

**LEOPOLDO GUARIN AND ONE HUNDRED TWENTY (120) OTHERS,
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION,
LIPERCON SERVICES, INC., AND/OR NOVELTY PHILIPPINES, INC.,
RESPONDENTS.**

G.R. No. 86010. October 03, 1989

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

The sole issue in this petition for certiorari is whether or not, as found by the National Labor Relations Commission (or NLRC), respondent Lipercon Services, Inc. is an independent contractor and that petitioners are its employees.

Novelty Philippines, Inc. is a domestic corporation that is engaged in the garment manufacturing business.

Lipercon Services, Inc. is also a domestic corporation which is engaged in business as a service contractor providing workers for other companies.

On July 6, 1983, Novelty and Lipercon entered into a "Contract of Services" in which Lipercon, as the "CONTRACTOR," and Novelty, as the "COMPANY," agreed as follows:

"1. The CONTRACTOR shall provide the COMPANY with Contractual Laborers/Helpers/Janitors as requested by the COMPANY from time to time and such other activities that may be contracted out at the discretion of the COMPANY.

"2. In consideration for the above undertakings of the CONTRACTOR, the COMPANY expressly agrees to pay the CONTRACTOR a fee based on the rates as shown on Annex 'A' of this agreement which is deemed as incorporated herein. A three (3%) percent Contractor's Tax shall be charged to the client which is made part of the billing rate.

"3. The CONTRACTOR shall employ the necessary personnel to efficiently, fully and speedily accomplish the work and services undertaken herein by the CONTRACTOR. The CONTRACTOR represents that its personnel shall be in such number as will be sufficient to cope with the requirements of the services and work herein undertaken and that such personnel shall be physically fit, with good moral character and has not been convicted of any crime.

"4. The CONTRACTOR shall comply with all labor laws such as Minimum Wage Law, Eight Hour Labor Law, Social Security System, Medicare, Maternity Contribution, ECC and other laws relating to employers and employees. It is hereby expressly understood and agreed that the COMPANY shall not be liable in any manner whatsoever for non-compliance with any requirements involving employer-employee relationship and other matters relative to labor laws, and CONTRACTOR hereby renders the COMPANY free and harmless from any responsibility whatsoever for non-compliance with any such requirements and for any violation of any laws, rules and regulations.

"5. The CONTRACTOR shall be answerable for any claim for losses caused by its personnel assigned to the COMPANY and for damages to property of the COMPANY, its employees, officers or agents or to third parties, or for personal injury, including death which may arise from the work or services under this contract from negligence of employees of the CONTRACTOR; provided, however that necessary investigation be made and that the loss and/or damage sustained was a result of negligence of the contractor's personnel.

"6. It is the essence of this contract which is hereby agreed and understood by both parties that there is no employer-employee relationship between the COMPANY and employee assigned by the CONTRACTOR under this agreement. Therefore, the CONTRACTOR obliges itself and its successors in interest, to pay whatever salaries and wages may be due under this contract, including any and all obligations, claims which may arise as a result of the employer-employee relationship existing between the CONTRACTOR and its employees assigned under this agreement and warrants to hold the COMPANY free and harmless of and from any responsibility, liability or claim regarding employment.

"7. The CONTRACTOR shall have exclusive discretion in the selection, engagement and discharge of its personnel, employees or agents or otherwise in the direction and control of the personnel, workers and employees of the CONTRACTOR shall be within its full control.

"8. The COMPANY agrees to pay the amount due to the CONTRACTOR under this contract within seven (7) days after presentation of bills. If payment is not made within thirty (30) days after due date, a one (1%) percent interest per month shall be added to the unpaid balance.

"9. This contract shall remain in full force from July 6, 1983 to July 5, 1984 and is renewable at the option of the COMPANY. Either party may terminate this contract upon.

Petitioners were hired by Lipercon and assigned to Novelty as helpers, janitors, janitresses, firemen, and mechanics under the above agreement. Petitioners worked for Novelty for some three years. On December 31, 1986, Novelty terminated its agreement with Lipercon, resulting in the dismissal of the petitioners.

On January 9, 1987, petitioners filed a complaint for illegal dismissal against both Lipercon and Novelty (Case No. NLRC-NCR-1-107-87). Lipercon did not answer.

In a decision dated June 29, 1987, the Labor Arbiter ruled that the petitioners were regular employees of Novelty and declared their dismissal illegal. Both employers appealed.

Lipercon Services, Inc., on appeal, alleged that the decision was contrary to the facts of the case and not in conformity with the evidence on record and that the Executive Labor Arbiter gravely abused his discretion when he ruled that Lipercon Services, Inc. merely acted as an agent of Novelty Philippines, Inc. in the hiring and placement of the complainants.

On August 19, 1988, the NLRC rendered a decision holding that Lipercon was an independent contractor and that the petitioners were its employees. The dispositive portion of the NLRC's decision reads as follows:

"WHEREFORE, premises considered, the appealed decision is hereby set aside and another judgment entered, ordering respondent Lipercon Services, Inc. to reinstate herein complainants to their former positions without loss of seniority rights and other related benefits granted by law with a limited backwages of one (1) year without qualification or deduction. In case reinstatement is no longer feasible, respondent Lipercon Services, Inc. is hereby ordered to grant complainants separation pay of one (1) month salary for every year of service, a fraction of six (6) months considered as one (1) whole year in addition to the one year backwages." (p. 26, Rollo.)

The petition is meritorious.

Articles 106 and 107 of the Labor Code of the Philippines provide:

"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 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."

"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."

Sections 8 and 9, Rule VIII, Book I of the Omnibus Rules implementing the Labor Code defines "job" contracting and "labor-only" contracting as follows:

"Sec. 8. Job contracting. There is job contracting permissible under the Code if the following conditions are met:

"(1) The contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and

"(2) The contractor has substantial capital or investment in the form of tools, equipments, machineries, work premises, and other materials which are necessary in the conduct of his business."

"Sec. 9. Labor-only contracting. - (a) Any person who undertakes to supply workers to an employer shall be deemed to be engaged in labor-only contracting where such person:

"(1) Does not have substantial capital or investment in the form of tools, equipments, machineries, work premises and other materials; and

"(2) The workers recruited and placed by such person are performing activities which are directly related to the principal business or operations of the employer in which workers are habitually employed.

"(b) Labor-only contracting as defined herein is hereby prohibited and the person acting as contractor shall be considered merely as an agent or intermediary 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.

"(c) For cases not falling under this article, the Secretary of Labor shall determine through appropriate orders whether or not the contracting out of labor is permissible in the light of the circumstances of each case and

after considering the operating needs of the employer and the rights of the workers involved. In such case, he may prescribe conditions and restrictions to insure the protection and welfare of the workers."

It is clear from the foregoing definitions that under the "Contract of Services" between Lipercon and Novelty, Lipercon was a "labor-only" contractor, hence, only an agent of Novelty to procure workers for the latter, the real employer.

The NLRC's finding that Lipercon was not a mere labor-only contractor because it has substantial capital or investment in the form of tools, equipment, machineries, work premises, is based on insubstantial evidence, as the NLRC pointed out, that "it (Lipercon) claims to be possessed among others, of substantial capital and equipment essential to carry out its business as a general independent contractor" (p. 25, Rollo).

The law casts the burden on the contractor to prove that he/it has substantial capital, investment, tools, etc. The petitioners, on the other hand, need not prove the negative fact that the contractor does not have substantial capital, investment, and tools to engage in job-contracting.

The jobs assigned to the petitioners as mechanics, janitors, gardeners, firemen and grasscutters were directly related to the business of Novelty as a garment manufacturer. In the case of *Philippine Bank of Communications vs. NLRC*, 146 SCRA 347, we ruled that the work of a messenger is directly related to a bank's operations. In its Comment, Novelty contends that the services which are directly related to manufacturing garments are sewing, textile cutting, designs, dying, quality control, personnel, administration, accounting, finance, customs, delivery and similar other activities; and that allegedly, "[i]t is only by stretching the imagination that one may conclude that the services of janitors, janitresses, firemen, grasscutters, mechanics and helpers are directly related to the business of manufacturing garments" (p. 78, Rollo). Not so, for the work of gardeners in maintaining clean and well-kept grounds around the factory, mechanics to keep the machines functioning properly, and firemen to look out for fires, are directly related to the daily operations of a garment factory. That fact is confirmed by Novelty's rehiring the workers or renewing the contract with Lipercon every year from 1983 to 1986, a period of three (3) years.

As Lipercon was a "labor-only" contractor, the workers it supplied Novelty became regular employees of the latter.

WHEREFORE, the decision of the NLRC is set aside and that of the Labor Arbiter is reinstated. Novelty Philippines, Inc. is ordered to reinstate the petitioners with backwages for one (1) year without qualification or deduction. In case reinstatement is no longer feasible, respondent Novelty Philippines, Inc. is hereby ordered to grant the complainants separation pay equivalent to one (1) month salary for every year of service, a fraction of six (6) months to be considered as one (1) whole year, in addition to their backwages. Costs against respondent Novelty Philippines, Inc.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Gancayco, JJ., concur.

Medialdea, J., no part.

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