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THIRD DIVISION

[G.R. No. 159323, July 31, 2008]

COCA-COLA BOTTLERS (PHILS.), INC. AND ERIC MONTINOLA, PETITIONERS, VS. SOCIAL SECURITY COMMISSION AND DR. DEAN CLIMACO, RESPONDENTS.

D E C I S I O N

REYES, R.T., J.:

WE are confronted with triple remedial issues on prejudicial question, forum shopping, and *litis pendentia*.

We review on *certiorari* the Decision[1] of the Court of Appeals (CA) upholding the order of the Social Security Commission (SSC),[2] denying petitioners' motion to dismiss respondent Climaco's petition for compulsory coverage with the Social Security System (SSS).

The Facts

Petitioner Coca-Cola Bottlers (Phils.), Inc. is a corporation engaged in the manufacture and sale of softdrink beverages.[3] Co-petitioner Eric Montinola was the general manager of its plant in Bacolod City.[4] Respondent Dr. Dean Climaco was a former retainer physician at the company's plant in Bacolod City.[5]

In 1988, petitioner company and Dr. Climaco entered into a Retainer Agreement[6] for one year, with a monthly compensation of P3,800.00,[7] where he "may charge professional fees for hospital services rendered in line with his specialization."[8] The agreement further provided that "either party may terminate the contract upon giving thirty (30)-day written notice to the other."[9] In consideration of the retainer's fee, Dr. Climaco "agrees to perform the duties and obligations"[10] enumerated in the Comprehensive Medical Plan,[11] which was attached and made an integral part of the agreement.

Explicit in the contract, however, is the provision that no employee-employer relationship shall exist between the company and Dr. Climaco while the contract is in effect.[12] In case of its termination, Dr. Climaco "shall be entitled only to such retainer fee as may be due him at the time of termination."[13]

Dr. Climaco continuously served as the company physician, performing all the duties stipulated in the Retainer Agreement and the Comprehensive Medical Plan. By 1992, his salary was increased to P7,500.00 per month.[14]

Meantime, Dr. Climaco inquired with the Department of Labor and Employment and

the SSS whether he was an employee of the company. Both agencies replied in the affirmative.[15] As a result, Dr. Climaco filed a complaint[16] before the National Labor Relations Commission (NLRC), Bacolod City. In his complaint, he sought recognition as a regular employee of the company and demanded payment of his 13th month pay, cost of living allowance, holiday pay, service incentive leave pay, Christmas bonus and all other benefits.[17]

During the pendency of the complaint, the company terminated its Retainer Agreement with Dr. Climaco. Thus, Dr. Climaco filed another complaint[18] for illegal dismissal against the company before the NLRC Bacolod City. He asked that he be reinstated to his former position as company physician of its Bacolod Plant, without loss of seniority rights, with full payment of backwages, other unpaid benefits, and for payment of damages.[19]

The Labor Arbiter, in each of the complaints, ruled in favor of petitioner company. [20] The first complaint was dismissed after Labor Arbiter Jesus N. Rodriguez, Jr. found that the company did not have the power of control over Dr. Climaco's performance of his duties and responsibilities. The validity of the Retainer Agreement was also recognized. Labor Arbiter Benjamin Pelaez likewise dismissed the second complaint in view of the dismissal of the first complaint.

On appeal, the NLRC, Fourth Division, Cebu City, affirmed the Arbiter disposition.[21] On petition for review before the CA, the NLRC ruling was reversed.[22] The appellate court ruled that using the four-fold test, an employer-employee relationship existed between the company and Dr. Climaco. Petitioners elevated the case through a petition for review on *certiorari*[23] before this Court.

Meantime, on November 9, 1994, while the NLRC cases were pending, Dr. Climaco filed with the SSC in Bacolod City, a petition[24] praying, among others, that petitioner Coca-Cola Bottlers (Phils.), Inc. be ordered to report him for compulsory social security coverage.

On April 12, 1995, petitioners moved for the dismissal of the petition on the ground of lack of jurisdiction. They argued that there is no employer-employee relationship between the company and Dr. Climaco; and that his services were engaged by virtue of a Retainer Agreement.[25]

Dr. Climaco opposed the motion. [26] According to Dr. Climaco, "[t]he fact that the petitioner [i.e., respondent Dr. Climaco] does not enjoy the other benefits of the company is a question that is being raised by the petitioner in his cases filed with the National Labor Relations Commission (NLRC), Bacolod City, against the respondent [i.e., petitioner company]."[27]

On July 24, 1995, the SSC issued an order stating among others, that the resolution of petitioner company's motion to dismiss is held in abeyance "pending reception of evidence of the parties."[28]

In view of the statements of Dr. Climaco in his opposition to the company's motion to dismiss, petitioners again, on March 1, 1996, moved for the dismissal of Dr.

Climaco's complaint, this time on the grounds of forum shopping and *litis pendentia*. [29]

SSC and CA Dispositions

On January 17, 1997, the SSC denied petitioners' motion to dismiss, disposing as follows:

> **WHEREFORE, PREMISES CONSIDERED,** the respondents' Motion to Dismiss is hereby denied for lack of merit.
>
> Accordingly, let this case be remanded to SSS Bacolod Branch Office for reception of evidence of the parties pursuant to the Order dated July 24, 1995.
>
> **SO ORDERED**.[30]

Petitioners' motion for reconsideration[31] received the same fate.[32]

On April 29, 1997, the company filed a petition for *certiorari* before the CA. On March 15, 2002, the CA dismissed the petition, with a *fallo* reading:

> **WHEREFORE,** under the premises, the Court holds that public respondent Social Security Commission did not act with grave abuse of discretion in issuing the disputed orders, and the herein petition is therefore **DISMISSED** for want of merit.
>
> **SO ORDERED**.[33]

Hence, the present recourse.

Issues

Petitioners raise the following issues for Our consideration:

> WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS ERRED IN RENDERING THE ASSAILED RESOLUTIONS, HAVING DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW AND THE APPLICABLE DECISIONS OF THIS HONORABLE COURT, CONSIDERING THAT:
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> I.
>
> THE PREVIOUS COMPLAINT FOR REGULARIZATION AND/OR ILLEGAL DISMISSAL, WHICH IS NOW PENDING RESOLUTION BEFORE THE SUPREME COURT, POSES A PREJUDICIAL QUESTION TO THE SUBJECT OF THE PRESENT CASE.
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> II.
>
> GIVEN THE ATTENDANT CIRCUMSTANCES, RESPONDENT CLIMACO IS GUILTY OF FORUM SHOPPING, WHICH THEREBY CALLED FOR THE OUTRIGHT DISMISSAL OF HIS PETITION BEFORE THE SOCIAL SECURITY

COMMISSION.

III.

THE PETITION SHOULD HAVE ALSO BEEN DISMISSED OUTRIGHT ON THE GROUND OF *LITIS PENDENTIA*, AS THERE ARE OTHER ACTIONS PENDING BETWEEN THE SAME PARTIES FOR THE SAME CAUSE OF ACTION.[34] (Underscoring supplied)

Our Ruling

The petition fails.

The Court notes that petitioners, in their petition, averred that the appeal from the NLRC and CA dispositions on the illegal dismissal of respondent Climaco is still pending with this Court. Upon verification, however, it was unveiled that the said case had already been decided by this Court's First Division on February 5, 2007.

While we deplore the failure of petitioners and counsel in updating the Court on the resolution of the said related case, We hasten to state that it did not operate to moot the issues pending before Us. We take this opportunity to address the questions on prejudicial question, forum shopping, and *litis pendentia*.

No prejudicial question exists.

Petitioners allege that Dr. Climaco previously filed separate complaints before the NLRC seeking recognition as a regular employee. Necessarily then, a just resolution of these cases hinge on a determination of whether or not Dr. Climaco is an employee of the company.[35] The issue of whether Dr. Climaco is entitled to employee benefits, as prayed for in the NLRC cases, is closely intertwined with the issue of whether Dr. Climaco is an employee of the company who is subject to compulsory coverage under the SSS Law. Hence, they argue, said regularization/illegal dismissal case is a prejudicial question.

The argument is untenable.

Our concept of prejudicial question was lifted from Spain, where civil cases are tried exclusively by civil courts, while criminal cases are tried exclusively in criminal courts. Each kind of court is jurisdictionally distinct from and independent of the other. In the Philippines, however, courts are invariably tribunals of general jurisdiction. This means that courts here exercise jurisdiction over both civil and criminal cases. Thus, it is not impossible that the criminal case, as well as the civil case in which a prejudicial question may rise, may be both pending in the same court. For this reason, the elements of prejudicial question have been modified in such a way that the phrase "pendency of the civil case in a different tribunal" has been eliminated.[36]

The rule is that **there is prejudicial question when (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed**.[37]

It comes into play generally in a situation where a civil action and a criminal action both pend and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed. This is so because howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case. [38]

Here, **no prejudicial question exists because there is no pending criminal case**.[39] The consolidated NLRC cases **cannot** be considered as "previously instituted civil action." In *Berbari v. Concepcion*,[40] it was held that a prejudicial question is understood in law to be **that which must precede the criminal action**, that which requires a decision with which said question is closely related.

Neither can the doctrine of prejudicial question be applied by analogy . The issue in the case filed by Dr. Climaco with the SSC involves the question of whether or not he is an employee of Coca-Cola Bottlers (Phils.), Inc. and subject to the compulsory coverage of the Social Security System. On the contrary, the cases filed by Dr. Climaco before the NLRC involved different issues. In his first complaint,[41] Dr. Climaco sought recognition as a regular employee of the company and demanded payment of his 13th month pay, cost of living allowance, holiday pay, service incentive leave pay, Christmas bonus and all other benefits.[42] The second complaint [43] was for illegal dismissal, with prayer for reinstatement to his former position as company physician of the company's Bacolod Plant, without loss of seniority rights, with full payment of backwages, other unpaid benefits, and for payment of damages. [44] Thus, the issues in the NLRC cases are not determinative of whether or not the SSC should proceed. It is settled that the question claimed to be prejudicial in nature must be determinative of the case before the court.[45]

There is no forum shopping.

Anent the second issue, petitioners posit that since the issues before the NLRC and the SSC are the same, the SSC cannot make a ruling on the issue presented before it without necessarily having a direct effect on the issue before the NLRC. It was patently erroneous, if not malicious, for Dr. Climaco to invoke the jurisdiction of the SSC through a separate petition. [46] Thus, petitioners contend, Dr. Climaco was guilty of forum shopping.

Again, We turn down the contention.

Forum shopping is a prohibited malpractice and condemned as trifling with the courts and their processes.[47] It is proscribed because it unnecessarily burdens the courts with heavy caseloads. It also unduly taxes the manpower and financial resources of the judiciary. It mocks the judicial processes, thus, affecting the efficient administration of justice.[48]

The grave evil sought to be avoided by the rule against forum shopping is the rendition by two (2) competent tribunals of two (2) separate and contradictory decisions. Unscrupulous litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different fora until a favorable result is reached.[49]