.) 902-A.[16] On motion for reconsideration, the National Labor Relations Commission (NLRC) Third Division set aside the Labor Arbiter's order and remanded the case to the arbitration branch for further proceedings.[17] The Third Division held that Gomez was a regular employee, not a corporate officer; hence, her complaint came under the jurisdiction of the Labor Arbiter.

Upon elevation of the matter to the Court of Appeals (CA) in CA-G.R. SP 88819, however, the latter rendered a decision on May 19, 2006,[18] reversing the NLRC decision. The CA held that since Gomez's appointment as administrator required the approval of the board of directors, she was clearly a corporate officer. Thus, her complaint is within the jurisdiction of the Regional Trial Court (RTC) under P.D. 902-A, as amended by Republic Act (R.A.) 8799.[19] With the denial of her motion for reconsideration,[20] Gomez filed this petition for review on *certiorari* under Rule 45.

---

[16] P.D. 902-A states that the following cases fall under the exclusive jurisdiction of the SEC:

x x x x x x x x x

c) Controversies in the election or appointment of directors, trustees, officers, or managers of such corporations, partnerships or associations;

x x x x x x x x x

[17] *Rollo*, pp. 112-119. Penned by Commissioner Ireneo B. Bernardo and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo.

[18] *Id.* at 70-75. Penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by Associate Justices Marina L. Buzon and Aurora Santiago-Lagman.

[19] Section 5.2 of R.A. 8799 (the Securities Regulation Code, July 19, 2000) provides:

The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: Provided, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over the cases x x x.

[20] *Rollo*, p. 111.

Supreme Court E-Library

The Issue Presented

The key issue in this case is whether or not petitioner Gomez was, in her capacity as administrator of respondent PDMC, an ordinary employee whose complaint for illegal dismissal and non-payment of wages and benefits is within the jurisdiction of the NLRC.

The Court's Ruling

Ordinary company employees are generally employed not by action of the directors and stockholders but by that of the managing officer of the corporation who also determines the compensation to be paid such employees.[21] Corporate officers, on the other hand, are elected or appointed[22] by the directors or stockholders, and are those who are given that character either by the Corporation Code or by the corporation's by-laws.[23]

Here, it was the PDMC president who appointed petitioner Gomez administrator, not its board of directors or the stockholders. The president alone also determined her compensation package. Moreover, the administrator was not among the corporate officers mentioned in the PDMC by-laws. The corporate officers proper were the chairman, president, executive vice-president, vice-president, general manager, treasurer, and secretary.[24]

Respondent PDMC claims, however, that since its board had under its by-laws the power to create additional corporate offices, it may be deemed to have simply ratified its president's creation of the corporate position of administrator.[25] But creating

---

[21] *Easycall Communications Phils., Inc. v. King*, G.R. No. 145901, December 15, 2005, 478 SCRA 102, 110.

[22] See *Nacpil v. International Broadcasting Corporation*, 429 Phil. 410, 418 (2002).

[23] *Supra* note 21, at 109.

[24] *Rollo*, p. 418.

[25] *Id.* at 419. Under Article VI, Section 1(b) of the by-laws, the board may appoint such other officers as it deems necessary.

Supreme Court E-Library

an additional corporate office was definitely not respondent PDMC's intent based on its several actions concerning the position of administrator.

Respondent PDMC never told Gomez that she was a corporate officer until the tail-end of her service after the board found legal justification for getting rid of her by consulting its legal department and the OGCC which supplied an answer that the board obviously wanted. Indeed, the PDMC president first hired her as administrator in May 1994 and then as "administrator/legal counsel" in September 1996 without a board approval. The president even extended her term in May 1998 also without such approval. The company's mindset from the beginning, therefore, was that she was not a corporate officer.

Respondent PDMC of course claims that as administrator petitioner Gomez performed functions that were similar to those of its vice-president or its general manager, corporate positions that were mentioned in the company's by-laws. It points out that Gomez was third in the line of command, next only to the chairman and president,[26] and had been empowered to make major decisions and manage the affairs of the company.

But the relationship of a person to a corporation, whether as officer or agent or employee, is not determined by the nature of the services he performs but by the incidents of his relationship with the corporation as they actually exist.[27] Here, respondent PDMC hired petitioner Gomez as an ordinary employee without board approval as was proper for a corporate officer. When the company got her the first time, it agreed to have her retain the managerial rank that she held with Petron. Her appointment paper said that she would be entitled to all the rights, privileges, and benefits that regular PDMC employees enjoyed.[28] This is in sharp contrast to what the former PDMC president's appointment paper

---

[26] CA *rollo*, p. 224.

[27] *Supra* note 22, at 418-419.

[28] *Rollo*, p. 223.

Supreme Court E-Library

stated: he was elected to the position and his compensation depended on the will of the board of directors.[29]

What is more, respondent PDMC enrolled petitioner Gomez with the Social Security System, the Medicare, and the Pag-Ibig Fund. It even issued certifications dated October 10, 2008,[30] stating that Gomez was a permanent employee and that the company had remitted combined contributions during her tenure. The company also made her a member of the PDMC's savings and provident plan[31] and its retirement plan.[32] It grouped her with the managers covered by the company's group hospitalization insurance.[33] Likewise, she underwent regular employee performance appraisals,[34] purchased stocks through the employee stock option plan,[35] and was entitled to vacation and emergency leaves.[36] PDMC even withheld taxes on her salary and declared her as an employee in the official Bureau of Internal Revenue forms.[37] These are all *indicia* of an employer-employee relationship which respondent PDMC failed to refute.

Estoppel, an equitable principle rooted on natural justice, prevents a person from rejecting his previous acts and representations to the prejudice of others who have relied on them.[38] This principle of law applies to corporations as well. The PDMC in this case is estopped from claiming that despite all the appearances of regular employment that it weaved around

---

[29] *Id.* at 395.

[30] *Id.* at 800-804.

[31] *Id.* at 663-666.

[32] *Id.* at 652.

[33] *Id.* at 661-662.

[34] *Id.* at 650-651.

[35] *Id.* at 671-672.

[36] *Id.* at 669-670.

[37] *Id.* at 658-660.

[38] *Philippine National Bank v. Palma*, G.R. No. 157279, August 9, 2005, 466 SCRA 307, 324.

Supreme Court E-Library

petitioner Gomez's position it must have technically hired her only as a corporate officer. The board and its officers made her stay on and work with the company for years under the belief that she held a regular managerial position.

That petitioner Gomez served concurrently as corporate secretary for a time is immaterial. A corporation is not prohibited from hiring a corporate officer to perform services under circumstances which will make him an employee.[39] Indeed, it is possible for one to have a dual role of officer and employee. In *Elleccion Vda. De Lecciones v. National Labor Relations Commission*,[40] the Court upheld NLRC jurisdiction over a complaint filed by one who served both as corporate secretary and administrator, finding that the money claims were made as an employee and not as a corporate officer.

WHEREFORE, the Court *GRANTS* the petition, *REVERSES* and *SETS ASIDE* the decision dated May 19, 2006 and the resolution dated August 15, 2006 of the Court of Appeals in CA-G.R. SP 88819, and *REINSTATES* the resolution dated November 22, 2002 of the National Labor Relations Commission's Third Division in NLRC NCR 30-12-00856-99. Let the records of this case be *REMANDED* to the arbitration branch of origin for the conduct of further proceedings.

SO ORDERED.

Carpio, Leonardo-de Castro, Brion, and *Del Castillo, JJ.,* concur.

---

[39] *Rural Bank of Coron (Palawan), Inc. v. Cortes*, G.R. No. 164888, December 6, 2006, 510 SCRA 443, 450; citing *Mainland Construction Co., Inc. v. Movilla*, G.R. No. 118088, November 23, 1995, 250 SCRA 290, 296.

[40] G.R. No. 184735, September 17, 2009.