Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PHILTRANCO SERVICE ENTERPRISES, INC., AND/OR JOSE PEPITO ALVAREZ, ARSENIO YAP AND CENTURION SOLANO,

Petitioners,

– versus -

FRANKLIN CUAL, NOEL PORMENTO, RAMIL TIMOG, WILFREDO PALADO, ROBERTO VILLARAZA, JOSE NERIO ARTISTA, CESAR SANCHEZ, RENERIO MATOCIÑOS, VALENTINO SISCAR, LARRY ACASIO, GERARDO NONATO, JOSE SAFRED, JUAN LUNA, GREGORIO MEDINA, NESTOR ZAGADA, FRANCISCO MIRANDA, LEON MANUEL VILLAFLOR, RODOLFO NOLASCO, REYNALDO PORTES, GERARDO CALINYAO, LUTARDO DAYOLA, VICENTE BALDOS, ROGELIO MEJARES, RENIE SILOS AND SERVANDO PETATE,

Respondents.

G.R. No. 207684

Present:

VELASCO, JR., *J.*,
Chairperson,
BERSAMIN,
JARDELEZA,
TIJAM, and
REYES, JR., *JJ.*

Promulgated:

July 17, 2017

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DECISION

TIJAM, *J.*:

This is a Petition for Review on Certiorari under Rule 45 assailing the Decision[1] dated November 9, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 123587, as well as its June 11, 2013 Resolution[2] denying reconsideration thereof. The CA reinstated the Labor Arbiter's finding that petitioner Philtranco Service Enterprises, Inc. (Philtranco) illegally dismissed the respondents, who were drivers, conductors, and maintenance personnel of Philtranco.

At the outset, the present petition stemmed from a refiled case before the labor arbiter. The respondents in the present case failed to sign the verification page of the earlier filed position paper and their names were not mentioned in the board resolution authorizing the filing of the complaint, which caused their exclusion from the case.

The Antecedents

Respondents were all members of Philtranco Workers Union – Association of Genuine Labor Organization (PWU-AGLO). They were all included in a retrenchment program embarked on by Philtranco in the years 2006 to 2007, on the ground that Philtranco was suffering business losses. Consequently, PWU-AGLO filed a Notice of Strike with the Department of Labor and Employment (DOLE), claiming that Philtranco engaged in unfair labor practices. The case was docketed as NCMB-NCR Case No. NS-02-028-07.

The parties were unable to settle their differences, thus the case was eventually referred to the Office of the Secretary of the DOLE and docketed as Case No. OS-VA-2007-008.

On June 13, 2007, Acting DOLE Secretary Danilo P. Cruz issued a Decision ordering Philtranco to:

> 1. REINSTATE to their former positions, without loss of seniority rights, the ILLEGALLY TERMINATED 17 "union officers", xxx, and PAY them BACKWAGES from the time of termination until their actual or payroll reinstatement, provided in the computation of backwages [those] among the seventeen (17) who had received their separation pay *(sic)* should deduct the payments made to them from the backwages due them.

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[1] Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Hakim S. Abdulwahid and Edwin D. Sorongon; *Rollo*, pp. 39-70.

[2] Id. at 72-74 .

> 2. MAINTAIN the status quo and continue in full force and effect the terms and conditions of the existing CBA – specifically, Article VI on Salaries and Wages (commissions) and Article XI, on Medical and Hospitalization – until a new agreement is reached by the parties; and
>
> 3. REMIT the withheld union dues to PWU-AGLO without unnecessary delay.
>
> The PARTIES are enjoined to strictly and fully comply with the provisions of the existing CBA and the other dispositions of this Decision.
>
> SO ORDERED.[3]

The respondents alleged that they were not absorbed by Philtranco despite the fact that the company was hiring new employees; thus, the respondents, together with other Philtranco employees, filed a labor complaint for illegal dismissal on October 16, 2007, and prayed for reinstatement, backwages and wage differentials. Docketed as NLRC NCR Case No. 00-10-11607-07 (first NLRC case), the complaint essentially assailed the employees' inclusion in the retrenchment program of Philtranco.[4]

In March 25, 2008 Decision, Labor Arbiter (LA) Antonio Macam found union president Jose Jessie Olivar (Olivar) to have been illegally dismissed and was entitled to reinstatement, backwages and attorney's fees. The present respondents' claims, however, were dismissed for their failure to sign the verification and certification of non-forum shopping of the complaint and position paper; the latter was signed only by Olivar without specific authority from the board.[5]

Respondents' appeal to the National Labor Relations Commission (NLRC), on the matter of their exclusion, was unsuccessful. So was their subsequent petition before the CA in CA-G.R. SP No. 110410[6], which attained finality on May 14, 2010. Thus, they remained excluded from the award.

Significantly, the LA, as affirmed by the NLRC and the CA in CA-G.R. SP No. 110410, found the retrenchment program undertaken by Philtranco in the years 2006 to 2007 as invalid for failure to sufficiently prove its necessity, considering that the audited financial statements for those years were not presented. On this basis, Olivar was declared to have been illegally dismissed.

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[3] *Philtranco Service Enterprises, Inc., v. PWU-AGLO*, G.R. No. 180962, February 26, 2014; and *Rollo*, pp. 42 and 120.

[4] Id. at 14-15, 43, 120-121.

[5] *Infra.*

[6] *PWU-AGLO v. NLRC*, penned by Associate Justice Rodil V. Zalameda and concurred in by Associate Justices Mario L. Guariña III and Apolinario D. Bruselas, Jr.

On the belief that the dismissal of their claims due to a technicality was without prejudice to their refiling of the same complaint, the respondents filed NLRC-NCR Case No. 06-08130-10 (second NLRC case).[7] This time, Philtranco submitted its audited financial statements for the years 2006 and 2007.

On April 15, 2011, Labor Arbiter Quintin Cueto III (LA Cueto) rendered a decision finding respondents to have been illegally dismissed. In so deciding, LA Cueto applied the *law of the case* principle, stating that the first NLRC case is binding upon Philtranco. The dispositive portion of LA Cueto's April 15, 2011 decision reads:

> WHEREFORE, premises considered, respondents are hereby declared guilty of illegal dismissal and ordered to reinstate complainants immediately to their former positions and to pay them, jointly and severally, full backwages from date of dismissal until actual reinstatement plus their 13th month pay and attorney's [fees] equivalent to 10% of all the monetary award computed as follows:
>
> xxx
>
> COMPLAINANTS, who had received their separation pay should be deducted (sic) from the amount of backwages due them.
>
> SO ORDERED.[8]

When Philtranco appealed LA Cueto's decision to the NLRC, the commission reversed and set aside LA Cueto's decision on September 15, 2011. Unlike LA Cueto, the commission gave weight to the audited financial statements for the years 2006 and 2007 submitted by Philtranco in the refiled case, but which was not presented in the prior case. The NLRC also disagreed with LA Cueto's application of the *law of the case* in the refiled complaint, stating that the principle applies only to Olivar.[9]

Respondents' motion for reconsideration before the NLRC was denied on December 13, 2011. Hence, they assailed the reversal via a petition for certiorari before the CA, which thereafter reinstated LA Cueto's decision.[10] The CA reasoned that the supervening event is inapplicable in the present case and agreed with LA Cueto that it is inappropriate to consider the belatedly filed audited financial statements for the years 2006 and 2007.

Aggrieved by the denial of its motion for reconsideration, Philtranco timely filed the present Petition for Review on Certiorari under Rule 45 raising the following issues:

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[7] *Rollo*, pp. 15-16, 44 and 122-123.
[8] Id. at 44-45, 122-123.
[9] Id. at 16, 47-53.
[10] Note 1.

I. The Court of Appeals committed reversible error when it ruled that the retrenchment was invalid and the respondents were illegally dismissed[;]

II. The Court of Appeals committed reversible error when it ruled that the "law of the case" applied to respondents' "refiled" labor claim in 2010[; and]

III. The Court of Appeals committed reversible error when it ruled that individual petitioners Jose Pepito Alvarez, Arsenio Yap and Centurion Solano were jointly and severally liable for payment of backwages and other awards.[11]

The threshold issue for resolution is whether or not the CA correctly applied the principle of the *law of the case* in the second NLRC complaint.

We find the *law of the case* doctrine not applicable in the cases under consideration.

The doctrine has been defined as "that principle under which determinations of questions of law will generally be held to govern a case throughout all its subsequent stages where such determination has already been made on a prior appeal to a court of last resort. It is merely a rule of procedure and does not go to the power of the court, and will not be adhered to where its application will result in an unjust decision. **It relates entirely to questions of law, and is confined in its operation to subsequent proceedings in the same case.**" (emphasis ours)[12]

The second NLRC case is certainly not a continuation of the first NLRC case from which respondents were excluded. It is a separate case instituted anew by respondents because the prior case was only given due course with respect to the parties who signed the complaint and position paper.

Furthermore, the matter of whether or not Philtranco sufficiently proved its alleged business losses when it embarked on its retrenchment program is a question of fact and not a question of law. The appellate court's finding then in CA-G.R. SP No. 110410, that the retrenchment undertaken by Philtranco in 2006-2007 was invalid, may not be invoked as the *law of the case*.

With respect to the DOLE Secretary's decision finding the retrenchment invalid in the NCMB case, the issue that reached the CA via CA-G.R. SP No. 100324 and this Court in G.R. No. 180962 was confined only to the correct remedy against the DOLE Secretary's decision, *i.e.*,

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[11] *Rollo*, p. 17.

[12] *Villa v. Sandiganbayan* and consolidated cases, G.R. Nos. 87186, 87281, 87466, and 87524, April 24, 1992.

whether it should be Rule 43 or Rule 65. This Court remanded the case to the CA on February 26, 2014, where it is still pending decision.

While the second NLRC case is separate from the first NLRC case and the NCMB case, it is not altogether accurate to say that the determinations made in these previously decided cases has no bearing on the second NLRC case.

We hold that the LA's decision in the first NLRC case, finding Philtranco's retrenchment program to be illegal, constitutes *res judicata* in the concept of collateral estoppel or issue preclusion. As amply discussed in *Degayo v. Magbanua-Dinglasan, et al.*:[13]

> *Res judicata* literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It also refers to the "rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former suit. It rests on the principle that parties should not to be permitted to litigate the same issue more than once; that, when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate.
>
> xxxx
>
> The doctrine of *res judicata* is set forth in Section 47 of Rule 39 of the Rules of Court, which in its relevant part reads:
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> Sec. 47. Effect of judgments or final orders. — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
>
> x x x x
>
> (b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and
>
> (c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.
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> This provision comprehends two distinct concepts of res judicata: (1) bar by former judgment and (2) conclusiveness of judgment.
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> The first aspect is the effect of a judgment as a bar to the prosecution of a second action upon the same claim, demand or cause of

[13]G.R. No. 173148, April 6, 2015.

action. In traditional terminology, this aspect is known as merger or bar; in modern terminology, it is called claim preclusion.

The second aspect precludes the relitigation of a particular fact of issue in another action between the same parties on a different claim or cause of action. This is traditionally known as collateral estoppel; in modern terminology, it is called issue preclusion.

Conclusiveness of judgment finds application when a fact or question has been squarely put in issue, judicially passed upon, and adjudged in a former suit by a court of competent jurisdiction. The fact or question settled by final judgment or order binds the parties to that action (and persons in privity with them or their successors-in-interest), and continues to bind them while the judgment or order remains standing and unreversed by proper authority on a timely motion or petition; the conclusively settled fact or question furthermore cannot again be litigated in any future or other action between the same parties or their privies and successors-in-interest, in the same or in any other court of concurrent jurisdiction, either for the same or for a different cause of action. Thus, only the identities of parties and issues are required for the operation of the principle of conclusiveness of judgment.

While conclusiveness of judgment does not have the same barring effect as that of a bar by former judgment that proscribes subsequent actions, the former nonetheless estops the parties from raising in a later case the issues or points that were raised and controverted, and were determinative of the ruling in the earlier case. In other words, the dictum laid down in the earlier final judgment or order becomes conclusive and continues to be binding between the same parties, their privies and successors-in-interest, as long as the facts on which that judgment was predicated continue to be the facts of the case or incident before the court in a later case; the binding effect and enforceability of that earlier dictum can no longer be re-litigated in a later case since the issue has already been resolved and finally laid to rest in the earlier case.[14]

It is beyond dispute that the determination on the invalidity of the retrenchment in the first NLRC case has attained finality. Moreover, records show that the decision was adjudicated on the merits.

We likewise find that there is a community of interest among the complainants in the prior labor case and in the present. Pertinently:

There is identity of parties where the parties in both actions are the same, or there is privity between them, or they are successors-in-interest by title subsequent to the commencement of the action, litigating for the same thing and under the same title and in the same capacity. **Absolute identity of parties is not required, shared identity of interest is sufficient to invoke the coverage of this principle. Thus, it is enough that there is a community of interest between a party in the first case and a party in the second case even if the latter was not impleaded in the first case.**

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[14] Id.

> xxx **One test to determine substantial identity of interest would be to see whether the success or failure of one party materially affects the other.**[15]

In both the first and second NLRC cases, the issue of whether or not complainants were illegally dismissed is hinged on the validity of Philtranco's retrenchment program in 2006 and 2007. Without a doubt, the interests of all the complainants are inextricably intertwined on that factual question.

The only difference between the first NLRC case and the second NLRC case is Philtranco's submission of its audited financial statements for the years 2006 and 2007 in the second NLRC case. The NLRC treated such belated submission as a "supervening event". We, however, agree with the CA that the supervening event principle does not apply in this case. It correctly ratiocinated:

> xxx Supervening events refer to facts which transpire after judgment has become final and executory or to new circumstances which developed after the judgment has acquired finality, including matters which the parties were not aware of prior to or during the trial as they were not yet in existence at that time. In this case, the Audited Financial Statements could not be considered as a supervening event because the existence thereof should have been established as early as February 2007, the time when the retrenchment of petitioners was effected. Unfortunately, respondents failed to present the same.[16]

Contrary to Philtranco's stance that there was no belated filing of the audited financial statements since this is a newer and different case, the factual milieu prevailing at the time the retrenchment was effected is still the same one under consideration. The CA cannot, thus, be faulted for concluding that at the time the retrenchment program was effected in February 2007, Philtranco had no basis and was in fact unaware of the true state of its finances. This, coupled with the records annexed to the case showing that Philtranco hired new employees for the years 2006 to 2010, were taken to belie Philtranco's claim that it exercised the retrenchment of respondents in good faith.[17]

Finally, on the issue of whether or not the individual petitioners, Jose Pepito Alvarez, Arsenio Yap and Centurion Solano, who are officers of Philtranco, should be jointly and severally held liable with petitioner corporation, this Court finds merit in petitioners' arguments. As pronounced in *Lambert Pawnbrokers and Jewelry Corporation v. Binamira*[18], the lack of authorized or just cause to terminate one's employment and the failure to

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[15] Id.
[16] *Rollo,* p. 64, citing *Natalia Realty v. CA*, G.R. No. 126462, November 12, 2002.
[17] *Rollo,* p. 66.
[18] G.R. No. 170464, July 12, 2010.

observe due process do not *ipso facto* mean that the corporate officer acted with malice or bad faith. There must be independent proof of malice or bad faith which is lacking in the present case.

WHEREFORE, in view of the foregoing, the instant petition is **DENIED** and the assailed decision and resolution, respectively, dated November 9, 2012 and June 11, 2013, rendered by the Court of Appeals in CA-G.R. SP No. 123587 are **AFFIRMED with the modification** that petitioner Philtranco is held solely liable for the illegal dismissal of the respondents.

Costs against the petitioner Philtranco.

SO ORDERED.

NOEL GIMENEZ TIJAM
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ANDRES B. 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.

PRESBITERO J. VELASCO, JR.
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.

ANTONIO T. CARPIO
Acting Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
SEP 05 2017