

SECOND DIVISION

**[G.R. No. 227795 (Formerly UDK-15556),
February 20, 2019]**

**MARVIN O. DAGUINOD, PETITIONER, V. SOUTHGATE FOODS,
INC., REPRESENTED BY MAUREEN O. FERRER AND GENERATION
ONE RESOURCE SERVICE AND MULTI-PURPOSE COOPERATIVE,
[*] REPRESENTED BY RESTY CRUZ, RESPONDENTS.**

DECISION

CAGUIOA, J:

Before the Court is a petition for review^[1] (Petition) under Rule 45 of the Rules of Court assailing the Court of Appeals (CA) Decision^[2] dated January 28, 2016 and Resolution^[3] dated March 18, 2016 in CA-G.R. SP No. 129296.

Facts

Petitioner Marvin O. Daguinod (Daguinod) was assigned as counter crew/cashier of a Jollibee franchise located in Alphaland Southgate Mall, Makati City (Jollibee Alphaland) pursuant to a Service Agreement^[4] between Generation One Resource Service and Multi-Purpose Cooperative (Generation One) and the franchise operator Southgate Foods, Inc. (Southgate) (collectively respondents). Under the Service Agreement, Generation One was contracted by Southgate to provide "specified non-core functions and operational activities"^[5] for its Jollibee Alphaland branch.

Daguinod also executed a Service Contract^[6] dated September 9, 2010 with Generation One which stated that Generation One was contracted by Southgate to perform "specified peripheral and support services." In the Service Contract, Daguinod was referred to as a "service provider" and "member" of Generation One cooperative. The specific work responsibilities to be performed by Daguinod were left blank. The period of Daguinod's services was stated as "beginning September 9, 2010 until the end of the project." To become a member of Generation One, Daguinod completed an application form^[7] dated September 8, 2010, which required him to pay a membership fee of P250.00, and participate in "capital build-up and savings program" which obligated him to acquire 150 paid-up shares in Generation One, valued at P1,500.00. Prior to his employment/membership in Generation One cooperative, Daguinod was employed directly by Southgate from March 12, 2010 to August 26, 2010 as counter crew.^[8]

Petitioner's version of events

Daguinod alleges that on April 10, 2011, he reported for work at 6:00 A.M. as a counter crew/cashier in Jollibee Alphaland. He was given a cash fund of P5,000.00. After serving one of the customers, Security Guard Jaime Rivero (Rivero) approached him and asked for the receipt of the last customer who had ordered a

longanisa breakfast meal. Daguinod realized that he had put the customer's payment inside the cash register without the corresponding receipt so he had it "punched in." Thereafter, Rivero took the receipt and told Daguinod that he had committed a "pass out" of transaction. Rivero asked for assistance from the manager on duty, Jane^[9] Geling (Geling). The latter conducted an audit and verification of the sales which revealed that the cash in the register was in excess of P106.00.^[10]

Daguinod was then brought into a function room inside Jollibee Alphaland with Rivero keeping guard over him. Geling went into the room and accused Daguinod of theft. Daguinod reasoned that he did not commit any theft as in fact there was an overage of cash in the register. Geling did not believe him and told him that if he confessed, he would be forgiven and he could continue working. Daguinod was given two Notices to Explain (NTE). In the first NTE, he was made to explain the overage in the cash register. In the second NTE, he was charged with using the manager's swipe card without authority. Daguinod was directed to immediately answer the two NTEs.^[11] In the first NTE, Daguinod alleges that he was instructed to write the sentence: "*Opo Mam, inaamin ko na po na nagpassout po ako, 2nd week po ng March, [P]5,500.00.*"^[12] In the second NTE, Daguinod wrote: "*Di kopo alam, mam, nalito na po ako kaya di ko nabilang ang 50's. Nakita ko po yung [unintelligible] ni S' Aldrin tapos ginamit ko po. Isang buwan ko na pong ginagamit.*"^[13]

Daguinod was then brought to the Makati Police Station, Bangkal Precinct, where he was accused of Qualified Theft and put in jail. Daguinod was able to contact his sister, Maribeth D. Pacheco (Maribeth), to ask for help. At around 4:00 P.M., Daguinod was brought to the Ospital ng Makati for a medical check-up but he was brought back to the Makati Police Station where he was imprisoned until April 13, 2011. He was made to write a confession letter in exchange for his release from jail. He did not want to write the confession but he acceded as he had already spent two days in jail. On April 13, 2011, he was brought to the Makati City Prosecutor's Office for inquest before Assistant City Prosecutor Carolina J. Esguerra (Prosecutor Esguerra). Prosecutor Esguerra ordered Daguinod's release as the allegations against Daguinod were deficient and preliminary investigation was scheduled on April 19 and 26, 2011.^[14] Daguinod alleges that during the second meeting for the preliminary investigation, he inquired with Geling as to the status of his employment. Geling told Daguinod to ask Resty Cruz (Cruz), Generation One's Resource Area Coordinator, who told Daguinod via phone call that his employment was terminated effective May 13, 2011.^[15]

Daguinod's sister, Maribeth, corroborated his testimony. In her Affidavit^[16] dated July 5, 2011, Maribeth alleged that on April 10, 2011 at around 1:30 P.M., she received a text message from her brother, asking for help as he was put in jail for alleged theft. She went to Jollibee Southgate and was able to talk to store managers Geling and Julius Paul Penafuerte, and Atty. Jay Sangalang (Atty. Sangalang), legal counsel of Southgate, who told her that Daguinod would be released if he confessed to the theft. She immediately went to the Makati Police Station to relay the same to her brother. She was shocked to see her brother in jail. She informed him of the instructions of Atty. Sangalang. At first, Daguinod refused to write a confession but after a while, he decided to comply as he was scared and wanted to be released from the jail. Thus, Daguinod wrote an apology/confession letter which Maribeth gave to Atty. Sangalang. However, Atty. Sangalang refused to accept the letter as it

did not mention a date and amount. Upon Atty. Sangalang's instructions, Daguinod made a revised letter^[17] containing the amount of P10,000.00, with a promise that Daguinod would pay back the amount in installments.^[18]

Respondents' counter-allegations

Generation One admitted that Daguinod was its employee. The cooperative alleged that Southgate had discovered the attempted act of dishonesty of Daguinod on April 10, 2011. Generation One asserted that the filing of the complaint was premature as the cooperative's investigation of the incident was still ongoing when Daguinod filed the complaint before the Labor Arbiter (LA).^[19]

For its part, Southgate asserted that Daguinod was an employee of Generation One and not Southgate. Southgate further alleged that the complaint for illegal dismissal was merely retaliatory as it was Southgate employees who discovered that Daguinod was attempting to steal funds from Southgate.^[20]

Southgate denied that Daguinod was coerced into signing the confession. On the issue of labor-only contracting, both Generation One and Southgate averred that Generation One is a legitimate labor contractor and that the Service Agreement between the two companies was valid.^[21]

Ruling of the labor tribunals

In a Decision^[22] dated June 28, 2012, Labor Arbiter Romelita N. Rioflorido (LA) held that Generation One is a legitimate labor contractor and Daguinod was a regular employee of Generation One. On the issue of illegal dismissal, the LA held that Daguinod was unable to prove that he was illegally dismissed, or even dismissed from service. The LA gave credence to Generation One's averment that its investigation of the allegations against Daguinod was still ongoing, and even Daguinod admitted that he did not receive a formal notice of termination.

Daguinod appealed the case to the National Labor Relations Commission (NLRC) which affirmed the LA's Decision. In its Decision^[23] dated December 12, 2012, the NLRC agreed with the LA that Generation One was a legitimate labor contractor as it is a registered cooperative with substantial capital, investment, or equipment to perform its business. It also has its own office where its members meet and conduct activities. The NLRC also affirmed the LA's findings that Daguinod was not illegally dismissed; rather, it was Daguinod who prematurely concluded that he had been dismissed.^[24] The NLRC denied Daguinod's motion for reconsideration (MR) in its Resolution^[25] dated January 25, 2013.

Thus, Daguinod filed a petition for *certiorari*^[26] under Rule 65 before the CA alleging that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in affirming the LA's Decision.

The CA Decision

The CA dismissed Daguinod's petition for *certiorari* and affirmed the NLRC Decision. The CA held that aside from Daguinod's mere assertions, there was no corroborative and competent evidence to substantiate his claim that he had been dismissed; if there is no dismissal, there can be no question as to its legality or illegality. The fact

of dismissal must be established by positive and overt acts of the employer indicating the intention to dismiss the employee.^[27]

The CA further ruled that Generation One is a legitimate labor contractor as it was issued a Certificate of Registration by the Department of Labor and Employment (DOLE). The Service Agreement between Generation One and Southgate clearly states that the former was to provide specific non-core functions and operational activities which included management and supervision of the food chain system, assistance in food preparation and quality control, cleaning of the dining area, comfort room, and other areas of the restaurant, assistance in cash control activities and warehouse and utilities management.^[28]

Daguinod filed an MR which the CA denied in its Resolution^[29] dated March 18, 2016.

Thus, Daguinod filed the instant Petition assailing the CA Decision and Resolution. Southgate filed its Comment^[30] dated August 17, 2017. Generation One failed to file a Comment despite the grant of its motion for extension to file the same.^[31]

Issues

1. Whether Generation One is a legitimate labor contractor.
2. Whether Daguinod's dismissal was valid.

The Court's Ruling

The Petition is meritorious.

Ordinarily, the Court will not disturb the findings of the CA in labor cases especially if they are consistent with the findings of the NLRC and LA, in recognition of the expertise of administrative agencies whose jurisdiction is limited to specific fields of law.^[32] Rule 45 petitions should raise only questions of law, as the Court is not duty-bound to analyze and re-examine the evidence already passed upon by the courts or tribunals below.^[33]

However, there are recognized exceptions to this rule, as enunciated in *New City Builders Inc. v. National Labor Relations Commission*:^[34]

- x x x (1) [W]hen 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 facts are conflicting; (6) when in making its findings the Court of Appeals 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 Court of Appeals manifestly overlooked certain**

relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.^[35] (Emphasis supplied)

In the instant case, the CA committed grave and serious error in affirming the findings of the NLRC, which had, in turn, affirmed the findings of the LA. The appellate court misappreciated relevant and undisputed facts which if it had correctly considered, would have resulted in the reversal of the erroneous decisions of the labor tribunals. After a judicious review of the facts of the case as borne out by evidence on record, the Court resolves to overturn the CA Decision.

Generation One is not a legitimate labor contractor; Daguinod is a regular employee of Southgate

The outsourcing of services is not prohibited in all instances. In fact, Article 106^[36] of the Labor Code of the Philippines^[37] provides the legal basis for legitimate labor contracting. This provision is further implemented by DOLE Order No. 18, Series of 2002^[38] (DO 18-02).

Under Section 4(a) of DO 18-02, legitimate labor contracting or subcontracting refers to an arrangement whereby a principal agrees to put out or farm out with a contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal. The "principal" refers to any employer who puts out or farms out a job, service or work to a contractor or subcontractor.^[39]

Meanwhile, labor-only contracting is prohibited and defined under Section 5 of DO 18-02:

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 [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.**