

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
FIRST DIVISION**

**TIMES TRANSPORTATION COMPANY,  
INC.,**

*Petitioner,*

*-versus-*

**G.R. No. 163786  
February 16, 2005**

**SANTOS SOTELO, CONRADO B.  
SALONGA, SAMSON C. SOLIVEN,  
BIENVENIDO F. MALANA, JR., JOVITO  
V. ALCAUSIN, EFREN A. RAMOS,  
RODRIGO P. CABUSAO, JR., EDGAR G.  
PONCE, RONALD ALLAN PARINAS,  
RODEL PALO, REYNALDO R.  
RAGUCOS, MARIO T. TOLEDO,  
BERNARDINO PADUA, DOMINGO P.  
BILAN, ARNEL VALLEDORES, RAMON  
RETUTA, JR., PANTALEON  
TABANGIN, ALBERTO PANDO,  
VIRGILIO E. OBAR, EULOGIO D. DIGA,  
SR., DANIEL LLADO, RONILO  
BALTAZAR, MARITO PANDO,  
LEOPOLDO FUNTILA, GERRY B.  
CARRIDO, WILLIAM A. TABUCOL,  
ANTONIO L. RAMOS, SR., PABLO P.  
PADRE, HENRY B. GANIR, TEOTIMO  
R. REQUILMAN, CIPRIANO ULPINDO,  
ROGER BABIDA, SAMUEL PERALTA,  
BONIFACIO TUMALIP, EDGAR ABLOG,**

EFREN ABELLA, RODRIGO RABOY,  
RENATO SILVA, GEORGE PERALTA,  
RONILO BARBOSA, JULIAN  
BUENAFE, FLORENCIO CARIÑO,  
BERNIE TUMBAGA, RODRIGO  
CABAÑERO, ELMER TAMO,  
LEOPOLDO NANA, NELIE BOSE,  
DEMETRIO HERRERA, RODOLFO  
ABELLA, ALVIN ELEFANTE,  
REDENTOR GARCIA, JERRY  
PALACPAC, JOSE PAET, ARTHUR  
IBEA, ELIZER BORJA, EDMUNDO  
ASPIRAS, JOSE V. PESCADOR,  
WILLIAM GARCIA, ERNESTO P.  
MANGULABNAN, BENJAMIN B.  
BLAZA, JOSELITO P. CACABELOS,  
LEON R. GALANTA, JR., MARIANO P.  
TEJADA, PEDRITO C. ORTIZ, JR.,  
NESTOR E. BALCITA, FLOR  
BURBANO, HERNANDO A. PIMENTEL,  
ALEX A. GOMEZ, ARNALDO P. BOSE,  
NAPOLEON BALDERAS, CARLINO V.  
RULLODA, JR., RANDY R. AMODO,  
CORNELIO R. RAGUINI, ROBERT  
CERIA, JUANITO U. UGALDE,  
ALBERTO PAJO, ALFREDO  
VALOROSO, RUFINO ADRIATICO,  
BARTOLOME C. EDROSOLAN, JR.,  
REYNANTE A. ALCAIN, NOELITO  
SUSA and VICENTE NAVA,

*Respondents.*

X-----X

## DECISION

YNARES-SANTIAGO, J.:

This Petition for Review on *Certiorari* assails the Decision of the Court of Appeals dated January 30, 2004 in CA-G.R. SP No. 75291,<sup>[1]</sup> which set aside the decision and resolution of the National Labor Relations Commission, and its resolution dated May 24, 2004<sup>[2]</sup> denying reconsideration thereof.

Petitioner Times Transportation Company, Inc. (Times) is a corporation engaged in the business of land transportation. Prior to its closure in 1997, the Times Employees Union (TEU) was formed and issued a certificate of union registration. Times challenged the legitimacy of TEU by filing a petition for the cancellation of its union registration.

On March 3, 1997, TEU held a strike in response to Times' alleged attempt to form a rival union and its dismissal of the employees identified to be active union members. Upon petition by Times, then Labor Secretary, and now Associate Justice of this Court, Leonardo A. Quisumbing, assumed jurisdiction over the case and referred the matter to the NLRC for compulsory arbitration. The case was docketed as NLRC NCR CC-000134-97. A return-to-work order was likewise issued on March 10, 1997.

In a certification election held on July 1, 1997, TEU was certified as the sole and exclusive collective bargaining agent in Times. Consequently, TEU's president wrote the management of Times and requested for collective bargaining. Times refused on the ground that the decision of the Med-Arbitrator upholding the validity of the certification election was not yet final and executory.

TEU filed a Notice of Strike on August 8, 1997. Another conciliation/mediation proceeding was conducted for the purpose of settling the brewing dispute. In the meantime, Times' management implemented a retrenchment program and notices of retrenchment dated September 16, 1997 were sent to some of its employees, including the respondents herein, informing them of their retrenchment effective 30 days thereafter.

On October 17, 1997, TEU held a strike vote on grounds of unfair labor practice on the part of Times. For alleged participation in what it deemed was an illegal strike, Times terminated all the 123 striking

employees by virtue of two notices dated October 26, 1997 and November 24, 1997.<sup>[3]</sup> On November 17, 1997, then DOLE Secretary Quisumbing issued the second return-to-work order certifying the dispute to the NLRC. While the strike was ended, the employees were no longer admitted back to work.

In the meantime, by December 12, 1997, Mencorp Transport Systems, Inc. (Mencorp) had acquired ownership over Times' Certificates of Public Convenience and a number of its bus units by virtue of several deeds of sale.<sup>[4]</sup> Mencorp is controlled and operated by Mrs. Virginia Mendoza, daughter of Santiago Rondaris, the majority stockholder of Times.

On May 21, 1998, the NLRC rendered a Decision<sup>[5]</sup> in the cases certified to it by the DOLE, the dispositive portion of which read:

WHEREFORE, the respondents' first strike, conducted from March 3, 1997 to March 12, 1997, is hereby declared LEGAL; its second strike, which commenced on October 17, 1997, is hereby declared ILLEGAL. Consequently, those 23 persons who participated in the illegal strike are deemed to have lost their employment status and were therefore validly dismissed from employment:

The respondents' "Motion to Implead Mencorp Transport Systems, Inc. and/or Virginia Mendoza and/or Santiago Rondaris" is hereby DENIED for lack of merit.

SO ORDERED.<sup>[6]</sup>

Times and TEU both appealed the decision of the NLRC, which the Court of Appeals affirmed on November 17, 2000.<sup>[7]</sup> Upon denial of its motion for reconsideration, Times filed a petition for review on certiorari,<sup>[8]</sup> docketed as G.R. Nos. 148500-01, now pending with the Third Division of this Court. TEU likewise appealed but its petition was denied due course.

In 1998, and after the closure of Times, the retrenched employees, including practically all the respondents herein, filed cases for illegal dismissal, money claims and unfair labor practices against Times

before the Regional Arbitration Branch in San Fernando City, La Union. Times filed a Motion to Dismiss but on October 30, 1998, the arbitration branch ordered the archiving of the cases pending resolution of G.R. Nos. 148500-01.<sup>[9]</sup>

The dismissed employees did not interpose an appeal from said Order. Instead, they withdrew their complaints with leave of court and filed a new set of cases before the National Capital Region Arbitration Branch. This time, they impleaded Mencorp and the Spouses Reynaldo and Virginia Mendoza. Times sought the dismissal of these cases on the ground of *litis pendencia* and forum shopping. On January 31, 2002, Labor Arbiter Renaldo O. Hernandez rendered a decision stating:

WHEREFORE, premises considered, judgment is hereby entered FINDING that the dismissals of complainants, excluding the expunged ones, by respondent Times Transit (sic) Company, Inc. effected, participated in, authorized or ratified by respondent Santiago Rondaris constituted the prohibited act of unfair labor practice under Article 248(a) and (e) of the Labor Code, as amended and hence, illegal and that the sale of said respondent company to respondents Mencorp Transport Systems Company (sic), Inc. and/or Virginia Mendoza and Reynaldo Mendoza was simulated and/or effected in bad faith, ORDERING:

1. Respondents Times Transit (sic) Company, Inc. and Santiago Rondaris as the officer administratively held liable of the unfair labor practice herein to CEASE AND DESIST therefore (sic);
2. Respondents Times Transit (sic) Company, Inc. and/or Santiago Rondaris and Mencorp Transport Systems Company, Inc. and/or Virginia Mendoza and Reynaldo Mendoza to cause the reinstatement therein of complainants to their former positions without loss of seniority rights and benefits and to pay jointly and severally said complainants full back wages reckoned from their respective dates of illegal dismissal as above-indicated, until actually reinstated or in lieu of

such reinstatement, at the option of said complainants, payment of their separation pay of one (1) month pay per year of service, reckoned from their date of hire as above-indicated, until actual payment and/or finality of this decision;

3. And finally for respondents Times Transit (sic) Company, Inc. and/or Santiago Rondaris to pay jointly and severally said complainants as moral and exemplary damages the combined amount of P75,000.00 and 5% of the total award as attorney's fees.

All other claims of complainants are dismissed for lack of merit.

SO ORDERED.<sup>[10]</sup>

The monetary award amounted to P43,347,341.69. On March 4, 2002, Times, Mencorp and the Spouses Mendoza submitted their respective memorandum of appeal to the NLRC with motions to reduce the bond. Mencorp posted a P5 million bond issued by Security Pacific Assurance Corp. (SPAC). On April 30, 2002, the NLRC issued an order disposing of the said motion, thus:

WHEREFORE, premises considered, the Urgent Motion for Reduction of Bond is denied for lack of merit. Respondents are hereby ordered to complete the bond equivalent to the monetary award in the Labor Arbiter's Decision, within an unextendible period of ten (10) days from receipt hereof, otherwise, the appeal shall be dismissed for non-perfection thereof.

SO ORDERED.<sup>[11]</sup>

On May 18, 2002, Times moved to reconsider said order arguing mainly that it did not have sufficient funds to put up the required bond. On July 26, 2002, Mencorp and the Spouses Mendoza posted an additional P10 million appeal bond. Thus far, the total amount of bond posted was P15 million. On August 7, 2002, the NLRC granted

the Motion for Reduction of Bond and approved the P10 million additional appeal bond.<sup>[12]</sup>

On September 17, 2002, the NLRC rendered its decision, stating:

WHEREFORE, the foregoing premises duly considered, the decision appealed from is hereby VACATED. The records of these consolidated cases are hereby ordered REMANDED to the Arbitration Branch of origin for disposition and for the conduct of appropriate proceedings for a decision to be rendered with dispatch.

SO ORDERED.<sup>[13]</sup>

Reconsideration thereof was denied by the NLRC on October 30, 2002. Thus, the respondents appealed to the Court of Appeals by way of a petition for certiorari, attributing grave abuse of discretion on the NLRC for: (1) not dismissing the appeals of Times, Mencorp and the Spouses Mendoza despite their failure to post the required bond; (2) remanding the case for further proceedings despite the sufficiency of the evidence presented by the parties; (3) not sustaining the labor arbiter's ruling that they were illegally dismissed; (4) not affirming the labor arbiter's ruling that there was no *litis pendencia*; and (5) not ruling that Times and Mencorp are one and the same entity.

On January 30, 2004, the Court of Appeals rendered the decision now assailed in this petition, the decretal portion of which states:

WHEREFORE, based on the foregoing, the instant petition is hereby GRANTED. The assailed Decision and Resolution of the NLRC are hereby SET ASIDE. The Decision of the Labor Arbiter dated January 31, 2002 is hereby REINSTATED.

SO ORDERED.<sup>[14]</sup>

Times, Mencorp and the Spouses Mendoza filed Motions for Reconsideration, which were denied in a resolution promulgated on May 24, 2004. Hence, this petition for review based on the following grounds:

- I. Petitioner respectfully maintains that the Honorable Court a quo, in not dismissing the complaints against the petitioner on the ground of *lis pendens*, decided the matter in a way not in accord with existing laws and applicable decisions of this Honorable Court.
- II. Petitioner, further, respectfully maintains that the Honorable Court a quo, in determining that herein petitioners hitherto lost their right to appeal to the NLRC on account of their purported failure to post an adequate appeal bond, radically departed from the accepted and usual course of judicial proceedings, not to mention resolved said issue in a manner and fashion antithetical to existing jurisprudence.
- III. Petitioner, furthermore, respectfully maintains that the Honorable Court a quo, in applying wholesale the doctrine of piercing the veil of corporate fiction and finding Times' co-petitioners liable for the former's obligations, resolved the matter in a manner contradictory to existing applicable laws and dispositions of this Honorable Court, and departed from the accepted and usual course of judicial proceedings with regard to admitting evidence to sustain the application of such principle.<sup>[15]</sup>

The petition lacks merit.

As to the first issue, Times argues that there exists an identity of issues, rights asserted, relief sought and causes of action between the present case and the one concerning the legality of the second strike, which is now pending with the Third Division of this Court. As such, the Court of Appeals erred in not dismissing the case at bar on the ground of *litis pendencia*.

*Litis pendencia* as a ground for dismissal of an action refers to that situation wherein another action is pending between the same parties for the same cause of action and the second action becomes unnecessary and vexatious.<sup>[16]</sup> We agree with the findings of the Court of Appeals that there is no *litis pendencia* as the two cases involve dissimilar causes of action. The first case, now pending with the

Third Division, pertains to the alleged error of the NLRC in not upholding the dismissal of all the striking employees (not only of the 23 strikers so declared to have lost their employment) in spite of the latter's ruling that the second strike was illegal. None of the respondents herein were among those deemed terminated by virtue of the NLRC decision.

In the instant case, the issue is the validity of the retrenchment implemented by Times prior to the second strike and the subsequent dismissal of the striking employees. As such, there can be no question that respondents were still employees of Times when they were retrenched. In short, the outcome of this case does not hinge on the legality of the second strike or the validity of the dismissal of the striking employees, which issues are yet to be resolved in G.R. Nos. 148500-01. Consequently, *litis pendencia* does not arise.

Anent the issue on whether Times perfected its appeal to the NLRC, the right to appeal is a statutory right and one who seeks to avail of the right must comply with the statute or rules. The rules for perfecting an appeal must be strictly followed as they are considered indispensable interdictions against needless delays and for orderly discharge of judicial business.<sup>[17]</sup> Section 3(a), Rule VI of the NLRC Rules of Procedure outlines the requisites for perfecting an appeal, to wit:

SECTION 3. Requisites for Perfection of Appeal. — a) The Appeal shall be filed within the reglementary period as provided in Section 1 of this Rule and shall be under oath with proof of payment of the required appeal fee and the posting of a cash or surety bond as provided in Section 6 of this Rule; shall be accompanied by memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof; the relief prayed for and a statement of the date when the appellant received the appealed decision, order or award and proof of service on the other party of such appeal.

A mere notice of appeal without complying with the other requisites aforestated shall not stop the running of the period for perfecting an appeal. (Emphasis supplied)

Article 223 of the Labor Code provides that in case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the NLRC in the amount equivalent to the monetary award in the judgment appealed from. The perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional, and failure to perfect an appeal has the effect of making the judgment final and executory.<sup>[18]</sup> However, in several cases, we have relaxed the rules regarding the appeal bond especially where it must necessarily yield to the broader interest of substantial justice.<sup>[19]</sup> The Rules of Procedure of the NLRC allows for the reduction of the appeal bond upon motion of the appellant and on meritorious grounds.<sup>[20]</sup> It is required however that such motion is filed within the reglementary period to appeal.

The records reveal that Times, Mencorp and the Spouses Mendoza's motion to reduce the bond was denied and the NLRC ordered them to post the required amount within an unextendible period of ten (10) days.<sup>[21]</sup> However, instead of complying with the directive, Times filed another motion for reconsideration of the order of denial. Several weeks later, Mencorp posted an additional bond, which was still less than the required amount. Three (3) months after the filing of the motion for reconsideration, the NLRC reversed its previous order and granted the motion for reduction of bond.

We agree with the Court of Appeals that the foregoing constitutes grave abuse of discretion on the part of the NLRC. By delaying the resolution of Times' motion for reconsideration, it has unnecessarily prolonged the period of appeal. We have held that to extend the period of appeal is to prolong the resolution of the case, a circumstance which would give the employer the opportunity to wear out the energy and meager resources of the workers to the point that they would be constrained to give up for less than what they deserve in law.<sup>[22]</sup> The NLRC is well to take notice of our pronouncement in Santos vs. Velarde:<sup>[23]</sup>

The Court is aware that the NLRC is not bound by the technical rules of procedure and is allowed to be liberal in the interpretation of rules in deciding labor cases. However, such

liberality should not be applied in the instant case as it would render futile the very purpose for which the principle of liberality is adopted. From the decision of the Labor Arbiter, it took the NLRC four months to rule on the “motion” for exemption to pay bond and another four months to decide the merits of the case. This Court has repeatedly ruled that delay in the settlement of labor cases cannot be countenanced. Not only does it involve the survival of an employee and his loved ones who are dependent on him, it also wears down the meager resources of the workers.<sup>[24]</sup> (Emphasis supplied)

The NLRC’s reversal of its previous order of denial lacks basis. In the first motion, Mencorp and Spouses Mendoza moved for the reduction of the appeal bond on the ground that the computation of the monetary award was highly suspicious and anomalous. In their motion for reconsideration of the NLRC’s denial, Mencorp and the Spouses Mendoza cited financial difficulties in completing the appeal bond. Neither ground is well-taken.

Times and Mencorp failed to substantiate their allegations of errors in the computation of the monetary award. They merely asserted “inaccuracies” without specifying which aspect of the computation was inaccurate. If Times and Mencorp truly believed that there were errors in the computation, they could have presented their own computation for comparison. As to the claim of financial difficulties, suffice it to say that the law does not require outright payment of the total monetary award, but only the posting of a bond to ensure that the award will be eventually paid should the appeal fail. What Times has to pay is a moderate and reasonable sum for the premium for such bond.<sup>[25]</sup> The impression thus created was that Times, Mencorp and the Spouses Mendoza were clearly circumventing, if not altogether dodging, the rules on the posting of appeal bonds.

On the propriety of the piercing of the corporate veil, Times claims that “to drag Mencorp, (Spouses) Mendoza and Rondaris into the picture on the purported ground that a fictitious sale of Times’ assets in their favor was consummated with the end in view of frustrating the ends of justice and for purposes of evading compliance with the judgment is the height of judicial arrogance.”<sup>[26]</sup> The Court of Appeals

believes otherwise and reckons that Times and Mencorp failed to adduce evidence to refute allegations of collusion between them.

We have held that piercing the corporate veil is warranted only in cases when the separate legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, such that in the case of two corporations, the law will regard the corporations as merged into one.<sup>[27]</sup> It may be allowed only if the following elements concur: (1) control—not mere stock control, but complete domination—not only of finances, but of policy and business practice in respect to the transaction attacked; (2) such control must have been used to commit a fraud or a wrong to perpetuate the violation of a statutory or other positive legal duty, or a dishonest and an unjust act in contravention of a legal right; and (3) the said control and breach of duty must have proximately caused the injury or unjust loss complained of.<sup>[28]</sup>

The following findings of the Labor Arbiter, which were cited and affirmed by the Court of Appeals, have not been refuted by Times, to wit:

1. The sale was transferred to a corporation controlled by V. Mendoza, the daughter of respondent S. Rondaris of [Times] where she is/was also a director, as proven by the articles of incorporation of [Mencorp];
2. All of the stockholders/incorporators of [Mencorp]: Reynaldo M. Mendoza, Virginia R. Mendoza, Vernon Gerard R. Mendoza, Vivian Charity R. Mendoza, Vevey Rosario R. Mendoza are all relatives of respondent S. Rondaris;
3. The timing of the sale evidently was to negate the employees/complainants/members' right to organization as it was effected when their union (TEU) was just organized/requesting [Times] to bargain;

5. [Mencorp] never obtained a franchise since its supposed incorporation in 10 May 1994 but at present, all the buses of [Times] are already being run/operated by respondent [Mencorp], the franchise of [Times] having been transferred to it.<sup>[29]</sup>

We uphold the findings of the labor arbiter and the Court of Appeals. The sale of Times' franchise as well as most of its bus units to a company owned by Rondaris' daughter and family members, right in the middle of a labor dispute, is highly suspicious. It is evident that the transaction was made in order to remove Times' remaining assets from the reach of any judgment that may be rendered in the unfair labor practice cases filed against it.

**WHEREFORE**, premises considered, the petition is **DENIED**. The decision of the Court of Appeals in CA-G.R. SP No. 75291 dated January 30, 2004 and its resolution dated May 24, 2004, are hereby **AFFIRMED** in toto.

**SO ORDERED.**

**Davide, Jr., C.J., (Chairman), Carpio, and Azcuna, JJ., concur.**

**Quisumbing, J., no part, due prior action in DOLE.**

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[1] Penned by Associate Justice Juan Q. Enriquez, Jr. as concurred in by Associate Justices Roberto A. Barrios and Arsenio J. Magpale of the Thirteenth Division. Rollo, pp. 50-63.

[2] Rollo, p. 49.

[3] Annexes R and R-1, Rollo, pp. 138-142.

[4] Deeds of Sale, Annexes D, D-1 to D-6.

[5] Rollo, pp. 154-170.

[6] Id., pp. 169-170.

[7] Id., pp. 171-180.

[8] Copy of Petition, Annex V, Rollo, pp. 181-214.

[9] Annex X, Rollo, pp. 221-224.

[10] Rollo, pp. 259-260.

[11] Id., p. 279.

[12] Id., p. 313.

[13] Id., p. 334.

[14] Id., p. 62.

- [15] *Id.*, pp. 33-34.
- [16] *University Physicians Services, Inc. vs. Court of Appeals*, 381 Phil. 54, 67 (2000).
- [17] *Corporate Inn Hotel vs. Lizo*, G.R. No. 148279, 27 May 2004.
- [18] *Buenaobra vs. Lim King Guan*, G.R. No. 150147, 20 January 2004, 420 SCRA 359, 364.
- [19] Where the labor arbiter's decision failed to state the exact total amount due which would be the basis of the bond (*Your Bus Line vs. NLRC*, G.R. No. 93381, 28 September 1990, 190 SCRA 160; *Rada vs. NLRC*, G.R. No. 96078, 9 January 1992, 205 SCRA 69); where the labor arbiter included moral and exemplary damages in the computation of the appeal bond (*Erectors, Inc. vs. NLRC*, G.R. No. 93690, 10 October 1991, 202 SCRA 597); where it was deemed that there was substantial compliance with the filing of the appeal and a bond though in an amount less than the proper appeal bond (*Coral Point Development Corporation vs. NLRC*, 383 Phil. 456 [2000]).
- [20] Section 6, Rule VI.
- [21] *Rollo*, pp. 278-279.
- [22] *Globe General Services and Security Agency vs. NLRC*, 319 Phil. 531, 537 (1995).
- [23] G.R. No. 140753, 30 April 2003, 402 SCRA 321.
- [24] *Id.*, p. 329.
- [25] *Biogenerics Marketing and Research Corporation vs. NLRC*, 372 Phil. 653, 661 (1999).
- [26] *Petition, Rollo*, p. 41.
- [27] *Velarde vs. Lopez, Inc.*, G.R. No. 153886, 14 January 2004, 419 SCRA 422, 431; see also *Gala vs. Ellice Agro-Industrial Corporation*, G.R. No. 156819, 11 December 2003, 418 SCRA 431, 446; *Retuya vs. Dumarpa*, G.R. No. 148848, 5 August 2003, 408 SCRA 315, 327.
- [28] *R & E Transport, Inc. vs. Latag*, G.R. No. 155214, 13 February 2004, citing *Philippine National Bank & National Sugar Development Corporation vs. Andrada Electric & Engineering Company*, G.R. No. 142936, 17 April 2002, 381 SCRA 244, 255.
- [29] *Rollo*, pp. 257-258.