



Republic of the Philippines  
**Supreme Court**  
 Manila

SUPREME COURT OF THE PHILIPPINES  
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**RECEIVED**  
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 TIME: 9:30 am W/CO

**THIRD DIVISION**

**GDI LIGHTING SOLUTIONS**  
**and YEHUDA ORTAL,**  
*Petitioners,*

**G.R. No. 243414**

Present:

- versus -

LEONEN, J.,  
 Chairperson,  
 HERNANDO,  
 INTING,  
 DELOS SANTOS, and  
 LOPEZ, J., JJ.

**JASMIN**                      **BACALANGCO**  
**UNATING,**                      *Respondent.*

Promulgated:

May 3, 2021

Mis-DCBatt

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**DECISION**

**DELOS SANTOS, J.:**

**The Case**

This is a Petition for Review on *Certiorari*<sup>1</sup> assailing the Decision<sup>2</sup> dated March 12, 2018 and the Resolution<sup>3</sup> dated November 28, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 146669.

**The Facts**

Sometime in May 2012, petitioner GDI Lighting Solutions (GDI Lighting), a company engaged in the business of selling and supplying

<sup>1</sup> *Rollo*, pp. 3-17.

<sup>2</sup> *Id.* at 24-38; penned by Associate Justice Marie Christine Azcarraga-Jacob, with Associate Justices Celia C. Librea-Leagogo and Samuel H. Gaerlan (now a Member of the Court), concurring.

<sup>3</sup> *Id.* at 19-22.

lighting lamps and bulbs and LED Lighting Technology, hired respondent Jasmin Bacalango Unating (Unating) as a Marketing Assistant. GDI Lighting promised her a salary of ₱1,000/day, additional food allowance, and transportation allowance. In time, Unating was promoted to Manager/Supervisor.<sup>4</sup>

Sometime in November 2014, Unating asked petitioner Yehuda Ortal (Ortal), the President and CEO of GDI Lighting, for financial assistance due to her impending maternity leave. Unating could not avail of maternity leave benefits from the Social Security System (SSS) since GDI Lighting did not enroll her with the SSS. However, Ortal ignored her request.<sup>5</sup>

Unating repeated her plea in December 2014, after knowing that she would need to undergo a Caesarian section procedure, but her request went unheeded.<sup>6</sup>

On the last week of December 2014, Ortal directed Unating to turn over company records in her possession. Unating complied and turned over the records in the presence of her two daughters and the new office secretary, Josalie Cabante.<sup>7</sup>

On January 2, 2015, Ortal advised Unating to go home since she was due to give birth.<sup>8</sup>

On January 29, 2015, aggrieved by the lack of support, Unating filed a Complaint<sup>9</sup> against GDI Lighting and Ortal (collectively, petitioners) for illegal dismissal, nonpayment of salary/wages, overtime pay, holiday pay, holiday premium, rest day premium, service incentive leave pay, 13<sup>th</sup> month pay, separation pay, emergency cost of living allowance (ECOLA), night shift differential pay, and nonpayment of maternity benefits, with prayer for moral and exemplary damages, as well as attorney's fees.<sup>10</sup>

In her Position Paper, Unating alleged that during the two years and nine months working for GDI Lighting, she was not paid any salary or other forms of compensation, aside from meal allowances. Also, Unating asserted that she was not paid overtime pay, holiday pay, rest day premium, five-day service incentive leave, 13<sup>th</sup> month pay, ECOLA, and night-shift differential pay.<sup>11</sup>

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<sup>4</sup> Id. at 25, 85.

<sup>5</sup> Id. at 26, 86.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Docketed as NLRC NCR Case No. 01-00945-15.

<sup>10</sup> *Rollo*, pp. 85-86.

<sup>11</sup> Id. at 26.

In its Position Paper, GDI Lighting claimed that Unating was not an employee, but an independent contractor, as evidenced by a Manpower Service Agreement which they entered into. GDI Lighting alleged that the company entered into such agreement with Unating for installation works and paid the service fees on a weekly basis consisting of transportation allowance, daily salary for the manpower crew, meal allowance and provision for uniform, safety shoes and company identification cards. Thus, GDI Lighting averred that the elements of an employer-employee relationship were absent.<sup>12</sup>

In her Reply, Unating challenged the authenticity and existence of the Manpower Service Agreement presented by GDI Lighting. She pointed out that said agreement was undated and unnotarized and that her signature appearing therein was different from her real signature. Also, Unating stated that she was not an independent contractor and that petitioners failed to show that she had the capacity or capitalization to be qualified as such. Unating insisted that she was a regular employee, having been in GDI Lighting's service for more than two years and holding the position of Manager/Supervisor.<sup>13</sup>

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

In a Decision<sup>14</sup> dated November 25, 2015, Labor Arbiter (LA) Mona Lisa M. Vargas ruled in favor of GDI Lighting. The dispositive portion states:

**WHEREFORE**, finding no employer-employee relationship between complainant and respondent, it becomes unnecessary to rule on the other issues of her money claims. The complaint is hereby **DISMISSED** for lack of merit.

SO RESOLVED.<sup>15</sup>

The LA ruled that Unating failed to discharge the burden of proving the existence of an employer-employee relationship with GDI Lighting. The LA stated that Unating failed to show any contract or appointment paper that she was hired or on GDI Lighting's payroll or that GDI Lighting registered or enrolled her with any government entity. Likewise, Unating failed to prove that she was bound to observe strict schedule of working hours, or that her continued tenure was dependent on whether or not she adhered or was compliant with the rules, regulations or policies of GDI Lighting. Thus, the LA adjudged that there was no employer-employee relationship.<sup>16</sup>

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<sup>12</sup> Id.

<sup>13</sup> Id. at 26-27.

<sup>14</sup> Id. at 85-92.

<sup>15</sup> Id. at 92.

<sup>16</sup> Id. at 89-91.

Unating filed an Appeal<sup>17</sup> with the National Labor Relations Commission (NLRC).

**Ruling of the NLRC**

In a Resolution<sup>18</sup> dated April 20, 2016, the NLRC partially granted an award in favor of Unating. The dispositive portion states:

WHEREFORE, premises considered, the Complainant-Appellant’s appeal is hereby **PARTIALLY GRANTED** only [insofar] as the award for the payment of her salaries, 13<sup>th</sup> month pay, and service incentive leave in the following amounts:

Unpaid wages -----	₱ 194,218.18
13 <sup>th</sup> Month Pay -----	₱ 16,184.85
Service Incentive Leave Pay -----	₱ <u>2,405.00</u>
TOTAL	₱ 212,808.03
10% Attorney’s Fees	21,280.80

The November 25, 2015 Decision of Labor Arbiter Mona Lisa M. Vargas is hereby **MODIFIED** accordingly.

SO ORDERED.<sup>19</sup>

The NLRC ruled that there existed an employer-employee relationship between Unating and GDI Lighting. The NLRC stated that aside from the Manpower Service Agreement, which was not witnessed and remained unnotarized, no other evidence was presented by GDI Lighting to support its claim that Unating was an independent contractor. However, the NLRC found that Unating was not illegally dismissed by GDI Lighting based on Unating’s mere allegations and bare statements on refusal to heed her request for assistance and maternity benefits.<sup>20</sup>

Thus, the NLRC concluded that as an employee, it was proper and reasonable that Unating should receive the minimum wage plus ECOLA. The NLRC stated that the starting date should be computed from September 18, 2013, the date Unating was hired by GDI Lighting based on the Manpower Service Agreement submitted by GDI Lighting since Unating failed to show any supporting evidence that she was hired sometime in 2012. Also, the NLRC denied compensation for overtime work and work on holidays and rest days since Unating did not submit any proof that she was entitled to such.<sup>21</sup>

<sup>17</sup> Docketed as NLRC LAC No. 04-001112-16; id. at 93.

<sup>18</sup> Id. at 93-99.

<sup>19</sup> Id. at 98.

<sup>20</sup> Id. at 96-97.

<sup>21</sup> Id. at 97-98.



GDI Lighting filed a Motion for Reconsideration (MR), but was denied in a Resolution<sup>22</sup> dated May 31, 2016 for lack of merit. Thus, GDI Lighting filed a Petition for *Certiorari* under Rule 65 of the Rules of Court with the CA.

### **Ruling of the CA**

In a Decision<sup>23</sup> dated March 12, 2018, the CA affirmed the NLRC Decision. The dispositive portion states:

**WHEREFORE**, all premises considered, the instant Petition for *Certiorari* is hereby **DENIED** for lack of merit.

Accordingly, the assailed *Resolutions dated 20 April 2016 and 31 May 2016* of public respondent National Labor Relations Commission (NLRC), Third Division issued in NLRC LAC No. 04-001112-16 are **AFFIRMED**.

SO ORDERED.<sup>24</sup>

GDI Lighting filed an MR which was denied in a Resolution<sup>25</sup> dated November 28, 2018.

Hence, this Petition.

### **The Issue**

Whether or not the CA erred in ruling that there existed an employer-employee relationship between the parties and that Unating was entitled to backwages, 13<sup>th</sup> month pay, service incentive leave pay, and attorney's fees.

### **The Court's Ruling**

The Petition lacks merit.

GDI Lighting insists that Unating was not an employee, but an independent contractor based on a Manpower Service Agreement which they allegedly entered into. On the other hand, Unating asserts that she did not enter into such agreement with GDI Lighting and that she was a regular employee.

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<sup>22</sup> Id. at 100-101.

<sup>23</sup> Supra note 2.

<sup>24</sup> *Rollo*, p. 37.

<sup>25</sup> Supra note 3.

In the present case, the records reveal that the Manpower Service Agreement which GDI Lighting submitted as evidence was undated, unnotarized, and not witnessed to be credible as a real contract between the parties. Unating denied entering into such agreement and averred that her signature therein is different from her signature in the Complaint and Position Paper.

To prove that she was an employee of GDI Lighting, Unating presented (1) a company identification card issued by Ortal which indicated her status as "Supervisor" and an employee of the company, and (2) various electronic mails with buyers and suppliers to prove her communications, involvement and role that were directly related to the company's main business and which were under the control and direct supervision of GDI Lighting.

Aside from the Manpower Service Agreement and Unating's evidence, no other evidence was submitted by the parties to prove or disprove the existence of an employer-employee relationship.

It is a well-settled rule in jurisprudence that when the evidence of the employer and the employee are in equipoise, doubts are resolved in favor of labor. This is in line with the policy of the State to afford greater protection to labor.<sup>26</sup>

Thus, weighing the Manpower Service Agreement submitted by GDI Lighting to prove that Unating was an independent contractor, and the identification card and electronic mails submitted by Unating to prove that she was an employee, we agree with the NLRC and the CA that it is reasonable to conclude that Unating is an employee of GDI Lighting.

All the elements of the four-fold test, used in determining the existence of employer-employee relationship and which involves an inquiry into: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee with respect to the means and method by which the work is to be accomplished,<sup>27</sup> are all present in this case.

As observed by the CA in its Decision dated March 12, 2018:

A review of the records reveals that the evidence presented during the proceedings before the Labor Arbiter and the NLRC supports the NLRC's

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<sup>26</sup> *Philippine National Bank v. Bulatao*, G.R. No. 200972, December 11, 2019, citing *Hubilla v. HSY Marketing, Ltd., Co.*, 823 Phil. 358, 384 (2018).

<sup>27</sup> *Gesolgon v. Cyberone PH, Inc.*, G.R. No. 210741, October 14, 2020.

factual finding on appeal that there exists an employer-employee relationship between petitioners and private respondent. Specifically, there is no showing in the evidence presented by petitioners that they disputed the validity and due issuance of the company identification card issued by its President and CEO, petitioner Ortal Yehuda, to private respondent that indicated her status as "Supervisor" and an employee of petitioner GDI Lighting Solutions. The various emails sent to and coming from petitioners and its clients invariably indicate the involvement of private respondent in the performance of activities which are directly related to the main business operations of petitioners as well as a clear manifestation of the manner of control that petitioners exercised over how private respondent will perform her tasks and responsibilities.

Indeed, there is substantial evidence presented on record that supported the conclusion of the NLRC on the existence of employer-employee relationship between petitioners and private respondent. Petitioners cannot benefit from the apparent lack of proof of enrollment of private respondent as an employee-member with the government social institutions such as SSS, Pag-IBIG Fund, and Philippine Health Insurance Corporation as in fact is it petitioners' legal responsibility under the respective laws that created these government institutions to ensure that all its employees or workers are enrolled as members and appropriate employer counterpart contributions are made and paid for the benefit of the employee or worker.<sup>28</sup>

Further, since Unating denied that she was an independent contractor, the burden to prove that she is an independent contractor shifted to GDI Lighting. In *Chavez v. National Labor Relations Commission*,<sup>29</sup> we defined that "an independent contractor is one who carries on a distinct and independent business and undertakes to perform the job, work, or service on its own account and under its own responsibility according to its own manner and method, free from the control and direction of the principal in all matters connected with the performance of the work except as to the results."<sup>30</sup>

However, aside from submitting the Manpower Service Agreement, GDI Lighting did not present any other proof to show that Unating was a legitimate contractor with substantial capital, investment and tools to operate. Such mere allegations by GDI Lighting will not suffice.

Also, where an employee is tasked to undertake activities usually desirable or necessary in the usual business of the employer, the contractor is considered as a "labor-only" contractor and such employee is considered as a regular employee of the employer.<sup>31</sup>

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<sup>28</sup> *Rollo*, pp. 32-33.

<sup>29</sup> 489 Phil. 444 (2005).


<sup>30</sup> *Id.* at 457-458.

<sup>31</sup> *See Pacquing v. Coca-Cola Philippines, Inc.*, 567 Phil. 323, 340 (2008).

Here, Unating's work, as a Marketing Assistant then promoted as a Manager/Supervisor, dealing with buyers and suppliers for lights installation is directly related to GDI Lighting's principal business of selling and supplying lighting needs to clients. Aside from this, Unating was also assigned to prepare and submit daily time records and payroll, supervise electricians and technicians, and deal with the engineers of different client companies. Clearly, Unating performed tasks which were desirable or necessary in GDI Lighting's main business. Thus, we find Unating to be an employee of GDI Lighting entitled to backwages, 13<sup>th</sup> month pay, service incentive leave pay, and attorney's fees.

**WHEREFORE**, the Petition is **DENIED**. The Decision dated March 12, 2018 and the Resolution dated November 28, 2018 of the Court of Appeals in CA-G.R. SP No. 146669 are hereby **AFFIRMED**.

**SO ORDERED.**



**EDGARDO L. DELOS SANTOS**  
Associate Justice



**WE CONCUR:**



**MARVIC MARIO VICTOR F. LEONEN**

Associate Justice  
Chairperson



**RAMON PAUL L. HERNANDO**

Associate Justice



**HENRI JEAN PAUL B. INTING**

Associate Justice



**JHOSEP LOPEZ**

Associate Justice

**ATTESTATION**

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

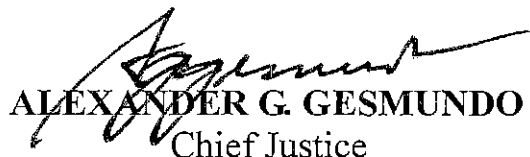


**MARVIC MARIO VICTOR F. LEONEN**

Associate Justice  
Chairperson, Third 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