

**MARVIN O. DAGUINOD, PETITIONER, V. SOUTHGATE FOODS, INC.,
REPRESENTED BY MAUREEN O. FERRER AND GENERATION ONE
RESOURCE SERVICE AND MULTI-PURPOSE COOPERATIVE,[]
REPRESENTED BY RE...**

G.R. No. 227795 (Formerly UDK-15556). February 20, 2019

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CAGUIOA, J:

Before the Court is a petition for review[1] (Petition) under Rule 45 of the Rules of Court assailing the Court of Appeals (CA) Decision[2] dated January 28, 2016 and Resolution[3] dated March 18, 2016 in CA-G.R. SP No. 129296.

Facts

Petitioner Marvin O. Daguinod (Daguinod) was assigned as counter crew/cashier of a Jollibee franchise located in Alphaland Southgate Mall, Makati City (Jollibee Alphaland) pursuant to a Service Agreement[4] between Generation One Resource Service and Multi-Purpose Cooperative (Generation One) and the franchise operator Southgate Foods, Inc. (Southgate) (collectively respondents). Under the Service Agreement, Generation One was contracted by Southgate to provide "specified non-core functions and operational activities"[5] for its Jollibee Alphaland branch.

Daguinod also executed a Service Contract[6] dated September 9, 2010 with Generation One which stated that Generation One was contracted by Southgate to perform "specified peripheral and support services." In the Service Contract, Daguinod was referred to as a "service provider" and "member" of Generation One cooperative. The specific work responsibilities to be performed by Daguinod were left blank. The period of Daguinod's services was stated as "beginning September 9, 2010 until the end of the project." To become a member of Generation One, Daguinod completed an application form[7] dated September 8, 2010, which required him to pay a membership fee of P250.00, and participate in "capital build-up and savings program" which obligated him to acquire 150 paid-up shares in Generation One, valued at P1,500.00. Prior to his employment/membership in Generation One cooperative, Daguinod was employed directly by Southgate from March 12, 2010 to August 26, 2010 as counter crew.[8]

Petitioner's version of events

Daguinod alleges that on April 10, 2011, he reported for work at 6:00 A.M. as a counter crew/cashier in Jollibee Alphaland. He was given a cash fund of P5,000.00. After serving one of the customers, Security Guard Jaime Rivero (Rivero) approached him and asked for the receipt of the last customer who had ordered a longanisa breakfast meal. Daguinod realized that he had put the customer's payment inside the cash register without the corresponding receipt so he had it "punched in." Thereafter, Rivero took the receipt and told Daguinod that he had committed a "pass out" of transaction. Rivero asked for assistance from the manager on duty, Jane[9] Geling (Geling). The latter conducted an audit and verification of the sales which revealed that the cash in the register was in excess of P106.00.[10]

Daguinod was then brought into a function room inside Jollibee Alphaland with Rivero keeping guard over him. Geling went into the room and accused Daguinod of theft. Daguinod reasoned that he did not commit any theft as in fact there was an overage of cash in the register. Geling did not believe him and told him that if he confessed, he would be forgiven and he could continue working. Daguinod was given two Notices to Explain (NTE). In the first NTE, he was made to explain the overage in the cash register. In the second NTE, he was charged with using the manager's swipe card without authority. Daguinod was directed to immediately answer the two NTEs.[11] In the first NTE, Daguinod alleges that he was instructed to write the sentence: "Opo Mam, inaamin ko na po na nagpassout po ako, 2[nd] week po ng March, [P]5,500.00." [12] In the second NTE, Daguinod wrote: "Di kopo alam, mam, nalito na po ako kaya di ko nabilang ang 50's. Nakita ko po yung [unintelligible] ni S' Aldrin tapos ginamit ko po. Isang buwan ko na pong ginagamit." [13]

Daguinod was then brought to the Makati Police Station, Bangkal Precinct, where he was accused of Qualified Theft and put in jail. Daguinod was able to contact his sister, Maribeth D. Pacheco (Maribeth), to ask for help. At around 4:00 P.M., Daguinod was brought to the Ospital ng Makati for a medical check-up but he was brought back to the Makati Police Station where he was imprisoned until April 13, 2011. He was made to write a confession letter in exchange for his release from jail. He did not want to write the confession but he acceded as he had already spent two days in jail. On April 13, 2011, he was brought to the Makati City Prosecutor's Office for inquest before Assistant City Prosecutor Carolina J. Esguerra (Prosecutor Esguerra). Prosecutor Esguerra ordered Daguinod's release as the allegations against Daguinod were deficient and preliminary investigation was scheduled on April 19 and 26, 2011.[14] Daguinod alleges that during the second meeting for the preliminary investigation, he inquired with Geling as to the status of his employment. Geling told Daguinod to ask Resty Cruz (Cruz), Generation One's Resource Area Coordinator, who told Daguinod via phone call that his employment was terminated effective May 13, 2011.[15]

Daguinod's sister, Maribeth, corroborated his testimony. In her Affidavit[16] dated July 5, 2011, Maribeth alleged that on April 10, 2011 at around 1:30 P.M., she received a text message from her brother, asking for help as he was put in jail for alleged theft. She went to Jollibee Southgate and was able to talk to store managers Geling and Julius Paul Penafuerte, and Atty. Jay Sangalang (Atty. Sangalang), legal counsel of Southgate, who told her that Daguinod would be released if he confessed to the theft. She immediately went to the Makati Police Station to relay the same to her brother. She was shocked to see her brother in jail. She informed him of the instructions of Atty. Sangalang. At first, Daguinod refused to write a confession but after a while, he decided to comply as he was scared and wanted to be released from the jail. Thus, Daguinod wrote an apology/confession letter which Maribeth gave to Atty. Sangalang. However, Atty. Sangalang refused to accept the letter as it did not mention a date and amount. Upon Atty. Sangalang's instructions, Daguinod made a revised letter[17] containing the amount of P10,000.00, with a promise that Daguinod would pay back the amount in installments.[18]

Respondents' counter-allegations

Generation One admitted that Daguinod was its employee. The cooperative alleged that Southgate had discovered the attempted act of dishonesty of Daguinod on April 10, 2011. Generation One asserted that the filing of the complaint was premature as the cooperative's investigation of the incident was still ongoing when Daguinod filed the complaint before the Labor Arbiter (LA).[19]

For its part, Southgate asserted that Daguinod was an employee of Generation One and not Southgate. Southgate further alleged that the complaint for illegal dismissal was merely retaliatory as it was Southgate employees who discovered that Daguinod was attempting to steal funds from Southgate.[20]

Southgate denied that Daguinod was coerced into signing the confession. On the issue of labor-only contracting,

both Generation One and Southgate averred that Generation One is a legitimate labor contractor and that the Service Agreement between the two companies was valid.[21]

Ruling of the labor tribunals

In a Decision[22] dated June 28, 2012, Labor Arbiter Romelita N. Rioflorido (LA) held that Generation One is a legitimate labor contractor and Daguinod was a regular employee of Generation One. On the issue of illegal dismissal, the LA held that Daguinod was unable to prove that he was illegally dismissed, or even dismissed from service. The LA gave credence to Generation One's averment that its investigation of the allegations against Daguinod was still ongoing, and even Daguinod admitted that he did not receive a formal notice of termination.

Daguinod appealed the case to the National Labor Relations Commission (NLRC) which affirmed the LA's Decision. In its Decision[23] dated December 12, 2012, the NLRC agreed with the LA that Generation One was a legitimate labor contractor as it is a registered cooperative with substantial capital, investment, or equipment to perform its business. It also has its own office where its members meet and conduct activities. The NLRC also affirmed the LA's findings that Daguinod was not illegally dismissed; rather, it was Daguinod who prematurely concluded that he had been dismissed.[24] The NLRC denied Daguinod's motion for reconsideration (MR) in its Resolution[25] dated January 25, 2013.

Thus, Daguinod filed a petition for certiorari[26] under Rule 65 before the CA alleging that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in affirming the LA's Decision.

The CA Decision

The CA dismissed Daguinod's petition for certiorari and affirmed the NLRC Decision. The CA held that aside from Daguinod's mere assertions, there was no corroborative and competent evidence to substantiate his claim that he had been dismissed; if there is no dismissal, there can be no question as to its legality or illegality. The fact of dismissal must be established by positive and overt acts of the employer indicating the intention to dismiss the employee.[27]

The CA further ruled that Generation One is a legitimate labor contractor as it was issued a Certificate of Registration by the Department of Labor and Employment (DOLE). The Service Agreement between Generation One and Southgate clearly states that the former was to provide specific non-core functions and operational activities which included management and supervision of the food chain system, assistance in food preparation and quality control, cleaning of the dining area, comfort room, and other areas of the restaurant, assistance in cash control activities and warehouse and utilities management.[28]

Daguinod filed an MR which the CA denied in its Resolution[29] dated March 18, 2016.

Thus, Daguinod filed the instant Petition assailing the CA Decision and Resolution. Southgate filed its Comment[30] dated August 17, 2017. Generation One failed to file a Comment despite the grant of its motion for extension to file the same.[31]

Issues

- Whether Generation One is a legitimate labor contractor.
- Whether Daguinod's dismissal was valid.

The Court's Ruling

The Petition is meritorious.

Ordinarily, the Court will not disturb the findings of the CA in labor cases especially if they are consistent with the findings of the NLRC and LA, in recognition of the expertise of administrative agencies whose jurisdiction is limited to specific fields of law.[32] Rule 45 petitions should raise only questions of law, as the Court is not duty-bound to analyze and re-examine the evidence already passed upon by the courts or tribunals below.[33]

However, there are recognized exceptions to this rule, as enunciated in *New City Builders Inc. v. National Labor Relations Commission*:[34]

x x x (1) [W]hen the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[35] (Emphasis supplied)

In the instant case, the CA committed grave and serious error in affirming the findings of the NLRC, which had, in turn, affirmed the findings of the LA. The appellate court misappreciated relevant and undisputed facts which if it had correctly considered, would have resulted in the reversal of the erroneous decisions of the labor tribunals. After a judicious review of the facts of the case as borne out by evidence on record, the Court resolves to overturn the CA Decision.

Generation One is not a legitimate labor contractor; Daguinod is a regular employee of Southgate

The outsourcing of services is not prohibited in all instances. In fact, Article 106[36] of the Labor Code of the Philippines[37] provides the legal basis for legitimate labor contracting. This provision is further implemented by DOLE Order No. 18, Series of 2002[38] (DO 18-02).

Under Section 4(a) of DO 18-02, legitimate labor contracting or subcontracting refers to an arrangement whereby a principal agrees to put out or farm out with a 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. The "principal" refers to any employer who puts out or farms out a job, service or work to a contractor or subcontractor.[39]

Meanwhile, labor-only contracting is prohibited and defined under Section 5 of DO 18-02:

Section 5. Prohibition against labor-only contracting. Labor-only contracting is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies, or places workers to perform a job, work or service for a principal, and any of the following elements [is] present:

i)

The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or

ii)

The contractor does not exercise the right to control over the performance of the work of the contractual employee.

The foregoing provisions shall be without prejudice to the application of Article 248 (c) of the Labor Code, as amended.

"Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out.

The "right to control" shall refer to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end. (Emphasis supplied)

When there is labor-only contracting, Section 7 of DO 18-02 describes the consequences thereof:

Section 7. Existence of an employer-employee relationship. The contractor or subcontractor shall be considered the employer of the contractual employee for purposes of enforcing the provisions of the Labor Code and other social legislation. The principal, however, shall be solidarity liable with the contractor in the event of any violation of any provision of the Labor Code, including the failure to pay wages.

The principal shall be deemed the employer of the contractual employee in any of the following case, as declared by a competent authority:

(a)

where there is labor-only contracting; or

(b)

where the contracting arrangement falls within the prohibitions provided in Section 6 (Prohibitions) hereof. (Emphasis supplied)

In *Garden of Memories Park and Life Plan, Inc., v. National Labor Relations Commission*,^[40] the Court summarized the above rules accordingly:

x x x [I]n determining the existence of an independent contractor relationship, several factors may be considered, such as, but not necessarily confined to, whether or not the contractor is carrying on an independent business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the performance of specified pieces of work; the control and supervision of the work to another; the employer's power with respect to the hiring, firing and payment of the contractor's workers; the control of the premises; the duty to supply premises, tools, appliances, materials and labor; and the mode, manner and terms of payment.

On the other hand, there is labor-only contracting where: (a) the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others; and (b) the workers recruited and placed by such person are performing activities which are directly related to the principal business of the employer.^[41] (Emphasis supplied)

Based on the foregoing, one of the factors in determining whether there is labor-only contracting is the nature of the employee's job, i.e., whether the work he performs is necessary and desirable to the business of the principal.

In this particular case, it was established that Daguinod was assigned as a counter crew/cashier in Jollibee Alphaland. The Service Contract of Daguinod with Generation One does not disclose the specific tasks and functions that he was assigned to do as counter crew/cashier. Thus, the Court must refer to Annex "A"^[42] of the

Service Agreement between Generation One and Southgate which lists the “non-core” functions contracted out by Southgate. The Service Agreement states:

Each of the non-core functions identified cover specific tasks that include, but are not limited to the following:

A.

Peripheral activities related to the management and supervision of the food chain system.

B.

Assistance in food preparation and quality control.

1.

Prepare food ingredients

2.

Wrap burgers, rice, cake and other food products

C.

Peripheral activities related to orderliness, cleanliness and upkeep of dining area, comfort room, glass panels, and other areas.

x x x x

D.

Assistance in cash control activities

1.

Gathers orders

2.

Assemble food on tray/take-out

E.

Assistance in warehouse and utilities management[43]

Daguinod was assigned to perform cash control activities which entails gathering of orders and assembling food on the tray for dine-in customers or for take-out. As cashier, Daguinod was also tasked to receive payments and give change. These tasks are undoubtedly necessary and desirable to the business of a fast food restaurant such as Jollibee. The service of food to customers is the main line of business of any restaurant. It is not merely a non-core or peripheral activity as Generation One and Southgate claim. It is in the interest of Southgate, franchise owner of Jollibee, that its customers be served food in a timely manner. Respondents' position that the gathering of orders and service of food to customers are "non-core" functions or peripheral activities is simply preposterous

and is contrary to the basic business model of a fast food restaurant. These circumstances lead to no other conclusion than that Daguinod was a regular employee of Southgate and that Generation One was a mere agent of Southgate.

The ownership of substantial capital in the form of tools, equipment, machineries, work premises, and other properties, by the contractor is another factor in establishing whether it is legitimate. The NLRC held that Generation One was able to prove that it had substantial capital, proving that it was a legitimate labor contractor. The Court disagrees.

Generation One submitted only one Income Tax Return (ITR) for the year ended December 2010 showing a gross income of P9,564,065.00.[44] The submission of one ITR for one fiscal year can hardly be considered substantial evidence to prove that the cooperative has substantial capital. Furthermore, the Court cannot give credence to the ITR as it does not appear to have been submitted to the Bureau of Internal Revenue. Generation One likewise did not submit any Audited Financial Statements (AFS) to show its assets, liabilities, and equity. It only submitted the Notes to the AFS[45] for the year ended 2010 which does not show a complete picture of its financial standing. In fine, the documents submitted are insufficient to prove that Generation One possesses substantial capital to be considered a legitimate labor contractor.

In arriving at its Decision, the CA also relied on the Certificate of Registration[46] as an independent contractor issued by the DOLE to Generation One. However, the Court has previously ruled that said registration is not conclusive evidence of legitimate status. In *San Miguel Corporation v. Semillano*,[47] the Court ruled:

Petitioner cannot rely either on AMPCO's Certificate of Registration as an Independent Contractor issued by the proper Regional Office of the DOLE to prove its claim. It 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. In distinguishing between permissible job contracting and prohibited labor-only contracting, the totality of the facts and the surrounding circumstances of the case are to be considered.[48] (Emphasis supplied)

Thus, registration with DOLE as an independent contractor does not automatically vest it with the status of a legitimate labor contractor, it is merely presumptive proof. In the instant case, the totality of circumstances reveals that Generation One, despite its DOLE registration, is not a legitimate labor contractor.

As astutely noted by Associate Justice Estela M. Perlas-Bernabe during the deliberations of this case, Section 5 of DO 18-02 speaks of a second instance, where the "right to control" must be exercised by the contractor, otherwise, the arrangement shall be considered to be labor only contracting.

The Court notes that on April 10, 2011, the administrative investigation was conducted by Jollibee Alphaland's manager-on-duty Geling, in the presence of security guard Rivero. The handwritten NTEs, although bearing the header and name of Generation One were served upon Daguinod by Southgate manager Geling. Thus, Southgate took it upon itself to discipline Daguinod for an alleged violation of its company rules, regulations, and policies, validating the presence of its right to control Daguinod.

A perusal of Daguinod's Service Contract shows that the specific work responsibilities were unspecified, leaving the "[o]ther requirements to perform the services [to] be part of the orientation at the designated place of assignment,"[49] thus, suggesting that the right to determine not only the end to be achieved, but also the manner and means to achieve that end, was reposed in Southgate. Consequently, Southgate shall be deemed as the direct employer of Daguinod.

The CA also relied heavily on the Service Agreement between Generation One and Southgate which provided for the scope of the agreement as well as the proviso that there would be no employer-employee relationship between

Southgate and Generation One's employees.

The Court holds that it was erroneous for the CA to place reliance on the contracts as the provisions therein are not the sole determining factor in ascertaining the true nature of the relationship between the principal, contractor, and employees. As held in *Petron v. Caberte*:^[50]

x x x [T]he character of the business, whether as labor-only contractor or as a job contractor, should be determined by the criteria set by statute and the parties cannot dictate by the mere expedience of a unilateral declaration in a contract the character of their business.^[51]

In the instant case, the badges of labor-only contracting are too blatant to ignore and the Court cannot blindly rely on the contractual declarations of respondents.

With the finding that Generation One is a labor-only contractor, Daguinod is considered a regular employee of Southgate, as provided under Section 7^[52] of DO 18-02.

Daguinod was illegally dismissed

The employer must comply with substantive and procedural due process in the dismissal of an employee. Substantive due process pertains to the just and authorized causes for dismissal as provided under Articles 297,^[53] 298,^[54] and 299^[55] of the Labor Code.

Procedural due process pertains to the twin requirements of notice and hearing, as explained by the Court in *Noblado v. Alfonso*:^[56]

x x x The employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first notice apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second notice informs the employee of the employer's decision to dismiss him. Before the issuance of the second notice, the requirement of a hearing must be complied with by giving the worker an opportunity to be heard. It is not necessary that an actual hearing be conducted.^[57]

In *King of Kings Transport, Inc. v. Mamac*,^[58] the Court expounded on the requirements of procedural due process:

(1) The first written notice to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

(2) After serving the first notice, the employers should schedule and conduct a hearing or conference wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.[59] (Emphasis supplied)

In this case, there was non-compliance with procedural due process as the NTEs did not contain the specific information required under the law. Moreover, Daguinod was not given a reasonable opportunity to submit his written explanation as he was ordered to immediately answer the NTEs.

The CA and labor tribunals no longer discussed the above requirements as it accepted Generation One's assertion that Daguinod was not dismissed from service as its investigation of the incident was ongoing and it was Daguinod who wrongly presumed that he was dismissed and prematurely filed the complaint.[60]

The Court cannot countenance such a simplistic explanation. It was reasonable for Daguinod to believe that he had been dismissed from service due to the events of April 10, 2011. On the said date, Daguinod was accused of theft after having an overage in the cash register of P106.00. He was served two NTEs which he had to answer on the same day. He was not given time to prepare a proper defense or was not informed of his right to seek representation and counsel. He was, to the contrary, immediately arrested and imprisoned without warrant from April 10 to April 13, 2011. Thereafter, when he called Generation One to inquire about the status of his employment and his back pay, he was told by Cruz, Generation One's Resource Area Coordinator, that his employment was terminated effective May 13, 2011. Thus, Daguinod cannot be faulted for believing that his employment had been terminated.

Generation One claimed that it was conducting an investigation of the incident but did not submit any proof of the investigation or the results thereof. The Court notes that Generation One did not deny the phone call between Cruz and Daguinod but merely posited Cruz to be a mere employee of Generation One who has no part in the recruitment process. Again, the Court is unconvinced. Cruz does not appear to be an ordinary employee of Generation One as he was the signatory of Daguinod's Service Contract. As well, Generation One did not send a Return-to-Work Order to Daguinod if indeed it still considered him an employee.

In the similar case of *Robinsons Galleria/Robinsons Supermarket Corp. v. Ranchez*,[61] the Court held that the employee was illegally dismissed, thus:

In the instant case, based on the facts on record, petitioners failed to accord respondent substantive and procedural due process. The haphazard manner in the investigation of the missing cash, which was left to the determination of the police authorities and the Prosecutor's Office, left respondent with no choice but to cry foul. Administrative investigation was not conducted by petitioner Supermarket. On the same day that the missing money was reported by respondent to her immediate superior, the company already pre-judged her guilt without proper investigation, and instantly reported her to the police as the suspected thief, which resulted in her languishing in jail for two weeks.

x x x x

Respondent was constructively dismissed by petitioner Supermarket effective October 30, 1997. It was unreasonable for petitioners to charge her with abandonment for not reporting for work upon her release in jail. It would be the height of callousness to expect her to return to work after suffering in jail for two weeks. Work had been rendered unreasonable, unlikely, and definitely impossible, considering the treatment that was accorded respondent by petitioners.[62]

The haphazard way in which the accusations were thrown against Daguinod and how the investigation was conducted shows bad faith on the part of Southgate and Generation One. Daguinod spent three days in jail for an

alleged attempted theft of P106.00. There was a pre-judgment of guilt without a proper investigation. Thus, Daguinod was constructively dismissed effective on April 10, 2011.

Daguinod is entitled to full backwages, separation pay, moral and exemplary damages, and attorney's fees

Article 294 of the Labor Code provides that an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges, full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.[63] When reinstatement is no longer viable such as when the parties have strained relations, separation pay may be awarded as an alternative.[64]

In *Aliling v. Feliciano*[65] (*Aliling*), citing *Golden Ace Builders v. Talde*,[66] the Court awarded both backwages and separation pay:

The basis for the payment of backwages is different from that for the award of separation pay. Separation pay is granted where reinstatement is no longer advisable because of strained relations between the employee and the employer. Backwages represent compensation that should have been earned but were not collected because of the unjust dismissal. The basis for computing backwages is usually the length of the employee's service while that for separation pay is the actual period when the employee was unlawfully prevented from working.[67]

Undeniably, reinstatement is no longer feasible due to the strained relations of the parties and considering as well the length of time that has passed since the filing of this case. Thus, separation pay is awarded in lieu thereof.

Daguinod is likewise entitled to moral and exemplary damages as his dismissal was attended with bad faith. Moral damages are awarded in illegal termination cases when the employer acted (a) in bad faith or fraud; (b) in a manner oppressive to labor; or (c) in a manner contrary to morals, good customs, or public policy.[68] In addition to moral damages, exemplary damages may be imposed by way of example or correction for the public good.[69] In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.[70]

In the instant case, Southgate and Generation One clearly acted in bad faith. The respondents created a subterfuge of legitimate labor contracting to avoid the regularization of Daguinod. More significantly, respondents haphazardly accused Daguinod of theft without sufficient proof which resulted in his incarceration for three days. Thus, Daguinod is entitled to moral and exemplary damages of P200,000.00 and P100,000.00, respectively.[71]

The Court also awards Daguinod attorney's fees of 10% of the total monetary award. In *Aliling*, citing *Rutaquio v. NLRC*,[72] the Court held:

It is settled that in actions for recovery of wages or where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable.[73]

Daguinod was compelled to litigate to enforce his rights which had been unjustly and blatantly violated by Generation One and Southgate, thus, he is entitled to attorney's fees.

Finally, the monetary award herein granted shall earn legal interest of 12% per annum from April 10, 2011, the date of constructive dismissal, until June 30, 2013 in line with the Court's ruling in *Nacar v. Gallery Frames*. [74] From July 1, 2013 until full satisfaction of the award, the interest rate shall be at 6%. The total amount of the foregoing shall, in turn, earn interest at the rate of 6% per annum from finality of this Decision until full payment.[75] The liability of Generation One and Southgate shall be joint and solidary.

WHEREFORE, premises considered, the Petition is GRANTED. The Court further RESOLVES to:

1.

REVERSE and SET ASIDE the assailed Decision dated January 28, 2016 and Resolution dated March 18, 2016 of the Court of Appeals in CA-G.R. SP No. 129296;

2.

AWARD petitioner Marvin O. Daguinod the following:

(a)

full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent from April 10, 2011 until finality of this judgment;

(b)

separation pay in lieu of reinstatement computed from April 10, 2011 until finality of this judgment,

(c)

moral damages of P200,000.00;

(d)

exemplary damages of P100,000.00; and

(e)

attorney's fees of 10% of the monetary award

which shall be the JOINT AND SOLIDARY LIABILITY of Generation One Resource Service and Multi-Purpose Cooperative and Southgate Foods, Inc.;

3.

The monetary award shall earn legal interest of 12% per annum from April 10, 2011 until June 30, 2013, and 6% from July 1, 2013 until full satisfaction of the award. The total amount of the foregoing shall, in turn, earn interest at the rate of 6% per annum from finality of this Decision until full payment; and

4.

REMAND the case to the Labor Arbiter for the proper computation of backwages and separation pay and for execution of the award.

SO ORDERED.

Carpio (Chairperson), Perlas-Bernabe, J. Reyes, Jr., and Hernando,[**] JJ., concur.

[*] Also referred to as "Generation One Service Cooperative" and "Generation One Resource Service Cooperative" in some parts of the records.

[**] Designated additional Member per Special Order No. 2630 dated December 18, 2018.

[1] Rollo, pp. 2-18.

[2] Id. at 20-29. Penned by Associate Justice Ma. Luisa C. Quijano-Padilla, with the concurrence of Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan.

[3] Id. at 31-32.

[4] CA rollo, pp. 130-134.

[5] Id. at 130.

[6] Id. at 124.

[7] Id. at 123.

[8] See id. at 36, 123 and 135.

[9] Also referred to as "Mary Jean" in some parts of the records.

[10] CA rollo, pp. 44, 94 and 219-220.

[11] Id. at 221-222.

[12] Id. at 37.

[13] Id. at 38.

[14] Id. at 44-45. Resolution dated April 13, 2011 of the Office of the City Prosecutor, Makati.

[15] Id. at 223-225.

[16] Id. at 39-42.

[17] Id. at 43.

[18] Id. at 39-40.

[19] Id. at 208-210.

[20] Id. at 90.

[21] See id. at 102-104.

[22] Id. at 268-277.

[23] Id. at 23-32.

[24] Id. at 23-32.

[25] Id. at 33-35.

[26] Id. at 2-22.

[27] Id. at 25-26.

[28] Id. at 27.

[29] Id. at 31-33.

[30] Rollo, pp. 81-113.

[31] See Resolution dated August 1, 2018 granting Generation One's motion for extension of time to file Comment within 10 days; id. at 231.

[32] See *Sarona v. National Labor Relations Commission*, 679 Phil. 394, 414 (2012).

[33] See *Sps. Garrido v. Court of Appeals*, 421 Phil. 872, 881 (2001).

[34] 499 Phil. 207 (2005).

[35] Id. at 213, citing *The Insular Life Assurance Co., Ltd. v. Court of Appeals*, 472 Phil. 11, 22-23 (2004).

[36] ART. 106. Contractor or Subcontractor. — Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

The Secretary of Labor and Employment may, by appropriate regulations, restrict or prohibit the contracting-out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him. (Emphasis supplied)

[37] Amended and renumbered by DOLE Department Advisory No. 01, series of 2015 issued on July 21, 2015.

[38] Rules Implementing Articles 106 to 109 of the Labor Code, as amended.

[39] DO 18-02, Sec. 4(d).

[40] 681 Phil. 299 (2012).

[41] Id. at 310-311.

[42] CA rollo, p. 134.

[43] Id.

[44] Id. at 257-258.

[45] Id. at 259-267.

[46] Rollo, p. 125.

[47] 637 Phil. 115 (2010).

[48] Id. at 129-130.

[49] CA rollo, p. 124.

[50] 759 Phil. 353 (2015).

[51] Id. at 367.

[52] Section 7. Existence of an employer-employee relationship. The contractor or subcontractor shall be considered the employer of the contractual employee for purposes of enforcing the provisions of the Labor Code and other social legislation. The principal, however, shall be solidarity liable with the contractor in the event of any violation of any provision of the Labor Code, including the failure to pay wages.

The principal shall be deemed the employer of the contractual employee in any of the following cases, as declared by a competent authority:

- (a) where there is labor-only contracting; or
 - (b) where the contracting arrangement falls within the prohibitions provided in Section 6 (Prohibitions) hereof.
- (Emphasis supplied)

[53] ART. 297. [282] Termination by Employer. — An employer may terminate an employment for any of the following causes:

- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (b) Gross and habitual neglect by the employee of his duties;
- (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
- (e) Other causes analogous to the foregoing.

[54] ART. 298. [283] Closure of Establishment and Reduction of Personnel. — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

[55] ART. 299. [284] Disease as Ground for Termination. — An employer may terminate the services of an

employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

[56] 773 Phil. 271 (2015).

[57] *Id.* at 282.

[58] 553 Phil. 108 (2007).

[59] *Id.* at 115-116.

[60] See Generation One's Position Paper dated December 6, 2011, CA rollo, p. 210.

[61] 655 Phil. 133 (2011).

[62] *Id.* at 140-141.

[63] ART. 294. [279] Security of Tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[64] *Peak Ventures Corp. v. Heirs of Nestor B. Villareal*, 141 Phil. 320, 335 (2014).

[65] 686 Phil. 889 (2012).

[66] 634 Phil. 364, 369 (2010).

[67] *Aliling v. Feliciano*, *supra* note 65, at 916.

[68] *Montinola v. PAL*, 742 Phil. 487, 505 (2014).

[69] *Id.* at 510.

[70] CIVIL CODE, Art. 2232.

[71] See *San Miguel Properties, Philippines, Inc. v. Gucaban*, 669 Phil. 288 (2011).

[72] 375 Phil. 405, 418 (1999).

[73] *Aliling v. Feliciano*, *supra* note 65, at 922.

[74] 716 Phil. 267 (2013). Consequently, the twelve percent (12%) per annum legal interest shall apply only until June 30, 2013. Come July 1, 2013 the new rate of six percent (6%) per annum shall be the prevailing rate of interest when applicable. *Id.* at 281.

[75] See *id.* at 281.

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