

SECOND DIVISION

[G.R. NO. 179807, July 31, 2009]

**RAMY GALLEGO, PETITIONER, VS. BAYER PHILIPPINES, INC.,
DANPIN GUILLERMO, PRODUCT IMAGE MARKETING, INC., AND
EDGARDO BERGONIA, RESPONDENTS.**

D E C I S I O N

CARPIO MORALES, J.:

Ramy Gallego (petitioner) was contracted in April 1992 by Bayer Philippines, Inc. (BAYER) as crop protection technician to promote and market BAYER products.^[1] Under the supervision of Aristeo Filipino, BAYER sales representative for Panay Island, petitioner made farm visits to different municipalities in Panay Island to convince farmers to buy BAYER products.^[2]

In 1996, petitioner's employment with BAYER came to a halt, prompting him to seek employment with another company. BAYER eventually reemployed petitioner, however, in 1997 through Product Image and Marketing Services, Inc. (PRODUCT IMAGE) of which respondent Edgardo Bergonia (Bergonia) was the President and General Manager, performing the same task as that of crop protection technician - promoting BAYER products to farmers and dealers in Panay Island - solely for the benefit of BAYER.^[3]

By petitioner's claim, in October, 2001, he was directed by Pet Pascual, the newly assigned BAYER sales representative, to submit a resignation letter, but he refused; and that in January, 2002, he was summoned by his immediate supervisors including respondent Danpin Guillermo (Guillermo), BAYER District Sales Manager for Panay, and was ordered to quit his employment which called for him to return all pieces of service equipment issued to him, but that again he refused.^[4]

Still by petitioner's claim, he continued performing his duties and receiving compensation until the end of January, 2002; that on April 7, 2002, he received a memorandum that his area of responsibility would be transferred to Luzon, of which memorandum he sought reconsideration but to no avail; and that Guillermo and Bergonia spread rumors that reached the dealers in Antique to the effect that he was not anymore connected with BAYER and any transaction with him would no longer be honored as of April 30, 2002.^[5]

Believing that his employment was terminated, petitioner lodged on June 6, 2002 a complaint for illegal dismissal with the National Labor Relations Commission (NLRC) against herein respondents Bayer, Guillermo, Product Image, and Bergonia, with claims for reinstatement, backwages and/or separation pay, unpaid wages, holiday pay, premium pay, service incentive leave and allowances, damages and attorney's fees.^[6]

Respondents BAYER and Guillermo denied the existence of an employer-employee relationship between BAYER and petitioner, explaining that petitioner's work at BAYER was simply occasioned by the Contract of Promotional Services that BAYER had executed with PRODUCT IMAGE whereby PRODUCT IMAGE was to promote and market BAYER products on its (PRODUCT IMAGE) own account and in its own manner and method. They added that as an independent contractor, PRODUCT IMAGE retained the exclusive power of control over petitioner as it assigned full-time supervisors to exercise control and supervision over its employees assigned at BAYER.^[7]

Respondents PRODUCT IMAGE and Bergonia, on the other hand, admitted that petitioner was hired as an employee of PRODUCT IMAGE on April 7, 1997 on a contractual basis to promote and market BAYER products pursuant to the Contract of Promotional Services forged between it and BAYER. They alleged that petitioner was a field worker who had no fixed hours and worked under minimal supervision, his performance being gauged only by his accomplishment reports duly certified to by BAYER acting as his *de facto* supervisor;^[8] that petitioner was originally assigned to Iloilo but later transferred to Antique; that petitioner was not dismissed, but went on official leave from January 23 to 31, 2002, and stopped reporting for work thereafter; and that petitioner was supposed to have been reassigned to South Luzon effective March 15, 2002 in accordance with a personnel reorganization program, but he likewise failed to report to his new work station.^[9]

By Decision of May 6, 2004,^[10] the Labor Arbiter declared respondents guilty of illegal dismissal, disposing as follows:

WHEREFORE, judgment is rendered declaring respondents, Bayer Phil. Inc./Danpin Guillermo and Product Image Marketing Services, Inc./Edgardo Begornia [*sic*] guilty of Illegal Dismissal and is hereby **ORDERED** to **Reinstate** complainant to his former or equivalent position ten (10) days from receipt hereof and to immediately pay complainant upon receipt of this decision the following:

Backwages	Php228,000.00
13th Month Pay	Php 19,000.00
Holiday Pay	Php 9,500.00
Service Incentive	Php 4,750.00
Leave Pay	
Attorney's Fees	<u>Php 26,125.00</u>

**Total: Php
287,375.00**

In so deciding, the Labor Arbiter found, among other things, that there was an employer-employee relationship between BAYER and petitioner since BAYER furnished petitioner the needed facilities and paraphernalia, and fixed the methodology to be used in the performance of his work.

On appeal by respondents, the NLRC reversed the Decision of the Labor Arbiter and dismissed petitioner's complaint by Decision of February 22, 2006,^[11] holding that as an independent contractor, PRODUCT IMAGE was the employer of petitioner but there was no evidence that petitioner was dismissed by either PRODUCT IMAGE or BAYER. Sustaining PRODUCT IMAGE's claim of abandonment, it held that an employee is deemed to have abandoned his job if he failed to report for work after the expiration of a duly approved leave of absence or if, after being transferred to a new assignment, he did not report for work anymore.

Petitioner's Motion for Reconsideration having been denied by Resolution of May 25, 2006,^[12] he appealed to the Court of Appeals via Certiorari.^[13]

By Resolution of September 25, 2006, the appellate court dismissed petitioner's petition for failure to attach to it the complaint and the parties' respective position papers filed with the Labor Arbiter.^[14] His Motion for Reconsideration having been denied by Resolution of August 14, 2007,^[15] petitioner comes before this Court via the present Petition for Review on Certiorari.

Petitioner argues that the appellate court erred in dismissing his petition outright considering that it had previously allowed subsequent submission of required documents not attached to a petition for certiorari; and that he attached the required pleadings to his Motion for Reconsideration with the appellate court. Moreover, he contends that respondents failed to discharge the burden of proving the validity of his dismissal in order to overturn the finding of the Labor Arbiter that he was illegally dismissed.^[16]

BAYER and Guillermo counter that petitioner raised factual issues in his petition before the appellate court which are not reviewable by certiorari; that petitioner's failure to attach the required pleadings to his petition before the appellate court, coupled with his failure to offer any justification therefor, provides no occasion for a liberal application of the rules in his favor; that petitioner has no cause of action against them as his employer is PRODUCT IMAGE; and that assuming that petitioner is entitled to his money claims, the same should be enforced against the performance bond posted by PRODUCT IMAGE to cover the claims of its employees assigned at BAYER.^[17]

PRODUCT IMAGE and Bergonia postulate in their Comment that the appellate court's outright dismissal of petitioner's appeal was proper in view of, among other things, the summary nature of proceedings in labor cases. They also contend that petitioner's present petition suffers from the following infirmities: (1) it does not contain an affidavit of service; (2) it is not accompanied by petitioner's Petition for Certiorari before the appellate court; (3) it does not specify the errors of law allegedly committed by the appellate court; (4) it is not accompanied by proof of service upon the adverse party of a copy of the payment of docket fees; (5) it raises questions of fact; and (6) it impleads the NLRC and imputes grave abuse of discretion to the appellate court, thereby implying that the petition is likewise made under Rule 65 of the Rules of Court. Lastly, they maintain that petitioner was not dismissed as he actually abandoned his job.^[18]

The Court shall first resolve the procedural issues.

Only errors of law are generally reviewed by this Court in petitions for review on certiorari of the appellate court's decisions,^[19] and the question of whether an employer-employee relationship exists in a given case is essentially a question of fact.^[20] Be that as it may, when, as here, the findings of the NLRC contradict those of the Labor Arbiter, this Court, in the exercise of its equity jurisdiction, may look into the records of the case and reexamine the questioned findings.^[21]

Respecting the appellate court's dismissal of petitioner's Petition for Certiorari for his failure to attach thereto the relevant pleadings filed with the Labor Arbiter, the requirement to attach the same under Section 1, Rule 65^[22] is considered *vis a vis* Section 3, Rule 46^[23] which states that the failure of the petitioner to comply with any of the documentary requirements, such as the attachment of relevant pleadings, "shall be sufficient ground for the dismissal of the petition." By and large, the outright dismissal of a petition for failure to comply with said requirement cannot be assailed as constituting either grave abuse of discretion or reversible error of law.^[24]

The Court, however, is inclined to, as it does, overlook petitioner's failure to attach the subject relevant pleadings to his Petition for Certiorari before the appellate court in view of the serious matters dealt with in this case. That brings the Court to consider the substantial merits of the case, thus rendering it unnecessary to still discuss the other procedural matters raised by respondents.

In the main, the substantive issues are: whether PRODUCT IMAGE is a labor-only contractor and BAYER should be deemed petitioner's principal employer; and whether petitioner was illegally dismissed from his employment.

Permissible job contracting or subcontracting refers to an arrangement whereby a principal agrees to farm out with a contractor or subcontractor the performance of a specific job, work, or service within a definite or predetermined period, regardless of whether such job, work or, service is to be performed or completed within or outside the premises of the principal.^[25] Under this arrangement, the following conditions must be met: (a) the contractor carries on a distinct and independent business and undertakes the contract work on his account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of his work except as to the results thereof; (b) the contractor has substantial capital or investment; and (c) the agreement between the principal and contractor or subcontractor assures the contractual employees' entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social welfare benefits.^[26]

In distinguishing between permissible job contracting and prohibited labor-only contracting,^[27] the totality of the facts and the surrounding circumstances of the case are to be considered,^[28] each case to be determined by its own facts, and all the features of the relationship assessed.^[29]

In the case at bar, the Court finds substantial evidence to support the finding of the NLRC that PRODUCT IMAGE is a legitimate job contractor.

The Court notes that PRODUCT IMAGE was issued by the Department of Labor and Employment (DOLE) Certificate of Registration Numbered NCR-8-0602-176 reading:

CERTIFICATE OF REGISTRATION
Numbered NCR-8-0602-176

issued to

Mr. Edgardo V. Bergonia
President
PRODUCT IMAGE & MARKETING SERVICES, INC.
Unit 5& 6 GF J & L Bldg., 251 EDSA Greenhills,
Mandaluyong City

for having complied with the requirements as provided for under the Labor Code, as amended, and its implementing Rules and having paid the registration fee in the amount of **ONE HUNDRED (P100) PESOS** per Official Receipt Number 6530485Y, dated 21 June 2002.^[30]

The DOLE certificate having been issued by a public officer, it carries with it the presumption that it was issued in the regular performance of official duty.^[31] Petitioner's bare assertions fail to rebut this presumption. Further, since the DOLE is the agency primarily responsible for regulating the business of independent job contractors, the Court can presume, in the absence of evidence to the contrary, that it had thoroughly evaluated the requirements submitted by PRODUCT IMAGE before issuing the Certificate of Registration.

Independently of the DOLE's Certification, among the circumstances that establish the status of PRODUCT IMAGE as a legitimate job contractor are: (1) PRODUCT IMAGE had, during the period in question, a contract with BAYER for the promotion and marketing of BAYER products;^[32] (2) PRODUCT IMAGE has an independent business and provides services nationwide to big companies such as Ajinomoto Philippines and Procter and Gamble Corporation;^[33] and (3) PRODUCT IMAGE's total assets from 1998 to 2000 amounted to P405,639, P559,897, and P644,728, respectively.^[34] PRODUCT IMAGE also posted a bond in the amount of P100,000 to answer for any claim of its employees for unpaid wages and other benefits that may arise out of the implementation of its contract with BAYER.^[35]

PRODUCT IMAGE cannot thus be considered a labor-only contractor.

The existence of an employer-employee relationship is determined on the basis of four standards, namely: (a) the manner of selection and engagement of the putative employee; (b) the mode of payment of wages; (c) the presence or absence of power of dismissal; and (d) the presence or absence of control of the putative employee's conduct. Most determinative among these factors is the so-called "*control test*."^[36]

The presence of the first requisite which refers to selection and engagement is evidenced by a document entitled Job Offer, whereby PRODUCT IMAGE offered to