

CORAZON ALMIREZ, PETITIONER, VS INFINITE LOOP TECHNOLOGY CORPORATION, EDWIN R. RABINO AND COURT OF APPEALS, RESPONDENTS.

G.R. No. 162401. January 31, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Corazon Almirez (petitioner) was hired as a Refinery Senior Process Design Engineer for a specific project by respondent Infinite Loop Technology Corporation (Infinite Loop) through its General Manager/President-co-respondent Edwin R. Rabino (Rabino) who, by letter[1] dated September 30, 1999 to petitioner, furnished the details of the employment of her services as follows:

Subject: Acceptance of Professional Services
Refinery – Senior Process Design Engineer

Dear Ms. Almirez

This is to confirm acceptance of your services as per attached Terms and Conditions. Your services will commence effective October 18, 1999 up to the completion of the scope of services and continuation thereof with a guaranty of 12 continuous months as outlined in the attachment or until a mutually agreed date.

We thank you for considering our company as a valued partner in the advancement of Petroleum Processing Technology in our country.

x x x x (Emphasis and underscoring supplied)

As indicated in the above-quoted portion of Rabino's letter, the terms and conditions attendant to the acceptance of petitioner's "Professional Services"[2] were attached to it reading:

Scope of Professional Services

The Senior Process Design Engineer shall work together with the Process Design Consultant in performing the scope of services below which includes but are not limited to the following:

- Prepare the Process Design Terms of Reference or Basis of Design and other data required for the proposed 1,200,000 BPSD Petroleum Refinery. These data are to be used in securing the services of a Basic Design Engineering Company as well as part of Project Accomplishment of Infinite Loop Technology Corp.
- Review and revise/improve as necessary the existing conceptual process block diagram or Process Flow Scheme of the proposed petroleum refinery. Various capacity combinations are to be considered to develop process design modules of 1,200,000 BPSD total capacity.
- Implement new process technologies that can meet the requirements of Japanese, Australian and US petroleum product standard by the year 2004. As well as the Philippine Clean Air Act provisions applicable to the proposed 1,200,000 BPSD petroleum refinery. Petroleum Product Standards required shall be researched

and be part of the Basis of Design or Term of Reference.

- Participate in discussions during the solicitation of proposals from Basic Design Engineering Companies.
- Review the progress of work being done by the Basic Design Engineering Company and coordinate with the company management team for an efficient and effective project implementation.
- Make reports and recommendations to the company management team regarding work progress, revisions and improvement of process design on a regular basis as required by company management team.
- Represent the Company in technical meetings to be held locally or abroad.
- Perform other related works that are necessary in completing the Engineering Procurement and Construction (EPC) bid documents and progress reports relevant to schedules of deliveries to the Project Proponent as required by the company.
- Continue related works when the construction stage of this Proposed Refinery will push through.
- Serve as technical consultant to Infinite Loop Technology Corp. on other relevant works or projects when required.

x x x x (Emphasis in the original; underscoring supplied)

Terms of Payments

Professional Fee: US\$ 2,000.00 per month (net of tax)

To be paid 50/50 split in US Dollars or equivalent Peso every 15th and 30th of the month

Length of Service: Guaranteed minimum of 12 continuous months or up to completion of services, or until a mutually agreed date.

Reimbursable Expenses:

Work related expenses which include but not limited to the following:

- Communication Expenses (Cellular phone, fax, tels)
- Representation Expenses
- Out of town travel expenses

Other Benefits:

- US\$ 300.00 per month as transportation allowance (Engineer to use her personal car in the performance of work) to be paid in equivalent pesos every end of the month.

- Project Bonus at the end of the contract to be mutually agreed upon by both parties.

Others:

Infinite Loop Technology Corporation to provide the ff:

- Laptop Computer (Pentium III or best available model with modems etc.)
- Printer/ Scanner
- Process Simulation Softwares to be identified later (Emphasis in the original; underscoring supplied)

The letter, as well as the attached documents, bore the signature of petitioner and Rabino.

For her services, petitioner received the following amounts on the dates indicated:[3]

Voucher date

Amount

11/23/99 Salary for Nov. 1-15, 1999

P20,000.00

12/02/99 Salary for Nov. 15-30, 1999

8,000.00

12/15/99 Full payment for Nov. 15-30 salary

2,000.00

Salary for Dec. 1-15, 1999

10,000.00

1/17/00 Salary for Jan. 1-15, 2000

12,000.00

1/16/00 Salary for Jan. 16-31, 2000

12,500.00

1/20/00 Salary for Jan. 1-15, 2000

12,500.00

Total

P77,000.00

By letter[4] dated February 2, 2000, petitioner conveyed to Infinite Loop through Rabino her disappointment with the "salary" she was receiving in this wise:

x x x When I agreed with a salary of P30,000.00 monthly, my understanding is that, this amount is already net of tax x x x. However, when I received my salary for the month of January which is only partial, (P25,000) and even less because [of] SSS and tax deductions x x x

I understand that tax should be deducted from my salary for your Accounting records but I would like to ask you not to deduct it from the P30,000.00 salary I am supposed to be receiving. Currently I am paying my SSS contributions voluntarily so there is no need for the company to pay my monthly contributions.

I would like to render my service at Infinite Loop based on the contract that I signed and I am willing to serve as technical consultant to Infinite Loop on other relevant works or projects while we are waiting for the Masbate refinery project.

x x x x (Emphasis and underscoring supplied)

Responding,[5] Rabino stated that petitioner's letter "was totally different [from] what [they] verbally agreed

[upon]" in her house; that "like any other proposed project, [the Proposed 1,200,000 BPSD Petroleum Refinery] can be deferred like its present status;" and that since "the financial side for the engineering design for the proposed [project] is not yet available x x x it would be prudent to SUSPEND her professional services as Senior Process Design Engineer effective February 7, 2000." Rabino assured petitioner that her professional services would be resumed once they are provided with the initial payment requested from the project proponent.

By letter[6] dated August 9, 2000, petitioner, through counsel, wrote Rabino "to compensate [her with] the total amount of her contract," thus:

Our client MS. CORAZON S. ALMIREZ has referred to us for appropriate legal action concerning her contract with your company as a refinery process design engineer.

In the said contract, which was accepted by our said client on September 30, 1999, you stated that our client's services "will commence effective October 18, 1999 up to the completion of the scope of the services and continuation thereof with a guaranty of 12 continuous months as outlined in the attachment or until a mutually agreed date". However, despite your guarantee of at least 12 continuous months of service, you suspended her professional services effective February 7, 2000. The same is a clear violation of the terms and conditions of the contract. Moreover, you have paid her only a total amount of SEVENTY FOUR THOUSAND TWO HUNDRED TWENTY NINE & 17/100 PESOS (P74,229.17), which is way below than the agreed professional fee of US \$2,000.00 a month net of tax. On account of your blatant violation of the terms and conditions of the contract, our client suffered sleepless nights, anxiety and besmirched reputation. She was constrained to resign from her job as an engineer at the Technoserve International Co., Inc., in view of her contract with your company.

In view thereof, formal demand is hereby made on you to compensate our client the total amount of her contract or the amount of US DOLLARS: twenty thousand (\$ 20,000.00), MORE OR LESS, within five (5) days from your receipt hereof, failing which we shall, much to our regret, be constrained to file the necessary action in court.

x x x x (Underscoring supplied)

Rabino later wrote petitioner, by letter of November 15, 2000,[7] as follows:

Thank you for reminding us about our agreement about this possible landmark project. You all know that Infinite Loop Tech. Corp. is the lead company in this undertaking in association with other companies forming a consortium to cope up with the huge financial and technical requirement of this project. We all have invested a lot of group resources for this, but unfortunately the Project Proponent, Arrox Resources Corp., have encountered re-organization and have not yet paid us for this project.

At the moment, the former Chairman of Arrox Resources Corp. is still in contact with us. We all hope that this project will push thru after our country would overcome all the peace and order, economic and political crisis we are encountering now.

We all hope that you would bear with us. We would inform you soonest once any development from the project proponent would be relayed to us.

On December 12, 2000, petitioner filed a complaint against Infinite Loop and Rabino before the National Labor Relations Commission (NLRC) for "breach of contract of employment," praying that judgment be rendered in her favor ordering Infinite Loop to pay:

- (1) \$22,000.00 or its peso equivalent representing salaries and wages;
- (2) P300,000.00 as and for moral damages;
- (3) P100,000.00 as and for exemplary damages; and

(4) 10% of the total claim as and for attorney's fees.

Infinite Loop moved to dismiss[8]petitioner's complaint on the ground that the NLRC has no jurisdiction over the parties and the subject matter, there being no employee-employer relationship between them as the contract they entered into was one of services and not of employment.

By Resolution of November 14, 2001, the Labor Arbiter, finding that paragraph No. 6 of the Scope of Professional Services of petitioner showed that "the company's management team exercises control over the means and methods in the performance of [petitioner's] duties as Refinery Process Design Engineer," held that there existed an employer-employee relationship between the parties.

The Labor Arbiter thus ordered Infinite Loop and Rabino to jointly and severally pay petitioner the sum of US\$ 24,000.00 in its peso equivalent at the date of payment less advances in the amount of P77,000.00 plus 5% thereof by way of attorney's fees. It dismissed petitioner's claim for damages, however.[9]

Infinite Loop and Rabino (hereafter respondents) appealed to the NLRC. By Resolution[10] dated September 19, 2002, the NLRC, finding that employer-employee relation between the parties indeed existed, dismissed respondents' appeal.

Before the Court of Appeals to which respondents elevated the case, they argued that the NLRC:

I.

x x x ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION AND ERRED IN NOT FINDING THAT THE LABOR ARBITER HAS NO JURISDICTION OVER THE CAUSES OF ACTION PLEADED IN THE COMPLAINT, I.E., NON PAYMENT OF PROFESSIONAL FEE AND BREACH OF CONTRACT.

II.

x x x COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION AND COMMITTED REVERSIBLE ERROR IN NOT FINDING THAT [PETITIONER] IS NOT AN EMPLOYEE OF [INFINITE LOOP].

III.

x x x SERIOUSLY ERRED IN NOT FINDING THE ENVISIONED ENGAGEMENT OF [PETITIONER] AS A REFINERY PROCESS ENGINEER IS CO-TERMINOUS WITH THE PROJECT, WHICH PROJECT DID NOT MATERIALIZE.[11] (Underscoring supplied)

The appellate court, finding that "[petitioner] was hired to render professional services for a specific project' and her 'primary cause of action is for a sum of money on account of [Infinite Loop's] alleged breach of contractual obligation to pay her agreed professional fee,' held by Decision[12] dated October 20, 2003 that no employer-employee relationship existed between the parties, hence, the NLRC and the Labor Arbiter have no jurisdiction over the complaint. It accordingly reversed the NLRC decision and dismissed petitioner's complaint.

Hence, the present petition, petitioner contending that the appellate court erred when it:

A.

x x x INCONSISTENTLY RULED THAT THERE WAS NO EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE PARTIES BUT AT THE SAME TIME IT CITED THAT [PETITIONER] IS A PROJECT

EMPLOYEE. MOREOVER, THE ASSAILED JUDGMENT IS BASED ON MISAPPRECIATION OF FACTS.

B.

x x x FAILED TO CONSIDER THE RELIEF MENTIONED IN [PETITIONER'S] COMPLAINT FOR PAYMENT OF SALARY x x x

C.

x x x RULED THAT THE SEPARATION FROM SERVICE OF [PETITIONER] BECAUSE OF THE PROJECT'S DISCONTINUANCE DID NOT RESULT TO ILLEGAL DISMISSAL.[13]

To ascertain the existence of an employer-employee relationship, jurisprudence has invariably applied the four-fold test, to wit: (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, 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.[14]

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.[15]

From the earlier-quoted scope of petitioner's professional services, there is no showing of a power of control over petitioner. The services to be performed by her specified what she needed to achieve but not on how she was to go about it.

Contrary to the finding of the Labor Arbiter, as affirmed by the NLRC, above-quoted paragraph No. 6 of the "Scope of [petitioner's] Professional Services" requiring her to "[m]ake reports and recommendations to the company management team regarding work progress, revisions and improvement of process design on a regular basis as required by company management team" does not "show that the company's management team exercises control over the means and methods in the performance of her duties as Refinery Process Design Engineer." Having hired petitioner's professional services on account of her "expertise and qualifications" as petitioner herself proffers in her Position Paper,[16] the company naturally expected to be updated regularly of her "work progress," if any, on the project for which she was specifically hired.

In bolstering her contention that there was an employer-employee relationship, petitioner draws attention to the pay slips and Infinite Loop's deduction of her SSS, Philhealth, and withholding tax, and to the designation of the payments to her as "salaries."

The deduction from petitioner's remuneration of amounts representing SSS premiums, Philhealth contributions and withholding tax, was made in the only payslip issued to petitioner, that for the period of January 16-31, 2000,[17] the other amounts of remuneration having been documented by cash vouchers. Such payslip cannot prove the existence of an employer-employee relationship between the parties.

The cases of *Equitable Banking Corp. v. NLRC*[18] and *Nagusara v. NLRC*[19] should be differentiated from the present case, as the employers in these two cases did not only regularly make similar deductions from the therein complainants' remuneration but also registered and declared the complainants with the SSS and Medicare (Philhealth) as their employees.

As for the designation of the payments to petitioner as "salaries," it is not determinative of the existence of an

employer-employee relationship. "Salary" is a general term defined as "a remuneration for services given." It is the above-quoted contract of engagement of services-letter dated September 30, 1999, together with its attachments, which is the law between the parties. Even petitioner concedes rendering service "based on the contract,"[20]which, as reflected earlier, is bereft of a showing of power of control, the most crucial and determinative indicator of the presence of an employer-employee relationship.

WHEREFORE, the petition is DENIED for lack of merit.

Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairman), Carpio, and Tinga, JJ., concur.

[1]NLRC records, p. 16.

[2] Id. at 17-18.

[3] Annexes "B" to "B-5," NLRC records, pp. 19-21.

[4] Annex "C," NLRC records, p. 22.

[5]Annex "D," NLRC records, p. 23.

[6] Annex "E," NLRC records, p. 24.

[7]Annex "F," NLRC records, p. 26.

[8] NLRC records, pp. 28-32.

[9]Id. at 53-54.

[10]Id. at 371-385.

[11]CA rollo, p. 10.

[12] Penned by Justice Eugenio S. Labitoria with Justices Mercedes Gozo-Dadole and Rosmari D. Carandang, concurring; Court of Appeals (CA) rollo, pp. 185-192.

[13] Rollo, pp. 22-23.

[14] Abante Jr., v. Lamadrid Bearing & Parts Corp., G.R. No. 159890, May 28, 2004, 430 SCRA 368, 379 (citations omitted).

[15]Ibid.

[16] NLRC Records, pp. 9 and 11.

[17] Id. at 21.

[18] 339 Phil 541, 559 (1997).

[19] 352 Phil 854, 861-862 (1998).

[20] Annex "C," NLRC records, p. 22.

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