Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ROBERTO M. MECAYDOR, EDGARDO P. EMPEROSO, SAMUEL A. ABAQUITA, SHOEVER C. ALGUZAR, EDGAR Y. DELOBIO, EDUARDO G. SERNAL, BASILIO R. AREVALO, ORLANDO T. JUMAO-AS, BRITZCHE BOY B. CABUSAS, NILO A. AMORES, JR., MARLO A. RIN, APOLLO TURA, DONALD JAKE E. POGOY, JERRY E. BASAY, MARJUN SIPLAO, JUNWELL I. DEGAMO, JUNREY L. BAJE, BENGIE A. MERCADO, ROGELIO T. PACALDO, DOMINADOR S. TORRES, MARLON JUMAO-AS, CYRUS A. DELA CRUZ, MARCIAL F. SIPLAO, ROLANDO T. AMPARADO, ALBERTO L. TELMOSO, CRISOLOGO B. ESTRERA, JOSEPH A. MERCADO, BEMBEM A. MERCADO, JOHN ANTHONY M. BAUDI, ROLLY A. MERCADO, JHONAS M. EWAYAN, JOEMARIE M. IWAYAN, RICARDO TIROL, JOHNY JUSTAN, JAMES HARVEY T. VENTURA, MARIO DUNDE T. YCONG, NUDDY J. YBAÑEZ, ANDIY NADILA, RAMIL S. NGUJO, and RODOLFO OMPOC, *Petitioners*,	**G.R. No. 249616** Present: PERLAS-BERNABE,* *S.A.J.*, HERNANDO, *Acting Chairperson*,** INTING, GAERLAN, and DIMAAMPAO, *JJ.*

* On official leave.

** Per Special Order No. 2846 dated October 6, 2021.

- versus -

SAEKYUNG REALTY CORPORATION/CHEOLSIK LIM,
Respondents.

Promulgated:
OCT 11 2021

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DECISION

INTING, *J.*:

Assailed in this Petition for Review[1] are the Decision[2] dated August 31, 2018 and the Resolution[3] dated August 7, 2019 of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 10628 which affirmed the Resolutions dated September 20, 2016[4] and November 29, 2016[5] of the National Labor Relations Commission (NLRC) in NLRC Case No. VAC-03-000215-2016.

The Antecedents

Petitioners[6] filed several complaints for illegal dismissal, non-payment of salaries, overtime pay, holiday pay, and 13th month pay

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1 *Rollo*, Vol. 1, pp. 18-80.

2 *Id.* at 88-100; penned by Associate Justice Marilyn B. Lagura-Yap, with Associate Justices Gabriel T. Ingles and Emily R. Aliño-Geluz, concurring.

3 *Id.* at 102-105; penned by Associate Justice Marilyn B. Lagura-Yap, with Associate Justices Gabriel T. Ingles and Emily R. Aliño-Geluz, concurring.

4 *Rollo*, Vol. 2, pp. 697-704; penned by Presiding Commissioner Violeta Ortiz-Bantug, with Commissioners Julie C. Rendoque and Commissioner Jose G. Gutierrez, concurring.

5 *Id.* at 755-761.

6 The following are the petitioners in this case: Roberto Mecaydor (spelled as Robert in some parts of the *rollo*) and Edgardo Emperoso in *NLRC RAB VII Case No. 04-1049-15*; Samuel Abaquita, Shoever Alguzar (spelled as Jover in some parts of the *rollo*), Edgar Delobio (spelled as Dulobio in some parts of the *rollo*), Eduardo Sernal, Basilio Arevalo, Orlando T. Jumao-as, Britzche Boy Cabusas, Nilo A. Amores, Jr., Marlo Rin and Apollo Tura in *NLRC RAB VII Case No. 05-1094-15*; Jake F. Pogoy (spelled Pugoy in some parts of the *rollo*), Jerry Basay, Marjun Siplao, Junwell Degamo (spelled as Junwel in some parts of the *rollo*), Junrey Baje (spelled as Junerey in some parts of the *rollo*), Bengie Mercado (spelled Benjie in some parts of the *rollo*), Rogelio Pacaldo, Dominador Torres, Marlon Jumao-as and Cyrus Dela Cruz in *NLRC RAB VII Case No. 05-1101-15*, Marcial Siplao, Rolando Amparado, Alberto Telmoso, Crisologo Estrera, Joseph Mercado, Bembem Mercado, John Anthony Baudi (spelled as Jon in some parts of the *rollo*), Rolly Mercado, Jhonas Ewayan, and Joemarie Iwayan in *NLRC RAB VII Case No. 05-1104-15*; Ricardo Tirol in *NLRC RAB VII Case No. 05-1107-15*; Johnny P. Justan (spelled as Johny in some parts of the *rollo*) in *NLRC RAB VII Case No. 05-1167-15*; James Harvey Ventura, Mario Dunde Ycong (spelled as Dundee in some parts of the *rollo*), Nuddy Ybañez, Andiy Nadila and Ramil Ngujo (spelled as Romalito in some parts of the *rollo*) in *NLRC RAB VII Case No. 05-1196-15*; and Rodolfo J. Ompoc (spelled as Rodulfo in some parts of the *rollo*) in *NLRC RAB VII Case No. 06-1338-15*; *rollo*, Vol. 1, p. 89.

against Saekyung Realty Corporation (SRC), a company engaged in real estate development, particularly condominium projects. They alleged that SRC hired them on different dates as construction workers, particularly as foreman, mason, carpenter, steel man, painter, helper, and laborer, through MPY Construction (MPY), a labor-only contractor that paid them below the minimum rate.[7]

According to petitioners, SRC President Lim Cheolsik (Lim) directly supervised their work; while SRC employee Willy P. Yalung (Yalung) personally monitored their time-ins and time-outs and prepared their weekly payroll reports.[8]

On September 28, 2013, at around 9:00 a.m., Yalung told Foreman Jonathan Baje (Baje) that the employment of Baje's group shall be terminated at 5:00 p.m. that day. SRC then hired new workers after terminating the services of petitioners.[9]

SRC and Lim (respondents), for their part, averred that SRC was neither established as a construction company nor authorized to hire and select construction workers and personnel. After SRC was incorporated on August 18, 2010, it started developing nine condominium projects in Cebu. For the first three buildings, SRC entered into a Contractor Agreement on October 27, 2011 with MPY, an independent contractor, covering specific work, number of laborers, and the rate per laborer. MPY hired petitioners and detailed them to SRC as project employees.[10]

On January 10, 2014, MPY informed SRC that petitioners abandoned their jobs. Thinking that the matter was MPY's concern, respondents did nothing about the situation and were just surprised to learn that petitioners filed complaints against them.[11]

Respondents denied that Yalung was their payroll master. They also manifested that they successfully defended similar cases against other employees, entitled *Ayod, et al. v. SRC* (RAB VII Case No. 01-0149-2014) and in *Emia, et al. v. SRC* (RAB Case No. 02-0542-14/VAC 10-000505-14).[12]

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7 *Id.* at 40-41.
8 *Id.* at 90.
9 *Id.*
10 *Id.* at 90-91.
11 *Id.* at 91.
12 *Id.* at 91-92.

The Ruling of the Labor Arbiter (LA)

On December 3, 2015, the LA rendered a Decision[13] dismissing the consolidated cases after finding that no employer-employee relationship existed between petitioners and SRC. The LA held that it was incumbent on petitioners to prove by substantial evidence the employer-employee relationship between them and respondents. Using the "four-fold test," it ruled that MPY was petitioners' employer and not SRC.[14]

The dispositive portion of the LA Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered declaring that there is no employer-employee relationship between SAEKYUNG and complainants but only between complainants and MPY Construction.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[15]

The Ruling of the NLRC

Petitioners appealed to the NLRC.[16]

The NLRC rendered its Decision[17] on May 31, 2016 reversing the ruling of the LA. The NLRC held that the burden of proving that there is no labor-only contracting rests with respondents and not with petitioners. It found insufficient SRC's evidence to support its claim that MPY is a legitimate contractor. It cited the following: the Contractor Agreement

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[13] *Id.* at 441-459; penned by Labor Arbiter Bertino A. Ruaya, Jr.

[14] *Id.* at 454-457.

[15] *Id.* at 459.

[16] The NLRC parenthetically noted that Samuel Abaquita, Nilo Amores, Jr., Ricardo Tirol, Marcial Siplao, Marlon Siplao, Rolando Amparado, Bembem Mercado, Roberto M. Mecaydor, Bengie A. Mercado, Crisologo Estrera, Rolly A. Mercado, Joseph Mercado, Edgardo Emperoso, and Junrey L. Baje were complainants in a case against SRC, docketed as NLRC RAB VII Case No. 02-0542-14, which was dismissed, with respect to them, for their failure to sign the position paper. The NLRC held that failure to sign the verification in the position paper is without prejudice to those who failed to sign and could not be considered an adjudication on the merits. Thus, said complainants are not barred by prior judgment: *rollo*, Vol. 2, pp. 596-597.

[17] *Id.* at 590-616; penned by Presiding Commissioner Violeta Ortiz-Banting with Commissioner Julie C. Rendoque, concurring, and Commissioner Jose G. Gutierrez, dissenting.

between SRC and MPY, SRC's Certificate of Incorporation, various billings, and Yalung's Sworn Statement denying that he was in charge of monitoring the workers' time and preparing their payroll.[18]

The NLRC further held that for failure of SRC to prove that MPY was a legitimate contractor, MPY is presumed a labor-only contractor and considered a mere agent of SRC. As such, the NLRC concluded that petitioners were the employees of SRC.[19]

The NLRC then disposed of the case, *viz.*:

> WHEREFORE, premises considered, the appealed Decision is hereby REVERSED and SET ASIDE. Respondent Saekyung Development Co. Ltd. is considered the actual employer of herein complainants as MPY Construction is considered a labor-only contractor. Respondents are hereby ORDERED to reinstate complainants, except for Apollo S. Tura, without loss of seniority rights and privileges and to pay them backwages, wage differentials, service incentive leave pay and 10% attorney's fees in the total amount of Twelve Million Seven Hundred Seventy-Seven Thousand Ninety-Five and 20/100 (Php 12,777,095.20) Pesos.
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> SO ORDERED.[20]

However, acting on respondents' Motion for Reconsideration,[21] the NLRC reversed itself and issued a Resolution[22] on September 20, 2016 agreeing with the LA that there was no employer-employee relationship between petitioners and SRC. It decreed:

> WHEREFORE, premises considered, respondents' Motion for Reconsideration is GRANTED. Accordingly, Our decision promulgated on 31 May 2016 is hereby VACATED. A new one is rendered dismissing this case for lack of employer-employee relationship between complainants and Saekyung Realty Corporation, without prejudice, however, to complainants' re-filing of this case against MPY Construction as direct employer and Saekyung Realty Corporation as indirect employer.
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> SO ORDERED.[23]

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[18] *Id.* at 601.
[19] *Id.* at 602.
[20] *Id.* at 616.
[21] *Id.* at 623-638.
[22] *Id.* at 697-704.
[23] *Id.* at 704.

This time, the NLRC gave weight to the additional evidence presented by SRC consisting of the following: the Certificates of Business Name Registration issued by the Department of Trade and Industry; Mayor's Business Permit; Certification issued by Dun and Bradstreet Phils., Inc., and Audited Financial Statements as of December 31, 2010. It also noted the Land Transportation Office (LTO)-Region 7 letter which enumerated the motor vehicles registered under the names of MPY and its proprietor, Marito P. Yraola (Yraola).[24]

Aggrieved, petitioners moved for reconsideration alleging that the person who made the financial statement of MPY was not a certified public accountant as confirmed by the Professional Regulation Commission (PRC).[25]

The NLRC denied petitioners' motion on November 29, 2016,[26] reiterating that its finding that MPY is a legitimate contractor was largely anchored on the LTO letter that enumerated MPY's vehicles; and that the certification from the PRC had no bearing on its findings.[27]

The Ruling of the CA

Petitioners then filed a Petition for *Certiorari* with the CA which was dismissed in the CA Decision[28] dated August 31, 2018.

The CA held that the NLRC correctly found that respondents presented substantial evidence to support their claim that MPY is a legitimate and independent contractor.[29]

The CA ruled:

> WHEREFORE, premises considered, the instant Petition for Certiorari is DISMISSED. The Resolutions dated 20 September 2016 and 29 November 2016 rendered by the National Labor Relations Commission STAND.

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[24] *Id.* at 702-703.
[25] *Id.* at 709-711.
[26] *Id.* at 755-761.
[27] *Id.* at 758-759.
[28] *Rollo*, Vol. 1, pp. 88-100.
[29] *Id.* at 98.

SO ORDERED.[30]

Petitioners filed a motion for reconsideration, but the CA denied it in its Resolution[31] dated August 7, 2019.

The Petition

Hence, the petition before the Court wherein petitioners assert the following:

I.

THE HONORABLE COURT OF APPEALS ERRED IN DECIDING THAT THERE WAS NO GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION ON THE PART OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) WHEN IT DECIDED THAT THERE WAS NO EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN PETITIONERS AND PRIVATE RESPONDENTS.

II.

THE HONORABLE COURT OF APPEALS ERRED IN GIVING CREDENCE TO THE DOCUMENTS PRESENTED BY THE PRIVATE RESPONDENTS CONTRARY TO AND NOT IN ACCORDANCE WITH THE APPLICABLE DECISION OF THE SUPREME COURT, SPECIFICALLY IN PETRON CORPORATION VS. ARMZ CABERTE, G.R. NO. 182255, JUNE 15, 2015.

III.

THE HONORABLE COURT OF APPEALS ERRED IN FAILING TO RULE THAT THERE WAS ILLEGAL DISMISSAL.

IV.

THE HONORABLE COURT OF APPEALS ERRED IN DISMISSING THE CASE, FAILING TO RECOGNIZE THE SOLIDARY LIABILITY OF THE DIRECT EMPLOYER AND INDIRECT EMPLOYER, GRANTING FOR THE SAKE OF ARGUMENT THAT INDEED THE PETITIONERS WERE WORKERS OF MPY CONSTRUCTION.

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[30] *Id.* at 99.

[31] *Id.* at 102-105.

V.

THE HONORABLE COURT OF APPEALS ERRED IN DECIDING THAT IT CANNOT REVIEW FACTUAL ISSUES RAISED IN THE PETITION FOR CERTIORARI.[32]

Petitioners seek the Court's attention to the following: MPY is not registered as a legitimate labor contractor with the Regional Office of the Department of Labor and Employment (DOLE). Neither is MPY licensed by the Philippine Contractors Accreditation Board. Respondents retained overall rights in the management and performance of the scope of work of petitioners, who performed tasks that were vital, necessary, and indispensable to the usual business or trade of SRC. Also, SRC provided the tools and materials used by petitioners for the project. SRC had an agreement with MPY that the latter's compensation shall be 10% of the total payroll of the workers. Those who worked under the control of SRC from the very beginning continued to work for the latter even after the death of MPY's owner, Yraola.[33]

For their part, respondents maintain that the CA did not err in ruling over the factual issues, which are not reviewable by the Court in a petition for *certiorari*. They assert that there was no grave abuse on the part of the NLRC.[34]

The Issue

Whether MPY is a labor-only contractor.

The Court's Ruling

The Court grants the petition.

The Court, generally, does not disturb the findings of the CA in labor cases, especially if they are consistent with the LA and the NLRC findings. This is in recognition of the expertise of administrative agencies whose jurisdiction is limited to specific fields of law. Rule 45 petitions should raise only questions of law, as the Court is not duty-bound to analyze and re-examine the evidence already passed upon by

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[32] *Id.* at 46-47.

[33] *Id.* at 51-52.

[34] See Comment dated February 27, 2020, *rollo*, Vol. 2, pp. 811-812.

courts or tribunals below.[35]

But there are recognized exceptions:

> x x x (1) [W]hen the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) *when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion*.[36] (Italics supplied.)

As the CA overlooked relevant facts in this case that would result in a different conclusion if properly considered, a re-examination of the evidence presented before the lower tribunals is proper.

The burden of proving legitimate job-contracting.

To protect the workforce, the general presumption is that a contractor is engaged in labor-only contracting, unless the contractor proves otherwise by having substantial capital, investment, tools, and the like. The burden of proving the legitimacy of the contractor shifts to the principal when it is the one claiming that status.[37] Thus, the burden of proving that MPY is a legitimate labor contractor rests on SRC and not on petitioners.

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[35] *Daguinod v. Southgate Foods, Inc.*, G.R. No. 227795, February 20, 2019.

[36] *Id.*, citing *New City Builders, Inc. v. NLRC*, 499 Phil. 207, 213 (2005), further citing *The Insular Life Assurance Co., Ltd. v. Court of Appeals*, 472 Phil. 11, 22-23 (2004).

[37] *Manila Cordage Company-Employees Labor Union-Organized Labor Union in Line Industries and Agriculture v. Manila Cordage Co.*, G.R. Nos. 242495-96, September 16, 2020, citing *Alilin, et al. v. Petron Corporation*, 735 Phil. 509, 524 (2014), further citing *Garden of Memories Park and Life Plan, Inc. v. NRLC, et al.*, 681 Phil. 299, 311 (2012).

The LA, in dismissing petitioners' complaints on the ground that they failed to prove employer-employee relationship between them and SRC, totally ignored the aforesaid basic principle. A re-evaluation of the respective pieces of evidence presented by the parties, mindful of the presumption aforestated, is therefore in order.

Article 106 of the Labor Code of the Philippines (Labor Code) provides:

> 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.

Section 5 of DOLE Order No. 18-05 further prohibits labor-only contracting and defines it as an arrangement wherein 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:

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

It should be mentioned, however, that not all forms of contracting are prohibited.[38] Job contracting is the permissible yet regulated practice of farming out a specific job or service to a contractor for a definite period of time, regardless of whether the contractor's employees perform their assigned tasks within or outside the principal employer's premises.[39] In job contracting, the contractor carries out a business

[38] *Alaska Milk Corp. v. Paez*, G.R. Nos. 237277 & 237317, November 27, 2019.

[39] *Id.*, citing *Mago, et al. v. Sun Power Manufacturing Limited*, 824 Phil. 464, 476 (2018).

distinct and independent from that of the principal, and undertakes the work or service on its own account, using its own manner and methods in doing so. The contractor's employees are free from the control of the principal employer, except as to the result thereof.[40]

In determining the existence of an independent contractor relationship, several factors may be considered such as, but not necessarily confined to, whether or not the contractor is carrying on an independent business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the performance of specified pieces of work; the control and supervision of the work to another; the employer's power with respect to the hiring, firing, and payment of the contractor's workers; the control of the premises; the duty to supply premises, tools, appliances, material, and labor; and the mode, manner, and terms of payment.[41]

Meanwhile, there is labor-only contracting where (a) the person supplying the workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others; and (b) the workers recruited and placed by such person are performing activities that are directly related to the principal business of the employer. [42]

DOLE-RO Certificate of Registration.

As job contracting is a regulated practice, the law authorized the Secretary of Labor to promulgate administrative rules that distinguish between valid job contracting and prohibited labor-only contracting, keeping with the fundamental state policy of protecting labor. [43]

Thus, the DOLE issued Department Order No. 18, Series of 2002 (DO 18-02) which states:

> 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

[40] *Id.*, citing *Petron Corporation v. Caberte, et al.*, 759 Phil. 353, 366 (2015).

[41] *Daguinod v. Southgate Foods, Inc.*, *supra* note 35, citing *Garden of Memories Park and Life Plan, Inc. v. NLRC, et al.*, 681 Phil. 299, 310-311 (2012).

[42] *Id.*

[43] *Alaska Milk Corp. v. Paez*, *supra* note 38.

> 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.* (Italics supplied.)

DO 18-02 requires contractors to register themselves with the DOLE Regional Office (DOLE-RO) in which they operate, in order to regulate and monitor contracting arrangements and ensure that contractors operate in accordance with law and its guiding principles.[44] Failure to comply with the registration requirement gives rise to a presumption that the contractor is engaged in labor-only contracting.[45]

In the case at bar, respondents failed to present MPY's certificate of registration as required by DO 18-02. The tribunals below therefore erred when they overlooked such noncompliance as there arises the presumption provided by law, which finds more significance especially when respondents have nothing but silence to rebut it.[46]

While a certificate of registration is not conclusive evidence of the contractor's legitimate status, the fact of registration prevents the legal presumption of being a mere labor-only contractor from arising.[47] There being no certificate of registration as required by DO 18-02 in this case, there rises the presumption that MPY is engaged in labor-only contracting.

Proof of capitalization.

Cases have also held that even if a principal or contractor submits a certificate of registration in compliance with DO 18-02, still, this is not conclusive evidence that respondent is a legitimate contracting entity.[48] Compliance with the registration requirement merely gives rise to a

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[44] *Consolidated Building Maintenance, Inc., et al. v. Asprec, et al.*, 832 Phil. 630, 644 (2018).

[45] *Alaska Milk Corp. v. Paez, supra* note 38.

[46] *De Castro, et al. v. Court of Appeals, et al.*, 796 Phil. 681, 700 (2016).

[47] *Daguinod v. Southgate Foods, Inc., supra* note 35, citing *San Miguel Corporation v. Semillano, et al.*, 637 Phil. 115, 129-130 (2010).

[48] *Manila Cordage Company-Employees Labor Union-Organized Labor Union in Line Industries and Agriculture v. Manila Cordage Co., supra* note 37

disputable presumption that the entity is a legitimate labor contractor which can be refuted by other evidence.[49] This is because in determining whether an entity is a labor-only contractor or a legitimate labor contractor, it is the totality of the facts and surrounding circumstances of the case which must be considered.[50]

Here, there is no financial statement that could be relied upon as proof of MPY's capitalization. MPY's Audited Financial Statement,[51] which respondents submitted to the NLRC in their motion for reconsideration, was prepared by a certain "Ladislao V. Molina, Sr., CPA," who turned out to be non-existent upon verification with the PRC.[52]

To this, respondents merely stated that assuming that it was not prepared by a CPA, "it does not necessarily make the figures and financial capability stated therein false."[53] Such explanation is clearly self-serving.

Also wanting is the LTO-Region 7 letter which the NLRC stated as its basis in finding that MPY had substantial capitalization.[54] The letter from Asstistant Chief, LTO Operations Division Engineer Marivic G. Causin, dated August 22, 2016, enumerated the motor vehicles consisting of five trucks and five motorcycles registered in the names of MPY and Yraola.[55]

While it may be true that MPY owned trucks, it was not shown to have been actually and directly used by the contractor in the completion of the job, work, or service contracted out. It therefore does not satisfy the requirement that the equipment be used in the performance of the specific work contracted out.[56]

To recall, substantial capital or investment is defined as capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and

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[49] *Id.*

[50] *Id.*, citing *Polyfoam-RGC International, Corp., et al. v. Concepcion*, 687 Phil. 137, 148 (2012).

[51] *Rollo*, Vol. 2, p. 641.

[52] *Id.* at 721.

[53] *Id.* at 822.

[54] *Id.* at 757-759.

[55] *Id.* at 691-695.

[56] See *CEPALCO, et al. v. CEPALCO Employee's Labor Union-Associated Labor Unions-Trade Union Congress of the Phils. (TUCP)*, 787 Phil. 612 (2016).

directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out.[57] In the plain language of DO 18-02, such assets must be manifested as investments relating to the job or service to be performed.[58]

At most, the vehicles registered with LTO under the names of MPY and Yraola only show that MPY was engaged in the trucking business. This is consistent with Yraola's letter to SRC dated May 19, 2011 where Yraola declared that MPY was engaged in supplying quarry materials such as sand and gravel; and that Yraola was a member of the Visayas Truckers, Equipment & Quarry Operators.[59]

As for the tools and materials actually used by petitioners, these were supplied by SRC, consistent with the provisions of the Contractor Agreement.[60]

Contractor Agreement.

In ruling that MPY was petitioners' employer, the LA gave weight to the provisions of the Contractor Agreement which gave MPY the power to "exercise management right over its laborers, personnel and engineers...[which] include the right to hire, discharge, promote and transfer employees."[61]

The Court has held that the character of the business, whether as labor-only contractor or as a job contractor, should be determined by the criteria set by statute and the parties cannot dictate by the mere expedience of a unilateral declaration in a contract the character of their business.[62] Thus, it is erroneous for courts to place reliance on contracts as the provisions therein are not the sole determining factor in

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[57] *Monsanto Philippines, Inc. v. National Labor Relations Commission*, G.R. Nos. 230609-10, August 27, 2020.

[58] *Alaska Milk Corp. v. Paez*, *supra* note 38.

[59] *Rollo*, Vol. 2, p. 650.

[60] Sub-article 1.4 of the Contractor Agreement provides:

x x x x

1.4. Procurement of Materials. The essence of this Agreement is for the Contractor to provide labor and construction for the Project either wholly or partly in accordance with the Scope of Work. Owner shall determine and provide all materials needed for the Project including the canvass, purchase and delivery of the same at the Site or at the place mutually designated by the Parties

x x x x

See *rollo*, Vol. 1, p. 428.

[61] *Id.* at 456.

[62] *Daguinod v. Southgate Foods, Inc.*, *supra* note 35, citing *Petron Corporation v. Caberte, et al.*, 759 Phil. 353, 367 (2015).

ascertaining the true nature of the relationship between the principal, contractor, and employees.[63]

Illegal dismissal.

With the finding that MPY is a labor-only contractor, petitioners are therefore considered regular employees of SRC as provided under Sec. 7[64] of DO 18-02.

As the employer, SRC should have complied with the substantive and procedural due process in the dismissal of its employees. There must be just and authorized causes for dismissal as provided under Articles 297, 298, and 299 of the Labor Code; and the twin requirements of notice and hearing must be duly observed.[65]

Employees who are unjustly dismissed from work are entitled to reinstatement without loss of seniority rights and other privileges, full backwages, inclusive of allowances, and to other benefits or monetary equivalent. When reinstatement is no longer viable, separation pay may be awarded as an alternative.[66]

Attorney's fees equivalent to 10% of the total monetary award are also in order. Cases have held that in actions for recovery of wages or where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable.[67] As petitioners were compelled to litigate to enforce their rights which had been unjustly and blatantly violated by SRC, they are entitled to attorney's fees.

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[63] *Id.*

[64] Section 7 of Department Order No. 18, Series of 2002

Section 7. Existence of an employer-employee relationship. — The contractor or subcontractor shall be considered the employer of the contractual employee for purposes of enforcing the provisions of the Labor Code and other social legislation. The principal, however, shall be solidarily liable with the contractor in the event of any violation of any provision of the Labor Code, including the failure to pay wages.

The principal shall be deemed the employer of the contractual employee in any of the following cases, as declared by a competent authority:

(a) where there is labor-only contracting; or

(b) where the contracting arrangement falls within the prohibitions provided in Section 6 (Prohibitions) hereof.

[65] *Daguinod v. Southgate Foods, Inc.*, *supra* note 35.

[66] *Id.*, citing *Peak Ventures Corp., et al. v. Heirs of Nestor B. Villareal*, 747 Phil. 320, 335 (2014).

[67] *Id.*, citing *Aliling v. Feliciano, et al.*, 686 Phil. 889, 922 (2012).

Finally, the monetary award shall earn legal interest at the rate of 6% *per annum* from finality of this Decision until full payment.[68]

WHEREFORE, the petition is **GRANTED**. The Decision dated August 31, 2018 and the Resolution dated August 7, 2019 of the Court of Appeals in CA-G.R. CEB-SP No. 10628 are **REVERSED** and **SET ASIDE**. The NLRC Decision dated May 31, 2016 in NLRC Case No. VAC-03-000215-2016 is **REINSTATED**. Respondents are **ORDERED** to **REINSTATE** petitioners, except for Apollo S. Tura, to their former positions without loss of seniority rights and privileges, and to **PAY** them backwages, wage differentials, service incentive leave pay and 10% attorney's fees, all in the total amount of ₱12,777,095.20.

In addition, the monetary award shall earn legal interest at the rate of 6% *per annum* from finality of this Decision until full payment.

SO ORDERED.

HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:

(On official leave.)
ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

RAMON PAUL L. HERNANDO
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

[68] *Id.*, citing *Nacar v. Gallery Frames*, 716 Phil. 267, 281 (2013).

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.

RAMON PAUL L. HERNANDO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice