

SAN MIGUEL CORPORATION, PETITIONER, VS. MAERC INTEGRATED SERVICES, INC.; AND EMERBERTO ORQUE, ROGELIO PRADO, JR., EDDIE SELLE, ALEJANDRO ANNABIEZA, ANNIAS JUAMO-AS, CONSORCIO MA...

G.R. No. 144672. July 10, 2003

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

TWO HUNDRED NINETY-ONE (291) workers filed their complaints (nine [9] complaints in all) against San Miguel Corporation (petitioner herein) and Maerc Integrated Services, Inc. (respondent herein), for illegal dismissal, underpayment of wages, non-payment of service incentive leave pays and other labor standards benefits, and for separation pays from 25 June to 24 October 1991. The complainants alleged that they were hired by San Miguel Corporation (SMC) through its agent or intermediary Maerc Integrated Services, Inc. (MAERC) to work in two (2) designated workplaces in Mandaue City: one, inside the SMC premises at the Mandaue Container Services, and another, in the Philphos Warehouse owned by MAERC. They washed and segregated various kinds of empty bottles used by SMC to sell and distribute its beer beverages to the consuming public. They were paid on a per piece or pakiao basis except for a few who worked as checkers and were paid on daily wage basis.

Complainants alleged that long before SMC contracted the services of MAERC a majority of them had already been working for SMC under the guise of being employees of another contractor, Jopard Services, until the services of the latter were terminated on 31 January 1988.

SMC denied liability for the claims and averred that the complainants were not its employees but of MAERC, an independent contractor whose primary corporate purpose was to engage in the business of cleaning, receiving, sorting, classifying, etc., glass and metal containers.

It appears that SMC entered into a Contract of Services with MAERC engaging its services on a non-exclusive basis for one (1) year beginning 1 February 1988. The contract was renewed for two (2) more years in March 1989. It also provided for its automatic renewal on a month-to-month basis after the two (2)-year period and required that a written notice to the other party be given thirty (30) days prior to the intended date of termination, should a party decide to discontinue with the contract.

In a letter dated 15 May 1991, SMC informed MAERC of the termination of their service contract by the end of June 1991. SMC cited its plans to phase out its segregation activities starting 1 June 1991 due to the installation of labor and cost-saving devices.

When the service contract was terminated, complainants claimed that SMC stopped them from performing their jobs; that this was tantamount to their being illegally dismissed by SMC who was their real employer as their activities were directly related, necessary and desirable to the main business of SMC; and, that MAERC was merely made a tool or a shield by SMC to avoid its liability under the Labor Code.

MAERC for its part admitted that it recruited the complainants and placed them in the bottle segregation project of SMC but maintained that it was only conveniently used by SMC as an intermediary in operating the project or work directly related to the primary business concern of the latter with the end in view of avoiding its obligations and responsibilities towards the complaining workers.

The nine (9) cases[1] were consolidated. On 31 January 1995 the Labor Arbiter rendered a decision holding that MAERC was an independent contractor.[2] He dismissed the complaints for illegal dismissal but ordered MAERC to pay complainants' separation benefits in the total amount of P2,334,150.00. MAERC and SMC were also ordered to jointly and severally pay complainants their wage differentials in the amount of P845,117.00 and to pay attorney's fees in the amount of P317,926.70.

The complainants appealed the Labor Arbiter's finding that MAERC was an independent contractor and solely liable to pay the amount representing the separation benefits to the exclusion of SMC, as well as the Labor Arbiter's failure to grant the Temporary Living Allowance of the complainants. SMC appealed the award of attorney's fees.

The National Labor Relations Commission (NLRC) ruled in its 7 January 1997 decision that MAERC was a labor-only contractor and that complainants were employees of SMC.[3] The NLRC also held that whether MAERC was a job contractor or a labor-only contractor, SMC was still solidarily liable with MAERC for the latter's unpaid obligations, citing Art. 109[4] of the Labor Code. Thus, the NLRC modified the judgment of the Labor Arbiter and held SMC jointly and severally liable with MAERC for complainants' separation benefits. In addition, both respondents were ordered to pay jointly and severally an indemnity fee of P2,000.00 to each complainant.

SMC moved for a reconsideration which resulted in the reduction of the award of attorney's fees from P317,926.70 to P84,511.70. The rest of the assailed decision was unchanged.[5]

On 12 March 1998, SMC filed a petition for certiorari with prayer for the issuance of a temporary restraining order and/or injunction with this Court which then referred the petition to the Court of Appeals.

On 28 April 2000 the Court of Appeals denied the petition and affirmed the decision of the NLRC.[6] The appellate court also denied SMC's motion for reconsideration in a resolution[7] dated 26 July 2000. Hence, petitioner seeks a review of the Court of Appeals' judgment before this Court.

Petitioner poses the same issues brought up in the appeals court and the pivotal question is whether the complainants are employees of petitioner SMC or of respondent MAERC.

Relying heavily on the factual findings of the Labor Arbiter, petitioner maintained that MAERC was a legitimate job contractor. It directed this Court's attention to the undisputed evidence it claimed to establish this assertion: MAERC is a duly organized stock corporation whose primary purpose is to engage in the business of cleaning, receiving, sorting, classifying, grouping, sanitizing, packing, delivering, warehousing, trucking and shipping any glass and/or metal containers and that it had listed in its general information sheet two hundred seventy-eight (278) workers, twenty-two (22) supervisors, seven (7) managers/officers and a board of directors; it also voluntarily entered into a service contract on a non-exclusive basis with petitioner from which it earned a gross income of P42,110,568.24 from 17 October 1988 to 27 November 1991; the service contract specified that MAERC had the selection, engagement and discharge of its personnel, employees or agents or otherwise in the direction and control thereof; MAERC admitted that it had machinery, equipment and fixed assets used in its business valued at P4,608,080.00; and, it failed to appeal the Labor Arbiter's decision which declared it to be an independent contractor and ordered it to solely pay the separation benefits of the complaining workers.

We find no basis to overturn the Court of Appeals and the NLRC. Well-established is the principle that findings of fact of quasi-judicial bodies, like the NLRC, are accorded with respect, even finality, if supported by substantial evidence.[8] Particularly when passed upon and upheld by the Court of Appeals, they are binding and conclusive upon the Supreme Court and will not normally be disturbed.[9]

This Court has invariably held that in ascertaining an employer-employee relationship, the following factors are considered: (a) the selection and engagement of employee; (b) the payment of wages; (c) the power of dismissal; and, (d) the power to control an employee's conduct, the last being the most important.[10] Application of the aforesaid criteria clearly indicates an employer-employee relationship between petitioner and the complainants.

Evidence discloses that petitioner played a large and indispensable part in the hiring of MAERC's workers. It also appears that majority of the complainants had already been working for SMC long before the signing of the service contract between SMC and MAERC in 1988.

The incorporators of MAERC admitted having supplied and recruited workers for SMC even before MAERC was created.[11] The NLRC also found that when MAERC was organized into a corporation in February 1988, the complainants who were then already working for SMC were made to go through the motion of applying for work with Ms. Olga Ouano, President and General Manager of MAERC, upon the instruction of SMC through its supervisors to make it appear that complainants were hired by MAERC. This was testified to by two (2) of the workers who were segregator and forklift operator assigned to the Beer Marketing Division at the SMC compound and who had been working with SMC under a purported contractor Jopard Services since March 1979 and March 1981, respectively. Both witnesses also testified that together with other complainants they continued working for SMC without break from Jopard Services to MAERC.

As for the payment of workers' wages, it is conceded that MAERC was paid in lump sum but records suggest that the remuneration was not computed merely according to the result or the volume of work performed. The memoranda of the labor rates bearing the signature of a Vice-President and General Manager for the Vismin Beer Operations[12] as well as a director of SMC[13] appended to the contract of service reveal that SMC assumed the responsibility of paying for the mandated overtime, holiday and rest day pays of the MAERC workers.[14] SMC also paid the employer's share of the SSS and Medicare contributions, the 13th month pay, incentive leave pay and maternity benefits.[15] In the lump sum received, MAERC earned a marginal amount representing the contractor's share. These lend credence to the complaining workers' assertion that while MAERC paid the wages of the complainants, it merely acted as an agent of SMC.

Petitioner insists that the most significant determinant of an employer-employee relationship, i.e., the right to control, is absent. The contract of services between MAERC and SMC provided that MAERC was an independent contractor and that the workers hired by it "shall not, in any manner and under any circumstances, be considered employees of the Company, and that the Company has no control or supervision whatsoever over the conduct of the Contractor or any of its workers in respect to how they accomplish their work or perform the Contractor's obligations under the Contract." [16]

In deciding the question of control, the language of the contract is not determinative of the parties' relationship; rather, it is the totality of the facts and surrounding circumstances of each case.[17]

Despite SMC's disclaimer, there are indicia that it actively supervised the complainants. SMC maintained a constant presence in the workplace through its own checkers. Its asseveration that the checkers were there only to check the end result was belied by the testimony of Carlito R. Singson, head of the Mandaue Container Service of SMC, that the checkers were also tasked to report on the identity of the workers whose performance or quality of work was not according to the rules and standards set by SMC. According to Singson, "it (was) necessary to

identify the names of those concerned so that the management [referring to MAERC] could call the attention to make these people improve the quality of work." [18]

Viewed alongside the findings of the Labor Arbiter that the MAERC organizational set-up in the bottle segregation project was such that the segregators/cleaners were supervised by checkers and each checker was also under a supervisor who was in turn under a field supervisor, the responsibility of watching over the MAERC workers by MAERC personnel became superfluous with the presence of additional checkers from SMC.

Reinforcing the belief that the SMC exerted control over the work performed by the segregators or cleaners, albeit through the instrumentality of MAERC, were letters by SMC to the MAERC management. These were letters [19] written by a certain Mr. W. Padin [20] addressed to the President and General Manager of MAERC as well as to its head of operations, [21] and a third letter [22] from Carlito R. Singson also addressed to the President and General Manager of MAERC. More than just a mere written report of the number of bottles improperly cleaned and/or segregated, the letters named three (3) workers who were responsible for the rejection of several bottles, specified the infraction committed in the segregation and cleaning, then recommended the penalty to be imposed. Evidently, these workers were reported by the SMC checkers to the SMC inspector.

While the Labor Arbiter dismissed these letters as merely indicative of the concern in the end-result of the job contracted by MAERC, we find more credible the contention of the complainants that these were manifestations of the right of petitioner to recommend disciplinary measures over MAERC employees. Although calling the attention of its contractors as to the quality of their services may reasonably be done by SMC, there appears to be no need to instruct MAERC as to what disciplinary measures should be imposed on the specific workers who were responsible for rejections of bottles. This conduct by SMC representatives went beyond a mere reminder with respect to the improperly cleaned/segregated bottles or a genuine concern in the outcome of the job contracted by MAERC.

Control of the premises in which the contractor's work was performed was also viewed as another phase of control over the work, and this strongly tended to disprove the independence of the contractor. [23] In the case at bar, the bulk of the MAERC segregation activities was accomplished at the MAERC-owned PHILPHOS warehouse but the building along with the machinery and equipment in the facility was actually being rented by SMC. This is evident from the memoranda of labor rates which included rates for the use of forklifts and the warehouse at the PHILPHOS area, hence, the NLRC's conclusion that the payment for the rent was cleverly disguised since MAERC was not in the business of renting warehouses and forklifts. [24]

Other instances attesting to SMC's supervision of the workers are found in the minutes of the meeting held by the SMC officers on 5 December 1988. Among those matters discussed were the calling of SMC contractors to have workers assigned to segregation to undergo and pass eye examination to be done by SMC EENT company doctor and a review of compensation/incentive system for segregators to improve the segregation activities. [25]

But the most telling evidence is a letter by Mr. Antonio Ouano, Vice-President of MAERC dated 27 May 1991 addressed to Francisco Eizmendi, SMC President and Chief Executive Officer, asking the latter to reconsider the phasing out of SMC's segregation activities in Mandaue City. The letter was not denied but in fact used by SMC to advance its own arguments. [26]

Briefly, the letter exposed the actual state of affairs under which MAERC was formed and engaged to handle the segregation project of SMC. It provided an account of how in 1987 Eizmendi approached the would-be incorporators of MAERC and offered them the business of servicing the SMC bottle-washing and segregation department in order to avert an impending labor strike. After initial reservations, MAERC incorporators accepted the offer and before long trial segregation was conducted by SMC at the PHILPHOS warehouse. [27]

The letter also set out the circumstances under which MAERC entered into the Contract of Services in 1988 with the assurances of the SMC President and CEO that the employment of MAERC's services would be long term to enable it to recover its investments. It was with this understanding that MAERC undertook borrowings from banking institutions and from affiliate corporations so that it could comply with the demands of SMC to invest in machinery and facilities.

In sum, the letter attested to an arrangement entered into by the two (2) parties which was not reflected in the Contract of Services. A peculiar relationship mutually beneficial for a time but nonetheless ended in dispute when SMC decided to prematurely end the contract leaving MAERC to shoulder all the obligations to the workers.

Petitioner also ascribes as error the failure of the Court of Appeals to apply the ruling in *Neri v. NLRC*.^[28] In that case, it was held that the law did not require one to possess both substantial capital and investment in the form of tools, equipment, machinery, work premises, among others, to be considered a job contractor. The second condition to establish permissible job contracting^[29] was sufficiently met if one possessed either attribute.

Accordingly, petitioner alleged that the appellate court and the NLRC erred when they declared MAERC a labor-only contractor despite the finding that MAERC had investments amounting to P4,608,080.00 consisting of buildings, machinery and equipment.

However, in *Vinoya v. NLRC*,^[30] we clarified that it was not enough to show substantial capitalization or investment in the form of tools, equipment, machinery and work premises, etc., to be considered an independent contractor. In fact, jurisprudential holdings were to the effect that in determining the existence of an independent contractor relationship, several factors may be considered, such as, but not necessarily confined to, whether the contractor was carrying on an independent business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the performance of specified pieces of work; the control and supervision of the workers; the power of the employer with respect to the hiring, firing and payment of the workers of the contractor; the control of the premises; the duty to supply premises, tools, appliances, materials and labor; and the mode, manner and terms of payment.^[31]

In *Neri*, the Court considered not only the fact that respondent Building Care Corporation (BBC) had substantial capitalization but noted that BCC carried on an independent business and performed its contract according to its own manner and method, free from the control and supervision of its principal in all matters except as to the results thereof.^[32] The Court likewise mentioned that the employees of BCC were engaged to perform specific special services for their principal.^[33] The status of BCC had also been passed upon by the Court in a previous case where it was found to be a qualified job contractor because it was "a big firm which services among others, a university, an international bank, a big local bank, a hospital center, government agencies, etc." Furthermore, there were only two (2) complainants in that case who were not only selected and hired by the contractor before being assigned to work in the Cagayan de Oro branch of FEBTC but the Court also found that the contractor maintained effective supervision and control over them.

In comparison, MAERC, as earlier discussed, displayed the characteristics of a labor-only contractor. Moreover, while MAERC's investments in the form of buildings, tools and equipment amounted to more than P4 Million, we cannot disregard the fact that it was the SMC which required MAERC to undertake such investments under the understanding that the business relationship between petitioner and MAERC would be on a long term basis. Nor do we believe MAERC to have an independent business. Not only was it set up to specifically meet the pressing needs of SMC which was then having labor problems in its segregation division, none of its workers was also ever assigned to any other establishment, thus convincing us that it was created solely to service the needs of SMC. Naturally, with the severance of relationship between MAERC and SMC followed MAERC's cessation of

operations, the loss of jobs for the whole MAERC workforce and the resulting actions instituted by the workers.

Petitioner also alleged that the Court of Appeals erred in ruling that "whether MAERC is an independent contractor or a labor-only contractor, SMC is liable with MAERC for the latter's unpaid obligations to MAERC's workers."

On this point, we agree with petitioner as distinctions must be made. In legitimate job contracting, the law creates an employer-employee relationship for a limited purpose, i.e., to ensure that the employees are paid their wages.[34] The principal employer becomes jointly and severally liable with the job contractor only for the payment of the employees' wages whenever the contractor fails to pay the same. Other than that, the principal employer is not responsible for any claim made by the employees.

On the other hand, in labor-only contracting, the statute creates an employer-employee relationship for a comprehensive purpose: to prevent a circumvention of labor laws. The contractor is considered merely an agent of the principal employer and the latter is responsible to the employees of the labor-only contractor as if such employees had been directly employed by the principal employer. The principal employer therefore becomes solidarily liable with the labor-only contractor for all the rightful claims of the employees.

This distinction between job contractor and labor-only contractor, however, will not discharge SMC from paying the separation benefits of the workers, inasmuch as MAERC was shown to be a labor-only contractor; in which case, petitioner's liability is that of a direct employer and thus solidarily liable with MAERC.

SMC also failed to comply with the requirement of written notice to both the employees concerned and the Department of Labor and Employment (DOLE) which must be given at least one (1) month before the intended date of retrenchment.[35] The fines imposed for violations of the notice requirement have varied.[36] The measure of this award depends on the facts of each case and the gravity of the omission committed by the employer.[37] For its failure, petitioner was justly ordered to indemnify each displaced worker P2,000.00.

The NLRC and the Court of Appeals affirmed the Labor Arbiter's award of separation pay to the complainants in the total amount of P2,334,150.00 and of wage differentials in the total amount of P845,117.00. These amounts are the aggregate of the awards due the two hundred ninety-one (291) complainants as computed by the Labor Arbiter. The following is a summary of the computation of the benefits due the complainants which is part of the Decision of the Labor Arbiter.

S U M M A R Y

NAME

SALARY

SEPARATION

TOTAL

DIFFERENTIAL

PAY

Case No. O6-1165-91

1. Rogelio Prado, Jr

P3,056.00

P8,190.00

P11,246.00

2. Eddie Selle

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3. Alejandro Annabieza

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4. Ananias Jumao-as

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5. Consorcio Manlolooyo

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6. Ananias Alcotin

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7. Rey Gestopa

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8. Edgardo Nuñez

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9. Junel Cabatingan

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10. Paul Dumaqueta

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11,055.00

11. Felimon Echavez

2,843.00

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12. Vito Sealana

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13. Denecia Palao

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14. Roberto Lapiz

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15. Baltazar Labio

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16. Leonardo Bongo

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17. El Cid Icalina

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18. Jose Diocampo

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19. Adelo Cantillas

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20. Isaias Branzuela

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21. Ramon Rosales

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22. Gaudencio Peson

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23. Hector Cabañog

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24. Edgardo Dagmayan

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25. Rogelio Cruz

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26. Rolando Espina

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27. Bernardino Regidor

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28. Arnelio Sumalinog

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29. Gumersindo Alcontin

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30. Loreto Nuñez

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31. Joebe Boy Dayon

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32. Conrado Mesanque

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33. Marcelo Pescador

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34. Marcelino Jabagat

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35. Vicente Devilleres

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36. Vicente Alin

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37. Rodolfo Pahugot

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38. Ruel Navares

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39. Danilo Anabieza

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40. Alex Juen

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41. Juanito Garces

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42. Silvino Limbaga

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43. Aurelio Jurpacio

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44. Jovito Loon

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45. Victor Tenedero

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46. Sasing Moreno

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47. Wilfredo Hortezuella

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48. Joselito Melendez

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49. Alfredo Gestopa

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50. Regino Gabuya

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51. Jorge Gamuzarno

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52. Lolito Cocido

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53. Efraim Yubal

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54. Venerando Roamar

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55. Gerardo Butalid

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56. Hipolito Vidas

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57. Vengelito Frias

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58. Vicente Celacio

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59. Corlito Pestañas

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60. Ervin Hyrosa

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61. Rommel Guerero

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62. Rodrigo Enerlas

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63. Francisco Carbonilla

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64. Nicanor Cuizon

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65. Pedro Briones

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66. Rodolfo Cabalhug

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67. Teofilo Ricardo

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68. Danilo R. Dizon

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69. Alberto Embong

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70. Alfonso Echavez

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71. Gonzalo Roraceña

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72. Marcelo Caracina

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73. Raul Borres

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74. Lino Tongalamos

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75. Artemio Bongo, Jr.

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76. Roy Avila

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77. Melchor Freglo

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78. Raul Cabillada

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79. Eddie Catab

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80. Melencio Durano

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81. Allan Rago

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82. Dominador Caparida

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83. Jovito Catab

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84. Albert Laspiñas

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85. Alex Anabieza

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86. Nestor Reynante

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87. Eulogio Estopa

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88. Mario Bolo

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89. Ederlito A. Balocano

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90. Joel Pepito

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91. Reynaldo Ludia

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92. Manuel Cinco

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93. Allan Agustin

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94. Pablito Polegrates

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95. Clyde Prado

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96. Dindo Misa

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97. Roger Sasing

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98. Ramon Arcallana

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99. Gabriel Salas

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100. Edwin Sasan

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101. Diosdado Barriga

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102. Moises Sasan

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103. Sinforiano Cantago

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104. Leonardo Marturillas

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105. Mario Ranis

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106. Alejandro Ranido

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107. Jerome Prado

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108. Raul Oyao

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109. Victor Celacio

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TOTAL

P330,621.00

P884,520.00

P1,215,141.00

Case No. 07-1177-91

110. Gerardo Roque

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P5,460.00

P8,516.00

Case No. 07-1176-91

111. Zosimo Cararaton

P3,056.00

P8,192.00

11,246.00

Case No. 07-1219-91

112. Virgilio Zanoloria P

3,056.00

P5,460.00

P8,516.00

113. Jose Zanoria

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5,460.00

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114. Allan Zanoria

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115. Victorino Seno

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116. Teodulo Jumao-as

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117. Alexander Hera

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118. Anthony Araneta

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119. Aldrin Suson

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120. Victor Verano

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121. Ruel Sufrerencia

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122. Alfred Naparate

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123. Wenceslao Baclohon

3,056.00

8,190.00

11,246.00

124. Eduardo Langita

3,056.00

8,190.00

11,246.00

TOTAL

P39,728.00

P76,440.00

P116,168.00

Case No. 07-1283-91

125. Feliz Ordeneza

P2,816.00

P8,190.00

P11,006.00

126. Arsenio Logarta

3,056.00

8,190.00

11,246.00

127. Eduardo dela Vega

3,056.00

8,190.00

11,246.00

128. Joventino Canoog

3,056.00

8,190.00

11,246.00

TOTAL

P11,984.00

P32,760.00

P44,744.00

Case No. 10-1584-91

129. Regelio Abapo

P3,056.00

8,190.00

11,246.00

Case No. 08-1321-91

130. Ricardo Ramas

P3,056.00

P8,190.00

P11,246.00

Case No. 09-1507-91

131. Jose Bandialan

P2,816.00

P8,190.00

P11,006.00

132. Antonio Basalan

2,816.00

8,190.00

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133. Lyndon Basalan

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134. Wilfredo Aliviano

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135. Bienvenido Rosario

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136. Jesus Capangpangan

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137. Renato Mendoza

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138. Alejandro Catandegan

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139. Ruben Talaba

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140. Filemon Echavez

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141. Marcelino Caracena

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142. Ignacio Misa

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143. Feliciano Agbay

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144. Victor Maglasang

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145. Arturo Heyrosa

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146. Alipio Tirol

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147. Rosendo Mondares

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148. Aniceto Ludia

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149. Reynaldo Lavandero

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150. Reuyan Herculano

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151. Teodula Nique

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139. Ruben Talaba

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140. Filemon Echavez

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141. Marcelino Caracena

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149. Reynaldo Lavandero

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150. Reuyan Herculano

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151. Teodula Nique

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TOTAL

P59,136.00

P171,990.00

P231,126.00

Case No. 06-1145-91

152. Emerberto Orque

P2,816.00

P8,190.00

P11,006.00

153. Zosimo Baobao

2,816.00

8,190.00

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154. Medardo Singson

2,816.00

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155. Antonio Patalinghug

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156. Ernesto Singson

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157. Roberto Torres

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158. Cesar Escario

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159. Leodegario Dollecín

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160 Alberto Anoba

2,816.00

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161. Rodrigo Bisnar

2,816.00

8,190.00

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162. Zosimo Bingas

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163. Rosalio Duran, Sr.

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164. Rosalio Duran, Jr.

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165. Romeo Duran

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166. Antonio Abella

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167. Mariano Repollo

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168. Polegarpo Degamo

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169. Mario Cereza

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170. Antonio Laoronilla

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171. Proctuso Magallanes

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172. Eladio Torres

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173. Warlito Demana

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174. Henry Gedaro

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175. Doisederio Gemperao

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176. Aniceto Gemperao

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177. Jerry Caparoso

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178. Serlito Noynay

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179. Luciano Recopelacion

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180. Juanito Garces

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181. Feliciano Torres

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182. Ranilo Villareal

2,816.00

8,190.00

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183. Fermin Aliviano

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184. Junjie Laviste

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185. Tomacito de Castro

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186. Joselito Capilina

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187. Samuel Casquejo

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188. Leonardo Natad

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189. Benjamin Sayson

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190. Pedro Inoc

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191. Edward Flores

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192. Edwin Sasan

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193. Jose Rey Inot

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194. Edgar Cortes

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195. Romeo Lombog

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196. Nicolas Ribo

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197. Jaime Rubin

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198. Orlando Regis

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199. Ricky Alconza

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200. Rudy Tagalog

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201. Victorino Tagalog

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202. Edward Colina

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203. Ronie Gonzaga

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204. Paul Cabillada

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205. Wilfredo Magalona

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206. Joel Pepito

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207. Prospero Maglasang

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208. Allan Agustin

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209. Fausto Bargayo

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210. Nomer Sanchez

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211. Jolito Alin

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212. Birning Regidor

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213. Garry Dignos

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214. Edwin Dignos

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215. Dario Dignos

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216. Rogelio Dignos

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8,190.00

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217. Jimmy Cabigas

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218. Fernando Anajao

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219. Alex Flores

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220. Fernando Remedio

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221. Toto Mosquido

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222. Alberto Yagonia

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223. Victor Bariquit

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224. Ignacio Misa

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225. Eliseo Villareno

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226. Manuel Lavandero

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227. Vircede

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228. Mario Ranis

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229. Jaime Responso

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230. Marianito Aguirre

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231. Marcial Heruela

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232. Godofredo Tuñacao

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233. Perfecto Regis

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234. Roel Demana

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235. Elmer Castillo

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236. Wilfredo Calamohoy

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237. Rudy Lucernas

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238. Antonio Cañete

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239. Efraim Yubal

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240. Jesus Capangpangan

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241. Damian Capangpangan

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242. Teofilo Capangpangan

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243. Nilo Capangpangan

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244. Cororeno Capangpangan

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245. Emilio Mondares

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246. Ponciano Agana

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247. Vicente Devilleres

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248. Mario Alipan

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249. Romanito Alipan

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250. Aldeon Robinson

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251. Fortunato Soco

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252. Celso Compuesto

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253. William Itoralde

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254. Antonio Pescador

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255. Jeremias Rondero

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256. Estropio Punay

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257. Leovijildo Punay

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258. Romeo Quilongquilong

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259. Wilfredo Gestopa

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260. Eliseo Santos

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261. Henry Orio

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262. Jose Yap

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263. Nicanor Manayaga

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264. Teodoro Salinas

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265. Aniceto Montero

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266. Rafaelito Versoza

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267. Alejandro Ranido

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268. Henry Talaba

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269. Romulo Talaba

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270. Diosdado Besabela

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271. Sylvestre Toring

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272. Edilberto Padilla

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273. Allan Herosa

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274. Ernesto Sumalinog

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275. Ariston Velasco, Jr.

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276. Fernando Lopez

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277. Alfonso Echavez

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278. Nicanor Cuizon

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279. Dominador Caparida

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280. Zosimo Cororation

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281. Artemio Loveranes

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282. Dionisio Yagonia

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283. Victor Celocia

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284. Hipolito Vidas

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285. Teodoro Arcillas

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286. Marcelino Habagat

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287. Gaudioso Labasan

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288. Leopoldo Regis

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289. Aquillo Damole

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290. Willy Roble

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TOTAL

P391,424.00

P1,138,410.00

P1,529,834.00

R E C A P

CASE NO.

SALARY

SEPARATION

TOTAL

DIFFERENTIAL

PAY

06-1165-91

P330,621.00

P884,520.00

P1,215,141.00

07-1177-91

3,056.00

5,460.00

8,516.00
06-1176-91
3,056.00
8,190.00
11,246.00
07-1219-91
39,728.00
76,440.00
116,168.00
07-1283-91
11,984.00
32,760.00
44,744.00
10-1584-91
3,056.00
8,190.00
11,246.00
08-1321-91
3,056.00
8,190.00
11,246.00
09-1507-91
59,136.00
171,990.00
231,126.00
06-1145-91
391,424.00
1,138,410.00
1,529,834.00

GRAND TOTAL**P845,117.00****P2,334,150.00****P3,179,267.00**

However, certain matters have cropped up which require a review of the awards to some complainants and a recomputation by the Labor Arbiter of the total amounts.

A scrutiny of the enumeration of all the complainants shows that some names^[38] appear twice by virtue of their being included in two (2) of the nine (9) consolidated cases. A check of the Labor Arbiter's computation discloses that most of these names were awarded different amounts of separation pay or wage differential in each separate case where they were impleaded as parties because the allegations of the length and period of their employment for the separate cases, though overlapping, were also different. The records before us are incomplete and do not aid in verifying whether these names belong to the same persons but at least three (3) of those names were found to have identical signatures in the complaint forms they filed in the separate cases. It is likely therefore that the Labor Arbiter erroneously granted some complainants separation benefits and wage differentials twice. Apart from this, we also discovered some names that are almost identical.^[39] It is possible that the minor variance in the spelling of some names may have been a typographical error and refer to the same persons although the records seem to be inconclusive.

Furthermore, one of the original complainants^[40] was inadvertently omitted by the Labor Arbiter from his computations.^[41] The counsel for the complainants promptly filed a motion for inclusion/correction^[42] which motion was treated as an appeal of the Decision as the Labor Arbiter was prohibited by the rules of the NLRC from entertaining any motion at that stage of the proceedings.^[43] The NLRC for its part acknowledged the omission^[44] but both the Commission and subsequently the Court of Appeals failed to rectify the oversight in their decisions.

Finally, the NLRC ordered both MAERC and SMC to pay P84,511.70 in attorneys fees which is ten percent (10%) of the salary differentials awarded to the complainants in accordance with Art. 111 of the Labor Code. The Court of Appeals also affirmed the award. Consequently, with the recomputation of the salary differentials, the award of attorney's fees must also be modified.

WHEREFORE, the petition is DENIED. The assailed Decision of the Court of Appeals dated 28 April 2000 and the Resolution dated 26 July 2000 are AFFIRMED with MODIFICATION. Respondent Maerc Integrated Services, Inc. is declared to be a labor-only contractor. Accordingly, both petitioner San Miguel Corporation and respondent Maerc Integrated Services, Inc., are ordered to jointly and severally pay complainants (private respondents herein) separation benefits and wage differentials as may be finally recomputed by the Labor Arbiter as herein directed, plus attorney's fees to be computed on the basis of ten percent (10%) of the amounts which complainants may recover pursuant to Art. 111 of the Labor Code, as well as an indemnity fee of P2,000.00 to each complainant.

The Labor Arbiter is directed to review and recompute the award of separation pays and wage differentials due complainants whose names appear twice or are notably similar, compute the monetary award due to complainant Niel Zanoria whose name was omitted in the Labor Arbiter's Decision and immediately execute the monetary awards as found in the Labor Arbiter's computations insofar as those complainants whose entitlement to separation pay and wage differentials and the amounts thereof are no longer in question. Costs against petitioner.

SO ORDERED.

Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

Quisumbing, J., on leave.

[1] RAB Case Nos. 06-1145-91; 06-1165-91; 06-1176-91; 07-1177-91; 07-1219-91; 07-1283-91; 08-1321-91; 09-1507-91 and 10-1584-91.

[2] Decision penned by Labor Arbiter Antonio P. Villamor.

[3] Decision penned by Commissioner Amorito V. Cañete with Commissioner Irene E. Ceniza concurring and Commissioner Bernabe S. Batuhan dissenting; Rollo, pp. 94-127.

[4] Art. 109. Solidary Liability. — x x x 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.

[5] Resolution of the NLRC; Rollo, pp. 128-134.

[6] Decision penned by Associate Justice Conchita Carpio Morales with Associate Justices Teodoro P. Regino and Jose L. Sabio, Jr. (Fifteenth Division) concurring, Annex “A;” Rollo, pp. 37-46.

[7] Resolution penned by Associate Justice Conchita Carpio Morales with Associate Justices Eloy R. Bello, Jr. and Jose L. Sabio, Jr. (Fifteenth Division) concurring, Annex “C;” Rollo, pp. 62-63.

[8] Travelaire and Tours Corporation v. NLRC, G.R. No. 131523, 20 August 1998, 294 SCRA 505.

[9] Napocor v. Court of Appeals, G.R. No. 122195, 23 July 1998, 293 SCRA 130.

[10] De los Santos v. NLRC, G.R. No. 121327, 20 December 2001; SSS v. Court of Appeals, G.R. No. 100388, 14 December 2000, 348 SCRA 1; Escario v. NLRC, G.R. No. 124055, 8 June 2000, 333 SCRA 257; Coca-Cola Bottlers Phils., Inc. v. National Labor Relations Commission, G.R. No. 120466, 17 May 1999, 307 SCRA 131; Caurdanetann Piece Workers Union v. Laguesma, G.R. No. 114911, 24 February 1998, 286 SCRA 286.

[11] Rollo, pp. 279-283.

[12] Ricardo F. Elizagaque.

[13] Raymund E. Francisco.

[14] Rollo, pp. 249, 256, 268-271.

[15] Id., p. 255.

[16] Id., pp. 245, 251.

[17] 41 Am Jur 2d, Independent Contractor, Sec. 10, p. 406.

[18] TSN, Vol. IV, pp. 53-54, 59, 64, 73, cited in NLRC Decision, p. 25; Rollo, p. 118.

[19] Rollo, pp. 261-263.

[20] Inspector, Segregation Quality Control of San Miguel Corporation.

[21] Mr. Lowell Tallo.

[22] Rollo, p. 259.

[23] 41 Am Jur 2d, Independent Contractors, Sec. 14, p. 412.

[24] NLRC Decision, p. 27; Rollo, p. 120.

[25] NLRC Rollo, Vol. V, pp. 103-105

[26] Rollo, pp. 279-283; Re: Contract of Services Washing and Segregation/Beer Bottles.

Dear Mr. President,

Per letter dated 15 May 1991, we were advised by your Vismin Physical Distribution Division, thru Director Mr. Danilo Flores, that effective 01 June 1991 our aforesaid contract will be altogether terminated since SMC's bottle segregation activities will be phased out.

Believing that SMC officers may have overlooked that grave repercussions of such a decision in so far as our end is concerned, we sent and made zealous letters to and requests for a conference with Mr. Flores, for us to reason earnestly to have such discretion reconsidered. Unfortunately, said letters and requests were met with not even a slightest response. Forced by this unexpected turn of events, we are compelled to raise this appeal to your office.

Allow us then to narrate factual backdrops which may in the process, in exercise of equitable and fair judgment, may lead you to understand how oppressed our situation might be.

- 1. Way back in 1987, when SMC was faced with an impending "Physical Bottle Segregation Division" labor strike, SMC and us took hand-in-hand an arrangement to avoid the same. And you offered us to serve that Division. Frankly, we were disinclined then to accept your offer for the reason that such service or project needs not only substantial capital investment but likewise long term financial exposure and labor risks. However, relying on your express representations that you will assist us with a continued and healthy business relationship, more than sufficient enough for us to recover our investments, we took that offer you made. As a favorable consequence, among others, your labor problem was eluded and you earned in your control a very cooperative contractor in our person.

- When our arrangement was reduced into contract form, certainly we could have objected to several stipulations unfavorable to us. However, again resting on your then sincere assurances that "... as long as there is SMC there is segregation ..." and "... beyond verbal contractual implementation ..." of said paper contract, we did no longer bother to contest and request to modify certain stipulations. Again, all because we have your word and that we trusted that your word is as good as if not better than a written contract.

- True to your being a successful conglomerate, demands from your end, to more than improve our standards of

performance and prompt delivery, were always things forthcoming. Among those you required of us are as follows, viz: (a) Procure more forklifts; (b) Provide a concrete building; (c) Maintain efficient workers; (d) Put up cemented working areas; and, (e) Maintain reliable segregation equipment.

And in compliance with your demands, and entertaining the belief of your continued support, we hastened to embark further financial or loan obligations if at all to conform to your criterion of what service under you should be. Thus,

- We purchased twelve (12) forklifts, communication, operation and office equipment.

- Worker's salaries were standardized although we are receiving restricted margin from your rates.

- A warehouse and shed were constructed.

- We constructed a concrete road leading to and from our premises of work.

So great (in our level) was our financial exposure that as of 31 December 1990 our Corporate "Liabilities" alone total FOUR MILLION THREE HUNDRED SEVENTY EIGHT THOUSAND SIXTY NINE PESOS (P4,378,069.00).

And how do we pay these obligations if and when our relationship will be terminated?

Undeniably, we have machineries and equipment, and fixed assets which are valued at Four Million Six Hundred Eight Thousand Eighty Pesos (P4,608,080.00) as of 31 December 1991.

And who would be liquid enough to re-imburse or buy these fixed assets and machineries and equipment from us if and when our services will be phased out?

- San Miguel Corporation is already an institution. Certainly and frankly, its operation is even now associated or coupled with, to say the least- public, and, to say the most- political and economic, interests.

Working with us under his Contractual Service we have with you are Three Hundred (300) or more employees not to mention the overall family members totaling more than Two Thousand (2,000) people — women and children at that. If you will pursue your notice to terminate and phase out our project, naturally you will abruptly dislocate more than Three Hundred (300) employees and, with them, you will be making restless and hungry more than Two Thousand (2,000) stomachs.

And where shall we put these good number of people? Who will feed them? Would we not toy the hidden

apprehension that they might eventually stage a very collective representation, stirring public and private sectoral sentiments — the very problem we gathered hands to promptly solve at the inception?

What is happening to the goodwill of SMC?

Do consideration of more profit could override SMC's moral values and blind it to leave out in the cold a number of employees and forget an old friend?

These and maybe more are the areas of concern we deeply make as basis for our appeal. And we do hope and pray that, with and of this letter, your generous consideration will be forthcoming.

We remain,

Very faithfully yours,

Maerc Integrated Services Corporation

By:

Antonio M. Ouano

Vice President, Internal Affairs

[27] Report dated 9 June 1987 by Carlito R. Singson on the problems encountered during the first week (June 1-6, 1987) of trial segregation conducted at the PHILPHOS Warehouse; Rollo, pp. 257-258.

[28] G.R. Nos. 97008-09, 23 July 1993, 224 SCRA 717.

[29] Section 8, 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.

[30] G.R. No. 126586, 2 February 2000, 324 SCRA 469.

[31] *Id.*, citing *Ponce v. NLRC*, G.R. No. 124643, 30 July 1998, 293 SCRA 366.

[32] *Ibid.*

[33] *Ibid.*

[34] PBC v. NLRC, G.R. No. 66598, 19 December 1986, 146 SCRA 347.

[35] Magnolia Dairy Products Corporation v. NLRC, G.R. No. 114952, 29 January 1996, 252 SCRA 483.

[36] Serrano v. NLRC, G.R. No. 117040, 27 January 2000, 323 SCRA 445.

[37] Ibid.

[38] The following are complainants in two (2) of the nine (9) consolidated cases: Juanito Garces, Edwin Sasan, Joel Pepito, Allan Agustin, Ignacio Misa, Mario Ranis, Efraim Yubal, Jesus Capangpangan, Vicente Devilleres, Alejandro Ranido, Alfonso Eschavez, Nicanor Cuizon, Dominador Caparida and Hipolito Vidas.

[39] Marcelino Habagat and Marcelino Jabagat; Victor Celacio and Victor Celocia; Zosimo Cororation and Zosimo Coraraton; Filemon Echavez and Felimon Echavez.

[40] Niel Zanoria.

[41] NLRC Rollo, Vol. V, p. 156; Rollo, p. 148.

[42] Id., pp. 215.

[43] Id., p. 218.

[44] NLRC Decision, p. 1; Rollo, p. 94.

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