JEROMIE D. ESCASINAS AND EVAN RIGOR SINGCO, PETITIONERS, VS. SHANGRI-LA’S MACTAN ISLAND RESORT AND DR. JESSICA J.R. PEPITO, RESPONDENTS.

G.R. No. 178827. March 04, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Registered nurses Jeromie D. Escasinas and Evan Rigor Singco (petitioners) were engaged in 1999 and 1996, respectively, by Dr. Jessica Joyce R. Pepito (respondent doctor) to work in her clinic at respondent Shangri-la's Mactan Island Resort (Shangri-la) in Cebu of which she was a retained physician.

In late 2002, petitioners filed with the National Labor Relations Commission (NLRC) Regional Arbitration Branch No. VII (NLRC-RAB No. VII) a complaint[1]for regularization, underpayment of wages, non-payment of holiday pay, night shift differential and 13[th] month pay differential against respondents, claiming that they are regular employees of Shangri-la. The case was docketed as RAB Case No. 07-11-2089-02.

Shangri-la claimed, however, that petitioners were not its employees but of respondent doctor whom it retained via Memorandum of Agreement (MOA)[2] pursuant to Article 157 of the Labor Code, as amended.

Respondent doctor for her part claimed that petitioners were already working for the previous retained physicians of Shangri-la before she was retained by Shangri-la; and that she maintained petitioners' services upon their request.

By Decision[3] of May 6, 2003, Labor Arbiter Ernesto F. Carreon declared petitioners to be regular employees of Shangri-la. The Arbiter thus ordered Shangri-la to grant them the wages and benefits due them as regular employees from the time their services were engaged.

In finding petitioners to be regular employees of Shangri-la, the Arbiter noted that they usually perform work which is necessary and desirable to Shangri-la's business; that they observe clinic hours and render services only to Shangri-la's guests and employees; that payment for their salaries were recommended to Shangri-la's Human Resource Department (HRD); that respondent doctor was Shangri-la's "in-house" physician, hence, also an employee; and that the MOA between Shangri-la and respondent doctor was an "insidious mechanism in order to circumvent [the doctor's] tenurial security and that of the employees under her."

Shangri-la and respondent doctor appealed to the NLRC. Petitioners appealed too, but only with respect to the non-award to them of some of the benefits they were claiming.

By Decision[4] dated March 31, 2005, the NLRC granted Shangri-la's and respondent doctor's appeal and dismissed petitioners' complaint for lack of merit, it finding that no employer-employee relationship exists between petitioner and Shangri-la. In so deciding, the NLRC held that the Arbiter erred in interpreting Article 157 in relation to Article 280 of the Labor Code, as what is required under Article 157 is that the employer should provide the services of medical personnel to its employees, but nowhere in said article is a provision that nurses

are required to be employed; that contrary to the finding of the Arbiter, even if Article 280 states that if a worker performs work usually necessary or desirable in the business of the employer, he cannot be automatically deemed a regular employee; and that the MOA amply shows that respondent doctor was in fact engaged by Shangri-la on a retainer basis, under which she could hire her own nurses and other clinic personnel.

Brushing aside petitioners' contention that since their application for employment was addressed to Shangri-la, it was really Shangri-la which hired them and not respondent doctor, the NLRC noted that the applications for employment were made by persons who are not parties to the case and were not shown to have been actually hired by Shangri-la.

On the issue of payment of wages, the NLRC held that the fact that, for some months, payment of petitioners' wages were recommended by Shangri-la's HRD did not prove that it was Shangri-la which pays their wages. It thus credited respondent doctor's explanation that the recommendations for payment were based on the billings she prepared for salaries of additional nurses during Shangri-la's peak months of operation, in accordance with the retainership agreement, the guests' payments for medical services having been paid directly to Shanrgi-la.

Petitioners thereupon brought the case to the Court of Appeals which, by Decision[5]of May 22, 2007, affirmed the NLRC Decision that no employer-employee relationship exists between Shangri-la and petitioners. The appellate court concluded that all aspects of the employment of petitioners being under the supervision and control of respondent doctor and since Shangri-la is not principally engaged in the business of providing medical or healthcare services, petitioners could not be regarded as regular employees of Shangri-la.

Petitioners' motion for reconsideration having been denied by Resolution[6] of July 10, 2007, they interposed the present recourse.

Petitioners insist that under Article 157 of the Labor Code, Shangri-la is required to hire a full-time registered nurse, apart from a physician, hence, their engagement should be deemed as regular employment, the provisions of the MOA notwithstanding; and that the MOA is contrary to public policy as it circumvents tenurial security and, therefore, should be struck down as being void ab initio. At most, they argue, the MOA is a mere job contract.

And petitioners maintain that respondent doctor is a labor-only contractor for she has no license or business permit and no business name registration, which is contrary to the requirements under Sec. 19 and 20 of the Implementing Rules and Regulations of the Labor Code on sub-contracting.

Petitioners add that respondent doctor cannot be a legitimate independent contractor, lacking as she does in substantial capital, the clinic having been set-up and already operational when she took over as retained physician; that respondent doctor has no control over how the clinic is being run, as shown by the different orders issued by officers of Shangri-la forbidding her from receiving cash payments and several purchase orders for medicines and supplies which were coursed thru Shangri-la's Purchasing Manager, circumstances indubitably showing that she is not an independent contractor but a mere agent of Shangri-la.

In its Comment,[7] Shangri-la questions the Special Powers of Attorneys (SPAs) appended to the petition for being inadequate. On the merits, it prays for the disallowance of the petition, contending that it raises factual issues, such as the validity of the MOA, which were never raised during the proceedings before the Arbiter, albeit passed upon by him in his Decision; that Article 157 of the Labor Code does not make it mandatory for a covered establishment to employ health personnel; that the services of nurses is not germane nor indispensable to its operations; and that respondent doctor is a legitimate individual independent contractor who has the power to hire, fire and supervise the work of the nurses under her.

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The resolution of the case hinges, in the main, on the correct interpretation of Art. 157 vis a vis Art. 280 and the provisions on permissible job contracting of the Labor Code, as amended.

The Court holds that, contrary to petitioners' postulation, Art. 157 does not require the engagement of full-time nurses as regular employees of a company employing not less than 50 workers. Thus, the Article provides:

> ART. 157. Emergency medical and dental services. - It shall be the duty of every employer to furnish his employees in any locality with free medical and dental attendance and facilities consisting of:
>
> (a)
>
> The services of a full-time registered nurse when the number of employees exceeds fifty (50) but not more than two hundred (200) except when the employer does not maintain hazardous workplaces, in which case the services of a graduate first-aider shall be provided for the protection of the workers, where no registered nurse is available. The Secretary of Labor shall provide by appropriate regulations the services that shall be required where the number of employees does not exceed fifty (50) and shall determine by appropriate order hazardous workplaces for purposes of this Article;
>
> (b)
>
> The services of a full-time registered nurse, a part-time physician and dentist, and an emergency clinic, when the number of employees exceeds two hundred (200) but not more than three hundred (300); and
>
> (c)
>
> The services of a full-time physician, dentist and full-time registered nurse as well as a dental clinic, and an infirmary or emergency hospital with one bed capacity for every one hundred (100) employees when the number of employees exceeds three hundred (300).

In cases of hazardous workplaces, no employer shall engage the services of a physician or dentist who cannot stay in the premises of the establishment for at least two (2) hours, in the case of those engaged on part-time basis, and not less than eight (8) hours in the case of those employed on full-time basis. Where the undertaking is nonhazardous in nature, the physician and dentist may be engaged on retained basis, subject to such regulations as the Secretary of Labor may prescribe to insure immediate availability of medical and dental treatment and attendance in case of emergency. (Emphasis and underscoring supplied)

Under the foregoing provision, Shangri-la, which employs more than 200 workers, is mandated to "furnish" its employees with the services of a full-time registered nurse, a part-time physician and dentist, and an emergency clinic which means that it should provide or make available such medical and allied services to its employees, not necessarily to hire or employ a service provider. As held in Philippine Global Communications vs. De Vera:[8]

> x x x while it is true that the provision requires employers to engage the services of medical practitioners in certain establishments depending on the number of their employees, nothing is there in the law which says that medical practitioners so engaged be actually hired as employees, adding that the law, as written, only requires the employer "to retain", not employ, a part-time physician who needed to stay in the premises of the non-hazardous workplace for two (2) hours. (Emphasis and underscoring supplied)

The term "full-time" in Art. 157 cannot be construed as referring to the type of employment of the person engaged to provide the services, for Article 157 must not be read alongside Art. 280[9] in order to vest employer-employee relationship on the employer and the person so engaged. So De Vera teaches:

> x x x For, we take it that any agreement may provide that one party shall render services for and in behalf of another, no matter how necessary for the latter's business, even without being hired as an employee. This set-up is precisely true in the case of an independent contractorship as well as in an agency agreement. Indeed,

> Article 280 of the Labor Code, quoted by the appellate court, is not the yardstick for determining the existence of an employment relationship. As it is, the provision merely distinguishes between two (2) kinds of employees, i.e., regular and casual. x x x[10] (Emphasis and underscoring supplied)

The phrase "services of a full-time registered nurse" should thus be taken to refer to the kind of services that the nurse will render in the company's premises and to its employees, not the manner of his engagement.

As to whether respondent doctor can be considered a legitimate independent contractor, the pertinent sections of DOLE Department Order No. 10, series of 1997, illuminate:

> Sec. 8. Job contracting. - There is job contracting permissible under the Code if the following conditions are met:
>
> (1) 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 as to the results thereof; and
>
> (2) The contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business.
>
> Sec. 9. Labor-only contracting. - (a) Any person who undertakes to supply workers to an employer shall be deemed to be engaged in labor-only contracting where such person:
>
> (1) Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and
>
> (2) The workers recruited and placed by such persons are performing activities which are directly related to the principal business or operations of the employer in which workers are habitually employed.
>
> (b) Labor-only contracting as defined herein is hereby prohibited and the person acting as contractor shall be considered merely as an agent or intermediary 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.
>
> (c) For cases not falling under this Article, the Secretary of Labor shall determine through appropriate orders whether or not the contracting out of labor is permissible in the light of the circumstances of each case and after considering the operating needs of the employer and the rights of the workers involved. In such case, he may prescribe conditions and restrictions to insure the protection and welfare of the workers. (Emphasis supplied)

The existence of an independent and permissible contractor relationship is generally established by considering the following determinants: whether 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.[11]

On the other hand, existence of an employer- employee relationship is established by the presence of the following determinants: (1) the selection and engagement of the workers; (2) power of dismissal; (3) the payment of wages by whatever means; and (4) the power to control the worker's conduct, with the latter assuming primacy in the overall consideration.[12]

Against the above-listed determinants, the Court holds that respondent doctor is a legitimate independent contractor. That Shangri-la provides the clinic premises and medical supplies for use of its employees and guests

does not necessarily prove that respondent doctor lacks substantial capital and investment. Besides, the maintenance of a clinic and provision of medical services to its employees is required under Art. 157, which are not directly related to Shangri-la's principal business - operation of hotels and restaurants.

As to payment of wages, respondent doctor is the one who underwrites the following: salaries, SSS contributions and other benefits of the staff[13]; group life, group personal accident insurance and life/death insurance[14] for the staff with minimum benefit payable at 12 times the employee's last drawn salary, as well as value added taxes and withholding taxes, sourced from her P60,000.00 monthly retainer fee and 70% share of the service charges from Shangri-la's guests who avail of the clinic services. It is unlikely that respondent doctor would report petitioners as workers, pay their SSS premium as well as their wages if they were not indeed her employees.[15]

With respect to the supervision and control of the nurses and clinic staff, it is not disputed that a document, "Clinic Policies and Employee Manual"[16]claimed to have been prepared by respondent doctor exists, to which petitioners gave their conformity[17] and in which they acknowledged their co-terminus employment status. It is thus presumed that said document, and not the employee manual being followed by Shangri-la's regular workers, governs how they perform their respective tasks and responsibilities.

Contrary to petitioners' contention, the various office directives issued by Shangri-la's officers do not imply that it is Shangri-la's management and not respondent doctor who exercises control over them or that Shangri-la has control over how the doctor and the nurses perform their work. The letter[18] addressed to respondent doctor dated February 7, 2003 from a certain Tata L. Reyes giving instructions regarding the replenishment of emergency kits is, at most, administrative in nature, related as it is to safety matters; while the letter[19] dated May 17, 2004 from Shangri-la's Assistant Financial Controller, Lotlot Dagat, forbidding the clinic from receiving cash payments from the resort's guests is a matter of financial policy in order to ensure proper sharing of the proceeds, considering that Shangri-la and respondent doctor share in the guests' payments for medical services rendered. In fine, as Shangri-la does not control how the work should be performed by petitioners, it is not petitioners' employer.

WHEREFORE, the petition is hereby DENIED. The Decision of the Court of Appeals dated May 22, 2007 and the Resolution dated July 10, 2007 are AFFIRMED.

SO ORDERED.

Quisumbing, (Chairperson), Nachura[*], Brion, and Peralta[**], JJ., concur.

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* Additional member per Special Order No. 571 dated February 12, 2009 in lieu of Justice Dante O. Tinga who is on official leave.

** Additional member per Special Order No. 572 dated February 12, 2009 in lieu of Justice Presbitero J. Velasco, Jr. who is on official leave.

[1]Records, pp. 1-2.

[2] Id. at 44-49.

[3] Id. at. 221-227.

[4]Rollo, pp. 73-82. Penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Oscar S. Uy and Aurelio D. Menzon.

[5]CA rollo, pp. 262-269. Penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices

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[6] Id. at 63.

[7] Rollo, pp. 181-235.

[8] G.R. No. 157214, June 7, 2005, 459 SCRA 260, 275.

[9] Art. 280. The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreements of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform in the usual business or trade of the employer, except where the 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 services to be performed is seasonal in nature and the employment is for the duration of the season.'

> `An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one (1) year of service, whether such is continuous or broken, shall be considered a regular with respect to the activity in which he is employed and his employment shall continue while such activity exists.

[10] Supra note at 274.

[11] DOLE Philippines, Inc. v. Esteva, et al., G.R. No. 161115, November 30, 2006, 509 SCRA 332, 376.

[12] Corporal v. NLRC, G.R. No. 129315, October 2, 2000, 341 SCRA 658, 666.

[13] Vide SSS Employment Report and Salary/Calamity/Educational/Emergency Loan Collection List, records, pp. 214-219.

[14] Vide various Statements of Account re healthcare and insurance, records, pp. 67-71.

[15] Corporal v. NLRC, supra at 668.

[16] Records, pp. 50-59.

[17] Id. at 60-61.

[18] CA rollo, p. 71.

[19] Id. at 72.

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