

**ROMEO ALBA, PETITIONER, VS. CONRADO G. ESPINOSA, ET AL.,  
RESPONDENTS.***G.R. No. 227734. August 09, 2017*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-227734/>**REYES, JR., J:**

This resolves the Petition for Review on Certiorari[1] filed under Rule 45 of the Rules of Court by petitioner Romeo Alba (Alba) to assail the Decision[2] dated July 14, 2016 and Resolution[3] dated October 17, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 144043, wherein the CA affirmed the Decision[4] dated November 27, 2015 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 09-002460-15 that declared Alba guilty of illegal dismissal and liable for monetary claims.

**The Antecedents**

The case stems from two complaints for illegal dismissal and monetary claims filed against Alba Construction and its owner, Alba, by herein respondents with the Arbitration Branch of the NLRC. The first labor complaint, docketed as NLRC NCR Case No. 06-07959-14,[5] was filed by Conrado Gabe Espinosa (Conrado), Eusebio Mojica, Jaime Ocfemia, Jr. (Jaime, Jr.), Remy Diamo, Ross Florencio, Jr., Gerry U. Milo, Rodolfo Benosa, Rolando Benosa, Marcelino Macindo, Nikko Benosa, Felix Taperla, Landirico Taperla, Arturo Nebrida, Jr. and Bongbong Delumpines.[6] The second complaint, docketed as NLRC NCR Case No. 06-07960-14,[7] was filed by Nilo Abrencillo (Nilo), Freddie Abrencillo, Robert Manimtiin, Ronaldo Hernandez, Jr., William Janer, Ronie Tuparan, Samuel Nabas (Samuel), Eufrecino B. Jemina, Ruben Caleza, Hermel Caringal, Phamer Mandeoya, Alexander Barbacena, Roily Abrencillo, Rene Barbacena, Jr., Jolito Cabillo and Roger Nebrida.[8]

It was alleged by the respondents that on various dates, Alba hired them as construction workers for his projects in several residential villages within Metro Manila and nearby provinces. The respondents were Alba's regular employees who were paid different wage rates that ranged from P350.00 to P500.00 a day, but were deprived of some statutorily-mandated benefits such as their overtime pay, 13<sup>th</sup> month pay, holiday pay, and service incentive leave (SIL) pay.[9] On different dates in 2013, some of the respondents[10] confronted Alba regarding their benefits, but such action eventually resulted in their dismissal.[11]

In 2014, the other respondents again questioned Alba for his non-payment of their benefits. Alba still took it against them and began treating them harshly, as he would shout at them while at the job site, and would find scheming ways to extend their working hours. The foregoing prompted these respondents to seek the assistance of media personality Raffy Tulfo (Tulfo) in his Radyo Singko Program. As he addressed the respondents' dilemma, Tulfo personally called Alba, who was reminded to pay the respondents their full benefits. The action, however, proved to create more harm than good for the respondents because when they reported back for work the following day, they were informed of their dismissal.[12] Feeling aggrieved, all the respondents filed their complaints for illegal dismissal and monetary claims with the NLRC. The two complaints were later consolidated before the Labor Arbiter (LA).

For his defense, Alba argued that the respondents could not be deemed his regular employees. He claimed to be a

mere taker of small-scale construction projects for house repairs and renovations. In the construction industry, he was deemed a mere mamamakyaw, who would pool a team of skilled and semi-skilled carpenters and masons for specific projects that usually lasted from one to two weeks. The respondents were paid daily wages ranging from P600.00 to P1,000.00, depending on their skill, and could take on projects with their own clients after Alba's projects had terminated.[13] For succeeding projects, Alba would only take in construction workers who were still available for the duration of the new work.[14]

As he denied any liability for the respondents' claims, Alba likewise presented certifications from clients indicating that the latter directly paid the salaries of the workers provided by Alba for the projects. He also argued that the respondents used their own tools at work, and received instructions from either the architect or foreman engaged by the project owner.[15]

The respondents were displeased by Alba's explanations. To disprove Alba's claim that he was a mere mamamakyaw, they presented gate passes, issued by the villages where Alba had construction projects, which indicated that Alba was a "contractor." [16]

#### Ruling of the LA

The LA dismissed the complaints via a Decision[17] dated July 31, 2015.

For the LA, no employer-employee relationship existed between Alba and the respondents. The LA referred to the following circumstances affecting the parties' payment of wages and the element of control, and which negated the claim that the respondents should be deemed employees of Alba: first, the wages of the respondents were paid directly by the project owners; second, the respondents applied their own methodology and used their own tools and equipment as they discharged their work; and third, the respondents obtained their work instructions from architects or the foreman directly hired by the owners or clients.[18] The supposed gate passes issued by village representatives did not qualify as substantial evidence to show that Alba was indeed a contractor.[19]

The LA's decision ended with the following dispositive portion:

WHEREFORE, this Labor Arbitration Branch resolves to DISMISS the complaint for lack of merit.

SO ORDERED.[20]

Dissatisfied, the respondents appealed to the NLRC.

#### Ruling of the NLRC

The respondents' appeal was partly granted by the NLRC. On November 27, 2015, the NLRC rendered its Decision[21] that ended with the following decretal portion:

WHEREFORE, premises considered, this instant Appeal is PARTLY GRANTED. The assailed Decision dated 31 July 2015 is AFFIRMED with respect to [respondents] CONRADO GABE ESPINOSA, and JAIME OCFEMIA, JR. The same assailed Decision is REVERSED AND SET ASIDE with respect to the remaining [respondents]. [Alba and Alba Construction] are hereby ordered to:

- Reinstatement the remaining [respondents] and pay full backwages computed from the time of their dismissal up to the time of actual reinstatement. In case reinstatement is no longer possible due to strained relations between the parties, [Alba and Alba Construction] shall be liable for separation pay in lieu of reinstatement equivalent to one month salary for every year of service reckoned from the [respondents'] respective time of employment to the finality of this decision;
- Pay the remaining [respondents] moral and exemplary damages in the total amount of P200,000.00;

- Pay the remaining [respondents] their 13[th] month pay computed from the last three years;
- Pay the remaining [respondents], excluding Nilo Abrencillo, [SIL] benefits computed from their respective date[s] of employment; and
- Pay attorney's fees equivalent to 10 percent of the final judgment award.

The monetary awards are as follows:

x x x x

P 14,459,613.28

ADD: Moral and Exemplary Damages 200,000.00

TOTAL 1[4],659,613.28

PLUS: 10% ATTORNEY'S FEES 1.465,961.33

TOTAL AWARD P16,125,574.61

SO ORDERED.[22]

The NLRC justified the dismissal of Jaime, Jr.'s complaint by citing sufficient evidence that Alba engaged him as an independent contractor, specifically as excavation contractor.[23] Conrado's complaint, on the other hand, was dismissed given his admission that he was employed as a tanod in Barangay Almanza Dos, Las Piñas City.[24]

As to the remaining respondents, the NLRC rejected the LA's finding on the lack of employer-employee relationship. The association between Alba and the respondents was established after Alba readily proclaimed that the respondents were part of his pool of workers. Alba had the power to determine who would remain in or be terminated from his projects. He also admitted that he paid the respondents their wages on a daily basis.

The claim that the respondents used their own methods and tools for the construction remained unsubstantiated by convincing evidence. On the contrary, it was established that Alba exercised his authority at the respondents' job sites. The four-fold test in determining the existence of an employer-employee relationship was duly satisfied, particularly: (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 on the means and methods by which the work is accomplished.[25] Their employment was deemed regular given that they had been continuously rehired for Alba's projects for several years. More importantly, they performed tasks which were necessary and indispensable to the usual business or trade of Alba.[26]

The NLRC also addressed the evidentiary weight of the documents that were considered by the LA. By the gate passes that formed part of the respondents' evidence, it was shown that even the management of the villages that issued them recognized Alba to be the employer of the respondents. On the other hand, the certifications presented by Alba were either unsigned, defective or proven to contain false statements.[27]

In the end, Alba was declared liable for illegal dismissal given his failure to allocate further work assignments to the respondents. It did not appear that the termination was founded on any just or valid cause, and neither was it established that Alba duly satisfied the demands of due process for an employee's termination.[28] The illegally dismissed employees were declared entitled to reinstatement and backwages, plus moral damages, exemplary damages and attorney's fees.[29]

As regards the other monetary claims, the NLRC ordered the payment of 13[th] month pay and SIL pay, in view of Alba's failure to prove that the said benefits had been paid to his employees. Nilo, however, was declared not entitled to SIL pay because he worked as a personal driver who, pursuant to Article 82 of the Labor Code, was not

entitled to the benefit.[30]

Undaunted, Alba sought relief with the CA through a Petition for Certiorari,[31] as he imputed grave abuse of discretion upon the NLRC and reiterated the arguments that he presented during the proceedings with the LA.

#### Ruling of the CA

On July 14, 2016, the CA rendered its Decision[32] dismissing Alba's petition. The CA reiterated the satisfaction of the four-fold test that is considered in finding employer-employee relationship. The appellate court likewise assessed the nature of work that the respondents were required to accomplish, vis-a-vis the type of Alba's business, which prompted the CA to also affirm the finding that the illegally dismissed respondents were regular employees.

The dispositive portion of the CA decision provides:

WHEREFORE, premises considered, the instant Petition for Certiorari is hereby DISMISSED.

SO ORDERED.[33]

Alba moved to reconsider, but his motion was denied by the CA in its Resolution[34] dated October 17, 2016. Hence, this petition.

#### The Present Petition

Alba restates the same grounds cited in his petition for certiorari with the CA. Specifically assailed are the finding of employer-employee relationship, and the ruling that the respondents were regular employees illegally dismissed by Alba from employment. Alba likewise disputes the order upon him to pay the monetary claims totalling P16,125,574.61.

#### Ruling of the Court

At the outset, the Court explains that it shall no longer delve on the correctness of the NLRC's and CA's ruling to, first, dismiss the complaints of Conrado and Jaime, Jr. for illegal dismissal and monetary claims, and, second, deny Nilo of his claim for SIL pay. The NLRC's pronouncements thereon did not appear to have been assailed by said parties, making the pronouncements on the matter already final. Moreover, the Court's disposition in this case needs to be confined to the issues that are assailed in the petition. Hence, the Court's further reference to, or use of, the term "respondents" shall be limited by these qualifications.

Upon review, the Court finds no cogent reason to disturb the ruling of the CA that affirmed the decision of the NLRC.

#### The respondents were regular employees of Alba

Contrary to Alba's contention, the existence of an employer-employee relationship between him and the respondents was sufficiently established. The Court reiterates its ruling in *South East International Rattan, Inc., et al. v. Coming*[35] on the established measure for such determination, particularly:

To ascertain the existence of an employer-employee relationship[,] jurisprudence has invariably adhered to the four-fold test, to wit: (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, or the so-called "control test." In resolving the issue of whether such relationship exists in a given case, substantial evidence - that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion - is sufficient. Although no particular form of evidence is required to prove the existence of the relationship, and any competent and relevant evidence to prove the relationship may be admitted, a finding that the relationship

exists must nonetheless rest on substantial evidence.[36] (Citations omitted)

Alba's relationship with the respondents satisfies the four-fold test.

The presence of the first element is beyond dispute. Alba himself admitted that he was the one who selected and engaged the workers that comprised his pool of semi-skilled and skilled workers, for placement in his several construction projects obtained from various clients. It was equally significant that Alba determined to which projects the respondents were to be assigned, or whether they would be assigned at all. As it established Alba's power to select and engage, the circumstance likewise rendered concomitant the power of Alba to dismiss any of the respondents. Notwithstanding the length of time that his workers had been working for his projects, he could opt to simply drop them off any assignment, effectively dismissing them from employment, albeit with necessary consequences if the dismissal was proved to be illegal.

Alba's payment of the respondents' wages was likewise established by his plain admission. As the LA cited in its decision, "[Alba] would pay the [respondents] a daily fee ranging from [P]600.00 to [P]1,000.00. They were also given bonuses from savings that [Alba and Alba Construction] made." [37] As against this statement from Alba and the certifications that he later presented to dispute his direct payment of the wages, the latter deserves nil consideration. The evidentiary weight of the supposed certifications on this issue even remained questionable. While the documents appeared to have been subscribed before a Notary Public, the requirements for a valid notarization were not satisfied because proof of each affiant's identity was not indicated in the jurat. Taken in light of Alba's declaration, it could be reasonably deduced that the arrangement on his clients' direct payment of the workers' wages was by a mere concession between Alba and the clients in order to facilitate payment, yet it was still Alba who ultimately bore liability for the payment of the wages.

Specifically on the "control test," this power to control is oft-repeated in jurisprudence as the most important and crucial among the four tests.[38] The Court explained in *Gapayao v. Fulo, et al.*: [39]

In *Legend Hotel Manila v. Realuyo*, the Court held that "the power of the employer to control the work of the employee is considered the most significant determinant of the existence of an employer-employee relationship. This is the so-called control test and is premised on whether the person for whom the services are performed reserves the right to control both the end achieved and the manner and means used to achieve that end." It should be remembered that the control test merely calls for the existence of the right to control, and not necessarily the exercise thereof. It is not essential that the employer actually supervises the performance of duties by the employee. It is enough that the former has a right to wield the power.[40] (Citations omitted)

From the records, it is clear that Alba possessed this power to control, and had in fact freely exercised it over the respondents. Alba failed to satisfactorily rebut the respondents' direct assertions that Alba frequented the work sites, and would reprimand his workers whom he believed were idle or sluggish. He even controlled the time when they had to stay at work.[41] The respondents relied upon instructions coming from Alba, as their work was for projects obtained by the latter. He controlled the results of the work that the respondents had to perform, along with the means and methods by which to accomplish them. His control was not negated by any instructions that came from a foreman or an architect, as directives that came from them, if there were at all, were understandably limited. The respondents worked for Alba who held the project, and the latter was the one who exercised authority over them.

Even Alba's allegation that the respondents were independent contractors was not amply substantiated. Time and again, the Court has emphasized that "the test of independent contractorship is 'whether one claiming to be an independent contractor has contracted to do the work according to his own methods and without being subject to the control of the employer, except only as to the results of the work.'" [42] The Court has explained Alba's exercise of control over the respondents. For a worker to be deemed an independent contractor, it is further

necessary to establish several indicators. In *Television and Production Exponents, Inc. and/or Tuviera v. Servaña*,<sup>[43]</sup> the Court explained:

Aside from possessing substantial capital or investment, a legitimate job contractor or subcontractor carries on a distinct and independent business and undertakes to perform the job, work or service on its own account and under its own responsibility according to its manner and method, and free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof. x x x.<sup>[44]</sup> (Citation omitted)

"It is the burden of the employer to prove that a person whose services it pays for is an independent contractor rather than a regular employee with or without a fixed term."<sup>[45]</sup> Undeniably, Alba failed to discharge this burden.

As the Court affirms the finding of illegal dismissal, it underscores the fact that the respondents were regular employees, and not project employees as Alba asserts. The mere fact that the respondents worked on projects that were time-bound did not automatically characterize them as project employees. The nature of their work was determinative, as the Court considers its ruling in *DM. Consunji, Inc., et al. v. Jamin*<sup>[46]</sup> that "[o]nce a project or work pool employee has been: (1) continuously, as opposed to intermittently, rehired by the same employer for the same tasks or nature of tasks; and (2) these tasks are vital, necessary and indispensable to the usual business or trade of the employer, then the employee must be deemed a regular employee."<sup>[47]</sup>

As construction workers, the respondents performed tasks that were crucial and necessary in Alba's business. Their work was the core of his trade. His enterprise could not have thrived through the years without their service. The fact that the respondents had been engaged to work for long periods of time, and across several construction projects, further substantiate the finding that their work was vital in the business. Most respondents were separately employed beginning way back to the 1990s to 2006.<sup>[48]</sup> One employee, Samuel, even began working for Alba in 1982.<sup>[49]</sup> "[A]n employment ceases to be co-terminus with specific projects when the employee is continuously rehired due to the demands of the employer's business and re-engaged for many more projects without interruption."<sup>[50]</sup>

Given the respondents' regular employment, their employment could not have been validly terminated by Alba without just or valid cause, and without affording them their right to due process. In cases affecting an employee's dismissal, the burden is on the employer to prove that the dismissal was legal, a matter that in this case, Alba miserably failed to establish. There were no adequate explanations from Alba as to why the respondents had ceased obtaining assignments in his construction projects. In view of the illegal dismissal, the respondents were rightfully entitled to the ordered reinstatement and award of backwages, or separation pay in case of strained relations.<sup>[51]</sup>

Alba is liable for the payment of the other monetary claims

The awards of 13<sup>th</sup> month pay, SIL pay, moral and exemplary damages, and attorney's fees are sustained.

Article 95 of the Labor Code provides that "[e]very employee who has rendered at least one year of service shall be entitled to a yearly [SIL] of five days with pay." On the other hand, the respondents derive their right to the 13<sup>th</sup> month pay from Presidential Decree No. 851, otherwise known as the 13<sup>th</sup> Month Pay Law, as amended.

After the respondents alleged non-payment of the 13<sup>th</sup> month and SIL pays, it became incumbent upon Alba to prove payment of the statutory monetary benefits when he opted to deny further liability therefor. Instead of doing so, however, Alba could only harp on his argument that the respondents, in the first place, could not be considered as his employees.

The award of P200,000.00 as total moral and exemplary damages for the respondents is reasonable under the circumstances. When it declared such award, the NLRC aptly referred to the dismissal as a retaliatory action by Alba after his employees had asked for their benefits as employees. The NLRC sufficiently explained:

A dismissed employee is entitled to moral damages when the dismissal is attended by bad faith or fraud; or constitutes an act oppressive to labor; or is done in a manner contrary to good morals, good customs or public policy. Exemplary damages, on the other hand, may be awarded if the dismissal is effected in a wanton, oppressive or malevolent manner. Dismissing the [respondents] as an act of retaliation and after they requested to be given their rightful benefits as employees constitute an act oppressive to labor and displays x x x wanton exercise of authority.[52]

Finally, attorney's fees in labor cases are sanctioned "when the employee is illegally dismissed in bad faith and is compelled to litigate or incur expenses to protect his rights by reason of the unjustified acts of his employer." [53]

WHEREFORE, the petition is DENIED. The Decision dated July 14, 2016 and Resolution dated October 17, 2016 of the Court of Appeals in CA-G.R. SP No. 144043 are AFFIRMED.

**SO ORDERED.**

Velasco, Jr., (Chairperson), Bersamin, Jardeleza, and Tijam, JJ., concur.

September 15, 2017

**NOTICE OF JUDGMENT**

Sirs / Mesdames:

Please take notice that on August 9, 2017 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on September 15, 2017 at 2:40 p.m.

Very truly yours,

(SGD)

**WILFREDO V. LAPITAN**

Division Clerk of Court

[1] Rollo, pp. 11-30.

[2] Penned by Associate Justice Ramon R. Garcia, with Associate Justices Leoncia R. Dimagiba and Jhosep Y. Lopez, concurring; id. at 33-46.

[3] Id. at 48-49.

[4] Penned by Commissioner Cecilio Alejandro C. Villanueva, with Presiding Commissioner Alex A. Lopez and Pablo C. Espiritu, Jr., concurring; id. at 60-86.

[5] Id. at 169-170.

[6] Id. at 173.

[7] Id. at 177-178.

[8] Id. at 181.

[9] Id. at 34-35.

[10] Marcelino Macindo, Landrito Taperia, Ross Florencio, Nestor Abrencillo, Roily Abrencillo, Freddie Abrencillo, Ronie Tuparan and Eufrecino Jemina.

[11] Rollo, p. 221.

[12] Id. at 35.

[13] Id. at 35-36.

[14] Id. at 53.

[15] Id. at 54.

[16] Id.

[17] Rendered by LA Irene Castro De Quiroz; id. at 50-58.

[18] Id. at 56.

[19] Id. at 57.

[20] Id. at 57-58.

[21] Id. at 60-86.

[22] Id. at 74-86.

[23] Id. at 67.

[24] Id. at 69.

[25] Id. at 67-68.

[26] Id. at 69-70.

[27] Id. at 66-67.

[28] Id. at 71-72.

[29] Id. at 72-74.

[30] Id. at 73-74.

[31] Id. at 108-126.

[32] Id. at 33-46.

[33] Id. at 45-46.

[34] Id. at 48-49.

[35] 729 Phil. 298 (2014).

- [36] Id. at 306.
- [37] Rollo, p. 53.
- [38] Atok Big Wedge Company, Inc. v. Gison, 670 Phil. 615, 627 (2011).
- [39] 711 Phil. 179 (2013).
- [40] Id. at 195-196.
- [41] Rollo, pp. 68-69.
- [42] Polyfoam-RGC International Corporation, et al. v. Conception, 687 Phil. 137, 148 (2012).
- [43] 566 Phil. 564 (2008).
- [44] Id. at 574.
- [45] Fuji Television Network, Inc. v. Espiritu, 749 Phil. 388, 394 (2014).
- [46] 686 Phil. 220 (2012).
- [47] Id. at 233. (Emphasis deleted)
- [48] Rollo, pp. 75-86.
- [49] Id. at 85.
- [50] Chua v. CA, 483 Phil. 126, 139 (2004).
- [51] See Aliling v. Feliciano, et al., 686 Phil. 889, 915-918 (2012).
- [52] Rollo, p. 73.
- [53] Pepsi Cola Products Philippines, Inc., et al. v. Santos, 574 Phil. 400, 408 (2008).

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