571 Phil. 444

THIRD DIVISION

[G.R. No. 159668, March 07, 2008]

MANDAUE GALLEON TRADE, INC. and/or GAMALLOSONS TRADERS, INC., Petitioners, vs. VICENTE ANDALES, RESTITUTA SOLITANA,[*] ELPIDIO SUELTO, ET AL.,[**] Respondents.[1]

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[2] dated May 21, 2003 and the Amended Decision[3] dated August 19, 2003 of the Court of Appeals (CA) in CA-G.R. SP No. 70214.

The facts:

Petitioners Mandaue Galleon Trade, Inc. (MGTI) and Gamallosons Traders, Inc.[4] (GTI) are business entities engaged in rattan furniture manufacturing for export, with principal place of business at Cabangcalan, Mandaue City.

Respondent Vicente Andales[5] (Andales) filed a complaint with the Labor Arbiter (LA) against both petitioners for illegal dismissal and non-payment of 13th month pay and service incentive leave pay. His other co-workers numbering 260 filed a similar complaint against petitioner MGTI only.

The complainants alleged that MGTI hired them on various dates as weavers, grinders, sanders and finishers; sometime in August 1998, workers in the Finishing Department were told that they would be transferred to a contractor and they were given Visitor Identification Cards (IDs), while workers in the Weaving Department were told to look for work elsewhere as the company had no work for them; sometime in September 1998, workers in the Grinding Department were not allowed to enter the company premises, while workers in the Sanding Department were told that they could no longer work since there was no work available; workers who were issued IDs were allowed to go inside the premises; and they were dismissed without notice and just cause.

They further alleged that they are regular employees of MGTI because: (a) they performed their work inside the company premises in Cabangcalan, Mandaue City; (b) they were issued uniforms by MGTI and were told to strictly follow company rules and regulations; (c) they were under the supervision of MGTI's foremen, quality control personnel and checkers; (d) MGTI supplied the materials, designs, tools and equipment in the production of furniture; (e) MGTI conducts orientations on how the work was to be done and the safe and efficient use of tools and equipment; (f) MGTI issues memoranda regarding absences and waste of materials; and (g) MGTI exercises the power to discipline them.

On the other hand, MGTI denied the existence of employer-employee relationship with complainants, claiming that they are workers of independent contractors whose services were engaged temporarily and seasonally when the demands for its products are high and could not be met by its regular workforce; the independent contractors recruited and hired the complainants, prepared the payroll and paid their wages, supervised and directed their work, and had authority to dismiss them. It averred that due to the economic crisis and internal squabble in the company, the volume of orders from foreign buyers dived; as a survival measure, management decided to retrench its employees; and the substantial separation pay paid to retrenched employees caught the jealous eyes of complainants who caused the filing of the complaint for illegal dismissal.

On August 23, 1999, the LA rendered a Decision[6] holding that 183[7] complainants are regular piece-rate employees of MGTI since they were made to perform functions which are necessary to MGTI's rattan furniture manufacturing business; the independent contractors were not properly identified; the absence of proof that the independent contractors have work premises of their own, substantial capital or investment in the form of tools, equipment and machineries make them only labor contractors; and there was no dismissal but only a claim for separation pay. The LA ordered petitioners to take back complainants and directed it to pay their 13th month pay in the total sum of P545,386.43.

Both parties appealed. On April 30, 2001, the National Labor Relations

Commission (NLRC) rendered a Decision[8] affirming the LA's finding of employer-employee relationship. It held that labor-only contracting and not job-contracting was present since the alleged contractors did not have substantial capital in the form of equipment, machineries and work premises. The NLRC, however, did not agree with the LA's finding that there was no dismissal. It held that complainants were constructively dismissed when they were unilaterally transferred to a contractor to evade payment of separation pay as a result of the retrenchment. Thus, it directed MGTI to pay complainants separation pay of one month for every year of service based on the prevailing minimum wage at the time of their dismissal, in addition to payment of 13th month pay.

Both parties filed separate motions for reconsideration[9] but the NLRC denied them in a Resolution[10] dated February 12, 2002.

On April 19, 2002, petitioners filed a Petition for *Certiorari*[11] with the CA. On May 21, 2003 the CA rendered a Decision[12] dismissing the petition and affirming the findings of the NLRC. It held that MGTI is liable to the respondents because the alleged contractors are not independent contractors but labor-only contractors; that respondents were constructively dismissed when they were unilaterally transferred to another contractor; and that the allegation of retrenchment was not proven.

On June 12, 2003, petitioners filed a Motion for Reconsideration.[13]

On August 19, 2003, the CA rendered an Amended Decision[14] partially granting the motion, in this wise:

> After taking a second look at the petition and in consonance with Article 283 of the Labor Code, We are computing the separation pay of the 183 private respondents at one-half month salary per year of service up to the promulgation of this Amended Decision.
>
> WHEREFORE, petitioners' motion for reconsideration is PARTIALLY GRANTED. This Court's decision dated May 21, 2003 is hereby amended. Petitioners are ordered to pay the 183 respondents their separation pay computed at one-half month salary per year of service up to the promulgation of this Amended Decision.
>
> SO ORDERED.[15]

On September 16, 2003, petitioners filed with this Court a Motion for Extension of Time to file a petition for review, which was granted by the Court,[16] and petitioners filed herein petition on October 23, 2003.

Meanwhile, on September 24, 2003, respondents filed a Motion for Reconsideration with the CA assailing the reduction of the separation pay in the Amended Decision.[17] On December 9, 2003, the CA issued a Resolution[18] merely noting the Motion for Reconsideration filed by respondents on the ground that the case had already been referred to this Court by way of the present petition.

Respondents then filed with this Court a Petition for *Certiorari* with Motion to Consolidate the Petition with the present petition, assailing the August 19, 2003 Amended Decision and December 9, 2003 CA Resolution. Respondents' petition, docketed as G.R. No. 162227, was dismissed in a Resolution[19] dated April 14, 2004 for failure to attach a clearly legible duplicate original or certified true copy of the Amended Decision. On August 26, 2004, entry of judgment was made.[20]

In the present petition, petitioners raise the sole issue:

I

> WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR IN CONSIDERING THE RESPONDENTS AS EMPLOYEES OF THE PETITIONERS ABSENT THE REQUISITES/ ELEMENTS IN THE JURISPRUDENCE AS DETERMINATIVE FACTOR IN THE EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP.[21]

Petitioners submit that respondents are employees of independent contractors who have their own manpower, tools, equipment and capital; they did not have a hand in respondents' recruitment and hiring, payment of wages, control and supervision, and dismissal; and respondents did not have time cards or uniforms, nor were they subjected to petitioner's company policies.

On the other hand, respondents, in their Comment and Memorandum, assail the CA's Amended Decision which reduced the separation pay from one month to one-half month, claiming there was no justification to support such order. Moreover, they contend that they were denied their day in court when the CA did not resolve their

Motion for Reconsideration of the Amended Decision. They aver that since they were illegally dismissed, they are entitled to backwages and not only separation pay.

The petition is bereft of merit.

Factual findings of quasi-judicial bodies like the NLRC, when adopted and confirmed by the CA and if supported by substantial evidence, are accorded respect and even finality by this Court.[22] The existence of an employer-employee relationship is a factual matter that will not be delved into by this Court, since only questions of law may be raised in petitions for review.[23] The Court has recognized several exceptions to this rule, such as: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. [24] None of these exceptions, however, has been convincingly shown by petitioners to apply in the present case.

Article 106 of the Labor Code explains the relations which may arise between an employer, a contractor and the contractor's employees thus:

> **ART. 106.** ***Contractor or subcontractor.*** – Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.
>
> In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.
>
> The Secretary of Labor may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

> There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are performing activities which directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

The first two paragraphs of Article 106 set the general rule that a principal is permitted by law to engage the services of a contractor for the performance of a particular job, but the principal, nevertheless, becomes solidarily liable with the contractor for the wages of the contractor's employees. The third paragraph of Article 106, however, empowers the Secretary of Labor to make distinctions between permissible job contracting and "labor-only" contracting, which is a prohibited act further defined under the last paragraph. A finding that a contractor is a "labor-only" contractor is equivalent to declaring that there is an employer-employee relationship between the principal and the employees of the supposed contractor, and the "labor-only" contractor is considered as a mere agent of the principal, the real employer.[25]

Sections 5 and 7 of the Rules Implementing Articles 106 to 109 of the Labor Code, as amended[26] (Implementing Rules), reinforce the rules in determining the existence of employer-employee relationship between employer, contractor or subcontractor, and the contractor's or subcontractor's employee, to wit:

> ***Section 5. Prohibition against labor-only contracting.*** – Labor-only contracting is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and **any** of the following elements are [is] present:
>
> i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or
>
> ii) The contractor does not exercise the right to control over the performance of the work of the contractual employee

i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or
ii) The contractor does not exercise the right to control over the performance of the work