Republic of the Philippines
Supreme Court
Manila

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
MAR 06 2018

THIRD DIVISION

WILFREDO P. ASAYAS, Petitioner,	**G.R. No. 201792**
	Present:
- versus -	VELASCO, JR., *J., Chairperson,* BERSAMIN, LEONEN, *MARTIRES, and GESMUNDO, *JJ.*
SEA POWER SHIPPING ENTERPRISES, INC., and/or AVIN INTERNATIONAL S.A., and/or ANTONIETTE GUERRERO, Respondents.	Promulgated: January 24, 2018

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D E C I S I O N

BERSAMIN, *J.*:

The seafarer hereby seeks to reverse and undo the adverse decision promulgated on November 28, 2011,[1] whereby the Court of Appeals (CA) nullified and set aside the decision rendered on May 9, 2011 by the National Labor Relations Commission (NLRC)[2] that had affirmed the decision rendered by the Labor Arbiter on October 29, 2010 declaring him to have been illegally terminated from employment, and ordering the respondents to pay him his salaries for the unexpired portion of his contract.[3]

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* On wellness leave.

1 *Rollo* pp. 32-41; penned by Associate Justice Stephen C. Cruz, with the concurrence of Associate Justice S.E. Veloso and Associate Justice Danton Q. Bueser.

2 Id. at 51-53; penned by Presiding Commissioner Benedicto R. Palacol and concurred in by Commissioner Isabel G. Panganiban-Ortiguerra and Commissioner Nieves Vivar-De Castro.

3 Id. at 45-49; penned by Labor Arbiter Madjayran H. Ajan.

Antecedents

Respondent Sea Power Shipping Enterprises, Inc. employed the petitioner as Third Officer on board the M/T Samaria, a vessel owned by Avin International SA. On October 25, 2009, prior to the expiration of his employment contract, the shipowner sold the M/T Samaria to the Swiss Singapore Overseas Enterprise, Pte. Ltd. As a consequence of the sale, he was discharged from the vessel and repatriated to the Philippines under the promise to transfer him to the M/T Platinum, another vessel of the respondents. After he was not ultimately deployed on the M/T Platinum, he was engaged to work as a Second Mate on board the M/T Kriti Akti. Before his deployment on board the M/T Kriti Akti, however, the shipowner also sold the vessel to the Mideast Shipping and Trading Limited on April 8, 2010. Thereafter, he was no longer deployed to another vessel to complete his contract.[4]

On April 23, 2010, the petitioner complained against the respondents in the Philippine Overseas Employment Administration (POEA) demanding the full payment of his employment contract. His claim was settled through a compromise agreement with quitclaim, pursuant to which he received separation pay after deducting his cash advances.

Two months thereafter, the petitioner filed another complaint against the respondents for alleged illegal dismissal and non-payment of the unexpired portion of his contract. The complaint was docketed as NLRC Case No. 04-05764-10.[5]

On October 29, 2010, the Labor Arbiter (LA) rendered a decision in NLRC Case No. 04-05764-10 declaring the termination of the petitioner's employment as illegal,[6] pertinently holding:

> With the finding that complainant was illegally dismissed from employment, he is entitled to payment of his salaries of the remaining ten (10) months unexpired portion of his employment contract in the total amount of twenty-two thousand and three hundred US dollars (US22,300.00) basic monthly salary, allowances and leave pay x 10 months plus attorneys fees equivalent to ten percent (10%) thereof.
>
> All other claims are hereby denied for lack of sufficient factual and legal basis.
>
> SO ORDERED.[7]

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4 Id. at 33-34.
5 Id. at 34.
6 Id. at 45-49.
7 Id. at 49.

The LA ratiocinated that:

> Settled is the rule that in termination cases, the burden of proving that the dismissal of the employee was for a valid and authorized cause roots on the employer. It is incumbent upon the employer to show by substantial evidence that the termination of the employment of the employees was validly made and failure to discharge that duty would mean that the dismissal is not justified and therefore illegal (Fernando P De Guzman versus NLRC, December 12, 2007).
>
> In the instant case, complainant seafarer was deployed as Third Mate by virtue of a contract entered into by the parties on August 26, 2009. But after the sale of the vessel SAMARIA by the principal owner, on October 25, 2009, there is illegal termination because there is no showing that he was transferred or re-engaged to another vessel named PLATINUM as promised by the respondents as they are governed by employment contract for nine (9) months plus three (3) months with the consent of both parties. Notwithstanding this is in violation to Section 23 on the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels, regarding termination due to vessel sale, buy up or discontinuance of voyage, to wit:
>
> > Where the vessel is sold, laid up, or the voyage is discontinued necessitating the termination of employment before the date indicated in the Contract, the seafarer shall be entitled to earned wages, repatriation at employer's cost and one (1) month basic wage as termination pay, unless arrangements have been made for the seafarer to join another vessel belonging to the same principal to complete his contract which case the seafarer shall be entitled to basic wages until the date of joining the other vessel.
>
> Anent the Compromise Agreement with quitclaim and Release (Annex "4" Respondent's Position Paper), this Office noted that it pertains clearly to a final settlement of claims relative to the complaint of both parties against one another for recruitment violation/disciplinary action.
>
> It does not include release and settlement to complaint for termination disputes and money claims, which is not barred from proceeding his cause of action for illegal dismissal and money claims pursuant to R.A. 8042 otherwise known as Migrant Workers Act.[8]

The copy of the LA's decision sent to the respondents by registered mail was returned with the notation "Moved Out."[9] Thus, on December 14, 2010, the LA issued a writ of execution.[10] On December 17, 2010, the respondents moved to quash the writ of execution, but the LA denied their motion on January 17, 2011, *viz.*:

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8 Id. at 48-49.
9 Id. at 50.
10 Id. at 35.

> WHEREFORE, the Writ of Execution dated December 14, 2010, hereby STANDS UNDISTURBED and REMAINS effective.
>
> ACCORDINGLY, let an Order to Release should be, as it is issued as prayed for in the complainant's Urgent Ex-Parte Motion for an Order to Release, dated January 7, 2010, of the garnished amount of ₱848,810,53 from the respondent's account with the Bank of the Philippine Islands pursuant to the 2nd Sheriff Report dated January 7, 2011.
>
> SO ORDERED.[11]

Apprised of the LA's decision upon receipt of the writ of execution,[12] the respondents appealed the LA's decision to the NLRC.

However, on May 9, 2011,[13] the NLRC dismissed the respondents' appeal, disposing in its decision:

> **WHEREFORE**, premises considered, judgment is hereby rendered **DISMISSING** the appeal for lack of merit. The Order of the Labor dated January 17, 2011 is hereby **AFFIRMED**.
>
> **SO ORDERED**.[14]

The NLRC justified its dismissal of the respondents' appeal as follows:

> We are not persuaded.
>
> It is noteworthy that the service was made by registered mail and We presume regularity of the service in the absence of proof to the contrary. Since the postal service stated that the respondents-appellants have moved out of their address on record and since the latter failed to present substantial evidence to disprove it, We find no valid reason to rule otherwise.
>
> It is worth to state that the address currently issued by the respondent-appellants is new one as evidenced by the Secretary's Certificate attached to their appeal (Records, p. 339)
>
> Lastly, the quashal of the writ of execution is appropriate only in any of the following circumstances:
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> 1) when the writ of execution varies the judgment;
>
> 2) when there has been a change in the situation of the parties making execution inequitable or unjust;

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11 Id. at 35.
12 Id. at 62.
13 Id. at 51-53.
14 Id. at 53.

> 3) when execution is sought to be enforced against property exempt from execution;
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> 4) when it appears that the controversy has never been submitted to the judgment of the court;
>
> 5) when the terms of the judgment are not clear enough and there remains room for interpretation thereof; or,
>
> 6) when it appears that the writ of execution has been improvidently issued, or that it is defective in substance, or is issued against the wrong party, or that the judgment debt has been paid or otherwise satisfied, or the writ was issued without authority;
>
> None of these circumstances exist to warrant quashal thereof."[15]

After the NLRC denied their motion for reconsideration on June 10, 2011,[16] the respondents brought their petition for *certiorari* in the CA, submitting that the NLRC committed grave abuse of discretion in dismissing their appeal and denying their motion for reconsideration.

Decision of the CA

On November 28, 2011, the CA promulgated the assailed decision granting the respondents' petition for *certiorari*,[17] to wit:

> **WHEREFORE**, in the light of all the foregoing, the petition is **GRANTED**. The assailed decision dated May 9, 2011 and Resolution dated June 10, 2011, respectively, promulgated by the National Labor Relations Commission (Sixth Division) in NLRC LAC No. (M) 02-000102-11; NLRC Case No. 04-05764-10, are hereby **REVERSED**. Likewise, the Decision of the Labor Arbiter dated October 29, 2010 is hereby **ANNULLED and SET ASIDE**. The complaint of private respondent dated June 15, 2010 is **DISMISSED** for lack of merit. Accordingly, private respondent Wilfredo P. Asayas is ordered to **RETURN/REIMBURSE** to the petitioners all amounts (₱1,079,320.03) received from petitioners to earn legal interest of twelve (12%) per annum from date of receipt until fully paid.
>
> **SO ORDERED.**[18]

The CA explained its grant of the respondents' petition for *certiorari* in the following manner:

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15 Id. at 52-53.
16 Id. at 56.
17 Id. at 32-41.
18 Id. at 40.

This Court is constrained to probe into the attendant circumstances as appearing on record in view of the peculiar circumstances surrounding the instant case and in as much as the questions that need to be settled are factual in nature.

The instant case is sanctioned by the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels. We quote the provisions thereof pertinent to the case, specifically Sections 23 and 26, to wit:

> SECTION 23. TERMINATION DUE TO VESSEL SALE, LAY-UP OR DISCONTINUANCE OF VOYAGE
>
> Where the vessel is sold, laid up, or the voyage is discontinued necessitating the termination of employment before the date indicated in the Contract, the seafarer shall be entitled to earned wages, repatriation at employer's cost and one (1) month basic wage as termination pay, unless arrangements have been made for the seafarer to join another vessel belonging to the same principal to complete his contract which case the seafarer shall be entitled to basic wages until the date of joining the other vessel."
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> SECTION 26.CHANGE OF PRINCIPAL
>
> A. Where there is change of principal of the vessel necessitating the termination of employment of the seafarer before the date indicated in the Contract, the seafarer shall be entitled to earned wages, repatriation at employer's expense and one month basic pay as termination pay.
>
> B. If by mutual agreement, the seafarer continues his service on board the same vessel, such service shall be treated as a new contract. The seafarer shall be entitled to earned wages only.
>
> C. In case arrangements have been made for the seafarer to join another vessel to complete his contract, the seafarer shall be entitled to basic wage until the date joining the other vessel."

It is worthy to note that private respondent's non-inclusion of employment contract in the case at bar was due to the sale of M/T SAMARIA to Swiss Singapore Overseas Enterprise, Pte. Ltd. We find that the requirements under the Standard Terms and Conditions Governing the employment of Filipino Seafarers on Board Ocean Going Vessels were met, to wit: (a) Seafarer's entitlement to earned wages; (b) Seafarer's repatriation at employer's cost; and (c) one (1) month basic wage as termination pay.

Indubitably, the foregoing were availed of by private respondent.

It must also be stressed that upon the signing of the employment contract, private respondent was duly informed of the impending sale of the vessel. The same was admitted by private respondent in his position

paper and he does not deny the fact that he had knowledge of the same when he signed his employment contract.

More importantly, private respondent later on executed a "Compromise Agreement with Quitclaim" before conciliator Judy A. Santillan. The Supreme Court in a litany of cases has ruled that a waiver or quitclaim is a valid and binding agreement between the parties, provided that it constitutes a credible and reasonable settlement, and that the one accomplishing it has done so voluntarily and with a full understanding of its import, to wit:

> Not all quitclaims are per se invalid or against public policy, except: 1) where there is clear proof that the waiver was wangled from an unsuspecting or gullible person; or (2) where the terms of settlement are unconscionable on their face; in these cases, the law will step in to annul the questionable transaction. Indeed, there are legitimate waivers that represent a voluntary and reasonable settlement of laborer's claims which should be respected by the Court as the law between the parties. Where the person making the waiver has done so voluntarily, with a full understanding thereof, and the consideration for the quitclaim so credible and reasonable, the transaction must be recognized as being valid and binding undertaking, and may not later be disowned simply because of a change of mind.

In this case, We hold and so rule that private respondent voluntarily executed the "Compromise Agreement with Quitclaim" discharging and releasing petitioners for any and all claims and liabilities attendant to or arising out of private respondent's application for overseas employment. Thus, there is no more legal controversy to speak of.

All told, We hold and so rule that private respondent Wilfredo P. Asayas was not illegally dismissed.

During the pendency of this petition, private respondent received the amounts of ₱848,810.53 and ₱230,509,50 representing the judgment award from the NLRC cashier as this Court did not issue a TRO. Thus, private respondent was able to receive the total amount of ₱1,079,320.03. Justice and equity demand that private respondent should return all amounts received with legal interest from date of receipt.[19]

The CA denied the petitioner's motion for reconsideration on May 10, 2012.[20]

Issues

In this appeal, the petitioner insists that the CA seriously erred in granting the respondents' petition for *certiorari* despite the absence of grave abuse of discretion amounting to lack or in excess of jurisdiction on the part

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19 Id. at 37-40.
20 Id. at 42-44.

of the LA and the NLRC in issuing their decisions and resolutions, in clear derogation of the settled doctrine of conclusiveness of a final and immutable judgment.[21]

In contrast, the respondents contend in their comment that the petitioner was not illegally dismissed considering that the POEA Standard Contract permitted the termination of his employment on account of the sale of the vessel.[22]

It is noted that both the respondents and the CA were silent about the finality and immutability of the LA's decision.

Ruling of the Court

The appeal is meritorious.

It was entirely unwarranted on the part of the CA to have granted the respondents' petition for *certiorari* despite the absence of the showing by them that the NLRC had gravely abused its discretion amounting to lack or excess of jurisdiction.

The LA's decision that was served on the respondents by registered mail was returned with the notation "Moved Out." In this regard, the NLRC specifically observed that:

> It is noteworthy that the service was made by registered mail and We presume regularity of the service in the absence of proof to the contrary. Since the postal service stated that the respondents-appellants have moved out of their address on record and since the latter failed to present substantial evidence to disprove it, We find no valid reason to rule otherwise.
>
> It is worth to state that the address currently issued by the respondent-appellants is new one as evidenced by the Secretary's Certificate attached to their appeal (Records, p. 339).[23]

The service of the LA's decision by registered mail was deemed complete five days after the copy of decision sent to the respondents was returned to the NLRC as the sender. Such consequence was unavoidable even if the addressees did not actually receive the copy of the decision. In *Philippine Airlines, Inc. v. Heirs of Bernardin J. Zamora*,[24] the petitioner moved to another address without giving a notice of the change of address to

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21 Id. at 11.
22 Id. at 58-65.
23 Id. at 52.
24 G.R. No. 164267 and G.R. No. 166996, March 31, 2009, 582 SCRA 670.

the NLRC. As a result, the copy of the NLRC's decision dispatched to the petitioner's address of record by registered mail was returned. The Court ruled there as follows:[25]

> The rule on service by registered mail contemplates two situations: (1) actual service, the completeness of which is determined upon receipt by the addressee of the registered mail; and (2) constructive service, the completeness of which is determined upon expiration of five days from the date the addressee received the first notice of the postmaster. A party who relies on constructive service or who contends that his adversary has received a copy of a final order or judgment upon the expiration of five days from the date the addressee received the first notice sent by the postmaster must prove that the first notice was actually received by the addressee. Such proof requires a certified or sworn copy of the notice given by the postmaster to the addressee.
>
> In the instant case, there is no postmaster's certification to the effect that the registered mail containing the NLRC decision was unclaimed by the addressee and thus returned to sender, after first notice was sent to and received by the addressee on a specified date. All that appears from the records are the envelopes containing the NLRC decision with the stamped markings and notation on the face and dorsal sides thereof showing "RTS" (meaning, "Return To Sender") and "MOVED." Still, we must rule that service upon PAL and the other petitioners was complete.

With the service by registered mail being complete, the respondents only had 10 calendar days from the return of the mail within which to appeal in accordance with the *Labor Code*.[26] When they did not so appeal, the LA's decision became final and executory. With the LA's decision attaining finality, it was no longer legally feasible or permissible to modify the ruling through the expediency of a petition claiming that the termination of the petitioner's employment had been legal. Verily, the decision could no longer be reviewed, or in any way modified directly or indirectly by a higher court, not even by the Supreme Court.[27] The underlying reason for the rule is two-fold: (1) to avoid delay in the administration of justice and thus make orderly the discharge of judicial business; and (2) to put judicial controversies to an end, at the risk of occasional errors, inasmuch as controversies cannot be allowed to drag on indefinitely and the rights and obligations of every litigant must not hang in suspense for an indefinite period of time.[28] The courts must guard against any scheme calculated to bring about that result, and must frown upon any attempt to prolong controversies.[29]

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[25] Id. at 683.

[26] Article 229 (223) of the *Labor Code.*

[27] *C-E Construction Corporation v. National Labor Relations Commission,* G.R. No. 180188, 582 SCRA 449, 456.

[28] *Navarro v. Metropolitan Bank & Trust Company*, G.R. Nos. 165697 and 166481, August 4, 2009, 595 SCRA 149, 159.

[29] *Johnson and Johnson (Phils.), Inc. v. Court of Appeals*, G.R. No. 102692, September 22, 1996, 262 SCRA 298, 311-312, citing *Li Kim Tho v. Go Siv Kao*, 82 Phil. 776 (1949).

Grave abuse of discretion, as held in *De los Santos v. Metropolitan Bank and Trust Company*,[30] "must be grave, which means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction." Accordingly, the dismissal of the respondents' appeal, being fully warranted and in accord with jurisprudence, did not constitute grave abuse of discretion simply because the NLRC did not thereby act whimsically, or capriciously, or arbitrarily.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the decision promulgated on November 28, 2011 in CA-G.R. SP No. 120175; **REINSTATES** the decision issued on May 9, 2011 in NLRC LAC No. (M) 02-000102-111; and **ORDERS** the respondents to pay the costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

(ON WELLNESS LEAVE)
SAMUEL R. MARTIRES
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

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[30] G.R. No. 153852, October 24, 2012, 684 SCRA 410, 422-423.

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.

MARIA LOURDES P. A. SERENO
Chief Justice

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