Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **October 1, 2019** *which reads as follows:*

"G.R. No. 200245 (*COCA-COLA BOTTLERS PHILS., INC., Petitioner,* v. *BOMBET I. AMPER, RUBY CASIANO, ET. AL., Respondents.*) - The Court dismisses this appeal from the February 1, 2010 Decision[1] and the January 16, 2012 Resolution[2] promulgated by the Court of Appeals (CA) in CA-G.R. SP No. 90103, whereby the CA reversed the National Labor Relations Commission (NLRC) Decision dated February 4, 2004[3] in NLRC NCR CA No. 030908-99 and NLRC NCR Case No. 00-07-07574-99.

As a general rule, the Court does not review errors that raise factual questions. Nonetheless, the conflicting findings of the Labor Arbiter and the NLRC on one hand, and of the CA on the other, constrains the Court to review and re-evaluate such factual findings.[4]

The primary issue to be resolved in this case is whether Peerless Integrated Services, Inc. (Peerless) is a legitimate job contractor. Upon such finding hinges the determination of whether an employer-employee relationship exists between the parties as to make the petitioner liable for the respondents' dismissal.

The petitioner claims that Peerless is a legitimate independent contractor because: (1) it was registered as an independent contractor with the Department of Labor and Employment (DOLE); (2) it was

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84-A

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1 *Rollo* (Vol. I), pp. 435-450; penned by Associate Justice Noel G. Tijam (now a member of this court), concurred by Associate Justice Apolinario D. Bruselas, Jr. and Associate Justice Franchito N. Diamante.

2 *Rollo* (Vol. II), pp. 758-769.

3 *Rollo* (Vol. I), pp. 263-266.

4 *Javier v. Fly Ace Corporation*, G.R. No. 192558, February 15, 2012, 666 SCRA 382, 394-395.

registered with the Securities and Exchange Commission to engage in providing supplementary, temporary, seasonal and specialized services to the public; (3) it had a total asset amounting to ₱7,507,938 in 1998; and (4) on top of its ₱5,000,000.00 authorized capital stock, it increased its capitalization to ₱5,000,000.00 in 1996, which amount was fully subscribed and paid.[5]

We do not agree with the petitioner.

Labor-only contracting, a prohibited act, is an arrangement where the contractor, who does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, supplies workers to an employer and the workers recruited are performing activities which are directly related to the principal business of such employer.[6] The Court finds that both indicators exist in the case at bar.

As to the substantial capital and investment required of an independent job contractor, the petitioner failed to establish that Peerless had sufficient capitalization. Pursuant to Peerless' Certificate of Increase of Capital Stock, out of the increased ₱15 million capital stock, only ₱5 million was paid up as of March 6, 2001. The said certificate also disclosed that as of the said date, Peerless had an actual indebtedness of ₱11,231,040. The Court does not set an absolute figure for what it considers substantial capital for an independent job contractor, but it measures the same against the type of work which the contractor is obligated to perform for the principal.[7] In the case at bar, the Contract of Services[8] executed between the parties failed to clearly specify the work that the employees are obligated to perform. The contract used general terms[9] which are insufficient to be the basis of the required capital investment.

Notably, herein respondents served as "route helpers," whose duties include handling, loading and unloading, door to door delivery of bottled soft drinks to retailers, wholesalers, or distributors and

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84-A

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5 *Rollo* (Vol. I), pp. 29-30

6 *Petron Corporation v. Caberte*, G.R. No. 182255, June 15, 2015, 757 SCRA 390, 403.

7 *Coca-Cola Bottlers Phils., Inc. v. Agito*, G.R. No. 179546, February 13, 2009, 579 SCRA 445, 462.

8 *Rollo* (Vol. I), pp. 54-57.

9 Id. at 54.

CONTRACT OF SERVICES

x x x x

1) The CONTRACTOR agrees and undertakes to perform and/or provide for the COMPANY on a non-exclusive basis the services of contractual employees for a temporary period a **task or activities that are considered contractible** x x x. (Emphasis ours)

retrieval of empty bottles and their return to the petitioner's plants or sales office. In *Magsalin v. National Organization of Workingmen,*[10] We held that the work of the route helpers is clearly indispensable to the principal business of the petitioner. We explained therein that if only those whose work were directly involved in the production of softdrinks as performing functions necessary and desirable in Coca-Cola's usual business or trade, then there would have been no need for the company to maintain regular truck sales helpers.[11]

As to the power of control, We likewise agree with the CA's observation that the petitioner exercised the power of control over the respondents. The Contract of Services entered into by the petitioner and respondents pertinently read:

> The CONTRACTOR further warrants to make available at all times relievers and/or replacement to ensure continuous and uninterrupted as in the case of absences of any of the above-mentioned and to exercise the necessary and due supervision over the work of its personnel. The CONTRACTOR hereby binds to replace without delay any of the personnel above assigned performance causes the service contracted for to fail.[12]

Thusly, the Court agrees with the CA's finding that the petitioner had the power of control over the performance of the work contracted. An independent job contractor need not guarantee to the principal the daily attendance of the workers assigned to the latter. An independent job contractor would surely have the discretion over the pace at which the work is performed, the number of employees required to complete the same, and the work schedule which its employees need to follow.[13]

A finding that a contractor is a labor-only contractor, as opposed to permissible job contracting, is equivalent to declaring that there is an employer-employee relationship between the principal and the employees of the supposed contractor, and the labor-only contractor is considered as a mere agent of the principal, the real employer.[14] The Court thus finds Peerless as a labor-only contractor, and a mere agent of petitioner. Consequently, an employer-employee relationship exists in this case between respondents as employees and CCBPI as their employer.

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84-A

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10 G.R. No. 148492, May 9, 2003, 403 SCRA 199.
11 Id. at 205.
12 *Rollo*, p. 448.
13 *Coca-Cola Bottlers Phils., Inc. v. Agito*, G.R. No. 179546, February 13, 2009, 579 SCRA 445, 448-449.
14 *Polyfoam-RGC International Corporation v. Concepcion*, G.R. 172349, June 13, 2012, 672 SCRA 148, 163.

Lastly, the execution of the certificate of non-forum shopping by the five (5) respondents in behalf of Roel V. Delos Santos, Jun O. Cueva and Allan F. Flores, constitutes substantial compliance. In *San Miguel Corporation vs. Aballa*,[15] the Court ruled that due to the collective nature of the case, raising one common cause of action against SMC, the execution by some of the private respondents in behalf of all the other private respondents of the certificate of non-forum shopping constitutes substantial compliance with the *Rules of Court*.

WHEREFORE, We **DENY** the petition for review and **AFFIRM** the Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 90103.

SO ORDERED." ***Carandang, J.,*** *on official leave.*

Very truly yours,

LIBRADA C. BUENA
Division Clerk of Court
84-A

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[15] *San Miguel Corporation v. Aballa,* G.R. No. 149011, June 28, 2005, 500 SCRA 170.