Republic of the Philippines
Supreme Court
Manila

**EN BANC**

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| **EMMANUEL D. QUINTANAR, BENJAMIN O. DURANO, CECILIO C. DELAVIN, RICARDO G. GABORNI, ROMEL G. GERARMAN, JOEL JOHN P. AGUILAR, RAMIRO T. GAVIOLA, RESTITUTO D. AGSALUD, MARTIN E. CELIS, PATRICIO L. ARIOS, MICHAEL S. BELLO, LORENZO C. QUINLOG, JUNNE G. BLAYA, SANTIAGO B. TOLENTINO, JR., NESTOR A. MAGNAYE, ARNOLD S. POLVORIDO, ALLAN A. AGAPITO, ARIEL E. BAUMBAD, JOSE T. LUTIVA, EDGARDO G. TAPALLA, ROLDAN C. CADAYONA, REYNALDO V. ALBURO, RUDY C. ULTRA, MARCELO R. CABILI, ARNOLD B. ASIATEN, REYMUNDO R. MACABALLUG, JOEL R. DELEÑA, DANILO T. OQUIÑO, GREG B. CAPARAS and ROMEO T. ESCARTIN,**<br>Petitioners, | **G.R. No. 210565**<br><br>Present:<br><br>SERENO, *C.J.*,<br>CARPIO,<br>VELASCO, JR.,<br>LEONARDO-DE CASTRO,<br>BRION,<br>PERALTA,<br>BERSAMIN,<br>DEL CASTILLO,*<br>PEREZ,<br>MENDOZA,<br>REYES,<br>PERLAS-BERNABE,<br>LEONEN,<br>JARDELEZA,** and<br>CAGUIOA, *JJ.* |
| - versus - | |
| **COCA-COLA BOTTLERS, PHILIPPINES, INC.,**<br>Respondent. | Promulgated:<br><br>June 28, 2016 |

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* On Leave.
** No Part.

# DECISION

**MENDOZA, *J.*:**

At bench is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the July 11, 2013 Decision[1] and the December 5, 2013 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 115469, which reversed and set aside the March 25, 2010 Decision[3] and the May 28, 2010 Resolution[4] of the National Labor Relations Commission *(NLRC)*, affirming the August 29, 2008 Decision of the Labor Arbiter *(LA),* in a case for illegal dismissal, damages and attorney's fees filed by the petitioners against respondent Coca-Cola Bottlers Philippines, Inc. *(Coca-Cola).*

The gist of the subject controversy, as narrated by the LA and adopted by the NLRC and the CA, is as follows:

> Complainants allege that they are former employees directly hired by respondent Coca-Cola on different dates from 1984 up to 2000, assigned as regular Route Helpers under the direct supervision of the Route Sales Supervisors. Their duties consist of distributing bottled Coca-Cola products to the stores and customers in their assigned areas/routes, and they were paid salaries and commissions at the average of ₱3,000.00 per month. After working for quite sometime as directly-hired employees of Coca-Cola, complainants were allegedly transferred successively as agency workers to the following manpower agencies, namely, Lipercon Services, Inc., People's Services, Inc., ROMAC, and the latest being respondent Interserve Management and Manpower Resources, Inc.
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> Further, complainants allege that the Department of Labor and Employment (DOLE) conducted an inspection of Coca-Cola to determine whether it is complying with the various mandated labor standards, and relative thereto, they were declared to be regular employees of Coca-Cola, which was held liable to pay complainants the underpayment of their 13th month pay, emergency cost of living allowance (ECOLA), and other claims. As soon as respondents learned of the filing of the claims with DOLE, they were dismissed on various dates in January 2004. Their claims were later settled by the respondent company, but the settlement allegedly did not include the issues on reinstatement and payment of CBA benefits. Thus, on November 10, 2006, they filed their complaint for illegal dismissal.

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[1] Penned by Associate Justice Edwin D. Sorongon with Associate Justices Hakim S. Abdulwahid (now retired) and Marlene Gonzales-Sison, concurring; *rollo*, pp. 1730-1753.
[2] Id. at 1843-1845.
[3] Id. at 726-743. Penned by Commissioner Nieves E. Vivar-de Castro.
[4] Id. at 552-559. Penned by Labor Arbiter Jose G. De Vera, concurred in by Presiding Commissioner Benedicto R. Palacol and Commissioner Isabel G. Panganiban-Ortiquerra.

In support of their argument that they were regular employees of Coca-Cola, the complainants relied on the pronouncement of the Supreme Court in the case of *CCBPI vs. NOWM,* G.R. No. 176024, June 18, 2007, as follows:

> "In the case at bar, individual complainants were directly hired by respondent Coca-Cola as Route Helpers. They assist in the loading and unloading of softdrinks. As such they were paid by respondent Coca-Cola their respective salaries plus commission. It is of common knowledge in the sales of softdrinks that salesmen are not alone in making a truckload of softdrinks for delivery to customers. Salesmen are usually provided with route helpers or utility men who does the loading and unloading. The engagement of the individual complainants to such activity is usually necessary in the usual business of respondent Coca-Cola.
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> Contrary to the Labor Arbiter's conclusion that respondent Coca-Cola is engaged solely in the manufacturing is erroneous as it is also engaged in the sales of the softdrinks it manufactured.
>
> Moreover, having been engaged to perform, such activity for more than a year all the more bolsters individual complainants' status as regular employees notwithstanding the contract, oral or written, or even if their employment was subsequently relegated to a labor contractor."

Respondent Coca-Cola denies employer-employee relationship with the complainants pointing to respondent Interserve with whom it has a service agreement as the complainants' employer. As alleged independent service contractor of respondent Coca-Cola, respondent Interserve "is engaged in the business of rendering substitute or reliever delivery services to its own clients and for CCBPI in particular, the delivery of CCBPI's softdrinks and beverage products." It is allegedly free from the control and direction of CCBPI in all matters connected with the performance of the work, except as to the results thereof, pursuant to the service agreement. Moreover, respondent Interserve is allegedly highly capitalized with a total of ₱21,658,220.26 and with total assets of ₱27,509,716.32.

Further, respondent Coca-Cola argued that all elements of employer-employee relationship exist between respondent Interserve and the complainants. It was allegedly Interserve which solely selected and engaged the services of the complainants, which paid the latter their salaries, which was responsible with respect to the imposition of appropriate disciplinary sanctions against its erring employees, including the complainants, without any participation from Coca-Cola, which personally monitors the route helpers' performance of their delivery services pointing to Noel Sambilay as the Interserve Coordinator. Expounding on the power of control, respondent Coca-Cola vigorously argued that:

> "12. According to Mr. Sambilay, he designates who among the route helpers, such as complainants herein, will be assigned for each of the delivery trucks. Based on the route helpers' performance and rapport with the truck driver and the other route helpers, he groups together a team of three (3) to five (5) route helpers to undertake the loading and unloading of the softdrink products to the delivery trucks and to their designated delivery point. It is his exclusive discretion to determine who among the route helpers will be grouped together to comprise an effective team to render the most efficient delivery service of CCBPI's products.
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> "13. Similarly, it is Interserve, through Mr. Sambilay, who takes charge of monitoring the attendance of the route helpers employed by Interserve. At the start of the working day, Mr. Sambilay would position himself at the gate of the CCBPI premises to check the attendance of the route helpers. He also maintains a logbook to record the time route helpers appear for work. In case a route helper is unable to report for duty, Mr. Sambilay reassigns another route helper to take his place."

On its part, respondent Interserve merely filed its position paper, pertaining only to complainants Quintanar and Cabili totally ignoring all the other twenty-eight (28) complainants. It maintains that it is a legitimate job contractor duly registered as such and it undertakes to perform utility, janitorial, packaging, and assist in transporting services by hiring drivers. Complainants Quintanar and Cabili were allegedly hired as clerks who were assigned to CCBPI Mendiola Office, under the supervision of Interserve supervisors. Respondent Coca-Cola does not allegedly interfere with the manner and the methods of the complainants' performance at work as long as the desired results are achieved. While admitting employer-employee relationship with the complainants, nonetheless, respondent Interserve avers that complainants are not its regular employees as they were allegedly mere contractual workers whose employment depends on the service contracts with the clients and the moment the latter sever said contracts, respondent has allegedly no choice but to either deploy the complainants to other principals, and if the latter are unavailable, respondent cannot allegedly be compelled to retain them.[5]

*The Decision of the LA*

On August 29, 2008, the LA rendered its decision granting the prayer in the complaint. In its assessment, the LA explained that the documentary evidence submitted by both parties confirmed the petitioners' allegation that they had been working for Coca-Cola for quite some time. It also noted that Coca-Cola never disputed the petitioners' contention that after working for

[5] Id. at 553-555.

Coca-Cola through the years, they were transferred to the various service contractors engaged by it, namely, Interim Services, Inc. *(ISI)*, Lipercon Services, Inc. *(Lipercon)*, People Services, Inc. *(PSI)*, ROMAC, and lastly, Interserve Management and Manpower Resources, Inc. *(Interserve)*. In view of said facts, the LA concluded that the petitioners were simply employees of Coca-Cola who were "seconded" to Interserve.[6]

The LA opined that it was highly inconceivable for the petitioners, who were already enjoying a stable job at a multi-national company, to leave and become mere agency workers. He dismissed the contention of Coca-Cola that the petitioners were employees of Interserve, stressing that they enjoyed the constitutional right to security of tenure which Coca-Cola could not compromise by entering into a service agreement manpower supply contractors, make petitioners sign employment contracts with them, and convert their employment status from regular to contractual.[7]

Ultimately, the LA ordered Coca-Cola to reinstate the petitioners to their former positions and to pay their full backwages.[8] The dispositive portion of the decision reads:

> WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered ordering respondent Coca-Cola Bottlers Phils., Inc. to reinstate complainants to their former or substantially equivalent positions, and to pay their full backwages which as of August 29, 2008 already amounts to ₱15,319,005.00, without prejudice to recomputation upon subsequent determination of the applicable salary rates and benefits due a regular route helper or substantially equivalent position on the plantilla of respondent CCBPI.
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> SO ORDERED.[9]

*The Decision of the NLRC*

Similar to the conclusion reached by the LA, the NLRC found that the petitioners were regular employees of Coca-Cola. In its decision, dated March 25, 2010, it found that the relationship between the parties in the controversy bore a striking similarity with the facts in the cases of *Coca-Cola Bottlers Philippines, Inc. v. National Organization of Workingmen*[10] *(N.O.W.)* and *Magsalin v. National Organization of Workingmen (Magsalin)*.[11] The NLRC, thus, echoed the rulings of the Court in the said

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[6] Id. at 556-557.
[7] Id. at 557.
[8] Id. at 559.
[9] Id.
[10] Docketed as G.R. 176024; Disposed by the Court via Minute Resolution, dated June 18, 2007; id. at 531-532. See also Minute Resolutions, id. at 547-548.
[11] 451 Phil. 254 (2003).

cases which found the employees involved, like the petitioners in this case, as regular employees of Coca-Cola. It stated that the entities ISI, Lipercon, PSI, ROMAC, and Interserve simply "played to feign that status of an employer so that its alleged principal would be free from any liabilities and responsibilities to its employees."[12] As far as it is concerned, Coca-Cola failed to provide evidence that would place the subject controversy on a different plane from *N.O.W* and *Magsalin* as to warrant a deviation from the rulings made therein.

As for the quitclaims executed by the petitioners, the NLRC held that the same could not be used by Coca-Cola to shield it from liability. The NLRC noted the Minutes of the National Conciliation and Mediation Board *(NCMB)* which stated that the petitioners agreed to settle their claims with Coca-Cola only with respect to their claims for violation of labor standards law, and that their claims for illegal dismissal would be submitted to the NLRC for arbitration.[13]

Coca-Cola sought reconsideration of the NLRC decision but its motion was denied.[14]

*The Decision of the CA*

Reversing the findings of the LA and the NLRC, the CA opined that the petitioners were not employees of Coca-Cola but of Interserve. In its decision, the appellate court agreed with the contention of Coca-Cola that it was Interserve who exercised the power of selection and engagement over the petitioners considering that the latter applied for their jobs and went through the pre-employment processes of Interserve. It noted that the petitioners' contracts of employment and personal data sheets, which were filed with Interserve, categorically stipulated that Interserve had the sole power to assign them temporarily as relievers for absent employees of their clients. The CA also noted that the petitioners had been working for other agencies before they were hired by Interserve.[15]

The CA also gave credence to the position of Coca-Cola that it was Interserve who paid the petitioners' salaries. This, coupled with the CA's finding that Coca-Cola paid Interserve for the services rendered by the petitioners whenever they substituted for the regular employees of Coca-Cola, led the CA to conclude that it was Interserve who exercised the power of paying the petitioners' wages.

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[12] Id. at 736-737.
[13] Id. at 741-742.
[14] Id. at 778-779.
[15] Id. at 1745-1746.

The CA then took into consideration Interserve's admission that they had to sever the petitioners' from their contractual employment because its contract with Coca-Cola expired and there was no demand for relievers from its other clients. The CA equated this with Interserve's exercise of its power to fire the petitioners.[16]

Finally, the CA was of the considered view that it was Interserve which exercised the power of control. Citing the Affidavit[17] of Noel F. Sambilay *(Sambilay)*, Coordinator of Interserve, the CA noted that Interserve exercised the power of control, monitoring the petitioners' attendance, providing them with their assignments to the delivery trucks of Coca-Cola, and making sure that they were able to make their deliveries.[18]

The CA then went on to conclude that Interserve was a legitimate independent contractor. It noted that the said agency was registered with the Department of Labor and Employment *(DOLE)* as an independent contractor which had provided delivery services for other beverage products of its clients, and had shown that it had substantial capitalization and owned properties and equipment that were used in the conduct of its business operations. The CA was, thus, convinced that Interserve ran its own business, separate and distinct from Coca-Cola.[19]

The petitioners sought reconsideration, but they were rebuffed.[20]

Hence, this petition, raising the following

**GROUNDS FOR THE PETITION/**
**ASSIGNMENT OF ERRORS**

**THE COURT OF APPEALS IS GUILTY OF GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN:**

**I.**

**RENDERING A DECISION THAT IS CONTRARY TO LAW AND ESTABLISHED JURISPRUDENCE**

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[16] Id. at 1746-1747.
[17] Id. at 351-352.
[18] Id. at 1747-1748.
[19] Id. at 1750-1751.
[20] Id. at 1843-1845.

**II.**

**MISAPPRECIATING FACTS WHICH GRAVELY PREJUDICED THE RIGHTS OF THE PETITIONERS.**[21]

In their petition for review on *certiorari*, the petitioners ascribed grave abuse of discretion on the part of the CA when it reassessed the evidence and reversed the findings of fact of the LA and the NLRC that ruled in their favor.[22]

The petitioners also claimed that the CA violated the doctrine of *stare decisis* when it ruled that Interserve was a legitimate job contractor. Citing *Coca Cola Bottlers, Philippines, Inc. v. Agito (Agito)*,[23] the petitioners argued that because the parties therein were the same parties in the subject controversy, then the appellate court should have followed precedent and declared Interserve as a labor-only contractor.[24]

In further support of their claim that Interserve was a labor-only contractor and that Coca-Cola, as principal, should be made ultimately liable for their claims, the petitioners asserted that Interserve had no products to manufacture, sell and distribute to customers and did not perform activities in its own manner and method other than that dictated by Coca-Cola. They claimed that it was Coca-Cola that owned the softdrinks, the trucks and the equipment used by Interserve and that Coca-Cola assigned supervisors to ensure that the petitioners perform their duties.[25]

Lastly, the petitioners insisted that both Coca-Cola and Interserve should be made liable for moral and exemplary damages, as well as attorney's fees, for having transgressed the petitioners' right to security of tenure and due process.[26]

## The Court's Ruling

Essentially, the core issue presented by the foregoing petition is whether the petitioners were illegally dismissed from their employment with Coca-Cola. This, in turn, necessitates a determination of the characterization of the relationship between route-helpers such as the petitioners, and softdrink manufacturers such as Coca-Cola, notwithstanding the

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[21] Id. at 12-13.
[22] Id. at 13-14.
[23] 598 Phil. 909 (2009).
[24] *Rollo*, pp. 14-16.
[25] Id. at 16-22.
[26] Id. at 22-23.

participation of entities such as ISI, Lipercon, PSI, ROMAC, and Interserve. The petitioners insist that ISI, Lipercon, PSI, ROMAC, and Interserve are labor-only contractors, making Coca-Cola still liable for their claims. The latter, on the other hand, asserts that the said agencies are independent job contractors and, thus, liable to the petitioners on their own.

*Procedural Issues*

Before the Court proceeds to resolve the case on its merits, it must first be pointed out that the petitioners erred in resorting to this petition for review on *certiorari* under Rule 45 of the Rules of Court and alleging, at the same time, that the CA abused its discretion in rendering the assailed decision.

Well-settled is the rule that grave abuse of discretion or errors of jurisdiction may be corrected only by the special civil action of *certiorari* under Rule 65. Such corrective remedies do not avail in a petition for review on *certiorari* which is confined to correcting errors of judgment only. Considering that the petitioners have availed of the remedy under Rule 45, recourse to Rule 65 cannot be allowed either as an add-on or as a substitute for appeal.[27]

Moreover, it is observed that from a perusal of the petitioners' arguments, it is quite apparent that the petition raises questions of facts, inasmuch as this Court is being asked to revisit and assess anew the factual findings of the CA and the NLRC. The petitioners fundamentally assail the findings of the CA that the evidence on record did not support their claims for illegal dismissal against Coca-Cola. In effect, they would have the Court sift through, calibrate and re-examine the credibility and probative value of the evidence on record so as to ultimately decide whether or not there is sufficient basis to hold the respondents accountable for their alleged illegal dismissal. This clearly involves a factual inquiry, the determination of which is the statutory function of the NLRC.[28]

Basic is the rule that the Court is not a trier of facts and this doctrine applies with greater force in labor cases. Questions of fact are for the labor tribunals to resolve.[29] Only errors of law are generally reviewed in petitions for review on certiorari under Rule 45 of the Rules of Court.

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[27] *Prudential Guarantee and Assurance Employee Labor Union, et al. v. National Labor Relations Commission,* 687 Phil. 351, 360-361 (2012); and *Cebu Woman's Club v. de la Victoria*, 384 Phil. 264, 270 (2000).

[28] *CBL Transit, Inc. v. National Labor Relations Commission*, 469 Phil. 363, 371 (2004).

[29] *Alfaro v. Court of Appeals*, 416 Phil. 310, 318 (2001).

In exceptional cases, however, the Court may be urged to probe and resolve factual issues when there is insufficient or insubstantial evidence to support the findings of the tribunal or the court below, or when too much is concluded, inferred or deduced from the bare or incomplete facts submitted by the parties or, where the LA and the NLRC came up with conflicting positions.[30] In this case, considering the conflicting findings of the LA and the NLRC on one hand, and the CA on the other, the Court is compelled to resolve the factual issues along with the legal ones.

*Substantial Issues*

The Court finds for the petitioners. The reasons are:

*First.* Contrary to the position taken by Coca-Cola, it cannot be said that route-helpers, such as the petitioners no longer enjoy the employee-employer relationship they had with Coca-Cola since they became employees of Interserve. A cursory review of the jurisprudence regarding this matter reveals that the controversy regarding the characterization of the relationship between route-helpers and Coca-Cola is no longer a novel one.

As early as May 2003, the Court in *Magsalin* struck down the defense of Coca-Cola that the complainants therein, who were route-helpers, were its "temporary" workers. In the said Decision, the Court explained:

> The basic law on the case is Article 280 of the Labor Code. Its pertinent provisions read:
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> > *Art. 280. Regular and Casual Employment.* The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.
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> > An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one year of

[30] *Nisda v. Sea Serve Maritime Agency*, 611 Phil. 291, 311 (2009).

> service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

Coca-Cola Bottlers Phils., Inc. is one of the leading and largest manufacturers of softdrinks in the country. Respondent workers have long been in the service of petitioner company. Respondent workers, when hired, would go with route salesmen on board delivery trucks and undertake the laborious task of loading and unloading softdrink products of petitioner company to its various delivery points.

Even while the language of law might have been more definitive, the clarity of its spirit and intent, i.e., to ensure a "regular" worker's security of tenure, however, can hardly be doubted. In determining whether an employment should be considered regular or non-regular, the applicable test is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. The standard, supplied by the law itself, is whether the work undertaken is necessary or desirable in the usual business or trade of the employer, a fact that can be assessed by looking into the nature of the services rendered and its relation to the general scheme under which the business or trade is pursued in the usual course. It is distinguished from a specific undertaking that is divorced from the normal activities required in carrying on the particular business or trade. But, although the work to be performed is only for a specific project or seasonal, where a person thus engaged has been performing the job for at least one year, even if the performance is not continuous or is merely intermittent, the law deems the repeated and continuing need for its performance as being sufficient to indicate the necessity or desirability of that activity to the business or trade of the employer. The employment of such person is also then deemed to be regular with respect to such activity and while such activity exists.

The argument of petitioner that its usual business or trade is softdrink manufacturing and that the work assigned to respondent workers as sales route helpers so involves merely "postproduction activities," one which is not indispensable in the manufacture of its products, scarcely can be persuasive. If, as so argued by petitioner company, only those whose work are directly involved in the production of softdrinks may be held performing functions necessary and desirable in its usual business or trade, there would have then been no need for it to even maintain regular truck sales route helpers. The nature of the work performed must be viewed from a perspective of the business or trade in its entirety and not on a confined scope.

The repeated rehiring of respondent workers and the continuing need for their services clearly attest to the necessity or desirability of their services in the regular conduct of the business or trade of petitioner company. The Court of Appeals has found each of respondents to have worked for at least one year with

> petitioner company. While this Court, in *Brent School, Inc. vs. Zamora,* has upheld the legality of a fixed-term employment, it has done so, however, with a stern admonition that where from the circumstances it is apparent that the period has been imposed to preclude the acquisition of tenurial security by the employee, then it should be struck down as being contrary to law, morals, good customs, public order and public policy. The pernicious practice of having employees, workers and laborers, engaged for a fixed period of few months, short of the normal six-month probationary period of employment, and, thereafter, to be hired on a day-to-day basis, mocks the law. Any obvious circumvention of the law cannot be countenanced. The fact that respondent workers have agreed to be employed on such basis and to forego the protection given to them on their security of tenure, demonstrate nothing more than the serious problem of impoverishment of so many of our people and the resulting unevenness between labor and capital. A contract of employment is impressed with public interest. The provisions of applicable statutes are deemed written into the contract, and "the parties are not at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by simply contracting with each other."[31]

Shortly thereafter, the Court in *Bantolino v. Coca-Cola*,[32] among others, agreed with the unanimous finding of the LA, the NLRC and the CA that the route-helpers therein were not simply employees of Lipercon, Peoples Specialist Services, Inc. or ISI, which, as Coca-Cola claimed were independent job contractors, but rather, those of Coca-Cola itself. In the said case, the Court sustained the finding of the LA that the testimonies of the complainants therein were more credible as they sufficiently supplied every detail of their employment, specifically identifying their salesmen/drivers were and their places of assignment, aside from the dates of their engagement and dismissal.

Then in 2008, in *Pacquing v. Coca-Cola Philippines, Inc. (Pacquing)*,[33] the Court applied the ruling in *Magsalin* under the principle of *stare decisis et non quieta movere* (follow past precedents and do not disturb what has been settled). It was stressed therein that because the petitioners, as route helpers, were performing the same functions as the employees in *Magsalin*, which were necessary and desirable in the usual business or trade of Coca- Cola Philippines, Inc., they were considered regular employees of Coca-Cola entitled to security of tenure.

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[31] *Magsalin v. National Organization of Workingmen, supra* note 11, at 260-262.
[32] 451 Phil. 839 (2003).
[33] 567 Phil. 323, 333 (2008).

A year later, the Court in *Agito*[34] similarly struck down Coca-Cola's contention that the salesmen therein were employees of Interserve, notwithstanding the submission by Coca-Cola of their personal data files from the records of Interserve; their Contract of Temporary Employment with Interserve; and the payroll records of Interserve. In categorically declaring Interserve as a labor-only contractor,[35] the Court found that the work of the respondent salesmen therein, constituting distribution and sale of Coca-Cola products, was clearly indispensable to the principal business of petitioner Coca-Cola.[36]

As to the supposed substantial capital and investment required of an independent job contractor, the Court stated that it "does not set an absolute figure for what it considers substantial capital for an independent job contractor, but it measures the same against the type of work which the contractor is obligated to perform for the principal."[37] The Court reiterated that the contractor, not the employee, had the burden of proof that it has the substantial capital, investment and tool to engage in job contracting. As applied to Interserve, the Court ruled:

> The contractor, not the employee, has the burden of proof that it has the substantial capital, investment, and tool to engage in job contracting. Although not the contractor itself (since Interserve no longer appealed the judgment against it by the Labor Arbiter), said burden of proof herein falls upon petitioner who is invoking the supposed status of Interserve as an independent job contractor. Noticeably, petitioner failed to submit evidence to establish that the service vehicles and equipment of Interserve, valued at ₱510,000.00 and ₱200,000.00, respectively, were sufficient to carry out its service contract with petitioner. Certainly, petitioner could have simply provided the courts with records showing the deliveries that were undertaken by Interserve for the Lagro area, the type and number of equipment necessary for such task, and the valuation of such equipment. Absent evidence which a legally compliant company could have easily provided, the Court will not presume that Interserve had sufficient investment in service vehicles and equipment, especially since respondents' allegation that they were using equipment, such as forklifts and pallets belonging to petitioner, to carry out their jobs was uncontroverted.
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> In sum, Interserve did not have substantial capital or investment in the form of tools, equipment, machineries, and work premises; and respondents, its supposed employees, performed work which was directly related to the principal business of petitioner. It is, thus, evident that Interserve falls under the definition of a labor-only contractor, under Article 106 of the Labor

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[34] *Supra* note 23.
[35] Id. at 934.
[36] Id. at 925.
[37] Id. at 927.

> Code; as well as Section 5(i) of the Rules Implementing Articles 106-109 of the Labor Code, as amended.[38]

As for the certification issued by the DOLE stating that Interserve was an independent job contractor, the Court ruled:

> The certification issued by the DOLE stating that Interserve is an independent job contractor does not sway this Court to take it at face value, since the primary purpose stated in the Articles of Incorporation of Interserve is misleading. According to its Articles of Incorporation, the principal business of Interserve is to provide janitorial and allied services. The delivery and distribution of Coca-Cola products, the work for which respondents were employed and assigned to petitioner, were in no way allied to janitorial services. While the DOLE may have found that the capital and/or investments in tools and equipment of Interserve were sufficient for an independent contractor for janitorial services, this does not mean that such capital and/or investments were likewise sufficient to maintain an independent contracting business for the delivery and distribution of Coca-Cola products.[39]

Finally, the Court determined the existence of an employer-employee relationship between the parties therein considering that the contract of service between Coca-Cola and Interserve showed that the former indeed exercised the power of control over the complainants therein.[40]

The Court once more asserted the findings that route-helpers were indeed employees of Coca-Cola in *Coca-Cola Bottlers Philippines, Inc. v. Dela Cruz*[41] and, recently, in *Basan v. Coca-Cola Bottlers Philippines, Inc.*[42] and that the complainants therein were illegally dismissed for want of just or authorized cause. Similar dispositions by the CA were also upheld by this Court in *N.O.W.*[43] and *Ostani*,[44] through minute resolutions.

It bears mentioning that the arguments raised by Coca-Cola in the case at bench even bear a striking similarity with the arguments it raised before the CA in *N.O.W.*[45] and *Ostani*.[46]

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[38] Id. at 929-930.
[39] Id. at 934.
[40] Id. at 930-934.
[41] 622 Phil. 886 (2009).
[42] G.R. Nos. 174365-66, February 4, 2015, 749 SCRA 541.
[43] Resolutions, G.R. 176024, dated March 14, 2007 and June 18, 2007; See *rollo*, pp. 531-532.
[44] Resolutions, G.R. No. 1771996, dated June 4, 2007 and September 3, 2007; id. at 547-548.
[45] See Decision of the Court of Appeals in CA-G.R. SP No. 82457, the subject of the Court's Minute Resolution in G.R. 176024; id. at 520-530.
[46] See Decision of the Court of Appeals in CA-G.R. SP No. 84524, the subject of the Court's Minute Resolution in G.R. No. 1771996; id. at 533-546.

From all these, a pattern emerges by which Coca-Cola consistently resorts to various methods in order to deny its route-helpers the benefits of regular employment. Despite this, the Court, consistent with sound pronouncements above, adopts the rulings made in *Pacquing* that Interserve was a labor-only contractor and that Coca-Cola should be held liable pursuant to the principle of *stare decisis et non quieta movere.*

It should be remembered that the doctrine of *stare decisis et non quieta movere* is embodied in Article 8 of the Civil Code of the Philippines which provides:

> ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

And, as explained in *Fermin v. People:*[47]

> The doctrine of *stare decisis* enjoins adherence to judicial precedents. **It requires courts in a country to follow the rule established in a decision of the Supreme Court thereof.** That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.[48]
>
> [Emphasis Supplied]

The Court's ruling in *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation* is also worth citing, *viz:*[49]

> Time and again, the court has held that **it is a very desirable and necessary judicial practice** that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. *Stare decisis et non quieta movere.* Stand by the decisions and disturb not what is settled. *Stare decisis* simply means that **for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same,** even though the parties may be different. It proceeds from the first principle of justice that, **absent any powerful countervailing considerations, like cases ought to be decided alike.** Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and

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[47] 573 Phil. 278 (2008).
[48] Id. at 287, citing *Castillo v. Sandiganbayan*, 427 Phil. 785, 793 (2002).
[49] 573 Phil. 320 (2008).

> decided by a competent court, **the rule of *stare decisis* is a bar to any attempt to relitigate the same issue**.[50]
>
> [Emphases Supplied]

Verily, the doctrine has assumed such value in our judicial system that the Court has ruled that "**[a]bandonment thereof must be based only on strong and compelling reasons**, otherwise, the becoming virtue of predictability which is expected from this Court would be immeasurably affected and the public's confidence in the stability of the solemn pronouncements diminished."[51]Thus, only upon showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of *stare decisis*, can the courts be justified in setting it aside.

In this case, Coca-Cola has not shown any strong and compelling reason to convince the Court that the doctrine of *stare decisis* should not be applied. It failed to successfully demonstrate how or why both the LA and the NLRC committed grave abuse of discretion in sustaining the pleas of the petitioners that they were its regular employees and not of Interserve.

*Second.* A reading of the decision of the CA and the pleadings submitted by Coca-Cola before this Court reveals that they both lean heavily on the service agreement[52] entered into by Coca-Cola and Interserve; the admission by Interserve that it paid the petitioners' salaries; and the affidavit of Sambilay who attested that it was Interserve which exercised the power of control over the petitioners.

The service agreements entered into by Coca-Cola and Interserve, the earliest being that dated January 1998,[53] (another one dated July 11, 2006)[54] and the most recent one dated March 21, 2007[55] – all reveal that *they were entered into **One,** after the petitioners were hired by Coca-Cola* (some of whom were hired as early as 1984)*; **Two,** after they were dismissed from their employment sometime in January 2004;* and ***Three,** after the petitioners filed their complaint for illegal dismissal on November 10, 2006 with the LA.*

To quote with approval the observations of the LA:

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[50] Id. at 337, citing Ty v. *Banco Filipino Savings and Mortgage Bank*, 511 Phil. 510, 520-521 (2005).
[51] *Pepsi-Cola Products, Phil., Inc. v. Pagdanganan*, 535 Phil. 540, 554-555 (2006).
[52] Denominated as Contract for Substitute or Reliever Services. *Rollo*, pp. 170-175.
[53] Id. at 384-388.
[54] Id. at 58-62.
[55] Id. at 170-174.

x x x The most formidable obstacle against the respondent's theory of lack of employer-employee relationship is that complainants have [been] performing the tasks of route-helpers for several years and that practically all of them have been rendering their services as such **even before respondent Interserve entered into a service agreement with Coca-Cola** sometime in 1998. Thus, the complainants in their position paper categorically stated the record of their service with Coca-Cola as having started on the following dates: Emmanuel Quintanar – October 15, 1994; Benjamin Durano – November 16, [1987]; Cecilio Delaving – June 10, 1991; Ricardo Gaborni – September 28, 1992; Romel Gerarman – June 20, 1995; Ramilo Gaviola – October 10, 1988; Joel John Aguilar – June 1, 1992; Restituto Agsalud – September 7, 1989; Martin Celis – August 15, 1995; Patricio Arios – June 2, 1989; Michael Bello – February 15, 1992; Lorenzo Quinlog – May 15, 1992; Junne Blaya – September 15, 1997; Santiago Tolentino, Jr. – May 29, 1989; Nestor Magnaye – February 15, 1996; Arnold Polvorido – February 8, 1996; Allan Agapito – April 15, 1995; Ariel Baumbad – January 15, 1995; Jose Lutiya – February 15, 1995; Edgardo Tapalla – August 15, 1994; Roldan Cadayona – May 14, 1996; Raynaldo Alburo – September 15, 1996; Rudy Ultra – February 28, 1997; Marcelo Cabili – November 15, 1995; Arnold Asiaten – May 2, 1992; Raymundo Macaballug – July 31, 1995; Joel Delena – January 15, 1991; Danilo Oquino – September 15, 1990; Greg Caparas – August 15, 1995; and Romeo Escartin – May 15, 1986.

It should be mentioned that the foregoing allegation of the complainants' onset of their services with respondent Coca-Cola **has been confirmed by the Bio-Data Sheets submitted in evidence by the said respondent [Coca-Cola]**. Thus, in the Bio-Data Sheet of complainant Quintanar (Annex "4"), he stated therein that he was in the service of respondent Coca-Cola continuously from 1993 up to 2002. Likewise, complainant Quinlog indicated in his Bio-data Sheet submitted to respondent Interserve that he was already in the employ of respondent Coca-Cola from 1992 (Annex "12"). Complainant Edgardo Tapalla also indicated in his Bio-Data Sheet that he was already in the employ of Coca-Cola since 1995 until he was seconded to Interserve in 2002 (Annex "20").

As a matter of fact, complainants' allegation that they were directly hired by respondent Coca-Cola and had been working with the latter for quite sometime when they were subsequently referred to successive agencies such as Lipercon, ROMAC, People's Services, and most recently, respondent Interserve, **has not been controverted by the respondents.** Even when respondent Coca-Cola filed its reply to the complainants' position paper, there is nothing therein which disputed complainant's statements of their services directly with the respondent even before it entered into service agreement with respondent Interserve.[56]

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[56] Id. at 639-640.

As to the payment of salaries, although the CA made mention that it was Interserve which paid the petitioners' salaries, no reference was made to any evidence to support such a conclusion. The Court, on the other hand, gives credence to the petitioners' contention that they were employees of Coca-Cola. Aside from their collective account that it was Coca-Cola's Route Supervisors who provided their daily schedules for the distribution of the company's products, the petitioners' payslips,[57] tax records,[58] SSS[59] and Pag-Ibig[60] records more than adequately showed that they were being compensated by Coca-Cola. More convincingly, the petitioners even presented their employee Identification Cards,[61] which expressly indicated that they were "[d]irect hire[es]" of Coca-Cola.

As for the affidavit of Sambilay, suffice it to say that the same was bereft of evidentiary weight, considering that he failed to attest not only that he was already with Interserve at the time of the petitioners hiring, but also that he had personal knowledge of the circumstances surrounding the hiring of the petitioners following their alleged resignation from Coca-Cola.

*Third.* As to the characterization of Interserve as a contractor, the Court finds that, contrary to the conclusion reached by the CA, the petitioners were made to suffer under the prohibited practice of labor-only contracting. Article 106 of the Labor Code provides the definition of what constitutes labor-only contracting. Thus:

> Article 106. Contractor or subcontractor.- x x x
>
> 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.

Expounding on the concept, the Court in *Agito* explained:

> The law clearly establishes an employer-employee relationship between the principal employer and the contractor's employee upon a finding that the contractor is engaged in "labor-only" contracting. Article 106 of the Labor Code categorically states: "There is `labor-only' contracting where the person supplying workers to an employer does not

[57] Id. at 1315-1318, 1320-1321, 1338-1339, 1342, 1346, 1353-1355.
[58] Id. at 1331, 1337, 1351.
[59] Id. at 1310, 1326-1327, 1333, 1336, 1343, 1344-1345, 1347.
[60] Id. at 1348-1350.
[61] Id. at 1312, 1314, 1319, 1322, 1324, 1328, 1329.

> have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer." **Thus, performing activities directly related to the principal business of the employer is only one of the two indicators that "labor-only" contracting exists; the other is lack of substantial capital or investment.** The Court finds that both indicators exist in the case at bar.
>
> [Emphases and Underscoring Supplied]

In this case, the appellate court considered the evidence of Interserve that it was registered with the DOLE as independent contractor and that it had a total capitalization of ₱27,509,716.32 and machineries and equipment worth ₱12,538859.55.[62] As stated above, however, **the possession of substantial capital is only one element**. Labor-only contracting exists when *any* of the two elements is present.[63] Thus, even if the Court would indulge Coca-Cola and admit that Interserve had more than sufficient capital or investment in the form of tools, equipment, machineries, work premises, *still*, it cannot be denied that the petitioners were performing activities which were directly related to the principal business of such employer. Also, it has been ruled that no absolute figure is set for what is considered 'substantial capital' because the same is measured against the type of work which the contractor is obligated to perform for the principal.[64]

More importantly, even if Interserve were to be considered as a legitimate job contractor, Coca-Cola failed to rebut the allegation that petitioners were transferred from being its employees to become the employees of ISI, Lipercon, PSI, and ROMAC, which were labor-only contractors. Well-settled is the rule that "[t]he contractor, not the employee, has the burden of proof that it has the substantial capital, investment, and tool to engage in job contracting." [65] In this case, the said burden of proof lies with Coca-Cola although it was not the contractor itself, but it was the one invoking the supposed status of these entities as independent job contractors.

*Fourth.* In this connection, even granting that the petitioners were last employed by Interserve, the record is bereft of any evidence that would show that the petitioners voluntarily resigned from their employment with Coca-Cola only to be later hired by Interserve. Other than insisting that the petitioners were last employed by Interserve, Coca-Cola failed not only to show by convincing evidence how it severed its employer relationship with the petitioners, but also to prove that the termination of its relationship with them was made through any of the grounds sanctioned by law.

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[62] Id. at 1751.
[63] *Aliviado v. Procter and Gamble, Inc.*, 665 Phil. 542, 554 (2011).
[64] *Coca Cola Bottlers, Philippines, Inc. v. Agito*, *supra* note 23, at 927.
[65] Id. at 929.

The rule is long and well-settled that, in illegal dismissal cases such as the one at bench, the burden of proof is upon the employer to show that the employees' termination from service is for a just and valid cause.[66] The employer's case succeeds or fails on the strength of its evidence and not the weakness of that adduced by the employee,[67] in keeping with the principle that the scales of justice must be tilted in favor of the latter in case doubts exist over the evidence presented by the parties.[68]

For failure to overcome this burden, the Court concurs in the observation of the LA that it was highly inconceivable for the petitioners, who were already enjoying a stable job at a multi-national company, to leave and become mere agency workers. Indeed, it is contrary to human experience that one would leave a stable employment in a company like Coca-Cola, only to become a worker of an agency like Interserve, and be assigned back to his original employer – Coca-Cola.

Although it has been said that among the four (4) tests to determine the existence of any employer-employee relationship, it is the "control test" that is most persuasive, the courts cannot simply ignore the other circumstances obtaining in each case in order to determine whether an employer-employee relationship exists between the parties.

**WHEREFORE**, the petition is **GRANTED.** The July 11, 2013 Decision and the December 5, 2013 Resolution of the Court of Appeals, in CA-G.R. SP No. 115469 are **REVERSED** and **SET ASIDE** and the August 29, 2008 Decision of the Labor Arbiter in NLRC Case Nos. 12-13956-07 and 12-14277-07, as affirmed *in toto* by the National Labor Relations Commission, is hereby **REINSTATED**.

**SO ORDERED.**

**JOSE CATRAL MENDOZA**
Associate Justice

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[66] *Harborview Restaurant v. Labro*, 605 Phil. 349, 354 (2009).
[67] *Philippine Long Distance Telephone Company, Inc. v. Tiamson*, 511 Phil. 384, 394 (2005).
[68] *Triple Eight Integrated Services, Inc. v. National Labor Relations Commission*, 359 Phil. 955, 964 (1998).

**WE CONCUR:**

**MARIA LOURDES P. A. SERENO**
Chief Justice

**ANTONIO T. CARPIO**
Associate Justice

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

**TERESITA J. LEONARDO-DE CASTRO**
Associate Justice

**ARTURO D. BRION**
Associate Justice

**DIOSDADO M. PERALTA**
Associate Justice

**LUCAS P. BERSAMIN**
Associate Justice

(On Leave)
**MARIANO C. DEL CASTILLO**
Associate Justice

**JOSE PORTUGAL PEREZ**
Associate Justice

**BIENVENIDO L. REYES**
Associate Justice

**ESTELA M. PERLAS-BERNABE**
Associate Justice

**MARVIC M.V.F. LEONEN**
Associate Justice

(No Part)
**FRANCIS H. JARDELEZA**
Associate Justice

**ALFREDO BENJAMIN S. CAGUIOA**
Associate Justice

# CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I hereby 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.

**MARIA LOURDES P. A. SERENO**
Chief Justice