

SECOND DIVISION

[G.R. No. 217301, June 06, 2018]

**CONSOLIDATED BUILDING MAINTENANCE, INC. AND SARAH
DELGADO, PETITIONERS, VS. ROLANDO ASPREC, JR. AND
JONALEN BATALLER, RESPONDENTS.**

DECISION

REYES, JR., J:

Before this Court is a petition for review on *certiorari*^[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 123429 dated November 15, 2013, and Resolution^[3] dated March 4, 2015, denying the motion for reconsideration thereof. The assailed decision denied the petition for *certiorari* filed by Consolidated Building Maintenance, Inc. (CBMI) and its Human Resource Manager Sarah Delgado (collectively referred to as the petitioners) assailing the Resolution^[4] dated September 28, 2011 of the National Labor Relations Commission (NLRC) and reinstated the Decision^[5] dated June 27, 2011 of the Labor Arbiter (LA).

The Antecedent Facts

CBMI is a corporation engaged in the business of providing janitorial, kitchen, messengerial, elevator maintenance and allied services to various entities.^[6] Among CBMI's clients is Philippine Pizza, Inc.-Pizza Hut (PPI). For PPI, CBMI provides kitchen, delivery, sanitation and other related services pursuant to contracts of services, which are valid for one-year periods.^[7] Records reveal that contracts of services were executed between PPI and CBMI in the years 2000^[8] and from 2002 until 2010.^[9]

Rolando Asprec, Jr. (Asprec) and Jonalen Bataller (Bataller) (collectively referred to as the respondents) alleged that they are regular employees of PPI, the former having commenced work as a "Rider" in January 2001 and the latter as "team member/slice cashier" in March 2008, both assigned at PPI's Pizza Hut, Marcos Highway, Marikina City Branch.

In his *Sinumpaang Salaysay* dated February 8, 2011, Asprec averred that after the expiration of his contract on November 4, 2001, PPI advised him to go on leave for one (1) month and ten (10) days. Thereafter, he was called for an interview by PPI's Area Manager, Rommel Blanco. After passing the same, he was told to proceed to the office of CBMI where he signed a contract. Asprec stated that except for the fact that the payslips were then issued by CBMI, work proceeded as usual with him being assigned at the same branch and performing his usual duties as

"Rider/Production Person."^[10]

Bataller had a similar experience as she narrated in her *Sinumpaang Salaysay* dated February 8, 2011. She related that before the expiration of her employment contract, she was informed by Pizza Hut Restaurant Manager Jun Samar that as a precondition for continued employment, she had to "submit first a resignation letter, had to pass through CBMI, and after six months she should go on vacation for one month." Thereafter, she was interviewed by PPI General Manager Edilberto Garcia. Bataller advanced that after she passed the interview, PPI prepared her documents and then forwarded the same to CBMI. She then resumed employment in December 2008 until July 23, 2010, with her being assigned at the same branch, performing her usual duties, and receiving the same salary.^[11]

On the other hand, CBMI posited that the respondents are its employees. CBMI claimed that the respondents were investigated based on an Incident Report by PPI's Store Manager Karl Clemente of an attempted theft on July 23, 2010. On which date, one Jessie Revilla (Revilla) supposedly delivered an excess of two boxes to PPI's slice booth at the Light Rail Train (LRT) Santolan, Pasig Station, which the respondents failed to report.

Anent the incident, Asprec asserted that he has no knowledge of such actions by Revilla and claimed that the same is outside his responsibility as a "production person." Nonetheless, Asprec claimed that on account of the incident, he has been suspended for eight days and then was eventually dismissed.^[12]

On the other hand, Bataller, who was manning the slice booth at the LRT Santolan, Pasig Station on the day of the incident, claimed that when Revilla brought the three boxes of pizza which she ordered, she was busy attending to customers and thus did not notice that there has been an excess in the delivery. Nonetheless, she posited that immediately upon discovery, she called Revilla but the latter was already far from the station and as such could no longer go back. Revilla allegedly went back to get the two extra pizza boxes later that day.

Bataller likewise submitted that she has informed the area manager of the incident, but was thereafter asked to proceed to PPI's Marcos Highway branch. There, she was interviewed along with Asprec and Revilla, and then told to report to the head office. Starting July 24, 2010, she was allegedly no longer allowed to return to work.^[13]

On November 12, 2010, the respondents filed their Complaint against the petitioners for constructive illegal dismissal, illegal suspension, and non-payment of separation pay.^[14]

In their Complaint, the respondents argued two points: first, that their transfer from PPI to CBMI constituted labor-only contracting and was a mere scheme by PPI to prevent their regularization; and second, that they were illegally dismissed without cause and due process of law.^[15]

On December 20, 2010, the respondents amended their Complaint by impleading PPI and including a prayer for reinstatement and payment of moral and exemplary

damages and attorney's fees.^[16]

Ruling of the LA

The LA rendered a Decision^[17] on June 27, 2011, granting respondents' complaint in this wise:

WHEREFORE, premises considered, the respondent companies are hereby found liable for having illegally dismissed [the respondents] and are hereby ordered TO REINSTATE them to their former positions without loss of seniority rights and TO PAY to EACH of the [respondents] their backwages from July 26, 2010 up to the date of actual reinstatement, which as of the date of this decision is P121,000.00 and P100,000.00 each as moral damages; P50,000.00 each as exemplary damages plus ten percent (10%) of the totality of the awards as and for attorney's fees.

All other claims and charges are dismissed for lack of merit.

SO ORDERED.^[18]

In its decision, the LA applied the four-fold test and ruled that the respondents are employees of PPI. Consequently, the LA held that the arrangement between CBMI and PPI constitutes labor-only contracting and imposed upon them solidary liability for the respondents' claim.^[19]

The LA ruled that as the employer, the burden is upon PPI to prove that the dismissal was based on a just cause and that there has been compliance with procedural due process, which it failed to do. Thus, the LA concluded that the respondents have been illegally dismissed.^[20]

With this ruling, the petitioners and PPI appealed to the NLRC.^[21]

Ruling of the NLRC

On September 28, 2011, the NLRC rendered its Resolution^[22] affirming with modification the LA's Decision dated June 27, 2011. The dispositive portion of the resolution reads:

WHEREFORE, premises considered, the appeal filed by [PPI] is GRANTED and is hereby DROPPED as party to the case.

CBMI's appeal is DISMISSED. [The petitioners] are ordered to pay the [respondents] the following:

1. backwages computed from August 20, 2010 up to the finality of this decision, and,
2. separation pay equivalent to one month's pay for every year of service, and
3. 10% attorney's fees based on the total judgment award.

SO ORDERED.^[23]

In contrast with the finding of the LA, the NLRC held that the respondents are regular employees of CBMI. In so ruling, the NLRC relied heavily on the employment contract and CBMI's admission of the respondents' employment.^[24] In this regard, and considering that there is no allegation of under payment or non-payment of wages, the NLRC ordered PPI to be dropped from the case.

Both the petitioners and the respondents filed their respective motions for partial reconsideration^[25] but they were denied by the NLRC in its Resolution^[26] dated November 29, 2011.

The parties herein separately filed their appeal *via* petitions for *certiorari* with the CA.^[27]

In their Petition,^[28] the petitioners alleged, among others, that the NLRC gravely abused its discretion in awarding backwages, separation pay, and attorney's fees despite the absence of finding that the respondents have been illegally dismissed.

On the other hand, the respondents in their petition claimed that the totality of evidence presented proves that they are the regular employees not of CBMI but of PPI. They asserted that their transfer to CBMI was a mere ploy to prevent their regularization, this bolstered by the fact that even after they signed with CBMI, they remained to be under the direct supervision of PPI.^[29]

Ruling of the CA

On November 15, 2013, the CA rendered the herein assailed Decision^[30] denying the petition for *certiorari*, to wit:

IN VIEW OF ALL THESE, the Petition is DENIED. The assailed Resolutions of [NLRC] are SET ASIDE. The Decision of the [LA] is REINSTATED.

SO ORDERED.^[31]

The CA held that the NLRC erred in dropping PPI as a party to the case, as contrary to its findings, CBMI failed to prove that it was an independent contractor, or was engaged in permissible job contracting.

According to the CA, the totality of the circumstances surrounding the case established that it was PPI and not CBMI which has the discretion and control over the manner and method by which the respondents' works are to be accomplished.

Furthermore, considering that the respondents performed tasks which are necessary and desirable to the usual trade or business of PPI, and use tools and equipment of the latter in their work, the CA concluded that CBMI falls under the definition of a "labor only contractor," which is prohibited under Article 106 of the Labor Code. Hence:

Being a labor-only contractor, CBMI was deemed to be an agent of Pizza Hut, which in turn, was therefore, the principal of CBMI. Concomitantly, an employer-employee relationship was created between Pizza Hut as principal, and private respondents as employees. Pizza Hut, as a result is solidarity liable with petitioners for private respondents' claims. x x x.^[32]
(Citations omitted)

As agent of PPI, the CA ruled that it is incumbent upon the petitioners to prove that the dismissal was for a just and valid cause which it failed to do, accordingly, the CA concluded that the dismissal is illegal and the respondents are entitled to their money claims.^[33]

Petitioners sought a reconsideration^[34] of the November 15, 2013 Decision but the CA denied it in its Resolution^[35] dated March 4, 2015.

Issues

In the instant petition, the petitioners submit the following issues for this Court's resolution:

I.

WHETHER OR NOT THE HONORABLE CA GRAVELY AND SERIOUSLY ERRED IN THE APPLICATION OF LAW AND JURISPRUDENCE WHEN IT HELD THAT CBMI IS A LABOR-ONLY CONTRACTOR.

II.

WHETHER OR NOT THE HONORABLE CA GRAVELY AND SERIOUSLY ERRED IN THE APPLICATION OF LAW AND JURISPRUDENCE WHEN IT HELD THAT THE RESPONDENTS WERE ILLEGALLY DISMISSED.

III.

WHETHER OR NOT THE HONORABLE CA GRAVELY AND SERIOUSLY ERRED IN THE APPLICATION OF LAW AND JURISPRUDENCE WHEN IT AWARDED BACKWAGES IN FAVOR OF THE RESPONDENTS.

IV.