

SOUTH DAVAO DEVELOPMENT COMPANY, INC. (NOW SODACO AGRICULTURAL CORPORATION) AND/OR MALONE PACQUIAO AND VICTOR A. CONSUNJI, PETITIONERS, VS. SERGIO L. GAMO, ERNESTO BELLEZA, FELI...*G.R. No. 171814. May 08, 2009*

Ponente: TINGA, J.

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Before us is a Rule 45 petition[1] which seeks the reversal of the Court of Appeals' decision[2] and resolution[3] in CA-G.R. SP No. 68511. The Court of Appeal's decision reinstated the NLRC's Resolution[4] dated 23 March 2001 which reversed the labor arbiter's decision.[5]

Petitioner South Davao Development Company (petitioner or petitioner corporation) is the operator of a coconut and mango farm in San Isidro, Davao Oriental and Inawayan/Baracatan, Davao del Sur. On August 1963 petitioner hired respondent Sergio L. Gamo (Gamo) as a foreman. Sometime in 1987, petitioner appointed Gamo as a copra maker contractor. Respondents Ernesto Belleza, Carlos Rojas, Maximo Malinao were all employees in petitioner's coconut farm, while respondents Felix Terona, Virgilio Cosep, Maximo Tolda, and Nelson Bagaan were assigned to petitioner's mango farm. All of the abovenamed respondents (copra workers) were later transferred by petitioner to Gamo as the latter's copraceros. From 1987 to 1999, Gamo and petitioner entered into a profit-sharing agreement wherein 70% of the net proceeds of the sale of copra went to petitioner and 30% to Gamo. The copra workers were paid by Gamo from his 30% share.

Petitioner wanted to standardize payments to its "contractors" in its coconut farms. On 2 October 1999, petitioner proposed a new payment scheme to Gamo. The new scheme provided a specific price for each copra making activity. Gamo submitted his counter proposal.[6] Petitioner did not accept Gamo's counter proposal since it was higher by at least fifty percent (50%) from its original offer. Without agreeing to the new payment scheme, Gamo and his copra workers started to do harvesting work. Petitioner told them to stop. Eventually, petitioner and Gamo agreed that the latter may continue with the harvest provided that it would be his last "contract" with petitioner. Gamo suggested to petitioner to look for a new "contractor" since he was not amenable to the new payment scheme.[7]

Gamo and petitioner failed to agree on a payment scheme, thus, petitioner did not renew the "contract" of Gamo. Gamo and the copra workers alleged that they were illegally dismissed.

On the other hand, respondent Eleonor Cosep (Eleonor) was employed as a mango classifier in the packing house of petitioner's mango farm in San Isidro, Davao Oriental. Sometime in October 1999, she did not report for work as she had wanted to raise and sell pigs instead. Petitioner, through Malone Pacquiao, tried to convince Eleonor to report for work but to no avail.

On 22 March 2000, respondents filed a complaint[8] for illegal dismissal against petitioner. They alleged that

sometime in December 1999, petitioner verbally terminated them en masse.

The labor arbiter dismissed[9] the complaint. He ruled that there was no employee-employer relationship between petitioner and respondents. As to Eleonor, he ruled that she had voluntarily stopped working.

Respondents appealed to the National Labor Relations Commission (NLRC). The NLRC's Resolution[10] reversed the arbiter's decision and ruled that respondents were petitioner's employees. Petitioner moved[11] for reconsideration. The NLRC granted[12] the motion for reconsideration and ruled that the nature of the job of the respondents could not result in an employer-employee relationship. Respondents moved for reconsideration which was denied.[13]

Respondents filed a petition for certiorari[14] under Rule 65 with the Court of Appeals. The Court of Appeals ruled that there existed an employer-employee relationship. It declared that respondents were regular seasonal employees who can be dismissed by the petitioner at the end of the season provided due process is observed.[15] With regard to Eleonor, the Court of Appeals ruled that she did not abandon her work.

Hence this petition.

Petitioner raises the following issues: (1) whether the Court of Appeals failed to take judicial notice of the accepted practice of independent contractors in the coconut industry; (2) whether there is a valid job contracting between petitioner and Gamo; and (3) whether Eleonor had effectively abandoned her work.

The labor arbiter took judicial notice of the alleged prevailing business practices in the coconut industry that copra making activities are done quarterly; that the workers can contract with other farms; and that the workers are independent from the land owner on all work aspects. Petitioner wants this Court to take judicial notice of the current business practice in the coconut industry which allegedly treats copraceros as independent contractors. In *Expertravel & Tours, Inc. v. Court of Appeals*, [16] we held, thus:

Generally speaking, matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. The principal guide in determining what facts may be assumed to be judicially known is that of notoriety.[17] Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety. Moreover, a judicially noticed fact must be one not subject to a reasonable dispute in that it is either: (1) generally known within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready determination by resorting to sources whose accuracy cannot reasonably be questionable.[18]

Things of "common knowledge," of which courts take judicial matters coming to the knowledge of men generally in the course of the ordinary experiences of life, or they may be matters which are generally accepted by mankind as true and are capable of ready and unquestioned demonstration. Thus, facts which are universally known, and which may be found in encyclopedias, dictionaries or other publications, are judicially noticed, provided, they are of such universal notoriety and so generally understood that they may be regarded as forming part of the common knowledge of every person. As the common knowledge of man ranges far and wide, a wide variety of particular facts have been judicially noticed as being matters of common knowledge. But a court cannot take judicial notice of any fact which, in part, is dependent on the existence or non-existence of a fact of which the court has no constructive knowledge.[19]

An invocation that the Court take judicial notice of certain facts should satisfy the requisites set forth by case law. A mere prayer for its application shall not suffice. Thus, in this case the Court cannot take judicial notice of the alleged business practices in the copra industry since none of the material requisites of matters of judicial notice is present in the instant petition. The record is bereft of any indication that the matter is of common knowledge to

the public and that it has the characteristic of notoriety, except petitioners' self-serving claim.

A related issue is whether Gamo is an independent contractor. In *Escario v. NLRC*,^[20] we ruled that there is permissible job contracting when a principal agrees to put out or farm out with a contractor or a subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job or work service is to be performed within or outside the premises of the principal.^[21] To establish the existence of an independent contractor, we apply the following conditions: first, 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 to the result thereof; and second, the contractor has substantial capital or investments in the form of tools, equipment, machineries, work premises and other materials which are necessary in the conduct of his business.^[22]

The Implementing Rules and Regulation of the Labor Code defines investment—as 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.^[23] The investment must be sufficient to carry out the job at hand.

In the case at bar, Gamo and the copra workers did not exercise independent judgment in the performance of their tasks. The tools used by Gamo and his copra workers like the karit, bolo, pangbunot, panglugit and pangtapok are not sufficient to enable them to complete the job.^[24] Reliance on these primitive tools is not enough. In fact, the accomplishment of their task required more expensive machineries and equipment, like the trucks to haul the harvests and the drying facility, which petitioner corporation owns.

In order to determine the existence of an employer-employee relationship, the Court has frequently applied the four-fold test: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct, or the so called "control test," which is considered the most important element.^[25] From the time they were hired by petitioner corporation up to the time that they were reassigned to work under Gamo's supervision, their status as petitioner corporation's employees did not cease. Likewise, payment of their wages was merely coursed through Gamo. As to the most determinative test—the power of control, it is sufficient that the power to control the manner of doing the work exists, it does not require the actual exercise of such power.^[26] In this case, it was in the exercise of its power of control when petitioner corporation transferred the copra workers from their previous assignments to work as copraceros. It was also in the exercise of the same power that petitioner corporation put Gamo in charge of the copra workers although under a different payment scheme. Thus, it is clear that an employer-employee relationship has existed between petitioner corporation and respondents since the beginning and such relationship did not cease despite their reassignments and the change of payment scheme.

As to the last issue, petitioner seeks our indulgence to declare that Eleonor has abandoned her work. Petitioner admitted that Eleonor was its regular employee.^[27] However, it claimed that she abandoned her work, preferring to sell and raise pigs instead.

It is well settled that abandonment as a just and valid ground for dismissal requires the deliberate and unjustified refusal of the employee to return for work. Two elements must be present, namely: (1) the failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship. The second element is more determinative of the intent and must be evinced by overt acts. Mere absence, not being sufficient, the burden of proof rests upon the employer to show that the employee clearly and deliberately intended to discontinue her employment without any intention of returning.^[28] In *Samarca v.*

Arc-Men Industries, Inc, we held that abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts.

To constitute abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship. Clearly, the operative act is still the employee's ultimate act of putting an end to his employment.[29] However, an employee who takes steps to protest her layoff cannot be said to have abandoned her work because a charge of abandonment is totally inconsistent with the immediate filing of a complaint for illegal dismissal, more so when it includes a prayer for reinstatement.[30] When Eleonor filed the illegal dismissal complaint, it totally negated petitioner's theory of abandonment.

Also, to effectively dismiss an employee for abandonment, the employer must comply with the due process requirement of sending notices to the employee. In *Brahm Industries, Inc. v. NLRC*,[31] we ruled that this requirement is not a mere formality that may be dispensed with at will. Its disregard is a matter of serious concern since it constitutes a safeguard of the highest order in response to man's innate sense of justice.[32] Petitioner was not able to send the necessary notice requirement to Eleonor. Petitioner's belated claim that it was not able to send the notice of infraction prior to the filing of the illegal dismissal case cannot simply unacceptable.[33] Based on the foregoing, Eleonor did not abandon her work.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals is AFFIRMED. Cost against petitioner.

SO ORDERED.

Carpio-Morales,[*] (Acting Chairperson), Velasco, Jr., Leonardo-De Castro,**] and Brion, JJ., concur.

[*] Acting chairperson as replacement of Associate Justice Leonardo Quisumbing who is on official leave per Special Order No. 618.

[**] Additional member of the Second Division per Special Order No. 619.

[1] Rollo, pp. 17-30.

[2] Dated 27 September 2005. Penned by Justice Rodrigo F. Lim, Jr. and concurred in by Justices Teresita Dy-Liacco Flores and Myrna Dimaranan Vidal; Id. at 32-45.

[3] Dated 27 January 2006. Penned by Justice Rodrigo F. Lim, Jr. and concurred in by Justices Teresita Dy-Liacco Flores and Myrna Dimaranan Vidal; Id. at 47-47-A.

[4] Penned by Commissioner Leon G. Gonzaga, Jr. concurred in by Commissioners Salic B. Dumarpa and Oscar N. Abella, id. at 93-100.

[5] Dated 21 July 2000. Penned by Miriam A. Libron-Barroso; id. at 75-82.

[6] Id. at 63.

[7] Id. at 56.

[8] Records, p. 3.

[9] Supra note 5.

[10] Rollo, pp. 93-100.

- [11] Id. at 101-109.
- [12] Resolution granting Motion for Reconsideration dated 29 June 2001. id. at 111-114.
- [13] Id. at 116-a-117.
- [14] Id. at 118-134.
- [15] Id. at 43.
- [16] *Expertravel & Tours, Inc. v. Court of Appeals*, G.R. No. 152392, 26 May 2005, 459 SCRA 147, 162.
- [17] *Citing State Prosecutors v. Muro, A.M.* RTJ-92-876, 19 September 1994, 236 SCRA 505.
- [18] *Citing Wood v. Astleford*, 412 N.W. 2d 753 (1987).
- [19] *Citing Trepanier v. Toledo & D.C. Ry., Co.*, 130 N.E. 558.
- [20] 388 Phil. 929 (2000), G.R. No. 145271, 14 July 2005.
- [21] Id. at 938.
- [22] *Manila Electric Company v. Benamira*, G.R. No. 145271, 14 July 2005, 463 SCRA 331, 353 citing *National Power Corporation v. Court of Appeals*, G.R. No. 119121, 14 August 1998, 294 SCRA 209, 214.
- [23] Department of Labor and Employment, Department Order No. 18-02, Sec. 5.
- [24] Rollo, p. 221.
- [25] *Coca-Cola Bottlers, (Phils.), Inc. v. Climaco*, G.R. No. 146881, 05 February 2007, 514 SCRA 164, 177, citing *Philippine Global Communication, Inc. v. De Vera*, G.R. No. 157214, 07 June 2005, 459 SCRA 260, 268.
- [26] *Vinoya v. National Labor Relations Commission*, 381 Phil. 460, 481 (2000), citing *Zanotte Shoes v. NLRC*, 241 SCRA 261 and *Tiu v. NLRC*, 254 SCRA 1.
- [27] Rollo, p. 64.
- [28] *Aquinas School v. Magnaye*, 344 Phil. 145, 151 (1997) citing *Brew Master International Inc. v. NLRC*, G.R. No. 111211, July 24, 1997.
- [29] *Samarca v. Arc-men Industries, Inc.* 459 Phil. 506, 516 (2003).
- [30] *Mame v. Court of Appeals*, G.R. No. 167953, 4 April 2007, 520 SCRA 552, 563.
- [31] 345 Phil. 1077 (1997).
- [32] Id. at 1086.
- [33] Rollo, p. 234.

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