

SANTOSA B. DATUMAN, PETITIONER, VS. FIRST COSMOPOLITAN MANPOWER AND PROMOTION SERVICES, INC., RESPONDENT.

G.R. No. 156029. November 14, 2008

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

Before us is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Court of Appeals (CA) Decision[1] dated August 7, 2002, in CA-G.R. SP No. 59825, setting aside the Decision of the National Labor Relations Commission (NLRC).

The facts are as follows:

Sometime in 1989, respondent First Cosmopolitan Manpower & Promotion Services, Inc. recruited petitioner Santosa B. Datuman to work abroad under the following terms and conditions:

Site of employment

-

Bahrain

Employees Classification/Position/Grade

-

Saleslady

Basic Monthly Salary

-

US\$370.00

Duration of Contract

-

One (1) year

Foreign Employer

-

Mohammed Sharif Abbas Ghulam Hussain[2]

On April 17, 1989, petitioner was deployed to Bahrain after paying the required placement fee. However, her employer Mohammed Hussain took her passport when she arrived there; and instead of working as a saleslady, she was forced to work as a domestic helper with a salary of Forty Bahrain Dinar (BD40.00), equivalent only to

One Hundred US Dollars (US\$100.00). This was contrary to the agreed salary of US\$370.00 indicated in her Contract of Employment signed in the Philippines and approved by the Philippine Overseas Employment Administration (POEA).[3]

On September 1, 1989, her employer compelled her to sign another contract, transferring her to another employer as housemaid with a salary of BD40.00 for the duration of two (2) years.[4] She pleaded with him to give her a release paper and to return her passport but her pleas were unheeded. Left with no choice, she continued working against her will. Worse, she even worked without compensation from September 1991 to April 1993 because of her employer's continued failure and refusal to pay her salary despite demand. In May 1993, she was able to finally return to the Philippines through the help of the Bahrain Passport and Immigration Department.[5]

In May 1995, petitioner filed a complaint before the POEA Adjudication Office against respondent for underpayment and nonpayment of salary, vacation leave pay and refund of her plane fare, docketed as Case No. POEA ADJ. (L) 95-05-1586.[6] While the case was pending, she filed the instant case before the NLRC for underpayment of salary for a period of one year and six months, nonpayment of vacation pay and reimbursement of return airfare.

When the parties failed to arrive at an amicable settlement before the Labor Arbiter, they were required to file their respective position papers, subsequent pleadings and documentary exhibits.

In its Position Paper,[7] respondent countered that petitioner actually agreed to work in Bahrain as a housemaid for one (1) year because it was the only position available then. However, since such position was not yet allowed by the POEA at that time, they mutually agreed to submit the contract to the POEA indicating petitioner's position as saleslady. Respondent added that it was actually petitioner herself who violated the terms of their contract when she allegedly transferred to another employer without respondent's knowledge and approval. Lastly, respondent raised the defense of prescription of cause of action since the claim was filed beyond the three (3)-year period from the time the right accrued, reckoned from either 1990 or 1991.[8]

On April 29, 1998, Labor Arbiter Jovencio Mayor, Jr. rendered a Decision finding respondent liable for violating the terms of the Employment Contract and ordering it to pay petitioner: (a) the amount of US\$4,050.00, or its equivalent rate prevailing at the time of payment, representing her salary differentials for fifteen (15) months; and, (b) the amount of BD 180.00 or its equivalent rate prevailing at the time of payment, representing the refund of plane ticket, thus:

From the foregoing factual backdrop, the only crucial issue for us to resolve in this case is whether or not complainant is entitled to her monetary claims.

x x x

In the instant case, from the facts and circumstances laid down, it is thus self-evident that the relationship of the complainant and respondent agency is governed by the Contract of Employment, the basic terms and covenants of which provided for the position of saleslady, monthly compensation of US\$370.00 and duration of contract for one (1) year. As it is, when the parties - complainant and respondent Agency - signed and executed the POEA - approved Contract of Employment, this agreement is the law that governs them. Thus, when respondent agency deviated from the terms of the contract by assigning the position of a housemaid to complainant instead of a saleslady as agreed upon in the POEA-approved Contract of Employment, respondent Agency committed a breach of said Employment Contract. Worthy of mention is the fact that respondent agency in their Position Paper paragraph 2, Brief Statement of the Facts and of the Case - admitted that it had entered into an illegal contract with complainant by proposing the position of a housemaid which said position was then not allowed by the POEA, by making it appear in the Employment Contract that the position being applied for is the position of a saleslady. As it is, we find indubitably clear that the foreign employer had took

advantage to the herein hopeless complainant and because of this ordeal, the same obviously rendered complainant's continuous employment unreasonable if not downright impossible. The facts and surrounding circumstances of her ordeal was convincingly laid down by the complainant in her Position Paper, from which we find no flaws material enough to disregard the same. Complainant had clearly made out her case and no amount of persuasion can convince us to tilt the scales of justice in favor of respondents whose defense was anchored solely on the flimsy allegations that for a period of more than five (5) years - from 1989 until 1995 - nothing was heard from her or from her relatives, presuming then that complainant had no problem with her employment abroad. We also find that the pleadings and the annexes filed by the parties reveal a total lapse on the part of respondent First Cosmopolitan Manpower and Promotions - their failure to support with substantial evidence their contention that complainant transferred from one employer to another without knowledge and approval of respondent agency in contravention of the terms of the POEA approved Employment Contract. Obviously, respondent Agency anchored its disquisition on the alleged "contracts" signed by the complainant that she agreed with the terms of said contracts - one (1) year duration only and as a housemaid - to support its contention that complainant violated the contract agreement by transferring from one employer to another on her own volition without the knowledge and consent of respondent agency. To us, this posture of respondent agency is unavailing. These "documents" are self-serving. We could not but rule that the same were fabricated to tailor-fit their defense that complainant was guilty of violating the terms of the Employment Contract. Consequently, we could not avoid the inference of a more logical conclusion that complainant was forced against her will to continue with her employment notwithstanding the fact that it was in violation of the original Employment Contract including the illegal withholding of her passport.

With the foregoing, we find and so rule that respondent Agency failed to discharge the burden of proving with substantial evidence that complainant violated the terms of the Employment Contract, thus negating respondent Agency's liability for complainant's money claims. All the more, the record is bereft of any evidence to show that complainant Datuman is either not entitled to her wage differentials or have already received the same from respondent. As such, we are perforce constrained to grant complainant's prayer for payment of salary differentials computed as follows:

January 1992 April 1993 (15 months)

US\$370.00 agreed salary

US\$100.00 actual paid salary

US\$270.00 balance

US\$270.00 x 15 months = US\$4050.00

We are also inclined to grant complainant's entitlement to a refund of her plane ticket in the amount of BD 180 Bahrain Dinar or the equivalent in Philippine Currency at the rate of exchange prevailing at the time of payment.

Anent complainant's claim for vacation leave pay and overtime pay, we cannot, however, grant the same for failure on the part of complainant to prove with particularity the months that she was not granted vacation leave and the day wherein she did render overtime work.

Also, we could not grant complainant's prayer for award of damages and attorney's fees for lack of factual and legal basis.

WHEREFORE, premises considered, judgment is hereby rendered, finding respondent Agency liable for violating the term of Employment Contract and respondent First Cosmopolitan Manpower and Promotions is hereby ordered:

To pay complainant the amount of US\$ FOUR THOUSAND AND FIFTY (US\$4,050.00), or its equivalent rate prevailing at the time of payment, representing her salary differentials for fifteen (15) months;

To pay complainant the amount of BD 180.00 or its equivalent rate prevailing at the time of payment, representing the refund of plane ticket;

All other claims are hereby dismissed for lack of merit.

SO ORDERED.[9] (emphasis supplied)

On appeal, the NLRC, Second Division, issued a Decision[10] affirming with modification the Decision of Labor Arbiter Mayor, Jr., by reducing the award of salary differentials from US\$4,050.00 to US\$2,970.00 ratiocinating as follows:

Accordingly, we find that the claims for salary differentials accruing earlier than April of 1993 had indeed prescribed. This is so as complainant had filed her complaint on May 31, 1995 when she arrived from the jobsite in April 1993. Since the cause of action for salary differential accrues at the time when it falls due, it is clear that only the claims for the months of May 1993 to April 1994 have not yet prescribed. With an approved salary rate of US\$370.00 vis-à-vis the amount of salary received which was \$100.00, complainant is entitled to the salary differential for the said period in the amount of \$2,970.00.

x x x

WHEREFORE, premises considered, judgment is hereby rendered MODIFYING the assailed Decision by reducing the award of salary differentials to \$2,970.00 to the complainant.

The rest of the disposition is AFFIRMED.

SO ORDERED.[11]

On July 21, 2000, respondent elevated the matter to the CA through a petition for certiorari under Rule 65.

On August 2, 2000,[12] the CA dismissed the petition for being insufficient in form pursuant to the last paragraph of Section 3, Rule 42 of the 1997 Rules of Civil Procedure, as amended.

On October 20, 2000,[13] however, the CA reinstated the petition upon respondent's motion for reconsideration.[14]

On August 7, 2002, the CA issued the assailed Decision[15] granting the petition and reversing the NLRC and the Labor Arbiter, thus:

Under Section 1 (f), Rule II, Book II of the 1991 POEA Rules and Regulations, the local agency shall assume joint and solidary liability with the employer for all claims and liabilities which may arise in connection with the implementation of the contract, including but not limited to payment of wages, health and disability compensation and repatriation.

Respondent Commission was correct in declaring that claims of private respondent "for salary differentials accruing earlier than April of 1993 had indeed prescribed." It must be noted that petitioner company is privy only to the first contract. Granting *arguendo* that its liability extends to the acts of its foreign principal, the Towering Recruiting Services, which appears to have a hand in the execution of the second contract, it is Our considered opinion that the same would, at the most, extend only up to the expiration of the second contract or until 01 September 1991. Clearly, the money claims subject of the complaint filed in 1995 had prescribed.

However, this Court declares respondent Commission as not only having abused its discretion, but as being without jurisdiction at all, in declaring private respondent entitled to salary differentials. After decreeing the money claims accruing before April 1993 as having prescribed, it has no more jurisdiction to hold petitioner company for salary differentials after that period. To reiterate, the local agency shall assume joint and solidary liability with the employer for all claims and liabilities which may arise in connection with the implementation

of the contract. Which contract? Upon a judicious consideration, we so hold that it is only in connection with the first contract. The provisions in number 2, Section 10 (a), Rule V, Book I of the Omnibus Rules Implementing the Labor Code Section 1 (f), Rule II, Book II of the 1991 POEA Rules and Regulations were not made to make the local agency a perpetual insurer against all untoward acts that may be done by the foreign principal or the direct employer abroad. It is only as regards the principal contract to which it is privy shall its liability extend. In *Catan v. National Labor Relations Commission*, 160 SCRA 691 (1988), it was held that the responsibilities of the local agent and the foreign principal towards the contracted employees under the recruitment agreement extends up to and until the expiration of the employment contracts of the employees recruited and employed pursuant to the said recruitment agreement.

x x x

Foregoing considered, the assailed Decision dated 24 February 2000 and the Resolution dated 23 June 2000 of respondent Commission in NLRC NCR CA 016354-98 are hereby SET ASIDE.

SO ORDERED.[16]

Petitioner's Motion for Reconsideration[17] thereon was denied in the assailed Resolution[18] dated November 14, 2002.

Hence, the present petition based on the following grounds:

I.

THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT ABANDONED THE FACTUAL FINDINGS OF THE LABOR ARBITER AS AFFIRMED BY THE NATIONAL LABOR RELATIONS COMMISSION.

II.

THE HONORABLE COURT OF APPEALS PATENTLY ERRED IN HOLDING THAT THE RESPONDENT AGENCY IS ONLY A [sic] PRIVY AND LIABLE TO THE PRINCIPAL CONTRACT.

III.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE CAUSE OF ACTION OF THE PETITIONER ALREADY PRESCRIBED.

The respondent counters in its Comment that the CA is correct in ruling that it is not liable for the monetary claims of petitioner as the claim had already prescribed and had no factual basis.

Simply put, the issues boil down to whether the CA erred in not holding respondent liable for petitioner's money claims pursuant to their Contract of Employment.

We grant the petition.

On whether respondent is solidarily liable for petitioner's monetary claims

Section 1 of Rule II of the POEA Rules and Regulations states that:

Section 1. Requirements for Issuance of License. - Every applicant for license to operate a private employment agency or manning agency shall submit a written application together with the following requirements:

x x x

f. A verified undertaking stating that the applicant:

x x x

(3) Shall assume joint and solidary liability with the employer for all claims and liabilities which may arise in connection with the implementation of the contract; including but not limited to payment of wages, death and disability compensation and repatriation. (emphasis supplied)

The above provisions are clear that the private employment agency shall assume joint and solidary liability with the employer.[19] This Court has, time and again, ruled that private employment agencies are held jointly and severally liable with the foreign-based employer for any violation of the recruitment agreement or contract of employment.[20] This joint and solidary liability imposed by law against recruitment agencies and foreign employers is meant to assure the aggrieved worker of immediate and sufficient payment of what is due him.[21] This is in line with the policy of the state to protect and alleviate the plight of the working class.

In the assailed Decision, the CA disregarded the aforecited provision of the law and the policy of the state when it reversed the findings of the NLRC and the Labor Arbiter. As the agency which recruited petitioner, respondent is jointly and solidarily liable with the latter's principal employer abroad for her (petitioner's) money claims. Respondent cannot, therefore, exempt itself from all the claims and liabilities arising from the implementation of their POEA-approved Contract of Employment.

We cannot agree with the view of the CA that the solidary liability of respondent extends only to the first contract (i.e. the original, POEA-approved contract which had a term of until April 1990). The signing of the "substitute" contracts with the foreign employer/principal before the expiration of the POEA-approved contract and any continuation of petitioner's employment beyond the original one-year term, against the will of petitioner, are continuing breaches of the original POEA-approved contract. To accept the CA's reasoning will open the floodgates to even more abuse of our overseas workers at the hands of their foreign employers and local recruiters, since the recruitment agency could easily escape its mandated solidary liability for breaches of the POEA-approved contract by colluding with their foreign principals in substituting the approved contract with another upon the worker's arrival in the country of employment. Such outcome is certainly contrary to the State's policy of extending protection and support to our overseas workers. To be sure, Republic Act No. 8042 explicitly prohibits the substitution or alteration to the prejudice of the worker of employment contracts already approved and verified by the Department of Labor and Employment (DOLE) from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the DOLE.[22]

Respondent's contention that it was petitioner herself who violated their Contract of Employment when she signed another contract in Bahrain deserves scant consideration. It is the finding of both the Labor Arbiter and the NLRC - which, significantly, the CA did not disturb - that petitioner was forced to work long after the term of her original POEA-approved contract, through the illegal acts of the foreign employer.

In *Placowell International Services Corporation v. Camote*,[23] we held that the subsequently executed side agreement of an overseas contract worker with her foreign employer which reduced his salary below the amount approved by the POEA is void because it is against our existing laws, morals and public policy. The said side agreement cannot supersede the terms of the standard employment contract approved by the POEA.

Hence, in the present case, the diminution in the salary of petitioner from US\$370.00 to US\$100 (BD 40.00) per month is void for violating the POEA-approved contract which set the minimum standards, terms, and conditions of her employment. Consequently, the solidary liability of respondent with petitioner's foreign employer for petitioner's money claims continues although she was forced to sign another contract in Bahrain. It is the terms of the original POEA-approved employment contract that shall govern the relationship of petitioner with the respondent recruitment agency and the foreign employer. We agree with the Labor Arbiter and the NLRC that the

precepts of justice and fairness dictate that petitioner must be compensated for all months worked regardless of the supposed termination of the original contract in April 1990. It is undisputed that petitioner was compelled to render service until April 1993 and for the entire period that she worked for the foreign employer or his unilaterally appointed successor, she should have been paid US\$370/month for every month worked in accordance with her original contract.

Respondent cannot disclaim liability for the acts of the foreign employer which forced petitioner to remain employed in violation of our laws and under the most oppressive conditions on the allegation that it purportedly had no knowledge of, or participation in, the contract unwillingly signed by petitioner abroad. We cannot give credence to this claim considering that respondent by its own allegations knew from the outset that the contract submitted to the POEA for approval was not to be the "real" contract. Respondent blithely admitted to submitting to the POEA a contract stating that the position to be filled by petitioner is that of "Saleslady" although she was to be employed as a domestic helper since the latter position was not approved for deployment by the POEA at that time. Respondent's evident bad faith and admitted circumvention of the laws and regulations on migrant workers belie its protestations of innocence and put petitioner in a position where she could be exploited and taken advantage of overseas, as what indeed happened to her in this case.

We look upon with great disfavor the unsubstantiated actuations of innocence or ignorance on the part of local recruitment agencies of acts of their foreign principals, as if the agencies' responsibility ends with the deployment of the worker. In the light of the recruitment agency's legally mandated joint and several liability with the foreign employer for all claims in connection with the implementation of the contract, it is the recruitment agency's responsibility to ensure that the terms and conditions of the employment contract, as approved by the POEA, are faithfully complied with and implemented properly by its foreign client/principal. Indeed, it is in its best interest to do so to avoid being haled to the courts or labor tribunals and defend itself from suits for acts of its foreign principal.

On whether petitioner's claims for underpaid salaries have prescribed

It should be recalled that the Labor Arbiter and the NLRC similarly found that petitioner is entitled to underpaid salaries, albeit they differed in the number of months for which salary differentials should be paid. The CA, on the other hand, held that all of petitioner's monetary claims have prescribed pursuant to Article 291 of the Labor Code which provides that:

Art. 291. Money Claims. - All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three years from the time that cause of action accrued; otherwise, they shall be forever barred. (emphasis supplied)

We do not agree with the CA when it held that the cause of action of petitioner had already prescribed as the three-year prescriptive period should be reckoned from September 1, 1989 when petitioner was forced to sign another contract against her will. As stated in the complaint, one of petitioner's causes of action was for underpayment of salaries. The NLRC correctly ruled the right to claim unpaid salaries (or in this case, unpaid salary differentials) accrue as they fall due.[24] Thus, petitioner's cause of action to claim salary differential for October 1989 only accrued after she had rendered service for that month (or at the end of October 1989). Her right to claim salary differential for November 1989 only accrued at the end of November 1989, and so on and so forth.

Both the Labor Arbiter and the NLRC found that petitioner was forced to work until April 1993. Interestingly, the CA did not disturb this finding but held only that the extent of respondent's liability was limited to the term under the original contract or, at most, to the term of the subsequent contract entered into with the participation of

respondent's foreign principal, i.e. 1991. We have discussed previously the reasons why (a) the CA's theory of limited liability on the part of respondent is untenable and (b) the petitioner has a right to be compensated for all months she, in fact, was forced to work. To determine for which months petitioner's right to claim salary differentials has not prescribed, we must count three years prior to the filing of the complaint on May 31, 1995. Thus, only claims accruing prior to May 31, 1992 have prescribed when the complaint was filed on May 31, 1995. Petitioner is entitled to her claims for salary differentials for the period May 31, 1992 to April 1993, or approximately eleven (11) months.[25]

We find that the NLRC correctly computed the salary differential due to petitioner at US\$2,970.00 (US\$370.00 as approved salary rate - US\$100.00 as salary received = US\$290 as underpaid salary per month x 11 months). However, it should be for the period May 31, 1992 to April 1993 and not May 1993 to April 1994 as erroneously stated in the NLRC's Decision.

A final note

This Court reminds local recruitment agencies that it is their bounden duty to guarantee our overseas workers that they are being recruited for bona fide jobs with bona fide employers. Local agencies should never allow themselves to be instruments of exploitation or oppression of their compatriots at the hands of foreign employers. Indeed, being the ones who profit most from the exodus of Filipino workers to find greener pastures abroad, recruiters should be first to ensure the welfare of the very people that keep their industry alive.

WHEREFORE, the petition is GRANTED. The assailed Decision of the Court of Appeals dated August 7, 2002 and Resolution dated November 14, 2002 in CA-G.R. SP No. 59825 are REVERSED AND SET ASIDE. The Decision of the National Labor Relations Commission dated February 24, 2000 is REINSTATED with a qualification with respect to the award of salary differentials, which should be granted for the period May 31, 1992 to April 1993 and not May 1993 to April 1994.

SO ORDERED.

Carpio,** (Acting Chairperson), Austria-Martinez, Corona, and Carpio Morales,*** JJ., concur.
Puno, C.J., on official leave.

** Acting Chairperson of the First Division as per Special Order No. 534.

*** Additional Member as per Special Order No. 535.

[1] Penned by then Associate Justice Romeo A. Brawner and concurred in by Associate Justices Jose L. Sabio, Jr. and Mario L. Guarina III.

[2] Annexes B - B-2, Court of Appeals (CA) Rollo at 79-81.

[3] Id.

[4] Annex "A," CA Rollo at 77.

[5] Petition for Review in the CA, CA Rollo.

[6] Rollo at 86.

[7] CA Petition-Annex "H," CA Rollo.

[8] Id., at 97-98.

[9] Rollo at 108-113.

[10] Promulgated on February 24, 2000, penned by Commissioner Victoriano R. Calaycay and concurred in by Presiding Commissioner Raul Aquino and Commissioner Angelita Gacutan.

[11] Rollo at 161.

[12] CA Rollo at 45.

[13] *Id.*, at 91.

[14] *Id.*, at 91-92.

[15] *Id.*, at 37-43.

[16] Rollo at 41-42.

[17] CA Rollo at 121-133.

[18] *Id.*, at 46-47.

[19] *Skippers United Pacific, Inc. and J.P. Samartzsis Maritime Enterprises Co., S.A. v. Jerry Maguad and Porferio Ceudadano*, G.R. No. 166363, August 15, 2006, 498 SCRA 639, 668.

[20] *Hellenic Philippine Shipping, Inc. v. Siete*, G.R. No. 84082, March 13, 1991, 195 SCRA 179, 186; *Empire Insurance Company v. NLRC*, G.R. 121879, August 14, 1998, 294 SCRA 263, 271-272.

[21] *P.I. Manpower Placements, Inc. v. NLRC (Second Division)*, G.R. No. 97369, July 31, 1997, 276 SCRA 451, 461.

[22] *Placewell International Services Corporation v. Camote*, G.R. No. 169973, June 26, 2006, 492 SCRA 761.

[23] *Id.*, citing *Chavez v. Bonto-Perez*, G.R. No. 109808, March 1, 1995, 242 SCRA 73.

[24] NLRC Decision, Rollo at 160.

[25] As an aside, this Court notes that in petitioner's complaint filed with the Labor Arbiter, she only claims underpayment of salaries and did not include nonpayment of salaries as one of her causes of action. Subsequently, in her position paper and other pleadings, petitioner asserts that she was not paid any salary at all from September 1991 to April 1993. However, under the NLRC Rules of Procedure, parties are barred from alleging or proving causes of action in the position paper that are not found/alleged in the complaint. Thus, the Labor Arbiter and the NLRC only granted petitioner salary differentials as she herself prayed for in her complaint.

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