

**CAILO/HENRY DEFERIA, EDDIE NORICO, FLORENTINO DE PAULA,
CARLOS PACHECO, HERNANI DEFERIA, EDWIN NORICO, CRISTOBAL
MORADAS, JOSE RABALA, LORETA PADASAS, CELESTINA MASION,
ELISA BA...**

G.R. No. 78713. February 27, 1991

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The existence of an employer-employee relationship and the determination of the liability of an indirect employer are the common issues of these two consolidated petitions for certiorari.

In G.R. No. 78713, a petition involving the alleged violation of labor standard laws, the National Labor Relations Commission (NLRC), affirming the Decision of the Labor Arbiter, ruled in its assailed Resolution[1] dated January 8, 1987 that no employer-employee relationship existed between the petitioners and the private respondents.

In G.R. No. 82718, a petition involving charges of unfair labor practices against the private respondents, the said Commission in a Resolution[2] dated August 31, 1987 reiterated the lack of employer-employee relationship between the said parties. The motions for reconsideration filed by the petitioners in both cases were denied by the respondent Commission.

The facts, as gathered from the records of both petitions, are as follows:

On May 3, 1979, the private respondent Erma Industries, Inc. (hereinafter referred as ERMA), a private corporation engaged in exporting shrimps, prawns, squids, and other marine products and as represented by its Vice-President Sergio Ortiz Luis, Jr., entered into a contract with the private co-respondent Cirilo Undan for the latter to supply the former with marine products in Bacolod City.[3]

Under the said contract, ERMA would provide both the financing and the equipment to Undan while the latter would be responsible for hiring the workers.

Subsequently, Undan engaged the services of the nineteen (19) individual petitioners to clean, behead, sort, prepare, and pack the marine products for their shipment and delivery to ERMA.

Since the employment of the petitioners in 1982 up to June 30, 1984, they have worked continuously for Undan who paid them on a piece-work basis or pakiao. The female employees who took charge of the cleaning, beheading, and sorting phases of the work were allegedly paid at the rate of P0.16 per kilo or an average weekly earning of P8.00 to P22.00. The male employees, on the other hand, who were engaged in the preparation and packing phases of the work were paid at the rate of P0.25 per kilo or an earning of P60.00 to P100.00 a week. All the said employees claimed to work everyday, including Sundays and legal holidays from 8:00 o'clock AM to 6:00 o'clock PM.[4]

Sometime in April 1984, the petitioners constituting a majority of the employees of Undan, joined and became members of the co-petitioner Commercial and Agro-Industrial Labor Organization (CAILO), a duly registered and existing labor union.[5]

On May 9, 1984, the petitioners filed a petition for certification election as the sole and exclusive bargaining representative of the workers of ERMA with the then Ministry (now Department) of Labor and Employment, Regional Office No. VI, which case was docketed as LRD Case No. 0638-84. At the same time, the petitioners filed a complaint against the private respondents for non-payment of wage differentials, emergency and cost allowances, 13th month pay, night shift differentials and service incentive pay with the National Labor Relations Commission, Regional Arbitration Branch No. VI, which case was designated as RAB 0230-84. A letter complaint was likewise filed with the Social Security System for the failure of the private respondents to register the petitioners as their employees.[6]

However, on June 30, 1984, while the petitioners were about to report for work in the morning, they were surprised to see the entrance to their working place closed with Undan informing them of the shutdown of the said business.

Consequently, the petitioners filed another case designated as RAB Case No. 0313-84 with the National Labor Relations Commission, Regional Arbitration Branch No. VI, Bacolod City for unfair labor practice committed by the private respondents through the alleged pretended closure of the said business. The petitioners contended that the same business continued to operate at another place which was at the residence of Undan's relative and that the purported closure was made without prior notice to the then Ministry (now Department) of Labor and Employment.[7]

On October 9, 1984, the Med-Arbiter Rodolfo G. Lagoc dismissed the petition for certification election filed by the petitioners against ERMA on the ground that there was no existing employer-employee relationship between them and suggested that the petitioners' employer appeared to be Undan.[8]

On March 27, 1985, Labor Arbiter Ricardo T. Octavio likewise dismissed RAB Case No. 0230-84 which was the complaint for the violation of labor standard laws on the same ground that there was no employer-employee relationship between the said parties. On appeal, the National Labor Relations Commission in a Resolution dated January 8, 1987, affirmed the said decision of the Labor Arbiter and denied a subsequent motion for reconsideration.

Meanwhile, on October 30, 1985, Labor Arbiter Jose Aguirre dismissed RAB Case No. 0313-84 which was the complaint for unfair labor practice on the same finding that there was no employer-employee relationship between the said parties. On appeal, the National Labor Relations Commission in a Resolution dated August 31, 1987, affirmed the said decision of the Labor Arbiter and denied a subsequent motion for reconsideration.

Hence, these twin petitions.

Upon the manifestation and motion of the Solicitor General, the said petitions for certiorari were ordered consolidated by the Court in a Resolution dated December 14, 1988.[9] On March 26, 1990, the Court resolved in G.R. No. 82718, to dispense with the comment of the private respondents, due to their failure up to that late date to comply with the resolutions of the Court of July 11, 1988 and September 19, 1988, requiring them to file comment on the petition in that case, and thus considered these cases submitted for decision.

The common issues raised by the said petitions as adverted to at the outset are as follows:

- Whether or not an employer-employee relationship exists between ERMA and the petitioners, and

- Whether or not ERMA is the indirect employer of petitioners so as to make it jointly and severally liable with Cirilo Undan for the petitioners' claims.[10]

With regard to the first issue, we affirm the challenged ruling of the National Labor Relations Commission that, indeed, there is no employer-employee relationship between ERMA and the petitioners. Settled jurisprudence enumerates four (4) elements necessary to establish the existence of an employer-employee relationship, 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 employees' conduct.[11]

Nowhere in the record of the case is there a showing by the petitioners of any evidence as to substantiate the presence of the said four (4) elements. On the contrary, various exhibits[12] of the petitioners, such as the alleged authorization signed by Cirilo Undan as Officer-in-Charge of ERMA, sales and charge invoices, and collector's and delivery receipts purportedly showing the active involvement of ERMA in the said business, only demonstrates more convincingly that it was Undan who was the direct and actual employer who had engaged the petitioners, paid their wages, controlled their conduct, and ultimately, dismissed them. In short, we conclude rather that the employer-employee relationship had existed between Undan and the petitioners.

Be that as it may, notwithstanding the lack of employer-employee relationship between ERMA and the petitioners, we however can not hold ERMA free from any liability to the petitioners for the payment of emergency cost of living allowance, 13th month pay, and minimum wages due the latter under applicable laws.

Addressing the second issue, we agree with the Solicitor-General in his strong support of the submission on this score of the petitioners that ERMA is their indirect employer and therefore solidarity liable with Undan. He proffers:

xxx xxx xxx

It is evident from the foregoing that ERMA contracted with Undan only for the purpose of securing the services necessary to prepare and pack the marine products it procured from Bacolod with ERMA providing everything else. Thus, when Undan hired the petitioners to provide the services needed by ERMA, the latter became an indirect employer of the petitioners and hence, liable for their monetary claims x x x.[13]

The conclusion is easily borne out by the provisions in the contract between ERMA and Undan which, in part, states:

2. x x x

Realizing, as per your request, that you are not in a position to finance the buying, we will put in a representative from the Manila office to take care of cashiering.

x x x

3. Erma Industries expect(s) that it did not enter into a complicated arrangement. Suffice it to say that you are our supplier who [sic] we finance. x x x

4. x x x

Upon termination of the agreement, all the equipment we have loaned out to you shall be turned over to us.[14]

The joint and several liability of ERMA, with Carlos Undan, the "labor-only" contractor, arises not only from their contract but finds firm statutory basis in Articles 106, 107, and 109 of the Labor Code which state:

ART. 106. Contractor or sub?contractor. 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.

x x x

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 persons 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.

x x x

ART. 107. Indirect employer.-- The provisions of the immediately preceding Article shall likewise apply to any person, partnership, association or corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task, job or project.

x x x

ART. 109. Solidary liability.-- The provisions of existing laws to the contrary notwithstanding, every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of any provision of this Code. For purposes of determining the extent of their civil liability under this Chapter, they shall be considered as direct employers.

Corollarily, the joint and several liability imposed on ERMA is without prejudice to a claim for reimbursement by it against Cirilo Undan of such sums which ERMA may have to pay the petitioners.[15]

Anent the charge against private respondent Carlos Undan of unfair labor practice in illegally dismissing the petitioners through the sham closure of the said business, we find the same meritorious. The said act constitutes an interference and restraint on the petitioners in their exercise of their right to self-organization[16] as the latter were then pursuing their union affiliation and membership with CAILO.

In an earlier case, we struck down a similar attempt by the employer to avoid responsibility for the valid claims of its employees, to wit:

xxx xxx xxx

Aggravating RANSOM's clear evasion of payment of its financial obligations is the organization of a "run-away corporation," ROSARIO, in 1969 at the time the unfair labor practice case was pending before the CIR by the same persons who were the officers and stockholders of RANSOM, engaged in the same line of business as RANSOM, producing the same line of products, occupying the same compound, using the same machineries, buildings, laboratory, bodega and sales accounts departments used by RANSOM, and which is still in existence. Both corporations were closed corporations owned and managed by members of the same family. Its organization proved to be a convenient instrument to avoid payment of backwages and the reinstatement of the 22 workers. This is another instance where the fiction of separate and distinct corporate entities should be disregarded.[17]

In sum, we hold that Undan as direct employer and ERMA as indirect employer are jointly and severally liable to the petitioners for the violation of labor standard laws and unfair labor practice which the private respondents

have failed to deny.

WHEREFORE, the petitions are GRANTED and all the challenged Resolutions of the National Labor Relations Commission are hereby ANNULLED and SET ASIDE. Private respondent Carlos Undan is ordered to REINSTATE the petitioners to their same or substantially equivalent positions at the time of their termination, with three years backwages and without loss or seniority rights and benefits appurtenant thereto.

Should the said reinstatement be rendered impossible by the supervention of circumstances, Undan is further ordered to PAY the petitioners separation pay equivalent to one (1) month's salary for every year of service rendered, computed at the minimum daily wage level at the time of their termination.

In addition, we FIND that each of the petitioners is entitled to moral damages in the amount of Five Thousand Pesos (P5,000.00) for the evident bad faith shown by Undan in illegally dismissing the former.

In all instances, Undan and ERMA are jointly and severally liable for all the aforementioned monetary awards. Costs against the private respondents.

SO ORDERED.

Melencio-Hererra, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Commissioner Conrado B. Maglaya, ponente, Commissioners Edna Bonto-Perez and Rosario G. Encarnacion, concurring; rollo, 29-31.

[2] Commissioner Edna Bonto-Perez, ponente, Commissioners Conrado B. Maglaya and Rosario G. Encarnacion, concurring; rollo, 18-21.

[3] G.R. No. 78713, rollo, 21.

[4] Id., 22.

[5] Ibid.

[6] Id., 23.

[7] Ibid.

[8] Id., 96.

[9] G.R. No. 82718, rollo, 64.

[10] G.R. No. 78713, rollo, 58.

[11] Besa vs. Trajano, No. 72409, December 29, 1986, [146 SCRA 501]; Rosario Brothers, Inc. vs. Ople, No. 53590, July 31, 1984, [131 SCRA 72]; Mafinco Trading Corp. vs. Ople, No. L-37790, March 25, 1976, [70 SCRA 139].

[12] G.R. No. 78713, rollo, 57.

[13] Id., 101.

[14] Ibid; emphasis supplied.

[15] Del Rosario & Sons Logging Enterprises, Inc. v. NLRC, 136 SCRA 669 [1985].

[16] Article 248(a), Labor Code.

[17] A.C. Ransom Labor Union-CCLU vs. NLRC, No. 69494, May 29, 1987 [150 SCRA 498, 507-508].

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