



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated August 22, 2022 which reads as follows:

“G.R. No. 250724 (MARIFE E. ACTA, Petitioner v. MICA BY THE SEA COMPANY and ARNULFO SINGCA, Respondents). – The Court **NOTES:** (1) the Manifestation¹ dated July 1, 2021 of counsel for petitioner Marife E. Acta (Marife), stating that counsel filed a manifestation in lieu of reply through registered mail on June 10, 2021, as personal service and filing are not practicable due to the limited number of messengers at the Public Attorney’s Office; and (2) the aforesaid Manifestation (in lieu of Reply)² dated June 10, 2021, dispensing with the filing of reply, to avoid repetition of the arguments already raised in the petition dated January 26, 2020, as the same is comprehensive enough to cover the issues and arguments raised in the Comment³ of respondents Mica by the Sea Company (MBSC) and Arnulfo Singca (Arnulfo).

This Court resolves a Petition for Review on *Certiorari*⁴ assailing the Decision⁵ dated July 15, 2019 and the Resolution⁶ dated November 28, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 158976 affirming the dismissal of the complaint filed by Marife against MBSC for illegal dismissal.

The antecedents follow.

On April 6, 2017, Marife filed a complaint⁷ for illegal dismissal and money claims against MBSC and Arnulfo before the Labor Arbiter (LA). Allegedly, MBSC hired Marife in 2002 as an inventory staff at its factory located at Food Terminal Incorporated, Taguig City. Later, MBSC transferred

¹ *Rollo*, pp. 258–260.

² *Id.* at 261–263.

³ *Id.* at 236–251.

⁴ *Id.* at 12–34.

⁵ *Id.* at 39–52. Penned by Associate Justice Pedro B. Corales, with the concurrence of Associate Justices Stephen C. Cruz and Germano Francisco D. Legaspi.

⁶ *Id.* at 54–55.

⁷ *Id.* at 105–106.

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Marife to the factory in Nueva Ecija. In 2011, MBSC promoted Marife as production supervisor. In December 2016, MBSC transferred Marife to the new factory in Clark, Pampanga. In February 2017, Marife asked MBSC for her 13th month pay. Yet, MBSC supervisor Rosemarie⁸ Mercado (Rosemarie) told Marife to go home because her services were no longer needed. Rosemarie then confiscated Marife's locker and room keys. Marife reported for work but she was not permitted to enter the premises.⁹

On the other hand, MBSC and Arnulfo claimed that the company was only registered¹⁰ on November 2, 2015 as a partnership with the Securities and Exchange Commission (SEC). The construction of MBSC's building in the Clark Freeport Zone began on November 18, 2015.¹¹ MBSC did not operate in 2016 since construction was still ongoing.¹² On December 27, 2016, MBSC was granted a permit to occupy the building. Marife began working for MBSC on January 15, 2017, when the company started its dry-run operations. On February 15, 2017, Marife stopped reporting for work. On February 24, 2017, Marife filed a request for assistance under the Single Entry Approach Program of the Department of Labor and Employment against MBSC and Arnulfo. At the conferences, MBSC told Marife that she was not terminated and directed her to return to work, but Marife refused because she did not want to work in Clark, Pampanga. Also, Rosemarie denied dismissing Marife's services because she did not have the authority to do so. Further, MBSC argued that Marife was not its regular employee because she was hired on a "*pakyaw*" basis and she only worked for one month. Marife was paid the correct salary and benefits during her employment.¹³ Before 2017, it was Mica by the Sea Import/Export (MBSIE) which hired Marife which is based in Nueva Ecija and still in operation.¹⁴

In a Decision¹⁵ dated February 28, 2018, the LA ruled that MBSC hired Marife before 2017 and that she was illegally dismissed upon Rosemarie's statement that her services were no longer needed. The LA awarded Marife's money claims which included backwages, 13th month pay, service incentive leave pay, separation pay, wage differential, holiday pay, and attorney's fees.¹⁶ Dissatisfied, MBSC and Arnulfo appealed¹⁷ to the National Labor Relations Commission (NLRC) and insisted that they hired Marife only in January 2017. Marife's years of employment with MBSIE cannot be tacked with that in MBSC because these are two different entities.¹⁸ In a Decision¹⁹ dated August 28, 2018, the NLRC granted the appeal and dismissed the complaint. The NLRC ruled that Marife must first establish the fact of

⁸ "Rosemary" in some parts of the *rollo*.

⁹ *Rollo*, pp. 40-41, 80-81, 111-112, and 137-138.

¹⁰ *Id.* at 162.

¹¹ *Id.* at 127.

¹² *Id.* at 153-161.

¹³ *Id.* at 41, 81-83, 128-131, and 138-139.

¹⁴ *Id.* at 164.

¹⁵ *Id.* at 137-142. Signed by Labor Arbiter Ma. Claradel C. Javier-Rotor.

¹⁶ *Id.* at 140-142.

¹⁷ See Memorandum of Appeal dated April 23, 2018; *id.* at 143-152.

¹⁸ *Id.* at 147-148.

¹⁹ *Id.* at 78-99. Signed by Commissioner Felinda T. Agus, with the concurrence of Commissioner Dominador B. Medroso, Jr.

termination before MBSC can prove the legality of the supposed dismissal. Finally, MBSC cannot be held accountable against MBSIE which is not impleaded in the case,²⁰ to wit:

WHEREFORE, premises considered, the instant appeal is **GRANTED**.

The Decision of the Labor Arbiter dated February 28, 2018 is **REVERSED AND SET ASIDE** and a new judgment is entered declaring respondents as **NOT GUILTY** of illegal dismissal.

Accordingly, all the monetary awards in the total amount of [PHP] 701,466.11 are **DELETED**.

SO ORDERED.²¹ (Emphasis in the original)

Marife sought reconsideration but it was denied in a Resolution²² dated October 19, 2018. Marife elevated the case to the CA through a Petition for *Certiorari*²³ docketed as CA-G.R. SP No. 158976. Marife invoked the doctrine of piercing the veil of corporate fiction explaining that Diana Michaela Singca (Diana), the sole proprietor of MBSIE, is a partner in MBSC.²⁴ In a Decision²⁵ dated July 15, 2019, the CA affirmed the NLRC's findings that no employer-employee relationship was present between Marife and MBSC before 2017. Moreover, MBSC is not liable for the obligations of MBSIE,²⁶ thus:

WHEREFORE, the instant petition for certiorari is **DISMISSED**. Accordingly, the August 28, 2018 Decision and October 19, 2018 Resolution of the National Labor Relations Commission, Second Division in NLRC LAC No. 05-001749-18 are hereby **AFFIRMED**.

SO ORDERED.²⁷ (Emphasis in the original)

Unsuccessful at reconsideration,²⁸ Marife filed this Petition reiterating that MBSC and MBSIE are one and the same entity, and that substantial evidence exists to prove her illegal dismissal.²⁹

The Petition is partly meritorious.

The parties raised factual issues which are beyond the ambit of this Court's jurisdiction in a petition for review on *certiorari*. It is not this Court's task to go over the proofs presented below to ascertain if they were weighed

²⁰ *Id.* at 91-98.

²¹ *Id.* at 98.

²² *Id.* at 101-103. Signed by Commissioner Erlinda T. Agus, with the concurrence of Presiding Commissioner Julia Cecily Coching-Sosito and Commissioner Dominador B. Medroso, Jr.

²³ *Id.* at 56-76.

²⁴ *Id.* at 64-66.

²⁵ *Id.* at 39-52.

²⁶ *Id.* at 47-52.

²⁷ *Id.* at 52.

²⁸ See Resolution dated November 28, 2019; *id.* at 54-55.

²⁹ *Id.* at 21-27.

correctly.³⁰ However, this rule of limited jurisdiction admits of exceptions and one of them is when the factual findings of the CA and the labor tribunals are contradictory.³¹ In this case, the LA concluded that MBSC illegally dismissed Marife while the CA and the NLRC found no employment relationship between them. Considering these conflicting findings, this Court will entertain the factual issues raised in the Petition.

In illegal dismissal cases, it is incumbent upon the employee to first establish by substantial evidence the fact of their termination from service before the employer bears the burden of proving that it was for a valid or authorized cause. If there was no dismissal, then there can be no question as to its legality or illegality.³² Here, Marife did not submit evidence proving her actual or constructive dismissal, and how she was terminated or prevented from returning to work. The bare allegation of having been dismissed from the service cannot be given credence.³³ Similarly, Marife's claim that she worked with MBSC before 2017 was unsubstantiated. Marife failed to present any document or witness showing that MBSC and MBSIE are a single entity. Notably, the equitable doctrine of piercing the corporate veil seeks to prevent the act of hiding behind the separate and distinct personalities of juridical entities to perpetuate fraud, commit illegal acts, and evade one's obligations.³⁴ The corporate personality will only be ignored after the wrongdoing is first clearly and convincingly established.³⁵ In this case, the sole allegation that Diana has interests in both MBSC and MBSIE is insufficient to establish the intent of an employer to evade its obligation to the employees. Verily, bad faith cannot be presumed.³⁶

However, the Court sustains the LA's grant of salary differentials and 13th month pay but only for the period she worked for MBSC or from January 15, 2017 to February 14, 2017. The burden rests on the employer to prove payment rather than on the employee to prove non-payment. The reason for the rule is that the pertinent personnel files, payrolls, records, remittance, and other similar documents are not in the possession of the employee but are in the custody and control of the employer.³⁷ Here, the LA found that MBSC did

³⁰ *Gatan v. Vinarao*, 820 Phil. 257, 266 (2017) [Per J. Leonardo-De Castro, First Division]; *Heirs of Teresita Villanueva v. Heirs of Petronila Suquia Mendoza*, 810 Phil. 172, 177-178 (2017) [Per J. Peralta, Second Division]; and *Bacsasar v. Civil Service Commission*, 596 Phil. 858, 867 (2009) [Per J. Nachura, *En Banc*].

³¹ *Office of the Ombudsman v. De Villa*, 760 Phil. 937, 949-950 (2015) [Per J. Mendoza, Second Division]; *Miro v. Vda. de Erederos*, 721 Phil. 772, 787 (2013) [Per J. Brion, Second Division]; *Office of the Ombudsman v. Dechavez*, 721 Phil. 124, 129-130 (2013) [Per J. Brion, Second Division]; and *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225, 232 (1990) [Per J. Bidin, Third Division].

³² *Philippine Rural Reconstruction Movement v. Pulgar*, 637 Phil. 244, 256 (2010) [Per J. Brion, Third Division], citing *Ledesma, Jr. v. NLRC*, 562 Phil. 939, 959 (2007) [Per J. Chico-Nazario, Third Division]. See also *Exodus International Construction Corporation v. Biscocho*, 659 Phil. 142, 154 (2011) [Per J. Del Castillo, First Division]; and *Security & Credit Investigation, Inc. v. NLRC*, 403 Phil. 264, 276 (2001) [Per J. Kapunan, First Division].

³³ *Gelmart Industries (Phils.), Inc. v. Leogardo, Jr.*, 239 Phil. 386, 391 (1987) [Per J. Cortes, Third Division]; and *Vertudes v. Buenaflor*, 514 Phil. 399, 419 (2005) [Per J. Puno, Second Division].

³⁴ *Nextphase International, Inc. v. NLRC*, G.R. No. 249046, December 9, 2020 [Notice, Second Division].

³⁵ *Tan v. Tan*, G.R. No. 233172, July 14, 2021 [Notice, Second Division].

³⁶ *Malate Construction Development Corporation v. Extraordinary Realty Agents & Brokers Cooperative*, G.R. No. 243765, January 5, 2022, <<https://sc.judiciary.gov.ph/28319/>>.

³⁷ *Mariano v. G.V. Florida Transport*, G.R. No. 240882, September 16, 2020, <<https://sc.judiciary.gov.ph/16140/>>.

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not prove the payment of the prescribed minimum wage to Marife from January 15, 2017 to February 14, 2017. The Handbook on Workers' Statutory Monetary Benefits provides that all workers paid by result, including those paid on "*pakyaw*" basis, should not receive less than the prescribed minimum wage orders for normal working hours.³⁸ Also, MBSC failed to present proof of payment of Marife's proportionate 13th month pay for 2017.³⁹ An employee who resigned or whose services were terminated before the payment of the 13th month pay is entitled to the benefit in proportion to the length of time they worked during the year.⁴⁰

In contrast, the CA and the NLRC correctly deleted the awards of backwages, separation pay, holiday pay, and service incentive leave pay. Backwages are awarded only to an illegally dismissed employee. Likewise, the grant of separation pay applies only in certain instances such as when the employee's position is no longer available, when the parties' relationship is already strained, when the employee opted not to be reinstated, or when the payment of separation pay is for the best interest of the parties.⁴¹ Also, Marife is not entitled to holiday pay as there were no legal holidays declared from January 15, 2017 to February 14, 2017.⁴² Lastly, Marife is not entitled to service incentive leave pay, a benefit given to employees who have rendered at least one year of service.⁴³

FOR THESE REASONS, the Petition is **PARTLY GRANTED**. The Decision dated July 15, 2019 and the Resolution dated November 28, 2019 of the Court of Appeals in CA-G.R. SP No. 158976 are **AFFIRMED** with **MODIFICATION** in that petitioner Marife E. Acta is entitled to salary differentials from January 15, 2017 to February 14, 2017 and proportionate 13th month pay for 2017.

SO ORDERED."

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court

24 MAR 2023 ^{mm} 3/24

³⁸ *Guevarra v. Paigma*, G.R. Nos. 230886 and 230966, September 14, 2021 [Notice, First Division]. See also Handbook on Workers' Statutory Monetary Benefits (2016).

³⁹ *Rollo*, p. 140.

⁴⁰ *Dynamiq Multi-Resources, Inc. v. Genon*, G.R. No. 239349, June 28, 2021, <<https://sc.judiciary.gov.ph/24786/>> [Per J. Delos Santos, Third Division].

⁴¹ *Claudia's Kitchen, Inc. v. Tanguin*, 811 Phil. 784, 799 (2017) [Per J. Mendoza, Second Division].

⁴² See Proclamation No. 50 entitled "DECLARING THE REGULAR HOLIDAYS AND SPECIAL (NON-WORKING) DAYS FOR THE YEAR 2017" (August 16, 2016).

⁴³ LABOR CODE, art. 95.

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***with copy of CA Decision dated July 15, 2019**
Please notify the Court of any change in your address.
GR250724. 08/22/2022A(111)URES

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