LAKAS SA INDUSTRIYA NG KAPATIRANG HALIGI NG ALYANSA-PINAGBUKLOD NG MANGGAGAWANG PROMO NG BURLINGAME, PETITIONER, VS. BURLINGAME CORPORATION, RESPONDENT.

G.R. NO. 162833. June 15, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is an appeal to reverse and set aside both the Decision[1] dated August 29, 2003 of the Court of Appeals and its Resolution[2] dated March 15, 2004 in CA-G.R. SP No. 69639. The appellate court had reversed the decision[3] dated December 29, 2000 of the Secretary of Labor and Employment which ordered the holding of a certification election among the rank-and-file promo employees of respondent Burlingame Corporation.

The facts are undisputed.

On January 17, 2000, the petitioner Lakas sa Industriya ng Kapatirang Haligi ng Alyansa-Pinagbuklod ng Manggagawang Promo ng Burlingame (LIKHA-PMPB) filed a petition for certification election before the Department of Labor and Employment (DOLE). LIKHA-PMPB sought to represent all rank-and-file promo employees of respondent numbering about 70 in all. The petitioner claimed that there was no existing union in the aforementioned establishment representing the regular rank-and-file promo employees. It prayed that it be voluntarily recognized by the respondent to be the collective bargaining agent, or, in the alternative, that a certification/consent election be held among said regular rank-and-file promo employees.

The respondent filed a motion to dismiss the petition. It argued that there exists no employer-employee relationship between it and the petitioner's members. It further alleged that the petitioner's members are actually employees of F. Garil Manpower Services (F. Garil), a duly licensed local employment agency. To prove such contention, respondent presented a copy of its contract for manpower services with F. Garil.

On June 29, 2000, Med-Arbiter Renato D. Parungo dismissed[4] the petition for lack of employer-employee relationship, prompting the petitioner to file an appeal[5] before the Secretary of Labor and Employment.

On December 29, 2000, the Secretary of Labor and Employment ordered the immediate conduct of a certification election.[6]

A motion for reconsideration of the said decision was filed by the respondent on January 19, 2001, but the same was denied in the Resolution[7] of February 19, 2002 of the Secretary of Labor and Employment.

Respondent then filed a complaint with the Court of Appeals, which then reversed[8] the decision of the Secretary. The petitioner then filed a motion for reconsideration,[9] which the Court of Appeals denied[10] on March 15, 2004.

Hence the instant petition for review on certiorari.

The issue raised in the petition is:

> WHETHER THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN DECLARING THAT THERE IS NO EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN PETITIONER'S MEMBERS AND BURLINGAME BECAUSE F. GARIL MANPOWER SERVICES IS AN INDEPENDENT CONTRACTOR.[11]

Respondent contends that there is no employer-employee relationship between the parties.[12] Petitioner, on the other hand, insists that there is.[13]

The resolution of this issue boils down to a determination of the true status of F. Garil, i.e., whether it is an independent contractor or a labor-only contractor.

The case of De Los Santos v. NLRC[14] succinctly enunciates the statutory criteria:

> Job contracting is permissible only if the following conditions are met: 1) the contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and 2) the contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of the business.[15]

According to Section 5 of DOLE Department Order No. 18-02, Series of 2002:[16]

> 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 sub-contractor 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 foregoing 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.

Given the above criteria, we agree with the Secretary that F. Garil is not an independent contractor.

First, F. Garil does not have substantial capitalization or investment in the form of tools, equipment, machineries, work premises, and other materials, to qualify as an independent contractor. No proof was adduced to show F. Garil's capitalization.

Second, the work of the promo-girls was directly related to the principal business or operation of Burlingame. Marketing and selling of products is an essential activity to the main business of the principal.

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Lastly, F. Garil did not carry on an independent business or undertake the performance of its service contract according to its own manner and method, free from the control and supervision of its principal, Burlingame.

The "four-fold test" will show that respondent is the employer of petitioner's members. The elements to determine the existence of an employment relationship are: (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's conduct. The most important element is the employer's control of the employee's conduct, not only as to the result of the work to be done, but also as to the means and methods to accomplish it.[17]

A perusal of the contractual stipulations between Burlingame and F. Garil shows the following:

> - The AGENCY shall provide Burlingame Corporation or the CLIENT, with sufficient number of screened, tested and pre-selected personnel (professionals, highly-skilled, skilled, semi-skilled and unskilled) who will be deployed in establishment selling products manufactured by the CLIENT.
>
> - The AGENCY shall be responsible in paying its workers under this contract in accordance with the new minimum wage including the daily living allowances and shall pay them overtime or remuneration that which is authorized by law.
>
> - It is expressly understood and agreed that the worker(s) supplied shall be considered or treated as employee(s) of the AGENCY. Consequently, there shall be no employer-employee relationship between the worker(s) and the CLIENT and as such, the AGENCY shall be responsible to the benefits mandated by law.
>
> - For and in consideration of the service to be rendered by the AGENCY to the CLIENT, the latter shall during the terms of agreement pay to the AGENCY the sum of Seven Thousand Five Hundred Pesos Only (P7,500.00) per month per worker on the basis of Eight (8) hours work payable up-to-date, semi-monthly, every 15[th] and 30[th] of each calendar month. However, these rates may be subject to change proportionately in the event that there will be revisions in the Minimum Wage Law or any law related to salaries and wages.
>
> - The CLIENT shall report to the AGENCY any of its personnel assigned to it if those personnel are found to be inefficient, troublesome, uncooperative and not observing the rules and regulations set forth by the CLIENT. It is understood and agreed that the CLIENT may request any time the immediate replacement of any personnel(s) assigned to them.[18]

It is patent that the involvement of F. Garil in the hiring process was only with respect to the recruitment aspect, i.e. the screening, testing and pre-selection of the personnel it provided to Burlingame. The actual hiring itself was done through the deployment of personnel to establishments by Burlingame.

The contract states that Burlingame would pay the workers through F. Garil, stipulating that Burlingame shall pay F. Garil a certain sum per worker on the basis of eight-hour work every 15[th] and 30[th] of each calendar month. This evinces the fact that F. Garil merely served as conduit in the payment of wages to the deployed personnel. The interpretation would have been different if the payment was for the job, project, or services rendered during the month and not on a per worker basis. In Vinoya v. National Labor Relations Commission,[19] we held:

The Court takes judicial notice of the practice of employers who, in order to evade the liabilities under the Labor Code, do not issue payslips directly to their employees. Under the current practice, a third person, usually the purported contractor (service or manpower placement agency), assumes the act of paying the wage. For this reason, the lowly worker is unable to show proof that it was directly paid by the true employer. Nevertheless, for the workers, it is enough that they actually receive their pay, oblivious of the need for payslips, unaware of its legal implications. Applying this principle to the case at bar, even though the wages were coursed through PMCI, we note that the funds actually came from the pockets of RFC. Thus, in the end, RFC is still the one who paid the wages of petitioner albeit indirectly.[20]

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The contract also provides that "any personnel found to be inefficient, troublesome, uncooperative and not observing the rules and regulations set forth by Burlingame shall be reported to F. Garil and may be replaced upon request." Corollary to this circumstance would be the exercise of control and supervision by Burlingame over workers supplied by F. Garil in order to establish the inefficient, troublesome, and uncooperative nature of undesirable personnel. Also implied in the provision on replacement of personnel carried upon request by Burlingame is the power to fire personnel.

These are indications that F. Garil was not left alone in the supervision and control of its alleged employees. Consequently, it can be concluded that F. Garil was not an independent contractor since it did not carry a distinct business free from the control and supervision of Burlingame.

It goes without saying that the contractual stipulation on the nonexistence of an employer-employee relationship between Burlingame and the personnel provided by F. Garil has no legal effect. While the parties may freely stipulate terms and conditions of a contract, such contractual stipulations should not be contrary to law, morals, good customs, public order or public policy. A contractual stipulation to the contrary cannot override factual circumstances firmly establishing the legal existence of an employer-employee relationship.

Under this circumstance, there is no doubt that F. Garil was engaged in labor-only contracting, and as such, is considered merely an agent of Burlingame. In labor-only contracting, the law creates an employer-employee relationship to prevent a circumvention of labor laws. The contractor is considered merely an agent of the principal employer and the latter is responsible to the employees of the labor-only contractor as if such employees had been directly employed by the principal employer.[21] Since F. Garil is a labor-only contractor, the workers it supplied should be considered as employees of Burlingame in the eyes of the law.

WHEREFORE, the challenged Decision of the Court of Appeals dated August 29, 2003 and the Resolution dated March 15, 2004 denying the motion for reconsideration are REVERSED and SET ASIDE. The decision of the Secretary of Labor and Employment ordering the holding of a certification election among the rank-and-file promo employees of Burlingame is reinstated.

Costs against respondent.

SO ORDERED.

Carpio, Tinga, and Velasco, Jr., JJ., concur.
Carpio-Morales, J., on official leave.

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[1]Rollo, pp. 27-35. Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Andres B. Reyes, Jr. and Regalado E. Maambong concurring.

[2]Id. at 37.

[3] Id. at 38-44.

[4] Id. at 53-57.

[5] Id. at 58-60.

[6]Id. at 43.

[7] Id. at 45-51.

[8] Id. at 35.

[9] Id. at 62-78.

[10] Id. at 37.

[11]Id. at 235.

[12] Id. at 215.

[13] Id. at 229-243.

[14] 423 Phil. 1020 (2001), citing Tiu v. NLRC, 324 Phil. 202 (1996).

[15] Id. at 1032.

[16] Rules Implementing Articles 106 to 109 of the Labor Code, As Amended. Superseded Rule VIII-A, Book III of the Rules Implementing the Labor Code.

[17] Sy v. Court of Appeals, G.R. No. 142293, February 27, 2003, 398 SCRA 301, 307-308.

[18]Rollo, p. 49.

[19] G.R. No. 126586, February 2, 2000, 324 SCRA 469.

[20] Id. at 486.

[21]San Miguel Corporation v. MAERC Integrated Services, Inc., G.R. No. 144672, July 10, 2003, 405 SCRA 579, 596.

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