Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

CHEVRON (PHILS.), INC.,
Petitioner,

- versus -

VITALIANO C. GALIT, SJS AND SONS CONSTRUCTION CORPORATION and MR. REYNALDO SALOMON,
Respondents.

G.R. No. 186114

Present:

PERALTA,* *J.*, *Acting Chairperson*,
VILLARAMA, JR.,
PERLAS-BERNABE,**
LEONEN,*** and
JARDELEZA, *JJ.*

Promulgated:

October 7, 2015

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DECISION

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking the reversal and setting aside of the Decision[1] and Resolution[2] of the Court of Appeals (*CA*), dated December 8, 2008 and January 20, 2009, respectively, in CA-G.R. SP No. 104713. The assailed CA Decision reversed and set aside the Decision dated January 31, 2008 and the Resolution dated May 27, 2008 of the National Labor Relations Commission (*NLRC*), Second Division in NLRC NCR (Case No.) 00-03-02399-06 (CA

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* Per Special Order No. 2203 dated September 22, 2015.

** Designated Acting Member in lieu of Associate Justice Bienvenido L. Reyes per Special Order No. 2245 dated October 5, 2015.

*** Designated Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr. per Special Order No. 2204 dated September 22, 2015.

1 Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Rosalinda Asuncion-Vicente and Ramon M. Bato, Jr., concurring; Annex "A" to Petition, *rollo*, pp. 36-51.

2 Annex "B" to Petition, *id.* at 52-54.

No. 051468-07), while the questioned CA Resolution denied petitioner's Motion for Reconsideration.

The factual and procedural antecedents of the case are as follows:

On March 20, 2006, herein respondent (*Galit*) filed against Caltex Philippines, Inc., now Chevron (Phils.), Inc., SJS and Sons Construction Corporation (*SJS*), and its president, Reynaldo Salomon (*Salomon*),[3] a Complaint[4] for illegal dismissal, underpayment/non-payment of 13th month pay, separation pay and emergency cost of living allowance. The Complaint was filed with the NLRC National Capital Region, North Sector Branch in Quezon City.

In his Position Paper,[5] Galit alleged that: he is a regular and permanent employee of Chevron since 1982, having been assigned at the company's Pandacan depot; he is an "all-around employee" whose job consists of cleaning the premises of the depot, changing malfunctioning oil gaskets, transferring oil from containers and other tasks that management would assign to him; in the performance of his duties, he was directly under the control and supervision of Chevron supervisors; on January 15, 2005, he was verbally informed that his employment is terminated but was promised that he will be reinstated soon; for several months, he followed up his reinstatement but was not given back his job.

In its Position Paper,[6] SJS claimed that: it is a company which was established in 1993 and was engaged in the business of providing manpower to its clients on a "per project/contract" basis; Galit was hired by SJS in 1993 as a project employee and was assigned to Chevron, as a janitor, based on a contract between the two companies; contrary to Galit's allegation, he started working for SJS only in 1993; the manpower contract between SJS and Chevron eventually ended on November 30, 2004 which resulted in the severance of Galit's employment; SJS finally closed its business operations in December 2004; it retired from doing business in Manila on January 21, 2005; Galit was paid separation pay of ₱11,000.00.

On the other hand, petitioner contended in its Position Paper with Motion to Dismiss[7] that: it entered into two (2) contracts for janitorial services with SJS from May 1, 2001 to April 30, 2003 and from June 1, 2003 to June 1, 2004; under these contracts, SJS undertook to "assign such number of its employees, upon prior agreement with [petitioner], as would be sufficient to fully and effectively render the work and services

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3 Also spelled as "Solomon" in other parts of the *rollo* and records.
4 Records, vol. I, p. 2.
5 *Id.* at 8-26.
6 *Id.* at 29-34.
7 *Id.* at 67-87.

undertaken" and to "supply the equipment, tools and materials, which shall, by all means, be effective and efficient, at its own expense, necessary for the performance" of janitorial services; Galit, who was employed by SJS, was assigned to petitioner's Pandacan depot as a janitor; his wages and all employment benefits were paid by SJS; he was subject to the supervision, discipline and control of SJS; on November 30, 2004, the extended contract between petitioner and SJS expired; subsequently, a new contract for janitorial services was awarded by petitioner to another independent contractor; petitioner was surprised that Galit filed an action impleading it; despite several conferences, the parties were not able to arrive at an amicable settlement.

On October 31, 2006, the Labor Arbiter (*LA*) assigned to the case rendered a Decision,[8] the dispositive portion of which reads as follows:

> WHEREFORE, judgment is hereby rendered DISMISSING the Complaint against respondent Chevron for lack of jurisdiction, and against respondents SJS and Reynaldo Salomon for lack of merit. For equity and compassionate consideration, however, respondent SJS is hereby ordered to pay the complainant a separation pay at the rate of a half-month salary for every year of service that the complainant had with respondent SJS.
>
> SO ORDERED.[9]

The LA found that SJS is a legitimate contractor and that it was Galit's employer, not petitioner. The LA dismissed Galit's complaint for illegal dismissal against petitioner for lack of jurisdiction on the ground that there was no employer-employee relationship between petitioner and Galit. The LA likewise dismissed the complaint against SJS and Salomon for lack of merit on the basis of his finding that Galit's employment with SJS simply expired as a result of the completion of the project for which he was engaged.

Aggrieved, herein respondent filed an appeal[10] with the NLRC.

On January 31, 2008, the NLRC rendered its Decision[11] and disposed as follows:

> WHEREFORE, premises considered, the decision under review is hereby, MODIFIED.

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8 *Id.* at 125-134.
9 *Id.* at 134.
10 *Id.* at 143-165.
11 *Id.* at 209-217.

> Respondent SJS and Sons Construction Corporation is ordered to pay the complainant, severance compensation, at the rate of one (1) month salary for every year of service. In all other respects, the appealed decision so stands as AFFIRMED.
>
> SO ORDERED.[12]

The NLRC affirmed the findings of the LA that SJS was a legitimate job contractor and that it was Galit's employer. However, the NLRC found that Galit was a regular, and not a project employee, of SJS, whose employment was effectively terminated when SJS ceased to operate.

Herein respondent filed a Motion for Reconsideration,[13] but the NLRC denied it in its Resolution[14] dated May 27, 2008.

Respondent then filed a petition for *certiorari* with the CA assailing the above NLRC Decision and Resolution.

On December 8, 2008, the CA promulgated its assailed Decision, the dispositive portion of which reads, thus:

> **WHEREFORE**, premises considered, the petition is **GRANTED**. The Decision dated January 31, 2008 and the Resolution dated May 27, 2008 of the NLRC, Second Division in NLRC NCR [Case No.] 00-03-02399-06 (CA No. 051468-07) are **REVERSED and SET ASIDE**. Judgment is rendered declaring private respondent Chevron Phils. guilty of illegal dismissal and ordering petitioner Galit's reinstatement without loss of seniority rights and other privileges and payment of his full backwages, inclusive of allowances and to other benefits or their monetary equivalents computed from the time compensation was withheld up to the time of actual reinstatement. Private respondent Chevron Phils. is also hereby ordered to pay 10% of the amount due petitioner Galit as attorney's fees.
>
> **SO ORDERED.**[15]

Contrary to the findings of the LA and the NLRC, the CA held that SJS was a labor-only contractor, that petitioner is Galit's actual employer and that the latter was unjustly dismissed from his employment.

Herein petitioner filed a motion for reconsideration, but the CA denied it in its Resolution dated January 20, 2009.

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12 *Id.* at 216.
13 *Id.* at 219-245.
14 *Id.* at 247-249.
15 *Rollo*, p. 50. (Emphasis in the original)

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

> I.
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> WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN DECLARING THAT THE DISMISSAL OF RESPONDENT WAS ILLEGAL CONSIDERING THAT:
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> A. THE FINDINGS OF FACT OF THE LABOR ARBITER *A QUO* AND THE NATIONAL LABOR RELATIONS COMMISSION ARE ALREADY BINDING UPON THE HONORABLE COURT OF APPEALS.
>
> B. THERE IS NO EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE COMPANY AND RESPONDENT HEREIN.
>
> C. PETITIONER SJS IS A LEGITIMATE INDEPENDENT CONTRACTOR.
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> II.
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> CONSIDERING THAT THERE IS NO EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE COMPANY AND RESPONDENT HEREIN, THE HONORABLE COURT OF APPEALS' AWARD OF REINSTATEMENT, BACKWAGES, AND ATTORNEY'S FEES AGAINST THE COMPANY HAS NO LEGAL BASIS.[16]

On September 19, 2012, this Court issued a Resolution[17] directing petitioner to implead SJS as party-respondent on the ground that it is an indispensable party without whom no final determination can be had of this case.

In a Motion[18] dated November 21, 2012, petitioner manifested its compliance with this Court's September 19, 2012 Resolution. In addition, it prayed that Salomon be also impleaded as party-respondent.

Acting on petitioner's above Motion, this Court issued another Resolution[19] on June 19, 2013, stating that SJS and Salomon are impleaded as parties-respondents and are required to comment on the petition for review on *certiorari.*

However, despite due notice sent to SJS and Salomon at their last known addresses, copies of the above Resolution were returned unserved. Hence, on October 20, 2014, the Court, acting on Galit's plea for early

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16 *Id.* at 5-6. (Emphasis omitted)
17 *Id.* at 683-684.
18 *Id.* at 707-711.
19 *Id.* at 722.

resolution of the case, promulgated a Resolution[20] resolving to dispense with the filing by SJS and Salomon of their respective comments.

The Court will, thus, proceed to resolve the instant petition.

At the outset, the Court notes that the first ground raised by petitioner consists of factual issues. It is settled that this Court is not a trier of facts, and this applies with greater force in labor cases.[21] Corollary thereto, this Court has held in a number of cases that factual findings of administrative or quasi-judicial bodies, which are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality, and bind the Court when supported by substantial evidence.[22] However, it is equally settled that the foregoing principles admit of certain exceptions, to wit: (1) the findings are grounded entirely on speculation, surmises or conjectures; (2) the inference made is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both appellant and appellee; (7) the findings are contrary to those of the trial court; (8) the findings are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition, as well as in petitioners main and reply briefs, are not disputed by respondent; (10) the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[23] In the instant case, the Court gives due course to the instant petition considering that the findings of fact and conclusions of law of the LA and the NLRC differ from those of the CA.

Thus, the primordial question that confronts the Court is whether there existed an employer-employee relationship between petitioner and Galit, and whether the former is liable to the latter for the termination of his employment. Corollary to this, is the issue of whether or not SJS is an independent contractor or a labor only contractor.

To ascertain the existence of an employer-employee relationship, jurisprudence has invariably adhered to the four-fold test, to wit: (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's conduct,

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20 *Id.* at last page (795).

21 *New City Builders, Inc. v. NLRC,* 499 Phil. 207, 211 (2005).

22 *Merck Sharp and Dohme (Phils.), et al. v. Robles, et. al.,* 620 Phil. 505, 512 (2009).

23 *Id.*

or the so-called "control test."[24] Of these four, the last one is the most important.[25] The so-called "control test" is commonly regarded as the most crucial and determinative indicator of the presence or absence of an employer-employee relationship.[26] Under the control test, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end achieved, but also the manner and means to be used in reaching that end.[27]

In the instant case, the true nature of Galit's employment is evident from the Job Contract between petitioner and SJS, pertinent portions of which are reproduced hereunder:

> x x x x
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> 1.1 The CONTRACTOR [SJS] shall provide the following specific services to the COMPANY [petitioner]:
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> x x x x
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> 1. Scooping of slop of oil water separator
> 2. Cleaning of truck parking area/drum storage area and pier
>
> x x x x
>
> 4.1 In the fulfillment of its obligations to the COMPANY, the CONTRACTOR shall select and hire its workers. The CONTRACTOR alone shall be responsible for the payment of their wages and other employment benefits and likewise for the safeguarding of their health and safety in accordance with existing laws and regulations. Likewise, the CONTRACTOR shall be responsible for the discipline and/or dismissal of these workers.
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> 4.2 The CONTRACTOR shall retain the right to control the manner and the means of performing the work, with the COMPANY having the control or direction only as to the results to be accomplished.
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> x x x x
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> 4.4 It is understood that, for the above reasons, these workers shall be considered as the employees of the CONTRACTOR. Under no circumstances, shall these workers be deemed directly or indirectly as the employees of the COMPANY.
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> x x x x

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24 *Atok Big Wedge Co., Inc. v. Gison,* 670 Phil. 615, 626-627 (2011).
25 *Id.* at 627.
26 *Id.*
27 *Id.*

5.1 The CONTRACTOR shall maintain efficient and effective discipline over any and all employees it may utilize in performing its obligations under this CONTRACT. x x x

5.2 The COMPANY shall in no manner be answerable or accountable for any incident or injury which may occur to any worker or personnel of the CONTRACTOR during the time and consequent upon the performance of the work and services under this Agreement, nor for any injury, loss or damage arising from fault, negligence or carelessness of the CONTRACTOR or anyone of its workers to any person or persons or to his or their property; and the CONTRACTOR covenants and agrees to assume, as it does hereby assume, all liabilities for any such injury, loss or damage and to make the COMPANY free and blameless therefrom. x x x

5.3. The CONTRACTOR shall be responsible for any loss or damage that may be incurred upon the products, properties and installations of the COMPANY during the effectivity of this Contract which are due to the unreasonable or negligent act of the CONTRACTOR, its agents or its workers.

x x x x

6.1 The CONTRACTOR shall at its own expense maintain with a reputable insurance company, acceptable to the COMPANY, a comprehensive liability insurance in the amount required by the COMPANY to cover claims for bodily injury, death or property damage caused to any person or persons by an act or omission of the CONTRACTOR or any of its employees, agents or representatives.

x x x x

x x x [T]he CONTRACTOR agrees and undertakes:

x x x x

b. To submit satisfactory proof to the COMPANY that it has registered its personnel/workers assigned to perform the work and services herein required with the Social Security System, Medicare and other appropriate agencies for purposes of the Labor Code as well as other laws, decrees, rules and regulations.

c. To pay the wages or salaries of its personnel/workers as well as benefits, premia and protection in accordance with the provisions of the Labor Code and other applicable laws, decrees, rules and regulations promulgated by competent authority. x x x

d. To assign such number of its employees, upon prior agreement with the COMPANY, as would be sufficient to fully and effectively render the work and services herein undertaken. x x x

e. To supply the equipment, tools and materials, which shall, by all means, be effective and efficient, at its own expense, necessary for the performance of the services under this Contract.[28]

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28 *Rollo*, pp. 76-80.

The foregoing provisions of the Job Contract between petitioner and SJS demonstrate that the latter possessed the following earmarks of an employer, to wit: (1) the power of selection and engagement of employees, under Sections 4.1 and 6.1(d); (2) the payment of wages, under Sections 4.1 and 6.1(c); (3) the power to discipline and dismiss, under Section 4.1; and, (4) the power to control the employee's conduct, under Sections 4.1, 4.2, and 5.1.

As to SJS' power of selection and engagement, Galit himself admitted in his own affidavit that it was SJS which assigned him to work at Chevron's Pandacan depot.[29] As such, there is no question that it was SJS which selected and engaged Galit as its employee.

With respect to the payment of wages, the Court finds no error in the findings of the LA that Galit admitted that it was SJS which paid his wages. While Galit claims that petitioner was the one which actually paid his wages and that SJS was merely used as a conduit, Galit failed to present evidence to this effect. Galit, likewise, failed to present sufficient proof to back up his claim that it was petitioner, and not SJS, which actually paid his SSS, Philhealth and Pag-IBIG premiums. On the contrary, it is unlikely that SJS would report Galit as its worker, pay his SSS, Philhealth and Pag-IBIG premiums, as well as his wages, if it were not true that he was indeed its employee.[30] In the same manner, the Quitclaim and Release,[31] which was undisputedly signed by Galit, acknowledging receipt of his separation pay from SJS, is an indirect admission or recognition of the fact that the latter was indeed his employer. Again, it would be unlikely for SJS to pay Galit his separation pay if it is not the latter's employer.

Galit also did not dispute the fact that he was dismissed from employment by reason of the termination of the service contract between SJS and petitioner. In other words, it was not petitioner which ended his employment. He was dismissed therefrom because petitioner no longer renewed its contract with SJS and that the latter subsequently ceased to operate.

Anent the power of control, the Court again finds no cogent reason to depart from the findings of the NLRC that in case of matters that needed to be addressed with respect to employee performance, petitioner dealt directly with SJS and not with the employee concerned. In any event, it is settled that such power merely calls for the existence of the right to control and not necessarily the exercise thereof. In the present case, the Job Contract between petitioner and SJS clearly provided that SJS "shall retain the right

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29 See records, vol. I, p. 27.

30 *Corporal, Sr., v. NLRC,* 395 Phil. 890, 901 (2000); *Escasinas, et al. v. Shangri-la's Mactan Island Resort, et al.,* 599 Phil. 746, 757 (2009).

31 See *rollo*, p. 347.

to control the manner and the means of performing the work, with [petitioner] having the control or direction only as to the results to be accomplished."[32]

In addition, it would bear to point out that contrary to the ruling of the CA, the work performed by Galit, which is the "scooping of slop of oil water separator,"[33] has no direct relation to petitioner's business, which is the importation, refining and manufacture of petroleum products. The Court defers to the findings of both the LA and the NLRC that the job performed by Galit, which essentially consists of janitorial services, may be incidental or desirable to petitioner's main activity but it is not necessary and directly related to it.

As to whether or not SJS is an independent contractor, jurisprudence has invariably ruled that an independent contractor carries on an independent business and undertakes the contract work on his own account, under his own responsibility, according to his own manner and method, and free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof.[34] This embodies what has long been jurisprudentially recognized as the control test, as discussed above. In the instant case, SJS presented evidence to show that it had an independent business by paying business taxes and fees and that it was registered as an employer with the Social Security System. Moreover, there was no evidence to show that SJS and its employees were ever subject to the control of petitioner. On the contrary, as shown above, SJS possessed the right to control its employees' manner and means of performing their work , including herein respondent Galit.

As to its capital, there is no dispute that SJS generated an income of ₱1,523,575.81 for the year 2004.[35] In *Neri v. National Labor Relations Commission,*[36] this Court held that a business venture which had a capitalization of ₱1,000,000.00 was considered as highly capitalized and cannot be deemed engaged in labor-only contracting. In the present case, while SJS' income of more than ₱1,500,000.00 was not shown to be equivalent to its authorized capital stock, such income is an indication of how much capital was put into its business to generate such amount of revenue. Thus, the Court finds no sufficient reason to disturb the findings of the LA and the NLRC that SJS had substantial capital.

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32 See *rollo*, p. 77.

33 *Id.* at 93; 96.

34 *Alilin v. Petron Corporation,* G.R. No. 177592, June 9, 2014, 725 SCRA 342, 357; *First Philippine Industrial Corporation v. Calimbas,* G.R. No. 179256, July 10, 2013, 701 SCRA 1, 14.

35 See *rollo,* p. 127.

36 G.R. Nos. 97008-09, July 23, 1993, 224 SCRA 717, 720.

WHEREFORE, the instant petition is **GRANTED**. The assailed Decision and Resolution of the Court of Appeals, dated December 8, 2008 and January 20, 2009, respectively, are **REVERSED** and **SET ASIDE**. The Decision of the National Labor Relations Commission, dated January 31, 2008 in NLRC NCR [Case No.] 00-03-02399-06 (CA No. 051468-07) is **REINSTATED**.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

MARTIN S. VILLARAMA, JR.
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
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.

ARTURO D. BRION
Acting Chief Justice

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

OCT 16 2015