LOLITA LOPEZ, PETITIONER, VS. BODEGA CITY (VIDEO-DISCO KITCHEN OF THE PHILIPPINES) AND/OR ANDRES C. TORRES-YAP, RESPONDENTS.

G.R. No. 155731. September 03, 2007

Ponente: AUSTRIA-MARTINEZ, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-155731/

AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the July 18, 2002 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 66861, dismissing the petition for certiorari filed before it and affirming the Decision of the National Labor Relations Commission (NLRC) in NLRC-NCR Case No. 00-03-01729-95; and its Resolution dated October 16, 2002,[2] denying petitioner's Motion for Reconsideration. The NLRC Decision set aside the Decision of the Labor Arbiter finding that Lolita Lopez (petitioner) was illegally dismissed by Bodega City and/or Andres C. Torres-Yap (respondents).

Respondent Bodega City (Bodega City) is a corporation duly registered and existing under and by virtue of the laws of the Republic of the Philippines, while respondent Andres C. Torres-Yap (Yap) is its owner/ manager. Petitioner was the "lady keeper" of Bodega City tasked with manning its ladies' comfort room.

In a letter signed by Yap dated February 10, 1995, petitioner was made to explain why the concessionaire agreement between her and respondents should not be terminated or suspended in view of an incident that happened on February 3, 1995, wherein petitioner was seen to have acted in a hostile manner against a lady customer of Bodega City who informed the management that she saw petitioner sleeping while on duty.

In a subsequent letter dated February 25, 1995, Yap informed petitioner that because of the incident that happened on February 3, 1995, respondents had decided to terminate the concessionaire agreement between them.

On March 1, 1995, petitioner filed with the Arbitration Branch of the NLRC, National Capital Region, Quezon City, a complaint for illegal dismissal against respondents contending that she was dismissed from her employment without cause and due process.

In their answer, respondents contended that no employer-employee relationship ever existed between them and petitioner; that the latter's services rendered within the premises of Bodega City was by virtue of a concessionaire agreement she entered into with respondents.

The complaint was dismissed by the Labor Arbiter for lack of merit. However, on appeal, the NLRC set aside the order of dismissal and remanded the case for further proceedings. Upon remand, the case was assigned to a different Labor Arbiter. Thereafter, hearings were conducted and the parties were required to submit memoranda and other supporting documents.

On December 28, 1999, the Labor Arbiter rendered judgment finding that petitioner was an employee of respondents and that the latter illegally dismissed her.[3]

Respondents filed an appeal with the NLRC. On March 22, 2001, the NLRC issued a Resolution, the dispositive portion of which reads as follows:

> WHEREFORE, premises duly considered, the Decision appealed from is hereby ordered SET ASIDE and VACATED, and in its stead, a new one entered DISMISSING the above-entitled case for lack of merit.[4]

Petitioner filed a motion for reconsideration of the above-quoted NLRC Resolution, but the NLRC denied the same.

Aggrieved, petitioner filed a Petition for Certiorari with the CA. On July 18, 2002, the CA promulgated the presently assailed Decision dismissing her special civil action for certiorari. Petitioner moved for reconsideration but her motion was denied.

Hence, herein petition based on the following grounds:

> - WITH DUE RESPECT, PUBLIC RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN RULING THAT THE NATIONAL LABOR RELATIONS COMMISSION DID NOT COMMIT GRAVE ABUSE OF DISCRETION IN REVERSING THE DECISION OF THE LABOR ARBITER FINDING PETITIONER TO HAVE BEEN ILLEGALLY DISMISSED BY PRIVATE RESPONDENTS.
>
> - WITH DUE RESPECT, PUBLIC RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN RULING THAT PETITIONER WAS NOT AN EMPLOYEE OF PRIVATE RESPONDENTS.[5]

Petitioner contends that it was wrong for the CA to conclude that even if she did not sign the document evidencing the concessionaire agreement, she impliedly accepted and thus bound herself to the terms and conditions contained in the said agreement when she continued to perform the task which was allegedly specified therein for a considerable length of time. Petitioner claims that the concessionaire agreement was only offered to her during her tenth year of service and after she organized a union and filed a complaint against respondents. Prior to all these, petitioner asserts that her job as a "lady keeper" was a task assigned to her as an employee of respondents.

Petitioner further argues that her receipt of a special allowance from respondents is a clear evidence that she was an employee of the latter, as the amount she received was equivalent to the minimum wage at that time.

Petitioner also contends that her identification card clearly shows that she was not a concessionaire but an employee of respondents; that if respondents really intended the ID card issued to her to be used simply for having access to the premises of Bodega City, then respondents could have clearly indicated such intent on the said ID card.

Moreover, petitioner submits that the fact that she was required to follow rules and regulations prescribing appropriate conduct while she was in the premises of Bodega City is clear evidence of the existence of an employer-employee relationship between her and petitioners.

On the other hand, respondents contend that the present petition was filed for the sole purpose of delaying the proceedings of the case; the grounds relied upon in the instant petition are matters that have been exhaustively discussed by the NLRC and the CA; the present petition raises questions of fact which are not proper in a petition for review on certiorari under Rule 45 of the Rules of Court; the respective decisions of the NLRC and the CA are based on evidence presented by both parties; petitioner's compliance with the terms and conditions of the proposed concessionaire contract for a period of three years is evidence of her implied acceptance of such proposal; petitioner failed to present evidence to prove her allegation that the subject concessionaire agreement

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

was only proposed to her in her 10th year of employment with respondent company and after she organized a union and filed a labor complaint against respondents; petitioner failed to present competent documentary and testimonial evidence to prove her contention that she was an employee of respondents since 1985.

The main issue to be resolved in the present case is whether or not petitioner is an employee of respondents.

The issue of whether or not an employer-employee relationship exists in a given case is essentially a question of fact.[6]

While it is a settled rule that only errors of law are generally reviewed by this Court in petitions for review on certiorari of CA decisions,[7] there are well-recognized exceptions to this rule, as in this case, when the factual findings of the NLRC as affirmed by the CA contradict those of the Labor Arbiter.[8] In that event, it is this Court's task, in the exercise of its equity jurisdiction, to re-evaluate and review the factual issues by looking into the records of the case and re-examining the questioned findings.[9]

It is a basic rule of evidence that each party must prove his affirmative allegation.[10] If he claims a right granted by law, he must prove his claim by competent evidence, relying on the strength of his own evidence and not upon the weakness of that of his opponent.[11]

The test for determining on whom the burden of proof lies is found in the result of an inquiry as to which party would be successful if no evidence of such matters were given.[12]

In an illegal dismissal case, the onus probandi rests on the employer to prove that its dismissal of an employee was for a valid cause.[13] However, before a case for illegal dismissal can prosper, an employer-employee relationship must first be established.[14]

In filing a complaint before the Labor Arbiter for illegal dismissal based on the premise that she was an employee of respondent, it is incumbent upon petitioner to prove the employee-employer relationship by substantial evidence.[15]

The NLRC and the CA found that petitioner failed to discharge this burden, and the Court finds no cogent reason to depart from their findings.

The Court applies the four-fold test expounded in Abante v. Lamadrid Bearing and Parts Corp.,[16] to wit:

> To ascertain the existence of an employer-employee relationship, jurisprudence has invariably applied the four-fold test, namely: (1) the manner of selection and engagement; (2) the payment of wages; (3) the presence or absence of the power of dismissal; and (4) the presence or absence of the power of control. Of these four, the last one is the most important. The so-called "control test" is commonly regarded as the most crucial and determinative indicator of the presence or absence of an employer-employee relationship. Under the control test, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end achieved, but also the manner and means to be used in reaching that end.[17]

To prove the element of payment of wages, petitioner presented a petty cash voucher showing that she received an allowance for five (5) days.[18] The CA did not err when it held that a solitary petty cash voucher did not prove that petitioner had been receiving salary from respondents or that she had been respondents' employee for 10 years.

Indeed, if petitioner was really an employee of respondents for that length of time, she should have been able to present salary vouchers or pay slips and not just a single petty cash voucher. The Court agrees with respondents that petitioner could have easily shown other pieces of evidence such as a contract of employment, SSS or

Medicare forms, or certificates of withholding tax on compensation income; or she could have presented witnesses to prove her contention that she was an employee of respondents. Petitioner failed to do so.

Anent the element of control, petitioner's contention that she was an employee of respondents because she was subject to their control does not hold water.

Petitioner failed to cite a single instance to prove that she was subject to the control of respondents insofar as the manner in which she should perform her job as a "lady keeper" was concerned.

It is true that petitioner was required to follow rules and regulations prescribing appropriate conduct while within the premises of Bodega City. However, this was imposed upon petitioner as part of the terms and conditions in the concessionaire agreement embodied in a 1992 letter of Yap addressed to petitioner, to wit:

> January 6, 1992
>
> Dear Ms. Lolita Lopez,
>
> The new owners of Bodega City, 1121 Food Service Corporation offers to your goodself the concessionaire/contract to provide independently, customer comfort services to assist users of the ladies comfort room of the Club to further enhance its business, under the following terms and conditions:
>
> - You will provide at your own expense, all toilet supplies, useful for the purpose, such as toilet papers, soap, hair pins, safety pins and other related items or things which in your opinion is beneficial to the services you will undertake;
>
> - For the entire duration of this concessionaire contract, and during the Club's operating hours, you shall maintain the cleanliness of the ladies comfort room. Provided, that general cleanliness, sanitation and physical maintenance of said comfort rooms shall be undertaken by the owners of Bodega City;
>
> - You shall at all times ensure satisfaction and good services in the discharge of your undertaking. More importantly, you shall always observe utmost courtesy in dealing with the persons/individuals using said comfort room and shall refrain from doing acts that may adversely affect the goodwill and business standing of Bodega City;
>
> - All remunerations, tips, donations given to you by individuals/persons utilizing said comfort rooms and/or guests of Bodega City shall be waived by the latter to your benefit provided however, that if concessionaire receives tips or donations per day in an amount exceeding 200% the prevailing minimum wage, then, she shall remit fifty percent (50%) of said amount to Bodega City by way of royalty or concession fees;
>
> - This contract shall be for a period of one year and shall be automatically renewed on a yearly basis unless notice of termination is given thirty (30) days prior to expiration. Any violation of the terms and conditions of this contract shall be a ground for its immediate revocation and/or termination.
>
> - It is hereby understood that no employer-employee relationship exists between Bodega City and/or 1121 FoodService Corporation and your goodself, as you are an independent contractor who has represented to us that you possess the necessary qualification as such including manpower compliment, equipment, facilities, etc. and that any person you may engage or employ to work with or assist you in the discharge of your undertaking shall be solely your own employees and/or agents.
>
> 1121 FoodService Corporation
> Bodega City
>
> By:
> (Sgd.) ANDRES C. TORRES-YAP

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

Conforme:

_____

LOLITA LOPEZ[19]

Petitioner does not dispute the existence of the letter; neither does she deny that respondents offered her the subject concessionaire agreement. However, she contends that she could not have entered into the said agreement with respondents because she did not sign the document evidencing the same.

Settled is the rule that contracts are perfected by mere consent, upon the acceptance by the offeree of the offer made by the offeror.[20] For a contract, to arise, the acceptance must be made known to the offeror.[21] Moreover, the acceptance of the thing and the cause, which are to constitute a contract, may be express or implied as can be inferred from the contemporaneous and subsequent acts of the contracting parties.[22] A contract will be upheld as long as there is proof of consent, subject matter and cause; it is generally obligatory in whatever form it may have been entered into.[23]

In the present case, the Court finds no cogent reason to disregard the findings of both the CA and the NLRC that while petitioner did not affix her signature to the document evidencing the subject concessionaire agreement, the fact that she performed the tasks indicated in the said agreement for a period of three years without any complaint or question only goes to show that she has given her implied acceptance of or consent to the said agreement.

Petitioner is likewise estopped from denying the existence of the subject concessionaire agreement. She should not, after enjoying the benefits of the concessionaire agreement with respondents, be allowed to later disown the same through her allegation that she was an employee of the respondents when the said agreement was terminated by reason of her violation of the terms and conditions thereof.

The principle of estoppel in pais applies wherein -- by one's acts, representations or admissions, or silence when one ought to speak out -- intentionally or through culpable negligence, induces another to believe certain facts to exist and to rightfully rely and act on such belief, so as to be prejudiced if the former is permitted to deny the existence of those facts.[24]

Moreover, petitioner failed to dispute the contents of the affidavit[25] as well as the testimony[26] of Felimon Habitan (Habitan), the concessionaire of the men's comfort room of Bodega City, that he had personal knowledge of the fact that petitioner was the concessionaire of the ladies' comfort room of Bodega City.

Petitioner also claims that the concessionaire agreement was offered to her only in her 10th year of service, after she organized a union and filed a complaint against respondents. However, petitioner's claim remains to be an allegation which is not supported by any evidence. It is a basic rule in evidence that each party must prove his affirmative allegation,[27] that mere allegation is not evidence.[28]

The Court is not persuaded by petitioner's contention that the Labor Arbiter was correct in concluding that there existed an employer-employee relationship between respondents and petitioner. A perusal of the Decision[29] of the Labor Arbiter shows that his only basis for arriving at such a conclusion are the bare assertions of petitioner and the fact that the latter did not sign the letter of Yap containing the proposed concessionaire agreement. However, as earlier discussed, this Court finds no error in the findings of the NLRC and the CA that petitioner is deemed as having given her consent to the said proposal when she continuously performed the tasks indicated therein for a considerable length of time. For all intents and purposes, the concessionaire agreement had been perfected.

Petitioner insists that her ID card is sufficient proof of her employment. In Domasig v. National Labor Relations Commission,[30] this Court held that the complainant's ID card and the cash vouchers covering his salaries for the

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

months indicated therein were substantial evidence that he was an employee of respondents, especially in light of the fact that the latter failed to deny said evidence. This is not the situation in the present case. The only evidence presented by petitioner as proof of her alleged employment are her ID card and one petty cash voucher for a five-day allowance which were disputed by respondents.

As to the ID card, it is true that the words "EMPLOYEE'S NAME" appear printed below petitioner's name.[31] However, she failed to dispute respondents' evidence consisting of Habitan's testimony,[32] that he and the other "contractors" of Bodega City such as the singers and band performers, were also issued the same ID cards for the purpose of enabling them to enter the premises of Bodega City.

The Court quotes, with approval, the ruling of the CA on this matter, to wit:

> Nor can petitioners identification card improve her cause any better. It is undisputed that non-employees, such as Felimon Habitan, an admitted concessionaire, musicians, singers and the like at Bodega City are also issued identification cards. Given this premise, it appears clear to Us that petitioner's I.D. Card is incompetent proof of an alleged employer-employee relationship between the herein parties. Viewed in the context of this case, the card is at best a "passport" from management assuring the holder thereof of his unmolested access to the premises of Bodega City.[33]

With respect to the petty cash voucher, petitioner failed to refute respondent's claim that it was not given to her for services rendered or on a regular basis, but simply granted as financial assistance to help her temporarily meet her family's needs.

Hence, going back to the element of control, the concessionaire agreement merely stated that petitioner shall maintain the cleanliness of the ladies' comfort room and observe courtesy guidelines that would help her obtain the results they wanted to achieve. There is nothing in the agreement which specifies the methods by which petitioner should achieve these results. Respondents did not indicate the manner in which she should go about in maintaining the cleanliness of the ladies' comfort room. Neither did respondents determine the means and methods by which petitioner could ensure the satisfaction of respondent company's customers. In other words, petitioner was given a free hand as to how she would perform her job as a "lady keeper." In fact, the last paragraph of the concessionaire agreement even allowed petitioner to engage persons to work with or assist her in the discharge of her functions.[34]

Moreover, petitioner was not subjected to definite hours or conditions of work. The fact that she was expected to maintain the cleanliness of respondent company's ladies' comfort room during Bodega City's operating hours does not indicate that her performance of her job was subject to the control of respondents as to make her an employee of the latter. Instead, the requirement that she had to render her services while Bodega City was open for business was dictated simply by the very nature of her undertaking, which was to give assistance to the users of the ladies' comfort room.

> In Consulta v. Court of Appeals,[35] this Court held:
>
> It should, however, be obvious that not every form of control that the hiring party reserves to himself over the conduct of the party hired in relation to the services rendered may be accorded the effect of establishing an employer-employee relationship between them in the legal or technical sense of the term. A line must be drawn somewhere, if the recognized distinction between an employee and an individual contractor is not to vanish altogether. Realistically, it would be a rare contract of service that gives untrammeled freedom to the party hired and eschews any intervention whatsoever in his performance of the engagement.
>
> Logically, the line should be drawn between rules that merely serve as guidelines towards the achievement of the mutually desired result without dictating the means or methods to be employed in attaining it, and those

> that control or fix the methodology and bind or restrict the party hired to the use of such means. The first, which aim only to promote the result, create no employer-employee relationship unlike the second, which address both the result and the means used to achieve it.[36]

Lastly, the Court finds that the elements of selection and engagement as well as the power of dismissal are not present in the instant case.

It has been established that there has been no employer-employee relationship between respondents and petitioner. Their contractual relationship was governed by the concessionaire agreement embodied in the 1992 letter. Thus, petitioner was not dismissed by respondents. Instead, as shown by the letter of Yap to her dated February 15, 1995,[37] their contractual relationship was terminated by reason of respondents' termination of the subject concessionaire agreement, which was in accordance with the provisions of the agreement in case of violation of its terms and conditions.

In fine, the CA did not err in dismissing the petition for certiorari filed before it by petitioner.

WHEREFORE, the instant petition is DENIED. The assailed Decision and Resolution of the Court of Appeals are AFFIRMED. Costs against petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Reyes, JJ., concur.

---

[1] Penned by Justice Cancio C. Garcia (now a member of this Court) and concurred in by Justices Marina L. Buzon and Eliezer R. de los Santos; rollo, p. 26.

[2] CA rollo, p. 452.

[3] Rollo, p. 113.

[4] CA rollo, p. 16.

[5] Rollo, p. 18.

[6] Manila Water Company, Inc. v. Peña, G.R. No. 158255, July 8, 2004, 434 SCRA 53, 58.

[7] Mitsubishi Motors Philippines Corporation v. Chrysler Philippines Labor Union, G.R. No. 148738, June 29, 2004, 433 SCRA 206, 217.

[8] Diamond Motors Corporation v. Court of Appeals, 462 Phil. 452, 458 (2003).

[9] Tiu v. Pasaol, Sr. , 450 Phil. 370, 379 (2003); Manila Water Company, Inc. v. Peña, supra note 6, at 58-59.

[10] Martinez v. National Labor Relations Commission, 339 Phil. 176, 183 (1997).

[11] Rufina Patis Factory v. Alusitain, G.R. No. 146202, July 14, 2004, 434 SCRA 418, 428.

[12] Imperial Victory Shipping Agency v. National Labor Relations Commission, G.R. No. 84672, August 5, 1991, 200 SCRA 178,185.

[13] R.P. Dinglasan Construction, Inc. v. Atienza, G.R. No. 156104, June 29, 2004, 433 SCRA 263, 269.

[14] Sy v. Court of Appeals, 446 Phil. 404, 413 (2003).

[15] Martinez v. National Labor Relations Commission, supra note 10, at 183; RULES OF COURT, Rule 133,

Section 5.

[16] G.R. No. 159890, May 28, 2004, 430 SCRA 368.

[17] Id. at 379.

[18] CA rollo, p. 62.

[19] CA rollo, p. 176.

[20] Jardine Davies Inc. v. Court of Appeals, 389 Phil. 204, 212 (2000).

[21] Id.

[22] CIVIL CODE OF THE PHILIPPINES, Article 1320; Jardine Davies Inc. v. CA, supra note 20, at 214.

[23] Cordial v. Miranda, 401 Phil. 307, 319 (2000).

[24] Spouses Hanopol v. Shoemart, Inc., 439 Phil. 266, 285 (2002).

[25] CA rollo, p. 207.

[26] Id. at 242-245.

[27] Aklan Electric Cooperative Inc. v. National Labor Relations Commission, 380 Phil. 225, 245 (2000).

[28] Martinez v. National Labor Relations Commission, supra note 10, at 183; Ramoran v. Jardine CMG Life Insurance Co., Inc., 383 Phil. 83, 100 (2000).

[29] Rollo, pp. 94-113.

[30] 330 Phil. 518, 524-525 (1996).

[31] CA rollo, p. 61.

[32] Id. at 246-250.

[33] CA rollo, p. 428.

[34] Id. at 176-177.

[35] G.R. No. 145443, March 18, 2005, 453 SCRA 732 citing Insular Life Assurance Co., Ltd. v. National Labor Relations Commission, G.R. No. 84484, November 15, 1989, 175 SCRA 459.

[36] Consulta v. Court of Appeals, id. at 740.

[37] CA rollo, p. 184.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.