

THIRD DIVISION

[G.R. No. 227734, August 09, 2017]

**ROMEO ALBA, PETITIONER, VS. CONRADO G. ESPINOSA, ET AL.,
RESPONDENTS.**

DECISION

REYES, JR., J:

This resolves the Petition for Review on *Certiorari*^[1] filed under Rule 45 of the Rules of Court by petitioner Romeo Alba (Alba) to assail the Decision^[2] dated July 14, 2016 and Resolution^[3] dated October 17, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 144043, wherein the CA affirmed the Decision^[4] dated November 27, 2015 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 09-002460-15 that declared Alba guilty of illegal dismissal and liable for monetary claims.

The Antecedents

The case stems from two complaints for illegal dismissal and monetary claims filed against Alba Construction and its owner, Alba, by herein respondents with the Arbitration Branch of the NLRC. The first labor complaint, docketed as NLRC NCR Case No. 06-07959-14,^[5] was filed by Conrado Gabe Espinosa (Conrado), Eusebio Mojica, Jaime Ocfemia, Jr. (Jaime, Jr.), Remy Diama, Ross Florencio, Jr., Gerry U. Milo, Rodolfo Benosa, Rolando Benosa, Marcelino Macindo, Nikko Benosa, Felix Taperla, Landirico Taperla, Arturo Nebrida, Jr. and Bongbong Delumpines.^[6] The second complaint, docketed as NLRC NCR Case No. 06-07960-14,^[7] was filed by Nilo Abrencillo (Nilo), Freddie Abrencillo, Robert Manimtiin, Ronaldo Hernandez, Jr., William Janer, Ronie Tuparan, Samuel Nabas (Samuel), Eufrecino B. Jemina, Ruben Caleza, Hermel Caringal, Phamer Mandeoya, Alexander Barbacena, Roily Abrencillo, Rene Barbacena, Jr., Jolito Cabillo and Roger Nebrida.^[8]

It was alleged by the respondents that on various dates, Alba hired them as construction workers for his projects in several residential villages within Metro Manila and nearby provinces. The respondents were Alba's regular employees who were paid different wage rates that ranged from P350.00 to P500.00 a day, but were deprived of some statutorily-mandated benefits such as their overtime pay, 13th month pay, holiday pay, and service incentive leave (SIL) pay.^[9] On different dates in 2013, some of the respondents^[10] confronted Alba regarding their benefits, but such action eventually resulted in their dismissal.^[11]

In 2014, the other respondents again questioned Alba for his non-payment of their benefits. Alba still took it against them and began treating them harshly, as he would shout at them while at the job site, and would find scheming ways to extend

their working hours. The foregoing prompted these respondents to seek the assistance of media personality Raffy Tulfo (Tulfo) in his *Radyo Singko* Program. As he addressed the respondents' dilemma, Tulfo personally called Alba, who was reminded to pay the respondents their full benefits. The action, however, proved to create more harm than good for the respondents because when they reported back for work the following day, they were informed of their dismissal.^[12] Feeling aggrieved, all the respondents filed their complaints for illegal dismissal and monetary claims with the NLRC. The two complaints were later consolidated before the Labor Arbiter (LA).

For his defense, Alba argued that the respondents could not be deemed his regular employees. He claimed to be a mere taker of small-scale construction projects for house repairs and renovations. In the construction industry, he was deemed a mere *mamamakyaw*, who would pool a team of skilled and semi-skilled carpenters and masons for specific projects that usually lasted from one to two weeks. The respondents were paid daily wages ranging from P600.00 to P1,000.00, depending on their skill, and could take on projects with their own clients after Alba's projects had terminated.^[13] For succeeding projects, Alba would only take in construction workers who were still available for the duration of the new work.^[14]

As he denied any liability for the respondents' claims, Alba likewise presented certifications from clients indicating that the latter directly paid the salaries of the workers provided by Alba for the projects. He also argued that the respondents used their own tools at work, and received instructions from either the architect or foreman engaged by the project owner.^[15]

The respondents were displeased by Alba's explanations. To disprove Alba's claim that he was a mere *mamamakyaw*, they presented gate passes, issued by the villages where Alba had construction projects, which indicated that Alba was a "contractor."^[16]

Ruling of the LA

The LA dismissed the complaints *via* a Decision^[17] dated July 31, 2015.

For the LA, no employer-employee relationship existed between Alba and the respondents. The LA referred to the following circumstances affecting the parties' payment of wages and the element of control, and which negated the claim that the respondents should be deemed employees of Alba: *first*, the wages of the respondents were paid directly by the project owners; *second*, the respondents applied their own methodology and used their own tools and equipment as they discharged their work; and *third*, the respondents obtained their work instructions from architects or the foreman directly hired by the owners or clients.^[18] The supposed gate passes issued by village representatives did not qualify as substantial evidence to show that Alba was indeed a contractor.^[19]

The LA's decision ended with the following dispositive portion:

WHEREFORE, this Labor Arbitration Branch resolves to **DISMISS** the complaint for lack of merit.

SO ORDERED.^[20]

Dissatisfied, the respondents appealed to the NLRC.

Ruling of the NLRC

The respondents' appeal was partly granted by the NLRC. On November 27, 2015, the NLRC rendered its Decision^[21] that ended with the following decretal portion:

WHEREFORE, premises considered, this instant Appeal is **PARTLY GRANTED**. The assailed Decision dated 31 July 2015 is **AFFIRMED** with respect to [respondents] **CONRADO GABE ESPINOSA**, and **JAIME OCFEMIA, JR.** The same assailed Decision is **REVERSED AND SET ASIDE** with respect to the remaining [respondents]. [Alba and Alba Construction] are hereby ordered to:

1. Reinstate the remaining [respondents] and pay full backwages computed from the time of their dismissal up to the time of actual reinstatement. In case reinstatement is no longer possible due to strained relations between the parties, [Alba and Alba Construction] shall be liable for separation pay in lieu of reinstatement equivalent to one month salary for every year of service reckoned from the [respondents'] respective time of employment to the finality of this decision;
2. Pay the remaining [respondents] moral and exemplary damages in the total amount of P200,000.00;
3. Pay the remaining [respondents] their 13th month pay computed from the last three years;
4. Pay the remaining [respondents], excluding Nilo Abrencillo, [SIL] benefits computed from their respective date[s] of employment; and
5. Pay attorney's fees equivalent to 10 percent of the final judgment award.

The monetary awards are as follows:

x x x x

P 14,459,613.28

ADD: Moral and Exemplary Damages	<u>200,000.00</u>
TOTAL	1[4],659,613.28
PLUS: 10% ATTORNEY'S FEES	<u>1.465,961.33</u>

TOTAL AWARD **P16,125,574.61**

SO ORDERED.^[22]

The NLRC justified the dismissal of Jaime, Jr.'s complaint by citing sufficient evidence that Alba engaged him as an independent contractor, specifically as excavation contractor.^[23] Conrado's complaint, on the other hand, was dismissed given his admission that he was employed as a *tanod* in Barangay Almanza Dos, Las Piñas City.^[24]

As to the remaining respondents, the NLRC rejected the LA's finding on the lack of employer-employee relationship. The association between Alba and the respondents was established after Alba readily proclaimed that the respondents were part of his pool of workers. Alba had the power to determine who would remain in or be terminated from his projects. He also admitted that he paid the respondents their wages on a daily basis.

The claim that the respondents used their own methods and tools for the construction remained unsubstantiated by convincing evidence. On the contrary, it was established that Alba exercised his authority at the respondents' job sites. The four-fold test in determining the existence of an employer-employee relationship was duly satisfied, particularly: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee on the means and methods by which the work is accomplished.^[25] Their employment was deemed regular given that they had been continuously rehired for Alba's projects for several years. More importantly, they performed tasks which were necessary and indispensable to the usual business or trade of Alba.^[26]

The NLRC also addressed the evidentiary weight of the documents that were considered by the LA. By the gate passes that formed part of the respondents' evidence, it was shown that even the management of the villages that issued them recognized Alba to be the employer of the respondents. On the other hand, the certifications presented by Alba were either unsigned, defective or proven to contain false statements.^[27]

In the end, Alba was declared liable for illegal dismissal given his failure to allocate further work assignments to the respondents. It did not appear that the termination was founded on any just or valid cause, and neither was it established that Alba duly satisfied the demands of due process for an employee's termination.^[28] The illegally dismissed employees were declared entitled to reinstatement and backwages, plus moral damages, exemplary damages and attorney's fees.^[29]

As regards the other monetary claims, the NLRC ordered the payment of 13th month pay and SIL pay, in view of Alba's failure to prove that the said benefits had been paid to his employees. Nilo, however, was declared not entitled to SIL pay because he worked as a personal driver who, pursuant to Article 82 of the Labor Code, was not entitled to the benefit.^[30]

Undaunted, Alba sought relief with the CA through a Petition for *Certiorari*,^[31] as he imputed grave abuse of discretion upon the NLRC and reiterated the arguments that he presented during the proceedings with the LA.

Ruling of the CA

On July 14, 2016, the CA rendered its Decision^[32] dismissing Alba's petition. The CA reiterated the satisfaction of the four-fold test that is considered in finding employer-employee relationship. The appellate court likewise assessed the nature of work that the respondents were required to accomplish, *vis-a-vis* the type of Alba's business, which prompted the CA to also affirm the finding that the illegally dismissed respondents were regular employees.

The dispositive portion of the CA decision provides:

WHEREFORE, premises considered, the instant Petition for Certiorari is hereby DISMISSED.

SO ORDERED.^[33]

Alba moved to reconsider, but his motion was denied by the CA in its Resolution^[34] dated October 17, 2016. Hence, this petition.

The Present Petition

Alba restates the same grounds cited in his petition for *certiorari* with the CA. Specifically assailed are the finding of employer-employee relationship, and the ruling that the respondents were regular employees illegally dismissed by Alba from employment. Alba likewise disputes the order upon him to pay the monetary claims totalling P16,125,574.61.

Ruling of the Court

At the outset, the Court explains that it shall no longer delve on the correctness of the NLRC's and CA's ruling to, *first*, dismiss the complaints of Conrado and Jaime, Jr. for illegal dismissal and monetary claims, and, *second*, deny Nilo of his claim for SIL pay. The NLRC's pronouncements thereon did not appear to have been assailed by said parties, making the pronouncements on the matter already final. Moreover, the Court's disposition in this case needs to be confined to the issues that are assailed in the petition. Hence, the Court's further reference to, or use of, the term "respondents" shall be limited by these qualifications.

Upon review, the Court finds no cogent reason to disturb the ruling of the CA that affirmed the decision of the NLRC.

The respondents were regular employees of Alba

Contrary to Alba's contention, the existence of an employer-employee relationship between him and the respondents was sufficiently established. The Court reiterates its ruling in *South East International Rattan, Inc., et al. v. Coming*^[35] on the established measure for such determination, particularly:

To ascertain the existence of an employer-employee relationship[,], jurisprudence has invariably adhered to the four-fold test, to wit: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct, or the so-called "control test." In resolving the issue of whether