Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **July 30, 2014** *which reads as follows:*

"G.R. No. 161058 – ***CARMELITA V. DIMALANTA and ARTURO C. DAISOG, Petitioners, v. CAINTA COLISEUM, INC., KEN K.C. YU, Owner/ President/ General Manager, and MARIA THERESA AYUSON as responsible officers, and NATIONAL LABOR RELATIONS COMMISSION.***

Aggrieved by the decision promulgated on December 19, 2002 in CA-G.R. SP No. 69303,[1] whereby the Court of Appeals (CA) dismissed their petition for *certiorari* brought to assail the adverse ruling of the National Labor Relations Commission (NLRC) on their complaint for illegal dismissal, the petitioners have appealed by petition for review on *certiorari* in order to undo the dismissal.

Let us first review the factual and procedural antecedents.

With the canteen of Cainta Coliseum Inc. as their place of work, petitioner Arturo C. Daisog worked as chief cook since October 1993 and petitioner Carmelita Dimalanta served as caretaker since April 10, 1991. They claimed that on June 11, 1999 they were terminated from employment without any valid reason and without due process.[2] Thus, they filed, along with three others, a complaint for illegal dismissal in the Regional Arbitration Branch No. IV of the NLRC to seek their reinstatement, payment of full backwages and claims for underpayment of wages, premium pay, service incentive leave pay, moral and exemplary damages, and attorney's fees.

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[1] *Rollo*, pp. 182-188; penned by Associate Justice Bienvenido L. Reyes (now a member of this Court) and concurred in by Associate Justice Romeo A. Brawner (later Presiding Justice) and Associate Justice Danilo B. Pine (retired).

[2] Id. at 51.

- over – seven (7) pages .....

But Cainta Coliseum, Inc., together with its President and General Manager Ken K.C. Yu and its Canteen Manager Maria Theresa Ayuson, the respondents herein, moved to dismiss the petitioners' complaint, asserting that the labor tribunal did not have jurisdiction due to the absence of any employer-employee relationship between them and the petitioners. The respondents insisted that various concessionaires had operated the Cainta Coliseum cockpit and its canteen under lease contracts; that the lessees had then hired their own workers; and that Cainta Coliseum, Inc., as lessor, had nothing to do with the operations of the lessees' business.

In his decision of May 22, 2000,[3] Acting Executive Labor Arbiter Pedro C. Ramos found that the following concessionaires had managed and operated the Cainta Coliseum canteen, namely: Susan Belleza, from 1993 to 1996; Alma Catalan, from 1997 to 1999; and Ma. Theresa Ayuson from 1999 to the time of the filing of the complaint; that prior to their employment at the Cainta Coliseum canteen, Daisog and Dimalanta had worked at the Cainta Fair Restaurant, then operated by a corporation separate and distinct from Cainta Coliseum, Inc.; that after Cainta Fair Restaurant had closed down, Daisog and Dimalanta had transferred to the Cainta Coliseum canteen in 1994, during the period of Belleza's contract; that they had continued to work in the canteen during Catalan's contract; that when Ayuson had taken over the canteen's operations, they and three others had instead asked for separation pay because they did not like to work under Ayuson's management; that unlike the others, however, Daisog and Dimalanta had eventually refused Ayuson's offer of separation pay because Gabriel Eduarte, Sr., the cockpit concessionaire, had meanwhile convinced them that they could receive much higher amounts of separation pay if they pursued their case; that Eduarte, Sr. had been motivated by anger over his ejection as the cockpit concessionaire; and that Eduarte, Sr. had then convinced Daisog and Dimalanta to file the case against respondents.

Acting Executive Labor Arbiter Ramos concluded and held thusly:

> After properly evaluating the facts and evidence on record, we find herein complainants not illegally terminated from their employment. Rather, there was a change of concessionaire who would operate the canteen where the complainants worked. There is no question that all of [the] complainants are entitled to separation pay when Alma Catalan stopped as the canteen concessionaire in February 1999 but only for the period of almost two (2) years. x x x Cainta Coliseum, Kenneth Yu and Ma. Theresa Ayuson cannot likewise be held liable because they were not their employers.

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[3] Id. at 50-55.

In determining the employer-employee relationship, the power of control over the employees' conduct is generally regarded as the very important basis thereof, which is absent in the case at bar.

The law provides that in determining the existence of employer-employee relationship, the following elements are generally considered. The selection and engagement of the employee, the payment of wages, the power of dismissal and the means and methods by which the work is to be accomplished. Considering therefore that herein complainants has [sic] miserably failed to show by convincing evidence that these elements are present in the instant case, we have no other recourse but to dismiss their claims as against herein respondents.

Jurisprudence on the matter are in abundance. In one case, the Supreme Court held that "where there is transfer of ownership, the transferee is under no legal obligation to absorb the transferor's employees as there is no law compelling such absorption. The most that the transferor may do, for reason of public policy and social justice, is to give preference to the qualified separated employees in the filling of vacancies" (Roman Manlimos, et al., vs. NLRC, Super Mahogany Plywood Corp., G.R. No. 113337, March 2, 1995).

Parenthetically, Cainta Coliseum, Inc., Kenneth Yu and Ma. Theresa Ayuson cannot be held liable as they appeared to be not the real employers of the complainants herein. If ever they have valid claims, the same should be lodged against the concessionaires of the respondents which appeared [sic] to be complainants' real employers by the name of Susan Belleza and Alma Catalan.

x x x x

The claims for premium pay, incentive leave pay, moral and exemplary damages, as well as attorney's fees, are likewise dismissed for not being substantiated by credible and convincing quantum of evidence.

WHEREFORE, premises considered, judgment is hereby rendered dismissing the above-entitled cases for lack of merit.

SO ORDERED.[4]

In its resolution dated September 27, 2001, the NLRC dismissed the petitioners' appeal and affirmed the May 22, 2000 decision of Labor Arbiter Ramos.[5]

Daisog and Dimalanta sought reconsideration, but the NLRC denied their motion for reconsideration for its lack of merit on November 29, 2001.[6]

4 *Rollo*, pp. 54-55.
5 Id. at 57-68.
6 Id. at 71-72.

Daisog and Dimalanta then filed their petition for *certiorari*. However, the CA dismissed their petition through its assailed decision promulgated on December 19, 2002,[7] stating:

> Admittedly, the question of whether or not an employer-employee relationship exists between petitioners Daisog and Dimalanta and private respondents is a question of fact ***(Asim vs. Castro, 163 SCRA 344 [1988]) citing RJL Martinez Fishing Corp. vs. NLRC, 127 SCRA 454***). And that factual matters are not proper subjects for certiorari, (***Suarez vs. NLRC, 293 SCRA 496***) and that in certiorari proceedings, judicial review does not go as far as to evaluate the sufficiency of evidence, upon which the Labor Arbiter and NLRC based their determinations, the inquiry being limited essentially to whether or not said public respondents had acted without or in excess of its jurisdiction or with grave abuse of discretion ***(Travelaire & Tours Corp. vs. NLRC, 294 SCRA 505)***.
>
> Be that as it may, We opted to resolve the aforecited issues at hand for a broader interest of justice.
>
> Anent the first issue, We opine that there is no employer-employee relationship between petitioners Daisog and Dimalanta and private respondents Cainta Coliseum and/or Ken K.C. Yu and Ma. Theresa Ayuson. The following elements must be present in order to constitute an employer-employee relationship, to wit: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct, which is the most important ***(Ecal vs. NLRC, G.R. Nos. 92777-78, March 13, 1991).***
>
> It must be recalled that when Belleza was the canteen concessionaire from 1993 to 1996, herein petitioners Daisog and Dimalanta were and continuously working thereat. When Catalan took over the management thereof in May 1997 they also continued their employment thereat. However, when private respondent Ma. Theresa Ayuson took over the canteen management on April 29, 1999, she offered to petitioners Daisog and Dimalanta to continue working under her new management but the latter refused and they did not accept the separation pay being offered to them. Based on the foregoing factual backdrop, it could be deduced that petitioners Daisog and Dimalanta's employers if at all were Belleza and Catalan and not herein private respondent Ma. Theresa Ayuson. However, Belleza and Catalan could not be held liable since they were not impleaded to the complaint. Neither was there evidence which directly established that petitioners Daisog and Dimalanta were employees of private respondent Cainta Coliseum which is managed by co-private respondent Ken K.C. Yu.
>
> Likewise, the record is bereft of any evidence which showed that private respondents Cainta Coliseum and/or Ken K.C. Yu and Maria Theresa Ayuson were the one[s] who hired petitioners Daisog and

7 Supra note 1.

Dimalanta; neither did it prove that private respondents have the power to control the conduct of petitioners. As also found out by public respondent NLRC, which reads:

> "Contrary to the allegation of complainants, the alleged payrolls do not bear the name of respondent Kenneth Yu, their alleged employer. Respondents denied that there was a signature of Kenneth Yu on the supposed payrolls. What is established in the records is that complainants are employees of canteen concessionaires operating in the respondent coliseum. As correctly ruled by the Labor Arbiter:
>
> > "Parenthetically, Cainta Coliseum, Inc., Kenneth Yu and Ma. Theresa Ayuson cannot be held liable as they appeared to be not the real employers of the complainants herein. If ever they have valid claims, the same should be lodged against the concessionaires of the respondents which appeared [sic] to be complainants' real employers by the name of Susan Belleza and Alma Catalan." (p. 31, rollo)

Factual findings of quasi-judicial bodies like the NLRC particularly when they coincide with those of the Labor Arbiter are accorded respect, even finality, and will not be disturbed for as long as such findings are supported by substantial evidence. (*Habana vs. NLRC, 298 SCRA 537*)

Admittedly, petitioners Daisog and Dimalanta miserably failed to show by convincing evidence that there exists an employer-employee relationship between them and private respondents. Besides, the existence of an employer-employee relationship is ultimately a question of fact and the findings thereon by the labor arbiter and the NLRC shall be accorded not only respect but even finality when supported by substantial evidence. (***AFP Mutual Benefit Association, Inc. vs. NLRC, 267 SCRA 47***)

Consequently, there is no illegal dismissal to speak of, since it had been established that petitioners Daisog and Dimalanta were not private respondents' employees as aforecitedly [sic] discussed. Corollarily, it must be considered that there was a change of concessionaire who would operate the canteen where petitioners Daisog and Dimalanta worked. And since petitioners Daisog and Dimalanta themselves were the one [sic] who refused to continue working in the canteen, why put the blame on private respondent Ma. Theresa Ayuson nor [sic] to co-private respondents Cainta Coliseum and/or Ken K.C. Yu?

With regard to the monetary claims, the same is not warranted under the circumstances considering that private respondents Cainta Coliseum and/or Ken K.C. Yu and Ma. Theresa Ayuson were not the employer[s] of petitioners Daisog and Dimalanta. Neither was there factual and legal basis to award the same.

WHEREFORE, the PETITION FOR CERTIORARI is hereby DENIED. Accordingly, the Resolutions dated September 27, 2001 and November 29, 2001 are hereby AFFIRMED in toto.

SO ORDERED.[8]

Daisog and Dimalanta then moved for reconsideration,[9] but the CA denied the motion for reconsideration on November 18, 2003.[10]

Hence, this appeal, in which Daisog and Dimalanta submit as issues for resolution: (1) whether or not they were employees of Cainta Coliseum, Inc.; and (2) whether or not they were illegally dismissed from employment.

The petition has no merit.

The first issue is concededly a factual matter that the Court cannot determine in this appeal by petition for review on *certiorari*, where only pure questions of law can be addressed and resolved. Nonetheless, the matter of whether or not the petitioners were the employees of Cainta Coliseum, Inc. was competently resolved by the NLRC, which concurred in the findings of the Labor Arbiter to the effect that they were not the employees of Cainta Coliseum, Inc. The resolution by the NLRC was a final and unalterable adjudication. In that regard, the petitioners assailed the resolution of the NLRC by petition for *certiorari* in the CA, claiming that the NLRC thereby committed grave abuse of discretion amounting to lack or excess of jurisdiction. However, as already mentioned, the CA dismissed the petition for *certiorari* on the ground that the NLRC properly upheld the findings of the Labor Arbiter, and thus did not commit any abuse of discretion, least of all grave.

Anent the second issue of whether or not the petitioners were illegally dismissed from employment, the conclusion of the NLRC (and the Labor Arbiter) was that there was no employer-employee relationship between them and Cainta Coliseum, Inc. Such conclusion was adopted by the CA as its basis for declaring that the NLRC committed no grave abuse of discretion. It becomes unnecessary for the Court now to re-examine the records in order to test the validity of the conclusion. To start with, the NLRC and the Labor Arbiter were invested with the expertise to determine the question of the employer-employee relationship. We should respect

8 Id. at 185-188.
9 Id. at 189-195.
10 Id. at 199-200.

their conclusion thereon. And, secondly, the petitioners did not discharge their burden of convincingly showing that the CA committed reversible error for declaring that the NLRC did not commit any grave abuse of discretion in upholding and affirming the ruling of the Labor Arbiter.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on December 19, 2002; and **ORDERS** the petitioners to pay the costs of suit.

SO ORDERED." ***REYES, J.***, took no part; ***LEONEN, J.***, designated additional member per raffle dated May 8, 2013.

Very truly yours,

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Division Clerk of Court

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