SAILOR'S CORNER

ATTY. AUGUSTO R. BUNDANG
Head, Litigation and Seafarers Department
Sapalo Velez Bundang and Bulilan Law Offices

The Employers' Joint & Solidarity Liability

What is the liability of the foreign principal and the manning agent for any and all claims arising out of an employer-employee relationship or by virtue of any law or contract involving a seafarer? It is "joint and several", according to the case of Sealanes Marine Services, et.al. v. Arnel G. dela Torre" which was decided by the Supreme Court last February 18, 2015. "Joint and several liability", in simple terms, is a form of liability where a creditor may hold answerable any of his debtors for his entire claim.

In said Sealanes case, the seafarer was hired as able seaman by a local manning agent in behalf of its foreign principal. Unfortunately, the seafarer figured in an accident on board and injured his lower back thus, necessitating his medical repatriation. The company-designated doctor assessed him with a Grade 11 disability and was informed of the same only after 240 days since his accident. As such, the seafarer filed a disability claim, among others. His claim was granted by the Arbiter and sustained by the NLRC, twhe Court of Appeals and the Supreme Court.

The High Court noted that under Section 10 of Republic Act No. 8042, otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995", as amended by Section 7 of Republic Act No. 10022, the liability of the principal and the recruitment agency for all claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damage, shall be joint and several. Such liability which shall be incorporated in the overseas employment contract, shall be a condition precedent to the contract's approval, and shall continue during the contract's entire duration.

The performance bond filed by the recruitment agency shall answer for all money claims or damages that may be awarded to the worker. This being the case, the Supreme Court pointed out in the earlier case of Varorient Shipping Co., Inc. v. NLRC (G.R. No. 164940, November 28, 2007) that even the certificate of non-forum shipping filed by a manning agent in a court case is sufficient to cover and benefit its foreign principal. The POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers (POEA Rules) ordain that the local manning agent is solidarily liable for every obligation that the foreign principal may incur against the local worker. The foreign principal does not have any capacity to act in the Philippines unless through its accredited local manning agent.

Significantly, if the recruitment agency is a juridical being, the corporate officers and directors shall also be jointly and solidarily liable with the corporation. The High Court added that every applicant for a license to operate a seafarers' manning agency shall, in the case of a corporation, submit a written application together with, among others, a verified undertaking by officers, directors, and partners that they will be jointly and severally liable with the company over claims arising from employer-employee relationship. The POEA Rules so provide for this as pointed out in the Varorient case. Each of the solidary debtors, insofar as the creditor is concerned, is the debtor of the entire amount; it is only with respect to his co-debtors that he is liable to the extent of his share in the obligation.