



Republic of the Philippines  
**SUPREME COURT**  
Manila

**THIRD DIVISION**

**FONTERRA BRANDS PHILS.,  
INC.,**

Petitioner,

- versus -

**LEONARDO<sup>1</sup> LARGADO and  
TEOTIMO ESTRELLADO,**

Respondents.

**G.R. No. 205300**

Present:

VELASCO, JR., J., Chairperson,  
PERALTA,  
VILLARAMA, JR.,  
REYES, and  
JARDELEZA, JJ.

Promulgated:

March 18, 2015 ,

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**DECISION**

**VELASCO, JR., J.:**

**The Case**

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court seeking the reversal and setting aside of the Decision of the Court of Appeals (CA) dated September 6, 2012, as well as its January 11, 2013 Resolution denying reconsideration thereof, in CA-G.R. SP No. 114227, entitled *Leonardo Largado and Teotimo P. Estrellado v. National Labor Relations Commission (NLRC), Fonterra Brands Phils., Inc./Carlo Mendoza, Zytron Marketing & Promotions Corp./Francisco Valencia, A.C. Sicat Marketing & Promotional Services/Arturo Sicat*.

**The Facts**

Petitioner Fonterra Brands Phils., Inc. (Fonterra) contracted the services of Zytron Marketing and Promotions Corp. (Zytron) for the marketing and promotion of its milk and dairy products. Pursuant to the contract, Zytron provided Fonterra with trade merchandising representatives (TMRs), including respondents Leonardo Largado (Largado) and Teotimo Estrellado (Estrellado). The engagement of their services began on

<sup>1</sup> Respondent's name as indicated in the annexes is Leandro Largado.

September 15, 2003 and May 27, 2002, respectively, and ended on June 6, 2006.

On May 3, 2006, Fonterra sent Zytron a letter terminating its promotions contract, effective June 5, 2006. Fonterra then entered into an agreement for manpower supply with A.C. Sicat Marketing and Promotional Services (A.C. Sicat). Desirous of continuing their work as TMRs, respondents submitted their job applications with A.C. Sicat, which hired them for a term of five (5) months, beginning June 7, 2006 up to November 6, 2006.

When respondents' 5-month contracts with A.C. Sicat were about to expire, they allegedly sought renewal thereof, but were allegedly refused. This prompted respondents to file complaints for illegal dismissal, regularization, non-payment of service incentive leave and 13<sup>th</sup> month pay, and actual and moral damages, against petitioner, Zytron, and A.C. Sicat.

The Labor Arbiter dismissed the complaint and ruled that: (1) respondents were not illegally dismissed. As a matter of fact, they were the ones who refused to renew their contract and that they voluntarily complied with the requirements for them to claim their corresponding monetary benefits in relation thereto; and (2) they were consecutively employed by Zytron and A.C. Sicat, not by Fonterra. The dispositive portion of the Decision<sup>2</sup> reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered **DISMISSING** the instant case for utter lack of merit.

SO ORDERED.

The NLRC affirmed the Labor Arbiter, finding that respondents' separation from Zytron was brought about by the execution of the contract between Fonterra and A.C. Sicat where the parties agreed to absorb Zytron's personnel, including respondents. Too, respondents failed to present any evidence that they protested this set-up. Furthermore, respondents failed to refute the allegation that they voluntarily refused to renew their contract with A.C. Sicat. Also, respondents did not assert any claim against Zytron and A.C. Sicat. The NLRC disposed of the case in this wise:

**WHEREFORE**, premises considered, the appeals are hereby ordered **DISMISSED** and the Decision of the Labor Arbiter is **AFFIRMED** [in] toto.

**SO ORDERED.**<sup>3</sup>

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<sup>2</sup> Dated March 15, 2008 in NLRC Case No. RAB IV 12-23927-06-Q. By Labor Arbiter Jesus Orlando M. Quinones

<sup>3</sup> NLRC Decision dated November 20, 2009 in NLRC Case No. RAB IV 12-23927-06-Q. By Presiding Commissioner Herminio V. Suelo

The NLRC decision was assailed in a petition under Rule 65 before the CA.

Ruling on the petition, the CA, in the questioned Decision,<sup>4</sup> found that A.C. Sicat satisfies the requirements of legitimate job contracting, but Zytron does not. According to the CA: (1) Zytron's paid-in capital of ₱250,000 cannot be considered as substantial capital; (2) its Certificate of Registration was issued by the DOLE months after respondents' supposed employment ended; and (3) its claim that it has the necessary tools and equipment for its business is unsubstantiated. Therefore, according to the CA, respondents were Fonterra's employees.

Additionally, the CA held that respondents were illegally dismissed since Fonterra itself failed to prove that their dismissal is lawful. However, the illegal dismissal should be reckoned from the termination of their supposed employment with Zytron on June 6, 2006. Furthermore, respondents' transfer to A.C. Sicat is tantamount to a completely new engagement by another employer. Lastly, the termination of their contract with A.C. Sicat arose from the expiration of their respective contracts with the latter. The CA, thus, ruled that Fonterra is liable to respondents and ordered the reinstatement of respondents without loss of seniority rights, with full backwages, and other benefits from the time of their illegal dismissal up to the time of their actual reinstatement. The *fallo* of the Decision reads:

**WHEREFORE**, premises considered, the petition is hereby **GRANTED**. The assailed Decision dated 20 November 2009 and Resolution dated 5 March 2010 of the National Labor Relations Commission (NLRC), Seventh Division, are hereby **ANULLED and SET ASIDE**. Private respondent Fonterra Brand, Inc. is hereby ordered to REINSTATE [respondents] without loss of seniority rights. Private respondents Fonterra Brand, Inc. and Zytron Marketing and Promotional Corp. are hereby further **ORDERED** to jointly and severally pay petitioners their full backwages and other benefits from the time of their illegal dismissal up to the time of their actual reinstatement; and attorney's fees.

**SO ORDERED.**

Zytron and Fonterra moved for reconsideration, but to no avail. Hence, this petition.

### **The Issues**

Petitioner presents the following issues for Our resolution:

- I. The CA erred in ruling that Zytron was a mere labor-only contractor to petitioner Fonterra, in that:

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<sup>4</sup> Penned by Associate Justice Samuel H. Gaerlan and concurred in by Associate Justices Rebecca L. De Guia-Salvador and Apolinario D. Bruselas, Jr.

- a. As held by the Court, there is no absolute figure that constitutes “substantial” capital for an independent contractor, and the same should instead be measured against the type of work it is obligated to do for the principal. It is most respectfully submitted that, here, the merchandising work undertaken by Zytron’s paid-in capital of ₱250,000 was as of 1990, the year it was incorporated;
  - b. As shown in its Articles of Incorporation, Zytron had been in business since 1990, or more than a decade before it signed a merchandising agreement with petitioner Fonterra;
  - c. Very importantly, petitioner Fonterra never exercised the right to control respondents and other employees of Zytron. Indeed, respondents neither alleged that petitioner exercised control over them nor presented proof in support thereof in any of their previous pleadings.
- II. Respondents never claimed nor adduced evidence that they were dismissed from employment by Zytron. In fact, Zytron denies terminating them from work. The CA, thus, erred in finding that respondents were “illegally dismissed.”

Succinctly, the issues in the case at bar are: (1) whether or not Zytron and A.C. Sicat are labor-only contractors, making Fonterra the employer of herein respondents; and (2) whether or not respondents were illegally dismissed.

### **Our Ruling**

We find merit in the petition.

As regards the CA’s conclusion that Zytron is not a legitimate job contractor, We are of the view that such is immaterial to the resolution of the illegal dismissal issue for one reason: We find that respondents voluntarily terminated their employment with Zytron, contrary to their allegation that their employment with Zytron was illegally terminated.

We do not agree with the CA that respondents’ employment with Zytron was illegally terminated.

As correctly held by the Labor Arbiter and the NLRC, the termination of respondents’ employment with Zytron was brought about by the cessation of their contracts with the latter. We give credence to the Labor Arbiter’s conclusion that respondents were the ones who refused to renew their contracts with Zytron, and the NLRC’s finding that they themselves acquiesced to their transfer to A.C. Sicat.

By refusing to renew their contracts with Zytron, respondents effectively resigned from the latter. Resignation is the voluntary act of

employees who are compelled by personal reasons to dissociate themselves from their employment, done with the intention of relinquishing an office, accompanied by the act of abandonment.<sup>5</sup>

Here, it is obvious that respondents were no longer interested in continuing their employment with Zytron. Their voluntary refusal to renew their contracts was brought about by their desire to continue their assignment in Fonterra which could not happen in view of the conclusion of Zytron's contract with Fonterra. Hence, to be able to continue with their assignment, they applied for work with A.C. Sicat with the hope that they will be able to continue rendering services as TMRs at Fonterra since A.C. Sicat is Fonterra's new manpower supplier. This fact is even acknowledged by the CA in the assailed Decision where it recognized the reason why respondents applied for work at A.C. Sicat. The CA stated that "[t]o continuously work as merchandisers of Fonterra products, [respondents] submitted their job applications to A.C. Sicat x x x."<sup>6</sup> This is further bolstered by the fact that respondents voluntarily complied with the requirements for them to claim their corresponding monetary benefits in relation to the cessation of their employment contract with Zytron.

In short, respondents voluntarily terminated their employment with Zytron by refusing to renew their employment contracts with the latter, applying with A.C. Sicat, and working as the latter's employees, thereby abandoning their previous employment with Zytron. Too, it is well to mention that for obvious reasons, resignation is inconsistent with illegal dismissal. This being the case, Zytron cannot be said to have illegally dismissed respondents, contrary to the findings of the CA.

As regards respondents' employment with A.C. Sicat and its termination via non-renewal of their contracts, considering that in labor-only contracting, the law creates an employer-employee relationship between the principal and the labor-only contractor's employee as if such employees are directly employed by the principal employer, and considers the contractor as merely the agent of the principal,<sup>7</sup> it is proper to dispose of the issue on A.C. Sicat's status as a job contractor first before resolving the issue on the legality of the cessation of respondents' employment.

In this regard, We defer to the findings of the CA anent A.C. Sicat's status as a legitimate job contractor, seeing that it is consistent with the rules on job contracting and is sufficiently supported by the evidence on record.

A person is considered engaged in legitimate job contracting or subcontracting if the following conditions concur:

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<sup>5</sup> *Carlos v. Court of Appeals*, G.R. No. 168096, August 28, 2007, 531 SCRA 461, 470.

<sup>6</sup> *Rollo*, p. 50.

<sup>7</sup> See *Almeda v. Asahi Glass Philippines, Inc.*, G.R. No. 177785, September 3, 2008, 564 SCRA 115, 126.

1. The contractor or subcontractor carries on a distinct and independent business and undertakes to perform the job, work or service on its own account and under its own responsibility according to its own manner and method, and free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof;
2. The contractor or subcontractor has substantial capital or investment; and
3. The agreement between the principal and contractor or subcontractor assures the contractual employees entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social and welfare benefits.<sup>8</sup>

On the other hand, contracting is prohibited when the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal and if any of the following elements are present, thus:

1. The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or
2. The contractor does not exercise the right to control over the performance of the work of the contractual employee.<sup>9</sup>

The CA correctly found that A.C. Sicat is engaged in legitimate job contracting. It duly noted that A.C. Sicat was able to prove its status as a legitimate job contractor for having presented the following evidence, to wit:

1. Certificate of Business Registration;
2. Certificate of Registration with the Bureau of Internal Revenue;
3. Mayor's Permit;
4. Certificate of Membership with the Social Security System;
5. Certificate of Registration with the Department of Labor and Employment;
6. Company Profile; and
7. Certifications issued by its clients.<sup>10</sup>

Furthermore, A.C. Sicat has substantial capital, having assets totaling ₱5,926,155.76 as of December 31, 2006. Too, its Agreement with Fonterra clearly sets forth that A.C. Sicat shall be liable for the wages and salaries of its employees or workers, including benefits, premiums, and protection due them, as well as remittance to the proper government entities of all

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<sup>8</sup> Id. at 125-126.

<sup>9</sup> *Aliviado v. Procter & Gamble Phils., Inc.*, G.R. No. 160506, March 9, 2010, 614 SCRA 563, 577.

<sup>10</sup> *Rollo*, p. 55.

withholding taxes, Social Security Service, and Medicare premiums, in accordance with relevant laws.

The appellate court further correctly held that Fonterra's issuance of Merchandising Guidelines, stock monitoring and inventory forms, and promo mechanics, for compliance and use of A.C. Sicat's employees assigned to them, does not establish that Fonterra exercises control over A.C. Sicat. We agree with the CA's conclusion that these were imposed only to ensure the effectiveness of the promotion services to be rendered by the merchandisers as it would be risky, if not imprudent, for any company to completely entrust the performance of the operations it has contracted out.

These sufficiently show that A.C. Sicat carries out its merchandising and promotions business, independent of Fonterra's business. Thus, having settled that A.C. Sicat is a legitimate job contractor, We now determine whether the termination of respondents' employment with the former is valid.

We agree with the findings of the CA that the termination of respondents' employment with the latter was simply brought about by the expiration of their employment contracts.

Foremost, respondents were fixed-term employees. As previously held by this Court, fixed-term employment contracts are not limited, as they are under the present Labor Code, to those by nature seasonal or for specific projects *with predetermined dates of completion*; they also include those to which the parties by free choice have assigned a specific date of termination.<sup>11</sup> The determining factor of such contracts is not the duty of the employee but *the day certain agreed upon by the parties for the commencement and termination of the employment relationship*.<sup>12</sup>

In the case at bar, it is clear that respondents were employed by A.C. Sicat as project employees. In their employment contract with the latter, it is clearly stated that "[A.C. Sicat is] temporarily employing [respondents] as TMR[s] effective June 6[, 2006] under the following terms and conditions: The need for your service being only for a specific project, your temporary employment will be for the duration only of said project of our client, namely to promote FONTERRA BRANDS products x x x which is expected to be finished on or before Nov. 06, 2006."<sup>13</sup>

Respondents, by accepting the conditions of the contract with A.C. Sicat, were well aware of and even acceded to the condition that their employment thereat will end on said pre-determined date of termination. They cannot now argue that they were illegally dismissed by the latter when it refused to renew their contracts after its expiration. This is so since the

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<sup>11</sup> *Price v. Innodata Phils. Inc.*, G.R. No. 178505, September 30, 2008, 567 SCRA 269, 283; citing *Brent School, Inc. v. Zamora*, No. L-48494, February 5, 1990.

<sup>12</sup> *Id.*


<sup>13</sup> *Rollo*, pp. 923, 929.

non-renewal of their contracts by A.C. Sicat is a management prerogative, and failure of respondents to prove that such was done in bad faith militates against their contention that they were illegally dismissed. The expiration of their contract with A.C. Sicat simply caused the natural cessation of their fixed-term employment thereat. We, thus, see no reason to disturb the ruling of the CA in this respect.

With these, We need not belabor the other assigned errors.

**IN VIEW OF THE FOREGOING**, the instant Petition for Review is **GRANTED**. The assailed Decision of the Court of Appeals dated September 6, 2012 and its January 11, 2013 Resolution denying reconsideration thereof, in CA-G.R. SP No. 114227, are hereby **REVERSED** and **SET ASIDE**. The Decision of the National Labor Relations Commission dated November 20, 2009 and its Resolution dated March 5, 2010 in NLRC Case No. RAB IV 12-23927-06-Q are hereby **REINSTATED**.

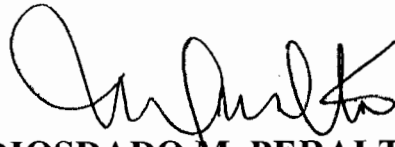
**SO ORDERED.**



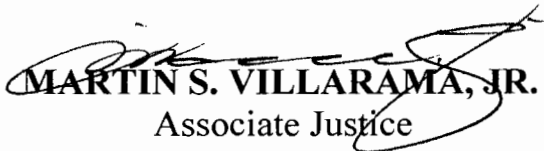
**PRESBITERO J. VELASCO, JR.**  
Associate Justice



WE CONCUR:



**DIOSDADO M. PERALTA**  
Associate Justice



**MARTIN S. VILLARAMA, JR.**  
Associate Justice



**BIENVENIDO L. REYES**  
Associate Justice



**FRANCIS H. JARDELEZA**  
Associate Justice

**ATTESTATION**

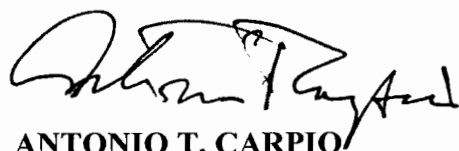
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division 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.



**ANTONIO T. CARPIO**  
Acting Chief Justice