

SPECIAL FOURTH DIVISION

[CA-G.R. SP No. 137387, April 24, 2015]

ALEXANDER R. NG, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION), SELIVIC PAWNSHOP CORPORATION (FORMERLY TAMBUNTING PAWNSHOP) AND TERESITA T. LIBORO, RESPONDENTS.

D E C I S I O N

ABDULWAHID, J.:

Before us is a *petition for certiorari* filed under Rule 65 of the Revised Rules of Civil Procedure, which seeks to reverse and set aside the *Decision*^[1] promulgated on April 21, 2014 and *Resolution*^[2] promulgated on July 14, 2014, of public respondent National Labor Relations Commission (NLRC), First Division, in NLRC NCR Case No. NCR-11-17826-11 (LER Case No. 01-013-14).

The instant petition stemmed from a *Complaint*^[3] for actual illegal dismissal, underpayment of salary/wages, non-payment of salary/wages, service incentive leave, 13th month pay, separation pay and ECOLA, filed with the Labor Arbiter on November 29, 2011 by petitioner Alexander Ng against private respondents Selivic Pawnshop Corporation (formerly Tambunting Pawnshop) and Teresita T. Liboro. The complaint was docketed as NLRC NCR Case No. NCR-11-17826-11.

In his *Position Paper*,^[4] petitioner alleged that he has been employed as an appraiser of Tambunting Pawnshop (now Selivic Pawnshop Corporation) in one of its Pasig City branches since November 23, 1999. He was required to work for six (6) days a week from 8:30 in the morning until 5:30 in the afternoon and on some occasions, on rest days. He received a daily wage of Four Hundred Four Pesos (Php404.00) though he never received the monetary value of his unused service incentive leave as well as his 13th month pay and ECOLA. Petitioner also claimed that on March 2, 2011, Tambunting Pawnshop formally closed its Pasig branch and transferred him to its Caloocan City branch. He was able to work there only for two (2) days from March 9 to March 10, 2011. At around this time, petitioner received a memorandum from Tambunting Pawnshop, alleging that he has violated company policies, among which, is the over-appraising of pawned items on certain instances covering the entire period of his employment with Tambunting Pawnshop or for a period of almost twelve (12) years. He was suspended for a month pursuant to the said memorandum. According to petitioner, he never heard again from respondents until a termination letter was handed to him, signed by the Auditor and the Operations Manager. He claimed that he was not afforded an opportunity to present his defense on the charges leveled against him, but was instead unceremoniously dismissed without due process and without payment of separation pay.

On the other hand, private respondents did not file their position paper. The records

show that during the mandatory hearing scheduled on December 20, 2011 and January 5, 2012, private respondents failed to appear despite due notices sent to the address of private respondent Teresita T. Liboro at No. 12, Mahogany Street, Forbes Park, Makati City. The said notices were returned bearing the notations, "RTS, REFUSED TO RECEIVE BY MR. LIBORO ALBANO, dated December 12, 2011." Another set of notices were sent for the January 27, 2012 hearing to the same address, directing private respondents to file their verified position paper. Again, the notices were returned with the notations, "RTS, REFUSED TO RECEIVE dated January 17, 2012." The filing of their position paper was rescheduled to February 20, 2012, with a warning that if private respondents fail to appear and file the required position paper, the hearing will proceed *ex-parte*. However, the said notices were returned, bearing the notations, "RTS, REFUSED TO RECEIVE dated February 6, 2012." To further afford respondents another chance, petitioner furnished the office of the Labor Arbiter another address at 7-A EDSA Ave., corner Evangelista Street, Bangkal, Makati City. Notice was sent to the given address and was received by a certain Jualyn Ajoc, but private respondents failed to appear despite notice. Another notice was sent to the same address and was received by a certain Elvis Montenegro. Still, private respondents failed to appear. Thus, on July 31, 2012, Labor Arbiter Joel S. Lustria rendered a *Decision*,^[5] finding that petitioner was illegally dismissed by private respondents, entitling him to the mandatory remedy of reinstatement and payment of backwages, and granting his claim for payment of 13th month pay and service incentive leave pay. The dispositive portion of the said Decision reads, as follows:^[6]

WHEREFORE, premises considered, judgment is hereby rendered, finding respondents guilty of illegal dismissal. Accordingly, respondents are ordered jointly and severally liable:

- 1) To pay complainant the amount of P199,207.54, representing his backwages computed only up to the promulgation of this decision;
- 2) To pay complainant the amount of PP143,988.00, representing his separation pay;
- 3) To pay complainant the amount of P31,512.00, representing his 13th month pay; and the sum of P6,060.00, as his service incentive leave pay.

Other claims are dismissed for lack of merit.

SO ORDERED.

There being no appeal from the decision interposed by private respondents, petitioner filed on November 19, 2012 a *Motion to Issue Writ of Execution*,^[7] praying that a writ be issued for the execution and satisfaction of the July 31, 2012 Decision. A pre-execution conference was scheduled on December 17, 2012 and notices were sent to both parties. During the said conference, a representative of petitioner appeared, while private respondents failed to attend.

Finding that private respondents were sufficiently notified by registered mail, the Labor Arbiter issued a *Writ of Execution*^[8] and thereafter, a *Notice of Garnishment*^[9] dated April 2, 2013 addressed to Banco de Oro (BDO).

Upon learning from BDO that a *Notice of Garnishment* was issued against their account, private respondents filed an *Entry of Appearance with Motion to Quash Writ of Execution*^[10] dated April 10, 2013 wherein they alleged that the notice sent to them by BDO regarding the garnishment of their bank accounts pursuant to a *Writ of Execution* in connection with the instant labor case was the first notice they received regarding the said case. Private respondents contended that the office of the Labor Arbiter did not validly acquire jurisdiction over them by reason of improper service of summons upon them. They contended that the claimed employer of complainant is Selivic Corporation, with respondent Teresita T. Liboro being named as a party-respondent only on account of her position and/or association with the corporation. Thus, the summons issued in relation to this case should have been served at 742 Rizal Avenue Extension, Caloocan City, Metro Manila, which is the principal office address of private respondent company, and not at No. 12, Mahogany Street, Forbes Park, Makati City, which is the residence of respondent Teresita T. Liboro. Based on the foregoing premise, private respondents prayed that: (1) the *Writ of Execution* be quashed for having been issued without the requisite jurisdiction over the respondents; (2) the *Decision* rendered in the instant case be recalled and set aside for having been issued without the requisite jurisdiction over the respondents; and (3) consistent with due process, an order be issued directing respondents to file their position paper.

On July 10, 2013, petitioner filed a *Comment/Opposition*^[11] to private respondent's *Motion to Quash Writ of Execution*, praying that the same be noted and the *Writ of Execution* issued pursuant to the *Decision* dated July 31, 2012 rendered by the Labor Arbiter be maintained.

On December 11, 2012, Labor Arbiter Joel S. Lustria issued an *Order*,^[12] denying private respondents' *Motion to Quash*, the dispositive portion of which reads, as follows:^[13]

WHEREFORE, premises considered, respondents' Motion to Quash is hereby **DENIED**. Accordingly, let the execution proceedings proceed.

SO ORDERED.

On January 13, 2014, private respondents filed a *Petition*^[14] with urgent prayer for issuance of temporary restraining order and/or writ of preliminary injunction, where they essentially questioned the validity of the summons issued to them in the present case and claimed that the Labor Arbiter never acquired jurisdiction over them, thus, depriving them of their right to due process. Private respondents alleged that their legal demurral began when they received a notice from BDO informing them that their bank accounts were being garnished. They alleged that it was only then that they were informed of the existing labor case between them and petitioner.

According to private respondents, the claimed employer of complainant is Selivic Corporation, with respondent Teresita T. Liboro being named as a party-respondent only on account of her position and/or association with the corporation. Thus, private respondents contended that summons should have been served at the principal place of business of private respondent company, at 742 Rizal Avenue

Extension, Caloocan City, Metro Manila. Private respondents alleged that summons in the labor case was not sent to private respondent company's principal place of business, but at the residence of private respondent Teresita T. Liboro, which notice was received by a certain Liboro Albano at No. 12, Mahogany St., Forbes Park, Makati City. This notwithstanding, the Labor Arbiter proceeded with the hearing and the submission of the parties' position papers. This time, the Labor Arbiter sent a notice of hearing allegedly received by a certain Jualyn Ayoc at 7-A EDSA Ave., corner Evangelista St., Bangkal, Makati City, which is still not the principal place of business of private respondent company. Private respondents asserted that, by reason of the improper service of summons, they were not the one at fault in failing to attend the hearings before the Labor Arbiter.

On April 21, 2014, the NLRC rendered a *Decision*,^[15] finding the service of summons over private respondents to be invalid and not binding, and consequently reversing the decision of the Labor Arbiter, the dispositive portion of which reads, as follows:^[16]

WHEREFORE, the petition is hereby **GRANTED**. The Decision of the Labor Arbiter is hereby **REVERSED and SET ASIDE**. Let the case be **REMANDED** to the Labor Arbiter for further proceedings upon service of valid summons to petitioner.

SO ORDERED.

Petitioner filed a *Motion for Reconsideration*^[17] dated May 5, 2014, but the same was denied in the assailed *Resolution*^[18] dated July 14, 2014.

Aggrieved, petitioner filed the instant petition, praying that the April 21, 2014 *Decision* and the July 14, 2014 *Resolution* of public respondent NLRC be annulled and set aside on the ground that public respondent acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it reversed the Labor Arbiter's decision and remanded the case for further proceedings.

Petitioner contends that in quasi-judicial proceedings, procedural rules governing service of summons are not strictly construed, and substantial compliance therewith is sufficient. They claimed that service to private respondent Liboro was tantamount to service to private respondent company, as Liboro was, at the time the complaint was filed, was the company's appointed treasurer, and currently, corporate secretary of the said company.

We find no merit in the instant petition.

Service of summons in cases filed with the Labor Arbiter is governed by Section 4, Rule V of the 2011 NLRC Rules of Procedure, to wit:

SECTION 4. SERVICE OF SUMMONS. – Summons shall be served personally upon the parties by the bailiff or a duly authorized public officer within three (3) days from his/her receipt thereof, or by registered mail, or by private courier authorized by the Commission; Provided that in special circumstances, service of summons may be effected in accordance with the pertinent provisions of the Rules of Court.