648 Phil. 596

THIRD DIVISION

[G.R. No. 185567, October 20, 2010]

ARSENIO Z. LOCSIN, PETITIONER, VS. NISSAN LEASE PHILS. INC. AND LUIS BANSON, RESPONDENTS.

D E C I S I O N

BRION, J.:

Through a petition for review on *certiorari,*[1] petitioner Arsenio Z. Locsin (*Locsin*) seeks the reversal of the Decision[2] of the Court of Appeals (*CA*) dated August 28, 2008,[3] in *"Arsenio Z. Locsin v. Nissan Car Lease Phils., Inc. and Luis Banson,"* docketed as CA-G.R. SP No. 103720 and the Resolution dated December 9, 2008,[4] denying Locsin's Motion for Reconsideration. The assailed ruling of the CA reversed and set aside the Decision[5] of the Hon. Labor Arbiter Thelma Concepcion (*Labor Arbiter Concepcion*) which denied Nissan Lease Phils. Inc.'s (*NCLPI*) and Luis T. Banson's (*Banson*) Motion to Dismiss.

THE FACTUAL ANTECEDENTS

On January 1, 1992, Locsin was elected Executive Vice President and Treasurer (*EVP/Treasurer*) of NCLPI. As EVP/Treasurer, his duties and responsibilities included: (1) the management of the finances of the company; (2) carrying out the directions of the President and/or the Board of Directors regarding financial management; and (3) the preparation of financial reports to advise the officers and directors of the financial condition of NCLPI.[6] Locsin held this position for 13 years, having been re-elected every year since 1992, until January 21, 2005, when he was nominated and elected Chairman of NCLPI's Board of Directors.[7]

On August 5, 2005, a little over seven (7) months after his election as Chairman of the Board, the NCLPI Board held a special meeting at the Manila Polo Club. One of the items of the agenda was the election of a new set of officers. Unfortunately, Locsin was neither re-elected Chairman nor reinstated to his previous position as EVP/Treasurer.[8]

Aggrieved, on June 19, 2007, Locsin filed a complaint for illegal dismissal with prayer for reinstatement, payment of backwages, damages and attorney's fees before the Labor Arbiter against NCLPI and Banson, who was then President of NCLPI.[9]

The Compulsory Arbitration Proceedings before the Labor Arbiter.

On July 11, 2007, instead of filing their position paper, NCLPI and Banson filed a

Motion to Dismiss,[10] on the ground that the Labor Arbiter did not have jurisdiction over the case since the issue of Locsin's removal as EVP/Treasurer involves an intra-corporate dispute.

On August 16, 2007, Locsin submitted his opposition to the motion to dismiss, maintaining his position that he is an employee of NCLPI.

On March 10, 2008, Labor Arbiter Concepcion issued an Order denying the Motion to Dismiss, holding that her office acquired "jurisdiction to arbitrate and/or decide the instant complaint finding extant in the case an employer- employee relationship." [11]

NCLPI, on June 3, 2008, elevated the case to the CA through a Petition for *Certiorari* under Rule 65 of the Rules of Court.[12] NCLPI raised the issue on whether the Labor Arbiter committed grave abuse of discretion by denying the Motion to Dismiss and holding that her office had jurisdiction over the dispute.

The CA Decision - Locsin was a corporate officer; the issue of his removal as EVP/Treasurer is an intra-corporate dispute under the RTC's jurisdiction.

On August 28, 2008,[13] the CA reversed and set aside the Labor Arbiter's Order denying the Motion to Dismiss and ruled that Locsin was a corporate officer.

Citing PD 902-A, the CA defined "corporate officers as those officers of a corporation who are given that character either by the Corporation Code or by the corporations' by-laws." In this regard, the CA held:

> Scrutinizing the records, We hold that petitioners successfully discharged their *onus* of establishing that private respondent was a corporate officer who held the position of Executive Vice-President/Treasurer as provided in the by-laws of petitioner corporation and that he held such position by virtue of election by the Board of Directors.
>
> That private respondent is a corporate officer cannot be disputed. The position of Executive Vice-President/Treasurer is specifically included in the roster of officers provided for by the (Amended) By-Laws of petitioner corporation, his duties and responsibilities, as well as compensation as such officer are likewise set forth therein. [14]

Article 280 of the Labor Code, the receipt of salaries by Locsin, SSS deductions on that salary, and the element of control in the performance of work duties - indicia used by the Labor Arbiter to conclude that Locsin was a regular employee - were held inapplicable by the CA.[15] The CA noted the Labor Arbiter's failure to address the fact that the position of EVP/Treasurer is specifically enumerated as an "office" in the corporation's by-laws.[16]

Further, the CA pointed out Locsin's failure to "state any circumstance by which

NCLPI engaged his services as a corporate officer that would make him an employee." The CA found, in this regard, that Locsin's assumption and retention as EVP/Treasurer was based on his election and subsequent re- elections from 1992 until 2005. Further, he performed only those functions that were "specifically set forth in the By-Laws or required of him by the Board of Directors.[17]"

With respect to the suit Locsin filed with the Labor Arbiter, the CA held that:

> Private respondent, in belatedly filing this suit before the Labor Arbiter, questioned the legality of his "dismissal" **but in essence, he raises the issue of whether or not the Board of Directors had the authority to remove him from the corporate office to which he was elected pursuant to the By-Laws of the petitioner corporation**. Indeed, had private respondent been an ordinary employee, an election conducted by the Board of Directors would not have been necessary to remove him as Executive Vice-President/Treasurer. However, in an obvious attempt to preclude the application of settled jurisprudence that corporate officers whose position is provided in the by-laws, their election, removal or dismissal is subject to Section 5 of P.D. No. 902-A (now R.A. No. 8799), private respondent would even claim in his Position Paper, that since his responsibilities were akin to that of the company's Executive Vice-President/Treasurer, he was "hired under the pretext that he was being `elected' into said post. [18] [Emphasis supplied.]

As a consequence, the CA concluded that Locsin does not have any recourse with the Labor Arbiter or the NLRC since the removal of a corporate officer, whether elected or appointed, is an intra-corporate controversy over which the NLRC has no jurisdiction.[19] Instead, according to the CA, Locsin's complaint for "illegal dismissal" should have been filed in the Regional Trial Court (*RTC)*, pursuant to Rule 6 of the Interim Rules of Procedure Governing Intra- Corporate Controversies.[20]

Finally, the CA addressed Locsin's invocation of Article 4 of the Labor Code. Dismissing the application of the provision, the CA cited Dean Cesar Villanueva of the Ateneo School of Law, as follows:

> x x x the **non-coverage of corporate officers from the security of tenure clause under the Constitution is now well-established principle** by numerous decisions upholding such doctrine under the aegis of the 1987 Constitution in the face of contemporary decisions of the same Supreme Court likewise confirming that security of tenure covers all employees or workers including managerial employees. [21]

THE PETITIONER'S ARGUMENTS

Failing to obtain a reconsideration of the CA's decision, Locsin filed the present petition on January 28, 2009, raising the following procedural and substantive issues:

(1) Whether the CA has original jurisdiction to review decision of the Labor Arbiter under Rule 65?

(2) Whether he is a regular employee of NCLPI under the definition of Article 280 of the Labor Code? and

(3) Whether Locsin's position as Executive Vice-President/Treasurer makes him a corporate officer thereby excluding him from the coverage of the Labor Code?

Procedurally, Locsin essentially submits that NCLPI wrongfully filed a petition for *certiorari* before the CA, as the latter's remedy is to proceed with the arbitration, and to appeal to the NLRC after the Labor Arbiter shall have ruled on the merits of the case. Locsin cites, in this regard, Rule V, Section 6 of the Revised Rules of the National Labor Relations Commission (*NLRC Rules*), which provides that a denial of a motion to dismiss by the Labor Arbiter is not subject to an appeal. Locsin also argues that even if the Labor Arbiter committed grave abuse of discretion in denying the NCLPI motion, a special civil action for *certiorari*, filed with the CA was not the appropriate remedy, since this was a breach of the doctrine of exhaustion of administrative remedies.

Substantively, Locsin submits that he is a regular employee of NCLPI since - as he argued before the Labor Arbiter and the CA - his relationship with the company meets the "four-fold test."

First, Locsin contends that NCLPI had the power to engage his services as EVP/Treasurer. *Second,* he received regular wages from NCLPI, from which his SSS and Philhealth contributions, as well as his withholding taxes were deducted. *Third,* NCLPI had the power to terminate his employment.[22] *Lastly,* Nissan had control over the manner of the performance of his functions as EVP/Treasurer, as shown by the 13 years of faithful execution of his job, which he carried out in accordance with the standards and expectations set by NCLPI.[23] Further, Locsin maintains that even after his election as Chairman, he essentially performed the functions of EVP/Treasurer - handling the financial and administrative operations of the Corporation - thus making him a regular employee.[24]

Under these claimed facts, Locsin concludes that the Labor Arbiter and the NLRC - not the RTC (as NCLPI posits) - has jurisdiction to decide the controversy. Parenthetically, Locsin clarifies that he does not dispute the validity of his election as Chairman of the Board on January 1, 2005. Instead, he theorizes that he never lost his position as EVP/Treasurer having continuously performed the functions appurtenant thereto.[25] Thus, he questions his "unceremonious removal" as EVP/Treasurer during the August 5, 2005 special Board meeting.

THE RESPONDENT'S ARGUMENTS

It its April 17, 2009 Comment,[26] Nissan prays for the denial of the petition for lack of merit. Nissan submits that the CA correctly ruled that the Labor Arbiter does not have jurisdiction over Locsin's complaint for illegal dismissal. In support, Nissan maintains that Locsin is a corporate officer and not an employee. In addressing the procedural defect Locsin raised, Nissan brushes the issue aside, stating that (1) this issue was belatedly raised in the Motion for Reconsideration, and that (2) in any

case, Rule VI, Section 2(1) of the NLRC does not apply since only *appealable* decisions, resolutions and orders are covered under the rule.

THE COURT'S RULING

We resolve to deny the petition for lack of merit.

At the outset, we stress that there are two (2) important considerations in the final determination of this case. On the one hand, Locsin raises a procedural issue that, if proven correct, will require the Court to dismiss the instant petition for using an improper remedy. On the other hand, there is the substantive issue that will be disregarded if a strict implementation of the rules of procedure is upheld.

Prefatorily, we agree with Locsin's submission that the NCLPI incorrectly elevated the Labor Arbiter's denial of the Motion to Dismiss to the CA. Locsin is correct in positing that the denial of a motion to dismiss is unappealable. As a general rule, an aggrieved party's proper recourse to the denial is to file his position paper, interpose the grounds relied upon in the motion to dismiss before the labor arbiter, and actively participate in the proceedings. Thereafter, the labor arbiter's decision can be appealed to the NLRC, not to the CA.

As a rule, we strictly adhere to the rules of procedure and do everything we can, to the point of penalizing violators, to encourage respect for these rules. We take exception to this general rule, however, when a strict implementation of these rules would cause substantial injustice to the parties.

We see it appropriate to apply the exception to this case for the reasons discussed below; hence, we are compelled to go beyond procedure and rule on the merits of the case. In the context of this case, we see sufficient justification to rule on the employer-employee relationship issue raised by NCLPI, even though the Labor Arbiter's interlocutory order was *incorrectly* brought to the CA under Rule 65.

The NLRC Rules are clear: the denial by the labor arbiter of the motion to dismiss is not appealable because the denial is merely an interlocutory order.

In *Metro Drug v. Metro Drug Employees,*[27] we definitively stated that the denial of a motion to dismiss by a labor arbiter is not immediately appealable.[28]

We similarly ruled in *Texon Manufacturing v. Millena,*[29] in *Sime Darby Employees Association v. National Labor Relations Commission*[30] and in *Westmont Pharmaceuticals v. Samaniego.* [31] In *Texon,* we specifically said:

> The Order of the Labor Arbiter denying petitioners' motion to dismiss is interlocutory. It is well-settled that a **denial of a motion to dismiss a complaint is an interlocutory order** and hence, **cannot be appealed**, until a final judgment on the merits of the case is rendered. [Emphasis supplied.][32]