

## SEVENTH DIVISION

[ CA-G.R. SP No. 134981, February 27, 2015 ]

**DDT KONSTRUCT, INC. AND DANILO TAMAYO, PETITIONERS, VS.  
NATIONAL LABOR RELATIONS COMMISSION AND DINDO D.  
BALLACAR, RESPONDENTS.**

### **DECISION**

**LAMPAS PERALTA, J.:**

Before the Court is a petition for certiorari<sup>[1]</sup> filed under Rule 65, 1997 Rules of Civil Procedure, as amended, assailing public respondent National Labor Relations Commission's (NLRC's) (i) Decision dated December 5, 2013<sup>[2]</sup> in NLRC LAC No. 10-002865-13 which set aside the labor arbiter's Decision dated August 28, 2013<sup>[3]</sup> and held that private respondent was illegally dismissed from employment, and (ii) Resolution dated January 21, 2014<sup>[4]</sup> which denied petitioners' motion for reconsideration<sup>[5]</sup> of the Decision dated December 5, 2013.

### ***THE ANTECEDENTS***

Petitioner DDT Konstruct, Inc. (petitioner DDTKI, for brevity) and Whiteport Inc. (WPI, for brevity) are corporations engaged in construction business . Petitioner Danilo Tamayo is the president of both petitioner DDTKI and WPI. On August 7, 2001, private respondent Dindo D. Ballacar was employed by petitioner DDTKI as welder, assigning him to several successive projects. On February 16, 2009, private respondent was terminated by petitioner DDTKI on account of a finished project. On October 22, 2010, WPI hired private respondent as welder. On October 21, 2012, after the completion of a project, WPI terminated the services of private respondent.<sup>[6]</sup>

However, private respondent claims that he was a regular employee of petitioner DDTKI and WPI considering that both corporations are substantially owned by petitioner Danilo D. Tamayo and his wife Cynthia P. Tamayo.<sup>[7]</sup>

The respective factual versions of the parties were synthesized by public respondent NLRC in its Decision dated December 5, 2013 as follows:

The Complainant was first employed by Respondent-DDT Konstruct, Inc. [DDTKI] ON 7 August 2001, as a welder in its construction business. No employment contract however was executed by him and DDTKI. Since then, or for more than eight [8] years, he was assigned to several projects of DDTKI, the last of which was at the BPO San Lazaro Project. DDTKI terminated him on 16 February 2009.

Subsequently, on 22 October 2010, Respondent-Whiteport Inc. [WPI]

hired the Complainant as welder for a little less than two [2] years or until 22 November 2010 and assigned him to its Trion Tower Project. Pertinent to this, he was required to sign a Project Basis Employment Contract and every two [2] months thereafter his service was renewed by WPI. After the completion of the Trion Tower Project, WPI terminated him effective 21 October 2012.<sup>[8]</sup>

On December 14, 2012, private respondent filed with the labor arbiter a complaint against petitioners, WPI and WPI's general manager Andrea Marie Tamayo-Ulep for "*Illegal dismissal - Actual, Non-payment - Service Incentive Leave, Non-payment - 13<sup>th</sup> Month Pay, Moral and Exemplary Damages, Attorney's Fees*".<sup>[9]</sup>

After the parties had submitted their respective position papers<sup>[10]</sup> and documentary evidence,<sup>[11]</sup> the labor arbiter rendered a Decision dated August 28, 2013<sup>[12]</sup> dismissing private respondent's complaint for lack of merit, but holding WPI liable to pay private respondent the total amount of Php14,577.83 as service incentive leave pay and proportionate 13<sup>th</sup> month pay. Thus:

WHEREFORE, in view of the foregoing, the complaint for illegal dismissal is dismissed for lack of merit. Respondent Whiteport, Inc. is however ordered to pay complainant Dindo D. Ballacar the following:

Service Incentive Leave Pay	– P 4,700.00
Proportionate 13 <sup>th</sup> Month Pay	– P 9,877.83
 TOTAL	 – P14, 577.83

All other claims are denied.

The complaint against DDT Konstract Inc., Danilo Tamayo and Andrea (sic) Marie T. Ulep is dismissed for lack of merit.

SO ORDERED.<sup>[13]</sup>

Private respondent filed with public respondent NLRC a partial appeal, contending that the labor arbiter erred in (i) finding that he was a project employee; (ii) not piercing the corporate fiction existing between petitioner DDTKI and WPI; and, (iii) absolving petitioner DDTKI.<sup>[14]</sup> Private respondent thus prayed that petitioners be held liable for illegal dismissal and ordered to reinstate private respondent to his former position and to pay him full backwages, among others.

In a Decision dated December 5, 2013,<sup>[15]</sup> public respondent NLRC reversed the labor arbiter's Decision dated August 28, 2013 and held that private respondent was illegally dismissed from employment. Thus:

WHEREFORE, the Appeal is GRANTED and the Labor Arbiter's Decision, dated 28 August 2013, is SET ASIDE, except the award of service incentive leave pay and proportionate 13<sup>th</sup> month pay. Respondents-DDT

Konstruct, Inc. and Whiteport, Inc. are mandated to immediately reinstate Complainant- Dindo D. Ballacar to his former position without loss of seniority rights and other privileges. However, if reinstatement is no longer feasible, the Respondents-Corporations and including Private Respondents, Danilo Tamayo and Andria Marie Tamayo-Ulep are directed to pay, jointly and severally, the Complainant his separation pay, from the time that he was first employed on 7 August 2001 until the actual payment, equivalent to one month pay salary for every year of service, a fraction of at least six [6] months considered one year, at the rate of his latest daily rate of four hundred seventy [Php 470.00], computed as follows:

8/7/01 – 11/29/13

$P470 \times 26 \times 12 = P146,640.00$

In addition, said corporations and the Individual Respondents are ordered to pay, jointly and severally, the Complainant's full backwages, at the rate of his latest daily rate inclusive of allowance, from the time that he was terminated, or on (sic) 21 October 2012, until he is actually reinstated or paid, as the case maybe, computed as follows:

a. Basic Salary

10/21/12 –

11/29/13

$P470 \times 26 \times 13.27 =$  P 162, 159.40

b. 13<sup>th</sup> month  
pay

P 162,159.40/12 = P 13,513.28

c. SILP

$P 470 \times 5/12 \times 13.27 =$  P 2, 598. 71

P 178, 271.39

All other claims are DISMISSED for lack of merit.

SO ORDERED.<sup>[16]</sup>

Petitioners and WPI filed a motion for reconsideration,<sup>[17]</sup> but the same was denied by public respondent NLRC in a Resolution dated January 21, 2014.<sup>[18]</sup>

Hence, petitioners filed the present petition which is premised on the following grounds:

"43. The NLRC committed grave abuse of discretion when it classified Mr. Ballacar as a regular and permanent employee of Petitioners and not mere project employee.

44. The NLRC committed grave abuse of discretion when it disregarded the separate personalities of Petitioners and Whiteport.

45. The NLRC committed grave abuse of discretion when it disregarded the separate personalities of Petitioner and its President Mr. Tamayo and held him jointly and severally liable in his personal capacity.

46. The NLRC committed grave abuse of discretion when it ruled that Mr. Ballacar was illegally dismissed by Petitioner.

47. The NLRC committed grave abuse of discretion when it ordered the reinstatement of Mr. Ballacar to his former position or, if not feasible, to pay the Complainant his separation pay and full back wages.”<sup>[19]</sup>

### ***THE ISSUE***

Whether public respondent NLRC committed grave abuse of discretion in reversing the labor arbiter's Decision dated August 28, 2013 and in finding that private respondent was illegally dismissed from employment.

### ***THE COURT'S RULING***

In dismissing private respondent's complaint for illegal dismissal, the labor arbiter ratiocinated that no employer-employee relationship existed between petitioner DDTKI and private respondent considering that private respondent's last employment contract prior to his dismissal was with WPI. The labor arbiter explained that private respondent was WPI's project employee because the term of his employment with WPI specifically stated that *"in no case shall it extend beyond the duration of the phase work or of the project itself for which your services had been engaged."* Also, the labor arbiter ruled that private respondent's employment with WPI as project employee could not be considered as a continuation of his work with petitioner DDTKI considering that the two corporations were separate and distinct from each other. Said the labor arbiter in his Decision dated August 28 2013:

On the first issue, this Office finds that the complainant is an employee of Whiteport. This Office finds merit in respondents' contention that Whiteport, DDTKI and individual respondents have separate and distinct personalities. The veil of corporate fiction cannot be validly pierced in the absence of bad faith on the part of respondents as well as the instances enumerated in *Pantranco Employee's Association vs. NLRC* (G.R. No. 170689, 17 March 2009) as correctly cited by DDTKI.

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Unfortunately for complainant, he failed to prove any justification to pierce the veil of corporate fiction of Whiteport and DDTKI. As such, Whiteport alone is the latest employer of complainant since it is the company that hired him for his last contract as evidenced by his employment contracts, pays his salaries, exercises control over the performance of his duties and has the authority to terminate his services. It is Whiteport which gives him his assignments and directs how he should perform his functions, having an immediate supervisor at the work site who is also an employee of Whiteport.

On the issue of illegal dismissal, this Office finds the same without merit. Complainant is indeed a project employee of Whiteport. Granting that it was only Whiteport which issued employment contract to him on a per project basis, his previous stint with DDTKI sans any employment contract plus his present stint with Whiteport cannot be validly considered a continuation of his work with DDTKI. As discussed above, these two corporations are separate and distinct from each other.

It is evident that complainant's employment with Whiteport is governed by project employment contracts. Although he was continuously hired, the date of the termination of his employment is specifically stated therein, but "in no case shall it extend beyond the duration of the phase work or of the project itself for which your services had been engaged." It is enough that complainant is made aware of the duration of his employment to consider him a project employee.

Moreover, being a welder, and Whiteport being a contractor, complainant's employment evidently depends on the number of projects that Whiteport can secure. As such, his employment legally ends upon completion of the project or the phase of the project for which he was hired. Complainant sweepingly concluded that he belongs to the work pool of Whiteport which makes him a regular employee. His basis for this conclusion is the fact that while he was still doing some welding works for a particular project, he was transferred to another project which requires his services. This however remained a mere allegation. What appears on record is that during his employment with Whiteport, he was assigned only to one project, the Trion Tower I Global City Project. This therefore belies complainant's claim that he was transferred from one project to another for as long as his services are needed, even if his project is not yet completed.

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xxx There is no bad faith, malice, fraud or abuse of authority on the part of respondents Whiteport and individual respondents Danilo D. Tamayo and Andrea (sic) Marie T. Ulep. Complainant failed to present evidence to prove his entitlement to his claims for damages and attorney's fees.

Corollary thereto, the complaint against individual respondents Danilo D. Tamayo and Andrea (sic) Marie T. Ulep must necessarily fail.

The complaint against respondents DDTKI must also be dismissed with prejudice. It is not the employer of complainant and no employer-employee relations exists between them. Evidently, complainant's last contract prior to his alleged illegal dismissal was with Whiteport.<sup>[20]</sup>

In reversing the labor arbiter's Decision (except the award of service incentive leave pay and proportionate 13<sup>th</sup> month pay to private respondent), public respondent NLRC disregarded the separate personalities of petitioner DDTKI and WPI and ordered the reinstatement of private respondent who was found to be a regular employee of petitioners and WPI. Public respondent NLRC stressed that even a