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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

CONSOLIDATED BUILDING MAINTENANCE, INC. and SARAH DELGADO, Petitioners,	**G.R. No. 217301**
	Present:
	CARPIO, *J.*, *Chairperson,*
- versus -	PERALTA, PERLAS-BERNABE, CAGUIOA, and REYES, JR., *JJ.*
ROLANDO ASPREC, JR. and JONALEN BATALLER, Respondents.	Promulgated: 06 JUN 2018

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DECISION

REYES, JR., *J.*:

Before this Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 123429 dated November 15, 2013, and Resolution[3] dated March 4, 2015, denying the motion for reconsideration thereof. The assailed decision denied the petition for *certiorari* filed by Consolidated Building Maintenance, Inc. (CBMI) and its Human Resource Manager Sarah Delgado (collectively referred to as the petitioners) assailing the Resolution[4] dated September 28, 2011 of the National Labor Relations Commission (NLRC) and reinstated the Decision[5] dated June 27, 2011 of the Labor Arbiter (LA).

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1 *Rollo*, pp. 3-67.

2 Penned by Associate Justice Michael P. Elbinias, with Associate Justices Isaias P. Dicdican and Nina G. Antonio-Valenzuela, concurring; id. at 73-94.

3 Id. at 96-97.

4 Id. at 402-408.

5 Id. at 335-350.

The Antecedent Facts

CBMI is a corporation engaged in the business of providing janitorial, kitchen, messengerial, elevator maintenance and allied services to various entities.[6] Among CBMI's clients is Philippine Pizza, Inc.-Pizza Hut (PPI). For PPI, CBMI provides kitchen, delivery, sanitation and other related services pursuant to contracts of services, which are valid for one-year periods.[7] Records reveal that contracts of services were executed between PPI and CBMI in the years 2000[8] and from 2002 until 2010.[9]

Rolando Asprec, Jr. (Asprec) and Jonalen Bataller (Bataller) (collectively referred to as the respondents) alleged that they are regular employees of PPI, the former having commenced work as a "Rider" in January 2001 and the latter as "team member/slice cashier" in March 2008, both assigned at PPI's Pizza Hut, Marcos Highway, Marikina City Branch.

In his *Sinumpaang Salaysay* dated February 8, 2011, Asprec averred that after the expiration of his contract on November 4, 2001, PPI advised him to go on leave for one (1) month and ten (10) days. Thereafter, he was called for an interview by PPI's Area Manager, Rommel Blanco. After passing the same, he was told to proceed to the office of CBMI where he signed a contract. Asprec stated that except for the fact that the payslips were then issued by CBMI, work proceeded as usual with him being assigned at the same branch and performing his usual duties as "Rider/Production Person."[10]

Bataller had a similar experience as she narrated in her *Sinumpaang Salaysay* dated February 8, 2011. She related that before the expiration of her employment contract, she was informed by Pizza Hut Restaurant Manager Jun Samar that as a precondition for continued employment, she had to "submit first a resignation letter, had to pass through CBMI, and after six months she should go on vacation for one month." Thereafter, she was interviewed by PPI General Manager Edilberto Garcia. Bataller advanced that after she passed the interview, PPI prepared her documents and then forwarded the same to CBMI. She then resumed employment in December 2008 until July 23, 2010, with her being assigned at the same branch, performing her usual duties, and receiving the same salary.[11]

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6 Id. at 6.
7 Id. at 8.
8 Id. at 150-154.
9 Id. at 155-214.
10 Id. at 302-303.
11 Id. at 312-314.

On the other hand, CBMI posited that the respondents are its employees. CBMI claimed that the respondents were investigated based on an Incident Report by PPI's Store Manager Karl Clemente of an attempted theft on July 23, 2010. On which date, one Jessie Revilla (Revilla) supposedly delivered an excess of two boxes to PPI's slice booth at the Light Rail Train (LRT) Santolan, Pasig Station, which the respondents failed to report.

Anent the incident, Asprec asserted that he has no knowledge of such actions by Revilla and claimed that the same is outside his responsibility as a "production person." Nonetheless, Asprec claimed that on account of the incident, he has been suspended for eight days and then was eventually dismissed.[12]

On the other hand, Bataller, who was manning the slice booth at the LRT Santolan, Pasig Station on the day of the incident, claimed that when Revilla brought the three boxes of pizza which she ordered, she was busy attending to customers and thus did not notice that there has been an excess in the delivery. Nonetheless, she posited that immediately upon discovery, she called Revilla but the latter was already far from the station and as such could no longer go back. Revilla allegedly went back to get the two extra pizza boxes later that day.

Bataller likewise submitted that she has informed the area manager of the incident, but was thereafter asked to proceed to PPI's Marcos Highway branch. There, she was interviewed along with Asprec and Revilla, and then told to report to the head office. Starting July 24, 2010, she was allegedly no longer allowed to return to work.[13]

On November 12, 2010, the respondents filed their Complaint against the petitioners for constructive illegal dismissal, illegal suspension, and non-payment of separation pay.[14]

In their Complaint, the respondents argued two points: first, that their transfer from PPI to CBMI constituted labor-only contracting and was a mere scheme by PPI to prevent their regularization; and second, that they were illegally dismissed without cause and due process of law.[15]

On December 20, 2010, the respondents amended their Complaint by impleading PPI and including a prayer for reinstatement and payment of moral and exemplary damages and attorney's fees.[16]

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12 Id. at 404.
13 Id. at 74-75.
14 Id. at 258-263.
15 Id. at 340.
16 Id. at 264-269.

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Ruling of the LA

The LA rendered a Decision[17] on June 27, 2011, granting respondents' complaint in this wise:

> WHEREFORE, premises considered, the respondent companies are hereby found liable for having illegally dismissed [the respondents] and are hereby ordered TO REINSTATE them to their former positions without loss of seniority rights and TO PAY to EACH of the [respondents] their backwages from July 26, 2010 up to the date of actual reinstatement, which as of the date of this decision is P121,000.00 and P100,000.00 each as moral damages; P50,000.00 each as exemplary damages plus ten percent (10%) of the totality of the awards as and for attorney's fees.
>
> All other claims and charges are dismissed for lack of merit.
>
> SO ORDERED.[18]

In its decision, the LA applied the four-fold test and ruled that the respondents are employees of PPI. Consequently, the LA held that the arrangement between CBMI and PPI constitutes labor-only contracting and imposed upon them solidary liability for the respondents' claim.[19]

The LA ruled that as the employer, the burden is upon PPI to prove that the dismissal was based on a just cause and that there has been compliance with procedural due process, which it failed to do. Thus, the LA concluded that the respondents have been illegally dismissed.[20]

With this ruling, the petitioners and PPI appealed to the NLRC.[21]

Ruling of the NLRC

On September 28, 2011, the NLRC rendered its Resolution[22] affirming with modification the LA's Decision dated June 27, 2011. The dispositive portion of the resolution reads:

> WHEREFORE, premises considered, the appeal filed by [PPI] is GRANTED and is hereby DROPPED as party to the case.

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17 Id. at 335-350.
18 Id. at 350.
19 Id. at 342-346, 349.
20 Id. at 346-347.
21 Id. at 351-400.
22 Id. at 402-409.

> CBMI's appeal is DISMISSED. [The petitioners] are ordered to pay the [respondents] the following:
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> 1. backwages computed from August 20, 2010 up to the finality of this decision, and,
> 2. separation pay equivalent to one month's pay for every year of service, and
> 3. 10% attorney's fees based on the total judgment award.
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> SO ORDERED.[23]

In contrast with the finding of the LA, the NLRC held that the respondents are regular employees of CBMI. In so ruling, the NLRC relied heavily on the employment contract and CBMI's admission of the respondents' employment.[24] In this regard, and considering that there is no allegation of under payment or non-payment of wages, the NLRC ordered PPI to be dropped from the case.

Both the petitioners and the respondents filed their respective motions for partial reconsideration[25] but they were denied by the NLRC in its Resolution[26] dated November 29, 2011.

The parties herein separately filed their appeal *via* petitions for *certiorari* with the CA.[27]

In their Petition,[28] the petitioners alleged, among others, that the NLRC gravely abused its discretion in awarding backwages, separation pay, and attorney's fees despite the absence of finding that the respondents have been illegally dismissed.

On the other hand, the respondents in their petition claimed that the totality of evidence presented proves that they are the regular employees not of CBMI but of PPI. They asserted that their transfer to CBMI was a mere ploy to prevent their regularization, this bolstered by the fact that even after they signed with CBMI, they remained to be under the direct supervision of PPI.[29]

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23 Id. at 408.
24 Id. at 405.
25 Id. at 410-433.
26 Id. at 460-462.
27 Id. at 467-504; 505-525.
28 Id. at 467-504.
29 Id. at 519-520, 522.

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Ruling of the CA

On November 15, 2013, the CA rendered the herein assailed Decision[30] denying the petition for *certiorari*, to wit:

> IN VIEW OF ALL THESE, the Petition is DENIED. The assailed Resolutions of [NLRC] are SET ASIDE. The Decision of the [LA] is REINSTATED.
>
> SO ORDERED.[31]

The CA held that the NLRC erred in dropping PPI as a party to the case, as contrary to its findings, CBMI failed to prove that it was an independent contractor, or was engaged in permissible job contracting.

According to the CA, the totality of the circumstances surrounding the case established that it was PPI and not CBMI which has the discretion and control over the manner and method by which the respondents' works are to be accomplished.

Furthermore, considering that the respondents performed tasks which are necessary and desirable to the usual trade or business of PPI, and use tools and equipment of the latter in their work, the CA concluded that CBMI falls under the definition of a "labor only contractor," which is prohibited under Article 106 of the Labor Code. Hence:

> Being a labor-only contractor, CBMI was deemed to be an agent of Pizza Hut, which in turn, was therefore, the principal of CBMI. Concomitantly, an employer-employee relationship was created between Pizza Hut as principal, and private respondents as employees. Pizza Hut, as a result is solidarily liable with petitioners for private respondents' claims. x x x.[32] (Citations omitted)

As agent of PPI, the CA ruled that it is incumbent upon the petitioners to prove that the dismissal was for a just and valid cause which it failed to do, accordingly, the CA concluded that the dismissal is illegal and the respondents are entitled to their money claims.[33]

Petitioners sought a reconsideration[34] of the November 15, 2013 Decision but the CA denied it in its Resolution[35] dated March 4, 2015.

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30 Id. at 73-93.
31 Id. at 93.
32 Id. at 86.
33 Id. at 87, 92.
34 Id. at 98-117.
35 Id. at 96-97.

Issues

In the instant petition, the petitioners submit the following issues for this Court's resolution:

> I.
> WHETHER OR NOT THE HONORABLE CA GRAVELY AND SERIOUSLY ERRED IN THE APPLICATION OF LAW AND JURISPRUDENCE WHEN IT HELD THAT CBMI IS A LABOR-ONLY CONTRACTOR.
>
> II.
> WHETHER OR NOT THE HONORABLE CA GRAVELY AND SERIOUSLY ERRED IN THE APPLICATION OF LAW AND JURISPRUDENCE WHEN IT HELD THAT THE RESPONDENTS WERE ILLEGALLY DISMISSED.
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> III.
> WHETHER OR NOT THE HONORABLE CA GRAVELY AND SERIOUSLY ERRED IN THE APPLICATION OF LAW AND JURISPRUDENCE WHEN IT AWARDED BACKWAGES IN FAVOR OF THE RESPONDENTS.
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> IV.
> WHETHER OR NOT THE HONORABLE CA GRAVELY AND SERIOUSLY ERRED IN THE APPLICATION OF LAW AND JURISPRUDENCE WHEN IT AWARDED MORAL DAMAGES, EXEMPLARY DAMAGES, AND ATTORNEY'S FEES TO THE RESPONDENTS.[36]

In sum, the issues to be resolved by this Court in the instant case are the following: *first*, whether or not the respondents are employees of CBMI; and *second*, whether or not the respondents have been illegally dismissed and as such entitled to their monetary claims.

Ruling of the Court

The petition is partly meritorious.

Initially, it must be said that the issues of whether CBMI is an independent contractor, and the matter of respondents' employment status are questions of fact that are not the proper subjects of a petition for review under Rule 45 of the Rules of Court. However, considering the variance between the factual determination of the LA and the CA on the one hand,

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[36] Id. at 19-20.

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and the NLRC on the other, this case presents an exception for the Court to re-evaluate the evidence on record.[37]

The resolution of the first issue hinges on the determination of the status of CBMI, *i.e.,* whether or not it is a labor-only contractor or an independent contractor.

In support of its position that it is engaged in legitimate job contracting, CBMI attached for the Court's reference, its Certificate of Registration[38] with the Department of Labor and Employment (DOLE). Furthermore, it cites that it has been in operation for almost 50 years, counting various institutions among its clients.

Under the premises and based on the evidence presented by the parties, the Court is inclined to sustain the position of CBMI that it is an independent contractor.

Labor-only contracting is defined by Article 106 of the Labor Code of the Philippines, as an arrangement where a person, who does ***not*** have substantial capital or investment, supplies workers to an employer to perform activities which are directly related to the principal business of such employer. Furthermore, jurisprudence instructs that the existence of an independent contract relationship may be indicated by several factors, *viz.*:

> [S]uch as, but not necessarily confined to, whether the contractor was carrying on an independent business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the performance of specified pieces of work; the control and supervision of the workers; the power of the employer with respect to the hiring, firing and payment of the workers of the contractor; the control of the premises; the duty to supply premises, tools, appliances, materials and labor; and the mode, manner and terms of payment.[39]

The issue in this case being the status of the respondents, the pertinent Department Order (DO) implementing the aforecited provision of the Labor Code is DOLE DO No. 18-02, Series of 2002, the regulation in force at the time the respondents were hired and assigned to PPI.[40]

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37 *Royale Homes Marketing Corp. v. Alcantara*, 739 Phil. 744, 755-756 (2014); *South East International Rattan, Inc., et al. v. Coming*, 729 Phil. 298, 300 (2014); *Norkis Trading Co., Inc. v. Gnilo*, 568 Phil. 256, 265 (2008).

38 *Rollo*, p. 133.

39 *Coca-Cola Bottlers Phils., Inc. v. Agito, et al.*, 598 Phil. 909, 928 (2009), citing *San Miguel Corp. v. Maersk Integrated Services, Inc.*, 453 Phil. 543, 566-567 (2003).

40 *Leo V. Mago and Leilani E. Colobong v. Sunpower Philippines Manufacturing Limited*, G.R. No. 210961, January 24, 2018; *Superior Packaging Corp. v. Balagsay, et al.*, 697 Phil. 62, 71-72 (2012). *See DOLE Philippines, Inc. v. Esteva*, 538 Phil. 817 (2006).

DO No. 18-02 reiterates the prohibition against labor-only contracting, *viz.*:

> 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 the performance of the work of the contractual employee.
>
> x x x x

From the foregoing, it is clear that job contracting is not absolutely prohibited. Indeed, an employer is allowed to farm out the performance or completion of a specific job, work or service, within a definite or specified period, and regardless of whether the said task is to be performed or completed within or outside its premises. Job contracting is deemed legitimate and permissible when the contractor has substantial capital or investment, and runs a business that is independent and free from control by the principal. Further, in *Norkis Trading Co., Inc. v. Gnilo*,[41] it is required that "the agreement between the principal and the contractor or subcontractor assures the contractual employees' entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social welfare benefits."[42] The absence of any of these elements results in a finding that the contractor is engaged in labor-only contracting.

In addition to the foregoing, DO No. 18-02 requires that contractors and subcontractors be registered with the DOLE Regional Offices. The system of registration has been established under the DO to regulate and monitor contracting arrangements.[43] It is imposed to ensure that those contractors operate in accordance with law and its guiding principles.[44]

But unlike the elements of substantial capital or investment and control, the absence of registration merely gives rise to the *presumption* that the contractor is engaged in labor-only contracting.[45] Conversely, in the absence of evidence to the contrary, flowing from the presumption of

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41 568 Phil. 256 (2008).
42 *Rollo*, pp. 92-93.
43 D.O. No. 18-02, Series of 2002, Sections 11 and 12.
44 Id. at Section 1.
45 Id. at Section 11.

regularity in the performance of official functions, the existence of registration in favor of a contractor is a strong badge of legitimacy in favor of the contractor.

It is not disputed that CBMI is a duly licensed labor contractor by the DOLE.[46] As the primary agency tasked to regulate job contracting, DOLE is presumed to have acted in accordance with its mandate and after due evaluation of rules and regulations in its registration of CBMI.[47] The Certificate of Registration issued by DOLE recognizes CBMI as an independent contractor as of February 13, 2008, and regards the validity of the latter's registration as such until February 14, 2011,[48] well within the period relevant to this appeal. In this light, it then becomes incumbent upon the respondents to rebut the presumption of regularity to prove that CBMI is not a legitimate contractor as determined by the DOLE, which they failed to do.[49]

While the Certificate of Registration offered as evidence pertains only to a period of three years from February 13, 2008 until February 14, 2011, case law dictates that the status of CBMI may be evaluated on the basis of the corporation's activities and status prior to their registration.[50]

In this case, the Court finds that CBMI has established compliance with the requirements of legitimate job contracting previously cited.

Per documentary evidence attached by CBMI, the company's total assets at the time of filing of the respondents' complaint before the NLRC in 2010 amounted to Php 84,351,349.00.[51] Based on its attached Audited Financial Statements for the years 2008 and 2009, its total assets, which consists of cash, receivables, and property and equipment, amounted to Php 79,203,902.00[52] and Php 76,189,554.00,[53] respectively.

Likewise from the records, as of December 2010, CBMI has an authorized capital stock of 1,000,000.00 shares, half of which or 500,000.00 have been subscribed.[54] Its retained earnings for the years 2009 and 2010 consists of Php 6,433,525.00 and Php 10,988,890.00, respectively.[55] Incidentally, for the years 2005 to 2007 and 2012, CBMI's paid-up capital amounted to Php 3,500,000.00,[56] which is even beyond by

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46 *Rollo*, p. 133.

47 *Leo V. Mago and Leilani E. Colobong v. Sunpower Philippines Manufacturing Limited*, supra note 40; *Gallego v. Bayer Philippines, Inc., et al.*, 612 Phil. 250, 261-262 (2009).

48 *Rollo*, p. 133.

49 *Sasan, Sr., et al. v. NLRC, 4th Div., et al.*, 590 Phil. 685, 704 (2008).

50 *Almeda, et al., v. Asahi Glass Philippines, Inc.*, 586 Phil. 103, 106 (2008).

51 *Rollo*, p. 220.

52 Id. at 229.

53 Id. at 232.

54 Id. at 222.

55 Id. at 220.

56 Id. at 224, 227, 534.

the standard set by the DOLE D.O. No. 18-A, series of 2011, of what constitutes "substantial capital."[57]

Clearly, CBMI has substantial capital to maintain its manpower business. From the evidence adduced by CBMI, it is also clear that it runs a business independent from the PPI. Based on its registration with the Securities and Exchange Commission (SEC), CBMI has been in existence since 1967;[58] and has since provided a variety of services to entities in various fields, such as banking, hospitals, and even government institutions. CBMI counts among its clients, De La Salle University (DLSU), Philippine National Bank (PNB), Smart Communications, Inc., SM Supermalls, and the United States (US) Embassy. In the case of the US Embassy for instance, CBMI has been a service contractor for seven years.[59]

Above all, CBMI maintains the "right of control" over the respondents. For purposes of determining whether a job contractor is engaged in legitimate contracting or prohibited labor-only contracting, DO No. 18-02, defines the "right of control" as:

> [T]he 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 in achieving that end.[60]

From these, it can readily be inferred that the element of control that is determinative of an employer-relationship "does not merely relate to the mutually desirable result intended by the contractual relationship; they must have the nature of dictating the means and methods to be employed in attaining the result."[61] Nonetheless, as the Court emphasized in *Almeda, et al. v. Asahi Glass Philippines, Inc.*,[62] "[t]he power of control refers merely to the existence of the power and not to the actual exercise thereof. It is not essential for the employer to actually supervise the performance of duties of the employee; it is enough that the former has a right to wield the power."[63]

The contract of service, while of itself is not determinative of the relationship between the parties, nonetheless provides useful leads into the relationship between the principal on the one hand, and the job contractor on the other.[64] In this case, the "Contract of Services" between CBMI and PPI for the year 2000, imposes upon the former the obligation to provide not only the necessary personnel to perform "kitchen, busing, rider/delivery, and

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57 Per Sec. 3(i) of D.O. 18-A, series of 2011, "substantial capital" refers to paid-up capital stocks/shares of at least Three Million Pesos (Php3,000,000.00) in case of corporations.

58 *Rollo*, p. 121.

59 Id. at 141; *Neri v. National Labor Relations Commission*, 296 Phil. 610 (1993).

60 DOLE D.O. No. 18-02, Series of 2002, Section 5.

61 *Tongko v. The Manufacturers Life Insurance Co. (Phils.), Inc., et al.*, 655 Phil. 384, 402 (2011).

62 586 Phil. 103 (2008).

63 Id. at 113.

64 *Coca-Cola Bottlers Phils., Inc. v. Dela Cruz, et al.*, 622 Phil. 886, 905 (2009).

sanitation services" but as well to provide tools and equipment necessary for the rendition of such services.[65] Also, it is understood under the agreement that upon deployment, the personnel are already qualified and possessed of the necessary skills for their assigned tasks.[66] Pertinently, the said contract provides for the following:

> V. HIRING AND PAYROLL
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> The INDEPENDENT CONTRACTOR shall be responsible for the hiring, supervision, discipline, suspension, or termination of its own employees, including those assigned to the CLIENT. The employees of the INDEPENDENT CONTRACTOR shall be under its own payroll. The INDEPENDENT CONTRACTOR shall ensure the proper and prompt payment of each employee's wages and contributions to the SSS, Pag-Ibig and to other agencies as may be required under the law.
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> VI. SUPERVISION OF THE INDEPENDENT CONTRACTOR'S PERSONNEL
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> The INDEPENDENT CONTRACTOR shall provide coordinators/supervisors, such that there shall be at least one (1) coordinator/supervisor in each place of business of the CLIENT as listed in ANNEX A of the CONTRACT. The coordinator/supervisor shall direct the performance of the services rendered by the INDEPENDENT CONTRACTOR's employees. The coordinator/supervisor shall, likewise, ensure that the agreed number of personnel is on site and that the qualities of services are maintained at the agreed standards.[67]

The same obligations have been imposed upon CBMI, albeit differently worded, under its Contract of Services with PPI for the years 2002,[68] 2003,[69] 2004,[70] 2006,[71] 2007,[72] and 2008.[73] For the year 2009[74] and 2010,[75] the Contract of Services further detailed these provisions, in that the contract provided that CBMI has the "sole authority to control and direct the performance of the details of the work of its employees." Further, that any complaints or reports regarding the performance, misconduct, or negligence of the persons so deployed shall be made in writing and addressed by PPI to CBMI, the latter having the sole authority to discipline its employees.[76]

Without necessarily touching on the respondents' status prior to their employment with CBMI, in the instant controversy, the petitioners' control over the respondents is manifested by the fact that they wield and exercise

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65 *Rollo*, p. 150.
66 Id. at 151.
67 Id.
68 Id. at 155-160.
69 Id. at 161-166.
70 Id. at 167-171.
71 Id. at 173-177.
72 Id. at 178-182.
73 Id. at 183-187.
74 Id. at 194-204.
75 Id. at 205-214.
76 Id. at 197, 207-208.

the following powers over them: "selection and engagement, payment of wages, dismissal, and control over the employees' conduct."[77]

It is indisputable from the respondents' employment contracts[78] that they were hired by CBMI.[79] It was also the latter who assigned respondents at PPI's Marcos Highway Branch after they were briefed of company policies and their duties.[80] It is also CBMI who pays the respondents their salaries, and remits premiums to PhilHealth and Social Security System.[81]

The nature of CBMI's agreement with PPI requires the former to assign employees to perform specific services for the latter.[82] CBMI deploys employees already equipped of the skills based on the specific service demanded by PPI to be accomplished. Ultimately, the training necessary to acquire the skills essential to perform the duties of a rider for Asprec, and as a team member for Bataller, have been provided for by CBMI. Simply, the manner in which respondents perform their task are all dictated by CBMI, the sole concern of PPI being the result, *i.e.,* what and how many items are to be produced and where to deliver the same. Noteworthy, CBMI maintains the sole power to determine respondents' place of assignment and their transfer from one work assignment to another.[83] CBMI's manner of deployment and its choice as to who will be assigned for a specific task or location does not require the approval or acceptance of PPI.[84]

Moreover, it is evident from how this controversy unfolded that CBMI maintains the power to discipline the respondents. In accordance with the terms of the 2010 Contract of Services, an Incident Report[85] was prepared by PPI's Store Manager who then submitted the same to CBMI. Pursuant to its power of supervision over the respondents, CBMI initiated the investigation[86] and on the basis thereof imposed upon the respondents preventive suspension from August 5 to 19, 2010.[87] It may not be amiss to point out that the respondents' participation in these proceedings is indicative of their recognition of CBMI's disciplinary authority over them.[88]

All these, without doubt indicate that CBMI possesses the power of control over the respondents; which in turn supports the conclusion that CBMI carries a business independent of PPI.

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77 *See Philippine Airlines, Inc. v. NLRC,* 358 Phil. 919, 934-935 (1998).
78 *Rollo*, pp. 233-235.
79 Id. at 404-405.
80 Id. at 32, 236-237.
81 Id. at 238-341.
82 Supra notes 68-75.
83 *Rollo*, p. 9.; *Alilin, et al. v. Petron Corporation,* 735 Phil. 509, 528 (2014); *South Davao Development Company, Inc. v. Gamo,* 605 Phil. 604, 613 (2009).
84 *Rollo,* p. 141; *Neri v. National Labor Relations Commission,* supra note 59, at 618-619.
85 *Rollo*, p. 242.
86 Id. at 243-244.
87 Id. at 250-251.
88 Id. at 245-249; 252-253.

With respect to the respondents' dismissal, the Court affirms the decision of the NLRC.

CBMI, as the employer has the power to impose discipline upon the respondents who are its employees, which includes the imposition of the preventive suspension pending investigation.[89] However, as correctly noted by the NLRC, the extension of the period of suspension by the CBMI is unwarranted under the attendant circumstances.

Section 4, Rule XIV of the Omnibus Rules Implementing the Labor Code is explicit in that the period of preventive suspension should not exceed 30 days, after which, the employee must be reinstated and paid the wages and other benefits due, *viz.*:

> SECTION 4. *Period of suspension.* - No preventive suspension shall last longer than 30 days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker.

To recall, in this case, after the conduct of administrative hearing, the respondents have been suspended by CBMI for a period of 15 days or from August 5 to 19, 2010.[90] Thereafter, allegedly due to the reduced need of PPI and on account of the incident subject of investigation, respondents have been placed on "temporary-lay-off status" for a period of six months or from August 20, 2010 until February 20, 2011.[91] Succinctly, respondents have been under preventive suspension for more than the maximum period allowed by law, without any word as to the result of the investigation, and without having been reinstated to their former or to a substantially equivalent position, which thus renders the period of extended suspension illegal. It bears to stress albeit at the risk of repetition, the Omnibus Rules Implementing the Labor Code requires that the employer act within the 30-day period of preventive suspension by concluding the investigation either by absolving the respondents of the charges or meting corresponding penalty if liable. Otherwise, the employer must reinstate the employee, or extend the period of suspension provided the employee's wages and benefits are paid in the interim.[92] Failure by the employer to comply with these, the preventive suspension is deemed illegal as it amounts to a constructive dismissal.[93]

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89 Omnibus Rules Implementing the Labor Code, Rule XIV, Section 3.

90 *Rollo,* pp. 250-251.

91 Id. at 254-255.

92 *Genesis Transport Service, Inc., et al. v. Unyon ng Malayang Manggagawa ng Genesis Transport, et al.,* 631 Phil. 350, 359 (2010).

93 *Mandapat v. Add Force Personnel Services, Inc., et al.,* 638 Phil. 150, 156 (2010).

In an attempt to justify its action, CBMI alleged that the respondents were merely placed under "floating status," due to a decline in the demand of PPI for respondents' services. According to CBMI, the placing of respondents in a "floating status" due to unavailability of work has long been recognized as a valid exercise of management prerogative.[94] In support thereof, CBMI cites Article 286[95] of the Labor Code, to wit:

> ART. 286. *When employment not deemed terminated.* - The *bona-fide* suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

In the case of *Sebuguero, et al. v. NLRC*,[96] the term "lay-off" or what is also referred to as retrenchment is defined as:

> [T]he termination of employment initiated by the employer through no fault of the employee's and without prejudice to the latter, resorted to by management during periods of business recession, industrial depression, or seasonal fluctuations, or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program or the introduction of new methods or more efficient machinery, or of automation. Simply put, it is an act of the employer of dismissing employees because of losses in the operation of a business, lack of work, and considerable reduction on the volume of his business, a right consistently recognized and affirmed by this Court.[97] (Citations omitted)

When a "lay-off" is permanent, it amounts to dismissal. However, when the same is temporary, it is regarded as a mere suspension of the employment status of the employee.[98] Notably, while the Court recognizes lay-off as an exercise of management prerogative, jurisprudence requires that the same must be attended by good faith and that notice must be given to the employees concerned and the DOLE at least one (1) month prior to the intended date of lay-off or retrenchment.[99]

Article 286 of the Labor Code, as cited by CBMI, likewise contemplates lay-off, particularly that which is temporary in nature, and as such must be for a period not exceeding six months. In which case, apart

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94 *Rollo*, p. 48.

95 Now Article 301, per Department Advisory No. 01, Renumbering the Labor Code of the Philippines, as Amended, Series of 2015; pursuant to Section 5 of Republic Act No. 10151, entitled "An Act Allowing the Employment of Night Workers, thereby Repealing Articles 130 and 131 of Presidential Decree Number Four Hundred Forty-Two, as amended, otherwise known as The Labor Code of the Philippines," July 26, 2010.

96 318 Phil. 635 (1995).

97 Id. at 646.

98 *Lopez v. Irvine Construction Corp., et al.*, 741 Phil. 728, 740 (2014).

99 Id. at 741.

from causes attributable to the employer, the temporary suspension of employment may also be on account of the employee's performance of military or civic duty.

To the Court, CBMI's claim that the suspension falls under Article 286 of the Labor Code is a mere afterthought to justify its extension of respondents' period of preventive suspension. For one, the equivocal wording of the notice evinces the real reason behind the extended period of suspension, *i.e.,* the attempted stealing incident. The notices dated August 23, 2010 to the respondents read:

> CBMI would like to inform you that due to the reduced needs of its client for your services, **and** because of the incident that happened last July 23, 2010, your assignment as Team Member PH Marcos H-way have been subjected to further investigation.
>
> Meanwhile, the management has no option but to place you on temporary – lay off or status effective August 20, 2010 until February 20, 2011. Further, CBMI will expedite effort to process your employment as soon as there is available project that fits your qualification and expertise.
>
> In view thereof, please coordinate with the undersigned for possible transfer of assignment.[100] (Emphasis Ours)

The said conclusion is bolstered by the fact that other than its bare allegation, CBMI failed to adduce evidence to prove that there has indeed been a reduction in the demand of PPI for the services it provides. Likewise, PPI, despite having all the opportunity to do so, did not corroborate CBMI's submission. In addition, CBMI also failed to comply with the mandatory one-month notice requirement. The law requires that notice be given one month prior to the intended date of lay-off. In this case, the notice to the respondents dated August 23, 2010 has been sent *via* registered mail on August 20, 2010, for an intended period of lay-off starting August 20, 2010 to February 20, 2011. The records are bereft of proof that CBMI furnished a copy of the said notice to the DOLE.

Considering the dire consequences of "lay-off" to an employee, jurisprudence places upon the employer the burden to prove with sufficient and convincing evidence the justification therefor, and as well compliance with the parameters set forth by law.[101] On account of CBMI's failure to discharge this burden in this case, the Court views that the extended period of suspension is illegal, which thus entitles the respondents to their money claims.

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100 Id. at 254-255.

101 *Lopez v. Irvine Construction Corp., et al.,* supra note 98.

WHEREFORE, in consideration of the foregoing disquisitions, the petition is **PARTLY GRANTED.** Accordingly, the Decision dated November 15, 2013 of the Court of Appeals in CA-G.R. SP No. 123429, is hereby **REVERSED and SET ASIDE**. The Resolution dated September 28, 2011 of the National Labor Relations Commission in NLRC NCR Case No. 11-15889-10 and NLRC NCR Case No. 11-16067-10 insofar as it holds petitioner Consolidated Building Maintenance, Inc. liable for the money claims of respondents Rolando Asprec, Jr. and Jonalen Bataller is hereby **REINSTATED.**

In addition, respondents Rolando Asprec, Jr. and Jonalen Bataller are entitled to interest on the monetary awards at the rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

ANDRES B. REYES, JR.
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

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.

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. No. 296
The Judiciary Act of 1948,
as amended)