

THIRTEENTH DIVISION

[CA-G.R. SP No. 136323, November 14, 2014]

BURGUNDY ASSETS DEVELOPMENT CORPORATION, ROGELIO SERAFICA, AND GREGG GREGONIA, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (FOURTH DIVISION) AND BURGUNDY ASSETS DEV'T CORP. EMPLOYEES LABOR UNION, REPRESENTED BY MANOLO J. CABAUG (VICE-PRESIDENT), DIONITO V. BABOR (AUDITOR), DANILO G. FUENTES (B.O.D.), ROMEO D. PESTANAS (B.O.D. SECRETARY), MARIO M. FORTUNOBA (B.O.D. CHAIRMAN), EDWIN M. GALEON (P.R.O.) AND RIZALDO A. TIGBAYAN (TREASURER), RESPONDENTS.

DECISION

LIBREA-LEAGOGO, J.:

Before this Court is a Petition for *Certiorari* (with prayer for the issuance of temporary restraining order and/or writ of preliminary injunction)^[1] dated 27 June 2014, under Rule 65 of the Rules of Court seeking the nullification of the Decision^[2] dated 25 April 2014 and Resolution^[3] dated 16 June 2014 of the National Labor Relations Commission (Fourth Division) in the case entitled "*Burgundy Asset Development Corp. Employees Labor Union-National Union of Building and Construction Workers (BADCELU-NUBCW), represented by its Manolo J. Cabahug (Vice-President), et al. v. Burgundy Asset Development Corporation and/or Rogelio T. Serafica (President) and Gregg Gregonia (Vice-President),*" docketed as NLRC LAC No. 01-000008-14; NLRC NCR Case No. 03-04638-13.

The dispositive portion of the assailed Decision reads:

"WHEREFORE, complainants' appeal is **GRANTED**. The assailed Decision of Labor Arbiter Vivian H. Magsino-Gonzalez, dated October 21, 2013 is **VACATED** and **SET ASIDE** and a new one entered:

1.Declaring respondent Burgundy Asset Development Corporation guilty of Unfair Labor Practice;

2.Finding Manolo J. Cabahug, Dionito V. Babor, Danilo G. Fuentes, Romeo D. Pestanas, Mario M. Fortunoba, Edwin M. Galeon and Rizaldy A. Tigbayan to have been illegally and constructively dismissed by respondent Burgundy Asset Development Corporation;

3.Ordering respondent Burgundy Asset Development

Corporation to reinstate complainants Manolo J. Cabahug, Dionito V. Babor, Danilo G. Fuentes, Romeo D. Pestanas, Mario M. Fortunoba, Edwin M. Galeon and Rizaldy A. Tigbayan without loss of seniority rights and other benefits, and to pay the aforesaid complainants' full backwages from the time of their dismissal on February 23, 2013 up to the (sic) their actual reinstatement as herein discussed;

4.Ordering respondent Burgundy Asset Development Corporation to pay each of the complainants Fifteen Thousand (P15,000.00) Pesos as moral damages and Ten Thousand (P5,000.00) (sic) as exemplary damages; plus attorney's fees equivalent to ten percent (10%) of the total judgment award, the computation of which is hereto attached forming part of the records.

SO ORDERED."^[4]

The assailed Resolution denied the petitioners' Motion for Reconsideration.

Private respondents filed a Comment^[5] dated 23 September 2014. Petitioners filed their Manifestation and Compliance with Motion for Leave to Admit Reply, etc.^[6] dated 13 October 2014. Thus, the fourth paragraph of the Resolution^[7] dated 01 September 2014 is reiterated, and the Petition is submitted for decision.

FACTUAL ANTECEDENTS

A Complaint^[8] dated 25 March 2013 was filed by Burgundy Asset Dev't Corp. Employees Union-NUBCW ("union," for brevity), represented by its Vice President Manolo Jarligo Cabahug, Danilo Gutierrez Fuentes, Romeo Delfino Pestañas, Mario Milla Fortunoba, Edwin Macalos Galeon and Rizaldy Angeles Tigbayan against respondents Burgundy Asset Development Corp. ("Burgundy," for brevity), Rogelio Serafica ("Serafica," for brevity) and/or Gregg Gregonia ("Gregonia," for brevity) for unfair labor practices, illegal dismissal-constructive, damages, attorney's fees, and illegal dismissal of union officers.

In their Position Paper^[9] dated 29 May 2013, it was alleged by complainants, *inter alia*, that: they started to work for respondents in 1997, and continuously up to their summary dismissal on 23 February 2013; aside from their uninterrupted years of service for almost seventeen (17) years, their work positions as mason and carpenters are no doubt necessary, desirable and directly related to the main business of respondent, which is a realty developer and builder of high rise buildings/condominiums; on 10 October 2012, in order to improve the terms and conditions of employment including wages and other wage-related benefits, the employees, including complainants, started to organize the Burgundy Asset Development Corporation Employees Labor Union ("BADCELU," for brevity) directly affiliated to the National Union of Building and Construction Workers ("NUBCW," for brevity) for the purpose of collective bargaining; BADCELU is one of the local chapters of NUBCW having Charter Certificate No. 23 issued by the NUBCW

President and General Secretary; on 15 October 2012, a petition for certification election was filed before the Makati Pasay District Field Office praying for the immediate conduct of a certification election among the regular rank-and-file employees of Burgundy; they were assigned at the Burgundy Corporate Tower in Makati City, Burgundy McKinley Place in Parañaque City and Burgundy Transpacific Place in Taft Avenue, Manila as building maintenance, electrician, painter and mason up to 2012; when respondents noticed that all of them were the leaders of the newly organized union, respondents did not waste time and immediately transferred them from McKinley Place/Transpacific Place to Burgundy Forbes Tower in Manila in the early part of January 2013 without any valid reason; Burgundy Forbes Tower was considered as an abandoned building and only security guards lived therein; hence, it was act of wild insanity to transfer them from the productive and profitable place of Burgundy in Makati City, Parañaque City and Taft Avenue in Manila to the lifeless Burgundy Forbes Tower; almost two (2) weeks after, they were placed on suspension for a maximum period of thirty (30) days from 24 January 2013 to 23 February 2013, allegedly for suspension of work; the anti-union sentiment of respondents is glaring, from the intentional non-payment of salaries and wages since the union was organized, to transferring them from their profitable workplace to an abandoned building, to their suspension of thirty (30) days, and termination afterwards; they have been in the service for seventeen (17) years with respondents as regular employees; their positions as masons, carpenters, electricians and painters were directly related to the business or trade of the employer; as regular employees, they are entitled to security of tenure and due process; their dismissal is limited to just and authorized cause as provided for by law and after compliance with substantive and procedural due process; the burden of proof is on the employer to establish that the dismissal was for cause; their suspension from work that led to their termination was due to the respondents' anti-union sentiment; respondents' suppression of their right to self-organization is a legal maneuver crafted by the former to bust the union and stop the furtherance of union activities, in violation of Article 248 (e) of the Labor Code and the Constitution; respondents are guilty of unfair labor practice; being illegally dismissed, they are entitled to reinstatement to their former positions without loss of seniority rights and other privileges, and with full backwages from the time of their illegal dismissal up to the time of their actual reinstatement; all of the illegal and improvident acts of respondents are part of their malevolent design to interfere with and curtail their constitutional rights to self-organization and collective bargaining, entitling them to exemplary and moral damages; and since respondents dismissed them illegally, they engaged the services of lawyers to protect their rights, entitling them to 10% attorney's fees.

Respondents failed to submit their Position Paper.^[10]

On 21 October 2013, Labor Arbiter Vivian H. Magsino-Gonzalez rendered a Decision,^[11] the dispositive portion of which reads:

"IN THE LIGHT OF THE FOREGOING, the instant illegal dismissal/unfair labor practice complaint with money claims is DISMISSED.

***SO ORDERED.*"**^[12]

Complainants filed a Memorandum of Appeal^[13] dated 14 November 2013.

The NLRC (Fourth Division) rendered the assailed Decision^[14] dated 25 April 2014, which granted the complainants' appeal and set aside the Labor Arbiter's Decision, the decretal portion of which was earlier quoted.^[15]

Respondents filed their Motion for Reconsideration^[16] dated 16 May 2014. The NLRC (Fourth Division) issued the assailed Resolution^[17] dated 16 June 2014 denying respondent's Motion for Reconsideration for lack of merit.

Hence, this Petition.

RULING

Petitioners raise the following grounds for allowance of their Petition, viz:

I. THE PUBLIC RESPONDENT HONORABLE NATIONAL LABOR RELATIONS COMMISSION-FOURTH DIVISION COMMITTED A GRAVE REVERSIBLE ERROR AMOUNTING TO GRAVE ABUSE OF DISCRETION IN DENYING THE MOTION FOR RECONSIDERATION FILED BY THE PETITIONER (sic) (THEN RESPONDENTS) FOR GRANTING THE APPEAL OF THE PRIVATE RESPONDENT (sic) (THEN COMPLAINANT) (sic) WHICH ON ITS FACE HAD COMMITTED A VIOLATION OF THE RULE ON FORUM SHOPPING;

II. THE PUBLIC RESPONDENT HONORABLE NATIONAL LABOR RELATIONS COMMISSION-FOURTH DIVISION COMMITTED A GRAVE REVERSIBLE ERROR AMOUNTING TO GRAVE ABUSE OF DISCRETION IN REVERSING THE DECISION OF THE HONORABLE LABOR ARBITER VIVIAN MAGSINO-GONZALES (sic) WHICH EARLIER DISMISSED THE COMPLAINT FOR ILLEGAL DISMISSAL, UNFAIR LABOR PRACTICE WITH MONEY CLAIMS (; AND)

III. THE INSTANT PETITION FOR CERTIORARI IS THE ONLY ADEQUATE, PLAIN AND SPEEDY REMEDY AVAILABLE UNDER THE CIRCUMSTANCES(.)^[18]

Petitioners contend, *inter alia*, that: there is no doubt that private respondents were project employees, and in no circumstance considered as regular employees; being project employees, they cannot enjoy the rights and privileges accorded a *bona fide* regular employee; their status as project employees can be gleaned from their respective contracts; the Labor Arbiter was correct in dismissing the complaint in the absence of any proof of existence of employer-employee relationship; this was supported by an Order dated 21 December 2012 issued by Atty. Ma. Simonette Calabocal-Macalalad, Mediator-Arbiter, NCR-DOLE, Manila which explicitly states that, "the petitioning union failed to present even a single evidence to show that they are indeed employees of Burgundy Asset Development Corporation xxx"; the evidence failed to prove by substantial evidence the cause of action for unfair labor practice and illegal/constructive dismissal, damages and attorney's fees; public respondent shifted the issue from the absence of employer-employee relationship and shifted the burden of showing by substantial evidence that the dismissal of

complainants is not illegal; instead of sanctioning the contumacy and habitual penchant of the complainants of filing several actions before the Office of the Labor Arbiter and trifling with the legal procedures for filing similar actions which lead to confusion and uncertainty, public respondent kept a blind eye and disposed the appeal in total reversal of the Labor Arbiter's decision, which is bereft of any cogent reason; in the case filed before Labor Arbiter Thomas Que docketed as *NLRC NCR Case No. 11-171012-12*, complainants therein, Tito Catamco, Christopher dela Rosa, Dionito Babor, Dionisio Ybarrita, Tito Canares, Edwin Galeon, Romeo Pestanas, Mario Fortunoba, Ramon Fajardo and Gino Acyatan, complained of non/underpayment of service incentive leave and 13th month pay, reinstatement, damages and attorney's fees, while in the case before Labor Arbiter Veneranda Guerrero docketed as *NLRC NCR Case No. 10-15913-12* complainants therein, Zaldy Agustin, Norberto Renon, Rizaldy Tigbayan, Manolo Cabahug, Richard Sario, Danilo Fuentes and Apolinario Gutierrez, averred non-payment of salary/wages, underpayment of ECOLA, and regularization with damages; when these matters were brought to the attention of public respondent, the latter ignored the same and instead, postured against the supposed non-presentation of evidence via position paper before the Labor Arbiter; petitioners never claimed denial of due process; it is unfortunate that during the appeal, public respondent reversed the decision of the Labor Arbiter dismissing the complaint due to the absence of employer-employee relationship, by imposing judicial notice of the decisions on the other cases where petitioners failed to present evidence that the complainants in those cases were project employees; there was no constructive dismissal in the instant case when private respondents were transferred to Burgundy Forbes Park Tower in España, Manila because the requisites laid down by law were complied with; private respondents were notified of their transfer in a letter of communication by Project Engineer Reynaldo Valdez ("Engr. Valdez," for brevity) to the HR Officer Cherry Yambao ("Yambao," for brevity) dated 10 January 2013 with the subject *Temporary Transfer*; private respondents did not report for work as directed and refused to report and sign their temporary transfer; a letter-notice was sent to the Office of DOLE-NCR Regional Director Raymund Agravante of the low volume of production which necessitated the temporary suspension of work operations which shall commence on 23 February 2013 and shall not last for more than six months, together with the names of the affected employees; after the temporary suspension of work, private respondents were called back to work through a letter by HR Officer Yambao dated 18 September 2013, with an instruction for them to coordinate with Engr. Valdez, Engr. Francis Mamaril or with the HR Department; despite the return to work orders, private respondents, particularly Dionito Babor, refused and filed the instant case; thus, from the foregoing, it is very clear that there was no dismissal as petitioners were able to comply with the legal requirements of temporary stoppage or suspension of work; there was notice to the employees concerned of at least thirty days, notice was sent to the Regional Director of DOLE-NCR having territorial jurisdiction over the place of work and there was substantial ground for the temporary suspension; as it is an exercise of management prerogative, as long as the legal procedures and requirements laid down by law is complied with, there is no business for employees to interfere; the fact that the temporary suspension ended with a return to work order issued to private respondents and as the latter actually worked after the temporary suspension negated constructive dismissal; unfair labor practice cannot be sustained because there was no certified labor union to speak of; the matter of certification/representation issue insofar as the alleged labor union of private respondents is still pending appeal with the Office of the Secretary of Labor; private respondents, being project employees, cannot belong to the bargaining unit