

JOSE Y. SONZA, PETITIONER, VS. ABS-CBN BROADCASTING CORPORATION, RESPONDENT.

G.R. No. 138051. June 10, 2004

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before this Court is a petition for review on certiorari[1] assailing the 26 March 1999 Decision[2] of the Court of Appeals in CA-G.R. SP No. 49190 dismissing the petition filed by Jose Y. Sonza (“SONZA”). The Court of Appeals affirmed the findings of the National Labor Relations Commission (“NLRC”), which affirmed the Labor Arbiter’s dismissal of the case for lack of jurisdiction.

The Facts

In May 1994, respondent ABS-CBN Broadcasting Corporation (“ABS-CBN”) signed an Agreement (“Agreement”) with the Mel and Jay Management and Development Corporation (“MJMDC”). ABS-CBN was represented by its corporate officers while MJMDC was represented by SONZA, as President and General Manager, and Carmela Tiangco (“TIANGCO”), as EVP and Treasurer. Referred to in the Agreement as “AGENT,” MJMDC agreed to provide SONZA’s services exclusively to ABS-CBN as talent for radio and television. The Agreement listed the services SONZA would render to ABS-CBN, as follows:

- Co-host for Mel & Jay radio program, 8:00 to 10:00 a.m., Mondays to Fridays;
- Co-host for Mel & Jay television program, 5:30 to 7:00 p.m., Sundays.[3]

ABS-CBN agreed to pay for SONZA’s services a monthly talent fee of P310,000 for the first year and P317,000 for the second and third year of the Agreement. ABS-CBN would pay the talent fees on the 10th and 25th days of the month.

On 1 April 1996, SONZA wrote a letter to ABS-CBN’s President, Eugenio Lopez III, which reads:

Dear Mr. Lopez,

We would like to call your attention to the Agreement dated May 1994 entered into by your goodself on behalf of ABS-CBN with our company relative to our talent JOSE Y. SONZA.

As you are well aware, Mr. Sonza irrevocably resigned in view of recent events concerning his programs and career. We consider these acts of the station violative of the Agreement and the station as in breach thereof. In this connection, we hereby serve notice of rescission of said Agreement at our instance effective as of date.

Mr. Sonza informed us that he is waiving and renouncing recovery of the remaining amount stipulated in paragraph 7 of the Agreement but reserves the right to seek recovery of the other benefits under said Agreement.

Thank you for your attention.

Very truly yours,

(Sgd.)

JOSE Y. SONZA

President and Gen. Manager[4]

On 30 April 1996, SONZA filed a complaint against ABS-CBN before the Department of Labor and Employment, National Capital Region in Quezon City. SONZA complained that ABS-CBN did not pay his salaries, separation pay, service incentive leave pay, 13th month pay, signing bonus, travel allowance and amounts due under the Employees Stock Option Plan (“ESOP”).

On 10 July 1996, ABS-CBN filed a Motion to Dismiss on the ground that no employer-employee relationship existed between the parties. SONZA filed an Opposition to the motion on 19 July 1996.

Meanwhile, ABS-CBN continued to remit SONZA’s monthly talent fees through his account at PCIBank, Quezon Avenue Branch, Quezon City. In July 1996, ABS-CBN opened a new account with the same bank where ABS-CBN deposited SONZA’s talent fees and other payments due him under the Agreement.

In his Order dated 2 December 1996, the Labor Arbiter[5] denied the motion to dismiss and directed the parties to file their respective position papers. The Labor Arbiter ruled:

In this instant case, complainant for having invoked a claim that he was an employee of respondent company until April 15, 1996 and that he was not paid certain claims, it is sufficient enough as to confer jurisdiction over the instant case in this Office. And as to whether or not such claim would entitle complainant to recover upon the causes of action asserted is a matter to be resolved only after and as a result of a hearing. Thus, the respondent’s plea of lack of employer-employee relationship may be pleaded only as a matter of defense. It behooves upon it the duty to prove that there really is no employer-employee relationship between it and the complainant.

The Labor Arbiter then considered the case submitted for resolution. The parties submitted their position papers on 24 February 1997.

On 11 March 1997, SONZA filed a Reply to Respondent’s Position Paper with Motion to Expunge Respondent’s Annex 4 and Annex 5 from the Records. Annexes 4 and 5 are affidavits of ABS-CBN’s witnesses Soccoro Vidanes and Rolando V. Cruz. These witnesses stated in their affidavits that the prevailing practice in the television and broadcast industry is to treat talents like SONZA as independent contractors.

The Labor Arbiter rendered his Decision dated 8 July 1997 dismissing the complaint for lack of jurisdiction.[6] The pertinent parts of the decision read as follows:

x x x

While Philippine jurisprudence has not yet, with certainty, touched on the “true nature of the contract of a talent,” it stands to reason that a “talent” as above-described cannot be considered as an employee by reason of the peculiar circumstances surrounding the engagement of his services.

It must be noted that complainant was engaged by respondent by reason of his peculiar skills and talent as a TV host and a radio broadcaster. Unlike an ordinary employee, he was free to perform the services he undertook to render in accordance with his own style. The benefits conferred to complainant under the May 1994 Agreement are certainly very much higher than those generally given to employees. For one, complainant Sonza’s monthly talent fees amount to a staggering P317,000. Moreover, his engagement as a talent was covered by a specific contract. Likewise, he was not bound to render eight (8) hours of work per day as he worked only for such number of hours as may be necessary.

The fact that per the May 1994 Agreement complainant was accorded some benefits normally given to an employee is inconsequential. Whatever benefits complainant enjoyed arose from specific agreement by the parties and not by reason of employer-employee relationship. As correctly put by the respondent, “All these benefits are merely talent fees and other contractual benefits and should not be deemed as ‘salaries, wages and/or other remuneration’ accorded to an employee, notwithstanding the nomenclature appended to these benefits. Apropos to this is the rule that the term or nomenclature given to a stipulated benefit is not controlling, but the intent of the parties to the Agreement conferring such benefit.”

The fact that complainant was made subject to respondent’s Rules and Regulations, likewise, does not detract from the absence of employer-employee relationship. As held by the Supreme Court, “The line should be drawn between rules that merely serve as guidelines towards the achievement of the mutually desired result without dictating the means or methods to be employed in attaining it, and those that control or fix the methodology and bind or restrict the party hired to the use of such means. The first, which aim only to promote the result, create no employer-employee relationship unlike the second, which address both the result and the means to achieve it.” (*Insular Life Assurance Co., Ltd. vs. NLRC, et al.*, G.R. No. 84484, November 15, 1989).

x x x (Emphasis supplied)[7]

SONZA appealed to the NLRC. On 24 February 1998, the NLRC rendered a Decision affirming the Labor Arbiter’s decision. SONZA filed a motion for reconsideration, which the NLRC denied in its Resolution dated 3 July 1998.

On 6 October 1998, SONZA filed a special civil action for certiorari before the Court of Appeals assailing the decision and resolution of the NLRC. On 26 March 1999, the Court of Appeals rendered a Decision dismissing the case.[8]

Hence, this petition.

The Rulings of the NLRC and Court of Appeals

The Court of Appeals affirmed the NLRC’s finding that no employer-employee relationship existed between SONZA and ABS-CBN. Adopting the NLRC’s decision, the appellate court quoted the following findings of the NLRC:

x x x the May 1994 Agreement will readily reveal that MJMDC entered into the contract merely as an agent of complainant Sonza, the principal. By all indication and as the law puts it, the act of the agent is the act of the principal itself. This fact is made particularly true in this case, as admittedly MJMDC ‘is a management company devoted exclusively to managing the careers of Mr. Sonza and his broadcast partner, Mrs. Carmela C. Tiangco.’ (Opposition to Motion to Dismiss)

Clearly, the relations of principal and agent only accrues between complainant Sonza and MJMDC, and not between ABS-CBN and MJMDC. This is clear from the provisions of the May 1994 Agreement which specifically referred to MJMDC as the ‘AGENT’. As a matter of fact, when complainant herein unilaterally rescinded said May 1994 Agreement, it was MJMDC which issued the notice of rescission in behalf of Mr. Sonza, who himself signed the same in his capacity as President.

Moreover, previous contracts between Mr. Sonza and ABS-CBN reveal the fact that historically, the parties to the said agreements are ABS-CBN and Mr. Sonza. And it is only in the May 1994 Agreement, which is the latest Agreement executed between ABS-CBN and Mr. Sonza, that MJMDC figured in the said Agreement as the agent of Mr. Sonza.

We find it erroneous to assert that MJMDC is a mere ‘labor-only’ contractor of ABS-CBN such that there exist[s] employer-employee relationship between the latter and Mr. Sonza. On the contrary, We find it indubitable, that MJMDC is an agent, not of ABS-CBN, but of the talent/contractor Mr. Sonza, as expressly

admitted by the latter and MJMDC in the May 1994 Agreement.

It may not be amiss to state that jurisdiction over the instant controversy indeed belongs to the regular courts, the same being in the nature of an action for alleged breach of contractual obligation on the part of respondent-appellee. As squarely apparent from complainant-appellant's Position Paper, his claims for compensation for services, '13th month pay', signing bonus and travel allowance against respondent-appellee are not based on the Labor Code but rather on the provisions of the May 1994 Agreement, while his claims for proceeds under Stock Purchase Agreement are based on the latter. A portion of the Position Paper of complainant-appellant bears perusal:

'Under [the May 1994 Agreement] with respondent ABS-CBN, the latter contractually bound itself to pay complainant a signing bonus consisting of shares of stocks...with FIVE HUNDRED THOUSAND PESOS (P500,000.00).

Similarly, complainant is also entitled to be paid 13th month pay based on an amount not lower than the amount he was receiving prior to effectivity of (the) Agreement'.

Under paragraph 9 of (the May 1994 Agreement), complainant is entitled to a commutable travel benefit amounting to at least One Hundred Fifty Thousand Pesos (P150,000.00) per year.'

Thus, it is precisely because of complainant-appellant's own recognition of the fact that his contractual relations with ABS-CBN are founded on the New Civil Code, rather than the Labor Code, that instead of merely resigning from ABS-CBN, complainant-appellant served upon the latter a 'notice of rescission' of Agreement with the station, per his letter dated April 1, 1996, which asserted that instead of referring to unpaid employee benefits, 'he is waiving and renouncing recovery of the remaining amount stipulated in paragraph 7 of the Agreement but reserves the right to such recovery of the other benefits under said Agreement.' (Annex 3 of the respondent ABS-CBN's Motion to Dismiss dated July 10, 1996).

Evidently, it is precisely by reason of the alleged violation of the May 1994 Agreement and/or the Stock Purchase Agreement by respondent-appellee that complainant-appellant filed his complaint. Complainant-appellant's claims being anchored on the alleged breach of contract on the part of respondent-appellee, the same can be resolved by reference to civil law and not to labor law. Consequently, they are within the realm of civil law and, thus, lie with the regular courts. As held in the case of *Dai-Chi Electronics Manufacturing vs. Villarama*, 238 SCRA 267, 21 November 1994, an action for breach of contractual obligation is intrinsically a civil dispute.[9] (Emphasis supplied)

The Court of Appeals ruled that the existence of an employer-employee relationship between SONZA and ABS-CBN is a factual question that is within the jurisdiction of the NLRC to resolve.[10] A special civil action for certiorari extends only to issues of want or excess of jurisdiction of the NLRC.[11] Such action cannot cover an inquiry into the correctness of the evaluation of the evidence which served as basis of the NLRC's conclusion.[12] The Court of Appeals added that it could not re-examine the parties' evidence and substitute the factual findings of the NLRC with its own.[13]

The Issue

In assailing the decision of the Court of Appeals, SONZA contends that:

THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE NLRC'S DECISION AND REFUSING TO FIND THAT AN EMPLOYER-EMPLOYEE RELATIONSHIP EXISTED BETWEEN SONZA AND ABS-CBN, DESPITE THE WEIGHT OF CONTROLLING LAW, JURISPRUDENCE AND EVIDENCE TO SUPPORT SUCH A FINDING.[14]

The Court's Ruling

We affirm the assailed decision.

No convincing reason exists to warrant a reversal of the decision of the Court of Appeals affirming the NLRC ruling which upheld the Labor Arbiter's dismissal of the case for lack of jurisdiction.

The present controversy is one of first impression. Although Philippine labor laws and jurisprudence define clearly the elements of an employer-employee relationship, this is the first time that the Court will resolve the nature of the relationship between a television and radio station and one of its "talents." There is no case law stating that a radio and television program host is an employee of the broadcast station.

The instant case involves big names in the broadcast industry, namely Jose "Jay" Sonza, a known television and radio personality, and ABS-CBN, one of the biggest television and radio networks in the country.

SONZA contends that the Labor Arbiter has jurisdiction over the case because he was an employee of ABS-CBN. On the other hand, ABS-CBN insists that the Labor Arbiter has no jurisdiction because SONZA was an independent contractor.

Employee or Independent Contractor?

The existence of an employer-employee relationship is a question of fact. Appellate courts accord the factual findings of the Labor Arbiter and the NLRC not only respect but also finality when supported by substantial evidence.[15] Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[16] A party cannot prove the absence of substantial evidence by simply pointing out that there is contrary evidence on record, direct or circumstantial. The Court does not substitute its own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible.[17]

SONZA maintains that all essential elements of an employer-employee relationship are present in this case. Case law has consistently held that the elements of an employer-employee relationship are: (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.[18] The last element, the so-called "control test", is the most important element.[19]

A. Selection and Engagement of Employee

ABS-CBN engaged SONZA's services to co-host its television and radio programs because of SONZA's peculiar skills, talent and celebrity status. SONZA contends that the "discretion used by respondent in specifically selecting and hiring complainant over other broadcasters of possibly similar experience and qualification as complainant belies respondent's claim of independent contractorship."

Independent contractors often present themselves to possess unique skills, expertise or talent to distinguish them from ordinary employees. The specific selection and hiring of SONZA, because of his unique skills, talent and celebrity status not possessed by ordinary employees, is a circumstance indicative, but not conclusive, of an independent contractual relationship. If SONZA did not possess such unique skills, talent and celebrity status, ABS-CBN would not have entered into the Agreement with SONZA but would have hired him through its personnel department just like any other employee.

In any event, the method of selecting and engaging SONZA does not conclusively determine his status. We must consider all the circumstances of the relationship, with the control test being the most important element.

B. Payment of Wages

ABS-CBN directly paid SONZA his monthly talent fees with no part of his fees going to MJMDC. SONZA asserts that this mode of fee payment shows that he was an employee of ABS-CBN. SONZA also points out that

ABS-CBN granted him benefits and privileges “which he would not have enjoyed if he were truly the subject of a valid job contract.”

All the talent fees and benefits paid to SONZA were the result of negotiations that led to the Agreement. If SONZA were ABS-CBN’s employee, there would be no need for the parties to stipulate on benefits such as “SSS, Medicare, x x x and 13th month pay”[20] which the law automatically incorporates into every employer-employee contract.[21] Whatever benefits SONZA enjoyed arose from contract and not because of an employer-employee relationship.[22]

SONZA’s talent fees, amounting to P317,000 monthly in the second and third year, are so huge and out of the ordinary that they indicate more an independent contractual relationship rather than an employer-employee relationship. ABS-CBN agreed to pay SONZA such huge talent fees precisely because of SONZA’s unique skills, talent and celebrity status not possessed by ordinary employees. Obviously, SONZA acting alone possessed enough bargaining power to demand and receive such huge talent fees for his services. The power to bargain talent fees way above the salary scales of ordinary employees is a circumstance indicative, but not conclusive, of an independent contractual relationship.

The payment of talent fees directly to SONZA and not to MJMDC does not negate the status of SONZA as an independent contractor. The parties expressly agreed on such mode of payment. Under the Agreement, MJMDC is the AGENT of SONZA, to whom MJMDC would have to turn over any talent fee accruing under the Agreement.

C. Power of Dismissal

For violation of any provision of the Agreement, either party may terminate their relationship. SONZA failed to show that ABS-CBN could terminate his services on grounds other than breach of contract, such as retrenchment to prevent losses as provided under labor laws.[23]

During the life of the Agreement, ABS-CBN agreed to pay SONZA’s talent fees as long as “AGENT and Jay Sonza shall faithfully and completely perform each condition of this Agreement.”[24] Even if it suffered severe business losses, ABS-CBN could not retrench SONZA because ABS-CBN remained obligated to pay SONZA’s talent fees during the life of the Agreement. This circumstance indicates an independent contractual relationship between SONZA and ABS-CBN.

SONZA admits that even after ABS-CBN ceased broadcasting his programs, ABS-CBN still paid him his talent fees. Plainly, ABS-CBN adhered to its undertaking in the Agreement to continue paying SONZA’s talent fees during the remaining life of the Agreement even if ABS-CBN cancelled SONZA’s programs through no fault of SONZA.[25]

SONZA assails the Labor Arbiter’s interpretation of his rescission of the Agreement as an admission that he is not an employee of ABS-CBN. The Labor Arbiter stated that “if it were true that complainant was really an employee, he would merely resign, instead.” SONZA did actually resign from ABS-CBN but he also, as president of MJMDC, rescinded the Agreement. SONZA’s letter clearly bears this out.[26] However, the manner by which SONZA terminated his relationship with ABS-CBN is immaterial. Whether SONZA rescinded the Agreement or resigned from work does not determine his status as employee or independent contractor.

D. Power of Control

Since there is no local precedent on whether a radio and television program host is an employee or an independent contractor, we refer to foreign case law in analyzing the present case. The United States Court of Appeals, First Circuit, recently held in *Alberty-Vélez v. Corporación De Puerto Rico Para La Difusión Pública* (“WIPR”)[27]

that a television program host is an independent contractor. We quote the following findings of the U.S. court:

Several factors favor classifying Alberty as an independent contractor. First, a television actress is a skilled position requiring talent and training not available on-the-job. x x x In this regard, Alberty possesses a master's degree in public communications and journalism; is trained in dance, singing, and modeling; taught with the drama department at the University of Puerto Rico; and acted in several theater and television productions prior to her affiliation with "Desde Mi Pueblo." Second, Alberty provided the "tools and instrumentalities" necessary for her to perform. Specifically, she provided, or obtained sponsors to provide, the costumes, jewelry, and other image-related supplies and services necessary for her appearance. Alberty disputes that this factor favors independent contractor status because WIPR provided the "equipment necessary to tape the show." Alberty's argument is misplaced. The equipment necessary for Alberty to conduct her job as host of "Desde Mi Pueblo" related to her appearance on the show. Others provided equipment for filming and producing the show, but these were not the primary tools that Alberty used to perform her particular function. If we accepted this argument, independent contractors could never work on collaborative projects because other individuals often provide the equipment required for different aspects of the collaboration. x x x

Third, WIPR could not assign Alberty work in addition to filming "Desde Mi Pueblo." Alberty's contracts with WIPR specifically provided that WIPR hired her "professional services as Hostess for the Program Desde Mi Pueblo." There is no evidence that WIPR assigned Alberty tasks in addition to work related to these tapings. x x x[28] (Emphasis supplied)

Applying the control test to the present case, we find that SONZA is not an employee but an independent contractor. The control test is the most important test our courts apply in distinguishing an employee from an independent contractor.[29] This test is based on the extent of control the hirer exercises over a worker. The greater the supervision and control the hirer exercises, the more likely the worker is deemed an employee. The converse holds true as well – the less control the hirer exercises, the more likely the worker is considered an independent contractor.[30]

First, SONZA contends that ABS-CBN exercised control over the means and methods of his work.

SONZA's argument is misplaced. ABS-CBN engaged SONZA's services specifically to co-host the "Mel & Jay" programs. ABS-CBN did not assign any other work to SONZA. To perform his work, SONZA only needed his skills and talent. How SONZA delivered his lines, appeared on television, and sounded on radio were outside ABS-CBN's control. SONZA did not have to render eight hours of work per day. The Agreement required SONZA to attend only rehearsals and tapings of the shows, as well as pre- and post-production staff meetings.[31] ABS-CBN could not dictate the contents of SONZA's script. However, the Agreement prohibited SONZA from criticizing in his shows ABS-CBN or its interests.[32] The clear implication is that SONZA had a free hand on what to say or discuss in his shows provided he did not attack ABS-CBN or its interests.

We find that ABS-CBN was not involved in the actual performance that produced the finished product of SONZA's work.[33] ABS-CBN did not instruct SONZA how to perform his job. ABS-CBN merely reserved the right to modify the program format and airtime schedule "for more effective programming." [34] ABS-CBN's sole concern was the quality of the shows and their standing in the ratings. Clearly, ABS-CBN did not exercise control over the means and methods of performance of SONZA's work.

SONZA claims that ABS-CBN's power not to broadcast his shows proves ABS-CBN's power over the means and methods of the performance of his work. Although ABS-CBN did have the option not to broadcast SONZA's show, ABS-CBN was still obligated to pay SONZA's talent fees... Thus, even if ABS-CBN was completely dissatisfied with the means and methods of SONZA's performance of his work, or even with the quality or product of his work, ABS-CBN could not dismiss or even discipline SONZA. All that ABS-CBN could do is not

to broadcast SONZA's show but ABS-CBN must still pay his talent fees in full.[35]

Clearly, ABS-CBN's right not to broadcast SONZA's show, burdened as it was by the obligation to continue paying in full SONZA's talent fees, did not amount to control over the means and methods of the performance of SONZA's work. ABS-CBN could not terminate or discipline SONZA even if the means and methods of performance of his work - how he delivered his lines and appeared on television - did not meet ABS-CBN's approval. This proves that ABS-CBN's control was limited only to the result of SONZA's work, whether to broadcast the final product or not. In either case, ABS-CBN must still pay SONZA's talent fees in full until the expiry of the Agreement.

In *Vaughan, et al. v. Warner, et al.*, [36] the United States Circuit Court of Appeals ruled that vaudeville performers were independent contractors although the management reserved the right to delete objectionable features in their shows. Since the management did not have control over the manner of performance of the skills of the artists, it could only control the result of the work by deleting objectionable features.[37]

SONZA further contends that ABS-CBN exercised control over his work by supplying all equipment and crew. No doubt, ABS-CBN supplied the equipment, crew and airtime needed to broadcast the "Mel & Jay" programs. However, the equipment, crew and airtime are not the "tools and instrumentalities" SONZA needed to perform his job. What SONZA principally needed were his talent or skills and the costumes necessary for his appearance. [38] Even though ABS-CBN provided SONZA with the place of work and the necessary equipment, SONZA was still an independent contractor since ABS-CBN did not supervise and control his work. ABS-CBN's sole concern was for SONZA to display his talent during the airing of the programs.[39]

A radio broadcast specialist who works under minimal supervision is an independent contractor.[40] SONZA's work as television and radio program host required special skills and talent, which SONZA admittedly possesses. The records do not show that ABS-CBN exercised any supervision and control over how SONZA utilized his skills and talent in his shows.

Second, SONZA urges us to rule that he was ABS-CBN's employee because ABS-CBN subjected him to its rules and standards of performance. SONZA claims that this indicates ABS-CBN's control "not only [over] his manner of work but also the quality of his work."

The Agreement stipulates that SONZA shall abide with the rules and standards of performance "covering talents"[41] of ABS-CBN. The Agreement does not require SONZA to comply with the rules and standards of performance prescribed for employees of ABS-CBN. The code of conduct imposed on SONZA under the Agreement refers to the "Television and Radio Code of the Kapisanan ng mga Broadcaster sa Pilipinas (KBP), which has been adopted by the COMPANY (ABS-CBN) as its Code of Ethics." [42] The KBP code applies to broadcasters, not to employees of radio and television stations. Broadcasters are not necessarily employees of radio and television stations. Clearly, the rules and standards of performance referred to in the Agreement are those applicable to talents and not to employees of ABS-CBN.

In any event, not all rules imposed by the hiring party on the hired party indicate that the latter is an employee of the former.[43] In this case, SONZA failed to show that these rules controlled his performance. We find that these general rules are merely guidelines towards the achievement of the mutually desired result, which are top-rating television and radio programs that comply with standards of the industry. We have ruled that:

Further, not every form of control that a party reserves to himself over the conduct of the other party in relation to the services being rendered may be accorded the effect of establishing an employer-employee relationship. The facts of this case fall squarely with the case of *Insular Life Assurance Co., Ltd. vs. NLRB*. In said case, we held that:

Logically, the line should be drawn between rules that merely serve as guidelines towards the achievement of the mutually desired result without dictating the means or methods to be employed in attaining it, and those that control or fix the methodology and bind or restrict the party hired to the use of such means. The first, which aim only to promote the result, create no employer-employee relationship unlike the second, which address both the result and the means used to achieve it.[44]

The Vaughan case also held that one could still be an independent contractor although the hirer reserved certain supervision to insure the attainment of the desired result. The hirer, however, must not deprive the one hired from performing his services according to his own initiative.[45]

Lastly, SONZA insists that the “exclusivity clause” in the Agreement is the most extreme form of control which ABS-CBN exercised over him.

This argument is futile. Being an exclusive talent does not by itself mean that SONZA is an employee of ABS-CBN. Even an independent contractor can validly provide his services exclusively to the hiring party. In the broadcast industry, exclusivity is not necessarily the same as control.

The hiring of exclusive talents is a widespread and accepted practice in the entertainment industry.[46] This practice is not designed to control the means and methods of work of the talent, but simply to protect the investment of the broadcast station. The broadcast station normally spends substantial amounts of money, time and effort “in building up its talents as well as the programs they appear in and thus expects that said talents remain exclusive with the station for a commensurate period of time.”[47] Normally, a much higher fee is paid to talents who agree to work exclusively for a particular radio or television station. In short, the huge talent fees partially compensates for exclusivity, as in the present case.

MJMDC as Agent of SONZA

SONZA protests the Labor Arbiter’s finding that he is a talent of MJMDC, which contracted out his services to ABS-CBN. The Labor Arbiter ruled that as a talent of MJMDC, SONZA is not an employee of ABS-CBN. SONZA insists that MJMDC is a “labor-only” contractor and ABS-CBN is his employer.

In a labor-only contract, there are three parties involved: (1) the “labor-only” contractor; (2) the employee who is ostensibly under the employ of the “labor-only” contractor; and (3) the principal who is deemed the real employer. Under this scheme, the “labor-only” contractor is the agent of the principal. The law makes the principal responsible to the employees of the “labor-only contractor” as if the principal itself directly hired or employed the employees.[48] These circumstances are not present in this case.

There are essentially only two parties involved under the Agreement, namely, SONZA and ABS-CBN. MJMDC merely acted as SONZA’s agent. The Agreement expressly states that MJMDC acted as the “AGENT” of SONZA. The records do not show that MJMDC acted as ABS-CBN’s agent. MJMDC, which stands for Mel and Jay Management and Development Corporation, is a corporation organized and owned by SONZA and TIANGCO. The President and General Manager of MJMDC is SONZA himself. It is absurd to hold that MJMDC, which is owned, controlled, headed and managed by SONZA, acted as agent of ABS-CBN in entering into the Agreement with SONZA, who himself is represented by MJMDC. That would make MJMDC the agent of both ABS-CBN and SONZA.

As SONZA admits, MJMDC is a management company devoted exclusively to managing the careers of SONZA and his broadcast partner, TIANGCO. MJMDC is not engaged in any other business, not even job contracting. MJMDC does not have any other function apart from acting as agent of SONZA or TIANGCO to promote their careers in the broadcast and television industry.[49]

Policy Instruction No. 40

SONZA argues that Policy Instruction No. 40 issued by then Minister of Labor Blas Ople on 8 January 1979 finally settled the status of workers in the broadcast industry. Under this policy, the types of employees in the broadcast industry are the station and program employees.

Policy Instruction No. 40 is a mere executive issuance which does not have the force and effect of law. There is no legal presumption that Policy Instruction No. 40 determines SONZA's status. A mere executive issuance cannot exclude independent contractors from the class of service providers to the broadcast industry. The classification of workers in the broadcast industry into only two groups under Policy Instruction No. 40 is not binding on this Court, especially when the classification has no basis either in law or in fact.

Affidavits of ABS-CBN's Witnesses

SONZA also faults the Labor Arbiter for admitting the affidavits of Socorro Vidanes and Rolando Cruz without giving his counsel the opportunity to cross-examine these witnesses. SONZA brands these witnesses as incompetent to attest on the prevailing practice in the radio and television industry. SONZA views the affidavits of these witnesses as misleading and irrelevant.

While SONZA failed to cross-examine ABS-CBN's witnesses, he was never prevented from denying or refuting the allegations in the affidavits. The Labor Arbiter has the discretion whether to conduct a formal (trial-type) hearing after the submission of the position papers of the parties, thus:

Section 3. Submission of Position Papers/Memorandum

x x x

These verified position papers shall cover only those claims and causes of action raised in the complaint excluding those that may have been amicably settled, and shall be accompanied by all supporting documents including the affidavits of their respective witnesses which shall take the place of the latter's direct testimony.

x x x

Section 4. Determination of Necessity of Hearing. – Immediately after the submission of the parties of their position papers/memorandum, the Labor Arbiter shall *motu proprio* determine whether there is need for a formal trial or hearing. At this stage, he may, at his discretion and for the purpose of making such determination, ask clarificatory questions to further elicit facts or information, including but not limited to the subpoena of relevant documentary evidence, if any from any party or witness.[50]

The Labor Arbiter can decide a case based solely on the position papers and the supporting documents without a formal trial.[51] The holding of a formal hearing or trial is something that the parties cannot demand as a matter of right.[52] If the Labor Arbiter is confident that he can rely on the documents before him, he cannot be faulted for not conducting a formal trial, unless under the particular circumstances of the case, the documents alone are insufficient. The proceedings before a Labor Arbiter are non-litigious in nature. Subject to the requirements of due process, the technicalities of law and the rules obtaining in the courts of law do not strictly apply in proceedings before a Labor Arbiter.

Talents as Independent Contractors

ABS-CBN claims that there exists a prevailing practice in the broadcast and entertainment industries to treat talents like SONZA as independent contractors. SONZA argues that if such practice exists, it is void for violating the right of labor to security of tenure.

The right of labor to security of tenure as guaranteed in the Constitution[53] arises only if there is an

employer-employee relationship under labor laws. Not every performance of services for a fee creates an employer-employee relationship. To hold that every person who renders services to another for a fee is an employee - to give meaning to the security of tenure clause - will lead to absurd results.

Individuals with special skills, expertise or talent enjoy the freedom to offer their services as independent contractors. The right to life and livelihood guarantees this freedom to contract as independent contractors. The right of labor to security of tenure cannot operate to deprive an individual, possessed with special skills, expertise and talent, of his right to contract as an independent contractor. An individual like an artist or talent has a right to render his services without any one controlling the means and methods by which he performs his art or craft. This Court will not interpret the right of labor to security of tenure to compel artists and talents to render their services only as employees. If radio and television program hosts can render their services only as employees, the station owners and managers can dictate to the radio and television hosts what they say in their shows. This is not conducive to freedom of the press.

Different Tax Treatment of Talents and Broadcasters

The National Internal Revenue Code (“NIRC”)[54] in relation to Republic Act No. 7716,[55] as amended by Republic Act No. 8241,[56] treats talents, television and radio broadcasters differently. Under the NIRC, these professionals are subject to the 10% value-added tax (“VAT”) on services they render. Exempted from the VAT are those under an employer-employee relationship.[57] This different tax treatment accorded to talents and broadcasters bolsters our conclusion that they are independent contractors, provided all the basic elements of a contractual relationship are present as in this case.

Nature of SONZA’s Claims

SONZA seeks the recovery of allegedly unpaid talent fees, 13th month pay, separation pay, service incentive leave, signing bonus, travel allowance, and amounts due under the Employee Stock Option Plan. We agree with the findings of the Labor Arbiter and the Court of Appeals that SONZA’s claims are all based on the May 1994 Agreement and stock option plan, and not on the Labor Code. Clearly, the present case does not call for an application of the Labor Code provisions but an interpretation and implementation of the May 1994 Agreement. In effect, SONZA’s cause of action is for breach of contract which is intrinsically a civil dispute cognizable by the regular courts.[58]

WHEREFORE, we DENY the petition. The assailed Decision of the Court of Appeals dated 26 March 1999 in CA-G.R. SP No. 49190 is AFFIRMED. Costs against petitioner.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Panganiban, Ynares-Santiago, and Azcuna, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Eugenio S. Labitoria with Associate Justices Jesus M. Elbinias and Marina L. Buzon concurring.

[3] Rollo, p. 150.

[4] Ibid., p. 204.

[5] Donato G. Quinto, Jr.

[6] Rollo, pp. 114-130.

[7] Ibid., pp. 123-125.

[8] Ibid., p. 39.

[9] Rollo, pp. 37-39.

[10] Ibid., p. 39.

[11] Ibid.

[12] Ibid.

[13] Ibid.

[14] Ibid., p. 269.

[15] *Fleischer Company, Inc. v. National Labor Relations Commission*, G.R. No. 121608, 26 March 2001, 355 SCRA 105; *AFP Mutual Benefit Association, Inc. v. NLRC*, G.R. No. 102199, 28 January 1997, 267 SCRA 47; *Cathedral School of Technology v. NLRC*, G.R. No. 101438, 13 October 1992, 214 SCRA 551. See also *Ignacio v. Coca-Cola Bottlers Phils., Inc.*, 417 Phil. 747 (2001); *Gonzales v. National Labor Relations Commission*, G.R. No. 131653, 26 March 2001, 355 SCRA 195; *Sandigan Savings and Loan Bank, Inc. v. NLRC*, 324 Phil. 348 (1996); *Magnolia Dairy Products Corporation v. NLRC*, 322 Phil. 508 (1996).

[16] *Madlos v. NLRC*, 324 Phil. 498 (1996).

[17] *Domasig v. National Labor Relations Commission*, G.R. No. 118101, 16 September 1996, 261 SCRA 779.

[18] *De Los Santos v. NLRC*, 423 Phil. 1020 (2001); *Traders Royal Bank v. NLRC*, 378 Phil. 1081 (1999); *Aboitiz Shipping Employees Association v. National Labor Relations Commission*, G.R. No. 78711, 27 June 1990, 186 SCRA 825; *Ruga v. National Labor Relations Commission*, G.R. Nos. 72654-61, 22 January 1990, 181 SCRA 266.

[19] Ibid.

[20] Paragraph 10 of the Agreement provides: "The COMPANY shall provide him with the following benefits: SSS, Medicare, Healthcare, executive life and accident insurance, and a 13th-month pay based on an amount not lower than the amount he was receiving prior to the effectivity of this Agreement."

[21] Presidential Decree No. 851 (Requiring All Employers to Pay their Employees a 13th-month Pay) for the 13th month pay; Republic Act No. 1161 (Social Security Law) for the SSS benefits; and Republic Act No. 7875 (National Health Insurance Act of 1995) for the Philhealth insurance.

[22] Article 1157 of the Civil Code explicitly provides:

Obligations arise from:

- (1) Law;
- (2) Contracts;
- (3) Quasi-contracts;
- (4) Acts or omissions punished by law; and
- (5) Quasi-delicts. (Emphasis supplied)

[23] See Article 283, Labor Code.

[24] Paragraph 7 of the Agreement states: "Provided that the AGENT and Jay Sonza shall faithfully and

completely perform each condition of this Agreement for and in consideration of the aforesaid services by the AGENT and its talent, the COMPANY agrees to pay the AGENT for the first year of this Agreement the amount of THREE HUNDRED TEN THOUSAND PESOS ONLY (P310,000.00) per month, payable on the 10th and 25th of each month. For the second and third year of this Agreement, the COMPANY shall pay the amount of THREE HUNDRED SEVENTEEN THOUSAND PESOS ONLY (P317,000.00) per month, payable likewise on the 10th and 25th of the each month.”

[25] Paragraph 11 of the Agreement states: “ In the event of cancellation of this Agreement through no fault of the AGENT and its talent, COMPANY agrees to pay the full amount specified in this Agreement for the remaining period covered by this Agreement, provided that the talent shall not render any service for or in any other radio or television production of any person, firm, corporation or any entity competing with the COMPANY until the expiry hereof.”

[26] The opening sentence of the second paragraph of SONZA’s letter reads:

“As you are well aware, Mr. Sonza irrevocably resigned in view of recent events concerning his programs and career. xxx”

[27] 361 F.3d 1, 2 March 2004.

[28] See also *Spirides v. Reinhardt*, 486 F. Supp. 685 (1980).

[29] In the United States, aside from the right of control test, there are the “economic reality” test and the “multi-factor test.” The tests are drawn from statutes, regulations, rules, policies, rulings, case law and the like. The “right of control” test applies under the federal Internal Revenue Code (“IRC”). The “economic reality” test applies to the federal Fair Labor Standards Act (“FLSA”).[29] The California Division of Labor Standards Enforcement (“DLSE”) uses a hybrid of these two tests often referred to as the “multi-factor test” in determining who an employee is.

Most courts in the United States have utilized the control test to determine whether one is an employee. Under this test, a court must consider the hiring party’s right to control the manner and means by which the product is accomplished. Among other factors relevant to this inquiry are the skills required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party’s discretion over when and how long to work; the method of payment; the hired party’s role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party. (www.piercegorman.com, quoted from the article entitled “Management-side employment law advice for the entertainment industry” with subtitle “Classification of Workers: Independent Contractors versus Employee” by David Albert Pierce, Esq.)

[30] www.piercegorman.com, quoted from the article entitled “Management-side employment law advice for the entertainment industry” with subtitle “Classification of Workers: Independent Contractors versus Employee” by David Albert Pierce, Esq.

[31] Paragraph 4 of the Agreement provides: “AGENT will make available Jay Sonza for rehearsals and tapings of the Programs on the day and time set by the producer and director of the Programs and to attend pre and post production staff meetings.”

[32] Paragraph 15 of the Agreement provides: “AGENT, talent shall not use the Programs as a venue to broadcast or announce any criticism on any operational, administrative, or legal problems, situations or other matter which

may occur, exist or alleged to have occurred or existed within the COMPANY. Likewise, AGENT, talent shall, in accordance with good broadcast management and ethics, take up with the proper officers of the COMPANY suggestions or criticisms on any matter or condition affecting the COMPANY or its relation to the public or third parties.”

[33] In *Zhengxing v. Nathanson*, 215 F.Supp.2d 114, citing *Redd v. Summers*, 232 F.3d 933 (D.C. Cir.), plaintiff’s superior was not involved in the actual performance that produced the final product.

[34] Paragraph 3 of the Agreement provides: “The COMPANY reserves the right to modify the program format and likewise change airtime schedule for more effective programming.”

[35] The right not to broadcast an independent contractor’s show also gives the radio and television station protection in case it deems the contents of the show libelous.

[36] 157 F.2d 26, 8 August 1946.

[37] *Ibid*.

[38] In *Zhengxing v. Nathanson*, 215 F.Supp.2d 114, 5 August 2002, plaintiff was also provided with the place of work and equipment to be used.

[39] In the *Alberty* case, the US Court of Appeals rejected *Alberty*’s contention that WIPR provided the “equipment necessary to tape the show.” The court held there that “the equipment necessary for *Alberty* to conduct her job as program host related to her appearance on the show. Others provided equipment for filming and producing the show, but these were not the primary tools that *Alberty* used to perform her particular function.” Since *Alberty* provided, or obtained sponsors to provide, the costumes, jewelry, and other image-related supplies and services necessary for her appearance, she provided the “tools and instrumentalities” necessary for her to perform. The US Court of Appeals added that if it accepted *Alberty*’s argument, independent contractors could never work on collaborative projects because other individuals often provide the equipment required for different aspects of the collaboration.

The *Alberty* case further ruled that “while ‘control’ over the manner, location, and hours of work is often critical to the independent contractor/employee analysis, it must be considered in light of the work performed and the industry at issue. Considering the tasks that an actor performs, the court does not believe that the sort of control identified by *Alberty* necessarily indicates employee status.”

[40] In *Zhengxing*, a Chinese language broadcaster and translator was deemed an independent contractor because she worked under minimal supervision. The U.S. court also found that plaintiff was required to possess specialized knowledge before commencing her position as a broadcaster.

[41] Paragraph 13 of the Agreement provides: “AGENT agrees that talent shall abide by the rules, regulations and standards of performance of the COMPANY covering talents, and that talent is bound to comply with the Television and Radio Code of the Kapisanan ng mga Broadcaster sa Pilipinas (KBP), which has been adopted by the COMPANY as its Code of Ethics. AGENT shall perform and keep all of the duties and obligations assumed or entered by the AGENT hereunder using its best talents and abilities. Any violation of or non-conformity with this provision by talent shall be a valid and sufficient ground for the immediate termination of the Agreement.” (Emphasis supplied)

[42] *Ibid*.

[43] *AFP Mutual Benefit Association, Inc. v. NLRC*, G.R. No. 102199, 28 January 1997, 267 SCRA 47.

[44] Ibid.

[45] Supra note 36.

[46] Rollo, p. 302.

[47] Ibid.

[48] The second paragraph of Article 106 of the Labor Code reads:

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.

[49] Rollo, p. 90.

[50] New Rules of Procedure of the National Labor Relations Commission, as amended by Resolution 3-99, series of 1999.

[51] *University of the Immaculate Concepcion v. U.I.C. Teaching and Non-Teaching Personnel and Employees Union*, 414 Phil. 522 (2001).

[52] *Columbus Philippine Bus Corp. v. NLRC*, 417 Phil. 81 (2001).

[53] Section 3, Article XIII of the Constitution.

[54] Republic Act No. 8424. BIR Revenue Regulations No. 19-99 also provides the following:

SECTION 1. Scope. — Pursuant to the provisions of Sections 244 and 108 of the National Internal Revenue Code of 1997, in relation to Section 17 of Republic Act No. 7716, as amended by Section 11 of Republic Act 8241, these Regulations are hereby promulgated to govern the imposition of value-added tax on sale of services by persons engaged in the practice of profession or calling and professional services rendered by general professional partnerships; services rendered by actors, actresses, talents, singers and emcees, radio and television broadcasters and choreographers; musical, radio, movie, television and stage directors; and professional athletes.

SECTION 2. Coverage. — Beginning January 1, 2000, general professional partnerships, professionals and persons described above shall be governed by the provisions of Revenue Regulation No. 7-95, as amended, otherwise known as the “Consolidated Value-Added Tax Regulations”. xxx

[55] Otherwise known as the Expanded Value-Added Tax Law.

[56] Act amending Republic Act No. 7716, otherwise known as the Expanded Value-Added Tax Law and other pertinent provisions of the National Internal Revenue Code, as amended (December 20, 1996).

[57] Section 109 of the NIRC provides:

Exempt transactions. — The following shall be exempt from the value-added tax:

xxx

(o) Services rendered by individuals pursuant to an employer-employee relationship; xxx

[58] *Singapore Airlines Ltd. v. Hon. Cruz, etc., et al.*, 207 Phil. 585 (1983).

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