

**COCOMANGAS HOTEL BEACH RESORT AND/OR SUSAN MUNRO,
PETITIONERS, FEDERICO F. VISCA, JOHNNY G. BAREDO, RONALD Q.
TIBUS, RICHARD G. VISCA AND RAFFIE G. VISCA, RESPONDENTS.**

G.R. No. 167045. August 29, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Decision[1] dated July 30, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 78620 which reversed and set aside the Resolution dated February 27, 2003 of the National Labor Relations Commission (NLRC) in NLRC Case No. V-000714-2000; and the CA Resolution[2] dated February 2, 2005 which denied petitioners' Motion for Reconsideration.

The present controversy stemmed from five individual complaints[3] for illegal

dismissal filed on June 15, 1999 by Federico F. Visca (Visca), Johnny G. Barredo, Ronald Q. Tibus, Richard G. Visca and Raffie G. Visca (respondents) against Cocomangas Hotel Beach Resort and/or its owner-manager, Susan Munro (petitioners) before Sub-Regional Arbitration Branch No. VI of the National Labor Relations Commission (NLRC) in Kalibo, Aklan.

In their consolidated Position Paper,[4] respondents alleged that they were regular employees of petitioners, with designations and dates of employment as follows:

Name Designation Date Employed

Federico F. Visa Foreman October 1, 1987

Johnny G. Barredo Carpenter April 23, 1993

Ronald Q. Tibus Mason November 9, 1996

Richard G. Visca Carpenter April 1998

Raffie G. Visca Mason/Carpenter March 27, 1993

tasked with the maintenance and repair of the resort facilities; on May 8, 1999, Maria Nida Iñigo-Tañala, the Front Desk Officer/Sales Manager, informed them not to report for work since the ongoing constructions and repairs would be temporarily suspended because they caused irritation and annoyance to the resort's guests; as instructed, they did not report for work the succeeding days; John Munro, husband of petitioner Susan Munro, subsequently visited respondent foreman Visca and informed him that the work suspension was due to budgetary constraints; when respondent Visca later discovered that four new workers were hired to do respondents' tasks, he confronted petitioner Munro who explained that respondents' resumption of work was not possible due to budgetary constraints; when not less than ten workers were subsequently hired by petitioners to do repairs in two

cottages of the resort and two workers were retained after the completion without respondents being allowed to resume work, they filed their individual complaints for illegal dismissal. In addition to reinstatement with payment of full backwages, respondents prayed for payment of premium pay for rest day, service incentive leave pay, 13th month pay, and cost-of-living allowance, plus moral and exemplary damages and attorney's fees.

In their Position Paper,[5] petitioners denied any employer-employee relationship with respondents and countered that respondent Visca was an independent contractor who was called upon from time to time when some repairs in the resort facilities were needed and the other respondents were selected and hired by him.

On June 30, 2000, the Labor Arbiter (LA) rendered a Decision[6] dismissing the complaint, holding that respondent Visca was an independent contractor and the other respondents were hired by him to help him with his contracted works at the resort; that there was no illegal dismissal but completion of projects; that respondents were project workers, not regular employees.

On August 9, 2000, respondents filed a Memorandum of Appeal[7] with the NLRC. No comment thereon was filed by the petitioners.

On August 29, 2002, the NLRC rendered a Decision,[8] setting aside the Decision of the LA and ordering the payment to respondents of backwages computed from May 8, 1999 to July 31, 2002, 13th month pay and service incentive leave pay for three years, in addition to 10% attorney's fees. The dispositive portion of the NLRC Decision reads:

WHEREFORE, the decision dated June 30, 2000 of the Labor Arbiter is VACATED and SET ASIDE and a new decision rendered declaring the Illegal Dismissal of the complainant (sic) and ordering respondent Susan Munro to pay the complainants the following:

1. Federico F. Visca

P 288,816.53

2. Johnny G. Barredo

P 211,058.47

3. Ronald Q. Tibus

P 175,774.00

4. Richard C. Visca

P 200,977.85

5. Raffie C. Visca

P 211,058.47

P1,087,685.32

6. Attorney's fees (10%)

P 108,768.53

Total Award

P1,196,453.85[9]

Petitioners failed to convince the NLRC that respondent Visca was not an independent contractor and the other

respondents were selected and hired by him. The NLRC held that respondents were regular employees of petitioners since all the factors determinative of employer-employee relationship were present and the work done by respondents was clearly related to petitioners' resort business. It took into account the following: (a) respondent Visca was reported by petitioners as an employee in the Quarterly Social Security System (SSS) report; (b) all of the respondents were certified to by petitioner Munro as workers and even commended for their satisfactory performance; (c) respondents were paid their holiday and overtime pay; and (d) respondents had been continuously in petitioners' employ from three to twelve years and were all paid by daily wage given weekly.

On November 18, 2002, petitioners filed a Motion for Reconsideration, arguing that respondents were project employees.[10] Petitioners also filed a Supplemental to their Motion for Reconsideration.[11] No opposition or answer to petitioners' motion for reconsideration and supplement was filed by respondents despite due notice.[12]

On February 27, 2003, the NLRC made a complete turnabout from its original decision and issued a Resolution[13] dismissing the complaint, holding that respondents were not regular employees but project employees, hired for a short period of time to do some repair jobs in petitioners' resort business. Nonetheless, it ordered payment of P10,000.00 to each complainant as financial assistance.

Respondents then filed a Petition for Certiorari[14] with the CA raising three issues for resolution: (a) whether or not the respondents were project employees of petitioners; (b) whether or not the respondents' dismissal from work was based on valid grounds; (c) whether or not the NLRC had sufficient basis to overturn its own decision despite its overwhelming findings that respondents were illegally dismissed.

On July 30, 2004, the CA rendered its assailed Decision,[15] the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered by us REVERSING and SETTING ASIDE the NLRC Resolution dated February 28, 2003, REINSTATING the NLRC Decision dated August 29, 2000 [sic], and ORDERING the private respondents to pay damages in the amount of P50,000.00. The instant case is hereby REMANDED to the 4[th] Division NLRC, Cebu City for the purpose of UPDATING the award promulgated in its Decision dated August 29, 2000 [sic].

SO ORDERED.[16]

The CA held respondents were regular employees, not project workers, since in the years that petitioners repeatedly hired respondents' services, the former failed to set, even once, specific periods when the employment relationship would be terminated; that the repeated hiring of respondents established that the services rendered by them were necessary and desirable to petitioners' resort business; at the least, respondents were regular seasonal employees, hired depending on the tourist season and when the need arose in maintaining petitioners' resort for the benefit of guests.

In addition to the amounts granted by the NLRC in its August 29, 2002 Decision, the CA awarded respondents P50,000.00 as damages, since their termination was attended by bad faith, in that petitioners not only gave respondents the run-around but also blatantly hired others to take respondents' place despite their claim that the so-called temporary stoppage of work was due to budgetary constraints.

On August 18, 2004, petitioners filed a Motion for Reconsideration,[17] but it was denied by the CA in a Resolution[18] dated February 2, 2005.

Petitioners then filed the present petition[19] on the following grounds:

I

THE HONORABLE COURT OF APPEALS ERRED IN GIVING DUE COURSE TO THE SPECIAL CIVIL

ACTION UNDER RULE 65 NOTWITHSTANDING THE FACT THAT RESPONDENTS HAVE FAILED TO PROVE THE GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION THAT WOULD ALLOW THE NULLIFICATION OF THE ASSAILED RESOLUTION OF THE NATIONAL LABOR RELATIONS COMMISSION.

II

THE HONORABLE COURT OF APPEALS ERRED IN REVERSING AND SETTING ASIDE THE RESOLUTION DATED FEBRUARY 27, 2003 AND REINSTATING THE DECISION DATED AUGUST 29, 2002 RENDERED BY THE NATIONAL LABOR RELATIONS COMMISSION.[20]

Petitioners argue that the CA erred in giving due course to respondents' petition, since respondents failed to recite specifically how the NLRC abused its discretion, an allegation essentially required in a petition for certiorari under Rule 45 of the Rules of Court; the three issues raised by respondents in their petition before the CA required appreciation of the evidence presented below and are therefore errors of judgment, not of jurisdiction; that the factual findings of the LA and the NLRC on the lack of employer-employee relationship between petitioners and respondents should be accorded not only respect but finality.

On the other hand, respondents contend that the issues raised by the petitioners call for reevaluation of the evidence presented by the parties, which is not proper in petitions for review under Rule 45 of the Rules of Court; in any case, they argue that they have amply established that they are regular employees of petitioners, since their jobs as carpenters, which include the repairs of furniture, motor boats, cottages and windbreakers, are not at all foreign to the business of maintaining a beach resort.

The petition is bereft of merit.

The extent of judicial review by certiorari of decisions or resolutions of the NLRC, as exercised previously by this Court and now by the CA, is described in *Zarate, Jr. v. Olegario*,[21] thus:

The rule is settled that the original and exclusive jurisdiction of this Court to review a decision of respondent NLRC (or Executive Labor Arbiter as in this case) in a petition for certiorari under Rule 65 does not normally include an inquiry into the correctness of its evaluation of the evidence. Errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for certiorari, which is merely confined to issues of jurisdiction or grave abuse of discretion. It is thus incumbent upon petitioner to satisfactorily establish that respondent Commission or executive labor arbiter acted capriciously and whimsically in total disregard of evidence material to or even decisive of the controversy, in order that the extraordinary writ of certiorari will lie. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, and it must be shown that the discretion was exercised arbitrarily or despotically. For certiorari to lie, there must be capricious, arbitrary and whimsical exercise of power, the very antithesis of the judicial prerogative in accordance with centuries of both civil law and common law traditions.[22] (Emphasis supplied)

The CA, therefore, can take cognizance of a petition for certiorari if it finds that the NLRC, in its assailed decision or resolution, committed grave abuse of discretion by capriciously, whimsically, or arbitrarily disregarding evidence which is material to or decisive of the controversy. The CA cannot make this determination without looking into the evidence presented by the parties. The appellate court needs to evaluate the materiality or significance of the evidence, which is alleged to have been capriciously, whimsically, or arbitrarily disregarded by the NLRC, in relation to all other evidence on record.[23]

In *Garcia v. National Labor Relations Commission*,[24] the Court elucidated on when certiorari can be properly resorted to, thus:

[I]n *Ong v. People*, we ruled that certiorari can be properly resorted to where the factual findings complained of are not supported by the evidence on record. Earlier, in *Gutib v. Court of Appeals*, we emphasized thus:

[I]t has been said that a wide breadth of discretion is granted a court of justice in certiorari proceedings. The cases in which certiorari will issue cannot be defined, because to do so would be to destroy its comprehensiveness and usefulness. So wide is the discretion of the court that authority is not wanting to show that certiorari is more discretionary than either prohibition or mandamus. In the exercise of our superintending control over inferior courts, we are to be guided by all the circumstances of each particular case "as the ends of justice may require." So it is that the writ will be granted where necessary to prevent a substantial wrong or to do substantial justice.

And in another case of recent vintage, we further held:

In the review of an NLRC decision through a special civil action for certiorari, resolution is confined only to issues of jurisdiction and grave abuse of discretion on the part of the labor tribunal. Hence, the Court refrains from reviewing factual assessments of lower courts and agencies exercising adjudicative functions, such as the NLRC. Occasionally, however, the Court is constrained to delve into factual matters where, as in the instant case, the findings of the NLRC contradict those of the Labor Arbiter.

In this instance, the Court in the exercise of its equity jurisdiction may look into the records of the case and re-examine the questioned findings. As a corollary, this Court is clothed with ample authority to review matters, even if they are not assigned as errors in their appeal, if it finds that their consideration is necessary to arrive at a just decision of the case. The same principles are now necessarily adhered to and are applied by the Court of Appeals in its expanded jurisdiction over labor cases elevated through a petition for certiorari; thus, we see no error on its part when it made anew a factual determination of the matters and on that basis reversed the ruling of the NLRC.[25] (Emphasis supplied)

Thus, pursuant to *Garcia*, the appellate court can grant a petition for certiorari when the factual findings complained of are not supported by the evidence on record; when it is necessary to prevent a substantial wrong or to do substantial justice; when the findings of the NLRC contradict those of the LA; and when necessary to arrive at a just decision of the case.[26]

In the present case, respondents alleged in its petition with the CA that the NLRC's conclusions had no basis in fact and in law, in that "it totally disregarded the evidence of the [respondents] and gave credence to the [petitioners'] asseverations which were in themselves insufficient to overturn duly established facts and conclusions." [27] Consequently, the CA was correct in giving due course to the Petition for Certiorari, since respondents drew attention to the absence of substantial evidence to support the NLRC's complete turnabout from its original Decision dated August 29, 2002 finding that respondents were regular employees, to its subsequent Resolution dated February 27, 2003 classifying respondents as project employees.

The next issue before the Court is whether the CA committed an error in reversing the NLRC Resolution dated February 27, 2003. The resolution of this issue principally hinges on the determination of the question whether respondents are regular or project employees.

Generally, the existence of an employer-employee relationship is a factual matter that will not be delved into by this Court, since only questions of law may be raised in petitions for review.[28] However, the Court is constrained to resolve the issue of whether respondents are regular or permanent employees due to the conflicting findings of fact of the LA, the NLRC and the CA,

thus, necessitating a review of the evidence on record.[29]

The petitioners were ambivalent in categorizing respondents. In their Position Paper[30] filed before the LA, petitioners classified respondent Visca as an independent contractor and the other respondents as his employees;

while in their Motion for Reconsideration^[31] before the NLRC, petitioners treated respondents as project employees.

Further, petitioners' position in their Motion for Reconsideration before the NLRC runs contrary to their earlier submission in their Position Paper before the LA. While initially advancing the absence of an employer-employee relationship, petitioners on appeal, sang a different tune, so to speak, essentially invoking the termination of the period of their employer-employee relationship.

The NLRC should not have considered the new theory offered by the petitioners in their Motion for Reconsideration. As the object of the pleadings is to draw the lines of battle, so to speak, between the litigants and to indicate fairly the nature of the claims or defenses of both parties, a party cannot subsequently take a position contrary to, or inconsistent, with his pleadings.^[32] It is a matter of law that when a party adopts a particular theory and the case is tried and decided upon that theory in the court below, he will not be permitted to change his theory on appeal. The case will be reviewed and decided on that theory and not approached and resolved from a different point of view. To permit a party to change his theory on appeal will be unfair to the adverse party.^[33]

At any rate, after a careful examination of the records, the Court finds that the CA did not err in finding that respondents were regular employees, not project employees. A project employee is one whose "employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season."^[34] Before an employee hired on a per-project basis can be dismissed, a report must be made to the nearest employment office, of the termination of the services of the workers every time completes a project, pursuant to Policy Instruction No. 20.^[35]

In the present case, respondents cannot be classified as project employees, since they worked continuously for petitioners from three to twelve years without any mention of a "project" to which they were specifically assigned. While they had designations as "foreman," "carpenter" and "mason," they performed work other than carpentry or masonry. They were tasked with the maintenance and repair of the furniture, motor boats, cottages, and windbreakers and other resort facilities. There is likewise no evidence of the project employment contracts covering respondents' alleged periods of employment. More importantly, there is no evidence that petitioners reported the termination of respondents' supposed project employment to the DOLE as project employees. Department Order No. 19, as well as the old Policy Instructions No. 20, requires employers to submit a report of an employee's termination to the nearest public employment office every time his employment is terminated due to a completion of a project. Petitioners' failure to file termination reports is an indication that the respondents were not project employees but regular employees.^[36]

This Court has held that an employment ceases to be coterminous with specific projects when the employee is continuously rehired due to the demands of employer's business and re-engaged for many more projects without interruption.^[37]

The Court is not persuaded by petitioners' submission that respondents' services are not necessary or desirable to the usual trade or business of the resort. The repeated and continuing need for their services is sufficient evidence of the necessity, if not indispensability, of their services to petitioners' resort business.^[38]

In *Maraguinot, Jr. v. National Labor Relations Commission*,^[39] the Court ruled that "once a project or work pool employee has been: (1) continuously, as opposed to intermittently, rehired by the same employer for the same tasks or nature of tasks; and (2) these tasks are vital, necessary and indispensable to the usual business or trade of the employer, then the employee must be deemed a regular employee, pursuant to Article 280 of the Labor Code and jurisprudence."^[40]

That respondents were regular employees is further bolstered by the following evidence: (a) the SSS Quarterly Summary of Contribution Payments[41] listing respondents as employees of petitioners; (b) the Service Record Certificates stating that respondents were employees of petitioners for periods ranging from three to twelve years and all have given "very satisfactory performance";[42] (c) petty cash vouchers[43] showing payment of respondents' salaries and holiday and overtime pays.

Thus, substantial evidence supported the CA finding that respondents were regular employees. Being regular employees, they were entitled to security of tenure, and their services may not be terminated except for causes provided by law.

Article 279[44] of the Labor Code, as amended, provides that an illegally dismissed employee shall be entitled to reinstatement, full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

The Court notes that the NLRC, in its earlier Decision dated August 29, 2002 which was affirmed by the CA, computed the award for backwages from May 8, 1999 to July 31, 2002 only. It is evident that respondents' backwages should not be limited to said period. The backwages due respondents must be computed from the time they were unjustly dismissed until actual reinstatement to their former positions. Thus, until petitioners implement the reinstatement aspect, its obligation to respondents, insofar as accrued backwages and other benefits are concerned, continues to accumulate.

The fact that the CA failed to consider this when it affirmed the August 29, 2002 decision of the NLRC or that respondents themselves did not appeal the CA Decision on this matter, does not bar this Court from ordering its modification. While as a general rule, a party who has not appealed is not entitled to affirmative relief other than the ones granted in the decision of the court below, this Court is imbued with sufficient authority and discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice.[45]

Besides, substantive rights like the award of backwages resulting from illegal

dismissal must not be prejudiced by a rigid and technical application of the rules.[46] The computation of the award for backwages from the time compensation was withheld up to the time of actual reinstatement is a mere legal consequence of the finding that respondents were illegally dismissed by petitioners.

WHEREFORE, the petition is DENIED. The assailed Decision dated July 30, 2004 and Resolution dated February 2, 2005 of the Court of Appeals in CA-G.R. SP No. 78620 are AFFIRMED with MODIFICATION that the award for backwages should be computed from the time compensation was withheld up to the time of actual reinstatement.

Double costs against petitioners.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Reyes, JJ., concur.

[1] Penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Elvi John S. Asuncion and Ramon Bato, Jr., CA rollo, p. 133.

[2]

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