

ANTONIO VALEROSO AND ALLAN LEGATONA, PETITIONERS, VS. SKYCABLE CORPORATION, RESPONDENT.

G.R. No. 202015. July 13, 2016

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

By this Petition for Review on Certiorari,[1] Antonio Valeroso and Allan Legatona (petitioners) assail the November 11, 2011 Decision[2] and May 18, 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 116296, which reversed the May 24, 2010 Decision[4] of the National Labor Relations Commission (NLRC) and consequently dismissed their Complaint for illegal dismissal and money claims against Skycable Corporation (respondent).

Antecedent Facts

This case arose from a Complaint[5] for illegal dismissal, non-payment of 13[th] month pay, separation pay and illegal deduction filed by petitioners against respondent on February 25, 2009 before the Labor Arbiter, docketed as NLRC NCR Case No. 02-03439-09. The Complaint was subsequently amended to include regularization and payment of moral and exemplary damages as additional causes of action.[6]

Petitioners Valeroso and Legatona alleged that they started working on November 1, 1998 and July 13, 1998, respectively, as account executives tasked to solicit cable subscriptions for respondent, as evidenced by Certifications[7] issued by Michael T. De la Cuesta (De la Cuesta), respondent's Sales Territory Manager. As shown in their payslips[8] for the years 2001 to 2006, they received commissions ranging from P15,000.00 to 530,000.00 each upon reaching a specific quota every month and an allowance of P6,500.00 to P7,000.00 per month. From being direct hires of respondent, they were transferred on January 1, 2007 to Skill Plus Manpower Services sans any agreement for their transfer. In February 2009, they were informed that their commissions would be reduced due to the introduction of prepaid cards sold to cable subscribers resulting in lower monthly cable subscriptions. Dismayed, they notified their manager, Marlon Pasta (Pasta), of their intention to file a labor case with the NLRC, which they did on February 25, 2009. Pasta then informed them that they will be dropped from the roster of its account executives, which act, petitioners claimed, constitutes unfair labor practice.

Further, petitioners claimed that they did not receive 13[th] month pay for 2006 and were underpaid of such benefit for the years 2007 and 2008; and that in January 2008, petitioner Legatona signed a Release and Quitclaim[9] in consideration of the amount of P25,000.00 as loyalty bonus from respondent.

Respondent, on the other hand, claimed that it did not terminate the services of petitioners for there was never an employer-employee relationship to begin with. It averred that in 1998, respondent (then Central CATV, Inc.) engaged petitioners as independent contractors under a Sales Agency Agreement.[10] In 2007, respondents decided to streamline its operations and instead of contracting with numerous independent account executives such as petitioners, respondent engaged the services of an independent contractor, Armada Resources & Marketing Solutions, Inc. (Armada, for brevity; formerly Skill Plus Manpower Services) under a Sales Agency

Agreement.[11] As a result, petitioners' contracts were terminated but they, together with other sales account executives, were referred for transfer to Armada. Petitioners then became employees of Armada. In 2009, respondent and Armada again entered into a Sales Agency Agreement,[12] wherein petitioners were again tasked to solicit accounts/ generate sales for respondent.

Respondent insisted that in hiring petitioners and Armada as independent contractors, it engaged in legitimate job contracting where no employer-employee relation exists between them. In an affidavit,[13] De la Cuesta stated that the certifications he issued are not employment certifications but are mere accommodations, requested by petitioners themselves, for their credit card and loan applications. Moreover, Armada's President, Francisco Navasa (Navasa), in his affidavit,[14] verified that Armada is an independent contractor which selected and engaged the services of petitioners, paid their compensation, exercised the power to control their conduct and discipline or dismiss them. Therefore, when petitioners filed their Complaint in February 2009, they were employees of Armada and as such, had no cause of action against respondent.

Petitioners, however, assailed the allegation that they were employees of Armada, claiming that they were directly hired, paid and dismissed by respondent. They cited the following as indicators that they are under the direct control and supervision of respondent: 1) respondent's officers supervise their area of work, monitor them daily, update them of new promos and installations they need to work on, inform them of meetings and penalize them for non-attendance, ask them to train new agents/account executives, and inform them of new prices and expiration dates of product promos; 2) respondent's supervisors delegate to them authority to investigate, campaign against and legalize unlawful cable connections; 3) respondent's supervisors monitor their quota production and impose guaranteed charges as penalty for failing to meet their quota; and 4) respondent consistently gives trophies to award them of their outstanding performance.

Ruling of the Labor Arbiter

In a Decision[15] dated August 26, 2009, the Labor Arbiter dismissed the Complaint since petitioners failed to establish by substantial evidence that respondent was their employer. The Labor Arbiter observed that petitioners failed to identify and specify the person who allegedly hired them, paid their wages and exercised supervision and control over the manner and means of performing their work. There was neither any evidence to prove that Pasta, who allegedly dismissed them, is an officer of respondent with an authority to dismiss them. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the complaint filed in the instant case is dismissed as discussed in the body hereof.

SO ORDERED.[16]

Ruling of the National Labor Relations Commission

Petitioners filed an appeal with the NLRC attributing reversible error on the Labor Arbiter in dismissing their Complaint on the ground of no employer-employee relationship.

In a Decision[17] dated May 24, 2010, the NLRC reversed the Labor Arbiter's ruling. It found that petitioners are regular employees of respondent having performed their job as account executives for more than one year, even if not continuous and merely intermittent, and considering the indispensability and continuing need of petitioners' tasks to the business. The NLRC observed that there was no evidence that petitioners have substantial capitalization or investment to consider them as independent contractors. On the other hand, the certifications and the payslips presented by petitioners constitute substantial evidence of employer-employee relationship. The NLRC held that upon termination of the Sales Agency Agreement with Armada in 2009, petitioners were considered dismissed without just cause and due process. The dispositive portion of the NLRC Decision reads:

WHEREFORE, premises considered, the instant appeal is GRANTED and the assailed Decision of Labor Arbiter Gaudencio P. Demaisip, Jr. dated August 26, 2009, is REVERSED and SET ASIDE, and a new one entered declaring complainants to have been illegally dismissed. Accordingly, respondent Skycable Corporation/Central CATV Inc. is hereby directed to immediately reinstate complainants to their former position[s] and to pay each of the complainants their full backwages reckoned from February 25, 2009 up to the actual payroll reinstatement, (tentatively computed at P607,200.00), in addition to the amount of P58,500.00 representing 13[th] month pay differentials and pro-rata 3[th] month pay for 2009.

SO ORDERED.[18]

With the NLRC's ruling in favor of petitioners, respondent filed a motion for reconsideration. This motion was, however, denied by the NLRC in its Resolution[19] of July 27, 2010.

Riding of the Court of Appeals

Respondent filed a Petition for Certiorari[20] with the CA, attributing grave abuse of discretion on the part of the NLRC in holding it liable for the alleged illegal dismissal of petitioners.

The CA rendered a Decision[21] on November 11, 2011 granting respondent's Petition for Certiorari and reversing the NLRC Decision. The CA sustained the Labor Arbiter's finding that there was no evidence to substantiate the bare allegation of employer-employee relationship between the parties. The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the instant petition is GRANTED and the Decision dated May 24, 2010 of the National Labor Relations Commission in NLRC NCR Case No. 02-03439-09 is hereby REVERSED and SET ASIDE.

SO ORDERED.[22]

Petitioners moved for reconsideration which was denied by the CA in its Resolution[23] dated May 18, 2012.

Issues

Hence, this Petition raising the following issues:

- I.
WHETHER THE COURT OF APPEALS GRAVELY ERRED IN RENDERING ITS DECISION DATED NOVEMBER 11, 2011.
- II.
WHETHER THE PETITIONERS WERE RESPONDENT'S REGULAR EMPLOYEES, WHOSE DISMISSAL FROM EMPLOYMENT WAS ILLEGAL.[24]

Petitioners maintain that respondent failed to discharge the burden of disproving the employer-employee relationship through competent evidence of independent contractorship. They assert that the nature of their work and length of service with respondent made them regular employees as defined in Article 280[25] of the Labor Code. Consequently, the CA gravely erred in dismissing their Complaint for illegal dismissal against respondent.

Our Ruling

The Petition has no merit.

The pivotal issue to be resolved in this case is whether petitioners were employees of respondent.

Well-entrenched is the doctrine that the existence of an employer-employee relationship is ultimately a question

of fact and that the findings thereon by the Labor Arbiter and NLRC shall be accorded not only respect but even finality when supported by substantial evidence.[26] However, considering the conflicting findings of fact by the Labor Arbiter, the NLRC and the CA, the Court is impelled to re-examine the records and resolve this factual issue.

To prove the claim of an employer-employee relationship, the following should be established by competent evidence: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished.[27] Among the four, the most determinative factor in ascertaining the existence of employer-employee relationship is the "right of control test." [28] Under this control test, the person for whom the services are performed reserves the right to control not only the end to be achieved, but also the means by which such end is reached.[29]

We rule that an employer-employee relationship is absent in this case. The evidence presented by petitioners did not prove their claim that they were employees of respondent. The certifications issued by De la Cuesta are not competent evidence of employer-employee relation as these merely certified that respondent had engaged the services of petitioners without specifying the true nature of such engagement. These documents did not certify that petitioners were employees but were only issued to accommodate petitioners' request for loan applications, which fact was not refuted by petitioners. As for the payslips presented, it appears that only the payslips for the years 2001 to 2006 were submitted. No payslips for the years material to this case (2007 to 2009) were submitted. It is undisputed that petitioners were transferred to Armada in 2007, thus, we cannot give much credence to the payslips issued before this period.

We, further, find no merit in petitioners' assertion that respondent's control over them was demonstrated. "[Guidelines indicative of labor law 'control' do not merely relate to the mutually desirable result intended by the contractual relationship; they must have the nature of dictating the means and methods to be employed in attaining the result.]"[30] Here, we find that respondent's act of regularly updating petitioners of new promos, new price listings, meetings and trainings of new account executives; imposing quotas and penalties; and giving commendations for meritorious performance do not pertain to the means and methods of how petitioners were to perform and accomplish their task of soliciting cable subscriptions. At most, these indicate that respondent regularly monitors the result of petitioners' work but in no way dictate upon them the manner in which they should perform their duties. Absent any intrusion by respondent into the means and manner of conducting petitioners' tasks, bare assertion that petitioners' work was supervised and monitored does not suffice to establish employer-employee relationship.

Reliance by petitioners on the case of *Francisco v. National Labor Relations Commission*[31] is misplaced. In that case, the Court adopted a two-tiered test in order to determine the true relationship between the employer and employee. This two-tiered test, which involves: "(1) the putative employer's power to control the employee with respect to the means and methods by which the work is to be accomplished; and (2) the underlying economic realities of the activity or relationship," has been made especially appropriate in cases where there is no written agreement to base the relationship on and where the various tasks performed by the worker brings complexity to the relationship with the employer.[32] Thus, in addition to the control test, the totality of the economic circumstances of the worker is taken into light to determine the existence of employment relationship.

In the present case, there is a written contract, i.e., the Sales Agency Agreement, which served as the primary evidence of the nature of the parties' relationship. In this duly executed and signed agreement, petitioners and respondent unequivocally agreed that petitioners' services were to be engaged on an agency basis as sales account executives and that no employer-employee relationship is created but an independent contractorship. It is

therefore clear that the intention at the time of the signing of the agreement is not to be bound by an employer-employee relationship. At any rate, even if we are to apply the two-tiered test pronounced in the Francisco case, there can still be no employer-employee relationship since, as discussed, the element of control is already absent.

Indeed, "[t]he presence of [the] power of control is indicative of an employment relationship while the absence thereof is indicative of independent contractorship." [33] Moreover, evidence on record reveal the existence of independent contractorship between the parties. As mentioned, the Sales Agency Agreement provided the primary evidence of such relationship. "While the existence of employer-employee relationship is a matter of law, the characterization made by the parties in their contract as to the nature of their juridical relationship cannot be simply ignored, particularly in this case where the parties' written contract unequivocally states their intention" [34] to be strictly bound by independent contractorship. Petitioner Legatona, in fact, in his Release and Quitclaim, acknowledged that he was performing sales activities as sales agent/independent contractor and not an employee of respondent. In the same token, De la Cuesta and Navasa, made sworn testimonies that petitioners are employees of Armada which is an independent contractor engaged to provide marketing services for respondent.

Neither can we subscribe to petitioners' contention that they are considered regular employees of respondent for they perform functions necessary and desirable to the business operation of respondent in consonance with Article 280 of the Labor Code. We have held that "Article 280 is not the yardstick for determining the existence of an employment relationship because it merely distinguishes between two kinds of employees, i.e., regular employees and casual employees, for purposes of determining [their rights] to certain benefits, [such as] to join or form a union, or to security of tenure. Article 280 does not apply where the existence of an employment relationship is in dispute," [35] as in this case.

Evidently, the legal relation of petitioners as sales account executives to respondent can be that of an independent contractor. There was no showing that respondent had control with respect to the details of how petitioners must conduct their sales activity of soliciting cable subscriptions from the public. In the case of *Abante, Jr. v. Lamadrid Bearing & Parts Corporation*, [36] *Empermaco Abante, Jr.*, a commission salesman who pursued his selling activities without interference or supervision from respondent company and relied on his own resources to perform his functions, was held to be an independent contractor. Similarly, in *Sandigan Savings & Loan Bank, Inc. v. National Labor Relations Commission*, [37] *Anita Javier* was also held to be an independent contractor as the Court found that Sandigan Realty Development Corporation had no control over her conduct as a realty sales agent since its only concern or interest was in the result of her work and not in how it was achieved.

All told, we sustain the CA's factual findings and conclusion and accordingly, find no cogent reason to overturn the dismissal of petitioners' Complaint against respondent.

WHEREFORE, the Petition is DENIED. The November 11, 2011 Decision and May 18, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 116296 are AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Brion, and Leonen, JJ., concur.

Mendoza, J., on official leave.

[1] Rollo, pp. 9-24.

[2] CA rollo, pp. 332-338; penned by Associate Justice Samuel H. Gaerlan and concurred in by Associate Justices

Rosmari D. Carandang and Ramon R. Garcia.

[3] Id. at 357.

[4] Records, pp. 296-304; penned by Commissioner Dolores M. Peralta-Beley and concurred in by Presiding Commissioner Leonardo L. Leonida and Commissioner Mercedes R. Posada-Lacap.

[5] Id. at 1-3.

[6] Id. at 9-11.

[7] Id. at 36-37.

[8] Id. at 38-5?.

[9] Id. at 58.

[10] Id. at 75-78.

[11] Id. at 79-91.

[12] Id. at 92-97.

[13] Id. at 120-121.

[14] Id. at 124-125.

[15] Id. at 163-170; penned by Labor Arbiter Gaudencio P. Demaisip, Jr.

[16] Id. at 170.

[17] Id. at 296-304.

[18] Id. at 305-306.

[19] Id. at 334-335.

[20] CA rollo, pp. 3-29.

[21] Id at 332-338.

[22] Id. at 337.

[23] Id. at 357.

[24] Rollo, p. 14.

[25] Art. 280. Regular and casual employment. The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall

continue while such activity exists.

[26] Basay v. Hacienda Consolation and/or Bouffard III, 632 Phil. 430, 444 (2010).

[27] McBurnie v. Ganzon, G.R. Nos 178034 & 178117, 186984-85, October 17, 2013, 707 SCRA 646, 690.

[28] Liho v. Genovia, 677 Phil. 134, 148 (2011).

[29] Encyclopedia Britannica (Phils.), Inc. v. National Labor Relations Commission, 332 Phil. 1, 6 (1996).

[30] Tongko v. The Manufacturers Life Insurance Co. (Phils.), Inc., 655 Phil. 384, 402 (2011).

[31] 532 Phil. 399 (2006).

[32] Id. at 407-408.

[33] AFP Mutual Benefit Association, Inc. v. National Labor Relations Commission, 334 Phil. 712, 722 (1997).

[34] Royale Homes Marketing Corporation v. Alcantara, G.R. No. 195190, July 28, 2014, 731 SCRA 147, 159-160.

[35] Atok Big Wedge Co., Inc. v. Gison, 670 Phil. 615, 629 (2011); Coca Cola Bottlers Phils., Inc. v. National Labor Relations Commission, 366 Phil. 581, 590 (1999) citing Singer Sewing Machine Company v. Drilon, G.R. No. 91307, January 24, 1991, 193 SCRA 270, 279.

[36] 474 Phil. 414, 426 (2004).

[37] 324 Phil. 348, 360 (1996).

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