

MANILA GOLF & COUNTRY CLUB, INC. PETITIONER, VS. INTERMEDIATE APPELLATE COURT AND FERMIN LLAMAR, RESPONDENTS.

G.R. No. 64948. September 27, 1994

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

The question before the Court here is whether or not persons rendering caddying services for members of golf clubs and their guests in said clubs' courses or premises are the employees of such clubs and therefore within the compulsory coverage of the Social Security System (SSS).

That question appears to have been involved, either directly or peripherally, in three separate proceedings, all initiated by or on behalf of herein private respondent and his fellow caddies. That which gave rise to the present petition for review was originally filed with the Social Security Commission (SSC) via petition of seventeen (17) persons who styled themselves "Caddies of Manila Golf and Country Club-PTCCEA" for coverage and availment of benefits under the Social Security Act as amended, "PTCCEA" being the acronym of a labor organization, the "Philippine Technical, Clerical, Commercial Employees Association," with which the petitioners claimed to be affiliated. The petition, docketed as SSC Case No. 5443, alleged in essence that although the petitioners were employees of the Manila Golf and Country Club, a domestic corporation, the latter had not registered them as such with the SSS.

At about the same time, two other proceedings bearing on the same question were filed or were pending; these were:

(1) a certification election case filed with the Labor Relations Division of the Ministry of Labor by the PTCCEA on behalf of the same caddies of the Manila Golf and Country Club, the case being titled "Philippine Technical, Clerical, Commercial Association vs. Manila Golf and Country Club" and docketed as Case No. R4-LRDX-M-10-504-78; it appears to have been resolved in favor of the petitioners therein by Med-Arbiter Orlando S. Rojo, who was thereafter upheld by Director Carmelo S. Noriel, denying the Club's motion for reconsideration;^[1]

(2) a compulsory arbitration case initiated before the Arbitration Branch of the Ministry of Labor by the same labor organization, titled "Philippine Technical, Clerical, Commercial Employees Association (PTCCEA), Fermin Lamar and Raymundo Jomok vs. Manila Golf and Country Club, Inc., Miguel Celdran, Henry Lim and Geronimo Alejo;" it was dismissed for lack of merit by Labor Arbiter Cornelio T. Linsangan, a decision later affirmed on appeal by the National Labor Relations Commission on the ground that there was no employer-employee relationship between the petitioning caddies and the respondent Club.^[2]

In the case before the SSC, the respondent Club filed answer praying for the dismissal of the petition, alleging in substance that the petitioners, caddies by occupation, were allowed into the Club premises to render services as such to the individual members and guests playing the Club's golf course and who themselves paid for such

services; that as such caddies, the petitioners were not subject to the direction and control of the Club as regards the manner in which they performed their work; and hence, they were not the Club's employees.

Subsequently, all but two of the seventeen petitioners of their own accord withdrew their claim for social security coverage, avowedly coming to realize that indeed there was no employment relationship between them and the Club. The case continued, and was eventually adjudicated by the SSC after protracted proceedings only as regards the two holdouts, Fermin Lllamar and Raymundo Jomok. The Commission dismissed the petition for lack of merit,[3] ruling:

“*** that the caddy's fees were paid by the golf players themselves and not by respondent club. For instance, petitioner Raymundo Jomok averred that for their services as caddies a caddy's Claim Stub (Exh. '1- A') is issued by a player who will in turn hand over to management the other portion of the stub known as Caddy Ticket (Exh. '1') so that by this arrangement management will know how much a caddy will be paid (TSN, p. 80, July 23, 1980). Likewise, petitioner Fermin Lllamar admitted that caddy works on his own in accordance with the rules and regulations (TSN, p. 24, February 26, 1980) but petitioner Jomok could not state any policy of respondent that directs the manner of caddying (TSN, pp. 76-77, July 23, 1980). While respondent club promulgates rules and regulations on the assignment, deportment and conduct of caddies (Exh. 'C') the same are designed to impose personal discipline among the caddies but not to direct or conduct their actual work. In fact, a golf player is at liberty to choose a caddy of his preference regardless of the respondent club's group rotation system and has the discretion on whether or not to pay a caddy. As testified to by petitioner Lllamar that their income depends on the number of players engaging their services and liberality of the latter (TSN, pp. 10-11, Feb. 26, 1980). This lends credence to respondent's assertion that the caddies are never their employees in the absence of two elements, namely, (1) payment of wages and (2) control or supervision over them. In this connection, our Supreme Court ruled that in the determination of the existence of an employer-employee relationship, the 'control test' shall be considered decisive (Philippine Manufacturing Co. vs. Geronimo and Garcia, 96 Phil. 276; Mansal vs. P.P. Cochecho Lumber Co., 96 Phil. 941; Viana vs. Al-lagadan, et al., 99 Phil. 408; Vda. de Ang, et al. vs. The Manila Hotel Co., 101 Phil. 358, LVN Pictures Inc. vs. Phil. Musicians Guild, et al., L--12582, January 28, 1961, 1 SCRA 132. *** (reference being made also to Investment Planning Corporation Phil. vs. SSS 21 SCRA 925).

Records show that respondent club had reported for SS coverage Graciano Awit and Daniel Quijano, as bat unloader and helper, respectively, including their ground men, house and administrative personnel, a situation indicative of the latter's concern with the rights and welfare of its employees under the SS law, as amended. The un rebutted testimony of Col. Generoso A. Alejo (Ret.) that the ID cards issued to the caddies were merely intended to identify the holders as accredited caddies of the club and privilege(d) to ply their trade or occupation within its premises which could be withdrawn anytime for loss of confidence. This gives us a reasonable ground to state that the defense posture of respondent that petitioners were never its employees is well taken.”[4]

From this Resolution appeal was taken to the Intermediate Appellate Court by the union representing Lllamar and Jomok. After the appeal was docketed[5] and some months before decision thereon was reached and promulgated, Raymundo Jomok's appeal was dismissed at his instance, leaving Fermin Lllamar the lone appellant.[6]

The appeal ascribed two errors to the SSC:

(1) refusing to suspend the proceedings to await judgment by the Labor Relations Division of National Capital Regional Office in the certification election case (R-4-LRD-M-10-504-78) supra, on the precise issue of the existence of employer-employee relationship between the respondent club and the appellants, it being contended that said issue was "a function of the proper labor office"; and

(2) adjudging that self same issue in a manner contrary to the ruling of the Director of the Bureau of Labor Relations, which "has not only become final but (has been) executed or (become) res adjudicata.”[7]

The Intermediate Appellate Court gave short shrift to the first assigned error, dismissing it as of the least importance. Nor, it would appear, did it find any greater merit in the second alleged error. Although said Court reversed the appealed SSC decision and declared Fermin Llamar an employee of the Manila Golf and Country Club, ordering that he be reported as such for social security coverage and paid any corresponding benefits,[8] it conspicuously ignored the issue of *res adjudicata* raised in said second assignment. Instead, it drew basis for the reversal from this Court's ruling in *Investment Planning Corporation of the Philippines vs. Social Security System*, supra[9] and declared that upon the evidence, the questioned employer-employee relationship between the Club and Fermin Llamar passed the so-called "control test," established in that case -- i.e., "whether the employer controls or has reserved the right to control the employee not only as to the result of the work to be done but also as to the means and methods by which the same is to be accomplished," -- the Club's control over the caddies encompassing:

- (a) the promulgation of no less than twenty four (24) rules and regulations just about every aspect of the conduct that the caddy must observe, or avoid, when serving as such, any violation of any of which could subject him to disciplinary action, which may include suspending or cutting off his access to the club premises;
- (b) the devising and enforcement of a group rotation system whereby a caddy is assigned a number which designates his turn to serve a player;
- (c) the Club's "suggesting" the rate of fees payable to the caddies.

Deemed of little or no moment by the Appellate Court was the fact that the caddies were paid by the players, not by the Club, that they observed no definite working hours and earned no fixed income. It quoted with approval from an American decision[10] to the effect that: "whether the club paid the caddies and afterward collected from the players or the players themselves paid the caddies in the first instance, the caddies were still employees of the club." This, no matter that the case which produced this ruling had a slightly different factual cast, apparently having involved a claim for workmen's compensation made by a caddy who, about to leave the premises of the club where he worked, was hit and injured by an automobile then negotiating the club's private driveway.

That same issue of *res adjudicata*, ignored by the IAC beyond bare mention thereof, as already pointed out, is now among the mainstays of the private respondent's defense to the petition for review. Considered in the perspective of the incidents just recounted, it illustrates as well as anything can, why the practice of forum-shopping justly merits censure and punitive sanction. Because the same question of employer-employee relationship has been dragged into three different fora, willy-nilly and in quick succession, it has birthed controversy as to which of the resulting adjudications must now be recognized as decisive. On the one hand, there is the certification case (R4-LRDX-M-10-504-78), where the decision of the Med-Arbiter found for the existence of employer-employee relationship between the parties, was affirmed by Director Carmelo S. Noriel, who ordered a certification election held, a disposition never thereafter appealed according to the private respondent; on the other, the compulsory arbitration case (NCR Case No. AB-4-1771-79), instituted by or for the same respondent at about the same time, which was dismissed for lack of merit by the Labor Arbiter, which was afterwards affirmed by the NLRC itself on the ground that there existed no such relationship between the Club and the private respondent. And, as if matters were not already complicated enough, the same respondent, with the support and assistance of the PTCCEA, saw fit, also contemporaneously, to initiate still a third proceeding for compulsory social security coverage with the Social Security Commission (SSC Case No. 5443), with the result already mentioned.

Before this Court, the petitioner Club now contends that the decision of the Med-Arbiter in the certification case had never become final, being in fact the subject of three pending and unresolved motions for reconsideration, as well as of a later motion for early resolution.[11] Unfortunately, none of these motions is incorporated or reproduced in the record before the Court. And, for his part, the private respondent contends, not only that said

decision had been appealed to and been affirmed by the Director of the BLR, but that a certification election had in fact been held, which resulted in the PTCCEA being recognized as the sole bargaining agent of the caddies of the Manila Golf and Country Club with respect to wages, hours of work, terms of employment, etc.[12] Whatever the truth about these opposing contentions, which the record before the Court does not adequately disclose, the more controlling consideration would seem to be that, however final it may become, the decision in a certification case, by the very nature of that proceeding, is not such as to foreclose all further dispute between the parties as to the existence, or non--existence, of employer-employee relationship between them.

It is well settled that for *res adjudicata*, or the principle of bar by prior judgment, to apply, the following essential requisites must concur: (1) there must be a final judgment or order; (2) said judgment or order must be on the merits; (3) the court rendering the same must have jurisdiction over the subject matter and the parties; and (4) there must be between the two cases identity of parties, identity of subject matter and identity of cause of action.[13]

Clearly implicit in these requisites is that the action or proceedings in which is issued the "prior Judgment" that would operate in bar of a subsequent action between the same parties for the same cause, be adversarial, or contentious, "one having opposing parties; (is) contested, as distinguished from an *ex parte* hearing or proceeding. *** of which the party seeking relief has given legal notice to the other party and afforded the latter an opportunity to contest it." [14] and a certification case is not such a proceeding, as this Court has already ruled:

"A certification proceeding is not a 'litigation' in the sense in which this term is commonly understood, but a mere investigation of a non-adversary, fact-finding character, in which the investigating agency plays the part of a disinterested investigator seeking merely to ascertain the desires of the employees as to the matter of their representation. The court enjoys a wide discretion in determining the procedure necessary to insure the fair and free choice of bargaining representatives by the employees."15

Indeed, if any ruling or judgment can be said to operate as *res adjudicata* on the contested issue of employer-employee relationship between present petitioner and the private respondent, it would logically be that rendered in the compulsory arbitration case (NCR Case No. AB-4-771-79, *supra*), petitioner having asserted, without dispute from the private respondent, that said issue was there squarely raised and litigated, resulting in a ruling of the Arbitration Branch (of the same Ministry of Labor) that such relationship did not exist, and which ruling was thereafter affirmed by the National Labor Relations Commission in an appeal taken by said respondent.16

In any case, this Court is not inclined to allow private respondent the benefit of any doubt as to which of the conflicting rulings just adverted to should be accorded primacy, given the fact that it was he who actively sought them simultaneously, as it were, from separate fora, and even if the graver sanctions more lately imposed by the Court for forum-shopping may not be applied to him retroactively.

Accordingly, the IAC is not to be faulted for ignoring private respondent's invocation of *res adjudicata*; on the contrary, it acted correctly in doing so.

Said Court's holding that upon the facts, there exists (or existed) a relationship of employer and employee between petitioner and private respondent is, however, another matter. The Court does not agree that said facts necessarily or logically point to such a relationship, and to the exclusion of any form of arrangements, other than of employment, that would make the respondent's services available to the members and guests of the petitioner.

As long as it is, the list made in the appealed decision detailing the various matters of conduct, dress, language, etc. covered by the petitioner's regulations, does not, in the mind of the Court, so circumscribe the actions or judgment of the caddies concerned as to leave them little or no freedom of choice whatsoever in the manner of

carrying out their services. In the very nature of things, caddies must submit to some supervision of their conduct while enjoying the privilege of pursuing their occupation within the premises and grounds of whatever club they do their work in. For all that is made to appear, they work for the club to which they attach themselves on sufferance but, on the other hand, also without having to observe any working hours, free to leave anytime they please, to stay away for as long as they like. It is not pretended that if found remiss in the observance of said rules, any discipline may be meted them beyond barring them from the premises which, it may be supposed, the Club may do in any case even absent any breach of the rules, and without violating any right to work on their part. All these considerations clash frontally with the concept of employment.

The IAC would point to the fact that the Club suggests the rate of fees payable by the players to the caddies as still another indication of the latter's status as employees. It seems to the Court, however, that the intendment of such fact is to the contrary, showing that the Club has not the measure of control over the incidents of the caddies' work and compensation that an employer would possess.

The Court agrees with petitioner that the group rotation system so-called, is less a measure of employee control than an assurance that the work is fairly distributed, a caddy who is absent when his turn number is called simply losing his turn to serve and being assigned instead the last number for the day.¹⁷

By and large, there appears nothing in the record to refute the petitioner's claim that:

"(Petitioner) has no means of compelling the presence of a caddy. A caddy is not required to exercise his occupation only in the premises of petitioner. He may work with any other golf club or he may seek employment as a caddy or otherwise with any entity or individual without restriction by petitioner. ***.

*** In the final analysis, petitioner has no way of compelling the presence of the caddies as they are not required to render a definite number of hours of work on a single day. Even the group rotation of caddies is not absolute because a player is at liberty to choose a caddy of his preference regardless of the caddy's order in the rotation.

It can happen that a caddy who has rendered services to a player on one day may still find sufficient time to work elsewhere. Under such circumstances, he may then leave the premises of petitioner and go to such other place of work that he wishes (sic). Or a caddy who is on call for a particular day may deliberately absent himself if he has more profitable caddying, or another, engagement in some other place. These are things beyond petitioner's control and for which it imposes no direct sanctions on the caddies. ***¹⁸

WHEREFORE, the Decision of the Intermediate Appellate Court, review of which is sought, is reversed and set aside, it being hereby declared that the private respondent, Fermin Lllamar, is not an employee of petitioner Manila Golf and Country Club and that petitioner is under no obligation to report him for compulsory coverage to the Social Security System. No pronouncement as to costs.

SO ORDERED.

Regalado and Mendoza, JJ., concur.

Padilla, J., on official leave.

Puno, J., no part.

[1] Rollo, pp. 215-216

[2] NCR Case No. AB-4-1771-79; Rollo, pp. 143-151

[3] in a unanimous resolution dated May 20, 1981 written by Chairman Adrian E. Cristobal

[4] Rollo, pp. 87-90

[5] as AC-G.R. SP No. 13648

[6] Rollo, p. 52

[7] Id., at pp. 52-53

[8] Decision promulgated June 20, 1983, rendered by the First Special Cases Division, Rollo, pp. 48-58

[9] 21 SCRA 925, 929; footnote 2

[10] Indian Hill Club vs. Industrial Commission, et al., 140 NE 871, 872, 309 III. 271; Rollo, pp. 55-56

[11] Brief for Petitioner, p. 32; Rollo, p. 19

[12] Brief for Private Respondent, pp. 2-4; Rollo, p. 216/

[13] Valencia vs. RTC of Quezon City, Br. 90, 184 SCRA 80, 90-91, citing Yusingco, et al., vs. Ong Hing Lian, 42 SCRA 589, and Daeng vs. IAC, et al., 154 SCRA 159

[14] Black's Law Dictionary, 5th edition, p. 40)

LVN Pictures, Inc. vs. Phil. Musicians Guild and CIR, 110 Phil. 725, citing N.L.R.B. vs. Botany Worsted Mills, 319 U.S. 751, 87 L. ed. 1705, and Southern S.S. Co. vs. N.L.R.B., 316 U.S. 31, 86 L. ed. 1246, and N.L.R.B. vs. A. J. Tower Co., 66 Sup. Ct. 1911; also Rothenberg on Labor Relations, p. 514

16 Brief for Petitioner, pp. 32-36; Rollo, p. 202

17 Petition for Review, p. 4; Rollo, p. 18

18 Id., Rollo, pp. 18-19

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