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THIRD DIVISION

[G.R. No. 187691, January 13, 2016]

OLYMPIA HOUSING, INC., PETITIONER, VS. ALLAN LAPASTORA AND IRENE UBALUBAO, RESPONDENTS.

D E C I S I O N

REYES, J.:

This is a Petition for Review on *Certiorari*[1] filed under Rule 45 of the Rules of Court, assailing the Decision[2] dated April 28, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 103699, which affirmed the Decision dated December 28, 2007 and Resolution[3] dated February 29, 2008 of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. 30-03-00976-00.

The instant case stemmed from a complaint for illegal dismissal, payment of backwages and other benefits, and regularization of employment filed by Allan Lapastora (Lapastora) and Irene Ubalubao (Ubalubao) against Olympic Housing, Inc. (OHI), the entity engaged in the management of the Olympia Executive Residences (OER), a condominium hotel building situated in Makati City, owned by a Philippine-registered corporation known as the Olympia Condominium Corporation (OCC). The complaint, which was docketed as NLRC NCR Case No. 30-03-00976-00 (NLRC NCR CA No. 032043-02), likewise impleaded as defendants the part owner of OHI, Felix Limcaoco (Limcaoco), and Fast Manpower and Allied Services Company, Inc. (Fast Manpower). Lapastora and Ubalubao alleged that they worked as room attendants of OHI from March 1995 and June 1997, respectively, until they were placed on floating status on February 24, 2000, through a memorandum sent by Fast Manpower.[4]

To establish employer-employee relationship with OHI, Lapastora and Ubalubao alleged that they were directly hired by the company and received salaries directly from its operations clerk, Myrna Jaylo (Jaylo). They also claimed that OHI exercised control over them as they were issued time cards, disciplinary action reports and checklists of room assignments. It was also OHI which terminated their employment after they petitioned for regularization. Prior to their dismissal, they were subjected to investigations for their alleged involvement in the theft of personal items and cash belonging to hotel guests and were summarily dismissed by OHI despite lack of evidence.[5]

For their part, OHI and Limcaoco alleged that Lapastora and Ubalubao were not employees of the company but of Fast Manpower, with which it had a contract of services, particularly, for the provision of room attendants. They claimed that Fast Manpower is an independent contractor as it (1) renders janitorial services to various establishments in Metro Manila, with 500 janitors under its employ; (2) maintains an office where janitors assemble before they are dispatched to their

assignments; (3) exercises the right to select, refuse or change personnel assigned to OHI; and (4) supervises and pays the wages of its employees.[6]

Reinforcing OHI's claims, Fast Manpower reiterated that it is a legitimate manpower agency and that it had a valid contract of services with OHI, pursuant to which Lapastora and Ubalubao were deployed as room attendants. Lapastora and Ubalubao were, however, found to have violated house rules and regulations and were reprimanded accordingly. It denied the employees' claim that they were dismissed and maintained they were only placed on floating status for lack of available work assignments.[7]

Subsequently, on August 22, 2000, a memorandum of agreement was executed, stipulating the transfer of management of the OER from OHI to HSAI-Raintree, Inc. (HSAI-Raintree). Thereafter, OHI informed the Department of Labor and Employment (DOLE) of its cessation of operations due to the said change of management and issued notices of termination to all its employees. This occurrence prompted some union officers and members to file a separate complaint for illegal dismissal and unfair labor practice against OHI, OCC and HSAI-Raintree, docketed as NLRC NCR CN 30-11-04400-00 (CA No. 032193-02), entitled *Malonie D. Ocampo, et al. v. Olympia Housing, Inc., et at. (Ocampo v. OHI)*. This complaint was, however, dismissed for lack of merit. The complainants therein appealed the said ruling to the NLRC.[8]

Meanwhile, on May 10, 2002, the Labor Arbiter (LA) rendered a Decision[9] in the instant case, holding that Lapastora and Ubalubao were regular employees of OHI and that they were illegally dismissed. The dispositive portion of the decision reads as follows:

> WHEREFORE, finding complainants to have been illegally dismissed and as regular employees of [OHI] the latter is ordered to reinstate complainants to their former position or substantially equal position without loss of seniority rights and benefits. [OHI] is further ordered to pay complainants backwages, service incentive leave pay and attorney's fees as follows:
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> 1. Backwages:
>
>   [Lapastora] - P171,616.60 and
>   [Ubalubao] - P170,573.44 from February 24, 2000 to date of decision which shall further be adjusted until their actual reinstatement.
>
> 2. P3,305.05 - ILP for Lapastora
> 3. P3,426.04 - SILP for Ubalubao
> 4. 10% of the money awards as attorney's fees.
>
> Other claims are dismissed for lack of merit.
>
> The claim against [Limcaoco] is hereby dismissed for lack of merit.
>
> SO ORDERED.[10]

In ruling for the existence of employer-employee relationship, the LA held that OHI exercised control and supervision over Lapastora and Ubalubao through its supervisor, Anamie Lat. The LA likewise noted that documentary evidence consisting of time cards, medical cards and medical examination reports all indicated OHI as employer of the said employees. Moreover, the affidavit of OHI's housekeeping coordinator, Jaylo, attested to the fact that OHI is the one responsible for the selection of employees for its housekeeping department. OHI also paid the salaries of the housekeeping staff by depositing them to their respective ATM accounts. That there is a contract of services between OHI and Fast Manpower did not rule out the existence of employer-employee relationship between the former and Lapastora and Ubalubao as it appears that the said contract was a mere ploy to circumvent the application of pertinent labor laws particularly those relating to security of tenure. The LA pointed out that the business of OHI necessarily requires the services of housekeeping aides, room boys, chambermaids, janitors and gardeners in its daily operations, which is precisely the line of work being rendered by Lapastora and Ubalubao.[11]

Both parties appealed to the NLRC. OHI asseverated that the reinstatement of Lapastora and Ubalubao was no longer possible in view of the transfer of the management of the OER to HSAI-Raintree.[12]

On December 28, 2007, the NLRC rendered a decision, dismissing the appeal for lack of merit, the dispositive portion of which reads as follows:

> WHEREFORE, premises considered, the appeals of both the respondents and the complainants are DISMISSED, and the Decision of the [LA] is hereby AFFIRMED. All other claims are dismissed for lack of merit.[13]

The NLRC held that OHI is the employer of Lapastora and Ubalubao since Fast Manpower failed to establish the fact that it is an independent contractor. Further, it ruled that the memorandum of agreement between OCC and HSAI-Raintree did not render the reinstatement of Lapastora and Ubalubao impossible since a change in the management does not automatically result in a change of personnel especially when the memorandum itself did not include a provision on that matter.[14]

Unyielding, OHI filed its Motion for Reconsideration[15] but the NLRC denied the same in a Resolution[16] dated February 29, 2008.

In the meantime, in *Ocampo v. OHI,* the NLRC rendered a Decision[17] dated November 22, 2002, upholding the validity of the cessation of OHI's operations and the consequent termination of all its employees. It stressed that the cessation of business springs from the management's prerogative to do what is necessary for the protection of its investment, notwithstanding adverse effect on the employees. The discharge of employees for economic reasons does not amount to unfair labor practice.[18] The said ruling of the NLRC was elevated on petition for *certiorari* to the CA, which dismissed the same in Resolutions dated November 28, 2003[19] and June 23, 2004.[20] The mentioned resolutions were appealed to this Court and were

docketed as G.R. No. 164160, which was, however, denied in the Resolution[21] dated July 26, 2004 for failure to comply with procedural rules and lack of reversible error on the part of the CA.

Ruling of the CA

OHI, upon receipt of the adverse decision in NLRC NCR Case No. 30-03-00976-00, filed a Petition for *Certiorari*[22] with the CA, praying that the Decision dated December 28, 2007 and Resolution dated February 29, 2008 of the NLRC be set aside. It pointed out that in the related case of *Ocampo v. OHI*, the NLRC took into consideration the supervening events which transpired after the supposed termination of Lapastora and Ubalubao, particularly OHI's closure of business on October 1, 2000. The NLRC then likewise upheld the validity of the closure of business and the consequent termination of employees in favor of OHI, holding that the measures taken by the company were proper exercises of management prerogative. OHI argued that since the said disposition of the NLRC in *Ocampo v. OHI* was affirmed by both the CA and the Supreme Court, the principle of *stare decisis* becomes applicable and the issues that had already been resolved in the said case may no longer be relitigated.[23] At any rate, OHI argued that it could not be held liable for illegal dismissal since Lapastora and Ubalubao were not its employees.[24]

On April 28, 2009, the CA rendered a Decision[25] dismissing the petition, the dispositive portion of which reads as follows:

> **WHEREFORE**, the petition for certiorari is **DISMISSED**. The NLRC's Decision dated December 28, 2007 and Resolution dated February 29, 2008 in NLRC NCR Case No. 30-03-00976-00 (NLRC NCR CANo. 032043-02) are **AFFIRMED.**
>
> **SO ORDERED**.[26]

The CA ruled that OHI's cessation of operations on October 1, 2000 is not a supervening event because it transpired long before the promulgation of the LA's Decision dated May 10, 2002 in the instant case. In the same manner, the ruling of the NLRC in *Ocampo v. OHI* does not constitute *stare decisis* to the present petition because of the apparent dissimilarities in the attendant circumstances. For instance, *Ocampo v. OHI* was founded on the union members' allegation that OHI's claim of substantial financial losses to support closure of business lacked evidence, while in the instant case, Lapastora and Ubalubao claimed illegal dismissal on account of their being placed on floating status after they were implicated in a theft case. The differences in the facts and issues in the two cases rule out the invocation of the doctrine. The CA added that the prevailing jurisprudence is that the NLRC decision upholding the validity of the closure of business and retrenchment of employees resulting therefrom will not preclude it from decreeing the illegality of an employee's dismissal. Considering that OHI failed to prove that the memorandum of agreement between OCC and HSAI-Raintree had any effect on the employment of Lapastora and Ubalubao or that there is any other valid or authorized cause for their termination from employment, the CA concluded that they were unlawfully

dismissed.[27]

Unyielding, OHI filed the instant petition, reiterating its arguments before the CA. It added that, even assuming that the facts warrant a finding of illegal dismissal, the cessation of operations of the company is a supervening event that should limit the award of backwages to Lapastora and Ubalubao until October 1, 2000 only and justify the deletion of the order of reinstatement. After all, it complied with the notice requirements of the DOLE for a valid closure of business.[28]

On April 4, 2011, Ubalubao, on her own behalf, filed a Motion to Dismiss/Withdraw Complaint and Waiver,[29] stating that she has decided to accept the financial assistance in the amount of P50,000.00 offered by OHI, in lieu of all the monetary claims she has against the company, as full and complete satisfaction of any judgment that may be subsequently rendered in her favor. She likewise informed the Court that she had willingly and knowingly executed a quitclaim and waiver agreement, releasing OHI from any liability. She thus prayed for the dismissal of the complaint she filed against OHI.

In a Resolution[30] dated January 16, 2012, the Court granted Ubalubao's motion and considered the case closed and terminated as to her part, leaving Lapastora as the lone respondent in the present petition.

Ruling of the Court

Lapastora was illegally dismissed

Indisputably, Lapastora was a regular employee of OHI. As found by the LA, he has been under the continuous employ of OHI since March 3, 1995 until he was placed on floating status in February 2000. His uninterrupted employment by OHI, lasting for more than a year, manifests the continuing need and desirability of his services, which characterize regular employment. Article 280 of the Labor Code provides as follows:

> **Art. 280. Regular and casual employment.** The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: *Provided*, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.