REPUBLIC OF THE PHILIPPINES
SUPREME COURT
ManilaBY: YCA
TIME: 10:17

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Special Second Division, issued a Resolution dated **08 January 2020** which reads as follows:

“G.R. No. 225648 (*Dox & Parcel Courier Express International, Inc. and Incorporators/Directors Antonino Espiritu, deceased, Leopoldo Moreno, Marilyn Moreno, Victoria Espiritu and Gervacio Mojica v. Social Security System*). – This is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court which seeks to reverse and set aside the Decision² dated February 18, 2016 and Resolution³ dated July 8, 2016 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 137602 denying the petition and affirming the Resolution⁴ dated October 24, 2012 and Order⁵ dated May 9, 2014 of the Social Security Commission (SSC).

Antecedents

Dox & Parcel Courier Express International, Inc. (petitioner Corporation) was a duly registered employer under the Social Security System (respondent) with ID No. 03-9097052-3. It was duly incorporated on October 2, 1997, but its registration was revoked by the Securities and Exchange Commission (SEC) as it stopped operations sometime in March 2004.⁶

The other petitioners in this case, to wit: Antonino and Victoria Espiritu (Spouses Espiritu), Gervacio Mojica (Gervacio), Marilyn and Leopoldo Moreno (Spouses Moreno) (collectively referred to as individual petitioners) were incorporators and directors of petitioner

¹ *Rollo*, pp. 11-21.

² *Id.* at 22-39; penned by Associate Justice Renato C. Francisco with Associate Justices Apolinario D. Bruselas, Jr. and Danton Q. Bueser, concurring.

³ *Id.* at 47-52.

⁴ *Id.* at 95-102.

⁵ *Id.* at 120-124.

⁶ *Id.* at 23-24.

Corporation. As these persons were named as incorporators and directors of petitioner Corporation, they were likewise recognized by the SSC as persons-in-interest.⁷

Respondent, on the other hand, is a government-owned and controlled corporation in charge with the implementation and enforcement of Republic Act No. (RA) 1161,⁸ as amended.

Pursuant to RA 1161, a corporation has the legal obligation to: (1) deduct and withhold Social Security contributions from its employees' monthly salaries; (2) contribute as employer, a specified amount for each covered employee under Section 19 of the law; and (3) to remit the contribution together with the employer's share to the Social Security System (SSS) under Section 22(a) of the same law.

On December 13, 2002, respondent, through a billing letter, notified petitioner Corporation of its delinquency in the amount of ₱1,464,366.00. Because of petitioner Corporation's failure to act on the letter, respondent then sent a demand letter⁹ to the petitioner Corporation notifying the petitioner Corporation of its failure to settle the outstanding premium delinquency covering the period from June 2000 to May 2003 in the amount of ₱1,957,349.98, and reminding petitioner Corporation of the imposable penalties. Hence, an option was given to petitioner Corporation to either pay the delinquency in full or in installment within five days from date of receipt, or face legal charges thereon.

On December 6, 2005, respondent filed a petition for the issuance of a warrant of levy and garnishment of the personal properties and bank accounts of the incorporators/directors of petitioner Corporation, now a defunct corporation, before the SSC for the satisfaction of petitioner Corporation's unremitted SSS contributions and the penalties due.

On February 22, 2006, two of the five incorporators/directors of petitioner Corporation, the Spouses Moreno, filed their Answer with Counterclaim,¹⁰ through Atty. Ernesto D. Ceñal (Atty. Ceñal), specifically denying that petitioner Corporation violated Sections 18, 19, and 22 of RA 1161, as amended. They denied that the Corporation acknowledged its liabilities, that it did not propose to pay the obligations on installment, that it was not delinquent in the remittance

⁷ *Id.* at 24.

⁸ Social Security Act of 1954, approved on June 18, 1954.

⁹ *Rollo*, p. 82.

¹⁰ *Id.* at 69-71.

of premium contributions, and that it was not liable to pay the monthly penalty. Finally, they denied that a demand letter was received by the Corporation.

As special and affirmative defenses, Spouses Moreno averred that: (a) respondent SSS had no cause of action against them; (b) SSC had no jurisdiction over the petition; (c) they already ceased to be directors of petitioner Corporation at the time when it failed to remit the SSS contributions of its employees as they had already assigned their respective shares to Marc Anthony Espiritu and Maria Teresa Aguas on May 5, 1998 through a Deed of Assignment; and (d) that they were no longer connected in any capacity with petitioner Corporation at the time of the alleged non-remittance of the SSS contributions.¹¹

In an Order dated April 12, 2006, Gervacio failed to file an Answer and was declared in default.¹² Meanwhile, attempts to serve summons on Spouses Espiritu failed.

Atty. Ceñal appeared on behalf of Spouses Moreno during the scheduled preliminary conference before the SSC. Thereafter, Atty. Ceñal withdrew as their counsel.

On July 7, 2009, in a hearing before the SSC, Atty. Alberto Taguian (Atty. Taguian) entered his appearance for and in behalf of the individual petitioners. Considering that the SSC had acquired jurisdiction over the persons of the individual petitioners, Atty. Taguian moved for, and was granted an extension of time within which to file a pleading.¹³

After the preliminary conference, the SSC directed the parties to file their respective position papers.

Respondent filed its position paper arguing that Spouses Moreno and Gervacio remained liable for the unremitted SSS contributions in their capacities as incorporators/directors of petitioner Corporation. This, notwithstanding the alleged transfer of Spouses Moreno's shares to Marc Anthony Espiritu and Maria Teresa Aguas because the alleged transfer was not recorded in the books of petitioner Corporation; hence, it did not bind third parties including respondent.

¹¹ *Id.* at 69-70.

¹² *Id.* at 25.

¹³ *Id.* at 28.

Atty. Taguian failed to file a position paper for the individual petitioners. Thus, the case was submitted for decision.

Ruling of the SSC

On October 24, 2012, the SSC rendered a Resolution¹⁴ taking judicial notice of the cessation of the corporate existence of petitioner Corporation in March 2004 on the ground of revocation of its registration by the SEC. The SSC cited the cases of *Gudez v. National Labor Relations Commission*¹⁵ and *Valderrama v. NLRC*¹⁶ to establish the liability of the individual petitioners saying, “where the employer corporation is no longer existing and is unable to satisfy the judgment in favor of the employee, the officer should be held liable for acting on behalf of the corporation.”¹⁷ Thus, the SSC found herein individual petitioners, in their capacities as incorporators/directors, as jointly and severally liable. The SSC held Spouses Moreno and Gervacio liable because the transfer of their shares was not recorded in the books of the corporation; hence, it did not bind the SSS. As to Spouses Espiritu, the SSC ruled that it acquired jurisdiction over their persons through the voluntary appearance of Atty. Taguian in the hearing held on July 7, 2009. The dispositive portion of the Resolution reads:

WHEREFORE, respondents Antonino C. Espiritu, Leopoldo Moreno, Marilyn Moreno, Victoria Espiritu and Gervacio Mojica, as incorporators/directors of respondent Dox & Parcel Courier Express International, Inc., are hereby ordered to jointly and severally pay the Social Security System, within thirty (30) days from receipt hereof, the total amount of P1,835,219.00, representing the unremitted SS contributions in favor of the respondent company's employees, namely: Marlon T. Aranas, Bernardo C. Tan, Danilo P. Ignacio, Christopher S. Dela Cruz, Cesar Faundo, Edward G. Morales, Aunor B. Quijano, Orlando S. Morales and Rey L. Radam for the period June 2000 to October 2004, the underassessment for the period May 1996 to September 2000 and the additional delinquency for the period June 2003 to October 2004, and the amount of P8,377,962.57, representing the 3% per month penalty imposed thereon computed as of October 31, 2011, pursuant to the provisions of Sections 18, 19 and 22 of the SS Law, as amended.

¹⁴ *Id.* at 47-52.

¹⁵ 262 Phil 703 (1990).

¹⁶ 326 Phil 477 (1996).

¹⁷ *Id.* at 487.

This is without prejudice to the right of the SSS to collect the additional penalties accruing thereafter and to file other appropriate actions against the respondents.

SO ORDERED.¹⁸

On July 17, 2013, all the individual petitioners, through Atty. Antonio Zulueta (Atty. Zulueta), sought for reconsideration¹⁹ of the Resolution of the SSC. Spouses Espiritu averred that the SSC did not acquire jurisdiction over their persons for failure of service of summons, and there could be no voluntary appearance on their part even with the participation of Atty. Taguian on their behalf in a hearing held on July 7, 2009. For Spouses Espiritu, voluntary appearance meant the filing of pleadings and not merely through a manifestation made by Atty. Taguian that he was appearing on their behalf, and that while Atty. Taguian entered his appearance, he did not file any pleading. On this ground alone, Spouses Espiritu stressed that they were deprived of their right to due process.

On the other hand, in the same motion, Spouses Moreno and Gervacio prayed for the reversal of the Resolution on the ground that they had already assigned their shares through a notarized deed of assignment executed on May 5, 1998, and that being a notarized document, they averred that the assignment was binding upon third parties, including respondent.

On May 9, 2014, the SSC issued an Order²⁰ denying the motion for reconsideration for being filed out of time and for lack of merit. On the issue of being filed out of time, the SSC ruled that since the Resolution was served on Atty. Taguian on June 28, 2013, the motion for reconsideration should have been filed on or before July 13, 2013, or before the lapse of 15 days from receipt thereof. However, the motion was filed by the new counsel, Atty. Zulueta, only on July 17, 2013. The SSC further ruled that assuming *arguendo* that the motion was filed within the reglementary period, it nevertheless found no cogent or compelling reason to set aside, modify, much less reverse its Resolution dated October 24, 2012; and that the grounds and arguments relied upon by the individual petitioners in the motion had already been considered and passed upon in the Resolution sought to be reconsidered.²¹

¹⁸ *Rollo*, p. 101.

¹⁹ *Id.* at 106-117.

²⁰ *Id.* at 120-124.

²¹ *Id.* at 121-123.

Ruling of the CA

On February 18, 2016, the CA rendered the assailed Decision²² denying the petition on the following grounds, to wit: (a) the SSC validly acquired jurisdiction over the persons of the individual petitioners; (b) the individual petitioners' motion for reconsideration did not prevent the Resolution dated October 24, 2012 of the SSC from attaining finality; (c) Spouses Moreno and Gervacio were personally liable for petitioner corporation's non-remittance of the SSS contributions and penalties; and (d) the nature of the individual petitioners and petitioner Corporation's liability was solidary.

Thereafter, a motion for reconsideration²³ was filed by petitioners.

On July 8, 2016, the CA rendered the assailed Resolution²⁴ denying the motion for lack of merit.

Issue

Whether the CA gravely erred in affirming the Resolution and Order dated October 24, 2012 and May 9, 2014, respectively of the SSC.

Our Ruling

The petition is without merit.

A petition for review on *certiorari* under Rule 45 is an appeal from a ruling of a lower tribunal on pure questions of law.²⁵ In other words, in petitions for review on *certiorari*, only questions of law may be put into issue and questions of fact cannot be entertained.²⁶ It is only in exceptional circumstances that the Court admits and reviews questions of fact, to wit: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are

²² *Id.* at 22-39.

²³ *Id.* at 40-45.

²⁴ *Id.* at 47-52.

²⁵ *Century Iron Works, Inc., et al. v. Bañas*, 711 Phil. 576, 585 (2013).

²⁶ *Cebu Shipyard & Eng'g Works, Inc. v. William Lines, Inc.*, 366 Phil. 439, 452 (1999).

contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.²⁷

However, this case does not fall in any of the exceptional circumstances enumerated above.

In the petition before the Court, the herein petitioner Corporation and individual petitioners raised purely questions of fact, and proffered that the period within which to file a motion for reconsideration should be literally construed so as not to defeat the very purpose of the law and not to deprive the party of their substantial rights.

The Court disagrees.

Under Rule 52 of the Rules of Court, the filing of a motion for reconsideration must be within 15 days from notice of the judgment or final resolution sought to be reconsidered. Otherwise, the judgment or resolution becomes final and executory.²⁸

Further, the Court held in a number of cases that when a party is represented by counsel, notice of the judgment, final order or resolution should be made upon his counsel of record.²⁹ Thus, the 15-day period shall commence to run from receipt of the judgment, final order or resolution by the party's counsel on record.³⁰

As aptly found by the CA, the SSC did not err in finding that its Resolution dated October 24, 2012 had already become final and executory for failure of the petitioners to file their motion for

²⁷ See *New City Builders, Inc. v. NLRC*, 499 Phil. 207, 212-213 (2005), citing *The Insular Life Assurance Co., Ltd. v. Court of Appeals*, 472 Phil. 11, 22-23 (2004).

²⁸ Section 1, Rule 39, RULES OF COURT.

²⁹ *Miel v. Malindog*, 598 Phil. 594, 605 (2009), citing *Philemploy Services and Resources, Inc. v. Rodriguez*, 520 Phil. 828, 852-853 (2006), citing *Spouses Aguilar v. Court of Appeals*, 369 Phil. 655, 664 (1999); *Magno v. Court of Appeals*, 236 Phil. 595, 598 (1987); *Cubar, et al. v. Hon. Mendoza, etc., et al.*, 205 Phil. 672, 675 (1983).

³⁰ Section 2, Rule 13, RULES OF COURT.

reconsideration within 15 days from receipt of the Resolution by their counsel on record. In fact, Section 5, Rule VI of the Revised Rules of Procedure of the SSC provides that, “[t]he party aggrieved by the order, resolution, award or decision of the Commission may file a motion for reconsideration thereof within fifteen (15) days from receipt of the same.”

Thus, as found by the SSC, records of the case showed that the individual petitioners and petitioner Corporation: (a) were duly represented by their counsel on record, Atty. Taguian; (b) did not deny Atty. Taguian’s authority to appear on their behalf; and (c) in fact, Atty. Taguian’s services were terminated on July 12, 2013, through the filing of a Notice of Termination of Services on July 17, 2013. Records also show that a copy of the Resolution was received by their counsel on record, through the latter’s daughter on June 28, 2013.

Corollary, petitioners had 15 days from receipt of the Resolution to file a motion for reconsideration or up until July 13, 2013. However, the individual petitioners and petitioner Corporation, through their new counsel, only filed the motion on July 17, 2013, or four days after July 13, 2013. It goes without saying, the Resolution dated October 24, 2012 of the SSC became final and executory on July 13, 2013. Thus, petitioners already became bound by the findings and conclusions of the SSC.

Moreover, in the petition, Spouses Moreno and Gervacio argue that they cannot be held jointly and severally liable for the unremitted SSS contributions as they already assigned their shares as early as May 5, 1998.

The Court finds that the resolution of the above arguments of the individual petitioners and petitioner Corporation entails a review of the factual circumstances that led the SSC, as affirmed by the CA, to decide in such manner. In other words, the position of the individual petitioners and petitioner Corporation that they have already relinquished their respective shares when the non-remittance happened is like asking the Court to analyze and weigh the evidence all over again.

The Court wants to stress that only questions of law can be addressed in reviews on *certiorari*.³¹ It is not the function of the Court to analyze or weigh the evidence, which tasks belong to the trial court as

³¹ See *Far Eastern Surety and Insurance Co., Inc. v. People*, 721 Phil. 760, 766 (2013).

the trier of facts and to the appellate court as the reviewer of facts.³² The Court is confined to the review of errors of law that may have been committed in the judgment under review.³³

In *Madrigal v. Court of Appeals*,³⁴ the Court had the occasion to rule that the Court's jurisdiction is limited to reviewing errors of law that may have been committed by the lower court. *The Court is not a trier of facts as it leaves these matters to the lower court, which has more opportunity and facilities to examine these matters. It is the policy of the Court to defer to the factual findings of the trial judge, who has the advantage of directly observing the witnesses on the stand and to determine their demeanor whether they are telling or distorting the truth.*³⁵

At any rate, as aptly ruled by the CA, a corporate director may be held jointly and severally liable with the corporation when a director, trustee or officer is made, by a specific provision of law, personally liable for his corporate action.³⁶ As in this case, the SSC found the individual petitioners liable under Section 28(f) of RA 8282, which reads:

Sec. 28. Penal Clause. —

- (f) *If the act or omission penalized by this Act be committed by an association, partnership, corporation or any other institution, its managing head, directors or partners shall be liable to the penalties provided in this Act for the offense.*

All told, the CA did not err in affirming the findings of the SSC that individual petitioners being directors of a dissolved corporation are jointly and severally liable for the unremitted SSS contributions and penalties thereof.

WHEREFORE, the petition is **DENIED**. The Decision dated February 18, 2016 and the Resolution dated July 8, 2016 rendered by the Court of Appeals in CA-G.R. SP No. 137602 are **AFFIRMED in toto**.

³² *Id.* at 769, citing *Dihiansan v. Court of Appeals*, 237 Phil. 695, 701-703 (1987).

³³ *Id.*

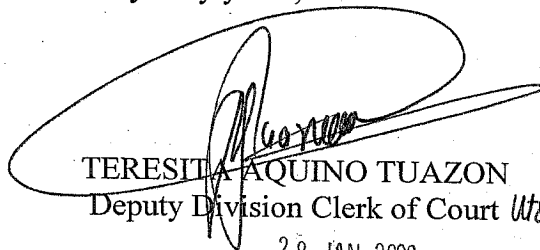
³⁴ 496 Phil. 149 (2005).

³⁵ *Id.* at 156 citing *Bernardo v. Court of Appeals*, 290 Phil. 649, 658 (1992).

³⁶ *Philex Gold Phils., Inc. v. Philex Bulawan Supervisors Union*, 505 Phil. 224, 237-238 (2005).

SO ORDERED." (Bernabe, *J.*, on official leave; Reyes, A., Jr., *J.*, on official business; Hernando, *J.*, designated acting chairperson per Special Order No. 2757 dated January 6, 2020.)

Very truly yours,



TERESITA AQUINO TUAZON
Deputy Division Clerk of Court *With 1/28*
28 JAN 2020

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