

JOSEFA VDA. DE CRUZ, ET AL., PLAINTIFFS ‘AND APPELLANTS VS. THE MANILA HOTEL COMPANY, DEFENDANT AND APPELLEE,

G. R. No. L-9110. April 30, 1957

Ponente: BENGZON, J.

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BENGZON, J.:

On May 22, 1954 and for several years before, Tirso Cruz with his orchestra furnished music to the Manila Hotel under the arrangement hereafter to be set forth. On that date the corporation owning the Hotel gave written notice to its employees that beginning July 1, 1954 the Hotel would be leased to the Bay View Hotel, and that those employees to be laid off would be granted a separation gratuity computed according to specified terms and conditions.

Cruz and his musicians claimed the gratuity; but the Manila Hotel management denied their claim saying they were not its employees. Wherefore they instituted this action in the Manila court of first instance in December 1954.

On motion by defendant, and after hearing the parties, the Hon. Francisco E. Jose, Judge, issued an order dismissing the complaint on the ground that plaintiffs had no cause of action against defendant since they were not its employees. Hence this appeal directly to this Court, involving only questions of law. In the meantime Tirso Cruz the bandleader died; he is now substituted by his legal heirs. However for convenience we shall refer to him as if he were still a party to the proceedings.

The complaint alleged that plaintiffs "were members of the orchestra which had been employed by the defendant to furnish music in the Manila Hotel"; that they were employees of the Hotel, and that contrary to the announcement (Annex A) promising gratuities to its "employees" the Hotel Management had refused to pay plaintiffs. The complaint attached a copy of the announcement which partly reads as follows:

"* * *. It is for this reason that the necessary authority has already been seen red for the payment of separation gratuity to the employees to be laid off as a result of the lease and who are not yet entitled to either the optional or compulsory retirement insurance provided under Republic Act No. 660, as amended, * *

The defendant filed a motion to dismiss alleging that plaintiffs were not its employees, under the terms of the contract whereby they had rendered services to the Hotel, copy of which was attached as Exhibit 1. It also alleged plaintiffs did not fall within the terms of Annex A because they were not, and never had been members of the Government Service Insurance System. Plaintiffs replied to the motion, did not deny the terms of Exhibit 1, nor the allegations of non-membership in the Government Service Insurance System; but insisted they were employees of the Hotel.

The controversy could therefore be decided and it was decided in the light of the terms of Exhibit 1 and Annex A, plus the factual allegations expressly or inpliedly admitted by the contending parties.

At the outset the following consideration presents itself : plaintiffs' right is not predicated on some statutory

provision, but upon the offer or promise contained in Annex A. Such offer or promise having been written by the defendant, it is logical to regard said defendant to be in the best position to state who were the employees contemplated in the aforesaid Annex A. The defendant asserts these musicians were not included; therefore such assertion should be persuasive, if not conclusive. Let it be emphasized that Annex A is not a contract, but a mere offer of gratuity, the beneficiaries of which normally depended upon the free selection of the offeror.

Independently however of the Hotel's interpretation of its own announcement, and analyzing the terms of Annex A, we notice that it extends to those employees of the Hotel who were "not yet entitled to either the optional or compulsory retirement insurance provided under Republic Act No. 660". And then we read that retirement insurance under Republic Act No. 660 is given only to those insured with the Government Service Insurance System or the G.S.I.S.; and that the herein plaintiffs were never members of (insured with) such Insurance System. Wherefore the inevitable conclusion flows that even if these plaintiffs were "employees" of the Hotel in general, they cannot claim to be beneficiaries under Annex A, because they could not qualify as employees "who were not yet entitled to retirement insurance under the G.S.I.S." The quoted portion of the announcement implied reference to employees insured by the Government Insurance System.

Still going further, are these plaintiffs "employees" of the Hotel? None of them, except Tirso Cruz and Ric Cruz, is mentioned in the contract Exhibit 1. None has submitted any contract or appointment except said Exhibit 1. Obviously their connection with the Hotel was only thru Tirso Cruz who was the leader of the orchestra; and they couldn't be in a better class than Tirso Cruz who dealt with the Hotel. Was Tirso Cruz an employee? Or was he an independent contractor, as held by the trial court?

It will be observed that by Annex 1 the Manila Hotel contracted or engaged the "services of your orchestra" (of Tirso Cruz) "composed of fifteen musicians including yourself plus Ric Cruz as vocalist" at P250 per day, said orchestra to "play from 7:30 p.m. to closing time daily". What pieces the orchestra shall play, and how the music shall be arranged or directed, the intervals and other details—such are left to the leader's discretion. The musical instruments, the music papers and other paraphernalia are not furnished by the Hotel, they belong to the orchestra, which in turn belongs to Tirso Cruz— not to the Hotel. The individual musicians, and the instruments they handle have not been selected by the Hotel. It reserved no power to discharge any musician. How much salary is given to the individual members is left entirely to "the orchestra" or the leader. Payment of such salary is not made by the Hotel to the individual musicians, but only a lump-sum compensation is given weekly to Tirso Cruz.

Considering the above features of the relationship, in connection with the tests indicated by numerous authorities, it is our opinion that Tirso Cruz was not an employee of the Manila Hotel, but one engaged to furnish music to said hotel for the price of P250.00 daily, in other words, an independent contractor^[1] within the meaning of the law of master and servant.

"An independent contractor is one who in rendering' services, exercises an independent employment or occupation and represents the will of his employer only as to the results of his work and not as to the means "whereby it is accomplished; one who exercising an independent employment, contracts to do a piece of work according to his own method¹!, without being subject to the control of his employer except as; to the result of his work; and who engages to perform a certain service for another, according to his³ own manner and method, free from the control and direction of his employer in all matters connected with the performance of the service, except as to the result of the work" (56 C. J. S. pp. 41-43.)

"Among" the factors to be considered are whether the contractor is carrying on an independent business; whether the work is part of the employer's general business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the performance of the work to another; the power to terminate the relationship; the existence of a contract for the performance of a specified piece of

work; the control and supervision of the work; the employer's powers and duties with respect to the hiring, firing;, and payment of the contractor's servants; the control of the premises; the duty to supply the premises, tools, appliances, material and labor; and the mode, manner, and terms of payment." (50 C. J. S. p. 46.) (*Italic* ours.*)

Not being employees of the Manila Hotel, the plaintiffs have no cause of action against the latter under Annex A. The order of dismissal is therefore affirmed, with costs against them. So ordered.

Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Conception, Endencia, and Felix, JJ., concur.

[1]Cf. *Phil. Manufacturing Co. vs. Santos*, 96 Phil., 276.

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