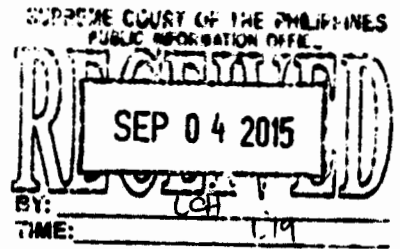




Republic of the Philippines
Supreme Court
 Manila



FIRST DIVISION

**PENTAGON INTERNATIONAL
 SHIPPING SERVICES, INC.,**
 Petitioner,

G.R. No. 169158

Present:

- versus -

SERENO, *C.J.*,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 PEREZ, and
 PERLAS-BERNABE, *JJ.*,

**THE COURT OF APPEALS,
 FILOMENO V. MADRIO,
 LUISITO G. RUBIANO, JDA
 INTER-PHIL. MARITIME
 SERVICES CORPORATION,**
 Respondents.

Promulgated:

JUL 01 2015

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DECISION

BERSAMIN, J.:

We review the decision promulgated on May 27, 2005,¹ whereby the Court of Appeals (CA) annulled and set aside the resolutions dated June 30, 2003 and December 14, 2004 of the National Labor Relations Commission (NLRC)² declaring respondent JDA Inter-Phil Maritime Services (JDA Inter-Phil) as the manning agency of Baleen Marine Pte. Ltd. (Baleen Marine) liable to pay respondents Filomeno V. Madrio and Luisito G. Rubiano the total amount of US\$31,254.65 or its peso equivalent at the time of payment.

Antecedents

Pentagon International Shipping Services, Inc. (Pentagon), a domestic corporation,³ was a private manning agency licensed by the Philippine Overseas Employment Administration (POEA) to engage in the recruitment of seafarers to service the crewing and personnel management needs of

¹ *Rollo*, pp. 65-80, penned by Associate Justice Danilo B. Pine (retired), and concurred in by Associate Justice Rodrigo V. Cosico (retired), and Associate Justice Arcangelita Romilla-Lontok (retired).

² *Id.* at 285-289 and 71, respectively.

³ *Id.* at 35.

shipping companies accredited to it. Respondent JDA Inter-Phil, also a domestic corporation, was similarly engaged in the recruitment of seafarers.

On March 27, 1998, Pentagon hired respondents Madrio and Rubiano as chief officer and second engineer, respectively, in behalf of its foreign principal, Baleen Marine, a corporation based in Singapore. When their 10-month contract expired, they were repatriated to the Philippines.⁴ Alleging non-payment and underpayment of wages, and claiming damages and attorney's fees, they separately brought claims against Pentagon and the owners and managers of Baleen Marine on January 13, 2000 and January 31, 2000,⁵ stating that Pentagon and Baleen Marine had reduced their monthly gross salary by 20% without the prior approval by the POEA; and that Pentagon and Baleen Marine had not paid their salaries from November 1, 1998 until their repatriation on March 24, 1999.

Pentagon denied liability, countering that it had ceased to be the manning agency of Baleen Marine effective October 1, 1998;⁶ that on June 25, 1998, its Executive Vice-President, Meynardo Bugia, Jr., had met with Baleen Marine in Singapore to notify the latter that it had been meanwhile appointed by Neptank Bunkering Services Pte., Ltd. as its exclusive local manning agency; that as one of the conditions of its appointment, it was to immediately sever its manning contract with Baleen Marine; and that on October 9, 1998, Baleen Marine had appointed JDA Inter-Phil as its new local agent for Baleen Marine's vessels NP Trader No. 3 and NP Prima.⁷

On its part, JDA Inter-Phil insisted that although it had applied with the POEA for the transfer and accreditation of Baleen Marine's vessels in its favor, it withdrew the application and did not execute an affidavit of assumption and responsibility as required; that, consequently, Pentagon continued to be jointly and severally liable with Baleen Marine for the money claims of Madrio and Rubiano.⁸

The Labor Arbiter ruled in favor of Pentagon, declaring JDA Inter-Phil jointly and solidarily liable with Baleen Marine, citing the decision of Labor Arbiter Pati in *Abrazado, et al. v. Pentagon International Shipping Services, et al.* and *Pentagon International Shipping Services v. Baleen Marine PTE, Ltd., and/or Nicor Petroleum PTE, Ltd.* that had also involved both Pentagon and JDA Inter-Phil and their principal Baleen Marine.

⁴ Id. at 66.

⁵ Id.

⁶ Id.

⁷ Id. at 45-46.

⁸ Id. at 46.

However, the NLRC reversed the Labor Arbiter on December 26, 2002⁹ on the ground that the NLRC's First Division had overturned Labor Arbiter Pati's decision in *Abrazado, et al. v. Pentagon International Shipping Services, et al.* and *Pentagon International Shipping Services v. Baleen Marine PTE, Ltd., and/or Nicor Petroleum PTE, Ltd.*¹⁰

Upon Pentagon's motion for reconsideration, the NLRC reversed itself and ruled in favor of Pentagon.

Subsequently, JDA Inter-Phil moved for reconsideration, but its motion was denied on December 14, 2004.¹¹

JDA Inter-Phil brought a petition for *certiorari* in the CA, with application for temporary restraining order (TRO) or writ of preliminary injunction. The CA granted the TRO applied for on February 9, 2005.¹²

On May 27, 2005, the CA rendered its assailed decision,¹³ viz.:

THE FOREGOING CONSIDERED, the Resolutions of public respondent NLRC, dated June 30, 2003 and December 14, 2004 are **REVERSED** and **SET ASIDE**.¹⁴

Issues

In its appeal, Pentagon posits as follows:

A. THE COURT OF APPEALS ERRED IN ABSOLVING PRIVATE RESPONDENT JDA OF THE LIABILITIES NOTWITHSTANDING THE AGREEMENT DATED OCTOBER 9, 1998.

B. THE COURT OF APPEALS REFUSED TO RECOGNIZE THE APPARENT BAD FAITH OF PRIVATE RESPONDENT JDA WHEN IT DELIBERATELY AND MALICIOUSLY REFUSED TO COMPLY WITH THE ACCREDITATION REQUIREMENTS.

C. THE COURT OF APPEALS IGNORED THE LEGAL IMPLICATIONS OF THE AGREEMENT DATED OCTOBER 9, 1998.¹⁵

⁹ Id. at 267-274.

¹⁰ Id. at 272.

¹¹ Id. at 71.

¹² Id. at 321-325.

¹³ Supra note 1.

¹⁴ Supra note 1, at 79.

¹⁵ *Rollo*, p. 47.

Pentagon assails the CA's overturning of the congruent findings of the Labor Arbiter and the NLRC to the effect that it could not be held solidarily liable with Baleen Marine for the money claims and other benefits of Madrio and Rubiano, insisting that the minutes of the October 9, 1998 meeting partook of the nature of the agreement required by law to effectively transfer the agency and the corresponding liability to JDA Inter-Phil.

In contrast, JDA Inter-Phil contends that it could not be held liable for the money claims and other benefits of Madrio and Rubiano because it had withdrawn its application in the POEA.

It appears on record that neither Pentagon nor JDA Inter-Phil disputed the money claims and other benefits of Madrio and Rubiano; instead, they were simply passing the liability for the claims to each other.

The pivotal issue is whether there was a valid substitution of the manning agent from Pentagon to JDA Inter-Phil.

Ruling of the Court

We deny the petition for review for its lack of merit.

To determine the pivotal issue, we review the guidelines set by law in the accreditation of a principal by a manning agency. Rule I, Book III of the Rules and Regulations Governing Overseas Employment states the following:

Section 2. **Requirements for Accreditation.** An agency applying for the accreditation of its principals or projects shall submit the following:

x x x x

b. For a Manning Agency for its Principals

- (1) **Authenticated special power of attorney and manning agreement;**
- (2) Crew complement and wages;
- (3) List of vessels and their particulars; and
- (4) Other documents which the Administration may find necessary.

Section 3 **Verification or Authentication of Documents.** Whenever required and determined by the Secretary, verification or authentication of documents for accreditation of principals or projects shall be undertaken by the following:

X X X X

b. Authentication of documents at the site of employment may be undertaken by the appropriate official of any of the designated Ministries/Office of the Host countries.

Requirements for accreditation shall not be authenticated if basic documents are signed by the authorized officials of both the hiring company and its local agent in the presence of any member of the POEA Directorate or duly designated officers of the Administration.

X X X X

Section 8. Approval and Validity of Accreditation. The Administration shall issue to the agency an accreditation certificate for its principal or project after approval of the accreditation request.

Full accreditation shall be valid for a maximum period of two (2) years from date of issuance, subject to renewal.

Provisional accreditation may be granted for a period of ninety (90) days for a principal or a project that meets the accreditation requirements substantially. (Emphasis supplied)

A local manning agency seeking accreditation of its foreign principal is mandated to submit the requirements listed under Section 2, *supra*. The use of the imperative word *shall* in the provision has the invariable significance to impose the enforcement of an obligation especially where public interest is involved. While the list is not exhaustive, the POEA identified the foremost requisite to be the authenticated special power of attorney and manning agreement. This identification is primarily due to the onerous responsibility assumed by the manning agency under Section 10 of the Migrant Workers' Act of 1995, to wit:

SEC. 10. MONEY CLAIMS. – X X X

The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be *joint and several*. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.

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Such liabilities shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment or modification made locally or in a foreign country of the said contract.

x x x x

The law clearly mandates that the special power of attorney and manning agreement should be authenticated, save only when the authorized officials of both the principal or hiring company and its local agent signed the document in the presence of any member of the POEA Directorate or duly designated officers of the POEA.¹⁶

As regards the transfer of accreditation, the following provisions apply, thus:

Section 6. **Transfer of Accreditation.** The accreditation of a principal may be transferred to another agency provided that transfer shall not involve any diminution of wages and benefits of workers

The transferee agency in these instances shall **comply with the requirements for accreditation** and shall assume full and complete responsibility to all contractual obligations of the principals to its workers originally recruited and processed by the former agency.

Prior to the transfer of accreditation, the Administration shall notify the previous agency and principal of such application.

Section 7. **Actions on Applications for Accreditation of Projects Whose Contracting Partners or Principals Have Outstanding Obligations.** Applications for the transfer of accreditation of principals or projects shall be **acted by the Administration upon submission of all requirements** by the new transferee agency.

x x x x (Emphasis supplied)

The foregoing rules are clear to the effect that before a transfer of accreditation can be effected, the transferee agency should likewise have to comply with the requirements for accreditation contained in Section 2, *supra*. The POEA can act on the transfer of accreditation only after all the requirements shall have been submitted.

In light of the foregoing, there was no effective transfer of agency from Pentagon to JDA Inter-Phil. Even assuming *arguendo* that JDA Inter-Phil did not withdraw its application for accreditation with the POEA, there was still no valid transfer of agency to speak of in the first place because JDA Inter-Phil did not submit the required authenticated special power of attorney and manning agreement. The minutes of the October 9, 1998

¹⁶ Section 3, Rule 1, Book III of the Rules and Regulations Governing Overseas Employment.

meeting could not, by any stretch of the imagination, supplant this mandatory requirement.

Verily, the minutes of any meeting are simply the notes or written record of the meeting, which usually describe what transpire during the meeting, identify the attendees, and present the statements and related responses or resolutions of the issues discussed. Often, the minutes are terse and meant to record only the basic information, like the actions discussed and the decisions made. In contrast, the special power of attorney is the grant of authority by the principal to the agent to act on a particular or specific matter, while the manning agreement states, among others, the responsibilities of both principal and manning agencies with respect to the employment of seafarers.

Considering that the minutes of the meeting neither contained in an unequivocal manner the important and distinct elements of a special power of attorney and manning agreement, nor were the minutes duly authenticated as required under the law, Pentagon's insistence upon an effective substitution must fail. To reiterate, the special power of attorney and manning agreement were necessary for the validity or enforceability of the transfer of accreditation. We may not easily do away with the requirement, for the transfer of the accreditation would surely impact on the employees in the end even if they neither parties to the agreement nor were ever consulted on the intended transfer of Baleen Marine's local manning agency from Pentagon to JDA Inter-Phil. The law requires, indeed, that contracts that have for their object an act that would prejudice a third person must appear in a public document.¹⁷ Likewise, the signatures appearing in the minutes of the meeting merely confirmed that the signatories were present during the meeting, and that they agreed that the contents of the minutes were faithful to what had transpired during the meeting. It is erroneous to construe the signatures to mean that the signatories intended the minutes of the meeting to be the document that would embody their intention or agreement that should be submitted in compliance with the POEA's requirements for the transfer of accreditation.

Although we do not preclude the possibility that, as Pentagon posits, JDA Inter-Phil had really agreed to the transfer of accreditation, it remains

¹⁷ Art. 1356. Contracts shall be obligatory, in whatever form they may have been entered into, provided all the essential requisites for their validity are present. However, when the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract be proved in a certain way, that requirement is absolute and indispensable. In such cases, the right of the parties stated in the following article cannot be exercised. (1278a)

x x x x

Art. 1358. The following must appear in a public document:

x x x x

(3) The power to administer property, or any other power which has for its object an act appearing or which should appear in a public document, or should prejudice a third person;

x x x x (R.A. 386, An Act To Ordain And Institute The Civil Code of the Philippines)

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that the agreement to do so did not ultimately come to fruition. We cannot but hold that the agreement reached during the meeting was only a preliminary step in the transfer of accreditation, and would not have standing in the POEA for the purpose intended.

It is relevant to observe that Pentagon cannot feign ignorance of Section 10, paragraph 2, of the Migrant Workers' Act of 1995 to the effect that its liabilities would continue during the entire period or duration of the employment contract, and would not be affected by any substitution, amendment or modification of the contract made either locally or in a foreign country. The provisions of the POEA Rules and Regulations to the effect that the manning agreement extends up to and until the expiration of the employment contracts of the employees recruited and employed pursuant to the recruitment agreement are also clear enough.¹⁸ As such, Pentagon is not exempt from its liabilities and responsibilities towards Madrio and Rubiano.

In this regard, we reiterate the pronouncement in *OSM Shipping Philippines, Inc. vs. National Labor Relations Commission*,¹⁹ as follows:

x x x Joint and solidary liability is meant to assure aggrieved workers of immediate and sufficient payment of what is due them. The fact that petitioner and its principal have already terminated their agency agreement does not relieve the former of its liability. The reason for this ruling was given by this Court in *Catan vs. National Labor Relations Commission*, which we reproduce in part as follows:

This must be so, because the obligations covenanted in the [manning] agreement between the local agent and its foreign principal are not coterminous with the term of such agreement so that if either or both of the parties decide to end the agreement, the responsibilities of such parties towards the contracted employees under the agreement do not at all end, but the same extends up to and until the expiration of the, employment contracts of the employees recruited and employed pursuant to the said recruitment agreement. Otherwise, this will render nugatory the very purpose for which the law governing the employment of workers for foreign jobs abroad was enacted.

Although JDA Inter-Phil undertook in the meeting of October 1, 1998 to assume the responsibility as the local agent to Baleen Marine, the actual transfer of the accreditation would not be completed without JDA Inter-Phil's compliance with the requirements under the aforementioned rules. What actually happened between the time the meeting took place and the eventual withdrawal of the application by the JDA Inter-Phil remained to be

¹⁸ *Skippers United Pacific, Inc. v. Maguad*, G.R. No. 166363, August 15, 2006, 498 SCRA 639, 669.

¹⁹ G.R. No. 138193, March 5, 2003, 398 SCRA 606, 616-617.


mere conjecture. Nevertheless, Madrio and Rubiano should not be prejudiced by any purported transfer of accreditation or agreement that they were not privy to. For sure, Pentagon remained under the law the only recognized manning agent of Baleen Marine.

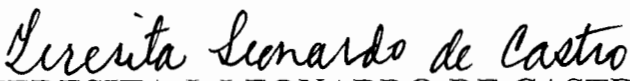
WHEREFORE, the Court **AFFIRMS** the decision promulgated on May 27, 2005 by the Court of Appeals in CA-G.R. SP No. 88301; and **ORDERS** the petitioner to pay the costs of suit.


SO ORDERED.



LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice

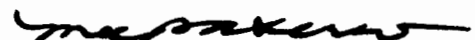

TERESITA J. LEONARDO-DE CASTRO
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.


MARIA LOURDES P. A. SERENO
Chief Justice