108 OG No. 9, 944 (February 27, 2012)

# [ SP No. 110770, March 30, 2010 ]

## FONTANA DEVELOPMENT CORPORATION, PETITIONER, VS. THE SECRETARY OF LABOR AND EMPLOYMENT, BUREAU OF LABOR RELATIONS AND THE ASSOCIATION OF FONTANA RESORT EMPLOYEES (AFRE) RESPONDENTS.

# Court of Appeals

Before this Court is a Petition for Certiorari[1] (With Application For Preliminary Injunction and/or Temporary Restraining Order) under Rule 65 of 1997 Revised Rules of Civil Procedure seeking to annul the Resolution[2] dated August 19, 2009 of the public respondent Labor Secretary through Undersecretary, Romeo C. Lagman, in OS-A-14-6-09 (RO300-0811-RU-002) entitled "In Re: Petition For Certification Election Among the Regular Rank-And-File Employees of Fontana Leisure Parks. Association of Fontana Resort Employees (AFRE), Petitioner-Appellee, Fontana Leisure Parks, Employer-Appellant", the dispositive portion of which reads:

> "Wherefore, the appeals are hereby dismissed and the 13 May 2009 Order of the Mediator-Arbiter is hereby affirmed.
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> SO ORDERED."[3]

The facts are:

Petitioner Fontana Development Corporation (FDC for brevity) is a corporation engaged in the development of real estate property located at the Clubhouse B. Fontana Leisure Parks, CM. Recto Highway, Clark Special Economic Zone, Clarkfield, Angeles City, Pampanga. Private respondent Association of Fontana Resort Employees (AFRE for brevity), on the other hand, is the legitimate labor organization which represents the rank-and-file employees of Fontana Resort and Country Club, Body Bliss Spa, Amazingly Clean Inc., New Hongkong Golden Castle Restaurant Corporation and petitioner FDC.

Sometime on February 11, 2009, an order for the conduct of a certification election was issued by the Designate Mediator-Arbiter among the rank-and-file employees of Fontana Leisure Parks located at CM. Recto Highway, Clarkfield, Pampanga with private respondent AFRE and "No Union" as choices. On March 23, 2009, the certification election was conducted with private respondent AFRE receiving 166 votes out of the total votes cast of 167. Thereafter, special protests were filed by four establishments, namely; 1) Fontana Resort and Country Club; 2) petitioner FDC; 3) Fontana Leisure Park; and 4) Body Bliss Spa.

Fontana Resort and Country Club argued that: Fontana Leisure Parks is composed of several companies that run separate and distinct businesses; the conduct of a certification election without clarifying which employees should participate, is unfair, illegal and ultimately detrimental to the interests of its employees; and the election would mingle employees of different employers and would result in industrial unrest.

Petitioner FDC, on the other hand, argued that it is not a respondent to the petition nor is it an alter-ego, agent or representative of Fontana Leisure Parks. It further argued that the Med-Arbiter failed to acquire jurisdiction over it so that any order issued relative thereto is void and unenforceable.

Body Bliss, Spa, through a letter from its owner Anita Alvarado, objected to the holding of a certification election on the ground that it included persons from different employers. Amazingly Clean, Inc., however, objected to the conduct of certification election on the ground that jurisdiction was never acquired over it because it did not receive summons or notification for the conduct of the certification election.

On April 17, 2009, private respondent AFRE filed a motion to dismiss on the ground that the protesters failed to furnish it with copies of their respective protest.

On May 13, 2009, Med-Arbiter Maria Consuelo S. Bacay denied the protest of petitioner FDC and the other protesters and at the same time, certified private respondent AFRE as the sole and exclusive bargaining agent of the regular rank and file employees of "Fontana Leisure Parks".

On May 29, 2009, petitioner FDC filed its Special Appearance With Notice And Memorandum of Appeal4 arguing in the main that the Med-Arbiter seriously erred in dismissing the protests and in certifying private respondent AFRE as the sole and exclusive bargaining agent of the regular rank-and-file employees of Fontana Leisure Parks. It further argued that the members of private respondent AFRE are employees of different businesses and different interests.

On August 19, 2009, public respondent Labor Secretary, through the Undersecretary, issued the assailed resolution. Hence, this petition based on the following grounds:

> THE PUBLIC RESPONDENT SECRETARY ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN DISMISSING PETITIONER'S APPEAL AND AFFIRMING THE MED-ARBITER'S CERTIFICATION CONSIDERING THAT:
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> 1. THE CERTIFICATION OF AFRE AS THE SOLE BARGAINING AGENT OF THE EMPLOYEES OF PETITIONER AND OTHER SEPARATE ENTITIES BLATANTLY VIOLATES THE RULE THAT EMPLOYEES IN TWO OR MORE CORPORATIONS CANNOT BE TREATED AS A SINGLE BARGAINING UNIT;
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> 2. THE PROVISIONS OF DOLE DEPARTMENT ORDER 40-03 ON MULTI-EMPLOYER BARGAINING ARE COMPLETELY INAPPLICABLE;
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> 3. FONTANA LEISURE PARK IS NOT A JURIDICAL ENTITY NOR A "CORPORATION BY ESTOPPEL";
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> 4. PETITIONER FDC WAS NOT PROPERLY SERVED WITH NOTICE OF THE PRELIMINARY CONFERENCE, SINCE THE SAME WAS ADDRESSED ONLY TO FONTANA LEISURE PARK.

The petition is impressed with merit.

Petitioner FDC argues that: present jurisprudence prohibits several employers from being joined together under a single bargaining unit and conversely, the employees of different companies cannot be lumped together in a single bargaining unit; the employees of the four companies (i.e. Amazingly Clean, Inc., petitioner FDC, New Hongkong Golden Castle and Body Bliss Spa) have widely different jobs and have no commonality or mutuality of interest.

Private respondent AFRE, on the other hand, argues that: Fontana Leisure Parks is the one and only name prominently used and displayed by the company in representing itself to the general public; there is only one accounting department of the different companies and in fact, all the companies have a common work pool from which workers can be designated for assignment to any establishment in the park as needed; likewise, there is only one HRD Director and company President; the company represents itself as Fontana Leisure Parks to its employees, its guests, visitors, clients and the general public.

This Court finds for petitioner FDC.

Private respondent AFRE's contention that Fontana Leisure Parks is the one and only name prominently used by the company in representing itself to the general public is untenable. While it is true that Fontana Leisure Parks is being prominently used by the company in dealing with the public, it does not, however, automatically mean that these four companies, i.e. Amazingly Clean, Inc petitioner FDC, New Hongkong Golden Castle and Body Bliss Spa, should be treated as one entity only.

The issue in this kind of scenario was earlier settled by the Supreme Court in the case of Diatogon Labor Federation *vs.* Ople[5], and was subsequently reiterated in the case of Indophil Textile Mill Workers Union *vs.* Calica[6], wherein it was held that:

> "The fact that the businesses of private respondent and Acrylic are related, that some of the employees of private respondent are the same persons manning and providing for auxiliary services to the units of Acrylic, and that the physical plants, offices and facilities are situated in the same compound, it is our considered opinion that these facts are not sufficient to justify the piercing of the corporate veil of Acrylic.
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> In the same case of Umali, et al., *v.* Court of Appeals, We already emphasized that the "legal corporate entity is disregarded only if it is sought to hold the officers and stockholders directly liable for debt or obligation. In the instant case petitioner does not seek to impose a claim against the members of Acrylic.
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> Furthermore, We already ruled in the case of Diatogon Labor Federation Local 110 of the ULGWP, *v.* Ople that it is grave abuse of discretion to treat two companies as a single bargaining unit when these companies are indubitably distinct entities with separate juridical personalities."

This ruling was again reiterated in the case of Dela Salle University *vs.* Dela Salle University Employees Association[7], wherein it was held that:

> "The Court also affirms the findings of the voluntary arbitrator that the employees of the College of Saint Benilde should be excluded from then bargaining unit of the rank and file employees of Dela Salle University, because the two educational institutions have their own separate, juridical personality and no sufficient evidence was shown to justify the piercing the veil of corporate fiction."

In this case, it appears that the four companies, *i.e.* Amazingly Clean, Inc., petitioner FDC, New Hongkong Golden Castle and Body Bliss Spa have their own separate and distinct personalities. To lump together their employees in one single bargaining unit to bargain collectively with petitioner FDC is definitely grave abuse of discretion pursuant to the ruling in the Indophil Textile case.

The joining of these workers into a single bargaining unit is prohibited pursuant to the ruling laid down in the case of San Miguel Corporation *vs.* Laguesma[8], wherein it was held that the employees sought to be represented by the bargaining agent must have substantial mutual interests in terms of employment and working conditions as evidenced by the type of work they perform. The Supreme Court further held that:

> The fundamental factors in determining the appropriate collective bargaining unit are: 1) the will of the employees (Globe Doctrine); 2) affinity and unity of the employees' interest, such as substantial similarity of work and duties, or similarity or compensation and working conditions (substantial Mutual Interests Rule); 3) prior collective bargaining history; and (4) similarity of employment status.
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> Indeed, the test of grouping is mutuality or commonality of interests. The employees sought to be represented by the collective bargaining agent must have substantial mutual interests in terms of employment and working conditions as evinced by the type of work they perofrm.[9]

In this particular case, there appears no substantial mutual interests in the terms of employment and working conditions between the workers sought to be represented by private respondent AFRE. Hence, the Mid-Arbiter clearly gravely abused his discretion in ordering the conduct of a certification election.

Petitioner FDC further argues that the provisions of DOLE Department Order 40-03 an Multi-Employer Bargaining are inapplicable.

This Court finds this argument meritorious.

Granting arguendo that there are indeed four separate and distinct companies operating inside Fontana Leisure Parks, still, the procedure in the instant case due to the fact that consent of the participating employers is required. The procedure thereof is provided under Section 5 and 6 of DOLE Order No. 40-03, Rule XVI, which provide: