SUPREME COURT
THIRD DIVISION

MAM REALTY DEVELOPMENT CORPORATION and MANUEL CENTENO,

***Petitioners*,**

-versus-

G.R. No. 114787
June 2, 1995

NATIONAL LABOR RELATIONS COMMISSION and CELSO B. BALBASTRO,

***Respondents*.**

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D E C I S I O N

VITUG, *J.*:

A prime focus in the instant Petition is the question of when to hold a director or officer of a corporation solidarily obligated with the latter for a corporate liability.

The cases originated from a complaint filed with the Labor Arbiter by private respondent Celso B. Balbastro against herein petitioners, MAM Realty Development Corporation ("MAM") and its Vice President Manuel P. Centeno, for wage differentials, "ECOLA," overtime pay, incentive leave pay, 13th month pay (for the years 1988

and 1989), holiday pay and rest day pay. Balbastro alleged that he was employed by MAM as a pump operator in 1982 and had since performed such work at its Rancho Estate, Marikina, Metro manila. He earned a basic monthly salary of P1,590.00 for seven days of work a week that started from 6:00 a.m. to up until 6:00 p.m. daily.

MAM countered that Balbastro had previously been employed by Francisco Cacho and Co., Inc., the developer of Rancho Estates. Some time in May 1982, his services were contracted by MAM for the operation of the Rancho Estates' water pump. He was engaged, however, not as an employee, but as a service contractor, at an agreed fee of P1,590.00 a month. Similar arrangements were likewise entered into by MAM with one Rodolfo Mercado and with a security guard of Rancho Estates III Homeowners' Association. Under the agreement, Balbastro was merely made to open and close on a daily basis the water supply system of the different phases of the subdivision in accordance with its water rationing scheme. He worked for only a maximum period of three hours a day, and he made use of his free time by offering plumbing services to the residents of the subdivision. He was not at all subject to the control or supervision of MAM for, in fact, his work could so also be done either by Mercado or by the security guard. On 23 May 1990, prior to the filing of the complaint, MAM executed a Deed of Transfer,[1] effective 01 July 1990, in favor of the Rancho Estates Phase III Homeowners Association, Inc., conveying to the latter all its rights and interests over the water system in the subdivision.

In a decision, dated 23 December 1991, the Labor Arbiter dismissed the complaint for lack of merit.

On appeal to it, respondent National Labor Relations Commission ("NLRC") rendered judgment (a) setting aside the questioned decision of the Labor Arbiter and (b) referring the case, pursuant to Article 218(c) of the Labor Code, to Arbiter Cristeta D. Tamayo for further hearing and submission of a report within 20 days from receipt of the Order.[2] On 21 March 1994, respondent Commissioner, after considering the report of Labor Arbiter Tamayo, ordered:

> "WHEREFORE, the respondents are hereby directed to pay jointly and severally complaint the sum of P86,641.05 as above-computed."[3]

The instant petition asseverates that respondents NLRC gravely abused its discretion, amounting to lack or excess of jurisdiction, (1) in finding that an employer-employee relationship existed between petitioners and private respondents and (2) in holding petitioners jointly and severally liable for the money claims awarded to private respondent.

Once again, the matter of ascertaining the existence of an employer-employee relationship is raised. Repeatedly, we have said that this factual issue is determined by:

(a) the selection and engagement of the employee;

(b) the payment of wages;

(c) the power of dismissal; and

(d) the employer's power to control the employee with respect to the result of the work to be done and to the means and methods by which the work is to be accomplished.

We see no grave abuse of discretion on the part of NLRC in finding a full satisfaction, in the case at beach, of the criteria to establish that employer-employee relationship and, here, a point of controversy, refers merely to the existence of the power and not to the actual exercise thereof. It is not essential for the employer to actually supervise the performance of duties of the employee; it is enough that the former has a right to wield the power.[4] It is hard to accede to the contention of petitioners that private respondent should be considered totally free from such control merely because the work could equally and easily be done either by Mercado or by the subdivision's security guard. Not without any significance is that private respondent's employment with MAM has been registered by petitioners with the Social Security System.[5]

It would seem that the money claims awarded to private respondent were computed from 06 March 1988 to 06 march 1991,[6] the latter being the date of the filing of the complaint. The NLRC might have missed the transfer by MAM of the water system to the Homeowners Association on 01 July 1990, a matter that would appear not to be in dispute. accordingly, the period for the computation of the money claims should only be for the period from 06 march 1988 to 01 July 1990 (when petitioner corporation could be deemed to have ceased from the activity for which private respondents was employed), and petitioner corporation should, instead, be made liable for the employee's separation pay equivalent to one-half (½) month pay for every year of service.[7] While the transfer was allegedly due to MAM's financial constraints, unfortunately for petitioner corporation, however, it failed to sufficiently establish that its business losses or financial reverse were serious enough that possibly can warrant an exemption under the law.[8]

We agree with petitioners, however, that the NLRC erred in holding Centeno jointly and severally liable with MAM. A corporation, being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, acting as such corporate agents, are not theirs but the direct accountabilities of the corporation they represent. True, solidarily liabilities may at times be incurred but only when exceptional circumstances warrant such as, generally, in the following cases:[9]

1. When directors and trustees or, in appropriate cases, the officers of a corporation —

    (a) vote for or assent to patently unlawful acts of the corporation;

    (b) act in bad faith or with gross negligence in directing the corporate affairs;

    (c) are guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons.[10]

2. When a director or officer has consented to the issuance of watered stocks or who, having knowledge thereof, did not forthwith file with the corporate secretary his written objection thereto.[11]

3. When the director , trustee or officer has contractually agreed or stipulated to hold himself personally and solidarily liable with the Corporation.[12]

4. When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action.[13]

In labor cases, for instance, the Court has held corporate directors and officers solidarily liable with the corporation for the termination of employment of employees done with malice or in bad faith.[14]

In the case at bench, there is nothing substantial on record that can justify, prescinding from the foregoing, petitioner Centeno's solidary liability with the corporation.

An extra note. Private respondents avers that the questioned decision, having already become final and executory, could no longer be reviewed by this Court. The petition before us has been filed under Rule 65 of the Rules of Court, there being no appeal, or any other plain, speedy and adequate remedy in the ordinary course of law from decisions of the National Labor Relations Commission; it is a relief that is open so long as it is availed of within a reasonable time.

WHEREFORE, the Order of 21 march 1994 is **MODIFIED**. the case is **REMANDED** to the NLRC for a re-computation of private respondent's monetary awards, which, conformably with this opinion, shall be paid solely by petitioner MAM Realty Development Corporation. No special pronouncement on costs.

SO ORDERED.

Feliciano, Romero, Melo and Francisco, *JJ.*, concur.

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[1] Rollo, p. 48.

[2] Rollo, pp. 28-30.
[3] Rollo, p. 38.
[4] See Zanotte Shoes/Leonardo Lorenzo vs. NLRC, et al., G.R. No. 100665, 13 February 1995, citing Dy Ken Beng vs. International Labor and Marine Union of the Philippines, et al., 90 SCRA 161.
[5] Flores vs. Nuestro, 160 SCRA 568, citing Roman Catholic Archbishop of Manila vs. Social Security Commission, 1 SCRA 10; Insular Life Assurance Co., Ltd. vs. Social Security Commission, 3 SCRA 739; Insular Lumber Company vs. SSS, 7 SCRA 121; SSS vs. CA, 30 SCRA 210.
[6] Rollo, p. 35.
[7] Article 283, Labor Code provides:
"Art. 283. Closure of establishment and reduction of personnel. — The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent loses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy the worker affected thereby shall be entitled to a separation pay equivalent to at least one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. in case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year."
[8] Article 283. Labor Code, supra.
[9] Tramat Mercantile, Inc., and David Ong vs. Hon Court of Appeals and Melchor de la Cuesta, G.R. No. 111008, 07 November 1994.
[10] See Section 31, Corporation Code.
[11] Section 65, Corporation Code.
[12] See De Asis and Co., Inc. vs. Court of Appeals, 136 SCRA 599.
[13] Exemplified in Article 144, Corporation Code; see also Section 13, Presidential Decree 115 (Trust Receipts Law).
[14] See Sunio vs. NLRC, 127 SCRA 390; General Bank and Trust Company, et al. vs. Court of Appeals and Manuel E. Batucan, 135 SCRA 569.