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SECOND DIVISION

[G.R. No. 202215, December 09, 2015]

VICMAR DEVELOPMENT CORPORATION AND/OR ROBERT KUA, OWNER, AND ENGR. JUANITO C. PAGCALIWAGAN,[1] MANAGER, PETITIONERS, VS. CAMILO ELARCOSA, MARLON BANDA, DANTE L. BALAMAD, RODRIGO COLANSE,[2] CHIQUITO PACALDO, ROBINSON PANAGA, JUNIE ABUGHO, SBLVERIO NARISMA, ARMANDO GONZALES, TEOFILO ELBINA, FRANCISCO BAGUIO, GELVEN RHYAN RAMOS, JULITO SIMAN, RECARIDO[4] PANES, JESUS TINSAY, AGAPITO CANAS, JR., OLIVER LOBAYNON, SIMEON BAGUIO, JOSEPH SALCEDO, DONIL INDINO, WILFREDO GULBEN, JESRILE[5] TANIO, RENANTE PAMON, RICHIE[6] GULBEN, DANIEL ELLO, REXY DOFELIZ, RONALD NOVAL, NORBERTO BELARGA, ALLAN BAGUIO, ROBERTO PAGUICAN, ROMEO[7] PATOY, ROLANDO TACBOBO, WILFREDO LADRA, RUBEN PANES, RUEL CABANDAY, AND JUNARD[8] ABUGHO, RESPONDENTS.

D E C I S I O N

DEL CASTILLO, J.:

Before us is a Petition for Review on *Certiorari* assailing the November 24, 2009 Decision[9] of the Court of Appeals (CA) in CA-G.R SP No. 01853-MN. The CA granted the Petition for *Certiorari* filed therewith, and reversed and set aside the February 2, 2007[10] Resolution of the National Labor Relations Commission (NLRC), Fifth Division, Cagayan de Oro, which in turn, affirmed the May 25, 2006[11] and May 29, 2006[12] respective Decisions of Executive Labor Arbiters (LA) Benjamin E. Pelaez (Pelaez) and Noel Augusto S. Magbanua (Magbanua) dismissing the complaints for lack of merit. Also assailed is the May 10, 2012 CA Resolution[13] denying the motion for reconsideration.

Factual Antecedents

This case stemmed from a Complaint for illegal dismissal and money claims filed by Ruben Panes, Ruel Cabanday and Jonard Abugho (respondents) against Vicmar Development Corporation (Vicmar) and/or Robert Kua (Kua), its owner and Juanito Pagcaliwagan (Pagcaliwagan), its manager, docketed as NLRC Case No. RAB-10-08-00593-2005;[14] and consolidated Complaints for illegal dismissal and money claims filed by Camilo Elarcosa, Marlon Banda, Dante Balamad, Rodrigo Colanse, Chiquito Pacaldo, Robinson Panaga, Romel Patoy, Wilfredo Ladra, Junie Abugho, Silverio Narisma, Armando Gonzales, Teofilo Elbina, Francisco Baguio, Gelven Rhyan Ramos, Julito Siman, Recarido Panes, Jesus Tinsay, Agapito Cañas, Jr., Oliver Lobaynon, Rolando Tacbobo, Simeon Baguio, Roberto Paguican, Joseph Salcedo, Donil Indino,

Wilfredo Gulben, Jesreil Taneo, Renante Pamon, Richie Gulben, Daniel EUo, Rexy Dofeliz, Ronald Noval, Norberto Belarca, and Allan Baguio (respondents), among others, against Vicmar, Kua, and Pagcaliwagan (petitioners), docketed as NLRC Case Nos. RAB-10-09-00603-2004; RAB-10-09-00609-2004; RAB-10-09-00625-2004; and RAB-10-02-00190-2005.[15]

Respondents alleged that Vicmar, a domestic corporation engaged in manufacturing of plywood for export and for local sale, employed them in various capacities - as boiler tenders, block board receivers, waste feeders, plywood checkers, plywood sander, conveyor operator, ripsaw operator, lumber grader, pallet repair, glue mixer, boiler fireman, steel strap repair, debarker operator, plywood repair and reprocessor, civil workers and plant maintenance. They averred that Vicmar has two branches, Top Forest Developers, Incorporated (TFDI) and Greenwood International Industries, Incorporated (GUI) located in the same compound where Vicmar operated.[16]

According to respondents, Vicmar employed some of them as early as 1990 and since their engagement they had been performing the heaviest and dirtiest tasks in the plant operations. They claimed that they were supposedly employed as "extra" workers; however, their assignments were necessary and desirable in the business of Vicmar. They asserted that many of them were assigned at the boilers for at least 11 hours daily.[17] They emphasized that the boiler section was necessary to Vicmar's business because it was where pieces of plywood were dried and cooked to perfection.[18] They further stated that a number of them were also assigned at the plywood repair and processing section, which required longer working hours.[19]

Respondents declared that Vicmar paid them minimum wage and a small amount for overtime but it did not give them benefits as required by law, such as Philhealth, Social Security System, 13th month pay, holiday pay, rest day and night shift differential.[20] They added that Vicmar employed more than 200 regular employees and more than 400 "extra" workers.[21]

Sometime in 2004, Vicmar allegedly informed respondents that they would be handled by contractors.[22] Respondents stated that these contractors were former employees of Vicmar and had no equipment and facilities of their own.[23] Respondents averred that as a result thereof, the wages of a number of them who were receiving P276.00 as daily wage, were reduced to P200.00 or P180.00, despite overtime work; and the wages of those who were receiving P200.00 and P180.00 were reduced to P145.00 or P131.00. Respondents protested said wage decrease but to no avail. Thus, they filed a Complaint with the DOLE[24] for violations of labor standards for which appropriate compliance orders were issued against Vicmar.[25]

Respondents claimed that on September 13, 2004, 28 of them were no longer scheduled for work and that the remaining respondents, including their sons and brothers, were subsequently not given any work schedule.[26]

Respondents maintained that they were regular employees of Vicmar; that Vicmar employed a number of them as early as 1990 and as late as 2003[27] through Pagcaliwagan, its plant manager; that Vicmar made them perform tasks necessary and desirable to its usual business; and that Vicmar paid their wages and controlled

the means and methods of their work to meet the standard of its products. Respondents averred that Vicmar dismissed them from service without cause or due process that prompted the filing of this illegal dismissal case.[28]

Respondents claimed that they were illegally dismissed after Vicmar learned that they instituted the subject Complaint through the simple expedience of not being scheduled for work. Even those persons associated with them were dismissed. They also asserted that Vicmar did not comply with the twin notice requirement in dismissing employees.[29]

Furthermore, respondents contended that while Vicmar, TFDI and Gin were separately registered with the SEC,[30] they were involved in the same business, located in the same compound, owned by one person, had one resident manager, and one and the same administrative department, personnel and finance sections. They claimed that the employees of these companies were identified as employees of Vicmar even if they were assigned in TFDI or GIII.[31]

On the other hand, petitioners stated that Vicmar is a domestic corporation engaged in wood processing, including the manufacture of plywood since 1970;[32] that Vicmar employed adequate regular rank-and-file employees for its normal operation; and that it engaged the services of additional workers when there were unexpected high demands of plywood products and when several regular employees were unexpectedly absent or on leave.[33]

Petitioners pointed out that the engagement of Vicmar's "extra" workers was not continuous and not more than four of them were engaged per section in every shift. They added that from the time of engagement, respondents were not assigned for more than one year in a section or a specific activity.[34] They explained that some of Vicmar's "extra" workers were engaged under "*pakyaw*" system and were paid based on the items repaired or retrieved.[35] Petitioners also stated that respondents Allan Baguio, Romel Patoy, Rexy Dofeliz, Marlon Banda, Gulben Rhyan Ramos, Julieto Simon and Agapito Canas, Jr. were "extra" workers of TFDI, not Vicmar.[36] They likewise alleged that a number of respondents were engaged to assist regular employees in the company,[37] and the others were hired to repair used steel straps and retrieve useable veneer materials, or to perform janitorial services.[38]

Moreover, petitioners argued that the engagement of additional workforce was subject to the availability of forest products, as well as veneer materials from Malaysia or Indonesia and the availability of workers.[39]

Petitioners further asseverated that sometime in August 2004, they decided to engage the services of legitimate independent contractors, namely, E.A. Rosales Contracting Services and Candole Contracting Services, to provide additional workforce.[40] Petitioners claimed that they were unaware that respondents were dissatisfied with this decision leading to the DOLE case.[41] They insisted that hiring said contractors was a cost-saving measure, which was part of Vicmar's management prerogative.[42]

Ruling of the Executive Labor Arbiters

On May 25, 2006, ELA Pelaez dismissed the complaints in NLRC Case Nos. RAB-10-09-00603-2004; RAB-10-09-00609-2004; RAB-10-09-00625-2004; and RAB-10-02-00190-2005.[43] On May 29, 2006, ELA Magbanua dismissed the complaint in NLRC Case No. RAB-10-08-00593-2005.[44]

Both ELAs Pelaez and Magbanua held that respondents were seasonal employees of Vicmar, whose work was "co-terminus or dependent upon the extraordinary demands for plywood products and also on the availability of logs or timber to be processed into plywood."[45] They noted that Vicmar could adopt cost-saving measures as part of its management prerogative, including engagement of legitimate independent contractors.[46]

Ruling of the National Labor Relations Commission

Consequently, respondents filed a Notice of Appeal with Motion to Consolidate Cases[47] alleging that the foregoing cases involved same causes of actions, issues, counsels, and respondents, and complainants therein were similarly situated.

Thereafter, in their Consolidated Memorandum on Appeal,[48] respondents argued that their work in Vicmar was not seasonal. They averred that since their employment in 1990 until their termination in 2004, they continuously worked for Vicmar and were not allowed to work for other companies. They alleged that there was never a decline in the demand and production of plywood. They also claimed that they continuously worked in Vicmar the whole year, except in December during which the machines were shut down for servicing and clean-up. They, nonetheless, stated that some of them were the ones who had been cleaning these machines.

In addition, respondents averred that even assuming that they were seasonal employees, they were still regular employees whose employment was never severed during off-season. Thus, they asserted that the decision to farm them out to contractors was in violation of their right to security of tenure and was an evidence of bad faith on the part of Vicmar.

On February 2, 2007, the NLRC affirmed the Decisions of ELAs Pelaez and Magbanua.[49] On April 30, 2007, it denied respondents' motion for reconsideration.[50]

Ruling of the Court of Appeals

Undaunted, respondents filed with the CA a Petition[51] for *Certiorari* maintaining that they were regular employees of Vicmar and that the latter illegally dismissed them. They insisted that the labor contractors engaged by Vicmar were "labor-only" contractors, as they have no equipment and facilities of their own.

Petitioners, for their part, reiterated that Vicmar employed respondents as additional workforce when there was high demand for plywood thus, they were merely seasonal employees of Vicmar. They argued that Vicmar engaged independent contractors as a cost-saving measure; and these contractors exercised direct control

and supervision over respondents. In conclusion, petitioners declared that respondents were not illegally dismissed but lost their employment because of refusal to coordinate with Vicmar's independent contractors.

On November 24, 2009, the CA rendered the assailed Decision granting the Petition for *Certiorari*, the dispositive portion of which reads:

> WHEREFORE, premises considered, the Petition is GRANTED. The Resolution dated February 2, 2007 of the National Labor Relations Commission (NLRC), Fifth Division, Cagayan de Oro City is REVERSED and SET ASIDE. Private respondents are ORDERED to reinstate petitioners to their former positions, without loss of seniority rights, and to pay full backwages from the time they were illegally dismissed until actual reinstatement.
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> SO ORDERED.[52]

The CA held that a number of respondents were assigned to the boiler section where plywood was dried and cooked to perfection; and while the other respondents were said to have been assigned at the general service section, they were "cleaners on an industrial level handling industrial refuse."[53] As such, according to the CA, respondents performed activities necessary and desirable in the usual business of Vicmar, as they were assigned to departments vital to its operations. It also noted that the repeated hiring of respondents proved the importance of their work to Vicmar's business. It maintained that the contractors were engaged by Vicmar only for the convenience of Vicmar. In sum, the CA declared that respondents were illegally dismissed since there was no showing of just cause for their termination and of compliance by Vicmar to due process of law.

On May 10, 2012, the CA denied petitioners' motion for reconsideration.[54]

Petitioners thus filed this Petition raising the sole ground as follows:

> THE HONORABLE COURT OF APPEALS, WITH ALL DUE RESPECT AND DEFERENCE, ERRED IN REVERSING AND SETTING ASIDE THE FINDINGS OF FACTS AND CONCLUSIONS OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC). THE DECISION AS WELL AS THE RESOLUTION ARE NOT IN ACCORDANCE WITH LAW AND APPLICABLE JURISPRUDENCE AND IF NOT CORRECTED, WILL CAUSE GRAVE INJUSTICE AND IRREPERABLE [SIC] DAMAGE TO THE PETITIONERS WHO WILL BE CONSTRAINED TO ABSORB UNCESSARY [SIC] WORKFORCE, WHICH WILL LEAD TO THE FURTHER DETERIORATION OF ITS FINANCIAL INSTABILITY [SIC] AND POSSIBLY TO ITS CLOSURE.[55]

Petitioners contend that it is irregular for the CA to reverse the findings of facts of the NLRC and the ELAs based on two work schedules of different companies and identification cards of five respondents. They maintain that said evidence cannot conclusively prove that respondents were regular employees of Vicmar.[56]

Additionally, petitioners argue that the CA erred in finding that they (petitioners) have the burden to prove that respondents were hired for only one season to establish that they were mere seasonal employees. Petitioners emphasize that since