

MARANAW HOTELS AND RESORT CORP., PETITIONER, VS. COURT OF APPEALS, SHERYL OABEL AND MANILA PROMULGATED: RESOURCE DEVELOPMENT CORP., RESPONDENTS.

G.R. No. 149660. January 20, 2009

Ponente: PUNO, C.J.

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PUNO, C.J.:

Before the Court is a petition for review on certiorari assailing a resolution issued by the Court of Appeals. The resolution denied the petition for review filed by petitioner Maranaw Hotels and Resort Corp.

The present proceedings emanate from a complaint for regularization, subsequently converted into one for illegal dismissal, filed before Labor Arbiter Madjayran H. Ajan by private respondent Sheryl Oabel.

It appears that private respondent Oabel was initially hired by petitioner as an extra beverage attendant on April 24, 1995. This lasted until February 7, 1997.[1] Respondent worked in Century Park Hotel, an establishment owned by the petitioner.

On September 16, 1996,[2] petitioner contracted with Manila Resource Development Corporation.[3] Subsequently, private respondent Oabel was transferred to MANRED, with the latter deporting itself as her employer.[4] MANRED has intervened at all stages of these proceedings and has consistently claimed to be the employer of private respondent Oabel. For the duration of her employment, private respondent Oabel performed the following functions:

Secretary, Public Relations Department: February 10, 1997 - March 6, 1997

Gift Shop Attendant: April 7, 1997 - April 21, 1997

Waitress: April 22, 1997 - May 20, 1997

Shop Attendant: May 21, 1997 - July 30, 1998[5]

On July 20, 1998, private respondent filed before the Labor Arbiter a petition for regularization of employment against the petitioner. On August 1, 1998, however, private respondent Oabel was dismissed from employment.[6] Respondent converted her petition for regularization into a complaint for illegal dismissal.

Labor Arbiter Madjayran H. Ajan rendered a decision on July 13, 1999, dismissing the complaint against the petitioner. The decision held:

While complainant alleged that she has been working with the respondent hotel in different department (sic) of the latter on (sic) various capacities (although not all departments are part and parcel of the hotels), complainant never disputed the fact that her work with the same were on a per function basis or on a "need basis" - co-terminus with the function she was hired for....Considering that complainant job (sic) with the respondent hotel was on a per function basis or on a "need basis", complainant could not even be considered as casual employee or provisional employee. Respondent hotel consider (sic) complainant, at most, a project

employee which does not ripened (sic) into regular employee (sic).[7]

Private respondent appealed before the National Labor Relations Commission (NLRC). The NLRC reversed the ruling of the Labor Arbiter and held that: (1) MANRED is a labor-only contractor, and (2) private respondent was illegally dismissed.

Of the first holding, the NLRC observed that under the very terms of the service contract, MANRED shall provide the petitioner not specific jobs or services but personnel and that MANRED had insufficient capitalization and was not sufficiently equipped to provide specific jobs.[8] The NLRC likewise observed that the activities performed by the private respondent were directly related to and usually necessary or desirable in the business of the petitioner.[9]

With respect to the termination of private respondent's employment, the NLRC held that it was not effected for a valid or just cause and was therefore illegal. The dispositive portion of the ruling reads thus:

WHEREFORE, the decision appealed from is hereby REVERSED. xxxx Respondents Century Park Hotel and Manila Resource Development Corporation are hereby declared jointly and severally liable for the following awards in favor of complainant: 1) her full backwages and benefits from August 1, 1998 up to the date of her actual reinstatement; 2) her salary differentials, share in the service charges, service incentive leave pay and 13th month pay from July 20, 1995 to July 31, 1998.

SO ORDERED.[10]

Petitioner subsequently appealed before the Court of Appeals. In a resolution, the appellate court dismissed the petition on account of the failure of the petitioner to append the board resolution authorizing the counsel for petitioner to file the petition before the Court of Appeals. The Court of Appeals held:

After a careful perusal of the records of the case, We resolve to DISMISS the present petition on the ground of non-compliance with the rule on certification against forum shopping taking into account that the aforesaid certification was subscribed and verified by the Personnel Director of petitioner corporation without attaching thereto his authority to do so for and in behalf of petitioner corporation per board resolution or special power of attorney executed by the latter.[11]

Petitioner duly filed its motion for reconsideration which was denied by the Court of Appeals in a resolution dated August 30, 2001.[12]

In the present petition for review, the petitioner invokes substantial justice as justification for a reversal of the resolution of the Court of Appeals.[13] Petitioner likewise contends that the filing of a motion for reconsideration with the certificate of non-forum shopping attached constitutes substantial compliance with the requirement.[14]

There is no merit to the petition.

Well-settled is the rule that the certificate of non-forum shopping is a mandatory requirement. Substantial compliance applies only with respect to the contents of the certificate but not as to its presence in the pleading wherein it is required.

Petitioner's contention that the filing of a motion for reconsideration with an appended certificate of non forum-shopping suffices to cure the defect in the pleading is absolutely specious. It negates the very purpose for which the certification against forum shopping is required: to inform the Court of the pendency of any other case which may present similar issues and involve similar parties as the one before it. The requirement applies to both natural and juridical persons.

Petitioner relies upon this Court's ruling in *Digital Microwave Corp. v. Court of Appeals*[15] to show that its Personnel Director has been duly authorized to sign pleadings for and in behalf of the petitioner. Petitioner, however, has taken the ruling in *Digital Microwave* out of context. The portion of the ruling in *Digital Microwave* upon which petitioner relies was in response to the issue of impossibility of compliance by juridical persons with the requirements of Circular 28-91.[16] The Court's identification of duly authorized officers or directors as the proper signatories of a certificate of non forum-shopping was in response to that issue. The ruling does not, however, ipso facto clothe a corporate officer or director with authority to execute a certificate of non-forum shopping by virtue of the former's position alone.

Any doubt on the matter has been resolved by the Court's ruling in *BPI Leasing Corp. v. Court of Appeals*[17] where this Court emphasized that the lawyer acting for the corporation must be specifically authorized to sign pleadings for the corporation.[18] Specific authorization, the Court held, could only come in the form of a board resolution issued by the Board of Directors that specifically authorizes the counsel to institute the petition and execute the certification, to make his actions binding on his principal, i.e., the corporation.[19]

This Court has not wavered in stressing the need for strict adherence to procedural requirements. The rules of procedure exist to ensure the orderly administration of justice. They are not to be trifled with lightly.

For this reason alone, the petition must already be dismissed. However, even if this grave procedural infirmity is set aside, the petition must still fail. In the interest of averting further litigation arising from the present controversy, and in light of the respective positions asserted by the parties in the pleadings and other memoranda filed before this Court, the Court now proceeds to resolve the case on the merits.

Petitioner posits that it has entered into a service agreement with intervenor MANRED. The latter, in turn, maintains that private respondent Oabel is its employee and subsequently holds itself out as the employer and offers the reinstatement of private respondent.

Notably, private respondent's purported employment with MANRED commenced only in 1996, way after she was hired by the petitioner as extra beverage attendant on April 24, 1995. There is thus much credence in the private respondent's claim that the service agreement executed between the petitioner and MANRED is a mere ploy to circumvent the law on employment, in particular that which pertains on regularization.

In this regard, it has not escaped the notice of the Court that the operations of the hotel itself do not cease with the end of each event or function and that there is an ever present need for individuals to perform certain tasks necessary in the petitioner's business. Thus, although the tasks themselves may vary, the need for sufficient manpower to carry them out does not. In any event, as borne out by the findings of the NLRC, the petitioner determines the nature of the tasks to be performed by the private respondent, in the process exercising control.

This being so, the Court finds no difficulty in sustaining the finding of the NLRC that MANRED is a labor-only contractor.[20] Concordantly, the real employer of private respondent Oabel is the petitioner.

It appears further that private respondent has already rendered more than one year of service to the petitioner, for the period 1995-1998, for which she must already be considered a regular employee, pursuant to Article 280 of the Labor Code:

Art. 280. Regular and casual employment. The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the

season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists. (Emphasis supplied)

IN VIEW WHEREOF, the present petition is DENIED. The resolution of the Court of Appeals dated June 15, 2001 is affirmed.

Costs against petitioner.

SO ORDERED.

Carpio, Corona, Azcuna and Leonardo-De Castro, JJ., concur.

[1] Rollo, p. 137.

[2] Id., at p. 62.

[3] Hereafter MANRED.

[4] Rollo, p. 67.

[5] Id., at p. 61.

[6] Id., at p. 62.

[7] Id., at pp. 147-148.

[8] NLRC Rollo, pp. 535-536.

[9] Id., at pp. 536-537.

[10] Id., at p. 538.

[11] Id., at p. 27.

[12] CA Rollo, p. 107.

[13] Rollo, p. 18

[14] Id.

[15] G.R. No. 128550, March 16, 2000, 328 SCRA 286.

[16] Id., at p. 290.

[17] G.R. No. 127624, November 18, 2003, 416 SCRA 4.

[18] Id., at p. 10.

[19] Id., at p. 11.

[20] Supra, note 8.

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