



SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE  
**RECEIVED**  
OCT 21 2021  
BY: LCH  
TIME: 9:30

Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

**RONALD O. MARTINEZ, JUSTINO D. BUCAY, EDUARDO D. CANLAS, EDWIN Q. CANSINO, REYNALDO C. CAPILI, EMERITO D. CAPILI, DAVID L. CAYANAN, ROMEO C. CORTEZ, RENATO T. FRANCO, JERWIN P. GADIA, FREDERICK V. ILANO, ERNESTO C. IÑOSA, JUANITO A. LOBARDIO, ERNESTO L. MANGIO, GARRY L. MAÑACOP, GELICO A. MARZAN, BIENVENIDO D. MILLAN, JR., BENEDICTO O. MIRANDA, AARON T. OLIQUINO, EDGAR C. PANGILINAN, ARNOLD B. PEREZ, GERARDO S. ROXAS, ROBERT LAXAMANA,\* ALBERT SANTOS, EDGARDO ABAGAT, EDGARDO VILLAVICENCIO** (herein represented by his now widow Elnor C. Pangilinan), **JANNEL LORD M. BONDOC** (now herein represented by Jazmin Alfonso), and **ROEL M. GUTIERREZ,**

G.R. No. 231579

*Petitioners,*

-versus-

**MAGNOLIA POULTRY PROCESSING PLANT (MPPP), now named SAN MIGUEL FOODS, INC., (SMFI) – MPPP,**

*Respondent.*

\* Sometimes spelled as Roberto in the records.

X-----X

**SAN MIGUEL FOODS, INC.,**  
*Petitioner,*

**G.R. No. 231636**

Members:

-versus-

**PERLAS-BERNABE, Chairperson,**  
**LAZARO-JAVIER,**  
**LOPEZ, M.**  
**ROSARIO, and**  
**LOPEZ, J., JJ.\*\***

**RONALD O. MARTINEZ, JUSTINO  
D. BUCAY, EDUARDO D. CANLAS,  
EDWIN Q. CANSINO, REYNALDO  
C. CAPII, EMERITO D. CAPII,  
DAVID L. CAYANAN, ROMEO C.  
CORTEZ, RENATO T. FRANCO,  
JERWIN P. GADIA, FREDERICK V.  
ILANO, ERNESTO C. IÑOSA,  
JUANITO A. LOBARDIO, ERNESTO  
L. MANGIO, GARRY L. MAÑACOP,  
GELICO A. MARZAN,  
BIENVENIDO D. MILLAN, JR.,  
BENEDICTO O. MIRANDA, AARON  
T. OLIQUINO, EDGAR C.  
PANGILINAN, ARNOLD B. PEREZ,  
GERARDO S. ROXAS, ROBERT  
LAXAMANA, ALBERT SANTOS,  
EDGARDO ABAGAT, EDGARDO  
VILLAVICENCIO (herein represented  
by his now widow Elnor C. Pangilinan),  
JANNEL LORD M. BONDOC (now  
herein represented by Jazmin Alfonso),  
and ROEL M. GUTIERREZ,**

Promulgated:

**JUN 16 2021**

*Respondents.*

X-----X

**DECISION**

**LAZARO-JAVIER, J.:**

**THE CASES**

In their separate petitions for review on *certiorari*, Ronald O. Martinez and twenty-seven (27) others<sup>1</sup> (Martinez, *et al.*) on the one hand, **and**

\*\* Designated Additional member per Special Order No. 2822 dated April 7, 2021.

Magnolia Poultry Processing Plant, now named San Miguel Foods, Inc. (SMFI-MPPP), on the other, assail the following dispositions of the Court of Appeals in CA – G.R. SP No. 129575<sup>2</sup> entitled “*Ronald O. Martinez, et al. v. National Labor Relations Commission (5<sup>th</sup> Division), Magnolia Poultry Processing Plant (MPPP) now named San Miguel Foods, Inc., (SMFI) – MPPP, and ROMAC Services and Trading Co., Inc.*”:

- 1) **Decision**<sup>3</sup> dated April 29, 2016 declaring Romac as a labor-only contractor, and Martinez, *et al.* as regular employees of SMFI-MPPP, but denying their claim for CBA benefits and damages; and
- 2) **Resolution**<sup>4</sup> dated May 9, 2017 denying the respective motions for reconsideration of Martinez, *et al.*, SMFI-MPPP, and Romac.

### Antecedents

In their Amended Complaint<sup>5</sup> dated August 23, 2010, Ronald O. Martinez and the initial twenty-five (25) other employees<sup>6</sup> filed a complaint for illegal dismissal with other monetary claims<sup>7</sup> against SMFI-MPPP and Romac Services and Trading Co. Inc. (Romac). On September 30, 2010, two (2) others, namely: Roel M. Gutierrez and Ernesto Iñosa filed a similar complaint.<sup>8</sup> The two (2) cases were subsequently consolidated per Order<sup>9</sup> dated October 15, 2010.

**Martinez, et al.** alleged that on separate dates, they were hired by Romac as daily paid rank and file employees assigned at the production department of SMFI-MPPP in Quebiawan, San Fernando City, Pampanga. Romac though did not have a business distinct and separate from that of SMFI-MPPP.

---

<sup>1</sup> Justino D. Bucay, Eduardo D. Canlas, Edwin Q. Cansino, Reynaldo C. Capili, Emerito D. Capili, David L. Cayanan, Romeo C. Cortez, Renato T. Franco, Jerwin P. Gadia, Frederick V. Ilano, Ernesto C. Iñosa, Juanito A. Lobardio, Ernesto L. Mangio, Garry L. Mañacop, Gelico A. Marzan, Bienvenido D. Millan, Jr., Benedicto O. Miranda, Aaron T. Oliquino, Edgar C. Pangilinan, Arnold B. Perez, Gerardo S. Roxas, Robert Laxamana, Albert Santos, Edgardo Abagat, Edgardo Villavicencio, Jannel Lord M. Bondoc, and Roel M. Gutierrez.

<sup>2</sup> Penned by Associate Justice Nina G. Antonio-Valenzuela, concurred in by Associate Justices Manuel M. Barrios and Agnes Reyes Carpio, all members of the Special Sixth Division.

<sup>3</sup> *Rollo*, G.R. 231636, Vol. I, pp. 34-53.

<sup>4</sup> *Id.* at 55-57.

<sup>5</sup> *Rollo*, G.R. 231579, Vol. I, pp. 375-380.

<sup>6</sup> Justino D. Bucay, Eduardo D. Canlas, Edwin Q. Cansino, Reynaldo C. Capili, Emerito D. Capili, David L. Cayanan, Romeo C. Cortez, Renato T. Franco, Jerwin P. Gadia, Ernesto C. Iñosa, Juanito A. Lobardio, Ernesto L. Mangio, Garry L. Mañacop, Gelico A. Marzan, Bienvenido D. Millan, Jr., Benedicto O. Miranda, Aaron T. Oliquino, Edgar C. Pangilinan, Arnold B. Perez, Gerardo S. Roxas, Robert Laxamana, Albert Santos, Edgardo Abagat, Edgardo Villavicencio, and Jannel Lord M. Bondoc.

<sup>7</sup> Wage and benefit differentials according to the CBA of the regular rank and file employees for the past 3 years of service with MPPP, sick leave, vacation leave, signing bonus, full backwages, moral and exemplary damages, attorney's fees, and costs of suit.

<sup>8</sup> *Rollo*, G.R. 231579, Vol. I, p. 385.

<sup>9</sup> *Id.* at 388.

A

As members of the sanitation crew assigned at the production department, they performed tasks necessary and desirable to the poultry business of SMFI-MPPP *i.e.*, receiving-dressing, packaging, slitter, stunner, blood vat, scalding, head puller, deboning, chicken fat remover, crates sanitizer, crates cleaner, filer, stocker, hanger, inspector, feeder, and transporter. The sanitation aspect though only accounted for 30% of their tasks as they were mainly utilized at the production line of SMFI-MPPP.

In the performance of these tasks, they were closely monitored by regular supervisory employees of SMFI-MPPP such as Gilbert Espino, Caloy Castor, Danilo Aguilar, Noel Guerrero, and Joseph Zapata. To ensure the quality of its products, SMFI-MPPP periodically trained them through seminars on Basic Poultry Operations, Good Manufacturing Practices, Sanitation, and Hazard Analysis and Critical Control Point (HACCP) Overview.

They regularly reported for work until January 4, 2010, when most of them were no longer allowed inside the premises of SMFI-MPPP because it had ceased operations preparatory to its intended outsourcing of services. Thus, they got constrained to file the case for illegal dismissal with monetary claims against SMFI-MPPP and Romac.

As regular employees of SMFI-MPPP, they are entitled to the benefits under the Collective Bargaining Agreement (CBA) between SMFI-MPPP and SMFI-MPPP Workers Union (SMFI-MPPPWU-Daily).

Records show that Edgardo Villavicencio<sup>10</sup> died on September 19, 2010 while Jannel Lord Bondoc<sup>11</sup> died on June 21, 2011.

SMFI-MPPP,<sup>12</sup> on the other hand, countered that it is engaged in the business of poultry, meat, animal feeds, and veterinary medicines. To maximize efficiency and cost-effectiveness, beginning December 1, 1994, it entered into a contract of services with Romac for the performance of peripheral and ancillary tasks pertaining to its poultry business, *i.e.*, sanitation, maintenance, janitorial, housekeeping, and reliever services in times of demand upsurge. Romac, thus, deployed its own employees to perform these contracted services at the company's processing plant in San Fernando, Pampanga.

As early as 2007, it already contemplated on the closure of its Pampanga Plant in anticipation of its plan to cede the same to a third party. But in consideration of the numerous employees who would be affected by the closure, the same was deferred for some time and got implemented only in December of 2009.

---

<sup>10</sup> *Id.* at 370.

<sup>11</sup> *Id.* at 372.

<sup>12</sup> *Rollo*, G.R. 231636, Vol. I, pp. 138-160.

0

Contrary to the position of Martinez, *et al.*, the fact that SMFI-MPPP required them to attend seminars on Basic Poultry Operations, Good Manufacturing Practices, Sanitation, and HACCP Overview did not prove the existence of an employer-employee relationship between them. It required attendance to these seminars as part of its accreditation requirements. As Romac's regular employees, Martinez, *et al.* had no right to claim benefits under the CBA between SMFI-MPPP and SMFI-MPPPWU-Daily.<sup>13</sup>

For its part, **Romac**<sup>14</sup> acknowledged that it had a **contractual** (fixed period) employer-employee relationship with Martinez, *et al.* It was initially registered with the Securities and Exchange Commission (SEC) on June 26, 1989 to engage and operate in the business of contracting for general building maintenance and cleaning services, furnishing skilled and semi-skilled manpower services which include janitorial, messengerial, and driver services.<sup>15</sup>

In compliance with Department Order No. (DO) 10, series of 1997, it registered as a legitimate job contractor with the Department of Labor and Employment (DOLE) per Certificate of Registration No. R03-9709-006; and under DO 18-02, series of 2002 per Certificate of Registration No. III-O93-0502-006. It had substantial capital and investment in the form of tools, equipment, work premises, and other materials necessary for the conduct of its business as legitimate job contractor.

In 1994, it entered into two (2) service contracts with SMFI-MPPP - Contract for Sanitation, Maintenance, Janitorial, and Housekeeping Services and a Contract for Substitute or Reliever Services. Pursuant to these contracts, it designated Martinez, *et al.* to work at the SMFI-MPPP plant in San Fernando City, Pampanga. There, Martinez, *et al.* worked under the direct control and supervision of Licerio Araza, supervisory personnel of Romac.

As fixed period employees, Martinez, *et al.* should not be accorded regular or permanent status either by Romac or SMFI-MPPP. Upon the termination of its service contracts with SMFI-MPPP, it offered to transfer Martinez, *et al.*, to other assignments, but they refused, insisting they were SMFI-MPPP's regular employees. There could be no illegal dismissal to speak of simply because what took place was a mere expiration of the service contracts for which Martinez, *et al.*, got employed.<sup>16</sup>

### **Ruling of the Labor Arbiter**

By Decision<sup>17</sup> dated August 4, 2011, Labor Arbiter Reynaldo V. Abdon declared that Martinez, *et al.* were illegally dismissed, Romac was a labor-

<sup>13</sup> Rollo, G.R. 231579, Vol. I, p. 69.

<sup>14</sup> Rollo, G.R. 231579, Vol. II, pp. 534-560.

<sup>15</sup> Rollo, G.R. 231636, Vol. I, p. 182.

<sup>16</sup> Rollo, G.R. 231579, Vol. I, CA Decision, pp. 66-67.

<sup>17</sup> Rollo, G.R. 231636, Vol. I, pp. 76-112.

0

only contractor, and that the actual employer of Martinez, *et al.* was SMFI-MPPP, thus:

WHEREFORE, premises considered, judgment is hereby rendered DECLARING that respondent ROMAC SERVICES AND TRADING, INC. is a labor-only contractor and that respondent SAN MIGUEL FOODS, INC. (MAGNOLIA POULTRY PROCESSING PLANT) is the true employer of the complainants.

It is also DECLARED that complainants are deemed regular employees of the respondent San Miguel Foods, Inc. Consequently, complainants are within the scope of coverage of Magnolia Poultry Processing Plant Daily Union (PTGWO) Collective Bargaining Agreement (CBA) with SMFI.

IT IS FURTHER DECLARED that complainants were illegally dismissed by respondents. Accordingly, respondent SAN MIGUEL FOODS, INC. (MAGNOLIA PROCESSING PLANT) is hereby ORDERED to reinstate the complainants to their former job positions without loss of seniority rights and benefits.

Moreover, respondents ROMAC SERVICES AND TRADING, INC. and SAN MIGUEL CORPORATION, INC. are jointly and severally DIRECTED [to] pay the complainants their full backwages and other benefits from the date of dismissal until they are reinstated, the grand total amount at present is Four Million Six Hundred Eighty One Thousand Seven Hundred Seventy Two and Seventy Six Centavos (Php4,681,772.76).

Additionally, respondents are jointly and severally ORDERED to pay the complainants ten percent (10%) of their monetary award as attorney's fees, in the sum of Four Hundred Sixty Eight Thousand One Hundred Seventy Seven and Twenty Seven Centavos (Php 468,177.27).

The Report of the Fiscal Examiner on the computation of the complainants' monetary awards is hereto attached as Annex "A" and made an integral part of this decision.

Finally, the reinstatement aspect of this Decision is immediately executory. Hence, respondent San Miguel Foods, Inc. is DIRECTED to submit Compliance Report to this Office as regards the reinstatement of complainants within twenty (20) days from receipt of this decision.

Claims for moral and exemplary damages are dismissed for lack of merit.

Claims for monetary benefits under the present CBA is also denied for lack of basis.

**SO ORDERED.**

### **Appeals to the National Labor Relations Commission (NLRC)**

Martinez, *et al.*, SMFI-MPPP, and Romac filed their respective appeals before the National Labor Relations Commission (NLRC).



Martinez, *et al.*, faulted the labor arbiter for denying their claims for CBA benefits and damages.<sup>18</sup>

SMFI-MPPP, on the other hand, faulted the labor arbiter for holding that Romac was a labor-only contractor and that Martinez, *et al.* were regular employees of SMFI-MPPP. It emphasized that Martinez, *et al.* did not perform acts necessary and desirable to its main business of poultry supply. For lack of employer-employee relationship between the company and these individuals, it cannot be held liable for Martinez, *et al.*'s complaint for illegal dismissal and money claims.<sup>19</sup>

Romac, for its part, reiterated that it is a legitimate labor contractor and that it had an employment contract with SMFI-MPPP for a specific period which already expired. There could be no illegal dismissal to speak of when what took place was a mere expiration of the service contracts for which Martinez, *et al.* were employed.<sup>20</sup>

### Dispositions of the NLRC

By Resolution dated December 15, 2011, the NLRC initially dismissed the respective appeals of SMFI-MPPP and Romac. It noted that the joint declaration attached to the appeal bond of SMFI-MPPP was not signed by the bonding company while the appeal of Romac did not bear any bond at all in violation of Section 6, Rule VI of the NLRC Rules of Procedure.<sup>21</sup>

SMFI-MPPP, thus, promptly submitted the required joint declaration duly signed by Prudential Guarantee and Assurance, Inc. Vice-President Guia Laguio-Flaminiano. As for Romac, it submitted a manifestation that the common bond attached to the memorandum of appeal of SMFI-MPPP actually pertained to both of them.<sup>22</sup> Finding these submissions to be in order, the NLRC reinstated their respective appeals.

By Decision<sup>23</sup> dated September 13, 2012, the NLRC reversed in this wise, *viz.*:

x x x Romac x x x is a legitimate labor contractor. Respondent Romac is the complainants' employer, and not San Miguel.

Complainants were assigned to San Miguel pursuant to two contracts of: 1) Sanitation[,] Maintenance[,] Janitorial[,] and Housekeeping Services, and 2) Reliever Services. The services they rendered were

<sup>18</sup> *Rollo*, G.R. 231579, Vol. I, p. 432.

<sup>19</sup> *Id.* at 432.

<sup>20</sup> *Rollo*, G.R. 231579, Vol. III, pp. 1008-1041.

<sup>21</sup> SECTION 6. Bond. — In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent in amount to the monetary award, exclusive of damages and attorney's fees. (The 2011 NLRC Rules of Procedure, May 31, 2011).

<sup>22</sup> *Rollo*, G.R. 231579, Vol. I, pp. 431-432.

<sup>23</sup> *Id.* at 430-440.

maintenance and janitorial services, a job not necessary or desirable to the poultry business of San Miguel. x x x

Considering that there is absence of employer-employee relationship, San Miguel cannot be held guilty of illegal dismissal. Neither can it accord regular employment status to complainants, nor pay their backwages and attorney's fees.

Complainants are the contractual employees of Romac, as shown in the employment contracts for fixed periods. When the contracts of services entered in by and between San Miguel and Romac expired, the assignment of the complainants to San Miguel also ended.

x x x x

Thus, there is no illegal dismissal to speak of. The complainants are not entitled to backwages, damages[,] nor attorney's fees. Romac was transferring them to CCPI-SFD, but complainants refused.

x x x x

WHEREFORE, premises considered, the appeals of San Miguel and Romac Services are **GRANTED**. The appeal of the complainants is **DISMISSED**.

The Decision appealed from is **VACATED**, and a new one issued **DISMISSING** the complaint.

SO ORDERED.<sup>24</sup>

The motion for reconsideration of Martinez, *et al.*, was subsequently denied per Resolution<sup>25</sup> dated January 25, 2013.

### **Ruling of the Court of Appeals**

On a petition for *certiorari* initiated by Martinez, *et al.* in CA – G.R. SP No. 129575, the Court of Appeals, by Decision<sup>26</sup> dated April 29, 2016, nullified the dispositions of the NLRC and reinstated the ruling of the labor arbiter, *viz.*:

x x x As correctly found by the Labor Arbiter, respondent Romac was a labor-only contractor.

x x x x

*First*, respondent Romac had no substantial capital.

x x x x

---

<sup>24</sup> *Id.* at 437-440.

<sup>25</sup> *Rollo*, G.R. 231636, pp. 71-74.

<sup>26</sup> *Id.* at 34-52.



*Second*, respondent Romac supplied petitioners to respondent SMFI, to perform activities which were directly related to respondent SMFI's main business.

Petitioners' work in ensuring the sanitation and maintenance of the equipment, was directly related to the chicken poultry business of respondent SMFI. Petitioners' jobs of sanitation and maintenance, were necessary and desirable in the day-to-day operations of respondent SMFI's business. Notably, petitioners had been performing the same tasks regularly, within respondent SMFI's plant, for long periods of time. This was sufficient evidence of the indispensability of petitioners' jobs to respondent SMFI's business.

*Third*, respondent Romac did not exercise the right to control over the performance of work of the petitioners. Rather, it was respondent SMFI that exercised the power of control over the petitioners in the performance of their work.

X X X X

With respect to the final issue, we rule in the affirmative. Petitioners were entitled to their money claims.

X X X X

We **SET ASIDE** the Decision dated 13 September 2012, and the Resolution dated 25 January 2013, both issued by the National Labor Relations Commission, and we **REINSTATE** the Decision dated 4 August 2011 issued by the Labor Arbiter.

**IT IS SO ORDERED.**<sup>27</sup>

The Court of Appeals denied reconsideration on May 9, 2017.<sup>28</sup>

### **The Present Petitions**

Both Martinez, *et al.* and SMFI-MPPP now seek affirmative relief through their respective petitions for review on *certiorari*.

In G.R. No. 231579, **Martinez, et al.** assert anew that they are entitled to backwages and differential benefits pursuant to the CBA of the regular rank-and-file employees of SMFI-MPPP for three (3) years prior to their illegal dismissal, plus damages.<sup>29</sup>

In G.R. No. 231636, **SMFI-MPPP**<sup>30</sup> maintains that the contracts of service it entered into with Romac were valid and that the latter is a legitimate job contractor with substantial capitalization and investment. In 2001 alone,

---

<sup>27</sup> *Id.* at 52.

<sup>28</sup> *Rollo*, G.R. 231579, Vol. I, pp. 60-62.

<sup>29</sup> *Id.* at 9-56.

<sup>30</sup> *Rollo*, G.R. 231636, pp. 9-24.

Romac had an authorized capital stock of ₱20,000,000.00. Romac hired and paid the salaries and benefits of Martinez, *et al.*, and held the power to discipline and fire them. While performing their duties within the premises of SMFI-MPPP, Martinez, *et al.* were under the direct control and supervision of Licerio Araza, a supervisory employee of Romac. SMFI-MPPP, therefore, could not have illegally dismissed Martinez, *et al.*, who are, in fact, employees of Romac, nor could be made liable for the reinstatement of these employees and payment of their money claims.

Both petitioners, thereafter, filed their respective comments, reiterating the arguments in their petitions.

### **Core Issue**

Is Romac a legitimate labor contractor or a labor-only contractor?

### **Ruling**

Preliminarily, the Court notes that the core issue is a purely factual issue which the Court does not generally entertain. For the Court is not a trier of facts and does not normally embark in the evaluation of evidence adduced during the trial. This rule, however, admits of exceptions. One of them is when the factual findings of the quasi-judicial agencies concerned are conflicting or contradictory with those of the Court of Appeals, as here. Under this circumstance, it becomes the duty of the Court to re-examine the records and draw its own factual findings.<sup>31</sup>

We now resolve the cases on the merits.

Article 106 of the Labor Code proscribes the practice of labor-only contracting, *viz.*:

**ARTICLE 106.** *Contractor or Subcontractor.* — Whenever an employer enters into a contract with another person for the performance of the former's 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

---

<sup>31</sup> See *General Milling Corp. v. Viajar*, 2013, 702 Phil 532, 540 (2013).

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 same manner and extent as if the latter were directly employed by him.<sup>32</sup>

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 substantial capital, investment, tools, and the like.<sup>33</sup> As a regulated industry, the law requires registration of labor contractors with the DOLE. Failure to register shall give rise to the presumption that the contractor is engaged in labor-only contracting.

Section 5 in relation to Section 11 of DO 18-02<sup>34</sup> governed the registration of labor contractors at the time material to the cases at bar, thus:

**SECTION 5. Prohibition against labor-only contracting.** — Labor-only contracting is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present:

i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the 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

ii) the contractor does not exercise the right to control over the performance of the work of the contractual employee.

The foregoing provisions shall be without prejudice to the application of Article 248 (c) of the Labor Code, as amended.

"Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out.

<sup>32</sup> Labor Code of the Philippines, Presidential Decree No. 442 (Amended & Renumbered), July 21, 2015.

<sup>33</sup> See *Allied Banking Corp. v. Calumpang*, 823 Phil. 1143, 1156-1157, (2018).

<sup>34</sup> Rules Implementing Articles 106 to 109 of the Labor Code, as Amended, DOLE Order No. 18-02, February 21, 2002.

The "right to control" shall refer to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.<sup>35</sup>

x x x x

**SECTION 11. *Registration of Contractors or Subcontractors.*** — Consistent with the authority of the Secretary of Labor and Employment to restrict or prohibit the contracting out of labor through appropriate regulations, a registration system to govern contracting arrangements and to be implemented by the Regional Offices is hereby established.

The registration of contractors and subcontractors shall be necessary for purposes of establishing an effective labor market information and monitoring.

**Failure to register shall give rise to the presumption that the contractor is engaged in labor-only contracting.**<sup>36</sup> (Emphases supplied)

Here, there is no dispute that Romac held the Certificate of Registration No. III-O93-0502-006<sup>37</sup> as a legitimate and independent labor contractor per DO 18-02, *viz.*:

Republic of the Philippines  
**DEPARTMENT OF LABOR AND EMPLOYMENT**  
**Regional Office No. III**  
 City of San Fernando, Pampanga

This  
**CERTIFICATE OF REGISTRATION**  
**No. III-O93-0502-006**  
**TIN: 000-267-578-000**

is issued to

**ROMAC SERVICES & TRADING CO., INC.**  
**776 Sto. Rosario St., Sto. Domingo, Angeles City**

For having complied with the requirements as provided in the Labor Code, as amended, and its Implementing Rules and having paid the registration fee in the amount of ONE HUNDRED PESOS (P 100.00) per Official Receipt No. 5226437 dated 23 May 2008.

In witness whereof, and by the authority vested in me by the Labor Code, as amended, its Implementing Rules[,] specifically Department Order No. 18-02, Series of 2002 entitled Rules Implementing Articles 106 to 109 of the Labor Code[,] as amended, I have hereto set my hand and affixed the Official Seal of Department of Labor and Employment, Regional Office No. III, City of San Fernando, Pampanga on this 23<sup>rd</sup> day of May 2008.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Rollo*, G.R. No. 231636, Vol. I, p. 208.

This Certificate of Registration shall be valid until 07 May 2011 subject for renewal every three (3) years pursuant to Section 17 of DO 18-02, Series of 2002 unless, sooner cancelled by the Regional Director.

Signed  
NATHANIEL V. LACAMBRA  
Regional Director

As the primary agency tasked to regulate job contracting, DOLE is presumed to have regularly performed its official duty when it declared that Romac had complied with the requirements of the Labor Code and its implementing rules, and based thereon, conferred upon it the corresponding certificate of registration as a legitimate and independent labor contractor.<sup>38</sup>

We keenly note that the aforesaid certification was not the first but already the second certification issued by the DOLE conferring Romac the status of a legitimate labor contractor. The first was issued by the DOLE pursuant to DO 10, series of 1997.<sup>39</sup> Further, since 1989, Romac has been in the roster of duly registered corporations with the SEC, bearing SEC Reg. No. 165092.<sup>40</sup>

The Court though recognizes that the presumption of legitimacy arising from one's registration as an independent and legitimate labor contractor may be defeated whenever it is shown that:

i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work, or service to be performed and the 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

ii) the contractor does not exercise the right to control over the performance of the work of the contractual employee.<sup>41</sup>

Substantial capital or investment refers to "capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries, and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work, or service contracted out."<sup>42</sup> As to how much or what constitutes substantial capital, DO 18-A, series of 2011 dated November 14, 2011 defines substantial capital as paid-up capital stocks/shares of at least ₱3,000,000.00 in the case of corporations.

<sup>38</sup> See *Consolidated Building Maintenance, Inc. v. Asprec, Jr.*, 832 Phil. 630, 642 (2018).

<sup>39</sup> *Rollo*, G.R. No. 231636, p. 459.

<sup>40</sup> *Id.* at 181.

<sup>41</sup> Rules Implementing Articles 106 to 109 of the Labor Code, as Amended, DOLE Order No. 18-02, February 21, 2002.

<sup>42</sup> See *Mago v. Sun Power Manufacturing Limited*, 824 Phil. 464, 477-478 (2018); citing DO No. 18-02.

Here, in 2001 alone, Romac already had on record a capital stock of ₱20,000,000.00<sup>43</sup> and ownership of an office building, a commercial lot, various office equipment, furniture and fixtures, communication equipment, various service vehicles, and janitorial tools and equipment.<sup>44</sup> Verily, Romac had sufficient capital to carry on its independent on-going business as a legitimate contractor or provider of services to its various clients, including SMFI-MPPP pursuant to the standard of substantial capital under DO 18-A.

Another. It is a matter of record that apart from SMFI-MPPP, Romac also supplies services to its several other A-list clients such as Jollibee Foods Corporation, GMA Network – Regional TV, University of Santo Tomas Hospital, Philamlife Insurance Company, Coca-Cola Bottlers Philippines, Inc., and Cosmos Bottling Corporation. In *San Miguel Foods, Inc. v. Rivera*,<sup>45</sup> the Court held that the A-list clients listed in the roster of the labor contractor apart from petitioner, which incidentally is the same company involved here, strongly indicates that the concerned labor contractor carried on a legitimate and independent business operations distinct from the operations of petitioner itself.

As for the element of control, we shall discuss it in light of the four-fold test: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) **the power of control**.

**First.** On different dates, Romac engaged Martinez, *et al.* as evidenced by the latter's respective Personnel Appointments/Employment Contracts printed on Romac's own letterhead.<sup>46</sup>

**Second.** In both contracts for Sanitation, Maintenance, Janitorial, and Housekeeping Services and for Substitute or Reliever Services which Romac entered into with SMFI-MPPP, Romac unconditionally assumed the obligation to pay the salaries and other statutory benefits of Martinez, *et al.*, *viz.:*

**SECTION 5. CONTRACTOR'S COVENANTS – CONTRACTOR**  
further covenants and agrees to:

x x x x

- (i) While this Agreement, or any extension thereof, is in effect, pay the wages or salaries of its employees, personnel[,] and agents, as well as all benefits, premiums[,] and protection, in accordance with all applicable laws, rules[,] and regulations, and DOLE DO's, and furnish CLIENT, on or before the tenth (10<sup>th</sup>) day of every month, a sworn certification stating that: (i) CONTRACTOR has paid all wages and salaries due to the workers for all services rendered by them during the immediately preceding month, including overtime,

<sup>43</sup> *Rollo*, G.R. No. 231579, Vol. III, p. 1072.

<sup>44</sup> *Id.* at 1073-1074.

<sup>45</sup> 824 Phil. 961, 977 (2018).

<sup>46</sup> *Rollo*, G.R. 231636, Vol. II, pp. 836-857.

if any, and such other payments and benefits as are required under the Labor Code of the Philippines, SSS Law [sic], and other laws or regulations relating to the Home Development Mutual Fund, PhilHealth, [sic] Employees Compensation Commission, and the like, (ii) that such payments were all in accordance with the requirements of law, and (iii) that remittances required to be made to the Bureau of Internal Revenue on behalf of its employees have been made for the subject reporting period; x x x

x x x x

True to its undertaking, Romac paid the monthly salary and labor standard benefits to Martinez, *et al.* and effected the statutory deductions on their salaries, as shown by the employees' payslips bearing the logo of Romac.

**Third.** The power of Romac to hire included its inherent power to discipline Martinez, *et al.*<sup>47</sup> In one instance, Romac found Benedicto Miranda guilty of simple negligence in the performance of his janitorial task inside the premises of SMFI-MPPP, *viz.*:

**Romac Services & Trading Company, Inc.  
Disciplinary Action Form**

Violator's Name: Benedicto O. Miranda  
Dept./Project: SMFI-MPPP  
x x x x

Nature of Offense: Negligence  
Date of Commission: October 16, 2007  
Date Served: October 19, 2007

Due to your violation of the company Rules & Regulations x x x : Acts of Negligence in the performance of duties or in the care and use of the company property, equipment[,], or device. (Simple Negligence: Failure to observe diligence demand[ed] by the situation thereby exposing the company to unnecessary risk.)

In his explanation letter, Miranda denied the charge:

*"Ako po si Benedicto Miranda, janitor[-]sweeper sa [building] B. Kinuha ko yung basura sa holding return na nasa anim na crates po [i]yon itinaob ko lang po sa drum. Hindi ko po alam na may manok po yung mga basura na nasa crates. Itinapon ko na po sa may basurahan. Ang mali ko lang po[,] hindi ako nakapag[-]log book.*

Signed  
Benedicto Miranda<sup>48</sup>

Romac eventually suspended Miranda for fourteen (14) working days.

<sup>47</sup> See *Felicilda v. Uy*, 795 Phil. 408, 412 (2016).

<sup>48</sup> *Rollo*, G.R. No. 231636, Vol. I, p. 284.

In another instance, Bienvenido Millan, Jr. was caught punching in another employee's timecard. He reasoned out:

*Ako si Bienvenido Millan, Jr., sumulat po ako para humingi ng tawad sa nagawa kong kamalian. [H]indi na po mauulit [i]yon. Sa totoo lang p[ro], napag-utusan lang po ako ng [l]eadman ko na i-[punch] ang time card niya. [S]umunod naman ako dahil siya ang leadman ko at saka baka pag-initan niya ako kung hindi ako susunod sa kanya. [M]ahal ko po ang trabaho ko. [D]ito ko po binubuhay ang pamilya ko. Kaya lang nagkamali ako sa pagsunod sa leadman ko. Pero ipangako ko sa inyo na hindi na mauulit [i]yon. Pagbutihan ko ang trabaho ko hanggang sa makakaya ko.*

Signed  
Bienvenido Millan<sup>49</sup>

Romac, too, eventually suspended Bienvenido and even instructed him to first report to Romac Corporate Office after serving his suspension for further instruction:

**The ROMAC GROUP**  
**Romac Services & Trading Co., Inc.**

To: Bienvenido D. Millan, Jr.  
Utility  
From: Human Resources Department  
Date: June 10, 2009  
Re: Suspension

We would like to inform you that in relation to your suspension regarding the punching log in of other employees[,] we would extend your suspension starting June 8 up to June 14, 2009.

We would also like to inform you that after the exclusive dates of your suspension, you should first report to Romac Corporate office on June 15, 2009 for further instruction.

For your strict compliance.

Received  
Bienvenido Millan, Jr.  
June 11, 2009<sup>50</sup>

Significantly, Martinez, *et al.* invariably recognized and respected the authority of Romac to impose disciplinary sanctions on them for their individual infractions for the entire duration of their employment with the latter, specifically during their assignment at SMFI-MPPP.

<sup>49</sup> *Id.* at 243.

<sup>50</sup> *Id.* at 245.

10



**Fourth.** Among the four-fold test, **control** is the most important. Under the control test, an employer-employee relationship exists if the “employer” has reserved the right to control the “employee” not only as to the result of the work done but also as to the means and methods by which the same is to be accomplished. Otherwise, no such relationship exists.<sup>51</sup>

Records show that it was Romac which exercised control over Martinez, *et al.* To recall, these employees applied with and were hired by Romac, as evidenced by their individual employment contracts printed on the letterhead of Romac. It was Romac which paid the wages and other labor standard benefits of these employees, as shown by their payrolls and disbursement vouchers. More, it was Romac which reported them as its employees to the Social Security System (SSS), Employees Compensation Commission (ECC), and Philippine Health Insurance Corporation (PhilHealth), among others. It was also Romac which made the necessary deductions on their salaries and the proper remittance thereof to these agencies. Further, Romac exercised the power to dismiss and discipline as heretofore shown. Finally, it was Romac through its supervisory personnel Licerio Araza which gave the employees their work schedule, monitored their attendance, determined the end result of their assigned tasks, as well as the methods and means by which the end result was to be accomplished.

The fact alone that Martinez, *et al.* were required by SMFI-MPPP to attend its company-sponsored seminars on Basic Poultry Operations, Good Manufacturing Practices, Sanitation, and HACCP Overview do not in any way equate to control. *Non sequitur.* In any case, the Court finds the compelling reason behind this initiative: to minimize risks of exposure to possible violations of sanitation requirements in the food industry, for any deviation from the sanitation standards prescribed by law would open SMFI-MPPP to possible closure of business under the Meat Inspection Code of the Philippines.<sup>52</sup> In the final analysis, this initiative is truly intended to ensure the safety and protection of the consuming public who buys the food products of SMFI-MPPP. Thus, instead of being criticized or suspected of circumventing the law, SMFI-MPPP should be commended for its corporate and social sense of responsibility in this regard.

In the same vein, we do not find anything wrong or suspicious about the itemized billings sent by Romac to SMFI-MPPP, reflecting the employer’s share of Romac to the employees’ mandatory contributions to SSS, ECC, PhilHealth, and Pag-Ibig, and the amounts corresponding to agency fee, supplies and equipment allowance, and other labor standard benefits such as overtime pay, night shift differential, and holiday pay.

**For one,** the style or manner of billing by Romac as well as the style or manner of paying by SMFI-MPPP, be it itemized or lump-sum, is perfectly

<sup>51</sup> See *Sara v. Agarrado*, 248 Phil. 847; 852 (1988).

<sup>52</sup> The Meat Inspection Code of the Philippines, Republic Act No. 9296, May 12, 2004.

1

within their discretion. **For another**, Romac's itemized billings and SMFI-MPPP's payments thereof readily reflect, on their face, whether Romac is indeed compliant with labor standard laws. This is a legitimate concern of SMFI-MPPP since under Section 19<sup>53</sup> of DO 18-02 it can be held solidarily liable for the monetary claims of the contractual employees against the contractor arising from any violation of their rights.

As for the fact that under the Contract for Sanitation, Maintenance, Janitorial, and Housekeeping Services and Contract for Substitute or Reliever Services, Martinez, *et al.* performed their respective tasks in the premises of SMFI-MPPP, we curtly ask – where else should they perform these tasks? Precisely, Romac was engaged to keep the premises of SMFI-MPPP clean, safe, and sanitary at all times; hence, doing it elsewhere simply does not make sense.

In *Manila Electric Co. v. Quisumbing*,<sup>54</sup> the Court recognized that contracting out of services is an exercise of business judgment or management prerogative.

The management cannot be denied the faculty of promoting efficiency and attaining economy by a study of what units are essential for its operation. It has the ultimate determination of whether services should be performed by its personnel or contracted to outside agencies. While there should be mutual consultation, eventually deference is to be paid to what management decides. **Contracting out of services is an exercise of business judgment or management prerogative.** Absent proof that management acted in a malicious or arbitrary manner, the Court will not interfere with the exercise of judgment by an employer. x x x (Emphasis added)

x x x x

We further clarified in *BPI Employees Union-Davao City-FUBU v. Bank of the Philippine Islands*<sup>55</sup> that it is within the prerogative of management to farm out any of its activities, **regardless whether such activity is peripheral or core in nature.** What is primordially important is that the service agreement does not violate the employee's right to security of tenure and payment of benefits to which he or she is entitled under the law.

So long as the outsourcing does not fall squarely as labor-only contracting, the arrangement does not ripen into an employer-employee

<sup>53</sup> SECTION 19. *Solidary Liability.* — The principal shall be deemed as the direct employer of the contractual employees and therefore, solidarily liable with the contractor or subcontractor for whatever monetary claims the contractual employees may have against the former in the case of violations as provided for in Sections 5 (Labor-Only contracting), 6 (Prohibitions), 8 (Rights of Contractual Employees) and 16 (Delisting) of these Rules. (Rules Implementing Articles 106 to 109 of the Labor Code, as Amended, DOLE Order No. 18-02, February 21, 2002).

<sup>54</sup> 383 Phil. 47, 60 (2000).

<sup>55</sup> 715 Phil. 35, 53 (2013).

relationship between the principal and the employees of the legitimate labor contractor.

In closing, we refer back to the three (3) year old case of *San Miguel Foods, Inc. v. Rivera*,<sup>56</sup> viz.:

In the case under consideration, it was sufficiently found by both the LA and the NLRC that the respondents applied with and were hired by ICSI, as evidenced by their individual Personal Information Sheets, employment contracts and Letters of Appointment. Concomitantly, ICSI issued them their individual identification cards as borne by the records. Even the payment of respondents' wages and other labor standard benefits were also made by ICSI, as shown by their payrolls and disbursement vouchers. More so, ICSI itself reported the respondents as its employees with the SSS, Philhealth, PAG-IBIG, and BIR. Also, ICSI was the one that made the necessary deductions on the respondents' salaries for their contributions (their premium share) thereto, which were all properly remitted to the said agencies. As to the power of dismissal and to discipline, it was also ICSI that exercised the same. This is evident from the Notice to Explain and Memorandum it issued to its erring employees who violated its rules and regulations. Contrary to the claim of the respondents, which the CA affirmed, this Court holds that the controverted letter dated May 22, 2009 issued by the petitioner to ICSI contained no instruction from the former for the latter to transfer or even terminate the respondents. This Court finds satisfactory the petitioner's explanation that such letter merely informed ICSI of the changes in their agreement regarding the invoicing services that the invoicing operations at its head office would be discontinued and would be transferred to San Fernando, Pampanga. At the same time, the petitioner was just reminding ICSI to ensure that in the event there will be employees unwilling to comply with the new terms and conditions of their agreement, they should be properly dealt with in accordance with law. Stated differently, the petitioner only wanted to make sure that ICSI would not renege on its obligations to its employees. Lastly, the power of control similarly rests upon ICSI. As previously stated, it was ICSI's officers who have direct supervision over the respondents. ICSI's Base Controller and OIC were the ones who gave the respondents their work schedule and monitored their attendance, respectively.

It is worthy to note this Court's pronouncement in *Royale Homes Marketing Corporation v. Alcantara*, citing *Insular Life Assurance Co., Ltd. v. National Labor Relations Commission*, viz.:

Not every form of control is indicative of employer-employee relationship. A person who performs work for another and is subjected to its rules, regulations, and code of ethics does not necessarily become an employee. **As long as the level of control does not interfere with the means and methods of accomplishing the assigned tasks, the rules imposed by the hiring party on the hired party do not amount to the labor law concept of control**

<sup>56</sup> Supra 45 at 979-981.

**that is indicative of employer-employee relationship. x x x**

x x x x

With all the foregoing, this Court holds that no employer-employee relationship exists between the petitioner and the respondents. It is an error, therefore, on the part of the CA to order the petitioner to reinstate the respondents and to grant them all the benefits and privileges of regular employees. Not being petitioner's employees, thus, they cannot attain the regular status. Along side, the petitioner cannot be charged of constructive illegal dismissal for it is beyond its power to dismiss the respondents as they were never its employees.

x x x x

While *Rivera* involves a different contractor in the person of ICSI and a different kind of contracted service (invoicing), there appears to be a uniform corporate standard or set of rules followed by SMFI in contracting out the invoicing service in *Rivera* and the janitorial services here, to wit: in both cases, the company chose only those legitimate contractors duly registered with SEC and DOLE, substantially capitalized, and servicing other A-list clients, as well; clothed with the power to hire and fire and discipline employees and most importantly, the power of control over the result of the tasks performed and the means and methods used to accomplish the same; and required the tasks to be performed in the company premises.

As it was, in *Rivera*, the Court found ICSI to be a legitimate labor contractor and the real employer of employees Rivera, *et al.* There is no rhyme or reason to rule otherwise in the present case considering that *Rivera* and this case are substantially analogous. *What is sauce for the goose is sauce for the gander.*

All told, the Court finds and holds that Romac is a legitimate labor contractor and truly the employer of Martinez, *et al.* Romac could not be said to have dismissed Martinez, *et al.* just because of its service contracts with SMFI-MPPP had expired. In fact, there is no question that Romac offered to reassign Martinez, *et al.* to its other clients, but the latter declined because they erroneously believed that they had become the regular employees of SMFI-MPPP.

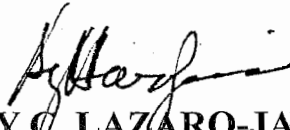
**ACCORDINGLY**, the petition of *Martinez, et al.* in G.R. No. 231579 is **DENIED**. On the other hand, the petition of *San Miguel Foods, Inc., formerly Magnolia Poultry Processing Plant (SMFI-MPPP)* in G.R. No. 231636 is **GRANTED**.

The Decision dated April 29, 2016 and Resolution dated May 9, 2017 of the Court of Appeals in CA – G.R. SP No. 129575 are **REVERSED** and

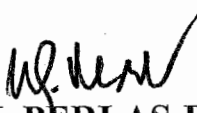


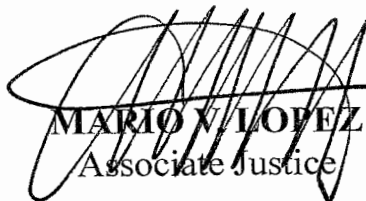
**SET ASIDE**, and the Decision dated September 13, 2012 of the National Labor Relations Commission, **REINSTATED**. No costs.

**SO ORDERED.**

  
**AMY C. LAZARO-JAVIER**  
Associate Justice

**WE CONCUR:**

  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice  
Chairperson

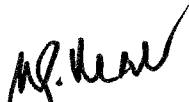
  
**MARIO V. LOPEZ**  
Associate Justice

  
**RICARDO R. ROSARIO**  
Associate Justice

  
**JHOSEP Y. LOPEZ**  
Associate Justice

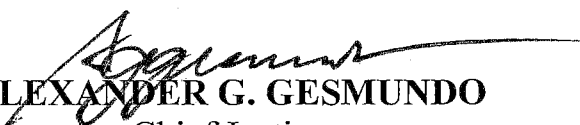
**ATTESTATION**

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

  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice  
Chairperson – Second Division

**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.

  
**ALEXANDER G. GESMUNDO**  
Chief Justice

*J*