



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

**ASHMOR M. TESORO, PEDRO
ANG and GREGORIO SHARP,**
Petitioners,

G.R. No. 171482

Present:

- versus -

VELASCO, JR., *J.*, Chairperson,
PERALTA,
ABAD,
PEREZ,* and
LEONEN, *JJ.*

**METRO MANILA RETREADERS, INC.
(BANDAG) and/or NORTHERN LUZON
RETREADERS, INC. (BANDAG)
and/or POWER TIRE AND RUBBER
CORP. (BANDAG),**
Respondents.

Promulgated:

March 12, 2014

McCoy

X ----- X

DECISION

ABAD, J.:

This case concerns the effect on the status of employment of employees who entered into a Service Franchise Agreement with their employer.

The Facts and the Case

On various dates between 1991 and 1998, petitioners Ashmor M. Tesoro, Pedro Ang, and Gregorio Sharp used to work as salesmen for respondents Metro Manila Retreaders, Inc., Northern Luzon Retreaders, Inc., or Power Tire and Rubber Corporation, apparently sister companies, collectively called "Bandag." Bandag offered repair and retread services for used tires. In 1998, however, Bandag developed a franchising scheme that

* Designated Additional Member, in lieu of Associate Justice Jose C. Mendoza, per Raffle dated August 15, 2011.

W

would enable others to operate tire and retreading businesses using its trade name and service system.

Petitioners quit their jobs as salesmen and entered into separate Service Franchise Agreements (SFAs) with Bandag for the operation of their respective franchises. Under the SFAs, Bandag would provide funding support to the petitioners subject to a regular or periodic liquidation of their revolving funds. The expenses out of these funds would be deducted from petitioners' sales to determine their incomes.

At first, petitioners managed and operated their respective franchises without any problem. After a length of time, however, they began to default on their obligations to submit periodic liquidations of their operational expenses in relation to the revolving funds Bandag provided them. Consequently, Bandag terminated their respective SFA.

Aggrieved, petitioners filed a complaint for constructive dismissal, non-payment of wages, incentive pay, 13th month pay and damages against Bandag with the National Labor Relations Commission (NLRC). Petitioners contend that, notwithstanding the execution of the SFAs, they remained to be Bandag's employees, the SFAs being but a circumvention of their status as regular employees.

For its part, Bandag pointed out that petitioners freely resigned from their employment and decided to avail themselves of the opportunity to be independent entrepreneurs under the franchise scheme that Bandag had. Thus, no employer-employee relationship existed between petitioners and Bandag.

On March 14, 2003 the Labor Arbiter rendered a Decision, dismissing the complaint on the ground that no employer-employee relationship existed between Bandag and petitioners. Upon petitioners' appeal to the NLRC the latter affirmed on June 30, 2003 the Labor Arbiter's Decision. It also denied petitioners' motion for reconsideration. Undaunted, petitioners filed a petition for *certiorari* under Rule 65 with the Court of Appeals (CA) ascribing grave abuse of discretion. On July 29, 2005 the CA rendered a Decision,¹ dismissing the petition for lack of merit. It also denied their motion for reconsideration on February 7, 2006.

¹ Penned by Associate Justice Edgardo P. Cruz and concurred in by Associate Justices Romeo A. Brawner and Jose C. Mendoza.

Issue of the Case

The only issue presented in this case is whether or not petitioners remained to be Bandag's salesmen under the franchise scheme it entered into with them.

Ruling of the Court

Franchising is a business method of expansion that allows an individual or group of individuals to market a product or a service and to use of the patent, trademark, trade name and the systems prescribed by the owner.² In this case, Bandag's SFAs created on their faces an arrangement that gave petitioners the privilege to operate and maintain Bandag branches in the way of franchises, providing tire repair and retreading services, with petitioners earning profits based on the performance of their branches.

The question is: did petitioners remain to be Bandag's employees after they began operating those branches? The tests for determining employer-employee relationship are: (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 methods by which the work is to be accomplished. The last is called the "control test," the most important element.³

When petitioners agreed to operate Bandag's franchise branches in different parts of the country, they knew that this substantially changed their former relationships. They were to cease working as Bandag's salesmen, the positions they occupied before they ventured into running separate Bandag branches. They were to cease receiving salaries or commissions. Their incomes were to depend on the profits they made. Yet, petitioners did not then complain of constructive dismissal. They took their chances, ran their branches, Gregorio Sharp in La Union for several months and Ashmor Tesoro in Baguio and Pedro Ang in Pangasinan for over a year. Clearly, their belated claim of constructive dismissal is quite hollow.

It is pointed out that Bandag continued, like an employer, to exercise control over petitioners' work. It points out that Bandag: (a) retained the right to adjust the price rates of products and services; (b) imposed minimum processed tire requirement (MPR); (c) reviewed and regulated credit applications; and (d) retained the power to suspend petitioners' services for failure to meet service standards.

² http://www.dti.gov.ph/uploads/DownloadableFiles/SAB_Franchising_09.pdf (last accessed August 15, 2013).

³ "*Brotherhood*" *Labor Unity Movement of the Philippines v. Hon. Zamora*, 231 Phil. 53, 59 (1987).

But uniformity in prices, quality of services, and good business practices are the essence of all franchises. A franchisee will damage the franchisor's business if he sells at different prices, renders different or inferior services, or engages in bad business practices. These business constraints are needed to maintain collective responsibility for faultless and reliable service to the same class of customers for the same prices.

This is not the "control" contemplated in employer-employee relationships. Control in such relationships addresses the details of day to day work like assigning the particular task that has to be done, monitoring the way tasks are done and their results, and determining the time during which the employee must report for work or accomplish his assigned task.

Franchising involves the use of an established business expertise, trademark, knowledge, and training. As such, the franchisee is required to follow a certain established system. Accordingly, the franchisors may impose guidelines that somehow restrict the petitioners' conduct which do not necessarily indicate "control." The important factor to consider is still the element of control over how the work itself is done, not just its end result.⁴

The Court held, in *Tongko v. The Manufacturers Life Insurance Co. (Phils.), Inc.*,⁵ that, results-wise, the insurance company, as principal, can impose production quotas upon its independent agents and determine how many individual agents, with specific territories, such independent agents ought to employ to achieve the company's objectives. These are management policy decisions that the labor law element of control cannot reach. Petitioners' commitment to abide by Bandag's policy decisions and implementing rules, as franchisees does not make them its employees.

Petitioners cannot use the revolving funds feature of the SFAs as evidence of their employer-employee relationship with Bandag. These funds do not represent wages. They are more in the nature of capital advances for operations that Bandag conceptualized to attract prospective franchisees. Petitioners' incomes depended on the profits they make, controlled by their individual abilities to increase sales and reduce operating costs.

The Labor Arbiter, the NLRC, and the CA, are unanimous that petitioners were no longer "route salesmen, bringing previously ordered supplies and goods to dealers, taking back returned items, collecting payments, remitting them, etc. They were themselves then the dealers,

⁴ *Orozco v. The Fifth Division of the Honorable Court of Appeals*, 584 Phil. 35, 47 (2008).

⁵ G.R. No. 167622, June 29, 2010, 622 SCRA 58, 86.

getting their own supply and bringing these to their own customers and sub-dealers, if any.”

The rule in labor cases is that the findings of fact of quasi-judicial bodies, like the NLRC, are to be accorded with respect, even finality, if supported by substantial evidence. This is particularly true when passed upon and upheld by the CA.⁶

WHEREFORE, the instant petition is **DENIED**. The Decision dated July 29, 2005 and Resolution dated February 7, 2006 of the Court of Appeals in CA-G.R. SP 82447 are **AFFIRMED**.

SO ORDERED.

ROBERTO A. ABAD
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

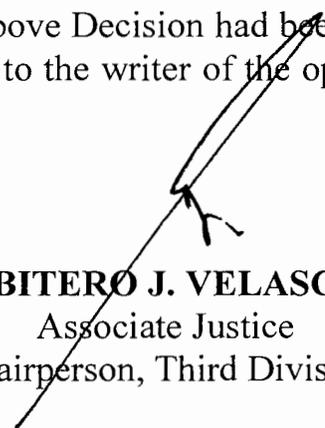
I dissent. See attached separate opinion.

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

⁶ *San Juan De Dios Educational Foundation Employees Union-Alliance of Filipino Workers v. San Juan De Dios Educational Foundation*, G.R. No. 143341, May 28, 2004, 430 SCRA 193, 205-206.

ATTESTATION

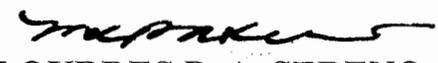
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



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

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.



MARIA LOURDES P. A. SERENO
Chief Justice