

POLYFOAM-RGC INTERNATIONAL, CORPORATION AND PRECILLA A. GRAMAJE, PETITIONERS, VS. EDGARDO CONCEPCION, RESPONDENT.

G.R. No. 172349. June 13, 2012

Ponente: PERALTA, J.

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PERALTA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court filed by petitioners Polyfoam-RGC International Corporation (Polyfoam) and Precilla A. Gramaje (Gramaje) against respondent Edgardo Concepcion assailing the Court of Appeals (CA) Decision[1] dated December 19, 2005 and Resolution[2] dated April 25, 2006 in CA-G.R. SP No. 83696. The assailed decision reversed the National Labor Relations Commission's (NLRC's) Decision[3] dated May 7, 2003 in NLRC NCR CA No. 030622-02, while the assailed resolution denied petitioners' and respondent's motions for reconsideration.

The factual and procedural antecedents follow:

On February 8, 2000, respondent filed a Complaint[4] for illegal dismissal, non-payment of wages, premium pay for rest day, separation pay, service incentive leave pay, 13[th] month pay, damages, and attorney's fees against Polyfoam and Ms. Natividad Cheng (Cheng). Respondent alleged that he was hired by Polyfoam as an "all-around" factory worker and served as such for almost six years.[5] On January 14, 2000, he allegedly discovered that his time card was not in the rack and was later informed by the security guard that he could no longer punch his time card.[6] When he protested to his supervisor, the latter allegedly told him that the management decided to dismiss him due to an infraction of a company rule. Cheng, the company's manager, also refused to face him. Respondent's counsel later wrote a letter[7] to Polyfoam's manager requesting that respondent be re-admitted to work, but the request remained unheeded prompting the latter to file the complaint for illegal dismissal.[8]

On April 28, 2000, Gramaje filed a Motion for Intervention[9] claiming to be the real employer of respondent. On the other hand, Polyfoam and Cheng filed a Motion to Dismiss[10] on the grounds that the NLRC has no jurisdiction over the case, because of the absence of employer-employee relationship between Polyfoam and respondent and that the money claims had already prescribed.[11]

On May 24, 2000, Labor Arbiter Adolfo Babiano issued an Order[12] granting Gramaje's motion for intervention, it appearing that she is an indispensable party and denying Polyfoam and Cheng's motion to dismiss as the lack of employer-employee relationship is only a matter of defense.

In their Position Paper,[13] Polyfoam and Cheng insisted that the NLRC has no jurisdiction over the case, because respondent was not their employee. They likewise contended that respondent's money claims had already prescribed. Finally, they fault respondent for including Cheng as a party-defendant, considering that she is not even a director of the company.[14]

In her Position Paper,[15] Gramaje claimed that P.A. Gramaje Employment Services (PAGES) is a legitimate job contractor who provided some manpower needs of Polyfoam. It was alleged that respondent was hired as “packer” and assigned to Polyfoam, charged with packing the latter’s finished foam products. She argued, however, that respondent was not dismissed from employment, rather, he simply stopped reporting for work.[16]

On December 14, 2001, Labor Arbiter (LA) Marita V. Padolina rendered a Decision finding respondent to have been illegally dismissed from employment and holding Polyfoam and Gramaje/PAGES solidarily liable for respondent’s money claims. The dispositive portion of the Decision is quoted below for easy reference:

WHEREFORE, premises considered, judgment is hereby rendered finding complainant to have been illegally dismissed and respondents Polyfoam-RGC International Corporation, P.A. Gramaje Employment Services/Precilla A. Gramaje are ordered to pay complainant jointly and severally the following:

- 1). Separation Pay - P 52,000.00
 - 2). Backwages - 157,041.38
 - 3). 13th Month Pay - 17,407.00
 - 4). Moral Damages - 5,000.00
 - 5). Exemplary Damages - 5,000.00
 - 6). Attorney’s fees - ____ 23,644.83
- P 260,093.21

All other claims are denied for lack of factual basis.

SO ORDERED.[17]

The Labor Arbiter found respondent to have been illegally dismissed from employment and thus is entitled to full backwages inclusive of allowances. In lieu of reinstatement, the LA awarded respondent separation pay of one month salary for every year of service from April 21, 1994 until promulgation of the decision.[18] The LA further held that petitioners are solidarily liable to respondent for the latter’s money claims, considering that Gramaje (the contractor) was not enrolled as private employment agency in the registry of the Regional Office of the Department of Labor and Employment (DOLE) and considering further that respondent performed a job directly related to the main business of Polyfoam.[19]

On appeal by petitioners, the NLRC modified the LA decision by exonerating Polyfoam from liability for respondent’s claim for separation pay and deleting the awards of backwages, 13[th] month pay, damages, and attorney’s fees. The dispositive portion of the decision reads:

WHEREFORE, the appealed decision is modified in that the complaint against respondent-appellant Polyfoam-RGC International Corp. is dismissed. However, respondent-intervenor-appellant P.A. Gramaje Employment Services is hereby ordered to pay complainant separation pay of one (1) month salary for every year of service reckoned from April 21, 1996 up to the rendition of this decision, or the sum of P58,5000 (sic).

The awards of backwages, 13[th] month pay, damages, and attorney’s fees are set aside.

SO ORDERED.[20]

The NLRC found Gramaje to be an independent contractor who contracted the packaging aspect of the finished foam products of Polyfoam. Pursuant to said contract, Gramaje’s employees, including respondent, were assigned to Polyfoam but remained under the control and supervision of Gramaje. It likewise concluded that Gramaje had its own office equipment, tools, and substantial capital and, in fact, supplied the plastic containers and carton boxes used by her employees in performing their duties.[21] The Commission also found sufficient evidence to prove that Gramaje paid respondent’s wages and benefits and reported the latter to the Social Security System

(SSS) as a covered employee.[22] As to whether there was illegal dismissal, the NLRC answered in the negative, since respondent was not notified that he had been dismissed nor was he prevented from returning to his work. The NLRC found Gramaje liable for claiming that respondent abandoned his job. Reinstatement, however, could not be decreed because of the strained relations between the parties; hence, the award of separation pay. But the NLRC refused to award backwages.[23] The award of moral and exemplary damages was likewise deleted for lack of evidence.[24]

Aggrieved, respondent elevated the case to the CA in a special civil action for certiorari under Rule 65 of the Rules of Court. On December 19, 2005, the appellate court rendered the assailed decision,[25] the dispositive portion of which reads:

WHEREFORE, IN VIEW OF THE FOREGOING, the petition is GRANTED. The assailed Decision of the National Labor Relations Commission, First Division dated May 7, 2003 is REVERSED and the decision of Labor Arbiter Marita Padolina, dated December 14, 2001, is hereby REINSTATED.

SO ORDERED.[26]

The CA agreed with the LA's conclusion that Gramaje is not a legitimate job contractor but only a "labor-only" contractor because of the following: (1) Gramaje failed to present its Audited Financial Statement that would have shown its financial standing and ownership of equipment, machineries, and tools necessary to run her own business;[27] (2) Gramaje failed to present a single copy of the purported contract with Polyfoam as to the packaging aspect of the latter's business;[28] (3) Gramaje's licenses supposedly issued by the DOLE appeared to be spurious.[29] (4) Gramaje was not registered with DOLE as a private recruitment agency;[30] and (5) Gramaje presented only one (1) SSS Quarterly Collection List whose authenticity is doubtful.[31] The CA noted that petitioners are represented by only one law firm though they made it appear that they were represented by different lawyers.[32] These circumstances, says the CA, give rise to the suspicion that the creation or establishment of Gramaje was just a scheme designed to evade the obligation inherent in an employer-employee relationship.[33] Thus, respondent was indeed Polyfoam's employee. This relationship was specifically shown by Polyfoam's exercise of supervision over the work of respondent;[34] the furnishing of a copy of Polyfoam's "Mga Alituntunin at Karampatang Parusa" to serve as respondent's guide in the performance of his duty;[35] the length of time that respondent had performed activities necessary for Polyfoam's business;[36] and Polyfoam's act of directly firing respondent.[37] Finally, the appellate court affirmed the LA's findings of illegal dismissal as respondent was dismissed from the service without cause and due process.[38] Consequently, separation pay in lieu of reinstatement was awarded. The CA quoted with approval the LA conclusions on the award of respondent's other money claims.[39]

Petitioners now come before the Court in this petition for review on certiorari based on the following assigned errors:

I.

THE COURT OF APPEALS ERRED IN NOT DISMISSING THE PETITION FOR CERTIORARI FILED BY HEREIN RESPONDENT CONSIDERING THE FACT THAT IT WAS CLEARLY FILED OUT OF TIME, HAVING BEEN FILED ON THE 77TH DAY FROM RECEIPT BY HEREIN RESPONDENT OF THE RESOLUTION OF THE NLRC DENYING HIS MOTION FOR RECONSIDERATION.

II.

THE COURT OF APPEALS ERRED IN NOT UPHOLDING THE DECISION OF THE NLRC AND ITS FINDINGS THAT A) RESPONDENT CONCEPCION IS AN EMPLOYEE OF P.A. GRAMAJE EMPLOYMENT SERVICES; B) P.A. GRAMAJE IS A LEGITIMATE JOB CONTRACTOR; C)

RESPONDENT CONCEPCION WAS NOT DISMISSED FROM HIS JOB, CONSIDERING THAT THESE FINDINGS ARE FULLY SUPPORTED BY EVIDENCE.

III.

THE COURT OF APPEALS ERRED IN REINSTATING THE DECISION OF THE LABOR ARBITER MARITA PADOLINA AWARDING RESPONDENT CONCEPCION BACKWAGES, MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES.[40]

There are three issues for resolution, to wit: (1) whether or not Gramaje is an independent job contractor; (2) whether or not an employer-employee relationship exists between Polyfoam and respondent; and (3) whether or not respondent was illegally dismissed from employment.

Gramaje is a Labor-Only Contractor

Article 106 of the Labor Code explains the relations which may arise between an employer, a contractor, and the contractor's employees, thus:

ART. 106. Contractor or subcontracting. - Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

The Secretary of Labor and Employment may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of workers established under the Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

There is labor-only contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

In *Sasan, Sr. v. National Labor Relations Commission* 4th Division,[41] the Court distinguished permissible job contracting or subcontracting from "labor-only" contracting, to wit:

Permissible job contracting or subcontracting refers to an arrangement whereby a principal agrees to put out or farm out to a contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal. A person is considered engaged in legitimate job contracting or subcontracting if the following conditions concur:

(a) The contractor or subcontractor carries on a distinct and independent business and undertakes to perform the job, work or service on its own account and under its own responsibility according to its own manner and method, and free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof;

- (b) The contractor or subcontractor has substantial capital or investment; and
- (c) The agreement between the principal and contractor or subcontractor assures the contractual employees entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social and welfare benefits.

In contrast, labor-only contracting, a prohibited act, is an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal. In labor-only contracting, the following elements are present:

- (a) The contractor or subcontractor does not have substantial capital or investment to actually perform the job, work or service under its own account and responsibility; and
- (b) The employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal.[42]

The test of independent contractorship is “whether one claiming to be an independent contractor has contracted to do the work according to his own methods and without being subject to the control of the employer, except only as to the results of the work.”[43] In *San Miguel Corporation v. Semillano*,[44] the Court laid down the criteria in determining the existence of an independent and permissible contractor relationship, to wit:

x x x [W]hether or not the contractor is carrying on an independent business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the performance of a specified piece of work; the control and supervision of the work to another; the employer’s power with respect to the hiring, firing and payment of the contractor’s workers; the control of the premises; the duty to supply the premises, tools, appliances, materials, and labor; and the mode, manner and terms of payment.[45]

Simply put, the totality of the facts and the surrounding circumstances of the case are to be considered. Each case must be determined by its own facts and all the features of the relationship are to be considered.[46]

Applying the foregoing tests, we agree with the CA’s conclusion that Gramaje is not an independent job contractor, but a “labor-only” contractor.

First, Gramaje has no substantial capital or investment. The presumption is that a contractor is a labor-only contractor unless he overcomes the burden of proving that it has substantial capital, investment, tools, and the like. The employee should not be expected to prove the negative fact that the contractor does not have substantial capital, investment and tools to engage in job-contracting.[47]

Gramaje claimed that it has substantial capital of its own as well as investment in its office, equipment and tools. She pointed out that she furnished the plastic containers and carton boxes used in carrying out the function of packing the mattresses of Polyfoam. She added that she had placed in Polyfoam’s workplace ten (10) sealing machines, twenty (20) hand trucks, and two (2) forklifts to enable respondent and the other employees of Gramaje assigned at Polyfoam to perform their job. Finally, she explained that she had her own office with her own staff.[48] However, aside from her own bare statement, neither Gramaje nor Polyfoam presented evidence showing Gramaje’s ownership of the equipment and machineries used in the performance of the alleged contracted job. Considering that these machineries are found in Polyfoam’s premises, there can be no other logical conclusion but that the tools and equipment utilized by Gramaje and her “employees” are owned by Polyfoam. Neither did Polyfoam nor Gramaje show that the latter had clients other than the former. Since petitioners failed to adduce evidence that Gramaje had any substantial capital, investment or assets to perform the work contracted for, the presumption that Gramaje is a labor-only contractor stands.[49]

Second, Gramaje did not carry on an independent business or undertake the performance of its service contract

according to its own manner and method, free from the control and supervision of its principal, Polyfoam, its apparent role having been merely to recruit persons to work for Polyfoam.[50] It is undisputed that respondent had performed his task of packing Polyfoam's foam products in Polyfoam's premises. As to the recruitment of respondent, petitioners were able to establish only that respondent's application was referred to Gramaje, but that is all. Prior to his termination, respondent had been performing the same job in Polyfoam's business for almost six (6) years. He was even furnished a copy of Polyfoam's "Mga Alituntunin at Karampatang Parusa,"[51] which embodied Polyfoam's rules on attendance, the manner of performing the employee's duties, ethical standards, cleanliness, health, safety, peace and order. These rules carried with them the corresponding penalties in case of violation.

While it is true that petitioners submitted the Affidavit of Polyfoam's supervisor Victor Abadia, claiming that the latter did not exercise supervision over respondent because the latter was not Polyfoam's but Gramaje's employee, said Affidavit is insufficient to prove such claim. Petitioners should have presented the person who they claim to have exercised supervision over respondent and their alleged other employees assigned to Polyfoam. It was never established that Gramaje took entire charge, control and supervision of the work and service agreed upon. And as aptly observed by the CA, "it is likewise highly unusual and suspect as to the absence of a written contract specifying the performance of a specified service, the nature and extent of the service or work to be done and the term and duration of the relationship." [52]

An Employer-Employee Relationship Exists Between Respondent and Polyfoam

A finding that a contractor is a "labor-only" contractor, as opposed to permissible job contracting, is equivalent to declaring that there is an employer-employee relationship between the principal and the employees of the supposed contractor, and the "labor-only" contractor is considered as a mere agent of the principal, the real employer.[53] In this case, Polyfoam is the principal employer and Gramaje is the labor-only contractor. Polyfoam and Gramaje are, therefore, solidarily liable for the rightful claims of respondent.[54]

Respondent was Illegally Dismissed From Employment

Respondent stated that on January 14, 2000, his time card was suddenly taken off the rack. His supervisor later informed him that Polyfoam's management decided to dismiss him due to infraction of company rule. In short, respondent insisted that he was dismissed from employment without just or lawful cause and without due process. Polyfoam did not offer any explanation of such dismissal. It, instead, explained that respondent's real employer is Gramaje. Gramaje, on the other hand, denied the claim of illegal dismissal. She shifted the blame on respondent claiming that the latter in fact abandoned his work.

The LA gave credence to respondent's narration of the circumstances of the case. Said conclusion was affirmed by the CA. We find no reason to depart from such findings.

Abandonment cannot be inferred from the actuations of respondent. When he discovered that his time card was off the rack, he immediately inquired from his supervisor. He later sought the assistance of his counsel, who wrote a letter addressed to Polyfoam requesting that he be re-admitted to work. When said request was not acted upon, he filed the instant illegal dismissal case. These circumstances clearly negate the intention to abandon his work.

Petitioners failed to show any valid or authorized cause under the Labor Code which allowed it to terminate the services of respondent. Neither was it shown that respondent was given ample opportunity to contest the legality of his dismissal. No notice of termination was given to him. Clearly, respondent was not afforded due process.

Having failed to establish compliance with the requirements of termination of employment under the Labor Code, the dismissal of respondent was tainted with illegality.[55] Consequently, respondent is entitled to reinstatement without loss of seniority rights, and other privileges and to his full backwages inclusive of allowances and to his other benefits or their monetary equivalent computed from the time his compensation was withheld up to the time of his actual reinstatement. However, if reinstatement is no longer feasible as in this case, separation pay equivalent to one month salary for every year of service shall be awarded as an alternative.[56] Thus, the CA is correct in affirming the LA's award of separation pay with full backwages and other monetary benefits.

WHEREFORE, premises considered, the petition is hereby DENIED. The Court of Appeals Decision dated December 19, 2005 and Resolution dated April 25, 2006, in CA-G.R. SP No. 83696, are AFFIRMED.

SO ORDERED.

Abad, Villarama, Jr.,[**] Mendoza, and Perlas-Bernabe, JJ., concur.
Peralta, J., (Acting Chairperson).[*]

[*] Per Special Order No. 1228 dated June 6, 2012.

[**] Designated Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1229 dated June 6, 2012.

[1] Penned by Associate Justice Regalado E. Maambong, with Associate Justices Rodrigo V. Cosico and Lucenito N. Tagle, concurring; rollo, pp. 33-63.

[2] Id. at 65-66.

[3] Penned by Commissioner Vicente S.E. Veloso, with Presiding Commissioner Roy V. Señeres concurring; CA rollo, pp. 49-61.

[4] CA rollo, p. 66.

[5] Id. at 75.

[6] Id.

[7] Rollo, pp. 123-124.

[8] Id. at 75.

[9] Id. at 70-73.

[10] Id. at 91-96.

[11] Id. at 91.

[12] Id. at 115-116.

[13] Id. at 119-128.

[14] Id. at 126.

[15] Id. at 163-170; Note that Precilla Gramaje filed the Motion for Intervention, but the named intervenor in the Position Paper is P.A. Gramaje Employment Services.

[16] CA rollo, p. 166.

- [17] Rollo, p. 136.
- [18] Id. at 130-131.
- [19] Id. at 132-133.
- [20] Id. at 183.
- [21] Id. at 179.
- [22] Id. at 180.
- [23] Id. at 181-182.
- [24] Id. at 182.
- [25] Supra note 1.
- [26] Rollo, pp. 62-63.
- [27] Id. at 51-52.
- [28] Id. at 53.
- [29] Id. at 54.
- [30] Id.
- [31] Id.
- [32] Id. at 56.
- [33] Id.
- [34] Id. at 57.
- [35] Id. at 58.
- [36] Id.
- [37] Id.
- [38] Id. at 60.
- [39] Id. at 61-62.
- [40] Id. at 14-15.
- [41] G.R. No. 176240, October 17, 2008, 569 SCRA 670.
- [42] Sasan, Sr. v. National Labor Relations Commission 4th Division, supra, at 689-690. (Citations omitted.)
- [43] San Miguel Corporation v. Aballa, G.R. No. 149011, June 28, 2005, 461 SCRA 392, 421.
- [44] G.R. No. 164257, July 5, 2010, 623 SCRA 114.
- [45] San Miguel Corporation v. Semillano, supra, at 124; Sasan, Sr. v. National Labor Relations Commission 4th Division, supra note 41, at 691.
- [46] Sasan, Sr. v. National Labor Relations Commission 4th Division, supra note 41, at 691.

[47] 7K Corporation v. National Labor Relations Commission, G.R. No. 148490, November 22, 2006, 507 SCRA 509, 523.

[48] CA rollo, p. 211.

[49] 7K Corporation v. National Labor Relations Commission, *supra* note 47.

[50] See: San Miguel Corporation v. Aballa, *supra* note 43, at 425.

[51] CA rollo, pp. 186-191.

[52] Rollo, p. 58.

[53] Aklan v. San Miguel Corporation, G.R. No. 168537, December 11, 2008, 573 SCRA 675, 685.

[54] 7K Corporation v. National Labor Relations Commission, *supra* note 47.

[55] See Iligan Cement Corporation v. ILIASCOR Employees and Workers Union-Southern Philippines Federation of Labor (IEWU-SPFL), G.R. No. 158956, April 24, 2009, 586 SCRA 449, 468.

[56] Big AA Manufacturer v. Antonio, G.R. No. 160854, March 3, 2006, 484 SCRA 33, 46.

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