SAN MIGUEL CORPORATION, PETITIONER, VS. PROSPERO A. ABALLA, BONNY J. ABARING, EDWIN M. ADLA-ON, ALVIN C. ALCALDE, CELANIO D. ARROLLADO, EDDIE A. ARROLLADO, REYNALDO T. ASONG, RE...

G.R. NO. 149011. June 28, 2005

Ponente: CARPIO-MORALES, J.

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CARPIO-MORALES, J.:

Petitioner San Miguel Corporation (SMC), represented by its Assistant Vice President and Visayas Area Manager for Aquaculture Operations Leopoldo S. Titular, and Sunflower Multi-Purpose Cooperative (Sunflower), represented by the Chairman of its Board of Directors Roy G. Asong, entered into a one-year Contract of Services[1] commencing on January 1, 1993, to be renewed on a month to month basis until terminated by either party. The pertinent provisions of the contract read:

> 1. The cooperative agrees and undertakes to perform and/or provide for the company, on a non-exclusive basis for a period of one year the following services for the Bacolod Shrimp Processing Plant:
>
> A. Messengerial/Janitorial
> B. Shrimp Harvesting/Receiving
> C. Sanitation/Washing/Cold Storage[2]
>
> 2. To carry out the undertaking specified in the immediately preceding paragraph, the cooperative shall employ the necessary personnel and provide adequate equipment, materials, tools and apparatus, to efficiently, fully and speedily accomplish the work and services undertaken by the cooperative. xxx
>
> 3. In consideration of the above undertaking the company expressly agrees to pay the cooperative the following rates per activity:
>
> A. Messengerial/Janitorial Monthly Fixed Service Charge of: Nineteen Thousand Five Hundred Pesos Only (P19,500.00)
>
> B. Harvesting/Shrimp Receiving. – Piece rate of P0.34/kg. Or P100.00 minimum per person/activity whichever is higher, with provisions as follows:
>
> P25.00 Fixed Fee per person
> Additional meal allowance P15.00 every meal time in case harvest duration exceeds one meal.
> This will be pre-set every harvest based on harvest plan approved by the Senior Buyer.
>
> C. Sanitation/Washing and Cold Storage P125.00/person for 3 shifts.
>
> One-half of the payment for all services rendered shall be payable on the fifteenth and the other half, on the end of each month. The cooperative shall pay taxes, fees, dues and other impositions that shall become due as a result of this contract.

The cooperative shall have the entire charge, control and supervision of the work and services herein agreed upon. xxx

4. There is no employer-employee relationship between the company and the cooperative, or the cooperative and any of its members, or the company and any members of the cooperative. The cooperative is an association of self-employed members, an independent contractor, and an entrepreneur. It is subject to the control and direction of the company only as to the result to be accomplished by the work or services herein specified, and not as to the work herein contracted. The cooperative and its members recognize that it is taking a business risk in accepting a fixed service fee to provide the services contracted for and its realization of profit or loss from its undertaking, in relation to all its other undertakings, will depend on how efficiently it deploys and fields its members and how they perform the work and manage its operations.

5. The cooperative shall, whenever possible, maintain and keep under its control the premises where the work under this contract shall be performed.

6. The cooperative shall have exclusive discretion in the selection, engagement and discharge of its member-workers or otherwise in the direction and control thereof. The determination of the wages, salaries and compensation of the member-workers of the cooperative shall be within its full control. It is further understood that the cooperative is an independent contractor, and as such, the cooperative agrees to comply with all the requirements of all pertinent laws and ordinances, rules and regulations. Although it is understood and agreed between the parties hereto that the cooperative, in the performance of its obligations, is subject to the control or direction of the company merely as a (sic) result to be accomplished by the work or services herein specified, and not as to the means and methods of accomplishing such result, the cooperative hereby warrants that it will perform such work or services in such manner as will be consistent with the achievement of the result herein contracted for.

xxx

8. The cooperative undertakes to pay the wages or salaries of its member-workers, as well as all benefits, premiums and protection in accordance with the provisions of the labor code, cooperative code and other applicable laws and decrees and the rules and regulations promulgated by competent authorities, assuming all responsibility therefor.

The cooperative further undertakes to submit to the company within the first ten (10) days of every month, a statement made, signed and sworn to by its duly authorized representative before a notary public or other officer authorized by law to administer oaths, to the effect that the cooperative has paid all wages or salaries due to its employees or personnel for services rendered by them during the month immediately preceding, including overtime, if any, and that such payments were all in accordance with the requirements of law.

xxx

12. Unless sooner terminated for the reasons stated in paragraph 9 this contract shall be for a period of one (1) year commencing on January 1, 1993. Thereafter, this Contract will be deemed renewed on a month-to-month basis until terminated by either party by sending a written notice to the other at least thirty (30) days prior to the intended date of termination.

xxx[3] (Underscoring supplied)

Pursuant to the contract, Sunflower engaged private respondents to, as they did, render services at SMC's Bacolod Shrimp Processing Plant at Sta. Fe, Bacolod City. The contract was deemed renewed by the parties every month after its expiration on January 1, 1994 and private respondents continued to perform their tasks until September 11, 1995.

In July 1995, private respondents filed a complaint before the NLRC, Regional Arbitration Branch No. VI,

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Bacolod City, praying to be declared as regular employees of SMC, with claims for recovery of all benefits and privileges enjoyed by SMC rank and file employees.

Private respondents subsequently filed on September 25, 1995 an Amended Complaint[4] to include illegal dismissal as additional cause of action following SMC's closure of its Bacolod Shrimp Processing Plant on September 15, 1995[5] which resulted in the termination of their services.

SMC filed a Motion for Leave to File Attached Third Party Complaint[6] dated November 27, 1995 to implead Sunflower as Third Party Defendant which was, by Order[7] of December 11, 1995, granted by Labor Arbiter Ray Alan T. Drilon.

In the meantime, on September 30, 1996, SMC filed before the Regional Office at Iloilo City of the Department of Labor and Employment (DOLE) a Notice of Closure[8] of its aquaculture operations effective on even date, citing serious business losses.

By Decision of September 23, 1997, Labor Arbiter Drilon dismissed private respondents' complaint for lack of merit, ratiocinating as follows:

> We sustain the stand of the respondent SMC that it could properly exercise its management prerogative to contract out the preparation and processing aspects of its aquaculture operations. Judicial notice has already been taken regarding the general practice adopted in government and private institutions and industries of hiring independent contractors to perform special services. xxx
>
> xxx
>
> Indeed, the law allows job contracting. Job contracting is permissible under the Labor Code under specific conditions and we do not see how this activity could not be legally undertaken by an independent service cooperative like the third-party respondent herein.
>
> There is no basis to the demand for regularization simply on the theory that complainants performed activities which are necessary and desirable in the business of respondent. It has been held that the definition of regular employees as those who perform activities which are necessary and desirable for the business of the employer is not always determinative because any agreement may provide for one (1) party to render services for and in behalf of another for a consideration even without being hired as an employee.
>
> The charge of the complainants that third-party respondent is a mere labor-only contractor is a sweeping generalization and completely unsubstantiated. xxx In the absence of clear and convincing evidence showing that third-party respondent acted merely as a labor only contractor, we are firmly convinced of the legitimacy and the integrity of its service contract with respondent SMC.
>
> In the same vein, the closure of the Bacolod Shrimp Processing Plant was a management decision purely dictated by economic factors which was (sic) mainly serious business losses. The law recognizes the right of the employer to close his business or cease his operations for bonafide reasons, as much as it recognizes the right of the employer to terminate the employment of any employee due to closure or cessation of business operations, unless the closing is for the purpose of circumventing the provisions of the law on security of tenure. The decision of respondent SMC to close its Bacolod Shrimp Processing Plant, due to serious business losses which has (sic) clearly been established, is a management prerogative which could hardly be interfered with.
>
> xxx The closure did affect the regular employees and workers of the Bacolod Processing Plant, who were accordingly terminated following the legal requisites prescribed by law. The closure, however, in so far as the complainants are concerned, resulted in the termination of SMC's service contract with their cooperative xxx[9] (Underscoring supplied)

Private respondents appealed to the NLRC.

By Decision of December 29, 1998, the NLRC dismissed the appeal for lack of merit, it finding that third party respondent Sunflower was an independent contractor in light of its observation that "[i]n all the activities of private respondents, they were under the actual direction, control and supervision of third party respondent Sunflower, as well as the payment of wages, and power of dismissal."[10]

Private respondents' Motion for Reconsideration[11] having been denied by the NLRC for lack of merit by Resolution of September 10, 1999, they filed a petition for certiorari[12] before the Court of Appeals (CA).

Before the CA, SMC filed a Motion to Dismiss[13] private respondents' petition for non-compliance with the Rules on Civil Procedure and failure to show grave abuse of discretion on the part of the NLRC.

SMC subsequently filed its Comment[14] to the petition on March 30, 2000.

By Decision of February 7, 2001, the appellate court reversed the NLRC decision and accordingly found for private respondents, disposing as follows:

> WHEREFORE, the petition is GRANTED. Accordingly, judgment is hereby RENDERED: (1) REVERSING and SETTING ASIDE both the 29 December 1998 decision and 10 September 1999 resolution of the National Labor Relations Commission (NLRC), Fourth Division, Cebu City in NLRC Case No. V-0361-97 as well as the 23 September 1997 decision of the labor arbiter in RAB Case No. 06-07-10316-95; (2) ORDERING the respondent, San Miguel Corporation, to GRANT petitioners: (a) separation pay in accordance with the computation given to the regular SMC employees working at its Bacolod Shrimp Processing Plant with full backwages, inclusive of allowances and other benefits or their monetary equivalent, from 11 September 1995, the time their actual compensation was withheld from them, up to the time of the finality of this decision; (b) differentials pays (sic) effective as of and from the time petitioners acquired regular employment status pursuant to the disquisition mentioned above, and all such other and further benefits as provided by applicable collective bargaining agreement(s) or other relations, or by law, beginning such time up to their termination from employment on 11 September 1995; and ORDERING private respondent SMC to PAY unto the petitioners attorney's fees equivalent to ten (10%) percent of the total award.
>
> No pronouncement as to costs.
>
> SO ORDERED.[15] (Underscoring supplied)

Justifying its reversal of the findings of the labor arbiter and the NLRC, the appellate court reasoned:

> Although the terms of the non-exclusive contract of service between SMC and [Sunflower] showed a clear intent to abstain from establishing an employer-employee relationship between SMC and [Sunflower] or the latter's members, the extent to which the parties successfully realized this intent in the light of the applicable law is the controlling factor in determining the real and actual relationship between or among the parties.
>
> xxx
>
> With respect to the power to control petitioners' conduct, it appears that petitioners were under the direct control and supervision of SMC supervisors both as to the manner they performed their functions and as to the end results thereof. It was only after petitioners lodged a complaint to have their status declared as regular employees of SMC that certain members of [Sunflower] began to countersign petitioners' daily time records to make it appear that they (petitioners) were under the control and supervision of [Sunflower] team leaders (rollo, pp. 523-527). xxx
>
> Even without these instances indicative of control by SMC over the petitioners, it is safe to assume that SMC would never have allowed the petitioners to work within its premises, using its own facilities, equipment and

tools, alongside SMC employees discharging similar or identical activities unless it exercised a substantial degree of control and supervision over the petitioners not only as to the manner they performed their functions but also as to the end results of such functions.

xxx

xxx it becomes apparent that [Sunflower] and the petitioners do not qualify as independent contractors. [Sunflower] and the petitioners did not have substantial capital or investment in the form of tools, equipment, implements, work premises, et cetera necessary to actually perform the service under their own account, responsibility, and method. The only "work premises" maintained by [Sunflower] was a small office within the confines of a small "carinderia" or refreshment parlor owned by the mother of its chair, Roy Asong; the only equipment it owned was a typewriter (rollo, pp. 525-525) and, the only assets it provided SMC were the bare bodies of its members, the petitioners herein (rollo, p. 523).

In addition, as shown earlier, petitioners, who worked inside the premises of SMC, were under the control and supervision of SMC both as to the manner and method in discharging their functions and as to the results thereof.

Besides, it should be taken into account that the activities undertaken by the petitioners as cleaners, janitors, messengers and shrimp harvesters, packers and handlers were directly related to the aquaculture business of SMC (See Guarin vs. NLRC, 198 SCRA 267, 273). This is confirmed by the renewal of the service contract from January 1993 to September 1995, a period of close to three (3) years.

Moreover, the petitioners here numbering ninety seven (97), by itself, is a considerable workforce and raises the suspicion that the non-exclusive service contract between SMC and [Sunflower] was "designed to evade the obligations inherent in an employer-employee relationship" (See Rhone-Poulenc Agrochemicals Philippines, Inc. vs. NLRC, 217 SCRA 249, 259).

Equally suspicious is the fact that the notary public who signed the by-laws of [Sunflower] and its [Sunflower] retained counsel are both partners of the local counsel of SMC (rollo, p. 9).

xxx

With these observations, no other logical conclusion can be reached except that [Sunflower] acted as an agent of SMC, facilitating the manpower requirements of the latter, the real employer of the petitioners. We simply cannot allow these two entities through the convenience of a non-exclusive service contract to stipulate on the existence of employer-employee relation. Such existence is a question of law which cannot be made the subject of agreement to the detriment of the petitioners (Tabas vs. California Manufacturing, Inc., 169 SCRA 497, 500).

xxx

There being a finding of "labor-only" contracting, liability must be shouldered either by SMC or [Sunflower] or shared by both (See Tabas vs. California Manufacturing, Inc., supra, p. 502). SMC however should be held solely liable for [Sunflower] became non-existent with the closure of the aquaculture business of SMC.
Furthermore, since the closure of the aquaculture operations of SMC appears to be valid, reinstatement is no longer feasible. Consistent with the pronouncement in Bustamante, et al., vs. NLRC, G.R. No. 111651, 28 November 1996, petitioners are thus entitled to separation pay (in the computation similar to those given to regular SMC employees at its Bacolod Shrimp Processing Plant) "with full backwages, inclusive of allowances and other benefits or their monetary equivalent, from the time their actual compensation was withheld from them" up to the time of the finality of this decision. This is without prejudice to differentials pays (sic) effective as of and from the time petitioners acquired regular employment status pursuant to the discussion mentioned above, and all such other and further benefits as provided by applicable collective bargaining agreement(s) or other relations, or by law, beginning such time up to their termination from employment on 11

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> September 1995.[16] (Emphasis and underscoring supplied)

SMC's Motion for Reconsideration[17] having been denied for lack of merit by Resolution of July 11, 2001, it comes before this Court via the present petition for review on certiorari assigning to the CA the following errors:

> **I**
>
> THE COURT OF APPEALS GRAVELY ERRED IN GIVING DUE COURSE AND GRANTING RESPONDENTS' PATENTLY DEFECTIVE PETITION FOR CERTIORARI. IN DOING SO, THE COURT OF APPEALS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS.
>
> II
>
> THE COURT OF APPEALS GRAVELY ERRED IN RECOGNIZING ALL THE RESPONDENTS AS COMPLAINANTS IN THE CASE BEFORE THE LABOR ARBITER. IN DOING SO, THE COURT OF APPEALS DECIDED THIS CASE IN A MANNER NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT.
>
> III
>
> THE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT RESPONDENTS ARE EMPLOYEES OF SMC.
>
> IV
>
> THE COURT OF APPEALS GRAVELY ERRED IN NOT FINDNG (sic) THAT RESPONDENTS ARE NOT ENTITLED TO ANY RELIEF. THE CLOSURE OF THE BACOLOD SHRIMP PROCESSING PLANT WAS DUE TO SERIOUS BUSINESS LOSSES.[18] (Underscoring supplied)

SMC bewails the failure of the appellate court to outrightly dismiss the petition for certiorari as only three out of the ninety seven named petitioners signed the verification and certification against forum-shopping.

While the general rule is that the certificate of non-forum shopping must be signed by all the plaintiffs or petitioners in a case and the signature of only one of them is insufficient,[19] this Court has stressed that the rules on forum shopping, which were designed to promote and facilitate the orderly administration of justice, should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective.[20] Strict compliance with the provisions regarding the certificate of non-forum shopping merely underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded.[21] It does not, however, thereby interdict substantial compliance with its provisions under justifiable circumstances.[22]

Thus in the recent case of HLC Construction and Development Corporation v. Emily Homes Subdivision Homeowners Association,[23] this Court held:

> Respondents (who were plaintiffs in the trial court) filed the complaint against petitioners as a group, represented by their homeowners' association president who was likewise one of the plaintiffs, Mr. Samaon M. Buat. Respondents raised one cause of action which was the breach of contractual obligations and payment of damages. They shared a common interest in the subject matter of the case, being the aggrieved residents of the poorly constructed and developed Emily Homes Subdivision. Due to the collective nature of the case, there was no doubt that Mr. Samaon M. Buat could validly sign the certificate of non-forum shopping in behalf of all his co-plaintiffs. In cases therefore where it is highly impractical to require all the plaintiffs to sign the certificate of non-forum shopping, it is sufficient, in order not to defeat the ends of justice, for one of the

> plaintiffs, acting as representative, to sign the certificate provided that xxx the plaintiffs share a common interest in the subject matter of the case or filed the case as a "collective," raising only one common cause of action or defense.[24] (Emphasis and underscoring supplied)

Given the collective nature of the petition filed before the appellate court by herein private respondents, raising one common cause of action against SMC, the execution by private respondents Winifredo Talite, Renelito Deon and Jose Temporosa in behalf of all the other private respondents of the certificate of non-forum shopping constitutes substantial compliance with the Rules.[25] That the three indeed represented their co-petitioners before the appellate court is, as it correctly found, "subsequently proven to be true as shown by the signatures of the majority of the petitioners appearing in their memorandum filed before Us."[26]

Additionally, the merits of the substantive aspects of the case may also be deemed as "special circumstance" or "compelling reason" to take cognizance of a petition although the certification against forum shopping was not executed and signed by all of the petitioners.[27]

SMC goes on to argue that the petition filed before the CA is fatally defective as it was not accompanied by "copies of all pleadings and documents relevant and pertinent thereto" in contravention of Section 1, Rule 65 of the Rules of Court.[28]

This Court is not persuaded. The records show that private respondents appended the following documents to their petition before the appellate court: the September 23, 1997 Decision of the Labor Arbiter,[29] their Notice of Appeal with Appeal Memorandum dated October 16, 1997 filed before the NLRC,[30] the December 29, 1998 NLRC Decision,[31] their Motion for Reconsideration dated March 26, 1999 filed with the NLRC[32] and the September 10, 1999 NLRC Resolution.[33]

It bears stressing at any rate that it is the appellate court which ultimately determines if the supporting documents are sufficient to make out a prima facie case.[34] It discerns whether on the basis of what have been submitted it could already judiciously determine the merits of the petition.[35] In the case at bar, the CA found that the petition was adequately supported by relevant and pertinent documents.

At all events, this Court has allowed a liberal construction of the rule on the accomplishment of a certificate of non-forum shopping in the following cases: (1) where a rigid application will result in manifest failure or miscarriage of justice; (2) where the interest of substantial justice will be served; (3) where the resolution of the motion is addressed solely to the sound and judicious discretion of the court; and (4) where the injustice to the adverse party is not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[36]

Rules of procedure should indeed be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed.[37]

SMC further argues that the appellate court exceeded its jurisdiction in reversing the decisions of the labor arbiter and the NLRC as "findings of facts of quasi-judicial bodies like the NLRC are accorded great respect and finality," and that this principle acquires greater weight and application in the case at bar as the labor arbiter and the NLRC have the same factual findings.

The general rule, no doubt, is that findings of facts of an administrative agency which has acquired expertise in the particular field of its endeavor are accorded great weight on appeal.[38] The rule is not absolute and admits of certain well-recognized exceptions, however. Thus, when the findings of fact of the labor arbiter and the NLRC are not supported by substantial evidence or their judgment was based on a misapprehension of facts, the appellate

court may make an independent evaluation of the facts of the case.[39]

SMC further faults the appellate court in giving due course to private respondents' petition despite the fact that the complaint filed before the labor arbiter was signed and verified only by private respondent Winifredo Talite; that private respondents' position paper[40] was verified by only six[41] out of the ninety seven complainants; and that their Joint-Affidavit[42] was executed only by twelve[43] of the complainants.

Specifically with respect to the Joint-Affidavit of private respondents, SMC asserts that it should not have been considered by the appellate court in establishing the claims of those who did not sign the same, citing this Court's ruling in Southern Cotabato Development and Construction, Inc. v. NLRC.[44]

SMC's position does not lie.

A perusal of the complaint shows that the ninety seven complainants were being represented by their counsel of choice. Thus the first sentence of their complaint alleges: "xxx complainants, by counsel and unto this Honorable Office respectfully state xxx." And the complaint was signed by Atty. Jose Max S. Ortiz as "counsel for the complainants." Following Section 6, Rule III of the 1990 Rules of Procedure of the NLRC, now Section 7, Rule III of the 1999 NLRC Rules, Atty. Ortiz is presumed to be properly authorized by private respondents in filing the complaint.

That the verification wherein it is manifested that private respondent Talite was one of the complainants and was causing the preparation of the complaint "with the authority of my co-complainants" indubitably shows that Talite was representing the rest of his co-complainants in signing the verification in accordance with Section 7, Rule III of the 1990 NLRC Rules, now Section 8, Rule 3 of the 1999 NLRC Rules, which states:

> Section 7. Authority to bind party. – Attorneys and other representatives of parties shall have authority to bind their clients in all matters of procedure; but they cannot, without a special power of attorney or express consent, enter into a compromise agreement with the opposing party in full or partial discharge of a client's claim. (Underscoring supplied)

As regards private respondents' position paper which bore the signatures of only six of them, appended to it was an Authority/Confirmation of Authority[45] signed by the ninety one others conferring authority to their counsel "to file RAB Case No. 06-07-10316-95, entitled Winifredo Talite et al. v. San Miguel Corporation presently pending before the sala of Labor Arbiter Ray Alan Drilon at the NLRC Regional Arbitration Branch No. VI in Bacolod City" and appointing him as their retained counsel to represent them in the said case.

That there has been substantial compliance with the requirement on verification of position papers under Section 3, Rule V of the 1990 NLRC Rules of Procedure[46] is not difficult to appreciate in light of the provision of Section 7, Rule V of the 1990 NLRC Rules, now Section 9, Rule V of the 1999 NLRC Rules which reads:

> Section 7. Nature of Proceedings. – The proceedings before a Labor Arbiter shall be non-litigious in nature. Subject to the requirements of due process, the technicalities of law and procedure and the rules obtaining in the courts of law shall not strictly apply thereto. The Labor Arbiter may avail himself of all reasonable means to ascertain the facts of the controversy speedily, including ocular inspection and examination of well-informed persons. (underscoring supplied)

As regards private respondents' Joint-Affidavit which is being assailed in view of the failure of some complainants to affix their signatures thereon, this Court quotes with approval the appellate court's ratiocinations:

> A perusal of the Southern Cotabato Development Case would reveal that movant did not quote the whole text of paragraph 5 on page 865 of 280 SCRA. The whole paragraph reads:

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> "Clearly then, as to those who opted to move for the dismissal of their complaints, or did not submit their affidavits nor appear during trial and in whose favor no other independent evidence was adduced, no award for back wages could have been validly and properly made for want of factual basis. There is no showing at all that any of the affidavits of the thirty-four (34) complainants were offered as evidence for those who did not submit their affidavits, or that such affidavits had any bearing at all on the rights and interest of the latter. In the same vein, private respondent's position paper was not of any help to these delinquent complainants.
>
> The implication is that as long as the affidavits of the complainants were offered as evidence for those who did not submit theirs, or the affidavits were material and relevant to the rights and interest of the latter, such affidavits may be sufficient to establish the claims of those who did not give their affidavits.
>
> Here, a reading of the joint affidavit signed by twelve (12) of the ninety-seven (97) complainants (petitioners herein) would readily reveal that the affidavit was offered as evidence not only for the signatories therein but for all of the complainants. (These ninety-seven (97) individuals were previously identified during the mandatory conference as the only complainants in the proceedings before the labor arbiter) Moreover, the affidavit touched on the common interest of all of the complainants as it supported their claim of the existence of an employer-employee relationship between them and respondent SMC. Thus, the said affidavit was enough to prove the claims of the rest of the complainants.[47] (Emphasis supplied, underscoring in the original)

In any event, SMC is reminded that the rules of evidence prevailing in courts of law or equity do not control proceedings before the Labor Arbiter. So Article 221 of the Labor Code enjoins:

> ART. 221. Technical rules not binding and prior resort to amicable settlement. – In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process. xxx

As such, their application may be relaxed to serve the demands of substantial justice.[48]

On the merits, the petition just the same fails.

SMC insists that private respondents are the employees of Sunflower, an independent contractor. On the other hand, private respondents assert that Sunflower is a labor-only contractor.

Article 106 of the Labor Code provides:

> ART. 106. Contractor or subcontracting. – Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any shall be paid in accordance with the provisions of this Code.
>
> In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.
>
> The Secretary of Labor may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of workers established under the Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.
>
> 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 person 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.

Rule VIII-A, Book III of the Omnibus Rules Implementing the Labor Code, as amended by Department Order No. 18, distinguishes between legitimate and labor-only contracting:

> Section 3. Trilateral Relationship in Contracting Arrangements. In legitimate contracting, there exists a trilateral relationship under which there is a contract for a specific job, work or service between the principal and the contractor or subcontractor, and a contract of employment between the contractor or subcontractor and its workers. Hence, there are three parties involved in these arrangements, the principal which decides to farm out a job or service to a contractor or subcontractor, the contractor or subcontractor which has the capacity to independently undertake the performance of the job, work or service, and the contractual workers engaged by the contractor or subcontractor to accomplish the job, work or service.
>
> Section 5. Prohibition against labor-only contracting. Labor-only contracting Sis hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present:
>
> i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal, or
>
> ii) The contractor does not exercise the right to control over the performance of the work of the contractual employee.
>
> The foregoing provisions shall be without prejudice to the application of Article 248 (c) of the Labor Code, as amended.
>
> "Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out.
>
> The "right to control" shall refer to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.

The test to determine the existence of independent contractorship is whether one claiming to be an independent contractor has contracted to do the work according to his own methods and without being subject to the control of the employer, except only as to the results of the work.[49]

In legitimate labor contracting, the law creates an employer-employee relationship for a limited purpose, i.e., to ensure that the employees are paid their wages. 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.[50]

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.[51]

The Contract of Services between SMC and Sunflower shows that the parties clearly disavowed the existence of an employer-employee relationship between SMC and private respondents. The language of a contract is not, however, determinative of the parties' relationship; rather it is the totality of the facts and surrounding circumstances of the case.[52] A party cannot dictate, by the mere expedient of a unilateral declaration in a contract, the character of its business, i.e., whether as labor-only contractor or job contractor, it being crucial that its character be measured in terms of and determined by the criteria set by statute.[53]

SMC argues that Sunflower could not have been issued a certificate of registration as a cooperative if it had no substantial capital.[54]

While indeed Sunflower was issued Certificate of Registration No. IL0-875[55] on February 10, 1992 by the Cooperative Development Authority, this merely shows that it had at least P2,000.00 in paid-up share capital as mandated by Section 5 of Article 14[56] of Republic Act No. 6938, otherwise known as the Cooperative Code, which amount cannot be considered substantial capitalization.

What appears is that Sunflower does not have substantial capitalization or investment in the form of tools, equipment, machineries, work premises and other materials to qualify it as an independent contractor.

On the other hand, it is gathered that the lot, building, machineries and all other working tools utilized by private respondents in carrying out their tasks were owned and provided by SMC. Consider the following uncontroverted allegations of private respondents in the Joint Affidavit:

> [Sunflower], during the existence of its service contract with respondent SMC, did not own a single machinery, equipment, or working tool used in the processing plant. Everything was owned and provided by respondent SMC. The lot, the building, and working facilities are owned by respondent SMC. The machineries and equipments (sic) like washer machine, oven or cooking machine, sizer machine, freezer, storage, and chilling tanks, push carts, hydrolic (sic) jack, tables, and chairs were all owned by respondent SMC. All the boxes, trays, molding pan used in the processing are also owned by respondent SMC. The gloves and boots used by the complainants were also owned by respondent SMC. Even the mops, electric floor cleaners, brush, hoose (sic), soaps, floor waxes, chlorine, liquid stain removers, lysol and the like used by the complainants assigned as cleaners were all owned and provided by respondent SMC.
>
> Simply stated, third-party respondent did not own even a small capital in the form of tools, machineries, or facilities used in said prawn processing
>
> xxx
>
> The alleged office of [Sunflower] is found within the confines of a small "carinderia" or "refreshment" (sic) owned by the mother of the Cooperative Chairman Roy Asong.
>
> xxx In said . . . office, the only equipment used and owned by [Sunflower] was a typewriter. [57]

And from the job description provided by SMC itself, the work assigned to private respondents was directly related to the aquaculture operations of SMC. Undoubtedly, the nature of the work performed by private respondents in shrimp harvesting, receiving and packing formed an integral part of the shrimp processing operations of SMC. As for janitorial and messengerial services, that they are considered directly related to the principal business of the employer[58] has been jurisprudentially recognized.

Furthermore, Sunflower did not carry on an independent business or undertake the performance of its service contract according to its own manner and method, free from the control and supervision of its principal, SMC, its apparent role having been merely to recruit persons to work for SMC.

Thus, it is gathered from the evidence adduced by private respondents before the labor arbiter that their daily time

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records were signed by SMC supervisors Ike Puentebella, Joemel Haro, Joemari Raca, Erwin Tumonong, Edison Arguello, and Stephen Palabrica, which fact shows that SMC exercised the power of control and supervision over its employees.[59] And control of the premises in which private respondents worked was by SMC. These tend to disprove the independence of the contractor.[60]

More. Private respondents had been working in the aqua processing plant inside the SMC compound alongside regular SMC shrimp processing workers performing identical jobs under the same SMC supervisors.[61] This circumstance is another indicium of the existence of a labor-only contractorship.[62]

And as private respondents alleged in their Joint Affidavit which did not escape the observation of the CA, no showing to the contrary having been proffered by SMC, Sunflower did not cater to clients other than SMC,[63] and with the closure of SMC's Bacolod Shrimp Processing Plant, Sunflower likewise ceased to exist. This Court's ruling in San Miguel Corporation v. MAERC Integrated Services, Inc.[64] is thus instructive.

> xxx 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.[65] (Underscoring supplied)

All the foregoing considerations affirm by more than substantial evidence the existence of an employer-employee relationship between SMC and private respondents.

Since private respondents who were engaged in shrimp processing performed tasks usually necessary or desirable in the aquaculture business of SMC, they should be deemed regular employees of the latter[66] and as such are entitled to all the benefits and rights appurtenant to regular employment.[67] They should thus be awarded differential pay corresponding to the difference between the wages and benefits given them and those accorded SMC's other regular employees.

Respecting the private respondents who were tasked with janitorial and messengerial duties, this Court quotes with approval the appellate court's ruling thereon:

> Those performing janitorial and messengerial services however acquired regular status only after rendering one-year service pursuant to Article 280 of the Labor Code. Although janitorial and messengerial services are considered directly related to the aquaculture business of SMC, they are deemed unnecessary in the conduct of its principal business; hence, the distinction (See Coca Cola Bottlers Phils., Inc. v. NLRC, 307 SCRA 131, 136-137 and Philippine Bank of Communications v. NLRC, supra, p. 359).[68]

The law of course provides for two kinds of regular employees, namely: (1) those who are engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; and (2) those who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which they are employed.[69]

As for those of private respondents who were engaged in janitorial and messengerial tasks, they fall under the second category and are thus entitled to differential pay and benefits extended to other SMC regular employees from the day immediately following their first year of service.[70]

Regarding the closure of SMC's aquaculture operations and the consequent termination of private respondents, Article 283 of the Labor Code provides:

> ART. 283. Closure of establishment and reduction of personnel. – The employer may also terminate the

> employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Department of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or to at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year. (Underscoring supplied)

In the case at bar, a particular department under the SMC group of companies was closed allegedly due to serious business reverses. This constitutes retrenchment by, and not closure of, the enterprise or the company itself as SMC has not totally ceased operations but is still very much an on-going and highly viable business concern.[71]

Retrenchment is a management prerogative consistently recognized and affirmed by this Court. It is, however, subject to faithful compliance with the substantive and procedural requirements laid down by law and jurisprudence.[72]

For retrenchment to be considered valid the following substantial requirements must be met: (a) the losses expected should be substantial and not merely de minimis in extent; (b) the substantial losses apprehended must be reasonably imminent such as can be perceived objectively and in good faith by the employer; (c) the retrenchment must be reasonably necessary and likely to effectively prevent the expected losses; and (d) the alleged losses, if already incurred, and the expected imminent losses sought to be forestalled, must be proved by sufficient and convincing evidence.[73]

In the discharge of these requirements, it is the employer who has the onus, being in the nature of an affirmative defense.[74]

Normally, the condition of business losses is shown by audited financial documents like yearly balance sheets, profit and loss statements and annual income tax returns. The financial statements must be prepared and signed by independent auditors failing which they can be assailed as self-serving documents.[75]

In the case at bar, company losses were duly established by financial documents audited by Joaquin Cunanan & Co. showing that the aquaculture operations of SMC's Agribusiness Division accumulated losses amounting to P145,848,172.00 in 1992 resulting in the closure of its Calatrava Aquaculture Center in Negros Occidental, P11,393,071.00 in 1993 and P80,325,608.00 in 1994 which led to the closure of its San Fernando Shrimp Processing Plant in Pampanga and the Bacolod Shrimp Processing Plant in 1995.

SMC has thus proven substantial business reverses justifying retrenchment of its employees.

For termination due to retrenchment to be valid, however, the law requires that written notices of the intended retrenchment be served by the employer on the worker and on the DOLE at least one (1) month before the actual date of the retrenchment,[76] in order to give employees some time to prepare for the eventual loss of their jobs, as well as to give DOLE the opportunity to ascertain the verity of the alleged cause of termination.[77]

Private respondents, however, were merely verbally informed on September 10, 1995 by SMC Prawn Manager Ponciano Capay that effective the following day or on September 11, 1995, they were no longer to report for work as SMC would be closing its operations.[78]

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Where the dismissal is based on an authorized cause under Article 283 of the Labor Code but the employer failed to comply with the notice requirement, the sanction should be stiff as the dismissal process was initiated by the employer's exercise of his management prerogative, as opposed to a dismissal based on a just cause under Article 282 with the same procedural infirmity where the sanction to be imposed upon the employer should be tempered as the dismissal process was, in effect, initiated by an act imputable to the employee.[79]

In light of the factual circumstances of the case at bar, this Court awards P50,000.00 to each private respondent as nominal damages.

The grant of separation pay as an incidence of termination of employment due to retrenchment to prevent losses is a statutory obligation on the part of the employer and a demandable right on the part of the employee. Private respondents should thus be awarded separation pay equivalent to at least one (1) month pay or to at least one-half month pay for every year of service, whichever is higher, as mandated by Article 283 of the Labor Code or the separation pay awarded by SMC to other regular SMC employees that were terminated as a result of the retrenchment, depending on which is most beneficial to private respondents.

Considering that private respondents were not illegally dismissed, however, no backwages need be awarded. It is well settled that backwages may be granted only when there is a finding of illegal dismissal.[80] The appellate court thus erred in awarding backwages to private respondents upon the authority of Bustamante v. NLRC,[81] what was involved in that case being one of illegal dismissal.

With respect to attorney's fees, in actions for recovery of wages or where an employee was forced to litigate and thus incurred expenses to protect his rights and interests,[82] a maximum of ten percent (10%) of the total monetary award[83] by way of attorney's fees is justifiable under Article 111 of the Labor Code,[84] Section 8, Rule VIII, Book III of its Implementing Rules,[85] and paragraph 7, Article 2208 of the Civil Code.[86] Although an express finding of facts and law is still necessary to prove the merit of the award, there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. There need only be a showing that the lawful wages were not paid accordingly, as in this case.[87]

Absent any evidence showing that Sunflower has been dissolved in accordance with law, pursuant to Rule VIII-A, Section 19[88] of the Omnibus Rules Implementing the Labor Code, Sunflower is held solidarily liable with SMC for all the rightful claims of private respondents.

WHEREFORE, the petition is DENIED. The assailed Decision dated February 7, 2001 and Resolution dated July 11, 2001 of the Court of Appeals are AFFIRMED with MODIFICATION.

Petitioner San Miguel Corporation and Sunflower Multi-Purpose Cooperative are hereby ORDERED to jointly and severally pay each private respondent differential pay from the time they became regular employees up to the date of their termination; separation pay equivalent to at least one (1) month pay or to at least one-half month pay for every year of service, whichever is higher, as mandated by Article 283 of the Labor Code or the separation pay awarded by SMC to other regular SMC employees that were terminated as a result of the retrenchment, depending on which is most beneficial to private respondents; and ten percent (10%) attorney's fees based on the herein modified award.

Petitioner San Miguel Corporation is further ORDERED to pay each private respondent the amount of P50,000.00, representing nominal damages for non-compliance with statutory due process.

The award of backwages is DELETED.

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SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

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[1] Rollo at 278-286.

[2] Annexed to the Service Contract is a detailed listing of the scope of the services to be provided to SMC:

A. Shrimp Receiving/Harvesting
- Assist in the crushing and loading of ice;
- Receive the raw materials and put them into the chilling tanks;
- Sort the shrimp according to standard quality specifications;
- Pack the raw materials into styropor boxes/containers and assist on the delivery of the harvested raw materials to the processing plant;
- Prepare harvest materials and equipment and clean them after use and
- Perform other duties that the company may assign from time to time.

B. Janitorial and Messengerial Services

1. Maintain, sanitize and clean the following:
- Streets cemented and otherwise
- Canals and floor area
- Administration building offices and comfort rooms
- Logistics/materials/warehouse building
- Clinic and comfort room
- Plant grounds/lawn

2. Maintain and Water the plants and trees

3. Haul and dispose garbage daily from designated waste containers within the compound to an area outside and far from the compound.

4. Perform messengerial activities within Bacolod City and other duties that may be assigned during office hours.
C. Sanitation/Washing Services

1. Wash and sanitize boxes, chilling tanks, trays and other harvesting materials.
2. Store harvesting materials in the designated area after washing.
3. Load and unload boxes, trays, chilling tanks and other harvesting materials to be used during harvest schedule.

[3] Rollo at 279-283.

[4] Id. at 114-117.

[5] Id. at 502.

[6] Id. at 118-120.

[7] Id. at 121.

[8] Id. at 340.

[9] Id. at 504-507.

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[10] Id. at 553-557.

[11] Id. at 559-563.

[12] Id. at 574-587.

[13] CA Rollo at 74-82.

[14] Id. at 108-142.

[15] Rollo at 22.

[16] Id. at 15-21-a.

[17] Id. at 623-637.

[18] Id. at 57-58.

[19] Docena v. Lapesura, 355 SCRA 658, 667 (2001).

[20] Cavile v. Heirs of Clarita Cavile, 400 SCRA 255, 261-262 (2003) (citations omitted).

[21] HLC Construction and Development Corporation v. Emily Homes Subdivision Homeowners Association, 411 SCRA 504, 508 (2003).

[22] Cavile v. Heirs of Clarita Cavile, 400 SCRA 255, 262 (2003) (citation omitted).

[23] 411 SCRA 504 (2003).

[24] Id. at 509-510.

[25] Vide: Cavile v. Heirs of Clarita Cavile, 400 SCRA 255 (2003) where this Court found:

We find that the execution by Thomas George Cavile, Sr. in behalf of all the other petitioners of the certificate of non-forum shopping constitutes substantial compliance with the Rules. All the petitioners, being relatives and co-owners of the properties in dispute, share a common interest thereon. They also share a common defense in the complaint for partition filed by the respondents. Thus, when they filed the instant petition, they filed it as a collective, raising only one argument to defend their rights over the properties in question. There is sufficient basis, therefore, for Thomas George Cavili, Sr. to speak for and in behalf of his co-petitioners that they have not filed any action or claim involving the same issues in another court or tribunal, nor is there other pending action or claim in another court or tribunal involving the same issues.

[26] Rollo at 28.

[27] Torres v. Specialized Packaging Development Corporation, 433 SCRA 455, 467 (2004), Cavile v. Heirs of Clarita Cavile, 400 SCRA 255, 262 (2003) (citation omitted).

[28] SECTION 1. Petition for Certiorari. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof,

copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

[29] CA Rollo at 16-31.

[30] Id. at 33-47.

[31] Id. at 48-61.

[32] Id. at 63-67.

[33] Id. at 68-69.

[34] Atillo v. Bombay, 351 SCRA 361, 369 (2001).

[35] Ibid.

[36] Manila Hotel Corporation v. Court of Appeals, 384 SCRA 520, 524 (2002) (citation omitted).

[37] Serrano v. Galant Maritime Services, Inc., 408 SCRA 523, 528 (2003) (citations omitted).

[38] Pepsi-Cola Distributors of the Philippines, Inc. v. NLRC, 272 SCRA 267, 276 (1997), Trendline Employees Association-Southern Philippines Federation of Labor v. NLRC, 272 SCRA 172, 179 (1997) (citation omitted).

[39] EMCO Plywood Corporation v. Abelgas, 427 SCRA 496, 515-516 (2004) (citations omitted), Villar v. NLRC, 331 SCRA 686, 692 (2000) (citation omitted).

[40] Rollo at 124-136.

[41] Winifredo Talite, Camilo Temporosa, Arnel De Pedro, Jonathan Inventor, Ramie Despi and Roderick Duquesa.

[42] Rollo at 483-489.

[43] Winifredo Talite, Jerry Talite, Clifford Despi, Joey de la Cruz, Jonathan Inventor, Ramie Despi, Arnel De Pedro, Leonardo Lemoncito, Camilo Temporosa, Renelito Deon, Jose Temporosa and Victor Despi.

[44] 280 SCRA 853 (1997).

[45] Rollo at 133-135.

[46] Section 3. Submission of Position Papers/Memorandum. – Should the parties fail to agree upon an amicable settlement, either in whole or in part, during the conferences, the Labor Arbiter shall issue an order stating therein the matters taken up and agreed upon during the conferences and directing the parties to simultaneously file their respective verified position papers.

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. The parties shall thereafter not be allowed to allege facts, or present evidence to prove facts, not referred to and any cause or causes of action not included in the complaint or position papers, affidavits and other documents. Unless otherwise requested in writing by both parties, the Labor Arbiter shall direct both parties to submit simultaneously their position papers/memorandum with the supporting documents and affidavits within fifteen (15) calendar days from the date of the last conference, with proof of having furnished each other with copies thereof.

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[47] Rollo at 26.

[48] Havtor Management Phils., Inc. v. NLRC, 372 SCRA 271, 274 (2001) (citation omitted), Samahan ng Manggagawa sa Moldex Products, Inc. v. NLRC, 324 SCRA 237, 252 (2000) (citation omitted).

[49] New Golden City Builders & Development Corporation v. Court of Appeals, 418 SCRA 411, 417 (2003), Vinoya v. NLRC, 324 SCRA 469, 487 (2000) (citation omitted), Philippine Airlines, Inc. v. NLRC, 298 SCRA 430, 444 (1998) (citation omitted).

[50] New Golden City Builders & Development Corporation v. Court of Appeals, 418 SCRA 411, 419 (2003) (citation omitted), San Miguel Corporation v. MAERC Integrated Services, Inc., 405 SCRA 579, 596 (2003) (citation omitted).

[51] Manila Water Company, Inc. v. Peña, 434 SCRA 53, 61 (2004) (citation omitted), San Miguel Corporation v. MAERC Integrated Services, Inc., 405 SCRA 579, 596 (2003), Philippine Airlines, Inc. v. NLRC, 298 SCRA 430, 447 (1998) (citation omitted), Ponce v. NLRC, 293 SCRA 366, 375-376, (1998) (citations omitted), Tiu v. NLRC, 254 SCRA 1, 9 (1996) (citations omitted), Ecal v. NLRC, 195 SCRA 224, 231 (1991) (citation omitted), Philippine Bank of Communications v. NLRC, 146 SCRA 347, 356 (1986).

[52] San Miguel Corporation v. MAERC Integrated Services, Inc, 405 SCRA 579, 589 (2003) (citation omitted), Bernardo v. NLRC, 310 SCRA 186, 205 (1999) (citation omitted).

[53] De los Santos v. NLRC, 372 SCRA 723, 734 (2001).

[54] Rollo at 76.

[55] Id. at 287.

[56] (5) No cooperative shall be registered unless the articles of cooperation is accompanied with the bonds of the accountable officers and a sworn statement of the treasurer elected by the subscribers showing that at least twenty-five per centum (25%) of the authorized share capital has been subscribed and at least twenty-five per centum (25%) of the total subscription has been paid: Provided, That in no case shall the paid-up share capital shall be less than Two thousand pesos (P2,000.00).

[57] Rollo at 483-486.

[58] Coca Cola Bottlers Phils, Inc. v. NLRC, 307 SCRA 131, 137 (1999) (citation omitted), Neri v. NLRC, 224 SCRA 717, 722 (1993) (citation omitted), Guarin v. NLRC, 178 SCRA 267, 273 (1989) (citation omitted).

[59] De los Santos v. NLRC, 372 SCRA 723, 732 (2001).

[60] San Miguel Corporation v. MAERC Integrated Services, Inc., 405 SCRA 579, 590 (2003) (citation omitted).

[61] Rollo at 485.

[62] Vide: Philippine Bank of Communications v. NLRC (146 SCRA 347, 354) where this Court found:

Turning to the power to control Orpiada's conduct, it should be noted immediately that Orpiada performed his functions within the bank's premises, and not within the office premises of CESI. As such, Orpiada must have been subject to at least the same control and supervision that the bank exercises over any other person physically within its premises and rendering services to or for the bank, in other words, any employee or staff member of the bank. It seems unreasonable to suppose that the bank would have allowed Orpiada and the other persons assigned to the bank by CESI to remain within the bank's premises and there render services to the bank, without subjecting them to a substantial measure of control and supervision xxx

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[63] Vide: Coca Cola Bottlers Phils., Inc. v. NLRC, 307 SCRA 131, 140 (1999).

[64] 405 SCRA 579 (2003).

[65] Id. at 595-596.

[66] Manila Water Company, Inc. v. Pena, 434 SCRA 53, 62 (2004).

[67] Ecal v. NLRC, 195 SCRA 224, 234 (1991) (citations omitted).

[68] Rollo at 21.

[69] Kimberly Independent Union v. Drilon, 185 SCRA 190, 203 (1990).

[70] Id. at 205.

[71] Catatista v. NLRC, 247 SCRA 46, 51 (1995), Construction & Development Corporation of the Philippines v. Leogardo, Jr., 125 SCRA 863, 867 (1983).

[72] EMCO Plywood Corporation v. Abelgas, 427 SCRA 496, 511 (2004) (citation omitted).

[73] EMCO Plywood Corporation v. Abelgas, 427 SCRA 496, 508 (2004) (citation omitted), Philippine Tobacco Flue-Curing & Redrying Corporation v. NLRC, 300 SCRA 37, 55-56 (1998) (citation omitted), Somerville Stainless Steel Corporation v. NLRC, 287 SCRA 420, 430 (1998) (citation omitted), Edge Apparel, Inc., v. NLRC, 286 SCRA 302, 313 (1998) (citation omitted), San Miguel Jeepney Service v. NLRC, 265 SCRA 35, 44 (1996) (citation omitted), Catatista v. NLRC, 247 SCRA 46, 52 (1995) (citation omitted).

[74] Somerville Stainless Steel Corporation v. NLRC, 287 SCRA 420, 432 (1998) (citation omitted), San Miguel Jeepney Service v. NLRC, 265 SCRA 35, 45 (1996) (citation omitted), Guerrero v. NLRC, 261 SCRA 301, 306 (1996) (citation omitted).

[75] Asian Alcohol Corporation v. NLRC, 305 SCRA 417 (1999) (citations omitted).

[76] EMCO Plywood Corporation v. Abelgas, 427 SCRA 496, 511-512 (2004) (citation omitted), San Miguel Corporation v. MAERC Integrated Services, Inc., 405 SCRA 579, 596 (2003) (citations omitted), Guerrero v. NLRC, 261 SCRA 301, 307 (1996).

[77] EMCO Plywood Corporation v. Abelgas, 427 SCRA 496, 512 (2004) (citation omitted), Sebuguero v. NLRC, 248 SCRA 532, 545 (1995).

[78] Rollo at 126.

[79] JAKA Food Processing Corporation v. Pacot, G.R. No. 151378, March 28, 2005.

[80] J.A.T. General Services v. NLRC, 421 SCRA 78, 91 (2004) (citation omitted).

[81] 265 SCRA 61, 71 (1996).

[82] Manila Water v. Pena, 434 SCRA 53, 64-65 (2004) (citation omitted), Rasonable v. NLRC, 253 SCRA 815, 819 (1996) (citations omitted).

[83] Reyes v. Court of Appeals, 409 SCRA 267, 284 (2003) (citations omitted), Marsaman Manning Agency, Inc. v. NLRC, 313 SCRA 88, 99 (1999).

[84] ART. 111. Attorney's fees. – (a) In cases of unlawful withholding of wages the culpable party may be

assessed attorney's fees equivalent to ten percent of the amount of wages recovered. (b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of the wages, attorney's fees which exceed ten percent of the amount of wages recovered.

[85] SEC. 8. Attorney's fees. – Attorney's fees in any judicial or administrative proceedings for the recovery of wages shall not exceed 10% of the amount awarded. The fees may be deducted from the total amount due the winning party.

[86] ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except: xxx (7) In actions for the recovery of wages of household helpers, laborers and skilled workers.

[87] Reyes v. Court of Appeals, 409 SCRA 267, 283 (2003) (citations omitted).

[88] SEC. 19. Solidary Liability. The principal shall be deemed as the direct employer of the contractual employees and therefore, solidarily liable with the contractor or subcontractor for whatever monetary claims the contractual employees may have against the former in the case of violations as provided for in Sections 5 (Labor-Only contracting), 6 (Prohibitions), 8 (Rights of Contractual Employees) and 16 (Delisting) of these Rules. In addition, the principal shall also be solidarily liable in case the contract between the principal and contractor or subcontractor is preterminated for reasons not attributed to the fault of the contractor or subcontractor.

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