

ENIEDA MONTILLA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, JESSIE BAYDO, DANILO GREGAS AND JOSE MIRANDA, RESPONDENTS.

G.R. No. 71504. December 17, 1993

Ponente: NOCON, J.

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NOCON, J.:

This is a petition for review on certiorari to annul and set aside the Resolution of the public respondent National Labor Relations Commission (NLRC) of Manila[1] promulgated on March 1, 1984 which affirmed the Order dated April 5, 1982 of the Labor Arbiter Jose Ma. V. Valencia.

It appears on record that private respondents Jessie Baydo, Jose Miranda and Danilo Gregas were employed as waiters on April 7, 1978, April 17, 1978 and October 1, 1978, respectively, by petitioner Enieda Montilla who was the owner of a restaurant named "Sa Kabukiran Restaurant" located at Libertad Extension, Bacolod City until their dismissal on February 23, 1981.

Prior to their dismissal or on February 12, 1981, private respondents filed a complaint against petitioner with the Ministry of Labor and Employment of Bacolod City in LRD Case No. 81-8139-81 for non-payment of living allowances, 13th month pay, incentive leave pay, holiday pay, rest-day pay and underpayment of wages which was subsequently amended in a Complaint[2] dated February 25, 1981 to include the charge of illegal dismissal against the petitioner.

On the other hand petitioner maintained in her Answer:

"2. x x x that complainants (herein private respondents) were never employees of respondent Enieda Montilla (herein petitioner) and if they had worked in the Sa Kabukiran Restaurant, they were merely on commission basis, their compensation were dependent on whatever sales made which includes all amounts pertaining to their allowances and more or less they served only one (1) hour per service to customers during lunch time or dinner in the evening;

"xxx.

"4. That the respondent (herein petitioner) did not have any employer-employee relationship with the complainants (herein private respondents) because they are actually helping the regular waiters therein from which they share their commission and which is not coming from the funds of the respondent Enieda Montilla (herein petitioner) who is not connected with the said restaurant and being so they were asked to leave the premises without the necessary clearance from the Ministry of Labor and Employment for lack of employer-employee relationship."[3]

Thereafter, the Assistant Regional Director of the Ministry of Labor and Employment endorsed this case to the Regional Arbitration Branch No. VI of Bacolod City in A.B. Case No. A-384-81 and after hearing, issued an Order on April 5, 1982, the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, judgment is hereby rendered for respondent (herein petitioner) to pay the amounts due complainants (herein private respondents) for underpayment of wages, non-payment of cost of living allowances, 13th month pay, incentive leave pay, holiday pay and rest day pay in the total sum of P11,362.00 for Jessie Baydo, P3,422.50 for Danilo Gregas and P8,051.70 for Jose Miranda.

"Respondents (herein petitioner) are further directed to reinstate complainants (herein private respondents) to their former positions without loss of seniority rights and with full backwages beginning February 24, 1981 up to the date of actual reinstatement.

"The complaint for unfair labor practice is dismissed for lack of merit. "[4]

On April 23, 1982, petitioner appealed to public respondent NLRC which affirmed said decision in a Resolution[5] dated March 1, 1984.

On April 17, 1984, petitioner filed a Motion for Reconsideration which was denied in a Resolution[6] dated March 28, 1985.

Thereafter, private respondents waived their respective claims on the outcome of this case as evidenced by their affidavits[7] in which they received the following amounts of money as part of their out-of-court settlement:

Jessie Baydo : P9,000.00-December 19, 1985[8]

Jose Miranda : P4,000.00-November 29, 1985[9]

Danilo Gregas : P3,500.00-November 30, 1985[10]

On August 21, 1989, the First Division of this Court issued a Resolution[11] requiring the parties to manifest whether they are still interested in prosecuting the case.

On October 16, 1989, private respondents' counsel manifested that he is still interested in the early resolution of this case without which his Motion to enforce the attorneys lien dated December 28, 1985 would be without basis and that private respondents were only forced to accept the amounts offered by the petitioner due to the delay in the resolution of this case since they could no longer endure and sustain a long litigation.

Hence, this petition alleging grave abuse of discretion on the part of the public respondent NLRC in finding that private respondents are employees of the petitioner considering that she is only a lessor of "Sa Kabukiran Restaurant" since said restaurant was leased to Eddie Daguinotan from April, 1978 to November, 1978; to Elaine Asejo from January, 1979 to December, 1979; to Gilda Montilla from the middle of January, 1980 to July, 1980; and to Alice Araneta from February, 1981 up to the time when this case was set for hearing.

We do not agree with petitioner's allegations.

It is well-settled that in determining the existence of an employer-employee relationship, the elements that are generally considered are the following: (a) the manner of selection and engagement of the putative employee; (b) the mode of payment of wages; (c) the presence or absence of the power of dismissal; and (d) the presence or absence of a power to control the putative employee's conduct.[12]

This Court had generally relied on the so-called right-of-control test where the person for whom the services are performed reserves a right to control not only the end achieved but also the means to be used in reaching such end.[13] In the case at bar, petitioner's contention that private respondents are not her employees since she was merely a lessor of the restaurant and had acted only in a representative capacity for her different lessees is not meritorious. As held by the Labor Arbiter in its Order:

"A similar conclusion could also be made as regards the testimonies given by Eddie Daguinotan and Alice

Araneta, both alleged to be lessees of the property during the period covered by the complaint. There is no dispute that both had been employees of respondent Enieda Montilla (herein petitioner). Relative to their declarations, it would not be amiss to state that the same were made more in deference to the wishes of respondent Enieda Montilla, their employer. The fact is that Alice Araneta, for instance, is still an employee of Sa Kabukiran Restaurant. It would be more logical to believe, instead, the testimonies made by Jose Javelosa, respondent's (petitioner's) former promoter and PRO manager, no longer having any connection at all with any of the litigants. He consistently averred that Eddie Daguinotan was hired as a cook of Sa Kabukiran Restaurant and was, in fact, under his supervision at the said restaurant. The various documents shown by respondent (Exhibits "1", "1-A", "1-B" and "2") are not absolute proof of ownership. Precisely, the same are contested by complainants (herein private respondents) as the same are alleged to be a scheme adopted by respondent Enieda Montilla (herein petitioner) to evade her responsibilities under the law. Exhibit "C" for the complainants (herein private respondents), [which is a] Pacific Banking Corporation Interbank/Master Charge Merchant Agreement, acknowledged before a notary public on March 21, 1979 is very material to the issue. It shows respondent Enieda Montilla (herein petitioner) signing the agreement as authorized representative of Sa Kabukiran Restaurant. How can she now claim to have nothing to do with the restaurant's operations except as lessor thereof?"[14]

Moreover, private respondents' testimonies that Gilda Montilla, proprietor/manager of Sa Kabukiran Restaurant, paid their Social Security System premium contributions adds strength to the conclusion that the latter are considered employees of the restaurant. Indeed, private respondents are employees of petitioner's restaurant.

However, the fact that private respondents entered into a compromise agreement in connection with the complaints they filed against petitioner and executed affidavits of waiver in full settlement of the judgment in the NLRC case, amounts to a valid and binding compromise agreement. As we held in *Periquet vs. NLRC*: [15]

"Not all waivers and quitclaims are invalid as against public policy. If the agreement was voluntarily entered into and represents a reasonable settlement, it is binding on the parties and may not later be disowned simply because of a change of mind. It is only where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or the terms of settlement are unconscionable on its face, that the law will step in to annul the questionable transaction. But where it is shown that the person making the waiver did so voluntarily, with full understanding of what he was doing, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking. As in this case."

With respect to the Motion filed by the private respondents' counsel praying that the Court order petitioner to pay 10% of the total award granted to the private respondents as his attorney's lien under the authority of Rule VIII, Section 11 of the Omnibus Rules Implementing the Labor Code, we hold that no such attorney's lien could be enforced.

A charging lien to be enforceable as security for the payment of attorney's fees requires as a condition sine qua non a judgment for money and execution in pursuance of such judgment. A lawyer may enforce his right to fees by filing the necessary petition as an incident in the main action in which his services were rendered when something is due his client in the action from which the fee is to be paid.[16]

The attorney's lien can be enforced in the same action if his client is awarded a certain sum by the Court. Only in cases where no amount is awarded to his client will the filing of an appropriate action be necessary.[17]

Accordingly, counsel for private respondents can still collect his legal fees by filing an appropriate action for collection against his clients.

WHEREFORE, the petition for certiorari is hereby DENIED and the Resolution dated March 1, 1984 of respondent NLRC cannot anymore be enforced in view of the valid compromise agreement entered into between

herein petitioner and private respondent.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Puno, JJ., concur.

[1] Penned by Presiding Commissioner Ricardo C. Castro with the concurrence of Commissioner Cecilio T. Seno and Commissioner Federico O. Borromeo.

[2] Rollo, pp. 11-13.

[3] Id., at pp. 14-16.

[4] Id., at p. 29.

[5] Id., at pp. 36-40.

[6] Id., at p. 46.

[7] Id., at pp. 187-189.

[8] Id., at p. 187.

[9] Id., at p. 188.

[10] Id., at p. 189.

[11] Id., at p. 122.

[12] *Hijos De F. Escaño, Inc. vs. NLRC*, 201 SCRA 63 [1991].

[13] *Ruga vs. National Labor Relations Commission*, 181 SCRA 266 [1990].

[14] Rollo, p. 27-28.

[15] 186 SCRA 724 [1990].

[16] *Metropolitan Bank and Trust Co. vs. Court of Appeals, et al.*, 181 SCRA 367 (1990).

[17] *Morente vs. Firmalino*, 71 Phil. 49.

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