



Republic of the Philippines  
**Supreme Court**  
 Manila

**SECOND DIVISION**

**MANILA MEMORIAL PARK  
 CEMETERY, INC.,**

Petitioner,

**G.R. No. 208451**

Present:

- versus -

CARPIO, J., Chairperson,  
 VELASCO, JR.,\*  
 DEL CASTILLO,  
 MENDOZA, and  
 LEONEN,\*\* JJ.

**EZARD D. LLUZ, NORMAN CORRAL,  
 ERWIN FUGABAN, VALDIMAR  
 BALISI, EMILIO FABON, JOHN MARK  
 APLICADOR, MICHAEL CURIOSO,  
 JUNLIN ESPARES, GAVINO FARINAS,  
 and WARD TRADING AND SERVICES,**

Respondents.

Promulgated:

**03 FEB 2016**

*Caraballo*

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**DECISION**

**CARPIO, J.:**

**The Case**

This is a petition for review on certiorari<sup>1</sup> assailing the Decision<sup>2</sup> dated 21 January 2013 and the Resolution<sup>3</sup> dated 17 July 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 119237.

\* Designated additional member per Raffle dated 8 September 2014.  
 \*\* On leave.

<sup>1</sup> Under Rule 45 of the 1997 Revised Rules of Civil Procedure.

<sup>2</sup> *Rollo*, pp. 34-47. Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Rosalinda Asuncion-Vicente and Priscilla J. Baltazar-Padilla concurring.

<sup>3</sup> *Id.* at 48-49.

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### **The Facts**

On 23 February 2006, petitioner Manila Memorial Park Cemetery, Inc. (Manila Memorial) entered into a Contract of Services with respondent Ward Trading and Services (Ward Trading). The Contract of Services provided that Ward Trading, as an independent contractor, will render interment and exhumation services and other related work to Manila Memorial in order to supplement operations at Manila Memorial Park, Parañaque City.

Among those assigned by Ward Trading to perform services at the Manila Memorial Park were respondents Ezard Lluz, Norman Corral, Erwin Fugaban, Valdimar Balisi, Emilio Fabon, John Mark Aplicador, Michael Curioso, Junlin Espares, and Gavino Farinas (respondents). They worked six days a week for eight hours daily and were paid ₱250 per day.

On 26 June 2007, respondents filed a Complaint<sup>4</sup> for regularization and Collective Bargaining Agreement benefits against Manila Memorial; Enrique B. Lagdameo, Manila Memorial's Executive Vice-President and Director in Charge for Overall Operations, and Ward Trading. On 6 August 2007, respondents filed an amended complaint to include illegal dismissal, underpayment of 13<sup>th</sup> month pay, and payment of attorney's fees.

Respondents alleged that they asked Manila Memorial to consider them as regular workers within the appropriate bargaining unit established in the collective bargaining agreement by Manila Memorial and its union, the Manila Memorial Park Free Workers Union (MMP Union). Manila Memorial refused the request since respondents were employed by Ward Trading, an independent labor contractor. Thereafter, respondents joined the MMP Union. The MMP Union, on behalf of respondents, sought their regularization which Manila Memorial again declined. Respondents then filed the complaint. Subsequently, respondents were dismissed by Manila Memorial. Thus, respondents amended the complaint to include the prayer for their reinstatement and payment of back wages.

Meanwhile, Manila Memorial sought the dismissal of the complaint for lack of jurisdiction since there was no employer-employee relationship. Manila Memorial argued that respondents were the employees of Ward Trading.

In a Decision<sup>5</sup> dated 29 March 2010, the Labor Arbiter dismissed the complaint for failing to prove the existence of an employer-employee relationship. The dispositive portion of the Decision states:

<sup>4</sup> Docketed as NLRC OFW Case No. 06-06550-07.

<sup>5</sup> *Rollo*, pp. 252-257.

WHEREFORE, premises considered, judgment is hereby rendered dismissing the above-entitled case for complainants' lack of employer-employee relationship with respondent Manila Memorial Park Cemetery, Inc.

SO ORDERED.<sup>6</sup>

Respondents appealed<sup>7</sup> to the NLRC. In a Decision<sup>8</sup> dated 30 September 2010, the NLRC reversed the Labor Arbiter's findings. The NLRC ruled that Ward Trading was a labor-only contractor and an agent of Manila Memorial. The dispositive portion of the Decision states:

WHEREFORE, premises considered, complainants' appeal is GRANTED. The assailed Decision of Labor Arbiter Geobel A. Bartolabac dated March 29, 2010 is MODIFIED. It is hereby declared that complainants were regular employees of respondent Manila Memorial Park Cemetery, Inc. and entitled to the benefits provided for under the CBA between the latter and the Manila Memorial Park Free Workers Union.

Respondent Manila Memorial Park Cemetery, Inc. is ordered to pay wage differentials to complainants as follows:

1. Ezard D. Lluz –	₱43,982.79
2. Norman Corral –	₱29,765.67
3. Erwin Fugaban –	₱28,634.67
4. Valdimar Balisi –	₱20,310.33
5. Emilio Fabon –	₱43,982.79
6. John Mark Aplicador –	₱43,982.79
7. Michael Curioso –	₱43,982.79
8. Ju[n]lin Espares –	₱43,982.79
9. Gavino Farinas –	₱43,982.79

SO ORDERED.<sup>9</sup>

Manila Memorial filed a Motion for Reconsideration which was denied in a Resolution<sup>10</sup> dated 31 January 2011.

Thereafter, Manila Memorial filed an appeal with the CA. In a Decision dated 21 January 2013, the CA affirmed the ruling of the NLRC. The CA found the existence of an employer-employee relationship between Manila Memorial and respondents. The dispositive portion of the Decision states:

WHEREFORE, in view of the foregoing, the instant Petition for Certiorari is DENIED. The Decision, dated September 30, 2010 and the Resolution, dated January 31, 2011, rendered by the National Labor

<sup>6</sup> Id. at 257.

<sup>7</sup> Docketed as NLRC NCR Case No. 06-06550-07 and NLRC LAC No. 06-001267-10.

<sup>8</sup> *Rollo*, pp. 81-97.

<sup>9</sup> Id. at 96.

<sup>10</sup> Id. at 98-99.

Relations Commission (NLRC) in NLRC LAC No. 06-001267-10 are AFFIRMED.

SO ORDERED.<sup>11</sup>

Manila Memorial then filed a Motion for Reconsideration which was denied by the CA in a Resolution dated 17 July 2013.

Hence, the instant petition.

### **The Issue**

The main issue for our resolution is whether or not an employer-employee relationship exists between Manila Memorial and respondents for the latter to be entitled to their claim for wages and other benefits.

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

The petition lacks merit.

Manila Memorial contends that Ward Trading has total assets in excess of ₱1.4 million, according to Ward Trading's financial statements for the year 2006, proving that it has sufficient capitalization to qualify as a legitimate independent contractor. Manila Memorial insists that nowhere is it provided in the Contract of Services that Manila Memorial controls the manner and means by which respondents accomplish the results of their work. Manila Memorial states that the company only wants its contractors and the latter's employees to abide by company rules and regulations.

Respondents, on the other hand, assert that they are regular employees of Manila Memorial since Ward Trading cannot qualify as an independent contractor but should be treated as a mere labor-only contractor. Respondents state that (1) there is enough proof that Ward Trading does not have substantial capital, investment, tools and the like; (2) the workers recruited and placed by the alleged contractors performed activities that were related to Manila Memorial's business; and (3) Ward Trading does not exercise the right to control the performance of the work of the contractual employees.

As a general rule, factual findings of the CA are binding upon this Court. One exception to this rule is when the factual findings of the former are contrary to those of the trial court, or the lower administrative body, as the case may be. This Court is obliged to resolve an issue of fact due to the

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<sup>11</sup> Id. at 46.

conflicting findings of the Labor Arbiter on one hand, and the NLRC and the CA on the other.

In order to determine whether there exists an employer-employee relationship between Manila Memorial and respondents, relevant provisions of the labor law and rules must first be reviewed. Article 106 of the Labor Code states:

Art. 106. Contractor or subcontractor. Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

The Secretary of Labor and Employment may, by appropriate regulations, restrict or prohibit the contracting-out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

**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. (Emphasis supplied)**

Sections 3, 5 and 7 of Department Order No. 18-02<sup>12</sup> distinguish between legitimate and labor-only contracting and assume the existence of an employer-employee relationship if found to be engaged in labor-only contracting. The provisions state:

x x x x

Section 3. *Trilateral Relationship in Contracting Arrangements.* In **legitimate contracting**, there exists a trilateral relationship under which

<sup>12</sup> Rules Implementing Articles 106-109 of the Labor Code, as amended. Approved on 21 February 2002.

there is a contract for a specific job, work or service between the principal and the contractor or subcontractor, and a contract of employment between the contractor or subcontractor and its workers. Hence, there are three parties involved in these arrangements, the principal which decides to farm out a job or service to a contractor or subcontractor, the contractor or subcontractor which has the capacity to independently undertake the performance of the job, work or service, and the contractual workers engaged by the contractor or subcontractor to accomplish the job, work or service.

x x x x

Section 5. *Prohibition against labor-only contracting.* **Labor-only contracting** is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where 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:

- i) 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
- ii) The contractor does not exercise the right to control over the performance of the work of the contractual employee.

The foregoing provisions shall be without prejudice to the application of Article 248 (c) of the Labor Code, as amended.

“Substantial capital or investment” refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out.

The “right to control” shall refer to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.

x x x x

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. (Emphasis supplied)

It is clear from these provisions that contracting arrangements for the performance of specific jobs or services under the law and its implementing rules are allowed. However, contracting must be made to a legitimate and independent job contractor since labor rules expressly prohibit labor-only contracting.

Labor-only contracting exists when 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
- 2) The contractor does not exercise the right to control the performance of the work of the contractual employee.<sup>13</sup>

In the present case, Manila Memorial entered into a Contract of Services with Ward Trading, a single proprietorship owned by Emmanuel Mayor Ward with business address in Las Piñas City on 23 February 2006. In the Contract of Services, it was provided that Ward Trading, as the contractor, had adequate workers and substantial capital or investment in the form of tools, equipment, machinery, work premises and other materials which were necessary in the conduct of its business.

However, a closer look at the Contract of Services reveals that Ward Trading does not have substantial capital or investment in the form of tools, equipment, machinery, work premises and other materials since it is Manila Memorial which owns the equipment used in the performance of work needed for interment and exhumation services. The pertinent provision in the Contract of Services which shows that Manila Memorial owns the equipment states:

The COMPANY shall [sell] to the contractor the COMPANY owned equipment in the amount of ONE MILLION FOUR HUNDRED THOUSAND PESOS ONLY (Php 1,400,000.00) payable in two (2) years or a monthly payment of FIFTY EIGHT THOUSAND THREE

<sup>13</sup> *Aliviado v. Procter & Gamble Phils., Inc.*, 628 Phil. 469, 483 (2010).

HUNDRED THIRTY FIVE PESOS ONLY (Php 58,335.00) to be deducted from the CONTRACTOR's billing.<sup>14</sup>

Just by looking at the provision, it seems that the sale was a regular business transaction between two parties. However, Manila Memorial did not present any evidence to show that the sale actually pushed through or that payments were made by Ward Trading to prove an ordinary arms length transaction. We agree with the NLRC in its findings:

While the above-cited provision of the Contract of Service implies that respondent MMPCI would sell subject equipment to Ward at some future time, the former failed to present any contract of sale as proof that, indeed, it actually sold said equipment to Ward. Likewise, respondent MMPCI failed to present any "CONTRACTOR's billing" wherein the purported monthly installment of ₱58,335.00 had been deducted, to prove that Ward truly paid the same as they fell due. In a contract to sell, title is retained by the vendor until full payment of the price.

Moreover, the Contract of Service provides that:

"5. The COMPANY reserves the right to rent all or any of the CONTRACTOR's equipment in the event the COMPANY requires the use of said equipment. x x x."

This provision is clear proof that Ward does not have an absolute right to use or enjoy subject equipment, considering that its right to do so is subject to respondent MMPCI's use thereof at any time the latter requires it. Such provision is contrary to Article 428 of the Civil Code, which provides that "The owner has the right to enjoy and dispose of a thing, without other limitation than those established by law." It is plain to see that Ward is not the owner of the equipment worth ₱1,400,000.00 that is being actually and directly used in the performance of the services contracted out.

Further, the Service Contract states that:

"For its part, the COMPANY agrees to provide the following:

- a) Area to store CONTRACTOR's equipment and materials
- b) Office space for CONTRACTOR's staff and personnel"

This provision is clear proof that even the work premises actually and directly used by Ward in the performance of the services contracted out is owned by respondent MMPCI.<sup>15</sup>

Also, the difference in the value of the equipment in the total amount of ₱1,400,000.00 can be glaringly seen in Ward Trading's financial statements for the year 2006 when compared to its 2005 financial statements. It is significant to note that these financial statements were

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<sup>14</sup> *Rollo*, p. 128.

<sup>15</sup> *Id.* at 88-89.



submitted by Manila Memorial without any certification that these financial statements were actually audited by an independent certified public accountant. Ward Trading's Balance Sheet<sup>16</sup> as of 31 December 2005 showed that it had assets in the amount of ₱441,178.50 and property and equipment with a net book value of ₱86,026.50 totaling ₱534,705. A year later, Ward Trading's Balance Sheet<sup>17</sup> ending in 31 December 2006 showed that it had assets in the amount of ₱57,084.70 and property and equipment with a net book value of ₱1,426,468 totaling ₱1,491,052.70. Ward Trading, in its Income Statements<sup>18</sup> for the years 2005 and 2006, only earned a net income of ₱53,800 in the year ending 2005 and ₱68,141.50 in 2006. Obviously, Ward Trading could not have raised a substantial capital of ₱1,400,000.00 from its income alone without the inclusion of the equipment owned and allegedly sold by Manila Memorial to Ward Trading after they signed the Contract of Services on 23 February 2006.

Further, the records show that Manila Memorial and Enrique B. Lagdameo admitted that respondents performed various interment services at its Sucat, Parañaque branch which were directly related to Manila Memorial's business of developing, selling and maintaining memorial parks and interment functions. Manila Memorial even retained the right to control the performance of the work of the employees concerned. As correctly observed by the CA:

A perusal of the Service Contract would reveal that respondent Ward is still subject to petitioner's control as it specifically provides that although Ward shall be in charge of the supervision over individual respondents, the exercise of its supervisory function is heavily dependent upon the needs of petitioner Memorial Park, particularly:

"It is also agreed that:

- a) The CONTRACTOR's supervisor will conduct a regular inspection of grave sites/areas being dug to ensure compliance with the COMPANY's interment schedules and other related ceremonies.
- b) The CONTRACTOR will provide enough manpower during peak interment days including Sundays and Holidays.
- c) The CONTRACTOR shall schedule off-days for its workers in coordination with the COMPANY's schedule of interment operation.
- d) The CONTRACTOR shall be responsible for any damage done to lawn/s and/or structure/s resulting from its operation, which must be restored to its/their original condition without delay and at the expense of CONTRACTOR."

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<sup>16</sup> Id. at 152.

<sup>17</sup> Id. at 146.

<sup>18</sup> Id. at 151 and 147, respectively.

The contract further provides that petitioner has the option to take over the functions of Ward's personnel if it finds any part or aspect of the work or service provided to be unsatisfactory, thus:

“6.1 It is hereby expressly agreed and understood that, at any time during the effectivity of this CONTRACT and its sole determination, the COMPANY may take over the performance of any of the functions mentioned in Paragraph I above, in any of the following cases:

x x x

c. If the COMPANY finds the performance of the CONTRACTOR in any part or aspect of the grave digging works or other services provided by it to be unsatisfactory.”

It is obvious that the aforementioned provision leaves respondent Ward at the mercy of petitioner Memorial Park as the contract states that the latter may take over if it finds any part of the services to be below its expectations, including the manner of its performance. x x x.<sup>19</sup>

The NLRC also found that Ward Trading's business documents fell short of sound business practices. The relevant portion in the NLRC's Decision states:

It is also worth noting that while Ward has a Certificate of Business Name Registration issued by the Department of Trade and Industry on October 24, 2003 and valid up to October 24, 2008, the same expressly states that it is not a license to engage in any kind of business, and that it is valid only at the place indicated therein, which is Las Piñas City. Hence, the same is not valid in Parañaque City, where Ward assigned complainants to perform interment services it contracted with respondent MMPCI. It is also noted that the Permit, which was issued to Ward by the Office of the Mayor of Las Piñas City on October 28, 2003, was valid only up to December 31, 2003. Likewise, the Sanitary Permit to Operate, which was issued to Ward by the Office of the City Health Officer of the Las Piñas City Health Office on October 28, 2003, expired on December 31, 2003. While respondents MMPCI and Lagdameo were able to present copies of the above-mentioned documents, they failed to present any proof that Ward is duly registered as [a] contractor with the Department of Labor and Employment.<sup>20</sup>

Section 11 of Department Order No. 18-02, which mandates registration of contractors or subcontractors with the DOLE, states:

Section 11. *Registration of Contractors or Subcontractors.* – Consistent with authority of the Secretary of Labor and Employment to restrict or prohibit the contracting out of labor through appropriate regulations, a registration system to govern contracting arrangements and to be implemented by the Regional Office is hereby established.

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<sup>19</sup> Id. at 42-43.

<sup>20</sup> Id. at 90-91.

The Registration of contractors and subcontractors shall be necessary for purposes of establishing an effective labor market information and monitoring.

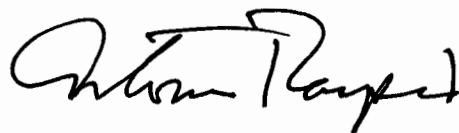
Failure to register shall give rise to the presumption that the contractor is engaged in labor-only contracting.

For failing to register as a contractor, a presumption arises that one is engaged in labor-only contracting unless the contractor overcomes the burden of proving that it has substantial capital, investment, tools and the like.<sup>21</sup>

In this case, however, Manila Memorial failed to adduce evidence to prove that Ward Trading had any substantial capital, investment or assets to perform the work contracted for. Thus, the presumption that Ward Trading is a labor-only contractor stands. Consequently, Manila Memorial is deemed the employer of respondents. As regular employees of Manila Memorial, respondents are entitled to their claims for wages and other benefits as awarded by the NLRC and affirmed by the CA.

**WHEREFORE**, we **DENY** the petition. We **AFFIRM** the Decision dated 21 January 2013 and the Resolution dated 17 July 2013 of the Court of Appeals in CA-G.R. SP No. 119237.

**SO ORDERED.**



**ANTONIO T. CARPIO**  
Associate Justice

**WE CONCUR:**



**PRESBITERO J. VELASCO, JR.**  
Associate Justice

<sup>21</sup> *7K Corporation v. National Labor Relations Commission*, 537 Phil. 664 (2006).

  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**JOSE CATRAL MENDOZA**  
Associate Justice

(on leave)  
**MARVIC M.V.F. LEONEN**  
Associate Justice

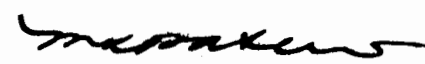
**ATTESTATION**

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.

  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson

**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