

**LAPANDAY AGRICULTURAL DEVELOPMENT CORPORATION,
PETITIONER, VS. THE HONORABLE COURT OF APPEALS (FORMER
EIGHTH DIVISION) AND COMMANDO SECURITY SERVICE AGENCY,
INC., RESPONDENTS.**

G.R. No. 112139. January 31, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Before us is a Petition for Review on Certiorari of the decision[1] of the Court of Appeals[2] in CA-G.R. CV No. 33893 entitled COMMANDO SECURITY SERVICE AGENCY, INCORPORATED vs. LAPANDAY AGRICULTURAL DEVELOPMENT CORPORATION which affirmed the decision[3] of the Regional Trial Court, 11th Judicial Region, Branch 9, Davao City in Civil Case No. 19203-88.

The pertinent facts as found by the Court of Appeals are as follows:

"The evidence shows that in June 1986, plaintiff Commando Security Service Agency, Inc., and defendant Lapanday Agricultural Development Corporation entered into a Guard Service Contract. Plaintiff provided security guards in defendant's banana plantation. The contract called for the payment to a guard of P754.28 on a daily 8-hour basis and an additional P565.72 for a four hour overtime while the shift-in-charge was to be paid P811.40 on a daily 8-hour basis and P808.60 for the 4-hour overtime.

Wage Orders increasing the minimum wage in 1983 were complied with by the defendant. On June 16, 1984, Wage Order No. 5 was promulgated directing an increase of P3.00 per day on the minimum wage of workers in the private sector and a P5.00 increase on the ECOLA. This was followed on November 1, 1984 by Wage Order No. 6 which further increased said minimum wage by P3.00 on the ECOLA. Both Wage Orders contain the following provision:

"In the case of contract for construction projects and for security, janitorial and similar services, the increase in the minimum wage and allowances rates of the workers shall be borne by the principal or client of the construction/service contractor and the contracts shall be deemed amended accordingly, subject to the provisions of Sec. 3 (b) of this order" (Sec. 6 and Sec. 9, Wage Orders No. 5 and 6, respectively)."

Plaintiff demanded that its Guard Service Contract with defendant be upgraded in compliance with Wage Order Nos. 5 and 6. Defendant refused. Their Contract expired on June 6, 1986 without the rate adjustment called for Wage Order Nos. 5 and 6 being implemented. By the time of the filing of plaintiff's Complaint, the rate adjustment payable by defendant amounted to P462,346.25. Defendant opposed the Complaint by raising the following defenses: (1) the rate adjustment is the obligation of the plaintiff as employer of the security guards; (2) assuming its liability, the sum it should pay is less in amount; and (3) the Wage Orders violate the impairment clause of the Constitution.

The trial court decided in favor of the plaintiff. It held:

x x x

"However, in order for the security agency to pay the security guards, the Wage Orders made specific provisions to amend existing contracts for security services by allowing the adjustment of the consideration paid by the principal to the security agency concerned. (Eagle Security Agency, Inc. vs. NLRC, Phil. Tuberculosis Society, Inc. vs. NLRC, et al., May 18, 1989).

The Wage Orders require the amendment of the contract as to the consideration to cover the service contractor's payment of the increases mandated. However, in the case at bar, the contract for security services had earlier been terminated without the corresponding amendment. Plaintiff now demands adjustment in the contract price as the same was deemed amended by Wage Order Nos. 5 and 6.

Before the plaintiff could pay the minimum wage as mandated by law, adjustments must be paid by the principal to the security agency concerned.

"Given these circumstances, if PTS pays the security guards, it cannot claim reimbursements from Eagle. But if its Eagle that pays them, the latter can claim reimbursement from PTS in lieu of an adjustment, considering that the contract had expired and had not been renewed. (Eagle Security Agency vs. NLRC and Phil. Tuberculosis Society, Inc. vs. NLRC, et al., 18 May 1989).

"As to the issue that Wage Orders Nos. 5 and 6 constitute impairments of contracts in violation of constitutional guarantees, the High Court ruled" The Supreme Court has rejected the impairment of contract argument in sustaining the validity and constitutionality of labor and social legislation like the Blue Sunday Law, compulsory coverage of private sector employees in the Social Security System, and the abolition of share tenancy enacted pursuant to the police power of the state (Eagle Security Agency, Inc. vs. National Labor Relation Commission and Phil. Tuberculosis Society, Inc. vs. NLRC, et al., May 18, 1989)."

Petitioner's motion for reconsideration was denied;^[4] hence this petition where petitioner cites the following grounds to support the instant petition for review:

"1.

THE WAGE INCREASES PROVIDED FOR IN THE WAGE ORDERS WERE DUE TO THE GUARDS AND NOT THE SECURITY AGENCY;

2.

A SECURITY AGENCY WHO DID NOT PAY WAGE INCREASE TO ITS GUARDS IT HAD ALREADY TERMINATED AND WITHOUT THEIR AUTHORIZATION CANNOT INSTITUTE AN ACTION TO RECOVER SAID WAGE INCREASE FOR ITS BENEFIT;

3.

IN THE ABSENCE OF BAD FAITH AND WITHOUT THE TRIAL COURT CORRECTLY ESTABLISHING THE BASIS FOR ATTORNEY'S FEES, THE SAME MAY NOT BE AWARDED.

4.

THE NATIONAL LABOR RELATIONS (SIC) IS THE PROPER FORUM THAT HAS THE JURISDICTION TO RESOLVE THE ISSUE OF WHETHER OR NOT THE PETITIONER IS LIABLE TO PAY THE PRIVATE RESPONDENT THE WAGE AND ALLOWANCE INCREASES MANDATED UNDER WAGE ORDER NOS. 5 AND 6." ^[5]

Reiterating its position below, petitioner asserts that private respondent has no factual and legal basis to collect the benefits under subject Wage Order Nos. 5 and 6 intended for the security guards without the authorization of the security guards concerned. Inasmuch as the services of the forty-two (42) security guards were already terminated at the time the complaint was filed on August 15, 1988, private respondent's complaint partakes of the nature of

an action for recovery of what was supposedly due the guards under said Wage Orders, amounts that they claim were never paid by private respondent and therefore not collectible by the latter from the petitioner. Petitioner also assails the award of attorney's fees in the amount of P115,585.31 or 25% of the total adjustment claim of P462,341.25 for lack of basis and for being unconscionable.

Moreover, petitioner submits that it is the National Labor Relations Commission (NLRC) and not the civil courts that has jurisdiction to resolve the issue involved in this case for it refers to the enforcement of wage adjustment and other benefits due to private respondent's security guards mandated under Wage Order Nos. 5 and 6. Considering that the RTC has no jurisdiction, its decision is without force and effect.[6]

On the other hand, private respondent contends that the basis of its action against petitioner-appellant is the enforcement of the Guard Service Contract entered into by them, which is deemed amended by Section 6 of Wage Order No. 5 and Section 9 of Wage Order No. 6; that pursuant to their amended Guard Service Contract, the increases/adjustments in wages and ECOLA are due to private respondent and not to the security guards who are not parties to the said contract. It is therefore immaterial whether or not private respondent paid its security guards their wages as adjusted by said Wage Orders and that since the forty-two (42) security guards are not parties to the Guard Service Contract, there is no need for them to authorize the filing of, or be joined in, this suit.

As regards the award to private respondent of the amount of P115,585.31 as attorney's fees, private respondent maintains that there is enough evidence and/or basis for the grant thereof, considering that the adamant attitude of the petitioner (in implementing the questioned Wage Orders) compelled the herein private respondent, to litigate in court. Furthermore, since the legal fee payable by private respondent to its counsel is essentially on contingent basis, the amount of P115,583.31 granted by the trial court which is 25% of the total claim is not unconscionable.

As regards the jurisdiction of the RTC, private respondent alleges that the suit filed before the trial court is for the purpose of securing the upgrading of the Guard Service Contract entered into by herein petitioner and private respondent in June 1983. The enforcement of this written contract does not fall under the jurisdiction of the NLRC because the money claims involved therein did not arise from employer-employee relations between the parties and is intrinsically a civil dispute. Thus, jurisdiction lies with the regular courts. Private respondent further contends that petitioner is estopped or barred from raising the question of jurisdiction for the first time before the Supreme Court after having voluntarily submitted to the jurisdiction of the regular courts below and having lost its case therein.[7]

We resolve to grant the petition.

We resolve first the issue of jurisdiction. We agree with the respondent that the RTC has jurisdiction over the subject matter of the present case. It is well settled in law and jurisprudence that where no employer-employee relationship exists between the parties and no issue is involved which may be resolved by reference to the Labor Code, other labor statutes or any collective bargaining agreement, it is the Regional Trial Court that has jurisdiction.[8] In its complaint, private respondent is not seeking any relief under the Labor Code but seeks payment of a sum of money and damages on account of petitioner's alleged breach of its obligation under their Guard Service Contract. The action is within the realm of civil law hence jurisdiction over the case belongs to the regular courts.[9] While the resolution of the issue involves the application of labor laws, reference to the labor code was only for the determination of the solidary liability of the petitioner to the respondent where no employer-employee relation exists. Article 217 of the Labor Code as amended vests upon the labor arbiters exclusive original jurisdiction only over the following:

- Unfair labor practices;
- Termination disputes;

- f accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;
- Claims for actual, moral exemplary and other forms of damages arising from employer-employee relations;
- Cases arising from any violation of Article 264 of this Code, including questions involving legality of strikes and lockouts; and
- Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims, arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (P5,000.00) regardless of whether accompanied with a claim for reinstatement.

In all these cases, an employer-employee relationship is an indispensable jurisdictional requisite;^[10] and there is none in this case.

On the merits, the core issue involved in the present petition is whether or not petitioner is liable to the private respondent for the wage adjustments provided under Wage Order Nos. 5 and 6 and for attorney's fees.

Private respondent admits that there is no employer-employee relationship between it and the petitioner. The private respondent is an independent/job contractor^[11] who assigned security guards at the petitioner's premises for a stipulated amount per guard per month. The Contract of Security Services expressly stipulated that the security guards are employees of the Agency and not of the petitioner.^[12] Articles 106 and 107 of the Labor Code provides the rule governing the payment of wages of employees in the event that the contractor fails to pay such wages as follows:

"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.

x x x

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."

It will be seen from the above provisions that the principal (petitioner) and the contractor (respondent) are jointly and severally liable to the employees for their wages. This Court held in *Eagle Security, Inc. vs. NLRC*^[13] and *Spartan Security and Detective Agency, Inc. vs. NLRC*^[14] that the joint and several liability of the contractor and the principal is mandated by the Labor Code to assure compliance with the provisions therein including the minimum wage. The contractor is made liable by virtue of his status as direct employer. The principal, on the other hand, is made the indirect employer of the contractor's employees to secure payment of their wages should the contractor be unable to pay them.^[15] Even in the absence of an employer-employee relationship, the law itself establishes one between the principal and the employees of the agency for a limited purpose i.e. in order to ensure that the employees are paid the wages due them. In the above-mentioned cases, the solidary liability of the principal and contractor was held to apply to the aforementioned Wage Order Nos. 5 and 6.^[16] In ruling that under the Wage Orders, existing security guard services contracts are amended to allow adjustment of the

consideration in order to cover payment of mandated increases, and that the principal is ultimately liable for the said increases, this Court stated:

"The Wage Orders are explicit that payment of the increases are 'to be borne' by the principal or client. 'To be borne', however, does not mean that the principal, PTSI in this case, would directly pay the security guards the wage and allowance increases because there is no privity of contract between them. The security guards' contractual relationship is with their immediate employer, EAGLE. As an employer, EAGLE is tasked, among others, with the payment of their wages [See Article VII Sec. 3 of the Contract for Security Services, *supra* and *Bautista vs. Inciong*, G. R. No. 52824, March 16, 1988, 158 SCRA 665].

On the other hand, there existed a contractual agreement between PTSI and EAGLE wherein the former availed of the security services provided by the latter. In return, the security agency collects from its client payment for its security services. This payment covers the wages for the security guards and also expenses for their supervision and training, the guards bonds, firearms with ammunitions, uniforms and other equipments, accessories, tools, materials and supplies necessary for the maintenance of a security force.

Premises considered, the security guards' immediate recourse for the payment of the increases is with their direct employer, EAGLE. However, in order for the security agency to comply with the new wage and allowance rates it has to pay the security guards, the Wage Orders made specific provision to amend existing contracts for security services by allowing the adjustment of the consideration paid by the principal to the security agency concerned. What the Wage Orders require, therefore, is the amendment of the contracts as to the consideration to cover the service contractors' payment of the increases mandated. In the end, therefore, ultimate liability for the payment of the increases rests with the principal.

In view of the foregoing, the security guards should claim the amount of the increases from EAGLE. Under the Labor Code, in case the agency fails to pay them the amounts claimed, PTSI should be held solidarily liable with EAGLE [Articles 106, 107 and 109]. Should EAGLE pay, it can claim an adjustment from PTSI for an increase in consideration to cover the increases payable to the security guards." [17]

It is clear also from the foregoing that it is only when contractor pays the increases mandated that it can claim an adjustment from the principal to cover the increases payable to the security guards. The conclusion that the right of the contractor (as principal debtor) to recover from the principal as solidary co-debtor arises only if he has paid the amounts for which both of them are jointly and severally liable is in line with Article 1217 of the Civil Code which provides:

"Art. 1217. Payment made by one of the solidary debtors extinguishes the obligation. If two or more solidary debtors offer to pay, the creditor may choose which offer to accept.

He who made payment may claim from his codebtors only the share which corresponds to each, with interest for the payment already made. If the payment is made before the debt is due, no interest for the intervening period may be demanded. xxx"

Pursuant to the above provision, the right of reimbursement from a co-debtor is recognized in favor of the one who paid.

It will be seen that the liability of the petitioner to reimburse the respondent only arises if and when respondent actually pays its employees the increases granted by Wage Order Nos. 5 and 6. Payment, which means not only the delivery of money but also the performance, in any other manner, of the obligation, [18] is the operative fact which will entitle either of the solidary debtors to seek reimbursement for the share which corresponds to each of the debtors.

The records show that judgment was rendered by Labor Arbiter Newton R. Sancho holding both petitioner and

private respondent jointly and solidarily liable to the security guards in a Decision[19] dated October 17, 1986 (NLRC Case No. 2849-MC-XI-86).[20] However, it is not disputed that the private respondent has not actually paid the security guards the wage increases granted under the Wage Orders in question. Neither is it alleged that there is an extant claim for such wage adjustments from the security guards concerned, whose services have already been terminated by the contractor. Accordingly, private respondent has no cause of action against petitioner to recover the wage increases. Needless to stress, the increases in wages are intended for the benefit of the laborers and the contractor may not assert a claim against the principal for salary wage adjustments that it has not actually paid. Otherwise, as correctly put by the respondent, the contractor would be unduly enriching itself by recovering wage increases, for its own benefit.

Finally, considering that the private respondent has no cause of action against the petitioner, private respondent is not entitled to attorney's fees.

WHEREFORE, the petition is GRANTED. The decision of the Court of Appeals dated May 24, 1993 is REVERSED and SET ASIDE. The complaint of private respondent COMMANDO SECURITY SERVICE AGENCY, INC. is hereby DISMISSED.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Annex "D", Petition; Rollo, pp. 70-73.

[2] Former Eighth Division.

[3] Annex "C", Petition, Rollo, pp. 63-68.

[4] Annex "F", Petition, Rollo, p. 79.

[5] Supplemental Memorandum for Petitioner, p. 7; Rollo, at p. 207.

[6] Supplemental Memorandum for the Petitioner, pp. 7-11; Rollo, pp. 207-211.

[7] Respondent's Memorandum, pp. 3-15; Rollo, pp. 184-196.

[8] Manriquez vs. Court of Appeals, 232 SCRA 427.

[9] Dai-Chi Electronics Manufacturing Corp. vs. Villarama, Jr., 238 SCRA 267 at p. 270 [1994] .

[10] Philippine Airlines, Inc. vs. NLRC, 263 SCRA 638 at 654 [1996].

[11] § 8 of Rule VIII of the Implementing Rules of Book III of the Labor Code provides:

"There is job contracting permissible under the Code if the following conditions are met:

A.)

A contractor carries on an independent business and undertakes contract work on his own account, under his own responsibility, according to his own manner and method, free from 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.)

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

[12] 2. Obligations of the Agency:

h.)

The AGENCY agrees to hold the COMPANY free from any liability cause or causes of action claim or claims under the provisions of the Labor Code, Employees Compensation Act, Social Security Act or any other social legislations or laws that are now in effect or that may hereinafter be enacted which may be filed by any or all of the security guards who are assigned at the premises of the COMPANY, it being clearly understood that the said security guards are employees of the AGENCY and not of the COMPANY.

[13] 173 SCRA 479.

[14] 213 SCRA 528.

[15] Spartan Security and Detective Agency, Inc. vs. NLRC, Supra at p. 534 [1992]; Eagle Security Agency, Inc. vs. NLRC, Supra at p. 484[1989].

[16] Ibid.

[17] Ibid.

[18] Article 1232, Civil Code.

[19] [Rollo, pp. 211-214 the dispositive portion of which reads:

"WHEREFORE, decision is hereby rendered ordering Commando Security Services Agency to pay the money claim differentials that had already accrued to the complainants for the past three (3) years as regards overtime and night premium pay, 13th month pay and 5-day service incentive leave pay. On the other hand, demand for a free uniform is denied for being baseless.

Likewise, their claims for differentials under various wage orders are granted, with respondent LADECO jointly and solidarily liable therefor.

The award of 10% attorney's fees based on the totality of the award is warranted considering that respondents have compelled them to litigate what were already due them in the first place. This would have been obviated had they been fair and candid to complainants.

SO ORDERED."

[20] Records fail to disclose if the decision is already final and executory.

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