

## **SPECIAL ELEVENTH DIVISION**

**[ CA-G.R. SP No. 128750, November 20, 2014 ]**

**ANDRES T. TENERIFE, JR., PETITIONER, VS. NATIONAL LABOR  
RELATIONS COMMISSION (NLRC), ACE VHONCE FURNITURE /  
PETER CHUA, RESPONDENTS.**

### **DECISION**

**PAREDES, J.:[\*]**

### **THE CASE**

THIS PETITION<sup>[1]</sup> FOR CERTIORARI, filed under Rule 65 of the Rules of Court, assails: (1) the Decision<sup>[2]</sup> dated September 26, 2012 of the National Labor Relations Commission (NLRC), in NLRC LAC No. 06-001866-12 (NCR Case No. 05-07146-11) which affirmed the Decision<sup>[3]</sup> of the Labor Arbiter dated April 30, 2012 dismissing petitioner's Complaint; and (2) the Resolution<sup>[4]</sup> dated November 29, 2012, which denied the motion for reconsideration.

### **THE ANTECEDENTS**

Petitioner Andres T. Tenerife, Jr. (petitioner) filed a Complaint<sup>[5]</sup> for illegal dismissal with money claims, moral damages, exemplary damages and attorney's fees against private respondents Ace Vhonce Furniture & Upholstery Center<sup>[6]</sup> (Ace Vhonce), a sole proprietorship registered with the Department of Trade and Industry on May 28, 2009 and/or Peter Chua (Chua; collectively referred to as private respondents).

In his Position Paper<sup>[7]</sup> and *Sinumpaang Salaysay*<sup>[8]</sup>, petitioner alleged that he was employed as an upholsterer of private respondent Ace Vhonce, owned and managed by Chua. He started working for private respondents in 1983 when the company was still under the management of Chua's father. It was when the father suffered a stroke that Chua took over the business. Petitioner used to be under the supervision of one Gerry Rada and, later on, under the supervision of his sister-in-law, Lilibeth Tenerife (Lilibeth). Being an upholsterer, he would work at the company premises and his work would be subjected to inspection and approval by his supervisors. According to petitioner, he would work from 8 AM until 5 PM or beyond, depending on the demand of private respondents' clients. For work rendered, petitioner was paid P280 a day.

On March 20, 2011, petitioner was suspended after absenting himself from work for one week due to an injury he sustained from an accident; he informed Lilibeth about his absence. A month after his suspension, he was not given work and was only told to wait for a call from private respondents. Petitioner would frequently visit company premises and saw that private respondents still had customers and the other employees were working. When he asked whether he would be allowed to go back

to work, he was only told to wait; hence, the complaint for illegal dismissal.

On the other hand, private respondents alleged in their Position Paper<sup>[9]</sup> that Ace Vhonce is engaged in the manufacture and fabrication of household and office furniture. To have an efficient and faster production of furniture, Chua conceived and devised a sub-contracting arrangement for the manufacture and production of furniture to old acquaintances also engaged in the trade and who reside in Valenzuela City. These sub-contractors assume responsibility for the production or manufacture of household and office furniture. They then turn-over the manufactured furnitures to private respondents. Among these sub-contractors are: (1) Lilibeth Tenerife, (2) Rolando Pampula, (3) Ramil Sayat and (4) Gil dela Rosa.

According to private respondents, petitioner is the brother-in-law of Lilibeth, one of the sub-contractors, and hired by the latter in October 2009. He worked for Lilibeth in the making of furniture on a piece rate basis. In the first week of April 2011, Lilibeth noticed that petitioner had not been reporting to her and his work has been neglected. Thus, on April 16, 2011, Lilibeth wrote petitioner a letter<sup>[10]</sup> which reads:

*"Ikaw ay aking sinulatan upang alamin kung bakit di ka pumapasok bilang helper na alam mo na kailangan kita bilang ako ay contractor ng pagawaan ng furniture.*

*Sa iyong pagtanggap nitong sulat ko, ikaw ay binibigyan ko ng 24 oras upang magreport sa akin, at magbigay ka sakin ng magandang dahilan kung bakit di ka na pumapasok.*

*Ang di mo pagtupad sa aking sulat ay ibibilang kita na aking helper na isang AWOL."*

Petitioner refused to acknowledge receipt of the afore-quoted letter, a fact confirmed by petitioner's brother, husband of Lilibeth.

Private respondents claim that it is a matter of practice that the sub-contractors report to its office from time to time to report on the development regarding the contracted-for furniture or products; workers of the sub-contractors, including the sub-contractors themselves, linger at the private respondents' office for transactions involving their respective businesses. It is the sub-contractors who prescribe their own rules in the conduct of their business as well as supervise and control all matters involving their transactions with private respondents.

In the Decision<sup>[11]</sup> dated April 30, 2012, the Labor Arbiter found that there was no employer-employee relationship between petitioner and private respondents and, accordingly, dismissed the complaint for lack of jurisdiction<sup>[12]</sup>.

Aggrieved, petitioner appealed to the NLRC. On September 26, 2012, the NLRC issued the assailed Decision<sup>[13]</sup> affirming the decision of the Labor Arbiter, thus:

WHEREFORE, the appeal filed by the complainant is hereby DISMISSED for lack of merit. Accordingly, the Decision dated 30 April 2012 of Labor

Arbiter Arden S. Anni is AFFIRMED.

SO ORDERED<sup>[14]</sup>.

Undaunted, petitioner moved<sup>[15]</sup> for reconsideration, but his motion was denied in the Resolution<sup>16</sup> dated November 29, 2012; hence, this Petition.

### **THE ISSUES**

Petitioners raise the following issues for the allowance of the petition:

#### **I**

WHETHER THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN HOLDING THAT THERE IS NO EMPLOYER-EMPLOYEE RELATIONSHIP IN THE CASE AT BAR.

#### **II**

WHETHER THE PETITIONER WAS ILLEGALLY DISMISSED AND ENTITLED TO HIS MONEY CLAIMS<sup>[17]</sup>.

### **THE COURT'S RULING**

#### ***The petition is meritorious.***

As a rule, the Court refrains from reviewing factual assessments of lower courts and agencies exercising adjudicative functions, such as the NLRC. Occasionally, however, the Court is constrained to wade into factual matters when there is insufficient or insubstantial evidence on record to support those factual findings; or when too much is concluded, inferred or deduced from the bare or incomplete facts appearing on record. In the present case, We find the need to review the records to ascertain the facts<sup>[18]</sup>.

The NLRC dismissed<sup>[19]</sup> the complaint for lack of merit on the ground that petitioner failed to establish the existence of an employer-employee relationship between him and private respondents. However, glaringly lacking in the assailed decision is a discussion and analysis of the defense raised by private respondents that petitioner is not its employee but the worker, on a piece rate basis, of a subcontractor, Lilibeth. ***On this score, We find that the NLRC gravely abused its discretion tantamount to an excess or lack of jurisdiction; hence, We discuss.***

The one who alleges a fact has the burden of proving it and the proof should be clear, positive and convincing<sup>[20]</sup>.

Private respondents claim that it is engaged in the business of manufacturing, fabricating and producing household and office furniture; that the production of furniture was sub-contracted to individuals/old acquaintances; and that petitioner is the worker of its sub-contractor, Lilibeth. To prove its allegations, private respondents presented the affidavit<sup>[21]</sup> of Lilibeth wherein she claimed to be one of

the sub-contractors of Ace Vhonce and the true employer of petitioner; and a Sub[-]contractorship Agreement<sup>[22]</sup> between Ace Vhonce and Lilibeth.

The affidavit of Lilibeth cannot be given due evidentiary weight. In general, affidavits, being self-serving, must be received with caution. An affidavit is only *prima facie* evidence and should be received with caution because of its weak probative value. It is not a complete reproduction of what the declarant had in mind. Unless the affiant is placed on the witness stand to testify thereon, an affidavit is considered hearsay<sup>[23]</sup>.

While there is present in the relationship of Lilibeth and private respondents some factors suggestive of an independent contractor relationship (*i.e.*, Lilibeth chose who to hire; Lilibeth paid the wages of the workers who produced furniture; Lilibeth supervises the production), other numerous factors are present which would indicate a labor-only contracting arrangement between Lilibeth and private respondents<sup>[24]</sup>.

An independent contractor is one who undertakes "job contracting," *i.e.*, a person who: (a) carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and (b) has substantial capital or investment in the form of tools, equipments, machineries, work premises and other materials which are necessary in the conduct of the business<sup>[25]</sup>.

The existence of an independent and permissible contractor relationship is generally established by the following criteria: whether or not the contractor is carrying on an independent business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the performance of a specified piece of work; the control and supervision of the work to another; the employer's power with respect to the hiring, firing and payment of the contractor's workers; the control of the premises; the duty to supply the premises, tools, appliances, materials, and labor; and the mode, manner and terms of payment<sup>[26]</sup>. These factors are markedly absent in the case at hand.

Consider, that: First, petitioner performed activities which were directly related to the main business of Ace Vhonce. His functions were not only directly related, but were, in fact, very vital to private respondents' business<sup>[27]</sup> of manufacturing, fabricating, producing and, as suggested by its designation, upholstering household and office furniture.

Second, private respondents did not dispute the allegation that petitioner worked inside its premises and used the materials provided by the former. Their silence on this matter is deemed an admission that petitioner's place of work is inside the company premises.

Third, the Sub[-]contractorship Agreement<sup>[28]</sup> dated May 2006, and upon which private respondents hinge their main defense against the complaint, provides:

1. That the Employer/Establishment is engaged in the sale and manufacture for the of (sic) office and household furniture's (sic) which it delivers to its customers/clients;
2. The Sub[-]contractor agrees to fabricate and manufacture for the Employer, and shall be paid by the number of finished products and turn over to the establishment;
3. The Sub[-]contractor, for the manufacture of said products shall hire or employ workers of her/his, to finish the manufactured products to whom she/he shall be responsible for the payment of their wages or compensation normally paid on the basis of furniture's (sic) finished or manufactured;
4. The Sub[-]contractor shall free the establishment or employer from any obligation towards the workers hired by the sub[-]contractor;
5. All products accomplished by the Sub[-]contractor shall be turned over to the Employer/Establishment in finished good condition;
6. This Contract shall be terminated or suspended, when there are no raw materials to work on, or when there is no work to be finished;
7. The Employer / Establishment and the Sub[-]contractor shall abide by [the] terms hereof in good faith.

The document is a sham, thus: (a) It is bemusing to note that, aside from the fact that the Sub-contractorship Agreement is unnotarized, it was purportedly entered into sometime in May 2006, three years before the alleged registration<sup>[29]</sup> and start of operation of Ace Vhonce on May 28, 2009; (b) The term and duration of the relationship between Lilibeth and private respondents is dependent on the availability of the raw materials to work on, as stated in paragraph 6 of the Sub-contractorship Agreement which provides that the contract will be suspended or terminated when there are no materials to work on or when there is no work to be finished; (c) The record is bereft of any proof pertaining to Lilibeth's capitalization, nor to her investment in tools, equipment, or implements actually used in the performance or completion of the job, work, or service that she was contracted to render. No evidence has been presented, such as a business permit, to show that Lilibeth maintains an independent and distinct business from that of private respondents.

While sub-contracting is permitted; labor-only contracting is prohibited. Section 5 of Department Order No. 18-02<sup>[30]</sup> provides, that:

Prohibition against labor-only contracting. — Labor-only contracting is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or sub-contractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present: