Republic of the Philippines
Supreme Court
Manila

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
FEB 17 2016

THIRD DIVISION

DIAMOND FARMS, INC., Petitioner,	**G.R. Nos. 173254-55 & 173263**
- versus -	
SOUTHERN PHILIPPINES FEDERATION OF LABOR (SPFL)-WORKERS SOLIDARITY OF DARBMUPCO/DIAMOND-SPFL, DIAMOND FARMS AGRARIAN REFORM BENEFICIARIES MULTI-PURPOSE COOPERATIVE (DARBMUPCO), VOLTER LOPEZ, RUEL ROMERO, PATRICIO CAPRECHO, REY DIMACALI, ELESIO EMANEL, VICTOR SINGSON, NILDA DIMACALI, PREMITIVO* DIAZ, RUDY VISTAL, ROGER MONTERO, JOSISIMO GOMEZ and MANUEL MOSQUERA, Respondents.	Present: VELASCO, JR., *J., Chairperson* LEONARDO-DE CASTRO,** PERALTA, VILLARAMA, JR., and JARDELEZA, *JJ.*
	Promulgated: January 13, 2016

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DECISION

JARDELEZA, *J.*:

We resolve in this Petition for Review[1] under Rule 45 of the Rules of Court, the issue of who among Diamond Farms, Inc. ("DFI"), Diamond Farms Agrarian Reform Beneficiaries Multi-Purpose Cooperative

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* Also referred to as Primitivo in other parts of the records.

** Designated as additional Member per Raffle dated November 4, 2015.

1 *Rollo*, pp. 9-39.

("DARBMUPCO") and the individual contractors[2] ("respondent-contractors") is the employer of the 400 employees ("respondent-workers").

DFI challenges the March 31, 2006 Decision[3] and May 30, 2006 Resolution[4] of the Court Appeals, Special Twenty-Second Division, Cagayan De Oro City for being contrary to law and jurisprudence. The Decision dismissed DFI's Petition for Certiorari in C.A.-G.R. SP Nos. 53806 and 61607 and granted DARBMUPCO's Petition for Certiorari in C.A.-G.R. SP No. 59958. It declared DFI as the statutory employer of the respondent-workers.

The Facts

DFI owns an 800-hectare banana plantation ("original plantation") in Alejal, Carmen, Davao.[5] Pursuant to Republic Act No. 6657 or the Comprehensive Agrarian Reform Law of 1988 ("CARL"), commercial farms shall be subject to compulsory acquisition and distribution,[6] thus the original plantation was covered by the law. However, the Department of Agrarian Reform ("DAR") granted DFI a deferment privilege to continue agricultural operations until 1998.[7] Due to adverse marketing problems and observance of the so-called "lay-follow" or the resting of a parcel of land for a certain period of time after exhaustive utilization, DFI closed some areas of operation in the original plantation and laid off its employees.[8] These employees petitioned the DAR for the cancellation of DFI's deferment privilege alleging that DFI already abandoned its area of operations.[9] The DAR Regional Director recalled DFI's deferment privilege resulting in the original plantation's automatic compulsory acquisition and distribution under the CARL.[10] DFI filed a motion for reconsideration which was denied. It then appealed to the DAR Secretary.[11]

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2 Volter Lopez, Ruel Romero, Patricio Caprecho, Rey Dimacali, Elesio Emanel, Victor Singson, Nilda Dimacali, Premitivo Diaz, Rudy Vistal, Roger Montero, Josisimo Gomez and Manuel Mosquera.

3 Penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Romulo V. Borja and Ricardo R. Rosario. *Rollo*, pp. 42-73.

4 Penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Romulo V. Borja and Edgardo A. Camello (in lieu of Associate Justice Rosario, on leave). *Id.* at 76-77.

5 *Id.* at 50.

6 The pertinent portion of Republic Act No. 6657 provides:

> Section 11. *Commercial Farming.* — Commercial farms, which are private agricultural lands devoted to commercial livestock, poultry and swine raising, and aquaculture including saltbeds, fishponds and prawn ponds, fruit farms, orchards, vegetable and cut-flower farms, and cacao, coffee and rubber plantations, shall be subject to immediate compulsory acquisition and distribution after (10) years from the effectivity of the Act. In the case of new farms, the ten-year period shall begin from the first year of commercial production and operation, as determined by the DAR. During the ten-year period, the government shall initiate the steps necessary to acquire these lands, upon payment of just compensation for the land and the improvements thereon, preferably in favor of organized cooperatives or associations, which shall hereafter manage the said lands for the worker-beneficiaries. xxx.

7 *Rollo*, p. 50.

8 *Id.*

9 *Id.*

10 *Id.*; Republic Act No. 6657 reads:

In the meantime, to minimize losses, DFI offered to give up its rights and interest over the original plantation in favor of the government by way of a Voluntary Offer to Sell.[12] The DAR accepted DFI's offer to sell the original plantation. However, out of the total 800 hectares, the DAR only approved the disposition of 689.88 hectares. Hence, the original plantation was split into two: 689.88 hectares were sold to the government ("awarded plantation") and the remaining 200 hectares, more or less, were retained by DFI ("managed area").[13] The managed area is subject to the outcome of the appeal on the cancellation of the deferment privilege before the DAR Secretary.

On January 1, 1996, the awarded plantation was turned over to qualified agrarian reform beneficiaries ("ARBs") under the CARL. These ARBs are the same farmers who were working in the original plantation. They subsequently organized themselves into a multi-purpose cooperative named "DARBMUPCO," which is one of the respondents in this case.[14]

On March 27, 1996, DARBMUPCO entered into a Banana Production and Purchase Agreement ("BPPA")[15] with DFI.[16] Under the BPPA, DARBMUPCO and its members as owners of the awarded plantation, agreed to grow and cultivate only high grade quality exportable bananas to be sold exclusively to DFI.[17] The BPPA is effective for 10 years.[18]

On April 20, 1996, DARBMUPCO and DFI executed a "Supplemental to Memorandum Agreement" ("SMA").[19] The SMA stated that DFI shall take care of the labor cost arising from the packaging operation, cable maintenance, irrigation pump and irrigation maintenance that the workers of DARBMUPCO shall conduct for DFI's account under the BPPA.[20]

From the start, DARBMUPCO was hampered by lack of manpower to undertake the agricultural operation under the BPPA because some of its members were not willing to work.[21] Hence, to assist DARBMUPCO in meeting its production obligations under the BPPA, DFI engaged the services of the respondent-contractors, who in turn recruited the respondent-workers.[22]

> Section 11. *Commercial Farming*. xxx If the DAR determines that the purposes for which this deferment is granted no longer exist, such areas shall automatically be subject to redistribution.

11 *Rollo,* p. 50.
12 *Id.* at 51.
13 *Id.*
14 *Rollo*, p. 14.
15 CA *rollo* (CA-G.R. SP No. 59958), pp. 108-112.
16 Petition for Review, *rollo*, p. 14.
17 CA *rollo* (CA-G.R. SP No. 59958), p. 109.
18 *Id.* at 108.
19 *Id.* at 113-114.
20 *Id.* at 113.
21 CA *rollo* (CA-G.R. SP No. 53806), p. 53.
22 *Rollo*, p. 52 citing CA *rollo* (CA-G.R. SP No. 53806), p. 53.

The engagement of the respondent-workers, as will be seen below, started a series of labor disputes among DARBMUPCO, DFI and the respondent-contractors.

C.A. G.R. SP No. 53806

On February 10, 1997, respondent Southern Philippines Federation of Labor ("SPFL")—a legitimate labor organization with a local chapter in the awarded plantation—filed a petition for certification election in the Office of the Med-Arbiter in Davao City.[23] SPFL filed the petition on behalf of some 400 workers (the respondent-workers in this petition) "jointly employed by DFI and DARBMUPCO" working in the awarded plantation.

DARBMUPCO and DFI denied that they are the employers of the respondent-workers. They claimed, instead, that the respondent-workers are the employees of the respondent-contractors.[24]

In an Order dated May 14, 1997,[25] the Med-Arbiter granted the petition for certification election. It directed the conduct of certification election and declared that DARBMUPCO was the employer of the respondent-workers. The Order stated that "whether the said workers/employees were hired by independent contractors is of no moment. What is material is that they were hired purposely to work on the 689.88 hectares banana plantation [the awarded plantation] now owned and operated by DARBMUPCO."[26]

DARBMUPCO appealed to the Secretary of Labor and Employment ("SOLE"). In a Resolution dated February 18, 1999,[27] the SOLE modified the decision of the Med-Arbiter. The SOLE held that DFI, through its manager and personnel, supervised and directed the performance of the work of the respondent-contractors. The SOLE thus declared DFI as the employer of the respondent-workers.[28]

DFI filed a motion for reconsideration which the SOLE denied in a Resolution dated May 4, 1999.[29]

On June 11, 1999, DFI elevated the case to the Court of Appeals ("CA") *via* a Petition for *Certiorari*[30] under Rule 65 of the Rules of Court. The case was raffled to the CA's former Twelfth Division and was docketed as *C.A.-G.R. SP No. 53806.*

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23 CA *rollo* (CA-G.R. SP No. 53806), pp. 57-60.
24 *Id.* at 76.
25 CA *rollo* (CA-G.R. SP No. 61607), pp. 125-131.
26 *Id.* at 128-129.
27 CA *rollo* (CA-G.R. SP No. 53806), pp. 86-88.
28 *Id.* at 88.
29 *Id.* at 95.
30 *Id.* at 47-56.

C.A.-G.R. SP. No. 59958

Meanwhile, on June 20, 1997[31] and September 15, 1997,[32] SPFL, together with more than 300 workers, filed a case for underpayment of wages, non-payment of 13th month pay and service incentive leave pay and attorney's fees against DFI, DARBMUPCO and the respondent-contractors before the National Labor Relations Commission ("NLRC") in Davao City. DARBMUPCO averred that it is not the employer of respondent-workers; neither is DFI. It asserted that the money claims should be directed against the true employer—the respondent-contractors.[33]

In a Decision dated January 22, 1999,[34] the Labor Arbiter ("LA") held that the respondent-contractors are "labor-only contractors." The LA gave credence to the affidavits of the other contractors[35] of DFI (who are not party-respondents in this petition) asserting that DFI engaged their services, and supervised and paid their laborers. The affidavits also stated that the contractors had no dealings with DARBMUPCO, except that their work is done in the awarded plantation.[36]

The LA held that, under the law, DFI is deemed as the statutory employer of all the respondent-workers.[37] The LA dismissed the case against DARBMUPCO and the respondent-contractors.[38]

DFI appealed to the NLRC. In a Resolution dated May 24, 1999,[39] the NLRC Fifth Division modified the Decision of the LA and declared that DARBMUPCO and DFI are the statutory employers of the workers rendering services in the awarded plantation and the managed area, respectively.[40] It adjudged DFI and DARBMUPCO as solidarily liable with the respondent-contractors for the monetary claims of the workers, in proportion to their net planted area.[41]

DARBMUPCO filed a motion for reconsideration which was denied.[42] It filed a second motion for reconsideration in the NLRC, which was also denied for lack of merit and for being barred under the NLRC Rules of Procedure.[43] Hence, DARBMUPCO elevated the case to the CA by way of a Petition for *Certiorari*.[44] The case was docketed as *C.A.-G.R. SP. No. 59958.*

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31 RAB-11-05-00598-97. Decision of the LA dated January 22, 1999, CA *rollo* (CA-G.R. SP No. 59958), p. 88.
32 RAB-11-09-00865-97. *Id.*
33 CA *rollo* (CA-G.R. SP No. 59958), p. 95.
34 *Id.* at 83-100.
35 Pertaining to Rolando Alonsagay, Edilberto Amoguis and Socrates Edilon who were former contractors of DFI. *Id.* at 97.
36 *Id.* at 98.
37 *Id.* at 99-100.
38 *Id.* at 100.
39 *Id.* at 55-62.
40 *Id.* at 60.
41 *Id.* at 61.
42 NLRC's Resolution dated July 30, 1999, *id.* at 64-67.
43 NLRC's Resolution dated June 26, 2000, *id.* at 69-71.
44 *Id.* at 14-53.

The former Eleventh Division of the CA consolidated C.A. G.R. SP. No. 59958 and C.A.-G.R. SP No. 53806 in a Resolution dated January 27, 2001.[45]

C.A.-G.R. SP No. 61607

Pursuant to the May 4, 1999 Resolution of the SOLE approving the conduct of certification election, the Department of Labor and Employment ("DOLE") conducted a certification election on October 1, 1999.[46] On even date, DFI filed an election protest[47] before the Med-Arbiter arguing that the certification election was premature due to the pendency of a petition for *certiorari* before the CA assailing the February 18, 1999 and May 4, 1999 Resolutions of the SOLE (*previously discussed in C.A.-G.R. SP No. 53806*).

In an Order dated December 15, 1999,[48] the Med-Arbiter denied DFI's election protest, and certified SPFL-Workers Solidarity of DARBMUPCO/DIAMOND-SPFL ("WSD-SPFL") as the exclusive bargaining representative of the respondent-workers. DFI filed a Motion for Reconsideration[49] which the Med-Arbiter treated as an appeal, and which the latter elevated to the SOLE.

In a Resolution dated July 18, 2000,[50] the SOLE dismissed the appeal. The Resolution stated that the May 4, 1999 Resolution directing the conduct of certification election is already final and executory on June 4, 1999. It pointed out that the filing of the petition for *certiorari* before the CA assailing the February 18, 1999 and May 4, 1999 Resolutions does not stay the conduct of the certification election because the CA did not issue a restraining order.[51] DFI filed a Motion for Reconsideration but the motion was denied.[52]

On October 27, 2000, DFI filed a Petition for *Certiorari*[53] before the CA, docketed as *C.A.-G.R. SP No. 61607*.

In a Resolution dated August 2, 2005,[54] the CA Twenty-Third Division consolidated C.A.-G.R. SP No. 61607 with C.A.-G.R. SP. No. 59958 and C.A. G.R. SP No. 53806.

The Assailed CA Decision and Resolution

The CA was confronted with two issues:[55]

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45 *Rollo*, p. 18.
46 *Id.* at 58.
47 CA *rollo* (CA-G.R. SP No. 61607), pp. 137-139.
48 *Id.* at 144-147.
49 *Id.* at 148-150
50 *Id.* at 165-167.
51 *Id.* at 166-167.
52 *Id.* at 172.
53 *Id.* at 10-23.
54 *Id.* at 389.
55 *Rollo*, pp. 60-61.

(1) "Whether DFI or DARBMUPCO is the statutory employer of the [respondent-workers] in these petitions; and

(2) Whether or not a certification election may be conducted pending the resolution of the petition for *certiorari* filed before this Court, the main issue of which is the identity of the employer of the [respondent-workers] in these petitions."

On the first issue, the CA agreed with the ruling of the SOLE[56] that DFI is the statutory employer of the respondent-workers. It noted that the DFI hired the respondent-contractors, who in turn procured their own men to work in the land owned by DARBMUPCO. Further, DFI admitted that the respondent-contractors worked under the direction and supervision of DFI's managers and personnel. DFI also paid for the respondent-contractors' services.[57] The CA said that the fact that the respondent-workers worked in the land owned by DARBMUPCO is immaterial. "Ownership of the land is not one of the four (4) elements generally considered to establish employer-employee relationship."[58]

The CA also ruled that DFI is the true employer of the respondent-workers because the respondent-contractors are not independent contractors.[59] The CA stressed that in its pleadings before the Med-Arbiter, the SOLE, and the CA, DFI revealed that DARBMUPCO lacks manpower to fulfill the production requirements under the BPPA. This impelled DFI to hire contractors to supply labor enabling DARBMUPCO to meet its quota. The CA observed that while the various agencies involved in the consolidated petitions sometimes differ as to who the statutory employer of the respondent-workers is, they are uniform in finding that the respondent-contractors are labor-only contractors.[60]

On the second issue, the CA reiterated the ruling of the SOLE[61] that absent an injunction from the CA, the pendency of a petition for *certiorari* does not stay the holding of the certification election.[62] The challenged Resolution of the SOLE is already final and executory as evidenced by an Entry of Judgment dated July 14, 1999; hence, the merits of the case can no longer be reviewed.[63]

The CA thus held in its Decision dated March 31, 2006:

> WHEREFORE, premises considered, this Court hereby ORDERS:

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56 In C.A.-G.R. SP No. 53806 (certification election).
57 *Rollo*, pp. 64-65.
58 *Id.* at 65.
59 *Id.* at 67.
60 *Id.* at 67- 68.
61 In C.A. G.R. No. 61607.
62 *Rollo*, p. 69.
63 *Id.* at 69-72.

(1) the DISMISSAL of the petitions in C.A.-G.R. SP No. 53806 and C.A.-G.R. SP No. 61607; and

(2) the GRANTING of the petition in C.A.-G.R. SP No. 59958 and the SETTING ASIDE of the assailed resolutions of the NLRC dated 24 May 1999, 30 July 1999 and 26 June 2000, respectively.

SO ORDERED.[64]

DFI filed a Motion for Reconsideration of the CA Decision which was denied in a Resolution dated May 30, 2006.[65]

DFI is now before us by way of Petition for Review on *Certiorari* praying that DARBMUPCO be declared the true employer of the respondent-workers.

DARBMUPCO filed a Comment[66] maintaining that under the control test, DFI is the true employer of the respondent-workers.

Respondent-contractors filed a Verified Explanation and Memorandum[67] asserting that they were labor-only contractors; hence, they are merely agents of the true employer of the respondent-workers.

SPFL did not file any comment or memorandum on behalf of the respondent-workers.[68]

The Issue

The issue before this Court is who among DFI, DARBMUPCO and the respondent-contractors is the employer of the respondent-workers.

Our Ruling

We deny the petition.

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64 *Id.* at 72.

65 *Id.* at 76-77.

66 *Id.* at 90-111.

67 *Id.* at 513-518. Only Voltaire Lopez, Jr., Ruel Romero, Patricio Capricho, Rudy Vistal, Roger Montero, Zosimo Gomez and Manuel Mosquera prepared the Verified Explanation and Memorandum. Elesio Emanel and Premitivo Dias were already deceased.

In a Resolution dated January 16, 2012, this Court dispensed with the memorandum of Rey Dimacali, Nilda Dimacali, Primitvo Diaz, Elesio Emanel and Victor Singson; *id.* at 566.

68 In a Manifestation dated December 17, 2012, Alvaro Lague, Sr.—the President of SPFL—asked for this Court's indulgence in view of SPFL's failure to report the death of its counsels. He admitted that SPFL has been negligent in representing the respondent-workers and such was caused by "inter-organization conflict and serious splitting among its leaders." SPFL also informed this Court of the new address where notices and resolutions should be sent; *id.*, at 606-607

In a Resolution dated March 6, 2013, this Court required SPFL to cause the entry of appearance of its new counsel, *id.* at 611. However, SPFL failed to comply. Hence, this Court issued a Resolution dated September 18, 2013 reiterating the order for SPFL to cause the entry of appearance of its new counsel. SPFL, again, failed to comply, *id.* at 618. On July 23, 2014, we resolved to issue a show cause order against Lague, Sr. for his failure to comply with this Court's abovementioned resolutions; *id.* at 651.

This case involves job contracting, a labor arrangement expressly allowed by law. Contracting or subcontracting is an arrangement whereby a principal (or employer) agrees to put out or farm out with a contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal.[69] It involves a trilateral relationship among the principal or employer, the contractor or subcontractor, and the workers engaged by the contractor or subcontractor.[70]

Article 106 of the Labor Code of the Philippines[71] (Labor Code) explains the relations which may arise between an employer, a contractor, and the contractor's employees,[72] thus:

> ART. 106. Contractor or subcontracting. − Whenever an employer enters into a contract with another person for the performance of the formers work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.
>
> In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.
>
> The Secretary of Labor and Employment may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.
>
> 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 such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the

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69 DOLE Department Order No. 10 (1997), Amending the Rules Implementing Books III and VI of the Labor Code, as amended, Section 4(d).

70 DOLE Department Order No. 10 (1997), Section 3.

71 Presidential Decree No. 442 (1974).

72 *Polyfoam-RGC International Corporation v. Concepcion*, G.R. No. 172349, June 13, 2012, 672 SCRA 148, 158.

> same manner and extent as if the latter were directly employed by him.

The Omnibus Rules Implementing the Labor Code[73] distinguishes between permissible job contracting (or independent contractorship) and labor-only contracting. Job contracting is permissible under the Code if the following conditions are met:

> (a) The 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, 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; and
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> (b) The contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business.[74]

In contrast, job contracting shall be deemed as labor-only contracting, an arrangement prohibited by law, if a person who undertakes to supply workers to an employer:

> (1) Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and
>
> (2) The workers recruited and placed by such person are performing activities which are directly related to the principal business or operations of the employer in which workers are habitually employed.[75]

As a general rule, a contractor is presumed to be a labor-only contractor, unless such contractor overcomes the burden of proving that it has the substantial capital, investment, tools and the like.[76]

Based on the conditions for permissible job contracting, we rule that respondent-contractors are labor-only contractors.

There is no evidence showing that respondent-contractors are independent contractors. The respondent-contractors, DFI, and DARBMUPCO did not offer

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73 The Omnibus Rules Implementing the Labor Code (before its amendment by Department Order No. 10, series of 1997) is the prevailing rule at the time the respondent-workers were employed by respondent-contractors in 1996.

74 Omnibus Rules Implementing the Labor Code, Book III, Rule VIII, Section 8.

75 *Id.*, Section 9.

76 *Alilin v. Petron Corporation*, G.R. No. 177592, June 9, 2014, 725 SCRA 342, 346, citing *Garden of Memories Park and Life Plan, Inc. v. NLRC*, G.R. No. 160278, February 8, 2012, 665 SCRA 293, 306. *See also Alps Transportation v. Rodriguez*, G.R. No. 186732, June 13, 2013, 698 SCRA 423, 434.

any proof that respondent-contractors were not engaged in labor-only contracting. In this regard, we cite our ruling in *Caro v. Rilloraza*,[77] thus:

> "In regard to the first assignment of error, the defendant company pretends to show through Venancio Nasol's own testimony that he was an independent contractor who undertook to construct a railway line between Maropadlusan and Mantalisay, but as far as the record shows, *Nasol did not testify that the defendant company had no control over him as to the manner or methods he employed in pursuing his work*. On the contrary, he stated that he was not bonded, and that he only depended upon the Manila Railroad for money to be paid to his laborers. As stated by counsel for the plaintiffs, the word 'independent contractor' means 'one who exercises independent employment and contracts to do a piece of work according to his own methods and without being subject to control of his employer except as to result of the work.' Furthermore, if the employer claims that the workmen is an independent contractor, for whose acts he is not responsible, *the burden is on him to show his independence*.
>
> **Tested by these definitions and by the fact that *the defendant has presented practically no evidence to determine whether Venancio Nasol was in reality an independent contractor* or not, we are inclined to think that he is nothing but an intermediary between the defendant and certain laborers. It is indeed difficult to find that Nasol is an independent contractor;** a person who *possesses no capital* or money of his own to pay his obligations to them, *who files no bond* to answer for any fulfillment of his contract with his employer and *specially subject to the control and supervision of his employer*, falls short of the requisites or conditions necessary for the common and independent contractor."[78] (Citations omitted; emphasis supplied.)

To support its argument that respondent-contractors are the employers of respondent-workers, and not merely labor-only contractors, DFI should have presented proof showing that respondent-contractors carry on an independent business and have sufficient capitalization. The record, however, is bereft of showing of even an attempt on the part of DFI to substantiate its argument.

DFI cannot cite the May 24, 1999 Resolution of the NLRC as basis that respondent-contractors are independent contractors. Nowhere in the NLRC Resolution does it say that the respondent-contractors are independent contractors. On the contrary, the NLRC declared that "it was

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77 102 Phil. 61 (1957).

78 *Id.* at 65-66, citing *Andoyo v. Manila Railroad Co*., 56 Phil. 852 (1932) (unreported).

not clearly established on record that said [respondent-]contractors are independent, xxx."[79]

Further, respondent-contractors admit, and even insist that they are engaged in labor-only contracting. As will be seen below, respondent-contractors made the admissions and declarations on two occasions: *first* was in their Formal Appearance of Counsel and Motion for Exclusion of Individual Party-Respondents filed before the LA; and *second* was in their Verified Explanation and Memorandum filed before this Court.

Before the LA, respondent-contractors categorically stated that they are "labor-only" contractors who have been engaged by DFI and DARBMUPCO.[80] They admitted that they do not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials, and they recruited workers to perform activities directly related to the principal operations of their employer.[81]

Before this Court, respondents-contractors *again* admitted that they are labor-only contractors. They narrated that:

> 1. **Herein respondents, Voltaire Lopez, Jr., et al., were commissioned and contracted by petitioner, Diamond Farms, Inc. (DFI) to recruit farm workers, who are the complaining [respondent-workers] (as represented by Southern Philippines Federation of Labor (SPFL) in this appeal by *certiorari*)**, in order to perform specific farm activities, such as pruning, deleafing, fertilizer application, bud inject, stem spray, drainage, bagging, etc., on banana plantation lands awarded to private respondent, Diamond Farms Agrarian Reform Beneficiaries Multi-Purpose Cooperative (DARBMUPCO) and on banana planted lands owned and managed by petitioner, DFI.
>
> 2. All farm tools, implements and equipment necessary to performance of such farm activities were supplied by petitioner DFI to respondents Voltaire Lopez, Jr., et. al. as well as to respondents-SPFL, et. al. **Herein respondents Voltaire Lopez, Jr. et. al. had no adequate capital to acquire or purchase such tools, implements, equipment, etc.**
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> 3. **Herein respondents Voltaire Lopez, Jr., et. al. as well as respondents-SPFL, et. al. were being directly supervised, controlled and managed by petitioner DFI farm managers and supervisors, specifically on work assignments and performance targets.** DFI managers and supervisors, at their sole discretion and

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79 CA *rollo* (CA-G.R. S.P. No. 59958), p. 59.

80 Manifestation and Explanation In Lieu of Comment filed before us (reproduced *in toto* the Formal Appearance of Counsel and Motion for Exclusion of Individual Party-Respondents); *rollo*, p. 148

81 *Id.*

> prerogative, could directly hire and terminate any or all of the respondents-SPFL, et. al., including any or all of the herein respondents Voltaire Lopez, Jr., et. al.
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> 4. Attendance/Time sheets of respondents-SPFL, et. al. were being prepared by herein respondents Voltaire Lopez, Jr., et. al., and correspondingly submitted to petitioner DFI. Payment of wages to respondents-SPFL, et. al. were being paid for by petitioner DFI thru herein respondents Voltaire Lopez, [Jr.], et. al. The latter were also receiving their wages/salaries from petitioner DFI for monitoring/leading/recruiting the respondents-SPFL, et. al.
>
> 5. No monies were being paid directly by private respondent DARBMUPCO to respondents-SPFL, et al., nor to herein respondents Voltaire Lopez, [Jr.], et. al. Nor did respondent DARBMUPCO directly intervene much less supervise any or all of [the] respondents-SPFL, et. al. including herein respondents Voltaire Lopez, Jr., et. al.[82] (Emphasis supplied.)

The foregoing admissions are legally binding on respondent-contractors.[83] Judicial admissions made by parties in the pleadings, or in the course of the trial or other proceedings in the same case are conclusive and so does not require further evidence to prove them.[84] Here, the respondent-contractors voluntarily pleaded that they are labor-only contractors; hence, these admissions bind them.

A finding that a contractor is a labor-only contractor is equivalent to a declaration that there is an employer-employee relationship between the principal, and the workers of the labor-only contractor; the labor-only contractor is deemed only as the agent of the principal.[85] Thus, in this case, respondent-contractors are the labor-only contractors and either DFI or DARBMUPCO is their principal.

We hold that DFI is the principal.

Under Article 106 of the Labor Code, a principal or employer refers to the person who enters into an agreement with a job contractor, either for the performance of a specified work or for the supply of manpower.[86] In this regard, we quote with approval the findings of the CA, to wit:

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82 Verified Explanation and Memorandum. *Rollo,* pp. 514-515.

83 *Constantino v. Heirs of Pedro Constantino, Jr*., G.R. No. 181508, October 2, 2013, 706 SCRA 580, 596.

84 *Philippine Long Distance Telephone Company v. Pingol*, G.R. No. 182622, September 8, 2010, 630 SCRA 413, 421; citing *Damasco v. NLRC*, G.R. No. 115755 & 116101, December 4, 2000, 346 SCRA 714, 725, citing *Philippine American General Insurance Co., Inc. v. Sweet Lines, Inc.,* G.R. No. 87434, August 5, 1992, 212 SCRA 194, 204.

85 *Aklan v. San Miguel Corporation*, G.R. No. 168537, December 11, 2008, 573 SCRA 675, 685; citing *Aboitiz Haulers, Inc. v. Dimapatoi,* G.R. No. 148619, September 19, 2006, 502 SCRA 271, 283. *See also Polyfoam-RGC International Corporation v. Concepcion*, *supra* note 73 at 163.

86 *PCI Automation Center, Inc. v. NLRC*, G.R. No. 115920, January 29, 1996, 252 SCRA 493, 503.

> **The records show that it is DFI which hired the individual [respondent-contractors] who in turn hired their own men to work in the 689.88 hectares land of DARBMUPCO as well as in the managed area of the plantation.** DFI admits [that] these [respondent-contractors] worked under the direction and supervision of the DFI managers and personnel. DFI paid the [respondent-contractors] for the services rendered in the plantation and the [respondent-contractors] in turn pay their workers after they [respondent-contractors] received payment from DFI. xxx DARBMUPCO did not have anything to do with the hiring, supervision and payment of the wages of the workers-respondents thru the contractors-respondents. xxx[87] (Emphasis supplied.)

DFI does not deny that it engaged the services of the respondent-contractors. It does not dispute the claims of respondent-contractors that they sent their billing to DFI for payment; and that DFI's managers and personnel are in close consultation with the respondent-contractors.[88]

DFI cannot argue that DARBMUPCO is the principal of the respondent-contractors because it (DARBMUPCO) owns the awarded plantation where respondent-contractors and respondent-workers were working;[89] and therefore DARBMUPCO is the ultimate beneficiary of the employment of the respondent-workers.[90]

That DARBMUPCO owns the awarded plantation where the respondent-contractors and respondent-workers were working is immaterial. This does not change the situation of the parties. As correctly found by the CA, DFI, as the principal, hired the respondent-contractors and the latter, in turn, engaged the services of the respondent-workers.[91] This was also the unanimous finding of the SOLE,[92] the LA,[93] and the NLRC.[94] Factual findings of the NLRC, when they coincide with the LA and affirmed by the CA are accorded with great weight and respect and even finality by this Court.[95]

Alilin v. Petron Corporation[96] is applicable. In that case, this Court ruled that the presence of the power of control on the part of the principal over the workers of the contractor, under the facts, prove the employer-employee relationship between the former and the latter, thus:

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87 CA Decision, *rollo*, pp. 64-65.

88 DFI's Memorandum before the CA, CA *rollo* (CA-G.R. SP No. 53806), p. 308.

89 Memorandum for the Petitioner, *rollo*, p. 301.

90 *Id.*

91 CA Decision, *rollo*, p. 64.

92 SOLE's Resolution dated February 18, 1998, CA *rollo* (CA-G.R. SP No. 53806), p. 88.

93 LA's Decision dated January 23, 1999, CA *rollo* (CA-G.R. SP No. 59958), p. 99.

94 NLRC's Resolution dated May 24, 1999, *id.* at 59-60.

95 *Emeritus Security and Maintenance Systems, Inc. v. Dailig*, G.R. No. 204761, April 2, 2014, 720 SCRA 572, 578-579, citing *Bank of Lubao, Inc. v. Manabat*, G.R. No. 188722, February 1, 2012, 664 SCRA 772, 779.

96 G.R. No. 177592, June 9, 2014, 725 SCRA 342.

[A] finding that a contractor is a 'labor-only' contractor is equivalent to declaring that there is an employer-employee relationship between the principal and the employees of the supposed contractor." **In this case, the employer-employee relationship between Petron and petitioners becomes all the more apparent due to the presence of the power of control on the part of the former over the latter.**

It was held in *Orozco v. The Fifth Division of the Hon. Court of Appeals* that:

> This Court has constantly adhered to the "four-fold test" to determine whether there exists an employer-employee relationship between the parties. The four elements of an employment relationship are: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the power to control the employee's conduct.

Of these four elements, it is the power to control which is the most crucial and most determinative factor, so important, in fact, that, the other elements may even be disregarded.

Hence, the facts that petitioners were hired by Romeo or his father and that their salaries were paid by them do not detract from the conclusion that there exists an employer-employee relationship between the parties due to Petron's power of control over the petitioners. One manifestation of the power of control is the power to transfer employees from one work assignment to another. Here, Petron could order petitioners to do work outside of their regular "maintenance/utility" job. Also, petitioners were required to report for work everyday at the bulk plant, observe an 8:00 a.m. to 5:00 p.m. daily work schedule, and wear proper uniform and safety helmets as prescribed by the safety and security measures being implemented within the bulk plant. All these imply control. In an industry where safety is of paramount concern, control and supervision over sensitive operations, such as those performed by the petitioners, are inevitable if not at all necessary. Indeed, Petron deals with commodities that are highly volatile and flammable which, if mishandled or not properly attended to, may cause serious injuries and damage to property and the environment. Naturally, supervision by Petron is essential in every aspect of its product handling in order not to compromise the integrity, quality and safety of the products that it distributes to the consuming public.[97] (Citations omitted; emphasis supplied)

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97 *Id*. at 361-362.

That DFI is the employer of the respondent-workers is bolstered by the CA's finding that DFI exercises control over the respondent-workers.[98] DFI, through its manager and supervisors provides for the work assignments and performance targets of the respondent-workers. The managers and supervisors also have the power to directly hire and terminate the respondent-workers.[99] Evidently, DFI wields control over the respondent-workers.

Neither can DFI argue that it is only the purchaser of the bananas produced in the awarded plantation under the BPPA,[100] and that under the terms of the BPPA, no employer-employee relationship exists between DFI and the respondent-workers,[101] to wit:

> UNDERTAKING OF THE FIRST PARTY
>
> xxx
>
> 3. THE FIRST PARTY [DARBMUPCO] shall be responsible for the proper conduct, safety, benefits and general welfare of its members working in the plantation and specifically render free and harmless the SECOND PARTY [DFI] of any expense, liability or claims arising therefrom. **It is clearly recognized by the FIRST PARTY that its members and other personnel utilized in the performance of its function under this agreement are not employees of the SECOND PARTY**.[102] (Emphasis supplied)

In labor-only contracting, it is the law which creates an employer-employee relationship between the principal and the workers of the labor-only contractor.[103]

Inasmuch as it is the law that forms the employment ties, the stipulation in the BPPA that respondent-workers are not employees of DFI is not controlling, as the proven facts show otherwise. The law prevails over the stipulations of the parties. Thus, in *Tabas v. California Manufacturing Co., Inc.*,[104] we held that:

> **The existence of an employer-employees relation is a question of law and being such, it cannot be made the subject of agreement.** Hence, the fact that the manpower supply agreement between Livi and California had specifically designated the former as the petitioners' employer and had absolved the latter from any liability as

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98 CA Decision, *rollo*, pp. 64-65.

99 Verified Explanation and Memorandum, *id*. at 515.

100 *Id.* at 291.

101 *Id.* at 302.

102 CA *rollo* (CA-G.R. SP No. 59958), pp. 108-109.

103 *Aliviado v. Procter & Gamble Phils., Inc*., G.R. No. 160506, March 9, 2010, 614 SCRA 563, 580; citing *Neri v. NLRC*, G.R. Nos. 97008-09, July 23, 1993, 224 SCRA 717, 720, citing *Philippine Bank of Communications v. NLRC*, G.R. No. L-66598, December 19, 1986, 146 SCRA 347, 356.

104 G.R. No. 80680, January 26, 1989, 169 SCRA 497.

> an employer, will not erase either party's obligations as an employer, if an employer-employee relation otherwise exists between the workers and either firm. xxx[105] (Emphasis supplied.)

Clearly, DFI is the true employer of the respondent-workers; respondent-contractors are only agents of DFI. Under Article 106 of the Labor Code, DFI shall be solidarily liable with the respondent-contractors for the rightful claims of the respondent-workers, to the same manner and extent as if the latter are directly employed by DFI.[106]

WHEREFORE, the petition is **DENIED** for lack of merit. The March 31, 2006 Decision and the May 30, 2006 Resolution of the Court of Appeals in C.A.-G.R. SP Nos. 53806, 61607 and 59958 are hereby **AFFIRMED**.

SO ORDERED.

FRANCIS H. JARDELEZA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

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105 *Id.* at 500. *See also Insular Life Assurance Co., Ltd. v. NLRC (4th Division)*, G.R. No. 119930, March 12, 1998, 287 SCRA 476, 483.

106 *Vigilla v. Philippine College of Criminology, Inc.*, G.R. No. 200094, June 10, 2013, 698 SCRA 247; *San Miguel Corporation v. MAERC Integrated Services, Inc.*, G.R. No. 144672, July 10, 2003, 405 SCRA 579.

ATTESTATION

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

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's attestation, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

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