

## SECOND DIVISION

[ G.R. No. 192514, April 18, 2012 ]

**D.M. CONSUNJI, INC. AND/OR DAVID M. CONSUNJI,  
PETITIONERS, VS. ESTELITO L. JAMIN, RESPONDENT.**

### DECISION

**BRION, J.:**

We resolve the present appeal<sup>[1]</sup> from the decision<sup>[2]</sup> dated February 26, 2010 and the resolution<sup>[3]</sup> dated June 3, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 100099.

#### The Antecedents

On December 17, 1968, petitioner D.M. Consunji, Inc. (*DMCI*), a construction company, hired respondent Estelito L. Jamin as a laborer. Sometime in 1975, Jamin became a helper carpenter. Since his initial hiring, Jamin's employment contract had been renewed a number of times.<sup>[4]</sup> On March 20, 1999, his work at DMCI was terminated due to the completion of the SM Manila project. This termination marked the end of his employment with DMCI as he was not rehired again.

On April 5, 1999, Jamin filed a complaint<sup>[5]</sup> for illegal dismissal, with several money claims (including attorney's fees), against DMCI and its President/General Manager, David M. Consunji. Jamin alleged that DMCI terminated his employment without a just and authorized cause at a time when he was already 55 years old and had no independent source of livelihood. He claimed that he rendered service to DMCI continuously for almost 31 years. In addition to the schedule of projects (where he was assigned) submitted by DMCI to the labor arbiter,<sup>[6]</sup> he alleged that he worked for three other DMCI projects: Twin Towers, Ritz Towers, from July 29, 1980 to June 12, 1982; New Istana Project, B.S.B. Brunei, from June 23, 1982 to February 16, 1984; and New Istana Project, B.S.B. Brunei, from January 24, 1986 to May 25, 1986.

DMCI denied liability. It argued that it hired Jamin on a project-to-project basis, from the start of his engagement in 1968 until the completion of its SM Manila project on March 20, 1999 where Jamin last worked. With the completion of the project, it terminated Jamin's employment. It alleged that it submitted a report to the Department of Labor and Employment (DOLE) everytime it terminated Jamin's services.

#### The Compulsory Arbitration Rulings

In a decision dated May 27, 2002,<sup>[7]</sup> Labor Arbiter Francisco A. Robles dismissed the complaint for lack of merit. He sustained DMCI's position that Jamin was a project

employee whose services had been terminated due to the completion of the project where he was assigned. The labor arbiter added that everytime DMCI rehired Jamin, it entered into a contract of employment with him. Moreover, upon completion of the phase of the project for which Jamin was hired or upon completion of the project itself, the company served a notice of termination to him and a termination report to the DOLE Regional Office. The labor arbiter also noted that Jamin had to file an application if he wanted to be re-hired.

On appeal by Jamin, the National Labor Relations Commission (*NLRC*), in its decision of April 18, 2007,<sup>[8]</sup> dismissed the appeal and affirmed the labor arbiter's finding that Jamin was a project employee. Jamin moved for reconsideration, but the *NLRC* denied the motion in a resolution dated May 30, 2007.<sup>[9]</sup> Jamin sought relief from the CA through a petition for *certiorari* under Rule 65 of the Rules of Court.

### **The CA Decision**

On February 26, 2010, the CA Special Fourth Division rendered the disputed decision<sup>[10]</sup> reversing the compulsory arbitration rulings. **It held that Jamin was a regular employee.** It based its conclusion on: (1) Jamin's repeated and successive rehiring in DMCI's various projects; and (2) the nature of his work in the projects — he was performing activities necessary or desirable in DMCI's construction business. Invoking the Court's ruling in an earlier case,<sup>[11]</sup> the CA declared that the pattern of Jamin's rehiring and the recurring need for his services are sufficient evidence of the necessity and indispensability of such services to DMCI's business or trade, a key indicator of regular employment. It opined that although Jamin started as a project employee, the circumstances of his employment made it regular or, at the very least, has ripened into a regular employment.

The CA considered the project employment contracts Jamin entered into with DMCI for almost 31 years not definitive of his actual status in the company. It stressed that the existence of such contracts is not always conclusive of a worker's employment status as this Court explained in *Liganza v. RBL Shipyard Corporation, et al.*<sup>[12]</sup> It found added support from *Integrated Contractor and Plumbing Works, Inc. v. NLRC*,<sup>[13]</sup> where the Court said that while there were several employment contracts between the worker and the employer, in all of them, the worker performed tasks which were usually necessary or desirable in the usual business or trade of the employer and, a review of the worker's assignments showed that he belonged to a work pool, making his employment regular.

Contrary to DMCI's submission and the labor arbiter's findings, the CA noted that DMCI failed to submit a report to the DOLE Regional Office everytime Jamin's employment was terminated, as required by DOLE Policy Instructions No. 20. The CA opined that DMCI's failure to submit the reports to the DOLE is an indication that Jamin was not a project employee. It further noted that DOLE Department Order No. 19, Series of 1993, which superseded DOLE Policy Instructions No. 20, provides that the termination report is one of the indicators of project employment.<sup>[14]</sup>

Having found Jamin to be a regular employee, the CA declared his dismissal illegal as it was without a valid cause and without due process. It found that DMCI failed to provide Jamin the required notice before he was dismissed. Accordingly, the CA

ordered Jamin's immediate reinstatement with backwages, and without loss of seniority rights and other benefits.

DMCI moved for reconsideration, but the CA denied the motion in its resolution of June 3, 2010.<sup>[15]</sup> DMCI is now before the Court through a petition for review on *certiorari* under Rule 45 of the Rules of Court.<sup>[16]</sup>

### **The Petition**

DMCI seeks a reversal of the CA rulings on the ground that the appellate court committed a grave error in annulling the decisions of the labor arbiter and the NLRC. It presents the following arguments:

1. The CA misapplied the phrase "usually necessary or desirable in the usual business or trade of the employer" when it considered Jamin a regular employee. The definition of a regular employee under Article 280 of the Labor Code does not apply to project employment or "employment which has been fixed for a specific project," as interpreted by the Supreme Court in *Fernandez v. National Labor Relations Commission*<sup>[17]</sup> and *D.M. Consunji, Inc. v. NLRC*.<sup>[18]</sup> It maintains the same project employment methodology in its business operations and it cannot understand why a different ruling or treatment would be handed down in the present case.

2. There is no work pool in DMCI's roster of project employees. The CA erred in insinuating that Jamin belonged to a work pool when it cited *Integrated Contractor and Plumbing Works, Inc. ruling*.<sup>[19]</sup> At any rate, Jamin presented no evidence to prove his membership in any work pool at DMCI.

3. The CA misinterpreted the rules requiring the submission of termination of employment reports to the DOLE. While the report is an indicator of project employment, as noted by the CA, it is only one of several indicators under the rules.<sup>[20]</sup> In any event, the CA penalized DMCI for a few lapses in its submission of reports to the DOLE with a "very rigid application of the rule despite the almost unanimous proofs surrounding the circumstances of private respondent being a project employee as shown by petitioner's documentary evidence."<sup>[21]</sup>

4. The CA erred in holding that Jamin was dismissed without due process for its failure to serve him notice prior to the termination of his employment. As Jamin was not dismissed for cause, there was no need to furnish him a written notice of the grounds for the dismissal and neither is there a need for a hearing. When there is no more job for Jamin because of the completion of the project, DMCI, under the law, has the right to terminate his employment without incurring any liability. Pursuant to the rules implementing the Labor Code,<sup>[22]</sup> if the termination is brought about by the completion of the contract or phase thereof, no prior notice is required.

Finally, DMCI objects to the CA's reversal of the findings of the labor arbiter and the NLRC in the absence of a showing that the labor authorities committed a grave abuse of discretion or that evidence had been disregarded or that their rulings had been arrived at arbitrarily.

## The Case for Jamin

In his Comment (to the Petition),<sup>[23]</sup> Jamin prays that the petition be denied for having been filed out of time and for lack of merit.

He claims, in support of his plea for the petition's outright dismissal, that DMCI received a copy of the CA decision (dated February 26, 2010) on March 4, 2010, as stated by DMCI itself in its motion for reconsideration of the decision.<sup>[24]</sup> Since DMCI filed the motion with the CA on March 22, 2010, it is obvious, Jamin stresses, that the motion was filed three days beyond the 15-day reglementary period, the last day of which fell on March 19, 2010. He maintains that for this reason, the CA's February 26, 2010 decision had become final and executory, as he argued before the CA in his Comment and Opposition (to DMCI's Motion for Reconsideration).<sup>[25]</sup>

On the merits of the case, Jamin submits that the CA committed no error in nullifying the rulings of the labor arbiter and the NLRC. He contends that DMCI misread this Court's rulings in *Fernandez v. National Labor Relations Commission, et al.*<sup>[26]</sup> and *D.M. Consunji, Inc. v. NLRC*,<sup>[27]</sup> cited to support its position that Jamin was a project employee.

Jamin argues that in *Fernandez*, the Court explained that the *proviso* in the second paragraph of Article 280 of the Labor Code relates only to **casual employees** who shall be considered regular employees if they have rendered at least one year of service, whether such service is continuous or broken. He further argues that in *Fernandez*, the Court held that inasmuch as the documentary evidence clearly showed gaps of a month or months between the hiring of Ricardo Fernandez in the numerous projects where he was assigned, it was the Court's conclusion that *Fernandez* had not continuously worked for the company but only intermittently as he was hired solely for specific projects.<sup>[28]</sup> Also, in *Fernandez*, the Court affirmed its rulings in earlier cases that "the failure of the employer to report to the [nearest] employment office the termination of workers everytime a project is completed proves that the employees are not project employees."<sup>[29]</sup>

Jamin further explains that in the *D.M. Consunji, Inc.* case, the company deliberately omitted portions of the Court's ruling stating that the complainants were not claiming that they were regular employees; rather, they were questioning the termination of their employment before the completion of the project at the Cebu Super Block, without just cause and due process.<sup>[30]</sup>

In the matter of termination reports to the DOLE, Jamin disputes DMCI's submission that it committed only few lapses in the reportorial requirement. He maintains that even the NLRC noted that there were no termination reports with the DOLE Regional Office after every completion of a phase of work, although the NLRC considered that the report is required only for statistical purposes. He, therefore, contends that the CA committed no error in holding that DMCI's failure to submit reports to the DOLE was an indication that he was not a project employee.

Finally, Jamin argues that as a regular employee of DMCI for almost 31 years, the termination of his employment was without just cause and due process.

## The Court's Ruling

### *The procedural issue*

Was DMCI's appeal filed out of time, as Jamin claims, and should have been dismissed outright? The records support Jamin's submission on the issue.

DMCI received its copy of the February 26, 2010 CA decision on March 4, 2010 (a Thursday), as indicated in its motion for reconsideration of the decision itself,<sup>[31]</sup> not on March 5, 2010 (a Friday), as stated in the present petition.<sup>[32]</sup> The deadline for the filing of the motion for reconsideration was on March 19, 2010 (15 days from receipt of copy of the decision), but it was filed only on March 22, 2010 or three days late. Clearly, **the motion for reconsideration was filed out of time, thereby rendering the CA decision final and executory.**

Necessarily, DMCI's petition for review on *certiorari* is also late as it had only fifteen (15) days from notice of the CA decision to file the petition or the denial of its motion for reconsideration filed in due time.<sup>[33]</sup> The reckoning date is March 4, 2010, since DMCI's motion for reconsideration was not filed in due time. We see no point in exercising liberality and disregarding the late filing as we did in *Orozco v. Fifth Division of the Court of Appeals*,<sup>[34]</sup> where we ruled that "[t]echnicality should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties." The petition lacks merit for its failure to show that **the CA committed any reversible error or grave abuse of discretion when it reversed the findings of the labor arbiter and the NLRC.**

As earlier mentioned, Jamin worked for DMCI for almost 31 years, initially as a laborer and, for the most part, as a carpenter. Through all those years, DMCI treated him as a project employee, so that he never obtained tenure. On the surface and at first glance, DMCI appears to be correct. Jamin entered into a contract of employment (actually an appointment paper to which he signified his conformity) with DMCI either as a field worker, a temporary worker, a casual employee, or a project employee everytime DMCI needed his services and a termination of employment paper was served on him upon completion of every project or phase of the project where he worked.<sup>[35]</sup> DMCI would then submit termination of employment reports to the DOLE, containing the names of a number of employees including Jamin.<sup>[36]</sup> The NLRC and the CA would later on say, however, that DMCI failed to submit termination reports to the DOLE.

The CA pierced the cover of Jamin's project employment contract and declared him a regular employee who had been dismissed without cause and without notice. To reiterate, the CA's findings were based on: (1) Jamin's repeated and successive engagements in DMCI's construction projects, and (2) Jamin's performance of activities necessary or desirable in DMCI's usual trade or business.

**We agree with the CA. In *Liganza v. RBL Shipyard Corporation*,<sup>[37]</sup> the Court held that "[a]ssuming, without granting[,] that [the] petitioner was initially hired for specific projects or undertakings, the repeated re-hiring and continuing need for his services for over eight (8) years have undeniably made him a regular employee."** We find the *Liganza* ruling squarely applicable to