Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOZOMI FORTUNE SERVICES, INC., Petitioner,	**G.R. No. 221043**
	Present:
- versus -	CAGUIOA, *J., Chairperson,* INTING, GAERLAN, DIMAAMPAO, and SINGH, *JJ.*
CELESTINO A. NAREDO, Respondent.	**Promulgated:** July 31, 2024

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DECISION

DIMAAMPAO, *J.:*

This Petition for Review on *Certiorari*[1] challenges the Decision[2] and the Resolution[3] of the Court of Appeals (CA), which declared that petitioner Nozomi Fortune Services, Inc. (Nozomi) is a labor-only contracting entity, and which denied the Partial Motion for Reconsideration[4] thereof, respectively, in CA-G.R. SP No. 125058.

The instant case stems from a complaint for illegal dismissal filed by respondent Celestino A. Naredo (Naredo) and several others (collectively, complainants) against Nozomi and its branch manager, Ludy Lasiog (Lasiog),

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1 *Rollo*, pp. 4–28.
2 *Id.* at 30–39. The December 10, 2014 Decision was penned by Associate Justice Edwin D. Sorongon with the concurrence of Associate Justices Marlene Gonzales-Sison and Elihu A. Ybañez of the Special Fourth Division, Court of Appeals, Manila.
3 *Id.* at 41–43. Dated September 3, 2015.
4 *Id.* at 512–527.

as well as Samsung Electro-Mechanics Phils. (Samsung); its president, Jung Soo Lee; and human resources manager, Anna Roselle Dayday.[5] As a manpower business, Nozomi hired complainants and assigned them to Samsung on various dates between 2003 and 2005.[6] They were detailed as production operators for the various electronic components manufactured by Samsung.[7] Sometime in May 2010, Lasiog told complainants that Samsung would absorb them as regular employees if they passed its examination. Unfortunately, they failed to hurdle the tests and Samsung informed them that their services were no longer needed.[8] On July 15, 2010, complainants all tendered their voluntary resignation by submitting handwritten letters citing various personal reasons.[9] A month later, they instituted a complaint for illegal dismissal and regularization before the National Labor Relations Commission (NLRC).[10] Complainants averred that they were actually regular employees of Samsung because they had been working for it for more than a year and the nature of their job was necessary and desirable to its usual business. Moreover, Nozomi was a mere labor-only contractor as it did not have substantial capital or investment and that the machines and equipment they used to perform their functions belonged to Samsung. Furthermore, it was Samsung which controlled and supervised them; Nozomi was merely a conduit for the payment of their wages.[11]

Nozomi countered that it was duly registered with the Department of Labor and Employment (DOLE) as an independent job contractor, operating its own medical laboratory and diagnostic services center for its employees. Moreover, it owned various training facilities, had several service agreements with various companies, including Samsung, and had substantial capital to finance its operations.[12]

For its part, Samsung denied liability over complainants, insisting that they were Nozomi's employees who were only assigned to it pursuant to a service contract with Nozomi whenever it was short of regular employees.[13]

In due course, the Labor Arbiter dismissed the complaint for lack of merit. In his Decision,[14] he held that Nozomi carried on an independent business as a contractor. Having been duly registered with the DOLE, it thus enjoys the presumption of being a legitimate independent job contractor.

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5 *Id.* at 365, Labor Arbiter's Decision.
6 *Id.* at 31.
7 *Id.* at 370.
8 *Id.* at 31.
9 *Id.* at 370–371.
10 *Id.* at 371.
11 *Id.* at 31–32, CA Decision.
12 *Id.* at 46, Nozomi's Position Paper.
13 *Id.* at 32, CA Decision.
14 *Id.* at 365–377. The January 31, 2011 Decision was rendered by Labor Arbiter Robert A. Jerez of the NLRC Regional Arbitration Branch No. IV, Calamba City, Laguna.

Moreover, Nozomi adduced proof of having substantial capital, and of even having a 2009 net income of PHP 991,413,266.00.[15] Its several facilities, as evidenced by its registration with both the Department of Trade and Industry (DTI) and the Department of Health (DOH), cater to the medical needs of its employees. While Nozomi has several training facilities and audio-visual centers, finance and EDP centers nationwide, and fully computerized payroll and software development centers, it likewise maintains a separate office in every company which it has a service contract with in order to monitor and supervise its detailed employees.[16] As to the issue on who the complainants' actual employer was, it is clear that Nozomi hired them, paid their wages, exercised the power to discipline and terminate them, and controlled the means and methods in the performance of their work.[17] Hence, it cannot be gainsaid that complainants were Nozomi's regular employees, and not of Samsung. In resolving the argument on illegal dismissal, the LA declared complainants to have voluntarily resigned from their posts. It was incumbent upon them to prove the fact of dismissal before the burden shifted to their employer to prove that it was done for just cause. However, they failed to discharge this burden.[18] Their other monetary claims were also found to be baseless.[19]

On appeal, the NLRC affirmed the judgment[20] of the Labor Arbiter, finding that the conclusions reached upon were supported by the evidence on record. It was abundantly clear that Nozomi was complainants' employer after applying the fourfold test. Moreover, Nozomi was able to prove its status as a legitimate job contractor in this case and in nine other decided cases.[21] The NLRC likewise concurred with the finding that complainants failed to prove their illegal dismissal and entitlement to monetary claims.[22]

Complainants' motion for reconsideration having been rebuffed by the NLRC,[23] Naredo sought recourse before the CA via a Petition for *Certiorari*.[24]

In the impugned Decision, the CA upheld the finding that Naredo was not illegally dismissed. Nevertheless, it declared that Nozomi is a labor-only contractor and Samsung is respondent's true employer. The CA found the

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15 *Id.* at 373.
16 *Id.* at 374.
17 *Id.* at 371.
18 *Id.* at 375–376.
19 *Id.* at 376.
20 *Id.* at 379–393. The October 21, 2011 Decision was penned by Commissioner Perlita B. Velasco with the concurrence of Presiding Commissioner Gerardo C. Nograles of the NLRC First Division. Commissioner Romeo L. Go took no part.
21 *Id.* at 390.
22 *Id.* at 391.
23 *Id.* at 395–403. The February 29, 2012 Resolution was penned by Commissioner Perlita B. Velasco with the concurrence of Presiding Commissioner Gerardo C. Nograles of the NLRC First Division. Commissioner Romeo L. Go took no part.
24 *Id.* at 404–441.

service contract between Nozomi and Samsung as defective since it only provided for deployment of manpower and not for performance of specific work.[25] The CA also declared that Nozomi failed to show other factors or conditions to qualify as an independent contractor aside from possessing substantial capital,[26] and rejected the contention that the DOLE Certificate of Registration confirmed the status of Nozomi as a legitimate independent contractor.[27] As a labor-only contractor, it follows that Samsung is Naredo's true employer and Nozomi merely acted as its agent.[28] Still, there was no proof that Naredo was illegally dismissed. Based on the records, the CA held that he voluntarily resigned.[29]

Nozomi's bid for partial reconsideration was denied in the oppugned Resolution, which led to the filing of the present Petition.

The main issue posited before the Court is whether or not the CA erred in finding grave abuse of discretion amounting to lack or excess of jurisdiction in the rulings of the NLRC, and in declaring that Nozomi is a labor-only contractor.

The Court's Ruling

The Petition is devoid of merit.

At the outset, it must be stressed that in deciding a Rule 45 petition inveighing against the CA's ruling on a Rule 65 petition, the Court is limited to determining whether the CA correctly determined the presence or absence of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC.[30] "There is grave abuse of discretion on the part of the NLRC when its findings and conclusions are not supported by substantial evidence, i.e., that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."[31]

Additionally, while a Rule 45 petition is generally confined to questions of law, the Court may deviate from this rule when the findings of the labor

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25 *Id.* at 34.
26 *Id.* at 35–36.
27 *Id.* at 37.
28 *Id.* at 37–38.
29 *Id.* at 38–39.
30 *See John Kriska Logistics, Inc. v. Mendoza,* G.R. No. 250288, January 30, 2023 [Per J. Inting, Third Division] at 8. This pinpoint citation refers to the copy of the Resolution uploaded to the Supreme Court website.
31 *Id.*

tribunals on one hand, and the CA on the other, are in conflict,[32] as in the case at bench. In such instances, the Court is compelled to re-evaluate and re-examine the attendant factual issues and findings.[33]

Guided by the foregoing principles, the Court finds that the CA correctly found grave abuse of discretion on the part of the NLRC when it rendered its rulings.

Preliminarily, the Court takes this occasion to emphasize once more that a DOLE Certificate of Registration, by itself, is not a conclusive proof of legitimacy for a manpower provider. It only prevents the presumption of labor-only contracting from arising.[34] In *Caballero v. Vikings Commissary*,[35] this Court held that "[t]o determine whether the contractor was engaged by the principal as a legitimate job contractor or a labor-only contractor, **the totality of the facts and the surrounding circumstances are to be considered." All the features of the relationship are assessed**.[36]

Tested against the totality of circumstances established by the evidence presented, the Court finds that the CA correctly held that Nozomi is engaged in labor-only contracting.

The distinction between permissible job contracting and prohibited labor-only contracting is well-established. *Caballero* explains—

> Permissible job contracting "refers to an arrangement whereby a principal agrees to put out or farm out with a contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal."[37]

Simply put, permissible job contracting involves contracting out of work, job or service, while prohibited labor-only contracting involves the contracting out of only labor.[38]

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32 *See Lugawe v. Pacific Cebu Resort International, Inc.*, G.R. No. 236161, January 25, 2023 [Per J. Hernando, First Division] at 10. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

33 *Id.*

34 *See Servflex, Inc. v. Urera*, G.R. No. 246369, March 29, 2022 [Per J. Inting, First Division] at 12. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

35 G.R. No. 238859, October 19, 2022 [Per J. Leonen, Second Division].

36 *Id.* at 10. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website. (Emphasis supplied)

37 *Id.* at 9.

38 *See Caballero v. Vikings Commissary*, G.R. No. 238859, October 19, 2022 [Per J. Leonen, Second Division] at 10. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

This demarcation between the two types of contracting is provided by no less than the Labor Code itself:

> ARTICLE 106. Contractor or Subcontractor. — Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.
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> In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.
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> The Secretary of Labor and Employment may, by appropriate regulations, restrict or prohibit the contracting-out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.
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> There is "labor-only" contracting **where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities *which are directly related to the principal business of such employer.*** In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him. (Emphasis supplied)

Based on the above-quoted provision of the Labor Code and pertinent jurisprudence, an entity is engaged in prohibited labor-only contracting when the following are present: "(1) a person who supplies workers to an employer does not possess substantial capital or investment in the form of tools, pieces of equipment or machinery, work premises, among others; and (2) the workers are made to perform tasks which are directly related to the employer's principal business."[39]

In gauging the first standard, it is not enough that the contractor possesses substantial capital. In fact, it is undeniable that Nozomi has

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[39] *See Servflex, Inc. v. Urera*, G.R. No. 246369, March 29, 2022 [Per J. Inting, First Division] at 8. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

sufficient capitalization as evinced by its audited financial statements.[40] However, the contractor must also show that it has the equipment and machinery "*actually and directly used in the performance of the work or service*" it is contracted to do."[41] Indeed, it is more in keeping with the spirit of Article 106 of the Labor Code if the tools, pieces of equipment, or machinery possessed by the contractor are actually and directly used in the performance of the work or service it is contracted for as this would be more in line with the concept of permissible job contracting which involves the contracting out of a specific work, job, or service *and not just labor*.

As astutely observed by the CA, a determination of the necessary equipment and machinery depends on the terms of the service contract. Here, Nozomi was engaged by Samsung to provide the following works:

> 6. [Samsung] shall engage the services of [Nozomi] for works or services temporarily or occasionally needed to meet other than the normal or increase in production; works or services temporarily occasionally needed by [Samsung] for undertakings requiring expert or highly technical personnel; services temporarily needed for the introduction of new production line; specialized works involving the use of some particular or specific skills, expertise, tools or equipment; substitute services for absent regular employees; and all other works or services that are beyond the capacity of [Samsung]'s current regular workforce[.][42]

By Nozomi's own representation, Naredo, in particular, was detailed to Samsung to work on a specific production line as a production operator, thusly:

> The said production line was created in order to address a growing demand for certain products, requiring an increase in work volume on the part of Samsung, which cannot be met by Samsung's regular work force. It is for this very reason that Samsung has entered into a Service Contract with Nozomi."[43] (Emphasis omitted)

However, there is nothing on record to show that Nozomi provided Naredo with the tools and equipment to perform his tasks as a production operator. There also does not appear to be any declared technical equipment in its financial statements for this particular kind of work.[44] This lends further

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40 *Rollo,* p. 344, Audited Financial Statements for 2009.

41 *See Servflex, Inc. v. Urera,* G.R. No. 246369, March 29, 2022 [Per J. Inting, First Division] at 9. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website. (Emphasis in the original)

42 *Rollo,* p. 310, Service Contract.

43 *Id.* at 20.

44 *Id.* at 342, Audited Financial Statements for 2009.

credence to Naredo's claim that the equipment used in his job assignment were actually owned by Samsung.[45]

To bolster substantial investment, Nozomi adduced proof of its medical laboratories, diagnostic centers, training facilities, audio-visual centers, finance and EDP centers, and its computerized payroll and software development centers.[46] Both the Labor Arbiter and the NLRC similarly relied on the foregoing factors to conclude that it was a legitimate independent contractor. While these pieces of evidence tend to evince that Nozomi holds an independent business, none of these relate to the particular service contract entered into with Samsung. Consequently, Nozomi cannot be deemed to have substantial capital or investment as recognized under prevailing jurisprudence.

On the second standard, there can be no serious contest that Naredo's work was directly related to Samsung's business. Samsung is engaged in the "production and exportation of microchips, primarily used for the assembly of electronic products, to particular customers and clients."[47] Naredo operated a stacking machine to pile chip capacitors on the press table to serve as guides for the alignment process in the manufacturing chain.[48] The very function itself relates to the production of microchips. Nozomi's own categorization of his work does not discount the fact that his function is necessary to Samsung's regular business only and that he is engaged whenever the demand exceeds Samsung's normal workforce. Additionally, the categorization that Naredo's job is directly necessary to Samsung's business is supported by the fact that he was given the "opportunity" to be absorbed as a regular employee of Samsung. If his task was not done by Samsung's existing workforce or was truly sporadic and intermittent in nature as Nozomi claims, then Samsung would have had no reason to absorb him or any of the other complainants.

Corollary to this, the Court finds that the factual circumstances in this case support the contention that Samsung is the true employer of Naredo. The Court has held that the power of control is the most significant factor to consider in order to determine the existence of an employer-employee relationship.[49] The power of control is said to exist when such power "extends not only over the work done but over the means and methods by which the employee must accomplish the work."[50] As observed by the CA, aside from the fact that it was Samsung who paid Naredo's salary, it was Samsung's

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45 *Id.* at 253, Position Paper for the Complainants.
46 *Id.* at 342 and 374.
47 *Id.* at 279, Position Paper of Samsung.
48 *Id.* at 250.
49 *See Ditiangkin v. Lazada E-Services Philippines, Inc.*, G.R. No. 246892, September 21, 2022 [Per S.A.J. Leonen, Second Division] at 15. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.
50 *Id.*

supervisors who gave him the instructions as to the means, method, and specifications for his job.[51] This suffices to prove control. In addition, it bears stressing that Naredo's engagement with Samsung was on a continuous basis for more than five years,[52] a fact that was not controverted by either Nozomi or Samsung.

All told, Nozomi undeniably engaged in labor-only contracting and Samsung is the true employer of Naredo.

The foregoing notwithstanding, the Court cannot provide succor to Naredo. The Labor Arbiter, the NLRC, and the CA were of one mind in declaring that, regardless of who his actual employer was, the evidence presented spoke of no illegal dismissal. A perspicacious sifting of the records and the applicable jurisprudence leads the Court to the same conclusion.

Naredo admitted to resigning from his position but claims that he and the other complainants were coerced to do so to receive "financial assistance" from Nozomi. Other than his bare allegation of this purported coercion, however, he proffered no other evidence to support this claim. When the fact of resignation is admitted, it becomes incumbent upon the employee to prove that it was involuntary and that it was actually a case of constructive dismissal. Bare allegations of constructive dismissal, when contrary to the evidence on record, cannot be given credence.[53] Unless the fact of dismissal is proven, whether actual or constructive, the validity or legality thereof cannot be put in issue.[54]

ACCORDINGLY, the Petition for Review on *Certiorari* is **DENIED** for lack of merit. The December 10, 2014 Decision and the September 3, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 125058 are **AFFIRMED**.

SO ORDERED.

JAPAR B. DIMAAMPAO
Associate Justice

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51 *Rollo*, p. 34, CA Decision.

52 *Id.* at 250, Position Paper for the Complainants.

53 *See Alenaje v. C.F. Sharp Crew Management, Inc.*, G.R. No. 249195, February 14, 2022 [Per J. Inting, Second Division] at 12. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme court website.

54 *See Italkarat 18, Inc. v. Gerasmio*, 886 Phil. 433, 448 (2020) [Per J. Hernando, Second Division].

WE CONCUR:

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of this Court.

ALEXANDER G. GESMUNDO
Chief Justice