

ANDRES T. TENERIFE, JR., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC), ACE VHONCE FURNITURE / PETER CHUA, RESPONDENTS.

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PAREDES, J.:[*]

THE CASE

THIS PETITION[1] FOR CERTIORARI, filed under Rule 65 of the Rules of Court, assails: (1) the Decision[2] dated September 26, 2012 of the National Labor Relations Commission (NLRC), in NLRC LAC No. 06-001866-12 (NCR Case No. 05-07146-11) which affirmed the Decision[3] of the Labor Arbiter dated April 30, 2012 dismissing petitioner's Complaint; and (2) the Resolution[4] dated November 29, 2012, which denied the motion for reconsideration.

THE ANTECEDENTS

Petitioner Andres T. Tenerife, Jr. (petitioner) filed a Complaint[5] for illegal dismissal with money claims, moral damages, exemplary damages and attorney's fees against private respondents Ace Vhonce Furniture & Upholstery Center[6] (Ace Vhonce), a sole proprietorship registered with the Department of Trade and Industry on May 28, 2009 and/or Peter Chua (Chua; collectively referred to as private respondents).

In his Position Paper[7] and Sinumpaang Salaysay[8], petitioner alleged that he was employed as an upholsterer of private respondent Ace Vhonce, owned and managed by Chua. He started working for private respondents in 1983 when the company was still under the management of Chua's father. It was when the father suffered a stroke that Chua took over the business. Petitioner used to be under the supervision of one Gerry Rada and, later on, under the supervision of his sister-in-law, Lilibeth Tenerife (Lilibeth). Being an upholsterer, he would work at the company premises and his work would be subjected to inspection and approval by his supervisors. According to petitioner, he would work from 8 AM until 5 PM or beyond, depending on the demand of private respondents' clients. For work rendered, petitioner was paid P280 a day.

On March 20, 2011, petitioner was suspended after absenting himself from work for one week due to an injury he sustained from an accident; he informed Lilibeth about his absence. A month after his suspension, he was not given work and was only told to wait for a call from private respondents. Petitioner would frequently visit company premises and saw that private respondents still had customers and the other employees were working. When he asked whether he would be allowed to go back to work, he was only told to wait; hence, the complaint for illegal dismissal.

On the other hand, private respondents alleged in their Position Paper[9] that Ace Vhonce is engaged in the manufacture and fabrication of household and office furniture. To have an efficient and faster production of furniture, Chua conceived and devised a sub-contracting arrangement for the manufacture and production of furniture to old acquaintances also engaged in the trade and who reside in Valenzuela City. These sub-contractors assume responsibility for the production or manufacture of household and office furniture. They then turn-over the manufactured furnitures to private respondents. Among these sub-contractors are: (1) Lilibeth Tenerife, (2)

Rolando Pampula, (3) Ramil Sayat and (4) Gil dela Rosa.

According to private respondents, petitioner is the brother-in-law of Lilibeth, one of the sub-contractors, and hired by the latter in October 2009. He worked for Lilibeth in the making of furniture on a piece rate basis. In the first week of April 2011, Lilibeth noticed that petitioner had not been reporting to her and his work has been neglected. Thus, on April 16, 2011, Lilibeth wrote petitioner a letter[10] which reads:

"Ikaw ay aking sinulatan upang alamin kung bakit di ka pumapasok bilang helper na alam mo na kailangan kita bilang ako ay contractor ng pagawaan ng furniture.

Sa iyong pagtanggap nitong sulat ko, ikaw ay binibigyan ko ng 24 oras upang magreport sa akin, at magbigay ka sakín ng magandang dahilan kung bakit di ka na pumapasok.

Ang di mo pagtupad sa aking sulat ay ibibilang kita na aking helper na isang AWOL."

Petitioner refused to acknowledge receipt of the afore-quoted letter, a fact confirmed by petitioner's brother, husband of Lilibeth.

Private respondents claim that it is a matter of practice that the sub-contractors report to its office from time to time to report on the development regarding the contracted-for furniture or products; workers of the sub-contractors, including the sub-contractors themselves, linger at the private respondents' office for transactions involving their respective businesses. It is the sub-contractors who prescribe their own rules in the conduct of their business as well as supervise and control all matters involving their transactions with private respondents.

In the Decision[11] dated April 30, 2012, the Labor Arbiter found that there was no employer-employee relationship between petitioner and private respondents and, accordingly, dismissed the complaint for lack of jurisdiction[12].

Aggrieved, petitioner appealed to the NLRC. On September 26, 2012, the NLRC issued the assailed Decision[13] affirming the decision of the Labor Arbiter, thus:

WHEREFORE, the appeal filed by the complainant is hereby DISMISSED for lack of merit. Accordingly, the Decision dated 30 April 2012 of Labor Arbiter Arden S. Anni is AFFIRMED.

SO ORDERED[14].

Undaunted, petitioner moved[15] for reconsideration, but his motion was denied in the Resolution¹⁶ dated November 29, 2012; hence, this Petition.

THE ISSUES

Petitioners raise the following issues for the allowance of the petition:

I WHETHER THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN HOLDING THAT THERE IS NO EMPLOYER-EMPLOYEE RELATIONSHIP IN THE CASE AT BAR.

II WHETHER THE PETITIONER WAS ILLEGALLY DISMISSED AND ENTITLED TO HIS MONEY CLAIMS[17].

THE COURT'S RULING

The petition is meritorious.

As a rule, the Court refrains from reviewing factual assessments of lower courts and agencies exercising adjudicative functions, such as the NLRC. Occasionally, however, the Court is constrained to wade into factual matters when there is insufficient or insubstantial evidence on record to support those factual findings; or when

too much is concluded, inferred or deduced from the bare or incomplete facts appearing on record. In the present case, We find the need to review the records to ascertain the facts[18].

The NLRC dismissed[19] the complaint for lack of merit on the ground that petitioner failed to establish the existence of an employer-employee relationship between him and private respondents. However, glaringly lacking in the assailed decision is a discussion and analysis of the defense raised by private respondents that petitioner is not its employee but the worker, on a piece rate basis, of a subcontractor, Lilibeth. On this score, We find that the NLRC gravely abused its discretion tantamount to an excess or lack of jurisdiction; hence, We discuss.

The one who alleges a fact has the burden of proving it and the proof should be clear, positive and convincing[20].

Private respondents claim that it is engaged in the business of manufacturing, fabricating and producing household and office furniture; that the production of furniture was sub-contracted to individuals/old acquaintances; and that petitioner is the worker of its sub-contractor, Lilibeth. To prove its allegations, private respondents presented the affidavit[21] of Lilibeth wherein she claimed to be one of the sub-contractors of Ace Vhonce and the true employer of petitioner; and a Sub[-]contractorship Agreement[22] between Ace Vhonce and Lilibeth.

The affidavit of Lilibeth cannot be given due evidentiary weight. In general, affidavits, being self-serving, must be received with caution. An affidavit is only prima facie evidence and should be received with caution because of its weak probative value. It is not a complete reproduction of what the declarant had in mind. Unless the affiant is placed on the witness stand to testify thereon, an affidavit is considered hearsay[23].

While there is present in the relationship of Lilibeth and private respondents some factors suggestive of an independent contractor relationship (i.e., Lilibeth chose who to hire; Lilibeth paid the wages of the workers who produced furniture; Lilibeth supervises the production), other numerous factors are present which would indicate a labor-only contracting arrangement between Lilibeth and private respondents[24].

An independent contractor is one who undertakes "job contracting," i.e., a person who: (a) carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and (b) has substantial capital or investment in the form of tools, equipments, machineries, work premises and other materials which are necessary in the conduct of the business[25].

The existence of an independent and permissible contractor relationship is generally established by the following criteria: whether or not the contractor is carrying on an independent 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 a specified piece of work; the control and supervision of the work to another; the employer's power with respect to the hiring, firing and payment of the contractor's workers; the control of the premises; the duty to supply the premises, tools, appliances, materials, and labor; and the mode, manner and terms of payment[26]. These factors are markedly absent in the case at hand.

Consider, that: First, petitioner performed activities which were directly related to the main business of Ace Vhonce. His functions were not only directly related, but were, in fact, very vital to private respondents' business[27] of manufacturing, fabricating, producing and, as suggested by its designation, upholstering household and office furniture.

Second, private respondents did not dispute the allegation that petitioner worked inside its premises and used the

materials provided by the former. Their silence on this matter is deemed an admission that petitioner's place of work is inside the company premises.

Third, the Sub[-]contractorship Agreement[28] dated May 2006, and upon which private respondents hinge their main defense against the complaint, provides:

- That the Employer/Establishment is engaged in the sale and manufacture for the of (sic) office and household furniture's (sic) which it delivers to its customers/clients;
- The Sub[-]contractor agrees to fabricate and manufacture for the Employer, and shall be paid by the number of finished products and turn over to the establishment;
- The Sub[-]contractor, for the manufacture of said products shall hire or employ workers of her/his, to finish the manufactured products to whom she/he shall be responsible for the payment of their wages or compensation normally paid on the basis of furniture's (sic) finished or manufactured;
- The Sub[-]contractor shall free the establishment or employer from any obligation towards the workers hired by the sub[-]contractor;
- All products accomplished by the Sub[-]contractor shall be turned over to the Employer/Establishment in finished good condition;
- This Contract shall be terminated or suspended, when there are no raw materials to work on, or when there is no work to be finished;
- The Employer / Establishment and the Sub[-]contractor shall abide by [the] terms hereof in good faith.

The document is a sham, thus: (a) It is bemusing to note that, aside from the fact that the Sub-contractorship Agreement is unnotarized, it was purportedly entered into sometime in May 2006, three years before the alleged registration[29] and start of operation of Ace Vhonce on May 28, 2009; (b) The term and duration of the relationship between Lilibeth and private respondents is dependent on the availability of the raw materials to work on, as stated in paragraph 6 of the Sub-contractorship Agreement which provides that the contract will be suspended or terminated when there are no materials to work on or when there is no work to be finished; (c) The record is bereft of any proof pertaining to Lilibeth's capitalization, nor to her investment in tools, equipment, or implements actually used in the performance or completion of the job, work, or service that she was contracted to render. No evidence has been presented, such as a business permit, to show that Lilibeth maintains an independent and distinct business from that of private respondents.

While sub-contracting is permitted; labor-only contracting is prohibited. Section 5 of Department Order No. 18-02[30] provides, that:

Prohibition against labor-only contracting. — Labor-only contracting is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or sub-contractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present:

- i) The contractor or subcontractor does not have sufficient capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or
- ii) The contractor does not exercise the right to control over the performance of the work of the contractual-employee.

"Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools or equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out.

Prescinding from the foregoing discussion, the totality of the facts and the surrounding circumstances of the case leads to the inevitable conclusion that Lilibeth is a labor-only contractor. As such, pursuant to Article 106 of the Labor Code on contracting and sub-contracting, the principal is responsible to the employees of the "labor-only" contractor as if the principal itself directly hired the employees[31], thus:

Article 106. Contractor or subcontractor. — xxx There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

Private respondents, the principals, are the real employers of the petitioner, with Lilibeth acting only as the agent or intermediary of the former[32] by supplying manpower. Viewed in these lights, the scales of justice must tilt in favor of the employees. This conclusion is consistent with the rule that the employer's cause can only succeed on the strength of its own evidence and not on the weakness of the employee's evidence[33].

Finding that petitioner is a regular employee of private respondents, We now determine if petitioner was illegally dismissed from employment. We rule in the affirmative.

Private respondents posit[34] that petitioner was never dismissed. In the affidavit of Lilibeth, it was stated that petitioner went on absence without leave (AWOL) and refused to receive the notice sent to him. On the other hand, petitioner claims that he was suspended and when he returned, he was no longer given work.

To constitute abandonment, two elements must concur: (1) the failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts[35]. In the case at bar, petitioner asserts that after his suspension, he returned to the workplace; that when he asked whether he would be allowed to work, he was only told to wait; and, that realizing that he would not be given any work, he lost no time in filing the case for illegal dismissal. It is well-settled that abandonment of work is inconsistent with the filing of the complaint[36]. Clearly, in returning to work and asking for his job back, petitioner had no intention of abandoning his job. Petitioner did not abandon his work, he was dismissed illegally.

Under Article 279 of the Labor Code, an employee unjustly dismissed from work is entitled, among others, to reinstatement and backwages. However, it has long been recognized that if reinstatement is no longer possible or practicable, the employer may be made instead to pay separation pay to the employee in lieu of reinstatement[37]. Separation pay in lieu of reinstatement may likewise be awarded if the employee decides not to be reinstated[38]. Considering that petitioner prayed for separation pay instead of reinstatement, We grant the award. It must be noted, however, that petitioner failed to support his allegation that he was employed by private respondents since 1983. Consequently, We can only consider that, as admitted by Lilibeth in her affidavit, petitioner began his employment with private respondents in 2009.

Aside from the backwages and separation pay, petitioner, being a regular employee under the supervision of private respondents' agent and although paid on a piece-rate basis, are also entitled to overtime pay, holiday pay and 13th month pay[39].

However, since petitioner was a piece-rate worker, there is a need to determine the varying degrees of production and days worked by petitioner. This issue is best left to the NLRC. Thus, the NLRC is tasked to conduct the proper determination of the appropriate amount of backwages and other awards due to petitioner[40].

WHEREFORE, the Petition for Certiorari is GRANTED. The Decision dated September 26, 2012, and the Resolution dated November 29, 2012 of the National Labor Relations Commission, in NLRC LAC No. 06-001866-12 (NLRC NCR Case No. 05-07146-11) are REVERSED and SET ASIDE and a new decision entered:

- DECLARING petitioner a regular employee of private respondents;
- DECLARING petitioner to have been illegally dismissed by private respondents, thereby, he is entitled to full back wages and other privileges, and separation pay in lieu of reinstatement at the rate of one month's salary for every year of service with a fraction of six months of service considered as one year;
- REMANDING the case to the National Labor Relations Commission for its determination of the backwages and other benefits and separation pay, taking into account the foregoing observations; and
- DIRECTING the National Labor Relations Commission to resolve the referred issues within sixty (60) days from receipt of this decision and to submit to this Court a report of its compliance hereof within ten (10) days from the rendition of its resolution.

SO ORDERED.

Didican, (Chairperson), and [**]Corales, JJ., concur.

[*] Acting Senior Member per Office Order No. 461-14-ABR dated November 3, 2014.

[**] Acting Junior Member vice J. Elbinias per Office Order No. 461-14-ABR dated November 3, 2014.

[1] Rollo, pp. 3-13 (exclusive of annexes).

[2] Rollo, pp. 20-27.

[3] Rollo, pp. 100-102.

[4] Rollo, pp. 17-19.

[5] Rollo, pp. 29-40.

[6] Rollo, pp. 54-5.

[7] Rollo, pp. 32-36.

[8] Rollo, pp. 37-38.

[9] Rollo, pp. 45-53.

[10] Rollo, p. 79.

[11] Rollo, pp. 100-102.

[12] Rollo, p. 102.

[13] Rollo, pp. 20-27.

- [14] Rollo, p. 26.
- [15] Motion for Reconsideration, rollo, pp. 28-30.
- [16] Rollo, pp. 17-19.
- [17] Rollo, p. 9.
- [18] Joeb M. Aliviado, Etal. vs. Procter & Gamble Phils., Inc. and PROMM-GEM Inc., G.R. No. 160506, June 6, 2011.
- [19] Decision, rollo, pp. 21-7, 23-5.
- [20] Romeo Basay, et. al. vs. Hacienda Consolacion and/or Bruno Bouffard III, et. al., G.R. No. 175532, April 19, 2010.
- [21] Rollo, pp. 81-2.
- [22] Rollo, pp. 75-76.
- [23] ACD Investigation Security Agency, Inc. vs. NLRC and Pablo D. Daquera, G.R. No. 147473, March 30, 2004.
- [24] See Dole Philippines, Inc. vs. Esteva, GR No. 161115, November 30, 2006.
- [25] Wack Wack Golf & Country Club vs. National Labor Relations Commission, GR No. 149793, April 15, 2005.
- [26] See San Miguel Corporation vs. Semillano, GR No. 164257, July 5, 2010.
- [27] See Dole Philippines, Inc. vs. Esteva, supra.
- [28] Rollo, pp. 75-6.
- [29] Rollo, pp. 54-5.
- [30] Rules Implementing Article 106 to 109 of the Labor Code, as amended.
- [31] San Miguel Corporation vs. Semillano, supra.
- [32] Dole Philippines, Inc. vs. Esteva, supra.
- [33] Wilgen Loon, et.al. vs. Power Master, Inc., et.al., G.R. No. 189404, December 11, 2013.
- [34] Rollo, pp. 52-53.
- [35] Premiere Development Bank vs. National Labor Relations Commission, GR No. 114695, July 23, 1998.
- [36] Id.
- [37] Velasco vs. National Labor Relations Commission, GR No.161694, June 26, 2006.
- [38] Id.
- [39] See Lambo vs. National Labor Relations Commission, GR No. 111042, October 26, 1999.
- [40] See Velasco vs. National Labor Relations Commission, supra.

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