

SECOND DIVISION

[G.R. No. 195167, November 16, 2011]

**FERNANDO CO (FORMERLY DOING BUSINESS UNDER THE NAME
"NATHANIEL MAMI HOUSE"*) , PETITIONER, VS. LINA B.
VARGAS, RESPONDENT.**

R E S O L U T I O N

CARPIO, J.:

The Case

This petition for review^[1] assails the 29 June 2010 Decision^[2] and the 5 January 2011 Resolution^[3] of the Court of Appeals in CA-G.R. SP No. 110728. The Court of Appeals set aside the 11 June 2008 Decision^[4] of the National Labor Relations Commission (NLRC) and reinstated the 30 October 2004 Decision^[5] of the Labor Arbiter.

The Facts

On 22 April 2003, respondent Lina B. Vargas (respondent) filed against Nathaniel Bakeshop and its owner Fernando Co a complaint for underpayment or non-payment of wages and holiday pay.^[6] The complaint was later amended to include illegal dismissal as a cause of action and the non-payment of service incentive leave.^[7]

Respondent alleged that she started working at the bakeshop in October 1994 as a baker and worked from 8:00 a.m. until 8:30 p.m., Monday to Saturday. Aside from baking, respondent also served the customers and supervised the other workers in the absence of the owner. Furthermore, respondent claimed that she sometimes cooked and did the chores of a housemaid whenever the latter was not available. Respondent had a salary of P220 per day, which she received every Saturday afternoon. During the period of her employment, respondent was not given a payslip and she was never asked to sign a payroll.

On 6 April 2003, petitioner Co's wife, Nely Co, told respondent to cook their lunch because the housemaid was ironing clothes. Since respondent was busy preparing customers' orders, she lost track of time and was unable to cook lunch as instructed.irate at respondent's failure to cook, Nely Co cursed respondent and told her to leave and never to return because she was not needed anymore. Respondent was so humiliated and could no longer bear the treatment she received from her employers that she decided to take her salary and leave that same day. Respondent later filed the complaint against Nathaniel Bakeshop and its owner Fernando Co.

Petitioner denies respondent's claim that she was employed as a baker in their business. Petitioner alleges that they hired respondent to work as a housemaid.

Petitioner refutes respondent's version of the events which allegedly happened on 6 April 2003. Petitioner alleges that in April 2003, his wife, Nely Co, reprimanded respondent for her failure to cook lunch on time. Angered at being reprimanded, respondent then demanded her salary and walked out of petitioner's residence and has never reported for work again. Petitioner further avers that respondent badmouthed petitioner's daughter and displayed defiance, disrespect and insubordination toward them.

On 30 October 2004, the Labor Arbiter rendered a Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered finding illegal complainant's dismissal. Consequently, respondents are hereby held liable and ordered to reinstate complainant to her former position without loss of seniority rights and other privileges with full backwages initially computed at this time at P110,436.04.

IN CASE REINSTATEMENT BECOMES IMPOSSIBLE DUE TO SOME SUPERVENING EVENT, RESPONDENTS ARE ALSO ORDERED TO PAY COMPLAINANT'S SEPARATION PAY COMPUTED at one month's pay for every year of service.

Respondents are likewise ordered to pay complainant's service incentive leave of P3,332.50, 13th month pay (pro-rata) of P1,551.66 and salary differential of P1,723.41.

All other claims are hereby dismissed for lack of merit.

SO ORDERED.^[8]

The Labor Arbiter found that the place of business of petitioner is the same as his place of residence and that respondent works for petitioner as well as for his business which is based in his home. Thus, the Labor Arbiter concluded that "while complainant may have started her employ doing chores for the [petitioner's] family, she also fulfilled tasks connected with the [petitioner's] business such as cooking, filling orders, baking orders, and other clerical work, all of which are usually necessary and desirable in the usual trade or business of the respondent. Inescapably, complainant is a regular employee and thus, entitled to security of tenure."^[9]

On appeal, the NLRC reversed and set aside the Labor Arbiter's Decision. The NLRC concluded that respondent was not employed as a baker at petitioner's bakeshop but was merely petitioner's housemaid who left her employ voluntarily. The NLRC found petitioner not guilty of illegal dismissal.

Respondent filed a petition for certiorari with the Court of Appeals.

The Ruling of the Court of Appeals

On 29 June 2010, the Court of Appeals promulgated its Decision in favor of

respondent. The Court of Appeals annulled the NLRC Decision and reinstated the 30 October 2004 Decision of the Labor Arbiter. The Court of Appeals ruled:

[I]t is clear that petitioner [Lina B. Vargas] is not a househelper or domestic servant of private respondents [Nathaniel Bakeshop and Fernando Co]. The evidence shows that petitioner is working within the premises of the business of private respondent Co and in relation to or in connection with such business. In the Memorandum of Appeal filed by private respondents before the NLRC, the place of business of respondent Co and his residence is located in the same place, Brgy. Juliana, San Fernando, Pampanga. Thus, respondent Co exercised control and supervision over petitioner's functions. Respondent Co's averment that petitioner had the simple task of cleaning the house and cooking at times and was not involved in the business was negated by the fact that petitioner likewise takes the orders of private respondents' customers. Even if petitioner was actually working as domestic servant in private respondent's residence, her act of taking orders, which was ratiocinated by the NLRC as not leading to the conclusion that petitioner in fact took the orders, would warrant the conclusion that petitioner should be considered as a regular employee and not as a mere family househelper or domestic servant of respondent Co.

Private respondents relied heavily on the recantation (through an Affidavit of Recantation) by Joseph Baybayon of his Affidavit stating that petitioner was an employee, to boast [sic] their theory that petitioner is a mere domestic helper. Nonetheless, this Court is convinced that the allegations in the first affidavit are sufficient to establish that petitioner is an employee of private respondent and not a housemaid. Granting *arguendo*, that the second affidavit validly repudiated the first one, courts generally do not look with favor on any retraction or recanted testimony, for it could have been secured by considerations other than to tell the truth and would make solemn trials a mockery and place the investigation of the truth at the mercy of unscrupulous witnesses. A recantation does not necessarily cancel an earlier declaration, but like any other testimony, the same is subject to the test of credibility and should be received with caution.

Having resolved the issue that petitioner was an employee of private respondents and not a housemaid, was petitioner illegally dismissed? The answer is in the affirmative. Since petitioner is an employee of private respondents, she is entitled to security of tenure. The NLRC observed that it was petitioner who left private respondents on April 6, 2003 when petitioner was allegedly driven away from work by Nely Co. Private respondents' witnesses, Jay dela Cruz and Maria Fe Reniva, averred that it was petitioner who abandoned her job by not reporting for work. But their affidavits did state that the two were employees of private respondent. The other two documents considered by the NLRC were the affidavits of Felisa Borason San Andres (who allegedly helped petitioner to be employed as housemaid of Nely Co) and Alma P. Agorita (an alleged co-housemaid of petitioner in the Co residence). Surprisingly, the affidavit of Felisa Borason San Andres was written in English, considering