

RAUL G. LOCSIN AND EDDIE B. TOMAQUIN, PETITIONERS, VS. PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, RESPONDENT.

G.R. No. 185251. October 02, 2009

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

This Petition for Review on Certiorari under Rule 45 seeks the reversal of the May 6, 2008 Decision[1] and November 4, 2008 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 97398, entitled *Philippine Long Distance Telephone Company v. National Labor Relations Commission, Raul G. Locsin and Eddie B. Tomaquin*. The assailed decision set aside the Resolutions of the National Labor Relations Commission (NLRC) dated October 28, 2005 and August 28, 2006 which in turn affirmed the Decision dated February 13, 2004 of the Labor Arbiter. The assailed resolution, on the other hand, denied petitioners' motion for reconsideration of the assailed decision.

The Facts

On November 1, 1990, respondent Philippine Long Distance Telephone Company (PLDT) and the Security and Safety Corporation of the Philippines (SSCP) entered into a Security Services Agreement[3] (Agreement) whereby SSCP would provide armed security guards to PLDT to be assigned to its various offices.

Pursuant to such agreement, petitioners Raul Locsin and Eddie Tomaquin, among other security guards, were posted at a PLDT office.

On August 30, 2001, respondent issued a Letter dated August 30, 2001 terminating the Agreement effective October 1, 2001.[4]

Despite the termination of the Agreement, however, petitioners continued to secure the premises of their assigned office. They were allegedly directed to remain at their post by representatives of respondent. In support of their contention, petitioners provided the Labor Arbiter with copies of petitioner Locsin's pay slips for the period of January to September 2002.[5]

Then, on September 30, 2002, petitioners' services were terminated.

Thus, petitioners filed a complaint before the Labor Arbiter for illegal dismissal and recovery of money claims such as overtime pay, holiday pay, premium pay for holiday and rest day, service incentive leave pay, Emergency Cost of Living Allowance, and moral and exemplary damages against PLDT.

The Labor Arbiter rendered a Decision finding PLDT liable for illegal dismissal. It was explained in the Decision that petitioners were found to be employees of PLDT and not of SSCP. Such conclusion was arrived at with the factual finding that petitioners continued to serve as guards of PLDT's offices. As such employees, petitioners were entitled to substantive and procedural due process before termination of employment. The Labor Arbiter

held that respondent failed to observe such due process requirements. The dispositive portion of the Labor Arbiter's Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondent Philippine Long Distance and Telephone Company (PLDT) to pay complainants Raul E. Locsin and Eddie Tomaquin their separation pay and back wages computed as follows:

NAME

SEPARATION PAY

BACKWAGES

1.

Raul E. Locsin

P127,500.00

P240,954.67

2.

Eddie B. Tomaquin

P127,500.00

P240,954.67

P736,909.34

All other claims are DISMISSED for want of factual basis.

Let the computation made by the Computation and Examination Unit form part of this decision.

SO ORDERED.

PLDT appealed the above Decision to the NLRC which rendered a Resolution affirming in toto the Arbiter's Decision.

Thus, PDLT filed a Motion for Reconsideration of the NLRC's Resolution which was also denied.

Consequently, PLDT filed a Petition for Certiorari with the CA asking for the nullification of the Resolution issued by the NLRC as well as the Labor Arbiter's Decision. The CA rendered the assailed decision granting PLDT's petition and dismissing petitioners' complaint. The dispositive portion of the CA Decision provides:

WHEREFORE, the instant Petition for Certiorari is GRANTED. The Resolutions dated October 28, 2005 and August 28, 2006 of the National Labor Relations Commission are ANNULLED and SET ASIDE. Private respondents' complaint against Philippine Long Distance Telephone Company is DISMISSED.

SO ORDERED.

The CA applied the four-fold test in order to determine the existence of an employer-employee relationship between the parties but did not find such relationship. It determined that SSCP was not a labor-only contractor and was an independent contractor having substantial capital to operate and conduct its own business. The CA further bolstered its decision by citing the Agreement whereby it was stipulated that there shall be no employer-employee relationship between the security guards and PLDT.

Anent the pay slips that were presented by petitioners, the CA noted that those were issued by SSCP and not PLDT; hence, SSCP continued to pay the salaries of petitioners after the Agreement. This fact allegedly proved that petitioners continued to be employees of SSCP albeit performing their work at PLDT's premises.

From such assailed decision, petitioners filed a motion for reconsideration which was denied in the assailed resolution.

Hence, we have this petition.

The Issues

- Whether or not; complainants extended services to the respondent for one (1) year from October 1, 2001, the effectivity of the termination of the contract of complainants agency SSCP, up to September 30, 2002, without a renewed contract, constitutes an employer-employee relationship between respondent and the complainants.
- Whether or not; in accordance to the provision of the Article 280 of the Labor Code, complainants extended services to the respondent for another one (1) year without a contract be considered as contractual employment.
- Whether or not; in accordance to the provision of the Article 280 of the Labor Code, does complainants thirteen (13) years of service to the respondent with manifestation to the respondent thirteen (13) years renewal of its security contract with the complainant agency SSCP, can be considered only as "seasonal in nature" or fixed as [specific projects] or undertakings and its completion or termination can be dictated as [controlled] by the respondent anytime they wanted to.
- Whether or not; complainants from being an alleged contractual employees of the respondent for thirteen (13) years as they were then covered by a contract, becomes regular employees of the respondent as the one (1) year extended services of the complainants were not covered by a contract, and can be considered as direct employment pursuant to the provision of the Article 280 of the Labor Code.
- Whether or not; the Court of Appeals committed grave abuse of discretion when it set aside and [annulled] the labor [arbiter's] decision and of the NLRC's resolution declaring the dismissal of the complainant as illegal.[6]

The Court's Ruling

This petition is hereby granted.

An Employer-Employee

Relationship Existed Between the Parties

It is beyond cavil that there was no employer-employee relationship between the parties from the time of petitioners' first assignment to respondent by SSCP in 1988 until the alleged termination of the Agreement between respondent and SSCP. In fact, this was the conclusion that was reached by this Court in *Abella v. Philippine Long Distance Telephone Company*,^[7] where we ruled that petitioners therein, including herein petitioners, cannot be considered as employees of PLDT. It bears pointing out that petitioners were among those declared to be employees of their respective security agencies and not of PLDT.

The only issue in this case is whether petitioners became employees of respondent after the Agreement between SSCP and respondent was terminated.

This must be answered in the affirmative.

Notably, respondent does not deny the fact that petitioners remained in the premises of their offices even after the

Agreement was terminated. And it is this fact that must be explained.

To recapitulate, the CA, in rendering a decision in favor of respondent, found that: (1) petitioners failed to prove that SSCP was a labor-only contractor; and (2) petitioners are employees of SSCP and not of PLDT.

In arriving at such conclusions, the CA relied on the provisions of the Agreement, wherein SSCP undertook to supply PLDT with the required security guards, while furnishing PLDT with a performance bond in the amount of PhP 707,000. Moreover, the CA gave weight to the provision in the Agreement that SSCP warranted that it "carry on an independent business and has substantial capital or investment in the form of equipment, work premises, and other materials which are necessary in the conduct of its business."

Further, in determining that no employer-employee relationship existed between the parties, the CA quoted the express provision of the Agreement, stating that no employer-employee relationship existed between the parties herein. The CA disregarded the pay slips of Locsin considering that they were in fact issued by SSCP and not by PLDT.

From the foregoing explanation of the CA, the fact remains that petitioners remained at their post after the termination of the Agreement. Notably, in its Comment dated March 10, 2009,[8] respondent never denied that petitioners remained at their post until September 30, 2002. While respondent denies the alleged circumstances stated by petitioners, that they were told to remain at their post by respondent's Security Department and that they were informed by SSCP Operations Officer Eduardo Juliano that their salaries would be coursed through SSCP as per arrangement with PLDT, it does not state why they were not made to vacate their posts. Respondent said that it did not know why petitioners remained at their posts.

Rule 131, Section 3(y) of the Rules of Court provides:

SEC. 3. Disputable presumptions.—The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x x

(y) That things have happened according to the ordinary course of nature and the ordinary habits of life.

In the ordinary course of things, responsible business owners or managers would not allow security guards of an agency with whom the owners or managers have severed ties with to continue to stay within the business' premises. This is because upon the termination of the owners' or managers' agreement with the security agency, the agency's undertaking of liability for any damage that the security guard would cause has already been terminated. Thus, in the event of an accident or otherwise damage caused by such security guards, it would be the business owners and/or managers who would be liable and not the agency. The business owners or managers would, therefore, be opening themselves up to liability for acts of security guards over whom the owners or managers allegedly have no control.

At the very least, responsible business owners or managers would inquire or learn why such security guards were remaining at their posts, and would have a clear understanding of the circumstances of the guards' stay. It is but logical that responsible business owners or managers would be aware of the situation in their premises.

We point out that with respondent's hypothesis, it would seem that SSCP was paying petitioners' salaries while securing respondent's premises despite the termination of their Agreement. Obviously, it would only be respondent that would benefit from such a situation. And it is seriously doubtful that a security agency that was established for profit would allow its security guards to secure respondent's premises when the Agreement was already terminated.

From the foregoing circumstances, reason dictates that we conclude that petitioners remained at their post under the instructions of respondent. We can further conclude that respondent dictated upon petitioners that the latter perform their regular duties to secure the premises during operating hours. This, to our mind and under the circumstances, is sufficient to establish the existence of an employer-employee relationship. Certainly, the facts as narrated by petitioners are more believable than the irrational denials made by respondent. Thus, we ruled in *Lee Eng Hong v. Court of Appeals*:^[9]

Evidence, to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself — such as the common experience and observation of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony, except its conformity to our knowledge, observation and experience. Whatever is repugnant to these belongs to the miraculous and is outside judicial cognizance (*Castañares v. Court of Appeals*, 92 SCRA 568 [1979]).

To reiterate, while respondent and SSCP no longer had any legal relationship with the termination of the Agreement, petitioners remained at their post securing the premises of respondent while receiving their salaries, allegedly from SSCP. Clearly, such a situation makes no sense, and the denials proffered by respondent do not shed any light to the situation. It is but reasonable to conclude that, with the behest and, presumably, directive of respondent, petitioners continued with their services. Evidently, such are indicia of control that respondent exercised over petitioners.

Such power of control has been explained as the "right to control not only the end to be achieved but also the means to be used in reaching such end."^[10] With the conclusion that respondent directed petitioners to remain at their posts and continue with their duties, it is clear that respondent exercised the power of control over them; thus, the existence of an employer-employee relationship.

In *Tongko v. The Manufacturers Life Insurance Co. (Phils.) Inc.*,^[11] we reiterated the oft repeated rule that control is the most important element in the determination of the existence of an employer-employee relationship:

In the determination of whether an employer-employee relationship exists between two parties, this Court applies the four-fold test to determine the existence of the elements of such relationship. In *Pacific Consultants International Asia, Inc. v. Schonfeld*, the Court set out the elements of an employer-employee relationship, thus:

Jurisprudence is firmly settled that whenever the existence of an employment relationship is in dispute, four elements constitute the reliable yardstick: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee's conduct. It is the so-called "control test" which constitutes the most important index of the existence of the employer-employee relationship that is, whether the employer controls or has reserved the right to control the employee not only as to the result of the work to be done but also as to the means and methods by which the same is to be accomplished. Stated otherwise, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end to be achieved but also the means to be used in reaching such end.

Furthermore, Article 106 of the Labor Code contains a provision on contractors, to wit:

Art. 106. Contractor or subcontractor. 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 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, 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. (Emphasis supplied.)

Thus, the Secretary of Labor issued Department Order No. 18-2002, Series of 2002, implementing Art. 106 as follows:

Section 5. Prohibition against labor-only contracting.—Labor-only contracting is hereby declared prohibited. For this purpose, 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 substantial 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.

The foregoing provisions shall be without prejudice to the application of Article 248 (C) of the Labor Code, as amended.

"Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out.

The "right to control" shall refer to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.

On the other hand, Sec. 7 of the department order contains the consequence of such labor-only contracting:

Section 7. Existence of an employer-employee relationship.—The contractor or subcontractor shall be considered the employer of the contractual employee for purposes of enforcing the provisions of the Labor Code and other social legislation. The principal, however, shall be solidarily liable with the contractor in the event of any violation of any provision of the Labor Code, including the failure to pay wages.

The principal shall be deemed the employer of the contractual employee in any of the following cases as declared by a competent authority:

- (a) where there is labor-only contracting; or
- (b) where the contracting arrangement falls within the prohibitions provided in Section 6 (Prohibitions) hereof.

(Emphasis supplied.)

Evidently, respondent having the power of control over petitioners must be considered as petitioners' employer—from the termination of the Agreement onwards—as this was the only time that any evidence of control was exhibited by respondent over petitioners and in light of our ruling in *Abella*.^[12] Thus, as aptly declared by the NLRC, petitioners were entitled to the rights and benefits of employees of respondent, including due process requirements in the termination of their services.

Both the Labor Arbiter and NLRC found that respondent did not observe such due process requirements. Having failed to do so, respondent is guilty of illegal dismissal.

WHEREFORE, we SET ASIDE the CA's May 6, 2008 Decision and November 4, 2008 Resolution in CA-G.R. SP No. 97398. We hereby REINSTATE the Labor Arbiter's Decision dated February 13, 2004 and the NLRC's Resolutions dated October 28, 2005 and August 28, 2006.

No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Peralta, JJ., concur.

[1] Rollo, pp. 31-41. Penned by Associate Justice Rosalinda Asuncion-Vicente and concurred in by Associate Justices Remedios A. Salazar-Fernando (Chairperson) and Sesinando E. Villon.

[2] *Id.* at 49-50.

[3] *Id.* at 16-19.

[4] *Id.* at 20.

[5] *Id.* at 21-24.

[6] *Id.* at 7-8.

[7] G.R. No. 159469, June 8, 2005, 459 SCRA 724.

[8] Rollo, pp. 57-75.

[9] G.R. No. 114145, February 15, 1995, 241 SCRA 392, 398.

[10] *Francisco v. National Labor Relations Commission*, G.R. No. 170087, August 31, 2006, 500 SCRA 690, 697.

[11] G.R. No. 167622, November 7, 2008, 570 SCRA 503, 516.

[12] *Supra* note 7.

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