



Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE

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SECOND DIVISION

MICHAEL CALLEON,

ADRIANO

G.R. No. 228572

Petitioner,

Present:

- versus -

PERLAS-BERNABE, S.A.J.,  
Chairperson,  
REYES, A., JR.,\*  
HERNANDO,\*\*  
INTING, and  
DELOS SANTOS, JJ.

HZSC REALTY CORPORATION, JOHN LEANLON P. RAYMUNDO, EMERSON D. ANGELES, LLOYD T. ISON, SHERWIN M. ODOÑO, LEMUEL D. VENZON, and RONALD F. CALING,  
Respondents.

Promulgated:

27 JAN 2020

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RESOLUTION

PERLAS-BERNABE, J.:

Before the Court is a petition for review on *certiorari*<sup>1</sup> with Urgent Prayer for the Issuance of a Temporary Restraining Order (TRO) filed by petitioner Michael Adriano Calleon (petitioner) assailing the Resolution<sup>2</sup> dated November 28, 2016 of the Court of Appeals (CA) in CA-G.R. SP. No. 147486, which denied his motion for reconsideration from the Resolution<sup>3</sup> dated September 23, 2016 for having been belatedly filed.

\* On official leave.

\*\* On official leave.

<sup>1</sup> *Rollo*, pp. 3-12.

<sup>2</sup> Id. at 16. Signed by Division Clerk of Court Michael F. Real.

<sup>3</sup> Id. at 118-119. Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Ramon A. Cruz and Renato C. Francisco, concurring.

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### The Facts

The instant controversy stemmed from complaints<sup>4</sup> for illegal (constructive) dismissal, non-payment of salary, 13<sup>th</sup> month pay, and separation pay, as well as payment of moral and exemplary damages and attorney's fees filed by respondents John Leanlon P. Raymundo, Emerson D. Angeles, Lloyd T. Ison, Sherwin M. Odoño, Lemuel D. Venzon, and Ronald F. Caling (respondents) against respondent HZSC Realty Corporation (HZSC) and its President, herein petitioner, arising from HZSC's failure to rehire them after more than six (6) months from the temporary shutdown of its business operation due to business losses on January 23, 2015.<sup>5</sup>

In a Decision<sup>6</sup> dated April 29, 2016, the Labor Arbiter (LA) declared HZSC and petitioner guilty of illegal (constructive) dismissal for HZSC's failure to comply with the procedural requirements under Article 283 (now Article 298)<sup>7</sup> of the Labor Code, and ordered them to pay respondents their respective unpaid salary, separation pay, nominal damages, plus ten percent (10%) of the total monetary awards as attorney's fees.<sup>8</sup>

Aggrieved, HZSC and petitioner appealed<sup>9</sup> to the National Labor Relations Commission (NLRC).

In a Decision<sup>10</sup> dated June 30, 2016, the NLRC dismissed the appeal of HZSC and petitioner,<sup>11</sup> and thereafter, denied their motions for

<sup>4</sup> CA rollo, pp. 31-36.

<sup>5</sup> See rollo, pp. 50-53.

<sup>6</sup> Id. at 50-56. Penned by Labor Arbiter Augusto L. Villanueva.

<sup>7</sup> As renumbered pursuant to Section 5 of Republic Act No. 10151, entitled "AN ACT ALLOWING THE EMPLOYMENT OF NIGHT WORKERS, THEREBY REPEALING ARTICLES 130 AND 131 OF PRESIDENTIAL DECREE NUMBER FOUR HUNDRED FORTY-TWO, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES," approved on June 21, 2011. See also Department Advisory No. 01, Series of 2015 of the Department of Labor and Employment entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED." Article 298 provides:

Article 298. (283) *Closure of Establishment and Reduction of Personnel.* — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or to at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

<sup>8</sup> See rollo, pp. 53-55.

<sup>9</sup> See Memorandum of Appeal dated June 13, 2016; id. at 59-68.

<sup>10</sup> Id. at 74-86. Penned by Presiding Commissioner Alex A. Lopez with Commissioners Pablo C. Espiritu, Jr. and Cecilio Alejandro C. Villanueva, concurring.

<sup>11</sup> Id. at 85.

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reconsideration<sup>12</sup> in a Resolution<sup>13</sup> dated August 31, 2016.

Petitioner filed a petition for *certiorari*<sup>14</sup> before the CA, praying to be absolved from liability in the absence of any finding of malice and fraud on his part.<sup>15</sup>

### The CA Ruling

In a Resolution<sup>16</sup> dated September 23, 2016, the CA dismissed the petition for failure to comply with the required contents thereof, and the documents which should accompany it.<sup>17</sup>

Petitioner received his personal notice of the September 23, 2016 Resolution on October 5, 2016.<sup>18</sup> On October 26, 2016, he filed a motion for reconsideration<sup>19</sup> claiming that: (a) he received (referring to his counsel's receipt) notice of the September 23, 2016 Resolution on October 11, 2016; and (b) he had already remedied the procedural defects in his petition,<sup>20</sup> attaching therewith an Amended Petition for *Certiorari*.<sup>21</sup>

In a Resolution<sup>22</sup> dated November 28, 2016, the CA denied the motion for reconsideration for having been belatedly filed. Hence, this petition claiming that petitioner's counsel, Atty. Ariel C. Santos (Atty. Santos), received notice of the September 23, 2016 Resolution on October 17, 2016, and as such, the motion for reconsideration was timely filed.<sup>23</sup>

In a Resolution<sup>24</sup> dated January 25, 2017, the Court required respondents to file their comment to the petition, and issued a TRO enjoining the NLRC from implementing its June 30, 2016 Decision and August 31, 2016 Resolution. Considering the discrepancy in petitioner's statements as to his counsel's receipt of notice of the September 23, 2016 Resolution, the Court resolved to direct the CA to elevate the complete records of the case.<sup>25</sup>

<sup>12</sup> See HZSC's motion for reconsideration (id. at 69-73); and petitioner's motion for reconsideration dated July 25, 2016 (id. at 87-92).

<sup>13</sup> Id. at 102-103.

<sup>14</sup> Dated September 14, 2016. Id. at 104-115.

<sup>15</sup> See id. at 111.

<sup>16</sup> Id. at 118-119.

<sup>17</sup> See id.

<sup>18</sup> See petitioner's letter dated October 6, 2016; *CA rollo*, p. 106.

<sup>19</sup> Dated October 25, 2016. *Rollo*, pp. 120-121.

<sup>20</sup> Id. at 120.

<sup>21</sup> Id. at 125-136.

<sup>22</sup> Id. at 16.

<sup>23</sup> See id. at 6.

<sup>24</sup> Id. at 144, including dorsal portion. Signed by Division Clerk of Court Edgar O. Aricheta.

<sup>25</sup> See Resolution dated June 3, 2019; id. at 220. Signed by Deputy Division Clerk of Court Teresita Aquino Tuazon.

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### The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA erred in dismissing the motion for reconsideration for having been belatedly filed.

### The Court's Ruling

The petition is meritorious.

Section 2, Rule 13 of the Rules of Court (Rules) provides that "[i]f any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court." **Thus, even if a party represented by counsel has been actually notified, said notice is not considered notice in law.**<sup>26</sup> "The reason is simple – the parties, generally, have no formal education or knowledge of the rules of procedure, specifically, the mechanics of an appeal or availment of legal remedies; thus, they may also be unaware of the rights and duties of a litigant relative to the receipt of a decision. More importantly, it is best for the courts to deal only with one person in the interest of orderly procedure – either the lawyer retained by the party or the party him/herself if [he/she] does not intend to hire a lawyer."<sup>27</sup>

As to service of court resolutions, Section 9, Rule 13 of the Rules pertinently provides:

Section 9. *Service of judgments, final orders or resolutions.* — Judgments, final orders or resolutions shall be served either personally or by registered mail. When a party summoned by publication has failed to appear in the action, judgments, final orders or resolutions against him shall be served upon him also by publication at the expense of the prevailing party.

In the case at bar, a copy of the September 23, 2016 Resolution was sent to Atty. Santos at his registered address in Meycauayan, Bulacan through registered Letter No. BDN-2291.<sup>28</sup> On November 8, 2016, the CA sent a tracer<sup>29</sup> to the Postmaster of Meycauayan, Bulacan directing him to inform the court of the exact date when the said letter was delivered to and received by the addressee. However, prior to the receipt of the Postmaster's reply, the CA already issued its assailed November 28, 2016 Resolution denying petitioner's motion for reconsideration for having been belatedly

<sup>26</sup> See *Prudential Bank v. Business Assistance Group, Inc.*, 488 Phil. 191, 197 (2004).

<sup>27</sup> *Villalonga v. CA*, G.R. No. 227222, August 20, 2019; citation omitted.

<sup>28</sup> See *CA rollo*, p. 235.

<sup>29</sup> *Id.*

filed, apparently reckoning the same from petitioner's receipt of his personal notice of the September 23, 2016 Resolution on October 5, 2016.


On December 2, 2016, the CA received the Postmaster's reply<sup>30</sup> to tracer informing the court that Atty. Santos received registered Letter No. BDN-2291 on October 11, 2016. Consequently, petitioner had fifteen (15) days from such receipt,<sup>31</sup> or until October 26, 2016, within which to file his motion for reconsideration. Thus, petitioner's motion for reconsideration was timely filed, contrary to the ruling of the CA.

Accordingly, there is a need to remand the case to the CA to resolve the motion for reconsideration on the merits. Notably, petitioner had submitted, together with the said motion, an Amended Petition for *Certiorari*<sup>32</sup> which he claims to have already rectified the procedural deficiencies cited by the CA in its September 23, 2016 Resolution. In view thereof, the other issues raised in this petition which involve mixed questions of fact and law on the substantive merits of the petition should properly be addressed to and resolved by the CA.

Finally, considering that petitioner raises as an issue the propriety of the order adjudging him solidarily liable with the non-operating<sup>33</sup> respondent, HZSC, for the individual respondents' money claims,<sup>34</sup> which is yet to be resolved by the CA, the TRO<sup>35</sup> issued by the Court on January 25, 2017 enjoining the NLRC from implementing its June 30, 2016 Decision and August 31, 2016 Resolution stands until further orders from the Court.

**WHEREFORE**, the petition is **GRANTED**. The Resolution dated November 28, 2016 of the Court of Appeals (CA) in CA-G.R. SP. No. 147486 is hereby **SET ASIDE**. The case is **REMANDED** to the CA which is hereby **DIRECTED** to resolve petitioner Michael Adriano Calleon's motion for reconsideration, with motion to admit the Amended Petition for *Certiorari*. The Temporary Restraining Order issued on January 25, 2017 **REMAINS** in full force and effect, until further orders.

**SO ORDERED.**

  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice

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<sup>30</sup> Id. at 237.

<sup>31</sup> See Section 1, Rule 52 of the Rules.

<sup>32</sup> *Rollo*, pp. 125-136.

<sup>33</sup> See id. at 77.


<sup>34</sup> See id. at 130-132.


<sup>35</sup> Id. at 141-143. Signed by Division Clerk of Court Edgar O. Aricheta.

**WE CONCUR:**

On official leave  
**ANDRES B. REYES, JR.**  
Associate Justice

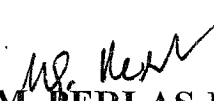
On official leave  
**RAMON PAUL L. HERNANDO**  
Associate Justice

  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

  
**EDGARDO L. DELOS SANTOS**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice  
Chairperson, Second Division

**CERTIFICATION**

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

  
**DIOSDADO M. PERALTA**  
Chief Justice