

SYCIP, GORRES, VELAYO & COMPANY, PETITIONER, VS. CAROL DE RAEDT, RESPONDENT.

G.R. No. 161366. June 16, 2009

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for review[1] challenging the 7 October 2003 Decision[2] and 17 December 2003 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 59916. The Court of Appeals reversed the 16 February 2000 Decision[4] of the National Labor Relations Commission and partially reinstated the 14 July 1999 Decision[5] of Labor Arbiter Monroe C. Tabingan holding that respondent Carol De Raedt (De Raedt) was illegally dismissed by petitioner Sycip, Gorres, Velayo & Company (SGV).

The Facts

Sometime in June 1989, the Philippine Government and the Commission for European Communities (Commission) entered into a Financing Memorandum whereby the Commission undertook to provide financial and technical assistance for the implementation of rural micro projects in five provinces of the Cordillera area in Northern Luzon. Consequently, the Central Cordillera Agricultural Programme (CECAP) project was launched to be implemented by the Department of Agriculture (DA).

On 22 May 1989, the DA contracted Travers Morgan International Ltd. (TMI) to provide the required technical assistance services for CECAP.

On 1 July 1989, TMI and SGV entered into a Sub-Consultancy Agreement for the latter to undertake part of the technical assistance services requirements of the CECAP. SGV would provide for the Technical Assistance Services. Hence, SGV proposed qualified consultants as defined by the Terms of Reference.

The acceptance and appointment of the proposed consultants to the project were subject to the unanimous approval of the TMI, the DA and the Commission. For the position of Sociologist, SGV proposed Felino Lorente (Lorente). However, Thomas Gimenez (Gimenez) of the DA disputed the qualifications of Lorente and recommended instead De Raedt.

Martin Tull (Tull) of TMI replied to Gimenez that TMI would consider De Raedt for the sociologist position. Thus, Gimenez volunteered to call De Raedt to advise her of a possible assignment to the CECAP.

Eventually, the DA advised SGV that De Raedt's nomination, among others, had been approved by the Commission and the DA and that she was expected to start her assignment on 3 July 1989.

On 6 July 1989, De Raedt wrote SGV expressing her conformity to the consultancy contract, thus she was advised to sign the same. De Raedt signed the contract on 14 July 1989 but her start-up date with the CECAP was moved to 15 August 1989 with the approval of the DA because she was in Thailand to finish an assignment.

While the CECAP was in progress, TMI received verbal and written complaints from the project staff regarding De Raedt's performance and working relations with them.

An investigation was then conducted by the TMI on the above complaints. Thereafter, the TMI confirmed that De Raedt's retention would be counter-productive to the progress of the project because a number of project staff found it difficult to work with her. Thus, the TMI directed SGV to withdraw De Raedt from the CECAP.

In compliance with TMI's instructions, SGV facilitated De Raedt's withdrawal from the CECAP.

De Raedt filed a case against SGV for illegal dismissal and damages before the Arbitration Branch of the NLRC.

The Labor Arbiter rendered a decision in favor of De Raedt.

SGV appealed the decision of the Labor Arbiter to the NLRC, which rendered judgment in favor of SGV.

De Raedt filed a petition for certiorari with the Court of Appeals, which reversed the NLRC in a Decision promulgated on 7 October 2003.

SGV filed a motion for reconsideration, which was denied by the Court of Appeals in its Resolution dated 17 December 2003.

Hence, this petition.

The Ruling of the Labor Arbiter

The Labor Arbiter found De Raedt as an employee of SGV. How she conducted herself and how she carried out the project were dependent on and prescribed by SGV and TMI, respectively. The Labor Arbiter further ruled that SGV is considered as the employer of De Raedt since it acted indirectly in the interest of TMI, the entity directly in-charge of the CECAP project for which De Raedt was hired. Moreover, the Labor Arbiter found SGV as the entity which is the source of De Raedt's income and other benefits.

The Labor Arbiter found no sufficient valid ground to terminate De Raedt's services although procedural due process was observed. The dispositive portion of the 14 July 1999 Decision of the Labor Arbiter reads:

WHEREFORE, judgment is hereby rendered declaring complainant to have been illegally dismissed by respondent. Consequently, respondent Sycip, Gorres & Velayo and Co. is hereby ordered to pay complainant the following:

- a) Unpaid salaries corresponding to the unexpired portion of the contract in the amount of Eight Hundred Two Thousand (P802,000.00) Pesos;
- b) Moral damages in the amount of Two Hundred Fifty Thousand (P250,000.00) Pesos;
- c) Exemplary damages in the amount of One Hundred Thousand (P100,000.00) Pesos;
- d) 10% of the total award as attorney's fees amounting to One Hundred Fifteen Thousand Two Hundred Pesos (P115,200.00).

The computations of which are hereto attached as Annex "A" and made an integral part hereof.

SO ORDERED.[6]

The Ruling of the NLRC

The NLRC reversed the ruling of the Labor Arbiter and found that there was no employer-employee relationship between SGV and De Raedt.

The NLRC agreed with the Labor Arbiter's finding that SGV had no discretion in the selection of De Raedt for the position of Sociologist in the CECAP. The selection was made by the TMI, upon recommendation of Gimenez of the DA, to be approved by the DA and the Commission. The engagement of De Raedt was coursed through SGV.

The payment of De Raedt's service fee was done through SGV but the funds came from the TMI as shown by SGV's billings to TMI for De Raedt's professional fee.

As regards the power of dismissal, SGV merely implemented TMI's instructions to withdraw De Raedt from the CECAP.

The NLRC found that SGV did not exercise control over De Raedt's work. The Sub-Consultancy Agreement between TMI and SGV clearly required De Raedt to work closely with and under the direction and supervision of both the Team leader and the Project Coordinator.

Hence, SGV's participation is to merely monitor her attendance, through time records, for the payment of her retainer fee and to validate the time she expended in the project with her written reports.

The following circumstances also indicated that no employment relationship existed between the parties: (1) De Raedt was engaged on a contract basis; (2) the letter-agreement between the parties clearly states that there is no employer-employee relationship between the parties and that De Raedt was at all times to be considered an independent contractor; and (3) De Raedt was allowed to engage in other employment during all the time she was connected with the project.

The dispositive portion of the 16 February 2000 Decision of the NLRC reads:

WHEREFORE, premises considered, the assailed decision of the Labor Arbiter is REVERSED and SET ASIDE and the complaint is DISMISSED for lack of jurisdiction.

SO ORDERED.[7]

The Ruling of the Court of Appeals

The Court of Appeals reversed the ruling of the NLRC and reinstated the decision of the Labor Arbiter insofar as the latter found De Raedt as an employee of SGV.

The Court of Appeals found that based on the letter-agreement between the parties, SGV engaged De Raedt for the project on a contract basis for 40 months over a period of five years during which she was to work full time. She could not engage in any other employment. In fact, she had to resign from her teaching job at the University of the Philippines. She could not leave her place of assignment without SGV's consent. She must maintain an accurate record of the time she spent on the job, and prepare reports which may be required by her team leader and SGV. Whether actual supervision of her work had turned out to be minimal or not, SGV reserved the right to exercise it at any time. Further, SGV asserted its right to terminate her services.[8]

The Court of Appeals found that De Raedt was removed from the project because of personality differences, which is not one of the grounds for a valid dismissal of an employee.[9]

The dispositive portion of the 7 October 2003 Decision of the Court of Appeals reads:

IN VIEW OF THE FOREGOING, the assailed decision of the NLRC dated February 16, 2000 is REVERSED, and a new one ENTERED partially REINSTATING the Decision of Labor Arbiter Monroe Tabing[a]n on July 14, 1999, by affirming paragraph (a) thereof, deleting paragraph (b) and (c), and reducing the award of attorney's fees in paragraph (d) to 5% of the principal award.

SO ORDERED.[10]

The Issue

The issue in this case is whether De Raedt was an employee of SGV. If so, whether De Raedt was illegally dismissed by SGV.

The Ruling of the Court

The petition is meritorious.

The existence of an employer-employee relationship is ultimately a question of fact. As a general rule, factual issues are beyond the province of this Court. However, this rule admits of exceptions, one of which is where there are conflicting findings of fact, such as in the present case. Consequently, this Court shall scrutinize the records to ascertain the facts for itself.[11]

To determine the existence of an employer-employee relationship, case law has consistently applied the four-fold test, to wit: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee on the means and methods by which the work is accomplished. The so-called "control test" is the most important indicator of the presence or absence of an employer-employee relationship.[12]

A. Selection and Engagement of the Employee

De Raedt was contracted by SGV as part of the latter's obligation under the Sub-Consultancy Agreement with TMI, which was in turn contracted by the DA to provide the services required for the foreign-assisted CECAP project. De Raedt was neither engaged by SGV as an ordinary employee, nor was she picked by SGV from a pool of consultants already working for SGV. Hence, SGV engaged De Raedt's services precisely because SGV had an existing Sub-Consultancy Agreement with TMI to provide such services.

The Labor Arbiter and the NLRC both agree that SGV had no discretion in the selection of De Raedt for the position of Sociologist in the CECAP. The selection was made by the TMI, upon recommendation of Gimenez of the DA, to be approved by the DA and the Commission. The engagement of De Raedt was merely coursed through SGV.

Moreover, SGV's first choice for the Sociologist position was Lorente. However, Gimenez recommended De Raedt to SGV. De Raedt's testimony proves that her appointment was ultimately the DA's decision, and not SGV's, thus:

Q

Madam Witness, how did you come to know the vacancy here in CECAP project for a position of project Sociologist?

A

I was contacted when I was in Honolulu. I was contacted by the firm Sarmiento and Company who asked me if I would list myself for the position of project sociologist for the CECAP project in 1987 when it was discussed by the NGO's in the Cordillera and finally I was contacted by the SGV. They asked me if I am interested in the position project sociologist. I was also contacted by Mr. Gimenez to ask me if SGV had contacted me regarding the position.

Q

So among the informants who gave you an idea that the position of project sociologist is the project director himself, is it not?

A

He informed me that I have been considered by the Department of Agriculture for the position of project sociologist.

Q

Before you were considered for the position of (sic) the Department of Agriculture, did you give them an application?

A

No, sir.

Q

Do you know who gave your name to them?

A

Not sure, may be the Department of Agriculture or Sarmiento, because I was asked by the consultancy firm Sarmiento if I would be willing to list with their business consultants for the CECAP project and this was before the bidding and Sarmiento did not make the bidding for the project.

Q

Sarmiento is different from SGV is that correct?

A

Yes, sir.[13] (Emphasis supplied)

B. Payment of Wages

The letter-agreement between the parties specifies the consideration for De Raedt's services as a retainer fee payable for every day of completed service in the project. In addition to this, monthly subsistence and housing allowances and medical insurance were to be given to De Raedt. The retainer fees and privileges given to De Raedt are not commonly given to ordinary employees, who receive basic monthly salaries and other benefits under labor laws.

The Court notes that the retainer fees paid by SGV to De Raedt ultimately came from its "client," TMI. De Raedt was aware that the source of the funds was the grant from the Commission. By the terms of the Sub-Consultancy Agreement, TMI paid SGV remuneration of the fixed unit rate component of the part services.

However, whatever amount SGV received from TMI did not necessarily entitle De Raedt to the entire amount. In the parties' letter-agreement, SGV made it clear that payments made by TMI "should not be construed as being due [De Raedt] since these items are intended for the administration, overhead expenses, and other related expenses of [SGV] in the development, management, and supervision of [De Raedt's] assignment."

C. Power of Dismissal

Under the letter-agreement between the parties, SGV may terminate De Raedt's services "at anytime that the contract between the Department of Agriculture - Government of the Philippines and Travers Morgan International, Consulting Engineers, Planners and Management Consultants is terminated for any cause whatsoever."

De Raedt failed to show that SGV could terminate her services on grounds other than the end of the contract between the DA as implementing agency of the CECAP and TMI or the termination by TMI of the contract with SGV, such as retrenchment to prevent losses as provided under labor laws.[14]

Further, under the parties' agreement, should De Raedt decide to leave the project for any reason whatsoever other than a reasonable cause beyond her control which prevents her from performing the required services, De Raedt shall be liable for liquidated damages for breach of contract, in an amount equivalent to the retainer fee for a period of one month. This pre-termination with penalty clause in the parties' agreement clearly negates the existence of an employment relationship between the parties. If De Raedt were indeed SGV's employee, she should have been able to resign for whatever professional or personal reason at anytime, even prior to the end of the contract between the DA and TMI or between TMI and SGV, without incurring any liability for such resignation.

Besides, it was TMI, through Tull, which instructed SGV to disengage De Raedt from the project. Terminating De Raedt's services was beyond SGV's control, as SGV had no choice but to comply with the directive of its client (TMI). Clearly, De Raedt's retention as a Sociologist in the CECAP project was dependent on TMI's and DA's decisions. In his letter dated 14 June 1991 addressed to SGV, Tull wrote the following:

Notwithstanding a number of staff on the project, all employed by the Department of Agriculture, have confirmed that they have found it difficult to work with Mrs de Raedt over the past few months which supports the earlier advice from the Department of Agriculture.

In the circumstances I consider we have no alternative but to replace Mrs de Raedt. Would you please make arrangement for her to be withdrawn from the project by the end of June 1991. Payment of staff fees and housing allowances under the project in respect of Mrs de Raedt will be paid up to 30[th] June 1991.[15]
(Emphasis supplied)

D. Power of Control

The letter-agreement between the parties required De Raedt to maintain an accurate time record, notify SGV of delays in De Raedt's schedule, secure a prior clearance to leave place of assignment, and prepare reports. These requirements hardly show that SGV exercises control over the means and methods in the performance of De Raedt's duties as a Sociologist of the CECAP. SGV was not concerned with De Raedt's ways of accomplishing her work as a Sociologist. Rather, SGV naturally expected to be updated regularly of De Raedt's "work progress," if any, on the project for which she was specifically engaged[16] to ensure SGV's compliance with the terms and conditions of the Sub-Consultancy Agreement with TMI. The services to be performed by her specified what she needed to achieve but not on how she was to go about it.[17]

In sum, there existed no employer-employee relationship between the parties. De Raedt is an independent contractor, who was engaged by SGV to render services to SGV's client TMI, and ultimately to DA on the CECAP project, regarding matters in the field of her special knowledge and training for a specific period of time. Unlike an ordinary employee, De Raedt received retainer fees and benefits such as housing and subsistence allowances and medical insurance. De Raedt's services could be terminated on the ground of end of contract between the DA and TMI, and not on grounds under labor laws. Though the end of the contract between the DA and TMI was not the ground for the withdrawal of De Raedt from the CECAP, De Raedt was disengaged from the project upon the instruction of SGV's client, TMI. Most important of all, SGV did not exercise control over the means and methods by which De Raedt performed her duties as Sociologist. SGV did impose rules on De Raedt, but these were necessary to ensure SGV's faithful compliance with the terms and conditions of the Sub-Consultancy Agreement it entered into with TMI.

WHEREFORE, the Court GRANTS the petition. The Court SETS ASIDE the 7 October 2003 Decision and 17 December 2003 Resolution of the Court of Appeals in CA-G.R. SP No. 59916 and REINSTATES the 16 February 2000 Decision of the National Labor Relations Commission.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Leonardo-De Castro, and Bersamin, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] Rollo, pp. 32-40. Penned by Associate Justice Mario L. Guariña III with Associate Justices Martin S. Villarama, Jr. and Jose C. Reyes, Jr. concurring.

[3] Id. at 42.

[4] Id. at 58-65. Penned by Commissioner Ireneo B. Bernardo with Presiding Commissioner Lourdes C. Javier concurring. Commissioner Tito F. Genilo was on leave.

[5] Id. at 43-56.

[6] Id. at 54-55.

[7] Id. at 64.

[8] Id. at 38.

[9] Id. at 39.

[10] Id.

[11] See *Social Security System v. Court of Appeals*, 401 Phil. 132, 141 (2000).

[12] *Almirez v. Infinite Loop Technology Corporation*, G.R. No. 162401, 31 January 2006, 481 SCRA 364, 373-374; *Sonza v. ABS-CBN Broadcasting Corporation*, G.R. No. 138051, 10 June 2004, 431 SCRA 583, 594-595.

[13] Rollo, p. 80.

[14] *Sonza v. ABS-CBN Broadcasting Corporation*, supra note 12 at 597.

[15] Rollo, p. 72.

[16] See *Almirez v. Infinite Loop Technology Corporation*, supra note 12.

[17] Id.

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