



SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE

RECEIVED
JUN 01 2022

Republic of the Philippines
Supreme Court
Manila

TIME: 3:00

THIRD DIVISION

CARMELA C. TIANGCO,
Petitioner,

G.R. No. 200434

Present:

- versus -

LEONEN, *Chairperson*
CARANDANG,
ZALAMEDA,
ROSARIO, and
MARQUEZ, *JJ.*

**ABS-CBN BROADCASTING
CORPORATION,**
Respondent.

Promulgated:

December 6, 2021

MistDC Batt

X ----- X

DECISION

ZALAMEDA, J.:

Possession of unique skills, expertise, or talent is a persuasive element of an independent contractor. It becomes conclusive if it is established that the worker performed the work according to his/her own manner and method and free from the principal's control except to the result.

The Case

This resolves a Petition for Review on *Certiorari*¹ under Rule 45 assailing the Decision² dated 27 January 2012 of the Court of Appeals (CA)

¹ *Rollo*, pp. 9-70.

² *Id.* at 80-90; Penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Ramon M. Bato, Jr. and Normandie B. Pizaro of the Special Third (3rd) Division, Court of Appeals,

in CA-G.R. SP No. 103584. The CA approved the parties' Partial Settlement Agreement³ dated 15 December 2011 and rendered judgment declaring that the remaining issue in the Petition had become moot and academic.

Antecedents

Petitioner Carmela C. Tiangco (petitioner) was initially engaged by respondent ABS-CBN Corporation (ABS-CBN) as Talent Newscaster, on an exclusive basis, on 22 July 1986 with a monthly talent fee of Php8,000.00 for a period of 1 year.⁴ Subsequently, petitioner's contract was renewed as follows:⁵

Date	Position	Term	Fee	Other Terms
2-Nov-1987	Talent Newscaster in TV Patrol	6 months	Php12,000.00	1. Exclusive 2. Talent not to appear or voice any other program other than those of ABS-CBN 3. Talent not to do any commercial without ABS-CBN's prior approval or clearance
26-Feb-1988	-same-	1 year	Php25,000.00	-same-
13-Mar-1989	-same-	1 year	Php35,000.00	-same-
5-Sept-1989	Contractual talent for the Mel & Jay show	26 weeks from 17 September 1989	Php20,000.00 per appearance per show	Exclusive
2-May-1990	Talent Newscaster in TV Patrol	1 year	Php50,000.00	1. Exclusive 2. Talent not to appear or voice any other program other than those of ABS-CBN 3. Talent not to do any commercial without ABS-CBN's prior approval or clearance

Manila.

³ *Id.* at 999 to 1001.

⁴ *Id.* at 190.

⁵ *Id.* at 191-196; 256-257.

27-Apr-1991	Talent announcer/TV host with appearances at Mel & Jay (radio and tv programs) and TV Patrol	3 years	Php240,000.00 plus Php250,000.00 worth of ABS-CBN stocks	Exclusive
-------------	----------------------------------------------------------------------------------------------	---------	----------------------------------------------------------	-----------

Upon expiration of the contract dated 27 April 1991, ABS-CBN entered into the May 1994 Agreement (Agreement)⁶ with Mel & Jay Management and Development Corporation (MJMDC), committing to provide petitioner's services to ABS-CBN as exclusive talent for radio and television under the following stipulations:

The AGENT shall provide the services of CARMELA C. Tiango (Mel Tiango) for the COMPANY as exclusive talent for Radio and Television. As Talent she shall render the following services:

- a. Co-anchor TV Patrol news program aired Mondays to Fridays at 6:00 - 7:00 p.m.;
- b. Co-host Mel & Jay radio program aired Mondays to Fridays at 8:00 - 10:00 a.m.;
- c. Co-host Mel & Jay television program aired Sundays at 5:30 to 7:00 p.m.;
- d. As executive director for Lingkod Bayan;

The AGENT warrants and obliges talent not to anchor and/or appear in any radio or television program in any other television or radio station without prior written approval of the COMPANY. AGENT further warrants that she shall not appear in commercials nor plug, mention, or otherwise, promote in the radio and television programs herein any radio or television program, segment or feature of any other radio or television station without the prior written approval of the COMPANY;

xxx

The COMPANY shall provide her with the following benefits: SSS, Medicare, healthcare, executive life and accident insurance, and a 13th-month pay based on an amount not lower than the amount she was receiving prior to the effectivity of this Agreement.

In the event of cancellation of this Agreement through no fault of the AGENT and its talent, COMPANY agrees to pay the full amount specified in this Agreement for the remaining period covered by this Agreement, provided that she shall not render any service for or in any

⁶ *Id.* at 186-189.

other radio or television production of any person, firm, corporation or any entity competing with the COMPANY until the expiry date hereof.

The COMPANY and AGENT [agree] that the Agreement is for a period of three (3) years effective March 01, 1994 to April 30, 1997.

AGENT agrees that talent shall abide by the rules, regulations and standards of performance of the COMPANY covering talents, and that talent is bound to comply with the Television and Radio Code of the Kapisanan ng mga Broadkaster sa Pilipinas (KBP), which has been adopted by the COMPANY as its Code of Ethics. AGENT shall perform and keep all of the duties and obligations assumed or entered by the AGENT hereunder using its best talents and abilities. Any violation of or non-conformity with this provision by talent shall be a valid and sufficient ground for the immediate termination of this Agreement.

xxx⁷

Thereafter, ABS-CBN issued the Memorandum⁸ dated 08 February 1995 (Memorandum) concerning commercial appearances of its talents and regular employees. Citing the "clear...need to protect the integrity and credibility of the news and public affairs programs[,]"⁹ the Memorandum directed all on-air and/or on-camera talents and employees in the Radio and the News and Public Affairs Departments to refrain from appearing in commercial advertisements, violation of which shall be considered a serious breach of company rules and regulations.¹⁰

Petitioner allegedly violated the Memorandum when she appeared in a Tide commercial that aired sometime in December 1995. Consequently, on 16 January 1996, ABS-CBN placed petitioner under suspension for three months without pay from her co-anchor positions in TV Patrol on Channel 2 and Mel & Jay radio program over at DZMM.¹¹

To clarify matters connected with the suspension, the parties met and exchanged several correspondences where they expressed their views and misgivings on the issue. The parties exerted efforts to come up with an amicable solution, but in the end could not come to an agreement. Petitioner maintained that she had the verbal approval of ABS-CBN management to proceed with the Tide commercial; that the three-month suspension without pay was harsh and unjust.¹² On the other hand, ABS-CBN, through Frederico

⁷ *Id.* at 186-188.

⁸ *Id.* at 272-273.

⁹ *Id.* at 272.

¹⁰ *Id.*

¹¹ *Id.* at 197.

¹² *Id.* at 198-199.



M. Garcia, denied that such verbal approval was ever given to petitioner, and that the penalty of suspension was decided after a lengthy and careful deliberation and on the basis of all the attendant facts and circumstances.¹³

On 11 March 1996, petitioner filed a complaint against ABS-CBN and its officers for illegal dismissal, illegal suspension, and claims for backwages, separation pay, 13th month pay, travel, vacation benefits of Php150,000.00, shares of stocks, damages, and attorney's fees.¹⁴

Meanwhile, petitioner, through its agent MJMDC, sent a Letter¹⁵ dated 27 March 1996 to ABS-CBN and expressed that her suspension and alleged constructive dismissal were in violation of the Agreement. For that reason, they were rescinding the Agreement at their instance. In response, ABS-CBN, through counsel, rebuked the rescission, saying that there was no basis for it as petitioner was an independent contractor and that her suspension for her violation of the Agreement did not constitute constructive dismissal.¹⁶

Ruling of the Labor Arbiter

Labor Arbiter Jose De Vera, in his 29 April 1999 Decision, ruled in favor of petitioner:¹⁷

WHEREFORE, all the foregoing premises considered, judgment is hereby rendered declaring complainant's suspension and subsequent constructive dismissal as illegal, and the respondent company is hereby ordered to pay complainant as follows: P1,254,000.00 as salaries corresponding to the period of her suspension; P4,170,000.00 as separation pay; P972,249.66 as 13th-month pay; P500,000.00 as signing bonus; P1,100,000.00 as refund of her contributions to ESOP; P300,000.00 as commutable travel expense benefit for 1994; P3,000,000.00 as moral damages; and ten percent (10%) of all the foregoing judgment awards as attorney's fees.

SO ORDERED.¹⁸

On 07 May 1999, ABS-CBN appealed¹⁹ this decision to the National Labor Relations Commission (NLRC) on the ground of lack of jurisdiction considering that no employer-employee relationship existed between ABS-

¹³ *Id.* at 275-277.

¹⁴ *Id.* at 84.

¹⁵ *Id.* at 230-231.

¹⁶ *Id.* at 283-284.

¹⁷ *Id.* at 85.

¹⁸ *Id.*

¹⁹ *Id.* at 661-743.



CBN and petitioner.²⁰

Subsequently, ABS-CBN filed a Manifestion²¹ informing the NLRC of the Supreme Court's decision dated 10 June 2004 in the case of *Sonza v. ABS-CBN Broadcasting Corporation*,²² involving Jay Sonza, the other half of the "Mel & Jay" show. ABS-CBN manifested that the Supreme Court pronounced that broadcast and entertainment talents like Sonza are not employees but independent contractors.

Ruling of the NLRC

The NLRC rendered its Decision²³ dated 31 July 2006 and reversed LA De Vera's decision and ruled, thus:

WHEREFORE, respondents' appeal is hereby granted and the assailed Decision is hereby VACATED and SET ASIDE and a new one entered dismissing the case for lack of jurisdiction.

SO ORDERED.²⁴

The NLRC held that it cannot adopt the LA's findings based on the principle of *stare decisis*. This, considering that Sonza and petitioner were similarly situated as both were covered by the Agreement containing identical provisions. As such, the Court's ruling in *Sonza* applied equally to both of them. The NLRC considered petitioner's claim that there were periods that she worked without a contract as "water under the bridge" since subsequently, she had a series of contracts with ABS-CBN, the latest being the Agreement in May 1994, which was deemed the law between the parties.²⁵

Petitioner elevated the NLRC's decision to the CA via a Petition for *Certiorari*²⁶ on the ground that the NLRC committed grave abuse of discretion when it applied *Sonza vs. ABS-CBN Broadcasting Corp.*²⁷ without considering the substantial differences in the situations.

On 08 September 2010, the case was referred to the Philippine Mediation Center (PMC)-CA for mediation pursuant to A.M. No. 04-3-15-

²⁰ *Id.*

²¹ *Id.* at 838-846.

²² 475 Phil. 539 (2004), G.R. No. 138051, 10 June 2004 [Per J. Carpio].

²³ *Rollo*, pp. 168-179.

²⁴ *Id.* at 178.

²⁵ *Id.* at 171-178.

²⁶ *Id.* at 151-165.

²⁷ *Supra* at note 19.

SC.²⁸ Thereafter, the parties executed and signed a Partial Settlement Agreement²⁹ with the following relevant stipulations:

WHEREAS, after several conciliation meetings presided over by the Hon. Gal-lang, the parties have mutually arrived at an agreement to partially settle specific monetary claims of petitioner Tiangco;

NOW THEREFORE, for and in consideration of the foregoing premises, the parties hereby agree and stipulate as follows:

1. PAYMENT – Petitioner Tiangco by this agreement signifies, that respondent has paid her in full amount covering her specific monetary claims as follows: salaries corresponding to her period of suspension, 13th Month pay, travel allowance, refund of her contributions to ESOP and Signing Bonus;
2. WITHDRAWAL OF DEPOSIT – Petitioner Tiangco shall be entitled to withdraw all amounts contained in a savings bank account originally opened at PCIBank Quezon Avenue (now BDO) designated as “Carmela Tiangco in Trust for ABS-CBN BROADCASTING CORPORATION” covered by Savings Account Passbook No. 5733-08476-5;”
3. WAIVER – Petitioner Tiangco therefore waives any and all claims she may have as against the respondent for any of the monetary claims as specified above.
4. NON-ADMISSION – The parties agree that nothing in this agreement shall in any way be considered as an admission or denial that would adversely affect in any way all other issues presented to the Honorable Court of Appeals for final adjudication.
5. ASSISTANCE OF COUNSELS – The parties declare that they have read this document and understood the terms and conditions thereof, and have freely and voluntarily executed the same with full knowledge and awareness of their respective rights under law, and that the same was made with the assistance of their respective counsels.

WHEREFORE, it is respectfully prayed of this Honorable Court of Appeals to approve the foregoing PARTIAL SETTLEMENT AGREEMENT.

15 December 2011, City of Manila.

(signed)
CARMELA C. TIANGCO

Assisted by:

²⁸ *Rollo*, p. 87.

²⁹ *Id.* at 999 to 1001.



(signed)
ATTY. ARNO V. SANIDAD

ABS-CBN CORPORATION

By:
(signed)
ATTY. MAXIMILIAN T. UY
Vice President – Legal Services³⁰

Ruling of the CA

On 27 January 2012, the CA rendered the assailed Decision based on the Partial Settlement Agreement and disposed the case as follows:

WHEREFORE, premises considered, the Partial Settlement Agreement dated 15 December 2011 is hereby APPROVED. Judgment is rendered in accordance with the same and the parties are hereby enjoined to strictly comply with its terms.

With the execution of the Partial Settlement Agreement, the remaining issue in the instant Petition is already MOOT and ACADEMIC as above discussed.

SO ORDERED.³¹

The CA noted the stipulation in the Partial Settlement Agreement that said agreement shall not in any way be considered as an admission or denial that would affect the other issues submitted for final adjudication. Further, the CA ruled that “the final settlement of the monetary claims of Petitioner [petitioner herein] against Private Respondent [ABS-CBN], the remaining issue raised in the instant Petition of whether or not the Public Respondent committed grave abuse of discretion in refusing to inhibit itself in the resolution of the case, has now become moot and academic.”³²

Aggrieved, petitioner filed the present Petition.³³

³⁰ *Id.* at 1000-1001.

³¹ *Id.* at 89-90.

³² *Id.* at 87-90.

³³ *Id.* at 9-70.



Issues

The issues for resolution are:

1. Did the Partial Settlement Agreement finally settle all of petitioner's monetary claims?
2. Is petitioner an ABS-CBN employee or an independent contractor?

Ruling of the Court

The determination of the nature of petitioner's relationship with ABS-CBN is essentially a question of fact and as such, outside of the purview of a Rule 45 petition. As a rule, the Court does not review questions of fact, but only questions of law in an appeal by *certiorari* under Rule 45 of the Rules of Court. The rule, however, is not absolute as the Court may review the facts in labor cases where the findings of the CA and of the labor tribunals are contradictory.³⁴

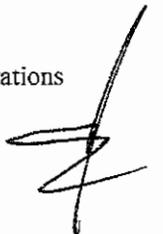
Partial Settlement Agreement

Petitioner's main contention is premised on the CA's judgment based on the Partial Settlement Agreement and declaration that the remaining issues were moot and academic by reason of the final settlement of petitioner's monetary claims. The CA said:

On 8 September 2010, the instant case was referred to the Philippine Mediation Center (PMC)-Court of Appeals for mediation pursuant to the Resolution dated 23 March 2004 of the Supreme Court in A.M. No. 04-3-15-SC on the Implementation of Mediation at the Court of Appeals.

On 15 December 2011, the parties were able to reach a successful settlement of this case as contained in the Partial Settlement Agreement, the relevant portion thereof reads:

³⁴ *Cabañas v. Abelardo G. Luzano Law Office*, G.R. No. 225803, 02 July 2018 [Per J. Peralta]; Citations omitted.



x x x x

A compromise agreement intended to resolve a matter already under litigation is a judicial compromise. Having judicial mandate and entered as its determination of the controversy, such judicial compromise has the force and effect of a judgment. It transcends its identity as a mere contract between the parties, as it becomes a judgment that is subject to execution in accordance with the Rules of Court.

Finding the above-quoted Partial Settlement Agreement to be not contrary to law, public order, public policy, morals and good customs, we resolve to approve the same.

However, there is a stipulation in the Partial Settlement Agreement that nothing in the said Agreement shall in any way be considered as an admission or denial that would adversely affect in any way all other issues presented to the Honorable Court of Appeals for final adjudication.

We rule that with the final settlement of the monetary claims of Petitioner against Private Respondent, the remaining issue raised in the instant Petition of whether or not the Public Respondent committed grave abuse of discretion in refusing to inhibit itself in the resolution of the case, has now become moot and academic. "A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value." In such cases, there is not actual substantial relief to which Petitioner would be entitled to and which would be negated by the dismissal of the Petition.³⁵

Petitioner maintains that her monetary claims were not fully settled by virtue of the Partial Settlement Agreement. She points out that, based on the monetary award in the LA's Decision, her claims for separation pay, moral damages, and attorney's fees are still unsatisfied and remain to be contested.³⁶

ABS-CBN, on the other hand, alleges that petitioner's claims were not actually raised before the CA. Further, her claims for separation pay, damages, and attorney's fees have no merit since all monetary claims of the petitioner have been settled in the Partial Settlement Agreement approved by the CA.³⁷

We agree with petitioner.

The Partial Settlement Agreement executed by and between petitioner

³⁵ *Rollo*, p. 87-89.

³⁶ *Id.* at 24-25.

³⁷ *Id.* at 1026-1027.



and ABS-CBN is essentially a compromise, which is understood as a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced.³⁸ The Court notes the relevant terms in the Partial Settlement Agreement as follows:

1. PAYMENT – Petitioner by this agreement signifies, that respondent has paid her in full amount **covering her specific monetary claims as follows: salaries corresponding to her period of suspension, 13th Month pay, travel allowance, refund of her contributions to ESOP and Signing Bonus;**

x x x x

3. WAIVER – Petitioner therefore waives any and all claims she may have as against the respondent for any of the monetary claims as specified above.

4. NON-ADMISSION – The parties agree that nothing in this agreement shall in any way be considered as an admission or denial that would adversely affect in any way all other issues presented to the Honorable Court of Appeals for final adjudication. xxx.³⁹ (Emphasis supplied)

Clearly, the Partial Settlement Agreement did not include separation pay, damages, and attorney's fees. ABS-CBN's assertion that petitioner did not raise these as part of her claims in her appeal to the CA is erroneous. A reading of the records showed that petitioner raised this matter when she prayed for the reinstatement⁴⁰ of the LA's Decision dated 23 April 1999, which had awarded her Php4,170,000.00 as separation pay; Php3,000,000.00 in moral damages; and attorney's fees at ten percent (10%) of the total monetary award.⁴¹

Accordingly, separation pay, damages, and attorney's fees were part of petitioner's appeal that were not included in the settlement approved by the CA. Be that as it may, We hold that petitioner is still not entitled to these claims based on the finding that petitioner is not an employee of ABS-CBN.

Petitioner was an independent contractor

An independent contractor is one who carries on a distinct and

³⁸ CIVIL CODE, Art. 2028.

³⁹ *Id.* at 1000.

⁴⁰ *Rollo*, p. 165.

⁴¹ *Id.* at 18-19.

independent business and undertakes to perform the job, work, or service on their own account and under their own responsibility according to their own manner and method, free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof. Hence, while an independent contractor enjoys independence and freedom from the control and supervision of their principal, an employee is subject to the employer's power to control the means and methods by which the employee's work is to be performed and accomplished.⁴²

In the landmark case of *Sonza v. ABS-CBN Broadcasting Corporation*,⁴³ the Court declared therein petitioner, Jose Y. Sonza (Sonza), a television and radio broadcasting talent, as an independent contractor. As previously mentioned, MJMDC, on behalf of Sonza, similarly signed an Agreement with ABS-CBN, being the on-air program partner of herein petitioner. The Agreement stated that Sonza was to serve as as talent for radio and television for ABS-CBN exclusively.

On 1 April 1996, Sonza rescinded the Agreement based on ABS-CBN's alleged breach. Sonza later filed a complaint against ABS-CBN claiming that he was not paid his salaries, service incentive leave, and 13th month pay, among others, on the premise that he was an ABS-CBN employee. In its defense, ABS-CBN argued that Sonza was an independent contractor. The Court agreed with ABS-CBN and ruled, thus:

SONZA maintains that all essential elements of an employer-employee relationship are present in this case. Case law has consistently held that the elements of an employer-employee relationship are: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee on the means and methods by which the work is accomplished. The last element, the so-called "control test", is the most important element.

A. Selection and Engagement of Employee

ABS-CBN engaged SONZA's services to co-host its television and radio programs because of SONZA's peculiar skills, talent and celebrity status. SONZA contends that the "discretion used by respondent in specifically selecting and hiring complainant over other broadcasters of possibly similar experience and qualification as complainant belies respondent's claim of independent contractorship."

Independent contractors often present themselves to possess unique skills, expertise or talent to distinguish them from ordinary employees. The specific selection and hiring of SONZA, because of his

⁴² *Chavez v. National Labor Relations Commission*, 489 Phil. 444 (2005), G.R. No. 146530, 17 January 2005 [Per J. Callejo, Sr.]; Citations omitted.

⁴³ *Supra* at note 19.

unique skills, talent and celebrity status not possessed by ordinary employees, is a circumstance indicative, but not conclusive, of an independent contractual relationship. If SONZA did not possess such unique skills, talent and celebrity status, ABS-CBN would not have entered into the Agreement with SONZA but would have hired him through its personnel department just like any other employee.

In any event, the method of selecting and engaging SONZA does not conclusively determine his status. We must consider all the circumstances of the relationship, with the control test being the most important element.

B. Payment of Wages

ABS-CBN directly paid SONZA his monthly talent fees with no part of his fees going to MJMDC. SONZA asserts that this mode of fee payment shows that he was an employee of ABS-CBN. SONZA also points out that ABS-CBN granted him benefits and privileges "which he would not have enjoyed if he were truly the subject of a valid job contract."

All the talent fees and benefits paid to SONZA were the result of negotiations that led to the Agreement. If SONZA were ABS-CBN's employee, there would be no need for the parties to stipulate on benefits such as "SSS, Medicare, . . . and 13th month pay" which the law automatically incorporates into every employer-employee contract. Whatever benefits SONZA enjoyed arose from contract and not because of an employer-employee relationship.

SONZA's talent fees, amounting to P317,000 monthly in the second and third year, are so huge and out of the ordinary that they indicate more an independent contractual relationship rather than an employer-employee relationship. ABS-CBN agreed to pay SONZA such huge talent fees precisely because of SONZA's unique skills, talent and celebrity status not possessed by ordinary employees. Obviously, SONZA acting alone possessed enough bargaining power to demand and receive such huge talent fees for his services. The power to bargain talent fees way above the salary scales of ordinary employees is a circumstance indicative, but not conclusive, of an independent contractual relationship.

The payment of talent fees directly to SONZA and not to MJMDC does not negate the status of SONZA as an independent contractor. The parties expressly agreed on such mode of payment. Under the Agreement, MJMDC is the AGENT of SONZA, to whom MJMDC would have to turn over any talent fee accruing under the Agreement.

C. Power of Dismissal

For violation of any provision of the Agreement, either party may terminate their relationship. SONZA failed to show that ABS-CBN could terminate his services on grounds other than breach of contract,



such as retrenchment to prevent losses as provided under labor laws.

During the life of the Agreement, ABS-CBN agreed to pay SONZA's talent fees as long as "AGENT and Jay Sonza shall faithfully and completely perform each condition of this Agreement." Even if it suffered severe business losses, ABS-CBN could not retrench SONZA because ABS-CBN remained obligated to pay SONZA's talent fees during the life of the Agreement. This circumstance indicates an independent contractual relationship between SONZA and ABS-CBN.

SONZA admits that even after ABS-CBN ceased broadcasting his programs, ABS-CBN still paid him his talent fees. Plainly, ABS-CBN adhered to its undertaking in the Agreement to continue paying SONZA's talent fees during the remaining life of the Agreement even if ABS-CBN cancelled SONZA's programs through no fault of SONZA.

SONZA assails the Labor Arbiter's interpretation of his rescission of the Agreement as an admission that he is not an employee of ABS-CBN. The Labor Arbiter stated that "if it were true that complainant was really an employee, he would merely resign, instead." SONZA did actually resign from ABS-CBN but he also, as president of MJMDC, rescinded the Agreement. SONZA's letter clearly bears this out. However, the manner by which SONZA terminated his relationship with ABS-CBN is immaterial. Whether SONZA rescinded the Agreement or resigned from work does not determine his status as employee or independent contractor.

D. Power of Control

Since there is no local precedent on whether a radio and television program host is an employee or an independent contractor, we refer to foreign case law in analyzing the present case. The United States Court of Appeals, First Circuit, recently held in *Alberty-Vélez v. Corporación De Puerto Rico Para La Difusión Pública* ("WIPR") that a television program host is an independent contractor.

We quote the following findings of the U.S. court:

Several factors favor classifying Alberty as an independent contractor. First, a television actress is a skilled position requiring talent and training not available on-the-job. . . . In this regard, Alberty possesses a master's degree in public communications and journalism; is trained in dance, singing, and modeling; taught with the drama department at the University of Puerto Rico; and acted in several theater and television productions prior to her affiliation with "Desde Mi Pueblo." Second, Alberty provided the "tools and instrumentalities" necessary for her to perform. Specifically, she provided, or obtained sponsors to provide, the costumes, jewelry, and other image-related supplies and services necessary for her appearance. Alberty disputes that this factor favors independent contractor status because WIPR provided the "equipment necessary to tape the show." Alberty's argument is misplaced. The equipment necessary for Alberty to conduct her job as host of "Desde Mi Pueblo" related to her appearance on the show. Others provided equipment for filming and producing the show, but these were not the



primary tools that Alberty used to perform her particular function. If we accepted this argument, independent contractors could never work on collaborative projects because other individuals often provide the equipment required for different aspects of the collaboration. . . .

Third, WIPR could not assign Alberty work in addition to filming "Desde Mi Pueblo." Alberty's contracts with WIPR specifically provided that WIPR hired her "professional services as Hostess for the Program Desde Mi Pueblo." There is no evidence that WIPR assigned Alberty tasks in addition to work related to these tapings. . . . (Emphasis supplied)

Applying the control test to the present case, we find that SONZA is not an employee but an independent contractor. The control test is the most important test our courts apply in distinguishing an employee from an independent contractor. This test is based on the extent of control the hirer exercises over a worker. The greater the supervision and control the hirer exercises, the more likely the worker is deemed an employee. The converse holds true as well — the less control the hirer exercises, the more likely the worker is considered an independent contractor.⁴⁴

The Court passed on each of Sonza's arguments in support of his claim that ABS-CBN exercised control over his work, and ruled:

We find that ABS-CBN was not involved in the actual performance that produced the finished product of SONZA's work. ABS-CBN did not instruct SONZA how to perform his job. ABS-CBN merely reserved the right to modify the program format and airtime schedule "for more effective programming." ABS-CBN's sole concern was the quality of the shows and their standing in the ratings. Clearly, ABS-CBN did not exercise control over the means and methods of performance of SONZA's work.

x x x x

In any event, not all rules imposed by the hiring party on the hired party indicate that the latter is an employee of the former. In this case, SONZA failed to show that these rules controlled his performance. We find that these general rules are merely guidelines towards the achievement of the mutually desired result, which are top-rating television and radio programs that comply with standards of the industry.

x x x x

x x x Being an exclusive talent does not by itself mean that SONZA is an employee of ABS-CBN. Even an independent contractor can validly provide his services exclusively to the hiring party. In the broadcast industry, exclusivity is not necessarily the same as control.⁴⁵

⁴⁴ *Id.*

⁴⁵ *Id.* at 557-562.

In *ABS-CBN Broadcasting Corporation vs. Marlyn Nazareno*,⁴⁶ respondents were production assistants (PAs) at ABS-CBN's news and public affairs division, specifically assigned to various radio programs in the Cebu Broadcasting Station. They were under the supervision of the assistant station manager. When a collective bargaining agreement (CBA) was signed between ABS-CBN and its rank-and-file employees, petitioner refused to recognize PAs as part of the bargaining unit. Respondents filed a complaint for recognition as regular employees. In its defense, ABS-CBN invoked the *Sonza* ruling and claimed that respondents were independent contractors. The Court ruled that *Sonza* was inapplicable to the case and held, thus:

Petitioner's reliance on the ruling of this Court in *Sonza v. ABS-CBN Broadcasting Corporation* is misplaced. In that case, the Court explained why Jose Sonza, a well-known television and radio personality, was an independent contractor and not a regular employee.

x x x x

In the case at bar, however, the employer-employee relationship between petitioner and respondents has been proven.

First. In the selection and engagement of respondents, no peculiar or unique skill, talent or celebrity status was required from them because they were merely hired through petitioner's personnel department just like any ordinary employee.

Second. The so-called "talent fees" of respondents correspond to wages given as a result of an employer-employee relationship. Respondents did not have the power to bargain for huge talent fees, a circumstance negating independent contractual relationship.

Third. Petitioner could always discharge respondents should it find their work unsatisfactory, and respondents are highly dependent on the petitioner for continued work.

Fourth. The degree of control and supervision exercised by petitioner over respondents through its supervisors negates the allegation that respondents are independent contractors.

The presumption is that when the work done is an integral part of the regular business of the employer and when the worker, relative to the employer, does not furnish an independent business or professional service, such work is a regular employment of such employee and not an independent contractor. The Court will peruse beyond any such agreement to examine the facts that typify the parties' actual relationship.⁴⁷

⁴⁶ 534 Phil. 306 (2006), G.R. No. 164156, 26 September 2006 [Per J. Callejo, Jr.].

⁴⁷ *Id.* at 334-336.

Meanwhile, in *Dumpit-Murillo v. Court of Appeals (Dumpit-Murillo)*,⁴⁸ private respondent Associated Broadcasting Company (ABC) hired petitioner Thelma Dumpit-Murillo as a newscaster and co-anchor for *Balitang-Balita*, an early evening news program, and "Live on Five." After four years of repeated renewals, petitioner's talent contract expired. When private respondent did not respond to petitioner's interest to renew, petitioner filed a complaint for constructive dismissal. The Court ruled that the *Sonza* ruling was inapplicable and petitioner was private respondent's employee. It held:

The Court of Appeals committed reversible error when it held that petitioner was a fixed-term employee. Petitioner was a regular employee under contemplation of law. The practice of having fixed-term contracts in the industry does not automatically make all talent contracts valid and compliant with labor law. The assertion that a talent contract exists does not necessarily prevent a regular employment status.

Further, the *Sonza* case is not applicable. In *Sonza*, the television station did not instruct *Sonza* how to perform his job. How *Sonza* delivered his lines, appeared on television, and sounded on radio were outside the television station's control. *Sonza* had a free hand on what to say or discuss in his shows provided he did not attack the television station or its interests. Clearly, the television station did not exercise control over the means and methods of the performance of *Sonza*'s work. In the case at bar, ABC had control over the performance of petitioner's work. Noteworthy too, is the comparatively low P28,000 monthly pay of petitioner vis the P300,000 a month salary of *Sonza*, that all the more bolsters the conclusion that petitioner was not in the same situation as *Sonza*.⁴⁹

In the 2015 case of *Nelson V. Begino v. ABS-CBN Corporation (Benigno)*,⁵⁰ petitioners were hired as camera operator, editor, and reporters. They were engaged through talent contracts that were regularly renewed. In ruling that petitioners, as talents, were ABS-CBN employees, the Court pronounced:

In finding that petitioners were regular employees, the NLRC further ruled that the exclusivity clause and prohibitions in their Talent Contracts and/or Project Assignment Forms were likewise indicative of respondents' control over them. Brushing aside said finding, however, the CA applied the ruling in *Sonza v. ABS-CBN Broadcasting Corporation* where similar restrictions were considered not necessarily determinative of the existence of an employer-employee relationship. Recognizing that independent contractors can validly provide his exclusive services to the hiring party, said case enunciated that

⁴⁸ 551 Phil. 725 (2007), G.R. No. 164652, 08 June 8 2007 [Per J. Quisumbing].

⁴⁹ *Id.* at 735-736.

⁵⁰ 758 Phil. 467 (2015), G.R. No. 199166, 20 April 2015 [Per J. Perez].

guidelines for the achievement of mutually desired results are not tantamount to control. As correctly pointed out by petitioners, however, parallels cannot be expediently drawn between this case and that of *Sonza* case which involved a well-known television and radio personality who was legitimately considered a talent and amply compensated as such. While possessed of skills for which they were modestly recompensed by respondents, petitioners lay no claim to fame and/or unique talents for which talents like actors and personalities are hired and generally compensated in the broadcast industry.⁵¹

In the recent case of *ABS-CBN Corp. v. Concepcion*⁵² (*Concepcion*), the Court ruled that respondent therein, an OB van driver, was a regular employee. This, considering that the necessary trainings and seminars to develop his skills, as well as the tools and instrumentalities he needed for his work were provided to him. Moreover, ABS-CBN could also assign him to any show or programs where the production group would need his services. Respondent therein likewise did not have the power to bargain and negotiate his fee:

It does not escape our attention that respondent has no power to bargain and negotiate for his fee. The power to bargain talent fees way above the salary scales of ordinary employees is a circumstance indicative of an independent contractual relationship. That ABS-CBN classified him as a talent is of no moment and does not make him an independent contractor. It is not the will or word of the employer which determines the nature of employment of an employee but the nature of the activities performed by such employee in relation to the particular business or trade of the employer. Hence, not being an independent contractor, respondent is necessarily an employee of ABS-CBN.⁵³

Notably, the Court held *Sonza* to not be applicable in the cases of *Nazareno*, *Dumpit-Murillo*, *Begino* and *Concepcion* because, unlike in *Sonza*, the complainants in these cases did not possess unique skills, talent, and celebrity status for which they were hired in their respective capacities as production assistants, newscaster and co-anchor, camera operator, editor, reporters, and OB van driver. The Court further found that there was a remarkable gap between the compensation in *Sonza* with those of the complainants in *Nazareno*, *Dumpit-Murillo*, *Begino*, and *Concepcion*.

This tells us that there is no inflexible rule to determine if a person is an employee or an independent contractor; thus, the characterization of the relationship must be made based on the particular circumstances of each case. There are several factors that may be considered by the courts, but the right to control remains the dominant factor in determining whether one is an employee or an independent contractor.⁵⁴

⁵¹ *Id.* at 482-483.

⁵² G.R. No. 230576, 05 October 2020 [Per J. Zalameda].

⁵³ *Id.*

⁵⁴ *Orozco vs. Court of Appeals*, 584 Phil. 35 (2008), G.R. No. 155207, 13 August 2008 [Per J. Nachura];

Petitioner claims that she was an ABS-CBN employee based on the four-fold test:⁵⁵ *first*, ABS-CBN specifically selected and hired her for her individual and peculiar talents, skills, personality, and celebrity status; *second*, ABS-CBN paid her salaries through a payroll account every 10th and 25th day of each month and withheld compensation income tax; *third*, petitioner was subject to ABS-CBN's rules and regulations, as in fact, ABS-CBN placed her under a three-month suspension without pay; and *fourth*, unlike her role as co-host of "Mel & Jay," ABS-CBN controlled the means and method of her performance of her job as newscaster for TV Patrol starting in 1986 as she was merely tasked to read the news. Petitioner further maintains that she also assumed the roles as Director for Lingkod Bayan, a job grade S4, segment producer in TV Patrol, and news reporter.

The Court disagrees.

First, petitioner's acknowledgment that she was hired by reason of her peculiar talents, skills, personality, and celebrity status proved the presence of one of the elements of an independent contractor. A unique skill, expertise, or talent is one of the factors in determining the nature of a person's status at work.

Second, payment through the company payroll on specified dates with income tax withheld at source is not conclusive proof of employer-employee relations. Such an arrangement is oftentimes agreed upon only for purposes of convenience and does not, in itself, create a badge of employment status. What is notable is petitioner's talent fee package, which as of her last contract⁵⁶ was at Php410,000.00 for the first year and Php417,000.00 for the second and third years. In addition, petitioner was given a signing bonus of Php500,000.00 worth of ABS-CBN stocks.

This extraordinarily high rate is given to those with unique skills, expertise, or talent like petitioner, who is considered an expert in the field with special qualities that an ordinary employee does not normally possess. This placed her on equal terms with ABS-CBN as she was allowed the power to bargain for the terms of her engagement, including her talent fee. Unlike ordinary employees, who are usually in a position of weakness, petitioner had a say on the terms of her engagement.

Third, petitioner viewed her three-month suspension without pay as proof that ABS-CBN had power of discipline over her. This is incorrect. The suspension itself was improper under the circumstances. Records showed that ABS-CBN suspended petitioner for her alleged violation of the

Citations omitted.

⁵⁵ *Rollo*, pp. 39-41.

⁵⁶ *Rollo*, pp. 186-189.



Memorandum prohibiting talents from appearing in commercials. The prohibition was likewise imprinted in petitioner's contract⁵⁷ as part of the that warranty, stating "she shall not appear in commercials nor plug, mention, or otherwise promote in the radio and television programs herein any radio or television program, segment or feature of any other radio or television station without the prior written approval of the company."

Although there was basis to hold petitioner responsible for the breach, ABS-CBN has no basis to suspend. The tie that binds ABS-CBN and petitioner was the Agreement they signed in May 1994. There is nothing in the Agreement that allows ABS-CBN to suspend petitioner for violating its rules. Its remedy should have been to terminate the Agreement as stipulated.⁵⁸ In any case, the petitioner's improper suspension had been rectified with the Partial Settlement Agreement wherein one of the monetary claims paid by ABS-CBN was petitioner's salaries during the period of her suspension.

Lastly, petitioner alleged that ABS-CBN controlled the manner she performed her job, particularly as a news anchor of TV Patrol, as she merely read the news. As a news anchor, petitioner is tasked to read or present a news copy that she or another person wrote. Nothing on record, however, shows that petitioner performed other tasks in relation to being an anchor, or that ABS-CBN dictated how petitioner should read the news or perform her other related tasks, if any. As a well-known veteran news anchor, petitioner's manner in delivering the news was distinctly her own. Her voice, stature, aura, and representation, form part of the unique qualities that impelled ABS-CBN to pick her for the job. Petitioner "reading the news" is not the same as an average person reading the same news. The impact would simply not be the same as there is premium that goes with petitioner's stature.

As regards the other positions petitioner assumed, *i.e.*, segment producer and Director of Lingkod Bayan, there were no specifics presented in terms of job description vis-à-vis ABS-CBN's control in its performance. As for the Director of Lingkod Bayan, petitioner merely alleged that it was in job grade S4, a supervisory position in ABS-CBN's company job classification. Nomenclatures are not controlling in determining the nature of the job.

⁵⁷ *Id.*

⁵⁸ *Id.* at 188; Agent agrees that talent shall abide by the rules, regulations and standards of performance of the COMPANY covering talents, and that talent is bound to comply with the Television and radio Code of the Kapisanan ng mga Broadcaster sa Pilipinas (KBP), which has been adopted by the COMPANY as its Code of Ethics. Agent shall perform and keep all of the duties and obligations assumed or entered by the AGENT hereunder using its best talents and abilities. **Any violation of or non-conformity with this provision by talent shall be a valid and sufficient ground for the immediate termination of this Agreement.** (Emphasis supplied)

The Court notes that petitioner admitted that she was not under the control of ABS-CBN in her role as co-host of the “Mel & Jay” show in her Petition, saying, “unlike her job as ‘co-host’ of respondent ABS-CBN’s television and radio programs Mel & Jay, how petitioner performed her job as ‘newscaster’ for TV Patrol was 100% under the sole and exclusive control of respondent ABS-CBN.”⁵⁹

To strengthen her claim that she was an employee, petitioner invoked the rulings of this Court in *Fuji Television Network Inc. vs. Espiritu*⁶⁰ and in *Dumpit-Murillo*. In these cases, the Court ruled that the repeated renewals of complainants’ contracts indicated the necessity and desirability of their work in the usual course of respondents’ business.

Petitioner maintains that her tasks as newscaster, segment producer, reporter, and among others, were necessary and desirable to ABS-CBN’s business and that, her contract were renewed several times during her 10-year employment. Her submission is misplaced. In *Fuji* and *Dumpit-Murillo*, the fact that the complainants in said cases were employees of the respondents was already established. The Court merely used the repeated renewals of contract to show that the complainants were performing jobs that are usually necessary and desirable to the respondents’ business for purposes of determining if they were regular employees under Article 280 of the Labor Code. Here, petitioner’s employment status was disproved.

Likewise, petitioner challenges the applicability of *Sonza* to her case based on these differences:

“First, the difference in what petitioner and Jay Sonza were made to do under their May 1994 Agreements. Second, the difference in their employment history with private respondent which petitioner, unlike Jay Sonza, was fortunate to have been given a full-blown trial. The facts and circumstances of her ten (10) year employment with private respondent have been laid bare for this Honorable Court to appreciate, and for the Honorable Court to uphold, as did the Labor Arbiter a quo, petitioner’s right and entitlement as a regular employee of private respondent.”⁶¹

The Court agrees with petitioner that she is not similarly situated with Sonza in terms of the roles she assumed under the Agreement and her length of stay with the network. However, despite the dissimilarities, **there is one important element that petitioner and Sonza share – they both possessed unique skills, expertise, and talent, for which they were both engaged as ABS-CBN’s exclusive talents.** In *Sonza*, we ruled:

⁵⁹ *Rollo*, p. 41.

⁶⁰ 749 Phil. 388 (2014), G.R. No. 204944-45, 03 December 2014 [Per J. Leonen]

⁶¹ *Rollo*, p. 54.

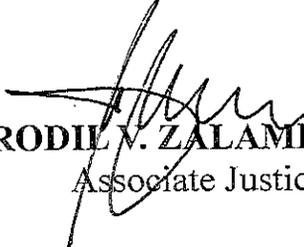
Independent contractors often present themselves to possess unique skills, expertise or talent to distinguish them from ordinary employees. The specific selection and hiring of SONZA, because of his unique skills, talent and celebrity status not possessed by ordinary employees, is a circumstance indicative, but not conclusive, of an independent contractual relationship. If SONZA did not possess such unique skills, talent and celebrity status, ABS-CBN would not have entered into the Agreement with SONZA but would have hired him through its personnel department just like any other employee.⁶²

In addition, petitioner failed to establish that ABS-CBN controlled the manner in which she performed her job as news anchor for TV Patrol. On the contrary, the Court finds that petitioner performed the job according to her own manner and method, free from the network's control. Possession of unique skills, expertise, or talent is a persuasive element of an independent contractor. It becomes conclusive if it is established that the worker performed the work according to their own manner and method and free from the principal's control except to the result.

All told, the Court concludes that petitioner is an independent contractor.

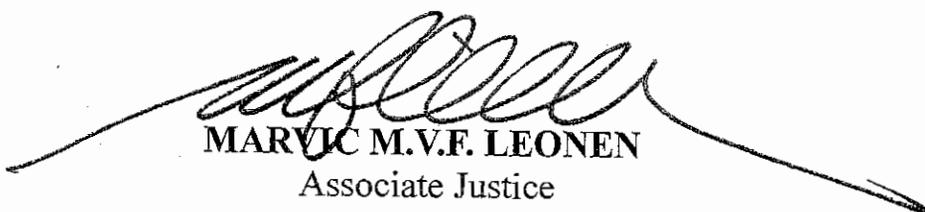
WHEREFORE, the Petition is **DENIED**. The Decision of the Court of Appeals dated 27 January 2012 in CA-G.R. SP No. 103584 is hereby **AFFIRMED**.

SO ORDERED.

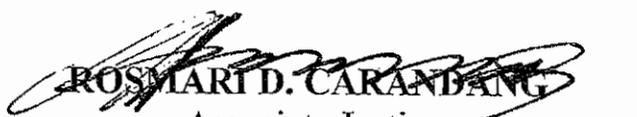

RODIL N. ZALAMEDA
Associate Justice

⁶² *Supra* note 22 at 552.

WE CONCUR:



MARVIC M.V.F. LEONEN
Associate Justice
Chairperson



ROSMARI D. CARANDANG
Associate Justice



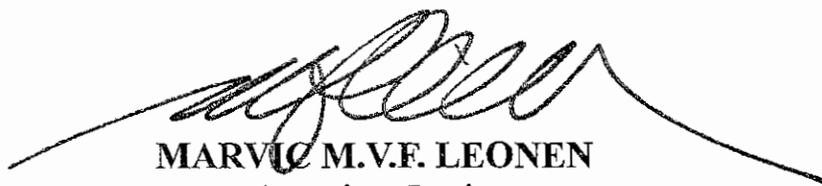
RICARDO R. ROSARIO
Associate Justice



JOSE MIDAS P. MARQUEZ
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.



MARVIC M.V.F. LEONEN
Associate Justice
Chairperson



CERTIFICATION

Pursuant to the Section 13, Article VIII of the Constitution, and the Division 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.



ALEXANDER G. GESMUNDO
Chief Justice