

FIFTEENTH DIVISION

[CA-G.R. SP No. 120734, February 23, 2015]

**CASTELWEB TRADING & DEVELOPMENT CORPORATION,
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION –
SPECIAL SECOND DIVISION PRESIDED BY HON. COMM. RAUL T.
AQUINO, TOLEDO CONSTRUCTION CORPORATION EMPLOYEES
ASSOCIATION – ASSOCIATION OF DEMOCRATIC LABOR
ORGANIZATION, LEGAL AND ENFORCEMENT DIVISION – NLRC,
AND ANY AND ALL PERSONS OR ENTITIES ACTING PURSUANT
TO THE ASSAILED SUBJECT DECISION AND RESOLUTION,
RESPONDENTS.**

D E C I S I O N

GAERLAN, S.H., J.:

Before this Court is a petition^[1] filed under Rule 65 of the Rules of Court seeking, among others, to nullify and set aside the Decision^[2] (dated 28 May 2010) and two Resolutions^[3] (dated 30 September 2010 and 27 May 2011) of the National Labor Relations Commission (NLRC) – Second Division^[4] in a certified labor case entitled "*In re: Labor Dispute at Toledo Construction Corporation*," docketed as NLRC-Certified Case No. 000259-04, and to enjoin the NLRC Sheriffs from implementing the writs of execution in relation to the challenged Decision and Resolutions.

FACTS

On 24 February 2005, the NLRC rendered a Decision in the above-mentioned labor case. The case reached the Supreme Court and was decided with finality on 15 October 2007.^[5]

Consequently, a writ of execution^[6] was issued by the NLRC on 4 February 2009 to enforce the monetary award in favor of the employees (Toledo Construction Corporation Employees Association-Association of Democratic Labor Organization; herein private respondent). To implement said writ, the NLRC sheriffs levied upon several motor vehicles allegedly owned by Toledo Corporation. Among those levied on are two motor vehicles with plate numbers WJS 667^[7] and UPU 616^[8]. The levy was effected through constructive levy, i.e. by presenting the notices of levy^[9] before the Land Transportation Office (LTO) for the purpose of annotating the same on the subject motor vehicles' respective certificates of registration. The alleged constructive levy was made in March 2009^[10]. Castelweb Trading and Development Corporation (petitioner) filed a third-party claim with the NLRC asserting its ownership over the subject two motor vehicles included in the levy.^[11]

In support of its claim, petitioner alleged^[12] that it is the owner of the subject

motor vehicles as evidenced by its certificates of registration that were approved and issued by the LTO on 16 March 2009, prior to the alleged constructive levy made by the NLRC sheriffs.

On 28 May 2010 and 30 September 2010, the NLRC-Second Division, through the assailed Decision and 30 September 2010 Resolution, dismissed^[13] petitioner's third party claim.

Petitioner moved for reconsideration but was also denied through the 27 May 2011 Resolution.

Hence, this petition.

ISSUE

WHETHER OR NOT THE PUBLIC RESPONDENT ACTED IN EXCESS OF ITS JURISDICTION AND/OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT DENIED THE PETITIONER'S THIRD PARTY CLAIMS AS WELL AS THE LATTER'S SUBSEQUENT MOTION FOR RECONSIDERATION.

THE COURT'S RULING

Petitioner contends that the subject levy is defective, illegal, and invalid. First, petitioner argues that the alleged constructive levy on the two motor vehicles was not in accordance with the NLRC Manual for Execution of Judgment. According to petitioner, constructive levy is applicable only with respect to real property. When personal property is involved, the levy is effected by serving the writ of execution upon the judgment debtor – and owner of the property – and thereafter, taking possession of and safekeeping the levied property. Here, the NLRC sheriffs, instead of taking possession of the subject vehicles, merely served the notice of levy with the LTO, a procedure that is neither sanctioned nor provided for in the aforementioned NLRC manual.^[14]

Second, petitioner asserts that the levy was made after the applications for registrations of the subject vehicles were processed and approved by the LTO Diliman District Office. It is petitioner's stance that the first levy made by the NLRC sheriffs on 5 March 2009 was ineffective inasmuch as the notice of levy was not accompanied by the corresponding writ of execution. The same is true anent the second levy when the notices of levy, while accompanied by a writ of execution, were erroneously served upon the LTO Office of the Assistant Secretary on 10 and 13 March 2009. It was only on 18 March 2009 that the notices of levy were officially transmitted to the LTO Diliman District Office. Hence, petitioner argues, the levy produced effect only on 18 March 2009 or two days after registration of the subject motor vehicles in the name of petitioner was approved by the LTO.^[15]

Moreover, petitioner assails the NLRC's reliance on the 30 April 2009 letter^[16] from the LTO Diliman District Office, stating the cancellation of the transfer of ownership over the two motor vehicles. Petitioner points out that said letter was already set aside by a subsequent memorandum^[17] dated 16 November 2009 from the above

LTO office, which clarified that there was no irregularity in the approval of petitioner's certificates of registration. According to petitioner, said memorandum is clear that the 5 March 2009 levy was defective because the notice of levy served on and received by the LTO Diliman District Office on said date has no accompanying writ of execution.^[18]

In sum, petitioner insists that the subject motor vehicles are not owned by Toledo Corporation. Asserting its rights under a Deed of Sale dated 7 June 2007, petitioner argues that even if the certificates of registration under its name are cancelled on ground of irregularity, still, it retained ownership over the subject vehicles because registration is not a conferment of title, but a mere recording of such transaction. Petitioner further contends that the "registered-owner rule" finds no application in the instant case as the same is primarily aimed to identify the person upon whom liability is fixed in case of an accident.^[19]

On the other hand, private respondent, in its Comment/Opposition^[20], counters, in gist, that petitioner failed to show any grave abuse of discretion on the part of the NLRC. Private respondent asserts that the questioned levy was made in accordance with law. Refuting petitioner's arguments, private respondent posits that constructive levy is applicable, not only to real property, but to personal property as well. Levy may either be actual or constructive. The NLRC sheriff need not be in actual possession of the motor vehicles. It is sufficient that said vehicles be in placed under the control of the sheriff, which in this case was effected upon service of the notices of levy and receipt thereof by the LTO. Also, under the circumstances of the case, constructive levy is the most expedient means to levy the subject motor vehicles because of the continuing resistance of Toledo Corporation (allegedly, petitioner's sister company) to satisfy the money judgment in favor of private respondent through the fraudulent transfers of its properties in favor of petitioner.^[21]

Further, private respondent insists that the levy was made on 5 March 2009, prior to the alleged registration of the subject vehicles on 16 March 2009. There is no specific provision of law or rule on execution of judgment stating that a levy is fatally defective if the notice of levy was not accompanied by a writ of execution. Hence the levy made by the NLRC sheriff on 5 March 2009 is valid and effective. Also, private respondent imputes fraudulent acts and transactions to Toledo Corporation and petitioner in hastily effecting the *en masse* transfer of the properties of the former to the latter immediately after Toledo Corporation received the writ of execution issued by the NLRC.^[22]

Private respondent likewise impugns the authenticity and weight of the purported 16 November 2009 memorandum from the LTO Diliman District Office that allegedly set aside the notice of cancellation of registration stated in the earlier 30 April 2009 letter. To be exact, private respondent contends that the alleged memorandum is in fact an answer to an administrative complaint against the author thereof (Rodolfo Gacelo, Chief of the LTO Diliman District Office) and cannot effectively reverse or set aside the tenor of the 30 April 2009 letter.^[23]

In the main, private respondent firmly asserts that the subject motor vehicles were still owned by Toledo Corporation at the time of the constructive levy. Whatever dubious sale or transfer allegedly made previously between Toledo Corporation and

petitioner involving the disputed motor vehicles does not affect the effectiveness of the levy because as to the public and the whole world, said motor vehicles were all registered to Toledo Corporation at the time of the levy.^[24] Thus, the NLRC did not gravely abuse its discretion in denying petitioner's third-party claim.

The petition fails.

At the onset, an issue which was neither alleged in the pleadings nor raised during the proceedings below cannot be ventilated for the first time before this Court.^[25] It cannot be raised for the first time in this petition for certiorari where the jurisdiction of this Court is limited to issues of jurisdiction and grave abuse of discretion.^[26]

In the case at bench, the Court notes that petitioner's challenge to the levy before the NLRC was solely grounded on its third-party claim. The issue of whether or not the levy of the subject motor vehicles is **procedurally** valid (i.e. done in accordance with the NLRC Manual of Execution of Judgment) was never raised by petitioner before the NLRC. In fact, the assailed NLRC Decision and the two subsequent Resolutions are conspicuously bereft of any discussion or ruling on the alleged defective levy made by the NLRC sheriffs on the subject vehicles. Indeed, if petitioner really raised said issue before the public respondent, it is rather odd that the NLRC never addressed the same in any of the three issuances subject of this petition.

Albeit petitioner avers, in its petition, that it filed a motion for reconsideration of the NLRC Decision and 30 September 2010 Resolution *"explaining that the questioned levy is defective, illegal and invalid because (1) it was not made in accordance with Section 1 of the NLRC Manual on Execution of Judgment; x x x,"*^[27] such averment, to the mind of the Court, is purely self-serving on account of petitioner's failure to attach - to the petition filed before this Court - a copy of its alleged motion for reconsideration. **As it would be offensive to the basic rules of fair play and justice to allow a party to raise a question which has not been passed upon by an administrative tribunal, it is now too late to entertain it.**^[28]

Further, the NLRC Manual on Execution of Judgment, as amended (the rules governing at the time of the questioned levy), states that the NLRC or the labor arbiter issuing the writ shall have **full control and supervision** over the sheriff assigned to enforce the same.^[29] Hence, if there was any irregularity or illegality on how the levy was effected, petitioner should have brought said issue before the NLRC so that the same may be aptly addressed or rectified by the commission.

It is settled that any objection against the levy and sale must be addressed to the judgment of the tribunal which issued the order, because it is within its jurisdiction to correct the errors or excesses of its ministerial officers and to control its own processes.^[30] Thus, petitioner's remedy is not to immediately raise, on certiorari, before this Court the alleged error or irregularity in the levy, but to bring the same to the attention of the NLRC which has jurisdiction and control over its sheriffs and legal processes.

At any rate, even if this Court entertains petitioner's arguments on the alleged procedural infirmity of the constructive levy effected by the NLRC sheriffs, still, said