

**MARTICIO SEMBLANTE AND DUBRICK PILAR, PETITIONERS, VS.
COURT OF APPEALS, 19TH DIVISION, NOW SPECIAL FORMER 19TH
DIVISION, GALLERA DE MANDAUE / SPOUSES VICENTE AND MARIA
LUISA LO...**

G.R. No. 196426. August 15, 2011

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

Before Us is a Petition for Review on Certiorari under Rule 45, assailing and seeking to set aside the Decision[1] and Resolution[2] dated May 29, 2009 and February 23, 2010, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 03328. The CA affirmed the October 18, 2006 Resolution[3] of the National Labor Relations Commission (NLRC), Fourth Division (now Seventh Division), in NLRC Case No. V-000673-2004.

Petitioners Marticio Semblante (Semblante) and Dubrick Pilar (Pilar) assert that they were hired by respondents-spouses Vicente and Maria Luisa Loot, the owners of Gallera de Mandaue (the cockpit), as the official masiador and sentenciador, respectively, of the cockpit sometime in 1993.

As the masiador, Semblante calls and takes the bets from the gamecock owners and other bettors and orders the start of the cockfight. He also distributes the winnings after deducting the arriba, or the commission for the cockpit. Meanwhile, as the sentenciador, Pilar oversees the proper gaffing of fighting cocks, determines the fighting cocks' physical condition and capabilities to continue the cockfight, and eventually declares the result of the cockfight.[4]

For their services as masiador and sentenciador, Semblante receives Php 2,000 per week or a total of Php 8,000 per month, while Pilar gets Php 3,500 a week or Php 14,000 per month. They work every Tuesday, Wednesday, Saturday, and Sunday every week, excluding monthly derbies and cockfights held on special holidays. Their working days start at 1:00 p.m. and last until 12:00 midnight, or until the early hours of the morning depending on the needs of the cockpit. Petitioners had both been issued employees' identification cards[5] that they wear every time they report for duty. They alleged never having incurred any infraction and/or violation of the cockpit rules and regulations.

On November 14, 2003, however, petitioners were denied entry into the cockpit upon the instructions of respondents, and were informed of the termination of their services effective that date. This prompted petitioners to file a complaint for illegal dismissal against respondents.

In answer, respondents denied that petitioners were their employees and alleged that they were associates of respondents' independent contractor, Tomas Vega. Respondents claimed that petitioners have no regular working time or day and they are free to decide for themselves whether to report for work or not on any cockfighting day. In times when there are few cockfights in Gallera de Mandaue, petitioners go to other cockpits in the vicinity. Lastly, petitioners, so respondents assert, were only issued identification cards to indicate that they were free from

the normal entrance fee and to differentiate them from the general public.[6]

In a Decision dated June 16, 2004, Labor Arbiter Julie C. Rendoque found petitioners to be regular employees of respondents as they performed work that was necessary and indispensable to the usual trade or business of respondents for a number of years. The Labor Arbiter also ruled that petitioners were illegally dismissed, and so ordered respondents to pay petitioners their backwages and separation pay.[7]

Respondents' counsel received the Labor Arbiter's Decision on September 14, 2004. And within the 10-day appeal period, he filed the respondents' appeal with the NLRC on September 24, 2004, but without posting a cash or surety bond equivalent to the monetary award granted by the Labor Arbiter.[8]

It was only on October 11, 2004 that respondents filed an appeal bond dated October 6, 2004. Hence, in a Resolution[9] dated August 25, 2005, the NLRC denied the appeal for its non-perfection.

Subsequently, however, the NLRC, acting on respondents' Motion for Reconsideration, reversed its Resolution on the postulate that their appeal was meritorious and the filing of an appeal bond, albeit belated, is a substantial compliance with the rules. The NLRC held in its Resolution of October 18, 2006 that there was no employer-employee relationship between petitioners and respondents, respondents having no part in the selection and engagement of petitioners, and that no separate individual contract with respondents was ever executed by petitioners.[10]

Following the denial by the NLRC of their Motion for Reconsideration, per Resolution dated January 12, 2007, petitioners went to the CA on a petition for certiorari. In support of their petition, petitioners argued that the NLRC gravely abused its discretion in entertaining an appeal that was not perfected in the first place. On the other hand, respondents argued that the NLRC did not commit grave abuse of discretion, since they eventually posted their appeal bond and that their appeal was so meritorious warranting the relaxation of the rules in the interest of justice.[11]

In its Decision dated May 29, 2009, the appellate court found for respondents, noting that referees and bet-takers in a cockfight need to have the kind of expertise that is characteristic of the game to interpret messages conveyed by mere gestures. Hence, petitioners are akin to independent contractors who possess unique skills, expertise, and talent to distinguish them from ordinary employees. Further, respondents did not supply petitioners with the tools and instrumentalities they needed to perform work. Petitioners only needed their unique skills and talents to perform their job as *masiador* and *sentenciador*. [12] The CA held:

In some circumstances, the NLRC is allowed to be liberal in the interpretation of the rules in deciding labor cases. In this case, the appeal bond was filed, although late. Moreover, an exceptional circumstance obtains in the case at bench which warrants a relaxation of the bond requirement as a condition for perfecting the appeal. This case is highly meritorious that propels this Court not to strictly apply the rules and thus prevent a grave injustice from being done.

As elucidated by the NLRC, the circumstances obtaining in this case wherein no actual employer-employee exists between the petitioners and the private respondents [constrain] the relaxation of the rules. In this regard, we find no grave abuse attributable to the administrative body.

x x x x

Petitioners are duly licensed "*masiador*" and "*sentenciador*" in the cockpit owned by Lucia Loot. Cockfighting, which is a part of our cultural heritage, has a peculiar set of rules. It is a game based on the fighting ability of the game cocks in the cockpit. The referees and bet-takers need to have that kind of expertise that is characteristic of the cockfight gambling who can interpret the message conveyed even by mere gestures. They ought to have the talent and skill to get the bets from numerous cockfighting aficionados and decide

which cockerel to put in the arena. They are placed in that elite spot where they can control the game and the crowd. They are not given salaries by cockpit owners as their compensation is based on the “arriba”. In fact, they can offer their services everywhere because they are duly licensed by the GAB. They are free to choose which cockpit arena to enter and offer their expertise. Private respondents cannot even control over the means and methods of the manner by which they perform their work. In this light, they are akin to independent contractors who possess unique skills, expertise and talent to distinguish them from ordinary employees.

Furthermore, private respondents did not supply petitioners with the tools and instrumentalities they needed to perform their work. Petitioners only needed their talent and skills to be a “masiador” and “sentenciador”. As such, they had all the tools they needed to perform their work. (Emphasis supplied.)

The CA refused to reconsider its Decision. Hence, petitioners came to this Court, arguing in the main that the CA committed a reversible error in entertaining an appeal, which was not perfected in the first place.

Indeed, the posting of a bond is indispensable to the perfection of an appeal in cases involving monetary awards from the Decision of the Labor Arbiter.[13] Article 223 of the Labor Code provides:

Article 223. Appeal. — Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:

x x x x

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from. (Emphasis supplied.)

Time and again, however, this Court, considering the substantial merits of the case, has relaxed this rule on, and excused the late posting of, the appeal bond when there are strong and compelling reasons for the liberality,[14] such as the prevention of miscarriage of justice extant in the case[15] or the special circumstances in the case combined with its legal merits or the amount and the issue involved.[16] After all, technical rules cannot prevent courts from exercising their duties to determine and settle, equitably and completely, the rights and obligations of the parties.[17] This is one case where the exception to the general rule lies.

While respondents had failed to post their bond within the 10-day period provided above, it is evident, on the other hand, that petitioners are NOT employees of respondents, since their relationship fails to pass muster the four-fold test of employment We have repeatedly mentioned in countless decisions: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee’s conduct, which is the most important element.[18]

As found by both the NLRC and the CA, respondents had no part in petitioners’ selection and management;[19] petitioners’ compensation was paid out of the arriba (which is a percentage deducted from the total bets), not by petitioners;[20] and petitioners performed their functions as masiador and sentenciador free from the direction and control of respondents.[21] In the conduct of their work, petitioners relied mainly on their “expertise that is characteristic of the cockfight gambling,”[22] and were never given by respondents any tool needed for the performance of their work.[23]

Respondents, not being petitioners’ employers, could never have dismissed, legally or illegally, petitioners, since respondents were without power or prerogative to do so in the first place. The rule on the posting of an appeal bond cannot defeat the substantive rights of respondents to be free from an unwarranted burden of answering for an illegal dismissal for which they were never responsible.

Strict implementation of the rules on appeals must give way to the factual and legal reality that is evident from the records of this case.[24] After all, the primary objective of our laws is to dispense justice and equity, not the contrary.

WHEREFORE, We DENY this petition and AFFIRM the May 29, 2009 Decision and February 23, 2010 Resolution of the CA, and the October 18, 2006 Resolution of the NLRC.

SO ORDERED.

Carpio,[*] Brion,**] Peralta, and Sereno,[***] JJ., concur.

[*] Acting member per Special Order No. 1059 dated August 1, 2011.

**] Acting member per Special Order No. 1056 dated July 27, 2011.

***] Additional member per Special Order No. 1028 dated June 21, 2011.

[1] Rollo, pp. 56-65. Penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Stephen C. Cruz and Rodil V. Zalameda.

[2] Id. at 79-80. Penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Edgardo L. Delos Santos and Socorro B. Inting.

[3] Id. at 99-103. Penned by Commissioner Oscar S. Uy and concurred in by Presiding Commissioner Gerardo C. Nograles. Commissioner Aurelio D. Menzon took no part, as he was on leave.

[4] Id. at 68.

[5] Id. at 103.

[6] Id. at 68; respondents' Position Paper.

[7] Id. at 82-96.

[8] Id. at 99.

[9] Penned by Commissioner Oscar S. Uy and concurred in by Commissioners Gerardo C. Nograles and Aurelio D. Menzon.

[10] Rollo, pp. 70-71.

[11] Id. at 71.

[12] Id. at 73.

[13] *McBurnie v. Ganzon*, G.R. Nos. 178034 & 178117 & 186984-85, September 18, 2009, 600 SCRA 658, 667.

[14] *Orozco v. Court of Appeals, Fifth Division*, G.R. No. 155207, April 29, 2005, 457 SCRA 700, 706-710, citing *Olacao v. NLRC*, G.R. No. 81390, August 29, 1989, 177 SCRA 38, 49; *Taberrah v. NLRC*, 342 Phil. 394 (1997); *Cosico, Jr. v. NLRC*, G.R. No. 118432, 338 Phil. 1080 (1997); *Star Angel Handicraft v. NLRC*, G.R. No. 108914, September 20, 1994, 236 SCRA 580, 584; *Blancaflor v. NLRC*, G.R. No. 101013, February 2, 1993, 218 SCRA 366, 371; *YBL v. NLRC*, G.R. No. 93381, September 28, 1990, 190 SCRA 160, 163.

[15] *Philippine Airlines, Inc. v. National Labor Relations Commission*, G.R. No. 120506, October 28, 1996, 263 SCRA 638, 658; *Manaban v. Sarphil Corporation*, G.R. No. 150915, April 11, 2005, 455 SCRA 240, citing *Jaro*

v. Court of Appeals, G.R. No. 127536, February 19, 2002, 377 SCRA 282.

[16] Rosewood Processing, Inc. v. NLRC, 352 Phil. 1013, 1029 (1998); citing Philippine Airlines, Inc., supra.

[17] Orozco, supra at 709; citing Buenaobra v. Lim King Guan, G.R. No. 150147, January 20, 2004, 420 SCRA 359, 364.

[18] Manila Water Company Inc. v. Dalumpines, G.R. No. 175501, October 4, 2010, 632 SCRA 76, 92, citing Lopez v. Metropolitan Waterworks and Sewerage System, 501 Phil. 115, 137 (2005) and Manila Water Company, Inc. v. Peña, 478 Phil. 68, 81 (2004); Makati Haberdashery, Inc. v. National Labor Relations Commission, G.R. Nos. 83380-81, November 15, 1989, 179 SCRA 448, 452, citing Bautista v. Inciong, G.R. No. 52824, March 16, 1988, 158 SCRA 556; Asim v. Castro, G.R. Nos. 75063-64, June 30, 1988, 163 SCRA 344; Continental Marble Corporation v. NLRC, G.R. No. 43825, May 9, 1988, 161 SCRA 151.

[19] Rollo, p. 70.

[20] Id. at 70-71, 73.

[21] Id. at 73.

[22] Id.

[23] Id.

[24] Locsin v. Nissan Lease, Philippines, Inc., G.R. No. 185567, October 20, 2010, 634 SCRA 392, 413.

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