

**NATIONAL FOOD AUTHORITY REPRESENTED BY ADMINISTRATOR
ANGELITO T. BANAYO, PETITIONER, VS. HON. LOURDES M.
TRANSMONTE, IN HER CAPACITY AS UNDERSECRETARY OF THE
DEPARTMENT OF LABOR...**

Ponente: SORONGON, E.D., J.

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SORONGON, E.D., J.

This petition for certiorari under Rule 65 of the Rules of Civil Procedure assails the Order[1] of Undersecretary Lourdes M. Transmonte of the Department of Labor and Employment (DOLE) dated May 4, 2009 affirming the February 28, 2007 Order[2] of Regional Director Ma. Gloria A. Tango which declared petitioner National Food Authority (NFA) jointly and solidarily liable with Thunder Security and Investigation Agency (TSIA) to the monetary claims of private respondents. Also challenged is the Resolution[3] dated October 14, 2011, denying NFA and TSIA respective motions for reconsideration.

The factual background of the case is follows:

All above-named private respondents were employed as security guards by Thunder Security and Investigation Agency (TSIA) assigned at NFA regional office in General Santos City by virtue of the Contract for Security Services[4] which TSIA inked with NFA beginning October 1, 2000 until September 30, 2001.

On August 31, 2001, or one month prior to the expiration of the contract, a public bidding for the procurement of security services for NFA Region XI was conducted by the NFA Regional Bids and Awards Committee. TSIA participated in the bidding but the contract was awarded to another bidder. The notice of award was however restrained by the issuance of a Temporary Restraining Order (TRO) in Civil Case No. Q-02-47532, entitled “Thunder Security and Investigation Agency and Lourdes M. Lasala vs. National Food Authority, et al.” Due to the TRO, NFA was compelled to extend the security services contract[5] of TSIA from the period of September 1, 2006 to September 30, 2006 and thereafter continued to be extended on a monthly basis.

On August 23, 2006, private respondents filed a Complaint[6] with the DOLE Regional Office No. 12 against TSIA and NFA for unpaid wages, wage differentials, allowance, overtime pay, 13th month pay and unremitted SSS premiums. Pursuant to Inspection Authority No. R1201-0609-IC-096, the DOLE conducted on September 7, 2006 a complaint inspection at TSIA premises and NFA compound in San Pedro St., Lagao, General Santos City wherein the following labor standards violations were discovered:

1. Underpayment of minimum wage;
2. Non-payment of cost living allowance;
3. Non-payment of 13th month pay;
4. Non-payment of five (5) days service incentive leave;
5. Non-payment of holiday premium pay;
6. Non-payment of night shift differential pay;
7. Illegal Deduction for insurance, penalties, parties and others; and

8. Non-payment of SSS/ Philhealth and Pag-ibig Contributions

During the series of hearings conducted by the Regional Office of the DOLE, NFA denied any monetary liability to private respondents based on the ground that no employer-employee relationship exists between it and private respondents. It claimed that TSIA, as their direct employer should be held solely responsible for private respondents' money claims. On the other hand, TSIA offered settlement with private respondents by offering the amount of Php20,000.00 for each of them, inclusive of refund of SSS premiums, Philhealth and cash bonds. However, private respondents rejected that offer and demanded for a higher amount of Php100,000.00 each as settlement. TSIA declined the proposal.

TSIA denied having violated any laws on labor standard. In fact, private respondents have been completely and regularly paid at the rate prescribed by existing statutes of their basic wages/salary, cost of living allowance, 13[th] month pay, 5 days incentive leave pay, holiday pay, night shift differential, retirement benefit and rest day premium as reflected in the payroll sheets containing the signatures of private respondents covering the period of 2003 to 2006. The reason why private respondents filed a case against it is because security supervisor Mr. Rene Palmero was able to convince them that they could collect a sizable amount from it considering they were paid below the statutory minimum wage.

NFA in its position paper, reiterated that, except for the wage differential, it could not be held liable for all the money claims because it is not the employer of private respondents. It asserted that the increase in wage referred to in Section 6 of RA No. 6727[7] pertains only to the statutory minimum wage and does not include other wage related benefits as a consequence of the increase in the minimum wage. NFA also claimed that it is an independent contractor having substantial capital and financial capability.

Finding for the private respondents, Regional Director Ma. Gloria A. Tango of the Dole issued an Order[8] on February 28, 2007, the dispositive portion of which reads:

WHEREFORE, premises considered, respondents Thunder Security and Investigation Agency and/or Mr. Albert Lasala, President/General Manager and/or National Food Authority, are hereby ordered to pay jointly and severally the twelve (12) affected security guards the amount of SEVEN HUNDRED SEVENTY THREE THOUSAND FOUR HUNDRED TWENTY PESOS and 15/100 (Php773,420.15), Philippine Currency, for underpayment of wages, non-payment of Cost of Living Allowance, 13[th] month pay and five (5) days service incentive leave pay covering the period September 2003 – September 2006 within ten (10) days from receipt of this Order, broken down as follows:

Name

UP Wages

NP OF COLA

NP OF 13TH

Mo. Pay

NP of 5 day

SILP

Total

1 Leonidez Arenio

P39,735.15

P9,766.80

P14,217.25

P2,750.00

P66,469.20

2 Arnold Amoguis

P39,735.15

P9,766.80

P 14,217.25

P 2,750.00

P66,469.20

3 Marcelino Amoguis

P39,735.15

P9,766.80

P 14,217.25

P 2,750.00

P66,469.20

4 Roger Borja

P39,735.15

P9,766.80

P 14,217.25

P 2,750.00

P66,469.20

5 Aramil Manginlao

P39,735.15

P9,766.80

P 14,217.25

P 2,750.00

P66,469.20

6 Nichel Miguel

P39,735.15

P9,766.80

P 14,217.25

P 2,750.00

P66,469.20

7 Israel Palao

P39,735.15

P9,766.80

P 14,217.25

P 2,750.00

P66,469.20

8 Faustino Ramos, Jr.

P39,735.15

P9,766.80

P 14,217.25

P 2,750.00

P66,469.20

9 Danilo Mandaguio

P39,735.15

P9,766.80

P 14,217.25

P 2,750.00

P66,469.20

10 Leo Senador

P39,735.15

P9,766.80

P 14,217.25

P 2,750.00

P66,469.20

11 Waringkadra Nopi

P30,053.05

P5,580.05

P5,625.85

P1,000.00

P42,258.95

12 Warren Villaries

P39,735.15

P9,766.80

P 14,217.25

P 2,750.00

P66,469.20

TOTAL

P467,139.70

P113,014.85

P162,015.60

P31,250.00

P773,420.15

SO ORDERED.[9]

On appeal, the DOLE, thru Undersecretary Lourdes M. Transmonte (Undersecretary Transmonte) affirmed the above Order and dismissed petitioner and TSIA's respective appeals for lack of merit.

Both petitioner and TSIA filed their respective motions for reconsideration, which Undersecretary Transmonte likewise denied per Resolution[10] dated October 14, 2011.

Displeased, NFA filed the instant Rule 65 petition on the ground that:

THE HONORABLE UNDERSECRETARY OF THE DOLE LOURDES M. TRANSMONTE GRAVELY ABUSED HER DISCRETION WHEN SHE AFFIRMED THE FEBRUARY 28, 2007 DECISION OF THE REGIONAL DIRECTOR FINDING PETITIONER NFA SOLIDARILY LIABLE WITH TSIA FOR ALL THE MONEY CLAIMS.

Prefatorily, we take note of the following incidents while NFA's petition for certiorari is pending before us: 1) On March 5, 2012, the DOLE issued an Entry of Judgment[11], stating that its October 14, 2011 Resolution has already become final and executory on November 20, 2011; 2) On March, 15, 2012, NFA filed a Manifestation with Motion to Lift Entry of Judgment[12]; 3) In a letter[13] dated March 27, 2012, DOLE advised NFA that it has no authority to give due course to its motion in view of the finality of the decision; 4) On March 15, 2012, a Motion for the Issuance of Writ of Execution[14] was filed by private respondents with the DOLE; 5) On June 4, 2012, NFA filed a Motion to Quash Writ of Execution[15]; and 6) DOLE issued a Writ of Execution[16] dated May 13, 2012.

NFA maintains that, except for the wage differential, it should not be held solidarily liable for all the money claims of private respondents. Citing the case of NFA vs. Masada Security Agency, Inc.[17] and Section 6 of RA No. 6727, it asserted that the increase in the daily minimum wage pertains only to the statutory minimum wage and does not include an increase on other benefits and remuneration such as cost of living allowance, 13th month pay, and five days service incentive leaves. It further claims that II.18.c of the Security Service Contract it entered with TSIA expressly provides that NFA is free from any and all claims of TSIA's security guards and that

even assuming arguendo that NFA is solidarily liable with TSIA, private respondents cannot directly claim from it because there is no privity of contract nor there exist an employer-employee relationship between them NFA and private respondents. NFA has been religiously paying its obligations to TSIA under the Security Service Contract. To hold NFA liable for the unpaid salaries of private respondents is tantamount to unjust enrichment on the part of TSIA. Moreso, the joint and solidary liability provided under Articles 106, 107 and 109 of the Labor Code were not contemplated to cover principal employer who faithfully and meticulously comply with their contractual obligations. Lastly, the claims of private respondents should be directed to the Commission on Audit (COA) since it is a claim against the funds of the government.

We disagree. NFA's liability is joint and several with that of TSIA pursuant to Articles 106, 107 and 109 of the Labor Code which provide as follows:

ART. 106. CONTRACTOR AND SUBCONTRACTOR. - Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provision of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

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ART. 107. INDIRECT EMPLOYER. - The provisions of the immediately preceding Article shall likewise apply to any person, partnership, association or corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task job or project.

ART. 109. SOLIDARY LIABILITY. - The provisions of existing laws to the contrary notwithstanding, every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of any provision of this Code. For purposes of determining the extent of their civil

NFA is the indirect employer described in Article 107 of the Labor Code when it entered into a contract for security services with TSIA which hired private respondents to work as security guards for the Regional Office of NFA in General Santos City. Following the directive of Article 106 of the Labor Code, the failure on the part of TSIA to pay the wages of its security guards, NFA becomes jointly and severally liable with TSIA for the guards' wages. The rationale of the law as held in a number of jurisprudence is to ensure that the employees are paid the wages due to them.[18] NFA's contention that the security guards cannot collect from it their money claims because there is no employer-employee relationship that exists between them is unacceptable. In 7K Corporation vs. NLRC[19], citing San Miguel vs. MAERC Integrated Services, Inc.[20], the Supreme Court explained that it is the law that creates an employer-employee relationship between the principal and the employees of the subcontractor whenever the subcontractor fails to pay the wages of its employees. The High Court ruled:

As explained by the Court in San Miguel Corporation v. MAERC Integrated Services, Inc.

In legitimate job contracting, the law creates an employer-employee relationship for a limited purpose, i.e., to ensure that the employees are paid their wages. The principal employer becomes jointly and severally liable with the job contractor only for the payment of the employees' wages whenever the contractor fails to pay the same. Other than that, the principal employer is not responsible for any claim made by the employees.

xxx xxx xxx

In legitimate job contracting, the law creates an employer-employee relationship for a limited purpose, to

ensure that the employees are paid their wages. In such an arrangement, the principal employer becomes jointly and severally liable with the job contractor for the payment of the employees' wages whenever the contractor fails to pay the same. As the claim of private respondents in this case involve only monetary claims that fall within the purview of wages, petitioner, even if found as the principal employer in a legitimate job contracting, is still liable to them for the payment of such claims.

The provisions in the Security Service Contract stating that NFA is absolved from any and all claims of TSIA security guards is not controlling and should not prevail over the strict mandate of the Labor Code declaring the liability of the principal (NFA) is joint and solidary to the employees (private respondents) of the subcontractor (TSIA). Neither can NFA assert the defense that the provisions of Articles 106, 107, and 109 of the Labor do not apply to principal employer who faithfully and meticulously comply with their contractual obligations. It should be noted that the aforesaid provisions make no distinctions as to its applicability. Well-recognized is the rule in statutory construction that where the law does not distinguish, neither should the courts distinguish — *ubi lex non distinguit, nec nos distinguere debemus*.^[21]

NFA's reliance on the case of *NFA vs. Masada Security Agency, Inc.*^[22] (Masada Case) is misplaced as the circumstances therein are markedly different from the case at bar. In that case, it is the security agency, which is Masada Security Agency (Masada), that filed a case against NFA, the indirect employer, asking for the increase in wage related benefits such as overtime pay, holiday pay, 13th month pay, holiday and rest day pay due to the increase in the daily wage rate mandated by Republic Act No. 6727 and wage orders issued by the Regional Tripartite Wages and Productivity Board. The Supreme Court held that NFA is not liable to Masada for the increase in the wage related benefits because the law merely mandates the principal to pay for the increase in minimum wage and does not include wage related benefits. In short, the Masada Case speaks of the liability of the principal to the subcontractor in a situation when there is an increase in the statutory minimum wage. Masada case did not discuss on the joint and solidary nature of liability of the principal to the employees of the subcontractor, which is the very issue in our present case. The nature of liability of the principal to the subcontractor whenever there is an increase in the minimum wage rate cannot be equated with the nature of liability of the principal to the employees of the subcontractor for non-payment of wages by the latter. The former is mandated by the wage orders or contract between the principal and the subcontractor while the latter is a directive from the Labor Code. Since the concern in the instant case is the liability of NFA as indirect employer with respect to the wage related benefits of the security guards, who were employees of the security agency, TSIA, the invocation of ruling in Masada Case in this case is obviously misplaced.

Neither can NFA shield itself from liability by the argument that it is a government entity and the claims of private respondents herein are directed against public funds. It should be noted that NFA herein is considered an indirect employer by provision of Article 107 of the Labor Code. In Book III, Title II on wages, the term "employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee and shall include the government and all its branches, subdivisions and instrumentalities, all government-owned or controlled corporations and institutions, as well as non-profit private institutions, or organizations. Considering the claims involved here are the wages of the security guards, the public nature of NFA is not a hindrance to the said claims.

Now that NFA's solidary liability as an indirect employer is settled, we are of the view that NFA nonetheless is not precluded to recover from TSIA the amount it has to pay to the private respondents pursuant to Article 1217 of the Civil Code and the Supreme Court's pronouncement in *GSIS vs. NLRC, et al.*^[23], where it was held:

Under Art. 1217 of the Civil Code, if the GSIS should pay the money claims of complainants, it has the right to recover from LSWA whatever amount it has paid in accordance with the terms of the service contract between the LSWA and the GSIS.

Joint and solidary liability is simply meant to assure aggrieved workers of immediate and sufficient payment of what is due them. This is in line with the policy of the State to protect and alleviate the plight of the working class.

Finally, the issuance by the DOLE of an Entry of Judgment declaring its Resolution dated October 14 final and executory as well as the Writ of Execution dated May 13, 2012 while a petition for certiorari is pending before this Court is allowed under the NLRC Rules of Procedure. The disquisition in the case of Leonis Navigation Co., Inc. vs. Villamater[24] citing Bago vs. NLRC,[25] is enlightening, thus:

In the recent case Bago v. National Labor Relations Commission, we had occasion to rule that although the CA may review the decisions or resolutions of the NLRC on jurisdictional and due process considerations, particularly when the decisions or resolutions have already been executed, this does not affect the statutory finality of the NLRC decisions or resolutions in view of Rule VIII, Section 6 of the 2002 New Rules of Procedure of the NLRC, viz.:

RULE VIII

x x x x

SECTION 6. EFFECT OF FILING OF PETITION FOR CERTIORARI ON EXECUTION. – A petition for certiorari with the Court of Appeals or the Supreme Court shall not stay the execution of the assailed decision unless a temporary restraining order is issued by the Court of Appeals or the Supreme Court.

Simply put, the execution of the final and executory decision or resolution of the NLRC shall proceed despite the pendency of a petition for certiorari, unless it is restrained by the proper court. xxx xxx xxx

Verily, the Court finds that the DOLE acted correctly in holding the joint liability of NFA with TSIA for the payment of the wage increases to private respondents. Accordingly, no grave abuse of discretion may be attributed to the DOLE in arriving at the impugned decision.

WHEREFORE, premises considered, petition is DENIED. The assailed issuances of of the Department of Labor and Employment dated May 4, 2009 and October 14, 2011 are hereby AFFIRMED.

SO ORDERED.

Reyes, Jr. A.B., Chairperson, and Rosario, R.R., JJ., concur.

[1] Rollo, pp. 20-31.

[2] Rollo, pp. 112-117.

[3] Rollo, pp. 76-81.

[4] Rollo, pp. 83-89.

[5] Rollo, pp. 99-104.

[6] Rollo, p. 90.

[7] An Act to Rationalize Wage Policy Determination by Establishing the Mechanism and Proper Standards Therefor, Amending for the Purpose Article 99 of, and Incorporating Articles 120, 121, 122, 123, 124, 126 and 127 Into, Presidential Decree No. 442, as Amended, Otherwise Known as the Labor Code of the Philippines, Fixing New Wage Rates, Providing Wage Incentives for Industrial Dispersal to the Countryside, and for Other Purposes.

- [8] Rollo, pp. 112-117.
- [9] Rollo, pp.116-117.
- [10] Rollo, pp. 76-81.
- [11] Rollo, p. 419.
- [12] Rollo, pp. 420-422.
- [13] Rollo, pp. 425-426.
- [14] Rollo, pp. 427-428.
- [15] Rollo, pp. 429-436.
- [16] Rollo, pp. 472-476.
- [17] G.R. No. 163448, March 8, 2005.
- [18] Eagle Security, Inc. vs. NLRC, G.R. No. 81314, May 18, 1989, Spartan Security and Detective Agency, Inc. vs. NLRC, G.R. No. 90693, September 3, 1992, Lapanday Agricultural Development Corp. vs. CA, G.R. No. 112139, January 31, 2000.
- [19] G.R. No. 148490, November 22, 2006.
- [20] 453 Phil. 543
- [21] United BF Homeowners ‘ Assoc., Inc. vs. The Barangay Chairman and the Sangguniang Barangay of BF Homes Paranaque, G.R. No. 140092, September 8, 2006.
- [22] G.R. No. 163448. March 08, 2005.
- [23] G.R. No. 157647, Oct. 15, 2007, GSIS vs. NLRC, Lanting Security and Watchman Agency, et al.
- [24] G.R. No. 179169, March 3, 2010.
- [25] G.R. No. 170001, April 4, 2007.

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