

## **SECOND DIVISION**

**[ CA-G.R. SP No. 127127, March 27, 2015 ]**

### **AMMARSONS CONSTRUCTION SERVICES, CO. AND/OR AMADO SEVILLA, PETITIONERS, VS. EMMANUEL M. MADRIAGA AND NATIONAL LABOR RELATIONS COMMISSION, FOURTH DIVISION, RESPONDENTS.**

#### **D E C I S I O N**

**CRUZ, R.A., J.:**

#### **THE CASE**

This is a Special Civil Action for Certiorari under Rule 65 of the Rules of Court which seeks to reverse and set aside the Decision of the National Labor Relations Commission (Fourth Division) promulgated on July 19, 2012<sup>[1]</sup> and its Resolution promulgated on September 21, 2012<sup>[2]</sup> in NLRC LAC No. 03-000922-12/NLRC NCR Case No. 05-07989-11.

In the July 19, 2012 Decision, the NLRC dismissed the appeal of Ammarsons Construction Services, Co. and/or Amado Sevilla. The NLRC affirmed the Decision dated November 8, 2011<sup>[3]</sup> of the labor arbiter which held that Emmanuel M. Madriaga was illegally dismissed by Ammarsons Construction. In the September 21, 2012 Resolution, the NLRC denied the Motion for Reconsideration filed by Ammarsons Construction.

#### **THE ANTECEDENTS**

Ammarsons Construction Services, Co. (Ammarsons Construction) is a domestic corporation duly organized and existing under Philippine laws and is engaged in providing construction services to its clients. Amado Sevilla is the owner/president of Ammarsons Construction.

Emmanuel M. Madriaga (Madriaga) was hired as a carpenter-mason by Ammarsons Construction in February 2009. Madriaga narrated that he worked continuously with Ammarsons Construction for more than two (2) years from February 2009 until he was unceremoniously dismissed from work on May 20, 2011.<sup>[4]</sup> Hence, he filed a complaint for illegal dismissal<sup>[5]</sup> against Ammarsons Construction on May 20, 2011.

In his position paper filed before the labor arbiter, Complainant Madriaga claimed that from February 2009 until his alleged illegal dismissal on May 20, 2011, he was assigned to the following construction projects undertaken by the company:

February 2009            Vicente Trinidad High School  
to November 2009    Phase V, Punturin, Valenzuela City

November 2009 to August 2010	Dumalay Residence Langka, Meycauayan City, Bulacan
August 2010 to March 2011	Andy & Vita Printing T.S. Cruz, Baesa, Quezon City
March 2011 to April 2011	Casa Nova Ammarsons Motorpool Casa Nova Drive, Culiat, Quezon City
April 2011 to May 2011	Ammarsons Main Office Litex Rd. corner Farmers St. Payatas, Quezon City <sup>[6]</sup>

Madriaga alleged that for the entire duration of his employment with Ammarsons Construction, the latter failed to comply with labor standards set by law. Specifying his money claims, Madriaga narrated that during his employment with Ammarsons Construction, the company paid him only P300.00 per day, which was below the required minimum wage. His salary was increased to P330.00 per day for a short period of time when he was assigned as a foreman in one project, which was subsequently ordered stopped by the local government unit for failure to secure the necessary building permit.<sup>[7]</sup>

Aside from the mandatory minimum wage, Ammarsons Construction also failed to pay, among others, holiday pay, rest day premium, 13<sup>th</sup> month pay, night shift differential, and service incentive leave. Madriaga and his co-workers were also not paid overtime pay.<sup>[8]</sup>

The complainant also related that Ammarsons Construction did not provide individual payslips to its employees. Madriaga and his fellow workers were just asked to sign a list of their names with their corresponding daily rate and net take-home pay upon receipt of their earnings. Copies of the said lists were submitted by Madriaga as annexes to his position paper.<sup>[9]</sup>

Madriaga and his fellow employees demanded that the company comply with the requirements under existing labor laws. Their employer made promises to comply, but this did not materialize. Thus, they discussed among themselves the possibility of filing a complaint against the corporation with the Department of Labor and Employment. However, Ammarsons Construction learned of the impending plan and on May 19, 2011, when Madriaga and his co-worker, Arnel Alvaro reported for work, they were informed by their foreman, Noel Sandoval, that their services were no longer needed. The two had already logged in for duty on that day, but their names were crossed out by the foreman from the Daily Time Record.<sup>[10]</sup>

Complainant Madriaga argued that he was a regular employee of Ammarsons Construction. He alleged that at the time he was hired, he was not asked to sign any employment contract; hence, his continuous service with the construction company for a period of more than six (6) years accorded him the status of a regular employee by operation of law. He added that all throughout his employment with Ammarsons Construction, he was assigned in several projects as carpenter-mason,

performing tasks which are vital and indispensable to the usual business or trade of his employer, a construction company.<sup>[11]</sup>

It was the position of Madriaga that because he has attained regular status, his dismissal from the service was illegal, capricious and whimsical. He pointed out that there was no compliance with substantive and procedural due process when his termination was carried out. Madriaga surmised that his dismissal came about because Ammarsons Construction learned of his intention to file a formal complaint against the company for failure to comply with labor standards. He underscored that the reason for his termination was not one of the just causes under the law. He characterized his separation from the service as attended with bad faith and as a form of harassment to discourage him and other employees from asserting their rights before the proper authorities.<sup>[12]</sup>

Ammarsons Construction, in reply to Madriaga's complaint, maintained that contrary to the latter's claim, Madriaga was not a regular employee, but a project employee. The company countered that it hired Madriaga, in May 2009, as a project employee for an undertaking (*i.e.*, construction of building at Vicente Trinidad High School in Punturin, Valenzuela City) that was completed in September 2009. After the completion of said construction project, Madriaga purportedly left the company without any issue.<sup>[13]</sup>

The construction company stated that there was no truth to Madriaga's claim that he continued working for Ammarsons Construction after the Punturin project was completed in September 2009. The company denied that the Bulacan (construction at Dumalay residence) and Quezon City (construction at Andy & Vita Printing) projects, at which Madriaga successively worked, from November 2009 to March 2011, were business ventures of Ammarsons Construction. The company stressed that the work which Madriaga performed for the Bulacan and Quezon City projects were not done under the employ of Ammarsons Construction, but under the respective owners of the Dumalay residence and Andy & Vita Printing. According to the company, during the time that Madriaga worked on these two projects, he could not be considered as an employee of Ammarsons Construction.<sup>[14]</sup>

The company also added that granting, for the sake of argument, that the complainant did acquire the status of a regular employee, there would still be no illegal dismissal because Madriaga failed to show that Noel Sandoval, the one who prevented the complainant from going to work, had the authority to hire or fire anyone for and on behalf of Ammarsons Construction.<sup>[15]</sup>

On November 8, 2011, the labor arbiter released his Decision<sup>[16]</sup> declaring the dismissal of the complainant as illegal.<sup>[17]</sup> The *fallo* of the labor arbiter's Decision is quoted below:

**WHEREFORE,** premises considered, judgment is hereby rendered declaring the dismissal of the complainant as illegal. As such, respondents Ammarsons Construction Services Company and/or Amado Sevilla are hereby ordered to pay complainant the following to wit:

1. The sum of P65,013.36 as back wages;

2. The sum of P31,512.00 as separation pay;
3. The sum of P48,103.68 as salary differentials;
4. The sum of P4,501.95 as service incentive leave;
5. The sum of P23,410.14 as 13<sup>th</sup> month pay; and
6. The sum equivalent to ten percent (10%) of the judgment award as attorney's fees.

All other claims are ordered dismissed for lack of merit.

**SO ORDERED.**<sup>[18]</sup>

Before delving on the issue of illegal dismissal, the labor arbiter determined the status of employment of the complainant,<sup>[19]</sup> viz:

xxx the documentary evidence adduced by the complainant showing that the latter continuously worked for the respondents until he was dismissed in May 2011. The Sinumpaang Salaysay of Messrs. Arnel Alvaro, Rolando Princillo and Danny Hernandez (Annexes "M" to "O," complainant's position paper) together with the daily time records and payrolls adduced in evidence by the complainant (Annexes "A" to "I," ibid) as well as respondents' request for barangay clearance for its employees including the complainant (Annex "J," ibid) are substantial enough to convince us that complainant was indeed engaged by the respondents on a regular basis and/or complainant has acquired the status of a regular employee by operation of law.

In fact, respondents failed to present any proof as to complainant's engagement as a project employee. No contract of project employment was ever presented by the respondents indicating therein the specific project for which complainant was hired, the completion or termination of which has been determined at the time of the engagement of the complainant.

xxx xxx xxx

In the instant case, the record is bereft of proof that the respondents' engagement [of the complainant] as project employee has been predetermined, as required by law. There is simply no evidence that complainant was informed that he was to be assigned to a "specific project or undertaking" when he was hired by the respondent company. As above-stated, no employment contract for the specific project signed by the complainant was ever presented much less was the termination of the complainant on account of alleged project completion was reported to the Department of Labor and Employment. The failure of respondents to file such termination report is an indication that complainant was not a project employee but a regular employee.<sup>[20]</sup>

After finding that Madriaga was a regular employee who enjoyed security of tenure, the labor arbiter continued that Madriaga could only be dismissed for a just or authorized cause.<sup>[21]</sup> Then, the labor arbiter held that Ammarsons Construction failed to prove that complainant's dismissal was for a just or authorized cause.<sup>[22]</sup>

Dissatisfied by the labor arbiter's ruling, Ammarsons Construction filed an appeal with the NLRC. The NLRC, in the assailed Decision of July 19, 2012,<sup>[23]</sup> affirmed the appealed Decision of the labor arbiter.<sup>[24]</sup> Ammarsons Construction filed a Motion for Reconsideration. Finding no "cogent reason to disturb, modify, alter, much less reverse" their Decision,<sup>[25]</sup> the NLRC denied the Motion through the Resolution dated September 21, 2012.<sup>[26]</sup>

Hence, this Petition for Certiorari.

## **THE ISSUES**

Ammarsons Construction Services, Co., the respondent below, and now, Our petitioner, submits the following issues for Our resolution:

### **I**

WHETHER OR NOT PRIVATE RESPONDENT WAS TERMINATED ILLEGALLY BY THE PETITIONER;

### **II**

WHETHER OR NOT PRIVATE RESPONDENT IS ENTITLED TO BACK WAGES AMOUNTING TO P65,013.36, SEPARATION PAY (P31,512.00), SALARY DIFFERENTIALS (P48,103.68xxvii), SERVICE INCENTIVE LEAVE (P4,501.95), 13TH MONTH PAY (P23,410.14) AND ATTORNEY'S FEE[S].

<sup>[28]</sup>

Ammarsons Construction posits that Our private respondent, Emmanuel M. Madriaga, was not terminated—legally or illegally. According to the company, Madriaga's claim of illegal dismissal, which he anchored on being prevented by Noel Sandoval from working is "bereft of truth" because "Sandoval himself stated that he was not authorized to hire, much more fire employees of Ammarsons." Petitioner Ammarsons Construction describes the complainant's allegation of dismissal as "an erroneous conclusion, a mere conjecture, a product of speculation" which Madriaga did not even seek to clarify with Amado Sevilla, the owner/president of Ammarsons Construction.<sup>[29]</sup>

The petitioner likewise asserts that the complainant was not an employee of Ammarsons Construction from September 2009 to April 2011. In support of this contention, the company insists that Madriaga was under the employ of the owners of the construction projects he was working in, specifically Margarita Dumalay (for the Dumalay residence in Bulacan), and Andy and Vita Acosta (for the construction at Andy & Vita Printing); and it was, therefore, "grave abuse of discretion for the NLRC to construe and provide an interpretation different from the otherwise clear admissions/declarations" of Dumalay and the Spouses Acosta. Ammarsons Construction adds that the Daily Time Record (DTRs) and payroll sheets presented