

THIRD DIVISION

[G.R. No. 170099, November 28, 2007]

**COLBY CONTRUCTION AND MANAGEMENT CORPORATION
AND/OR JAIME B. LO, PETITIONERS, VS. NATIONAL LABOR
RELATIONS COMMISSION, ANTONIO R. MACAM AND WILLY C.
OLAGUER, RESPONDENTS.**

DECISION

CHICO-NAZARIO, J.:

Before this Court is the Petition for Review on *Certiorari*^[1] under Rule 45 of the Revised Rules of Court filed by petitioners Colby Construction and Management Corporation (Colby Construction) and/or its President, Jaime B. Lo (Lo), seeking the reversal and the setting aside of the Decision^[2] dated 22 March 2005 and the Resolution^[3] dated 5 October 2005 of the Court of Appeals in CA-G.R. SP No. 59329. The appellate court, in its assailed Decision and Resolution, affirmed the Resolution dated 10 September 1999 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 020826-99 dismissing the petitioners' appeal for failure to perfect the same within the reglementary period.

The factual and procedural backdrop of the instant case are as follows:

Sometime in July 1991, private respondent Willy C. Olaguer (Olaguer) was employed by Colby Construction as a construction foreman with the salary of P150.00, plus a living allowance of P100.00 per day. Olaguer was tasked to oversee the various construction projects of the company.^[4]

Eventually, Olaguer ventured into a sub-contracting business with Colby Construction wherein he submitted his bid to build a part of the company's construction project for a cost. Such sub-contracting business was carried out by Olaguer simultaneous with his job as a construction foreman.^[5]

In 1996, Olaguer was awarded the CHB Layering and Plastering Project which costs P550,731.48. As a guarantee for the completion of the project, Olaguer was required to post a performance bond in the amount equivalent to 10% of the project cost or the sum of P55,073.14. After the project was completed, Colby Construction paid Olaguer the full amount of the project cost but refused to return the performance bond. When Olaguer persisted in demanding the return of the performance bond, Colby Construction, instead of complying with his demand, summarily dismissed Olaguer from his job as a construction foreman.^[6]

Consequently, Olaguer filed a complaint for illegal dismissal against petitioners Colby Construction and/or Lo before the Labor Arbiter alleging that he was summarily dismissed from his work as a construction foreman without justifiable cause. He

likewise claimed that Colby Construction refused to return the sum of his performance bond even after the project he undertook as a sub-contractor was faithfully completed. Olaguer thus prayed for reinstatement and backwages, and payment of P55,073.14, the sum of the unreturned performance bond.^[7]

For failure of petitioners to file their Position Paper, the Labor Arbiter, in a Decision^[8] dated 22 July 1999, ruled in favor of Olaguer and declared that the latter was illegally dismissed from employment. The Labor Arbiter, however, refused to dispose of the issue of whether or not Olaguer was entitled to the sum of the purported performance bond, asserting that such matter properly rested within the jurisdiction of the regular courts. The dispositive portion of the Labor Arbiter's Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered, ordering [petitioners] to reinstate [Olaguer] to his former or equivalent position without loss of seniority rights, and to pay him full backwages from date of dismissal to actual reinstatement, hereunder computed as follows:

I. FULL BACKWAGES:

Backwages:

From March 1996 to July 22, 1999

= 3 yrs. 4 mos. & 22
days or 40.73 mos.

P250.00 x 40.73 = P264,745.00

13th Month Pay:

From March to Dec.
31, 1996

= 9 mos. & 31 days or
10 mos.

P250.00 x 26 x 10

12 = P5,416.67

From Jan. to Dec. 31,
1997

= 12 mos.

P250.00 x 26 x 12

12 = P6,500.00

From Jan. to Dec. 31,
1998

= 12 mos.

P250.00 x 26 x 12

12 = P6,500.00

From Jan. to July 22,
1999

= 6 mos. & 22 days or
6.73 mos.

P250.00 x 26 x 73

12 = P2,916.33 21,333.00

Service Incentive
Leave:

1996 = P250.00 x 5 days = P1,250.00

1997 = P250.00 x 5 days = 1,250.00

1998 = P250.00 x 5 days = 1,250.00 3,730.00

TOTAL FULL BACKWAGES P289,828.00

Should reinstatement be not feasible, separation pay equivalent to one-half (1/2) month per year of service should be given instead under the following computation, to wit:

From July 1991 to July
22, 1999

= 8 years & 22 days or
8 yrs.

P250.00 x 26 x 8

2 P26,000.00

Aggrieved, petitioners appealed the foregoing decision before the NLRC. They primarily argued that when Olaguer ventured into a sub-contracting business with Colby Construction, his job as a construction foreman was effectively terminated, and an employer-employee relationship was therefore wanting in the instant case.^[9] Petitioners asserted that it was because of their lawyer's negligence that they were not able to controvert Olaguer's allegation before the Labor Arbiter.

Controversy arose as to the timely perfection of the petitioners' appeal with the NLRC. As borne by the records, petitioners received a copy of the 22 July 1999 Labor Arbiter Decision on 13 August 1999.^[10] Their Appeal Memorandum^[11] was filed on 23 August 1999, but without their posting the necessary appeal bond set by the NLRC in the sum of P315,828,000.00. Instead, petitioners filed a Motion to Reduce Bond,^[12] since there was a strong possibility of the reversal of the adverse Labor Arbiter Decision on appeal. Pending the resolution of petitioners' Motion to Reduce Bond, the reglementary period for perfecting an appeal lapsed on 23 August 1999. Nevertheless, petitioners posted an appeal bond in the sum of P100,000.00 on 27 August 1999.^[13]

In a Resolution^[14] dated 10 November 1999, the NLRC denied petitioners' Motion for Reduction of Bond and dismissed their appeal on the ground of non-perfection. The NLRC observed:

[Petitioners] claimed that they received a copy of the Labor Arbiter's decision on 13 August 1999. Thus, [petitioners] had only until August 23, 1999 to file and perfect their appeal. Records show that [petitioners], thru counsel, filed their Appeal Memorandum on August 23, 1999. Instead of posting a cash or surety bond, [petitioners] filed a Motion to Reduce Bond on the grounds that it is too costly and will entail unnecessary expense considering the strong possibility of a reversal of the appealed decision. The required appeal bond was filed only on August 27, 1999 or more than ten (10) days from receipt of the Decision.

x x x x

WHEREFORE, premises considered, the Motion to Reduce Bond is denied and the appeal is hereby dismissed for failure to perfect the same within the reglementary period set forth by law and the rules of the Commission.

Petitioners' Motion for Reconsideration was denied by the NLRC in its Resolution dated 3 May 2000.^[15]

Petitioners elevated the matter to the Court of Appeals via a Petition for *Certiorari*^[16] assailing the NLRC Resolution dated 10 November 1999 on the ground that the NLRC gravely abused its discretion in dismissing their appeal. Petitioners asserted that the NLRC failed to consider that they had filed an appeal bond for P100,000.00 even before their motion to reduce the same was resolved, thus, showing that there was no intention on their part to evade such requirement.^[17]

On 22 March 2005, the Court of Appeals rendered a Decision affirming the NLRC Resolution dated 10 November 1999 and declaring therein that the NLRC did not gravely abuse its discretion in dismissing the petitioners' appeal, thus:

WHEREFORE, finding no grave abuse of discretion on the part of respondent National Labor Relations Commission, the instant petition for certiorari is hereby DISMISSED for lack of merit. The assailed resolutions of the National Labor Relations Commission dated 10 November 1999 and 03 May 2000, respectively, are hereby AFFIRMED *in toto*.^[18]

Similarly ill-fated was petitioners' Motion for Reconsideration which was denied by the Court of Appeals in a Resolution dated 5 October 2005.

Hence, petitioners filed this instant Petition for Review on *Certiorari*,^[19] under Rule 45 of the Revised Rules of Court, challenging the Court of Appeals Decision and raising the sole issue of:

WHETHER OR NOT RESPONDENT COURT OF APPEALS ERRED IN COMPLETELY DISREGARDING THE TIMELY FILING OF THE PETITIONERS OF THE MOTION TO REDUCE BOND AS WELL AS THE SUBSTANTIAL

COMPLIANCE OF THE PETITIONER WITH THE REQUIREMENTS FOR PERFECTING APPEAL BEFORE THE NLRC

Petitioners, in questioning the appellate court's ruling, call the attention of this Court to the so-called "utmost good faith" they demonstrated in initially posting an appeal bond while their Motion to Reduce the Bond was still pending consideration by the NLRC. In ignoring such material consideration, petitioners claim that the Court of Appeals committed grave abuse of discretion in issuing its Decision dated 22 March 2005 and Resolution dated 5 October 2005.

The petition is devoid of merit.

Time and again it has been held that the right to appeal is not a natural right or a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law. The party who seeks to avail himself of the same must comply with the requirements of the rules. Failing to do so, the right to appeal is lost.^[20]

Article 223 of the Labor Code, as amended, sets forth the rules on appeal from the Labor Arbiter's monetary award:

ART. 223. Appeal. – Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. x x x.

x x x x

In case of a judgment involving a monetary award, an appeal by the employer **may be perfected only** upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from. (Emphasis ours.)

Implementing the aforesaid provisions of the Labor Code are the provisions of Rule VI of the New Rules of Procedure of the NLRC on perfection of appeals which read:

Section. 1. *Periods of Appeal.* - **Decisions, awards or orders of the Labor Arbiter and the POEA Administrator shall be final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards or orders** of the Labor Arbiter or of the Administrator, and in case of a decision of the Regional Director or his duly authorized Hearing Officer within five (5) calendar days from receipt of such decisions, awards or orders x x x.

Section 3. *Requisites for Perfection of Appeal.* – (a) The appeal shall be filed within the reglementary period as provided in Sec. 1 of this Rule; shall be under oath with proof of payment of the required appeal fee and the posting of a cash or surety bond as provided in Sec. 5 of this Rule; shall be accompanied by a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof; the relief