

SECOND DIVISION

[G.R. No. 210961, January 24, 2018]

**LEO V. MAGO AND LEILANIE E. COLOBONG, PETITIONERS, V.
SUN POWER MANUFACTURING LIMITED, RESPONDENT.**

DECISION

REYES, JR., J:

This is a petition for review on *certiorari*^[1] under Rule 45 of the Rules of Court, seeking the review of the Decision^[2] dated October 8, 2013 and Resolution^[3] dated January 13, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 131059. In these assailed issuances, the CA reversed the decision^[4] of the National Labor Relations Commission (NLRC) declaring Leo V. Mago (Leo) and Leilanie E. Colobong (Leilanie) (petitioners) as employees of Sunpower Philippines Manufacturing Limited (Sunpower) and consequently, holding that Jobcrest Manufacturing, Incorporated (Jobcrest) was a labor-only contractor. The NLRC in turn reversed the ruling^[5] of the labor arbiter (LA) dismissing the petitioners' complaint for illegal dismissal.

Factual Antecedents

The petitioners are former employees of Jobcrest, a corporation duly organized under existing laws of the Philippines, engaged in the business of contracting management consultancy and services.^[6] Jobcrest was licensed by the Department of Labor and Employment (DOLE) through Certificate of Registration No. NCR-MUNTA-64209-0910-087-R.^[7] During the time material to this case, the petitioners' co-habited together.^[8]

On October 10, 2008, Jobcrest and Sunpower entered into a Service Contract Agreement, in which Jobcrest undertook to provide business process services for Sunpower, a corporation principally engaged in the business of manufacturing automotive computer and other electronic parts.^[9] Jobcrest then trained its employees, including the petitioners, for purposes of their engagement in Sunpower.^[10] After the satisfactory completion of this training, the petitioners were assigned to Sunpower's plant in Laguna Technopark. Leo was tasked as a Production Operator in the Coinstacking Station on July 25, 2009,^[11] while Leilanie was assigned as a Production Operator, tasked with final visual inspection in the Packaging Station on June 27, 2009.^[12] Jobcrest's On-site Supervisor, Allan Dimayuga (Allan), supervised the petitioners during their assignment with Sunpower.^[13]

It was alleged that sometime in October 2011, Sunpower conducted an operational alignment, which affected some of the services supplied by Jobcrest. Sunpower decided to terminate the Coinstacking/Material Handling segment and the Visual Inspection segment.^[14] Meanwhile, Leo and Leilanie were respectively on paternity

and maternity leave because Leilanie was due to give birth to their common child.
[15]

When Leo reported for work to formally file his paternity leave, Allan purportedly informed Leo that his employment was terminated due to his absences. Leo, however, further alleged that he was asked to report to Jobcrest on December 14, 2011 for his assignment to Sunpower.^[16] In their defense, both Jobcrest and Allan denied terminating Leo's employment from Jobcrest.^[17]

Leo complied with the directive to go to Jobcrest's office on December 14, 2011. While he was there, Jobcrest's Human Resource Manager, Noel J. Pagtalunan (Noel), served Leo with a "Notice of Admin Charge/Explanation Slip."^[18] The notice stated that Leo violated the Jobcrest policy against falsification or tampering because he failed to disclose his relationship with Leilanie. Leo denied the charges and explained that he already filed a complaint for illegal dismissal with the NLRC.^[19]

Leilanie, on the other hand, alleged that when she reported for work at Jobcrest on November 29, 2011, she was informed by one of the Jobcrest personnel that she will be transferred to another client company. She was likewise provided a referral slip for a medical examination, pursuant to her new assignment.^[20]

Instead of complying with Jobcrest's directives, Leo and Leilanie filed a complaint for illegal dismissal and regularization on December 15, 2011, with the NLRC Regional Arbitration Branch No. IV. Leo alleged that he was dismissed on October 30, 2011, while Leilanie alleged that she was dismissed from employment on December 4, 2011.^[21] Despite the filing of the complaint, Leilanie returned to Jobcrest on December 16, 2011, where she was served with a similar "Notice of Admin Charge/Explanation Slip," requiring her to explain why she failed to disclose her co-habitation status with Leo.^[22]

During the mandatory conference, Jobcrest clarified that the petitioners were not dismissed from employment and offered to accept them when they report back to work. The petitioners refused and insisted that they were regular employees of Sunpower, not Jobcrest.^[23]

There being no amicable settlement of the matter among the parties, they proceeded to file their respective position papers.^[24]

Ruling of the LA

In a Decision^[25] dated July 3, 2012, the LA held that Jobcrest is a legitimate independent contractor and the petitioners' statutory employer:

WHEREFORE, premises considered, the complaint for illegal dismissal against [Sunpower] and Dwight Deato is DISMISSED for lack of employer-employee relationship. [Jobcrest] is declared as the statutory employer and is ordered to reinstate complainants sans backwages to substantially equivalent positions within ten (10) days from receipt hereof.

SO ORDERED.^[26]

The LA found the capital of Jobcrest substantial enough to comply with the requirements for an independent contractor, and that Jobcrest exercised control over the petitioners' work.^[27] The LA likewise rejected the petitioners' claim that they were illegally dismissed, ruling that the petitioners failed to establish the fact of dismissal itself.^[28]

Jobcrest partially appealed the LA's Decision dated July 3, 2012. Among its arguments is the assertion that the petitioners refused to be reinstated. Hence, they were considered constructively resigned from their employment with Jobcrest, especially because they obtained a job somewhere else. As an alternative relief, Jobcrest prayed that it be directed to pay the petitioners' separation pay instead of reinstating them to their former positions.^[29]

The petitioners, on the other hand, attributed serious error on the LA for ruling against their complaint.^[30]

Ruling of the NLRC

The NLRC reversed the LA's findings in its Decision^[31] dated April 24, 2013 and ruled favorably for the petitioners, viz.:

WHEREFORE, the decision appealed from is hereby SET ASIDE and a NEW ONE ENTERED declaring that [the petitioners] are regular employees of respondent [Sunpower], respondent [Jobcrest] being a mere labor-only contractor that [petitioners] were illegally dismissed; hence, respondent [Sunpower] is hereby ordered to reinstate them to their former position with full backwages, from the time they were refused to work on October 31, 2011 until reinstated, within ten (10) days from notice plus 10% of the total monetary awards as and for attorney's fees.

SO ORDERED.^[32]

According to the NLRC, the contract between Jobcrest and Sunpower was for the sole supply of manpower. The tools and equipment for the performance of the work were for the account of Sunpower, which supposedly contradicted the claim that Jobcrest has the required capital for a legitimate contractor.^[33] The NLRC also disagreed that Jobcrest exercised control over the petitioners and likewise gave more credence to the petitioners' sworn statements, which narrate that Sunpower employees allegedly supervised their work.^[34] Lastly, on the basis of the "Notice of Administrative Charge/Explanation Slip" furnished to the petitioners, the NLRC reversed the LA's ruling and held that the petitioners were illegally dismissed from employment.^[35]

Sunpower moved for the reconsideration of the NLRC's Decision dated April 24, 2013.^[36] Unconvinced, the NLRC denied this motion in its Resolution^[37] dated May 28, 2013 as follows:

WHEREFORE, the instant Motion for Reconsideration is hereby DENIED for lack of merit.

No further motion of this nature shall be entertained.

SO ORDERED.^[38]

As a result of the NLRC's ruling, Sunpower filed a petition for *certiorari* with the CA, with a prayer for the issuance of an injunctive writ.^[39] Sunpower attributed grave abuse of discretion, amounting to lack or excess of jurisdiction, on the NLRC for holding that the petitioners were regular employees of Sunpower despite evidence to the contrary.^[40] Sunpower also disagreed that Jobcrest is a labor-only contractor, and further submitted that the NLRC misinterpreted its Service Contract Agreement with Jobcrest.^[41]

Ruling of the CA

In a Decision^[42] dated October 8, 2013, the CA granted Sunpower's petition for *certiorari* and enjoined the implementation of the assailed NLRC ruling:

WHEREFORE, premises considered, the Petition is GRANTED. The Decision dated 24 April 2013 and Resolution dated 28 May 2013 of the [NLRC] (Second Division) in NLRC-LAC No. 09-002582-12; NLRC RAB-IV-12-01978-11-B are NULLIFIED. All the respondents and/or persons acting for and on their behalf are ENJOINED from enforcing or implementing the same. The Decision dated 03 July 2012 of LA Renell Joseph R. Dela Cruz is hereby REINSTATED. No pronouncement as to costs.

SO ORDERED.^[43]

The CA ruled that Sunpower was able to overcome the presumption that Jobcrest was a labor-only contractor, especially considering that the DOLE Certificate of Registration issued in favor of Jobcrest carries the presumption of regularity. In contrast with the NLRC ruling, the CA found that the Service Contract Agreement between Sunpower and Jobcrest specifically stated the job or task contracted out by stating that it was for the performance of various business process services.^[44] The CA also held that Jobcrest has substantial capital and as such, it was no longer necessary to prove that it has investment in the form of tools, equipment, machinery, and work premises.^[45]

Also, the CA found that there is an employer-employee relationship between Jobcrest and the petitioners under the four-fold test. The CA appreciated the affidavits of Jobcrest employees, as well as the sworn statements of Sunpower employees who the petitioners claim to supervise their work. In these statements, the Sunpower employees categorically denied under oath that they supervised the manner of the petitioners' work. Taken together with other pieces of evidence, the CA ruled that there was no employer-employee relationship between Sunpower and the petitioners. Finally, the CA held that any form of supervision, which Sunpower exercised over the results of the petitioners' work, was necessary and allowable under the circumstances.^[46]

Consequently, the CA rejected the claim that the petitioners were illegally dismissed from employment, especially in light of Jobcrest's earlier offer to accept the petitioners' return to work.^[47]

Following their receipt of the CA's Decision dated October 8, 2013, the petitioners filed their Motions for Reconsideration and to Investigate the Reviewer Who Recommended the Palpably Erroneous Decision.^[48] The CA firmly denied these motions in its Resolution^[49] dated January 13, 2014 for failure to raise any substantial argument that would warrant the reconsideration of its decision:

WHEREFORE, premises considered, the Motions for Reconsideration and to Investigate the Reviewer Who Recommended the Palpably Erroneous Decision are DENIED for sheer lack of merit.

SO ORDERED.^[50]

The petitioners are now before this Court, seeking to reverse and set aside the CA's issuances, and to reinstate the NLRC's decision.^[51] The petitioners insist that Jobcrest is a labor-only contractor, and that the DOLE Certificate of Registration is not conclusive of Jobcrest's legitimate status as a contractor.^[52] They further argue that, aside from lacking substantial capital, Jobcrest only supplied manpower to Sunpower.^[53] These services, the petitioners allege, are directly related and necessary to Sunpower's business.^[54]

Furthermore, the petitioners submit that it was Sunpower that controlled their work. They refute the evidentiary weight and value of the sworn statements of Jobcrest and Sunpower employees.^[55] The petitioners assert that the NLRC was correct in ruling that Sunpower was their statutory employer, and in ordering their reinstatement with payment of full backwages and attorney's fees.^[56] The petitioners thus pray that this Court reverse and set aside the Decision dated October 8, 2013 and Resolution dated January 13, 2014 of the CA.^[57]

Ruling of the Court

The Court resolves to deny the petition.

Jobcrest is a legitimate and independent contractor.

Article 106 of the Labor Code defines *labor-only contracting* as a situation "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 person are performing activities which are directly related to the principal business of such employer."^[58]

DOLE Department Order (DO) No. 18-02, the regulation in force at the time of the petitioners' assignment to Sunpower, reiterated the language of the Labor Code:

Section 5. Prohibition against labor-only contracting. x x x [L]abor-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 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