

SECOND DIVISION

[G.R. No. 170515, May 06, 2010]

**MARMOSY TRADING, INC. AND VICTOR MORALES, PETITIONERS,
VS. COURT OF APPEALS, NATIONAL LABOR RELATIONS
COMMISSION, HON. LABOR ARBITER ELIAS H. SALINAS AND
JOSELITO HUBILLA, RESPONDENTS.**

DECISION

PEREZ, J.:

This is a petition for review under Rule 45 of the Rules of Court assailing the Decision^[1] of the Court of Appeals dated 14 July 2005 in CA G.R. SP No. 85989, affirming the Resolution of the National Labor Relations Commission (NLRC) dated 30 January 2004 in CA No. 021367-99, ordering the levy on execution on the real property of herein petitioner Victor Morales. Likewise assailed is the resolution of the appellate court dated 16 November 2005,^[2] which denied the motion for reconsideration filed by petitioners Marmosy Trading, Inc. and Victor Morales.

The facts of the case are as follows:

Petitioner Marmosy Trading, Inc. is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines. It acts as a distributor of various chemicals from foreign suppliers. Petitioner Victor Morales is the President and General Manager of Marmosy Trading, Inc. Respondent Joselito Hubilla was hired as a Technical Salesman pursuant to an appointment letter dated 12 February 1991. Petitioner Marmosy Trading, Inc. terminated respondent's services effective 15 July 1997.^[3]

Owing to his termination, respondent filed a case for illegal dismissal, illegal deduction and diminution of benefits against petitioners before the Labor Arbiter, docketed as NLRC NCR Case No. 00-07-05054-97.^[4]

On 31 May 1999, Labor Arbiter Daniel C. Cueto rendered a Decision^[5] against petitioners, the dispositive portion of which reads:

WHEREFORE, on account of the foregoing considerations, judgment is hereby rendered declaring the termination of the services of the complainant to be illegal and without just and valid cause.

Accordingly, respondents are hereby ordered to reinstate the complainant to his former position, or in case the same is no longer available, to other equivalent position without loss of seniority rights and other benefits and privileges. Respondents are likewise hereby ordered to pay complainant his full backwages and other benefits which he should have received had his services not been terminated,

from July 15, 1997, until actually reinstated, after crediting respondents the separation pay paid to the complainant and other accountabilities in the total amount of P61,052.74 and 10% thereof as and by way of attorney's fees.

The total award is tentatively computed as follows:

1. Backwages

07/15/97- 05/31/99 = 22.53 months	
P5,950.00 x 22.53	P134,053.50

2. 13th Month Pay

1/12 of P134,053.50	11,171.13
	P145,224.63

3. Attorney's Fee

10% of P145,224.63 Total Monetary Award	14,522.46
	P159,747.09

Less: Accountabilities:

Separation Pay	P35,402.20	
Tax Deficiency 1996	4,420.59	
Tax Deficiency 1997	229.75	
Car Loan Balance	21,000.00	61,052.74
TOTAL		P98,694.35

All other claims are hereby denied for lack of merit.

Petitioners filed an Appeal^[6] to the NLRC docketed as CA No. 021367-99. The NLRC issued a Resolution^[7] dated 31 May 2000 denying the appeal for lack of merit. This Resolution of the NLRC became final and executory on 26 June 2000.^[8] Respondent then filed a Motion for the issuance of a writ of execution.^[9] Petitioners, for their part, further filed a petition to the Court of Appeals docketed as CA G.R. SP No. 60226. The Court of Appeals issued a Resolution dated 22 August 2000 dismissing outright the petition in CA G.R. SP No. 60226 filed by the petitioners on the ground of procedural infirmities, such as, failure to file a motion for reconsideration of the NLRC Resolution dated 31 May 2000, and failure to append to the petition relevant

and pertinent pleadings.^[10] This resolution likewise became final and executory and an Entry of Judgment was issued by the appellate court on 25 November 2000.^[11]

Petitioners elevated the decision of the Court of Appeals in CA G.R. SP No. 60226 to this Court by a petition for review docketed as G.R. No. 145881. This Court resolved to deny the petition in G.R. No. 145881 filed by the petitioners, in a Resolution dated 7 February 2001, for the late filing of the petition and failure to show reversible error on the part of the Court of Appeals.^[12] Entry of Judgment was issued on 13 August 2001.^[13]

Respondent then resorted to a motion for the issuance of an *alias* writ of execution.^[14] On 28 August 2001, Labor Arbiter Elias H. Salinas issued a writ of execution^[15] addressed to the NLRC Sheriff, the dispositive portion of which reads:

NOW THEREFORE, you are hereby commanded to proceed to the premises of respondent Marmosy Trading, Inc. located at ITC Building 337 Gil Puyat Avenue Extension, Makati City, or wherever they may be found, to collect the total sum of TWO HUNDRED NINETY SIX THOUSAND ONE HUNDRED SIXTY PESOS and TEN CENTAVOS (PHP296,160.10) representing complainant's total monetary award and to turn over the said amount collected to the NLRC Cashier for disposition to herein complainant.

In case you failed (sic) to collect said amount in cash from the respondents, you are to cause the satisfaction of the same to be made out of the movables or chattels, or in the absence thereof, from the immovable properties of the respondents not exempt from execution.

You are to return this Alias Writ of Execution with your corresponding report of the proceedings undertaken thereon within sixty (30) (sic) days from receipt hereof.

A Motion for Reconsideration,^[16] with Motion to Recall the Writ of Execution dated 5 September 2001 was filed by the petitioners. They assailed the computation made by the Labor Arbiter and averred that the company had stopped its operations as of June, 1997; that there is no position to which respondent can be reinstated or appointed; and that respondent had already been paid his separation pay. In a supplement to their own computation of the monetary award given to respondent, petitioners showed that in actuality, respondent still owes them the amount of P22,383.15, when they ceased operations at the end of 1997 and respondent had already received his separation pay.

Petitioners' motion for reconsideration was denied by the Labor Arbiter in an Order dated 22 October 2001 but the monetary award in favor of respondent was corrected to read as P274,823.70, and the Sheriff was directed to proceed with the execution.^[17]

Undeterred, petitioners again filed before the NLRC a "Memorandum of Appeal with Prayer for Injunction" assailing the 22 October 2001 Order of the Labor Arbiter.^[18]

Respondent countered by filing an opposition on the ground of failure to file a *supersedeas* bond on the part of the petitioners and that no new issues were raised therein.^[19]

In an Order dated 22 May 2002,^[20] the above Appeal of the petitioners was dismissed by the NLRC for failure to file a *supersedeas* bond. The NLRC in the same order affirmed *in toto* the 22 October 2001 Order of the Labor Arbiter. Petitioners filed a Motion for Reconsideration dated 21 June 2002.^[21] The motion for reconsideration was denied for lack of merit in a resolution dated 22 August 2002 issued by the NLRC. The NLRC likewise emphasized that no further motions for reconsideration shall be entertained.^[22]

Acting on respondent's *ex-parte* motion for the re-computation of his monetary award and for the issuance of an *alias* writ of execution dated 19 November 2002,^[23] Labor Arbiter Elias Salinas issued on 11 March 2003 an *alias* Writ of Execution^[24] addressed to the NLRC Sheriff, the dispositive portion of which reads:

NOW THEREFORE, you are hereby commanded to proceed to the premises of respondents MARMOSY TRADING INC. located at ITC Building 337 Gil Puyat, Avenue Extension, Makati (sic) City or wherever they can be found within the jurisdiction of the Republic of the Philippines, to collect the sum of TWO HUNDRED FIFTY ONE THOUSAND NINE HUNDRED TWENTY SEVEN PESOS AND TWELVE CENTAVOS (P251,927.12), representing complainant's computed monetary award and to deposit the said amount to the Cashier NLRC, for disposition to herein complainant.

In case you failed (sic) to collect the amount in cash, you are to cause the satisfaction of the same out of the movables, chattels and in the absence thereof, to the immovable not exempt from execution.

You are allowed to collect execution fees in accordance with the Procedures of the NLRC Manuals (sic) on Execution.

You are to return this writ within ONE HUNDRED EIGHTY (180) days from receipt hereof with the corresponding report of the proceedings.

Pursuant to the writ of execution issued by Labor Arbiter Elias Salinas, the Sheriff garnished petitioners account with Equitable-PCI Bank in the amount of P22,896.58,^[25] which was later released to the NLRC cashier and, thereafter, turned over to the respondent as partial satisfaction of the judgment in his favor.

Petitioners objected to the garnishment by filing a motion for reconsideration and to recall the order of release and *alias* writ of execution alleging that the account with Equitable-PCI Bank belongs to both petitioner Marmosy Trading, Inc. and petitioner Victor Morales; that only petitioner Marmosy Trading, Inc. was the employer of respondent whereas petitioner Victor Morales, who was president of the Marmosy Trading, Inc. when the complaint was filed, is only a nominal party.

Petitioners' motion for reconsideration was denied by Labor Arbiter Elias Salinas in an Order dated 23 June 2003.^[26] Petitioners again appealed to the NLRC. This appeal was dismissed for lack of merit in the Resolution of the NLRC dated 30 January 2004.^[27]

The pertinent portion of the NLRC Resolution dated 30 January 2004 is quoted hereunder:

As borne by the records, individual respondent Victor H. Morales is the President and General Manager of [respondent] Marmosy Trading Inc. As correctly ruled being the President at the same time General Manager of the Corporation, [Respondent] Morales is therefore to be held responsible for the corporation's obligations to the workers including complainant especially when as alleged the company had already closed its business operations. The termination of the existence of a corporation requires the assumption of the company's liabilities and there is no responsible officer but the President who must assume full responsibility of the consequences of the closure.

Petitioners' motion for reconsideration^[28] was denied for lack of merit by the NLRC in a Resolution^[29] dated 20 July 2004. The Resolution became final and executory on 8 October 2004.^[30]

From the above NLRC Resolution, petitioners again elevated the case to the Court of Appeals *via* a Petition for *Certiorari* under Rule 65 docketed as CA G.R. SP No. 85989. The petition was denied in a Decision^[31] of the Court of Appeals dated 14 July 2005. The Court of Appeals explained that:

The writ of execution commanded the Sheriff to proceed to the premises of petitioners located in Makati City or wherever they can be found to collect the sum of PhP251,927.12. Since petitioner Morales was likewise ordered in the decision sought to be executed to pay private respondent, the Sheriff properly levied on his real property. Section 2 Rule 4 of the NLRC Manual on Execution of Judgment provides that the Sheriff or proper officer shall enforce the execution of a money judgment by levying on all the property, real and personal, of the losing party, of whatever name and nature and which may be disposed of for value, not exempt from execution.^[32]

The *fallo* of the decision rendered by the Court of Appeals states:

Wherefore, the Petition is Dismissed for lack of merit.^[33]

Petitioners' motion for reconsideration met the same fate in the appellate court's Resolution^[34] dated 16 November 2005.

Hence, this petition on the lone issue of whether or not the decision dated 14 July