

NINETEENTH DIVISION

[C.A.-G.R. SP NO. 08107, January 30, 2015]

MANUEL BELO, JR., PETITIONER, VS. SPS. ROLAND AND AURORA SALEM/ JOVITO SALEM, PRIVATE RESPONDENTS,

**NATIONAL LABOR RELATIONS COMMISSION, 7TH DIVISION,
CEBU CITY (FORMERLY 4TH DIVISION), PUBLIC RESPONDENT.**

D E C I S I O N

LOPEZ, J.:

Before Us is a Special Civil Action for *Certiorari*^[1] under Rule 65 of the Rules of Court with Prayer for the Issuance of Preliminary Injunction to Prevent Immediate Execution of the *Decision*^[2] dated March 27, 2013, of public respondent National Labor Relations Commission (NLRC), Seventh Division (formerly Fourth Division), Cebu City which affirmed the *Decision*^[3] of the Labor Arbiter Regional Arbitration Branch VI dated November 29, 2012 dismissing the case for lack of merit, and the subsequent *Resolution*^[4] dated July 31, 2013 denying petitioner's Motion for Reconsideration.

The Facts

Petitioner, Manuel Belo, Jr., was hired as a caretaker for the fishpond owned by private respondents Spouses Roland and Aurora Salem situated in Brgy. Bucana, Ilog, Negros Occidental, with an area of five (5) hectares, more or less, which pond was being leased by the private respondents-spouses, who were staying in Canada.

On April 2006, private respondents-spouses were able to acquire a certain fishpond with an area of eleven (11) hectares, also located in Brgy. Bucana, Ilog, Negros Occidental, for which petitioner's services as caretaker were retained. As a caretaker, it is petitioner's responsibility to clean the ponds, supply sea water to each pond, supply good quality fry to each pond, handle them properly until they are ready for harvest for a period approximately three (3) months, when they will be due for harvest and sale to the market. After the said harvest, petitioner will repeat the same process in preparation for the next batch of fish for and out from the pond, to make sure that everything will be set.^[5]

According to petitioner, he was being paid on a commission basis in the sum equivalent to twenty (20) percent of the net proceeds after every harvest, which on average amounts to fifteen thousand (P15,000.00) to thirty thousand (P30,000.00), once every three months.^[6] Petitioner claims that aside from the said share, he was not given any other monetary benefits by the said respondents spouses, like 13th month pays, service incentive leave pays, holiday pays, rest day pays, SSS,

Philhealth and Pag-ibig.^[7]

On April 29, 2012, petitioner was advised by private respondent Roland Salem through a phone call from Canada that after getting his share from the last harvest from the pond, his services as caretaker will no longer be retained by them. Petitioner alleges that he recalls that the last time he went inside the premises of the eleven (11) hectare fishpond of the respondents was sometime in April 2012 when he was confronted by respondent Jovito Salem (the present manager/caretaker of the fishpond) with the latter's bolo on his waist and challenged him for a fight until death, leading petitioner to fear for his life and avoid going to the premises of the pond again.^[8]

On May 2012, petitioner filed a case for illegal dismissal with backwages or separation pay and damages against Rolando Salem (Owner) and Jovito Salem (Manager).

Respondents averred that sometime in the year 2000, petitioner's father, Manuel Belo, Sr., immediate relative of the respondent Roland Salem, made a business proposal for the latter to finance the renting of fishpond of their aunt, Consolacion Busaing, which fishpond is situated at Bocana, Ilog, Negros Occidental. The contractual arrangement was that respondent Roland Salem would take care of the financial aspect while Manuel Belo, Sr. would manage and run the fishpond business, the latter will be entitled to twenty (20) percent of the income for every harvest after deducting operating expenses; in short, it was a joint venture business. Respondent Roland Salem agreed to the foregoing arrangement and according to the agreed plan, respondent rented the fishpond for five (5) years.^[9]

Further respondents alleged that after two years of business operation, respondent was informed by his father, Jovito Salem, that Manuel Belo, Sr. was no longer personally attending the said fishpond business but delegated it to his son, petitioner Manuel Belo, Jr. Roland Salem contacted Manuel Belo, Sr. and the latter gave assurance that he would still coordinate with the petitioner. With hesitation, Roland Salem agreed until the said five year lease contract ended.^[10]

Two years after, Manuel Belo, Sr. and petitioner Manuel Belo, Jr. contacted respondent Roland Salem in Canada informing the latter that a certain fishpond consisting of ten (10) hectares also located at Bocana, Ilog, Negros Occidental, is offered for sale. They tried hard to convince respondent Roland Salem to acquire the fishpond for them to run the business in the same manner as previously they have done subject to the same contractual arrangement of sharing in the proceeds of the harvest after deducting operational expenses. Initially, respondent Roland Salem was not interested to purchase said fishpond, but, he was later on persuaded when petitioner and his father relentlessly pleaded that the business joint venture will tremendously help them. And in order to further convince respondent Roland Salem, petitioner covenanted that all income derived from the sale of shrimp would be turned over to respondent Roland Salem which condition petitioner did not comply.^[11]

Further, respondent alleged that petitioner ran the fishpond operation by himself, and the funds were entrusted to him for the purchase of the "semilla," fertilizers, and all materials pertaining to the fish farm. Petitioner hired workers and fixed their

pay; that he was the one who contracted the buyers during the harvest; that respondent Roland Salem never questioned the price of the harvested fish as agreed upon by the petitioner and the buyers.^[12] In addition, respondents alleged that the business venture started well but as years passed by, the harvest gradually deteriorated; that when asked by respondent why the business is not doing well, petitioner reasoned that birds were eating the fries in the fishpond but the truth is that petitioner did not spend enough time on the fishpond business because he let the fish die which prompted outside persons to gather and sell the dead fish.^[13]

Respondent also alleged that being based in Canada, he did not know that complainant was gallivanting with women and wine; that to make matters worse, petitioner indulged in compulsive gambling; that petitioner went to Cebu bringing money allocated for food of the workers during the house construction; that for one week, petitioner stayed there and gambled in cockfighting leaving the workers, without food provision, and forcing them to eat "bagungon" (telescope shell) for their daily sustenance.^[14] That, towards the middle of April 2012, petitioner called respondent Roland Salem in Canada that effective July 2012, right after the forthcoming harvest, he will no longer continue to handle the fishpond business venture because respondent Jovito Salem was speaking ill against him and bad mouthing him. Accordingly, respondent Roland Salem suggested to petitioner to think it over, but, after two weeks, petitioner called up again and informed respondent Roland Salem that he has made up his mind not to continue handling the said fishpond business venture.^[15]

The Labor Arbiter issued a *Decision*^[16] dated November 29, 2012, the dispositive portion of which states:

WHEREFORE, premises considered, judgment is hereby rendered
DISMISSING the instant case for lack of merit.

SO ORDERED.

The Labor Arbiter ratiocinated that petitioner is an industrial partner in the business venture of fishpond operations, thus, no employer-employee relationship existed between him and respondents, the latter being the capitalist in the partnership;^[17] that the receipt of a 20% of the net profits every harvest constitutes a prima facie evidence that the recipient is a partner in the business; that in the first place, petitioner had a voice in the management of the affairs and operations of the fishpond including selection of people who would work in the development of the pond and construction of structures thereof.^[18]

On appeal, the NRLC issued the assailed *Decision*^[19] dated March 27, 2013, affirming the Decision of the Labor Arbiter as follows:

WHEREFORE, premises considered, the decision of Labor Arbiter Henry B. Tañoso, dated 29 November 2012, is hereby AFFIRMED in its entirety.

SO ORDERED.

The NLRC held that upon examination of the financial reports/ summary of expenses, the expenses were deducted from the gross income first before the 20%

share of petitioner was taken; that petitioner's share in the profit was not considered as an expense as the same was consistently not indicated as such, in all the financial reports/summary of expenses; that petitioner's share was not considered as salary, otherwise the same would have been indicated as "suhol" (salary) as caretaker under "gasto" (expenses).^[20]

The NLRC also ruled that the fishpond business was a joint venture between him and petitioner wherein respondent Roland would provide the capital and the fishpond while petitioner would provide his expertise and labor and under which they divide the profits among themselves; that petitioner has failed to mention at least one instance in which respondent Roland intervened on how he should exercise his functions as a caretaker.^[21]

Finally, the NLRC rejected petitioner's contention that there was no basis for the Labor Arbiter's ruling that there was a partnership because respondent Roland was not able to present a written document evidencing their alleged partnership contrary to the provisions of the New Civil Code on Partnership (Article 1771^[22] and 1772^[23]). It held that petitioner failed to present evidence that the fishpond was in fact contributed by Roland to the partnership and that the latter merely allowed the use of his fishpond in the joint venture but has not ceded his ownership to it; hence Article 1771 does not apply. On the other hand, the NLRC ruled that the requirement to put the partnership in writing and be registered in the Securities and Exchange Commission, if the capital is three thousand pesos or more, is not a requirement for its validity but is mainly for the purpose of protecting the interests of third persons and not those of the partners, who are bound by the terms and conditions of their partnership agreement regardless of whether the said terms and conditions are reduced into writing; that a partnership is a consensual contract, perfected by the mere consent of the parties.^[24]

Petitioner's Motion for Reconsideration dated June 10, 2013 was denied by the public respondent in a *Resolution*^[25] dated July 31, 2013. Hence, this petition.

The petitioner raises the following issues:^[26]

I.

WHETHER THE HONORABLE PUBLIC RESPONDENT GRAVELY AND PATENTLY ERRED IN AFFIRMING THE MARCH 7, 2013 DECISION OF THE HONORABLE LABOR ARBITER FINDING THAT NO EMPLOYER-EMPLOYEE RELATIONSHIP EXISTED BETWEEN PETITIONER AND PRIVATE RESPONDENTS AND PETITIONER IS NOT ENTITLED TO HIS MONETARY CLAIMS; AND

II.

WHETHER THE HONORABLE COMMISSION COMMITTED A SERIOUS ERROR IN HOLDING THAT A PARTNERSHIP EXISTED BETWEEN THE PARTIES AND NOT AN EMPLOYER-EMPLOYEE RELATIONSHIP BECAUSE THE HONORABLE COMMISSION BELIEVES THAT THE PARTIES INTENDED TO CONTRIBUTE MONEY AND INDUSTRY FOR THE PURPOSE OF DIVIDING THE PROFITS BETWEEN THEM.

Petitioner contends that the NLRC erred in ruling that no employer-employee relationship existed on the basis of test of control in the four-fold test of an employer-employee relationship, because private respondents could not have the means and methods by which herein petitioner exercises his function as caretaker.
[27]

Petitioner also argues that in certain cases, the control test is not sufficient and that the better approach is to adopt a two-tiered test which takes into consideration the totality of circumstances surrounding the nature of the relationship between the parties; that the proper standard of economic dependence is whether the worker is dependent on the alleged employer for his continued employment in that line of business; that under the broader economic reality test, petitioner can likewise be said to be an employee of private respondents for, among others, he had served the private respondents for twelve (12) years before the termination of his services via phone call only; that there is a noticeable economic dependence of petitioner on private respondents for his continued employment in the latter's line of business, which in this case, is an eleven (11) hectare fishpond.
[28]

Petitioner further contends that the act of private respondents of terminating petitioner's employment, clearly and indubitably shows that they have control over him, which also involves the petitioner's hiring by private respondents, giving him a 20% commission for every harvest which serves as the compensation for the services rendered and their power to dismiss, which power was practised by the respondents when they called up herein petitioner that his services were no longer needed.
[29]

The Court's Ruling.

The petition is without merit.

The primary issue to be resolved in the present case is whether or not petitioner is an employee of private respondents.

The issue of whether or not an employer-employee relationship exists in a given case is essentially a question of fact.
[30]

No employer-employee relationship

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." Of these four, the last one is the most important. The so-called "control test" is commonly regarded as the most crucial and determinative indicator of the presence or absence of an employer-employee relationship. Under the control test, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end achieved, but also the manner and means to be used in reaching that end.
[31]

Applying the foregoing test, We find that there is no employer-employee relationship between petitioner and private respondent for the following reasons: