

THIRD DIVISION

[G.R. No. 170735, December 17, 2007]

IMMACULADA L. GARCIA, PETITIONER, VS. SOCIAL SECURITY COMMISSION LEGAL AND COLLECTION, SOCIAL SECURITY SYSTEM, RESPONDENTS.

DECISION

CHICO-NAZARIO, J.:

This is petition for review on *Certiorari* under Rule 45 of the Rules of Court is assailing the 2 June 2005 Decision^[1] and 8 December 2005 Resolution^[2] both of the Court of Appeals in CA-G.R. SP No. 85923. the appellate court affirmed the --- Order and --- Resolution both of the Social Security Commission (SSC) in SSC Case No. 10048, finding Immaculada L. Garcia (Garcia), the sole surviving director of Impact Corporation, petitioner herein, liable for unremitted, albeit collected, SSS contributions.

Petitioner Immaculada L. Garcia, Eduardo de Leon, Ricardo de Leon, Pacita Fernandez, and Consuelo Villanueva were directors^[3] of Impact Corporation. The corporation was engaged in the business of manufacturing aluminum tube containers and operated two factories. One was a "slug" foundry-factory located in Cuyapo, Nueva Ecija, while the other was an Extrusion Plant in Cainta, Metro Manila, which processed the "slugs" into aluminum collapsible tubes and similar containers for toothpaste and other related products.

Records show that around 1978, Impact Corporation started encountering financial problems. By 1980, labor unrest besieged the corporation.

In March 1983, Impact Corporation filed with the Securities and Exchange Commission (SEC) a Petition for Suspension of Payments,^[4] docketed as SEC Case No. 02423, in which it stated that:

[Impact Corporation] has been and still is engaged in the business of manufacturing aluminum tube containers x x x.

x x x x

In brief, it is an on-going, viable, and profitable enterprise.

On 8 May 1985, the union of Impact Corporation filed a Notice of Strike with the Ministry of Labor which was followed by a declaration of strike on 28 July 1985. Subsequently, the Ministry of Labor certified the labor dispute for compulsory arbitration to the National Labor Relations Commission (NLRC) in an Order^[5] dated 25 August 1985. The Ministry of Labor, in the same Order, noted the inability of

Impact Corporation to pay wages, 13th month pay, and SSS remittances due to cash liquidity problems. A portion of the order reads:

On the claims of unpaid wages, unpaid 13th month pay and non-remittance of loan amortization and SSS premiums, we are for directing the company to pay the same to the workers and to remit loan amortizations and SSS premiums previously deducted from their wages to the Social Security System. Such claims were never contested by the company both during the hearing below and in our office. In fact, such claims were admitted by the company although it alleged cash liquidity as the main reason for such non-payment.

WHEREFORE, the dispute at Impact Corporation is hereby certified to the National Labor Relations Commission for compulsory arbitration in accordance with Article 264 (g) of the Labor Code, as amended.

x x x x

The company is directed to pay all the entitled workers unpaid wages, unpaid 13th month pay and to remit to the Social Security System loan amortizations and SSS premiums previously deducted from the wages of the workers.^[6]

On 3 July 1985, the Social Security System (SSS), through its Legal and Collection Division (LCD), filed a case before the SSC for the collection of unremitted SSS premium contributions withheld by Impact Corporation from its employees. The case which impleaded Impact Corporation as respondent was docketed as SSC Case No. 10048.^[7]

Impact Corporation was compulsorily covered by the SSS as an employer effective 15 July 1963 and was assigned Employer I.D. No. 03-2745100-21.

In answer to the allegations raised in SSC Case No. 10048, Impact Corporation, through its then Vice President Ricardo de Leon, explained in a letter dated 18 July 1985 that it had been confronted with strikes in 1984 and layoffs were effected thereafter. It further argued that the P402,988.93 is erroneous. It explained among other things, that its operations had been suspended and that it was waiting for the resolution on its Petition for Suspension of Payments by the SEC under SEC Case No. 2423. Despite due notice, the corporation failed to appear at the hearings. The SSC ordered the investigating team of the SSS to determine if it can still file its claim for unpaid premium contributions against the corporation under the Petition for Suspension of Payments.

In the meantime, the Petition for Suspension of Payments was dismissed which was pending before the SEC in an Order^[8] dated 12 December 1985. Impact Corporation resumed operations but only for its winding up and dissolution.^[9] Due to Impact Corporation's liability and cash flow problems, all of its assets, namely, its machineries, equipment, office furniture and fixtures, were sold to scrap dealers to answer for its arrears in rentals.

On 1 December 1995, the SSS-LCD filed an amended Petition^[10] in SSC Case No.

10048 wherein the directors of Impact Corporation were directly impleaded as respondents, namely: Eduardo de Leon, Ricardo de Leon,^[11] Pacita Fernandez, Consuelo Villanueva, and petitioner. The amounts sought to be collected totaled P453,845.78 and P10,856.85 for the periods August 1980 to December 1984 and August 1981 to July 1984, respectively, and the penalties for late remittance at the rate of 3% per month from the date the contributions fell due until fully paid pursuant to Section 22(a) of the Social Security Law,^[12] as amended, in the amounts of P49,941.67 and P2,474,662.82.

Period	Unremitted Amount	Penalties (3% Interest Per Month)	TOTAL
August 1980 to December 1984	P 453,845.78	P49, 941.67	503,787.45
August 1981 to July 1984	P 10,856.85	P2, 474, 662.82	2,485,519.67

Summonses were not served upon Eduardo de Leon, Pacita Fernandez, and Consuelo Villanueva, their whereabouts unknown. They were all later determined to be deceased. On the other hand, due to failure to file his responsive pleading, Ricardo de Leon was declared in default.

Petitioner filed with the SSC a Motion to Dismiss^[13] on grounds of prescription, lack of cause of action and cessation of business, but the Motion was denied for lack of merit.^[14] In her Answer with Counterclaim^[15] dated 20 May 1999, petitioner averred that Impact Corporation had ceased operations in 1980. In her defense, she insisted that she was a mere director without managerial functions, and she ceased to be such in 1982. Even as a stockholder and director of Impact Corporation, petitioner contended that she cannot be made personally liable for the corporate obligations of Impact Corporation since her liability extended only up to the extent of her unpaid subscription, of which she had none since her subscription was already fully paid. The petitioner raised the same arguments in her Position Paper.^[16]

On 23 January 1998, Ricardo de Leon died following the death, too, of Pacita Fernandez died on 7 February 2000. In an Order dated 11 April 2000, the SSC directed the System to check if Impact Corporation had leviable properties to which the investigating team of respondent SSS manifested that the Impact Corporation had already been dissolved and its assets disposed of.^[17]

In a Resolution dated 28 May 2003, the Social Security Commission ruled in favor of SSS and declared petitioner liable to pay the unremitted contributions and penalties, stating the following:

WHEREFORE, premises considered, this Commission finds, and so holds, that respondents Impact Corporation and/or Immaculada L. Garcia, as director and responsible officer of the said corporation, is liable to pay the SSS the amounts of P442,988.93, representing the unpaid SS

contributions of their employees for the period August 1980 to December 1984, not inclusive, and P10,856.85, representing the balance of the unpaid SS contributions in favor of Donato Campos, Jaime Mascarenas, Bonifacio Franco and Romeo Fullon for the period August 1980 to December 1984, not inclusive, as well as the 3% per month penalty imposed thereon for late payment in the amounts of P3,194,548.63 and P78,441.33, respectively, computed as of April 30, 2003. This is without prejudice to the right of the SSS to collect the penalties accruing after April 30, 2003 and to institute other appropriate actions against the respondent corporation and/or its responsible officers.

Should the respondents pay their liability for unpaid SSS contributions within sixty (60) days from receipt of a copy of this Resolution, the 3% per month penalty for late payment thereof shall be deemed condoned pursuant to SSC Res. No. 397-S.97, as amended by SSC Res. Nos. 112-S.98 and 982-S.99, implementing the provision on condonation of penalty under Section 30 of R.A. No. 8282.

In the event the respondents fail to pay their liabilities within the aforesaid period, let a writ of execution be issued, pursuant to Section 22 (c) [2] of the SS Law, as amended, for the satisfaction of their liabilities to the SSS.^[18]

Petitioner filed a Motion for Reconsideration^[19] of the afore-quoted Decision but it was denied for lack of merit in an Order^[20] dated 4 August 2004, thus:

Nowhere in the questioned Resolution dated May 28, 2003 is it stated that the other directors of the defunct Impact Corporation are absolved from their contribution and penalty liabilities to the SSS. It is certainly farthest from the intention of the petitioner SSS or this Commission to pin the entire liability of Impact Corporation on movant Immaculada L. Garcia, to the exclusion of the directors of the corporation namely: Eduardo de Leon, Ricardo de Leon, Pacita Fernandez and Conzuelo Villanueva, who were all impleaded as parties-respondents in this case.

The case record shows that there was failure of service of summonses upon respondents Eduardo de Leon, Pacita Fernandez and Conzuelo Villanueva, who are all deceased, for the reason that their whereabouts are unknown. Moreover, neither the legal heirs nor the estate of the defaulted respondent Ricardo de Leon were substituted as parties-respondents in this case when he died on January 23, 1998. Needless to state, the Commission did not acquire jurisdiction over the persons or estates of the other directors of Impact Corporation, hence, it could not validly render any pronouncement as to their liabilities in this case.

Furthermore, the movant cannot raise in a motion for reconsideration the defense that she was no longer a director of Impact Corporation in 1982, when she was allegedly eased out by the managing directors of Impact Corporation as purportedly shown in the Deed of Sale and Assignment of Shares of Stock dated January 22, 1982. This defense was neither pleaded in her Motion to Dismiss dated January 17, 1996 nor in her Answer with Counterclaim dated May 18, 1999 and is, thus, deemed

waived pursuant to Section 1, Rule 9 of the 1997 Rules of Civil Procedure, which has supplementary application to the Revised Rules of Procedure of the Commission.

Finally, this Commission has already ruled in the Order dated April 27, 1999 that since the original Petition was filed by the SSS on July 3, 1985, and was merely amended on December 1, 1995 to implead the responsible officers of Impact Corporation, without changing its causes of action, the same was instituted well within the 20-year prescriptive period provided under Section 22 (b) of the SS Law, as amended, considering that the contribution delinquency assessment covered the period August 1980 to December 1984.

In view thereof, the instant Motion for Reconsideration is hereby denied for lack of merit.

Petitioner elevated her case to the Court of Appeals via a Petition for Review. Respondent SSS filed its Comment dated 20 January 2005, and petitioner submitted her Reply thereto on 4 April 2005.

The Court of Appeals, applying Section 28(f) of the Social Security Law,^[21] again ruled against petitioner. It dismissed the petitioner's Petition in a Decision dated 2 June 2005, the dispositive portion of which reads:

WHEREFORE, premises considered, the petition is DISMISSED for lack of merit. The assailed Resolution dated 28 May 2003 and the Order dated 4 August 2004 of the Social Security Commission are AFFIRMED in toto.^[22]

Aggrieved, petitioner filed a Motion for Reconsideration of the appellate court's Decision but her Motion was denied in a Resolution dated 8 December 2005.

Hence, the instant Petition in which petitioner insists that the Court of Appeals committed grave error in holding her solely liable for the collected but unremitted SSS premium contributions and the consequent late penalty payments due thereon. Petitioner anchors her Petition on the following arguments:

- I. SECTION 28(F) OF THE SSS LAW PROVIDES THAT A MANAGING HEAD, DIRECTOR OR PARTNER IS LIABLE ONLY FOR THE PENALTIES OF THE EMPLOYER CORPORATION AND NOT FOR UNPAID SSS CONTRIBUTIONS OF THE EMPLOYER CORPORATION.
- II. UNDER THE SSS LAW, IT IS THE MANAGING HEADS, DIRECTORS OR PARTNERS WHO SHALL BE LIABLE TOGETHER WITH THE CORPORATION. IN THIS CASE, PETITIONER HAS CEASED TO BE A STOCKHOLDER OF IMPACT CORPORATION IN 1982. EVEN WHILE SHE WAS A STOCKHOLDER, SHE NEVER PARTICIPATED IN THE DAILY OPERATIONS OF IMPACT CORPORATION.
- III. UNDER SECTION 31 OF THE CORPORATION CODE, ONLY DIRECTORS, TRUSTEES OR OFFICERS WHO PARTICIPATE IN UNLAWFUL ACTS OR ARE GUILTY OF GROSS NEGLIGENCE AND BAD FAITH SHALL BE PERSONALLY LIABLE. OTHERWISE, BEING A MERE STOCKHOLDER, SHE IS LIABLE ONLY TO THE EXTENT OF HER