

THIRD DIVISION

[G.R. No. 172349, June 13, 2012]

**POLYFOAM-RGC INTERNATIONAL, CORPORATION AND PRECILLA
A. GRAMAJE, PETITIONERS, VS. EDGARDO CONCEPCION,
RESPONDENT.**

D E C I S I O N

PERALTA, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by petitioners Polyfoam-RGC International Corporation (Polyfoam) and Precilla A. Gramaje (Gramaje) against respondent Edgardo Concepcion assailing the Court of Appeals (CA) Decision^[1] dated December 19, 2005 and Resolution^[2] dated April 25, 2006 in CA-G.R. SP No. 83696. The assailed decision reversed the National Labor Relations Commission's (NLRC's) Decision^[3] dated May 7, 2003 in NLRC NCR CA No. 030622-02, while the assailed resolution denied petitioners' and respondent's motions for reconsideration.

The factual and procedural antecedents follow:

On February 8, 2000, respondent filed a Complaint^[4] for illegal dismissal, non-payment of wages, premium pay for rest day, separation pay, service incentive leave pay, 13th month pay, damages, and attorney's fees against Polyfoam and Ms. Natividad Cheng (Cheng). Respondent alleged that he was hired by Polyfoam as an "all-around" factory worker and served as such for almost six years.^[5] On January 14, 2000, he allegedly discovered that his time card was not in the rack and was later informed by the security guard that he could no longer punch his time card.^[6] When he protested to his supervisor, the latter allegedly told him that the management decided to dismiss him due to an infraction of a company rule. Cheng, the company's manager, also refused to face him. Respondent's counsel later wrote a letter^[7] to Polyfoam's manager requesting that respondent be re-admitted to work, but the request remained unheeded prompting the latter to file the complaint for illegal dismissal.^[8]

On April 28, 2000, Gramaje filed a Motion for Intervention^[9] claiming to be the real employer of respondent. On the other hand, Polyfoam and Cheng filed a Motion to Dismiss^[10] on the grounds that the NLRC has no jurisdiction over the case, because of the absence of employer-employee relationship between Polyfoam and respondent and that the money claims had already prescribed.^[11]

On May 24, 2000, Labor Arbiter Adolfo Babiano issued an Order^[12] granting Gramaje's motion for intervention, it appearing that she is an indispensable party and denying Polyfoam and Cheng's motion to dismiss as the lack of employer-

employee relationship is only a matter of defense.

In their Position Paper,^[13] Polyfoam and Cheng insisted that the NLRC has no jurisdiction over the case, because respondent was not their employee. They likewise contended that respondent's money claims had already prescribed. Finally, they fault respondent for including Cheng as a party-defendant, considering that she is not even a director of the company.^[14]

In her Position Paper,^[15] Gramaje claimed that P.A. Gramaje Employment Services (PAGES) is a legitimate job contractor who provided some manpower needs of Polyfoam. It was alleged that respondent was hired as "packer" and assigned to Polyfoam, charged with packing the latter's finished foam products. She argued, however, that respondent was not dismissed from employment, rather, he simply stopped reporting for work.^[16]

On December 14, 2001, Labor Arbiter (LA) Marita V. Padolina rendered a Decision finding respondent to have been illegally dismissed from employment and holding Polyfoam and Gramaje/PAGES solidarily liable for respondent's money claims. The dispositive portion of the Decision is quoted below for easy reference:

WHEREFORE, premises considered, judgment is hereby rendered finding complainant to have been illegally dismissed and respondents Polyfoam-RGC International Corporation, P.A. Gramaje Employment Services/Precilla A. Gramaje are ordered to pay complainant jointly and severally the following:

1). Separation Pay	- P	52,000.00
2). Backwages	-	157,041.38
3). 13th Month Pay	-	17,407.00
4). Moral Damages	-	5,000.00
5). Exemplary Damages	-	5,000.00
6). Attorney's fees	-	<u>23,644.83</u>
	P	260,093.21

All other claims are denied for lack of factual basis.

SO ORDERED.^[17]

The Labor Arbiter found respondent to have been illegally dismissed from employment and thus is entitled to full backwages inclusive of allowances. In lieu of reinstatement, the LA awarded respondent separation pay of one month salary for every year of service from April 21, 1994 until promulgation of the decision.^[18] The LA further held that petitioners are solidarily liable to respondent for the latter's money claims, considering that Gramaje (the contractor) was not enrolled as private employment agency in the registry of the Regional Office of the Department of Labor and Employment (DOLE) and considering further that respondent performed a job directly related to the main business of Polyfoam.^[19]

On appeal by petitioners, the NLRC modified the LA decision by exonerating

Polyfoam from liability for respondent's claim for separation pay and deleting the awards of backwages, 13th month pay, damages, and attorney's fees. The dispositive portion of the decision reads:

WHEREFORE, the appealed decision is modified in that the complaint against respondent-appellant Polyfoam-RGC International Corp. is dismissed. However, respondent-intervenor-appellant P.A. Gramaje Employment Services is hereby ordered to pay complainant separation pay of one (1) month salary for every year of service reckoned from April 21, 1996 up to the rendition of this decision, or the sum of P58,5000 (sic).

The awards of backwages, 13th month pay, damages, and attorney's fees are set aside.

SO ORDERED.^[20]

The NLRC found Gramaje to be an independent contractor who contracted the packaging aspect of the finished foam products of Polyfoam. Pursuant to said contract, Gramaje's employees, including respondent, were assigned to Polyfoam but remained under the control and supervision of Gramaje. It likewise concluded that Gramaje had its own office equipment, tools, and substantial capital and, in fact, supplied the plastic containers and carton boxes used by her employees in performing their duties.^[21] The Commission also found sufficient evidence to prove that Gramaje paid respondent's wages and benefits and reported the latter to the Social Security System (SSS) as a covered employee.^[22] As to whether there was illegal dismissal, the NLRC answered in the negative, since respondent was not notified that he had been dismissed nor was he prevented from returning to his work. The NLRC found Gramaje liable for claiming that respondent abandoned his job. Reinstatement, however, could not be decreed because of the strained relations between the parties; hence, the award of separation pay. But the NLRC refused to award backwages.^[23] The award of moral and exemplary damages was likewise deleted for lack of evidence.^[24]

Aggrieved, respondent elevated the case to the CA in a special civil action for *certiorari* under Rule 65 of the Rules of Court. On December 19, 2005, the appellate court rendered the assailed decision,^[25] the dispositive portion of which reads:

WHEREFORE, IN VIEW OF THE FOREGOING, the petition is GRANTED. The assailed Decision of the National Labor Relations Commission, First Division dated May 7, 2003 is REVERSED and the decision of Labor Arbiter Marita Padolina, dated December 14, 2001, is hereby REINSTATED.

SO ORDERED.^[26]

The CA agreed with the LA's conclusion that Gramaje is not a legitimate job

contractor but only a "labor-only" contractor because of the following: (1) Gramaje failed to present its Audited Financial Statement that would have shown its financial standing and ownership of equipment, machineries, and tools necessary to run her own business;^[27] (2) Gramaje failed to present a single copy of the purported contract with Polyfoam as to the packaging aspect of the latter's business;^[28] (3) Gramaje's licenses supposedly issued by the DOLE appeared to be spurious.^[29] (4) Gramaje was not registered with DOLE as a private recruitment agency;^[30] and (5) Gramaje presented only one (1) SSS Quarterly Collection List whose authenticity is doubtful.^[31] The CA noted that petitioners are represented by only one law firm though they made it appear that they were represented by different lawyers.^[32] These circumstances, says the CA, give rise to the suspicion that the creation or establishment of Gramaje was just a scheme designed to evade the obligation inherent in an employer-employee relationship.^[33] Thus, respondent was indeed Polyfoam's employee. This relationship was specifically shown by Polyfoam's exercise of supervision over the work of respondent;^[34] the furnishing of a copy of Polyfoam's "*Mga Alituntunin at Karampatang Parusa*" to serve as respondent's guide in the performance of his duty;^[35] the length of time that respondent had performed activities necessary for Polyfoam's business;^[36] and Polyfoam's act of directly firing respondent.^[37] Finally, the appellate court affirmed the LA's findings of illegal dismissal as respondent was dismissed from the service without cause and due process.^[38] Consequently, separation pay in lieu of reinstatement was awarded. The CA quoted with approval the LA conclusions on the award of respondent's other money claims.^[39]

Petitioners now come before the Court in this petition for review on *certiorari* based on the following assigned errors:

I.

THE COURT OF APPEALS ERRED IN NOT DISMISSING THE PETITION FOR *CERTIORARI* FILED BY HEREIN RESPONDENT CONSIDERING THE FACT THAT IT WAS CLEARLY FILED OUT OF TIME, HAVING BEEN FILED ON THE 77TH DAY FROM RECEIPT BY HEREIN RESPONDENT OF THE RESOLUTION OF THE NLRC DENYING HIS MOTION FOR RECONSIDERATION.

II.

THE COURT OF APPEALS ERRED IN NOT UPHOLDING THE DECISION OF THE NLRC AND ITS FINDINGS THAT A) RESPONDENT CONCEPCION IS AN EMPLOYEE OF P.A. GRAMAJE EMPLOYMENT SERVICES; B) P.A. GRAMAJE IS A LEGITIMATE JOB CONTRACTOR; C) RESPONDENT CONCEPCION WAS NOT DISMISSED FROM HIS JOB, CONSIDERING THAT THESE FINDINGS ARE FULLY SUPPORTED BY EVIDENCE.

III.

THE COURT OF APPEALS ERRED IN REINSTATING THE DECISION OF THE LABOR ARBITER MARITA PADOLINA AWARDING RESPONDENT

CONCEPCION BACKWAGES, MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES.^[40]

There are three issues for resolution, to wit: (1) whether or not Gramaje is an independent job contractor; (2) whether or not an employer-employee relationship exists between Polyfoam and respondent; and (3) whether or not respondent was illegally dismissed from employment.

Gramaje is a Labor-Only Contractor

Article 106 of the Labor Code explains the relations which may arise between an employer, a contractor, and the contractor's employees, thus:

ART. 106. *Contractor or subcontracting.* - Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

The Secretary of Labor and Employment may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of workers established under the Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

There is labor-only contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

In *Sasan, Sr. v. National Labor Relations Commission 4th Division*,^[41] the Court distinguished permissible job contracting or subcontracting from "labor-only" contracting, to wit: