

SEVENTH DIVISION

[CA-G.R. SP NO. 80443, August 15, 2006]

**ABUEL SALON, ROLANDO DE LA TORRE, AGOSTO MANDILAG AND
ABRAHAM DOBLON, PETITIONERS, VS. THE PRESIDENT
BARBERSHOP,^[1] PEDRO LEE, RUFINO UBALDE AND NATIONAL
LABOR RELATIONS COMMISSION, RESPONDENTS.**

D E C I S I O N

DIMAAMPAO, J.:

This *Petition for Certiorari* ascribes grave abuse of discretion against public respondent National Labor Relations Commission (NLRC) for rendering the *Decision*^[2] dated 12 March 2003 which modified on appeal the Labor Arbiter's *Decision*^[3] dated 15 May 2002, as well as the *Resolution*^[4] dated 23 July 2003 which denied the *Motion for Reconsideration*^[5] thereof.

The instant *Petition* has its genesis from the individual complaints filed by the petitioners against the private respondents for illegal dismissal, damages and attorney's fees.

The petitioners are barbers. They claimed that sometime in August 1999 (except petitioner Mandilag who was hired later), private respondents Rufino Ubalde and Pedro Lee asked them to work as barbers in their soon to be opened barbershop -- "The President's Barber." They were enticed with the private respondents' promises for better pay and benefits. Thus, they all resigned from their work and transferred to "The President's Barber."

From the time the petitioners were hired, it was private respondent Ubalde who represented himself as General Manager and referred to private respondent Lee as the real owner and capitalist of the business, although it was registered in the former's name. During petitioners' employment, they were required to work from 8:00 o'clock in the morning to 8:00 o'clock in the evening, subject to extension if there were still customers to be serviced. They were all provided with uniforms required to be worn during working hours. They received an average daily compensation ranging from P200.00 to P250.00 depending on the number of customers serviced. They did not receive, however, any 13th month pay from the time of their employment up to the time of the barbershop's closure.

On 16 September 2001, "The President's Barber" closed its business without any notice to its employees and to the Department of Labor and Employment.^[6]

In the meantime, private respondent Ubaldo also filed a complaint against private respondent Lee and his wife, Salvadora Lee. He claimed that he was also a mere employee of private respondent Lee who was the real owner of "The President's

Barber” and the true employer of the petitioners. He (Ubalde) merely acted as a front. Thus, at the time of its closure, he was also dismissed from employment.

Private respondent Lee denied the foregoing allegations. He claimed ownership of the building known as the Aristocrat Hotel situated at Elias Angeles Street, Naga City where his co-respondent, Ubalde, occupied and leased one of its commercial spaces for his barbershop business called “The President’s Barber.” Private respondent Lee further alleged that except for collecting rentals of leased premises of his hotel, he was a total stranger to the barbershop business. He contended that since there was no employer-employee relationship between him and the petitioners, the claims against him should be dismissed. [7]

On 15 May 2002, Labor Arbiter Rolando Bobis rendered a *Joint Decision* [8], the decretal portion of which reads as follows:

“WHEREFORE, finding merit on the causes of action set forth by complainants Abuel Salon, Rolando de la Torre, Agosto Mandilag, and Abraham Doblon, judgment is hereby rendered declaring the termination or dismissal of said complainants by respondents as illegal, thereby ORDERING the latter jointly and severally, the following:

“A. To pay backwages, inclusive of allowances and to other benefits or their monetary equivalent, computed from the date of their respective dismissal September 16, 2001 up to the time of this decision, at an equal amount of P36,000.00 each or a total of P144,000.00.

“B. To pay separation pay in lieu of reinstatement equivalent to one-month salary for every year of service from the date of the commencement of their respective employment up to the actual date of the finality of this decision, at an equal amount of P9,000.00 each (equivalent to two (2) years separation pay for the period from August 28, 1999 to September 16, 2001) or a total of P36,000.00

D. To pay Attorney’s Fees equivalent to 10% of the total amount of P180,000.00 due to all the complainants or equivalent to the sum of P18,000.00.

“The complaint of Rufino Ubalde against Pedro Lee is DISMISSED for lack of merit and the claims of the other complaints are likewise ordered DISMISSED for want of evidence.” SO ORDERED.” [9]

On appeal, the public respondent NLRC in the assailed *Decision* dated 12 March 2003, granted private respondent Lee’s appeal and modified the Labor Arbiter’s *Decision* by absolving the former from any and all liability on the judgment award of the petitioners for want of an employer-employee relationship. [10]

The *Partial Motion for Reconsideration* [11] of petitioners on the foregoing *Decision* was denied in the assailed *Resolution* dated 23 July 2003, for lack of merit.

Hence, this *Petition for Certiorari* anchored on the following grounds:

I

WHETHER OR NOT THE HON. COMMISSION (NLRC) COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT DECLARED THAT THERE WAS NO EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN COMPLAINANTS AND RESPONDENT PEDRO LEE.

II

WHETHER OR NOT THE HON. COMMISSION (NLRC) COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT DECLARED THAT RESPONDENT LEE IS NOT LIABLE TO PAY COMPLAINANTS/PETITIONERS THE MONE-TARY AWARDS GRANTED BY THE LABOR ARBITER

We find the *Petition* meritorious.

Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined by law or to act at all in contemplation of the law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.^[12]

As a general rule, the factual findings and conclusions of *quasi-judicial* agencies such as the NLRC are accorded great weight and respect on appeal, and even with finality when they are supported by substantial evidence or that amount of relevant evidence which a reasonable man might accept as adequate to justify a conclusion.^[13] However, this rule does not apply where there is no unanimity of factual findings below because the NLRC's and the Labor Arbiter's findings differ.^[14] This difference in findings obtains in the present case as the public respondent NLRC absolved private respondent Lee from any liability for lack of employer-employee relationship while the Labor Arbiter found otherwise.

The Labor Arbiter held that private respondent Lee, being the owner of "The President Barber", is the real and principal employer of the petitioners. He ruled that this can be gleaned from the circumstances surrounding the setting-up of the subject business as well as his participation in its manage-ment thereof.

The public respondent NLRC ruled otherwise on appeal. It held that private respondent Lee was merely the lessor of the building where "The President Barber" was located. This is clearly expressed in the contract of lease executed between private respondents Lee and Ubalde, which, among other things, also stated that there would be no employer-employee relationship between private respondent Lee and the barbers and manicurists. It also took note of the testimony of SSS^[15] Accounts Officer, Melanie Fesico, who claimed that as per her investigation, the owner of the President Barbershop was private respondent Ubalde.

A judicious examination of the records of the case persuades Us that indeed public respondent NLRC committed grave abuse of discretion in absolving private respondent Lee from any liability to the petitioners for lack of employer-employee

relationship.

First. It should be pointed out that no particular form of proof is required to prove the existence of an employer-employee relationship. Any competent and relevant evidence may show the relationship. If only documentary evidence would be required to demonstrate that relationship, no scheming employer would ever be brought before the bar of justice.^[16] In the case at bench, petitioners categorically stated that they were hired by private respondents Ubalde and Lee to work as barbers in "The President Barber."^[17] They likewise stated that from the time they were hired, they knew that private respondent Ubalde was the manager while the real owner and capitalist of the said business was private respondent Lee.^[18]

Second. Petitioners' assertion that public respondent Lee was their employer is bolstered by the statements made by Reyhina De Los Reyes^[19] and Cory Villaflor,^[20] former cashiers of "The President Barber." Delos Reyes claimed that she was hired by Salvadora Lee, wife of private respondent Lee. For her part, Villaflor asserted that she was also hired by Salvadora Lee and that it was private respondent Lee who owned "The President Barber." These unbiased statements, to Our mind, convincingly prove that private respondent Lee, aside from his interest as lessor, had another interest over the subject business. If indeed he were not the owner of the said barbershop, then how come his wife hired the said cashiers? In this regard, We cannot give credence to the claim of private respondent Lee that De Los Reyes and Villaflor were mere practicum students who, as part of their activities, were tasked to collect the daily rentals of delinquent tenants.^[21] We hold that such allegation is a mere afterthought as it was raised only in private respondent Lee's *Rejoinder*^[22]. Besides, an examination of the statements of De Los Reyes and Villaflor shows that they were not practicum students. De Los Reyes declared that while waiting for the opening of the second semester, she worked at "The President Barbershop."^[23] On the other hand, Villaflor stated that she left her work at "The President Barbershop" when she was about to go to school.^[24] Thus, it may be inferred from these declarations that their work with the said barbershop was not in connection whatsoever with their schoolwork or that the same was required by their respective schools.

Third. We disagree with the finding of the public respondent NLRC that there is no employer-employee relationship between private respondent Lee and the petitioners in view of the contract of lease dated 15 July 1999 making private respondent Lee as a mere lessor. The contract of lease provides:

"1. The LESSOR (Pedro C. Lee) is the owner of a commercial stall denominated as Door-C of the ground floor of the Aristocrat Hote, Elias Angeles St., Naga City with an area of 70 sq. meters.

"2. That the LESSEE (Rufino Ubalde) wishes to lease the above described commercial space, and the LESSOR has agreed to lease the same under the following terms and conditions:

"a). The LESSEE shall use the said space as a Barber Shop under the name and stlye "THE PRESIDENT BARBER"

"b) The period of lease is one(1) year and renewable for a like