Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

REYNALDO S. GERALDO,
Petitioner,

- *versus* -

THE BILL SENDER CORPORATION/MS. LOURDES NER CANDO,
Respondents.

G.R. No. 222219

Present:

PERALTA, *J.*, *Chairperson*,
LEONEN,*
REYES, A., JR.,**
GESMUNDO,*** and
REYES, J., JR., *JJ.*

Promulgated:

October 3, 2018

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DECISION

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[1] dated August 7, 2014 and the Resolution[2] dated September 28, 2015 of the Court of Appeals (*CA*) in CA-G.R. SP No. 131235.

The antecedent facts are as follows:

On June 20, 1997, respondent The Bill Sender Corporation, engaged in the business of delivering bills and other mail matters for and in behalf of their customers, employed petitioner Reynaldo S. Geraldo as a delivery/messenger man to deliver the bills of its client, the Philippine Long Distance Telephone Company (*PLDT*). He was paid on a "per-piece basis,"

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* On wellness leave.

** Designated additional member per Special Order No. 2588 dated August 28, 2018.

*** On official business.

1 Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Jane Aurora C. Lantion and Danton Q. Bueser, concurring; *rollo*, pp. 32-39.

2 Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Ramon M. Bato, Jr. and Danton Q. Bueser, concurring; *id.* at 29-30.

the amount of his salary depending on the number of bills he delivered. On February 6, 2012, Geraldo filed a complaint for illegal dismissal alleging that on August 7, 2011, the company's operations manager, Mr. Nicolas Constantino, suddenly informed him that his employment was being terminated because he failed to deliver certain bills. He explained that he was not the messenger assigned to deliver the said bills but the manager refused to reconsider and proceeded with his termination. Thus, he claims that his dismissal was illegal for being done without the required due process under the law and that the company and its president, respondent Lourdes Ner Cando, be held liable for his monetary claims.[3]

For its part, the company countered that Geraldo was not a full time employee but only a piece-rate worker as he reported to work only as he pleased and that it was a usual practice for messengers to transfer from one company to another to similarly deliver bills and mail matters. As such, he would only be given bills to deliver if he reports to work, otherwise, the bills would be assigned to other messengers. Moreover, contrary to Geraldo's claims, the company asserts that he was not illegally dismissed for he was the one who abandoned his job when he no longer reported for work. Thus, the burden was on him to substantiate his claims for illegal dismissal.[4]

On November 29, 2012, the Labor Arbiter (*LA*) held that contrary to the company's assertion, the burden of proving that the dismissal of an employee is for just cause rests on the employer, without distinction whether the employer admits or does not admit the dismissal, pursuant to Article 277(b) of the Labor Code. It also ruled that Geraldo is considered as a regular employee of the company because he was doing work that is usually necessary and desirable to the trade or business thereof. Moreover, even if the performance of his job is not continuous or is merely intermittent, since he has been performing the same for more than a year, the law deems the repeated and continuing need thereof as sufficient evidence of the necessity, if not indispensability, of his work to the company's business. In addition, the LA found that the company failed to substantiate its contention that Geraldo was employed with another company and that he abandoned his job. But even if it was true that he abandoned his job, it was incumbent on the company to send him a notice ordering him to report to work and to explain his absences as mandated by Sections 2 and 5, Book V, Rule XIV of the Labor Code. Finding that Geraldo was illegally dismissed, the LA ordered the company to pay him separation pay, service incentive leave pay, and attorney's fees in the aggregate amount of ₱352,214.13.[5]

In a Decision[6] dated May 9, 2013, the National Labor Relations Commission (*NLRC*) affirmed the LA ruling with clarification that the

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3 *Id.* at 55-56.
4 *Id.* at 45.
5 *Id.* at 45-46.
6 *Id* at. 44-51.

computation of backwages must be from the time of his dismissal up to the finality of the NLRC Decision. According to the NLRC, the company failed to discharge the burden of proving a deliberate and unjustified refusal of Geraldo to resume his employment without any intention of returning as well as to observe the twin-notice requirement to insure that due process has been accorded to him. Moreover, said commission also rejected the company's claim that Geraldo abandoned his job since he filed his complaint only after seven (7) months from the alleged dismissal for the lapse of time between the dismissal of an employee for abandonment and the filing of the complaint is not a material *indicium* of abandonment.[7]

On August 7, 2014, however, the CA set aside the NLRC Decision. According to the appellate court, since Geraldo was paid on a per piece basis, he was hired on a per-result basis, and as such, he was not an employee of the company. The absence of an employer-employee relationship was further highlighted by the fact that messengers would habitually transfer from one messengerial company to another depending on the availability of mail matters. Thus, since Geraldo was not an employee of the company, there was no basis in awarding separation pay, backwages, 13th month pay, service incentive leave pay, and attorney's fees.[8] Thereafter, in a Resolution dated September 28, 2015, the CA further denied Geraldo's Motion for Reconsideration.

Aggrieved, Geraldo filed the instant petition on November 26, 2015 invoking the following arguments:

> I.
> THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT DISMISSED THE COMPLAINT ON THE GROUND THAT PETITIONER BEING A PIECE-RATE EMPLOYEE IS NOT AN EMPLOYEE OF RESPONDENT AND NOT ENTITLED TO SECURITY OF TENURE ON THE BASIS OF THE ALLEGATIONS THAT PETITIONER WAS PAID ON A PER PIECE BASIS.
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> II.
> THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT DISMISSED THE COMPLAINT AND SET ASIDE THE MONETARY AWARD FOR BACKWAGES, SEPARATION PAY, SERVICE INCENTIVE LEAVE, 13TH MONTH PAY AND ATTORNEY'S FEES WITHOUTH BASES IN FACT AND IN LAW.
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> IIII.
> THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT RULED THAT THE OFFICERS OF RESPONDENT CORPORATION ARE NOT LIABLE FOR THE MONETARY CLAIMS OF PETITIONER.

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7 *Id.* at 48-50.

8 *Id.* at 35-39.

In his petition, Geraldo posits that the existence of an employer-employee relationship cannot be denied and as a regular employee, he is entitled to a security of tenure. According to him, his being a piece-rate employee is just a manner of payment of his compensation and not the basis of his regularity of work. The regular nature of his work, moreover, is shown by the fact that the same is usually necessary and desirable to the nature of the company's business, which is the delivery of bills and other mail matters for and in behalf of its customers. Geraldo further claims that since he was illegally dismissed, for his employment was terminated without due process of law, he is entitled to his monetary claims as correctly awarded by the LA, and that Cando, as President of the company, should be held solidarily liable therefor. The mere fact that he was illegally dismissed, underpaid and deprived of his 13th month pay and service incentive leave pay constitutes bad faith on Cando's part as president of said company. As such, she cannot escape personal liability.[9]

The petition is partially meritorious.

The issue of whether Geraldo was, indeed, illegally dismissed depends upon the nature of his relationship with the company. Article 280 of the Labor Code describes a regular employee as one who is either (1) engaged to perform activities which are necessary or desirable in the usual business or trade of the employer; and (2) those casual employees who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which he is employed.

In *Integrated Contractor and Plumbing Works, Inc. v. National Labor Relations Commission*,[10] we held that the test to determine whether employment is regular or not is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. If the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability, of that activity to the business.

In the instant case, it is undisputed that the company was engaged in the business of delivering bills and other mail matters for and in behalf of their customers, and that Geraldo was engaged as a delivery/messenger man tasked to deliver bills of the company's clients. Clearly, the company cannot deny the fact that Geraldo was performing activities necessary or desirable in its usual business or trade for without his services, its fundamental purpose of delivering bills cannot be accomplished. On this basis alone, the

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9 *Id.* at 10-21.

10 503 Phil. 875, 882-883 (2005).

law deems Geraldo as a regular employee of the company. But even considering that he is not a full time employee as the company insists, the law still deems his employment as regular due to the fact that he had been performing the activities for more than one year. In fact, counting the number of years from the time he was engaged by the company on June 20, 1997 up to the time his services were terminated on August 7, 2011 reveals that he has been delivering mail matters for the company for more than fourteen (14) years. Without question, this amount of time that is well beyond a decade sufficiently discharges the requirement of the law. While length of time may not be the controlling test to determine if an employee is indeed a regular employee, it is vital in establishing if he was hired to perform tasks which are necessary and indispensable to the usual business or trade of the employer.[11]

The Court, moreover, cannot subscribe to the company's contention that Geraldo is not a regular employee but merely a piece-rate worker since his salary depends on the number of bills he is able to deliver. In *Hacienda Leddy/Ricardo Gamboa, Jr. v. Villegas*,[12] We held that the payment on a piece-rate basis does not negate regular employment. The term "wage" is broadly defined in Article 97 of the Labor Code as remuneration or earnings, capable of being expressed in terms of money whether fixed or ascertained on a time, task, piece or commission basis. Payment by the piece is just a method of compensation and does not define the essence of the relations. Thus, the fact that Geraldo is paid on the basis of his productivity does not render his employment as contractual. It must be remembered that notwithstanding any agreements to the contrary, what determines whether a certain employment is regular is not the will and word of the employer, to which the desperate worker often accedes, much less the procedure of hiring the employee or the manner of paying his salary. It is the nature of the activities performed in relation to the particular business or trades considering all circumstances, and in some cases the length of time of its performance and its continued existence.[13]

Having established that Geraldo was a regular employee of the company, it becomes incumbent upon the latter to show that he was dismissed in accordance with the requirements of the law for the rule is long and well settled that, in illegal dismissal cases like the one at bench, the burden of proof is upon the employer to prove that the employee's termination from service is for a just and valid cause.[14] Here, the company claims that Geraldo was not illegally dismissed for he was the one who abandoned his job when he no longer reported for work. The Court, however, finds that apart from this self-serving allegation, the company failed to adduce proof of overt acts on the part of Geraldo showing his intention to abandon his work. Time and again, the Court has held that to

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11 *Hacienda Leddy/Ricardo Gamboa, Jr. v. Villegas*, 743 Phil. 530, 539 (2014).
12 *Id.*
13 *Id.* at 541.
14 *Id.* at 538.

justify a finding of abandonment of work, there must be proof of a deliberate and unjustified refusal on the part of an employee to resume his employment. The burden of proof is on the employer to show an unequivocal intent on the part of the employee to discontinue employment. Mere absence is not sufficient. It must be accompanied by manifest acts unerringly pointing to the fact that the employee simply does not want to work anymore. Hence, it bears emphasis that the fact that Geraldo filed the instant illegal dismissal complaint negates any intention on his part to sever his employment with the company. The records reveal that he even sought permission to return to work but was rejected by the company. Contrary to the company's assertion, moreover, the mere lapse of seven (7) months from Geraldo's alleged dismissal to the filing of his complaint is not a material indication of abandonment, considering that the complaint was filed within a reasonable period during the three (3)-year period provided under Article 291 of the Labor Code.[15]

Apart from the absence of just and valid cause in the termination of Geraldo's employment, the Court rules that his dismissal was also done without the observance of due process required by law. It has long been settled in labor law that in terminating the services of an employee, the employer must first furnish the employee with two (2) written notices: (a) notice which apprises the employee of the particular acts or omissions for which his/her dismissal is sought; and (b) subsequent notice which informs the employee of the employer's decision to dismiss him/her.[16] The company in the present case, however, failed to show its compliance with the twin-notice rule. In fact, in its Comment, it even expressly admitted its failure to serve Geraldo with any written notice, merely insisting that its oral notice should be considered substantial compliance with the law.

In view of the foregoing premises, therefore, the Court is convinced that Geraldo, a regular employee entitled to security of tenure, was illegally dismissed from his employment due to the failure of the company to comply with the substantial and procedural requirements of the law. Thus, We sustain the award of the LA and the NLRC of separation pay, in lieu of reinstatement, attorney's fees, as well as Geraldo's monetary claims of 13th month pay and service incentive leave pay in view of the failure of the company to adduce evidence to show that Geraldo has been paid said benefits.

It must be noted, however, that respondent Cando cannot be held personally and solidarily liable with the company for the monetary claims of Geraldo. As a general rule, a corporate officer cannot be held liable for acts done in his official capacity because a corporation, by legal fiction, has a personality separate and distinct from its officers, stockholders, and members. To pierce this fictional veil, it must be shown that the corporate

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15 *Padilla Machine Shop, et al. v. Javilgas*, 569 Phil. 673, 683 (2008).

16 *Cabañas v. Abelardo G. Luzano Law Office*, G.R. No. 225803, July 2, 2018.

personality was used to perpetuate fraud or an illegal act, or to evade an existing obligation, or to confuse a legitimate issue. In illegal dismissal cases, corporate officers may be held solidarily liable with the corporation if the termination was done with malice or bad faith.[17] To hold a director or officer personally liable for corporate obligations, two requisites must concur, to wit: (1) the complaint must allege that the director or officer assented to the patently unlawful acts of the corporation, or that the director or officer was guilty of gross negligence or bad faith; and (2) there must be proof that the director or officer acted in bad faith.[18] In the instant case, however, there is no showing that Cando, as President of the company, was guilty of malice or bad faith in terminating the employment of Geraldo. Thus, she should not be held personally liable for his monetary claims.

WHEREFORE, premises considered, the instant petition is **PARTIALLY GRANTED.** The assailed Decision dated August 7, 2014 and Resolution dated September 28, 2015 of the Court of Appeals in CA-G.R. SP No. 131235 are **REVERSED** and **SET ASIDE.** The Decision dated May 9, 2013 of the National Labor Relations Commission is **REINSTATED** with the **MODIFICATION** that Lourdes Ner Cando is absolved of any personal liability as regards the money claims awarded to petitioner.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

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17 *Culili v. Eastern Telecommunications Philippines, Inc., et al.*, 657 Phil. 342, 372 (2011).
18 *Id.*

WE CONCUR:

On wellness leave
MARVIC M. V. F. LEONEN
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

On official business
ALEXANDER G. GESMUNDO
Associate Justice

JOSE C. REYES, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

TERESITA J. LEONARDO-DE CASTRO
Chief Justice