REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

SUPREME COURT OF THE PHILIPPINES
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NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **11 March 2015** *which reads as follows*:

"***G.R. No. 196287 (Formerly UDK-14485) – Annaliza R. Jimera, Florecita Andrade and Noli Ramonolos v. Clemente Sy, Chen Yu Ah, and Giok Al Tan Sy, owner/manager, doing business under the name and style New Image By Standard.***

This is a petition for review on *certiorari* under Rule 45 assailing the September 27, 2010 Decision[1] and the March 2, 2011 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 112318, which affirmed the October 24, 2008 Resolution[3] of the National Labor Relations Commission *(NLRC)* in NLRC NCR 00-05-05085-07. The NLRC decision dismissed the complaint for underpayment of wages, holiday pay, five-day incentive leave pay, overtime pay, premium for rest day pay, 13th month pay, and attorney's fees, filed by petitioners Analiza Jimera, Florecita Andrade and Noli Ramonolos *(petitioners)* against the respondents.

In their Sama-Samang Sinumpaang Salaysay,[4] dated August 2, 2007, petitioners asserted that in the 1990's they started working for New Image by Standard *(New Image)*, a garment factory owned by the respondents[5] as sewer, finisher and button holer. They further averred that New Image is not a corporate name or an entity registered with the Department of Trade and Industry or one listed with the Business Permit Section at the Manila City Hall, but only a name concocted by its partners.[6] According to the petitioners, they worked seven (7) days in a week for twelve (12) hours daily.[7] They also claimed that during their entire stint with New Image, they were not paid the minimum wage, as prescribed by law; that they never received the other economic benefits due them; and that they were not given salary increases. Petitioners further stated that despite their complaint for money claims, no settlement was reached.

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[1] *Rollo*, pp. 47-54. Penned by Associate Justice Bienvenido L. Reyes, with Associate Justice Estela M. Perlas-Bernabe and Elihu A. Ybañez, concurring.
[2] Id. at 57-58.
[3] CA *rollo*, pp. 80-84. Penned by Presiding Commissioner Raul T. Aquino.
[4] Id. at 36-37.
[5] Id. at 168.
[6] Id. at 153.
[7] Id. at 29.

In their Position Paper,[8] filed before the Labor Arbiter *(LA)*, respondents countered that they were not the owners of New Image; that New Image was exempted from complying with the minimum wage requirement; and that petitioners were only piece-rate workers who were paid based on the volume of their production,[9] and so were not entitled to minimum wage and to the benefits under Article 95 of the Labor Code.

Respondent Clemente Sy *(Sy)* claimed that he was an Assistant Hotel Manager tasked to purchase the hotel's supplies, such as curtains, bed sheets, pillow cases, and uniforms; that to fill up the hotel's needs, he contacted a home-based shop owned by Mrs. Uy which the petitioners mistakenly named New Image; that Mrs. Uy had difficulty communicating in Tagalog, so Sy gave instructions to the sewers with regard to the specification of his orders;[10] that he was familiar with the nature of the business of the shop; and that it was purely a domestic enterprise, irregularly hiring seven (7) or less than ten (10) people at a time. He also denied hiring petitioners as regular employees.

In its September 28, 2007 Decision,[11] in NLRC NCR Case No. 00-05-05085-07, the LA dropped the respondents from the case as there was no evidence on record to show any connection between them and New Image, and dismissed the complaint for lack of merit.

Aggrieved, petitioners filed an appeal before the NLRC.

On October 24, 2008, the NLRC affirmed the LA decision for failure of petitioners to show that the respondents were the owners of New Image. Petitioners then sought reconsideration. In its January 30, 2009 Resolution,[12] however, the NLRC denied their motion for lack of merit.

On *certiorari,* in its September 27, 2010 decision,[13] the CA upheld the ruling of the LA and the NLRC that the complaint should be dismissed for lack of merit as petitioners failed to prove that an employer-employee relationship existed between them and respondents.[14]

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[8] Id. at 44-47.
[9] *Rollo*, p. 51.
[10] Id. at 48.
[11] *CA rollo*, pp. 80-84.
[12] Id. at 90-91.
[13] *Rollo*, pp. 47-54.
[14] Id. at 141.

Petitioners moved for a reconsideration, but their motion was denied in the CA Resolution, dated March 2, 2011.[15]

Hence, this petition.

In its June 8, 2011 Resolution,[16] however, the Court denied the petition for review on *certiorari* for failure to show any reversible error committed by CA.

Undaunted, petitioners filed their motion for reconsideration[17] citing the separate illegal dismissal case they filed against the respondents, docketed as NLRC NCR Case No. 00-05-05074-07, which was decided by the LA on January 7, 2008.[18] The LA in the said case declared New Image guilty of illegal dismissal but stated that the respondents were not the employers of petitioners. The said case was then elevated to the NLRC to make respondents answerable for the award of damages. On February 27, 2009, the NLRC declared that the LA decision was final and executory for non-perfection of appeal. In its July 22, 2009 Resolution,[19] however, the NLRC modified its decision, and held respondents solidarily liable with New Image for the payment of backwages as it considered the giving of instruction by Sy regarding work specifications as clear indication of employer-employee relationship.[20]

In its August 22, 2011 Resolution,[21] the Court granted petitioners' motion for reconsideration, reinstated the petition and required the respondents to comment thereon.

In his Comment,[22] filed on May 7, 2012, respondent Sy pointed out that the SSS records of petitioners showed that they were self-employed, and that they failed to present any pay slip or payroll to prove their employment.[23]

Petitioners did not file their reply despite the grant of an extension of time given by the Court in its Resolution,[24] dated June 18, 2014.

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[15] Id. at 57-58.
[16] Id. at 141.
[17] Id. at 147-158.
[18] Id. at 159-165.
[19] Id. at 166-171.
[20] Id. at 170.
[21] Id at 172.
[22] Id. at 182-189.
[23] Id. at 186.
[24] Id. at 216.

This petition raises the following

ISSUES

I

THE FINDINGS OF THE HONORABLE COURT OF APPEALS IS CONTRARY TO ARTICLE 212 (E) OF THE LABOR CODE, AS AMENDED, THAT THE INDIVIDUAL PRIVATE RESPONDENTS ARE THE REAL EMPLOYERS OF THE PETITIONERS.

II

THE FINDINGS OF HONORABLE COURT OF APPEALS IS CONTRARY TO THE DOCTRINE LAID DOWN IN RESTAURANT LAS CONCHAS VS. LLEGO, x x x THAT CLEMENTE SY CAN LEGALLY ACT IN BEHALF OF HIS CO-RESPONDENTS.

III

THE FINDINGS OF THE HONORABLE COURT OF APPEALS IS CONTRARY TO THE TEACHINGS LAID DOWN IN ALLAN VILLAR, ET AL., VS. NLRC, ET AL.[25]

The petition is bereft of merit.

As correctly ruled by the LA,[26] there was no showing on record that the respondents had any connection whatsoever with New Image. There was no iota of evidence that respondents engaged the services of petitioners or paid them wages. The respondents never exercised any power to discipline or control the result of the work, including the means and methods by which the work was to be accomplished by petitioners.

The fact that Sy admitted that he gave instructions to petitioners regarding specifications of the work is not the control contemplated in the four-fold test, which would justify a finding of an employer-employee relationship. The four-fold test,[27] adhered to by the Court in several cases to determine the existence of an employer-employee relationship, is as follows:

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[25] Id. at 32-33.
[26] Id. at 49.
[27] *South East International Rattan, Inc. and/or Estanislao Agbay v. Coming,* G.R. No. 186621, March 12, 2014, citing *Atok Big Wedge Company, Inc. v. Gison,* G.R. No. 169510, August 8, 2011, 655 SCRA 193, 202.

(1) Selection and engagement of the employee;
(2) Payment of wages;
(3) Power of dismissal;
(4) Power to control the employee's conduct.

If at all, the act of giving instruction referred only to the result of the work. It was by no means the kind of control that proved an employer-employee relationship as it pertained only to the results and not the manner and method of doing the work.[28]

Moreover, as pointed out by Sy in his comment, petitioners' SSS records showed that they were self-employed.[29] As defined in the *Social Security Law,* self-employed means any person whose income is not derived from employment.[30] Petitioners did not refute this allegation by the respondents. They did not present pay slips/payrolls, company ID or SSS printout to support their claim of employment by the respondents either.

In view of all the foregoing, the Court agrees with the CA that the NLRC did not err in dismissing the appeal for failure of petitioners to show that the respondents were the owners of New Image and petitioners were entitled to money claims.

WHEREFORE, the petition is **DENIED.**

SO ORDERED.

Very truly yours,

MA. LOURDES C. PERFECTO
Division Clerk of Court

By:

TERESITA AQUINO TUAZON
Deputy Division Clerk of Court

[28] *Ramy Gallego v. Bayer Philippines,* 612 Phil. 250, 265 (2009).
[29] Id. at 186.
[30] Republic Act No. 8282, Section 8(s).

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