

## FIRST DIVISION

[ G.R. No. 223825, January 20, 2020 ]

**LUIS G. GEMUDIANO, JR., PETITIONER, VS. NAESS SHIPPING  
PHILIPPINES, INC. AND/OR ROYAL DRAGON OCEAN  
TRANSPORT, INC. AND/OR PEDRO MIGUEL F. OCA,  
RESPONDENTS.**

### D E C I S I O N

**REYES, J. JR., J.:**

Assailed in this Petition for Review on *Certiorari* are the Decision<sup>[1]</sup> dated December 11, 2015 and the Resolution<sup>[2]</sup> dated March 28, 2016 of the Court of Appeals (CA) in CA-G.R. SP. No. 139164 dismissing the complaint for breach of contract filed by Luis G. Gemudiano, Jr. (petitioner) against Naess Shipping Philippines, Inc. (Naess Shipping) and/or Royal Dragon Ocean Transport, Inc. (Royal Dragon) and/or Pedro Miguel F. Oca (collectively referred to as respondents ). The CA annulled and set aside the October 30, 2014 Decision<sup>[3]</sup> of the National Labor Relations Commission (NLRC) the dis positive portion of which reads:

**WHEREFORE,** the Decision of the Labor Arbiter is AFFIRMED with modification. The Respondents are hereby ORDERED to pay the Complainant actual damages in the amount of the peso equivalent of P180,000.00 representing his salary for six months under the contract; moral damages in the amount of Thirty Thousand Pesos (P30,000.00); exemplary damages of Fifty Thousand Pesos (P50,000.00); attorney's fees equivalent to ten percent (10%) of the recoverable amount; and P18,000.00 for refund of the cost of the PEME.

**SO ORDERED.**<sup>[4]</sup>

### The Antecedents

Sometime in December 2012, petitioner applied with Naess Shipping for possible employment as seaman upon learning of a job opening in its domestic vessel operations. He had an interview with Naess Shipping and completed the training on International Safety Management (ISM) Code at the Far East Maritime Foundation, Inc. As advised by Naess Shipping's crewing manager Leah G. Fetero (Fetero), petitioner underwent the mandatory pre-employment medical examination (PEME) where he was declared fit for sea service. The expenses for the PEME were shouldered by petitioner.

On February 15, 2013, petitioner signed an Embarkation Order duly approved by Fetero stipulating the terms and conditions of his employment, and directing him to

request for all the necessary documents and company properties from the person he was going to replace in his vessel of assignment.

On February 18, 2013, Naess Shipping, for and in behalf of its principal Royal Dragon, executed a "Contract of Employment for Marine Crew on Board Domestic Vessels" (contract of employment) engaging the services of petitioner as Second Officer aboard the vessel "M/V Meiling 11," an inter-island bulk and cargo carrier, for a period of six months with a gross monthly salary of P30,000.00. It was stipulated that the contract shall take effect on March 12, 2013. Subsequently, petitioner and respondents executed an "Addendum to Contract of Employment for Marine Crew Onboard Domestic Vessels" (Addendum) stating that the employment relationship between them shall commence once the Master of the Vessel issues a boarding confirmation to the petitioner. Petitioner also bound himself to abide by the Code of Discipline as provided for in the Philippine Merchant Marine Rules and Regulations.

On March 8, 2013, petitioner received a call from Fetero informing him that Royal Dragon cancelled his embarkation. Thus, he filed a complaint for breach of contract against respondents before the Arbitration Branch of the NLRC.

In his Position Paper,<sup>[5]</sup> petitioner alleged that respondents' unilateral and unreasonable failure to deploy him despite the perfected contract of employment constitutes breach and gives rise to a liability to pay actual damages. He also asserts that he is entitled to the award of moral and exemplary damages and attorney's fees on account of respondents' dishonesty and bad faith, as well as their wanton, fraudulent and malevolent violation of the contract of employment.

Respondents, on the other hand, argued that petitioner's employment did not commence because his deployment was withheld by reason of misrepresentation. They stressed that petitioner did not disclose the fact that he is suffering from diabetes mellitus and asthma which render him unfit for sea service. They claimed that the Labor Arbiter has no jurisdiction over the petitioner's complaint for breach of contract, invoking the absence of employer-employee relationship.

On March 28, 2014, the LA found respondents to have breached their contractual obligation to petitioner and ordered them to pay him P180,000.00 representing his salary for the duration of the contract. The LA applied Section 10 of Republic Act (R.A.) No. 8042, otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995," which provides that the labor arbiters shall have original and exclusive jurisdiction over "claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages." The Labor Arbiter declared that upon perfection of the employment contract on February 18, 2013, the rights and obligations of the parties had already arisen. Thus, when respondents failed to deploy petitioner in accordance with their perfected contract, they became liable to pay him actual damages in the amount of P180,000.00.<sup>[6]</sup>

Aggrieved thereby, respondents filed an appeal with the NLRC assailing the March 28, 2014 Labor Arbiter's Decision. In its Decision dated October 30, 2014, the NLRC affirmed the Labor Arbiter Decision but with modification as to damages. It awarded petitioner moral damages in the amount of P30,000.00, exemplary damages of P50,000.00, attorney's fees equivalent to ten percent (10%) of the recoverable

amount, and refund of the cost of the PEME in the amount of P18,000.00. It held that even without petitioner's actual deployment, the perfected contract already gave rise to respondents' obligations under the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC).<sup>[7]</sup>

Respondents moved for reconsideration but the same was denied in a Resolution dated December 11, 2014.<sup>[8]</sup>

On appeal, the CA annulled and set aside the October 30, 2014 Decision and December 11, 2014 Resolution of the NLRC. It declared that the LA did not acquire jurisdiction over the petitioner's complaint because of the non-existence of an employer-employee relationship between the parties. It emphasized that the perfected contract of employment did not commence since petitioner's deployment to his vessel of assignment did not materialize. It enunciated that petitioner does not fall within the definition of " migrant worker " or " seafarer " under R . A. No. 8042 because his services were engaged for local employment<sup>[9]</sup>

Hence, this petition raising the sole issue:

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW IN HOLDING THAT THE LABOR ARBITER HAS NO JURISDICTION OVER THE COMPLAINT, AND IN NOT SUSTAINING THE AWARD OF DAMAGES IN FAVOR OF RESPONDENT.<sup>[10]</sup>

Petitioner maintains that his claim for damages was well-within the jurisdiction of the Labor Arbiter because an employer-employee relationship exists between the parties. He contends that the respondents' failure to deploy him constitutes breach of his employment contract that warrants his claim for unpaid wages, damages, and attorney's fees against respondents.

Respondents, on the other hand, argue that the Labor Arbiter has no jurisdiction over the case because of the absence of an employer-employee relationship between them. They assert that petitioner's non-deployment was a valid and sound exercise of management prerogative because of his misrepresentation that he was fit to work despite the fact that he was suffering from diabetes mellitus and asthma.

### **Our Ruling**

We find merit in the petition.

To reiterate, on February 18, 2013, petitioner and respondents entered into a contract of employment stipulating that it shall take effect on March 12, 2013. Subsequently, the parties executed an Addendum with an agreement that said Addendum shall form of employment. But respondents cancelled petitioner's embarkation and informed him that he would not be deployed because of his existing medical condition which he failed to disclose. Thus, petitioner was not able to leave even though he duly passed the PEME and was declared fit for sea service.

In the instant case, there is no doubt that there was already a perfected contract of employment between petitioner and respondents. The contract had passed the