

CHARLIE JAO, PETITIONER, VS. BCC PRODUCTS SALES INC., AND TERRANCE TY, RESPONDENTS.

G.R. No. 163700. April 18, 2012

Ponente: BERSAMIN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-163700/>

BERSAMIN, J.:

The issue is whether petitioner was respondents' employee or not. Respondents denied an employer-employee relationship with petitioner, who insisted the contrary.

Through his petition for review on certiorari, petitioner appeals the decision promulgated by the Court of Appeals (CA) on February 27, 2004,[1] finding no employee-employer relationship between him and respondents, thereby reversing the ruling by the National Labor Relations Commission (NLRC) to the effect that he was the employee of respondents.

Antecedents

Petitioner maintained that respondent BCC Product Sales Inc. (BCC) and its President, respondent Terrance Ty (Ty), employed him as comptroller starting from September 1995 with a monthly salary of P20,000.00 to handle the financial aspect of BCC's business;[2] that on October 19, 1995, the security guards of BCC, acting upon the instruction of Ty, barred him from entering the premises of BCC where he then worked; that his attempts to report to work in November and December 12, 1995 were frustrated because he continued to be barred from entering the premises of BCC;[3] and that he filed a complaint dated December 28, 1995 for illegal dismissal, reinstatement with full backwages, non-payment of wages, damages and attorney's fees.[4]

Respondents countered that petitioner was not their employee but the employee of Sobien Food Corporation (SFC), the major creditor and supplier of BCC; and that SFC had posted him as its comptroller in BCC to oversee BCC's finances and business operations and to look after SFC's interests or investments in BCC.[5]

Although Labor Arbiter Felipe Pati ruled in favor of petitioner on June 24, 1996,[6] the NLRC vacated the ruling and remanded the case for further proceedings.[7] Thereafter, Labor Arbiter Jovencio Ll. Mayor rendered a new decision on September 20, 2001, dismissing petitioner's complaint for want of an employer-employee relationship between the parties.[8] Petitioner appealed the September 20, 2001 decision of Labor Arbiter Mayor.

On July 31, 2002, the NLRC rendered a decision reversing Labor Arbiter Mayor's decision, and declaring that petitioner had been illegally dismissed. It ordered the payment of unpaid salaries, backwages and 13[th] month pay, separation pay and attorney's fees.[9] Respondents moved for the reconsideration of the NLRC decision, but their motion for reconsideration was denied on September 30, 2002.[10] Thence, respondents assailed the NLRC decision on certiorari in the CA.

Ruling of the CA

On February 27, 2004, the CA promulgated its assailed decision,[11] holding:

After a judicious review of the records vis-à-vis the respective posturing of the contending parties, we agree with the finding that no employer-employee relationship existed between petitioner BCC and the private respondent. On this note, the conclusion of the public respondent must be reversed for being issued with grave abuse of discretion.

“Etched in an unending stream of cases are the four (4) standards in determining the existence of an employer-employee relationship, namely, (a) the manner of selection and engagement of the putative employee; (b) the mode of payment of wages; (c) the presence or absence of power of dismissal; and, (d) the presence or absence of control of the putative employee’s conduct.” Of these powers the power of control over the employee’s conduct is generally regarded as determinative of the existence of the relationship.

Apparently, in the case before us, all these four elements are absent. First, there is no proof that the services of the private respondent were engaged to perform the duties of a comptroller in the petitioner company. There is no proof that the private respondent has undergone a selection procedure as a standard requisite for employment, especially with such a delicate position in the company. Neither is there any proof of his appointment nor is there any showing that the parties entered into an employment contract, stipulating thereof that he will receive P20,000.00/month salary as comptroller, before the private respondent commenced with his work as such. Second, as clearly established on record, the private respondent was not included in the petitioner company’s payroll during the time of his alleged employment with the former. True, the name of the private respondent Charlie Jao appears in the payroll however it does not prove that he has received his remuneration for his services. Notably, his name was not among the employees who will receive their salaries as represented by the payrolls. Instead, it appears therein as a comptroller who is authorized to approve the same. Suffice it to state that it is rather obscure for a certified public accountant doing the functions of a comptroller from September 1995 up to December 1995 not to receive his salary during the said period. Verily, such scenario does not conform with the usual and ordinary experience of man. Coming now to the most controlling factor, the records indubitably reveal the undisputed fact that the petitioner company did not have nor did not exercise the power of control over the private respondent. It did not prescribe the manner by which the work is to be carried out, or the time by which the private respondent has to report for and leave from work. As already stated, the power of control is such an important factor that other requisites may even be disregarded. In *Sevilla v. Court of Appeals*, the Supreme Court emphatically held, thus:

“The “control test,” under which the person for whom the services are rendered reserves the right to direct not only the end to be achieved but also the means for reaching such end, is generally relied on by the courts.”

We have carefully examined the evidence submitted by the private respondent in the formal offer of evidence and unfortunately, other than the bare assertions of the private respondent which he miserably failed to substantiate, we find nothing therein that would decisively indicate that the petitioner BCC exercised the fundamental power of control over the private respondent in relation to his employment—not even the ID issued to the private respondent and the affidavits executed by Bertito Jemilla and Rogelio Santias. At best, these pieces of documents merely suggest the existence of employer-employee relationship as intimated by the NLRC. On the contrary, it would appear that the said sworn statement provided a substantial basis to support the contention that the private respondent worked at the petitioner BCC as SFC’s representative, being its major creditor and supplier of goods and merchandise. Moreover, as clearly pointed out by the petitioner in his Reply to the private respondent’s Comment, it is unnatural for SFC to still employ the private respondent “to oversee and supervise collections of account receivables due SFC from its customers or clients” like the herein petitioner BCC on a date later than December, 1995 considering that a criminal complaint has already been instituted against him.

Sadly, the private respondent failed to sufficiently discharge the burden of showing with legal certainty that employee-employer relationship existed between the parties. On the other hand, it was clearly shown by the petitioner that it neither exercised control nor supervision over the conduct of the private respondent’s employment. Hence, the allegation that there is employer-employee relationship must necessarily fail.

Consequently, a discussion on the issue of illegal dismissal therefore becomes unnecessary.

WHEREFORE, premises considered, the petition is GRANTED. The assailed Decision of the public respondent NLRC dated July 31, 2002 and the Resolution dated September 30, 2002 are REVERSED and SET ASIDE. Accordingly, the decision of the Labor Arbiter dated September 20, 2001 is hereby REINSTATED.

SO ORDERED.

After the CA denied petitioner's motion for reconsideration on May 14, 2004,[12] he filed a motion for extension to file petition for review, which the Court denied through the resolution dated July 7, 2004 for failure to render an explanation on why the service of copies of the motion for extension on respondents was not personally made.[13] The denial notwithstanding, he filed his petition for review on certiorari. The Court denied the petition on August 18, 2004 in view of the denial of the motion for extension of time and the continuing failure of petitioner to render the explanation as to the non-personal service of the petition on respondents.[14] However, upon a motion for reconsideration, the Court reinstated the petition for review on certiorari and required respondents to comment.[15]

Issue

The sole issue is whether or not an employer-employee relationship existed between petitioner and BCC. A finding on the existence of an employer-employee relationship will automatically warrant a finding of illegal dismissal, considering that respondents did not state any valid grounds to dismiss petitioner.

Ruling

The petition lacks merit.

The existence of an employer-employee relationship is a question of fact. Generally, a re-examination of factual findings cannot be done by the Court acting on a petition for review on certiorari because the Court is not a trier of facts but reviews only questions of law. Nor may the Court be bound to analyze and weigh again the evidence adduced and considered in the proceedings below.[16] This rule is not absolute, however, and admits of exceptions. For one, the Court may look into factual issues in labor cases when the factual findings of the Labor Arbiter, the NLRC, and the CA are conflicting.[17]

Here, the findings of the NLRC differed from those of the Labor Arbiter and the CA. This conflict among such adjudicating offices compels the Court's exercise of its authority to review and pass upon the evidence presented and to draw its own conclusions therefrom.

To prove his employment with BCC, petitioner offered the following: (a) BCC Identification Card (ID) issued to him stating his name and his position as "comptroller," and bearing his picture, his signature, and the signature of Ty; (b) a payroll of BCC for the period of October 1-15, 1996 that petitioner approved as comptroller; (c) various bills and receipts related to expenditures of BCC bearing the signature of petitioner; (d) various checks carrying the signatures of petitioner and Ty, and, in some checks, the signature of petitioner alone; (e) a court order showing that the issuing court considered petitioner's ID as proof of his employment with BCC; (f) a letter of petitioner dated March 1, 1997 to the Department of Justice on his filing of a criminal case for estafa against Ty for non-payment of wages; (g) affidavits of some employees of BCC attesting that petitioner was their co-employee in BCC; and (h) a notice of raffle dated December 5, 1995 showing that petitioner, being an employee of BCC, received the notice of raffle in behalf of BCC.[18]

Respondents denied that petitioner was BCC's employee. They affirmed that SFC had installed petitioner as its comptroller in BCC to oversee and supervise SFC's collections and the account of BCC to protect SFC's interest;

that their issuance of the ID to petitioner was only for the purpose of facilitating his entry into the BCC premises in relation to his work of overseeing the financial operations of BCC for SFC; that the ID should not be considered as evidence of petitioner's employment in BCC;[19] that petitioner executed an affidavit in March 1996,[20] stating, among others, as follows:

- I am a CPA (Certified Public Accountant) by profession but presently associated with, or employed by, Sobien Food Corporation with the same business address as abovestated;
- In the course of my association with, or employment by, Sobien Food Corporation (SFC, for short), I have been entrusted by my employer to oversee and supervise collections on account of receivables due SFC from its customers or clients; for instance, certain checks due and turned over by one of SFC's customers is BCC Product Sales, Inc., operated or run by one Terrance L. Ty, (President and General manager), pursuant to, or in accordance with, arrangements or agreement thereon; such arrangement or agreement is duly confirmed by said Terrance Ty, as shown or admitted by him in a public instrument executed therefor, particularly par. 2 of that certain Counter-Affidavit executed and subscribed on December 11, 1995, xerox copy of which is hereto attached, duly marked as Annex "A" and made integral part hereof.
- Despite such admission of an arrangement, or agreement insofar as BCC-checks were delivered to, or turned over in favor of SFC, Mr. Terrance Ty, in a desire to blemish my reputation or to cause me dishonor as well as to impute unto myself the commission of a crime, state in another public instrument executed therefor in that:
"3. That all the said 158 checks were unlawfully appropriated by a certain Charlie Jao absolutely without any authority from BCC and the same were reportedly turned over by said Mr. Jao to a person who is not an agent or is not authorized representative of BCC."

xerox copy of which document (Affidavit) is hereto attached, duly marked as Annex "B" and made integral part hereof. (emphasis supplied)

and that the affidavit constituted petitioner's admission of the arrangement or agreement between BCC and SFC for the latter to appoint a comptroller to oversee the former's operations.

Petitioner counters, however, that the affidavit did not establish the absence of an employer-employee relationship between him and respondents because it had been executed in March 1996, or after his employment with respondents had been terminated on December 12, 1995; and that the affidavit referred to his subsequent employment by SFC following the termination of his employment by BCC.[21]

We cannot side with petitioner.

Our perusal of the affidavit of petitioner compels a conclusion similar to that reached by the CA and the Labor Arbiter to the effect that the affidavit actually supported the contention that petitioner had really worked in BCC as SFC's representative. It does seem more natural and more believable that petitioner's affidavit was referring to his employment by SFC even while he was reporting to BCC as a comptroller in behalf of SFC. As respondents pointed out, it was implausible for SFC to still post him to oversee and supervise the collections of accounts receivables due from BCC beyond December 1995 if, as he insisted, BCC had already illegally dismissed him and had even prevented him from entering the premises of BCC. Given the patent animosity and strained relations between him and respondents in such circumstances, indeed, how could he still efficiently perform in behalf of SFC the essential responsibility to "oversee and supervise collections" at BCC? Surely, respondents would have vigorously objected to any arrangement with SFC involving him.

We note that petitioner executed the affidavit in March 1996 to refute a statement Ty himself made in his own affidavit dated December 11, 1995 to the effect that petitioner had illegally appropriated some checks without authority from BCC.[22] Petitioner thereby sought to show that he had the authority to receive the checks

pursuant to the arrangements between SFC and BCC. This showing would aid in fending off the criminal charge respondents filed against him arising from his mishandling of the checks. Naturally, the circumstances petitioner adverted to in his March 1996 affidavit concerned those occurring before December 11, 1995, the same period when he actually worked as comptroller in BCC.

Further, an affidavit dated September 5, 2000 by Alfredo So, the President of SFC, whom petitioner offered as a rebuttal witness, lent credence to respondents' denial of petitioner's employment. So declared in that affidavit, among others, that he had known petitioner for being "earlier his retained accountant having his own office but did not hold office" in SFC's premises; that Ty had approached him (So) "looking for an accountant or comptroller to be employed by him (Ty) in [BCC's] distribution business" of SFC's general merchandise, and had later asked him on his opinion about petitioner; and that he (So) had subsequently learned that "Ty had already employed [petitioner] as his comptroller as of September 1995." [23]

The statements of So really supported respondents' position in that petitioner's association with SFC prior to his supposed employment by BCC went beyond mere acquaintance with So. That So, who had earlier merely "retained" petitioner as his accountant, thereafter employed petitioner as a "retained" accountant after his supposed illegal dismissal by BCC raised a doubt as to his employment by BCC, and rather confirmed respondents' assertion of petitioner being an employee of SFC while he worked at BCC.

Moreover, in determining the presence or absence of an employer-employee relationship, the Court has consistently looked for the following incidents, 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 last element, the so-called control test, is the most important element. [24]

Hereunder are some of the circumstances and incidents occurring while petitioner was supposedly employed by BCC that debunked his claim against respondents.

It can be deduced from the March 1996 affidavit of petitioner that respondents challenged his authority to deliver some 158 checks to SFC. Considering that he contested respondents' challenge by pointing to the existing arrangements between BCC and SFC, it should be clear that respondents did not exercise the power of control over him, because he thereby acted for the benefit and in the interest of SFC more than of BCC.

In addition, petitioner presented no document setting forth the terms of his employment by BCC. The failure to present such agreement on terms of employment may be understandable and expected if he was a common or ordinary laborer who would not jeopardize his employment by demanding such document from the employer, but may not square well with his actual status as a highly educated professional.

Petitioner's admission that he did not receive his salary for the three months of his employment by BCC, as his complaint for illegal dismissal and non-payment of wages [25] and the criminal case for estafa he later filed against the respondents for non-payment of wages [26] indicated, further raised grave doubts about his assertion of employment by BCC. If the assertion was true, we are puzzled how he could have remained in BCC's employ in that period of time despite not being paid the first salary of P20,000.00/month. Moreover, his name did not appear in the payroll of BCC despite him having approved the payroll as comptroller.

Lastly, the confusion about the date of his alleged illegal dismissal provides another indicium of the insincerity of petitioner's assertion of employment by BCC. In the petition for review on certiorari, he averred that he had been barred from entering the premises of BCC on October 19, 1995, [27] and thus was illegally dismissed. Yet, his complaint for illegal dismissal stated that he had been illegally dismissed on December 12, 1995 when

respondents' security guards barred him from entering the premises of BCC,[28] causing him to bring his complaint only on December 29, 1995, and after BCC had already filed the criminal complaint against him. The wide gap between October 19, 1995 and December 12, 1995 cannot be dismissed as a trivial inconsistency considering that the several incidents affecting the veracity of his assertion of employment by BCC earlier noted herein transpired in that interval.

With all the grave doubts thus raised against petitioner's claim, we need not dwell at length on the other proofs he presented, like the affidavits of some of the employees of BCC, the ID, and the signed checks, bills and receipts. Suffice it to be stated that such other proofs were easily explainable by respondents and by the aforesaid circumstances showing him to be the employee of SFC, not of BCC.

WHEREFORE, the Court AFFIRMS the decision of the Court of Appeals; and ORDERS petitioner to pay the costs of suit.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Del Castillo, and Villarama, Jr., JJ., concur.

[1] Rollo, pp. 38-46; penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justice Eloy R. Bello, Jr. (retired) and Associate Justice Magdangal M. De Leon.

[2] Id., p. 12.

[3] Id., p. 13.

[4] Id., pp. 236-238.

[5] Id., p. 179.

[6] Id., p. 178.

[7] Id., p. 39.

[8] Id., pp. 105-119.

[9] Id., p. 40.

[10] Id., p. 38.

[11] Id., pp. 38-46.

[12] Id., pp. 49-50.

[13] Id., p. 8.

[14] Id., p. 148.

[15] Id., p. 176.

[16] *Diokno v. Cacdac*, G.R. No. 168475, July 4, 2007, 526 SCRA 440, 460-461.

[17] *Pagsibigan v. People*, G.R. No. 163868, June 4, 2009, 588 SCRA 249, 257.

[18] Rollo pp. 120-147.

[19] Id., pp. 179-180.

[20] *Id.*, p. 146.

[21] *Id.*, p. 32.

[22] *Id.*, p. 146.

[23] *Id.*, p. 25.

[24] *Abante, Jr. v. Lamadrid Bearing & Parts Corp.*, G.R. No. 159890, May 28, 2004, 430 SCRA 368, 379.

[25] *Id.*, pp. 236-238.

[26] *Id.*, p. 325.

[27] *Id.*, p. 13.

[28] *Id.*, p. 236.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.