Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

VALENTINO S. LINGAT AND APRONIANO ALTOVEROS,
Petitioners,

- versus -

COCA-COLA BOTTLERS PHILIPPINES, INC., MONTE DAPPLES TRADING, AND DAVID LYONS,[*****]
Respondents.

G.R. No. 205688

Present:

LEONARDO-DE CASTRO,[*]
PERALTA,[**]
DEL CASTILLO,
Acting Chairperson,[***]
TIJAM, *and*
GESMUNDO,[****] *JJ.*

Promulgated:
JUL 04 2018

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DECISION

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari* assails the July 4, 2012 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 112829, which modified the July 7, 2009 Decision[2] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 03-000855-09. Also challenged is the January 16, 2013 CA Resolution[3] which denied petitioners Valentino S. Lingat (Lingat) and Aproniano Altoveros' (Altoveros) (petitioners) Motion for Reconsideration.

Factual Antecedents

On May 5, 2008, petitioners filed a Complaint[4] for illegal dismissal, moral

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* On official leave.
** Per raffle dated February 7, 2018.
*** Per Special Order No. 2562 dated June 20, 2018.
**** Per Special Order No. 2560 dated May 11, 2018.
***** Lyon in some parts of the records.
1 *Rollo*, Vol. I, pp. 627-644; penned by Associate Justice Leoncia Real-Dimagiba and concurred in by Associate Justices Hakim S. Abdulwahid and Marlene Gonzales-Sison.
2 Id. at 206-216; penned by Presiding Commissioner Herminio V. Suelo and concurred in by Commissioners Angelo Ang Palana and Numeriano D. Villena.
3 Id. at 700-701.
4 Id. at 53-55.

and exemplary damages, and attorney's fees against Coca-Cola Bottlers Phils., Inc. (CCBPI), Monte Dapples Trading Corp. (MDTC), and David Lyons (Lyons) (respondents).

Petitioners averred in their Position Paper[5] and Reply[6] that, in August 1993 and January 1996, CCBPI employed Lingat and Altoveros as plant driver and forklift operator, and segregator/mixer respectively. They added that they had continually worked for CCBPI until their illegal dismissal in April 2005 (Lingat) and December 2005 (Altoveros).

According to petitioners, they were regular employees of CCBPI because it engaged them to perform tasks necessary and desirable in its business or trade. They explained that CCBPI made them part of its operations, and without them its products would not reach its clients. They asserted that their work was the link between CCBPI and its sales force.

Petitioners alleged that CCBPI engaged Lingat primarily as a plant driver but he also worked as forklift operator. In particular, he drove CCBPI's truck loaded with softdrinks and its other products, and thereafter, returned the empty bottles as well as the unsold softdrinks back to the plant of CCBPI. On the other hand, as segregator/mixer of softdrinks, Altoveros was required to segregate softdrinks based on the orders of the customers. Altoveros declared, that when a customer needed cases of softdrinks, such need was relayed to him since no sales personnel was allowed in the loading area.

Petitioners further stated, that after becoming regular employees (as they had been employed for more than a year), and by way of a *modus operandi*, CCBPI transferred them from one agency to another. These agencies included Lipercon Services, Inc., People Services, Inc., Interserve Management and Manpower Resources, Inc. The latest agency to where they were transferred was MDTC. They claimed that such transfer was a scheme to avoid their regularization in CCBPI.

In addition, petitioners stressed that the aforesaid agencies were labor-only contractors which did not have any equipment, machinery, and work premises for warehousing purposes. They insisted that CCBPI owned the warehouse where they worked; the supervisors thereat were CCBPI's employees; and, petitioners themselves worked for CCBPI, not for any agency. In fine, they maintained that they were regular employees of CCBPI because:

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5 Id. at 56-71.
6 Id. at 112-118.

> [Petitioners] worked within the premises of [CCBPI,] use the equipment, the facilities, cater on [its] products, [and served] the Sales Forces x x x. In other words, while at work, [petitioners] were under the direction, control and supervision of respondent Coca-Cola's regular employees. The situation calls for the over-all control of the operations by Coca-Cola employees as [petitioners] perform[ed] their work with x x x Coca-Cola and [its] premises. x x x[7]

Finally, petitioners argued that CCBPI dismissed them after it found out that they were "overstaying." As such, they posited that they were illegally dismissed as their termination was without cause and due process of law.

For their part, CCBPI and Lyons, its President/Chief Executive Officer, countered in their Position Paper[8] and Reply[9] that this case must be dismissed because the Labor Arbiter (LA) lacked jurisdiction, there being no employer-employee relationship between the parties.

CCBPI and Lyons declared that CCBPI was engaged in the business of manufacturing, distributing, and marketing of softdrinks and other beverage products. By reason of its business, CCBPI entered into a Warehousing Management Agreement[10] with MDTC for the latter to perform warehousing and inventory functions for the former.

CCBPI and Lyons insisted that MDTC was a legitimate and independent contractor, which only assigned petitioners at CCBPI's plant in Otis, Manila. They posited that MDTC carried on a distinct and independent business; catered to other clients, aside from CCBPI; and possessed sufficient capital and investment in machinery and equipment for the conduct of its business as well as an office building.

CCBPI and Lyons likewise stressed that petitioners were employees of MDTC, not CCBPI. They averred that MDTC was the one who engaged petitioners and paid their salaries. They also claimed that CCBPI only coordinated with the Operations Manager of MDTC in order to monitor the end results of the services rendered by the employees of MDTC. They added that it was MDTC which imposed corrective action upon its employees when disciplinary matters arose.

Finally, CCBPI and Lyons averred that when the Warehousing Management Agreement between CCBPI and MDTC expired, the parties no longer renewed the same. Consequently, it came as a surprise to CCBPI that petitioners filed this complaint considering that CCBPI was not their employer, but MDTC.

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7 Id. at 115-116.
8 Id. at 74-105.
9 Id. at 127-141.
10 Id. at 343-349.

Meanwhile, LA Catalino R. Laderas declared that despite notice, MDTC failed to file its position paper on this case.[11]

Ruling of the Labor Arbiter

On December 9, 2008, the LA ruled for the petitioners, the dispositive portion of his Decision reads:

> WHEREFORE, premised on the foregoing considerations[,] judgment is hereby rendered declaring that complainants were ILLEGALLY DISMISSED from their employment.
>
> Respondent CCBPI is hereby ordered, viz.:
>
> 1. To reinstate complainants to their former positions without loss of seniority rights and privileges and to pay complainants backwages from the time they were illegally dismissed up to the time of this decision.
>
> The computation unit of this Office is hereby directed to compute the monetary award of the complainant[s] which forms part of this decision.
>
> Other claims are DISMISSED for lack of merit.
>
> SO ORDERED.[12]

The LA ruled that respondents failed to refute that petitioners were employees of CCBPI and the latter undermined their regular status by transferring them to an agency. The LA decreed that, per the identification cards (IDs) of petitioners, CCBPI hired Lingat in 1993, and Altoveros in 1996. Moreover, as plant driver, and segregator/mixer, petitioners performed activities necessary in the usual business or trade of CCBPI; and, their continued employment for more than one year proved that they were regular employees of CCBPI.

The LA likewise ratiocinated that the contracts of employment which petitioners may have entered with CCBPI's contractors could not undermine their (petitioners) tenure arising from their regular status with CCBPI.

In sum, the LA decreed that, since respondents failed to debunk the allegations raised by petitioners, then judgment must be rendered in favor of petitioners.

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11 Id. at 146.

12 Id. at 151-152.

Ruling of the National Labor Relations Commission

On appeal, the NLRC dismissed the illegal dismissal case. It, nonetheless, ordered MDTC to pay Altoveros separation pay amounting to ₱10,725.00.

According to the NLRC, Lingat stated that CCBPI illegally dismissed him in April 2005. However, he only filed his complaint for illegal dismissal on May 5, 2008, which was beyond three years from his dismissal. Thus, Lingat's complaint must be dismissed on the ground of prescription.

Also, the NLRC decreed that the complaint of Altoveros was bereft of merit. It explained that per Altoveros' ID, CCBPI employed him in January 1996 until September 19, 1996; thereafter, he was employed by Genesis Logistics and Warehouse Corporation; and, on April 7, 2003, MDTC hired him and assigned him as loader/mixer at CCBPI's warehouse in Paco, Manila until December 2005 when MDTC's contract with CCBPI expired.

In ruling that Altoveros was an employee of MDTC, the NLRC gave credence to the Warehousing Management Agreement between MDTC and CCBPI as well as to MDTC's Amended Articles of Incorporation. It held that MDTC did not appear to be a mere agent of CCBPI but was one that provided stock handling and storage services to CCBPI. It held that, considering MDTC was the employer of Altoveros, then it must pay him separation pay of ½ month pay for every year of his service.

On November 4, 2009, the NLRC denied[13] petitioners' Motion for Reconsideration prompting them to file a Petition for *Certiorari* with the CA.

Ruling of the Court of Appeals

On July 4, 2012, the CA modified the NLRC Decision in that it ordered MDTC to pay separation pay to both petitioners.

Contrary to the finding of the NLRC, the CA found that the illegal dismissal case filed by Lingat had not yet prescribed. It held that, aside from money claims, Lingat prayed for reinstatement, as such, pursuant to Article 1146 of the Civil Code, Lingat had four years within which to file his case. It noted that Lingat filed this suit on May 5, 2008 or only three years and one day from his alleged illegal dismissal; thus, he timely filed his case against respondents.

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[13] Id. at 249-250.

Nevertheless, the CA agreed with the NLRC that MDTC was an independent contractor and the employer of petitioners. It gave weight to petitioners' latest IDs, which were issued by MDTC as well as to the Articles of Incorporation of MDTC, which indicated that its secondary purpose was "to engage in the business of land transportation" and "the business of warehousing services." It further ruled that MDTC had substantial capital stock, as well as properties and equipment, which supported the conclusion that MDTC was a legitimate labor contractor.

On January 16, 2013, the CA denied the Motion for Reconsideration on the assailed Decision.

Issues

Undaunted, petitioners filed this Petition raising these issues:

1. Whether or not there exists [an] employer-employ[ee] relationship between Petitioners and Respondent CCBPI;

2. Whether or not Petitioner Lingat's complaint is barred by prescription;

3. Whether or not the Court of Appeals gravely erred in declaring [that] Petitioners [were] not regular employees of Respondent CCBPI;

4. Whether or not Petitioners were dismissed without cause and due process;

5. Whether or not moral and exemplary damages lie; and

6. Whether or not the Petitioners are entitled to attorney's fees.[14]

Petitioners maintain that they were regular employees of CCBPI. They insist that their engagement by CCBPI in 1993 (Lingat) and 1996 (Altoveros) proved that they were its employees from the beginning. They also aver that they worked at CCBPI's warehouse, wore its uniforms, operated its machinery, and were under the direct control and supervision of CCBPI. They likewise contend that CCBPI illegally dismissed them from work. On this, they insist that respondents themselves admitted that petitioners' employment contract expired; and thereafter, they were no longer given any new assignments. They remain firm that such termination of contract was not a valid cause for their dismissal from work.

CCBPI and Lyons, for their part, counter that this Petition was not a proper recourse because petitioners seek a recalibration of facts and evidence which is not

[14] Id. at 11.

within the scope of the Petition because only pure questions of law may be raised herein. They add that MDTC was a legitimate and independent job contractor and was the employer of petitioners, not CCBPI.

Our Ruling

The Petition is impressed with merit.

As a rule, the determination of whether an employer-employee relationship exists between the parties involves factual matters that are generally beyond the ambit of this Petition as only questions of law may be raised in a petition for review on *certiorari*. However, this rule allows certain exceptions, which include an instance where the factual findings of the courts or tribunals below are conflicting. Given the situation here where the factual findings of the NLRC and the CA are divergent from those of the LA, the Court deems it proper to re-assess and review these findings in order to arrive at a just resolution of the issues on hand.[15]

Moreover, pursuant to Article 295 of the Labor Code, as amended and renumbered, a regular employee is a) one that has been engaged to perform tasks usually necessary or desirable in the employer's usual business or trade – without falling within the category of either a fixed or a project or a seasonal employee; or b) one that has been engaged for a least one year, whether his or her service is continuous or not, with respect to such activity he or she is engaged, and the work of the employee remains while such activity exists.

In this case, petitioners described their respective duties at CCBPI in this manner:

> x x x I, V. Lingat, x x x was also engaged as forklift operator [but] my main work as plant driver [required me] to take out truck loaded with softdrinks/Coca-Cola products after the same has been checked by the checker area; [I also] drive back Coca-Cola trucks loaded with empty bottles or sometimes x x x unsold softdrinks x x x This represented [my] daily chores while employed at Coca-Cola[.]
>
> x x x I, A. Altoveros, was with the latest work as segregator/mixer of softdrinks according to the demands of the customers, that is, when a customer needed ten (10) cases of Royal Tru-Orange or five (5) cases of Coke Sakto, the same is relayed to me in the loading area (as no sales personnel is allowed therein)[.] I have to segregate softdrinks accordingly to fill up the order of [the] customer.[16]

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15 *Pacquing v. Coca-Cola Philippines, Inc.*, 567 Phil 323, 337-338 (2008).

16 *Rollo*, p. 72.

To ascertain if one is a regular employee, it is primordial to determine the reasonable connection between the activity he or she performs and its relation to the trade or business of the supposed employer.[17]

Relating petitioners' tasks to the nature of the business of CCBPI – which involved the manufacture, distribution, and sale of soft drinks and other beverages – it cannot be denied that mixing and segregating as well as loading and bringing of CCBPI's products to its customers involved distribution and sale of these items. Simply put, petitioners' duties were reasonably connected to the very business of CCBPI. They were indispensable to such business because without them the products of CCBPI would not reach its customers.

Interestingly, in *Coca-Cola Bottlers Philippines, Inc. v. Agito*,[18] the Court held that respondents salesmen therein were regular employees of CCBPI as their work constituted distribution and sale of its products. The Court also stressed in *Agito* that the repeated rehiring of those salesmen bolstered the indispensability of their work to the business of CCBPI.

Similarly, herein petitioners have worked for CCBPI since 1993 (Lingat) and 1996 (Altoveros) until the non-renewal of their contracts in 2005. Aside from the fact that their work involved the distribution and sale of the products of CCBPI, they remained to be working for CCBPI despite having been transferred from one agency to another. Hence, such repeated re-hiring of petitioners, and the performance of the same tasks for CCBPI established the necessity and the indispensability of their activities in its business.

In addition, in *Pacquing v. Coca-Cola Philippines, Inc.*,[19] the Court ruled that the sales route helpers of CCBPI were its regular employees. In this case, petitioners had similarly undertook to bring CCBPI's products to its customers at their delivery points. In *Pacquing*, it was even stated that therein sales route helpers "were part of a complement of three personnel comprised of a driver, a salesman and a regular route helper, for every delivery truck."[20] As such, it would be absurd for the Court to hold those helpers as regular employees of CCBPI without giving the same status to its plant driver, including its segregator of softdrinks, whose work also had reasonable connection to CCBPI's business of distribution and sale of soft drinks and other beverage products.

Furthermore, in *Quintanar v. Coca-Cola Bottlers, Philippines, Inc.*,[21] therein

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17 *Vicmar Development Corporation v. Elarcosa*, 775 Phil. 218, 235 (2015).
18 598 Phil. 909, 925-926 (2009).
19 Supra note 15.
20 Id. at 328.
21 G.R. No. 210565, June 28, 2016, 794 SCRA 654.

route helpers, like petitioners, were tasked to distribute CCBPI's products and were likewise successively transferred to agencies after having been initially employed by CCBPI. The Court decreed therein that said helpers were regular employees of CCBPI notwithstanding the fact that they were transferred to agencies while working for CCBPI. In the same vein, the transfer of herein petitioners from one agency to another did not adversely affect their regular employment status. Such was the case because they continued to perform the same tasks for CCBPI even if they were placed under certain agencies, the last of which was MDTC.

Moreover, CCBPI and Lyons' contention that MDTC was a legitimate labor contractor and was the actual employer of petitioners does not hold water.

A labor-only contractor is one who enters into an agreement with the principal employer to act as the agent in the recruitment, supply, or placement of workers for the latter. A labor-only contractor 1) does not have substantial capital or investment in tools, equipment, work premises, among others, and the recruited employees perform tasks necessary to the main business of the principal; or 2) does not exercise any right of control anent the performance of the contractual employee. In such case, where a labor-only contracting exists, the principal shall be deemed the employer of the contractual employee; and the principal and the labor-only contractor shall be solidarily liable for any violation of the Labor Code. On the other hand, a legitimate job contractor enters into an agreement with the employer for the supply of workers for the latter but the "employer-employee relationship between the employer and the contractor's employees [is] only for a limited purpose, *i.e.*, to ensure that the employees are paid their wages."[22]

In *Diamond Farms, Inc. v. Southern Philippines Federation of Labor (SPFL)-Workers Solidarity of DARBMUPCO/Diamond-SPFL,*[23] the Court distinguished a labor-only contractor and a legitimate job contractor in this wise:

> The Omnibus Rules Implementing the Labor Code distinguishes between permissible job contracting (or independent contractorship) and labor-only contracting. Job contracting is permissible under the Code if the following conditions are met:
>
> > (a) 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

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22 *Coca-Cola Bottlers Philippines, Inc. v. Agito,* supra note 18 at 923.

23 778 Phil. 72, 87-88 (2016).

> (b) The contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business.
>
> In contrast, job contracting shall be deemed as labor-only contracting, an arrangement prohibited by law, if a person who undertakes to supply workers to an employer:
>
> (1) Does not have substantial capital or investment in the form of tools, equipment, 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.

Here, based on their Warehousing Management Agreement, CCBPI hired MDTC to perform warehousing management services, which it claimed did not directly relate to its (CCBPI's) manufacturing operations.[24] However, it must be stressed that CCBPI's business *not* only involved the manufacture of its products but also included their distribution and sale. Thus, CCBPI's argument that petitioners were employees of MDTC because they performed tasks directly related to "warehousing management services," lacks merit. On the contrary, records show that petitioners were performing tasks directly related to CCBPI's distribution and sale aspects of its business.

To reiterate, CCBPI is engaged in the manufacture, distribution, and sale of its products; in turn, as plant driver and segregator/mixer of soft drinks, petitioners were engaged to perform tasks relevant to the distribution and sale of CCBPI's products, which relate to the core business of CCBPI, not to the supposed warehousing service being rendered by MDTC to CCBPI. Petitioners' work were directly connected to the achievement of the purposes for which CCBPI was incorporated. Certainly, they were regular employees of CCBPI.

Moreover, we disagree with the CA when it heavily relied on MDTC's alleged substantial capital in order to conclude that it was an independent labor contractor.

To note, in *Quintanar v. Coca-Cola Bottlers, Philippines, Inc.*,[25] the Court ruled that "the possession of substantial capital is only one element."[26] To

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[24] *Rollo*, p. 343.
[25] Supra note 21.
[26] Id. at 681.

determine whether a person or entity is indeed a legitimate labor contractor, it is necessary to prove not only substantial capital or investment in tools, equipment, work premises, among others, but also that the work of the employee is directly related to the work that contractor is required to perform for the principal.[27] Evidently, the latter requirement is wanting in the case at bench.

Finally, as regular employees, petitioners may be dismissed only for cause and with due process. These requirements were not complied with here.

It was not disputed that petitioners ceased to perform their work when they were no longer given any new assignment upon the alleged termination of the Warehousing Management Agreement between CCBPI and MDTC. However, this is not a just or authorized cause to terminate petitioners' services. Otherwise stated, the contract expiration was not a valid basis to dismiss petitioners from service. At the same time, there was no clear showing that petitioners were afforded due process when they were terminated. Therefore, their dismissal was without valid cause and due process of law; as such, the same was illegal.

Considering that petitioners were illegally terminated, CCBPI and MDTC are solidarily liable for the rightful claims of petitioners.[28]

Moreover, by reason of the lapse of more than 10 years since the inception of this case on May 5, 2008, the Court deems it more practical and would serve the best interest of the parties to award separation pay to petitioners, in lieu of reinstatement.[29] Finally, since petitioners were compelled to litigate to protect their rights and interests, attorney's fees of 10% of the monetary award is given them. The legal interest of 6% *per annum* shall be imposed on all the monetary grants from the finality of the Decision until paid in full.[30]

WHEREFORE, the Petition is **GRANTED**. The July 4, 2012 Decision and January 16, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 112829 are **REVERSED and SET ASIDE**. Accordingly, the December 9, 2008 Decision of the Labor Arbiter is **REINSTATED WITH MODIFICATIONS** in that separation pay, in lieu of reinstatement, and attorney's fees equivalent to 10% of the monetary grants are awarded to petitioners. All monetary awards shall earn interest at the legal rate of 6% *per annum* from the finality of this Decision until fully paid.

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27 Id. at 682.

28 *Diamond Farms, Inc. v. Southern Philippines Federation of Labor (SPFL)-Workers Solidarity of DARBMUPCO/Diamond-SPFL*, supra note 23 at 87.

29 *Bank of Lubao, Inc. v. Manabat*, 680 Phil. 792, 801 (2012).

30 See *Brown v. Marswin Marketing, Inc.*, G.R. No. 206891, March 15, 2017.

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

(On official leave)
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIANO C. DEL CASTILLO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Acting Chief Justice