

## THIRD DIVISION

[ G.R. No. 139401, October 02, 2002 ]

**JMM PROMOTIONS AND MANAGEMENT, INC., PETITIONER, VS.  
COURT OF APPEALS, EMMANUEL BALANE AND CELSO PAGAPOLA-  
AN, RESPONDENTS.**

### D E C I S I O N

#### **CORONA, J.:**

In the hope of attaining a better future, many Filipinos succumb to the lure of opportunities in distant shores. Not all, however, are able to realize their dreams. A number of them return with neither money nor glory. For these unlucky souls, they take home with them twice the misery which they yearned to elude in the first place. When the dream is gone, there is nothing left but a bitter pill to swallow.

Before us is a petition for review under Rule 45 of the Rules of Court of the decision<sup>[1]</sup> dated June 25, 1999 of the Court of Appeals, which denied the petition for certiorari of the decision dated January 30, 1996 of the National Labor Relations Commission filed by herein petitioner JMM Promotions and Management, Inc.

This petition is an offshoot of an illegal dismissal case filed by private respondents Emmanuel Balane (Balane) and Celso Pagapola-an (Pagapola-an) in the POEA seeking justice for the plight they suffered as overseas entertainers. Private respondents charged petitioner with causing injury to their rights.

The facts of this case follow.

In March 1993, Sam Jin Entertainment Co. Ltd. (Sam Jin), through its agency, petitioner JMM Promotions and Management, Inc., hired private respondents and Theresa Domatican (Domatican) as entertainers for deployment in Korea. The three entertainers, as a musical band, assumed the name "Fix Trio." Balane played the keyboard while Pagapola-an handled the guitar. Domatican was the band's original vocalist.

The employment contract provided that private respondents were to receive a monthly salary of four hundred thousand won (W400,000) plus a round trip fare for a one-year contract.

The band was set to leave on March 26, 1993. However, a day before the band's departure, on March 25, 1993, petitioner assigned Bernadette Flores (Flores) instead of Domatican to perform with the band in Korea.

Private respondents, together with Flores, performed as a group for about four months in Seoul, South Korea. Their stint, however, was short-lived because of poor performance. Private respondents laid the blame on Flores' lack of singing talent. Sam Jin thereafter advised private respondents to return to the Philippines. Flores stayed behind.

On July 23, 1993, private respondents were repatriated to the Philippines. Before their departure from Korea, private respondents signed a statement dated July 21, 1993,<sup>[2]</sup> prepared by their employer, which expressed their agreement to go back home due to some difficulties in their contractual undertaking and another statement dated July 22, 1993,<sup>[3]</sup> which contained their promise to refund petitioner the sum of one hundred forty thousand won (W140,000) representing the balance of their processing fee.

Private respondents, after arrival in the Philippines, filed with the POEA an illegal dismissal case and money claim for the unfinished employment contract against petitioner and Sam Jin. They claimed that petitioner was mainly responsible for their aborted stint as a band in Seoul, Korea. The last-minute replacement of Domatican with Flores, a singer of allegedly questionable talent, resulted in the band's poor performance. This, in turn, led to the premature termination of the band's contract.

Petitioner denied any liability or responsibility for the untimely termination of private respondents' employment contract. It mainly anchored its defense to the statements dated July 21, 1993 and July 22, 1993, signed by private respondents, arguing that the latter voluntarily expressed their desire to go back to the Philippines.

The POEA ruled in favor of private respondents, ordering petitioner and Sam Jin to jointly and severally pay private respondents the amount of US\$1,049.98 each, representing the compensation for the unfinished portion of the employment contract,<sup>[4]</sup> based on the following:

"After a judicious appraisal of the attendant facts and evaluation of the evidence on record, we find that what actually transpired in this case was an unsuccessful and a losing entertainment business venture on account of the entertainers' failure to put up a good show or performance before the customers and clients of the club owners. Complainants blamed the respondents for this fiasco by attributing the cause thereof to the inability of the singer to render her part of the trio as she was not a singer nor had she undergone testing or audition before her engagement as such. What was originally contracted for was the real singer/talent and member of the contracted trio, Theresa Domatican. These facts have not been contradicted or explained by the respondents except the allegation that complainants were having difficulty in their employment, hence they signed a rescission agreement.

"Respondents' Annexes 'A' and 'B', the statements executed by complainants, were however disputed by the latter, claiming that they were forced under the circumstances to sign the same. They were put in a situation where they can not (sic) longer perform effectively because of a singer who cannot sing. If they do not perform, they will not be paid. Thus they were sent home by their employer and as a pre requisite for their repatriation, they were made to sign the aforementioned statements citing difficulty in their employment as cause of their discharge. Complainants were definitely pushed against the wall and had no other recourse but to comply with their employer's orders in order to be repatriated.

"It is also worthy to note that one of the complainants, Emmanuel Balane, corroborated their stance by executing a statement in the

presence of our Consul at the Philippine Embassy in Seoul, Korea. This statement is further supported by the Statement dated July 22, 1993 (Annex 'B', Joint Affidavit of Complainants) which was signed by Kang Ho Suck, Cho Jin Young and Shin Bok Hu.”<sup>[5]</sup>

The NLRC affirmed the decision of the POEA on appeal, holding that the findings of the POEA were supported by substantial evidence.

Twice thwarted but still unyielding, petitioner filed with the Court of Appeals a petition for certiorari under Rule 65 of the Rules of Court seeking the reversal of the NLRC decision.

Petitioner’s hope of vindication in the Court of Appeals failed as the latter found no reason to disturb the findings of the NLRC. The Court of Appeals attributed fault to the petitioner for the band’s poor performance abroad when it replaced the band’s original vocalist Domatican with Flores at the “eleventh hour.” Thus, it held:

“The effect of petitioner’s fault should not be used as the excuse to terminate its contract of employment with private respondents.”<sup>[6]</sup>

Aggrieved by the ruling of the Court of Appeals, petitioner now comes before us with the following –

#### “GROUNDS IN SUPPORT OF THE PETITION

a - The law is clear that an aggrieved party, before the appellate body may consider such as the findings of facts, been able to substantiate the matter arrived at by preponderance of evidence.

b - That public respondent cannot shied (sic) away from the mandated rule in the appreciation of evidence; the proceedings before the inferior quasi-judicial bodies is one of mere submission of affidavits whereon no open testimony is taken to cross-examine the witnesses; uprightness of the findings is, therefore, questionable and subject to review.”<sup>[7]</sup>

Petitioner argues that the Court of Appeals erroneously sustained the findings of fact of the NLRC. Private respondents could not have performed with Flores for four months in Korea if they did not initially do well as a band. Fights within and among themselves, therefore, caused their misfortunes.

Petitioner disputes the observation of the Court of Appeals that private respondents were intimidated into signing the quitclaim and request for repatriation. They were paid their salaries and they even committed to pay petitioner the amount of W140,000 as reimbursement for expenses incurred in their deployment to Seoul, Korea.

Petitioner also avers that the execution of statements critical of petitioner before the Philippine Consul in Seoul was not reflected in the records. There being no evidence thereof, private respondents’ stories were bereft of factual basis. Furthermore, the identity of the Koreans who allegedly signed and backed up private respondents’ statements was neither ascertained nor proved.

Petitioner asserts that the quitclaims executed by private respondents on July 21, 1993 and July 22, 1993 were valid and binding. The existence of fraud, mistake or duress in their execution has not been established. Thus, documents attesting that a