

## THIRD DIVISION

**[ G.R. No. 177785, September 03, 2008 ]**

**RANDY ALMEDA, EDWIN M. AUDENCIAL, NOLIE D. RAMIREZ,  
ERNESTO M. CALICAGAN AND REYNALDO M. CALICAGAN,  
PETITIONERS, VS. ASAHI GLASS PHILIPPINES, INC.,  
RESPONDENT.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, filed by petitioners Randy Almeda, Edwin Audencial, Nolie Ramirez, Ernesto Calicagan and Reynaldo Calicagan, seeking to reverse and set aside the Decision<sup>[1]</sup> dated 10 November 2006 and the Resolution<sup>[2]</sup> dated 27 April 2007 of the Court of Appeals in CA-G.R. SP No. 93291. The appellate court reversed and set aside the Decision dated 29 June 2005 and Resolution dated 24 November 2005 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 039768-04 finding respondent Asahi Glass Philippines, Inc. jointly and severally liable with San Sebastian Allied Services, Inc. (SSASI) for illegal dismissal, and ordering both respondent and SSASI to reinstate petitioners to their former positions and to pay their backwages from 2 December 2002 up to the date of their actual reinstatement. Instead, the Court of Appeals reinstated the Decision dated 18 February 2004 of the Labor Arbiter dismissing petitioners' complaint for illegal dismissal against respondent and SSASI, but ordering the payment of separation benefits to petitioners.

The present Petition arose from a complaint for illegal dismissal with claims for moral and exemplary damages and attorney's fees filed by petitioners against respondent and SSASI.

In their Complaint<sup>[3]</sup> filed before the Labor Arbiter, petitioners alleged that respondent (a domestic corporation engaged in the business of glass manufacturing) and SSASI (a labor-only contractor) entered into a service contract on 5 March 2002 whereby the latter undertook to provide the former with the necessary manpower for its operations. Pursuant to such a contract, SSASI employed petitioners Randy Almeda, Edwin Audencial, Nolie Ramirez and Ernesto Calicagan as glass cutters, and petitioner Reynaldo Calicagan as Quality Controller,<sup>[4]</sup> all assigned to work for respondent. Petitioners worked for respondent for periods ranging from three to 11 years.<sup>[5]</sup> On 1 December 2002, respondent terminated its service contract with SSASI, which in turn, terminated the employment of petitioners on the same date. Believing that SSASI was a labor-only contractor, and having continuously worked as glass cutters and quality controllers for the respondent - functions which are directly related to its main line of business as glass manufacturer - for three to 11 years, petitioners asserted that they should be considered regular employees of the respondent; and that their dismissal from employment without the benefit of due

process of law was unlawful. In support of their complaint, petitioners submitted a copy of their work schedule to show that they were under the direct control of the respondent which dictated the time and manner of performing their jobs.

Respondent, on the other hand, refuted petitioners' allegations that they were its regular employees. Instead, respondent claimed that petitioners were employees of SSASI and were merely assigned by SSASI to work for respondent to perform intermittent services pursuant to an Accreditation Agreement, dated 5 March 2002, the validity of which was never assailed by the petitioners. Respondent contested petitioners' contention that they were performing functions that were directly related to respondent's main business since petitioners were simply tasked to do mirror cutting, an activity occasionally performed upon a customer's order. Respondent likewise denied exercising control over petitioners and asserted that such was wielded by SSASI. Finally, respondent maintained that SSASI was engaged in legitimate job contracting and was licensed by the Department of Labor and Employment (DOLE) to engage in such activity as shown in its Certificate of Registration.<sup>[6]</sup> Respondent presented before the Labor Arbiter copies of the Opinion dated 18 February 2003 of DOLE Secretary Patricia Sto. Tomas authorizing respondent to contract out certain activities not necessary or desirable to the business of the company; and the Opinion dated 10 July 2003 of DOLE Bureau of Labor Relations (DOLE-BLR) Director Hans Leo Cacdac allowing respondent to contract out even services that were not directly related to its main line of business.

SSASI, for its part, claimed that it was a duly registered independent contractor as evidenced by the Certificate of Registration issued by the DOLE on 3 January 2003. SSASI averred that it was the one who hired petitioners and assigned them to work for respondent on occasions that the latter's work force could not meet the demands of its customers. Eventually, however, respondent ceased to give job orders to SSASI, constraining the latter to terminate petitioners' employment.

On 18 February 2004, the Labor Arbiter promulgated his Decision<sup>[7]</sup> finding that respondent submitted overwhelming documentary evidence to refute the bare allegations of the petitioners and accordingly dismissing the complaint for lack of merit. However, he also ordered the payment of separation benefits to petitioners. The Labor Arbiter thus decreed:

WHEREFORE, premises considered, judgment is hereby rendered declaring that the instant case should be, as it is hereby DISMISSED for lack of merit. However, the respondent San Sebastian Allied Services, Inc. is hereby ordered to pay the [herein petitioners] Edwin M. Audencial, Reynaldo Calicagan, Randy Almeda, Nolie D. Ramirez and Ernesto Calicagan their respective separation benefits in the following specified amounts:

(1)Edwin Audencial	P
	41,327.00
(2)Reynaldo Calicagan	M.15,860.00
(3)Randy V. Almeda	45,084.00
(4)Nolie Ramirez	15,028.00
(5)Ernesto Calicagan	22,542.00

All other claims are dismissed.

On appeal, the NLRC reversed the afore-quoted Decision of the Labor Arbiter, giving more evidentiary weight to petitioners' testimonies. It appeared to the NLRC that SSASI was engaged in labor-only contracting since it did not have substantial capital and investment in the form of tools, equipment and machineries. The petitioners were recruited and assigned by SSASI to respondent as glass cutters, positions which were directly related to respondent's principal business of glass manufacturing. In light of the factual circumstances of the case, the NLRC declared that petitioners were employees of respondent and not of SSASI. Hence, the NLRC ruled in its Decision<sup>[8]</sup> dated 29 June 2005:

WHEREFORE, the decision appealed from is hereby VACATED and SET ASIDE. [Herein respondent] and [SSASI] are hereby ordered to: (1) reinstate the [herein petitioners] to their former position as glass cutters; and (2) pay [petitioners'] full backwages from December 2, 2002 up to the date of their actual reinstatement. The liability of [respondent] and [SSASI] for [petitioners'] backwages is further declared to be joint and several.

Only respondent moved for the reconsideration of the foregoing NLRC Decision. Respondent prayed that the NLRC vacate its previous finding that SSASI was a *labor-only* contractor and that it was guilty of the illegal dismissal of petitioners. In a Resolution<sup>[9]</sup> dated 24 November 2005, the NLRC denied the Motion for Reconsideration of respondent for lack of compelling justification to modify, alter or reverse its earlier Decision.

This prompted respondent to elevate its case to the Court of Appeals by the filing of a Petition for *Certiorari* with Application for the Issuance of Temporary Restraining Order (TRO),<sup>[10]</sup> alleging that the NLRC abused its discretion in ignoring the established facts and legal principles fully substantiated by the documentary evidence on record and legal opinions of labor officials, and in giving more credence to the empty allegations advanced by petitioners.

To prevent the execution of the Decision dated 25 June 2005 and Resolution dated 24 November 2005 of the NLRC, respondent included in its Petition a prayer for the issuance of a TRO, which it reiterated in a motion filed on 29 August 2006. Acting on respondent's motion, the Court of Appeals issued a TRO on 11 September 2006 enjoining the NLRC from enforcing its 25 June 2005 Decision and 24 November 2005 Resolution.<sup>[11]</sup>

On 10 November 2006, the Court of Appeals rendered a Decision granting respondent's Petition for *Certiorari* and reversing the NLRC Decision dated 25 June 2005. The appellate court found merit in respondent's argument that the NLRC gravely abused its discretion in not finding that there was a legitimate job contracting between respondent and SSASI. SSASI is a legitimate job contractor as proven by its Certificate of Registration issued by the DOLE. Respondent entered into a valid service contract with SSASI, by virtue of which petitioners were assigned by SSASI to work for respondent. The service contract itself, which was duly approved by the DOLE, defined the relationship between SSASI and petitioners as one of employer-employees. It was SSASI which exercised the power of control over petitioners. Petitioners were merely allowed to work at respondent's premises for reasons of efficiency. Moreover, it was SSASI, not respondent, who terminated petitioners' services. The *fallo* of the Decision of the Court of Appeals state:

WHEREFORE, premises considered, the petition is GRANTED and [NLRC's] assailed 29 June 2005 Decision is, accordingly, REVERSED and SET ASIDE. In lieu thereof, the 18 February 2004 Decision rendered in the case by Labor Arbiter Francisco A. Robles is REINSTATED.<sup>[12]</sup>

The Court of Appeals denied petitioners' Motion for Reconsideration in a Resolution dated 27 April 2007.

Hence, petitioners come before this Court *via* the instant Petition for Review on *Certiorari* assailing the 10 November 2006 Decision and 27 April 2007 Resolution of the Court of Appeals based on the following assignment of errors:

I.

THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN REVERSING THE FINDING OF THE NLRC THAT RESPONDENT COMPANY IS ENGAGED IN LABOR-ONLY CONTRACTING.

II.

THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN REVERSING THE RULING OF THE NLRC THAT SAN SEBASTIAN ALLIED SERVICES, INC. IS MERELY RESPONDENT'S AGENT AND RESPONDENT IS PETITIONERS' REAL EMPLOYER.

III.

THE COURT OF APPEALS COMMITTED AN ERROR IN DISMISSING PETITIONERS' COMPLAINT FOR ILLEGAL DISMISSAL.

It is apparent to this Court that the judicious resolution of the Petition at bar hinges on two elemental issues: (1) whether petitioners were employees of respondent; and (2) if they were, whether they were illegally dismissed.

Respondent adamantly insists that petitioners were not its employees but those of SSASI, a legitimate job contractor duly licensed by the DOLE to undertake job contracting activities. The job performed by petitioners were not directly related to respondent's primary venture as flat glass manufacturer, for they were assigned to the mirroring line to perform glass cutting on occasions when the employees of respondent could not comply with the market's intermittent increased demand. And even if petitioners were working at respondent's premises, it was SSASI which effectively supervised the manner and method petitioners performed their jobs, except as to the result thereof.

The Court would only be able to deem petitioners as employees of respondent if it is established that SSASI was a labor-only contractor, and not a legitimate job contractor or subcontractor.

Permissible job contracting or subcontracting refers to an arrangement whereby a principal agrees to put out or farm out to 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.<sup>[13]</sup> A person is considered engaged in legitimate job contracting or subcontracting if the following conditions concur:

- (a) The contractor or subcontractor carries on a distinct and independent business and undertakes to perform the job, work or service on its own account and under its own responsibility according to its own manner and method, and free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof;
- (b) The contractor or subcontractor has substantial capital or investment; and
- (c) The agreement between the principal and contractor or subcontractor assures the contractual employees entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social and welfare benefits.<sup>[14]</sup>

On the other hand, labor-only contracting, a prohibited act, is an arrangement in which the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal.<sup>[15]</sup> In labor-only contracting, the following elements are present:

- (a) The contractor or subcontractor does not have substantial capital or investment to actually perform the job, work or service under its own account and responsibility;
- (b) 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.<sup>[16]</sup>

In labor-only contracting, the statutes create an employer-employee relationship for a comprehensive purpose: to prevent circumvention of labor laws. The contractor is considered as merely the agent of the principal employer and the latter is responsible to the employees of the labor-only contractor as if such employees are directly employed by the principal employer.<sup>[17]</sup> Therefore, if SSASI was a labor-only contractor, then respondent shall be considered as the employer of petitioners who must bear the liability for the dismissal of the latter, if any.

An important element of legitimate job contracting is that the contractor has substantial capital or investment, which respondent failed to prove. There is a dearth of evidence to prove that SSASI possessed substantial capital or investment when respondent began contractual relations with it more than a decade before 2003. Respondent's bare allegations, without supporting proof that SSASI had substantial capital or investment, do not sway this Court. The Court did not find a single financial statement or record to attest to the economic status and financial capacity of SSASI to venture into and sustain its own business independent from petitioner.

Furthermore, the Court is unconvinced by respondent's argument that petitioners were performing jobs that were not directly related to respondent's main line of