

SECOND DIVISION

[G.R. No. 201494, July 29, 2015]

MARITES R. CUSAP, PETITIONER, VS. ADIDAS PHILIPPINES, INC., (ADIDAS), PROMOTION RESOURCES & INTER-MARKETING EXPONENTS, INC. (PRIME) AND JC ATHLETES, INC. (JCA), RESPONDENTS.

DECISION

BRION, J.:

We resolve **petitioner** Marites R. Cusap's appeal^[1] from the September 21, 2011 decision^[2] and February 20, 2012 resolution^[3] of the Court of Appeals in CA-G.R. SP No. 104725.

The Antecedents

On January 21, 2003, the petitioner and 27 other employees (*complainants*) filed a complaint for illegal dismissal^[4] against the **respondents** Adidas Philippines Inc. (*Adidas*) and Promotion Resources Inter-Marketing Exponents, Inc. (*PRIME*). The complainants later amended the complaint to include JC Athletes, Inc. (*JCA*), as a respondent.^[5] They prayed for reinstatement with back wages, separation pay (should reinstatement be no longer feasible), 13th month pay, service incentive leave pay, and damages.

Through their "*Magkasanib na Sinumpaang Salaysay*,"^[6] the complainants alleged that they were regular employees of Adidas after having worked as promo girls and stockmen at the company's various rented outlets for years, ranging from one year to seven years; the earliest employed (June 1, 1995) was Nova Toque while the latest was Aquilino Banaag (September 21, 2000). The petitioner was hired on October 28, 1995.^[7]

The record shows that Adidas is engaged in the manufacture and marketing of different lines of shoes and other sporting goods and apparel in the Philippines.^[8] After its contract with its former distributor, World Sports, Inc. (WOSI) allegedly expired, it contracted^[9] JCA to be its exclusive distributor nationwide for one year or from January 1, 2002 to December 31, 2002. In turn, JCA entered into a Promotional Contract^[10] with PRIME to meet the promotional requirements in the distribution of Adidas products. PRIME supposedly assigned the complainants to JCA for the purpose.

The complainants claimed that they were dismissed from employment on December 9, 2002, when the service contract between PRIME and JCA was terminated. This notwithstanding, they argued that Adidas was their real employer, not PRIME which, they believed, was merely a recruitment agency supplying Adidas with manpower.

PRIME was being used, they further claimed, to conceal the actual employment relationship between them and Adidas.

They pointed out that for the years that they were employed, they worked for Adidas, under the supervision and control of Adidas and JCA personnel. They stressed that their work was related to and in pursuit of Adidas' principal business activity (the marketing of its products), thereby making them regular employees of the company. This was their reason for demanding their regularization by Adidas.

Further, the complainants maintained that JCA was a mere alter ego of Adidas and was being used to further muddle the employment relationship between them and Adidas. JCA's actual role as a dummy (together with PRIME) for Adidas, the complainants explained, was evidenced by the fact that JCA and Adidas occupied the same office. JCA took the place of WOSI as distributor of Adidas products.

Elaborating on their "muddled" employment status in relation with Adidas, the complainants bewailed that JCA was erroneously identified as "distributor" of Adidas products as no evidence showed that JCA purchased the Adidas products they were selling.^[11] Under their supposed Distribution Agreement, the *"Distributor shall purchase the Products only from Adidas or any other sources expressly designated by Adidas and sell the Products in its own name and for its own account x x x."*^[12]

The complainants asserted that the products they were selling at various outlets remained the property and under the control of Adidas - it was Adidas that provided the warehouse where the products were stored, that leased the outlets from department stores, and that provided regular training to them.^[13] Also, the proceeds of the sales were directly deposited to the bank account of Adidas. Moreover, their salaries and other monetary benefits supposedly paid by PRIME were charged to the account of Adidas, as indicated in their payslips.^[14] They argued that if JCA purchased the products being sold and were already its property, there was no point to still charge complainants' wages and benefits to the Adidas' account.

These circumstances, complainants stressed, confirmed their position that JCA and PRIME were only intermediaries of Adidas and were used to conceal Adidas' identity as their real employer.

To substantiate their assertion that PRIME was just an intermediary of Adidas, they submitted documentary proof that it was not even a registered corporation, labor recruiter, or agency when it supposedly entered into a contract with JCA; neither with the Securities and Exchange Commission^[15] nor with the Department of Trade and Industry.^[16] It was registered as a "job contractor/subcontractor" only on May 20, 2002.^[17] They thus maintained that PRIME was just a labor-only contractor at the time it claimed it had employed them for its supposed undertaking with JCA.

In defense, Adidas argued that in 2002, it amended its *Articles of Incorporation*^[18] to enable it to engage in the retail business without the need to contract the services of distributors such as JCA, following the approval by the Board of Investments of the application of its mother company, Adidas Solomon AG, to operate as a foreign retailer in the country. As a consequence, it no longer renewed its *Distribution Agreement* with JCA when it

expired on December 31, 2002.

Necessarily, it maintained, the *Promotion Contract* between JCA and PRIME was also terminated, resulting in the complainants' dismissal. However, for purposes of proper inventory, accounting and turnover of products, it agreed with JCA for a hold-over period of three months ending March 31, 2003.

Also, Adidas turned down the complainants' demand for regularization as they were employees of PRIME. It claimed it was PRIME who exercised control over their work; at most, the supervision it exercised over the complainants was only to provide them guidelines in aid of their marketing work. It added that neither could it satisfy their money claims because they were legally dismissed when their contracts with PRIME expired.

For its part, JCA prayed for the dismissal of the complaint as far as it was concerned in view of what it claimed - its valid job contract with PRIME, the complainants' employer. It averred that it was PRIME who exercised the power to select, engage, and dismiss the complainants, and who assumed the obligation to pay their wages. To bolster its position, JCA presented quitclaim and release papers executed by some employees in favor of PRIME.^[19]

JCA added that whatever liability it had with the complainants was limited to satisfying their unpaid wages to the extent of the work performed under its *Promotion Contract* with PRIME. However, PRIME'S payment of its monetary obligations to the complainants extinguished its liability towards them.

As its co-respondents did, PRIME denied liability, contending that it hired the complainants as contractual employees for its project with JCA to promote Adidas products. It maintained that their employment was terminated when its contract with JCA expired and was not renewed. Thus, the petitioner and the other complainants were not illegally dismissed and were not therefore entitled to reinstatement and back wages. On the issue of its legal personality as an independent contractor, it submitted certificates of registration from the DTI,^[20] DOLE,^[21] and SEC^[22] to establish that it had been in operation earlier than May 20, 2002.

The Rulings on Compulsory Arbitration

In a decision^[23] dated February 23, 2004, Labor Arbiter (LA) Elias H. Salinas dismissed the complaint for lack of merit, holding that PRIME was the complainants' employer as it was PRIME who hired them to work under its *Promotions Contract* with JCA. LA Salinas found the complainants' dismissal valid in view of the termination and nonrenewal of the contract.

LA Salinas denied the complainants' money claims, finding that PRIME had shown that it paid their 13th month pay and service incentive leave pay. However, for reasons of equity and humanitarian considerations, LA Salinas awarded the petitioner and the complainants financial assistance of one-half month's salary for every year of service.

The petitioner and 15 of the other complainants appealed. The 15 however moved

to withdraw their appeal, which the National Labor Relations Commission (NLRC) granted in its decision^[24] of January 23, 2008, leaving only the petitioner to pursue the case. Eventually, NLRC denied the appeal. It also denied the petitioner's motion for reconsideration, prompting her to seek recourse from the CA through a petition for *certiorari*. She charged the NLRC with grave abuse of discretion in rejecting her appeal and motion for reconsideration; as it was, she lamented, contrary to law and jurisprudence.

The CA Decision

Before the CA, the petitioner reiterated her position in compulsory arbitration that Adidas was her employer, not JCA or PRIME, since the two entities were mere dummies/intermediaries or were labor-only contractors of Adidas. She insisted that JCA and PRIME carried out - under their respective contracts - Adidas' merchandising activities using Adidas' premises and equipment with PRIME'S purported employees working under the supervision and control of Adidas' personnel.

The CA 10th Division denied the petition in its September 21, 2011^[25] decision and affirmed the assailed NLRC rulings as they were not rendered with grave abuse of discretion. It held that the rulings were supported by evidence establishing PRIME to be a "legitimate job contractor" as it possessed substantial capital to finance its promotions undertaking with JCA. The evidence, the CA explained, consisted of remittances to Philhealth, SSS and Pag-ibig^[26] which showed that PRIME fulfilled its obligations toward its employees under the government's welfare programs.

Applying the four-fold employer-employee relationship test,^[27] the CA found PRIME to be the complainants' and the petitioner's employer as it was PRIME which (1) hired the complainants;^[28] (2) paid their wages;^[29] (3) dismissed them upon the expiration of the contract for which they were hired; and (4) exercised control over them with respect to the conduct of the work to be performed.^[30]

Consequently, the CA brushed aside the random certificates of attendance in Adidas seminars^[31] of some of the complainants to prove that Adidas was their employer, agreeing with NLRC finding that the "certificates only establish the fact that complainants attended the seminars for product knowledge, service quality, and retail service."^[32]

The petitioner moved for reconsideration of the CA decision, to no avail, as the CA denied the motion in its February 20, 2012 resolution.^[33]

The Petition

The petitioner now asks this Court to reverse the CA rulings, contending that the appeals court seriously erred and gravely abused its discretion when it held that she was an employee of PRIME, not of Adidas, and was validly dismissed, contrary to law and applicable jurisprudence.

Before the Court, the petitioner reiterates the arguments she presented to the CA, particularly the following factual narration:

1. She applied at Adidas in its former address at Estrata 200, Emerald Avenue, Ortigas Center City. After the interviews made by Ms. Cornelia Indon (Head Concession, World of Sports Inc.) and Mr. Enrique Victoria (Adidas Sales Manager), they ordered her to proceed to the office of PRIME and from there she was given a letter of introduction ("intro letter") addressed to the outlet where she was assigned.
2. She was assigned to different Adidas outlets and she, together with her co-employees, were supervised by Adidas managers and supervisors Cornelia Indon, Sonny Niebres (Managing Director) and Philip Go (President). It was not PRIME who supervised them; neither was it JCA.
3. The sales in the outlets were deposited directly to the bank account of Adidas and not to JCA or PRIME bank accounts.
4. The products being sold and the tools she used in the performance of her duty were owned by Adidas. Adidas was also the one that paid the rents in the stores where it has concessions.
5. She continued to work in different Adidas outlets for more than seven years.

The petitioner submits that Adidas, JCA and PRIME failed to refute the above narration or to present any evidence to the contrary. Citing *Lakas sa Industriya ng Kapatirang Haligi ng Alyansa-Pinagbuklod ng Manggawang Promo ng Burlingame v. Burlingame Corporation*,^[34] she argues that as **promo girl**, her work is directly related to Adidas' principal business or operations, which makes her a regular employee of the company.

On the other hand, she points out, JCA and PRIME did not carry on an independent business or undertook the performance of their service contracts according to their own manner and methods, free from the control and supervision of the principal Adidas. The two entities, she insists, were mere labor-only contractors.

It is thus clear, the petitioner submits, that an employer-employee relationship existed between her and Adidas. Accordingly, she prays that: (1) she be declared a regular employee of Adidas; (2) Adidas be ordered (a) to reinstate her with full back wages or to pay her back wages and separation pay if reinstatement is no longer feasible; (b) to grant her moral and exemplary damages, plus attorney's fees; and (3) JCA and PRIME be declared jointly and solidarity liable with Adidas for all her other money claims.

The Case for the Respondents

In its Comment^[35] filed on June 7, 2012, Adidas asks for the dismissal of the petition, arguing principally that the petitioner failed to present any cogent reason to reverse the CA factual conclusions upholding the labor tribunals' ruling that the petitioner was an employee of PRIME and was not illegally dismissed.

To support its position, Adidas submits that the arguments relied upon by the