SUPREME COURT
FIRST DIVISION

ZEBRA SECURITY AGENCY and ALLIED SERVICES and/or NORMA G. ORTIZ, and MA. THERESA ESTAVILLO,[1]

***Petitioners*,**

-versus-

G.R. No. 115951
March 26, 1997

NATIONAL LABOR RELATIONS COMMISSION, GREGORIO CALASAN, Labor Arbiter; LINO R. DELA CRUZ, LEONARDO PASCUAL, JOAQUIN OLIVEROS, ANTONIO DOLLENTE, EDWIN CLARIN, ROMEO TAMAYO, and PACIFICO ANDRES,

***Respondents*.**

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D E C I S I O N

BELLOSILLO, *J.*:

Petitioners seek a Review of their cause earlier brought to us on Certiorari assailing the Decision of the National Labor Relations Commission (NLRC) as they claim they possess new documents which may alter the Decision.

The antecedent facts reveal that private respondents are security guards claiming to have been employed by petitioner Ma. Theresa Estavillo doing business under the name and style "Zebra Security Agency and Allied Services" (ZEBRA).[2] Their employment covered the period from 1989 through 1990.[3] Co-petitioner Norma Ortiz is Estavillo's mother and office manager of ZEBRA.

Sometime in 1990 private respondents filed individual complaints with the Regional Arbitration Branch II of the National Labor Relations Commission (RAB II-NLRC) in Tuguegarao, Cagayan. They charged petitioners with underpayment of wages[4] and non- payment of overtime pay, night shift differential pay, holiday and rest day pay, 13th month pay and service incentive leave pay.

Petitioners rejected the claims alleging among others that some of the private respondents, namely, Lino dela Cruz, Leonardo Pascual, Joaquin Oliveros and Edwin Clarin were never employed by ZEBRA at any given time. In denying respondents' claims for unpaid benefits and allowances for the years 1985, 1986, 1987 and the early months of 1988 petitioner maintained that ZEBRA started its operations only on 26 March 1988 when it was granted a license to operate by the Philippine Constabulary,[5] and that prior to 26 March 1988 ZEBRA was legally non-existent; therefore it could not have hired private respondents yet. Petitioners likewise contended that they had no contract for security services with the establishments where complainants had rendered services.

As for the other private respondents, namely, Antonio Dollente, Romeo Tamayo and Pacifico Andres, petitioners admitted their employment for certain definite periods and that they were duly paid their salaries, allowances and benefits as required by law.[6] Petitioners also alleged that the guards were irregular employees because they worked when and as they wished so that their termination was valid and just since they failed to report for duty as directed.[7]

Countering this assertion, private respondents claimed that they were initially hired by Armor Security Services, Inc. (ARMOR) on different dates in 1985 and that their employment continued even after

ARMOR changed its firm name to ZEBRA in 1988. They charged that ARMOR and ZEBRA were owned and managed by one and the same person, Norma Ortiz, and that Ma. Theresa Estavillo merely served as "dummy" of her mother in the operation of ZEBRA. Proceeding from this premise private respondents concluded that ZEBRA and ARMOR are one and the same entity so that ZEBRA should be liable for ARMOR's unsatisfied obligations to them.

Answering, petitioners argued that ARMOR and ZEBRA were distinct entities. They presented documentary exhibits showing that ARMOR was a domestic corporation while ZEBRA, a single proprietorship. According to them, when ARMOR ceased operating in 1987 its security guards were absorbed by another security agency, the Montillano Investigation and Security Agency (MONTILLANO), managed by one Matias Albano after it won the bidding for security services of the former clients of ARMOR. It utilized the former security guards of ARMOR and retained private respondents in their assignments.

The individual complaints were consolidated and assigned to Labor Arbiter Gregorio Calasan whose repeated efforts to conclude a settlement between the parties failed.

On 22 May 1992 the Labor Arbiter issued a decision ordering petitioners to pay private respondents the total amount of P374,126.50 for unpaid salary differentials, overtime pay, rest day and holiday pay, 13th month pay and service incentive leave pay.[8] The award was broken down as follows: (a) Lino dela Cruz, P54,236.55; (b) Leonardo Pascual, P63,047.17; (c) Joaquin Oliveros, P39,055.93; (d) Antonio Dollente, P64,072.37; (e) Edwin Clarin, P47,900.32; (f) Romeo Tamayo, P83,455.86, and, (g) Pacifico Andres, P22,358.30, or a total of P374,126.50. The claims for illegal dismissal and night shift differential pay however were dismissed for lack of factual basis.

On 1 July 1992, no appeal having been interposed by petitioners, the judgment became final and executory prompting private respondents to move for the issuance of a writ of execution.

On 6 July 1992 petitioners filed a petition for relief from judgment alleging that their failure to appeal was due to extreme financial difficulties and excusable negligence caused by the medical confinement of Norma Ortiz and her husband. The NLRC treated the petition as an appeal and docketed it as NLRC-CA No. L-000576-92. However on 31 August 1992 the Third Division of NLRC denied the "appeal" because it did not specify the legal and valid defenses intended to be presented.[9]

Subsequently, petitioners filed motions to drop complainants Antonio Dollente and Floro Gacayan[10] on the basis of affidavits executed by the two (2) retracting their claims against ZEBRA.

On 18 February 1993 NLRC sustained its decision of 31 August 1992 and took note of the motions to drop complainants.

On 20 May 1993 petitioners elevated to us the NLRC resolution on a petition for certiorari.[11] The Court dismissed the petition for having been filed out of time and finding that no grave abuse of discretion was committed by public respondent.[12] Accordingly, an entry of judgment was made on 6 August 1993 declaring the resolution of 18 February 1993 final and executory. On 4 October 1993 the case was remanded to the NLRC for execution.

Meanwhile, on 7 June 1993 the NLRC issued an entry of judgment certifying that the resolution affirming the denial of the petition for relief became final and executory. Thus on 21 October 1993 private respondents filed a motion for the issuance of a writ of execution. This was opposed by petitioners in a motion to quash the writ of execution[13] and to set case for conference and/or hearing and for recomputation alleging that complainants' position papers were fabricated and perjured.[14]

On 11 February 1994 the Labor Arbiter denied the motion to quash holding that "it is too late for the respondents to assail the decision and to put on hold the execution of the decision which had already become final and executory."[15]

Undaunted by the denial of their motion to quash, petitioners appealed to the NLRC claiming the existence of "prima facie evidence

of grave abuse of discretion of the labor arbiter in issuing the order."[16] Petitioners also collaterally attacked the final judgment awarding money claims to complainants, pointing out that the computation of the award was based merely on the allegations of complainants who presented no sufficient documentary proof. While they admitted their failure to submit the payrolls, time records and employment records of complainants, petitioners claimed that this was due to the fact that MONTILLANO's payrolls were not yet in their possession and their own records themselves were voluminous and not properly sorted out for submission.[17] They consequently prayed for the annulment of the order and recomputation of the money claims.

On 28 April 1994 the Third Division of the NLRC[18] dismissed the appeal holding that it was filed out of time and that even assuming that it was seasonably made the decision relative to the computations of the award had already become final and executory.

In a last ditch effort to prevent execution of the judgment, petitioners now file this petition for certiorari under Rule 65 of the Rules of Court. They pray that a preliminary injunction be issued to enjoin the execution of the decision; the resolution of public respondent NLRC dated 28 April 1994 dismissing the appeal be annulled; and, the decision of public respondent Labor Arbiter dated 22 May 1992 be likewise set aside. They also ask that public respondents be ordered to allow petitioners to present their evidence before the Labor Arbiter.

For obvious reasons, the petition must fail. In a minute resolution dated 2 June 1993 we already resolved that no grave abuse of discretion was committed by public respondents NLRC and Labor Arbiter in issuing their assailed decisions. Thus we said —

> Acting on the petition for certiorari of the decision dated February 15, 1993 (sic)[19] of the National Labor Relations Commission in NLRC-CA No. L-000576-92, the Court Resolved to DISMISS the petition for having been filed late.

Besides, the Court finds that no grave abuse of discretion was committed by the public respondents.

It is axiomatic that when a minute resolution denies or dismisses a petition for lack of merit, the challenged decision or order, together with its findings of fact and legal conclusions are deemed sustained.[20] There can be no question that our aforequoted minute resolution affirmed the decision of the Labor Arbiter in NLRC-CA No. L-000576-92 awarding money claims to private respondents. This decision cannot now be assailed even on the pretext of questioning the denial of the motion to quash the writ of execution. When the resolution attained finality it became the "law of the case." This means that if an appellate court has passed upon a legal question and remanded the cause to the court below for further proceedings, the legal question thus determined by the appellate court will not be differently determined on a subsequent appeal given the same case and substantially the same facts.[21] Such a rule is necessary to enable an appellate court to perform its duties satisfactorily and efficiently, which would be impossible if a question once considered and decided by it were to be litigated anew in the same case upon any and every subsequent appeal.[22] Thus in People vs. Pinuila[23] we explained —

> More specifically, [law of the case] means that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court (21 C.J.S. 330) Questions necessarily involved in the decision on a former appeal will be regarded as the law of the case on a subsequent appeal, although the questions are not expressly treated in the opinion of the court, as the presumption is that all facts in the case bearing on the point decided have received due consideration whether all or none of them are mentioned in the opinion (5 C.J.S. 1286-87).

Petitioners are now precluded from filing this second petition involving a matter necessarily connected to the first. The instant petition assails the resolution dated 28 April 1994 affirming the denial of the motion to quash the writ of execution. In attacking such decision petitioners predicated their argument on the alleged grave abuse of discretion of the Labor Arbiter in rendering the decision in NLRC-CA No. L-000576-92. Thuswise, petitioners are now barred

from alleging grave abuse of discretion because this matter has already been settled with finality. Quite obviously this petition is a deliberate ruse to mislead the Court into resurrecting an issue which had already been put to rest. A careful reading of G.R. Nos. 109181-87[24] and G.R. No. 115951[25] reveals that these in the main prayed for the annulment of the decision rendered in NLRC-CA No. L-000576-92. Evidently, the purpose of these petitions as well as all appeals and motions filed thereunder was to forestall the execution of judgment awarding money claims to private respondents. We find that there is substantial similarity in the facts and issues in both petitions. Courts frown upon litigants reiterating identical petitions in the hope that they would entertain a possible change of opinion in the future.[26]

Petitioners cannot conveniently offer the excuse that they have new documents to justify a review of the case. The denial of the first petition binds the parties not only as to every matter offered and received to sustain or defeat their claims or demand but as to any other admissible matter which might have been offered for that purpose and of all other matters that could have been adjudged in that case.[27]

Petitioners never submitted their own employment records, payrolls and time cards to prove lack of employer-employee relationship despite the availability of these documents, not even belatedly on appeal to the NLRC. They cannot now rely on the claim that these records were too voluminous to be sorted out.

Although petitioners furnished the Court with the payrolls and mission orders of MONTILLANO to prove that private respondents were employed by another security agency, these documents however cover certain employment periods only of some guards. At best they merely prove that the guards included in the payrolls were employed by MONTILLANO only for specified periods. These documents do not discount the fact that private respondents were likewise employed by ZEBRA at some time in the past.

In this petition Norma Ortiz swore that “I have not commenced any other action or proceeding involving the same issues in any Court, Agency or Tribunal, to the best of my own personal knowledge.” Such certification of non-forum shopping appears to be false because, as

we have earlier observed, this petition involves essentially the same facts and issues as those raised by petitioners in their first petition as well as in their other pleadings. Petitioners are consequently guilty of forum shopping. Willful and deliberate forum shopping constitutes either direct or indirect contempt of court under SC Adm. Circular No. 04-94 dated 1 April 1994. It is also characterized as an act of malpractice and condemned as trifling with the courts and abusing their processes.[28] Supreme Court Circular No. 28-91 requires that a complaint or petition be dismissed upon a finding that the parties who filed the pleading committed forum shopping.

UPON THESE PREMISES, we **DENY** the petition. The resolution of the National Labor Relations Commission dated 28 April 1994 in NLRC-CA No. L-000576-92 dismissing the appeal is **AFFIRMED**. The NLRC is directed to immediately implement the execution of the decision of the Labor Arbiter of 22 May, 1992. Costs against petitioners.

SO ORDERED.

Padilla, Vitug, Kapunan and Hermosisima, Jr., *JJ.*, concur.

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[1] The caption should be 'Ma. Theresa Estavillo doing business under the name and style Zebra Security Agency and Allied Services and/or Norma Ortiz.'

[2] With business address at Benitez Apartment, Quezon St., Cauayan, Isabela.

[3] Private respondents claimed that they were employed for the following periods: (a) Lino dela Cruz, 2 July 1986 to 31 December 1989; (b) Leonardo Pascual, 5 January 1986 to 15 January 1990; (c) Joaquin Oliveros, 16 July 1985 to 16 May 1990; (d) Antonio Dollente, September 1986 to January 1990; (e) Edwin Clarin, 1 August 1985 to 1 August 1986; (f) Floro Gacayan, 16 May 1987 to 1 December 1990; and, (g) Pacifico Andres, July 1986 to February 1989. Floro Gacayan was subsequently dropped as complainant.

[4] Private respondents alleged that they were paid the following salaries: (a) Romeo Tamayo, P1,100.00; (b) Leonardo Pascual, P1,100.00; (c) Pacifico Andres, P1,400.00; (d) Edwin Clarin, P900.00; (e) Joaquin Oliveros, P1,000.00; (f) Antonio Dollente, P1,200.00; and, (g) Lino dela Cruz, P1,100.00.

[5] Annex "E," Vol. I, Records, p. 185.

[6] Position Paper, 5 September 1991, p. 3; Rollo, p. 22.

[7] Ibid.

[8] Annex "B;" Rollo, pp. 25-44.
[9] Decision penned by Commissioner Rogelio I. Rayala, concurred in by Commissioners Lourdes C. Javier and Ireneo B. Bernardo.
[10] Record shows that Lino DELA CRUZ and Pacifico ANDRES also filed affidavits on 1 December 1992 and 2 February 1993 respectively, retracting their claims.
[11] G.R. Nos. 109161-67 entitled Ma. Theresa Estavillo doing business under the name and style Zebra Security Agency and Allied Services and/or Norma Ortiz.
[12] Per minute resolution of the Third Division dated 2 June 1993, Annex "2;" Rollo, p. 78.
[13] Record does not show that a writ of execution was in fact issued by the Labor Arbiter.
[14] Petitioner Norma Ortiz filed a complaint for perjury before the Prosecutors' Office of Isabela on 23 March 1993.
[15] RAB II Order, 11 February 1994, p. 1; Vol. I, Records, p. 328.
[16] Appeal, 10 March 1994, p. 1; Rollo, p. 382.
[17] Id., p. 2; Rollo, p. 385.
[18] Composed of Commissioners Lourdes C. Javier, Ireneo B. Bernardo and Joaquin A. Tanodra.
[19] Probably a typographical error because the resolution was actually promulgated. on the 18th and not on the 15th of February 1993.
[20] Tan vs. Nitafan, G.R. No. 76965, March 11, 1994, 231 SCRA 136.
[21] Ibid.
[22] Id., p. 137, citing Ramos vs. Intermediate Appellate Court, G.R. No. 72686, 8 March 1989, 171 SCRA 93.
[23] 103 Phil. 992, 999 (1958).
[24] Ma. Theresa Estavillo doing business under the name and style of 'Zebra Security Agency and Allied Services' vs. National Labor Relations Commission (Third Division), Gregorio Calasan (Labor Arbiter), Pacifico Andres, Edwin Clarin, et al.
[25] 'Zebra Security Agency and Allied Services' and/or Norma G. Ortiz, Ma. Theresa Estavillo vs. National Labor Relations Commission, Gregorio Calasan (Labor Arbiter), Lino R. dela Cruz, Leonardo Pascual, et al.
[26] See Note 20.
[27] Gabuya vs. Layug, G.R. No. 104846, 23 November 1995, 250 SCRA 218.
[28] Chemphil Export & Import Corporation vs. Court of Appeals, G.R. Nos. 112438-39, 12 December 1995, 251 SCRA 257.