

THIRD DIVISION

[G.R. No. 179256, July 10, 2013]

**FIRST PHILIPPINE INDUSTRIAL CORPORATION, PETITIONER,
VS. RAQUEL M. CALIMBAS AND LUISA P. MAHILOM,
RESPONDENTS.**

D E C I S I O N

PERALTA, J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Decision^[1] dated March 6, 2007 and Resolution^[2] dated August 16, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 90527.

The factual and procedural antecedents, as found by the CA, are as follows:

Private respondent First Philippine Industrial Corporation (FPIC) is a domestic corporation primarily engaged in the transportation of petroleum products by pipeline. Upon the other hand, petitioners Raquel Calimbias and Luisa Mahilom were engaged by De Guzman Manpower Services ("DGMS") to perform secretarial and clerical jobs for FPIC. [DGMS] is engaged in the business of supplying manpower to render general clerical, building and grounds maintenance, and janitorial and utility services.

On March 29, 1993, FPIC, represented by its Senior Vice-President and Head of Administration Department, Eustaquio Generoso, Jr. entered into a Contract of Special Services with DGMS, represented by its Operations Manager, Manuel De Guzman, wherein the latter agreed to undertake some aspects of building and grounds maintenance at FPIC's premises, offices and facilities, as well as to provide clerical and other utility services as may be required from time to time by FPIC. The pertinent portions of the said Contract, which took effect on April 1, 1993, reads:

B. Terms of Payment

1. FIRST PARTY [FPIC] shall pay the SECOND PARTY [DGMS] a contract price for services rendered based on individual timesheets prepared and submitted by the SECOND PARTY and duly authenticated by the FIRST PARTY's representative. The SECOND PARTY shall bill the FIRST PARTY on a semi-monthly basis.

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C. Other Terms and Conditions

1. SECOND PARTY shall undertake FIRST PARTY's projects only if covered by an approved Project Contract (Appendix-B) which the FIRST PARTY will issue to the SECOND PARTY when the need arises. The Project Contract shall indicate the scope of work to be done, duration and the manpower required to undertake the work. The composition of the workers to be assigned to a specific undertaking shall be agreed upon between the FIRST PARTY and the SECOND PARTY;
2. SECOND PARTY shall assign to FIRST PARTY competent personnel to do what is required in accordance with the Project Contract. FIRST PARTY shall have the right to request for replacement of an assigned personnel who is observed to be non-productive or unsafe, and if confirmed by its own investigation and findings, SECOND PARTY shall replace such personnel;
3. SECOND PARTY shall provide the maintenance equipment and tools necessary to complete assigned works. Parties hereto shall agree on the equipment, tools and supplies to be provided by SECOND PARTY prior to the start of assigned work;
4. SECOND PARTY shall be liable for loss and/or damage to SECOND PARTY's property, found caused by willful act or negligence of SECOND PARTY's personnel; and
5. There shall be no employer-employee relationship between the FIRST PARTY, on the one hand, and the SECOND PARTY, and the person who the SECOND PARTY may assign to perform the services called for, on the other. The SECOND PARTY hereby acknowledges that no authority has been conferred upon it by the FIRST PARTY to hire any person in behalf of the FIRST PARTY. The persons who (sic) the SECOND PARTY which hereby warrants full and faithful compliance with the provisions of the Labor Code of the Philippines, as well as with all Presidential Decrees, Executive Orders, General Orders, Letter of Instructions, Law Rules and Regulations pertaining to the employment of labor now existing. SECOND PARTY shall assist and defend the FIRST PARTY in any suit or proceedings and shall hold the FIRST PARTY free and harmless from any claims which the SECOND PARTY's employees may lodge against the FIRST PARTY.

Pursuant to the said Contract, petitioner Raquel Calimbas and Luisa Mahilom were engaged by the DGMS to render services to FPIC. Thereat, petitioner Calimbas was assigned as a department secretary at the Technical Services Department beginning June 3, 1996, while petitioner Mahilom served as a clerk at the Money Movement Section of the Finance Division starting February 13, 1996.

On June 21, 2001, FPIC, through its Human Resources Manager, Lorna Young, informed the petitioners that their services to the company would no longer be needed by July 31, 2001 as a result of the "Pace-Setting" Study conducted by an outside consultant. Accordingly, on July 9, 2001, Priscilla de Leon, Treasurer of DGMS, formally notified both the petitioners that their respective work assignments in FPIC were no longer available to them effective July 31, 2001, citing the termination of the Project Contract with FPIC as the main reason thereof. On August 3, 2001, petitioners Calimbas and Mahilom signed quitclaims, releasing and discharging DGMS from whatever claims that they might have against it by virtue of their past employment, upon receipt of the sums of P17,343.10 and P23,459.14, respectively.

Despite having executed the said quitclaims, the petitioners still filed on August 16, 2001 a Complaint against FPIC for illegal dismissal and for the collection of monetary benefits, damages and attorney's fees, alleging that they were regular employees of FPIC after serving almost five (5) years, and that they were dismissed without cause. The Complaint was docketed as NLRC NCR Case No. 00-08-04331-01 and was raffled to Labor Arbiter Joel Lustria. After conducting three (3) mandatory conferences, the parties failed to reach any amicable settlement; thus, they were required to submit their respective position papers, together with their documentary evidence.

In their Position Paper, the petitioners posited that they were regular employees of FPIC for having served the same for almost five (5) years, rendering services which were usually necessary or desirable in the usual business or trade of FPIC. They claimed that they were illegally dismissed when they were relieved from their work assignments on July 31, 2001 without valid and serious reasons therefor. The petitioners maintained and (sic) that their real employer was FPIC, and that DGMS was merely its agent for having been engaged in prohibited labor-only contracting. The petitioners averred that DGMS did not have substantial capital or investment by way of tools, equipment, machines, work places and other materials. They claimed that they only used office equipment and materials owned by FPIC at its offices in Ortigas Center, Pasig City. DGMS never exercised control over them in all matters related to the performance of their work. In fact, DGMS never maintained any representative at the FPIC's office to supervise or oversee their work. They insisted that their direct superiors, who were managerial employees of FPIC, had control over them since the latter made sure that they always complied with the policies of FPIC.

Upon the other hand, FPIC insisted in its Position Paper/ Motion to Dismiss that the Complaint should be dismissed considering that the

Labor Arbiter had no jurisdiction over the case because there was absolutely no employer-employee relationship between it and the petitioners. FPIC claimed that the petitioners had never been its employees. FPIC insisted that their true employer was DGMS considering that the petitioners were hired by DGMS and assigned them to the Company to render services based on their Contract; that they received their wages and other benefits from DGMS; and that they executed quitclaims in favor of DGMS. Also, FPIC submitted that the termination of the petitioners' employment with their employer, DGMS, was valid and lawful since they executed quitclaims with their employer.^[3]

On December 11, 2002, the Labor Arbiter rendered a Decision^[4] holding that respondents were regular employees of petitioner, and that they were illegally dismissed when their employment was terminated without just or authorized cause. The *fallo* reads:

WHEREFORE, premises considered, let the judgment be, as it is hereby rendered, declaring complainants' dismissal illegal, and ordering the respondent, as follows:

- 1) To reinstate complainants to their former positions without loss of seniority rights and other privileges;
- 2) To pay complainants, Raquel M. Calimbas the amount of **P131,555.19**; and Luisa P. Mahilom, the amount of **P115,403.14** representing their full backwages, from the time their salaries were withheld from them up to the date of their actual reinstatement;
- 3) To pay the complainants the amount equivalent to ten (10%) percent of the total judgment award, as and for attorney's fees.

The amount received by complainants, Raquel M. Calimbas in the amount of P17,343.10, and Luisa P. Mahilom, the amount of P23,459.14 under the quitclaims that they signed must be deducted from the awards herein made.

Other claims are hereby dismissed for lack of merit.

SO ORDERED.^[5]

Aggrieved, petitioner elevated the case to the National Labor Relations Commission (NLRC).

On December 22, 2003, the NLRC dismissed petitioner's appeal and upheld the Labor Arbiter's decision.

Unsatisfied, petitioner filed a Motion for Reconsideration reiterating the arguments brought up in its Position Paper/ Motion to Dismiss.

In a Resolution^[6] dated April 30, 2004, the NLRC reversed its decision dated December 22, 2003 and disposed of as follows:

After a second look, We observe that from the above-quoted issues, the Labor Arbiter assumed that complainants were regular employees of PDIC (sic) which we find erroneous.

First, the Contract of Special Services was signed by FPIC and DGMS on March 29, 1993 which shows that complainants' employment in February and June 1996 was pursuant to said contract which belies their submission that their working paper were forwarded by FPIC after directly employing them in February and June 1996.

Second, undisputed in FPIC's statement that, capitalized at P75,000.00, DGMS serviced the manpower requirements of other clients like the Makati Commercial Estate Association and the Philippine Transmarine Carrier which reinforces its being an independent contractor.

Third, complainants' realization that DGMS and not respondent FPIC, was their employer is shown by the fact that after they were disengaged, they went to DGMS, which paid them the amount of P17,343. (sic) for Calimbas and P23,454.14 for Mahilom.

We therefore find, again after a second look, at the records, that respondent First Philippine Industrial Corporation was not the employer of complainants Calimbas and Mahilom and that it was the De Guzman Manpower Services which was later on incorporated as De Guzman Manpower Corporation which was their employer. This finding, necessarily calls for the setting aside of the decision of Labor Arbiter Lustria dated December 11, 1992 (sic) and Our decision promulgated on December 22, 2003.

WHEREFORE, as we reconsider our Decision promulgated December 22, 2003, we set aside the decision of Labor Arbiter Joel A. Lustria dated December 11, 2002 and declare respondent First Pacific (sic) Industrial Corporation free from any liability whatsoever.

SO ORDERED.^[7]

Respondents sought reconsideration of the above resolution, but the same was denied in a Resolution^[8] dated April 20, 2005, maintaining that:

We deny. We find no legal basis to deem DGMS a "labor-only contracting" entity as maintained by complainants. The fact that DGMS had only a capitalization of P75,000.00, without an investment in tools, equipment, etc., does not necessarily constitute the latter as labor-only contractor since it has shown its adequacy of resources, directly or indirectly, in the performance of completion of the job, work or service contracted out,