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THIRD DIVISION

[G.R. No. 211312. December 5, 2016]

PEOPLE'S SECURITY, INC. and NESTOR RACHO, *petitioners, vs.* **JULIUS S. FLORES and ESTEBAN S. TAPIRU,** *respondents.*

SYLLABUS

1. POLITICAL LAW; SOCIAL JUSTICE AND HUMAN RIGHTS; LABOR; SECURITY OF TENURE; AN EMPLOYEE MAY ONLY BE TERMINATED FOR JUST OR AUTHORIZED CAUSES THAT MUST COMPLY WITH THE DUE PROCESS REQUIREMENTS MANDATED BY LAW.— As a rule, employment cannot be terminated by an employer without any just or authorized cause. No less than the 1987 Constitution in Section 3, Article 13 guarantees security of tenure for workers and because of this, an employee may only be terminated for just or authorized causes that must comply with the due process requirements mandated by law. Hence, employers are barred from arbitrarily removing their workers whenever and however they want. The law sets the valid grounds for termination as well as the proper procedure to take when terminating the services of an employee.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; IN TERMINATION CASES, THE EMPLOYER HAS THE BURDEN OF PROVING THAT THE DISMISSAL OF THE EMPLOYEE WAS VALIDLY MADE.— [I]n termination cases, the burden of proving that the dismissal of the employees was for a valid and authorized cause rests on the employer. It is incumbent upon the employer to show by substantial evidence that the dismissal of the employee was validly made and failure to discharge that duty would mean that the dismissal is not justified and therefore illegal. Accordingly, the burden of proof to show that the respondents' dismissal from employment was for a just cause falls on PSI as employer. PSI cannot discharge this burden by merely alleging that it did not dismiss the respondents. x x x Considering that there is no showing of a clear, valid and legal

Supreme Court E-Library

cause for the termination of employment, the law considers it a case of illegal dismissal.

3. **ID.; ID.; ID.; JUST CAUSES; ABANDONMENT; REQUISITES.—** [T]he petitioners miserably failed to prove that the respondents abandoned their work. Abandonment is a matter of intention and cannot lightly be inferred or legally presumed from certain equivocal acts. For abandonment to exist, two requisites must concur: *first*, the employee must have failed to report for work or must have been absent without valid or justifiable reason; and *second*, there must have been a clear intention on the part of the employee to sever the employer-employee relationship as manifested by some overt acts. The Court is not convinced that the respondents failed to report for work or have been absent without valid or justifiable cause.

4. **ID.; ID.; ID.; TWO-NOTICE REQUIREMENT; FAILURE TO COMPLY THEREWITH RENDERS THE DISMISSAL ILLEGAL.—** PSI did not afford the respondents due process. The validity of the dismissal of an employee hinges not only on the fact that the dismissal was for a just or authorized cause, but also on the very manner of the dismissal itself. It is elementary that the termination of an employee must be effected in accordance with law. It is required that the employer furnish the employee with two written notices: (1) a written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side; and (2) a written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination. Beyond dispute is the fact that no written notice was sent by PSI informing the respondents that they had been terminated due to abandonment of work. This failure on the part of PSI to comply with the twin-notice requirement, indeed, placed the legality of the dismissal in question, at the very least, doubtful, rendering the dismissal illegal.

5. **CIVIL LAW; CIVIL CODE; PRESCRIPTION OF ACTIONS; ACTIONS BASED UPON AN INJURY TO THE RIGHTS OF THE PLAINTIFF MUST BE BROUGHT WITHIN FOUR YEARS.—** In illegal dismissal cases, the employee concerned is given a period of four years from the time of his

Supreme Court E-Library

illegal dismissal within which to institute the complaint. This is based on Article 1146 of the New Civil Code which states that actions based upon an injury to the rights of the plaintiff must be brought within four years. The four-year prescriptive period shall commence to run only upon the accrual of a cause of action of the worker. The respondents were dismissed on January 13, 2003. They filed their respective complaints for illegal dismissal in September 2005. Clearly, then, the complaints for illegal dismissal were filed within the prescriptive period.

6. MERCANTILE LAW; CORPORATION LAW; CORPORATION CODE; DOCTRINE OF PIERCING THE CORPORATE VEIL; APPLIES ONLY WHEN THE CORPORATE FICTION IS USED TO DEFEAT PUBLIC CONVENIENCE, JUSTIFYING WRONG, PROTECT FRAUD, OR DEFEND CRIME.— A corporation has a personality separate and distinct from its directors, officers, or owners. Nevertheless, in exceptional cases, courts find it proper to breach this corporate personality in order to make directors, officers, or owners solidarily liable for the companies' acts. Thus, under Section 31 of the Corporation Code of the Philippines, "[d]irectors 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." The doctrine of piercing the corporate veil applies only when the corporate fiction is used to defeat public convenience, justify wrong, protect fraud, or defend crime. In the absence of malice, bad faith, or a specific provision of law making a corporate officer liable, such corporate officer cannot be made personally liable for corporate liabilities.

APPEARANCES OF COUNSEL

Rodolfo R. Ranion for respondents.

Supreme Court E-Library

RESOLUTION

REYES, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] dated April 25, 2013 and the Resolution[3] dated February 7, 2014 issued by the Court of Appeals (CA) in CA-G.R. SP No. 115464.

Facts

Julius S. Flores (Flores) and Esteban S. Tapiru (Tapiru) (collectively, the respondents) were security guards previously employed by People's Security, Inc. (PSI). The respondents were assigned at the various facilities of Philippine Long Distance Telephone Company (PLDT) pursuant to a security services agreement between PSI and PLDT. On October 1, 2001, however, PSI's security services agreement with PLDT was terminated and, accordingly, PSI recalled its security guards assigned to PLDT including the respondents.[4]

On October 8, 2001, the respondents, together with several other security guards employed by PSI, filed a complaint for illegal dismissal with the National Labor Relations Commission (NLRC) against PLDT and PSI, claiming that they are PLDT employees. The case was raffled to Labor Arbiter (LA) Felipe Pati (LA Pati) for resolution.[5]

Thereafter, PSI assigned the respondents to the facilities of its other clients such as the warehouse of a certain Marivic

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[1] *Rollo*, pp. 25-65.

[2] Penned by Associate Justice Michael P. Elbinias, with Associate Justices Isaias P. Dicdican and Nina G. Antonia-Valenzuela concurring; *id.* at 70-81.

[3] *Id.* at 83-84.

[4] *Id.* at 28.

[5] *Id.*

Supreme Court E-Library

Yulo in Sta. Ana, Manila and Trinity College's Elementary Department in Quezon City.[6]

On October 22, 2002, LA Pati rendered a Decision declaring that the respondents and the other complainants therein were employees of PLDT and are, thus, entitled to be reinstated to their former assignments. Consequently, however, LA Pati's decision was set aside by the NLRC, which ruled that the complainants therein are not employees of PLDT. The NLRC's disposition was affirmed by the CA and, ultimately, by this Court.[7]

Meanwhile, on January 13, 2003, the respondents were relieved from their respective assignments pursuant to Special Order No. 20031010[8] dated January 10, 2003 issued by Col. Leonardo L. Aquino, the Operations Manager of PSI.[9] Accordingly, Flores and Tapiru, on September 6 and 27, 2005, respectively, filed with the Regional Arbitration Branch of the NLRC in Quezon City a complaint for illegal dismissal and non-payment of service incentive leave pay and cash bond, with prayer for separation pay, against PSI and its President Nestor Racho (Racho) (collectively, the petitioners).[10]

On January 16, 2006, the petitioners filed a Motion to Dismiss[11] the complaints for illegal dismissal on the ground of forum shopping. In their comment,[12] the respondents denied that they are guilty of forum shopping. They pointed out that the illegal dismissal complaint that they previously filed against PLDT and PSI is a separate case since it involves their removal from their respective assignments on account of the termination of the security services agreement between PSI and PLDT.[13]

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[6] *Id.* at 71.

[7] *Id.* at 28-29.

[8] *Id.* at 154-155.

[9] *Id.* at 71.

[10] *Id.* at 85-86.

[11] *Id.* at 87-91.

[12] *Id.* at 120-124.

[13] *Id.* at 121.

Supreme Court E-Library

On May 21, 2006, the LA issued an Order,[14] dismissing the respondents' complaints on the ground of forum shopping. However, upon reconsideration, it was subsequently reversed by the NLRC in. its Decision dated March 26, 2008. The case was then remanded to the LA for further proceedings.[15]

On October 22, 2008, the LA directed the parties to submit their respective position papers within an unextendible period of 10 days from receipt of the Order.[16]

In their position paper,[17] the respondents claimed that, after they were relieved from their assignment in the warehouse in Sta. Ana, Manila on January 13, 2003, they repeatedly reported to PSI's office for possible assignment, but the latter refused to give them any assignment.[18]

On the other hand, the petitioners, in their position paper,[19] claimed that the respondents were merely relieved from their assignment in the warehouse in Sta. Ana, Manila and that the same was on account of their performance evaluation, which indicated that they were ill-suited for the said assignment. They likewise averred that while the respondents vacated their post pursuant to Special Order No. 20031010, the latter refused to acknowledge receipt of the same. The petitioners claimed that the respondents, after vacating their posts in the warehouse in Sta. Ana, Manila, no longer reported to PSI's premises for their next assignment.[20]

The petitioners pointed out that the respondents' relief from their last assignment was an exercise of PSI's management prerogative to transfer its employees in accordance with the

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[14] Rendered by LA Elias H. Salinas; *id.* at 126-129.

[15] *Id.* at 31.

[16] *Id.* at 130-131.

[17] *Id.* at 158-160.

[18] *Id.* at 158.

[19] *Id.* at 132-153.

[20] *Id.* at 134.

requirements of its business.[21] They also claimed that the respondents, in failing to report to PSI's premises after being relieved from their previous assignment, had abandoned and effectively resigned from their employment.[22]

On January 30, 2009, the LA rendered a Decision[23] finding that the respondents were illegally dismissed from their employment and, thus, directing the petitioners jointly and severally liable to pay the former separation pay and backwages. The LA dismissed the petitioners' defense of abandonment, ruling that the records do not bear any credible evidence that would warrant such a finding.[24]

On appeal, the NLRC, in its Decision[25] dated April 14, 2010, reversed the LA Decision dated January 30, 2009. The NLRC, in finding for the petitioners, opined that:

> Undisputed here in this case is the fact that when [the respondents] were relieved from their posts on January 13, 2003, they sought employment from other security agencies. Complainant Flores contracted regular employment with Multimodal Security and Investigation Agency, on May 2003, while complainant Tapiru also contracted employment with Pacific World Security and Investigation Agency on July 2003, as indicated by their SSS records.
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> All of the foregoing evidences [sic] considered, coupled by their overt acts of filing an illegal dismissal case against [the petitioners] only after they lost their case against PLDT in the Supreme Court, finding work with another security agency when the six months floating periods have not yet lapsed, and asking only for separation pay after three years from their alleged dismissal from employment, are proofs that [the respondents] herein were the ones who severed the employer-employee relationship with [PSI].[26]

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[21] *Id.* at 139.

[22] *Id.* at 141-142.

[23] *Id.* at 188-198.

[24] *Id.* at 196.

[25] *Id.* at 270-281.

[26] *Id.* at 279-280.

Supreme Court E-Library

The respondents sought a reconsideration[27] of the Decision dated April 14, 2010, but it was denied by the NLRC in its Resolution[28] dated June 15, 2010. Aggrieved, the respondents filed a petition for *certiorari*[29] with the CA, maintaining that they were illegally dismissed from their employment and that the petitioners failed to substantiate their defense of abandonment.

On April 25, 2013, the CA rendered the herein assailed Decision,[30] reversing the NLRC's Decision dated April 14, 2010 and Resolution dated June 15, 2010. In finding that the respondents were illegally dismissed, the CA found that the petitioners failed to prove that the respondents had abandoned their work and that their defense of abandonment was negated by the filing of a case for illegal dismissal.[31] The CA likewise opined that the petitioners failed to prove that it sent the respondents a written notice asking them to explain their supposed failure to report to work as required under Book V, Rule XIV, Sections 2 and 5 of the Implementing Rules of the Labor Code.[32]

The petitioners sought reconsideration[33] of the CA's Decision dated April 25, 2013, but it was denied by the CA in its Resolution[34] dated February 7, 2014.

In this petition for review on *certiorari*, the petitioners claim that the CA committed reversible error in ruling that the respondents were illegally dismissed from their employment. They maintain that PSI never terminated the respondents' employment. On the contrary, they claim that the respondents freely and voluntarily resigned from their employment.[35] They

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[27] *Id.* at 282-286.

[28] *Id.* at 298-299.

[29] *Id.* at 300-310.

[30] *Id.* at 70-81.

[31] *Id.* at 75-76.

[32] *Id.* at 77.

[33] *Id.* at 339-359.

[34] *Id.* at 83-84.

[35] *Id.* at 44-45.

also claim that the CA erred when it ruled that they should be held jointly and solidarily liable to pay the respondents separation pay and backwages considering that there was absolutely no allegation or proof of participation, bad faith, or malice on the part of Racho in dealing with the respondents.[36]

Issues

Essentially, the issues for the Court's resolution are: *first*, whether the respondents were illegally dismissed; and *second*, whether Racho is jointly and solidarily liable with PSI for the payment of the monetary awards to the respondents.

Ruling of the Court

The petition is denied.

As a rule, employment cannot be terminated by an employer without any just or authorized cause. No less than the 1987 Constitution in Section 3, Article 13 guarantees security of tenure for workers and because of this, an employee may only be terminated for just or authorized causes that must comply with the due process requirements mandated by law. Hence, employers are barred from arbitrarily removing their workers whenever and however they want. The law sets the valid grounds for termination as well as the proper procedure to take when terminating the services of an emp1oyee.[37]

There is no merit to the petitioners' claim that the respondents were not dismissed, but merely relieved from their respective assignments. While it is true that Special Order No. 20031010,[38] which the petitioners issued to the respondents on January 13, 2003, indicated that the latter were merely relieved from the warehouse in Sta. Ana, Manila, such fact alone would not negate the respondents' claim of illegal dismissal. Indeed, the respondents pointed out that after they were relieved from their

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[36] *Id.* at 45-47.

[37] *Alert Security and Investigation Agency, Inc. and/or Dasig v. Pasawilan, et al.*, 673 Phil. 291, 301 (2011).

[38] *Rollo*, pp. 154-155.

Supreme Court E-Library

previous assignment, the petitioners refused to provide them with new assignments.

It should be stressed that in termination cases, the burden of proving that the dismissal of the employees was for a valid and authorized cause rests on the employer. It is incumbent upon the employer to show by substantial evidence that the dismissal of the employee was validly made and failure to discharge that duty would mean that the dismissal is not justified and therefore illegal.[39]

Accordingly, the burden of proof to show that the respondents' dismissal from employment was for a just cause falls on PSI as employer. PSI cannot discharge this burden by merely alleging that it did not dismiss the respondents. It would also be the height of absurdity if PSI would be allowed to escape liability by claiming that the respondents abandoned their work. Considering that there is no showing of a clear, valid and legal cause for the termination of employment, the law considers it a case of illegal dismissal.

Further, as aptly ruled by the CA, the petitioners miserably failed to prove that the respondents abandoned their work. Abandonment is a matter of intention and cannot lightly be inferred or legally presumed from certain equivocal acts. For abandonment to exist, two requisites must concur: *first*, the employee must have failed to report for work or must have been absent without valid or justifiable reason; and *second*, there must have been a clear intention on the part of the employee to sever the employer-employee relationship as manifested by some overt acts.[40]

The Court is not convinced that the respondents failed to report for work or have been absent without valid or justifiable cause. After the petitioners relieved them from their previous assignment in Sta. Ana, Manila, the respondents were no longer

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[39] See *Columbus Philippines Bus Corporation v. NLRC*, 417 Phil. 81, 100 (2001).

[40] *Seven Star Textile Company v. Dy*, 541 Phil. 468, 481 (2007).

given any assignment. Indeed, the petitioners failed to show that new assignments were given to the respondents and that the latter were informed of the same. As regards the second requisite, suffice it to state that the respondents' act of filing a complaint for illegal dismissal against the petitioners negates any intention on their part to sever the employer-employee relationship.[41]

Moreover, considering the hard times in which we are in, it is incongruous for the respondents to simply abandon their employment after being relieved from their previous assignment. No employee would recklessly abandon his job knowing fully well the acute unemployment problem and the difficulty of looking for a means of livelihood nowadays.[42]

What is more, PSI did not afford the respondents due process. The validity of the dismissal of an employee hinges not only on the fact that the dismissal was for a just or authorized cause, but also on the very manner of the dismissal itself. It is elementary that the termination of an employee must be effected in accordance with law. It is required that the employer furnish the employee with two written notices: (1) a written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side; and (2) a written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.[43]

Beyond dispute is the fact that no written notice was sent by PSI informing the respondents that they had been terminated due to abandonment of work. This failure on the part of PSI to comply with the twin-notice requirement, indeed, placed the

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[41] See *Hodieng Concrete Products v. Emilia*, 491 Phil. 434, 439-440 (2005).

[42] See *Hantex Trading Co., Inc. v. Court of Appeals*, 438 Phil. 737, 744 (2002).

[43] *Lynvil Fishing Enterprises, Inc., et al. v. Ariola, et al.*, 680 Phil. 696, 715 (2012).

Supreme Court E-Library

legality of the dismissal in question, at the very least, doubtful, rendering the dismissal illegal.

The petitioners' further claim that the respondents' belated filing of the complaint of illegal dismissal, almost three years since the time of the dismissal, negated the allegation of illegal dismissal and, on the contrary, showed that the respondents intended to abandon their employment. The foregoing assertion is untenable.

In illegal dismissal cases, the employee concerned is given a period of four years from the time of his illegal dismissal within which to institute the complaint. This is based on Article 1146 of the New Civil Code which states that actions based upon an injury to the rights of the plaintiff must be brought within four years. The four-year prescriptive period shall commence to run only upon the accrual of a cause of action of the worker.[44] The respondents were dismissed on January 13, 2003. They filed their respective complaints for illegal dismissal in September 2005. Clearly, then, the complaints for illegal dismissal were filed within the prescriptive period.

Anent, the propriety of holding Racho, PSI's President, jointly and solidarily liable with PSI for the payment of the money awards in favor of the respondents, the Court finds for the petitioners.

A corporation has a personality separate and distinct from its directors, officers, or owners. Nevertheless, in exceptional cases, courts find it proper to breach this corporate personality in order to make directors, officers, or owners solidarily liable for the companies' acts. Thus, under Section 31 of the Corporation Code of the Philippines, "[d]irectors 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

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[44] *Reyes v. NLRC, et al.*, 598 Phil. 145, 162 (2009).

and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons."

The doctrine of piercing the corporate veil applies only when the corporate fiction is used to defeat public convenience, justify wrong, protect fraud, or defend crime. In the absence of malice, bad faith, or a specific provision of law making a corporate officer liable, such corporate officer cannot be made personally liable for corporate liabilities.[45]

The respondents failed to adduce any evidence to prove that Racho, as President and General Manager of PSI, is hiding behind the veil of corporate fiction to defeat public convenience, justify wrong, protect fraud, or defend crime. Thus, it is only PSI who is responsible for the respondents' illegal dismissal.

WHEREFORE, in view of the foregoing disquisitions, the petition for review on *certiorari* is hereby **DENIED**. The Decision dated April 25, 2013 and Resolution dated February 7, 2014 of the Court of Appeals in CA-G.R. SP No. 115464 and the Decision dated January 30, 2009 of the Labor Arbiter are **AFFIRMED with MODIFICATION** in that petitioner Nestor Racho is held not solidarily liable with petitioner People's Security, Inc. for the payment of the monetary awards in favor of respondents Julius S. Flores and Esteban S. Tapiru.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Peralta, Perez*, and *Jardeleza, JJ.*, concur.

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[45] *McLeod v. NLRC* (*1st Div.*), 541 Phil. 214, 239, 241-242 (2007).