Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MARITES R. CUSAP,
Petitioner,

- versus -

ADIDAS PHILIPPINES, INC., (ADIDAS), PROMOTION RESOURCES & INTER-MARKETING EXPONENTS, INC. (PRIME) and JC ATHLETES, INC. (JCA),
Respondents.

G.R. No. 201494

Present:

CARPIO, *J., Chairperson,*
BRION,
MENDOZA,
PERLAS-BERNABE,* and
LEONEN, *JJ.*

Promulgated:

JUL 29 2015

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DECISION

BRION, *J.*:

We resolve **petitioner** Marites R. Cusap's appeal[1] from the September 21, 2011 decision[2] and February 20, 2012 resolution[3] of the Court of Appeals in CA-G.R. SP No. 104725.

The Antecedents

On January 21, 2003, the petitioner and 27 other employees (*complainants*) filed a complaint for illegal dismissal[4] against the

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* Designated as Acting Member in lieu of Associate Justice Mariano C. del Castillo, per Special Order No. 2115 dated July 22, 2015.

1 *Rollo*, pp.2-18; filed pursuant to Rule 45 of the Rules of Court, the petitioner filing as an indigent party.

2 Id. at 22-32; penned by Associate Justice Noel G. Tijam and concurred in by Associate Justices Marlene Gonzales-Sison and Leoncia R. Dimagiba.

3 Id. at 35-36.

4 Id. at 611-614.

respondents Adidas Philippines Inc. (*Adidas*) and Promotion Resources Inter-Marketing Exponents, Inc. (*PRIME*). The complainants later amended the complaint to include JC Athletes, Inc. (*JCA*), as a respondent.[5] They prayed for reinstatement with back wages, separation pay (should reinstatement be no longer feasible), 13th month pay, service incentive leave pay, and damages.

Through their "*Magkasanib na Sinumpaang Salaysay*,"[6] the complainants alleged that they were regular employees of Adidas after having worked as promo girls and stockmen at the company's various rented outlets for years, ranging from one year to seven years; the earliest employed (June 1, 1995) was Nova Toque while the latest was Aquilino Banaag (September 21, 2000). The petitioner was hired on October 28, 1995.[7]

The record shows that Adidas is engaged in the manufacture and marketing of different lines of shoes and other sporting goods and apparel in the Philippines.[8] After its contract with its former distributor, World Sports, Inc. (*WOSI*) allegedly expired, it contracted[9] JCA to be its exclusive distributor nationwide for one year or from January 1, 2002 to December 31, 2002. In turn, JCA entered into a Promotional Contract[10] with PRIME to meet the promotional requirements in the distribution of Adidas products. PRIME supposedly assigned the complainants to JCA for the purpose.

The complainants claimed that they were dismissed from employment on December 9, 2002, when the service contract between PRIME and JCA was terminated. This notwithstanding, they argued that Adidas was their real employer, not PRIME which, they believed, was merely a recruitment agency supplying Adidas with manpower. PRIME was being used, they further claimed, to conceal the actual employment relationship between them and Adidas.

They pointed out that for the years that they were employed, they worked for Adidas, under the supervision and control of Adidas and JCA personnel. They stressed that their work was related to and in pursuit of Adidas' principal business activity (the marketing of its products), thereby making them regular employees of the company. This was their reason for demanding their regularization by Adidas.

Further, the complainants maintained that JCA was a mere alter ego of Adidas and was being used to further muddle the employment relationship between them and Adidas. JCA's actual role as a dummy (together with

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5 Id. at 101-102; Order dated May 12, 2003 of Labor Arbiter Elias H. Salinas granting complainants' Motion to Amend Complaint.

6 Id. at 89-93.

7 Id. at 59; NLRC Decision dated January y 23, 2008, p.2; penned by Presiding Commissioner Lourdes C. Javier, with Commissioners Tito F. Genilo and Gregorio O. Bilog III concurring.

8 Id. at 596; Adidas' Comment, p. 22, par. 23.

9 Id. at 219-239; Distribution Agreement between Adidas and JCA.

10 Id. at 698-701.

PRIME) for Adidas, the complainants explained, was evidenced by the fact that JCA and Adidas occupied the same office. JCA took the place of WOSI as distributor of Adidas products.

Elaborating on their "muddled" employment status in relation with Adidas, the complainants bewailed that JCA was erroneously identified as "distributor" of Adidas products as no evidence showed that JCA purchased the Adidas products they were selling.[11] Under their supposed Distribution Agreement, the "*Distributor shall purchase the Products only from Adidas or any other sources expressly designated by Adidas and sell the Products in its own name and for its own account x x x.*"[12]

The complainants asserted that the products they were selling at various outlets remained the property and under the control of Adidas – it was Adidas that provided the warehouse where the products were stored, that leased the outlets from department stores, and that provided regular training to them.[13] Also, the proceeds of the sales were directly deposited to the bank account of Adidas. Moreover, their salaries and other monetary benefits supposedly paid by PRIME were charged to the account of Adidas, as indicated in their payslips.[14] They argued that if JCA purchased the products being sold and were already its property, there was no point to still charge complainants' wages and benefits to the Adidas' account.

These circumstances, complainants stressed, confirmed their position that JCA and PRIME were only intermediaries of Adidas and were used to conceal Adidas' identity as their real employer.

To substantiate their assertion that PRIME was just an intermediary of Adidas, they submitted documentary proof that it was not even a registered corporation, labor recruiter, or agency when it supposedly entered into a contract with JCA; neither with the Securities and Exchange Commission[15] nor with the Department of Trade and Industry.[16] It was registered as a "job contractor/subcontractor" only on May 20, 2002.[17] They thus maintained that PRIME was just a labor-only contractor at the time it claimed it had employed them for its supposed undertaking with JCA.

In defense, Adidas argued that in 2002, it amended its *Articles of Incorporation*[18] to enable it to engage in the retail business without the need to contract the services of distributors such as JCA, following the approval by the Board of Investments of the application of its mother

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11 Id. at 154-155; Complainants' Consolidated Rejoinder, pp. 2. last paragraph.

12 *Supra* note 9, Article 2.2.

13 *Rollo*, pp. 159-163; certificates of attendance certificates in seminars given by Adidas to its employees.

14 Id. at 264-292.

15 Id. at 150; Certificate of Non-Registration of Corporation/Partnership, Annex "A," Complainants' Reply.

16 Id. at 151; Negative Certification, Annex "B," Complainants' Reply.

17 Id. at 152; Letter dated February 17, 2003 of Director Alex E. Maraan, DOLE-NCR to lead complainant Ma. Theresa S. Ampong, Annex "C," Complainants' Reply.

18 Id. at 134-139.

company, Adidas Solomon AG, to operate as a foreign retailer in the country. As a consequence, it no longer renewed its *Distribution Agreement* with JCA when it expired on December 31, 2002.

Necessarily, it maintained, the *Promotion Contract* between JCA and PRIME was also terminated, resulting in the complainants' dismissal. However, for purposes of proper inventory, accounting and turnover of products, it agreed with JCA for a hold-over period of three months ending March 31, 2003.

Also, Adidas turned down the complainants' demand for regularization as they were employees of PRIME. It claimed it was PRIME who exercised control over their work; at most, the supervision it exercised over the complainants was only to provide them guidelines in aid of their marketing work. It added that neither could it satisfy their money claims because they were legally dismissed when their contracts with PRIME expired.

For its part, JCA prayed for the dismissal of the complaint as far as it was concerned in view of what it claimed – its valid job contract with PRIME, the complainants' employer. It averred that it was PRIME who exercised the power to select, engage, and dismiss the complainants, and who assumed the obligation to pay their wages. To bolster its position, JCA presented quitclaim and release papers executed by some employees in favor of PRIME.[19]

JCA added that whatever liability it had with the complainants was limited to satisfying their unpaid wages to the extent of the work performed under its *Promotion Contract* with *PRIME.* However, PRIME's payment of its monetary obligations to the complainants extinguished its liability towards them.

As its co-respondents did, PRIME denied liability, contending that it hired the complainants as contractual employees for its project with JCA to promote Adidas products. It maintained that their employment was terminated when its contract with JCA expired and was not renewed. Thus, the petitioner and the other complainants were not illegally dismissed and were not therefore entitled to reinstatement and back wages. On the issue of its legal personality as an independent contractor, it submitted certificates of registration from the DTI,[20] DOLE,[21] and SEC[22] to establish that it had been in operation earlier than May 20, 2002.

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19 Id. at 241-263.
20 Id. at 422.
21 Id. at 423
22 Id. at 424.

The Rulings on Compulsory Arbitration

In a decision[23] dated February 23, 2004, Labor Arbiter (*LA*) Elias H. Salinas dismissed the complaint for lack of merit, holding that PRIME was the complainants' employer as it was PRIME who hired them to work under its *Promotions Contract* with JCA. LA Salinas found the complainants' dismissal valid in view of the termination and nonrenewal of the contract.

LA Salinas denied the complainants' money claims, finding that PRIME had shown that it paid their 13th month pay and service incentive leave pay. However, for reasons of equity and humanitarian considerations, LA Salinas awarded the petitioner and the complainants financial assistance of one-half month's salary for every year of service.

The petitioner and 15 of the other complainants appealed. The 15 however moved to withdraw their appeal, which the National Labor Relations Commission (*NLRC)* granted in its decision[24] of January 23, 2008, leaving only the petitioner to pursue the case. Eventually, NLRC denied the appeal. It also denied the petitioner's motion for reconsideration, prompting her to seek recourse from the CA through a petition for *certiorari.* She charged the NLRC with grave abuse of discretion in rejecting her appeal and motion for reconsideration; as it was, she lamented, contrary to law and jurisprudence.

The CA Decision

Before the CA, the petitioner reiterated her position in compulsory arbitration that Adidas was her employer, not JCA or PRIME, since the two entities were mere dummies/intermediaries or were labor-only contractors of Adidas. She insisted that JCA and PRIME carried out – under their respective contracts – Adidas' merchandising activities using Adidas' premises and equipment with PRIME's purported employees working under the supervision and control of Adidas' personnel.

The CA 10th Division denied the petition in its September 21, 2011[25] decision and affirmed the assailed NLRC rulings as they were not rendered with grave abuse of discretion. It held that the rulings were supported by evidence establishing PRIME to be a "legitimate job contractor" as it possessed substantial capital to finance its promotions undertaking with JCA. The evidence, the CA explained, consisted of remittances to Philhealth, SSS and Pag-ibig[26] which showed that PRIME fulfilled its obligations toward its employees under the government's welfare programs.

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23 Id. at 532-545.
24 *Supra* note 7.
25 *Supra* note 2.
26 *Rollo*, pp. 292-342.

Applying the four-fold employer-employee relationship test,[27] the CA found PRIME to be the complainants' and the petitioner's employer as it was PRIME which (1) hired the complainants;[28] (2) paid their wages;[29] (3) dismissed them upon the expiration of the contract for which they were hired; and (4) exercised control over them with respect to the conduct of the work to be performed.[30]

Consequently, the CA brushed aside the random certificates of attendance in Adidas seminars[31] of some of the complainants to prove that Adidas was their employer, agreeing with NLRC finding that the "certificates only establish the fact that complainants attended the seminars for product knowledge, service quality, and retail service."[32]

The petitioner moved for reconsideration of the CA decision, to no avail, as the CA denied the motion in its February 20, 2012 resolution.[33]

The Petition

The petitioner now asks this Court to reverse the CA rulings, contending that the appeals court seriously erred and gravely abused its discretion when it held that she was an employee of PRIME, not of Adidas, and was validly dismissed, contrary to law and applicable jurisprudence.

Before the Court, the petitioner reiterates the arguments she presented to the CA, particularly the following factual narration:

> 1. She applied at Adidas in its former address at Estrata 200, Emerald Avenue, Ortigas Center City. After the interviews made by Ms. Cornelia Indon (Head Concession, World of Sports Inc.) and Mr. Enrique Victoria (Adidas Sales Manager), they ordered her to proceed to the office of PRIME and from there she was given a letter of introduction ("intro letter") addressed to the outlet where she was assigned.
> 2. She was assigned to different Adidas outlets and she, together with her co-employees, were supervised by Adidas managers and supervisors Cornelia Indon, Sonny Niebres (Managing Director) and Philip Go (President). It was not PRIME who supervised them; neither was it JCA.

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27 (1) ***The selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee with respect to the means and methods by which the work is to be accomplished***; C.A. Azucena, Jr., The LABOR CODE, Comments and Cases, Volume I, Sixth Edition, 2007, citing *"Brotherhood" Labor Unity Movement of the Philippines, et al., v. Zamora*, G.R. No. 48645, January 7, 1987.

28 *Supra* note 2, at 9, par. 2.

29 *Supra* note 14.

30 JCA/PRIME Promotion Contract: ***"There shall be no employer-employee relationship between [JCA] and [PRIME's] employees nor any person that [PRIME] may assign to perform the services called for under this agreement, and as such, [JCA] has no control and supervision over the manner and means [PRIME] or its employees perform the obligations under this Agreement, except as to the result thereof."***

31 *Supra* note 11.

32 *Supra* note 2, at 9, last paragraph.

33 *Supra* note 3.

3. The sales in the outlets were deposited directly to the bank account of Adidas and not to JCA or PRIME bank accounts.
4. The products being sold and the tools she used in the performance of her duty were owned by Adidas. Adidas was also the one that paid the rents in the stores where it has concessions.
5. She continued to work in different Adidas outlets for more than seven years.

The petitioner submits that Adidas, JCA and PRIME failed to refute the above narration or to present any evidence to the contrary. Citing *Lakas sa Industriya ng Kapatirang Haligi ng Alyansa-Pinagbuklod ng Manggawang Promo ng Burlingame v. Burlingame Corporation*,[34] she argues that as **promo girl**, her work is directly related to Adidas' principal business or operations, which makes her a regular employee of the company.

On the other hand, she points out, JCA and PRIME did not carry on an independent business or undertook the performance of their service contracts according to their own manner and methods, free from the control and supervision of the principal Adidas. The two entities, she insists, were mere labor-only contractors.

It is thus clear, the petitioner submits, that an employer-employee relationship existed between her and Adidas. Accordingly, she prays that: (1) she be declared a regular employee of Adidas; (2) Adidas be ordered (a) to reinstate her with full back wages or to pay her back wages and separation pay if reinstatement is no longer feasible; (b) to grant her moral and exemplary damages, plus attorney's fees; and (3) JCA and PRIME be declared jointly and solidarily liable with Adidas for all her other money claims.

The Case for the Respondents

In its Comment[35] filed on June 7, 2012, Adidas asks for the dismissal of the petition, arguing principally that the petitioner failed to present any cogent reason to reverse the CA factual conclusions upholding the labor tribunals' ruling that the petitioner was an employee of PRIME and was not illegally dismissed.

To support its position, Adidas submits that the arguments relied upon by the petitioner are substantially identical with those raised in her *certiorari* petition with the CA, which do not merit further consideration as they had already been correctly passed upon by the appellate court.

Adidas bewails the petitioner's repeated reference to her regular employment with it and not with PRIME, "adducing in evidence only her self-serving *Salaysay* which simply stated her baseless claims."[36] On the other hand, it was able to present proof, together with JCA and PRIME,

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34 G.R. No. 162833, June 15, 2007, 524 SCRA 690.
35 *Rollo*, pp. 575-608.
36 Id. at 590; Comment, p. 16, par. 7.

showing that PRIME was the petitioner's employer, it being, like JCA, an independent and distinct business entity.

The respondents JCA and PRIME opted not to comment on the petition, despite being required by the Court to do so.[37]

The Court's Ruling

We find merit in the petition based on the evidence on record.

The evidence relied upon by LA Salinas, the NLRC, and the CA was insufficient to support their conclusion that the petitioner was an employee of PRIME. On the contrary, **the evidence points to Adidas as the petitioner's and the complainants' real employer.**

PRIME is a labor-only contractor;
JCA an agent/intermediary of Adidas

One of the criteria the CA cited as a basis of its conclusion that PRIME was a legitimate job contractor was its possession of "substantial capital to finance its undertakings,"[38] yet it was silent on what these undertakings were. It merely said: "We reached this conclusion based on records which showed PRIME has fulfilled its obligations towards its employees as regards remittances to Philhealth, the SSS and Pag-ibig."[39] The CA conclusion, to our mind, fell short of establishing that PRIME satisfied the substantial-capital requirement for legitimate job contractors under the law and the rules.

Article 106 of the Labor Code provides that *"There is 'labor-only' contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of the employer.* ***In such cases, the person or intermediary shall be considered merely an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.*** (emphasis supplied)

Sec. 5, Department Order No. 18-02, s. of 2002, implementing Articles 106 to 109 of the Labor Code, **prohibits** *labor-only contracting* and defines it as *"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 is present: (i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the workers recruited,*

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37 Id. at 527; Resolution dated April 20, 2013.
38 *Supra* note 2, at 8, last paragraph.
39 Id.

supplied or placed by such contractor or sub-contractor are performing activities which are directly related to the principal business of the employer; or (ii) the contractor does not exercise the right to control over the performance of the work of the contractual employee. x x x ***'substantial capital or investment' refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out.***" (emphasis supplied)

Aside from PRIME's remittances of employee contributions to Philhealth, SSS, and Pag-ibig and the payment for the complainants' and the petitioner's wages, we find no indication, **except mostly general statements** from Adidas, PRIME and JCA, that PRIME possessed substantial capital or investment to operate as a legitimate job contractor or subcontractor.

According to Adidas, not only did PRIME have substantial capital or investment to run its own business operations independent of its clients, it also has sufficient capability to control and supervise its employees. Yet it offered no proof to substantiate its claim,[40] other than its recognition of PRIME's capability to fulfill its obligations towards its employees.

The same thing is true with PRIME. It likewise offered no proof of how or in what manner its purported substantial capital financed its "promotional and inter-marketing business"[41] with JCA, except to say that in the pursuit of its business operations, "it has complied with all the requirements of law anent the rights, privileges and benefits of its employees."[42]

For its part, JCA relied principally on its promotional contract with PRIME to avoid liability, saying that the terms of their service agreement demonstrate the earmarks of an employer under the four-fold employer-employee relationship test.[43] It also presented no proof of how or in what manner PRIME carried out its undertaking under the contract; although like Adidas, it acknowledged PRIME's payment of the petitioners' and the complainants' wages, and remittances to Philhealth, SSS, and Pag-ibig.

While the payment of wages and workers' benefits is one of the determinants of an employer-employee relationship, we do not find it a reliable basis in this case. In fact, a closer look at the payslips[44] of PRIME's supposed employees reveals that the complainants' salaries and benefits were under the account of Adidas,[45] giving credence to their claim that their compensation was charged to Adidas. If indeed JCA and PRIME were an

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40 *Rollo*, p. 208; Adidas' Position Paper, p. 12, par. 14.
41 Id. at 416; PRIME's Rejoinder, p. 3, par. 2.
42 Id.
43 Id. at 429; JCA's Rejoinder, p. 430, par. 1.
44 *Supra* note 14.
45 Id. statement directly below "NET AMOUNT RECEIVED . . ."

independent contractor and a subcontractor, respectively, why would the name "ADIDAS" still appear on the payslips of PRIME's employees.

The answer lies in the fact that Adidas avoided being identified as the complainants' direct employer so that it would not have to bear the consequences of the complainants' and the petitioner's regularization. Notably, the records show[46] that these complainants and the petitioner were engaged not only in 2002, but much earlier; some were even hired in 1995, including the petitioner, who started selling Adidas products on October 28, 1995. In fact, LA Salinas relied on the complainants' several years of service of selling Adidas products in awarding financial assistance to them.

Under these circumstances, we have reason to believe that PRIME, the supposed JCA subcontractor, just assumed the act of paying the complainants' wages and benefits on behalf of Adidas, indicating thereby that it was a mere agent of Adidas or a labor-only contractor.[47]

In the light of the complete absence of proof that PRIME applied its "substantial capital or investment" in performing the promotional job it contracted with JCA, we find credence in the petitioner's submission that the products she was selling remained to be the property and under the control of Adidas; that it was Adidas who owned the warehouse where they were stored; that leased the sales outlets from department stores; and that provided regular training to her and to the other complainants. **The record shows that this particular claim by the petitioner had not been disputed by either Adidas or JCA.**

Moreover, if in fact Adidas entered a distribution agreement with JCA, we wonder why the products the petitioner and the other supposed "contractual employees" were selling were retained and remained to be under the control of Adidas, and also, why the proceeds of the sales went into Adidas' bank account. The answer is because JCA itself is not an independent contractor. It was merely an agent or intermediary of Adidas, despite the distribution agreement between them which they did not even honor since, as required under Section 2.2 of the agreement,[48] the distributor shall purchase the Adidas products and sell them in its own name and for its own account.

Although Adidas claims that by virtue of the agreement, JCA did not purchase but rather had in its custody and safekeeping different Adidas products, for distribution to different sales outlets in the country,[49] nowhere in the record does it appear that the agreement had been amended to allow such arrangement. Neither has it been shown how or in what manner the

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46 *Supra* note

47 *Vinoya v, National Labor Relations Commission*; 381 Phil. 460, 480 (2000).

48 *Supra* note 9.

49 *Rollo*, p. 933, Adidas' Comment on petitioner's Motion for Reconsideration before the CA., p. 8, par. 13.

distribution was to be done. It was not also shown who managed and provided the storage places and the sales outlets for the products.

Again, in the absence of evidence that JCA had the wherewithal to undertake its distribution agreement with Adidas, except to enter into a promotions contract with PRIME, we find merit in the petitioner's contention that Adidas and JCA, at a time, held office in the same address; and that Adidas provided the storage places and the outlets for the distribution of its products, not PRIME or JCA. As the petitioner points out, formerly it was WOSI and later JCA which acted as agent of Adidas. The record bears out her observations.

The petitioner performed activities necessary to the principal business of Adidas

Thus, the petitioner and the complainants (who withdrew from the case) were performing activities that were necessary to market the products that Adidas itself manufactured. They sold these products for several years, starting in June 1995 until December 9, 2000. While Adidas explains that it amended its articles of incorporation in October 2002 to engage in retail, it cannot be denied that in 1995 it was already in the retail business through its agents WOSI and JCA and labor-only contractor PRIME. Thus, the petitioner had become an Adidas regular employee a long time before she was supposedly made a "contractual employee" of PRIME.

Adidas exercised control and supervision over the performance of the petitioner's work

In the absence of evidence showing how or in what manner PRIME carried out its promotion work under its contract with JCA and how it provided the necessary requirements for such undertaking (such as the maintenance of storage areas and engagement of sales outlets), we likewise find merit in the petitioner's submission that it was Adidas who exercised control and supervision over the petitioner's work performance, through its Sales Manager Sonny Niebres, its President Philip Go, and even Cornelia Indon, head of the WOSI concession.

In sum, we hold that PRIME failed to satisfy the four-fold employer-employee relationship test,[50] making it a labor-only contractor under the law and the rules. Like JCA, it was merely an agent of Adidas, notwithstanding the quitclaims of some of the complainants in its favor. Adidas, therefore, is petitioner's real employer who shall be responsible to her **in the same manner and extent as if she were directly employed by the company.**[51] In this light, we find the petitioner **to have been illegally dismissed, there being obviously no valid cause to and absent due process in her dismissal.**

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50 *Supra* note 27.

51 LABOR CODE, Article 106.

Consequently, the petitioner is entitled under the law[52] to reinstatement, without loss of seniority rights and other privileges, and with full back wages. Should reinstatement no longer be feasible, she shall be entitled to full back wages and separation pay at one month's pay for every year of service. However, her claim for other monetary benefits is denied as she failed to refute LA Salinas' ruling that she had been paid her 13th month pay and service incentive leave pay.

Further, we find the respondents to have shown bad faith in the petitioner's dismissal as it resulted from the prohibited labor-only contracting arrangement imposed on her since October 28, 1995. Thus, the petitioner is also entitled to damages and to attorney's fees as she was compelled to litigate to protect her rights. Under the circumstances, we deem an award to the petitioner of ₱50,000.00 each in moral and exemplary damages, plus ten percent attorney's fees reasonable, to be paid jointly and solidarily by Adidas, PRIME, and JCA.

WHEREFORE, premises considered, the petition is **GRANTED.** The assailed decision and resolution of the Court of Appeals are **SET ASIDE.** The respondent Adidas Philippines, Inc., is **ORDERED** to reinstate the petitioner Marites R. Cusap to her former position without loss of seniority rights and other privileges, and to pay her back wages from her illegal dismissal on December 9, 2002, up to her actual reinstatement; and should reinstatement no longer be feasible, to pay her back wages and separation pay at one month's pay for every year of service.

Adidas Philippines, Inc., Promotion Resources & Inter-Marketing Exponents, Inc., and JC Athletes Inc., are **ORDERED** to pay the petitioner, jointly and solidarily, moral damages of ₱50,000.00, exemplary damages of ₱50,000.00 and 10% of all the sums due under this Decision as attorney's fees.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

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52 Id. Article 279.

JOSE CATRAL MENDOZA
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
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.

ANTONIO T. CARPIO
Acting Chief Justice