

COCA-COLA BOTTLERS PHILIPPINES, INC., PETITIONER, VS. RICKY E. DELA CRUZ, ROLANDO M. GUASIS, MANNY C. PUGAL, RONNIE L. HERMO, ROLANDO C. SOMERO, JR., DIBSON D. DIOCARES, AND IAN...

G.R. No. 184977. December 07, 2009

Ponente: BRION, J.

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BRION, J.:

The present petition for review on certiorari[1] challenges the decision[2] and resolution[3] of the Court of Appeals (CA) rendered on August 29, 2008 and October 13, 2008, respectively, in CA-G.R. SP No. 102988.

THE ANTECEDENTS

Respondents Ricky E. Dela Cruz, Rolando M. Guasis, Manny C. Pugal, Ronnie L. Hermo, Rolando C. Somero, Jr., Dibson D. Diocares, and Ian Ichapare (respondents) filed in July 2000 two separate complaints[4] for regularization with money claims against Coca-Cola Bottlers Philippines, Inc., (petitioner or the company). The complaints were consolidated and subsequently amended to implead Peerless Integrated Service, Inc. (Peerless) as a party-respondent.

Before the Labor Arbiter, the respondents alleged that they are route helpers assigned to work in the petitioner's trucks. They go from the Coca-Cola sales offices or plants to customer outlets such as sari-sari stores, restaurants, groceries, supermarkets and similar establishments; they were hired either directly by the petitioner or by its contractors, but they do not enjoy the full remuneration, benefits and privileges granted to the petitioner's regular sales force. They argued that the services they render are necessary and desirable in the regular business of the petitioner.[5]

In defense, the petitioner contended that it entered into contracts of services with Peerless[6] and Excellent Partners Cooperative, Inc. (Excellent)[7] to provide allied services; under these contracts, Peerless and Excellent retained the right to select, hire, dismiss, supervise, control and discipline and pay the salaries of all personnel they assign to the petitioner; in return for these services, Peerless and Excellent were paid a stipulated fee. The petitioner posited that there is no employer-employee relationship between the company and the respondents and the complaints should be dismissed for lack of jurisdiction on the part of the National Labor Relations Commission (NLRC). Peerless did not file a position paper, although nothing on record indicates that it was ever notified of the amended complaint.

In reply, the respondents countered that they worked under the control and supervision of the company's supervisors who prepared their work schedules and assignments. Peerless and Excellent, too, did not have sufficient capital or investment to provide services to the petitioner. The respondents thus argued that the petitioner's contracts of services with Peerless and Excellent are in the nature of "labor-only" contracts prohibited by law.[8]

In rebuttal, the petitioner belied the respondents' submission that their jobs are usually necessary and desirable in

its main business. It claimed that its main business is softdrinks manufacturing and the respondents' tasks of handling, loading and unloading of the manufactured softdrinks are not part of the manufacturing process. It stressed that its only interest in the respondents is in the result of their work, and left to them the means and the methods of achieving this result. It thus argued that there is no basis for the respondents' claim that without them, there would be over-production in the company and its operations would come to a halt.[9] The petitioner lastly argued that in any case, the respondents did not present evidence in support of their claims of company control and supervision so that these claims cannot be considered and given weight.[10]

THE COMPULSORY ARBITRATION RULINGS

Labor Arbiter Joel S. Lustria dismissed the complaint for lack of jurisdiction in his decision of September 28, 2004,[11] after finding that the respondents were the employees of either Peerless or Excellent and not of the petitioner. He brushed aside for lack of evidence the respondents' claim that they were directly hired by the petitioner and that company personnel supervised and controlled their work. The Labor Arbiter likewise ordered Peerless "to accord to the appropriate complainants all employment benefits and privileges befitting its regular employees." [12]

The respondents appealed to the NLRC.[13] On October 31, 2007, the NLRC denied the appeal and affirmed the labor arbiter's ruling,[14] and subsequently denied the respondents' motion for reconsideration.[15] The respondents thus sought relief from the CA through a petition for certiorari under Rule 65 of the Rules of Court.

THE CA DECISION

The main substantive issue the parties submitted to the CA was whether Excellent and Peerless were independent contractors or "labor-only" contractors. Procedurally, the petitioner questioned the sufficiency of the petition and asked for its dismissal on the following grounds: (1) the petition was filed out of time; (2) failure to implead Peerless and Excellent as necessary parties; (3) absence of the notarized proof of service that Rule 13 of the Rules of Court requires; and (4) defective verification and certification.

The CA examined the circumstances of the contractual arrangements between Peerless and Excellent, on the one hand, and the company, on the other, and found that Peerless and Excellent were engaged in labor-only contracting, a prohibited undertaking.[16] The appellate court explained that based on the respondents' assertions and the petitioner's admissions, the contractors simply supplied the company with manpower, and that the sale and distribution of the company's products are the same allied services found by this Court in *Magsalin v. National Organization of Workingmen*[17] to be necessary and desirable functions in the company's business.

On the matter of capitalization, the CA invoked our ruling in *7K Corporation v. NLRC*[18] presuming a contractor supplying labor to be engaged in prohibited labor-only contracting, unless the contractor can show that it has substantial capital, investment, and tools to undertake the contract. The CA found no proof in the records showing the required capitalization and tools; thus, the CA concluded that Peerless and Excellent were engaged in "labor-only" contracting.

The CA faulted the labor tribunals for relying solely on the contract of services in determining who the real employer is. Again invoking our *7K Corporation* ruling, it pointed out that the language of a contract is not wholly determinative of the relationship of the parties; whether a labor-only or a job contractor relationship exists must be determined using the criteria established by law. Finding that the Labor Arbiter's and the NLRC's conclusions were not supported by substantial evidence, the CA nullified the challenged NLRC decision and ordered the company "to reinstate the petitioners with the full status and rights of regular employees and to grant them all benefits as provided by existing collective bargaining agreement or by law."

The CA generally brushed aside the company's procedural questions.

It ruled that the petition was filed on time, noting that April 7, 2008, a Monday and the last day for filing the petition, was declared a holiday in lieu of April 9 (Araw ng Kagitingan), a Wednesday,[19] and that the petition was filed on April 8, 2008, a Tuesday and a working day.

That the contractors were not impleaded as necessary parties was not a fatal infirmity, according to the CA, relying on the ruling of the Court in *Cabutihan v. Landcenter Construction and Development Corporation*. [20] On the other hand, the alleged lack of proof of service was brushed aside on the finding that there is in the records of the case (page 35 of the petition) an affidavit of service executed by Rufino San Antonio indicating compliance with the rule on service. Finally, the CA ruled that the defect in the verification and certification was a mere formal requirement that can be excused in the interest of substantial justice, following the ruling of this Court in *Uy v. Landbank of the Philippines*. [21]

Petitioner moved for reconsideration of the decision, but the CA denied the motion in its resolution of October 13, 2008. [22]

THE PETITION

The company filed the present appeal on November 4, 2008 on the grounds that the CA erred when it: [23]

- gave due course to the petition despite the failure of the respondents to comply with the Rules on Notarial Practice in its verification and certification;
- excluded the contractors as necessary parties in violation of Section 8, Rule 3, in relation with Section 5, Rule 65 of the Rules of Court; and
- refused to follow established jurisprudence holding that the findings of fact of the NLRC are accorded respect, if not finality, when supported by substantial evidence.

On the notarial issue, the petitioner argues that Rule 65 of the Rules of Court requires that a petition filed before the CA must be verified and accompanied with a properly notarized certification of non-forum shopping. It claims that the verification and certification accompanying the petition were not notarized as required by Section 12, Rule II of the 2004 Rules on Notarial Practice (for failure to present competent evidence of identity) and Section 2, Rule IV (prohibition against the notarization without appropriate proof of identity); the verification and certification attached to the petition before the CA do not indicate that the affiants were personally known to the notary public, nor did the notary identify the affiants through competent evidence of identity other than their community tax certificate. These violations, according to the petitioner, collectively resulted in a petition filed without the proper verification and certification required by Section 4, Rule 7 of the Rules of Court.

On the necessary party issue, the petitioner posits that the CA ruling excluding the contractors as necessary parties "results in the absurd situation whereby the grant of regularization by the Labor Arbiter in favor of the respondents and against the contractors, is actually the same award the CA held in their favor and against the Company thereby making them regular employees of both the Company and the contractors," a situation which "is precisely what Section 8, Rule 3, in relation to Section 5, Rule 65 of the Rules of Court seeks to prevent."

The petitioner also takes exception to the CA's reliance on the ruling of the Court in *Cabutihan v. Landcenter Construction and Development Corporation*. [24] It posits that the ruling in *Cabutihan* was taken out of context; in that case, the subject matter was divisible as it pertained to the conveyance of 36.5% of the property under litigation or, in the alternative, to the value corresponding to this portion. On this fact situation, the Court found

that the non-joinder of the companions of the petitioner as party-litigants was not prejudicial to their rights.

In the present case, the petitioner posits that supposed cause of action (for regularization of the respondents) and the issue of employer-employee relationship cannot be ruled upon without including the parties who had already been held liable by the NLRC. It adds that as a result of the CA ruling, the respondents are now regular employees of both the petitioner and the contractors.

In their comment of March 4, 2009,[25] the respondents, aside from the reiteration of their previously expressed positions on necessary parties and the labor-only contracting issues, argued that the rules of procedure are not controlling in labor cases and that every and all the reasonable means shall be used to ascertain the facts for the full adjudication of the merits of the case. They argue that it is more in accord with substantial justice and equity to overlook procedural questions raised.

THE COURT'S RULING

We resolve to deny the petition for lack of merit.

The Notarial Issue.

After due consideration, we deem the respondents to have substantially complied with the verification and certification requirements in their petition for certiorari before the CA.

We find from our examination of the records that the fact situation that gave rise to the notarial issue before the CA was not a new one; the same situation obtained before the NLRC where the verification and certification of the respondents' appeal were also notarized before the same notary public - Diosdado V. Macapagal - and where the respondents presented the same evidence of identity (their community tax certificates).[26]

The petitioner's belated attention to the imputed defect indicates to us that the petitioner did not consider this defect worth raising when things were going its way, but considered it a serious one when things turned the other way. This opportunistic stance is not our idea of how technical deficiencies should be viewed. We are aware, too, that under the circumstances of this case, the defect is a technical and minor one; the respondents did file the required verification and certification of non-forum shopping with all the respondents properly participating, marred only by a glitch in the evidence of their identity.[27] In the interest of justice, this minor defect should not defeat their petition and is one that we can overlook in the interest of substantial justice, taking into account the merits of the case as discussed below.

The Necessary Party Issue.

In our view, the petitioner's necessary party issue proceeds from a misapprehension of the relationships in a contracting relationship. As lucidly pointed out in Azucena's *The Labor Code with Comments and Cases*,[28] there are three parties in a legitimate contracting relationship, namely: the principal, the contractor, and the contractor's employees. In this trilateral relationship, the principal controls the contractor and his employees with respect to the ultimate results or output of the contract; the contractor, on the other hand, controls his employees with respect, not only to the results to be obtained, but with respect to the means and manner of achieving this result. This pervasive control by the contractor over its employees results in an employer-employee relationship between them.

This trilateral relationship under a legitimate job contracting is different from the relationship in a labor-only contracting situation because in the latter, the contractor simply becomes an agent of the principal; either directly or through the agent, the principal then controls the results as well as the means and manner of achieving the

desired results. In other words, the party who would have been the principal in a legitimate job contracting relationship and who has no direct relationship with the contractor's employees, simply becomes the employer in the labor-only contracting situation with direct supervision and control over the contracted employees. As Azucena astutely observed: in labor-contracting, there is really no contracting and no contractor; there is only the employer's representative who gathers and supplies people for the employer; labor-contracting is therefore a misnomer.[29]

Where, as in this case, the main issue is labor contracting and a labor-only contracting situation is found to exist as discussed below, the question of whether or not the purported contractors are necessary parties is a non-issue; these purported contractors are mere representatives of the principal/employer whose personality, as against that of the workers, is merged with that of the principal/employer. Thus, this issue is rendered academic by our conclusion that labor-only contracting exists. Our labor-only contracting conclusion, too, answers the petitioner's argument that confusion results because the workers will have two employers.

The Contracting Out Issue.

Contracting and sub-contracting are "hot" labor issues for two reasons. The first is that job contracting and labor-only contracting are technical Labor Code concepts that are easily misunderstood. For one, there is a lot of lay misunderstanding of what kind of contracting the Labor Code prohibits or allows. The second, echoing the cry from the labor sector, is that the Labor Code provisions on contracting are blatantly and pervasively violated, effectively defeating workers' right to security of tenure.

This Court, through its decisions, can directly help address the problem of misunderstanding. The second problem, however, largely relates to implementation issues that are outside the Court's legitimate scope of activities; the Court can only passively address the problem through the cases that are brought before us. Either way, however, the need is for clear decisions that the workers, most especially, will easily understand and appreciate. We resolve the present case with these thoughts in mind.

The law allows contracting and subcontracting involving services but closely regulates these activities for the protection of workers. Thus, an employer can contract out part of its operations, provided it complies with the limits and standards provided in the Code and in its implementing rules.

The directly applicable provision of the Labor Code on contracting and subcontracting is Article 106 which provides:

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 shall be paid in accordance with the provisions of this Code.

The Secretary of Labor may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of workers established under this 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.

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 persons 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 (underscoring supplied).

The Department of Labor and Employment implements this Labor Code provision through its Department Order No. 18-02 (D.O. 18-02).[30] On the matter of labor-only contracting, Section 5 thereof provides:

Prohibition against labor-only contracting. - Labor-only contracting is hereby declared prohibited x x x labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present:

- i) The contractor or subcontractor does not have sufficient capital or investment which relates to the job, work or service to be performed and 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; or
- ii) The contractor does not exercise the right to control over the performance of the work of the contractual-employee.

"Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools or 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. [Emphasis supplied]

The "right to control" refers to the prerogative of a party to determine, not only the end result sought to be achieved, but also the means and manner to be used to achieve this end.

In strictly layman's terms, a manufacturer can sell its products on its own, or allow contractors, independently operating on their own, to sell and distribute these products in a manner that does not violate the regulations. From the terms of the above-quoted D.O. 18-02, the legitimate job contractor must have the capitalization and equipment to undertake the sale and distribution of the manufacturer's products, and must do it on its own using its own means and selling methods.

In the present case, both the capitalization of Peerless and Excellent and their control over the means and manner of their operations are live sub-issues before us.

A key consideration in resolving these issues is the contract between the company and the purported contractors. The contract[31] with Peerless, which is almost identical with the contract with Excellent, among others, states:

1. The CONTRACTOR agrees and undertakes to perform and/or provide for the COMPANY, on a non-exclusive basis, the services of contractual employees for a temporary period for task or activities that are considered contractible under DOLE Department Order No. 10, Series of 1997, such as lead helpers and replacement for absences as well as other contractible jobs that may be needed by the Company from time to time.[32]

x x x x

5. The CONTRACTOR shall have exclusive discretion in the selection, engagement and discharge of its personnel, employees or agents or otherwise in the direction and control hereunder. The determination of the wages, salaries and compensation of the personnel, workers and employees of the CONTRACTOR shall be within its full control.[33]

x x x x

. . . Although it is understood and agreed between the parties hereto that the CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of the COMPANY merely as to result to be accomplished by the work or services herein specified, and not as to the means and methods of accomplishing such result, the CONTRACTOR hereby warrants that it will perform such work or services in

such manner as will be consistent with the achievement of the result herein contracted for.[34]

These provisions - particularly, that Peerless and Excellent retain the right to select, hire, dismiss, supervise, control, and discipline all personnel they will assign to the petitioner, as well as pay their salaries - were cited by the labor arbiter and the NLRC as basis for their conclusion that no employer-employee relationship existed between the respondents and the petitioner.

The Court of Appeals viewed matters differently and faulted the labor tribunals for relying "solely" on the service contracts to prove that the respondents were employees of Peerless and Excellent. The CA cited in this regard what we said in *7K Corporation v. NLRC*:[35]

The fact that the service contract entered into by petitioner and Universal stipulated that private respondents shall be the employees of Universal, would not help petitioner, as the language of a contract is not determinative of the relationship of the parties. Petitioner and Universal cannot dictate, by the mere expedient of a declaration in a contract, the character of Universal business, i.e., whether as labor-only contractor, or job contractor, it being crucial that Universal's character be mentioned in terms of and determined by the criteria set by the statute.[36]

as basis for looking at how the contracted workers really related with the company in performing their contracted tasks. In other words, the contract between the principal and the contractor is not the final word on how the contracted workers relate to the principal and the purported contractor; the relationships must be tested on the basis of how they actually operate.

Even before going into the realities of workplace operations, the CA found that the service contracts[37] themselves provide ample leads into the relationship between the company, on the one hand, and Peerless and Excellent, on the other. The CA noted that both the Peerless and the Excellent contracts show that their obligation was solely to provide the company with "the services of contractual employees,"[38] and nothing more. These contracted services were for the handling and delivery of the company's products and allied services.[39] Following D.O. 18-02 and the contracts that spoke purely of the supply of labor, the CA concluded that Peerless and Excellent were labor-only contractors unless they could prove that they had the required capitalization and the right of control over their contracted workers.

The CA concluded that other than the petitioner's bare allegation, there is no indication in the records that Peerless and Excellent had substantial capital, tools or investment used directly in providing the contracted services to the petitioner. Thus, in the handling and delivery of company products, the contracted personnel used company trucks and equipment in an operation where company sales personnel primarily handled sales and distribution, merely utilizing the contracted personnel as sales route helpers.

In plainer terms, the contracted personnel (acting as sales route helpers) were only engaged in the marginal work of helping in the sale and distribution of company products; they only provided the muscle work that sale and distribution required and were thus necessarily under the company's control and supervision in doing these tasks.

Still another way of putting it is that the contractors were not independently selling and distributing company products, using their own equipment, means and methods of selling and distribution; they only supplied the manpower that helped the company in the handling of products for sale and distribution. In the context of D.O. 18-02, the contracting for sale and distribution as an independent and self-contained operation is a legitimate contract, but the pure supply of manpower with the task of assisting in sales and distribution controlled by a principal falls within prohibited labor-only contracting.

The role of sales route helpers in company operations is not a new issue before this Court as we have ruled on this

issue in *Magsalin v. National Organization of Workingmen*[40] which the CA itself cited in the assailed decision. We held in this cited case that:

The argument of petitioner that its usual business or trade is softdrink manufacturing and that the work assigned to the respondent workers so involves merely "postproduction activities," one which is not indispensable in the manufacture of its products, scarcely can be persuasive. If, as so argued by petitioner company, only those whose work are directly involved in the production of softdrinks may be held performing functions necessary and desirable in its usual business or trade, there would have been no need for it to even maintain regular truck sales route helpers. The nature of the work performed must be viewed from a perspective of the business or trade in its entirety and not only in a confined scope.[41]

While the respondents were not direct parties to this ruling, the petitioner was the party involved and *Magsalin* described in a very significant way the manufacture of softdrinks and the company's sales and distribution activities in relation with one another. Following the lead we gave in *Magsalin*, the CA concluded that the contracted personnel who served as route helpers were really engaged in functions directly related to the overall business of the petitioner. This led to the further CA conclusion that the contracted personnel were under the company's supervision and control since sales and distribution were in fact not the purported contractors' independent, discrete and separable activities, but were component parts of sales and distribution operations that the company controlled in its softdrinks business.

Based on these considerations, we fully agree with the CA that Peerless and Excellent were mere suppliers of labor who had no sufficient capitalization and equipment to undertake sales and distribution of softdrinks as independent activities separate from the manufacture of softdrinks, and who had no control and supervision over the contracted personnel. They are therefore labor-only contractors. Consequently, the contracted personnel, engaged in component functions in the main business of the company under the latter's supervision and control, cannot but be regular company employees. In these lights, the petition is totally without merit and hence must be denied.

WHEREFORE, premises considered, we hereby DENY the petition and accordingly AFFIRM the challenged decision and resolution of the Court of Appeals in CA-G.R. SP No. 102988. Costs against the petitioner.

SO ORDERED.

Carpio, (Chairperson), Leonardo-De Castro, Del Castillo, and Abad, JJ., concur.

[1] Filed under Rule 45 of the Rules of Court; rollo, pp. 3-35.

[2] Id. at 431; penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justice Jose L. Sabio, Jr. and Associate Justice Jose C. Reyes, Jr.

[3] Id. at 474.

[4] NLRC NCR Case Nos. 00-0703563-2000 & 00-07-03694-2000.

[5] Petition, Annex "E"; rollo, pp. 95-99, 98.

[6] Petition, Annex "A"; id. at 44-48.

[7] Petition Annex "B"; id. at 49-59.

[8] Petition, Annex "F"; id. at 102-108.

[9] Id. at 113-115.

[10] Petition, Annex "D"; id. at 91-94.

[11] Petition, Annex "I"; id. at 123-132.

[12] Petition, Annex "I"; id. at 123-132.

[13] Petition, Annex "J"; id. at 133-145.

[14] Decision dated October 31, 2007; id. at 221-227.

[15] Resolution dated December 28, 2007; id. at 228-229.

[16] The elements of prohibited labor-only contracting are: (a) the contractor supplies or places workers to perform a job, work or service for a principal; (b) the work performed is directly related to the business of the principal; and (c) the contractor does not have substantial capital or investment which relates to the job, work or service to be performed.

[17] G.R. No. 148492, May 9, 2003, 403 SCRA 199.

[18] G.R. No. 148490, November 22, 2006, 507 SCRA 509.

[19] Pursuant to Presidential Proclamation No. 1463, February 18, 2008.

[20] G.R. No. 146594, June 10, 2002, 383 SCRA 353.

[21] G.R. No. 136100, July 24, 2000, 336 SCRA 419.

[22] Supra note 3.

[23] Supra note 1, pp. 14-15.

[24] Supra note 20.

[25] Rollo, pp. 479-495.

[26] Petition, Annex "J"; id., pp. 149-150.

[27] Petition, Annex "O"; id., pp. 218-219.

[28] 5th ed., 2004, p. 261.

[29] Id.

[30] Rules Implementing Articles 106 to 109 of the Labor Code, as amended.

[31] Supra note 6.

[32] Id. at 44.

[33] Id. at 45.

[34] Id.

[35] Supra note 18.

[36] Id. at 521-522.

[37] Petition, Annexes "A" and "B"; supra notes 6 and 7.

[38] Court of Appeals Decision, August 29, 2008; rollo, pp. 435-438.

[39] Id.

[40] Supra note 17.

[41] Id. at 205.

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