

**FILIPINAS SYNTHETIC FIBER CORPORATION (FILSYN), PETITIONER,
VS. NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER
VOLTAIRE A. BALITAAN, FELIPE LOTERTE AND DE LIMA TRADING
& GEN...**

G.R. No. 113347. June 14, 1996

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Filipinas Synthetic Fiber Corporation (FILSYN) assails the decision of the National Labor Relations Commission (NLRC) of 16 September 1993[1] upholding the ruling of the Labor Arbiter that there exists an employer-employee relationship between FILSYN and private respondent Felipe Loterte.[2]

On 4 April 1991 FILSYN, a domestic corporation engaged in the manufacture of polyester fiber, contracted with De Lima Trading and General Services (DE LIMA) for the performance of specific janitorial services at the former's plant in Brgy. Don Jose, Sta. Rosa, Laguna.[3] Pursuant to the agreement Felipe Loterte, among others, was deployed at FILSYN to take care of the plants and maintain general cleanliness around the premises.

On 24 February 1992 Loterte sued FILSYN and DE LIMA as alternative defendants[4] for illegal dismissal, underpayment of wages, non-payment of legal holiday pay, service incentive leave pay and 13th month pay alleging that he was first assigned to perform janitorial work at FILSYN in 1981 by the La Saga General Services; that the La Saga was changed to DE LIMA on August 1991; that when a movement to demand increased wages and 13th month pay arose among the workers on December 1991 he was accused by a certain Dodie La Flores of having posted in the bulletin board at FILSYN an article attributing to management a secret understanding to block the demand; and, for denying responsibility, his gate pass was unceremoniously cancelled on 6 February 1992 and he was subsequently dismissed.[5]

The Labor Arbiter ruled in favor of Loterte. He was classified as a regular employee on the ground that he performed tasks usually necessary or desirable in the main business of FILSYN for more than ten (10) years or since 1981 under the ruling in *Guarin v. NLRC*. [6] FILSYN was declared to be the real employer of Loterte and DE LIMA as a mere labor contractor.[7] Hence, FILSYN was adjudged liable for Loterte's reinstatement, payment of salary differentials and back wages from 6 February 1992 up to the date of judgment, in addition to his unpaid legal holiday pay, service incentive leave pay and 13th month pay in the total amount of P56,394.90.

FILSYN appealed to the NLRC contending that the application of the *Guarin* ruling was misplaced since the contractor in said case was not able to prove that it had substantial capital, hence the reason for its being declared as a labor-only contractor. In the case of DE LIMA, however, sufficient evidence existed consisting of its Certificate of Registration issued by the Securities & Exchange Commission (SEC) and Articles of Incorporation and By-Laws to prove that it had substantial capitalization, hence, could not be considered as a mere labor contractor.

The NLRC debunked the claim of FILSYN and affirmed the Labor Arbiter in finding DE LIMA as a labor-only contractor. When a motion for reconsideration proved futile, FILSYN filed the instant petition.

On 23 February 1994 a temporary restraining order to stay the execution of the NLRC decision was issued by the Court upon approval of a bond in the amount of P56,000.00 to be effective during the pendency of this petition.[8]

Petitioner contends that the NLRC committed grave abuse of discretion in holding DE LIMA as a labor-only contractor with no substantial capital or investment. Petitioner insists that the evidence[9] it presented shows DE LIMA to be a corporation duly registered with the SEC with substantial capitalization of P1,600,000.00, P400,000.00 of which is actually subscribed. Hence, DE LIMA cannot possibly be considered as without substantial capital. But, assuming *arguendo* that DE LIMA is without substantial capital or investment, petitioner contends that it cannot still be considered as the real employer of Loterte since his work is not necessary in the principal business of FILSYN which is the manufacture of polyester, and that present jurisprudence holds that the performance of janitorial services, although directly related to the principal business of the alleged employer, is nonetheless unnecessary since non-performance thereof will not cause production and company sales to suffer.[10]

In his Comment the Solicitor General agrees with petitioner that DE LIMA is not a labor-only contractor. However, while he concedes that no employer-employee relationship exists between FILSYN and Loterte, the Solicitor General opines that the former is still liable solidarily with DE LIMA, its contractor, for the satisfaction of the Labor Arbiter's awards in favor of Loterte as an indirect employer under Art. 106 of the Labor Code.[11]

In its Consolidated Reply FILSYN contends that Art. 106 of the Labor Code cited by the Solicitor General applies only in cases where there is failure to pay wages, not in cases where the employee was illegally dismissed, as in the case of Loterte.

We agree that there is sufficient evidence to show that private respondent DE LIMA is an independent job contractor, not a mere labor-only contractor. Under the Labor Code, two (2) elements must exist for a finding of labor-only contracting: (a) 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 (b) the workers recruited and placed by such persons are performing activities directly related to the principal business of such employer.[12]

These two (2) elements do not exist in the instant case. As pointed out by petitioner, private respondent DE LIMA is a going concern duly registered with the Securities and Exchange Commission with substantial capitalization of P1,600,000.00, P400,000.00 of which is actually subscribed.[13] Hence, it cannot be considered as engaged in labor-only contracting being a highly capitalized venture.[14] Moreover, while the janitorial services performed by Felipe Loterte pursuant to the agreement between FILSYN and DE LIMA may be considered directly related to the principal business of FILSYN which is the manufacture of polyester fiber, nevertheless, they are not necessary in its operation.[15] On the contrary, they are merely incidental thereto, as opposed to being integral, without which production and company sales will not suffer.[16] Judicial notice has already been taken of the general practice in private as well as in government institutions and industries of hiring janitorial services on an independent contractor basis.[17] Consequently, DE LIMA being an independent job contractor, no direct employer- employee relationship exists between petitioner FILSYN and private respondent Felipe Loterte.[18]

With respect to its liability, however, petitioner cannot totally exculpate itself from the fact that respondent DE LIMA is an independent job contractor. We agree with the Solicitor General that notwithstanding the lack of a direct employer-employee relationship between FILSYN and Felipe Loterte, the former is still jointly and severally liable with respondent DE LIMA for Loterte's monetary claims under Art. 109 of the Labor Code¹⁹

which explicitly provides-

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 liability under this Chapter, they shall be considered as direct employers (*Italics supplied*).

However, a reduction of the Labor Arbiter's awards is in order. In his decision of 31 May 1993, the Labor Arbiter in computing the 13th month pay and service incentive leave pay due Loterte erroneously included the period starting June 1989 to the date of his decision. From the admission of Loterte himself,[20] he started working for DE LIMA only in August 1991 and that the Agreement between FILSYN and DE LIMA is dated 4 April 1991.[21] Consequently, the joint and several liability of FILSYN and DE LIMA could not have covered the period before said date. Thus, without prejudice to the right of petitioner to seek reimbursement from DE LIMA for whatever amount it will have to pay Loterte, we determine their joint and several liability on the basis of the computation of the Labor Arbiter, affirmed by the NLRC (which is not disputed by petitioner except only as to the awards for the period prior to August 1991), as follows-

A. Underpayment:

From August 1991 to 5 Feb. 1992

$$(P113.00 \times 314 = P35,482.00)$$

$$(P35,482.00 \div 12 = P2,956.83)$$

$$P2,956.83 \times 6 \text{ mos. \& 5 days}$$

$$= P18,233.78$$

Less: Amount received

$$(P104 \times 314 = P32,656.00)$$

$$(P32,656.00 \div 12 = P2,721.33)$$

$$P2,721.33 \times 6 \text{ mos. \& 5 days}$$

$$= 16,781.54$$

Total underpayment due

$$= P1,452.24$$

B. 13th Month Pay:

From Aug. to Dec. 1991

$$(P113.00 \times 314 = P35,482.00)$$

$$(P35,482.00 \div 12 = P2,956.83)$$

$$(P2,956.83 \times 5 \text{ mos.} = P14,784.15)$$

$$P14,784.15 \div 12$$

$$= P1,232.01$$

C. Service Incentive Leave Pay:

1991 (P113.00 x 5 days)

= P565.00

D. Backwages:

From 6 Feb. 1992 to 31 May 1993

(P113.00 x 314 = P35,482.00)

(P35,482.00 ÷ 12= P2,956.83)

(P2,956.83 x 15 mos. & 25 days

=P46,816.47

1992 13th month pay

=2,956.83

1992 service incentive leave pay

=565.00

Total back wages due

= P50,338.30

WHEREFORE, the questioned decision of respondent National Labor Relations Commission affirming that of the Labor Arbiter as well as its resolution denying petitioner's motion for reconsideration is REVERSED and SET ASIDE and a new one entered:

1. Declaring the relationship between petitioner Filipinas Synthetic Fiber Corporation (FILSYN) and private respondent De Lima Trading and General Services (DE LIMA) as one of job contractorship;
2. Ordering private respondent De Lima Trading and General Services (DE LIMA) to reinstate private respondent FELIPE LOTERTE to his former position or its equivalent without loss of seniority rights; and
3. Ordering private respondent De Lima Trading and General Services (DE LIMA) jointly and severally with petitioner Filipinas Synthetic Fiber Corporation (FILSYN) to pay private respondent FELIPE LOTERTE the following amounts: P1,452.24 for salary differentials, P1,232.01 for 13th month pay, P565.00 for service incentive leave pay, and P50,338.30 for backwages, or a total of P53,587.55 due and payable, without prejudice to FILSYN seeking reimbursement from DE LIMA for whatever amount the former may pay or have paid the latter by virtue hereof.

SO ORDERED.

Kapunan and Hermosisima, Jr., JJ., concur.

Padilla and Vitug, JJ., concur in the result.

[1] Penned by Presiding Commissioner Lourdes C. Javier, concurred in by Commissioners Ireneo B. Bernando and Joaquin A. Tanodra; Rollo, pp. 22-29.

[2] Rollo, pp. 34-43

[3] Annex "J", Id., p. 79.

[4] NLRC Case No. SRB IV-2-3411-92L

[5] See Sinumpaang Salaysay, Rollo, p. 45.

[6] xxx the work of gardeners in maintaining clean and well-kept grounds around the factory, mechanics to keep the machines functioning properly, and firemen to lookout for fires, are directly related to the operations of a garment factory xxx (G.R. No. 86010, 3 October 1989, 178 SCRA 267).

[7] Rollo, pp. 34-43.

[8] Id., pp. 140-141.

[9] Annex "K", Id., pp. 84-108.

[10] Neri v. NLRC, G.R. Nos. 97008-09, 23 July 1993, 224 SCRA 717; Ecal v. NLRC, G.R. Nos. 92777-78, 13 March 1991, 195 SCRA 224.

[11] x x x 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.

[12] Art. 106, par. 4.

[13] See Note 8.

[14] See Neri v. NLRC, G.R. Nos. 97008-09, 23 July 1993, 224 SCRA 717, 720-721.

[15] Baguio v. NLRC, G. R. Nos. 79004-08, 4 October 1991, 202 SCRA 465, 470.

[16] See Ecal v. NLRC, Q. R. Nos. 92777-78, 13 March 1991, 195 SCRA 224, 233.

[17] Rhone-Poulenc Agrochemicals Philippines, Inc. v. NLRC, G. R. Nos. 102633-35, 19 January 1993, 217 SCRA 249, 259; Kimberly Independent Labor Union For Solidarity, Activism and Nationalism- Organized Labor Association In Line Industries and Agriculture v. Drilon, G.R. No. 77629, 9 May 1990, 185 SCRA 190, 205.

[18] Associated Anglo-American Tobacco Corporation v. Clave, G.R. No. 50915, 30 August 1990, 189 SCRA 127, 133; Broadway Motors, Inc. v. NLRC, G.R. No. 78382, 14 December 1987, 156 SCRA 522, 530.

[19] Deferia v. NLRC, G.R. No. 78713, 27 February 1991, 194 SCRA 525; Baguio v. NLRC, G.R. Nos. 79004-08, 4 October 1991, 202 SCRA 465.

[20] Sinumpaang Salaysay, Annex "E", Rollo, p. 45.

[21] Rollo, p. 79.

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