Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

OYSTER PLAZA HOTEL, ROLITO GO, and JENNIFER AMPEL, Petitioners,	**G.R. No. 217455**
	Present:
	CARPIO, *J., Chairperson,* BRION,* DEL CASTILLO, MENDOZA, and LEONEN, *JJ.*
- versus -	
	Promulgated:
ERROL O. MELIVO, Respondent.	0 5 OCT 2016

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DECISION

MENDOZA, *J.*:

This Petition for Review on *Certiorari* seeks to reverse and set aside the April 30, 2014 Decision[1] and the March 12, 2015 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 122767, which affirmed the June 21, 2011 Decision[3] of the National Labor Relations Commission *(NLRC)* in NLRC NCR Case No. 10-14771-09, a case for illegal dismissal.

The Antecedents:

On October 22, 2009, respondent Errol O. Melivo *(Melivo)* filed before the NLRC a Complaint[4] for illegal dismissal with prayers for reinstatement and payment of back wages, holiday pay, overtime pay,

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* On Leave.

[1] Penned by Associate Justice Francisco P. Acosta with Associate Fernanda Lampas Peralta and Associate Justice Myra V. Garcia-Fernandez, concurring; *rollo,* pp. 47-56.

[2] Id. at 57.

[3] Penned by Commissioner Gerardo C. Nograles with Commissioner Perlita B. Velasco and Commissioner Romeo L. Go, concurring; id. at. 127-134.

[4] Id. at 63-64.

service incentive leave, and, 13th month pay against petitioners Oyster Plaza Hotel *(Oyster Plaza),* Rolito Go *(Go),* and Jennifer Ampel *(Ampel).*

The Summons,[5] dated October 26, 2009, together with a copy of the complaint, was served on the petitioners thru registered mail. The said summons ordered the petitioners to appear before the Labor Arbiter *(LA)* for mandatory conciliation/mediation conferences on November 23, 2009 and December 1, 2009. The registry return receipt,[6] dated November 27, 2009, showed that the summons and the copy of the complaint were duly served. The petitioners, however, failed to appear during the scheduled conferences. Thereafter, the case was set for formal hearing on January 14, 2010 and a notice of hearing[7] was sent to the petitioners, requiring them to appear before the LA and file their position paper, with a warning that failure to appear therein would be construed as a waiver of the opportunity to be heard. The notice, however, was returned unserved as there was no one to receive the same.[8] The formal hearing was, thus, reset to February 17, 2010, and a notice of hearing[9] was again sent to the petitioners, wherein they were reminded to file their position paper. The registry return receipt[10] showed that the said notice was received by a certain Charlie Miraña *(Miraña)* on January 25, 2010. At the February 17, 2010 hearing, however, only Melivo appeared.

On even date, Melivo filed his Position Paper,[11] alleging the following: that Oyster Plaza was a business entity engaged in the business of hotel operation, under the ownership/management of Go and Ampel; that in August 2008, Oyster Plaza hired him as a trainee room boy; that in November 2008, Oyster Plaza hired him as a probationary room boy and he was made to sign an employment contract but he was not furnished a copy, that the said contract expired in March 2009 and his work ended; that on April 7, 2009, Oyster Plaza hired him again as a room boy, but without any employment contract or document; and that in September 2009, his supervisor Ampel verbally told him that his contract was expiring, thus, he must stop reporting for work.

For the last time, another notice of hearing[12] for the March 24, 2010, was again sent to the petitioners with a directive to file their position paper, but it was again returned unserved.[13] Hence, the case was submitted for decision *ex parte.*[14]

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[5] Id. at 68.
[6] Id. at 66.
[7] Id. at 70.
[8] Id. at 69.
[9] Id. at 72.
[10] Id. at 71.
[11] Id. at 75-81.
[12] Id. at 74.
[13] Id. at 73.
[14] Id. at 84.

The LA Ruling

In its Decision,[15] dated April 20, 2010, the LA ruled that Melivo was illegally dismissed. Considering that Melivo had already rendered six (6) months of service for Oyster Plaza, the LA held that he had become a regular employee by operation of law. The LA stated that having attained the regular employment status, he could only be terminated for a valid cause; and because the petitioners failed to present countervailing evidence to justify Melivo's dismissal, there could be no other conclusion except that the dismissal was illegal.

The LA, however, found that there was no underpayment as Melivo was receiving the basic wage plus cost of living allowance as mandated by law; that he was not entitled to service incentive leave because he had not rendered at least one (1) year of service; and that there was no underpayment of holiday pay and overtime pay because he failed to adduce evidence to support these claims.

In the end, the LA ordered Oyster Plaza to reinstate Melivo to his previous position and to pay him back wages reckoned from his dismissal on September 15, 2009 until the finality of its decision; his proportionate 13th month pay; and attorney's fees in the amount equivalent to 10% of the total money claims awarded. The dispositive portion of the LA decision reads:

> CONFORMABLY WITH THE FOREGOING, judgment is hereby rendered finding complainant illegally dismissed.
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> Consequently, respondents must reinstate complainant to his former work as room boy within ten (10) days from receipt of this decision and pay him, *in solidum*, the following amounts:
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> a) ₱57,572.00, as backwages as of March 19, 2010 and to accrue further until finality of this decision;
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> b) ₱6,631.33, as proportionate 13th month pay; and
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> c) 10% of the money awards as attorney's fees.
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> SO ORDERED.[16]

[15] Id. at 83-89. Penned by Labor Arbiter Melquiades Sol D. Del Rosario.
[16] Id. at 89.

Thereafter, Melivo filed his Motion to Implement Order of Reinstatement.[17] Acting thereon, the LA issued the Writ of Execution[18] on September 21, 2010.

On October 21, 2010, the petitioners filed their Motion to Quash (Writ of Execution, dated September 1, 2010)[19] arguing that they did not receive the summons, the notices of hearings and the copy of the LA decision. The petitioners averred that they were only able to secure copies of the records on October 14, 2010.

Without awaiting the LA's action on their motion to quash, the petitioners filed an Appeal before the NLRC. In their Appeal Memorandum,[20] the petitioners argued that none of them was served with summons and notices of the November 23, 2009 and December 1, 2009 hearings; that the registry return receipt, dated November 27, 2009, did not bear a legibly written name to determine who received the summons; that the notice for the February 17, 2010 hearing was received by Miraña, a security guard who was not its employee but merely assigned to it by VICAR Security Agency; that "Oyster Plaza Hotel" was only a name and business style of its owner, Martyniuk Development Corporation *(MDC)* and, hence, could not be sued because it had no legal personality; that Go was not a stockholder, officer, or director of, and had no connection with, Oyster Plaza and MDC; that Ampel, whose real name was Jennilyn not Jennifer, was a mere assistant desk officer of Oyster Plaza; and that assuming there was valid service of summons, Melivo was not illegally dismissed because he was merely employed for a fixed term, which term already expired. The petitioners also submitted Melivo's Contract of Employment[21] as an attachment to their memorandum.

The NLRC Ruling

On June 21, 2011, the NLRC *affirmed* the April 20, 2010 Decision of the LA. It observed that the summons and the complaint, which were addressed to "Oyster Plaza Hotel, et al.," were served upon the petitioners by registered mail and received by them on November 27, 2009. Thus, it was prudent for them to verify the status of the case with the LA. It further explained that the petitioners' assertion that they had no knowledge on who received the subject processes and pleading did not render the service ineffectual; and that the Rules of Procedure of the NLRC did not specify any person upon whom summons must be served in the event that the respondent was a juridical entity. Thus, Oyster Plaza was bound by its employee's receipt of the summons.

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[17] Id. at 92-93.
[18] Id. at 94-96.
[19] Id. at 99-102.
[20] Id. at 103-115.
[21] Id. at 117.

The NLRC was of the view that the petitioners' denial of illegal dismissal did not deserve any consideration. It posited that the contract of employment failed to reveal the specific project or any phase of it where he was employed; and that the petitioners failed to submit a report of his termination to the nearest public employment office, as required under Department Order *(D.O.)* No. 19. The failure to file a termination report upon the alleged cessation of Melivo's employment was an indication that he was not a project employee, but a regular employee. Thus, for want of valid cause for his severance, the NLRC concluded that Melivo was illegally dismissed.

The petitioners moved for reconsideration, but their motion was denied by the NLRC in its Resolution,[22] dated September 26, 2011.

Aggrieved, the petitioners elevated the case to the CA.

The CA Ruling

In its assailed decision, dated April 30, 2014, the CA dismissed the petition for lack of merit and affirmed the June 21, 2011 NLRC Decision. The appellate court held that the failure to implead MDC in the proceedings before the LA and the NLRC was merely a procedural error which did not affect the jurisdiction of the labor tribunals. The CA observed that the petitioners failed to raise a valid argument, much less present sufficient evidence to show that there was irregularity in the service of summons. It emphasized that the petitioners' alternative argument that Ampel was not authorized to receive the summons bolstered the findings that she indeed received the said summons. It also opined that the provisions of the Rules of Court only had suppletory application to labor cases and, thus, not strictly applied thereto. Finally, it stated that petitioners failed to produce sufficient evidence, such as the company's General Information Sheet, to show that Go was no longer connected with either MDC or Oyster Plaza.

As to the issue of Melivo's illegal dismissal, the CA held that the petitioners failed to adduce adequate evidence to the contrary. It noted that the petitioners barely argued on the nature of Melivo's employment and they miserably failed to point specific acts by the NLRC which amounted to grave abuse of discretion. The CA stated that a perusal of the assailed NLRC decision would readily show that the same was arrived at after considering the evidence presented and arguments raised by the parties. The *fallo* of the CA decision reads:

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[22] Id. at 141-142.

> WHEREFORE, the instant Petition is hereby DENIED for lack of merit. The assailed Decision of the NLRC dated 21 June 2011 is AFFIRMED.
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> SO ORDERED.[23]

The petitioners filed their motion for reconsideration, but the same was denied by the CA in its assailed Resolution, dated March 12, 2015.

Hence, this petition, raising the following:

ISSUES

I

WHETHER OR NOT THE PETITIONERS WERE DEPRIVED OF THEIR RIGHT TO DUE PROCESS OF LAW AS THEY WERE NOT PROPERLY SERVED WITH SUMMONS

II

WHETHER OR NOT THE COURT OF APPEALS ERRED IN HOLDING THAT MELIVO WAS ILLEGALLY DISMISSED

III

WHETHER THE COURT OF APPEALS ERRED IN FINDING PETITIONERS GO AND AMPEL SOLIDARILY LIABLE WITH OYSTER PLAZA/MDC

The petitioners argue, *first*, that the service of summons was defective leaving the proceedings before the LA and the NLRC, and the decisions they rendered, void; that neither Miraña nor Ampel was authorized to receive the summons for Oyster Plaza/MDC because they were not its president, manager, secretary, cashier, agent, director, corporate secretary, or in-house counsel; that Ampel did not receive any summons; that Go never received any summons in the New Bilibid Prisons in Muntinlupa City, where he was serving his sentence; that Oyster Plaza, being a mere name and business style, could not be sued because it had no legal personality; and that the summons and notices addressed to Oyster Plaza could not bind MDC.

Second, on the assumption that the summons was validly served, the petitioners argue that Melivo was not illegally dismissed because he was not a regular employee but merely a fixed-term employee. *Lastly*, assuming that Oyster Plaza was liable, Go could not be made solidarily liable because he was no longer connected with the hotel. Neither could Ampel be held solidarily liable as there was no proof that she acted in bad faith.

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[23] Id. at 16.

In his Comment,[24] dated October 23, 2015, Melivo refuted the petitioners' arguments. He countered that in quasi-judicial proceedings before the NLRC and its arbitration branch, procedural rules governing service of summons were not strictly construed; that the service of summons and notices substantially complied with the requirements of the 2005 Revised NLRC Rules of Procedure; that the non-inclusion of the corporate name of MDC was a mere procedural error which did not affect the jurisdiction of the labor tribunals; that Go and Ampel were responsible officers of Oyster Plaza; and that Melivo's dismissal was done in bad faith because he was verbally and arbitrarily dismissed.

In their Reply,[25] dated March 23, 2016, the petitioners merely reiterated the arguments they raised in their petition.

The Court's Ruling

The petition is partly meritorious.

Petitioners were Not Deprived of their Right to Due Process

In quasi-judicial proceedings before the NLRC and its arbitration branch, procedural rules governing service of summons are not strictly construed. Substantial compliance thereof is sufficient. The constitutional requirement of due process with respect to service of summons only exacts that the service of summons be such as may reasonably be expected to give the notice desired. Once the service provided by the rules reasonably accomplishes that end, the requirement of justice is answered, the traditional notion of fair play is satisfied, and due process is served.[26]

In *Scenarios, Inc. vs. Vinluan*,[27] the Court considered as substantial compliance the service of summons by registered mail at the respondent's place of business. The Court explained therein that technical rules of procedure were not strictly applied in quasi-judicial proceedings and only substantial compliance was required; and that the notation in the registry receipt that "a registered article must not be delivered to anyone but the addressee, or upon the addressee's written order" creates the presumption that the persons who received the summons and notice were presumably able to present a written authorization to receive them and, therefore, the notices were presumed to be duly received in the ordinary course of events.

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[24] Id. at 201-227.
[25] Id. at 240-248.
[26] *Cada v. Time Saver Laundry*, 597 Phil. 548, 560 (2009).
[27] 587 Phil. 351, 360 (2008).

Similarly, in this case, the summons and notices were served by registered mail at the petitioners' place of business. Thus, the person who received the same was presumed authorized to do so. Consequently, the summons and notices were presumed to be duly served. The burden of proving the irregularity in the service of summons and notices, if any, is on the part of the petitioners. In this case, the petitioners clearly failed to discharge that burden.

The Court concurs with the CA that the failure to implead MDC in the proceedings before the LA and the NLRC was merely a procedural error which did not divest the labor tribunals of their jurisdiction. In *Pison-Arceo Agricultural Development Corp. vs. NLRC (Pison-Arceo)*,[28] which involved the resolution of substantially the same issue, the Court held that:

> X x x. There is no dispute that Hacienda Lanutan, which was owned SOLELY by petitioner, was impleaded and was heard. If at all, the **non-inclusion of the corporate name of petitioner** in the case before the executive labor arbiter was a mere procedural error which did not at all affect the jurisdiction of the labor tribunals.[29][Emphasis supplied]

By the petitioners' own admission, Oyster Plaza was owned and operated by MDC. This was further underscored in the petitioners' Verification/Certification,[30] dated December 8, 2011, attached to their petition before the CA. It was stated therein that "Elsa Go is the authorized representative of petitioner Oyster Plaza Hotel/Martyniuk Development Corporation." Applying the pronouncement in *Pison-Arceo*, the failure to include MDC's corporate name in the complaint did not necessarily result in the loss of the labor tribunals' jurisdiction over the former. The said failure was but a procedural blunder which did not render the labor proceedings void, so long as the dictates of justice were substantially complied with.

Further, the essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain one's side or to seek a reconsideration of the action or ruling complained of. What the law prohibits is the absolute absence of the opportunity to be heard; hence, a party cannot feign denial of due process where he had been afforded the opportunity to present his side.[31]

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[28] 344 Phil. 723 (1997).
[29] Id. at 733.
[30] *Rollo*, p. 158.
[31] *Audion Electric Co., Inc. v. NLRC*, 367 Phil. 620, 633 (1999).

The Court notes that even though the petitioners failed to participate in the proceedings before the LA, they were able to argue their case before the NLRC. The petitioners, through their pleadings, were able to argue their position and submit evidence in support of their position that they did not receive the summons and notices from the LA; and that Melivo was not illegally dismissed.

Evidently, the petitioners' contention that they were denied due process is devoid of any merit.

Melivo was Illegally Dismissed

Anent the issue of illegal dismissal, the CA correctly affirmed the ruling of the NLRC.

Probation is the period during which the employer may determine if the employee is qualified for possible inclusion in the regular force.[32] The employer has the right or is at liberty to choose who will be hired and who will be denied employment. In that sense, it is within the exercise of the right to select his employees that the employer may set or fix a probationary period within which the latter may test and observe the conduct of the former before hiring him permanently.[33] An employee allowed to work beyond the probationary period is deemed a regular employee.[34]

In *Holiday Inn Manila vs. NLRC (Holiday Inn)*,[35] the Court considered therein complainant's 3-week on-the-job training (*OJT*) period as her probationary employment period. The Court explained that the complainant was certainly under observation during her 3-week OJT such that if her services proved unsatisfactory, she could have been dropped anytime during said period. On the other hand, when her services were continued after her training, the employer in effect recognized that she had passed probation and was qualified to be a regular employee. Thus, the Court ruled that the complainant therein attained regular employment status when she was formally placed under probation after her OJT.

The present case involves substantially the same factual considerations as that of Holiday Inn. In this case, Melivo was first hired as a trainee in August 2008. His training lasted for three (3) months. As a room boy, his performance was certainly under observation. Thus, it can be reasonably deduced that Melivo's probationary employment actually started in August 2008, at the same time he started working as a trainee. Therefore, when he was re-hired as room boy after his training period sometime in November 2008 he attained regular employment status.

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[32] *Holiday Inn Manila v. NLRC*, G.R. No. 109114, September 14, 1993, 226 SCRA 417.
[33] *Universidad de Sta. Isabel v. Sambajon, Jr.*, G.R. Nos. 196280 & 196286, April 2, 2014, 720 SCRA 486.
[34] *Servidad v. NLRC*, 364 Phil. 518 (1999).
[35] *Supra*, note 32.

Assuming *arguendo* that the 3-month training period could be considered a probationary period, the conclusion would still be the same. It should be remembered that Melivo was again employed as a room boy in November 2008 under probationary status for five (5) months or until March 2009. Records would show that Melivo had completed his probationary employment. Thus, when Oyster Plaza re-hired him for the third time on April 7, 2009, he became its regular employee thereof.

The petitioners' contention that Melivo was hired as a project employee is untenable. Under Article 280 of the Labor Code, as amended, a project employee is one whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee. Here, the contract of employment failed to indicate the specific project or undertaking for which Oyster Plaza sought Melivo's services. Moreover, as correctly noted by the NLRC, the petitioners failed to submit a report of Melivo's termination to the nearest public employment office, as required under Section 2 of D.O. No. 19.

As a regular employee, Melivo could only be dismissed for just or authorized causes after affording him the procedural requirement of notice and hearing. The petitioners failed to adduce evidence that Melivo's dismissal was for a just or authorized cause, or that he was sufficiently notified and given opportunity to be heard why his employment should not be terminated. Hence, Melivo's dismissal was illegal.

Go and Ampel cannot be held Solidarily Liable with Oyster Plaza/MDC

A corporation, being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, acting as such corporate agents, are not theirs but the direct accountabilities of the corporation they represent.[36] Pursuant to this principle, a director, officer or employee of a corporation is generally not held personally liable for obligations incurred by the corporation; it is only in exceptional circumstances that solidary liability will attach to them.[37] Thus, in labor cases, corporate directors and officers are held solidarily liable with the corporation for the employee's termination only when the same is done with malice or in bad faith.[38]

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[36] *Peñaflor v. Outdoor Clothing Manufacturing Corporation*, 632 Phil. 219 (2010).
[37] *WPM International Trading, Inc. v. Labayen*, G.R. No. 182770, September 17, 2014, 735 SCRA 297.
[38] *MAM Realty Development Corporation v. NLRC*, 314 Phil. 838, 845 (1995); *Polymer Rubber Corporation v. Salamuding*, 715 Phil. 141, 150 (2013).

In the present case, there is nothing substantial on record which can justify Go and Ampel's solidary liability with Oyster Plaza or MDC. As to Ampel, records reveal that her participation in the illegal dismissal was her verbally informing Melivo that his services were being terminated; and the said act could hardly be considered malicious enough to make Ampel solidarily liable with Oyster Plaza or MDC.

With regard to Go, aside from the assertion that he was the owner of Oyster Plaza, no other act, relating to Melivo's illegal dismissal, was ever averred against him. Besides, Go's relation with Oyster Plaza or MDC was only based from the bare allegations of Melivo who failed to provide substantial evidence to prove them. It is of no moment that Go failed to produce evidence to show that he was no longer connected with MDC or Oyster Plaza. Melivo should have relied on the strength of his evidence and not on the weakness of the defense offered by the petitioners.[39] Clearly, without any participation in the illegal dismissal of Melivo, no malice or bad faith can be attributed to Go to justify his solidary liability with Oyster Plaza. In fine, the petition must be partially granted to the effect that only Oyster Plaza/MDC should be adjudged liable to Melivo.

Finally, pursuant to *Nacar v. Gallery Frames*,[40] this Court finds that the award of the CA should be modified in that the total monetary awards shall earn interest at the rate of 12% per annum from the date Melivo was terminated from work until June 30, 2013, and 6% per annum from July 1, 2013 until their full satisfaction.

WHEREFORE, the petition is **PARTIALLY GRANTED.** The April 30, 2014 Decision of the Court of Appeals in CA-G.R. SP No. 122767 is **AFFIRMED with MODIFICATION** in that only Oyster Plaza Hotel/Martyniuk Development Corporation is **ORDERED** to reinstate Melivo to his former position without loss of seniority rights; and to pay Melivo his backwages, proportionate 13th month pay, and attorney's fees equivalent to 10% of the monetary awards.

The total monetary awards shall earn interest at the rate of 12% per annum from the date that Melivo was illegally terminated from work until June 30, 2013, and 6% per annum from July 1, 2013 until their full satisfaction.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

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[39] *Spouses Ramos v. Obispo*, 705 Phil. 221 (2013).
[40] 716 Phil. 267 (2013).

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

(On Leave)
ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Acting Chief Justice