

PACIFIC CONSULTANTS INTERNATIONAL ASIA, INC. AND JENS PETER HENRICHSEN, PETITIONERS, VS. KLAUS K. SCHONFELD, RESPONDENT.

G.R. NO. 166920. February 19, 2007

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us is a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 76563. The CA decision reversed the Resolution of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 029319-01, which, in turn, affirmed the Decision of the Labor Arbiter in NLRC NCR Case No. 30-12-04787-00 dismissing the complaint of respondent Klaus K. Schonfeld.

The antecedent facts are as follows:

Respondent is a Canadian citizen and was a resident of New Westminster, British Columbia, Canada. He had been a consultant in the field of environmental engineering and water supply and sanitation. Pacicon Philippines, Inc. (PPI) is a corporation duly established and incorporated in accordance with the laws of the Philippines. The primary purpose of PPI was to engage in the business of providing specialty and technical services both in and out of the Philippines.[2] It is a subsidiary of Pacific Consultants International of Japan (PCIJ). The president of PPI, Jens Peter Henrichsen, who was also the director of PCIJ, was based in Tokyo, Japan. Henrichsen commuted from Japan to Manila and vice versa, as well as in other countries where PCIJ had business.

In 1997, PCIJ decided to engage in consultancy services for water and sanitation in the Philippines. In October 1997, respondent was employed by PCIJ, through Henrichsen, as Sector Manager of PPI in its Water and Sanitation Department. However, PCIJ assigned him as PPI sector manager in the Philippines. His salary was to be paid partly by PPI and PCIJ.

On January 7, 1998, Henrichsen transmitted a letter of employment to respondent in Canada, requesting him to accept the same and affix his conformity thereto. Respondent made some revisions in the letter of employment and signed the contract.[3] He then sent a copy to Henrichsen. The letter of employment reads:

Mr. Klaus K. Schonfeld

II-365 Ginger Drive
New Westminster, B.C.
Canada V3L 5L5

Tokyo 7 January 1998

Dear Mr. Schonfeld,

Letter of Employment

This Letter of Employment with the attached General Conditions of Employment constitutes the agreement under which you will be engaged by our Company on the terms and conditions defined hereunder. In case of any discrepancies or contradictions between this Letter of Employment and the General Conditions of Employment, this Letter of Employment will prevail.

You will, from the date of commencement, be ["seconded"] to our subsidiary Pacicon Philippines, Inc. in Manila, hereinafter referred as Pacicon. Pacicon will provide you with a separate contract, which will define that part of the present terms and conditions for which Pacicon is responsible. In case of any discrepancies or contradictions between the present Letter of Employment and the contract with Pacicon Philippines, Inc. or in the case that Pacicon should not live up to its obligations, this Letter of Employment will prevail.

1. Project Country: The Philippines with possible short-term assignments in other countries.

2. Duty Station: Manila, the Philippines.

3. Family Status: Married.

4. Position:

Sector Manager, Water and Sanitation.

5. Commencement: 1st October 1997.

6. Remuneration:

US\$7,000.00 per month. The amount will be paid partly as a local salary (US\$2,100.00 per month) by Pacicon and partly as an offshore salary (US\$4,900.00) by PCI to bank accounts to be nominated by you.

A performance related component corresponding to 17.6% of the total annual remuneration, subject to satisfactory performance against agreed tasks and targets, paid offshore.

7. Accommodation: The company will provide partly furnished accommodation to a rent including association fees, taxes and VAT not exceeding the Pesos equivalent of US\$2,900.00 per month.

8. Transportation: Included for in the remuneration.

9. Leave Travels: You are entitled to two leave travels per year.

10. Shipment of Personal Effects: The maximum allowance is US\$4,000.00.

11. Mobilization Travel: Mobilization travel will be from New Westminster, B.C., Canada.

This letter is send (sic) to you in duplicate; we kindly request you to sign and return one copy to us.

Yours sincerely,
Pacific Consultants International

Jens Peter Henrichsen

Above terms and conditions accepted

Date: 2 March 1998
(Sgd.)

Klaus Schonfeld

as annotated and initialed[4]

Section 21 of the General Conditions of Employment appended to the letter of employment reads:

21 Arbitration

Any question of interpretation, understanding or fulfillment of the conditions of employment, as well as any question arising between the Employee and the Company which is in consequence of or connected with his employment with the Company and which can not be settled amicably, is to be finally settled, binding to both parties through written submissions, by the Court of Arbitration in London.[5]

Respondent arrived in the Philippines and assumed his position as PPI Sector Manager. He was accorded the status of a resident alien.

As required by Rule XIV (Employment of Aliens) of the Omnibus Rules Implementing the Labor Code, PPI applied for an Alien Employment Permit (Permit) for respondent before the Department of Labor and Employment (DOLE). It appended respondent's contract of employment to the application.

On February 26, 1999, the DOLE granted the application and issued the Permit to respondent. It reads:

Republic of the Philippines
Department of Labor & Employment
National Capital Region

ALIEN EMPLOYMENT PERMIT

ISSUED TO: SCHONFELD, KLAUS KURT
DATE OF BIRTH: January 11, 1942 NATIONALITY: Canadian
POSITION: VP – WATER & SANITATION
EMPLOYER: PACICON PHILIPPINES, INC.
ADDRESS: 27/F Rufino Pacific Towers Bldg., Ayala Ave., Makati City
PERMIT
ISSUED ON: February 26, 1999 SIGNATURE OF BEARER:
VALID UNTIL: January 7, 2000 (Sgd.)
APPROVED: BIENVENIDO S. LAGUESMA

By: MAXIMO B. ANITO
REGIONAL DIRECTOR

(Emphasis supplied)[6]

Respondent received his compensation from PPI for the following periods: February to June 1998, November to December 1998, and January to August 1999. He was also reimbursed by PPI for the expenses he incurred in connection with his work as sector manager. He reported for work in Manila except for occasional assignments abroad, and received instructions from Henrichsen.[7]

On May 5, 1999, respondent received a letter from Henrichsen informing him that his employment had been terminated effective August 4, 1999 for the reason that PCIJ and PPI had not been successful in the water and sanitation sector in the Philippines.[8] However, on July 24, 1999, Henrichsen, by electronic mail,[9] requested respondent to stay put in his job after August 5, 1999, until such time that he would be able to report on certain projects and discuss all the opportunities he had developed.[10] Respondent continued his work with PPI until the end of business hours on October 1, 1999.

Respondent filed with PPI several money claims, including unpaid salary, leave pay, air fare from Manila to

Canada, and cost of shipment of goods to Canada. PPI partially settled some of his claims (US\$5,635.99), but refused to pay the rest.

On December 5, 2000, respondent filed a Complaint^[11] for Illegal Dismissal against petitioners PPI and Henrichsen with the Labor Arbiter. It was docketed as NLRC-NCR Case No. 30-12-04787-00.

In his Complaint, respondent alleged that he was illegally dismissed; PPI had not notified the DOLE of its decision to close one of its departments, which resulted in his dismissal; and they failed to notify him that his employment was terminated after August 4, 1999. Respondent also claimed for separation pay and other unpaid benefits. He alleged that the company acted in bad faith and disregarded his rights. He prayed for the following reliefs:

- Judgment be rendered in his favor ordering the respondents to reinstate complainant to his former position without loss of seniority and other privileges and benefits, and to pay his full backwages from the time compensation was withheld (sic) from him up to the time of his actual reinstatement. In the alternative, if reinstatement is no longer feasible, respondents must pay the complainant full backwages, and separation pay equivalent to one month pay for every year of service, or in the amount of US\$16,400.00 as separation pay;
- Judgment be rendered ordering the respondents to pay the outstanding monetary obligation to complainant in the amount of US\$10,131.76 representing the balance of unpaid salaries, leave pay, cost of his air travel and shipment of goods from Manila to Canada; and
- Judgment be rendered ordering the respondent company to pay the complainant damages in the amount of no less than US \$10,000.00 and to pay 10% of the total monetary award as attorney's fees, and costs.

Other reliefs just and equitable under the premises are, likewise, prayed for.^[12]

Petitioners filed a Motion to Dismiss the complaint on the following grounds: (1) the Labor Arbiter had no jurisdiction over the subject matter; and (2) venue was improperly laid. It averred that respondent was a Canadian citizen, a transient expatriate who had left the Philippines. He was employed and dismissed by PCIJ, a foreign corporation with principal office in Tokyo, Japan. Since respondent's cause of action was based on his letter of employment executed in Tokyo, Japan dated January 7, 1998, under the principle of *lex loci contractus*, the complaint should have been filed in Tokyo, Japan. Petitioners claimed that respondent did not offer any justification for filing his complaint against PPI before the NLRC in the Philippines. Moreover, under Section 12 of the General Conditions of Employment appended to the letter of employment dated January 7, 1998, complainant and PCIJ had agreed that any employment-related dispute should be brought before the London Court of Arbitration. Since even the Supreme Court had already ruled that such an agreement on venue is valid, Philippine courts have no jurisdiction.^[13]

Respondent opposed the Motion, contending that he was employed by PPI to work in the Philippines under contract separate from his January 7, 1998 contract of employment with PCIJ. He insisted that his employer was PPI, a Philippine-registered corporation; it is inconsequential that PPI is a wholly-owned subsidiary of PCIJ because the two corporations have separate and distinct personalities; and he received orders and instructions from Henrichsen who was the president of PPI. He further insisted that the principles of *forum non conveniens* and *lex loci contractus* do not apply, and that although he is a Canadian citizen, Philippine Labor Laws apply in this case.

Respondent adduced in evidence the following contract of employment dated January 9, 1998 which he had entered into with Henrichsen:

Mr. Klaus K. Schonfeld

II-365 Ginger Drive
New Westminster, B.C.
Canada V3L 5L5

Manila 9 January, 1998

Dear Mr. Schonfeld,

Letter of Employment

This Letter of Employment with the attached General Conditions of Employment constitutes the agreement, under which you will be engaged by Pacicon Philippines, Inc. on the terms and conditions defined hereunder.

1. Project Country:

The Philippines with possible assignments in other countries.

2. Duty Station: Manila, the Philippines.

3. Family Status: Married.

4. Position:

Sector Manager Water and Sanitation Sector.

5. Commencement: 1 January, 1998.

6. Remuneration:

US\$3,100.00 per month payable to a bank account to be nominated by you.

7. Accommodation:

The company will provide partly furnished accommodation to a rent including association fees, taxes and VAT not exceeding the Pesos equivalent of US\$2300.00 per month.

8. Transportation: Included for in the remuneration.

9. Shipment of Personal Effects:

The maximum allowance is US\$2500.00 in connection with initial shipment of personal effects from Canada.

10. Mobilization Travel:

Mobilization travel will be from New Westminster, B.C., Canada.

This letter is send (sic) to you in duplicate; we kindly request you sign and return one copy to us.

Yours sincerely,
Pacicon Philippines, Inc.

Jens Peter Henrichsen
President[14]

According to respondent, the material allegations of the complaint, not petitioners' defenses, determine which quasi-judicial body has jurisdiction. Section 21 of the Arbitration Clause in the General Conditions of Employment does not provide for an exclusive venue where the complaint against PPI for violation of the Philippine Labor Laws may be filed. Respondent pointed out that PPI had adopted two inconsistent positions: it was first alleged that he should have filed his complaint in Tokyo, Japan; and it later insisted that the complaint

should have been filed in the London Court of Arbitration.[15] In their reply, petitioners claimed that respondent's employer was PCIJ, which had exercised supervision and control over him, and not PPI. Respondent was dismissed by PPI via a letter of Henrichsen under the letterhead of PCIJ in Japan.[16] The letter of employment dated January 9, 1998 which respondent relies upon did not bear his (respondent's) signature nor that of Henrichsen.

On August 2, 2001, the Labor Arbiter rendered a decision granting petitioners' Motion to Dismiss. The dispositive portion reads:

WHEREFORE, finding merit in respondents' Motion to Dismiss, the same is hereby granted. The instant complaint filed by the complainant is dismissed for lack of merit.

SO ORDERED.[17]

The Labor Arbiter found, among others, that the January 7, 1998 contract of employment between respondent and PCIJ was controlling; the Philippines was only the "duty station" where Schonfeld was required to work under the General Conditions of Employment. PCIJ remained respondent's employer despite his having been sent to the Philippines. Since the parties had agreed that any differences regarding employer-employee relationship should be submitted to the jurisdiction of the court of arbitration in London, this agreement is controlling.

On appeal, the NLRC agreed with the disquisitions of the Labor Arbiter and affirmed the latter's decision in toto.[18]

Respondent then filed a petition for certiorari under Rule 65 with the CA where he raised the following arguments:

I

WITH ALL DUE RESPECT, THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT AFFIRMED THE LABOR ARBITER'S DECISION CONSIDERING THAT:

A. PETITIONER'S TRUE EMPLOYER IS NOT PACIFIC CONSULTANTS INTERNATIONAL OF JAPAN BUT RESPONDENT COMPANY, AND THEREFORE, THE LABOR ARBITER HAS JURISDICTION OVER THE INSTANT CASE; AND

B. THE PROPER VENUE FOR THE PRESENT COMPLAINT IS THE ARBITRATION BRANCH OF THE NLRC AND NOT THE COURT OF ARBITRATION IN LONDON.

II

WITH ALL DUE RESPECT, THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT AFFIRMED THE DISMISSAL OF THE COMPLAINT CONSIDERING THAT PETITIONER'S TERMINATION FROM EMPLOYMENT IS ILLEGAL:

A. THE CLOSURE OF RESPONDENT COMPANY'S WATER AND SANITATION SECTOR WAS NOT BONA FIDE.

B. ASSUMING ARGUENDO THAT THE CLOSURE OF RESPONDENT COMPANY'S WATER AND SANITATION SECTOR WAS JUSTIFIABLE, PETITIONER'S DISMISSAL WAS INEFFECTUAL AS THE DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE) AND PETITIONER WAS NOT NOTIFIED THIRTY (30) DAYS BEFORE THE ALLEGED CLOSURE.[19]

Respondent averred that the absence or existence of a written contract of employment is not decisive of whether he is an employee of PPI. He maintained that PPI, through its president Henrichsen, directed his work/duties as Sector Manager of PPI; proof of this was his letter-proposal to the Development Bank of the Philippines for PPI to provide consultancy services for the Construction Supervision of the Water Supply and Sanitation component of the World Bank-Assisted LGU Urban Water and Sanitation Project.[20] He emphasized that as gleaned from Alien Employment Permit (AEP) No. M-029908-5017 issued to him by DOLE on February 26, 1999, he is an employee of PPI. It was PPI president Henrichsen who terminated his employment; PPI also paid his salary and reimbursed his expenses related to transactions abroad. That PPI is a wholly-owned subsidiary of PCIJ is of no moment because the two corporations have separate and distinct personalities.

The CA found the petition meritorious. Applying the four-fold test[21] of determining an employer-employee relationship, the CA declared that respondent was an employee of PPI. On the issue of venue, the appellate court declared that, even under the January 7, 1998 contract of employment, the parties were not precluded from bringing a case related thereto in other venues. While there was, indeed, an agreement that issues between the parties were to be resolved in the London Court of Arbitration, the venue is not exclusive, since there is no stipulation that the complaint cannot be filed in any other forum other than in the Philippines.

On November 25, 2004, the CA rendered its decision granting the petition, the decretal portion of which reads:

WHEREFORE, the petition is GRANTED in that the assailed Resolutions of the NLRC are hereby REVERSED and SET ASIDE. Let this case be REMANDED to the Labor Arbiter a quo for disposition of the case on the merits.

SO ORDERED.[22]

A motion for the reconsideration of the above decision was filed by PPI and Henrichsen, which the appellate court denied for lack of merit.[23]

In the present recourse, PPI and Henrichsen, as petitioners, raise the following issues:

I

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT AN EMPLOYMENT RELATIONSHIP EXISTED BETWEEN PETITIONERS AND RESPONDENT DESPITE THE UNDISPUTED FACT THAT RESPONDENT, A FOREIGN NATIONAL, WAS HIRED ABROAD BY A FOREIGN CORPORATION, EXECUTED HIS EMPLOYMENT CONTRACT ABROAD, AND WAS MERELY "SECONDED" TO PETITIONERS SINCE HIS WORK ASSIGNMENT WAS IN MANILA.

II

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE LABOR ARBITER A QUO HAS JURISDICTION OVER RESPONDENT'S CLAIM DESPITE THE UNDISPUTED FACT THAT RESPONDENT, A FOREIGN NATIONAL, WAS HIRED ABROAD BY A FOREIGN CORPORATION, EXECUTED HIS EMPLOYMENT CONTRACT ABROAD, AND HAD AGREED THAT ANY DISPUTE BETWEEN THEM "SHALL BE FINALLY SETTLED BY THE COURT OF ARBITRATION IN LONDON." [24]

Petitioners fault the CA for reversing the findings of the Labor Arbiter and the NLRC. Petitioners aver that the findings of the Labor Arbiter, as affirmed by the NLRC, are conclusive on the CA. They maintain that it is not within the province of the appellate court in a petition for certiorari to review the facts and evidence on record since there was no conflict in the factual findings and conclusions of the lower tribunals. Petitioners assert that such findings and conclusions, having been made by agencies with expertise on the subject matter, should be

deemed binding and conclusive. They contend that it was the PCIJ which employed respondent as an employee; it merely seconded him to petitioner PPI in the Philippines, and assigned him to work in Manila as Sector Manager. Petitioner PPI, being a wholly-owned subsidiary of PCIJ, was never the employer of respondent.

Petitioners assert that the January 9, 1998 letter of employment which respondent presented to prove his employment with petitioner PPI is of doubtful authenticity since it was unsigned by the purported parties. They insist that PCIJ paid respondent's salaries and only coursed the same through petitioner PPI. PPI, being its subsidiary, had supervision and control over respondent's work, and had the responsibilities of monitoring the "daily administration" of respondent. Respondent cannot rely on the pay slips, expenses claim forms, and reimbursement memoranda to prove that he was an employee of petitioner PPI because these documents are of doubtful authenticity.

Petitioners further contend that, although Henrichsen was both a director of PCIJ and president of PPI, it was he who signed the termination letter of respondent upon instructions of PCIJ. This is buttressed by the fact that PCIJ's letterhead was used to inform him that his employment was terminated. Petitioners further assert that all work instructions came from PCIJ and that petitioner PPI only served as a "conduit." Respondent's Alien Employment Permit stating that petitioner PPI was his employer is but a necessary consequence of his being "seconded" thereto. It is not sufficient proof that petitioner PPI is respondent's employer. The entry was only made to comply with the DOLE requirements.

There being no evidence that petitioner PPI is the employer of respondent, the Labor Arbiter has no jurisdiction over respondent's complaint.

Petitioners aver that since respondent is a Canadian citizen, the CA erred in ignoring their claim that the principles of forum non conveniens and lex loci contractus are applicable. They also point out that the principal office, officers and staff of PCIJ are stationed in Tokyo, Japan; and the contract of employment of respondent was executed in Tokyo, Japan.

Moreover, under Section 21 of the General Conditions for Employment incorporated in respondent's January 7, 1998 letter of employment, the dispute between respondent and PCIJ should be settled by the court of arbitration of London. Petitioners claim that the words used therein are sufficient to show the exclusive and restrictive nature of the stipulation on venue.

Petitioners insist that the U.S. Labor-Management Act applies only to U.S. workers and employers, while the Labor Code of the Philippines applies only to Filipino employers and Philippine-based employers and their employees, not to PCIJ. In fine, the jurisdictions of the NLRC and Labor Arbiter do not extend to foreign workers who executed employment agreements with foreign employers abroad, although "seconded" to the Philippines.[25] In his Comment,[26] respondent maintains that petitioners raised factual issues in their petition which are proscribed under Section 1, Rule 45 of the Rules of Court. The finding of the CA that he had been an employee of petitioner PPI and not of PCIJ is buttressed by his documentary evidence which both the Labor Arbiter and the NLRC ignored; they erroneously opted to dismiss his complaint on the basis of the letter of employment and Section 21 of the General Conditions of Employment. In contrast, the CA took into account the evidence on record and applied case law correctly.

The petition is denied for lack of merit.

It must be stressed that in resolving a petition for certiorari, the CA is not proscribed from reviewing the evidence on record. Under Section 9 of Batas Pambansa Blg. 129, as amended by R.A. No. 7902, the CA is empowered to pass upon the evidence, if and when necessary, to resolve factual issues.[27] If it appears that the Labor Arbiter

and the NLRC misappreciated the evidence to such an extent as to compel a contrary conclusion if such evidence had been properly appreciated, the factual findings of such tribunals cannot be given great respect and finality.[28]

Inexplicably, the Labor Arbiter and the NLRC ignored the documentary evidence which respondent appended to his pleadings showing that he was an employee of petitioner PPI; they merely focused on the January 7, 1998 letter of employment and Section 21 of the General Conditions of Employment.

Petitioner PPI applied for the issuance of an AEP to respondent before the DOLE. In said application, PPI averred that respondent is its employee. To show that this was the case, PPI appended a copy of respondent's employment contract. The DOLE then granted the application of PPI and issued the permit.

It bears stressing that under the Omnibus Rules Implementing the Labor Code, one of the requirements for the issuance of an employment permit is the employment contract. Section 5, Rule XIV (Employment of Aliens) of the Omnibus Rules provides:

SECTION 1. Coverage. – This rule shall apply to all aliens employed or seeking employment in the Philippines and the present or prospective employers.

SECTION 2. Submission of list. – All employers employing foreign nationals, whether resident or non-resident, shall submit a list of nationals to the Bureau indicating their names, citizenship, foreign and local address, nature of employment and status of stay in the Philippines.

SECTION 3. Registration of resident aliens. – All employed resident aliens shall register with the Bureau under such guidelines as may be issued by it.

SECTION 4. Employment permit required for entry. – No alien seeking employment, whether as a resident or non-resident, may enter the Philippines without first securing an employment permit from the Ministry. If an alien enters the country under a non-working visa and wishes to be employed thereafter, he may only be allowed to be employed upon presentation of a duly approved employment permit.

SECTION 5. Requirements for employment permit applicants. – The application for an employment permit shall be accompanied by the following:

(a) Curriculum vitae duly signed by the applicant indicating his educational background, his work experience and other data showing that he possesses technical skills in his trade or profession.

(b) Contract of employment between the employer and the principal which shall embody the following, among others:

1. That the non-resident alien worker shall comply with all applicable laws and rules and regulations of the Philippines;
2. That the non-resident alien worker and the employer shall bind themselves to train at least two (2) Filipino understudies for a period to be determined by the Minister; and
3. That he shall not engage in any gainful employment other than that for which he was issued a permit.

(c) A designation by the employer of at least two (2) understudies for every alien worker. Such understudies must be the most ranking regular employees in the section or department for which the expatriates are being hired to insure the actual transfer of technology.

Under Section 6 of the Rule, the DOLE may issue an alien employment permit based only on the following:

- (a) Compliance by the applicant and his employer with the requirements of Section 2 hereof;

- (b) Report of the Bureau Director as to the availability or non-availability of any person in the Philippines who is competent and willing to do the job for which the services of the applicant are desired;
- (c) His assessment as to whether or not the employment of the applicant will redound to the national interest;
- (d) Admissibility of the alien as certified by the Commission on Immigration and Deportation;
- (e) The recommendation of the Board of Investments or other appropriate government agencies if the applicant will be employed in preferred areas of investments or in accordance with the imperative of economic development.

Thus, as claimed by respondent, he had an employment contract with petitioner PPI; otherwise, petitioner PPI would not have filed an application for a Permit with the DOLE. Petitioners are thus estopped from alleging that the PCIJ, not petitioner PPI, had been the employer of respondent all along.

We agree with the conclusion of the CA that there was an employer-employee relationship between petitioner PPI and respondent using the four-fold test. Jurisprudence is firmly settled that whenever the existence of an employment relationship is in dispute, four elements constitute the reliable yardstick: (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. It is the so-called "control test" which constitutes the most important index of the existence of the employer-employee relationship—that is, whether the employer controls or has reserved the right to control the employee not only as to the result of the work to be done but also as to the means and methods by which the same is to be accomplished. Stated otherwise, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end to be achieved but also the means to be used in reaching such end.[29] We quote with approval the following ruling of the CA:

[T]here is, indeed, substantial evidence on record which would erase any doubt that the respondent company is the true employer of petitioner. In the case at bar, the power to control and supervise petitioner's work performance devolved upon the respondent company. Likewise, the power to terminate the employment relationship was exercised by the President of the respondent company. It is not the letterhead used by the company in the termination letter which controls, but the person who exercised the power to terminate the employee. It is also inconsequential if the second letter of employment executed in the Philippines was not signed by the petitioner. An employer-employee relationship may indeed exist even in the absence of a written contract, so long as the four elements mentioned in the Mafinco case are all present.[30]

The settled rule on stipulations regarding venue, as held by this Court in the vintage case of *Philippine Banking Corporation v. Tensuan*,[31] is that while they are considered valid and enforceable, venue stipulations in a contract do not, as a rule, supersede the general rule set forth in Rule 4 of the Revised Rules of Court in the absence of qualifying or restrictive words. They should be considered merely as an agreement or additional forum, not as limiting venue to the specified place. They are not exclusive but, rather permissive. If the intention of the parties were to restrict venue, there must be accompanying language clearly and categorically expressing their purpose and design that actions between them be litigated only at the place named by them.[32]

In the instant case, no restrictive words like "only," "solely," "exclusively in this court," "in no other court save —," "particularly," "nowhere else but/except —," or words of equal import were stated in the contract.[33] It cannot be said that the court of arbitration in London is an exclusive venue to bring forth any complaint arising out of the employment contract.

Petitioners contend that respondent should have filed his Complaint in his place of permanent residence, or where the PCIJ holds its principal office, at the place where the contract of employment was signed, in London as stated in their contract. By enumerating possible venues where respondent could have filed his complaint, however,

petitioners themselves admitted that the provision on venue in the employment contract is indeed merely permissive.

Petitioners' insistence on the application of the principle of forum non conveniens must be rejected. The bare fact that respondent is a Canadian citizen and was a repatriate does not warrant the application of the principle for the following reasons:

First. The Labor Code of the Philippines does not include forum non conveniens as a ground for the dismissal of the complaint.[34]

Second. The propriety of dismissing a case based on this principle requires a factual determination; hence, it is properly considered as defense.[35]

Third. In *Bank of America, NT&SA, Bank of America International, Ltd. v. Court of Appeals*, [36] this Court held that:

x x x [a] Philippine Court may assume jurisdiction over the case if it chooses to do so; provided, that the following requisites are met: (1) that the Philippine Court is one to which the parties may conveniently resort to; (2) that the Philippine Court is in a position to make an intelligent decision as to the law and the facts; and, (3) that the Philippine Court has or is likely to have power to enforce its decision. x x x.

Admittedly, all the foregoing requisites are present in this case.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals in CA-G.R. SP No. 76563 is AFFIRMED. This case is REMANDED to the Labor Arbiter for disposition of the case on the merits. Cost against petitioners.

SO ORDERED.

Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Romeo A. Brawner (retired), with Associate Justices Mariano C. Del Castillo and Magdangal M. De Leon, concurring; rollo, pp. 31-37.

[2] Among these services are the following: consulting services utilizing available local skills, technical competence and know-how in the process, providing advice on scientific techniques and technology applications which require advance expert capabilities related to the conduct of surveys, preparation of master plans, feasibility studies, preliminary and detailed designs, supervision and management for the construction of roads, tollways, railways, tunnels, urban traffic networks, ports and harbours, airports, river improvements, power stations, water supply and sewage systems, agricultural and forestry civil works, and other civil construction works, city planning, planning of tourism, rural and natural resources development, planning of industrial and mining facilities, and all other activities related, connected or incidental to any and all of the foregoing activities. PPI later became Pacific Consultants International Asia, Inc. when its Articles of Incorporation were amended on October 11, 1999 (records, pp. 126-127, 131).

[3] Rollo, pp. 42-43.

[4] Id.

[5] Id. at 51.

[6] Id. at 298.

[7] Id. at 339.

[8] CA rollo, p. 81.

[9] Id. at 62.

[10] Id.

[11] Id. at 52.

[12] Id. at 58-59.

[13] Records, pp. 54-72.

[14] Id. at 124-125.

[15] Id. at 100-131.

[16] Id. at 133-141.

[17] Rollo, p. 110.

[18] CA rollo, p. 47.

[19] Rollo, pp. 4-5.

[20] CA rollo, p. 208.

[21] This test considers the following elements: (1) the power to hire; (2) the payment of wages; (3) the power to dismiss; and (4) the power to control.

[22] Rollo, p. 36.

[23] Id. at 39.

[24] Id. at 11.

[25] Id. at 24-25.

[26] Id. at 495.

[27] R&E Transport v. Latag, G.R. No. 155214, February 13, 2004, 422 SCRA 698; Tanjuan v. Philippine Postal Savings Bank, Inc., G.R. No. 155278, September 16, 2003, 411 SCRA 168.

[28] Castillo v. National Labor Relations Commission, 367 Phil. 605 (1999).

[29] Aurora Land Projects Corporation v. National Labor Relations Commission, 334 Phil. 4 (1997).

[30] Rollo, p. 35.

[31] G.R. No. 104649, February 28, 1994, 230 SCRA 413, 420.

[32] Unimasters Conglomeration, Inc. v. Court of Appeals, 335 Phil. 415 (1997).

[33] Id.

[34] PHILSEC Investment Corporation v. Court of Appeals, G.R. No. 103493, June 19, 1997, 274 SCRA 102.

[35] Id.

[36] 448 Phil. 181, 196 (2003).

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