

## VICENTE UY CHAO, PETITIONER, VS. MANUEL AGUILAR AND ERNESTO RAMOS, RESPONDENTS.

*G. R. No. L-9069. March 28, 1958*

Ponente: PADILLA, J.

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### **PADILLA, J.:**

This is an appeal under section 46, Act No. 3428, as amended by Act No. 3812, Commonwealth Act No. 210 and Republic Act No. 772, from a decision rendered by the Workmen's Compensation Commissioner on 18 March 1955, which affirmed a referee's amended decision of 7 December 1954, awarding respondent Manuel Aguilar

- \* \* \* the sum of FIVE HUNDRED THIRTY-THREE and 14/100 Pesos (P533.14) by way of compensation still due and unpaid; "

- \* \* \* the additional sum of FIFTEEN PESOS (P15.00) as reimbursement for medical expenses incurred;

- \* \* \* the sum of SEVEN PESOS (P7.00) and administrative costs

to be paid by La Boda de Plata and absolved respondent Ernesto Ramos from any liability (W.C.C. Case No. 26372).

It appears that at about 10:00 o'clock in the evening of 24 November 1953, respondent Aguilar suffered physical injury as a result of the sudden fall of the whole eave of a glassware store known as La Boda de Plata and owned by the petitioner Uy Chao, while he (respondent Aguilar) together with two other laborers was on top of said eave removing the galvanized iron sheets covering the frame of the eave. In the afternoon of the same day respondent Ramos engaged respondent Aguilar for the said work.

In this appeal petitioner Uy Chao raises two questions of law: (1) respondent Ramos was the statutory employer for the purposes of the Workmen's Compensation Act, and not he, the petitioner, and (2) the employment of respondent Aguilar to repair or replace the eave of the glassware store was casual and not for the purpose of the occupation or business of the petitioner.

The petitioner contends that respondent Ramos was an independent contractor and the statutory employer of the injured laborer, respondent Aguilar; that as such respondent Ramos should be held liable for the injuries sustained by the laborer; and that he (the petitioner) should be exempted from any liability.

There is, however, no need of passing upon the point whether respondent Ramos was an independent contractor, because even if the services of respondent Aguilar were engaged by petitioner Uy Chao directly or through an agent or contractor, still respondent Aguilar, the injured laborer, is not entitled to compensation for the simple reason that his employment was purely casual and was not for the purposes of the petitioner's business or occupation.

Section 39(b) of Act No. 3428 as amended, known otherwise as the Workmen's Compensation Act, provides that—

(b)

'Laborer' is used as a synonym of 'Employee' and means every person who has entered the employment of, or works under a service or apprenticeship contract for an employer. It does not include a person whose employment is purely casual and is not for the purposes of occupation, or business of the employer. \* \* \*(Italics supplied.)

Clearly, the Workmen's Compensation Act does not include an employment for labor that is purely casual and is not for the purposes of the employer's occupation or business. The employment of respondent Aguilar to help in the repair or replacement of the eave of a commercial store owned by petitioner Uy Chao was purely casual, because such work would occur only when the said structure should be damaged or broken. When it would be broken and repaired, nobody could foresee. It may safely be stated that the work on the eave would not be made at fixed intervals. The employment of a carpenter and a tinsmith for its repair or replacement was therefore only occasional, sporadic and for a short time.

It is clear that the repair or dismantlement of the eave was not for the purpose of the petitioner's occupation or business. The petitioner was a glassware dealer. He bought and sold glassware. It is difficult to see the connection of the repair or dismantlement with the buying and selling" of glassware. Repair is restoration to a sound or good state after decay, dilapidation, injury or partial destruction.[1] It is essentially a process of reconstruction, or of fixing broken or damaged parts of a structural whole. On the other hand, selling glassware is transferring the ownership over commodities or goods from the seller to the buyer for a certain valuable consideration.

Respondents contend that the repair of the eave was for the purposes of the petitioner's occupation or business of selling glassware. They argue that the said structure "being part of petitioner's store, it stands to reason that any repair made on it must be a repair made on petitioner's store and the employment for such repair must, therefore, be an employment for petitioner's business—that of maintaining a store," and that "whatever was or is sold in that store, be it glassware or any other commodity, is merely an incident to the petitioner's business of maintaining the store." In *Philippine Manufacturing Company vs. Santos Vda. de Geronimo et al.*, 96 Phil., 276, this Court ruled that the painting of an elevated water tank belonging to the Philippine Manufacturing Company was not for the purposes of the Company's business or occupation of manufacturing soap, vegetable lard, cooking oil and margarine and in *De los Santos vs. Javier*, 58 Phil, 82, it was held by this Court that the construction of a corral is not for the purposes of the business or occupation of buying and selling hogs and curing ham, because the defendant who engages in buying and selling hogs and curing ham "is not a building contractor, and it was not his business to construct buildings."

The rule in *Caro vs. Rilloraza et al.*, (102 Phil., 61), where this Court by a vote of 6 to 4 held that the laborer who while constructing a window railing of a building "fell to the ground and broke his leg, as the wooden platform on which he and another carpenter were working collapsed," was entitled to receive compensation from the owner of the building, is not applicable to the present case, because there the building was for lease for income purposes and the "repair, maintenance and painting thereof, with a view to attracting or keeping tenants and of inducing them to pay a good or increased rental is most certainly, part of said business." Here, the petitioner was engaged not in house-letting business but in buying and selling glassware.

The decision of the Workmen's Compensation Commissioner appealed from is reversed, and the petitioner Uy Chao absolved from liability, without pronouncement as to costs.

Bengzon, Montemayor, Reyes, A., Bautista Angelo, Endencia, and Felix, JJ., concur.

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[1] Webster's New International Dictionary, p. 2111.

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