

THIRD DIVISION

[CA-G.R. SP NO. 127136, June 11, 2014]

**CARLO DE LEON, PETITIONER, VS. SOCIAL SECURITY SYSTEM,
RESPONDENT.**

DECISION

BUESER, J.:

Before this Court is a Petition for Review seeking the nullification and reversal of the Resolution dated 22 December 2009^[1] issued by the Social Security Commission ("Commission") in the present case for the collection of delinquent SS contributions and corresponding penalties filed by the Social Security System ("SSS") against petitioner Carlo De Leon ("Petitioner") and his co-respondents below, i.e., Better Building, Inc. ("Better Building"), John Paul Anthony Warne, Paula Ann Warne, Orlando A. Zulueta and Robert Jaworski.

Granting said petition, the Commission ordered Better Building and its impleaded officers and directors to pay the unremitted SS contributions and penalties, the dispositive portion of which reads in this wise:

"WHEREFORE, the petition is granted.

Respondents are ordered to pay the SSS, within thirty (30) days from receipt hereof, the balance of the unremitted SS contributions of its seventy (70) complaining employees for the period January 1990 to February 2007 amounting to Five Hundred Twenty-Seven Thousand One Hundred Ninety-Seven Pesos (P527,197.00) and the 3% per month penalty imposed thereon for late remittance in the amount of One Million Three Hundred Fifty-One Thousand Nine Hundred Eighty-Three Pesos and 41/100 (P1,351,983.41) computed as of November 30, 2009, subject to a final computation of any penalty accruing after the said date, upon full payment of the contributions liability.

SO ORDERED."

Likewise on review is the Commission's Order dated 8 March 2012,^[2] which denied the separate motions for reconsideration filed by petitioner and Better Building and the other impleaded corporate officers and directors.

The Facts

The pertinent facts and antecedent proceedings, as borne by the records, are as follows:

On 17 May 2007, the SSS, for and in behalf of the seventy (70) former employees of Better Building, filed before the Social Security Commission ("Commission") a verified Petition dated 9 May 2007^[3] against Better Building and its impleaded

officers and directors including herein petitioner. Apparently, the former employees of Better Building executed a complaint-affidavit attesting to the non-remittance of their monthly SS contributions for the period January 1990 to February 2007.

A motion to dismiss was filed by Better Building and its officers, which was denied by the Commission. They then filed their Answer on 20 November 2007. Allegedly, Better Building is a domestic corporation engaged in the business of providing janitorial and allied services. In the main, it was argued that the complaining employees may have not been actually employed during the period alleged in the petition or they were unemployed for a certain period of time due to replacement, closure or reduction of personnel by the principals. They further maintained that the impleaded officers and directors were no longer connected with the corporation and should thus be absolved of liability. If at all, considering that the impleaded officers assumed office only in 2004, they should not be held liable for the delinquency that started in 1990.

On 28 July 2008, it was manifested that Better Building and the SSS were exploring the possibility of settling the case amicably and that the corporation had already made partial payment amounting to Five Hundred Eighty-Five Thousand Pesos (P585,000.00) for their assessed principal obligation. However, said efforts for an amicable settlement were rendered futile considering that Better Building had failed to submit a written proposal to the SSS on how they intend to pay the balance of their monetary obligation.

Consequently, in an Order dated 27 November 2008, the Commission directed the parties to submit their respective position papers. Both parties submitted their position papers each reiterating their allegations and points of argument.

Meanwhile, the Eufemio Law Offices entered its appearance as counsel for petitioner on 12 January 2009.^[4] In its Order dated 10 February 2009,^[5] the Commission noted such appearance and ordered its Secretariat to serve upon petitioner's counsel a copy of the Order dated 27 November 2008 to ensure the filing of petitioner's position paper.

On 22 December 2009, sans petitioner's position paper, the assailed Resolution was issued by the Commission granting the petition *a quo* and ordering Better Building and the impleaded officers and directors to pay the balance of the unremitted SS contributions and penalties.

Aggrieved, petitioner moved for the reconsideration of the Resolution contending that he had been deprived of his right to submit his position paper. He further highlighted the fact that he was a mere nominal director and that he had no part in the operations of the corporation.^[6] Better Building and the other officers and directors likewise moved for reconsideration of the adverse judgment arguing that the impleaded individuals should not be held solidarily liable considering that they were no longer part of the corporation at the time the demand letter had been served upon Better Building.

In its Order dated 8 March 2012, the Commission denied both motions for lack of merit. According to the Commission, petitioner was not deprived of due process considering that he had been given ample to be heard in light of the position paper that was submitted by his first counsel on record.

Undaunted, petitioner filed the present petition.