

PILIPINAS SHELL PETROLEUM CORPORATION, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND CLARITA T. CAMACHO, RESPONDENTS.

G.R. No. 104658. April 07, 1993

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

Was the hydro-pressure test of the underground storage tank in private respondent Clarita T. Camacho's gasoline station conducted by an independent contractor or not? A negative answer will make petitioner Pilipinas Shell Petroleum Corporation (Shell, for brevity) liable for the said independent contractor's acts or omissions; otherwise, no. This is the issue that this Court is called upon to resolve in this case.

The facts are as follows:

Private respondent Clarita T. Camacho (private respondent for short) was the operator of a gasoline station in Naguilian Road, Baguio City, wherein she sells petitioner Shell's petroleum products. Sometime in April 1983, private respondent requested petitioner to conduct a hydro-pressure test on the underground storage tanks of the said station in order to determine whether or not the sales losses she was incurring for the past several months were due to leakages therein. Petitioner acceded to the said request and on April 27, 1983, one Jesus "Jessie" Feliciano together with other workers, came to private respondent's station with a Job Order from petitioner to perform the hydro-pressure test.

On the same day, Feliciano and his men drained the underground storage tank which was to be tested of its remaining gasoline. After which, they filled the tank with water through a water hose from the deposit tank of private respondent. Then, after requesting one of private respondent's gasoline boys to shut off the water when the tank was filled, Feliciano and his men left. At around 2:00 a.m. the following day, private respondent saw that the water had reached the lip of the pipe of the underground storage tank and so, she shut off the water faucet.

At around 5:30 a.m., private respondent's husband opened the station and started selling gasoline. But at about 6:00 a.m., the customers who had bought gasoline returned to the station complaining that their vehicles stalled because there was water in the gasoline that they bought. On account of this, private respondent was constrained to replace the gasoline sold to the said customers. However, a certain Eduardo Villanueva, one of the customers, filed a complaint with the police against private respondent for selling the adulterated gasoline. In addition, he caused the incident to be published in two local newspapers.

Feliciano, who arrived later that morning, did not know what caused the water pollution of the gasoline in the adjacent storage tank. So he called up Nick Manalo, Superintendent of Shell's Poro Point Installation at San Fernando, La Union, and referred the matter to the latter. Manalo went up to Baguio in the afternoon to investigate. Thereafter, he and Feliciano again filled with water the underground storage tank undergoing hydro-pressure test whereat they noticed that the water was transferring to the other tanks from whence came the gasoline being sold. Manalo asked permission from Shell's Manila Office to excavate the underground pipes of

the station. Upon being granted permission to do so, Feliciano and his men began excavating the driveway of private respondent's station in order to expose the underground pipeline. The task was continued by one Daniel "Danny" Pascua who replaced Feliciano. Pascua removed the corroded pipeline and installed new independent vent pipe for each storage tank.

Meanwhile, petitioner undertook to settle the criminal complaint filed by Villanueva. Subsequently, Villanueva filed an Affidavit of Desistance,[1] declaring, inter alia -

"THAT, after careful evaluation of the surrounding circumstances, especially the explanation of the representatives of SHELL Phils., that the gasoline tanks of Mrs. Camacho were subject to Hydro test, in such a way that water was used for the said test, I believe that she may not have had anything to do with the filling of water in the tank of my car;

x x x x x x x x

THAT, said representatives of SHELL Phils. have interceded for and in behalf of Mrs. Camacho and have fully satisfied my claim against her.

THAT, in view of all the foregoing I do not intend to prosecute the case and I am therefore asking for the dismissal of the case against Mrs. Camacho."

Thereafter, private respondent demanded from petitioner the payment of damages in the amount of P10,000.00. Petitioner, instead, offered private respondent additional credit line and other beneficial terms, which offer was, however, rejected.

Subsequently, or on October 12, 1983, private respondent filed before the trial court a complaint for damages against petitioner due to the latter's alleged negligence in the conduct of the hydro-pressure test in her gasoline station. For its part, petitioner denied liability because, according to it, the hydro-pressure test on the underground storage tanks was conducted by an independent contractor.

The trial court dismissed private respondent's complaint for damages for the reason that:

"The hydro-pressure test which brought about the incident was conducted by Jesus Feliciano, who was neither an employee nor agent nor representative of the defendant. Jesus Feliciano is responsible for his own acts and omissions. He alone was in control of the Manner of how he is to undertake the hydro-pressure test.

Considering that the conduct of said hydro-pressure test was under the sole and exclusive control and supervision of Jesus Feliciano, the overflow with water causing the same to sip into the adjoining tank cannot be attributed to the fault or negligence of defendant."[2]

From the adverse decision of the trial court, private respondent appealed to the Court of Appeals which court reversed the decision of the trial court. Thus,

"PREMISES CONSIDERED, the decision being appealed from is hereby SET ASIDE and, in lieu thereof, another rendered ordering defendant to pay plaintiff:

1. P100,000.00 as moral damages;
2. P2,639.25 and P15,000.00 representing the actual losses suffered by plaintiff as a result of the water pollution of the gasoline.

No costs.

SO ORDERED."[3]

Petitioner moved to have the above decision reconsidered but the same was denied in a Resolution dated March 9, 1992. Hence, this recourse.

As stated at the very outset, the pivotal issue in this case is whether or not petitioner should be held accountable for the damage to private respondent due to the hydro-pressure test conducted by Jesus Feliciano.

It is a well-entrenched rule that an employer-employee relationship must exist before an employer may be held liable for the negligence of his employee. It is likewise firmly settled that the existence or non-existence of the employer-employee relationship is commonly to be determined by examination of certain factors or aspects of that relationship. These include: (a) the manner of selection and engagement of the putative employee; (b) the mode of payment of wages; (c) the presence or absence of a power to control the putative employee's conduct,[4] although the latter is the most important element.[5]

In this case, respondent Court of Appeals held petitioner liable for the damage caused to private respondent as a result of the hydro-pressure test conducted by Jesus Feliciano due to the following circumstances:[6]

1. Feliciano was hired by petitioner;
2. He received his instructions from the Field Engineer of petitioner, Mr. Roberto Mitra;
3. While he was at private respondent's service station, he also received instructions from Nick Manalo, petitioner's Poro Point Depot Superintendent;
4. Instructions from petitioner's Manila Office were also relayed to him while he was at the job site at Baguio City;
5. His work was under the constant supervision of petitioner's engineer;
6. Before he could complete the work, he was instructed by Mr. Manalo, petitioner's Superintendent, to discontinue the same and it was turned over to Daniel Pascua, who was likewise hired by petitioner.

Based on the foregoing, respondent Court of Appeals concluded that Feliciano was not an independent contractor but was under the control and supervision of petitioner in the performance of the hydro-pressure test, hence, it held petitioner liable for the former's acts and omissions.

We are not in accord with the above finding of respondent Court of Appeals. As aptly held by the trial court, petitioner did not exercise control and supervision over Feliciano with regard to the manner in which he conducted the hydro-pressure test. All that petitioner did, through its Field Engineer, Roberto Mitra, was relay to Feliciano the request of private respondent for a hydro-pressure test, to determine any possible leakages in the storage tanks in her gasoline station. The mere hiring of Feliciano by petitioner for that particular task is not the form of control and supervision contemplated by law which may be the basis for establishing an employer-employee relationship between petitioner and Feliciano. The fact that there was no such control is further amplified by the absence of any Shell representative in the job site at the time when the test was conducted. Roberto Mitra was never there. Only Feliciano and his men were.

True, it was petitioner who sent Feliciano to private respondent's gasoline station to conduct the hydro-pressure test as per the request of private respondent herself. But this single act did not automatically make Feliciano an employee of petitioner. As discussed earlier, more than mere hiring is required. It must further be established that petitioner is the one who is paying Feliciano's salary on a regular basis; that it has the power to dismiss said employee, and more importantly, that petitioner has control and supervision over the work of Feliciano. The last requisite was sorely missing in the instant case.

A careful perusal of the records will lead to the conclusion that Feliciano is an independent contractor. Section 8 of Rule VIII, Book III of the Omnibus Rules Implementing the Labor Code provides:

"Sec. 8. Job contracting. - There is job contracting permissible under the Code if the following conditions are met:

(1) The contractor 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

(2) The contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business."

Feliciano is independently maintaining a business under a duly registered business name, "JFS Repair and Maintenance Service," and is duly registered with the Bureau of Domestic Trade.[7] He does not enjoy a fixed salary but instead charges a lump sum consideration for every piece of work he accomplishes.[8] If he is not able to finish his work, he does not get paid, as what happened in this case.[9] Further, Feliciano utilizes his own tools and equipment and has a complement of workers. Neither is he required to work on a regular basis. Instead, he merely awaits calls from clients such as petitioner whenever repairs and maintenance services are requested. Moreover, Feliciano does not exclusively service petitioner because he can accept other business but not from other oil companies.[10] All these are the hallmarks of an independent contractor.

Being an independent contractor, Feliciano is responsible for his own acts and omissions. As he alone was in control over the manner of how he was to undertake the hydro-pressure test, he alone must bear the consequences of his negligence, if any, in the conduct of the same.

Anent the issue of damages, the same has been rendered moot by the failure of private respondent to establish an employer-employee relationship between petitioner and Feliciano. Absent said relationship, petitioner cannot be held liable for the acts and omissions of the independent contractor, Feliciano.

WHEREFORE, premises considered, the appealed decision of respondent Court of Appeals is hereby SET ASIDE and the decision of the trial court REINSTATED. Without pronouncement as to costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Nocon, JJ., concur.

[1] Rollo, p. 63.

[2] Decision, "Clarita T. Camacho vs. Pilipinas Shell Petroleum Corporation," Civil Case No. 83-20735, December 17, 1985, Judge Bernardo P. Pardo; Rollo, p. 94.

[3] Penned by Justice Jorge S. Imperial; concurred in by Justices Manuel C. Herrera and Arturo B. Buena; Rollo, p. 53.

[4] *Hijos de F. Escaño, Inc. vs. NLRC*, 201 SCRA 63 (1991).

[5] *Besa vs. Trajano*, 146 SCRA 501 (1986).

[6] *Supra*, note 4 at p. 50.

[7] Exhibit "3", Original Records, p. 258; TSN, February 7, 1985, pp. 24-26.

[8] Ibid., p. 31.

[9] TSN, March 28, 1985, pp. 30-31.

[10] TSN, February 7, 1985, pp. 24-29.

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