

## THIRD DIVISION

[ G.R. No. 205300, March 18, 2015 ]

**FONTERRA BRANDS PHILS., INC., PETITIONER, VS.  
LEONARDO<sup>[1]</sup> LARGADO AND TEOTIMO ESTRELLADO,  
RESPONDENTS.**

### DECISION

**VELASCO JR., J.:**

#### The Case

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court seeking the reversal and setting aside of the Decision of the Court of Appeals (CA) dated September 6, 2012, as well as its January 11, 2013 Resolution denying reconsideration thereof, in CA-G.R. SP No. 114227, entitled *Leonardo Largado and Teotimo P. Estrellado v. National Labor Relations Commission (NLRC), Fonterra Brands Phils., Inc./Carlo Mendoza, Zytron Marketing & Promotions Corp./Francisco Valencia, A.C. Sicat Marketing & Promotional Services/Arturo Sicat*.

#### The Facts

Petitioner Fonterra Brands Phils., Inc. (Fonterra) contracted the services of Zytron Marketing and Promotions Corp. (Zytron) for the marketing and promotion of its milk and dairy products. Pursuant to the contract, Zytron provided Fonterra with trade merchandising representatives (TMRs), including respondents Leonardo Largado (Largado) and Teotimo Estrellado (Estrellado). The engagement of their services began on September 15, 2003 and May 27, 2002, respectively, and ended on June 6, 2006.

On May 3, 2006, Fonterra sent Zytron a letter terminating its promotions contract, effective June 5, 2006. Fonterra then entered into an agreement for manpower supply with A.C. Sicat Marketing and Promotional Services (A.C. Sicat). Desirous of continuing their work as TMRs, respondents submitted their job applications with A.C. Sicat, which hired them for a term of five (5) months, beginning June 7, 2006 up to November 6, 2006.

When respondents' 5-month contracts with A.C. Sicat were about to expire, they allegedly sought renewal thereof, but were allegedly refused. This prompted respondents to file complaints for illegal dismissal, regularization, non-payment of service incentive leave and 13<sup>th</sup> month pay, and actual and moral damages, against petitioner, Zytron, and A.C. Sicat.

The Labor Arbiter dismissed the complaint and ruled that: (1) respondents were not illegally dismissed. As a matter of fact, they were the ones who refused to renew their contract and that they voluntarily complied with the requirements for them to

claim their corresponding monetary benefits in relation thereto; and (2) they were consecutively employed by Zytron and A.C. Sicat, not by Fonterra. The dispositive portion of the Decision<sup>[2]</sup> reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered DISMISSING the instant case for utter lack of merit.

SO ORDERED.

The NLRC affirmed the Labor Arbiter, finding that respondents' separation from Zytron was brought about by the execution of the contract between Fonterra and A.C. Sicat where the parties agreed to absorb Zytron's personnel, including respondents. Too, respondents failed to present any evidence that they protested this set-up. Furthermore, respondents failed to refute the allegation that they voluntarily refused to renew their contract with A.C. Sicat. Also, respondents did not assert any claim against Zytron and A.C. Sicat. The NLRC disposed of the case in this wise:

**WHEREFORE**, premises considered, the appeals are hereby ordered **DISMISSED** and the Decision of the Labor Arbiter is AFFIRMED [in]toto.

**SO ORDERED.**<sup>[3]</sup>

The NLRC decision was assailed in a petition under Rule 65 before the CA.

Ruling on the petition, the CA, in the questioned Decision,<sup>[4]</sup> found that A.C. Sicat satisfies the requirements of legitimate job contracting, but Zytron does not. According to the CA: (1) Zytron's paid-in capital of P250,000 cannot be considered as substantial capital; (2) its Certificate of Registration was issued by the DOLE months after respondents' supposed employment ended; and (3) its claim that it has the necessary tools and equipment for its business is unsubstantiated. Therefore, according to the CA, respondents were Fonterra's employees.

Additionally, the CA held that respondents were illegally dismissed since Fonterra itself failed to prove that their dismissal is lawful. However, the illegal dismissal should be reckoned from the termination of their supposed employment with Zytron on June 6, 2006. Furthermore, respondents' transfer to A.C. Sicat is tantamount to a completely new engagement by another employer. Lastly, the termination of their contract with A.C. Sicat arose from the expiration of their respective contracts with the latter. The CA, thus, ruled that Fonterra is liable to respondents and ordered the reinstatement of respondents without loss of seniority rights, with full backwages, and other benefits from the time of their illegal dismissal up to the time of their actual reinstatement. The *fallo* of the Decision reads:

**WHEREFORE**, premises considered, the petition is hereby **GRANTED**. The assailed Decision dated 20 November 2009 and Resolution dated 5 March 2010 of the National Labor Relations Commission (NLRC), Seventh Division, are hereby **ANULLED and SET ASIDE**. Private respondent Fonterra Brand, Inc. is hereby ordered to REINSTATE [respondents] without loss of seniority rights. Private respondents Fonterra Brand, Inc. and Zytron Marketing and Promotional Corp. are hereby further **ORDERED** to jointly and severally pay petitioners their full backwages and other benefits from the time of their illegal dismissal up to the time

of their actual reinstatement; and attorney's fees.

**SO ORDERED.**

Zytron and Fonterra moved for reconsideration, but to no avail. Hence, this petition.

**The Issues**

Petitioner presents the following issues for Our resolution:

I. The CA erred in ruling that Zytron was a mere labor-only contractor to petitioner Fonterra, in that:

- a. As held by the Court, there is no absolute figure that constitutes "substantial" capital for an independent contractor, and the same should instead be measured against the type of work it is obligated to do for the principal. It is most respectfully submitted that, here, the merchandising work undertaken by Zytron's paid-in capital of P250,000 was as of 1990, the year it was incorporated;
- b. As shown in its Articles of Incorporation, Zytron had been in business since 1990, or more than a decade before it signed a merchandising agreement with petitioner Fonterra;
- c. Very importantly, petitioner Fonterra never exercised the right to control respondents and other employees of Zytron. Indeed, respondents neither alleged that petitioner exercised control over them nor presented proof in support thereof in any of their previous pleadings.

II. Respondents never claimed nor adduced evidence that they were dismissed from employment by Zytron. In fact, Zytron denies terminating them from work. The CA, thus, erred in finding that respondents were "illegally dismissed."

Succinctly, the issues in the case at bar are: (1) whether or not Zytron and A.C. Sicat are labor-only contractors, making Fonterra the employer of herein respondents; and (2) whether or not respondents were illegally dismissed.

**Our Ruling**

We find merit in the petition.

As regards the CA's conclusion that Zytron is not a legitimate job contractor, We are of the view that such is immaterial to the resolution of the illegal dismissal issue for one reason: We find that respondents voluntarily terminated their employment with Zytron, contrary to their allegation that their employment with Zytron was illegally terminated.

We do not agree with the CA that respondents' employment with Zytron was illegally terminated.