SUPREME COURT
THIRD DIVISION

UNITED SPECIAL WATCHMAN AGENCY,
***Petitioner*,**

-versus-

G.R. No. 152476
July 8, 2003

The HONORABLE COURT OF APPEALS, CESAR PAMA, BENJAMIN PEREZ, JOSE ABRIAD, EDUARDO ALARBA, ANTONIO AVILA, OSCAR BERNARDO, JAIME COLUMBRES, MARIO COLUMBRES, RONNIE DESCUTODO, CONDORDIO EMPINO, NOEL FLAVIA, ANDRES GEDUCOS, PANFILO IHALAS, JUAN MIJARES, MARCELO MIJARES, CANESIO OMBAJIN, ANTONIO PAMA, CRISPULO PAMA, JR., DANILO PAMA, ESTAFANO PAMA, PEPITO PAMA, JR., ROMY PAMPOSA, JESUS PANIALES, DOMING PANIZALES, ARNALDO PEREZ, FIDEL PILOTON, CONCORDIO DE LOS REYES, VICENTE ROBLES, ALEJANDRO ROTAO, GERARDO SUMANGHID, NOEL SUPLIDO, MONICO TIEMPO, ALFREDO VELENZUELA, ARTURO VALENZUELA, ROMY VELARDE, ELISEO VILLAFLOR, and ARTEMIO

VILLALOBOS, and the NATIONAL LABOR RELATIONS COMMISSION,
Respondents.
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D E C I S I O N

PUNO, *J.*:

Assailed in this Petition for *Certiorari* under Rule 45 of the Revised Rules of Court is the decision of the Court of Appeals which dismissed the petition for certiorari filed by petitioner, United Special Watchman Agency ("USWA").

A complaint for illegal dismissal and payment of money claims was filed by respondent employees against USWA and Banco Filipino Savings and Mortgage Bank ("BF"). It stemmed from the termination of the Contract for Security Services[1] entered into between USWA and BF. The parties agreed that "the party terminating the CONTRACT shall give (a) THIRTY (30)-day notice prior to the date of termination to the other party."[2]

The contract took effect on 1 June 1994. However, on 3 June 1994, or two (2) days later, BF terminated the contract. The termination letter dated 3 June 1994, but received on June 17, advised USWA of the termination to take effect 30 days from receipt thereof.[3]

USWA alleged that, upon receipt of the letter, Mr. Angel Baliwag, its Operations Manager, immediately notified all the affected employees stationed at the BF branches about the termination of their contract. He advised them to report to the office for reassignment. Only thirty (30) out of the sixty-seven (67) guards reported and they were given new assignments. Out of the remaining thirty-seven (37), twenty-one (21) filed, on 4 August 1994, a complaint for illegal dismissal and payment of money claims against USWA and BF with the Regional Arbitration Branch of the National Labor Relations Commission ("NLRC"). On 29 August 1994, the complaint was amended to include

all thirty-seven (37) employees. In the course of the proceedings, five (5) of the thirty-seven employees reported to the office and were given new posts.[4]

The employees claimed that they were put on a floating status. They denied that USWA, represented by Mr. Baliwag, notified them of the standing offer of the agency to reassign them to other clients after the termination of the contract with BF. Due to their dismissal, they prayed for separation pay.

On 8 January 1998, the Labor Arbiter ordered USWA to pay the employees separation pay, and both USWA and BF to pay the salary differential and attorney's fees.[5] On appeal, the NLRC, on 23 July 1998, remanded the case, finding the conclusions on the issues of illegal dismissal and wage differential by the Arbiter without sufficient basis.[6] However, on 2 March 2000, a compromise settlement was reached between BF and the employees.[7] The Arbiter approved the settlement in its decision dated 15 March 2000, and dismissed the complaint for illegal dismissal for lack of merit.[8] Aggrieved, the employees filed an appeal with the NLRC. The NLRC ordered USWA to pay the employees their separation pay in light of its conclusion that there was no proof that the employees were notified to report for reassignment after the termination of the contract.[9] The motion for reconsideration was denied on 14 September 2001.[10] Thus, on 16 November 2001, USWA filed with the Court of Appeals a Petition for Certiorari under Rule 65 of the Revised Rules of Court. The petition was dismissed outright in a resolution by the appellate court[11] because Gen. Rodrigo Ordoyo, the Managing Director who signed the certification of non-forum shopping, was not authorized by a board resolution of USWA and its co-petitioner BF. USWA filed a Motion for Reconsideration to which was attached its board resolution authorizing Ordoyo to sign the certification. The motion was likewise denied because only USWA gave the authorization although there were other petitioners.[12] The denial was received by USWA on 15 March 2002. On 18 March 2002, USWA filed a Second Motion for Reconsideration with Leave of Court. It alleged that it was only USWA which intended to file the Petition for Certiorari, but the title included petitioner BF because they merely copied the title of the case from the NLRC decision.[13] While the second motion for reconsideration was pending before the

Court of Appeals, USWA filed the instant Petition for Certiorari under Rule 45 of the Revised Rules of Court.[14] It was only on 27 June 2002 when the Court of Appeals dismissed the second motion for reconsideration on the ground that it is a prohibited pleading.[15]

USWA contends that the Court of Appeals erred when it did not give due course to its petition and prayed that the aforementioned resolutions of the appellate court dismissing the petition be annulled and the case be remanded to the same court.[16]

The respondent employees, in their comment, prayed that the petition be dismissed due to forum shopping and for lack of merit.[17]

We shall first resolve the procedural issue. The question is whether USWA is guilty of forum shopping when it filed the present petition with this Court while its second motion for reconsideration was pending before the Court of Appeals.

Forum shopping exists when the elements of *litis pendentia* are present or where a final judgment in one case will amount to res judicata in another.[18] There is forum shopping when there is an: (1) identity of the parties, or at least such parties as to represent the same interest in both actions; (2) identity of the rights asserted and relief prayed for, the relief being founded on the same set of facts; and (3) identity of the two preceding particulars such that any judgment rendered in the other action will amount to res judicata in the action under consideration, or will constitute *litis pendentia*.[19]

USWA contends that it did not resort to forum shopping because the issues involved in the pleadings before the Court of Appeals and before this Court are different, *viz*:

> The motion for reconsideration and the subsequent motion for reconsideration with "Leave of Court" filed by the petitioner with the Honorable Court of Appeals sought the reconsideration of its earlier resolutions to give due course to the petition in the interest of justice and fair play since petitioner believed that it has strictly complied with its directives and that the dismissal was based on the caption of the pleading and not on the allegations therein, while the instant petition sought the

> remand of the case to the Honorable Court of Appeals for appropriate action.[20] (Emphasis and underscoring in the original)

We disagree. We cannot countenance the over stretched argument of USWA. Its two motions for reconsideration pray that the Court of Appeals give due course to the petition for certiorari filed before it. The petition before this Court seeks the remand of the case to the Court of Appeals "for appropriate action." It is obvious however, that if we grant the petition and remand the case, we will be ordering the Court of Appeals to give due course to USWA's petition. This is precisely the object of its motion for reconsideration, as well as its second motion for reconsideration. To be sure, a second motion for reconsideration is a prohibited pleading.[21] But this cannot save USWA from a blatant violation of the rule on forum shopping. The rule explicitly prohibits a party against whom an adverse judgment has been rendered in one forum from seeking another forum in the hope of obtaining a favorable disposition in the latter.[22] Forum shopping is not only "contumacious"[23] but also "deplorable because it adds to the congestion of the heavily burdened dockets of the courts."[24]

It matters not that USWA admitted the existence of the second motion for reconsideration pending with the Court of Appeals in the certification of non-forum shopping attached to its petition. In the case of Request for Consolidation of Civil Case No. 1169, RTC Br. 45, San Jose, Occidental Mindoro with Civil Case No. 3640, RTC Br. 49, Cabanatuan City,[25] we held that even if a party admits in the certification of non-forum shopping the existence of other related cases pending before another body, this does not exculpate such party who is obviously and deliberately seeking a more friendly forum for his case. For resorting to forum shopping, the petition of USWA should be dismissed with prejudice.[26]

But even on its merits, the petition of USWA cannot prosper. It is the contention of USWA that the respondents were not illegally dismissed, but that they refused to report to the office after the termination of the contract with BF. Allegedly, it was the fault of the respondents that they did not have any work assignment. There being

no illegal dismissal, they argue that the NLRC erred in awarding separation pay to the employees.

Again, we do not subscribe to this argument. This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court where only questions of law are allowed. It is fundamental that "findings of facts of administrative bodies charged with their specific field of expertise, are afforded great weight by the courts, and in the absence of substantial showing that such findings are made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed."[27] The NLRC, in its decision dated 30 March 2001,[28] held:

> In the case at bar, it is not shown that complainants were given new assignments six (6) months after termination of the contract between respondents bank and security agency. Records further do not show that complainants were informed, verbally or in writing, that they will be given new guarding assignments. Respondent security agency, through Mr. Angel Baliwag, Operations Officer, testified that he sent a letter dated 22 May 1995 to Atty. Loste, complainants' counsel, requesting addresses of the complainants but the latter stated that he does (sic) not know the addresses of complainants. We cannot give due merit to respondent's statement since the letter request was made beyond the six (6) months allowable period to place complainants on a floating status (pp. 6–10, TSN, taken on 30 May 1996). Moreover, we find unbelievable that respondent agency does not have any record of the complainants' addresses being their employees.[29]

These findings of the NLRC are supported by the evidence on record. It was established that the respondents were put on a temporary off-detail, which exceeded the allowable period of six (6) months, amounting to constructive dismissal.[30] There is thus no further need to dwell on the questions of fact raised in this petition.

Proceeding from the fact that the dismissal of the employees was illegal, we next rule on the liability of USWA. Pursuant to a legitimate job contracting, USWA and BF are jointly and severally liable in the

payment of the wages of the employees, and for violation of any provision of the Labor Code.[31] We note that a compromise agreement of the employees was executed between BF and the employees.[32] However, the compromise agreement dealt only with salary differential. It did not include nor does it preclude the award of separation pay. In light of the illegal dismissal of the respondents, USWA is liable to pay the respondents separation pay equivalent to one (1) month pay for every year of service.[33]

WHEREFORE, the petition of USWA is dismissed.

SO ORDERED.

Panganiban, Sandoval-Gutierrez, Corona and Carpio-Morales, *JJ.*, concur.

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[1] Rollo, pp. 129–131.
[2] Id. at 130.
[3] Id. at 132.
[4] Id. at 401.
[5] CA Rollo, p. 48.
[6] Id. at 59.
[7] Id. at 62.
[8] Id. at 69.
[9] Promulgated on 30 March 2001; Id. at 27.
[10] Id. at 36.
[11] Dated 28 November 2001 but received by petitioners on 5 December 2001, Rollo, p. 41.
[12] 6 March 2002, CA Rollo, p. 169.
[13] Rollo, p. 63.
[14] On 29 April 2002.
[15] CA Rollo, p. 288.
[16] Rollo, pp. 11–37.
[17] Id. at 185–188.
[18] Ayala Land, Inc. vs. Valisno, 324 SCRA 522 (2000).
[19] International School, Inc. (Manila) vs. Court of Appeals, 309 SCRA 367 (1999).
[20] Rollo, p. 199.
[21] "No party shall be allowed a second motion for reconsideration of a judgment or final order." (Section 5, Rule 37, Revised Rules of Court); Philgreen Trading Construction Corporation vs. Court of Appeals, 271 SCRA 719 (1997).

[22] Chemphil Export & Import Corporation vs. Court of Appeals, 251 SCRA 257 (1995).
[23] Equitable Banking Corporation vs. National Labor Relations Commission, 272 SCRA 352 (1997).
[24] Solid Homes, Inc. vs. Court of Appeals, 271 SCRA 157 (1997).
[25] 364 SCRA 189 (2001).
[26] Supra.
[27] Ocampo vs. Commission on Elections, 325 SCRA 636 (2000); Alfaro vs. Court of Appeals, 363 SCRA 799 (2001).
[28] Rollo, p. 118.
[29] Id. at 124.
[30] Superstar Security Agency vs. NLRC, 184 SCRA 74 (1990).
[31] "The provisions of existing laws to the contrary notwithstanding, every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of any provision of this Code. For purposes of determining the extent of their civil liability under this Chapter, they shall be considered as direct employers." (Art. 109 of the Labor Code of the Philippines); "In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him." (Art. 106)
[32] Rollo, pp. 152–153.
[33] Art. 279 of the Labor Code; Sec. 4[b], Rule I, Book VI, Rules Implementing the Labor Code; Hantex Trading Co., Inc., &/or Mariano Chua vs. Court of Appeals, et al., G.R. No. 148241, 27 September 2002.