Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

JESUS G. REYES,
Petitioner,

- *versus* -

GLAUCOMA RESEARCH FOUNDATION, INC., EYE REFERRAL CENTER and MANUEL B. AGULTO,
Respondents.

G.R. No. 189255

Present:

PERALTA,* *J.*, *Acting Chairperson*,
DEL CASTILLO,**
VILLARAMA, JR.,
REYES, and
JARDELEZA, *JJ.*

Promulgated:

June 17, 2015

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D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* seeking to reverse and set aside the Decision[1] and Resolution[2] of the Court of Appeals (*CA*), dated April 20, 2009 and August 25, 2009, respectively, in CA-G.R. SP No. 104261. The assailed CA Decision annulled the Decision of the National Labor Relations Commission (*NLRC*) in NLRC NCR Case No. 05-0441-05 and reinstated the Decision of the Labor Arbiter (*LA*) in the same case, while the CA Resolution denied petitioner's motion for reconsideration.

The instant petition arose from a complaint for illegal dismissal filed by petitioner against respondents with the NLRC, National Capital Region, Quezon City. Petitioner alleged that: on August 1, 2003, he was hired by respondent corporation as administrator of the latter's Eye Referral Center

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* Per Special Order No. 2059 dated June 17, 2015.

** Designated Acing Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 2060 dated June 17, 2105.

1 Penned by Associate Justice Mariflor P. Punzalan-Castillo, with Associate Justices Mario L. Guariña III and Marlene Gonzales-Sison, concurring; Annex "A" to Petition, *rollo* pp. 34-51.

2 *Id.* at 53-56.

(ERC); he performed his duties as administrator and continuously received his monthly salary of ₱20,000.00 until the end of January 2005; beginning February 2005, respondent withheld petitioner's salary without notice but he still continued to report for work; on April 11, 2005, petitioner wrote a letter to respondent Manuel Agulto (*Agulto*), who is the Executive Director of respondent corporation, informing the latter that he has not been receiving his salaries since February 2005 as well as his 14th month pay for 2004; petitioner did not receive any response from Agulto; on April 21, 2005, petitioner was informed by the Assistant to the Executive Director as well as the Assistant Administrative Officer, that he is no longer the Administrator of the ERC; subsequently, petitioner's office was padlocked and closed without notice; he still continued to report for work but on April 29, 2005 he was no longer allowed by the security guard on duty to enter the premises of the ERC.

On their part, respondents contended that: upon petitioner's representation that he is an expert in corporate organizational structure and management affairs, they engaged his services as a consultant or adviser in the formulation of an updated organizational set-up and employees' manual which is compatible with their present condition; based on his claim that there is a need for an administrator for the ERC, he later designated himself as such on a trial basis; there is no employer-employee relationship between them because respondents had no control over petitioner in terms of working hours as he reports for work at anytime of the day and leaves as he pleases; respondents also had no control as to the manner in which he performs his alleged duties as consultant; he became overbearing and his relationship with the employees and officers of the company soured leading to the filing of three complaints against him; petitioner was not dismissed as he was the one who voluntarily severed his relations with respondents.

On January 20, 2006, the LA assigned to the case rendered a Decision[3] dismissing petitioner's complaint. The LA held, among others, that petitioner failed to establish that the elements of an employer-employee relationship existed between him and respondents because he was unable to show that he was, in fact, appointed as administrator of the ERC and received salaries as such; he also failed to deny that during his stint with respondents, he was, at the same time, a consultant of various government agencies such as the Manila International Airport Authority, Manila Intercontinental Port Authority, Anti-Terrorist Task Force for Aviation and Air Transportation Sector; his actions were neither supervised nor controlled by the management of the ERC; petitioner, likewise, did not observe working hours by reporting for work and leaving therefrom as he pleased; and, he was receiving allowances, not salaries, as a consultant.

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3 Annex "C" to Petition, *id*. at 58-73.

On appeal, the NLRC reversed and set aside the Decision of the LA. The NLRC declared petitioner as respondents' employee, that he was illegally dismissed and ordered respondents to reinstate him to his former position without loss of seniority rights and privileges with full backwages. The NLRC held that the basis upon which the conclusion of the LA was drawn lacked support; that it was incumbent for respondents to discharge the burden of proving that petitioner's dismissal was for cause and effected after due process was observed; and, that respondents failed to discharge this burden.[4]

Respondents filed a motion for reconsideration, but it was denied by the NLRC in its Resolution[5] dated May 30, 2008.

Respondents then filed a Petition for *Certiorari*[6] with the CA.

In its assailed Decision, the CA annulled and set aside the judgment of the NLRC and reinstated the Decision of the LA. The CA held that the LA was correct in ruling that, under the control test and the economic reality test, no employer-employee relationship existed between respondents and petitioner.

Petitioner filed a motion for reconsideration, but the CA denied it in its Resolution dated August 25, 2009.

Hence, the present petition for review on *certiorari* based on the following grounds:

> I
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> THE HONORABLE COURT OF APPEALS ERRED AND ABUSED ITS DISCRETION IN NOT DISMISSING RESPONDENTS' PETITION FOR CERTIORARI ON THE GROUND THAT RESPONDENTS SUBMITTED A VERIFICATION THAT FAILS TO COMPLY WITH THE 2004 RULES ON NOTARIAL PRACTICE.
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> II
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> THE HONORABLE COURT OF APPEALS ERRED AND ABUSED ITS DISCRETION IN RULING THAT NO EMPLOYER-EMPLOYEE RELATIONSHIP EXISTS BETWEEN RESPONDENTS AND PETITIONER.[7]

As to the first ground, petitioner contends that respondents' petition for *certiorari* filed with the CA should have been dismissed on the ground

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4 Annex “E” to Petition, *id.* at 163-170.
5 Annex “F” to Petition, *id.* at 172-173.
6 CA *rollo*, pp. 2-20.
7 *Rollo*, pp. 14-15.

that it was improperly verified because the *jurat* portion of the verification states only the community tax certificate number of the affiant as evidence of her identity. Petitioner argues that under the 2004 Rules on Notarial Practice, as amended by a Resolution[8] of this Court, dated February 19, 2008, a community tax certificate is not among those considered as competent evidence of identity.

The Court does not agree.

This Court has already ruled that competent evidence of identity is not required in cases where the affiant is personally known to the notary public.[9]

Thus, in *Jandoquile v. Revilla, Jr.*,[10] this Court held that:

> **If the notary public knows the affiants personally, he need not require them to show their valid identification cards.** This rule is supported by the definition of a "jurat" under Section 6, Rule II of the 2004 Rules on Notarial Practice. A "jurat" refers to an act in which an individual on a single occasion: (a) appears in person before the notary public and presents an instrument or document; (b) is personally known to the notary public **or** identified by the notary public through competent evidence of identity; (c) signs the instrument or document in the presence of the notary; and (d) takes an oath or affirmation before the notary public as to such instrument or document.[11]

Also, Section 2(b), Rule IV of the 2004 Rules on Notarial Practice provides as follows:

> SEC. 2. Prohibitions –
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> (a) x x x
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> (b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document –
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> (1) is not in the notary's presence personally at the time of the notarization; and
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> (2) is not personally known to the notary public **or** otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

Moreover, Rule II, Section 6 of the same Rules states that:

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8 A.M. No. 02-8-13-SC.

9 *Amora, Jr. v. COMELEC, et al.*, 655 Phil. 467, 479 (2011).

10 A.C. No. 9514, April 10, 2013, 695 SCRA 356.

11 *Jandoquile v. Revilla, Jr.*, *supra*, at 360. (Emphasis ours)

> SEC 6. Jurat. – "Jurat" refers to an act in which an individual on a single occasion:
>
> (a) appears in person before the notary public and presents an instrument or document;
>
> (b) is personally known to the notary public **or** identified by the notary public through competent evidence of identity as defined by these Rules;
>
> (c) signs the instrument or document in the presence of the notary; and
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> (d) takes an oath or affirmation before the notary public as to such instrument or document.

In legal hermeneutics, "or" is a disjunctive that expresses an alternative or gives a choice of one among two or more things.[12] The word signifies disassociation and independence of one thing from another thing in an enumeration.[13]

Thus, as earlier stated, if the affiant is personally known to the notary public, the latter need not require the former to show evidence of identity as required under the 2004 Rules on Notarial Practice, as amended.

Applying the above rule to the instant case, it is undisputed that the attorney-in-fact of respondents who executed the verification and certificate against forum shopping, which was attached to respondents' petition filed with the CA, is personally known to the notary public before whom the documents were acknowledged. Both attorney-in-fact and the notary public hold office at respondents' place of business and the latter is also the legal counsel of respondents.

In any event, this Court's disquisition in the fairly recent case of *Heirs of Amada Zaulda v. Isaac Zaulda*[14] regarding the import of procedural rules *vis-a-vis* the substantive rights of the parties, is instructive, to wit:

> [G]ranting, *arguendo*, that there was non-compliance with the verification requirement, the rule is that courts should not be so strict about procedural lapses which do not really impair the proper administration of justice. After all, the higher objective of procedural rule is to ensure that the substantive rights of the parties are protected. Litigations should, as much as possible, be decided on the merits and not on technicalities. Every party-litigant must be afforded ample opportunity for the proper and just determination of his case, free from the unacceptable plea of technicalities.

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12 *Guzman v. Commission on Elections, et al.*, 614 Phil. 143, 160 (2009).
13 *Id.*
14 G.R. No. 201234, March 17, 2014.

> In *Coca-Cola Bottlers v. De la Cruz*, where the verification was marred only by a glitch in the evidence of the identity of the affiant, the Court was of the considered view that, in the interest of justice, the minor defect can be overlooked and should not defeat the petition.
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> The reduction in the number of pending cases is laudable, but if it would be attained by precipitate, if not preposterous, application of technicalities, justice would not be served. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. "It is a more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not miscarriage of justice."
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> What should guide judicial action is the principle that a party-litigant should be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor, or property on technicalities. The rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. At this juncture, the Court reminds all members of the bench and bar of the admonition in the often-cited case of Alonso v. Villamor:
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> > Lawsuits, unlike duels, are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. There should be no vested rights in technicalities.[15]

Anent the second ground, petitioner insists that, based on evidence on record, an employer-employee relationship exists between him and respondents.

The Court is not persuaded.

It is a basic rule of evidence that each party must prove his affirmative allegation.[16] If he claims a right granted by law, he must prove his claim by competent evidence, relying on the strength of his own evidence and not upon the weakness of that of his opponent.[17] The test for determining on whom the burden of proof lies is found in the result of an inquiry as to which party would be successful if no evidence of such matters were given.[18] In an illegal dismissal case, the *onus probandi* rests on the employer to prove that its dismissal of an employee was for a valid cause.[19] However, before a case

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15 *Amada Zaulda v. Isaac Zaulda, supra.* (Citations omitted)

16 *Lopez v. Bodega City (Video-Disco Kitchen of the Phils.) and/or Torres-Yap*, 558 Phil. 666, 673 (2007).

17 *Id.* at 673-674.

18 *Id*. at 674.

19 *Id.*

for illegal dismissal can prosper, an employer-employee relationship must first be established.[20] Thus, in filing a complaint before the LA for illegal dismissal, based on the premise that he was an employee of respondents, it is incumbent upon petitioner to prove the employer-employee relationship by substantial evidence.[21]

In regard to the above discussion, the issue of whether or not an employer-employee relationship existed between petitioner and respondents is essentially a question of fact.[22] The factors that determine the issue include who has the power to select the employee, who pays the employee's wages, who has the power to dismiss the employee, and who exercises control of the methods and results by which the work of the employee is accomplished.[23] Although no particular form of evidence is required to prove the existence of the relationship, and any competent and relevant evidence to prove the relationship may be admitted, a finding that the relationship exists must nonetheless rest on substantial evidence, which is that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion.[24]

Generally, the Court does not review factual questions, primarily because the Court is not a trier of facts.[25] However, where, like here, there is a conflict between the factual findings of the LA and the CA, on one hand, and those of the NLRC, on the other, it becomes proper for the Court, in the exercise of its equity jurisdiction, to review and re-evaluate the factual issues and to look into the records of the case and re-examine the questioned findings.[26]

Etched in an unending stream of cases are four standards in determining the existence of an employer-employee relationship, namely: (a) the manner of selection and engagement of the putative employee; (b) the mode of payment of wages; (c) the presence or absence of power of dismissal; and, (d) the presence or absence of control of the putative employee's conduct. Most determinative among these factors is the so-called "control test."[27]

Indeed, the power of the employer to control the work of the employee is considered the most significant determinant of the existence of an employer-employee relationship.[28] This test is premised on whether the

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20 *Id.*
21 *Id.*
22 *Legend Hotel (Manila) v. Realuyo*, G.R. No. 153511, July 18, 2012, 677 SCRA, 10, 19.
23 *Id.*
24 *Id.*
25 *Id.*
26 *Id*, at 19-20.
27 *Sasan, Sr. v. NLRC, 4th Div., et al*., 590 Phil. 685, 708-709 (2008).
28 *Legend Hotel (Manila) v. Realuyo, supra* note 22, at 22.

person for whom the services are performed reserves the right to control both the end achieved and the manner and means used to achieve that end.[29]

In the present case, petitioner contends that, as evidence of respondents' supposed control over him, the organizational plans he has drawn were subject to the approval of respondent corporation's Board of Trustees. However, the Court agrees with the disquisition of the CA on this matter, to wit:

> [Respondents'] power to approve or reject the organizational plans drawn by [petitioner] cannot be the control contemplated in the "control test." It is but logical that one who commissions another to do a piece of work should have the right to accept or reject the product. The important factor to consider in the "control test" is still the element of control over how the work itself is done, not just the end result thereof.
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> Well settled is the rule that where a person who works for another performs his job more or less at his own pleasure, in the manner he sees fit, not subject to definite hours or conditions of work, and is compensated according to the result of his efforts and not the amount thereof, no employer-employee relationship exists.[30]

What was glaring in the present case is the undisputed fact that petitioner was never subject to definite working hours. He never denied that he goes to work and leaves therefrom as he pleases.[31] In fact, on December 1-31, 2004, he went on leave without seeking approval from the officers of respondent company. On the contrary, his letter[32] simply informed respondents that he will be away for a month and even advised them that they have the option of appointing his replacement during his absence. This Court has held that there is no employer-employee relationship where the supposed employee is not subject to a set of rules and regulations governing the performance of his duties under the agreement with the company and is not required to report for work at any time, nor to devote his time exclusively to working for the company.[33]

In this regard, this Court also agrees with the ruling of the CA that:

> Aside from the control test, the Supreme Court has also used the economic reality test in determining whether an employer-employee relationship exists between the parties. Under this test, the economic realities prevailing within the activity or between the parties are examined, taking into consideration the totality of circumstances surrounding the true nature of the relationship between the parties. This is especially

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29 *Id.*

30 See CA Decision, *rollo*, pp. 43-44. (Citations omitted)

31 See *rollo*, pp. 243-244; CA *rollo*, p. 49.

32 *Rollo*, p. 158.

33 *Insular Life Assurance Co., Ltd. v. National Labor Relations Commission*, 259 Phil. 65, 72 (1989).

> appropriate when, as in this case, there is no written agreement or contract on which to base the relationship. In our jurisdiction, the benchmark of economic reality in analyzing possible employment relationships for purposes of applying the Labor Code ought to be the economic dependence of the worker on his employer.
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> In the instant case, as shown by the resume of [petitioner], he concurrently held consultancy positions with the Manila International Airport Authority (from 04 March 2001 to September 2003 and from 01 November 2004 up to the present) and the Anti-Terrorist Task Force for Aviation and Air Transportation Sector (from 16 April 2004 to 30 June 2004) during his stint with the Eye Referral Center (from 01 August 2003 to 29 April 2005). Accordingly, it cannot be said that the [petitioner] was wholly dependent on [respondent] company.[34]

In bolstering his contention that there was an employer-employee relationship, petitioner draws attention to the pay slips he supposedly received from respondent corporation. However, he does not dispute the findings of the CA that there are no deductions for SSS and withholding tax from his compensation, which are the usual deductions from employees' salaries. Thus, the alleged pay slips may not be treated as competent evidence of petitioner's claim that he is respondents' employee.

In addition, the designation of the payments to petitioner as salaries, is not determinative of the existence of an employer-employee relationship.[35] Salary is a general term defined as a remuneration for services given.[36] Evidence of this fact, in the instant case, was the cash voucher issued in favor of petitioner where it was stated therein that the amount of ₱20,000.00 was given as petitioner's allowance for the month of December 2004, although it appears from the pay slip that the said amount was his salary for the same period.

Additional evidence of the fact that petitioner was hired as a consultant and not as an employee of respondent corporation are affidavits to this effect which were executed by Roy Oliveres[37] and Aurea Luz Esteva,[38] who are Medical Records Custodian and Administrative Officer, respectively, of respondent corporation. Petitioner insists in its objection of the use of these affidavits on the ground that they are, essentially, hearsay. However, this Court has ruled that although the affiants had not been presented to affirm the contents of their affidavits and be cross-examined, their affidavits may be given evidentiary value; the argument that such affidavits were hearsay was not persuasive.[39] Likewise, this Court ruled that

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34 See CA Decision, *rollo*, pp. 46-47. (Citations omitted)

35 *Almirez v, Infinite Loop Technology Corporation*, 516 Phil. 705, 716 (2006).

36 *Id*.

37 *Rollo*, pp. 219-226.

38 *Id*. at 231-233.

39 *Lepanto Consolidated Mining Co. v. Dumapis, et al.*, 584 Phil. 100, 109 (2008), citing *Bantolino v. Coca-Cola Bottlers Phils., Inc.*, 451 Phil. 839, 845 (2003).

it was not necessary for the affiants to appear and testify and be cross-examined by counsel for the adverse party.[40] To require otherwise would be to negate the rationale and purpose of the summary nature of the proceedings mandated by the Rules and to make mandatory the application of the technical rules of evidence.[41]

These affidavits are corroborated by evidence, as discussed above, showing that petitioner has no definite working hours and is not subject to the control of respondents.

Lastly, the Court does not agree with petitioner's insistence that his being hired as respondent corporation's administrator and his designation as such in intra-company correspondence proves that he is an employee of the corporation. The fact alone that petitioner was designated as an administrator does not necessarily mean that he is an employee of respondents. Mere title or designation in a corporation will not, by itself, determine the existence of an employer-employee relationship.[42] In this regard, even the identification card which was issued to petitioner is not an adequate proof of petitioner's claim that he is respondents' employee. In addition, petitioner's designation as an administrator neither disproves respondents' contention that he was engaged only as a consultant.

As a final point, it bears to reiterate that while the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute will be automatically decided in favor of labor.[43] Management also has its rights which are entitled to respect and enforcement in the interest of simple fair play.[44] Out of its concern for the less privileged in life, the Court has inclined, more often than not, toward the worker and upheld his cause in his conflicts with the employer.[45] Such favoritism, however, has not blinded the Court to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and the applicable law and doctrine.[46]

WHEREFORE, the instant petition is **DENIED**. The Decision and Resolution of the Court of Appeals, dated April 20, 2009 and August 25, 2009, respectively, in CA-G.R. SP No. 104261, are **AFFIRMED**.

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40 *Id.* at 109-110, citing *Rase v. NLRC*, G.R. No. 110637, October 7, 1994, 237 SCRA 523, 534.
41 *Id.* at 109-110.
42 *Okol v. Slimmers World International, et al*., 623 Phil. 13, 18 (2009).
43 *Javier v. Fly Ace Corporation*, G.R. No. 192558, February 15, 2012, 666 SCRA 382, 399-400.
44 *Id.* at 400.
45 *Id.*
46 *Id.*

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest 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.

DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, 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
Chief Justice