

## EPARWA SECURITY AND JANITORIAL SERVICES, INC., PETITIONER, VS. LICEO DE CAGAYAN UNIVERSITY, RESPONDENT.

*G.R. NO. 150402. November 28, 2006*

Ponente: CARPIO, J.

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### CARPIO, J.:

#### The Case

This is a petition for certiorari[1] of the Decision[2] dated 20 April 2001 and the Resolution dated 21 September 2001 of the Court of Appeals ("appellate court") in CA-G.R. SP No. 59120, Liceo de Cagayan University v. The Hon. National Labor Relations Commission, Fifth Division, Eparwa Security and Janitorial Services, Inc., et al. The appellate court reinstated the 18 August 1999 decision[3] of the Labor Arbiter and remanded the case to the Regional Arbitration Board, Branch No. 10 of Cagayan de Oro City to compute what is due to Liceo de Cagayan University (LDCU) from Eparwa Security and Janitorial Services, Inc. ("Eparwa").

#### The Facts

On 1 December 1997, Eparwa and LDCU, through their representatives, entered into a Contract for Security Services. The pertinent portion of the contract provides that:

- For and in consideration of this security, protective and safety services, [LDCU] agrees to pay [Eparwa] FIVE THOUSAND PESOS ONLY (P5,000.00), Philippine Currency per guard a month payable within fifteen (15) days after [Eparwa] presents its service invoice. [Eparwa] shall furnish [LDCU] a monthly copy of SSS contribution of guards and monthly payroll of each guard assigned at [LDCU's] premises on a monthly basis[.][4]

Eparwa allocated the contracted amount of P5,000 per security guard per month in the following manner:

Basic Pay (P104.50 x 391.5/12)

Night Diff. Pay

**P3,409.31**

13[th] mo. Pay

113.64

5 day incentive leave

284.10

Uniform allowance

43.54

Employer's SSS, Medicare, ECC contribution

50.00

Agency share

224.80

### VAT

420.53

### CONTRACT RATE

454.59

(rounded off to P5,000.00)[5]

**P5,000.50**

On 21 December 1998, 11 security guards ("security guards") whom Eparwa assigned to LDCU from 1 December 1997 to 30 November 1998 filed a complaint before the National Labor Relations Commission's (NLRC) Regional Arbitration Branch No. 10 in Cagayan de Oro City. Docketed as NLRC-RABX Case No. 10-01-00102-99, the complaint was filed against both Eparwa and LDCU for underpayment of salary, legal holiday pay, 13[th] month pay, rest day, service incentive leave, night shift differential, overtime pay, and payment for attorney's fees.

LDCU made a cross-claim and prayed that Eparwa should reimburse LDCU for any payment to the security guards.

#### The Ruling of the Labor Arbiter

In its decision dated 18 August 1999, the Labor Arbiter found that the security guards are entitled to wage differentials and premium for holiday and rest day work. The Labor Arbiter held Eparwa and LDCU solidarily liable pursuant to Article 109 of the Labor Code. The dispositive portion of the Labor Arbiter's decision reads:

WHEREFORE, judgment is rendered[:]

- Ordering respondents [LDCU] and [Eparwa] solidarily liable to pay [the security guards] for underpayment, holiday and rest day, as follows:

N a m e

Amount

1. Casiñero , Jovencio

P 46,819.95

2. Villarino , Leonardo

46,819.95

3. Lumbab , Adriano

46,819.95

4. Caballero , Gregorio, Jr.

46,819.95

5. Cajilla , Delfin, Jr.

37,918.95

6. Paduanga , Arnold

20,321.10

7. Dungog , Achimedes

46,819.95

8. Magallanes , Eduardo

46,819.95

9. Dungog , Luigi

46,819.95

10. Dungog , Telford

46,819.95

11. Bahian , Wilfredo

30,741.30

P 463,540.95

- Denying the claim of unpaid 13<sup>th</sup> month pay, service incentive leave and night shift premium pay for lack of merit;

- Ordering respondent [Eparwa] to reimburse respondent [LDCU] for whatever amount the latter may be required to pay [the security guards];

- Ordering respondent [Eparwa] to pay respondent [LDCU] P20,000.00 and P5,000.00 each of the [security guards], moral and exemplary damages;

- Ordering [Eparwa] to pay 10% of attorney's fee[s];

- The rest of the claims are denied for lack of merit.

So Ordered.[6]

LDCU filed an appeal before the NLRC. LDCU agreed with the Labor Arbiter's decision on the security guards' entitlement to salary differential but challenged the propriety of the amount of the award. LDCU alleged that security guards not similarly situated were granted uniform monetary awards and that the decision did not include the basis of the computation of the amount of the award.

Eparwa also filed an appeal before the NLRC. For its part, Eparwa questioned its liability for the security guards' claims and the awarded cross-claim amounts.

The Ruling of the NLRC

The Fifth Division of the NLRC resolved Eparwa and LDCU's separate appeals in its Resolution[7] dated 19 January 2000. The NLRC found that the security guards are entitled to wage differentials and premium for holiday and rest day work. Although the NLRC held Eparwa and LDCU solidarily liable for the wage differentials and premium for holiday and rest day work, the NLRC did not require Eparwa to reimburse LDCU for its payments to the security guards. The NLRC also ordered the recomputation of the monetary awards according to the dates actually worked by each security guard. The dispositive portion of the NLRC Resolution reads thus:

WHEREFORE, the appealed decision is AFFIRMED, subject to the modification that the portions thereof directing respondent EPARWA Security Agency and Janitorial Services, Inc. to reimburse respondent Liceo de Cagayan University for whatever amount the latter may have paid complainants and to pay respondent Liceo de Cagayan University the sum [sic] [of] P20,000.00 and P5,000.00, representing moral and exemplary damages, respectively, of each complainants [sic], are deleted for lack of legal basis. Further the monetary awards for wage differential and premiums for holiday and rest day works shall be recomputed by the Regional Arbitration Branch of origin at the execution stage of the proceedings.

Co[n]formably, the award of Attorney's fee[s] is equivalent to ten (10%) percent of the aggregate monetary award as finally adjusted.

SO ORDERED.[8]

Eparwa and LDCU again filed separate motions for partial reconsideration of the 19 January 2000 NLRC Resolution. LDCU questioned the NLRC's deletion of LDCU's entitlement to reimbursement by Eparwa. Eparwa, on the other hand, prayed that LDCU be made to reimburse Eparwa for whatever amount it may pay to the security guards.

In its Resolution dated 14 March 2000, the NLRC declared that although Eparwa and LDCU are solidarily liable to the security guards for the monetary award, LDCU alone is ultimately liable. The NLRC resolved the issue thus:

WHEREFORE, the assailed resolution, dated 19 January 2000, is MODIFIED in that respondent Liceo de Cagayan University (LICEO) is ordered to reimburse respondent Eparwa Security and Janitorial Services, Inc. (EPARWA) for whatever amount the latter may have paid to complainants arising from this case.

SO ORDERED.[9]

LDCU filed a petition for certiorari[10] before the appellate court assailing the NLRC's decision. LDCU took issue with the NLRC's order that LDCU should reimburse Eparwa. LDCU stated that this would free Eparwa from any liability for payment of the security guards' money claims.

#### The Ruling of the Appellate Court

In its Decision promulgated on 20 April 2001, the appellate court granted LDCU's petition and reinstated the Labor Arbiter's decision. The appellate court also allowed LDCU to claim reimbursement from Eparwa. The appellate court's decision reads thus:

WHEREFORE, foregoing considered, the petition is hereby GRANTED. The decision dated August 18, 1999 of Labor Arbiter Celenito N. Daing is REINSTATED. The case is hereby REMANDED to the Regional Arbitration Board, Branch No. 10 of Cagayan de Oro City to compute what is due to LDCU from EPARWA.

SO ORDERED.[11]

Eparwa filed a motion for reconsideration of the appellate court's decision. Eparwa stressed that jurisprudence is consistent in ruling that the ultimate liability for the payment of the monetary award rests with LDCU alone.

The appellate court denied Eparwa's motion for reconsideration for lack of merit.

Hence, this petition.

The Issue

The petition raises this sole legal issue: Is LDCU alone ultimately liable to the security guards for the wage differentials and premium for holiday and rest day pay?

The Ruling of the Court

The petition has merit.

Eparwa and LDCU's Solidary Liability and LDCU's Ultimate Liability

Articles 106, 107 and 109 of the Labor Code read:

Art. 106. Contractor or subcontractor. — 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 this 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 persons are performing activities which are directly related to the principal business of the 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.

Article 107. Indirect employer. — The provisions of the immediately preceding Article shall likewise apply to any person, partnership, association or corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task, job or project.

Article 109. Solidary liability. — 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.

This Court's ruling in *Eagle Security Agency, Inc. v. NLRC*[12] squarely applies to the present case. In *Eagle*, we ruled that:

This joint and several liability of the contractor and the principal is mandated by the Labor Code to assure compliance of the provisions therein including the statutory minimum wage [Article 99, Labor Code]. The contractor is made liable by virtue of his status as direct employer. The principal, on the other hand, is made the indirect employer of the contractor's employees for purposes of paying the employees their wages should

the contractor be unable to pay them. This joint and several liability facilitates, if not guarantees, payment of the workers' performance of any work, task, job or project, thus giving the workers ample protection as mandated by the 1987 Constitution [See Article II Sec. 18 and Article XIII Sec. 3].

In the case at bar, it is beyond dispute that the security guards are the employees of EAGLE [See Article VII Sec. 2 of the Contract for Security Services; G.R. No. 81447, Rollo, p. 34]. That they were assigned to guard the premises of PTSI pursuant to the latter's contract with EAGLE and that neither of these two entities paid their wage and allowance increases under the subject wage orders are also admitted [See Labor Arbiter's Decision, p. 2; G.R. No. 81447, Rollo, p. 75]. Thus, the application of the aforecited provisions of the Labor Code on joint and several liability of the principal and contractor is appropriate [See *Del Rosario & Sons Logging Enterprises, Inc. v. NLRC*, G.R. No. 64204, May 31, 1985, 136 SCRA 669].

The solidary liability of PTSI and EAGLE, however, does not preclude the right of reimbursement from his co-debtor by the one who paid [See Article 1217, Civil Code]. It is with respect to this right of reimbursement that petitioners can find support in the aforecited contractual stipulation and Wage Order provision.

The Wage Orders are explicit that payment of the increases are "to be borne" by the principal or client. "To be borne", however, does not mean that the principal, PTSI in this case, would directly pay the security guards the wage and allowance increases because there is no privity of contract between them. The security guards' contractual relationship is with their immediate employer, EAGLE. As an employer, EAGLE is tasked, among others, with the payment of their wages [See Article VII Sec. 3 of the Contract for Security Services, *supra* and *Bautista v. Inciong*, G.R. No. 52824, March 16, 1988, 158 SCRA 665].

On the other hand, there existed a contractual agreement between PTSI and EAGLE wherein the former availed of the security services provided by the latter. In return, the security agency collects from its client payment for its security services. This payment covers the wages for the security guards and also expenses for their supervision and training, the guards' bonds, firearms with ammunitions, uniforms and other equipments, accessories, tools, materials and supplies necessary for the maintenance of a security force.

Premises considered, the security guards' immediate recourse for the payment of the increases is with their direct employer, EAGLE. However, in order for the security agency to comply with the new wage and allowance rates it has to pay the security guards, the Wage Orders made specific provision to amend existing contracts for security services by allowing the adjustment of the consideration paid by the principal to the security agency concerned. What the Wage Orders require, therefore, is the amendment of the contract as to the consideration to cover the service contractor's payment of the increases mandated. In the end, therefore, ultimate liability for the payment of the increases rests with the principal.

In view of the foregoing, the security guards should claim the amount of the increases from EAGLE. Under the Labor Code, in case the agency fails to pay them the amounts claimed, PTSI should be held solidarily liable with EAGLE [Articles 106, 107 and 109]. Should EAGLE pay, it can claim an adjustment from PTSI for an increase in consideration to cover the increases payable to the security guards.

However, in the instant case, the contract for security services had already expired without being amended consonant with the Wage Orders. It is also apparent from a reading of a record that EAGLE does not now demand from PTSI any adjustment in the contract price and its main concern is freeing itself from liability. Given these peculiar circumstances, if PTSI pays the security guards, it cannot claim reimbursement from EAGLE. But in case it is EAGLE that pays them, the latter can claim reimbursement from PTSI in lieu of an adjustment, considering that the contract, [sic] had expired and had not been renewed.[13] (Emphasis added)

We repeatedly upheld our ruling in *Eagle* regarding reimbursement in the subsequent cases of *Spartan Security & Detective Agency, Inc. v. NLRC*,<sup>[14]</sup> *Development Bank of the Philippines v. NLRC*,<sup>[15]</sup> *Alpha Investigation and Security Agency, Inc. v. NLRC*,<sup>[16]</sup> *Helpmate, Inc. v. NLRC, et al.*,<sup>[17]</sup> and *Lapanday Agricultural Development Corporation v. Court of Appeals*.<sup>[18]</sup>

For the security guards, the actual source of the payment of their wage differentials and premium for holiday and rest day work does not matter as long as they are paid. This is the import of Eparwa and LDCU's solidary liability. Creditors, such as the security guards, may collect from anyone of the solidary debtors. Solidary liability does not mean that, as between themselves, two solidary debtors are liable for only half of the payment.

LDCU's ultimate liability comes into play because of the expiration of the Contract for Security Services. There is no privity of contract between the security guards and LDCU, but LDCU's liability to the security guards remains because of Articles 106, 107 and 109 of the Labor Code. Eparwa is already precluded from asking LDCU for an adjustment in the contract price because of the expiration of the contract, but Eparwa's liability to the security guards remains because of their employer-employee relationship. In lieu of an adjustment in the contract price, Eparwa may claim reimbursement from LDCU for any payment it may make to the security guards. However, LDCU cannot claim any reimbursement from Eparwa for any payment it may make to the security guards.

WHEREFORE, we GRANT the petition. We SET ASIDE the Decision dated 20 April 2001 and the Resolution dated 21 September 2001 of the Court of Appeals. We REINSTATE the Resolutions dated 19 January 2000 and 14 March 2000 of the National Labor Relations Commission.

**SO ORDERED.**

Quisumbing, (Chairperson), Carpio Morales, Tinga, and Velasco, Jr., JJ., concur

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Eugenio S. Labitoria with Associate Justices Eloy R. Bello, Jr. and Mercedes Gozo-Dadole, concurring.

[3] Penned by Labor Arbiter Celenito N. Daing.

[4] Rollo, p. 92.

[5] *Id.* at 5.

[6] CA rollo, pp. 41-42.

[7] Penned by Presiding Commissioner Salic B. Dumarpa with Commissioners Oscar N. Abella and Leon G. Gonzaga, Jr., concurring.

[8] CA rollo, pp. 66-67.

[9] *Id.* at 77-78.

[10] Under Rule 65 of the 1997 Rules of Civil Procedure.

[11] CA rollo, p. 99.

[12] G.R. No. 81314, 18 May 1989, 173 SCRA 479.

[13] *Id.* at 485-487.

[14] G.R. No. 90693, 3 September 1992, 213 SCRA 528.

[15] G.R. Nos. 100376-77, 17 June 1994, 233 SCRA 250.

[16] 339 Phil. 40 (1997).

[17] 342 Phil. 277 (1997).

[18] 381 Phil. 41 (2000).

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