

**MARITES S. MARTEJA AND MELICIA G. BELEN, PETITIONERS, VS.
NATIONAL LABOR RELATIONS COMMISSION, EIGHTH DIVISION,
ADVENTURER'S MULTI-PURPOSE COOPERATIVE AND DOLE
PHILIPPINES, INC....**

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SANTOS, J.: [3]

Before the Court is a Petition for Certiorari[4] under Rule 65 of the Rules of Court assailing the Resolution[5] dated October 31, 2012 of public respondent National Labor Relations Commission, 8[th] Division, Cagayan de Oro City (NLRC), in NLRC No. MAC-07-012137-2011.

The Antecedents

Petitioners Marites S. Marteja (Marteja) and Melicia G. Belen (Belen) were former members of private respondent Adventures Multi-Purpose Cooperative (AMCOOP), a cooperative duly organized in accordance with Philippine laws and duly registered with the Cooperative Development Authority[6] with business address at Muñoz Subdivision, Cannery Road, Cannery Site, Polomok, South Cotabato.[7] Private respondent Dole Philippines, Inc. (Dolefil), on the other hand, is a corporation duly organized in accordance with Philippine laws. It is engaged in the business of growing and processing for export pineapple and pineapple products with principal office located at Cannery Site, Polomok, South Cotabato.[8]

In their Position Paper, petitioners Marteja and Belen claimed that on May 6, 2003 and August 9, 2003, respectively, private respondent AMCOOP “placed” them with private respondent Dolefil. Petitioner Marteja was assigned as a packer at Station 1, Packing Plant under the Agri Logistic Department, Agriculture Division while petitioner Belen was assigned as a harvester at the Plantation Area under the Harvesting Department, also of Agriculture Division.[9]

According to petitioners, they worked alongside regular employees of private respondent Dolefil and the manner by which they performed their work is subject to the supervision and control of private respondent Dolefil’s supervisors and managers. They performed the same tasks as private respondent Dolefil’s employees but they were only paid on a pakyawan basis. They added that private respondent AMCOOP is a labor-only contractor not having the necessary equipment, tools and capital to enable petitioners to do their tasks at private respondent Dolefil’s premises. Despite the fact that they have worked with private respondent Dolefil for more than six months then, they were not considered regular employees. Hence, their complaint prayed for their regularization and payment for money claims such as 13[th] month pay and entry-level salary rates enjoyed by private respondent Dolefil’s regular employees.[10] In support of petitioners’ allegations, they submitted a Sworn Statement[11] by former employees of private respondent Dolefil to prove that indeed, their work is subject to the control and supervision of the employees of private respondent Dolefil. Particularly for petitioner Marteja, allegedly her supervisor is one Glen Enonaria and her manager is one Carmelo Alanza. As regards petitioner Belen, allegedly her supervisor is one Jonathan Cagas and her manager is one Rolando Demetillo.[12]

Private respondent AMCOOP countered, in its Position Paper,[13] that petitioners were its members-employees,

hence co-owners thereof as shown in the Capital Buildup Ledgers.[14] Petitioner Marteja was assigned in the Packing Department of private respondent Dolefil on November 6, 2003 while petitioner Belen was assigned at the Harvesting Department on August 25, 2003. Petitioners, however, voluntarily severed their membership with private respondent AMCOOP.[15]

Private respondent AMCOOP alleged that on July 28, 2009, petitioner Marteja suddenly stopped reporting for work, and after almost one year or on June 15, 2010, she submitted a resignation letter[16] to private respondent AMCOOP which stated that she was constrained to resign due to her small business which she must personally handle. On the same day, petitioner Marteja executed an Affidavit of Waiver[17] which stated that she was withdrawing her membership with private respondent AMCOOP. As regards petitioner Belen, she simply abandoned her work and failed to report without a word on January 28, 2009. She never mentioned to the management of private respondent AMCOOP her intention to sever her membership with it.[18]

Moreover, private respondent AMCOOP denied petitioners' claim that it is a labor-only contractor. According to private respondent AMCOOP, it is a workers cooperative defined under Article 23 (t)[19] of Republic Act No. 9520.[20] Further, it is a legitimate job contractor as proven by its Certificate of Registration[21] issued by the Department of Labor and Employment (DOLE). In addition, per the Order[22] dated July 3, 2007 in Case No. R1100-9310-R1-355[23] issued by Regional Director Ma. Gloria A. Tango of DOLE, Regional Office XII, Koronadal City which directed the conduct of investigation and/or verification of the different cooperatives/contractors of private respondent Dolefil, it was declared that private respondent AMCOOP is a legitimate job contractor with substantial capitalization of P4,576,170.92 and total assets of P9,932,862.34.[24]

Further, private respondent AMCOOP contended that it merely entered into a service contract with private respondent Dolefil but was the one which hires and supervises its own workers, gives daily instructions to them, pays for their wages and benefits including their SSS contributions and imposes disciplinary actions on the basis of its established rules.[25]

For its part, private respondent Dolefil corroborated the claims of private respondent AMCOOP with respect to the membership and employment of petitioners with the latter. It also stated that private respondent AMCOOP is a legitimate job contractor which, like many of its job contracting cooperatives, provides relievers for its absent employees in any given day which is around 20% of its regular workforce due to absenteeism, vacation leave, sick leave, maternity leave, emergency leave, etc. Such arrangement is duly recognized and sanctioned by the existing Collective Bargaining Agreement of private respondent Dolefil. Furthermore, petitioners failed to present any evidence to prove their allegation that private respondent AMCOOP is a labor-only contractor. The Sworn Statement of the former employees of private respondent Dolefil cannot be given credence because these employees were its former employees and were all dismissed for a cause, hence, they have an axe to grind against private respondent Dolefil. Also, these employees have long been separated from private respondent Dolefil and are not connected with private respondent AMCOOP, thus, they have no personal knowledge of the affairs of private respondent Dolefil.[26]

Private respondent Dolefil also presented a Joint Affidavit[27] of Jonathan Cagas and Glaine Enonaria, the superintendents alluded to as having direct supervision over petitioners. In their Joint Affidavit, they denied supervising petitioners and stated that their tasks only involve supervising regular employees of private respondent Dolefil. They alleged that they do not control the manner by which petitioners perform their work. If at all, according to them, petitioners were only required to adhere to reasonable measures to maintain general peace and order in the workplace.

On May 11, 2011, the Labor Arbiter rendered a Decision[28] dismissing petitioners' complaint for lack of merit.

In due time, petitioners appealed[29] the adverse Decision to public respondent NLRC.

On June 29, 2012, public respondent NLRC issued a Resolution[30] which found in favor of the petitioners and reversed the ruling of the Labor Arbiter. Public respondent NLRC ruled that private respondent AMCOOP is a labor-only contractor because it does not have sufficient tools and equipment necessary in the performance of the contracted jobs with private respondent Dolefil. Furthermore, the works performed by petitioners were directly related to the main line of business of private respondent Dolefil. Public respondent NLRC also ruled that private respondents failed to prove that petitioners had indeed intentionally abandoned their work because mere absence or failure to work is not tantamount to abandonment. It held that in fact, the theory of abandonment is inconsistent with the fact that petitioners filed a complaint for regularization. Thus, according to public respondent NLRC, the Labor Arbiter committed serious error in declaring that petitioners voluntarily severed their employment. Public respondent NLRC concluded that given these, since there is neither dismissal nor abandonment of work to speak of, the employer-employee relationship of petitioners with private respondents should be maintained and petitioners should be reinstated back to their former positions without loss of seniority rights. The dispositive portion of the Resolution reads:

WHEREFORE, the appeal is hereby GRANTED. The assailed decision is hereby REVERSED and SET ASIDE, and a new one is entered declaring that AMCOOP as labor-only contractor and complainants as regular employees of DOLEFIL.

Accordingly, respondent DOLE PHILIPPINES, INC. and/or its authorized representative are hereby ORDERED to reinstate complainants to their previous position without loss of seniority rights but without BACKWAGES.

SO ORDERED.[31]

Private respondent Dolefil thereafter filed a Motion for Reconsideration[32] to the above Resolution while petitioners filed a Motion for Partial Reconsideration.[33]

On October 31, 2012, public respondent NLRC rendered the assailed Resolution[34] which granted private respondent Dolefil's Motion for Reconsideration and reversed its previous Resolution, the dispositive portion of which reads:

WHEREFORE, the Motion for Reconsideration is hereby GRANTED and Our Resolution dated 29 June 2012 is RECONSIDERED and SET ASIDE.

Accordingly, the Labor Arbiter's 11 May 2011 Decision is hereby AFFIRMED.

SO ORDERED.[35]

Aggrieved, on January 21, 2013, petitioners filed the present Petition.[36]

The Issues

I.

PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AND SERIOUSLY ERRED IN CHANGING ITS EARLIER RESOLUTION AND ADOPTING THE FINDINGS OF THE LABOR ARBITER THAT THE RESPONDENTS[37] WERE NOT ENGAGED IN LABOR-ONLY CONTRACTING AND PETITIONERS' CASE MUST BE DISMISSED FOR LACK OF MERIT (AND)

II.

PUBLIC RESPONDENT NLRC ACTED WITH GRAVE ABUSE OF DISCRETION AND SERIOUSLY ERRED IN DISMISSING PETITIONERS' CLAIM FOR 13TH MONTH PAY.[38]

On April 23, 2013, private respondent AMCOOP filed its Comment[39] to the Petition, while private respondent Dolefil filed its Comment[40] on April 29, 2013.

On April 30, 2013 and May 28, 2013, petitioners filed their respective Replies[41] to the Comments of private respondents.

Per the Court's Minute Resolution[42] dated July 16, 2013, the parties were required to submit their respective Memoranda within fifteen days from notice. All the parties complied[43] by filing their respective Memoranda. Consequently, the case was declared submitted for decision.[44]

This Court's Ruling

At the core of the present controversy is which, between private respondent AMCOOP and private respondent Dolefil, is the employer of petitioners.

Based on the arguments raised in the Petition, petitioners posed the following issues for the Court's consideration: 1) whether or not it was private respondent AMCOOP which exercised control over the performance of petitioners' works; 2) whether or not private respondent AMCOOP is a labor-only contractor; and 3) whether or not petitioners are entitled to the payment of 13[th] month pay and other money claims.

The Petition is bereft of merit.

Petitioners claim that public respondent NLRC committed grave abuse of discretion in ruling that it is private respondent AMCOOP, and not private respondent Dolefil, which exercised control over the manner and method by which they performed their work as shown by the Sworn Statement executed by former employees of private respondent Dolefil. They claim that petitioner Marteja was under one Glen Enonaria and Carmelo Alanza, the supervisor and manager, respectively, of private respondent Dolefil, while petitioner Belen was under Jonathan Cagas and Rolando Demetillo, also supervisor and manager of private respondent Dolefil.[45]

The Court is not persuaded.

In determining the presence or absence of an employer-employee relationship, the Court has consistently looked for the following incidents, to wit: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee on the means and methods by which the work is accomplished. The last element, the so-called "control test", is the most important element.[46] Indeed, the power of the employer to control the work of the employee is considered the most significant determinant of the existence of an employer-employee relationship. It is premised on whether the person for whom the services are performed reserves the right to control both the end achieved and the manner and means used to achieve that end. Although no particular form of evidence is required to prove the existence of an employer-employee relationship, any evidence submitted must nonetheless rest on substantial evidence.[47]

In this case, however, petitioners' sole evidence, which is the Sworn Statement of the former employees of private respondent Dolefil, does not prove they are employees of private respondent Dolefil because this was effectively denied by Jonathan Cagas and Glaine Enonaria, their alleged supervisors. In the Joint Affidavit[48] they executed, they denied supervising petitioners and stated that their tasks only involve supervising regular employees of private respondent Dolefil. Indeed, while it suffices that the power of control must be shown to exist, there must still be a showing of some evidence of such power,[49] which was not established here by

petitioners.

On the contrary, petitioners never denied both in their Reply to Position Paper before the Labor Arbiter, in their present Petition for Certiorari and in their Reply to the Comments of private respondents before the Court, that it was indeed private respondent AMCOOP which hired them. In fact, as admitted by petitioners themselves, it was private respondent AMCOOP which “placed” them with private respondent Dolefil. Petitioners’ Position Paper with the Labor Arbiter stated:

Complainant Marites Marteja started working with respondent Dole Philippines, Inc. under its Agri Logistic Department, Agriculture Division on May 6, 2003. She was placed therein by respondent Adventurer’s Multi-Purpose Cooperative which is managed by respondent Rodolfo Cruz. She was assigned as packer at Station 1, Packing Plant.

Complainant Melicia Belen started working with respondent Dole Philippines, Inc. under its Harvesting Department, Agriculture Division on August 9, 2003. She was placed therein by respondent Adventurer’s Multi-Purpose Cooperative which is managed by respondent Rodolfo Cruz. She was assigned as harvester at the Plantation Area.[50] (Emphasis supplied)

Also, petitioners did not deny that it was also private respondent AMCOOP which paid their wages, despite the fact that this was repetitively asserted to by private respondent AMCOOP,[51] and found to be so by the Labor Arbiter[52] and public respondent NLRC.[53] Furthermore, petitioners also never denied that it was private respondent AMCOOP which had the power to discipline and dismiss them. To be sure, petitioner Marteja addressed her resignation letter dated June 9, 2010 to private respondent AMCOOP. This, as properly pointed out by private respondent Dolefil, in fact indicates that petitioner Marteja acknowledged that her employer is private respondent AMCOOP, which estops her from claiming that her employer is private respondent Dolefil.[54] The resignation letter reads in full:

June 9, 2010

MR. RODOLFO CURPOZ (sic)
Manager
Adventare’s (sic) Multi-Purpose Cooperative
Munez Subd, Cannery, Polomok,
South Cotabato

Greetings

I would like to tender my resignation as an employee in your good office. I was (sic) started (sic) August 2003 ended September 2009.

However,(.) due to my small business that I must handle it personally,(.) I am forced to resigned (sic).

Furthermore, I would say thank you for giving me an opportunity to be (sic) part of your cooperative.

Hoping (sic) your kind consideration.

Thank you and more power.

Respectfully yours,

(Sgd)

MARITES MARTEJA[55]

The Court cannot sustain the asseveration of petitioners that petitioner Marteja was allegedly “duped” into

signing the resignation letter because it was written in the English language, a language she cannot understand, and it was allegedly “crafted impeccably and in fine grammar.”[56] For one, as argued by private respondent AMCOOP, petitioners failed to name the person who allegedly misled petitioner Marteja into signing the resignation letter.[57] For another, petitioners failed to state with particularity the reason or consideration perhaps which impelled petitioner Marteja to sign the resignation letter. Indeed, in all averments of fraud or mistake,[58] the circumstances constituting fraud or mistake must be stated with particularity.[59] Moreover, the resignation letter contained expressions of gratitude which contradicted petitioners’ allegation that petitioner Marteja was tricked into signing the same. In the case of *Auza, Jr. v. Mol Philippines, Inc.*,[60] the Supreme Court stated:

Contrary to their assertions, petitioners were not lured by any misrepresentation by respondents. Instead, they themselves were convinced that their separation was inevitable and for this, they voluntarily resigned. As aptly observed by the CA, no element of force can be deduced from their letters of resignation as the same even contained expressions of gratitude and thus contradicting their allegations that same were prepared by their employer. In *Globe Telecom v. Crisologo*, we held that allegations of coercion are belied by words of gratitude coming from an employee who is just forced to resign. (Emphasis supplied)

Given the foregoing, it cannot be denied that it is private respondent AMCOOP, and not private respondent Dolefil, which exercised control over the performance of petitioners’ works. Petitioners are indeed employees of private respondent AMCOOP.

Petitioners next contend that public respondent NLRC committed grave abuse of discretion in finding that private respondent AMCOOP is not a labor-only contractor but a legitimate job contractor. Petitioners claim that in the performance of their work, the tools and equipment they used were all provided by private respondent Dolefil.[61]

The Court does not agree.

Article 106 of the Labor Code provides:

ART. 106. Contractor or 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 provisions 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.

The Secretary of Labor may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

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 person 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.

Department Order No. 18-02 (Series of 2002)[62] distinguished between legitimate job contracting and labor-only contracting:

Section 5. 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 subcontractor 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 substantial 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) [T]he contractor does not exercise the right to control over the performance of the work of the contractual employee.

The foregoing provisions shall be without prejudice to the application of Article 248 (c) of the Labor Code, as amended.

"Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools, 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.

The "right to control" shall refer to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end. (Emphasis supplied)

In this case, it has been established earlier that private respondent AMCOOP has the right to control petitioners. Moreover, private respondent AMCOOP has a substantial capital and investment as can be gleaned from the Order^[63] dated July 3, 2007 issued by DOLE Regional Director Ma. Gloria A. Tango which stated that private respondent AMCOOP is a legitimate job contractor which has a substantial capitalization of P4,576,170.92 and total assets of P9,932,862.34^[64] as of 2007. According to the Order, private respondent AMCOOP also carries on various independent legitimate businesses which have been viable and profitable during the past years. It also undertakes to work on its own account under its own responsibility according to its own manner and method free from the control and direction of the employer or principal in all matters connected with the performance of the work except as to the results thereof. Private respondent AMCOOP also provides services not only to private respondent Dolefil but also to other establishments on South Cotabato, Sarangani and General Santos area. This fact distinguishes this case from the case of *Dole Philippines, Inc. v. Medel Esteva, et.al.*,^[65] cited by public respondent NLRC in its earlier Resolution dated June 29, 2012 which ruled that private respondent AMCOOP is a labor-only contractor. In that case, it was found *inter alia* that Dole Philippines was the only client of therein members of Cannery Multi-Purpose Cooperative (CAMPCO). Besides, in that case, the applicable rule is Section 9,^[66] Rule VIII, Book III of the Implementing Rules and Regulations of the Labor Code which has a different criterion as to what constitute labor-only contracting.^[67] Such rule has already been superseded^[68] by Department Order No. 18-02 (Series of 2002), the applicable rule in this case.^[69] The foregoing findings of the Regional Director were given credence by public respondent NLRC when it stated:

Simply stated, the factual findings of the DOLE Regional Director were based on evidence that the said office was able to gather first-hand. The DOLE Regional Director's factual findings must not be lightly brushed aside as it presents a more compelling reason for us to reverse our previous ruling and accordingly adopt the factual findings of FOLE Regional Director that AMCOOP is indeed a legitimate job contractor.^[70]

In fine, the Court agrees with public respondent NLRC that private respondent AMCOOP is a legitimate job contractor.

Given the foregoing, public respondent NLRC did not commit grave abuse of discretion in denying petitioners'

prayer for regularization of status with private respondent Dolefil because they are not employees of the latter. Consequently, they are also not entitled to the monetary claims prayed for from private respondent Dolefil. On this score, the Court quotes with approval the following findings of public respondent NLRC:

Accordingly, the complainants-appellants' prayer for reinstatement and regularization should be denied. Apart from the absence of an employer-employee relationship with DOLEFIL, record shows that complainant-appellant Belen Melecia left AMCOOP on 28 January 2009 while complainant-appellant Marites S. Marteja stopped reporting for work on 28 July 2009 and subsequently tendered resignation on 15[71] June 2010. Complainants-appellants never denied that they stopped reporting for duty on the above-mentioned dates. Neither did they explain why they stopped working. Verily, complainants-appellants' severance from AMCOOP was of their own volition by committing absence without leave (AWOL) and, with regard to complainant-appellant Marteja, by subsequently resigning from the cooperative.

All told, complainants-appellants cannot be considered as regular employees of DOLEFIL. Their complaint for regularization must fail for lack of merit. Consequently, their claims for backwages and damages must likewise fail considering that they were not illegally dismissed.

In the end, for failure to submit a single evidence to prove their claims, complainants-appellants' money claims for CBU and 13[th] month pay differentials must fall for lack of factual basis.

WHEREFORE, the Petition for Certiorari is hereby DENIED. The assailed Resolution dated October 31, 2012 of public respondent National Labor Relations Commission, 8[th] Division, Cagayan de Oro City (NLRC), is AFFIRMED.

SO ORDERED.

Lloren, J., Ch., and Contreras, JJ., concur.

[1] "Adventure's" or "Adventurer" in some parts of the rollos.

[2] In the assailed Resolution dated October 31, 2012, the case was entitled: "Marites S. Marteja and Melicia G. Belen, complainants-appellants v. Adventure's Multi-Purpose Coop (AMCOOP) and/or Rodolfo Corpuz & Dole Phils., Inc., Kevin Davis, respondents-appellees."

[3] The case was unloaded to the undersigned ponente as replacement of CA GR SP No. 05168-MIN which was consolidated with CA GR SP No. 05234-MIN per the Court Resolution dated December 16, 2014.

[4] Rollo, pp. 2-15.

[5] Rollo, pp. 36-43.

[6] Rollo, p. 162.

[7] Rollo, p. 95.

[8] Rollo, p. 59.

[9] Rollo, pp. 49-50.

[10] Rollo, pp. 50-54.

[11] Rollo, p. 56.

[12] Rollo, pp. 56-57.

[13] Rollo, pp. 49-55.

[14] Rollo, pp. 181-182.

[15] Rollo, pp. 163-164.

[16] Rollo, p. 69.

[17] Rollo, p. 184.

[18] Rollo, pp. 164-165.

[19] Article 23. Type and Categories of Cooperatives. – (1) Types of Cooperatives – Cooperatives may fall under any of the following types:

xxx xxx xxx

"(t) Workers Cooperative is one organized by workers, including the self-employed, who are at same time the members and owners of the enterprise. Its principal purpose is to provide employment and business opportunities to its members and manage it in accordance with cooperative principles; and

xxx xxx xxx

[20] AN ACT AMENDING THE COOPERATIVE CODE OF THE PHILIPPINES TO BE KNOWN AS THE "PHILIPPINE COOPERATIVE CODE OF 2008", February 17, 1990.

[21] Rollo, p. 70.

[22] Rollo, pp. 80-88.

[23] Entitled: In Re: Investigation Conducted Among the Cooperatives Organized and Existing in Polomok, South Cotabato Partuclarly at the Dole Philippines, Inc. Relative to Labor-Only Contracting Activities.

[24] Rollo, pp. 83; 85.

[25] Rollo, pp. 178-179.

[26] Rollo, pp. 59-65.

[27] Rollo, p. 89.

[28] Rollo, pp. 95-103.

[29] Rollo, pp. 104-109.

[30] Rollo, pp. 16-35.

[31] Rollo, p. 35.

[32] Rollo, p. 36

[33] Rollo, pp. 46-55.

[34] Rollo, pp. 36-43.

[35] NLRC Commissioner Proculo T. Sarmen, however, submitted a Dissenting Opinion, Rollo, p. 44-45.

[36] Rollo, pp. 2-15.

- [37] Should be “XXX RESPONDENT AMCOOP WAS XXX”.
- [38] Rollo, pp. 7-8.
- [39] Rollo, pp. 113-131.
- [40] Rollo, pp. 137-161.
- [41] Rollo, pp. 219-224; 229-235.
- [42] Rollo, p. 236.
- [43] Rollo, pp. 242-250; 251-282; 283-306.
- [44] Rollo, p. 307.
- [45] Rollo, pp. 9-10
- [46] *Jao v. BCC Products Sales, Inc.*, G.R. No. 163700, April 18, 2012.
- [47] *Legend Hotel (Manila) v. Realuyo*, G.R. No. 153511, July 18, 2012.
- [48] Rollo, p. 89
- [49] *Traveno v. Bobongon Banana Growers Multi-Purpose Cooperative*, G.R. No. 164205, September 3, 2009.
- [50] Rollo, pp. 49-50.
- [51] Rollo, pp. 178; 127.
- [52] Rollo, p. 101.
- [53] Rollo, p. 41.
- [54] Rollo, pp. 153-154.
- [55] Rollo, p. 69.
- [56] Rollo, pp. 10-11.
- [57] Rollo, p. 117.
- [58] Rules of Court, Rule 8, Section 5. Fraud, mistake, condition of the mind.—In all averments of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity. Malice, intent, knowledge or other condition of the mind of a person may be averred generally.
- [59] *Canete v. Genuino Ice Company, Inc.*, G.R. No. 154080, January 22, 2008. Note that provisions of the Rules of Court apply suppletorily in labor cases. Rule 1, Section 3 of the 2011 NLRC Rules of Procedure reads: “SECTION 3. SUPPLETORY APPLICATION OF THE RULES OF COURT. - In the absence of any applicable provision in these Rules, and in order to effectuate the objectives of the Labor Code, the pertinent provisions of the Rules of Court of the Philippines may, in the interest of expeditious dispensation of labor justice and whenever practicable and convenient, be applied by analogy or in a suppletory character and effect.”
- [60] G.R. No. 175481, November 21, 2012.
- [61] Rollo, p. 10.
- [62] Rules Implementing Articles 106-109 of the Labor Code, As Amended, February 21, 2002 issued by then

DOLE Secretary Patricia A. Sto. Tomas.

[63] Rollo, pp. 80-88.

[64] Rollo, pp. 83; 85.

[65] G.R. No. 161115, November 30, 2006

[66] Section 9. Labor-only contracting. — (a) Any person who undertakes to supply workers to an employer shall be deemed to be engaged in labor-only contracting where such person:

(1) Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and

(2) The workers recruited and placed by such person are performing activities which are directly related to the principal business or operations of the employer in which workers are habitually employed.

(b) Labor-only contracting as defined herein is hereby prohibited and the person acting as contractor shall be considered merely as an agent or intermediary 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.

(c) For cases not falling under this Rule, the Secretary of Labor and Employment shall determine through appropriate orders whether or not the contracting out of labor is permissible in the light of the circumstances of each case and after considering the operating needs of the employer and the rights of the workers involved. In such case, he may prescribe conditions and restrictions to insure the protection and welfare of the workers. (Emphasis supplied)

[67] According to that case, Section 9, Rule VIII, Book III of the Implementing Rules and Regulations is the applicable provision in force since 1976 and prior to its amendment by DOLE Department Order No. 10 (Series of 1997). The concerned Service Contract in that case between Dole Philippines, Inc. and CAMPCO was executed on August 17, 1993 and the complaint therein was filed on December 19, 1996.

[68] Note that Section 9, Rule VIII, Book III, Implementing Rules and Regulations of the Labor Code was amended by Department Order No. 10 (Series of 1997). The latter, however, was revoked by Department Order No. 3 (Series of 2001). See *Dole Philippines, Inc. v. Esteva*, G.R. No. 161115, November 30, 2006. Subsequently, the Secretary Patricia A. Sto Tomas of DOLE issued Department Order No. 18-02 (Series of 2002) which superseded all rules and regulations inconsistent with the provisions thereof. See Section 20. Supersession. All rules and regulations issued by the Secretary of Labor and Employment inconsistent with the provisions of this Rule are hereby superseded. Contracting or subcontracting arrangements in the construction industry, under the licensing coverage of the PCAB and shall not include shipbuilding and ship repairing works, however, shall continue to be governed by Department Order No. 19, series of 1993. See also *Superior Packaging Corporation v. Balagsa*, G.R. No. 178909, October 10, 2012.

[69] Note further that Department Order No. 18-02 (Series of 2002) has been amended by Department Order No. 18-A (Series of 2011) issued by DOLE Secretary Rosalinda Baldoz on November 14, 2011.

[70] Rollo, p. 40.

[71] Should be “9 June 2010” as stated in the resignation letter of petitioner Marteja. See rollo, p. 69.

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