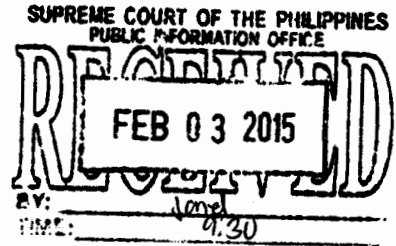




Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **November 24, 2014** which reads as follows:

“G.R. No. 215079 (TOKWING CONSTRUCTION, petitioner versus THE HONORABLE COURT OF APPEALS, ET AL., respondents).

This is a petition for *certiorari* filed via Rule 65 of the Rules of Court which imputes grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent Court of Appeals (CA) for denying the petition for *certiorari* for being filed out of time.

Petitioner Tokwing Construction (Tokwing) and Donggwang Clark Corporation (Donggwang) entered into a Memorandum of Agreement (MOA), employing Tokwing to construct Donggwang’s office (Project) in Clarkfield, Pampanga.

To undertake the Project, Tokwing hired its own manpower resources (complainants).

Tokwing alleged that in the middle of the Project, Donggwang demanded changes that were not in the MOA, which caused Tokwing to incur additional costs. Donggwang then failed to pay progress billings thus, on 20 November 2010, Tokwing issued an Internal Memorandum ordering a work stoppage. Tokwing alleged that it could no longer continue the Project due to lack of funds. Three (3) weeks after the work stoppage, Tokwing’s laborers (complainants) filed a complaint for Illegal Dismissal and Attorney’s Fees against Tokwing and Donggwang.

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On 26 March 2012, the Labor Arbiter ruled that the complainants were project employees and were unlawfully terminated.¹ On appeal to the National Labor Relations Commission (NLRC), the NLRC dismissed the appeal due to the failure of Tokwing's counsel to sign the joint declaration in the surety bond in violation to Section 4 in relation to Section 6 of Rule VI of the 2011 Revised NLRC Rules of Procedure, which requires that the joint declaration must be made under oath by the employer, counsel and the bonding company, attesting that the bond posted is genuine, and shall be in effect until the final disposition of the case.²

On 9 July 2012,³ Tokwing filed a Motion for Reconsideration. Attached therewith was a duly signed joint declaration. This time, the NLRC gave due course to the motion for reconsideration and ruled upon the merits of the case and affirmed that the complainants were project employees and were illegally dismissed.

Aggrieved, Tokwing again filed a motion for reconsideration, which the NLRC dismissed.

Instead of filing an appeal, Tokwing filed a Motion for Extension to file the necessary petition on 22 April 2014 before the CA.⁴ On 6 May 2014, Tokwing again filed a Motion for Second Extension.⁵

On 22 May 2014, Tokwing filed a petition for *certiorari* imputing grave abuse of discretion on the part of the NLRC for treating Tokwing's Motion for Reconsideration as a second motion, which the CA denied. The CA ruled that the period of 60 days within which to file a petition for *certiorari* under Section 4, Rule 65 is generally not extendible, except in highly exceptional and meritorious cases involving public interest.⁶

Hence, this petition.

OUR RULING

The CA did not commit any grave abuse of discretion amounting to lack or excess of jurisdiction for denying the petition for having been filed beyond the reglementary period. The belated filing of the petition is not due to exceptional and meritorious reasons involving public interest to

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¹ *Rollo*, pp. 34-65.

² NLRC Decision dated 19 June 2012; *id.* at 67-70.

³ *Id.* at 71-90.

⁴ *Id.* at 113-114.

⁵ *Id.* at 116-117.

⁶ *Id.* at 31-33.

warrant relaxation of the rules.⁷ A petition for *certiorari* is not a substitute for the lost remedy of appeal.⁸

In any case, the NLRC did not commit any grave abuse of discretion amounting to lack or excess of jurisdiction. Indeed, Tokwing failed to perfect an appeal by failing to attach a duly signed joint declaration, which warranted the NLRC's dismissal of the appeal. However, by filing a motion for reconsideration and subsequently filing a duly signed joint declaration, the NLRC gave due course to the motion for reconsideration and ruled on the merits of the case. The NLRC correctly ruled that the complainants were project employees who were illegally dismissed prior to the completion of the Project.

WHEREFORE, the petition is hereby **DENIED**.

SO ORDERED. PERLAS-BERNABE, J., on leave; VILLARAMA, JR., J., acting member per S.O. No. 1885 dated November 24, 2014.

Very truly yours,


EDGAR O. ARICHETA

Division Clerk of Court ^{m.r/n}

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(CA-G.R. SP No. 134960)

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NLRC RAB III 12-17115-0)

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⁷ *Republic v. St. Vincent de Paul Colleges, Inc.*, G.R. No. 192908, 22 August 2012, 678 SCRA 738, 747.

⁸ *Heirs of Spouses Teofilo M. Reterta and Elisa Reterta v. Spouses Lorenzo Mores and Virginia Lopez*, G.R. No. 159941, 17 August 2011, 655 SCRA 580, 590.