

RAMY GALLEGO, PETITIONER, VS. BAYER PHILIPPINES, INC., DANPIN GUILLERMO, PRODUCT IMAGE MARKETING, INC., AND EDGARDO BERGONIA, RESPONDENTS.

G.R. NO. 179807. July 31, 2009

Ponente: CARPIO MORALES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-179807/>

CARPIO MORALES, J.:

Ramy Gallego (petitioner) was contracted in April 1992 by Bayer Philippines, Inc. (BAYER) as crop protection technician to promote and market BAYER products.[1] Under the supervision of Aristeo Filipino, BAYER sales representative for Panay Island, petitioner made farm visits to different municipalities in Panay Island to convince farmers to buy BAYER products.[2]

In 1996, petitioner's employment with BAYER came to a halt, prompting him to seek employment with another company. BAYER eventually reemployed petitioner, however, in 1997 through Product Image and Marketing Services, Inc. (PRODUCT IMAGE) of which respondent Edgardo Bergonia (Bergonia) was the President and General Manager, performing the same task as that of crop protection technician - promoting BAYER products to farmers and dealers in Panay Island - solely for the benefit of BAYER.[3]

By petitioner's claim, in October, 2001, he was directed by Pet Pascual, the newly assigned BAYER sales representative, to submit a resignation letter, but he refused; and that in January, 2002, he was summoned by his immediate supervisors including respondent Danpin Guillermo (Guillermo), BAYER District Sales Manager for Panay, and was ordered to quit his employment which called for him to return all pieces of service equipment issued to him, but that again he refused.[4]

Still by petitioner's claim, he continued performing his duties and receiving compensation until the end of January, 2002; that on April 7, 2002, he received a memorandum that his area of responsibility would be transferred to Luzon, of which memorandum he sought reconsideration but to no avail; and that Guillermo and Bergonia spread rumors that reached the dealers in Antique to the effect that he was not anymore connected with BAYER and any transaction with him would no longer be honored as of April 30, 2002.[5]

Believing that his employment was terminated, petitioner lodged on June 6, 2002 a complaint for illegal dismissal with the National Labor Relations Commission (NLRC) against herein respondents Bayer, Guillermo, Product Image, and Bergonia, with claims for reinstatement, backwages and/or separation pay, unpaid wages, holiday pay, premium pay, service incentive leave and allowances, damages and attorney's fees.[6]

Respondents BAYER and Guillermo denied the existence of an employer-employee relationship between BAYER and petitioner, explaining that petitioner's work at BAYER was simply occasioned by the Contract of Promotional Services that BAYER had executed with PRODUCT IMAGE whereby PRODUCT IMAGE was to promote and market BAYER products on its (PRODUCT IMAGE) own account and in its own manner and method. They added that as an independent contractor, PRODUCT IMAGE retained the exclusive power of control over petitioner as it assigned full-time supervisors to exercise control and supervision over its employees

assigned at BAYER.[7]

Respondents PRODUCT IMAGE and Bergonia, on the other hand, admitted that petitioner was hired as an employee of PRODUCT IMAGE on April 7, 1997 on a contractual basis to promote and market BAYER products pursuant to the Contract of Promotional Services forged between it and BAYER. They alleged that petitioner was a field worker who had no fixed hours and worked under minimal supervision, his performance being gauged only by his accomplishment reports duly certified to by BAYER acting as his de facto supervisor;[8] that petitioner was originally assigned to Iloilo but later transferred to Antique; that petitioner was not dismissed, but went on official leave from January 23 to 31, 2002, and stopped reporting for work thereafter; and that petitioner was supposed to have been reassigned to South Luzon effective March 15, 2002 in accordance with a personnel reorganization program, but he likewise failed to report to his new work station.[9]

By Decision of May 6, 2004,[10] the Labor Arbiter declared respondents guilty of illegal dismissal, disposing as follows:

WHEREFORE, judgment is rendered declaring respondents, Bayer Phil. Inc./Danpin Guillermo and Product Image Marketing Services, Inc./Edgardo Begornia [sic] guilty of Illegal Dismissal and is hereby ORDERED to Reinstate complainant to his former or equivalent position ten (10) days from receipt hereof and to immediately pay complainant upon receipt of this decision the following:

Backwages

Php

228,000.00

13th Month Pay

Php

19,000.00

Holiday Pay

Php

9,500.00

Service Incentive Leave Pay

Php

4,750.00

Attorney's Fees

Php

26,125.00

Total:

Php 287,375.00

In so deciding, the Labor Arbiter found, among other things, that there was an employer-employee relationship between BAYER and petitioner since BAYER furnished petitioner the needed facilities and paraphernalia, and fixed the methodology to be used in the performance of his work.

On appeal by respondents, the NLRC reversed the Decision of the Labor Arbiter and dismissed petitioner's complaint by Decision of February 22, 2006,[11] holding that as an independent contractor, PRODUCT IMAGE was the employer of petitioner but there was no evidence that petitioner was dismissed by either PRODUCT IMAGE or BAYER. Sustaining PRODUCT IMAGE's claim of abandonment, it held that an employee is deemed to have abandoned his job if he failed to report for work after the expiration of a duly approved leave of absence or if, after being transferred to a new assignment, he did not report for work anymore.

Petitioner's Motion for Reconsideration having been denied by Resolution of May 25, 2006,[12] he appealed to the Court of Appeals via Certiorari.[13]

By Resolution of September 25, 2006, the appellate court dismissed petitioner's petition for failure to attach to it the complaint and the parties' respective position papers filed with the Labor Arbiter.[14] His Motion for Reconsideration having been denied by Resolution of August 14, 2007,[15] petitioner comes before this Court via the present Petition for Review on Certiorari.

Petitioner argues that the appellate court erred in dismissing his petition outright considering that it had previously allowed subsequent submission of required documents not attached to a petition for certiorari; and that he attached the required pleadings to his Motion for Reconsideration with the appellate court. Moreover, he contends that respondents failed to discharge the burden of proving the validity of his dismissal in order to overturn the finding of the Labor Arbiter that he was illegally dismissed.[16]

BAYER and Guillermo counter that petitioner raised factual issues in his petition before the appellate court which are not reviewable by certiorari; that petitioner's failure to attach the required pleadings to his petition before the appellate court, coupled with his failure to offer any justification therefor, provides no occasion for a liberal application of the rules in his favor; that petitioner has no cause of action against them as his employer is PRODUCT IMAGE; and that assuming that petitioner is entitled to his money claims, the same should be enforced against the performance bond posted by PRODUCT IMAGE to cover the claims of its employees assigned at BAYER.[17]

PRODUCT IMAGE and Bergonia postulate in their Comment that the appellate court's outright dismissal of petitioner's appeal was proper in view of, among other things, the summary nature of proceedings in labor cases. They also contend that petitioner's present petition suffers from the following infirmities: (1) it does not contain an affidavit of service; (2) it is not accompanied by petitioner's Petition for Certiorari before the appellate court; (3) it does not specify the errors of law allegedly committed by the appellate court; (4) it is not accompanied by proof of service upon the adverse party of a copy of the payment of docket fees; (5) it raises questions of fact; and (6) it impleads the NLRC and imputes grave abuse of discretion to the appellate court, thereby implying that the petition is likewise made under Rule 65 of the Rules of Court. Lastly, they maintain that petitioner was not dismissed as he actually abandoned his job.[18]

The Court shall first resolve the procedural issues.

Only errors of law are generally reviewed by this Court in petitions for review on certiorari of the appellate court's decisions,[19] and the question of whether an employer-employee relationship exists in a given case is essentially a question of fact.[20] Be that as it may, when, as here, the findings of the NLRC contradict those of the Labor Arbiter, this Court, in the exercise of its equity jurisdiction, may look into the records of the case and reexamine the questioned findings.[21]

Respecting the appellate court's dismissal of petitioner's Petition for Certiorari for his failure to attach thereto the relevant pleadings filed with the Labor Arbiter, the requirement to attach the same under Section 1, Rule 65[22] is

considered vis a vis Section 3, Rule 46[23] which states that the failure of the petitioner to comply with any of the documentary requirements, such as the attachment of relevant pleadings, "shall be sufficient ground for the dismissal of the petition." By and large, the outright dismissal of a petition for failure to comply with said requirement cannot be assailed as constituting either grave abuse of discretion or reversible error of law.[24]

The Court, however, is inclined to, as it does, overlook petitioner's failure to attach the subject relevant pleadings to his Petition for Certiorari before the appellate court in view of the serious matters dealt with in this case. That brings the Court to consider the substantial merits of the case, thus rendering it unnecessary to still discuss the other procedural matters raised by respondents.

In the main, the substantive issues are: whether PRODUCT IMAGE is a labor-only contractor and BAYER should be deemed petitioner's principal employer; and whether petitioner was illegally dismissed from his employment.

Permissible job contracting or subcontracting refers to an arrangement whereby a principal agrees to farm out with a contractor or subcontractor the performance 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.[25] Under this arrangement, the following conditions must be met: (a) the contractor carries on a distinct and independent business and undertakes the contract work on his 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 his work except as to the results thereof; (b) the contractor 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 welfare benefits.[26]

In distinguishing between permissible job contracting and prohibited labor-only contracting,[27]the totality of the facts and the surrounding circumstances of the case are to be considered,[28] each case to be determined by its own facts, and all the features of the relationship assessed.[29]

In the case at bar, the Court finds substantial evidence to support the finding of the NLRC that PRODUCT IMAGE is a legitimate job contractor.

The Court notes that PRODUCT IMAGE was issued by the Department of Labor and Employment (DOLE) Certificate of Registration Numbered NCR-8-0602-176 reading:

CERTIFICATE OF REGISTRATION

Numbered NCR-8-0602-176

issued to

Mr. Edgardo V. Bergonia

President

PRODUCT IMAGE & MARKETING SERVICES, INC.

Unit 5& 6 GF J & L Bldg., 251 EDSA Greenhills,

Mandaluyong City

for having complied with the requirements as provided for under the Labor Code, as amended, and its implementing Rules and having paid the registration fee in the amount of ONE HUNDRED (P100) PESOS per Official Receipt Number 6530485Y, dated 21 June 2002.[30]

The DOLE certificate having been issued by a public officer, it carries with it the presumption that it was issued in the regular performance of official duty.[31] Petitioner's bare assertions fail to rebut this presumption. Further, since the DOLE is the agency primarily responsible for regulating the business of independent job contractors, the

Court can presume, in the absence of evidence to the contrary, that it had thoroughly evaluated the requirements submitted by PRODUCT IMAGE before issuing the Certificate of Registration.

Independently of the DOLE's Certification, among the circumstances that establish the status of PRODUCT IMAGE as a legitimate job contractor are: (1) PRODUCT IMAGE had, during the period in question, a contract with BAYER for the promotion and marketing of BAYER products;^[32] (2) PRODUCT IMAGE has an independent business and provides services nationwide to big companies such as Ajinomoto Philippines and Procter and Gamble Corporation;^[33] and (3) PRODUCT IMAGE's total assets from 1998 to 2000 amounted to P405,639, P559,897, and P644,728, respectively.^[34] PRODUCT IMAGE also posted a bond in the amount of P100,000 to answer for any claim of its employees for unpaid wages and other benefits that may arise out of the implementation of its contract with BAYER.^[35]

PRODUCT IMAGE cannot thus be considered a labor-only contractor.

The existence of an employer-employee relationship is determined on the basis of four standards, namely: (a) the manner of selection and engagement of the putative employee; (b) the mode of payment of wages; (c) the presence or absence of power of dismissal; and (d) the presence or absence of control of the putative employee's conduct. Most determinative among these factors is the so-called "control test."^[36]

The presence of the first requisite which refers to selection and engagement is evidenced by a document entitled Job Offer, whereby PRODUCT IMAGE offered to hire petitioner as crop protection technician effective April 7, 1997, which offer petitioner accepted.^[37]

On the second requisite regarding the payment of wages, it was PRODUCT IMAGE that paid the wages and other benefits of petitioner, pursuant to the stipulation in the contract between PRODUCT IMAGE and BAYER that BAYER shall pay PRODUCT IMAGE an amount based on services actually rendered without regard to the number of personnel employed by PRODUCT IMAGE; and that PRODUCT IMAGE shall faithfully comply with the provisions of the Labor Code and hold BAYER free and harmless from any claim of its employees arising from the contract.^[38]

As to the third requisite which relates to the power of dismissal, and the fourth requisite which relates to the power of control, both powers are vested in PRODUCT IMAGE. The Contract of Promotional Services provides that PRODUCT IMAGE shall have the power to discipline its employees assigned at BAYER, such that no control whatsoever shall be exercised by BAYER over those personnel on the manner and method by which they perform their duties,^[39] and that all directives, complaints, or observations of BAYER relating to the performance of the employees of PRODUCT IMAGE shall be addressed to the latter.^[40]

If at all, the only control measure retained by BAYER over petitioner was to act as his de facto supervisor in certifying to the veracity of the accomplishment reports he submitted to PRODUCT IMAGE. This is by no means the kind of control that establishes an employer-employee relationship as it pertains only to the results and not the manner and method of doing the work. It would be a rare contract of service that gives untrammelled freedom to the party hired and eschews any intervention whatsoever in his performance of the engagement.^[41] Surely, it would be foolhardy for any company to completely give the reins and totally ignore the operations it has contracted out.^[42]

In fine, PRODUCT IMAGE is ineluctably the employer of petitioner.

Respecting the issue of illegal dismissal, the Court appreciates no evidence that petitioner was dismissed. What it finds is that petitioner unilaterally stopped reporting for work before filing a complaint for illegal dismissal, based on his belief that Guillermo and Bergonia had spread rumors that his transactions on behalf of BAYER would no

longer be honored as of April 30, 2002. This belief remains just that - it is unsubstantiated. While in cases of illegal dismissal, the employer bears the burden of proving that the dismissal is for a valid or authorized cause, the employee must first establish by substantial evidence the fact of dismissal.[43]

WHEREFORE, the petition is, in light of the foregoing, DENIED.

SO ORDERED.

Quisumbing, (Chairperson), Chico-Nazario,[*] Leonardo-De Castro,**] and Peralta,***] JJ., concur.

[*] Additional member per Special Order No. 658.

[**] Additional member per Special Order No. 635.

[***] Additional member per Special Order No. 664.

[1] NLRC records, p. 42.

[2] Id. at 42-43.

[3] Ibid.

[4] Id. at 44-45.

[5] Ibid.

[6] Id. at 1.

[7] Vide Position Paper for BAYER and Mr. Guillermo, id. at 51-88.

[8] Vide Position Paper for PRODUCT IMAGE and Mr. Bergonia, id. at 315-326.

[9] Ibid.

[10] Id. at 459-468.

[11] Id. at 717-721.

[12] Id. at 769.

[13] CA rollo, pp. 3-11.

[14] Id. at 43.

[15] Id. at 249-251.

[16] Vide Petition for Review, rollo, pp. 4-17.

[17] Vide Comment of BAYER and Mr. Guillermo, id. at 135-182.

[18] Vide Comment of PRODUCT IMAGE and Mr. Bergonia, id. at 369-380.

[19] Mitsubishi Motors Philippines Corporation v. Chrysler Philippines Labor Union, G.R. No. 148738, June 29, 2004, 433 SCRA 206, 217.

[20] Manila Water Company, Inc. v. Pena, G.R. No. 158255, July 8, 2004, 434 SCRA 53, 58.

[21] Diamond Motors Corporation v. Court of Appeals, 462 Phil. 452, 458 (2003).

[22] SECTION 1. Petition for certiorari. -- When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of [its or his] jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

[23] SEC. 3. Contents and filing of petition; effect of non-compliance with requirements. -- The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.

It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or by his duly-authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original.

x x x x

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

[24] Vide *Philippine Agila Satellite Inc. v. Trinidad-Lichauco*, G.R. No. 142362, May 3, 2006, 489 SCRA 22, 34.

[25] *Acevedo v. Advanstar Company, Inc.*, G.R. No. 157656, November 11, 2005, 474 SCRA 656, 667.

[26] Vide *Purefoods Corporation v. National Labor Relations Commission*, G.R. No. 172241, November 20, 2008.

[27] In legitimate job contracting, the law creates an employer-employee relationship for a limited purpose, i.e., to ensure that the employees are paid their wages. The principal employer becomes jointly and severally liable with the job contractor only for the payment of the employees' wages whenever the contractor fails to pay the same. Other than that, the principal employer is not responsible for any claim made by the employees.

On the other hand, in labor-only contracting, the statute creates an employer-employee relationship for a comprehensive purpose: to prevent a circumvention of labor laws. The contractor is considered merely an agent of the principal employer and the latter is responsible to the employees of the labor-only contractor as if such employees had been directly employed by the principal employer. The principal employer therefore becomes solidarity liable with the labor-only contractor for all the rightful claims of the employees. [*San Miguel Corporation v. MAERC Integrated Services, Inc.*, 453 Phil. 543, 566-567 (2003)]

- [28] Sasan, Sr., et. al. v. National Labor Relations Commission, G.R. No. 176240, October 17, 2008.
- [29] Encyclopaedia Britannica (Phils.), Inc. v. National Labor Relations Commission, 332 Phil. 1, 9 (1996).
- [30] Rollo, p. 244.
- [31] Vide Rules of Court, Rule 131 Section 3(m).
- [32] NLRC Records, pp. 116-122.
- [33] Id. at 53-54.
- [34] Id. at 96-113.
- [35] Id. at 123-124.
- [36] De los Santos v. National Labor Relations Commission, 423 Phil. 1020, 1029 (2001).
- [37] NLRC Records, p. 362.
- [38] Id. at 117.
- [39] Ibid.
- [40] Ibid.
- [41] Insular Life Assurance Co., Ltd. v. NLRC, G.R. No. 84484, November 15, 1989, 179 SCRA 459, 464-465.
- [42] Purefoods Corporation v. National Labor Relations Commission, *supra* note 26.
- [43] Vide Ledesma, Jr. v. National Labor Relations Commission, G.R. No. 174585, October 19, 2007, 537 SCRA 358, 370.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.