S.I.P. FOOD HOUSE AND MR. AND MRS. ALEJANDRO PABLO, PETITIONERS, VS. RESTITUTO BATOLINA, ALMER CALUMPISAN, ARIES MALGAPO, ARMANDO MALGAPO, FLORDELIZA MATIAS, PERCIVAL MATIAS, AR...

G.R. No. 192473. October 11, 2010

Ponente: BRION, J.

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BRION, J.:

We resolve the present petition for review on certiorari[1] which seeks to nullify the decision[2] and resolution[3] of the Court of Appeals (CA), promulgated on November 27, 2009 and May 31, 2010, respectively, in CA-G.R. SP No. 101651.[4]

The Antecedents

The facts are laid out in the assailed CA Decision and are summarized below.

The GSIS Multi-Purpose Cooperative (GMPC) is an entity organized by the employees of the Government Service Insurance System (GSIS). Incidental to its purpose, GMPC wanted to operate a canteen in the new GSIS Building, but had no capability and expertise in this area. Thus, it engaged the services of the petitioner S.I.P. Food House (SIP), owned by the spouses Alejandro and Esther Pablo, as concessionaire. The respondents Restituto Batolina and nine (9) others (the respondents) worked as waiters and waitresses in the canteen.

In February 2004, GMPC terminated SIP's "contract as GMPC concessionaire," because of GMPC's decision "to take direct investment in and management of the GMPC canteen;" SIP's continued refusal to heed GMPC's directives for service improvement; and the alleged interference of the Pablos' two sons with the operation of the canteen.[5] The termination of the concession contract caused the termination of the respondents' employment, prompting them to file a complaint for illegal dismissal, with money claims, against SIP and the spouses Pablo.

The Compulsory Arbitration Proceedings

The Parties' Positions

The respondents alleged before the labor arbiter that they were SIP employees, who were illegally dismissed sometime in February and March 2004. SIP did not implement Wage Order Nos. 5 to 11 for the years 1997 to 2004. They did not receive overtime pay although they worked from 6:30 in the morning until 5:30 in the afternoon, or other employee benefits such as service incentive leave, and maternity benefit (for their co-employee Flordeliza Matias). Their employee contributions were also not remitted to the Social Security System.

To avoid liability, SIP argued that it operated the canteen in behalf of GMPC since it had no authority by itself to do so. The respondents were not its employees, but GMPC's, as shown by their identification cards. It claimed

that GMPC terminated its concession and prevented it from having access to the canteen premises as GSIS personnel locked the place; GMPC then operated the canteen on its own, absorbing the respondents for the purpose and assigning them to the same positions they held with SIP. It maintained that the respondents were not dismissed, but were merely prevented by GMPC from performing their functions. For this reason, SIP posited that the legal obligations that would arise under the circumstances have to be shouldered by GMPC.

The Labor Arbiter's Decision

Labor Arbiter Francisco A. Robles rendered a Decision on June 30, 2005 dismissing the complaint for lack of merit.[6] He found that the respondents were GMPC's employees, and not SIP's, as there existed a labor-only contracting relationship between the two entities. The labor arbiter, however, opined that even if respondents were considered as SIP's employees, their dismissal would still not be illegal because the termination of its contract to operate the canteen came as a surprise and was against its will, rendering the canteen's closure involuntary.

Arbiter Robles likewise denied the employees' money claims. He ruled that SIP is not liable for unpaid salaries because it had complied with the minimum statutory requirement and had extended better benefits than GMPC; although they were paid only P160.00 to PP220.00 daily, the employees were provided with free board and lodging seven (7) days a week. Neither were the respondents entitled to overtime pay as it was highly improbable that they regularly worked beyond eight (8) hours every day for a canteen that closes after 5:30 p.m.

The respondents brought their case, on appeal, to the National Labor Relations Commission (NLRC).

The NLRC Ruling

In its Decision of August 30, 2007,[7] the NLRC found that SIP was the respondents' employer, but it sustained the labor arbiter's ruling that the employees were not illegally dismissed as the termination of SIP's concession to operate the canteen constituted an authorized cause for the severance of employer-employee relations. Furthermore, the respondents' admission that they applied with GMPC when it terminated SIP's concession is an indication that they were employees of SIP and that they were terminating their employment relationship with it. As the labor arbiter did, the NLRC regarded the closure of SIP's canteen operations involuntary, thus, negating the employees' entitlement to separation pay.[8]

For failure of SIP to present proof of compliance with the law on the minimum wage, 13[th] month pay, and service incentive leave, the NLRC awarded the respondents a total of P952,865.53 in salary and 13[th] month pay differentials and service incentive leave pay.[9] The NLRC, however, denied the employees' claim for overtime pay, holding that the respondents failed to present evidence that they rendered two hours overtime work every day of their employment with SIP.

SIP moved for, but failed to secure, a reconsideration of the NLRC decision. It then elevated the case to the CA through a petition for certiorari charging the NLRC with grave abuse of discretion in rendering the assailed decision. Essentially, SIP argued that the NLRC erred in declaring that it was the respondents' employer who is liable for their money claims despite its being a labor-only contractor of GMPC.

The CA Decision

In its Decision promulgated on November 27, 2009,[10] the CA granted the petition in part. While it affirmed the award, it found merit in SIP's objection to the NLRC computation and assumption that a month had twenty-six (26) working days, instead of twenty (20) working days. The CA recognized that in a government agency such as the GSIS, there are only 20 official business days in a month. It noted that the respondents presented no evidence that the employees worked even outside official business days and hours. It accordingly remanded the case for a

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recomputation of the award.

Finding substantial evidence in the records supporting the NLRC conclusions, the CA brushed aside SIP's argument that it could not have been the employer of the respondents because it was a mere labor-only contractor of GMPC. It sustained the NLRC's findings that SIP was the respondents' employer.

SIP moved for reconsideration, but the CA denied the motion on May 31, 2010.[11] Hence, the present petition.

The Petition

SIP seeks a reversal of the appellate court's ruling that it was the employer of the respondents, claiming that it was merely a labor-only contractor of GMPC.

It insists that it could not be the respondents' employer as it was not allowed to operate a canteen in the GSIS building. It was the GMPC who had the authority to undertake the operation. GMPC only engaged SIP's services because GMPC had no capability or competence in the area. SIP points out that GMPC assumed responsibility for its acts in operating the canteen; all businesses it transacted were under GMPC's name, as well as the business registration and other permits of the canteen, sales receipts and vouchers for food purchased from the canteen; the employees were issued individual ID cards by GMPC. In sum, SIP contends that its arrangement with GMPC was one of contractor/subcontractor governed by Article 106 of the Labor Code. Lastly, it submits that it was not registered with the Department of Labor and Employment as an independent contractor and, therefore, it is presumed to be a labor-only contractor.

The Respondents' Comment

Without being required by the Court, the respondents filed their comment to SIP's petition on August 3, 2010.[12] They question the propriety of the petition for review on certiorari raising only questions of fact and not of law as required by Rule 45 of the Rules of Court. This notwithstanding, they submit that the CA committed no error in upholding the NLRC's findings of facts which established that SIP was the real employer of Batolina and the other complainants. Thus, SIP was liable to them for their statutory benefits, although it was not made to answer for their lost employment due to the involuntary nature of the canteen's closure.

The respondents pray that the petition be dismissed for lack of merit.

The Court's Ruling

We first resolve the alleged impropriety of the petition.[13] While it is the general rule that the Court may not review factual findings of the CA, we deem it proper to depart from the rule and examine the facts of the case in view of the conflicting factual findings of the labor arbiter, on one hand, and the NLRC and the CA, on the other.[14] We, therefore, hold the respondents' position on this point unmeritorious.

We now consider the merits of the case.

The employer-employee relationship issue

We affirm the CA ruling that SIP was the respondents' employer. The NLRC decision, which the CA affirmed, states:

> Respondents have been the concessionaire of GMPC canteen for nine (9) years (Annex "A" of Complainants' Sur-Rejoinder...., Records, 302). During this period, complainants were employed at the said canteen (Sinumpaang Salaysay of complainants, Records, p. 156). On February 29, 2004, respondents' concession with GMPC was terminated (Annex "C" of Respondents' Answer and Position Paper, Records, p. 77). When respondents were prevented from entering the premises as a result of the termination of their concession, they

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> sent a protest letter dated April 14, 2004 to GMPC thru their counsel. Pertinent portion of the letter:
>
> We write this letter in behalf of our client Mr. & Mrs. Alejandro C. Pablo, the concessionaires who used to occupy and/or rent the area for a cafeteria/canteen at the 2[nd] Floor of the GSIS Building for the past several years.
>
> Last March 12, 2004, without any court writ or order, and with the aid of your armed agents, you physically barred our clients & their employees/helpers from entering the said premises and from performing their usual duties of serving the food requirements of GSIS personnel and others.

Clearly, no less than respondents, thru their counsel, admitted that complainants herein were their employees.

That complainants were employees of respondents is further bolstered by the fact that respondents do not deny that they were the ones who paid complainants salary. When complainants charged them of underpayment, respondents even interposed the defense of file (sic) board and lodging given to complainants.

Furthermore, these IDs issued to complainants bear the signature of respondent Alejandro C. Pablo (Annexes "J", "K", "M" to "M-2" of complainant's Reply. . ., Records, pp. 285 to 290). Likewise, the memoranda issued to complainants regarding their absences without leave were signed by respondent Alejandro C. Pablo (Annexes A, C, E, & G, Ibid., Records, pp. 274, 276, 279, 282). All these pieces of evidence clearly show that respondents are the employer of complainants. (Rollo, pp. 87-88.)

x x x x

The CA ruled out SIP's claim that it was a labor-only contractor or a mere agent of GMPC. We agree with the CA; SIP and its proprietors could not be considered as mere agents of GMPC because they exercised the essential elements of an employment relationship with the respondents such as hiring, payment of wages and the power of control, not to mention that SIP operated the canteen on its own account as it paid a fee for the use of the building and for the privilege of running the canteen. The fact that the respondents applied with GMPC in February 2004 when it terminated its contract with SIP, is another clear indication that the two entities were separate and distinct from each other. We thus see no reason to disturb the CA's findings.

The respondents's money claims

We likewise affirm the CA ruling on the monetary award to Batolina and the other complainants. The free board and lodging SIP furnished the employees cannot operate as a set-off for the underpayment of their wages. We held in Mabeza v. National Labor Relations Commission[15] that the employer cannot simply deduct from the employee's wages the value of the board and lodging without satisfying the following requirements: (1) proof that such facilities are customarily furnished by the trade; (2) voluntary acceptance in writing by the employees of the deductible facilities; and (3) proof of the fair and reasonable value of the facilities charged. As the CA aptly noted, it is clear from the records that SIP failed to comply with these requirements.

On the collateral issue of the proper computation of the monetary award, we also find the CA ruling to be in order. Indeed, in the absence of evidence that the employees worked for 26 days a month, no need exists to recompute the award for the respondents who were "explicitly claiming for their salaries and benefits for the services rendered from Monday to Friday or 5 days a week or a total of 20 days a month."[16]

In light of the foregoing, we find no merit in the petition.

WHEREFORE, premises considered, we hereby DISMISS the petition for lack of merit. The assailed decision and resolution of the Court of Appeals in CA-G.R. SP No. 101651, are AFFIRMED.

SO ORDERED.

Carpio Morales, Bersamin, Villarama, Jr., and Sereno, JJ., concur.

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[1] Rollo, pp. 11-32.

[2] Id. at 37-48.

[3] Id. at 51-53.

[4] Entitled S.I.P. Food House and Mr. and Mrs. Alejandro Pablo v. National Labor Relations Commission and Restituto Batolina, et al.

[5] Rollo, pp. 56-57.

[6] Id. at 69-83.

[7] Id. at 85-93.

[8] Manaban v. Sarphil Corporation/Apokon Fruits, Inc., G.R. No. 150915, April 11, 2005, 455 SCRA 240.

[9] Rollo, pp. 95-98; computation of Labor Arbitration Associate Flora P. Juarez.

[10] Supra note 2.

[11] Supra note 3.

[12] Rollo, pp. 102-107.

[13] Filed under Rule 45 of the Rules of Court.

[14] Cadiz v. Court of Appeals, G.R. No. 153784, October 25, 2005, 474 SCRA 232; Fujitsu Computer Products Corporation of the Philippines v. Court of Appeals, G.R. No. 150232, March 31, 2005, 454 SCRA 737.

[15] G.R. No. 118506, April 18, 1997, 271 SCRA 670.

[16] Rollo, pp. 47-48; CA Decision, p. 11, last paragraph.

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