FOURTEENTH DIVISION

[CA-G.R. SP NO. 128330, March 23, 2015]

AVENTUS CLINIC*, MARIO SILOS AND/OR GERARDO J. JIAO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION) AND MARIE RUTCHELLE S. DARVIN, RESPONDENTS.

D E C I S I O N

BATO, JR., J.:

Assailed in this Petition for Certiorari[1] with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction are the Decision[2] dated 28 September 2012 and the Resolution[3] dated 20 November 2012 of the National Labor Relations Commission in NLRC LAC No. 07-002068-12 (NLRC-NCR-10-16096-11).

The facts of the case, as culled from the records, are as follows:

Aventus Medical Care, Inc. ("Aventus") is a domestic corporation established on 10 February 2009[4] and engaged in the business of operating and managing medical clinics and laboratory.[5] Mario Silos ("Silos") and Gerardo J. Jiao ("Jiao") are the President and Medical Director of Aventus, respectively.[6]

As part of its business, Aventus sought the services of medical professionals such as, but not limited to, medical doctors.[7] As such, Aventus engaged the services of Dr. Marie Rutchelle S. Darvin ("Darvin") as one of its medical consultants for its clinic in Manila. As she started her services for Aventus, Darvin was asked to sign a Medical Consultancy Agreement.[8] However, she refused to sign the same.[9] The pertinent provisions of said agreement state –

> "1. Term of Employment. Subject to the provisions for termination set forth below this Agreement will begin on January 1, 2010 unless sooner terminated for cause pursuant to the provision of this contract and the applicable laws of the Republic of the Philippines;
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> 2. Compensation. The Company shall compensate the Consultant at a rate of 200 per hour, for the services of the Consultant;
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> 3. Services. The Company engages the Consultant in the capacity of Physician to perform the services enumerated under ANNEX 'A' hereof in compliance with existing laws, rules and regulations as contained but not limited to those

enumerated under ANNEX 'B' hereof. Provided that the Consultant's duties may be reasonably modified at the Company's discretion from time to time at the schedule set forth in ANNEX 'C' hereto attached;

x x x x

6. Termination of Agreement. Without cause, the Company may terminate this agreement at any time upon thirty (30) days written notice to the Consultant. If the Company requests, the Consultant will continue to perform his/her duties and may be paid his/her rate up to the date of termination. Notwithstanding anything to the contrary contained in this agreement, the Company may terminate the Consultant's employment upon fifteen (15) days notice to the Consultant should any of the following events occur:

   a. The sale of substantially all of the Company's assets to a single purchaser or group of associated purchasers; or
   b. The sale, exchange, or other disposition, in one transaction of the majority of the Company's outstanding corporate shares; or
   c. The Company's decision to terminate its business and liquidate its assets;
   d. The merger or consolidation of the Company with another company.
   e. Bankruptcy or insolvency.

7. No Employee-Employer Agreement. This Agreement shall not render the Consultant an employee, partner, agent of, or joint venturer (sic) with the Company for any purpose. The Consultant is and will remain an independent contractor in (his or her) relationship to the Company. The Consultant shall have no claim against the Company hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind;"[10]

The said consultancy agreement likewise laid down the rules for consultants regarding their employment status[11], working hours[12], time keeping[13], compensation[14], overtime pay, schedule adherence[15], tardiness, leaves and absences, workplace attire[16], decorum[17] and patients records.[18]

On 5 September 2011, Jiao sent an electronic mail to Darvin asking for her diagnosis and the procedure she conducted on Raphael Kaizer Ang ("Ang"), *viz.*:

"Good evening Dra.

May we have your side as to the case of Raphael Kaizer Ang, 6 year old, male from LBC who consulted you last Aug. 30, around 200 pm.

Please give your Diagnosis and the Procedure that you did.

May I get it tomorrow morning?"[19]

On the same day, Darvin replied that Ang was diagnosed with "Bilateral Impacted Cerumen", *viz.*:

"Good day.

After having the patient's chart pulled out, I recalled that patient Raphael Kaizer was for APE last August 30, 2011. A diagnosis of Bilateral Impacted Cerumen was found after otoscopy, so I asked him to be referred to Dr. Lerma for otoscopy and ear cleaning, because I saw him in the clinic earlier on.

With all due respect, I really don't understand what the issue is, Doctor. Did it affect patient's renewal status? Shouldn't I put down in writing PE findings that I found at the risk of renewal rejection? Shouldn't I refer accordingly in events of abnormal findings during APE? Or should I wait for approval of card before any action is done, and with this, what will I write on the APE form, "Essentially Normal"?

Please enlighten me on this because I know that first and foremost, we hold our patients' well being and welfare as top priority.

Thank you very much."[20]

On 7 September 2011, Jiao sent to Darvin a Notice of Termination of the Consultancy Agreement, *viz.*:

"This Notice is in connection with the violation of your consultancy with Aventus Medical Care, Inc., as it has been observed on several occasions that you have been performing procedures, such as cleaning and clearing of ear canals, as a consequence of your examination of patients through otoscopy, which is a direct violation of clinic policy that requires said procedures to be recorded and thereafter a recommendation issued in order that it be performed by ENT specialists.

In connection with the foregoing, we would wish to take this opportunity to remind you that otoscopy is considered an integral part of the Physical Examination in Adults and Pediatric patients, which shall not be separately compensated and does not require a Referral Control Sheet (RCS) or a Clinic Service Form (Job Order). On the other hand, Oto-Endoscopy is a specialized procedure using an Endoscope done by a trained specialist, which is the very reason why Aventus has insisted that patients requiring endoscopic examinations and cleaning or clearing of the ear canals be sent to the following ENT specialists:

x x x x

It has likewise been noted that you have continued do (sic) perform this violation despite the fact that your attention has been called on this

> matter last year. Moreover, Aventus has also taken cognizance of the fact that after your attention was called, you would channel patients to your ENT spouse, Dr. Joseph Darvin, who holds clinic at Manila Doctors of (sic) Healthway and not to the ENT in the Manila clinic where you practice.
>
> Therefore, as a consequence of your actions, we have no other recourse but to serve this NOTICE OF TERMINATION OF THE CONSULTANCY AGREEMENT effective thirty (30) days from receipt of this letter."[21]

Aggrieved, Darvin filed a complaint for illegal dismissal with claims for damages and attorney's fees against Aventus. During preliminary conference, the parties failed to reach an amicable settlement. Thus, the Labor Arbiter directed them to file their respective Position Papers.

In her Position Paper, Darvin averred that she never signed the Medical Consultancy Agreement because she is an employee of Aventus and not an independent contractor. She argued that, despite the alleged Medical Consultancy Agreement and the absence of any signed employment contract, the elements of an employment relationship are still present in her case. Aventus paid her wages. It had the power to select, engage and terminate her services and exercised the same when Aventus sent a Notice of Termination to her on the ground that she performed otoscopy procedures and referred a client to her spouse connected with a competitor clinic. Aventus required her to be present in the clinic during specific hours and had control over her work as a consultant and the sole discretion to terminate her services.

Being a regular employee of Aventus, Darvin argued that she was illegally terminated from employment because her dismissal was without due process and without just or authorized causes.

Aventus countered that the Labor Arbiter does not have jurisdiction over the case because Darvin is not an employee as all doctors engaged by the company were contracted as independent medical consultants. Using as basis the Consultancy Agreement[22] effective 1 January 2011 to 31 December 2011, Aventus argued that paragraph 7 thereof states that there is no employment relationship between the company and Darvin and that Aventus has no control over the means employed by Darvin in rendering her professional services.[23] Aventus alleged that Darvin was free to engage in the private practice of her profession and affiliate with other hospitals and clinics, as evidenced by the printed copy of Healthway's website.[24] She was also allowed to request for another doctor to substitute for her during her clinic hours in case she is sick or incapacitated to report for work. Absent an employment relationship between them, Aventus maintained that there can be no cause of action for illegal dismissal. Besides, Darvin pre-terminated the Consultancy Agreement with Aventus when she submitted her Letter of Resignation[25] dated 23 September 2011. Thus, Darvin is not entitled to her claims for damages and attorney's fees.[26]

On 30 May 2012, the Labor Arbiter rendered a Decision declaring Darvin as a regular employee of Aventus and granting her monetary claims. The dispositive portion of said decision state –

"WHEREFORE, premises considered, judgment is rendered finding the dismissal of complainant as illegal and ordering the respondents to pay complainant his backwages from the date of dismissal until the (sic) of this decision, and separation pay computed at one month pay per year of service considering the existence of strained relations between the parties plus 10% of the award as Attorney's fees the complainant being compelled to litigate as all hereunder computed as follows:

I. Backwages:

9/20/11 – 9/31/12 P12,000 x 8.36	P100,320.00	

II. Separation Pay

7/07-9/11 = 4 yrs. P12,000 x 4	P 48,000.00	P148,320.00

III. Attorney's fees		P 14,800.00
		P 163,120.00

All other claims are dismissed for want of merit/basis.

SO ORDERED."[27]

Applying the "four-fold test" in determining employment relationship the Labor Arbiter ruled that employer-employee relationship existed between the parties. As shown in the Medical Consultancy Agreement Aventus had control over Darvin. Said agreement provides that: (1) Darvin's duties may be modified at the company's discretion from time to time; (2) Darvin is subject to working hours from 7 am to 6 pm, Monday to Sunday; and (3) Darvin is subject to schedule adherence, tardiness, leaves, absences, workplace and decorum. Also, Aventus paid Darvin her wages and exercised its power to hire and fire her. Moreover, the Labor Arbiter ruled that an employment relationship cannot be negated by expressly repudiating it in the employment contract and providing that the employee is an independent contractor when the terms of the agreement clearly show otherwise. Furthermore, the Labor Arbiter declared that the performance of otoscopy procedure and referral of patients to her husband by Darvin could not be considered as just cause for her termination because it is not prohibited by the Medical Consultancy Agreement.[28]

On appeal by Aventus,[29] the NLRC affirmed the Labor Arbiter's decision that Darvin is an employee of Aventus but modified the monetary award therein. The dispositive portion of the NLRC's decision states –