579 Phil. 402

THIRD DIVISION

[G.R. No. 160905, July 04, 2008]

BIENVENIDO D. GOMA, PETITIONER, VS. PAMPLONA PLANTATION INCORPORATED, RESPONDENT.

DECISION

NACHURA, J.:

For review is the Decision[1] of the Court of Appeals (CA) dated August 27, 2003 granting respondent Pamplona Plantation, Inc.'s petition for *certiorari* and its Resolution[2] dated November 11, 2003 denying petitioner Bienvenido Goma's motion for reconsideration, in CA-G.R. SP No. 74892.

Petitioner commenced[3] the instant suit by filing a complaint for illegal dismissal, underpayment of wages, non-payment of premium pay for holiday and rest day, five (5) days incentive leave pay, damages and attorney's fees, against the respondent. The case was filed with the Sub-Regional Arbitration Branch No. VII of Dumaguete City. Petitioner claimed that he worked as a carpenter at the Hacienda Pamplona since 1995; that he worked from 7:30 a.m. to 12:00 noon and from 1:00 p.m. to 5:00 p.m. daily with a salary rate of P90.00 a day paid weekly; and that he worked continuously until 1997 when he was not given any work assignment.[4] On a claim that he was a regular employee, petitioner alleged to have been illegally dismissed when the respondent refused without just cause to give him work assignment. Thus, he prayed for backwages, salary differential, service incentive leave pay, damages and attorney's fees.[5]

On the other hand, respondent denied having hired the petitioner as its regular employee. It instead argued that petitioner was hired by a certain Antoy Cañaveral, the manager of the hacienda at the time it was owned by Mr. Bower and leased by Manuel Gonzales, a jai-alai pelotari known as "Ybarra."[6] Respondent added that it was not obliged to absorb the employees of the former owner.

In 1995, Pamplona Plantation Leisure Corporation (PPLC) was created for the operation of tourist resorts, hotels and bars. Petitioner, thus, rendered service in the construction of the facilities of PPLC. If at all, petitioner was a project but not a regular employee.[7]

On June 28, 1999, Labor Arbiter Geoffrey P. Villahermosa dismissed the case for lack of merit.[8] The Labor Arbiter concluded that petitioner was hired by the former owner, hence, was not an employee of the respondent. Consequently, his money claims were denied.[9]

On appeal to the National Labor Relations Commission (NLRC), the petitioner

obtained favorable judgment when the tribunal reversed and set aside the Labor Arbiter's decision. The dispositive portion of the NLRC decision reads:

> WHEREFORE, the Decision of the Labor Arbiter is hereby SET ASIDE and a new one is hereby issued ORDERING the respondent, Pamplona Plantation Incorporated, the following:
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> 1) to reinstate the complainant, BIENVENIDO D. GOMA to his former position immediately without loss of seniority rights and other privileges;
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> 2) to pay the same complainant TWELVE THOUSAND THREE HUNDRED FIFTY-NINE PESOS (P12,359.00) in salary differentials;
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> 3) to pay to the same complainant ONE HUNDRED ONE THOUSAND SIX HUNDRED SIXTY PESOS (P101,660.00) in backwages to be updated until actual reinstatement; and
>
> 4) to pay attorney's fee in the amount of ELEVEN THOUSAND FOUR HUNDRED TWO PESOS (P11,402.00) which is equivalent to ten percent (10%) of the total judgment award.
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> The respondent is further ordered to pay the aggregate amount of ONE HUNDRED FOURTEEN THOUSAND AND NINETEEN PESOS (P114,019.00) to the complainant through the cashier of this Commission within ten (10) days from receipt hereof.
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> SO ORDERED.[10]

Respondent's motion for reconsideration was denied by the NLRC on September 9, 2002.[11]

The NLRC upheld the existence of an employer-employee relationship, ratiocinating that it was difficult to believe that a simple carpenter from far away Pamplona would go to Dumaguete City to hire a competent lawyer to help him secure justice if he did not believe that his right as a laborer had been violated.[12] It added that the creation of the PPLC required the tremendous task of constructing hotels, inns, restaurants, bars, boutiques and service shops, thus involving extensive carpentry work. As an old carpentry hand in the old corporation, the possibility of petitioner's employment was great.[13] The NLRC likewise held that the respondent should have presented its employment records if only to show that petitioner was not included in its list of employees; its failure to do so was fatal.[14] Considering that petitioner worked for the respondent for a period of two years, he was a regular employee.[15]

Aggrieved, respondent instituted a special civil action for *certiorari* under Rule 65 before the Court of Appeals which granted the same; and consequently annulled and set aside the NLRC decision. The CA disposed, as follows:

> **WHEREFORE**, premises considered, the instant petition is **GRANTED.** The assailed decision of the NLRC dated October 24, 2000, as well as the Resolution dated September 9, 2002 in NLRC Case No. V-000882-99,

RAB VII-0088-98-D are hereby **ANNULLED and SET ASIDE.** The complaint is ordered **DISMISSED.**

SO ORDERED.[16]

Contrary to the NLRC's finding, the CA concluded that there was no employer-employee relationship. The CA stressed that petitioner having raised a positive averment, had the burden of proving the existence of an employer-employee relationship. Respondent, therefore, had no obligation to prove its negative averment.[17] The appellate court further held that while the respondent's business required the performance of occasional repairs and carpentry work, the retention of a carpenter in its payroll was not necessary or desirable in the conduct of its usual business.[18] Lastly, although the petitioner was an employee of the former owner of the hacienda, the respondent was not required to absorb such employees because employment contracts are *in personam* and binding only between the parties.[19]

Petitioner now comes before this Court raising the sole issue:

> WHETHER OR NOT THE DECISION OF [THE] COURT OF APPEALS DATED AUGUST 27, 2003, REVERSING AND SETTING ASIDE THE NLRC (Fourth Division, Cebu City) RULING THAT THE "PETITIONER WAS NOT ILLEGALLY DISMISSED AS HE WAS NOT AN EMPLOYEE OF RESPONDENT", IS CONTRARY TO LAW AND JURISPRUDENCE ON WHICH IT WAS BASED, AND NOT IN CONSONANCE WITH THE EVIDENCE ON RECORD.[20]

The disposition of this petition rests on the resolution of the following questions: 1) Is the petitioner a regular employee of the respondent? 2) If so, was he illegally dismissed from employment? and 3) Is he entitled to his monetary claims?

Petitioner insists that he was a regular employee of the respondent corporation. The respondent, on the other hand, counters that it did not hire the petitioner, hence, he was never an employee, much less a regular one.

Both the Labor Arbiter and the CA concluded that there was no employer-employee relationship between the petitioner and respondent. They based their conclusion on the alleged admission of the petitioner that he was previously hired by the former owner of the hacienda. Thus, they rationalized that since the respondent was not obliged to absorb all the employees of the former owner, petitioner's claim of employment could not be sustained. The NLRC, on the other hand, upheld petitioner's claim of regular employment because of the respondent's failure to present its employment records.

The existence of an employer-employee relationship involves a question of fact which is well within the province of the CA to determine. Nonetheless, given the reality that the CA's findings are at odds with those of the NLRC, the Court is constrained to probe into the attendant circumstances as appearing on record.[21]

A thorough examination of the records compels this Court to reach a conclusion different from that of the CA. It is true that petitioner admitted having been employed by the former owner prior to 1993 or before the respondent took over the

ownership and management of the plantation, however, he likewise alleged having been hired by the respondent as a carpenter in 1995 and having worked as such for two years until 1997. Notably, at the outset, respondent categorically denied that it hired the petitioner. Yet, in its petition filed before the CA, respondent made this admission:

> Private respondent [petitioner herein] cannot be considered a regular employee since the nature of his work is merely project in character in relation to the construction of the facilities of the Pamplona Plantation Leisure Corporation.
>
> He is a project employee as he was hired - 1) for a specific project or undertaking, and 2) the completion or termination of such project or undertaking has been determined at the time of engagement of the employee. x x x.
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> x x x x
>
> In other words, as regards those workers who worked in 1995 specifically in connection with the construction of the facilities of Pamplona Plantation Leisure Corporation, their employment was definitely "temporary" in character and not regular employment. Their employment was deemed terminated by operation of law the moment they had finished the job or activity under which they were employed.[22]

Thus, departing from its initial stand that it never hired petitioner, the respondent eventually admitted the existence of employer-employee relationship before the CA. It, however, qualified such admission by claiming that it was PPLC that hired the petitioner and that the nature of his employment therein was that of a "project" and not "regular" employee.

Parenthetically, this Court in *Pamplona Plantation Company, Inc. v. Tinghil*[23] and *Pamplona Plantation Company v. Acosta*[24] had pierced the veil of corporate fiction and declared that the two corporations,[25] PPLC and the herein respondent, are one and the same.

By setting forth these defenses, respondent, in effect, admitted that petitioner worked for it, albeit in a different capacity. Such an allegation is in the nature of a negative pregnant, a denial pregnant with the admission of the substantial facts in the pleadings responded to which are not squarely denied, and amounts to an acknowledgment that petitioner was indeed employed by respondent.[26]

The employment relationship having been established, the next question we must answer is: Is the petitioner a regular or project employee?

We find the petitioner to be a regular employee.

Article 280 of the Labor Code, as amended, provides:

> **ART. 280. REGULAR AND CASUAL EMPLOYMENT. -** The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be

> regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: *Provided*, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

As can be gleaned from this provision, there are two kinds of regular employees, namely: (1) those who are engaged to perform activities which are usually necessary or desirable in the usual business or trade of the
employer; and (2) those who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which they are employed.[27] Simply stated, regular employees are classified into: regular employees by nature of work; and regular employees by years of service. The former refers to those employees who perform a particular activity which is necessary or desirable in the usual business or trade of the employer, regardless of their length of service; while the latter refers to those employees who have been performing the job, regardless of the nature thereof, for at least a year.[28] If the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability, of that activity to the business.[29]

Respondent is engaged in the management of the Pamplona Plantation as well as in the operation of tourist resorts, hotels, inns, restaurants, etc. Petitioner, on the other hand, was engaged to perform carpentry work. His services were needed for a period of two years until such time that the respondent decided not to give him work assignment anymore. Owing to his length of service, petitioner became a regular employee, by operation of law.

Respondent argues that, even assuming that petitioner can be considered an employee, he cannot be classified as a regular employee, but merely as a project employee whose services were hired only with respect to a specific job and only while that specific job existed.

A project employee is assigned to carry out a specific project or undertaking the duration and scope of which are specified at the time the employee is engaged in the project. A project is a job or undertaking which is distinct, separate and identifiable from the usual or regular undertakings of the company. A project employee is assigned to a project which begins and ends at determined or determinable times.[30]

The principal test used to determine whether employees are project employees as