

**EMMANUEL BABAS, DANILO T. BANAG, ARTURO V. VILLARIN, SR.,
EDWIN JAVIER, SANDI BERMEIO, REX ALLESA, MAXIMO SORIANO,
JR., ARSENIO ESTORQUE, AND FELIXBERTO ANAJAO, PETITIONERS,
VS. ...**

G.R. No. 186091. December 15, 2010

Ponente: NACHURA, J.

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NACHURA, J.:

Petitioners Emmanuel Babas, Danilo T. Banag, Arturo V. Villarin, Sr., Edwin Javier, Sandi Bermeio, Rex Allesa, Maximo Soriano, Jr., Arsenio Estorque, and Felixberto Anajao appeal by certiorari under Rule 45 of the Rules of Court the October 10, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP. No. 103804, and the January 21, 2009 Resolution,[2] denying its reconsideration.

Respondent Lorenzo Shipping Corporation (LSC) is a duly organized domestic corporation engaged in the shipping industry; it owns several equipment necessary for its business. On September 29, 1997, LSC entered into a General Equipment Maintenance Repair and Management Services Agreement[3] (Agreement) with Best Manpower Services, Inc. (BMSI). Under the Agreement, BMSI undertook to provide maintenance and repair services to LSC's container vans, heavy equipment, trailer chassis, and generator sets. BMSI further undertook to provide checkers to inspect all containers received for loading to and/or unloading from its vessels.

Simultaneous with the execution of the Agreement, LSC leased its equipment, tools, and tractors to BMSI.[4] The period of lease was coterminous with the Agreement.

BMSI then hired petitioners on various dates to work at LSC as checkers, welders, utility men, clerks, forklift operators, motor pool and machine shop workers, technicians, trailer drivers, and mechanics. Six years later, or on May 1, 2003, LSC entered into another contract with BMSI, this time, a service contract.[5]

In September 2003, petitioners filed with the Labor Arbiter (LA) a complaint for regularization against LSC and BMSI. On October 1, 2003, LSC terminated the Agreement, effective October 31, 2003. Consequently, petitioners lost their employment.

BMSI asserted that it is an independent contractor. It averred that it was willing to regularize petitioners; however, some of them lacked the requisite qualifications for the job. BMSI was willing to reassign petitioners who were willing to accept reassignment. BMSI denied petitioners' claim for underpayment of wages and non-payment of 13[th] month pay and other benefits.

LSC, on the other hand, averred that petitioners were employees of BMSI and were assigned to LSC by virtue of the Agreement. BMSI is an independent job contractor with substantial capital or investment in the form of tools, equipment, and machinery necessary in the conduct of its business. The Agreement between LSC and BMSI constituted legitimate job contracting. Thus, petitioners were employees of BMSI and not of LSC.

After due proceedings, the LA rendered a decision[6] dismissing petitioners' complaint. The LA found that petitioners were employees of BMSI. It was BMSI which hired petitioners, paid their wages, and exercised control over them.

Petitioners appealed to the National Labor Relations Commission (NLRC), arguing that BMSI was engaged in labor-only contracting. They insisted that their employer was LSC.

On January 16, 2008, the NLRC promulgated its decision.[7] Reversing the LA, the NLRC held:

We find from the records of this case that respondent BMSI is not engaged in legitimate job contracting.

First, respondent BMSI has no equipment, no office premises, no capital and no investments as shown in the Agreement itself which states:

x x x x

VI. RENTAL OF EQUIPMENT

[6.01.] That the CLIENT has several forklifts and truck tractor, and has offered to the CONTRACTOR the use of the same by way of lease, the monthly rental of which shall be deducted from the total monthly billings of the CONTRACTOR for the services covered by this Agreement.

6.02. That the CONTRACTOR has agreed to rent the CLIENT's forklifts and truck tractor.

6.03. The parties herein have agreed to execute a Contract of Lease for the forklifts and truck tractor that will be rented by the CONTRACTOR. (p. 389, Records)

True enough, parties signed a Lease Contract (p. 392, Records) wherein respondent BMSI leased several excess equipment of LSC to enable it to discharge its obligation under the Agreement. So without the equipment which respondent BMSI leased from respondent LSC, the former would not be able to perform its commitments in the Agreement.

In *Phil. Fuji Xerox Corp. v. NLRC* (254 SCRA 294) the Supreme Court held:

x x x. The phrase "substantial capital and investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business," in the Implementing Rules clearly contemplates tools, equipment, etc., which are directly related to the service it is being contracted to render. One who does not have an independent business for undertaking the job contracted for is just an agent of the employer. (underscoring ours)

Second, respondent BMSI has no independent business or activity or job to perform in respondent LSC free from the control of respondent LSC except as to the results thereof. In view of the absence of such independent business or activity or job to be performed by respondent BMSI in respondent LSC [petitioners] performed work that was necessary and desirable to the main business of respondent LSC. Respondents were not able to refute the allegations of [petitioners] that they performed the same work that the regular workers of LSC performed and they stood side by side with regular employees of respondent LSC performing the same work. Necessarily, the control on the manner and method of doing the work was exercised by respondent LSC and not by respondent BMSI since the latter had no business of its own to perform in respondent LSC.

Lastly, respondent BMSI has no other client but respondent LSC. If respondent BMSI were a going concern, it would have other clients to which to assign [petitioners] after its Agreement with LSC expired. Since there is only one client, respondent LSC, it is easy to conclude that respondent BMSI is a mere supplier of labor.

After concluding that respondent BMSI is engaged in prohibited labor-only contracting, respondent LSC became

the employer of [petitioners] pursuant to DO 18-02.

[Petitioners] therefore should be reinstated to their former positions or equivalent positions in respondent LSC as regular employees with full backwages and other benefits without loss of seniority rights from October 31, 2003, when they lost their jobs, until actual reinstatement (*Vinoya v. NLRC*, 324 SCRA 469). If reinstatement is not feasible, [petitioners] then should be paid separation pay of one month pay for every year of service or a fraction of six months to be considered as one year, in addition to full backwages.

Concerning [petitioners'] prayer to be paid wage differentials and benefits under the CBA, We have no doubt that [petitioners] would be entitled to them if they are covered by the said CBA. For this purpose, [petitioners] should first enlist themselves as union members if they so desire, or pay agency fee. Furthermore, only [petitioners] who signed the appeal memorandum are covered by this Decision. As regards the other complainants who did not sign the appeal, the Decision of the Labor Arbiter dismissing this case became final and executory.[8]

The NLRC disposed thus:

WHEREFORE, the appeal of [petitioners] is GRANTED. The Decision of the Labor Arbiter is hereby REVERSED, and a NEW ONE rendered finding respondent Best Manpower Services, Inc. is engaged in prohibited labor-only-contracting and finding respondent Lorenzo Shipping Corp. as the employer of the following [petitioners]:

- Emmanuel B. Babas
- Danilo Banag
- Edwin L. Javier
- Rex Allesa
- Arturo Villarin, [Sr.]
- Felixberto C. Anajao
- Arsenio Estorque
- Maximo N. Soriano, Jr.
- Sandi G. Bermeo

Consequently, respondent Lorenzo Shipping Corp. is ordered to reinstate [petitioners] to their former positions as regular employees and pay their wage differentials and benefits under the CBA.

If reinstatement is not feasible, both respondents Lorenzo Shipping Corp. and Best Manpower Services are adjudged jointly and solidarily to pay [petitioners] separation pay of one month for every year of service, a fraction of six months to be considered as one year.

In addition, respondent LSC and BMSI are solidarily liable to pay [petitioners'] full backwages from October 31, 2003 until actual reinstatement or, if reinstatement is not feasible, until finality of this Decision.

Respondent LSC and respondent BMSI are likewise adjudged to be solidarily liable for attorney's fees equivalent to ten (10%) of the total monetary award.

x x x x

SO ORDERED.[9]

LSC went to the CA via certiorari. On October 10, 2008, the CA rendered the now challenged Decision,[10]

reversing the NLRC. In holding that BMSI was an independent contractor, the CA relied on the provisions of the Agreement, wherein BMSI warranted that it is an independent contractor, with adequate capital, expertise, knowledge, equipment, and personnel necessary for the services rendered to LSC. According to the CA, the fact that BMSI entered into a contract of lease with LSC did not ipso facto make BMSI a labor-only contractor; on the contrary, it proved that BMSI had substantial capital. The CA was of the view that the law only required substantial capital or investment. Since BMSI had substantial capital, as shown by its ability to pay rents to LSC, then it qualified as an independent contractor. It added that even under the control test, BMSI would be the real employer of petitioners, since it had assumed the entire charge and control of petitioners' services. The CA further held that BMSI's Certificate of Registration as an independent contractor was sufficient proof that it was an independent contractor. Hence, the CA absolved LSC from liability and instead held BMSI as employer of petitioners.

The fallo of the CA Decision reads:

WHEREFORE, premises considered, the instant petition is GRANTED and the assailed decision and resolution of public respondent NLRC are REVERSED and SET ASIDE. Consequently, the decision of the Labor Arbiter dated September 29, 2004 is REINSTATED.

SO ORDERED.[11]

Petitioners filed a motion for reconsideration, but the CA denied it on January 21, 2009.[12]

Hence, this appeal by petitioners, positing that:

THE HONORABLE COURT OF APPEALS ERRED IN IGNORING THE CLEAR EVIDENCE OF RECORD THAT RESPONDENT WAS ENGAGED IN LABOR-ONLY CONTRACTING TO DEFEAT PETITIONERS' RIGHT TO SECURITY OF TENURE.[13]

Before resolving the petition, we note that only seven (7) of the nine petitioners signed the Verification and Certification.[14] Petitioners Maximo Soriano, Jr. (Soriano) and Felixberto Anajao (Anajao) did not sign the Verification and Certification, because they could no longer be located by their co-petitioners.[15]

In *Toyota Motor Phils. Corp. Workers Association (TMPCWA), et al. v. National Labor Relations Commission*,^[16] citing *Loquias v. Office of the Ombudsman*,^[17] we stated that the petition satisfies the formal requirements only with regard to the petitioner who signed the petition, but not his co-petitioner who did not sign nor authorize the other petitioner to sign it on his behalf. Thus, the petition can be given due course only as to the parties who signed it. The other petitioners who did not sign the verification and certificate against forum shopping cannot be recognized as petitioners and have no legal standing before the Court. The petition should be dismissed outright with respect to the non-conforming petitioners.

Thus, we dismiss the petition insofar as petitioners Soriano and Anajao are concerned.

Petitioners vigorously insist that they were employees of LSC; and that BMSI is not an independent contractor, but a labor-only contractor. LSC, on the other hand, maintains that BMSI is an independent contractor, with adequate capital and investment. LSC capitalizes on the ratiocination made by the CA.

In declaring BMSI as an independent contractor, the CA, in the challenged Decision, heavily relied on the provisions of the Agreement, wherein BMSI declared that it was an independent contractor, with substantial capital and investment.

De Los Santos v. NLRC^[18] instructed us that the character of the business, i.e., whether as labor-only contractor or as job contractor, should

be measured in terms of, and determined by, the criteria set by statute. The parties cannot dictate by the mere expedience of a unilateral declaration in a contract the character of their business.

In *San Miguel Corporation v. Vicente B. Semillano, Nelson Mondejas, Jovito Remada, Alilgilan Multi-Purpose Coop (AMPCO), and Merlyn N. Policarpio*,^[19] this Court explained:

Despite the fact that the service contracts contain stipulations which are earmarks of independent contractorship, they do not make it legally so. The language of a contract is neither determinative nor conclusive of the relationship between the parties. Petitioner SMC and AMPCO cannot dictate, by a declaration in a contract, the character of AMPCO's business, that is, whether as labor-only contractor, or job contractor. AMPCO's character should be measured in terms of, and determined by, the criteria set by statute.

Thus, in distinguishing between prohibited labor-only contracting and permissible job contracting, the totality of the facts and the surrounding circumstances of the case are to be considered.

Labor-only contracting, a prohibited act, is an arrangement where the contractor or subcontractor merely recruits, supplies, or places workers to perform a job, work, or service for a principal. In labor-only contracting, the following elements are present: (a) the contractor or subcontractor does not have substantial capital or investment to actually perform the job, work, or service under its own account and responsibility; and (b) the employees recruited, supplied, or placed by such contractor or subcontractor perform activities which are directly related to the main business of the principal.^[20]

On the other hand, permissible job contracting or subcontracting refers to an arrangement whereby a principal agrees to put out or farm out with the contractor or subcontractor the performance or completion of a specific job, work, or service within a definite or predetermined period, regardless of whether such job, work, or service is to be performed or completed within or outside the premises of the principal. ^[21]

A person is considered engaged in legitimate job contracting or subcontracting if the following conditions concur:

- (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 the 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.^[22]

Given the above standards, we sustain the petitioners' contention that BMSI is engaged in labor-only contracting.

First, petitioners worked at LSC's premises, and nowhere else. Other than the provisions of the Agreement, there was no showing that it was BMSI which established petitioners' working procedure and methods, which supervised petitioners in their work, or which evaluated the same. There was absolute lack of evidence that BMSI exercised control over them or their work, except for the fact that petitioners were hired by BMSI.

Second, LSC was unable to present proof that BMSI had substantial capital. The record before us is bereft of any proof pertaining to the contractor's capitalization, nor to its investment in tools, equipment, or implements actually used in the performance or completion of the job, work, or service that it was contracted to render. What is clear was that the equipment used by BMSI were owned by, and merely rented from, LSC.

In *Mandaue Galleon Trade, Inc. v. Andales*,^[23] we held:

The law casts the burden on the contractor to prove that it has substantial capital, investment, tools, etc. Employees, on the other hand, need not prove that the contractor does not have substantial capital, investment, and tools to engage in job-contracting.

Third, petitioners performed activities which were directly related to the main business of LSC. The work of petitioners as checkers, welders, utility men, drivers, and mechanics could only be characterized as part of, or at least clearly related to, and in the pursuit of, LSC's business. Logically, when petitioners were assigned by BMSI to LSC, BMSI acted merely as a labor-only contractor.

Lastly, as found by the NLRC, BMSI had no other client except for LSC, and neither BMSI nor LSC refuted this finding, thereby bolstering the NLRC finding that BMSI is a labor-only contractor.

The CA erred in considering BMSI's Certificate of Registration as sufficient proof that it is an independent contractor. In *San Miguel Corporation v. Vicente B. Semillano, Nelson Mondejas, Jovito Remada, Alilgilan Multi-Purpose Coop (AMPCO), and Merlyn N. Policarpio*,^[24] we held that a Certificate of Registration issued by the Department of Labor and Employment is not conclusive evidence of such status. The fact of registration simply prevents the legal presumption of being a mere labor-only contractor from arising.^[25]

Indubitably, BMSI can only be classified as a labor-only contractor. The CA, therefore, erred when it ruled otherwise. Consequently, the workers that BMSI supplied to LSC became regular employees of the latter.^[26] Having gained regular status, petitioners were entitled to security of tenure and could only be dismissed for just or authorized causes and after they had been accorded due process.

Petitioners lost their employment when LSC terminated its Agreement with BMSI. However, the termination of LSC's Agreement with BMSI cannot be considered a just or an authorized cause for petitioners' dismissal. In *Almeda v. Asahi Glass Philippines, Inc. v. Asahi Glass Philippines, Inc.*,^[27] this Court declared:

The sole reason given for the dismissal of petitioners by SSASI was the termination of its service contract with respondent. But since SSASI was a labor-only contractor, and petitioners were to be deemed the employees of respondent, then the said reason would not constitute a just or authorized cause for petitioners' dismissal. It would then appear that petitioners were summarily dismissed based on the aforesaid reason, without compliance with the procedural due process for notice and hearing.

Herein petitioners, having been unjustly dismissed from work, are entitled to reinstatement without loss of seniority rights and other privileges and to full back wages, inclusive of allowances, and to other benefits or their monetary equivalents computed from the time compensation was withheld up to the time of actual reinstatement. Their earnings elsewhere during the periods of their illegal dismissal shall not be deducted therefrom.

Accordingly, we hold that the NLRC committed no grave abuse of discretion in its decision. Conversely, the CA committed a reversible error when it set aside the NLRC ruling.

WHEREFORE, the petition is GRANTED. The Decision and the Resolution of the Court of Appeals in CA-G.R. SP. No. 103804 are REVERSED and SET ASIDE. Petitioners Emmanuel Babas, Danilo T. Banag, Arturo V. Villarin, Sr., Edwin Javier, Sandi Bermeo, Rex Alles, and Arsenio Estorque are declared regular employees of Lorenzo Shipping Corporation. Further, LSC is ordered to reinstate the seven petitioners to their former position without loss of seniority rights and other privileges, and to pay full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the time compensation was withheld up to the time of actual reinstatement.

No pronouncement as to costs.

SO ORDERED.

Carpio, (Chairperson), Peralta, Del Castillo,[*] and Mendoza, JJ., concur.

[*] Additional member in lieu of Associate Justice Roberto A. Abad per Raffle dated December 15, 2010.

[1] Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Juan Q. Enriquez, Jr. and Isaias P. Dicdican, concurring; rollo, pp. 34-49.

[2] Id. at 53-54.

[3] Id. at 124-130.

[4] Id. at 131-134.

[5] Id. at 135-138.

[6] Id. at 278-286.

[7] Id. at 81-92.

[8] Id. at 86-88.

[9] Id. at 89-91.

[10] Supra note 1.

[11] Id. at 48.

[12] Supra note 2.

[13] Rollo, p. 21.

[14] Id. at 31-32.

[15] See Compliance; id. at 335-336.

[16] G.R. Nos. 158786 & 158789, October 19, 2007, 537 SCRA 171, 198-199.

[17] 392 Phil. 596, 603-604 (2000).

[18] 423 Phil. 1020, 1032 (2001).

[19] G.R. No. 164257, July 5, 2010.

[20] *Iligan Cement Corporation v. ILIASCOR Employees and Workers Union-Southern Philippines Federation of Labor (IEWU-SPFL)*, G.R. No. 158956, April 24, 2009, 586 SCRA 449, 464-465.

[21] *Purefoods Corporation (now San Miguel Purefoods Company, Inc.) v. National Labor Relations Commission*, G.R. No. 172241, November 20, 2008, 571 SCRA 406, 413.

[22] *Vinoya v. National Labor Relations Commission*, 381 Phil. 460, 472-473 (2000).

[23] G.R. No. 159668, March 7, 2008, 548 SCRA 17, 28.

[24] Supra note 19.

[25] Id.

[26] See *PCI Automation Center Inc. v. NLRC*, 322 Phil. 536 (1996).

[27] G.R. No. 177785, September 3, 2008, 564 SCRA 115, 132-134.

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