CEBU CITY

NINETEENTH DIVISION

[CA-G.R. SP NO. 07692, January 30, 2015]

MR. ALBERT TECSON/MRS. MARIPOL TECSON, OWNERS/MANAGERS, DERM CORNER HAIR AND BEAUTY SALON, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (7TH DIVISION, CEBU CITY) AND MELANIE CATIIL, RESPONDENTS.

D E C I S I O N

LOPEZ, J.:

This is a *Petition for Certiorari*[1] under Rule 65 of the 1997 Rules of Court seeking to annul and set aside the March 27, 2013 *Resolution*[2] and November 28, 2012 *Decision*[3] of the National Labor Relations Commission, Seventh Division of Cebu City affirming in toto the NLRC Regional Arbitration Branch's May 30, 2012 *Decision*[4] in favor of private respondent Melanie Catiil declaring her to be illegally dismissed thereby awarding her backwages and separation pay. The assailed Decision, in its dispositive portion, reads:

> "WHEREFORE, premises considered, the decision of the Labor Arbiter, dated 30 May 2012, is hereto AFFIRMED in toto.
>
> SO ORDERED."[5]

The disputed Resolution states:

> "WHEREFORE, the instant motion is DENIED.
>
> SO ORDERED."[6]

UNDISPUTED FACTS

Petitioners spouses Albert and Maripol Tecson are the owners of Derm Corner Hair and Beauty Salon located at Perdices Street, corner San Juan Street, Dumaguete City. Private respondent Melanie Catiil, on the other hand, was the salon's manicurist since 2004 up to the time when she was allegedly dismissed from employment on April 10, 2011.

Version of the Private Respondent

Private respondent Catiil's work schedule at the salon was from 9:30 in the morning to 7:00 in the evening. However, she was only allowed to leave after the last customer has left. During such working hours, she was prohibited from entertaining customers elsewhere. The salon's employees, including herein private respondent, were mandated to wear the uniform issued to them so as to maintain proper

decorum and good grooming.

Private respondent's compensation was on a percentage-per-customer-served basis. Her total monthly income would reach up to nine thousand pesos (PhP9,000.00). However, during her working stint at the salon, she was not paid 13th month pay and overtime pay.

On April 8, 2011, at around 9:00 in the morning, petitioner Maripol Tecson learned that private respondent Catiil brought her personal white hand towel to use in servicing her customers. Petitioner Maripol Tecson took Catiil's act as an insult on her part as the owner of the salon. She became mad. Such anger worsened when she overheard Catiil telling a co-employee that she brought such white hand towel because the ones supplied by the salon have already looked soiled, and that she felt uncomfortable using them to her customers.

Filled with rage, petitioner Maripol Tecson pounded her index finger on Catiil' forehead while calling her stupid in the face of the salon employees and some customers. Catiil tried to explain but Maripol Tecson refused to listen. Instead, she went on with her physical and verbal attacks on Catiil and told her never to come back. Instead of heeding such command, Catiil tried to compose herself and returned to work until closing time.

On April 11, 2011, Catiil returned to the salon. On that day, petitioner Albert Tecson summoned her and informed her of the great insult which she caused him and his wife. He told her that it was so rude of Catiil to bring her personally brought towel and use it in the course of her work at the salon. Thereafter, Albert Tecson terminated her services.

Aggrieved of the immediate termination without notice, private respondent Catiil filed a Complaint for illegal dismissal, non-payment of overtime pay, holiday pay, premium pay for work done on holiday, rest day, 13th month pay, allowances, separation pay, damages and attorney's fees.

Version of the Petitioners

Petitioners claimed that private respondent Catiil was not a regular employee of the salon. She was a manicurist paid on commission basis. They claimed that Catiil was free to report for duty or not depending on her need to earn for that day. They likewise insisted that Catiil was not illegally dismissed as she was the one who voluntarily refused to report back to the salon after the encounter.

Ruling of the Labor Arbiter and NLRC

On May 30, 2012, the Labor Arbiter ruled that private respondent Catiil was a regular employee of the salon. It declared that petitioner spouses had a hand in the selection of private respondent Catiil and controls her attendance at work. The labor tribunal found the version of private respondent Catiil more credible as it was in accord with the ordinary conduct of human affairs and it was duly supported by substantial evidence. The dispositive portion of the Labor Arbiter's Decision reads:

> "WHEREFORE, judgment is hereby declared that the complainant was ILLEGALLY DISMISSED. Respondents are hereby directed to pay the

complainant the sum of P181,000.00 representing her backwages and separation pay and shall continue to run until this judgment becomes final, plus 10% attorney's fees.

SO ORDERED."[7]

On appeal, the NLRC affirmed the Decision of the Labor Arbiter. Public respondent commission ruled that herein petitioners had the power to control the means and methods by which private respondent used to service the salon's clients. The decretal portion of the NLRC Decision reads:

"WHEREFORE, premises considered, the decision of the Labor Arbiter, dated 30 May 2012, is hereto AFFIRMED in toto.

SO ORDERED.[8]

On Motion for Reconsideration[9], public respondent NLRC upheld its previous Decision in a *Resolution*[10] dated March 27, 2013 finding no valid legal grounds to merit its review.

Pained, petitioners file the instant petition submitting, in brief, the following assignment of errors:

I.

THE HONORABLE NLRC, BY ABUSE OF DISCRETION, COMPLETELY DISREGARDED THE TESTIMONY OF RESPONDENTS' WITNESS MARIVIC Z. ENJERTO WHERE SHE SAID THAT THE COMPLAINANT "NEVER CAME BACK UNTIL RESPONDENTS (REFERRING TO SPOUSES TECSON) LEARNED THAT SHE IN FACT FILED A CASE AGAINST SPOUSES TECSON." THIS TESTIMONIAL EVIDENCE SHOWS THAT THERE WAS NO EMPLOYEE WHO WAS ILLEGALLY DISMISSED, BUT RATHER, A BUSINESS PARTNER LEAVING THE PREMISES OF THE WORK PLACE WHICH WAS PROVIDED BY THE CAPITAL-PARTNER.

II.

THE NLRC, BY ABUSE OF DISCRETION, COMPLETELY DISREGARDED THE FACT THAT COMPLAINANT DELIBERATELY, WHIMSICALLY AND CAPRICIOUSLY THREATENED TO FILE A LABOR CASE AGAINST RESPONDENTS AFTER A BUSINESS ARGUMENT WHICH IS AN OPEN DISPLAY OF BAD FAITH ON THE PART OF A PARTNER.

III.

THE NLRC, BY ABUSE OF DISCRETION, WAS COMPLETELY INSENSIBLE OF THE FACT THAT NOWHERE IN EVIDENCE DID THE COMPLAINANT CONVINCINGLY SHOWED THE EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP UNDER THE FOUR-FOLD TEST ESTABLISHED BY THE SUPREME COURT.

IV.

THE NLRC, BY ABUSE OF DISCRETION, IRRESPONSIBLY EQUATED THE INSTANT ISSUES TO THAT OF THE CASE OF CORPORAL VS. NLRC (341 SCRA 658). THE COMPARISON IS ERRONEOUS.

V.

THE NLRC, BY ABUSE OF DISCRETION, CONVENIENTLY DISREGARDED THE FACT THAT NOWHERE IN EVIDENDE IS THERE PROOF, APART FROM THE SELF-SERVING DECLARATION OF THE COMPLAINANT, THAT THERE WAS INDEED A DISMISSAL THAT TOOK PLACE.[11]

OUR RULING

The petition is devoid of merit.

Petitioners insist that the labor tribunal's finding of illegal dismissal, which was affirmed by the NLRC, is completely bereft of factual and legal bases. Nowhere in the records of the case did private respondent convincingly show the existence of an employer-employee relationship on the basis of the four-fold test mandated by the Supreme Court. The labor tribunal, in fact, failed to consider Marivic Z. Enjerto's testimony that private respondent Catiil never came back to the salon after the argument between the parties in the salon. This proves that no employee was dismissed but merely a business partner leaving the work premises after an argument with the business partner. Other than that, private respondent's declarations were merely self-serving which should be given lesser credence.

Petitioners further claim that they, as owners of the salon, had no control over the work of its manicurists, including herein private respondent. The only control they had over Catiil was the number of customers served so as to determine the sharing of their profits. Private respondent should thus be considered as an independent contractor as she is under the control of the salon only as regards the results of her work, but not as to the details or the manner of performing the work.

In fine, petitioners assail the labor tribunals' conclusion that there was an employer-employee relationship between them and private respondent Catiil. If there was, is private respondent considered a regular employee; and if she was an employee, was she validly dismissed from employment?

There was an employer-employee relationship between the parties; private respondent Catiil was a regular employee; and she was illegally dismissed from employment.

At the outset, it is well to note that where a petition for certiorari under Rule 65 of the Rules of Court alleges grave abuse of discretion, as in this case, the petitioner should establish that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction. In this case, nowhere in the petition did petitioners sufficiently show that the Decision rendered by public respondent NLRC was rendered with abuse of discretion that was so patent and gross that would warrant striking it down through a petition for certiorari. Petitioners mainly limited their

discussion on NLRC's failure to give credence to the testimony of the witness they presented; and their insistence that private respondent is merely a business partner, not its employee. Clearly, petitioners failed on their duty to demonstrate with definiteness the grave abuse of discretion that would justify the proper availment of a petition for certiorari under Rule 65 of the Rules of Court.

Jurisprudence tells *Us* that in the determination of whether an employer-employee relationship exists between two parties, the four-fold test is applied to determine the existence of the elements of such relationship.[12] In *Pacific Consultants International Asia, Inc. v. Schonfeld*[13], the Highest Court set out the elements of an employer-employee relationship, thus:

> Jurisprudence is firmly settled that whenever the existence of an employment relationship is in dispute, **four elements constitute the reliable yardstick: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee's conduct.** It is the so-called "control test" which constitutes the most important index of the existence of the employer-employee relationship that is, whether the employer controls or has reserved the right to control the employee not only as to the result of the work to be done but also as to the means and methods by which the same is to be accomplished. Stated otherwise, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end to be achieved but also the means to be used in reaching such end.

In the instant case, *We* concur with the Labor Arbiter in his findings that herein petitioners employers controlled the selection, attendance and work of private respondent Catiil thereby proving the existence of some of the elements enunciated by the Supreme Court. The words of the Labor Arbiter provide, to wit:

> "**In the evidence presented, it is obvious to Us that the complainant was chosen to work with the respondents' beauty salon.** It is also very obvious that the salon was making service income out of the efforts of the complainant for which the complainant was given her commission. Complainant herself admits she was making at least P300.00/daily from her monthly commission.
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> To the mind of this Office, respondents, in their selection of their manicurist, will choose someone who is competent in her trade and someone who knows how to deal with their customers for the simple reason that it cannot afford to lose customers or their goodwill because their employee bungled in their job. In this case, the complainant worked with the respondents for seven years. This could only mean that the respondents approved the quality of work that the complainant delivered to the salon. otherwise, she could have been asked to leave for the simple reason that why should the salon retain a manicurist who cannot deliver income?
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