



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

NESTLE PHILIPPINES, INC.,
 Petitioner,

G.R. No. 220617

- versus -

Present:

BENNY A. PUEDAN, JR.,
JAYFER D. LIMBO,
BRODNEY N. AVILA,
ARTHUR C. AQUINO, RYAN
A. MIRANDA, RONALD R.
ALAVE, JOHNNY A.
DIMAYA, MARLON B. DELOS
REYES, ANGELITO R.
CORDOVA, EDGAR S.
BARRUGA, CAMILO B.
CORDOVA, JR., JEFFRY B.
LANGUISAN, EDISON U.
VILLAPANDO, JHEIRNEY S.
REMOLIN, MARY LUZ A.
MACATALAD,* JENALYN M.
GAMUROT, DENNIS G.
BAWAG, RAQUEL A.
ABELLERA, and RICANDRO
G. GUATNO, JR.,

SERENO, C.J., Chairperson,
 LEONARDO-DE CASTRO,
 DEL CASTILLO,
 PERLAS-BERNABE, and
 CAGUIOA, JJ.

Promulgated:

JAN 30 2017

Respondents.

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DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ are the Decision² dated March 26, 2015 and the Resolution³ dated September 17, 2015 of the

* "Nacatalad" in some parts of the record.

¹ *Rollo*, pp. 10-35.

² *Id.* at 39-51. Penned by Associate Justice Agnes Reyes-Carpio with Associate Justices Rosmari D. Carandang and Romeo F. Barza concurring.

³ *Id.* at 53-54.

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Court of Appeals (CA) in CA-G.R. SP No. 132686, which affirmed the Decision⁴ dated May 30, 2013 and the Resolution⁵ dated August 30, 2013 of the National Labor Relations Commission (NLRC) in LAC No. 02-000699-13/ NCR-03-04761-12, declaring petitioner Nestle Philippines, Inc. (NPI), jointly and severally liable with Ocho de Septiembre, Inc. (ODSI) to respondents Benny A. Puedan, Jr., Jayfer D. Limbo, Brodney N. Avila, Arthur C. Aquino, Ryan A. Miranda, Ronald R. Alave, Johnny A. Dimaya, Marlon B. Delos Reyes, Angelito R. Cordova, Edgar S. Barruga, Camilo B. Cordova, Jr., Jeffrey B. Languisan, Edison U. Villapando, Jheirney S. Remolin, Mary Luz A. Macatalad, Jenalyn M. Gamurot, Dennis G. Bawag, Raquel A. Abellera, and Ricandro G. Guatno, Jr. (respondents) for separation pay, nominal damages, and attorney's fees.

The Facts

The instant case arose from an amended⁶ complaint⁷ dated July 6, 2012 for illegal dismissal, damages, and attorney's fees filed by respondents against, *inter alia*, ODSI and NPI. Respondents alleged that on various dates, ODSI and NPI hired them to sell various NPI products in the assigned covered area. After some time, respondents demanded that they be considered regular employees of NPI, but they were directed to sign contracts of employment with ODSI instead. When respondents refused to comply with such directives, NPI and ODSI terminated them from their position.⁸ Thus, they were constrained to file the complaint, claiming that: (a) ODSI is a labor-only contractor and, thus, they should be deemed regular employees of NPI; and (b) there was no just or authorized cause for their dismissal.⁹

For its part, ODSI averred that it is a company engaged in the business of buying, selling, distributing, and marketing of goods and commodities of every kind and it enters into all kinds of contracts for the acquisition thereof. ODSI admitted that on various dates, it hired respondents as its employees and assigned them to execute the Distributorship Agreement¹⁰ it entered with NPI,¹¹ the relevant portions of which state:

- 3.1 DISTRIBUTOR (ODSI) shall assign a sales force in his/her regular employ, dedicated solely to the handling of NPI Grocery Retail Products under this Agreement, and who shall exclusively cover assigned areas/channels of distribution.

⁴ Id. at 86-99. Penned by Commissioner Nieves E. Vivar-De Castro with Commissioners Joseph Gerard E. Mabilog and Isabel G. Panganiban-Ortiguerra concurring.

⁵ Id. at 101-112.

⁶ Said complaint was amended to include NPI as one of the respondents therein; see id. at 234 and 245.

⁷ See id. at 152-156.

⁸ See id. at 159.

⁹ Id. at 40.

¹⁰ ODSI entered into the Distributorship Agreement with NPI when the former was still named "Service Edge Distribution, Inc." Id. at 127-139.

¹¹ Id. at 40.

- 3.2 DISTRIBUTOR shall service the outlets within the Territory by re-selling Products obtained exclusively from Nestle Philippines, Inc. and not from any other source.
- 3.3 DISTRIBUTOR shall utilize booking and distribution salesmen to undertake territory development. Booking done by DISTRIBUTOR shall be delivered by its personnel. Collection of accounts shall be taken cared (*sic*) of by DISTRIBUTOR, without prejudice to the provisions of Clause 13 hereof.
- 3.4 DISTRIBUTOR's route salesmen shall exclusively cover assigned ex-truck areas/channels of distribution.
- 3.5 DISTRIBUTOR shall also provide training to its staff or personnel where necessary, to improve operations in servicing the requirements of DISTRIBUTOR's customers. From time to time, NESTLÉ shall offer to DISTRIBUTOR suggestions and recommendations to improve sales and to further develop the market.
- 3.6 DISTRIBUTOR shall meet the sales, reach and distribution targets agreed upon by NESTLÉ and DISTRIBUTOR. For purposes of this clause, reach targets refer to the number of stores, dealers and/or outlets which DISTRIBUTOR should cover or service within a particular period. Distribution targets refer to the number of stock keeping units and/or product lines covered by this Agreement.
- In the event of DISTRIBUTOR's failure to meet NESTLÉ's sales targets, NESTLÉ has the sole discretion of assigning another distributor of the Products and/or reducing the Territory covered by DISTRIBUTOR.
- 3.7 DISTRIBUTOR agrees to provide at its own cost and expense facilities and other resources necessary for the distribution and sale of the Products.
- 3.8 NESTLÉ's sales personnel may get orders for the Products distributed by DISTRIBUTOR and pass on the said orders to DISTRIBUTOR.
- 3.9 NESTLÉ shall provide the necessary promotional and marketing support for the Products through promotional materials, product information literature, participation in trade fairs, and other market development activities.
- 3.10 Should NESTLÉ manufacture and/or distribute other products not subject of this Agreement, which, in NESTLÉ's opinion, should likewise be extended to DISTRIBUTOR's outlets, such additional products shall be included among those listed in Annex "A" hereof.

NESTLÉ shall deliver the Products to DISTRIBUTOR's warehouse(s) at its own expenses. Immediately upon receipt of the Products, DISTRIBUTOR shall carry out a visual inspection thereof. In the event any quantity of the Products is found to be

defective upon such visual inspection, NESTLÉ shall replace such quantity of the Products at no cost to DISTRIBUTOR.

- 3.11 All costs for transportation and/or shipment of the Products from DISTRIBUTOR's warehouse(s) to its outlets/customers shall be the account of the DISTRIBUTOR.¹²

However, the business relationship between NPI and ODSI turned sour when the former's sales department badgered the latter regarding the sales targets. Eventually, NPI downsized its marketing and promotional support from ODSI which resulted to business reverses and in the latter's filing of a petition for corporate rehabilitation and, subsequently, the closure of its Nestlé unit due to the termination of the Distributorship Agreement and the failure of rehabilitation. Under the foregoing circumstances, ODSI argued that respondents were not dismissed but merely put in floating status.¹³

On the other hand, NPI did not file any position paper or appear in the scheduled conferences.¹⁴

The Labor Arbiter Ruling

In a Decision¹⁵ dated December 28, 2012, the Labor Arbiter (LA) dismissed the complaint for lack of merit, but nevertheless, ordered, *inter alia*, ODSI and NPI to pay respondents nominal damages in the aggregate amount of ₱235,728.00 plus attorney's fees amounting to ten percent (10%) of the total monetary awards.¹⁶ The LA found that: (a) respondents were unable to prove that they were NPI employees; and (b) respondents were not illegally dismissed as ODSI had indeed closed down its operations due to business losses.¹⁷ As to the issue on the failure to give respondents a thirty (30)-day notice prior to such closure, the LA concluded that all the impleaded respondents therein (*i.e.*, including NPI) should be held liable for the payment of nominal damages plus attorney's fees.¹⁸

Aggrieved, respondents appealed to the NLRC.¹⁹

The NLRC Ruling

In a Decision²⁰ dated May 30, 2013, the NLRC reversed and set aside the LA ruling and, accordingly, ordered ODSI and NPI to pay each of the

¹² Id. at 128-129.

¹³ See id. at 41-43.

¹⁴ Id. at 234.

¹⁵ Id. at 228-238. Penned by Labor Arbiter Lilia S. Savari.

¹⁶ See id. at 237-238.

¹⁷ See id. at 235-236.

¹⁸ See id. at 236.

¹⁹ See Memorandum of Appeal dated January 28, 2013; id. at 241-256.

²⁰ Id. at 86-99.

respondents: (a) separation pay amounting to ½ month pay for every year of service reckoned from the time they were employed until the finality of the Decision; and (b) nominal damages in the amount of ₱30,000.00. The NLRC likewise ordered NPI and ODSI to pay respondents attorney's fees amounting to ten percent (10%) of the monetary awards.²¹

Contrary to the LA's findings, the NLRC found that while ODSI indeed shut down its operations, it failed to prove that such closure was due to serious business losses as it did not present evidence, *e.g.*, financial statements, to corroborate its claims. As such, it ruled that respondents are entitled to separation pay. In this relation, the NLRC also found that since ODSI failed to notify respondents of such closure, the latter are likewise entitled to nominal damages.²²

Further, the NLRC found ODSI to be a labor-only contractor of NPI, considering that: (a) ODSI had no substantial capitalization or investment; (b) respondents performed activities directly related to NPI's principal business; and (c) the fact that respondents' employment depended on the continuous supply of NPI products shows that ODSI had not been carrying an independent business according to its own manner and method.²³ Consequently, the NLRC deemed NPI to be respondents' true employer, and thus, ordered it jointly and severally liable with ODSI to pay the monetary claims of respondents.²⁴

Respondents moved for a partial reconsideration,²⁵ arguing that since it was only ODSI that closed down operations and not NPI and, considering the finding that the latter was deemed to be their true employer, NPI should reinstate them, or if not practicable, to pay them separation pay equivalent to one (1) month pay for every year of service. NPI also moved for reconsideration,²⁶ contending that: (a) it was deprived of its right to participate in the proceedings before the LA and the NLRC; and (b) it had no employer-employee relationship with respondents as ODSI was never its contractor, whether independent or labor-only.²⁷ However, the NLRC denied both motions in a Resolution²⁸ dated August 30, 2013, holding that: (a) respondents' termination was due to the closure of ODSI's Nestlé unit, an authorized cause and, thus, the monetary awards in their favor were proper; (b) NPI was not deprived of its right to participate in the proceedings as it was duly served with copies of the parties' respective pleadings, as well as the rulings of both the LA and the NLRC; (c) assuming *arguendo* that NPI was indeed deprived of due process, its subsequent filing of a motion for reconsideration before the NLRC cured the defect as it was able to argue its

²¹ Id. at 97-99.

²² See id. at 95-96.

²³ See id. at 91-92.

²⁴ See id. at 92-93 and 96-97.

²⁵ See Partial Motion for Reconsideration dated June 24, 2013; id. at 272-278.

²⁶ See Motion for Reconsideration dated July 12, 2013; CA *rollo*, pp. 61-73.

²⁷ See *rollo*, pp. 102-103.

²⁸ Id. at 101-112.

position in the said motion; and (d) the circumstances surrounding the Distributorship Agreement between ODSI and NPI showed that the former is indeed a labor-only contractor of the latter.²⁹

Dissatisfied, NPI filed a petition for *certiorari*³⁰ before the CA, essentially insisting that: (a) it was deprived of due process before the tribunals *a quo*; and (b) there was no employer-employee relationship between NPI and respondents.³¹ Records reveal that no other party elevated the matter before the CA.

The CA Ruling

In a Decision³² dated March 26, 2015, the CA affirmed the NLRC ruling. Anent the issue on due process, the CA held that NPI was not deprived of its opportunity to be heard as it was able to receive a copy of the complaint and other pleadings, albeit it failed to respond thereto.³³ As regards the substantive issue, the CA ruled that despite ODSI and NPI's contract being denominated as a "Distributorship Agreement," it contained provisions demonstrating a labor-only contracting arrangement between them, as well as NPI's exercise of control over the business of ODSI. Moreover, the CA pointed out that: (a) there was nothing in the records which showed that ODSI had substantial capital to undertake an independent business; and (b) respondents performed tasks essential to NPI's business.³⁴

Undaunted, NPI moved for reconsideration,³⁵ which was, however, denied in a Resolution³⁶ dated September 17, 2015; hence, this petition.

The Issues Before the Court

The essential issues for the Court's resolution are whether or not the CA correctly ruled that: (a) NPI was accorded due process by the tribunals *a quo*; and (b) ODSI is a labor-only contractor of NPI, and consequently, NPI is respondents' true employer and, thus, deemed jointly and severally liable with ODSI for respondents' monetary claims.

²⁹ See *id.* at 103-111.

³⁰ Dated November 15, 2013. *Id.* at 55- 81.

³¹ *Id.* at 46-47.

³² *Id.* at 39-51.

³³ *Id.* at 47.

³⁴ *Id.* at 48-50.

³⁵ See Motion for Reconsideration dated May 6, 2015; *id.* at 333-349.

³⁶ *Id.* at 53-54.

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The Court's Ruling

To justify the grant of the extraordinary remedy of *certiorari*, the petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.³⁷

In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and conclusions are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.³⁸

Guided by the foregoing considerations, the Court finds that the CA was correct in ruling that the labor tribunals *a quo* gave NPI an opportunity to be heard. However, it erred in not ascribing grave abuse of discretion on the NLRC's finding that ODSI is a labor-only contractor of NPI and, thus, the latter is the respondents' true employer, and jointly and severally liable with ODSI for respondents' monetary claims. As will be explained hereunder, such finding by the NLRC is not supported by substantial evidence.

I.

The observance of fairness in the conduct of any investigation is at the very heart of procedural due process. The essence of due process is to be heard, and, as applied to administrative proceedings, this means a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. Administrative due process cannot be fully equated with due process in its strict judicial sense, for in the former a formal or trial-type hearing is not always necessary, and technical rules of procedure are not strictly applied.³⁹ The Court's disquisition in *Ledesma v. CA*⁴⁰ is instructive on this matter, to wit:

Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements

³⁷ See *Sta. Isabel v. Perla Compañia De Seguros, Inc.*, G.R. No. 219430, November 7, 2016.

³⁸ See *id.*, citation omitted.

³⁹ *Vivo v. Philippine Amusement and Gaming Corporation*, 721 Phil. 34, 39 (2013), citations omitted.

⁴⁰ 565 Phil. 731 (2007).

of due process. **The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain ones side, or an opportunity to seek a reconsideration of the action or ruling complained of.**⁴¹ (Emphasis and underscoring supplied)

In this case, NPI essentially claims that it was deprived of its right to due process when it was not notified of the proceedings before the LA and did not receive copies and issuances from the other parties and the LA, respectively.⁴² However, as correctly pointed out by the CA, NPI was furnished via courier of a copy of the amended complaint filed by the respondents against it as shown by LBC Receipt No. 125158910840.⁴³ It is also apparent that NPI was also furnished with the respondents' Position Paper, Reply, and Rejoinder.⁴⁴ Verily, NPI was indeed accorded due process, but as the LA mentioned, the former chose not to file any position paper or appear in the scheduled conferences.⁴⁵

Assuming *arguendo* that NPI was somehow deprived of due process by either of the labor tribunals, such defect was cured by: (a) NPI's filing of its motion for reconsideration before the NLRC; (b) the NLRC's subsequent issuance of its Resolution dated August 30, 2013 wherein the tribunal considered all of NPI's arguments as contained in its motion; and (c) NPI's subsequent elevation of the case to the CA. In *Gonzales v. Civil Service Commission*,⁴⁶ the Court reiterated the rule that "[a]ny seeming defect in [the] observance [of due process] is cured by the filing of a motion for reconsideration," and that "denial of due process cannot be successfully invoked by a party who [was] afforded the opportunity to be heard x x x."⁴⁷ Similarly, in *Autencio v. Mañara*,⁴⁸ it was held that defects in procedural due process may be cured when the party has been afforded the opportunity to appeal or to seek reconsideration of the action or ruling complained of.⁴⁹

Evidently, the foregoing shows that NPI was not denied due process of law as it was afforded the fair and reasonable opportunity to explain its side.

II.

In holding NPI jointly and severally liable with ODSI for the monetary awards in favor of respondents, both the NLRC and the CA held that based on the provisions of the Distributorship Agreement between them,

⁴¹ Id. at 740, citations omitted.

⁴² *Rollo*, pp. 20-24.

⁴³ See *rollo*, p. 156 and CA *rollo*, p. 104.

⁴⁴ See CA *rollo*, pp. 119, 129, and 134.

⁴⁵ *Rollo*, p. 234.

⁴⁶ 524 Phil. 271 (2006).

⁴⁷ Id. at 278.

⁴⁸ 489 Phil. 752 (2005).

⁴⁹ See id. at 761.

ODSI is merely a labor-only contractor of NPI.⁵⁰ In this regard, the CA opined that the following stipulations of the said Agreement evinces that NPI had control over the business of ODSI, namely, that: (a) NPI shall offer to ODSI suggestions and recommendations to improve sales and to further develop the market; (b) NPI prohibits ODSI from exporting its products (the No-Export provision); (c) NPI provided standard requirements to ODSI for the warehousing and inventory management of the sold goods; and (d) prohibition imposed on ODSI to sell any other products that directly compete with those of NPI.⁵¹

However, a closer examination of the Distributorship Agreement reveals that the relationship of NPI and ODSI is not that of a principal and a contractor (regardless of whether labor-only or independent), but that of a seller and a buyer/re-seller. As stipulated in the Distributorship Agreement, NPI agreed to sell its products to ODSI at discounted prices,⁵² which in turn will be re-sold to identified customers, ensuring in the process the integrity and quality of the said products based on the standards agreed upon by the parties.⁵³ As aptly explained by NPI, the goods it manufactures are distributed to the market through various distributors, *e.g.*, ODSI, that in turn, re-sell the same to designated outlets through its own employees such as the respondents. Therefore, the reselling activities allegedly performed by the respondents properly pertain to ODSI, whose principal business consists of the “buying, selling, distributing, and marketing goods and commodities of every kind” and “[entering] into all kinds of contracts for the acquisition of such goods [and commodities].”⁵⁴

Thus, contrary to the CA’s findings, the aforementioned stipulations in the Distributorship Agreement hardly demonstrate control on the part of NPI over the means and methods by which ODSI performs its business, nor were they intended to dictate how ODSI shall conduct its business as a distributor. Otherwise stated, the stipulations in the Distributorship Agreement do not operate to control or fix the methodology on how ODSI should do its business as a distributor of NPI products, but merely provide rules of conduct or guidelines towards the achievement of a mutually desired result⁵⁵ – which in this case is the sale of NPI products to the end consumer. In *Steelcase, Inc. v. Design International Selections, Inc.*,⁵⁶ the Court held that the imposition of minimum standards concerning sales, marketing, finance and operations are nothing more than an exercise of sound business practice to increase sales and maximize profits, to wit:

⁵⁰ See *rollo*, pp. 48-50 and 91-93.

⁵¹ *Id.* at 48.

⁵² *Id.* at 128.

⁵³ See *id.* at 128- 129.

⁵⁴ See *id.* at 40.

⁵⁵ See *Bernarte v. Philippine Basketball Association*, 673 Phil. 384, 395 (2011), citing *Sonza v. ABS-CBN Broadcasting Corporation*, G.R. No. 138051, June 10, 2004, 431 SCRA 583, 603-604.

⁵⁶ 686 Phil. 59 (2012).

Finally, both the CA and DISI rely heavily on the Dealer Performance Expectation required by Steelcase of its distributors to prove that DISI was not functioning independently from Steelcase because the same imposed certain conditions pertaining to business planning, organizational structure, operational effectiveness and efficiency, and financial stability. It is actually logical to expect that Steelcase, being one of the major manufacturers of office systems furniture, would require its dealers to meet several conditions for the grant and continuation of a distributorship agreement. **The imposition of minimum standards concerning sales, marketing, finance and operations is nothing more than an exercise of sound business practice to increase sales and maximize profits for the benefit of both Steelcase and its distributors. For as long as these requirements do not impinge on a distributor's independence, then there is nothing wrong with placing reasonable expectations on them.**⁵⁷ (Emphasis and underscoring supplied)

Verily, it was only reasonable for NPI – it being a local arm of one of the largest manufacturers of foods and grocery products worldwide – to require its distributors, such as ODSI, to meet various conditions for the grant and continuation of a distributorship agreement for as long as these conditions do not control the means and methods on how ODSI does its distributorship business, as shown in this case. This is to ensure the integrity and quality of the products which will ultimately fall into the hands of the end consumer.

Thus, the foregoing circumstances show that ODSI was not a labor-only contractor of NPI; hence, the latter cannot be deemed the true employer of respondents. As a consequence, NPI cannot be held jointly and severally liable to ODSI's monetary obligations towards respondents.

WHEREFORE, the petition is **GRANTED**. The Decision dated March 26, 2015 and the Resolution dated September 17, 2015 of the Court of Appeals in CA-G.R. SP No. 132686 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Decision dated May 30, 2013 and the Resolution dated August 30, 2013 of the National Labor Relations Commission in LAC No. 02-000699-13/ NCR-03-04761-12 are **MODIFIED, DELETING** petitioner Nestle Philippines, Inc.'s solidary liability with Ocho de Septiembre, Inc. (ODSI) for the latter's monetary obligations to respondents Benny A. Puedan, Jr., Jayfer D. Limbo, Brodney N. Avila, Arthur C. Aquino, Ryan A. Miranda, Ronald R. Alave, Johnny A. Dimaya, Marlon B. Delos Reyes, Angelito R. Cordova, Edgar S. Barruga, Camilo B. Cordova, Jr., Jeffry B. Languisan, Edison U. Villapando, Jheirney S. Remolin, Mary Luz A. Macatalad, Jenalyn M. Gamurot, Dennis G. Bawag, Raquel A. Abellera, and Ricandro G. Guatno, Jr.

⁵⁷ Id. at 69-70.

SO ORDERED.

Ms. Kent
ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

Maria Lourdes P. A. Sereno
MARIA LOURDES P. A. SERENO
Chief Justice

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Mariano C. Del Castillo
MARIANO C. DEL CASTILLO
Associate Justice

Alfredo Benjamin S. Caguioa
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Maria Lourdes P. A. Sereno
MARIA LOURDES P. A. SERENO
Chief Justice