Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

SUPERIOR PACKAGING CORPORATION,	**G.R. No. 178909**
Petitioner,	Present:
- versus -	SERENO, *C.J.*, *Chairperson,*
ARNEL BALAGSAY, ZALDY ALFORGNE, JAIME ANGELES, REY APURA, GERALD CABALAN, JONALD CALENTENG, RAMIL CRODERO, JUNREY CABALGUINTO, OSCAR DAYTO, RUFO DIONOLA, DIONILO ESMERALDA, BOOTS LADRILLO, ELIEZER MAGHAMOY, LEO FLORES, RENATO PAGADORA, REYNALDO PLAZA, ROGER SIBNEAO, EDWIN TONALBA, JOHN ACHARON, RODERICK RAMAS, SALVADOR ACURATO, JULUIS BASUL, CARLOS RAYTA, LITO BELANO, ROGER CASIMIRO, RENE CURADA, NESTRO ESTE, ROMMEL IMPELIDO, ZOILO ISLA, JHONIE OGARDO, EDWIN POSADAS, ALEXANDER REGPALA, CHRISTOPHER SAMPIANO, RITCHIE SANCHES, ROLANDO SORIANO, ROWELL ANCHETA, RICKY BORDAS, ANTONIO BEREN, RONALD DOMINGO, JERRY MORENO, ROLLY ROSALES, RENATO RESTANO and ISIDRO SARIGNE,	LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR., and REYES, *JJ.*
Respondents.	Promulgated:
	10 OCT 2012

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RESOLUTION

REYES, *J.*:

The main issue in this case is whether Superior Packaging Corporation (petitioner) may be held solidarily liable with Lancer Staffing & Services Network, Inc. (Lancer) for respondents' unpaid money claims.

The facts are undisputed.

The petitioner engaged the services of Lancer to provide reliever services to its business, which involves the manufacture and sale of commercial and industrial corrugated boxes. According to petitioner, the respondents were engaged for four (4) months – from February to June 1998 – and their tasks included loading, unloading and segregation of corrugated boxes.

Pursuant to a complaint filed by the respondents against the petitioner and its President, Cesar Luz (Luz), for underpayment of wages, non-payment of premium pay for worked rest, overtime pay and non-payment of salary, the Department of Labor and Employment (DOLE) conducted an inspection of the petitioner's premises and found several violations, to wit: (1) non-presentation of payrolls and daily time records; (2) non-submission of annual report of safety organization; (3) medical and accident/illness reports; (4) non-registration of establishment under Rule 1020 of Occupational and Health Standards; and (5) no trained first aide.[1] Due to the petitioner's failure to appear in the summary investigations conducted by the DOLE, an Order[2] was issued on June 18, 2003 finding in favor of the respondents and adopting the computation of the claims submitted. Petitioner and Luz were ordered, among others, to pay respondents their

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1 *Rollo*, p. 56.

2 Id. at 56-59.

total claims in the amount of Eight Hundred Forty Thousand Four Hundred Sixty-Three Pesos and 38/100 (₱840,463.38).[3]

They filed a motion for reconsideration on the ground that respondents are not its employees but of Lancer and that they pay Lancer in lump sum for the services rendered. The DOLE, however, denied its motion in its Resolution[4] dated February 16, 2004, ruling that the petitioner failed to support its claim that the respondents are not its employees, and even assuming that they were employed by Lancer, the petitioner still cannot escape liability as Section 13 of the Department Order No. 10, Series of 1997, makes a principal jointly and severally liable with the contractor to contractual employees to the extent of the work performed when the contractor fails to pay its employees' wages.

Their appeal to the Secretary of DOLE was dismissed per Order[5] dated July 30, 2004 and the Order dated June 18, 2003 and Resolution dated February 16, 2004 were affirmed.[6] Their motion for reconsideration likewise having been dismissed by the Secretary of DOLE in an Order dated January 21, 2005,[7] petitioner and Luz filed a petition for *certiorari* with the Court of Appeals (CA).

On November 17, 2006, the CA affirmed the Secretary of DOLE's orders, with the modification in that Luz was absolved of any personal liability under the award.[8] The petitioner filed a partial motion for reconsideration insofar as the finding of solidary liability with Lancer is concerned but it was denied by the CA in a Resolution[9] dated July 10, 2007.

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3 Id. at 59.

4 Id. at 69-71.

5 Id. at 87-90.

6 *Rollo*, p. 90.

7 Id. at 99-101.

8 Id. at 147-148.

9 Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Jose L. Sabio, Jr. and Ramon M. Bato, Jr., concurring; id. at 157-160.

The petitioner is now before the Court on petition for review under Rule 45 of the Rules of Court, alleging that:

I

THE COURT OF APPEALS SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN AFFIRMING THE RULING OF THE SECRETARY OF LABOR AND EMPLOYMENT THAT THE COMPANY IS SOLIDARILY LIABLE WITH THE CONTRACTOR NOTWITHSTANDING THE FACT THAT:

A. THE COMPANY CANNOT BE HELD SOLIDARILY LIABLE WITH THE CONTRACTOR FOR THE PENALTY OR SANCTION IMPOSED BY WAY OF "DOUBLE INDEMNITY" UNDER REPUBLIC ACT NO. 6727.

B. THERE IS NO EVIDENCE TO SHOW THAT PRIVATE RESPONDENTS RENDERED OVERTIME WORK AND ACTUALLY WORKED ON THEIR RESTDAYS FOR THE COMPANY FOR THE PERIOD IN QUESTION[.]

II

THE COURT OF APPEALS SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN AFFIRMING THE FINDINGS OF THE SECRETARY OF LABOR AND EMPLOYMENT THAT THE CONTRACTOR IS ENGAGED IN LABOR-ONLY CONTRACTING.[10]

On the first ground, the petitioner argues that the DOLE erred in doubling respondents' underpayment of wages and regular holiday pay under Republic Act No. 6727 (Wage Rationalization Act) inasmuch as the solidary liability of a principal does not extend to a punitive award against a contractor.[11] The petitioner also contends that there is no evidence showing that the respondents rendered overtime work and that they actually worked on their rest days for them to be entitled to such pay.[12]

On the second ground, the petitioner objects to the finding that it is engaged in labor-only contracting and is consequently an indirect employer, considering that it is beyond the visitorial and enforcement power of the

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10 Id. at 10.

11 Id. at 11-12.

12 Id. at 14-17.

DOLE to make such conclusion. According to the petitioner, such conclusion may be made only upon consideration of evidentiary matters and cannot be determined solely through a labor inspection.[13] The petitioner also refutes respondents' alleged belated argument that the latter are its employees.[14]

The petition is bereft of merit.

To begin with, the Court will not resolve or dwell on the petitioner's argument on the doubling of respondents' underpayment of wages and regular holiday pay by the DOLE for the simple reason that this is the first time that the petitioner raised such contention. From its pleadings filed in the DOLE and all the way up to the CA, the petitioner never questioned nor discussed such issue. It is only now before the Court that the petitioner belatedly presented such argument. It is well-settled that points of law, theories, issues and arguments not brought to the attention of the lower court, administrative agency or quasi-judicial body need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage.[15] To consider the alleged facts and arguments raised belatedly would amount to trampling on the basic principles of fair play, justice and due process.[16]

With regard to the contention that there is no evidence to support the finding that the respondents rendered overtime work and that they worked on their rest day, the resolution of this argument requires a review of the factual findings and the evidence presented, which this Court will not do. This Court is not a trier of facts and this applies with greater force in labor

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13 Id. at 17-18.

14 Id. at 184-186.

15 *Besana v. Mayor*, G.R. No. 153837, July 21, 2010, 625 SCRA 203, 214.

16 *Madrid v. Mapoy*, G.R. No. 150887, August 14, 2009, 596 SCRA 14, 28.

cases.[17] Hence, where the factual findings of the labor tribunals or agencies conform to, and are affirmed by, the CA, the same are accorded respect and finality, and are binding upon this Court.[18]

Petitioner also questions the authority of the DOLE to make a finding of an employer-employee relationship concomitant to its visitorial and enforcement power. The Court notes at this juncture that the petitioner, again, did not raise this question in the proceedings before the DOLE. At best, what the petitioner raised was the sufficiency of evidence proving the existence of an employer-employee relationship and it was only in its petition for *certiorari* with the CA that the petitioner sought to have this matter addressed. The CA should have refrained from resolving said matter as the petitioner was deemed to have waived such argument and was estopped from raising the same.[19]

At any rate, such argument lacks merit. The DOLE clearly acted within its authority when it determined the existence of an employer-employee relationship between the petitioner and respondents as it falls within the purview of its visitorial and enforcement power under Article 128(b) of the Labor Code, which provides:

> Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection. The Secretary or his duly authorized representative shall issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the findings of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of

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[17] *New City Builders, Inc. v. NLRC*, 499 Phil. 207, 211-212 (2005), citing *Manila Water Co., Inc. v. Pena*, 478 Phil. 68, 77 (2004).

[18] *C.F. Sharp Crew Management, Inc. v. Espanol, Jr.*, G.R. No. 155903, September 14, 2007, 533 SCRA 424, 440.

[19] *Catholic Vicariate, Baguio City v. Sto. Tomas*, G.R. No. 167334, March 7, 2008, 548 SCRA 31, 39.

inspection.

In *People's Broadcasting (Bombo Radyo Phils., Inc.) v. Secretary of the Department of Labor and Employment*,[20] the Court stated that it can be assumed that the DOLE in the exercise of its visitorial and enforcement power somehow has to make a determination of the existence of an employer-employee relationship. **Such determination, however, is merely preliminary, incidental and collateral to the DOLE's primary function of enforcing labor standards provisions**. Such power was further explained recently by the Court in its Resolution[21] dated March 6, 2012 issued in *People's Broadcasting*, *viz*:

> The determination of the existence of an employer-employee relationship by the DOLE must be respected. The expanded visitorial and enforcement power of the DOLE granted by RA 7730 would be rendered nugatory if the alleged employer could, by the simple expedient of disputing the employer-employee relationship, force the referral of the matter to the NLRC. The Court issued the declaration that at least a prima facie showing of the absence of an employer-employee relationship be made to oust the DOLE of jurisdiction. But it is precisely the DOLE that will be faced with that evidence, and it is the DOLE that will weigh it, to see if the same does successfully refute the existence of an employer-employee relationship.
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> x x x x
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> x x x [T]he power of the DOLE to determine the existence of an employer-employee relationship need not necessarily result in an affirmative finding. The DOLE may well make the determination that no employer-employee relationship exists, thus divesting itself of jurisdiction over the case. It must not be precluded from being able to reach its own conclusions, not by the parties, and certainly not by this Court.
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> Under Art. 128(b) of the Labor Code, as amended by RA 7730, the DOLE is fully empowered to make a determination as to the existence of an employer-employee relationship in the exercise of its visitorial and enforcement power, subject to judicial review, not review by the NLRC.[22]

Also, the existence of an employer-employee relationship is

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[20] G.R. No. 179652, May 8, 2009, 587 SCRA 724.

[21] *People's Broadcasting Service (Bombo Radyo Phils., Inc.) v. The Secretary of the Department of Labor and Employment, the Regional Director, DOLE Region VII, and Jandeleon Juezan*, G.R. No. 179652, March 6, 2012.

[22] Id.

ultimately a question of fact.[23] The determination made in this case by the DOLE, albeit provisional, and as affirmed by the Secretary of DOLE and the CA is beyond the ambit of a petition for review on *certiorari*.[24]

The Court now comes to the issue regarding the nature of the relationship between the petitioner and respondents, and the consequent liability of the petitioner to the respondents under the latter's claim.

It was the consistent conclusion of the DOLE and the CA that Lancer was not an independent contractor but was engaged in "labor-only contracting"; hence, the petitioner was considered an indirect employer of respondents and liable to the latter for their unpaid money claims.

At the time of the respondents' employment in 1998, the applicable regulation was DOLE Department Order No. 10, Series of 1997.[25] Under said Department Order, *labor-only contractin*g was defined as follows:

> Sec. 9. *Labor-only contracting*. – (a) Any person who undertakes to supply workers to an employer shall be deemed to be engaged in labor-only contracting where such person:
>
> > (1) Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and
> >
> > (2) The workers recruited and placed by such persons are performing activities which are directly related to the

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23 Supra note 19, at 38, citing *Manila Water Co., Inc. v. Pena*, 478 Phil. 68, 77 (2004).

24 Id.

25 DOLE Department Order No. 10 was subsequently revoked by Department Order No. 03 (Series of 2001) entitled, "Revoking Department Order No. 10, Series of 1997, and Continuing to Prohibit Labor-only Contracting." Finally, the DOLE issued Department Order No. 18- 02 (Series of 2002), implementing Articles 106 to 109 of the Labor Code, as amended, which defines *labor-only contracting*, as follows:

> Section 5. *Prohibition against labor-only contracting*. x x x x 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:
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> 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
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> ii) the contractor does not exercise the right to control over the performance of the work of the contractual employee.

> principal business or operations of the employer in which workers are habitually employed.

Labor-only contracting is prohibited and the person acting as contractor shall be considered merely as an agent or intermediary 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.[26]

According to the CA, the totality of the facts and surrounding circumstances of this case point to such conclusion. The Court agrees.

The ratio of Lancer's authorized capital stock of ₱400,000.00 as against its subscribed and paid-up capital stock of ₱25,000.00 shows the inadequacy of its capital investment necessary to maintain its day-to-day operations. And while the Court does not set an absolute figure for what it considers substantial capital for an independent job contractor, it measures the same against the type of work which the contractor is obligated to perform for the principal.[27] Moreover, the nature of respondents' work was directly related to the petitioner's business. The marked disparity between the petitioner's actual capitalization (₱25,000.00) and the resources needed to maintain its business, *i.e.*, "to establish, operate and manage a personnel service company which will conduct and undertake services for the use of offices, stores, commercial and industrial services of all kinds," supports the finding that Lancer was, indeed, a labor-only contractor. Aside from these is

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[26] Section 9(b), DOLE Department Order No. 10 (Series of 1997) states that *labor-only contracting* is prohibited and the person acting as contractor shall be considered merely as an agent or intermediary 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. Section 19, DOLE Department Order No. 18- 02, meanwhile, provides:

> x x x The principal shall be deemed as the direct employer of the contractual employees and therefore, solidarily liable with the contractor or subcontractor for whatever monetary claims the contractual employees may have against the former in the case of violations as provided for in Sections 5 (Labor-Only contracting), 6 (Prohibitions), 8 (Rights of Contractual Employees) and 16 (Delisting) of these Rules. In addition, the principal shall also be solidarily liable in case the contract between the principal and contractor or subcontractor is preterminated for reasons not attributable to the fault of the contractor or subcontractor.

[27] *Coca-Cola Bottlers Phils., Inc. v. Agito*, G.R. No. 179546, February 13, 2009, 579 SCRA 445, 462.

the undisputed fact that the petitioner failed to produce any written service contract that might serve as proof of its alleged agreement with Lancer.[28]

Finally, a finding that a contractor is a "labor-only" contractor is equivalent to declaring that there is an employer-employee relationship between the principal and the employees of the supposed contractor, and the "labor-only" contractor is considered as a mere agent of the principal, the real employer.[29] The former becomes solidarily liable for all the rightful claims of the employees.[30] The petitioner therefore, being the principal employer and Lancer, being the labor-only contractor, are solidarily liable for respondents' unpaid money claims.

WHEREFORE, the petition for review is **DENIED**.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

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28 *Rollo*, pp. 138-140.
29 *POLYFOAM-RGC International v. Concepcion*, G.R. No. 172349, June 13, 2012.
30 *San Miguel Corporation v. Semillano*, G.R. No. 164257, July 5, 2010, 623 SCRA 114, 129.

MARTIN S. VILLARAMA, JR.
Associate Justice

CERTIFICATION

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

MARIA LOURDES P. A. SERENO
Chief Justice