



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **16 February 2022** which reads as follows:*

“G.R. No. 251162 (*Don Pin Corporation v. Alfredo Caagay Guardados, William Dayot, Jr., Gaspar Oronos, Jr., Carlos Manliguez, Jr., and Charlieson Manliguez*). – This Petition for Review on *Certiorari*¹ assails the January 23, 2019 Decision² and January 6, 2020 Resolution³ of the Court of Appeals (CA) in CA-G.R. SP No. 144498, which reversed and set aside the October 27, 2015 Decision⁴ and December 28, 2015 Resolution⁵ of the National Labor Relations Commission (NLRC). The NLRC, on the other hand, reversed and set aside the May 29, 2015 Decision⁶ of the Labor Arbiter, declaring herein respondents Alberto Caagay Guardados (Alberto), William Dayot, Jr. (William), Gaspar Oronos, Jr. (Gaspar), Carlos Manliguez, Jr. (Carlos), and Charlieson Manliguez (Charlieson; collectively, respondents) to have been illegally dismissed by petitioner Don Pin Corporation (DPC).

The Antecedents

Respondents claim that they were hired as workers by DPC, a corporation engaged in the construction business. According to respondents, Alberto was hired as a carpenter on March 10, 2000; William as a driver on July 24, 2011; Carlos as a Warehouseman sometime in May 2013; and Charlieson as a welder sometime in June 2011.⁷

In 2014, DPC allegedly informed respondents that the latter were going to be transferred as employees from DPC to Caritas et Labore Cooperative (CLC), an independent service contractor registered with the Department of

¹ *Rollo*, pp. 11-41.

² *Id.* at 42-57. Penned by Associate Justice Sesinando E. Villon with Associate Justices Edwin D. Sorongon and Germano Francisco D. Legaspi, concurring.

³ *Id.* at 59-62.

⁴ *Id.* at 155-165. Penned by Commissioner Cecilio Alejandro C. Villanueva with Presiding Commissioner Alex A. Lopez and Commissioner Pablo C. Espiritu, Jr., concurring.

⁵ *Id.* at 167-168.

⁶ *Id.* at 94-101. Penned by Labor Arbiter Julio R. Gayaman.

⁷ *Id.* at 43.

Labor and Employment (DOLE). However, due to respondents' refusal to transfer to CLC, they were allegedly dismissed by DPC on October 13, 2014, without cause or any prior notice. This led to the filing of an illegal dismissal complaint before the arbitration branch of the NLRC.⁸

On the other hand, DPC claims that respondents were not regular employees, but project employees whose contracts expired at around September 2014. DPC stated that, as part of its management prerogative, it decided to engage the services of CLC to streamline its operations. Due to the expiration of respondents' contracts, the latter were advised by DPC to coordinate with CLC for possible employment. Respondents, however, allegedly took this advice in a negative light.⁹

DPC presented separate contracts of employment signed by each of the respondents. As indicated on the contracts, Alberto's contract was dated June 25, 2014, and was set to expire on August 31, 2014. Meanwhile, William's contract was dated February 5, 2014, and was set to expire on March 31, 2014. Gaspar's contract was dated February 1, 2014, and was set to expire on March 31, 2014. Carlos's contract was dated April 1, 2014, and was set to expire on June 30, 2014. Finally, Charlieson's contract was dated April 1, 2014, and was set to expire on June 30, 2014.¹⁰

Ruling of the Labor Arbiter

Labor Arbiter Julio R. Gayaman rendered a Decision,¹¹ dated May 29, 2015, in favor of respondents, the dispositive portion of which states:

WHEREFORE, judgment is hereby rendered declaring complainants Alberto Caagay Guardados, William Dayot Jr., Gaspar Oronos Jr., Carlos Manliguez[,] Jr., and Charlieson Manliguez as illegally dismissed. Accordingly, respondents Don Pin Corporation and Jun Y. Pin are ordered to jointly and severally pay complainants the following:

1. full backwages, computed from 13 October 2014 up to the finality of this decision;
2. separation pay, computed from the date of their employment up to the finality of this decision;
3. thirteenth month pay;
4. service incentive leave pay;
5. moral and exemplary damages of ₱5,000.00 each; and
6. attorney's fees of ten percent of the judgment award.

The Computation and Examination Unit of this Arbitration Branch is authorized to compute the complainant's monetary award as herein decreed, which computation shall form part of this decision.

⁸ Id.

⁹ Id.

¹⁰ Id. at 86-90.

¹¹ Id. at 94-101.

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SO ORDERED.¹²

The Labor Arbiter noted that DPC never disputed respondents' claim that they were hired on various dates from 2000 to 2013. The Labor Arbiter further stated that the sample project-based contracts presented by DPC cannot be valid bases to prove project employment as they only covered one project for each of the respondent employees. According to the Labor Arbiter's assessment, the circumstances of the case indicate that there was an evident purpose to evade respondents' security of tenure. Moreover, the Labor Arbiter found that the absence of any termination report in accordance with Section 2.2 of Department Order No. 19, series of 1993, provided further indication that respondents should indeed be recognized as regular and not project employees.¹³

Ruling of the NLRC

Petitioners appealed the decision of the Labor Arbiter to the NLRC, which partly granted the appeal in its Decision¹⁴ dated October 27, 2015. The dispositive portion of the NLRC Decision reads:

WHEREFORE, the appeal of respondents is PARTLY GRANTED.

The decision of the Labor Arbiter is modified as follows:

- I. As there is no illegal dismissal, the award of backwages and separation pay is deleted; in lieu thereof, each complainant is entitled to nominal damages in the sum of P25,000.00
- II. The awards of 13th month pay and SILP are affirmed.

All other claims are dismissed for lack of merit.

SO ORDERED.¹⁵

The NLRC stated that the burden of proving regular employment lies with respondents, consistent with the rule that the party who alleges a fact has the burden of proving it. Citing the failure of respondents to specify and enumerate the projects, positions, and periods when they were initially hired and rehired, the NLRC decided in favour of DPC and declared that there was no illegal dismissal. The NLRC, however, imposed nominal damages for noncompliance with the notice requirement under D.O. No. 19, and affirmed the award of 13th month pay and SILP for DPC's failure to proffer documentary evidence of payment of such claims.¹⁶ Aggrieved, respondents filed a petition for *certiorari* with the CA.

¹² Id. at 100-101.

¹³ Id. at 95-96.

¹⁴ Id. at 155-165.

¹⁵ Id. at 164-165.

¹⁶ Id. at 163-164.

Ruling of the CA

The CA granted respondents' appeal in its Decision¹⁷ dated January 23, 2019, the dispositive portion of which reads:

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated October 27, 2015 and Resolution dated December 28, 2015 of public respondent National Labor Relations Commission, Third Division, in NLRC-LAC No. 09-002535-15 are hereby **REVERSED and SET ASIDE**.

Resultantly, the Decision dated May 29, 2015 of Labor Arbiter Julio R. Gayaman in NLRC NCR Case No. 10-12616-14 is hereby **REINSTATED with MODIFICATION** in that legal interest at the rate of six percent (6%) *per annum* is hereby imposed on the total monetary award from the time of finality of this judgment until its full satisfaction. Private respondent Jun Y. Pin is hereby absolved from any liability arising from the instant case.

SO ORDERED.¹⁸

In deciding in favour of the respondents, the CA ruled contrarily to the NLRC when it stated that it is the employer, in illegal dismissal cases, who bears the burden to prove that termination was for a valid or authorized cause. Further, it was incumbent upon DPC to prove that respondents were project-based employees. According to the appellate court, DPC's abject failure to discharge this burden was fatal to its case. The CA also found that the project employment contracts presented by DPC appeared to be belated attempts to justify the employment status of respondents. Finally, the absence of any report of termination to the nearest public employment office, as contained in Section 2.2(e)¹⁹ of Department Order (D.O.) No. 19, series of 1993, bolstered respondents' position that they were not project-based employees. The CA denied DPC's motion for reconsideration in its Resolution²⁰ dated January 6, 2020.

Meanwhile, DPC purportedly entered into settlement or compromise agreements with Alberto, Carlos, and Charlieson, on September 13, 2019; December 20, 2019; and December 20, 2019, respectively, as shown in the

¹⁷ Id. at 42-57.

¹⁸ Id. at 60.

¹⁹ **SECTION 2. Employment Status**

x x x x

2.2 Indicators of project employment – Either one or more of the following circumstances, among others, may be considered as indicators that an employee is a project employee.

x x x x

(e) The termination of his employment in the particular project/undertaking is reported to the Department of Labor and Employment (DOLE) Regional Office having jurisdiction over the workplace within 30 days following the date of his separation from work, using the prescribed form on employees' terminations/dismissals/suspensions.

²⁰ *Rollo*, pp. 59-62.

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documents entitled *Pormal na Pagwawaksi ng Kasong Isinampa* and Release Waiver and Quitclaims submitted by DPC.²¹

On February 20, 2020, DPC filed before the Court a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking to appeal the assailed decision and resolution of the CA. Respondents filed their Comment²² on September 1, 2020, while petitioner filed its Reply²³ on September 14, 2020.

Issue

The issue for the Court's resolution is whether or not the CA correctly ruled that respondents were regular employees, not project employees of DPC, and thus, were illegally dismissed.

Ruling of the Court

In view of the settlement entered into between DPC and Alberto, Carlos, and Charlieson, the petition is partially granted, but only as to the three respondents who agreed to the settlement.

As to remaining respondents William and Gaspar, the Court upholds the findings of the CA that respondents were regular employees who were illegally dismissed.

The Labor Code defines regular and project employment as follows:

Article 295 [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 service to be performed is seasonal in nature and the employment is for the duration of the season.

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 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.*** (Emphasis supplied)

²¹ Id. at 190-200.

²² Id. at 203-213.

²³ Id. at 220-230.

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Meanwhile, D.O. No. 19, series of 1993, otherwise known as the Guidelines Governing the Employment of Workers in the Construction industry, issued by DOLE, states that:

SECTION 2. *Employment Status*

2.1 Classification of employees. – The employees in the construction industry are generally categorized as a) project employees and b) non-project employees. Project employees are those employed in connection with a particular construction project or phase thereof whose employment is co-terminus with each project or phase of the project to which they are assigned.

x x x x

2.2 Project completion and rehiring of workers. –

x x x x

(b) Upon completion of the project or a phase thereof, the project employee may be rehired for another undertaking provided, however, that such rehiring conforms with the provisions of law and this issuance. In such case, the last day of service with the employer in the preceding project should be indicated in the employment.

x x x x

(e) The termination of his employment in the particular project/undertaking is reported to the Department of Labor and Employment (DOLE) Regional Office having jurisdiction over the workplace within 30 days following the date of his separation from work, using the prescribed form on employees’ terminations/dismissals/suspensions.

x x x x

Thus, based on the foregoing provisions, an employment is generally deemed regular where: (i) the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, subject to exceptions, such as when one is a fixed, project or seasonal employee; or (ii) the employee has been engaged for at least a year, with respect to the activity he or she is hired, and the employment of such employee remains while such activity exists.²⁴

On the other hand, a project employee “is one whose 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.”²⁵ Thus, the “services of project-based employees are co-terminous

²⁴ *Engineering & Construction Corporation of Asia [now First Balfour, Inc.] v. Palle, et. al.*, G.R. No. 201247, July 13, 2020.

²⁵ *Id.* citing *Herma Shipyard, Inc. v. Oliveros*, 808 Phil. 668, 679 (2017).

with the project and may be terminated upon the end or completion of the project or a phase thereof for which they were hired.”²⁶

Generally, length of service is a measure to determine whether or not an employee who was initially hired on a temporary basis has attained the status of a regular employee who is entitled to security of tenure. However, such measure may not necessarily be applicable in a construction industry since construction firms cannot guarantee continuous employment of their workers after the completion stage of a project.²⁷ In addition, a project employee’s work may or may not be usually necessary or desirable in the usual business or trade of the employer. Thus, the fact that a project employee’s work is usually necessary and desirable in the business operation of his/her employer does not necessarily impair the validity of the project employment contract which specifically stipulates a fixed duration of employment.²⁸

In *Lopez v. Irvine Construction Corp. et al.*,²⁹ it was held that “the principal test for determining whether particular employees are properly characterized as project employees[,] as distinguished from regular employees, is whether or not the project employees were assigned to carry out a specific project or undertaking, the duration and scope of which were specified at the time the employees were engaged for that project.”³⁰

Hence, in order to ascertain whether or not respondents were project employees, it is essential to determine whether notice was given to them that they were being engaged just for a specific project, which notice must be made at the time of hiring.³¹

In the instant case, the Court agrees with the CA when it found that DPC failed to sufficiently prove that respondents were informed of the nature of their employment as project employees before the former engaged their services.

A review of the project employment contracts submitted by DPC would reveal that respondents affixed their signatures well beyond the date of the contract, and well after the project period indicated in each contract had commenced.³² Also of note is the labor arbiter’s observation that the project employment contracts submitted by DPC only covered one project for each respondents. Respondents, on the other hand, submitted their company identification cards which were issued on dates that fell outside the respective project periods stated in the project employment contracts.³³

²⁶ Id.

²⁷ Id. citing *William Uy Construction Corp. v. Trinidad*, 629 Phil. 185, 190 (2010).

²⁸ Id.

²⁹ 741 Phil. 728, 737-738 (2014).

³⁰ Id.

³¹ Id.

³² *Rollo*, pp. 86-90.

³³ Id. at 50-51.

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Based on the records, DPC failed to sufficiently prove that respondents were informed of the nature of their employment as project employees before DPC engaged their services in 2014. Furthermore, assuming *arguendo* that DPC was able to prove that respondents were informed of the nature of their employment as project employees in 2014, DPC had not submitted any other satisfactory proof that would show that the respondents were informed that they were project employees in the other instances when their services were engaged.

Accordingly, the CA cannot be faulted for expressing its suspicion that the project employment contracts signed by respondents with DPC appeared to be belated attempts on the part of petitioner to justify the employment status of respondents. Indeed, *apropos* is the pronouncement in *Glory Philippines, Inc. v. Vergara*³⁴ where the Supreme Court, quoting the CA, stated that:

To us, the private respondent's illegal intention became clearer from such acts. **Its making the petitioners sign written employment contracts a few days before the purported end of their employment periods** (as stated in such contracts) was a diaphanous ploy to set periods with a view for their possible severance from employment should the private respondent so willed it. **If the term of the employment was truly determined at the beginning of the employment, why was there delay in the signing of the ready-made contracts that were entirely prepared by the employer?** Also, the changes in the positions supposedly held by the petitioners in the company belied the private respondent's adamant contention that the petitioners were hired solely for the purpose of manning PIS during its alleged dry run period that ended on October 20, 1998. We view such situation as a very obvious ploy of the private respondent to evade the petitioner's eventual regularization.³⁵ (Emphasis supplied)

The CA was also correct in overturning the NLRC when the latter ruled that it was respondents' burden to prove that they were continuously rehired. The burden of proof falls not upon respondents, who, in fact, were even able to submit identification cards showing their engagement with the company outside the period stated in the project employment contracts. Rather, the burden falls on DPC to prove that termination was for a valid or authorized cause, being the employer in an illegal dismissal case.³⁶ An employer has the burden to prove that the employee is indeed a project employee. Thus, "the employer must establish that (a) the employee was assigned to carry out a particular project or undertaking; and, (b) the duration and scope of which was specified at the time of engagement."³⁷

We also agree with the CA that the absence of a termination report as contained in Section 2.2 of D.O. No. 19³⁸ bolsters the conclusion that

³⁴ 557 Phil. 789 (2007).

³⁵ Id. at 798-799.

³⁶ *Inocentes v. R. Syjuco Construction, Inc.*, G.R. No. 237020, July 29, 2019.

³⁷ Id. citing *Bajaro v. Metro Stonerich Corp. et al.*, 830 Phil. 714, 723-724 (2018).

³⁸ *Supra* note 19.

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respondents were not project employees. In *Freyssinet Filipinas Corp. v. Lapuz*,³⁹ the Court explained that the failure on the part of the employer to file with the DOLE a termination report every time a project or its phase is completed is an indication that the workers are not project employees but regular ones.

DPC argues that the termination report is not an essential requirement for an employee to be deemed project-based. While DPC may be correct, it is clear that the absence of a termination report was not, in and of itself, the only reason as to why respondents were not deemed project-based. In the end, it was the totality of the evidence and the circumstances of the case which led both the CA and the labor arbiter to justifiably and correctly rule that respondents were not project employees.

In view of DPC's failure to discharge its burden to prove that herein respondents were project employees, we find that the CA properly found them to be regular employees. Therefore, respondents, as regular employees, may only be dismissed for just or authorized causes and upon compliance with procedural due process, *et.al.*, notice and hearing.⁴⁰ The Court notes that completion of a project is not a valid cause to terminate regular employees, such as respondents herein.⁴¹ Thus, it is only proper to rule, consistent with the CA and Labor Arbiter, and adjudge respondents as having been illegally dismissed.

The Court, however, also takes important note of the settlement reached between DPC and Alberto, Carlos, and Charlieson, as evinced by the documents entitled *Pormal na Pagwawaksi ng Kasong Isinampa* and Release Waiver and Quitclaims.⁴²

Generally, deeds of release, waiver or quitclaims cannot bar employees from demanding benefits to which they are legally entitled, or from contesting the legality of their dismissal, since quitclaims are looked upon with disfavor and are frowned upon as contrary to public policy.⁴³ Where, however, the person making the waiver has done so voluntarily, with a full understanding thereof, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as being a valid and binding undertaking.⁴⁴

The requisites for a valid quitclaim are: (1) that there was no fraud or deceit on the part of any of the parties; (2) that the consideration for the quitclaim is credible and reasonable; and (3) that the contract is not contrary

³⁹ *Freyssinet Filipinas Corp. v. Lapuz*, G.R. No. 226722, March 18, 2019.

⁴⁰ *Lopez v. Irvine Construction Corp. et al.*, supra note 29 at 739.

⁴¹ *Inocentes v. R. Syjuco Construction, Inc.*, G.R. No. 237020, July 29, 2019.

⁴² *Rollo*, pp. 190-200.

⁴³ *PNB v. Dalmacio*, 813 Phil. 127, 136-137 (2017), citing *Soriano, Jr. v. NLRC*, 550 Phil. 111, 131 (2007).

⁴⁴ *Id.*

to law, public order, public policy, morals or good customs or prejudicial to a third person with a right recognized by law.⁴⁵

In the case at bar, there is no indication that fraud or deceit on the part of any of the parties was present. It bears noting that DPC had, as early as October 8, 2019, made known to the NLRC through a manifestation,⁴⁶ the first settlement entered into between DPC and Alberto. More recently, the settlement between DPC and Alberto, Carlos, and Charlieson was once again raised by petitioners in the petition for review on *certiorari* filed before the Court. Meanwhile, respondents, in their *Worker's Comment to the Petition*, have not raised any contest, entered any objection, nor raised any irregularity pertaining to the settlement. Thus, this Court recognizes the settlement entered into between the private parties, and declares moot the claims sought by Alberto, Carlos, and Charlieson.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is **PARTIALLY GRANTED**. The Decision dated January 23, 2019, and Resolution dated January 6, 2020, of the Court of Appeals in CA-G.R. SP No. 144498, with respect to respondents Alberto Caagay Guardados, Carlos Manliguez, Jr., and Charlieson Manliguez are hereby **SET ASIDE**. Accordingly, all claims of Alberto Caagay Guardados, Carlos Manliguez, Jr., and Charlieson Manliguez are hereby **DISMISSED**. However, the Decision dated January 23, 2019 and the Resolution dated January 6, 2020 of the Court of Appeals in CA-G.R. SP No. 144498, with respect to respondents William Dayot, Jr. and Gaspar Oronos, Jr., are hereby **AFFIRMED**.

SO ORDERED.”

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court

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⁴⁵ Id.

⁴⁶ *Rollo*, p. 187.

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