

MANDAUE GALLEON TRADE, INC. and/or GAMALLOSONS TRADERS, INC., Petitioners, vs. VICENTE ANDALES, RESTITUTA SOLITANA,[] ELPIDIO SUELTO, ET AL.,[] Respondents.

G.R. No. 159668. March 07, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Decision[2] dated May 21, 2003 and the Amended Decision[3] dated August 19, 2003 of the Court of Appeals (CA) in CA-G.R. SP No. 70214.

The facts:

Petitioners Mandaue Galleon Trade, Inc. (MGTI) and Gamallosons Traders, Inc.[4] (GTI) are business entities engaged in rattan furniture manufacturing for export, with principal place of business at Cabangcalan, Mandaue City.

Respondent Vicente Andales[5] (Andales) filed a complaint with the Labor Arbiter (LA) against both petitioners for illegal dismissal and non-payment of 13th month pay and service incentive leave pay. His other co-workers numbering 260 filed a similar complaint against petitioner MGTI only.

The complainants alleged that MGTI hired them on various dates as weavers, grinders, sanders and finishers; sometime in August 1998, workers in the Finishing Department were told that they would be transferred to a contractor and they were given Visitor Identification Cards (IDs), while workers in the Weaving Department were told to look for work elsewhere as the company had no work for them; sometime in September 1998, workers in the Grinding Department were not allowed to enter the company premises, while workers in the Sanding Department were told that they could no longer work since there was no work available; workers who were issued IDs were allowed to go inside the premises; and they were dismissed without notice and just cause.

They further alleged that they are regular employees of MGTI because: (a) they performed their work inside the company premises in Cabangcalan, Mandaue City; (b) they were issued uniforms by MGTI and were told to strictly follow company rules and regulations; (c) they were under the supervision of MGTI's foremen, quality control personnel and checkers; (d) MGTI supplied the materials, designs, tools and equipment in the production of furniture; (e) MGTI conducts orientations on how the work was to be done and the safe and efficient use of tools and equipment; (f) MGTI issues memoranda regarding absences and waste of materials; and (g) MGTI exercises the power to discipline them.

On the other hand, MGTI denied the existence of employer-employee relationship with complainants, claiming that they are workers of independent contractors whose services were engaged temporarily and seasonally when the demands for its products are high and could not be met by its regular workforce; the independent contractors recruited and hired the complainants, prepared the payroll and paid their wages, supervised and directed their

work, and had authority to dismiss them. It averred that due to the economic crisis and internal squabble in the company, the volume of orders from foreign buyers dived; as a survival measure, management decided to retrench its employees; and the substantial separation pay paid to retrenched employees caught the jealous eyes of complainants who caused the filing of the complaint for illegal dismissal.

On August 23, 1999, the LA rendered a Decision[6] holding that 183[7] complainants are regular piece-rate employees of MGTI since they were made to perform functions which are necessary to MGTI's rattan furniture manufacturing business; the independent contractors were not properly identified; the absence of proof that the independent contractors have work premises of their own, substantial capital or investment in the form of tools, equipment and machineries make them only labor contractors; and there was no dismissal but only a claim for separation pay. The LA ordered petitioners to take back complainants and directed it to pay their 13th month pay in the total sum of P545,386.43.

Both parties appealed. On April 30, 2001, the National Labor Relations

Commission (NLRC) rendered a Decision[8] affirming the LA's finding of employer-employee relationship. It held that labor-only contracting and not job-contracting was present since the alleged contractors did not have substantial capital in the form of equipment, machineries and work premises. The NLRC, however, did not agree with the LA's finding that there was no dismissal. It held that complainants were constructively dismissed when they were unilaterally transferred to a contractor to evade payment of separation pay as a result of the retrenchment. Thus, it directed MGTI to pay complainants separation pay of one month for every year of service based on the prevailing minimum wage at the time of their dismissal, in addition to payment of 13th month pay.

Both parties filed separate motions for reconsideration[9] but the NLRC denied them in a Resolution[10] dated February 12, 2002.

On April 19, 2002, petitioners filed a Petition for Certiorari[11] with the CA. On May 21, 2003 the CA rendered a Decision[12] dismissing the petition and affirming the findings of the NLRC. It held that MGTI is liable to the respondents because the alleged contractors are not independent contractors but labor-only contractors; that respondents were constructively dismissed when they were unilaterally transferred to another contractor; and that the allegation of retrenchment was not proven.

On June 12, 2003, petitioners filed a Motion for Reconsideration.[13]

On August 19, 2003, the CA rendered an Amended Decision[14] partially granting the motion, in this wise:

After taking a second look at the petition and in consonance with Article 283 of the Labor Code, We are computing the separation pay of the 183 private respondents at one-half month salary per year of service up to the promulgation of this Amended Decision.

WHEREFORE, petitioners' motion for reconsideration is PARTIALLY GRANTED. This Court's decision dated May 21, 2003 is hereby amended. Petitioners are ordered to pay the 183 respondents their separation pay computed at one-half month salary per year of service up to the promulgation of this Amended Decision.

SO ORDERED.[15]

On September 16, 2003, petitioners filed with this Court a Motion for Extension of Time to file a petition for review, which was granted by the Court,[16] and petitioners filed herein petition on October 23, 2003.

Meanwhile, on September 24, 2003, respondents filed a Motion for Reconsideration with the CA assailing the reduction of the separation pay in the Amended Decision.[17] On December 9, 2003, the CA issued a Resolution[18] merely noting the Motion for Reconsideration filed by respondents on the ground that the case had

already been referred to this Court by way of the present petition.

Respondents then filed with this Court a Petition for Certiorari with Motion to Consolidate the Petition with the present petition, assailing the August 19, 2003 Amended Decision and December 9, 2003 CA Resolution. Respondents' petition, docketed as G.R. No. 162227, was dismissed in a Resolution[19] dated April 14, 2004 for failure to attach a clearly legible duplicate original or certified true copy of the Amended Decision. On August 26, 2004, entry of judgment was made.[20]

In the present petition, petitioners raise the sole issue:

I

WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR IN CONSIDERING THE RESPONDENTS AS EMPLOYEES OF THE PETITIONERS ABSENT THE REQUISITES/ ELEMENTS IN THE JURISPRUDENCE AS DETERMINATIVE FACTOR IN THE EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP.[21]

Petitioners submit that respondents are employees of independent contractors who have their own manpower, tools, equipment and capital; they did not have a hand in respondents' recruitment and hiring, payment of wages, control and supervision, and dismissal; and respondents did not have time cards or uniforms, nor were they subjected to petitioner's company policies.

On the other hand, respondents, in their Comment and Memorandum, assail the CA's Amended Decision which reduced the separation pay from one month to one-half month, claiming there was no justification to support such order. Moreover, they contend that they were denied their day in court when the CA did not resolve their Motion for Reconsideration of the Amended Decision. They aver that since they were illegally dismissed, they are entitled to backwages and not only separation pay.

The petition is bereft of merit.

Factual findings of quasi-judicial bodies like the NLRC, when adopted and confirmed by the CA and if supported by substantial evidence, are accorded respect and even finality by this Court.[22] The existence of an employer-employee relationship is a factual matter that will not be delved into by this Court, since only questions of law may be raised in petitions for review.[23] The Court has recognized several exceptions to this rule, such as: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. [24] None of these exceptions, however, has been convincingly shown by petitioners to apply in the present case.

Article 106 of the Labor Code explains the relations which may arise between an employer, a contractor and the contractor's employees thus:

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 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.

The first two paragraphs of Article 106 set the general rule that a principal is permitted by law to engage the services of a contractor for the performance of a particular job, but the principal, nevertheless, becomes solidarily liable with the contractor for the wages of the contractor’s employees. The third paragraph of Article 106, however, empowers the Secretary of Labor to make distinctions between permissible job contracting and “labor-only” contracting, which is a prohibited act further defined under the last paragraph. A finding that a contractor is a “labor-only” contractor is equivalent to declaring that there is an employer-employee relationship between the principal and the employees of the supposed contractor, and the “labor-only” contractor is considered as a mere agent of the principal, the real employer.[25]

Sections 5 and 7 of the Rules Implementing Articles 106 to 109 of the Labor Code, as amended[26] (Implementing Rules), reinforce the rules in determining the existence of employer-employee relationship between employer, contractor or subcontractor, and the contractor’s or subcontractor’s employee, to wit:

Section 5. Prohibition against labor-only contracting. – Labor-only contracting is 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 [is] 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

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 forgoing 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.

Section 7. Existence of an employer-employee relationship. – The contractor or subcontractor shall be considered the employer of the contractual employee for purposes of enforcing the provisions of the Labor Code and other social legislation. The principal, however, shall be solidarily liable with the contractor in the event of any violation of any provision of the Labor Code, including the failure to pay wages.

The principal shall be deemed the employer of the contractual employee in any of the following cases, as declared by a competent authority:

- where there is a labor-only contracting; or
- where the contracting arrangement falls within the prohibitions provided in Section 6 (Prohibitions) hereof.

Thus, based on Article 106 of the Labor Code and Sections 5 and 7 of the Implementing Rules, “labor-only” contracting exists when the following criteria are present: (1) where the contractor or subcontractor supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among other things; and the workers recruited and placed by the contractor or subcontractor are performing activities which are directly related to the principal business of such employer; or (2) where the contractor does not exercise the right to control the performance of the work of the contractual employee.

In the present case, petitioners’ claim that their contractors are independent contractors, and, therefore, this case is one of permissible job contracting, is without basis.

First, respondents’ work as weavers, grinders, sanders and finishers is directly related to MGTI's principal business of rattan furniture manufacturing. Where the employees are tasked to undertake activities usually desirable or necessary in the usual business of the employer, the contractor is considered as a “labor-only” contractor and such employees are considered as regular employees of the employer.[27]

Second, MGTI was unable to present any proof that its contractors had substantial capital. There was no evidence pertaining to the contractors' capitalization; nor to their investment in tools, equipment or implements actually used in the performance or completion of the job, work, or service that they were contracted to render. The law casts the burden on the contractor to prove that it has substantial capital, investment, tools, etc. Employees, on the other hand, need not prove that the contractor does not have substantial capital, investment, and tools to engage in job-contracting.[28]

Thus, the contractors are “labor-only” contractors since they do not have substantial capital or investment which relates to the service performed and respondents performed activities which were directly related to MGTI's main business. MGTI, the principal employer, is solidarily liable with the labor-only contractors, for the rightful claims of the employees. Under this set-up, “labor-only” contractors are deemed agents of the principal, MGTI, and the law makes the principal responsible to the employees of the “labor-only” contractor as if the principal itself

directly hired or employed the employees. In prohibiting “labor-only” contracting and creating an employer-employee relationship between the principal and the supposed contractor’s employees, the law intends to prevent employers from circumventing labor laws intended to protect employees.

Hence, the Court sees no reason to disturb the findings of fact of the NLRC and the CA.

Respondents’ contention that the CA erred in lowering the award of separation pay from one month to one-half month for every year of service cannot prosper in the present petition. Whether right or wrong, the decision of the CA on that matter had long become final and executory with the dismissal of respondents’ Petition for Certiorari, docketed as G.R. No. 162227, assailing the reduction of the award of separation pay. Entry of judgment was made therein on August 26, 2004; hence, the reduction of the separation pay is now immutable, beyond the jurisdiction of this Court to amend, modify or reverse.[29]

Nothing is more settled in the law than that a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the Court that rendered it or by the highest Court of the land.[30] The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time.[31]

The only recognized exceptions to the general rule are the correction of clerical errors, the so-called nunc pro tunc entries which cause no prejudice to any party, void judgments, and whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.[32] None of the exceptions are present in the instant case.

The CA Amended Decision cannot be considered by the Court as a void judgment, as it was rendered by a tribunal with jurisdiction over the subject matter of the petition.[33] Neither can respondents complain that they were denied due process of law since they had the opportunity to be heard when they assailed the reduction of separation pay in their Petition for Certiorari, G.R. No. 162227, but bungled the same when they failed to comply with the basic procedural requirements in filing the petition. Respondents cannot be allowed to resurrect a cause lost thru negligence in properly pursuing their case.

WHEREFORE, the present petition is DENIED for lack of merit.

SO ORDERED.

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

[*] Referred to as “Solana” in other parts of the record.

[**] There were “183” complainants who were awarded 13th month pay by the Labor Arbiter in his Decision dated August 23, 1999; CA rollo, pp. 289-292.

[1] The name of the Court of Appeals, as respondent, is deleted from the title, pursuant to Section 4, Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Eliezer R. de los Santos and concurred in by Associate Justices Romeo A. Brawner and Regalado E. Maambong, CA rollo, p. 478.

[3] Id. at 524.

[4] Referred to as “Gamollo Son’s Inc.” in other parts of the record. Records do not show any specific finding as

to the liability of GTI to Andales. The findings of fact of the LA and the NLRC are focused only on MGTI. Pleadings filed by the parties in the present petition do not discuss the relationship of Andales to GTI.

[5] Omitted as respondent in the Motion for Extension of Time filed by petitioners on September 16, 2003, rollo, p. 3.

[6] CA rollo, p. 275.

[7] Should be 182 because “Rebecca Gutib” is named twice in the list of winning complainants specifically enumerated in pp. 15-18 of the LA Decision, CA rollo, pp. 289-292.

[8] CA rollo, p. 36.

[9] Id. at 356, 360.

[10] Id. at 44-46.

[11] Id. at 2.

[12] Id. at 478.

[13] Id. at 491.

[14] Id. at 524.

[15] CA rollo, pp. 524-525.

[16] Rollo, p. 3.

[17] CA rollo, p. 529.

[18] Id. at 540.

[19] Id. at 578.

[20] Id. at 581.

[21] Rollo, p. 21.

[22] Lazaro v. Court of Appeals, 423 Phil. 554, 558 (2001); Spouses Garrido v. Court of Appeals, 421 Phil. 872, 881 (2001); Santos v. Spouses Reyes, 420 Phil. 313, 317 (2001); Yu Bun Guan v. Ong, 419 Phil. 845, 854 (2001); Fernandez v. Fernandez, 416 Phil. 322, 337 (2001); Nagkakaisang Kapisanan Kapitbahayan sa Commonwealth Avenue v. Court of Appeals, 414 Phil. 146, 153-154 (2001).

[23] Manila Water Company, Inc. v. Pena, G.R. No. 158255, July 8, 2004, 434 SCRA 53, 58; Fleischer Company, Inc. v. National Labor Relations Commission, 407 Phil. 391, 399 (2001).

[24] Asiatic Development Corporation v. Brogada, G.R. No. 169136, July 14, 2006, 495 SCRA 166, 169.

[25] Acevedo v. Advanstar Company, Inc., G.R. No. 157656, November 11, 2005, 474 SCRA 656, 666; Baguio v. National Labor Relations Commission, G.R. Nos. 79004-08, October 4, 1991, 202 SCRA 465, 472-473.

[26] Department Order No. 18-02 (2002).

[27] Manila Water Company, Inc. v. Pena, supra note 23, at 60-61; Guinnux Interiors, Inc. v. National Labor Relations Commission, 339 Phil. 75, 79-80 (1997).

[28] 7K Corporation v. National Labor Relations Commission, G.R. No. 148490, November 22, 2006, 507 SCRA

509, 523; Coca-Cola Bottlers, Phils., Inc. v. Hingpit, 356 Phil. 90, 103 (1998); Guarin v. National Labor Relations Commission, G.R. No. 86010, October 3, 1989, 178 SCRA 267, 273.

[29] See Mayon Estate Corporation v. Altura, G.R. No. 134462, October 18, 2004, 440 SCRA 377, 385-386.

[30] Peña v. Government Service Insurance System, G.R. No. 159520, September 19, 2006, 502 SCRA 383, 404; Siy v. National Labor Relations Commission, G.R. No. 158971, August 25, 2005, 468 SCRA 154, 161-162; Sacdalan v. Court of Appeals, G.R. No. 128967, May 20, 2004, 428 SCRA 586, 599.

[31] Social Security System v. Isip, G.R. No. 165417, April 3, 2007, 520 SCRA 310, 315; Cervantes v. Court of Appeals, G.R. No. 166755, November 18, 2005, 475 SCRA 562, 571; Mayon Estate Corporation v. Altura, *supra* note 29, at 386.

[32] Peña v. Government Service Insurance System, *supra* note 30; Siy v. National Labor Relations Commission, *supra* note 30, at 162; Sacdalan v. Court of Appeals, *supra* note 30.

[33] Pilapil v. Heirs of Maximino R. Briones, G.R. No. 150175, February 5, 2007, 514 SCRA 197; Gomez v. Concepcion, 47 Phil. 717, 722-723 (1925).

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