

THIRD DIVISION

[G.R. No. 169757, November 23, 2011]

**CESAR C. LIRIO, DOING BUSINESS UNDER THE NAME AND STYLE
OF CELKOR AD SONICMIX, PETITIONER, VS. WILMER D.
GENOVIA, RESPONDENT.**

D E C I S I O N

PERALTA, J.:

This is a petition for review on *certiorari* of the decision of the Court of Appeals in CA-G.R. SP No. 88899 dated August 4, 2005 and its Resolution dated September 21, 2005, denying petitioner's motion for reconsideration.

The Court of Appeals reversed and set aside the resolution of the NLRC, and reinstated the decision of the Labor Arbiter with modification, finding that respondent is an employee of petitioner, and that respondent was illegally dismissed and entitled to the payment of backwages and separation pay in lieu of reinstatement.

The facts are as follows:

On July 9, 2002, respondent Wilmer D. Genovia filed a complaint against petitioner Cesar Lirio and/or Celkor Ad Sonicmix Recording Studio for illegal dismissal, non-payment of commission and award of moral and exemplary damages.

In his Position Paper,^[1] respondent Genovia alleged, among others, that on August 15, 2001, he was hired as studio manager by petitioner Lirio, owner of Celkor Ad Sonicmix Recording Studio (Celkor). He was employed to manage and operate Celkor and to promote and sell the recording studio's services to music enthusiasts and other prospective clients. He received a monthly salary of P7,000.00. They also agreed that he was entitled to an additional commission of P100.00 per hour as recording technician whenever a client uses the studio for recording, editing or any related work. He was made to report for work from Monday to Friday from 9:00 a.m. to 6 p.m. On Saturdays, he was required to work half-day only, but most of the time, he still rendered eight hours of work or more. All the employees of petitioner, including respondent, rendered overtime work almost everyday, but petitioner never kept a daily time record to avoid paying the employees overtime pay.

Respondent stated that a few days after he started working as a studio manager, petitioner approached him and told him about his project to produce an album for his 15-year-old daughter, Celine Mei Lirio, a former talent of ABS-CBN Star Records. Petitioner asked respondent to compose and arrange songs for Celine and promised that he (Lirio) would draft a contract to assure respondent of his compensation for such services. As agreed upon, the additional services that respondent would render included composing and arranging musical scores only, while the technical aspect in

producing the album, such as digital editing, mixing and sound engineering would be performed by respondent in his capacity as studio manager for which he was paid on a monthly basis. Petitioner instructed respondent that his work on the album as composer and arranger would only be done during his spare time, since his other work as studio manager was the priority. Respondent then started working on the album.

Respondent alleged that before the end of September 2001, he reminded petitioner about his compensation as composer and arranger of the album. Petitioner verbally assured him that he would be duly compensated. By mid-November 2001, respondent finally finished the compositions and musical arrangements of the songs to be included in the album. Before the month ended, the lead and back-up vocals in the ten (10) songs were finally recorded and completed. From December 2001 to January 2002, respondent, in his capacity as studio manager, worked on digital editing, mixing and sound engineering of the vocal and instrumental audio files.

Thereafter, respondent was tasked by petitioner to prepare official correspondence, establish contacts and negotiate with various radio stations, malls, publishers, record companies and manufacturers, record bars and other outlets in preparation for the promotion of the said album. By early February 2002, the album was in its manufacturing stage. ELECTROMAT, manufacturer of CDs and cassette tapes, was tapped to do the job. The carrier single of the album, which respondent composed and arranged, was finally aired over the radio on February 22, 2002.

On February 26, 2002, respondent again reminded petitioner about the contract on his compensation as composer and arranger of the album. Petitioner told respondent that since he was practically a nobody and had proven nothing yet in the music industry, respondent did not deserve a high compensation, and he should be thankful that he was given a job to feed his family. Petitioner informed respondent that he was entitled only to 20% of the net profit, and not of the gross sales of the album, and that the salaries he received and would continue to receive as studio manager of Celkor would be deducted from the said 20% net profit share. Respondent objected and insisted that he be properly compensated. On March 14, 2002, petitioner verbally terminated respondent's services, and he was instructed not to report for work.

Respondent asserts that he was illegally dismissed as he was terminated without any valid grounds, and no hearing was conducted before he was terminated, in violation of his constitutional right to due process. Having worked for more than six months, he was already a regular employee. Although he was a so called "studio manager," he had no managerial powers, but was merely an ordinary employee.

Respondent prayed for his reinstatement without loss of seniority rights, or, in the alternative, that he be paid separation pay, backwages and overtime pay; and that he be awarded unpaid commission in the amount of P2,000.00 for services rendered as a studio technician as well as moral and exemplary damages.

Respondent's evidence consisted of the Payroll dated July 31, 2001 to March 15, 2002, which was certified correct by petitioner,^[2] and Petty Cash Vouchers^[3] evidencing receipt of payroll payments by respondent from Celkor.

In defense, petitioner stated in his Position Paper^[4] that respondent was not hired as studio manager, composer, technician or as an employee in any other capacity of Celkor. Respondent could not have been hired as a studio manager, since the recording studio has no personnel except petitioner. Petitioner further claimed that his daughter Celine Mei Lirio, a former contract artist of ABS-CBN Star Records, failed to come up with an album as the latter aborted its project to produce one. Thus, he decided to produce an album for his daughter and established a recording studio, which he named Celkor Ad Sonicmix Recording Studio. He looked for a composer/arranger who would compose the songs for the said album. In July 2001, Bob Santiago, his son-in-law, introduced him to respondent, who claimed to be an amateur composer, an arranger with limited experience and musician without any formal musical training. According to petitioner, respondent had no track record as a composer, and he was not known in the field of music. Nevertheless, after some discussion, respondent verbally agreed with petitioner to co-produce the album based on the following terms and conditions: (1) petitioner shall provide all the financing, equipment and recording studio; (2) Celine Mei Lirio shall sing all the songs; (3) respondent shall act as composer and arranger of all the lyrics and the music of the five songs he already composed and the revival songs; (4) petitioner shall have exclusive right to market the album; (5) petitioner was entitled to 60% of the net profit, while respondent and Celine Mei Lirio were each entitled to 20% of the net profit; and (6) respondent shall be entitled to draw advances of P7,000.00 a month, which shall be deductible from his share of the net profits and only until such time that the album has been produced.

According to petitioner, they arrived at the foregoing sharing of profits based on the mutual understanding that respondent was just an amateur composer with no track record whatsoever in the music industry, had no definite source of income, had limited experience as an arranger, had no knowledge of the use of sound mixers or digital arranger and that petitioner would help and teach him how to use the studio equipment; that petitioner would shoulder all the expenses of production and provide the studio and equipment as well as his knowledge in the use thereof; and Celine Mei Lirio would sing the songs. They embarked on the production of the album on or about the third week of August 2002.

Petitioner asserted that from the aforesaid terms and conditions, his relationship with respondent is one of an informal partnership under Article 1767^[5] of the New Civil Code, since they agreed to contribute money, property or industry to a common fund with the intention of dividing the profits among themselves. Petitioner had no control over the time and manner by which respondent composed or arranged the songs, except on the result thereof. Respondent reported to the recording studio between 10:00 a.m. and 12:00 noon. Hence, petitioner contended that no employer-employee relationship existed between him and the respondent, and there was no illegal dismissal to speak of.

On October 31, 2003, Labor Arbiter Renaldo O. Hernandez rendered a decision,^[6] finding that an employer-employee relationship existed between petitioner and respondent, and that respondent was illegally dismissed. The dispositive portion of the decision reads:

WHEREFORE, premises considered, we find that respondents CELKOR AD SONICMIX RECORDING STUDIO and/ or CESAR C. LIRIO (Owner), have illegally dismissed complainant in his status as regular employee and, consequently, ORDERING said respondents:

- 1) To pay him full backwages from date of illegal dismissal on March 14, 2002 until finality of this decision and, *in lieu* of reinstatement, to [pay] his separation pay of one (1) month pay per year of service reckoned from [the] date of hire on August 15, 2001 until finality of this decision, which as of date amounts to **full backwages total of 145,778.6** (basic P7,000.00 x 19.6 mos.=P133,000.00 + 1/12 thereof as 13th month pay of P11,083.33 + SILP P7,000/32.62 days=P214.59/day x 5=P1,072.96 x 1.58 yrs.=P1,695.27); **separation pay of P22,750.00** (P7,000.00 x 3.25 yrs.);
- 2) To pay complainant's unpaid commission of P2,000.00;
- 3) To pay him moral and exemplary damages in the combined amount of P75,000.00.

Other monetary claims of complainant are dismissed for lack of merit.^[7]

The Labor Arbiter stated that petitioner's denial of the employment relationship cannot overcome respondent's positive assertion and documentary evidence proving that petitioner hired respondent as his employee.^[8]

Petitioner appealed the decision of the Labor Arbiter to the National Labor Relations Commission (NLRC).

In a Resolution⁷ dated October 14, 2004, the NLRC reversed and set aside the decision of the Labor Arbiter. The dispositive portion of the Resolution reads:

WHEREFORE, premises considered, the Appeal is GRANTED. Accordingly, the Decision appealed from is REVERSED and, hence, SET ASIDE and a new one ENTERED dismissing the instant case for lack of merit.^[9]

The NLRC stated that respondent failed to prove his employment tale with substantial evidence. Although the NLRC agreed that respondent was able to prove that he received gross pay less deduction and net pay, with the corresponding Certification of Correctness by petitioner, covering the period from July 31, 2001 to March 15, 2002, the NLRC held that respondent failed to proved with substantial evidence that he was selected and engaged by petitioner, that petitioner had the power to dismiss him, and that they had the power to control him not only as to the result of his work, but also as to the means and methods of accomplishing his work.

Respondent's motion for reconsideration was denied by the NLRC in a Resolution⁹ dated December 14, 2004.

Respondent filed a petition for *certiorari* before the Court of Appeals.

On August 4, 2005, the Court of Appeals rendered a decision^[10] reversing and setting aside the resolution of the NLRC, and reinstating the decision of the Labor Arbiter, with modification in regard to the award of commission and damages. The Court of Appeals deleted the award of commission, and moral and exemplary damages as the same were not substantiated. The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, the petition is **GRANTED** and the assailed resolutions dated October 14, 2004 and December 14, 2004 are hereby **REVERSED and SET ASIDE. Accordingly**, the decision dated October 31, 2003 of the Labor Arbiter is REINSTATED, with the modification that the awards of commission and damages are **deleted**.^[11] (Emphasis supplied.)

Petitioner's motion for reconsideration was denied for lack of merit by the Court of Appeals in its Resolution^[12] dated September 21, 2005.

Hence, petitioner Lirio filed this petition.

Petitioner states that respondent appealed to the Court of Appeals via a petition for *certiorari* under Rule 65, which will prosper only if there is a showing of grave abuse of discretion or an act without or in excess of jurisdiction on the part of the NLRC.^[13] However, petitioner contends that the Court of Appeals decided the case not in accordance with law and applicable rulings of this Court as petitioner could not find any portion in the Decision of the Court of Appeals ruling that the NLRC acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. Petitioner submits that the Court of Appeals could not review an error of judgment by the NLRC raised before it on a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure. Moreover, petitioner contends that it was error on the part of the Court of Appeals to review the finding of facts of the NLRC on whether there exists an employer-employee relationship between the parties.

Petitioner's argument lacks merit.

It is noted that respondent correctly sought judicial review of the decision of the NLRC via a petition for *certiorari* under Rule 65 of the Rules of Court filed before the Court of Appeals in accordance with the decision of the Court in ***St. Martin Funeral Home v. NLRC***,^[14] which held:

Therefore, all references in the amended Section 9 of B.P. No. 129 to supposed **appeals from the NLRC to the Supreme Court** are interpreted and hereby declared to mean and **refer to petitions for certiorari under Rule 65**. Consequently, **all such petitions should henceforth be initially filed in the Court of Appeals** in strict