6

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **December 3, 2014,** *which reads as follows*:

"***G.R. No. 170104 - CLUB FILIPINO, INC., Petitioner, v. NATIONAL LABOR RELATIONS COMMISSION, ELVIS DE ANDRES, RICHMOND BARBAS, ELPIDIO CATUBAY, JOSEPH SANTOS, ROWEL FULGENCIO, GILBERT GALAPON, RICARDO KABIGTING, ALBERT MANIPOL, RENATO NOBLE, ALGER ONDO, RUSTOM DOSIM, REX FULGENCIO, RENATO SANTOS, JOSE SEGISMUNDO, MANUEL VELCHES, SANTIAGO VEGA, and FERNANDO PASION, Respondents.***

Petitioner Club Filipino, Inc. is a non-stock, non-profit corporation purporting to be a social, civic and sports club the operations of which are maintained through the monthly dues of its members. Said club has a restaurant, several function rooms, a swimming pool, and other sports and recreational facilities for the use of its members and their dependents.

On January 26, 1998, a group of waiters (private respondents herein) working at petitioner's premises filed a complaint for regularization and payment of accrued benefits. In their position paper, private respondents alleged that despite their several years of service with the club doing work that was directly related to the latter's principal business they were denied regularization and the benefits due to regular employees. They likewise claimed to have been illegally dismissed on the pretext that their contracts have expired on January 31, 1998. Thus, they prayed to be declared regular employees entitled to the same benefits as other regular employees

9

under the law and the collective bargaining agreement (CBA) and to be reinstated to their former positions.

For its part, petitioner asserted that private respondents were employed by its independent labor contractors, McAlmond General Services, Inc. and Power Clean & General Services Co., and that there was no employer-employee relationship between it and private respondents. Petitioner further argued that it was not engaged in the restaurant business and its operation of a restaurant was only incidental to the main purpose for which the club was established. Consequently, even assuming that private respondents were the club's employees, their work was not necessary or desirable to the club's usual operations. Private respondents were allegedly only engaged when there were functions or parties.

In a Decision dated July 10, 1999, the Labor Arbiter dismissed the complaint for lack of merit.

However, on appeal, the National Labor Relations Commission (NLRC) took the side of private respondents and set aside the Labor Arbiter's decision. Instead, the NLRC entered a new judgment directing the club to regularize and reinstate private respondents to their former positions without loss of seniority rights and privileges and to pay them full backwages as regular employees from the date of their dismissal to the date of their actual reinstatement and their unprescribed differentials in salary, 13th month pay, service incentive leave pay, and legal holiday pay.

According to the NLRC, although petitioner was a non-stock, socio-civic sports club, it is engaged in the restaurant business. It was undisputed that the club operated a restaurant and for that purpose it maintained a main dining room and several function rooms. While the club also maintained sports and swimming facilities, part of its principal business was the maintenance of its restaurant where members and guests dined and enjoyed its amenities. The NLRC also noted that the club had a regular workforce of waiters who perform tasks necessary and desirable to the main business of the club. Private respondents performed exactly the same tasks as these regular waiters and there was no reason why private respondents should not be considered regular employees as well. Finally, the NLRC was not convinced that private respondents were the employees of the club's service contractors. It ruled that the club failed to prove that it had entered into service contracts with said agencies and that these agencies were independent contractors with substantial capital and investment. Therefore, it was evident that the intervention of such agencies was only to preclude private respondents from obtaining security of tenure.

In its motion for reconsideration, petitioner reiterated the lack of employer-employee relationship in the case at bar and that assuming there was an employer-employee relationship between it and private respondents, it can only be considered casual employment. Petitioner also manifested that four of the respondents (Albert H. Manipol, Ricardo Kabigting, Gilbert G. Galapon, and Santiago A. Vega) each executed a Release and Quitclaim in its favor. In a Resolution dated December 10, 2001, the NLRC denied the motion for reconsideration and refused to accept the quitclaims which the NLRC deemed void for being contrary to law, morals, good customs, public order or public policy since the consideration (₱10,000.00) for the quitclaims was unreasonable compared to the monetary award to which each respondent was entitled.

Undeterred, petitioner filed a petition for *certiorari* under Rule 65 with the Court of Appeals on the grounds that: (a) petitioner had no employer-employee relationship with the private respondents as the latter were employees of independent labor contractors; and (b) private respondents cannot be regular employees as they perform functions not necessary or desirable to the usual business or trade of the employer.

The Court of Appeals issued a Decision[1] dated August 1, 2005 affirming the resolutions of the NLRC. This prompted the petitioner to file a motion for reconsideration, arguing that:

(a) As the complaint was allegedly signed by only seven of the seventeen private respondents while the position paper and appeal were only signed by ten respondents, the NLRC exceeded its jurisdiction by including in its judgment persons who are not parties to the case and persons who have already signed quitclaims and releases. At this point, petitioner informed the Court of Appeals that three more respondents executed quitclaims: Reximo Fulgencio, Fernando Pasion, and Richmond Barbas.

(b) The NLRC exceeded its jurisdiction in making a finding of illegal dismissal since the same was not submitted as an issue in the complaint or private respondents' position paper.

(c) The NLRC erred in not considering that private respondents were contractual workers of the named manpower agencies and that their

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[1] *Rollo*, pp. 29-36; penned by Associate Justice Estela M. Perlas-Bernabe (now a member of this Court) with Associate Justices Elvi John S. Asuncion and Hakim S. Abdulwahid, concurring.

services were secured on a day-to-day basis depending on the existence of reservations by its members of its function room for events.

In a Resolution[2] dated October 14, 2005, the Court of Appeals denied the motion for reconsideration and held that (a) petitioner belatedly raised the issue of who are the proper parties to the case since its petition centered only on the issue of whether respondents are its regular employees and even included an enumeration of the names of all seventeen respondents, and (b) apart from petitioner's belated objection to the NLRC ruling against the quitclaims, said releases and quitclaims were invalid for not being approved by the Labor Arbiter that handled the case.

Hence, the club filed the present petition for review on *certiorari* under Rule 45 and the parties filed their pleadings on their respective positions. In the interim, petitioner filed a motion for issuance of a temporary restraining order enjoining the NLRC from issuing a writ of execution or performing any act that would undermine the jurisdiction of this Court. This motion was granted in a Resolution dated February 5, 2007 subject to petitioner's filing of a surety or cash bond in the amount of ₱600,000.00 to be effective until the case is finally decided, resolved or terminated.

Essentially, petitioner elevated to this Court for consideration the following issues:

1. WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS ERRED AND [HAD] VIOLATED THE LAW, THE RULES, AND ESTABLISHED JURISPRUDENCE WHEN IT RULED THAT AN EMPLOYER-EMPLOYEE RELATIONSHIP EXISTS BETWEEN HEREIN PETITIONER AND HEREIN PRIVATE RESPONDENTS.

2. THE HONORABLE COURT OF APPEALS MAY HAVE ERRED AND [HAD] VIOLATED THE LAW, [THE] RULES, AND ESTABLISHED JURISPRUDENCE WHEN IT DECIDED TO INCLUDE IN ITS DECISION PERSONS WHO ARE NOT PARTIES TO THE CASE, AND WHO WERE NOT EVEN APPELLANTS TO THE APPEAL THAT WAS SUBMITTED TO ITS JURISDICTION.

3. THE HONORABLE COURT OF APPEALS ERRED AND [HAD] VIOLATED THE LAW, THE RULES, AND ESTABLISHED JURISPRUDENCE IN DECLARING AS LEGAL ITS ORDER DECLARING THE ILLEGALITY OF THE DISMISSAL OF THE

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[2] Id. at 38-42.

PRIVATE RESPONDENTS WHEN SUCH ISSUE HAS NOT BEEN A SUBJECT OF THE CASE THAT THEY FILED WITH THE LABOR ARBITER *A QUO*.

4. THE HONORABLE COURT OF APPEALS ERRED AND [HAD] VIOLATED THE LAW, THE RULES, AND ESTABLISHED JURISPRUDENCE WHEN IT DECLARED THE QUITCLAIMS AND RELEASES EXECUTED BY CERTAIN PRIVATE RESPONDENTS AS NULL AND VOID FOR BEING CONTRARY TO LAW, PUBLIC ORDER AND PUBLIC POLICY.[3]

After a careful perusal of the records, we find no merit in petitioner's **first**, **third** and **fourth** assignment of errors and dispose of them as follows:

On the **first issue**, we agree with the NLRC and the Court of Appeals that petitioner failed to prove its allegation that private respondents are the employees of its independent contractors. No service agreements with the purported independent contractors were ever presented. Petitioner likewise offered no evidence that McAlmond General Services, Inc. and Power Clean & General Services Co. had sufficient capital to be considered independent contractors.

In jurisprudence, to determine the existence of an employer-employee relationship, four elements generally need to be considered, namely: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct. These elements or indicators comprise the so-called "four-fold" test of employment relationship.[4] Of the four, the control test is the most important element.[5]

Apart from a feeble attempt to show that these contractors billed petitioner for private respondents' services through isolated billing statements, there is nothing on record to show that these contractors selected and hired respondent waiters; controlled the means and method by which said waiters accomplished their work; paid for their salaries; and held the power of dismissal over them. On the other hand, we quote with approval the following disquisition of the appellate court:

> Records show that petitioner did not refute private respondents' claims that they were directly under the control and supervision of

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3 Id. at 11.
4 *David v. Macasio*, G.R. No. 195466, July 2, 2014.
5 *Lopez v. Metropolitan Waterworks and Sewerage System*, 501 Phil. 115, 137 (2005).

> petitioner's Head Waiters and Captain Waiters such that their duties, place of assignment, and schedules were determined by the latter. x x x
>
> The element of payment of wages is likewise present in this case considering private respondents' uncontroverted allegation[6] that they received their salaries from petitioner's cashier. x x x[7]

Having established the employer-employee relationship between petitioner and respondent waiters, we concur with the NLRC and the Court of Appeals that the private respondents should be considered regular employees of petitioner. As the Court discussed in *Goma v. Pamplona Plantation, Inc.*[8]:

> As can be gleaned from [Article 280 of the Labor Code], there are two kinds of regular employees, namely: (1) those who are engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; and (2) those who have rendered at least one year of service, whether continuous or broken, with respect to the activity in which they are employed. Simply stated, regular employees are classified into: regular employees by nature of work; and regular employees by years of service. **The former refers to those employees who perform a particular activity which is necessary or desirable in the usual business or trade of the employer, regardless of their length of service**; while the latter refers to those employees who have been performing the job, regardless of the nature thereof, for at least a year. x x x. (Emphasis supplied.)

We see no reason to overturn the findings of the tribunals *a quo* that private respondents perform tasks necessary and desirable to petitioner's business since providing restaurant and catering services to the club's members and guests is an integral part of its day-to-day operations. Thus, private respondents should be deemed regular employees of petitioner.

We cannot subscribe to petitioner's view, belatedly discussed only in its motion for reconsideration filed with the appellate court, that private respondents are project employees. Jurisprudence states that the principal test for determining whether an employee is properly characterized as "project employee," as distinguished from "regular employee," is whether or not "the project employee" was assigned to carry out "a specific project or undertaking," the duration and scope of which were specified at the time

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[6] There are samples of statements of earnings and deductions issued by petitioner in favor of respondents showing that the latter are paid by petitioner on a bi-weekly basis. *See* records, pp. 30-37.

[7] *Rollo*, p. 34.

[8] 579 Phil. 402, 411-412 (2008).

the employees were engaged for that project.[9] Further, in *GMA Network, Inc. v. Pabriga*,[10] the Court held:

> Thus, in order to safeguard the rights of workers against the arbitrary use of the word "project" to prevent employees from attaining the status of regular employees, **employers claiming that their workers are project employees should not only prove that the duration and scope of the employment was specified at the time they were engaged, but also that there was indeed a project.** As discussed above, the project could either be (1) a particular job or undertaking that is within the regular or usual business of the employer company, but which is distinct and separate, and identifiable as such, from the other undertakings of the company; or (2) a particular job or undertaking that is not within the regular business of the corporation. As it was with regard to the distinction between a regular and casual employee, the purpose of this requirement is to delineate whether or not the employer is in constant need of the services of the specified employee. **If the particular job or undertaking is within the regular or usual business of the employer company and it is not identifiably distinct or separate from the other undertakings of the company, there is clearly a constant necessity for the performance of the task in question, and therefore said job or undertaking should not be considered a project.** (Emphases supplied.)

In the case at bar, we are hard put to characterize each social function or event reserved by the club's members as a separate project that can be identifiably distinguished from the other undertakings of the club. As earlier discussed, the club's restaurant and catering services appear to be a regular component of its day-to-day operations and part of the usual amenities provided to its members and guests. Moreover, there was no convincing proof that private respondents' services as waiters were only engaged for functions or during peak months. Petitioner presented no contracts with private respondents detailing their supposed project employment. Even though the absence of a written contract does not by itself grant regular status to private respondents, such a contract is evidence that private respondents were informed of the duration and scope of their work and their status as project employees.[11]

With respect to the **third issue**, while it is true that the complaint did not state that private respondents were praying for reinstatement, the allegation of illegal dismissal and prayer for reinstatement were made in

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9 *Equipment Technical Services v. Court of Appeals,* 589 Phil. 116, 124 (2008).
10 G.R. No. 176419, November 27, 2013, 710 SCRA 690, 703-704.
11 *Omni Hauling Services, Inc. v. Bon*, G.R. No. 199388, September 3, 2014.

private respondents' position paper.[12] In *Nissan North Edsa Balintawak, Quezon City v. Serrano, Jr.*,[13] we affirmed the ruling of the Court of Appeals that Section 3, Rule V of the NLRC Rules of Procedure allows claims not made in the complaint to be still taken up in the position paper. In other cases, we held that the complaint is not the only document from which the complainant's cause of action is determined in a labor case[14] and that the cause of action should be ascertained from an evaluation of the complaint and the complainant's position paper.[15]

On the **fourth issue**, we affirm the NLRC and the Court of Appeals' finding that the quitclaims in the case at bar are invalid. Both sets of quitclaims were for amounts drastically less than the monetary awards to which private respondents were entitled. As oft repeated in jurisprudence, quitclaims are frowned upon as contrary to public policy and would be ineffective in barring recovery of the full measure of a worker's rights.[16] Moreover, statements in the quitclaims that the affiants thereto acknowledge that they are casual or temporary employees or that they are not entitled to the monetary awards in the NLRC decision for want of legal basis are contrary to law, public order, public policy, morals, or good customs. In the past, we upheld the principle that a quitclaim or waiver is patently invalid when premised on a wrong conviction or belief.[17] It is for the labor tribunals and the courts to determine the nature of private respondents' employment and their entitlement to any monetary claims. Indeed, such statements are even more reprehensible considering that the NLRC decision has been upheld by the Court of Appeals and now, by this Court. Lastly, we find no reason to disturb the Court of Appeals' ruling that the amounts received by private respondents as consideration for the quitclaims should be deducted from the monetary awards due to them under judgment. Such deduction is consistent with prevailing jurisprudence.[18]

Anent the **second issue**, we do not agree with petitioner that there were complainants who were never made a party to this case. While only seven complainants signed the standard complaint form, there was a

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12 Notably, the complaint was filed on January 26, 1998 while private respondents were allegedly dismissed due to termination of contract only on January 31, 1998.

13 606 Phil. 222 (2009).

14 *Tegimenta Chemical Phils. v. Buensalida*, 577 Phil. 534, 542 (2008).

15 *Samar-Med Distribution v. National Labor Relations Commission,* G.R. No. 162385, July 15, 2013, 701 SCRA 148, 159; *Our Haus Realty Development v. Parian,* G.R. No. 204651, August 6, 2014.

16 *Universal Robina Sugar Milling Corporation v. Caballeda,* 582 Phil. 118, 134-135 (2008).

17 *Canlubang Security Agency Corporation v. National Labor Relations Commission*, G.R. No. 97492, December 8, 1992, 216 SCRA 280, 286.

18 *Philippine Carpet Manufacturing Corporation v. Tagmayon*, G.R. No. 191475, December 11, 2013, 712 SCRA 489, 507.

handwritten notation on the complaint itself that the other complainants were listed in a separate sheet. The records show that there was indeed a separate sheet containing the employment details and signatures of other complainants.

As for the fact that only ten out of seventeen complainants signed the verification of the position paper, this is of no moment. It is settled that the lack of verification of the position paper is a formal defect and not a substantial one.[19] In pleadings that require verification, it is enough that those who signed the verification are unquestionably real parties in interest, who undoubtedly have sufficient knowledge and belief to swear to the truth of the allegations in the pleading.[20] Further, in *Automotive Engine Rebuilders, Inc. (AER) v. Progresibong Unyon ng mga Manggagawa sa AER*,[21] we adopted the ruling that the number of parties to a complaint corresponds to the number of signatories thereto and not necessarily to the names commonly appearing or identified in the position paper.

However, what we do find material is the fact that only ten out of the seventeen complainants signed the Appeal from the decision of the Labor Arbiter and nowhere does it appear on record that the signing complainants were authorized by the non-signing complainants to file an appeal on the latter's behalf. *Andaya v. National Labor Relations Commission*[22] teaches that the decision of the Labor Arbiter dismissing the complaint for illegal dismissal becomes final and executory when the complainant opts not to appeal. This is in line with the doctrine that a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision. Due process prevents the grant of additional awards to parties who did not appeal.[23] For this reason, we are constrained to hold that private respondents who did not sign the Appeal are bound by the Labor Arbiter's decision, which has become final and executory with respect to them, and they shall not benefit from the reversal of the same on appeal.

WHEREFORE, premises considered, the Court of Appeals' Decision dated August 1, 2005 and Resolution dated October 14, 2005 in CA-G.R. SP No. 69387 are **AFFIRMED** with the **MODIFICATION** that

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19 *St. Michael Academy v. National Labor Relations Commission*, 354 Phil. 491, 511 (1998).
20 *Torres v. Specialized Packaging Development Corporation*, 477 Phil. 540, 550 (2004).
21 G.R. Nos. 160138 and 160192, July 13, 2011, 653 SCRA 738, 754.
22 502 Phil. 151, 159 (2005).
23 *Manila Water Company v. Del Rosario*, G.R. No. 188747, January 29, 2014, 715 SCRA 67, 73-74.

said issuances shall only apply to the private respondents who signed the Appeal from the Decision dated July 10, 1999 of the Labor Arbiter.

The temporary restraining order issued in this case is **LIFTED**.

SO ORDERED." **PERLAS-BERNABE, J.**, took no part; **VILLARAMA, JR., J.,** designated additional member per Raffle dated December 3, 2014.

Very truly yours,

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329

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