Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

FUJI TELEVISION NETWORK, INC.,	**G.R. No. 204944-45**
Petitioner,	Present:
	CARPIO, *J., Chairperson,*
	DEL CASTILLO,
	MENDOZA,
	VILLARAMA, JR.,* and
-versus-	LEONEN, *JJ.*
ARLENE S. ESPIRITU,	**Promulgated:**
Respondent.	DEC 0 3 2014

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DECISION

LEONEN, *J.*:

It is the burden of the employer to prove that a person whose services it pays for is an independent contractor rather than a regular employee with or without a fixed term. That a person has a disease does not per se entitle the employer to terminate his or her services. Termination is the last resort. At the very least, a competent public health authority must certify that the disease cannot be cured within six (6) months, even with appropriate treatment.

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* Designated Acting Member per Special Order No. 1888 dated November 28, 2014.

We decide this petition for review[1] on certiorari filed by Fuji Television Network, Inc., seeking the reversal of the Court of Appeals' decision[2] dated June 25, 2012, affirming with modification the decision[3] of the National Labor Relations Commission.

In 2005, Arlene S. Espiritu ("Arlene") was engaged by Fuji Television Network, Inc. ("Fuji") as a news correspondent/producer[4] "tasked to report Philippine news to Fuji through its Manila Bureau field office."[5] Arlene's employment contract initially provided for a term of one (1) year but was successively renewed on a yearly basis with salary adjustment upon every renewal.[6]

Sometime in January 2009, Arlene was diagnosed with lung cancer.[7] She informed Fuji about her condition. In turn, the Chief of News Agency of Fuji, Yoshiki Aoki, informed Arlene "that the company will have a problem renewing her contract"[8] since it would be difficult for her to perform her job.[9] She "insisted that she was still fit to work as certified by her attending physician."[10]

After several verbal and written communications,[11] Arlene and Fuji signed a non-renewal contract on May 5, 2009 where it was stipulated that her contract would no longer be renewed after its expiration on May 31, 2009. The contract also provided that the parties release each other from liabilities and responsibilities under the employment contract.[12]

In consideration of the non-renewal contract, Arlene "acknowledged receipt of the total amount of US$18,050.00 representing her monthly salary from March 2009 to May 2009, year-end bonus, mid-year bonus, and separation pay."[13] However, Arlene affixed her signature on the non-renewal contract with the initials "U.P." for "under protest."[14]

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1 *Rollo*, pp. 16–97.
2 Id. at 111–126. The decision was penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Noel G. Tijam (Chair) and Romeo F. Barza.
3 Id. at 202–220.
4 The National Labor Relations Commission's decision (*rollo*, p. 204) referred to Arlene as a "news correspondent" and "journalist/news producer" while the Court of Appeals' decision (*rollo*, p. 112) referred to Arlene as a "news correspondent/producer." ln the "Certification of Employment and Compensation" (*rollo*, p. 429), Fuji indicated that Arlene holds the position of "news producer." Photocopies of Arlene's IDs also indicate that she is connected with Fuji Television Network, Inc. with the position of "news producer" (*rollo*, p. 431).
5 *Rollo*, p. 112.
6 Id. at 112 and 204.
7 Id. at 27 and 722.
8 Id. at 113.
9 Id. at 112–113.
10 Id. at 113.
11 The records show that Arlene and Fuji, through Mr. Yoshiki Aoki, had several e-mail exchanges. The parties also admitted that they communicated with each other verbally.
12 *Rollo*, p. 113.
13 Id.
14 Id. at 209.

On May 6, 2009, the day after Arlene signed the non-renewal contract, she filed a complaint for illegal dismissal and attorney's fees with the National Capital Region Arbitration Branch of the National Labor Relations Commission. She alleged that she was forced to sign the non-renewal contract when Fuji came to know of her illness and that Fuji withheld her salaries and other benefits for March and April 2009 when she refused to sign.[15]

Arlene claimed that she was left with no other recourse but to sign the non-renewal contract, and it was only upon signing that she was given her salaries and bonuses, in addition to separation pay equivalent to four (4) years.[16]

In the decision[17] dated September 10, 2009, Labor Arbiter Corazon C. Borbolla dismissed Arlene's complaint.[18] Citing *Sonza v. ABS-CBN*[19] and applying the four-fold test, the Labor Arbiter held that Arlene was not Fuji's employee but an independent contractor.[20]

Arlene appealed before the National Labor Relations Commission. In its decision dated March 5, 2010, the National Labor Relations Commission reversed the Labor Arbiter's decision.[21] It held that Arlene was a regular employee with respect to the activities for which she was employed since she continuously rendered services that were deemed necessary and desirable to Fuji's business.[22] The National Labor Relations Commission ordered Fuji to pay Arlene backwages, computed from the date of her illegal dismissal.[23] The dispositive portion of the decision reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered GRANTING the instant appeal. The Decision of the Labor Arbiter dated 19 September 2009 is hereby REVERSED and SET ASIDE, and a new one is issued ordering respondents-appellees to pay complainant-appellant backwages computed from the date of her illegal dismissal until finality of this Decision.
>
> **SO ORDERED.**[24]

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15 Id. at 113.
16 Id.
17 Id. at 225–235.
18 Id. at 235.
19 G.R. No. 138051, June 10, 2004, 431 SCRA 583 [Per J. Carpio, First Division].
20 *Rollo*, pp. 228–232.
21 Id. at 219.
22 Id. at 213–216.
23 Id. at 219.
24 Id.

Arlene and Fuji filed separate motions for reconsideration.[25] Both motions were denied by the National Labor Relations Commission for lack of merit in the resolution dated April 26, 2010.[26]

From the decision of the National Labor Relations Commission, both parties filed separate petitions for certiorari[27] before the Court of Appeals. The Court of Appeals consolidated the petitions and considered the following issues for resolution:

> 1) Whether or not Espiritu is a regular employee or a fixed-term contractual employee;
> 2) Whether or not Espiritu was illegally dismissed; and
> 3) Whether or not Espiritu is entitled to damages and attorney's fees.[28]

In the assailed decision, the Court of Appeals affirmed the National Labor Relations Commission with the modification that Fuji immediately reinstate Arlene to her position as News Producer without loss of seniority rights, and pay her backwages, 13th-month pay, mid-year and year-end bonuses, sick leave and vacation leave with pay until reinstated, moral damages, exemplary damages, attorney's fees, and legal interest of 12% per annum of the total monetary awards.[29]

The Court of Appeals ruled that:

> **WHEREFORE**, for lack of merit, the petition of Fuji Television Network, Inc. and Yoshiki Aoki is **DENIED** and the petition of Arlene S. Espiritu is **GRANTED**. Accordingly, the Decision dated March 5, 2010 of the National Labor Relations Commission, 6th Division in NLRC NCR Case No. 05-06811-09 and its subsequent Resolution dated April 26, 2010 are hereby **AFFIRMED** with **MODIFICATIONS**, as follows:
>
> Fuji Television, Inc. is hereby ***ORDERED*** to immediately ***REINSTATE*** Arlene S. Espiritu to her position as News Producer without loss of seniority rights and privileges and to pay her the following:
>
> 1. Backwages at the rate of $1,900.00 per month computed from May 5, 2009 (the date of dismissal), until reinstated;
> 2. 13th Month Pay at the rate of $1,900.00 per annum from the date of dismissal, until reinstated;
> 3. One and a half (1½) months pay or $2,850.00 as midyear bonus per year from the date of dismissal, until reinstated;

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25 Id. at 222.
26 Id. at 222–224.
27 Id. at 112 and 130–188.
28 Id. at 116.
29 Id. at 125–126.

> 4. One and a half (1½) months pay or $2,850.00 as year-end bonus per year from the date of dismissal, until reinstated;
> 5. Sick leave of 30 days with pay or $1,900.00 per year from the date of dismissal, until reinstated; and
> 6. Vacation leave with pay equivalent to 14 days or $1,425.00 per annum from date of dismissal, until reinstated.
> 7. The amount of □100,000.00 as moral damages;
> 8. The amount of □50,000.00 as exemplary damages;
> 9. Attorney's fees equivalent to 10% of the total monetary awards herein stated; and
> 10. Legal interest of twelve percent (12%) per annum of the total monetary awards computed from May 5, 2009, until their full satisfaction.
>
> The Labor Arbiter is hereby ***DIRECTED*** to make another re-computation of the above monetary awards consistent with the above directives.
>
> **SO ORDERED.**[30]

In arriving at the decision, the Court of Appeals held that Arlene was a regular employee because she was engaged to perform work that was necessary or desirable in the business of Fuji,[31] and the successive renewals of her fixed-term contract resulted in regular employment.[32]

According to the Court of Appeals, *Sonza* does not apply in order to establish that Arlene was an independent contractor because she was not contracted on account of any peculiar ability, special talent, or skill.[33] The fact that everything used by Arlene in her work was owned by Fuji negated the idea of job contracting.[34]

The Court of Appeals also held that Arlene was illegally dismissed because Fuji failed to comply with the requirements of substantive and procedural due process necessary for her dismissal since she was a regular employee.[35]

The Court of Appeals found that Arlene did not sign the non-renewal contract voluntarily and that the contract was a mere subterfuge by Fuji to secure its position that it was her choice not to renew her contract. She was left with no choice since Fuji was decided on severing her employment.[36]

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30 Id.
31 Id. at 121.
32 Id. at 119.
33 Id. at 119–120.
34 Id. at 120.
35 Id. at 122.
36 Id. at 122–123.

Fuji filed a motion for reconsideration that was denied in the resolution[37] dated December 7, 2012 for failure to raise new matters.[38]

Aggrieved, Fuji filed this petition for review and argued that the Court of Appeals erred in affirming with modification the National Labor Relations Commission's decision, holding that Arlene was a regular employee and that she was illegally dismissed. Fuji also questioned the award of monetary claims, benefits, and damages.[39]

Fuji points out that Arlene was hired as a stringer, and it informed her that she would remain one.[40] She was hired as an independent contractor as defined in *Sonza*.[41] Fuji had no control over her work.[42] The employment contracts were executed and renewed annually upon Arlene's insistence to which Fuji relented because she had skills that distinguished her from ordinary employees.[43] Arlene and Fuji dealt on equal terms when they negotiated and entered into the employment contracts.[44] There was no illegal dismissal because she freely agreed not to renew her fixed-term contract as evidenced by her e-mail correspondences with Yoshiki Aoki.[45] In fact, the signing of the non-renewal contract was not necessary to terminate her employment since "such employment terminated upon expiration of her contract."[46] Finally, Fuji had dealt with Arlene in good faith, thus, she should not have been awarded damages.[47]

Fuji alleges that it did not need a permanent reporter since the news reported by Arlene could easily be secured from other entities or from the internet.[48] Fuji "never controlled the manner by which she performed her functions."[49] It was Arlene who insisted that Fuji execute yearly fixed-term contracts so that she could negotiate for annual increases in her pay.[50]

Fuji points out that Arlene reported for work for only five (5) days in February 2009, three (3) days in March 2009, and one (1) day in April 2009.[51] Despite the provision in her employment contract that sick leaves in excess of 30 days shall not be paid, Fuji paid Arlene her entire salary for the

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37 Id. at 127–129.
38 Id. at 128.
39 Id. at 36–37.
40 Id. at 23.
41 Id. at 39.
42 Id. at 24.
43 Id. at 23.
44 Id. at 39.
45 Id. at 30.
46 Id. at 40.
47 Id.
48 Id. at 22.
49 Id. at 24.
50 Id. at 22–23.
51 Id. at 94.

months of March, April, and May; four (4) months of separation pay; and a bonus for two and a half months for a total of US$18,050.00.[52] Despite having received the amount of US$18,050.00, Arlene still filed a case for illegal dismissal.[53]

Fuji further argues that the circumstances would show that Arlene was not illegally dismissed. The decision to not renew her contract was mutually agreed upon by the parties as indicated in Arlene's e-mail[54] dated March 11, 2009 where she consented to the non-renewal of her contract but refused to sign anything.[55] Aoki informed Arlene in an e-mail[56] dated March 12, 2009 that she did not need to sign a resignation letter and that Fuji would pay Arlene's salary and bonus until May 2009 as well as separation pay.[57]

Arlene sent an e-mail dated March 18, 2009 with her version of the non-renewal agreement that she agreed to sign this time.[58] This attached version contained a provision that Fuji shall re-hire her if she was still interested to work for Fuji.[59] For Fuji, Arlene's e-mail showed that she had the power to bargain.[60]

Fuji then posits that the Court of Appeals erred when it held that the elements of an employer-employee relationship are present, particularly that of control;[61] that Arlene's separation from employment upon the expiration of her contract constitutes illegal dismissal;[62] that Arlene is entitled to reinstatement;[63] and that Fuji is liable to Arlene for damages and attorney's fees.[64]

This petition for review on certiorari under Rule 45 was filed on February 8, 2013.[65] On February 27, 2013, Arlene filed a manifestation[66] stating that this court may not take jurisdiction over the case since Fuji failed to authorize Corazon E. Acerden to sign the verification.[67] Fuji filed a comment on the manifestation[68] on March 9, 2013.

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52 Id. at 32–33.
53 Id. at 33.
54 Id. at 26–29.
55 Id. at 26.
56 Id. at 30–31.
57 Id. at 31.
58 Id.
59 Id.
60 Id. at 32.
61 Id. at 36.
62 Id. at 37.
63 Id.
64 Id.
65 Id. at 16.
66 Id. at 689–694.
67 Id. at 691.
68 Id. at 695–705.

Based on the arguments of the parties, there are procedural and substantive issues for resolution:

I. Whether the petition for review should be dismissed as Corazon E. Acerden, the signatory of the verification and certification of non-forum shopping of the petition, had no authority to sign the verification and certification on behalf of Fuji;

II. Whether the Court of Appeals correctly determined that no grave abuse of discretion was committed by the National Labor Relations Commission when it ruled that Arlene was a regular employee, not an independent contractor, and that she was illegally dismissed; and

III. Whether the Court of Appeals properly modified the National Labor Relations Commission's decision by awarding reinstatement, damages, and attorney's fees.

The petition should be dismissed.

I
Validity of the verification and certification against forum shopping

In its comment on Arlene's manifestation, Fuji alleges that Corazon was authorized to sign the verification and certification of non-forum shopping because Mr. Shuji Yano was empowered under the secretary's certificate to delegate his authority to sign the necessary pleadings, including the verification and certification against forum shopping.[69]

On the other hand, Arlene points out that the authority given to Mr. Shuji Yano and Mr. Jin Eto in the secretary's certificate is only for the petition for certiorari before the Court of Appeals.[70] Fuji did not attach any board resolution authorizing Corazon or any other person to file a petition for review on certiorari with this court.[71] Shuji Yano and Jin Eto could not re-delegate the power that was delegated to them.[72] In addition, the special power of attorney executed by Shuji Yano in favor of Corazon indicated that she was empowered to sign on behalf of Shuji Yano, and not on behalf of Fuji.[73]

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69 Id. at 695–696.
70 Id. at 718.
71 Id.
72 Id. at 719.
73 Id.

The Rules of Court requires the submission of verification and certification against forum shopping

Rule 7, Section 4 of the 1997 Rules of Civil Procedure provides the requirement of verification, while Section 5 of the same rule provides the requirement of certification against forum shopping. These sections state:

> **SEC. 4. *Verification*.** — Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.
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> A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his knowledge and belief.
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> A pleading required to be verified which contains a verification based on "information and belief," or upon "knowledge, information and belief," or lacks a proper verification, shall be treated as an unsigned pleading.
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> **SEC. 5. *Certification against forum shopping*.**— The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
>
> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

Section 4(e) of Rule 45[74] requires that petitions for review should "contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42." Section 5 of the same rule provides that failure to comply with any requirement in Section 4 is sufficient ground to dismiss the petition.

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[74] RULES OF CIVIL PROCEDURE (1997).

Effects of non-compliance

Uy v. Landbank[75] discussed the effect of non-compliance with regard to verification and stated that:

> [t]he requirement regarding verification of a pleading is formal, not jurisdictional. Such requirement is simply a condition affecting the form of pleading, the non-compliance of which does not necessarily render the pleading fatally defective. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. The court may order the correction of the pleading if the verification is lacking or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the rules may be dispensed with in order that the ends of justice may thereby be served.[76] (Citations omitted)

Shipside Incorporated v. Court of Appeals[77] cited the discussion in *Uy* and differentiated its effect from non-compliance with the requirement of certification against forum shopping:

> On the other hand, the lack of certification against forum shopping is generally not curable by the submission thereof after the filing of the petition. Section 5, Rule 45 of the 1997 Rules of Civil Procedure provides that the failure of the petitioner to submit the required documents that should accompany the petition, including the certification against forum shopping, shall be sufficient ground for the dismissal thereof. *The same rule applies to certifications against forum shopping signed by a person on behalf of a corporation which are unaccompanied by proof that said signatory is authorized to file a petition on behalf of the corporation.*[78] (Emphasis supplied)

Effects of substantial compliance with the requirement of verification and certification against forum shopping

Although the general rule is that failure to attach a verification and certification against forum shopping is a ground for dismissal, there are cases where this court allowed substantial compliance.

In *Loyola v. Court of Appeals*,[79] petitioner Alan Loyola submitted the

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75 *Uy v. Landbank*, 391 Phil. 303 (2000) [Per J. Kapunan, First Division].
76 Id. at 312.
77 404 Phil. 981 (2001) [Per J. Melo, Third Division].
78 Id. at 995.
79 315 Phil. 529 (1995) [Per J. Davide, Jr., En Banc]. Note that this case involved an electoral protest for barangay elections.

required certification one day after filing his electoral protest.[80] This court considered the subsequent filing as substantial compliance since the purpose of filing the certification is to curtail forum shopping.[81]

In *LDP Marketing, Inc. v. Monter*,[82] Ma. Lourdes Dela Peña signed the verification and certification against forum shopping but failed to attach the board resolution indicating her authority to sign.[83] In a motion for reconsideration, LDP Marketing attached the secretary's certificate quoting the board resolution that authorized Dela Peña.[84] Citing *Shipside*, this court deemed the belated submission as substantial compliance since LDP Marketing complied with the requirement; what it failed to do was to attach proof of Dela Peña's authority to sign.[85]

Havtor Management Phils., Inc. v. National Labor Relations Commission[86] and *General Milling Corporation v. National Labor Relations Commission*[87] involved petitions that were dismissed for failure to attach any document showing that the signatory on the verification and certification against forum-shopping was authorized.[88] In both cases, the secretary's certificate was attached to the motion for reconsideration.[89] This court considered the subsequent submission of proof indicating authority to sign as substantial compliance.[90]

Altres v. Empleo[91] summarized the rules on verification and certification against forum shopping in this manner:

> For the guidance of the bench and bar, the Court restates in capsule form the jurisprudential pronouncements . . . respecting non-compliance with the requirement on, or submission of defective, verification and certification against forum shopping:
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> 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective

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80 Id. at 532.
81 Id. at 537–538.
82 515 Phil. 768 (2006) [Per J. Carpio Morales, Third Division].
83 Id. at 772–773.
84 Id. at 773.
85 Id. at 776–778.
86 423 Phil. 509 (2001) [Per J. Kapunan, First Division].
87 442 Phil. 425 (2002) [Per J. Vitug, First Division].
88 *Havtor Management Phils., Inc. v. National Labor Relations Commission*, 423 Phil. 509, 512 (2001) [Per J. Kapunan, First Division]; *General Milling Corporation v. National Labor Relations Commission*, 442 Phil. 425, 426 (2002) [Per J. Vitug, First Division].
89 *Havtor Management Phils., Inc. v. National Labor Relations Commission*, 423 Phil. 509, 513 (2001) [Per J. Kapunan, First Division]; *General Milling Corporation v. National Labor Relations Commission*, 442 Phil. 425, 427 (2002) [Per J. Vitug, First Division].
90 *Havtor Management Phils., Inc. v. National Labor Relations Commission*, 423 Phil. 509, 513 (2001) [Per J. Kapunan, First Division]; *General Milling Corporation v. National Labor Relations Commission*, 442 Phil. 425, 427 (2002) [Per J. Vitug, First Division].
91 594 Phil. 246 (2008) [Per J. Carpio Morales, En Banc].

certification against forum shopping.

2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.

3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.

4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."

5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.

6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.[92]

There was substantial compliance by Fuji Television Network, Inc.

Being a corporation, Fuji exercises its power to sue and be sued through its board of directors or duly authorized officers and agents. Thus, the physical act of signing the verification and certification against forum shopping can only be done by natural persons duly authorized either by the corporate by-laws or a board resolution.[93]

In its petition for review on certiorari, Fuji attached Hideaki Ota's secretary's certificate,[94] authorizing Shuji Yano and Jin Eto to represent and sign for and on behalf of Fuji.[95] The secretary's certificate was duly

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92 Id. at 261–262.

93 *Chinese Young Men's Christian Association of the Philippine Islands, doing business under the name of Manila Downtown YMCA v. Remington Steel Corporation*, 573 Phil. 320 (2008) [Per J. Austria-Martinez, Third Division].

94 *Rollo*, pp. 102–103.

95 Id. at 102.

authenticated[96] by Sulpicio Confiado, Consul-General of the Philippines in Japan. Likewise attached to the petition is the special power of attorney executed by Shuji Yano, authorizing Corazon to sign on his behalf.[97] The verification and certification against forum shopping was signed by Corazon.[98]

Arlene filed the manifestation dated February 27, 2013, arguing that the petition for review should be dismissed because Corazon was not duly authorized to sign the verification and certification against forum shopping.

Fuji filed a comment on Arlene's manifestation, stating that Corazon was properly authorized to sign. On the basis of the secretary's certificate, Shuji Yano was empowered to delegate his authority.

Quoting the board resolution dated May 13, 2010, the secretary's certificate states:

> (a) The Corporation shall file a Petition for Certiorari with the Court of Appeals, against Philippines' National Labor Relations Commission ("NLRC") and Arlene S. Espiritu, pertaining to **NLRC-NCR Case No. LAC 00-002697-09, RAB No. 05-06811-00** and entitled **"Arlene S. Espiritu v. Fuji Television Network, Inc./Yoshiki Aoki",** and participate in any other subsequent proceeding that may necessarily arise therefrom, including but not limited to the filing of appeals in the appropriate venue;
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> (b) **Mr. Shuji Yano and Mr. Jin Eto** be authorized, as they are hereby authorized, to verify and execute the certification against non-forum shopping which may be necessary or required to be attached to any pleading to [sic] submitted to the Court of Appeals; and the authority to so verify and certify for the Corporation in favor of the said persons shall subsist and remain effective until the termination of the said case;
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> . . . .
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> (d) **Mr. Shuji Yano and Mr. Jin Eto** be authorized, as they are hereby authorized, to represent and appear on behalf the [sic] Corporation in all stages of the [sic] this case and in any other proceeding that may necessarily arise thereform [sic], and to act in the Corporation's name, place and stead to determine, propose, agree, decide, do, and perform any and all of the following:
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> 1. The possibility of amicable settlement or of submission to alternative mode of dispute resolution;
> 2. The simplification of the issue;
> 3. The necessity or desirability of amendments to the pleadings;

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96 Id. at 101.
97 Id. at 100.
98 Id. at 98.

> 4. The possibility of obtaining stipulation or admission of facts and documents; and
> 5. Such other matters as may aid in the prompt disposition of the action.[99] (Emphasis in the original; Italics omitted)

Shuji Yano executed a special power of attorney appointing Ms. Ma. Corazon E. Acerden and Mr. Moises A. Rollera as his attorneys-in-fact.[100] The special power of attorney states:

> That I, **SHUJI YANO**, of legal age, Japanese national, with office address at 2-4-8 Daiba, Minato-Ku, Tokyo, 137-8088 Japan, and being the representative of Fuji TV, INc., [sic] (evidenced by the attached Secretary's Certificate) one of the respondents in **NLRC-NCR Case No. 05-06811-00 entitled *"Arlene S. Espiritu v. Fuji Television Network, Inc./Yoshiki Aoki", and subsequently docketed before the Court of Appeals as* C.A. G.R. S.P. No. 114867 (*Consolidated with SP No. 114889*)** do hereby make, constitute and appoint **Ms. Ma. Corazon E. Acerden and Mr. Moises A. Rollera** as my true and lawful attorneys-in-fact for me and my name, place and stead to act and represent me in the above-mentioned case, with special power to make admission/s and stipulations and/or to make and submit as well as to accept and approve compromise proposals upon such terms and conditions and under such covenants as my attorney-in-fact may deem fit, and to engage the services of **Villa Judan and Cruz Law Offices** as the legal counsel to represent the Company in the Supreme Court;
>
> The said Attorneys-in-Fact are hereby further authorized to make, sign, execute and deliver such papers or documents as may be necessary in furtherance of the power thus granted, particularly to sign and execute the verification and certification of non-forum shopping needed to be filed.[101] (Emphasis in the original)

In its comment[102] on Arlene's manifestation, Fuji argues that Shuji Yano could further delegate his authority because the board resolution empowered him to "*act in the Corporation's name, place and stead to determine, propose, agree, decided* [sic]*, do and perform any and all of the following: . . . such other matters as may aid in the prompt disposition of the action*."[103]

To clarify, Fuji attached a verification and certification against forum shopping, but Arlene questions Corazon's authority to sign. Arlene argues that the secretary's certificate empowered Shuji Yano to file a petition for certiorari before the Court of Appeals, and not a petition for review before this court, and that since Shuji Yano's authority was delegated to him, he could not further delegate such power. Moreover, Corazon was representing

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99 Id. at 102–103.
100 Id. at 100.
101 Id.
102 Id. at 695–705.
103 Id. at 696.

Shuji Yano in his personal capacity, and not in his capacity as representative of Fuji.

A review of the board resolution quoted in the secretary's certificate shows that Fuji shall "*file a Petition for Certiorari with the Court of Appeals*"[104] and "*participate in any other subsequent proceeding that may necessarily arise therefrom, including but not limited to the filing of appeals in the appropriate venue*,"[105] and that Shuji Yano and Jin Eto are authorized to represent Fuji "*in any other proceeding that may necessarily arise thereform* [sic]."[106] As pointed out by Fuji, Shuji Yano and Jin Eto were also authorized to "*act in the Corporation's name, place and stead to determine, propose, agree, decide, do, and perform any and all of the following: . . . 5. Such other matters as may aid in the prompt disposition of the action*."[107]

Considering that the subsequent proceeding that may arise from the petition for certiorari with the Court of Appeals is the filing of a petition for review with this court, Fuji substantially complied with the procedural requirement.

On the issue of whether Shuji Yano validly delegated his authority to Corazon, Article 1892 of the Civil Code of the Philippines states:

> ART. 1892. The agent may appoint a substitute if the principal has not prohibited him from doing so; but he shall be responsible for the acts of the substitute:
>
> (1) When he was not given the power to appoint one;
>
> (2) When he was given such power, but without designating the person, and the person appointed was notoriously incompetent or insolvent.
>
> All acts of the substitute appointed against the prohibition of the principal shall be void.

The secretary's certificate does not state that Shuji Yano is prohibited from appointing a substitute. In fact, he is empowered to do acts that will aid in the resolution of this case.

This court has recognized that there are instances when officials or employees of a corporation can sign the verification and certification against forum shopping without a board resolution. In *Cagayan Valley Drug*

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104 Id. at 102.
105 Id.
106 Id.
107 Id. at 102–103.

Corporation v. CIR,[108] it was held that:

> In sum, we have held that the following officials or employees of the company can sign the verification and certification without need of a board resolution: (1) the Chairperson of the Board of Directors, (2) the President of a corporation, (3) the General Manager or Acting General Manager, (4) Personnel Officer, and (5) an Employment Specialist in a labor case.
>
> While the above cases[109] do not provide a complete listing of authorized signatories to the verification and certification required by the rules, the determination of the sufficiency of the authority was done on a case to case basis. The rationale applied in the foregoing cases is to justify the authority of corporate officers or representatives of the corporation to sign the verification or certificate against forum shopping, being 'in a position to verify the truthfulness and correctness of the allegations in the petition.'[110]

Corazon's affidavit[111] states that she is the "*office manager and resident interpreter of the Manila Bureau of Fuji Television Network, Inc.*"[112] and that she has "*held the position for the last twenty-three years*."[113]

As the office manager for 23 years, Corazon can be considered as having knowledge of all matters in Fuji's Manila Bureau Office and is in a position to verify "the truthfulness and the correctness of the allegations in the Petition."[114]

Thus, Fuji substantially complied with the requirements of verification and certification against forum shopping.

Before resolving the substantive issues in this case, this court will discuss the procedural parameters of a Rule 45 petition for review in labor cases.

II
Procedural parameters of petitions for review in labor cases

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108 568 Phil. 572 (2008) [Per J. Velasco, Jr., Second Division].

109 The ponencia cited the cases of *Mactan-Cebu International Airport Authority v. CA*, 399 Phil. 695 (2000) [Per J. Gonzaga-Reyes, Third Division]; *Pfizer, Inc. v. Galan*, 410 Phil. 483 (2001) [Per J. Davide, Jr., First Division]; *Novelty Philippines, Inc. v. CA*, 458 Phil. 36 (2003) [Per J. Panganiban, Third Division]; *Lepanto Consolidated Mining Company v. WMC Resources International Pty. Ltd.*, 458 Phil. 701 (2003) [Per J. Carpio Morales, Third Division].

110 *Cagayan Valley Drug Corporation v. CIR*, 568 Phil. 572, 581–582 (2008) [Per J. Velasco, Jr., Second Division].

111 *Rollo*, pp. 602–603.

112 Id.

113 Id.

114 Id. at 697.

Article 223 of the Labor Code[115] does not provide any mode of appeal for decisions of the National Labor Relations Commission. It merely states that "[t]he decision of the Commission shall be final and executory after ten (10) calendar days from receipt thereof by the parties." Being final, it is no longer appealable. However, the finality of the National Labor Relations Commission's decisions does not mean that there is no more recourse for the parties.

In *St. Martin Funeral Home v. National Labor Relations Commission,*[116] this court cited several cases[117] and rejected the notion that this court had no jurisdiction to review decisions of the National Labor Relations Commission. It stated that this court had the power to review the acts of the National Labor Relations Commission to see if it kept within its jurisdiction in deciding cases and also as a form of check and balance.[118] This court then clarified that judicial review of National Labor Relations Commission decisions shall be by way of a petition for certiorari under Rule 65. Citing the doctrine of hierarchy of courts, it further ruled that such petitions shall be filed before the Court of Appeals. From the Court of Appeals, an aggrieved party may file a petition for review on certiorari under Rule 45.

A petition for certiorari under Rule 65 is an original action where the issue is limited to grave abuse of discretion. As an original action, it cannot be considered as a continuation of the proceedings of the labor tribunals.

On the other hand, a petition for review on certiorari under Rule 45 is a mode of appeal where the issue is limited to questions of law. In labor cases, a Rule 45 petition is limited to reviewing whether the Court of Appeals correctly determined the presence or absence of grave abuse of discretion and deciding other jurisdictional errors of the National Labor Relations Commission.[119]

In *Odango v. National Labor Relations Commission*,[120] this court explained that a petition for certiorari is an extraordinary remedy that is "available only and restrictively in truly exceptional cases"[121] and that its sole office "is the correction of errors of jurisdiction including commission

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115 Pres. Decree No. 442, as amended.

116 356 Phil. 811 (1998) [Per J. Regalado, En Banc].

117 *San Miguel Corporation v. Secretary of Labor,* 159-A Phil. 346 (1975) [Per J. Aquino, Second Division]; *Scott v. Inciong, et al.*, 160-A Phil. 1107 (1975) [Per J. Fernando, Second Division]; *Bordeos v. National Labor Relations Commission*, 330 Phil. 1003 (1996) [Per J. Panganiban, Third Division].

118 *St. Martin Funeral Home v. National Labor Relations Commission*, 356 Phil. 811, 816 (1998) [Per J. Regalado, En Banc].

119 J. Brion, dissenting opinion in *Abott Laboratories, PhiIippines v. Alcaraz*, G.R. No. 192571, July 23, 2013, 701 SCRA 682, 723–724 [Per J. Perlas-Bernabe, En Banc].

120 G.R. No.147420, June 10, 2004, 431 SCRA 633 [Per J. Carpio, First Division].

121 Id. at 639.

of grave abuse of discretion amounting to lack or excess of jurisdiction."[122] A petition for certiorari does not include a review of findings of fact since the findings of the National Labor Relations Commission are accorded finality.[123] In cases where the aggrieved party assails the National Labor Relations Commission's findings, he or she must be able to show that the Commission "acted capriciously and whimsically or in total disregard of evidence material to the controversy."[124]

When a decision of the Court of Appeals under a Rule 65 petition is brought to this court by way of a petition for review under Rule 45, only questions of law may be decided upon. As held in *Meralco Industrial v. National Labor Relations Commission*:[125]

> This Court is not a trier of facts. Well-settled is the rule that the jurisdiction of this Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are completely devoid of support from the evidence on record, or the assailed judgment is based on a gross misapprehension of facts. Besides, factual findings of quasi-judicial agencies like the NLRC, when affirmed by the Court of Appeals, are conclusive upon the parties and binding on this Court.[126]

Career Philippines v. Serna,[127] citing *Montoya v. Transmed*,[128] is instructive on the parameters of judicial review under Rule 45:

> As a rule, only questions of law may be raised in a Rule 45 petition. In one case, we discussed the particular parameters of a Rule 45 appeal from the CA's Rule 65 decision on a labor case, as follows:
>
> > In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for certiorari it ruled upon was presented to it; *we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct.* In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the

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122 Id.
123 Id. at 640.
124 Id.
125 572 Phil. 94 (2008) [Per J. Chico-Nazario, Third Division].
126 Id. at 117.
127 G.R. No. 172086, December 3, 2012, 686 SCRA 676 [Per J. Brion, Second Division].
128 613 Phil. 696 (2009) [Per J. Brion, Second Division].

> NLRC decision challenged before it.[129] (Emphasis in the original)

Justice Brion's dissenting opinion in *Abott Laboratories, PhiIippines v. AIcaraz*[130] discussed that in petitions for review under Rule 45, "*the Court simply determines whether the legal correctness of the CA's finding that the NLRC ruling . . . had basis in fact and in Iaw*."[131] In this kind of petition, the proper question to be raised is, **"Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?"**[132]

Justice Brion's dissenting opinion also laid down the following guidelines:

> If the NLRC ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, ***dismiss*** the petition. If grave abuse of discretion exists, then the CA must grant the petition and nullify the NLRC ruling, entering at the same time the ruling that is justified under the evidence and the governing law, rules and jurisprudence. In our Rule 45 review, this Court must ***deny*** the petition if it finds that the CA correctly acted.[133] (Emphasis in the original)

These parameters shall be used in resolving the substantive issues in this petition.

III
Determination of employment status; burden of proof

In this case, there is no question that Arlene rendered services to Fuji. However, Fuji alleges that Arlene was an independent contractor, while Arlene alleges that she was a regular employee. To resolve this issue, we ascertain whether an employer-employee relationship existed between Fuji and Arlene.

This court has often used the four-fold test to determine the existence of an employer-employee relationship. Under the four-fold test, the "control

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129 *Career Philippines v. Serna*, G.R. No. 172086, December 3, 2012, 686 SCRA 676, 683–684 [Per J. Brion, Second Division], *citing Montoya v. Transmed Manila Corporation*, 613 Phil. 696, 706–707 (2009) [Per J. Brion, Second Division].

130 G.R. No. 192571, July 23, 2013, 701 SCRA 682 [Per J. Perlas-Bernabe, En Banc].

131 J. Brion, dissenting opinion in *Abott Laboratories, PhiIippines v. AIcaraz*, G.R. No. 192571, July 23, 2013, 701 SCRA 682, 723–724 [Per J. Perlas-Bernabe, En Banc].

132 Id. at 723, *citing Montoya v. Transmed Manila Corporation*, 613 Phil. 696, 707 (2009) [Per J. Brion, Second Division].

133 Id. at 724–725.

test" is the most important.[134] As to how the elements in the four-fold test are proven, this court has discussed that:

> [t]here is no hard and fast rule designed to establish the aforesaid elements. Any competent and relevant evidence to prove the relationship may be admitted. Identification cards, cash vouchers, social security registration, appointment letters or employment contracts, payrolls, organization charts, and personnel lists, serve as evidence of employee status.[135]

If the facts of this case vis-à-vis the four-fold test show that an employer-employee relationship existed, we then determine the status of Arlene's employment, i.e., whether she was a regular employee. Relative to this, we shall analyze Arlene's fixed-term contract and determine whether it supports her argument that she was a regular employee, or the argument of Fuji that she was an independent contractor. We shall scrutinize whether the nature of Arlene's work was necessary and desirable to Fuji's business or whether Fuji only needed the output of her work. If the circumstances show that Arlene's work was necessary and desirable to Fuji, then she is presumed to be a regular employee. The burden of proving that she was an independent contractor lies with Fuji.

In labor cases, the quantum of proof required is substantial evidence.[136] "Substantial evidence" has been defined as "such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."[137]

If Arlene was a regular employee, we then determine whether she was illegally dismissed. In complaints for illegal dismissal, the burden of proof is on the employee to prove the fact of dismissal.[138] Once the employee establishes the fact of dismissal, supported by substantial evidence, the burden of proof shifts to the employer to show that there was a just or authorized cause for the dismissal and that due process was observed.[139]

IV
Whether the Court of Appeals correctly affirmed the National Labor Relations Commission's finding that Arlene was a regular employee

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134 *Consulta v. Court of Appeals*, 493 Phil. 842, 847 (2005) [Per J. Carpio, First Division].

135 *Tenazas v. R. Villegas Taxi Transport*, G.R. No. 192998, April 2, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/192998.pdf> [Per J. Reyes, First Division], *citing Meteoro v. Creative Creatures Inc.*, 610 Phil. 150, 161 (2009) [Per J. Nachura, Third Division].

136 *Tenazas v. R. Villegas Taxi Transport*, G.R. No. 192998, April 2, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/192998.pdf> [Per J. Reyes, First Division].

137 Id.

138 *MZR Industries v. Colambot*, G.R. No. 179001, August 28, 2013, 704 SCRA 150, 157 [Per J. Peralta, Third Division]. *See also Exodus International Construction Corporation v. Biscocho*, G.R. No. 166109, February 23, 2011, 644 SCRA 76, 86 [Per J. Del Castillo, First Division].

139 LABOR CODE, art. 277(b). *See also Samar-Med Distribution v. National Labor Relations Commission*, G.R. No. 162385, July 15, 2013, 701 SCRA, 148, 160 [Per J. Bersamin, First Division].

Fuji alleges that Arlene was an independent contractor, citing *Sonza v. ABS-CBN* and relying on the following facts: (1) she was hired because of her skills; (2) her salary was US$1,900.00, which is higher than the normal rate; (3) she had the power to bargain with her employer; and (4) her contract was for a fixed term. According to Fuji, the Court of Appeals erred when it ruled that Arlene was forced to sign the non-renewal agreement, considering that she sent an email with another version of the non-renewal agreement.[140] Further, she is not entitled to moral damages and attorney's fees because she acted in bad faith when she filed a labor complaint against Fuji after receiving US$18,050.00 representing her salary and other benefits.[141]

Arlene argues that she was a regular employee because Fuji had control and supervision over her work. The news events that she covered were all based on the instructions of Fuji.[142] She maintains that the successive renewal of her employment contracts for four (4) years indicates that her work was necessary and desirable.[143] In addition, Fuji's payment of separation pay equivalent to one (1) month's pay per year of service indicates that she was a regular employee.[144] To further support her argument that she was not an independent contractor, she states that Fuji owns the laptop computer and mini-camera that she used for work.[145]

Arlene also argues that *Sonza* is not applicable because she was a plain reporter for Fuji, unlike Jay Sonza who was a news anchor, talk show host, and who enjoyed a celebrity status.[146]

On her illness, Arlene points out that it was not a ground for her dismissal because her attending physician certified that she was fit to work.[147]

Arlene admits that she signed the non-renewal agreement with quitclaim, not because she agreed to its terms, but because she was not in a position to reject the non-renewal agreement. Further, she badly needed the salary withheld for her sustenance and medication.[148] She posits that her acceptance of separation pay does not bar filing of a complaint for illegal dismissal.[149]

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140 *Rollo*, p. 80.
141 Id. at 83.
142 Id. at 726 and 728.
143 Id. at 729.
144 Id. at 733.
145 Id. at 719 and 725.
146 Id. at 719.
147 Id. at 752.
148 Id. at 736.
149 Id. at 768.

Article 280 of the Labor Code provides that:

> **Art. 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 services 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 exist.

This provision classifies employees into regular, project, seasonal, and casual. It further classifies regular employees into two kinds: (1) those "*engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer*"; and (2) casual employees who have "*rendered at least one year of service, whether such service is continuous or broken*."

Another classification of employees, i.e., employees with fixed-term contracts, was recognized in *Brent School, Inc. v. Zamora*[150] where this court discussed that:

> Logically, the decisive determinant in the term employment should not be the activities that the employee is called upon to perform, but the *day certain* agreed upon by the parties for the commencement and termination of their employment relationship, a *day certain* being understood to be "that which must necessarily come, although it may not be known when."[151] (Emphasis in the original)

This court further discussed that there are employment contracts where "a fixed term is an essential and natural appurtenance"[152] such as overseas employment contracts and officers in educational institutions.[153]

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150 260 Phil. 747 (1990) [Per J. Narvasa, En Banc].
151 Id. at 757, *citing* CIVIL CODE, art. 1193, par. 3.
152 Id. at 761.
153 Id.

Distinctions among fixed-term employees, independent contractors, and regular employees

GMA Network, Inc. v. Pabriga[154] expounded the doctrine on fixed-term contracts laid down in *Brent* in the following manner:

> Cognizant of the possibility of abuse in the utilization of fixed-term employment contracts, we emphasized in *Brent* that where from the circumstances it is apparent that the periods have been imposed to preclude acquisition of tenurial security by the employee, they should be struck down as contrary to public policy or morals. We thus laid down indications or criteria under which "term employment" cannot be said to be in circumvention of the law on security of tenure, namely:
>
> > 1) The fixed period of employment was knowingly and voluntarily agreed upon by the parties without any force, duress, or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent; or
> >
> > 2) It satisfactorily appears that the employer and the employee dealt with each other on more or less equal terms with no moral dominance exercised by the former or the latter.
>
> These indications, which must be read together, make the *Brent* doctrine applicable only in a few special cases wherein the employer and employee are on more or less in equal footing in entering into the contract. The reason for this is evident: when a prospective employee, on account of special skills or market forces, is in a position to make demands upon the prospective employer, such prospective employee needs less protection than the ordinary worker. Lesser limitations on the parties' freedom of contract are thus required for the protection of the employee.[155] (Citations omitted)

For as long as the guidelines laid down in *Brent* are satisfied, this court will recognize the validity of the fixed-term contract.

In *Labayog v. M.Y. San Biscuits, Inc.*,[156] this court upheld the fixed-term employment of petitioners because from the time they were hired, they were informed that their engagement was for a specific period. This court stated that:

> [s]imply put, petitioners were not regular employees. While their employment as mixers, packers and machine operators was necessary and desirable in the usual business of respondent company, they were

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154 G.R. No. 176419, November 27, 2013, 710 SCRA 690 [Per J. Leonardo-De Castro, First Division].
155 Id. at 709–710.
156 527 Phil. 67 (2006) [Per J. Corona, Second Division].

> employed temporarily only, during periods when there was heightened demand for production. Consequently, there could have been no illegal dismissal when their services were terminated on expiration of their contracts. There was even no need for notice of termination because they knew exactly when their contracts would end. Contracts of employment for a fixed period terminate on their own at the end of such period.
>
> Contracts of employment for a fixed period are not unlawful. What is objectionable is the practice of some scrupulous employers who try to circumvent the law protecting workers from the capricious termination of employment.[157] (Citation omitted)

Caparoso v. Court of Appeals[158] upheld the validity of the fixed-term contract of employment. Caparoso and Quindipan were hired as delivery men for three (3) months. At the end of the third month, they were hired on a monthly basis. In total, they were hired for five (5) months. They filed a complaint for illegal dismissal.[159] This court ruled that there was no evidence indicating that they were pressured into signing the fixed-term contracts. There was likewise no proof that their employer was engaged in hiring workers for five (5) months only to prevent regularization. In the absence of these facts, the fixed-term contracts were upheld as valid.[160]

On the other hand, an independent contractor is defined as:

> . . . one who carries on a distinct and independent business and undertakes to perform the job, work, or service on its own account and under one's own responsibility according to one's own manner and method, free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof.[161]

In view of the "distinct and independent business" of independent contractors, no employer-employee relationship exists between independent contractors and their principals.

Independent contractors are recognized under Article 106 of the Labor Code:

> **Art. 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

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157 Id. at 72–73.
158 544 Phil. 721 (2007) [Per J. Carpio, Second Division].
159 Id. at 724.
160 Id. at 728.
161 *Orozco v. Fifth Division, Court of Appeals*, 584 Phil. 35, 54 (2008) [Per J. Nachura, Third Division], *citing Chavez v. National Labor Relations Commission*, 489 Phil. 444, 457–458 [Per J. Callejo, Sr., Second Division].

> latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.
>
> . . . .
>
> 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.
>
> 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.

In Department Order No. 18-A, Series of 2011, of the Department of Labor and Employment, a contractor is defined as having:

> **Section 3**. . . .
>
> . . . .
>
> (c) . . . an arrangement whereby a principal agrees to put out or farm out with a contractor 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.

This department order also states that there is a trilateral relationship in legitimate job contracting and subcontracting arrangements among the principal, contractor, and employees of the contractor. There is no employer-employee relationship between the contractor and principal who engages the contractor's services, but there is an employer-employee relationship between the contractor and workers hired to accomplish the work for the principal.[162]

Jurisprudence has recognized another kind of independent contractor: individuals with unique skills and talents that set them apart from ordinary

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[162] DOLE Dept. O. No. 18-A (2011), secs. 3(m) and 5.

employees. There is no trilateral relationship in this case because the independent contractor himself or herself performs the work for the principal. In other words, the relationship is bilateral.

In *Orozco v. Court of Appeals*,[163] Wilhelmina Orozco was a columnist for the Philippine Daily Inquirer. This court ruled that she was an independent contractor because of her "talent, skill, experience, and her unique viewpoint as a feminist advocate."[164] In addition, the Philippine Daily Inquirer did not have the power of control over Orozco, and she worked at her own pleasure.[165]

Semblante v. Court of Appeals[166] involved a *masiador*[167] and a *sentenciador*.[168] This court ruled that "petitioners performed their functions as *masiador* and *sentenciador* free from the direction and control of respondents"[169] and that the *masiador* and *sentenciador* "relied mainly on their 'expertise that is characteristic of the cockfight gambling.'"[170] Hence, no employer-employee relationship existed.

Bernarte v. Philippine Basketball Association[171] involved a basketball referee. This court ruled that "a referee is an independent contractor, whose special skills and independent judgment are required specifically for such position and cannot possibly be controlled by the hiring party."[172]

In these cases, the workers were found to be independent contractors because of their unique skills and talents and the lack of control over the means and methods in the performance of their work.

In other words, there are different kinds of independent contractors: those engaged in legitimate job contracting and those who have unique skills and talents that set them apart from ordinary employees.

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163 584 Phil. 35 (2008) [Per J. Nachura, Third Division].
164 Id. at 56.
165 Id.
166 G.R. No. 196426, August 15, 2011, 655 SCRA 444 [Per J. Velasco, Jr., Third Division].
167 Id. at 446. *Semblante v. Court of Appeals* defined "masiador" as the person who "calls and takes the bets from the gamecock owners and other bettors and orders the start of the cockfight. He also distributes the winnings after deducting the *arriba*, or the commission for the cockpit."
168 Id. A "sentenciador" is defined as the person who "oversees the proper gaffing of fighting cocks, determines the fighting cocks' physical condition and capabilities to continue the cockfight, and eventually declares the result of the cockfight."
169 Id. at 452.
170 Id.
171 G.R. No. 192084, September 14, 2011, 657 SCRA 745 [Per J. Carpio, Second Division].
172 Id. at 757.

Since no employer-employee relationship exists between independent contractors and their principals, their contracts are governed by the Civil Code provisions on contracts and other applicable laws.[173]

A contract is defined as "a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service."[174] Parties are free to stipulate on terms and conditions in contracts as long as these "are not contrary to law, morals, good customs, public order, or public policy."[175] This presupposes that the parties to a contract are on equal footing. They can bargain on terms and conditions until they are able to reach an agreement.

On the other hand, contracts of employment are different and have a higher level of regulation because they are impressed with public interest. Article XIII, Section 3 of the 1987 Constitution provides full protection to labor:

> **ARTICLE XIII. SOCIAL JUSTICE AND HUMAN RIGHTS**
>
> . . . .
>
> **LABOR**
>
> Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.
>
> It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.
>
> The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.
>
> The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

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173 DOLE Dept. O. No. 18-A (2011), sec. 5(b). *See also Sonza v. ABS-CBN Broadcasting Corporation*, G.R. No. 138051, June 10, 2004, 431 SCRA 583, 592 [Per J. Carpio, First Division].

174 CIVIL CODE, art. 1305.

175 CIVIL CODE, art. 1306.

Apart from the constitutional guarantee of protection to labor, Article 1700 of the Civil Code states:

> ART. 1700. The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.

In contracts of employment, the employer and the employee are not on equal footing. Thus, it is subject to regulatory review by the labor tribunals and courts of law. The law serves to equalize the unequal. The labor force is a special class that is constitutionally protected because of the inequality between capital and labor.[176] This presupposes that the labor force is weak.

However, the level of protection to labor should vary from case to case; otherwise, the state might appear to be too paternalistic in affording protection to labor. As stated in *GMA Network, Inc. v. Pabriga,* the ruling in *Brent* applies in cases where it appears that the employer and employee are on equal footing.[177] This recognizes the fact that not all workers are weak. To reiterate the discussion in *GMA Network v. Pabriga*:

> The reason for this is evident: when a prospective employee, on account of special skills or market forces, is in a position to make demands upon the prospective employer, such prospective employee needs less protection than the ordinary worker. Lesser limitations on the parties' freedom of contract are thus required for the protection of the employee.[178]

The level of protection to labor must be determined on the basis of the nature of the work, qualifications of the employee, and other relevant circumstances.

For example, a prospective employee with a bachelor's degree cannot be said to be on equal footing with a grocery bagger with a high school

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[176] In *Jaculbe v. Silliman University*, 547 Phil 352, 359 (2007) [Per J. Corona, First Division], *citing Mercury Drug Co., Inc. v. CIR,* 155 Phil 636 (1974), [Per J. Makasiar, En Banc], this court stated that: "it is axiomatic that employer and employee do not stand on equal footing, a situation which often causes an employee to act out of need instead of any genuine acquiescence to the employer." In *Philippine Association of Service Exporters, Inc. v. Hon. Drilon,* 246 Phil 393, 405 (1988) [Per J. Sarmiento, En Banc], this court stated that: "'Protection to labor' does not signify the promotion of employment alone. What concerns the Constitution more paramountly is that such an employment may be above all, decent, just, and humane."

[177] *GMA Network, Inc. v. Pabriga*, G.R. No. 176419, November 27, 2013, 710 SCRA 690, 710 [Per J. Leonardo-De Castro, First Division].

[178] Id.

diploma. Employees who qualify for jobs requiring special qualifications such as "[having] a Master's degree" or "[having] passed the licensure exam" are different from employees who qualify for jobs that require "[being a] high school graduate; with pleasing personality." In these situations, it is clear that those with special qualifications can bargain with the employer on equal footing. Thus, the level of protection afforded to these employees should be different.

Fuji's argument that Arlene was an independent contractor under a fixed-term contract is contradictory. Employees under fixed-term contracts cannot be independent contractors because in fixed-term contracts, an employer-employee relationship exists. The test in this kind of contract is not the necessity and desirability of the employee's activities, "but the day certain agreed upon by the parties for the commencement and termination of the employment relationship."[179] For regular employees, the necessity and desirability of their work in the usual course of the employer's business are the determining factors. On the other hand, independent contractors do not have employer-employee relationships with their principals.

Hence, before the status of employment can be determined, the existence of an employer-employee relationship must be established.

The four-fold test[180] can be used in determining whether an employer-employee relationship exists. The elements of the four-fold test are the following: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power of control, which is the most important element.[181]

The "power of control" was explained by this court in *Corporal, Sr. v. National Labor Relations Commission*:[182]

> The power to control refers to the existence of the power and not necessarily to the actual exercise thereof, nor is it essential for the employer to actually supervise the performance of duties of the employee. It is enough that the employer has the right to wield that power.[183] (Citation omitted)

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179 Id. at 709.

180 The case of *Consulta v. Court of Appeals,* 493 Phil. 842, 847 (2005) [Per J. Carpio, First Division] *cited Viaña v. Al-Lagadan*, 99 Phil. 408, 411–412 (1956) [Per J. Concepcion, En Banc] as the case where the four-fold test was first applied. *Viaña* held: "In determining the existence of employer-employee relationship, the following elements are generally 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 employees' conduct — although the latter is the most important element."

181 *Cesar C. Lirio, doing business under the name and style of Celkor Ad Sonicmix v. Wilmer D. Genovia,* G.R. No. 169757, November 23, 2011, 661 SCRA 126, 139 [Per J. Peralta, Third Division]

182 395 Phil. 890 (2000) [Per J. Quisumbing, Second Division].

183 Id. at 900.

Orozco v. Court of Appeals further elucidated the meaning of "power of control" and stated the following:

> Logically, the line should be drawn between rules that merely serve as guidelines towards the achievement of the mutually desired result without dictating the means or methods to be employed in attaining it, and those that control or fix the methodology and bind or restrict the party hired to the use of such means. The first, which aim only to promote the result, create no employer-employee relationship unlike the second, which address both the result and the means used to achieve it. . . .[184] (Citation omitted)

In *Locsin, et al. v. Philippine Long Distance Telephone Company*,[185] the "power of control" was defined as *"[the] right to control not only the end to be achieved but also the means to be used in reaching such end."* [186]

Here, the Court of Appeals applied *Sonza v. ABS-CBN* and *Dumpit-Murillo v. Court of Appeals*[187] in determining whether Arlene was an independent contractor or a regular employee.

In deciding *Sonza* and *Dumpit-Murillo*, this court used the four-fold test. Both cases involved newscasters and anchors. However, Sonza was held to be an independent contractor, while Dumpit-Murillo was held to be a regular employee.

Comparison of the Sonza and Dumpit-Murillo cases using the four-fold test

Sonza was engaged by ABS-CBN in view of his "unique skills, talent and celebrity status not possessed by ordinary employees."[188] His work was for radio and television programs.[189] On the other hand, Dumpit-Murillo was hired by ABC as a newscaster and co-anchor.[190]

Sonza's talent fee amounted to □317,000.00 per month, which this court found to be a substantial amount that indicated he was an independent contractor rather than a regular employee.[191] Meanwhile, Dumpit-Murillo's

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184 *Orozco v. Fifth Division, Court of Appeals*, 584 Phil. 35, 49 (2008) [Per J. Nachura, Third Division].
185 617 Phil. 955 (2009) [Per J. Velasco, Jr., Third Division].
186 Id. at 964.
187 551 Phil. 725 (2007) [Per J. Quisumbing, Second Division].
188 *Sonza v. ABS-CBN Broadcasting Corporation*, G.R. No. 138051, June 10, 2004, 431 SCRA 583, 595 [Per J. Carpio, First Division].
189 Id.
190 *Dumpit-Murillo v. Court of Appeals*, 551 Phil. 725, 730 (2007) [Per J. Quisumbing, Second Division].
191 *Sonza v. ABS-CBN Broadcasting Corporation*, G.R. No. 138051, June 10, 2004, 431 SCRA 583, 596 [Per J. Carpio, First Division].

monthly salary was □28,000.00, a very low amount compared to what Sonza received.[192]

Sonza was unable to prove that ABS-CBN could terminate his services apart from breach of contract. There was no indication that he could be terminated based on just or authorized causes under the Labor Code. In addition, ABS-CBN continued to pay his talent fee under their agreement, even though his programs were no longer broadcasted.[193] Dumpit-Murillo was found to have been illegally dismissed by her employer when they did not renew her contract on her fourth year with ABC.[194]

In *Sonza*, this court ruled that ABS-CBN did not control how Sonza delivered his lines, how he appeared on television, or how he sounded on radio.[195] All that Sonza needed was his talent.[196] Further, "ABS-CBN could not terminate or discipline SONZA even if the means and methods of performance of his work . . . did not meet ABS-CBN's approval."[197] In Dumpit-Murillo, the duties and responsibilities enumerated in her contract was a clear indication that ABC had control over her work.[198]

Application of the four-fold test

The Court of Appeals did not err when it relied on the ruling in *Dumpit-Murillo* and affirmed the ruling of the National Labor Relations Commission finding that Arlene was a regular employee. Arlene was hired by Fuji as a news producer, but there was no showing that she was hired because of unique skills that would distinguish her from ordinary employees. Neither was there any showing that she had a celebrity status. Her monthly salary amounting to US$1,900.00 appears to be a substantial sum, especially if compared to her salary when she was still connected with GMA.[199] Indeed, wages may indicate whether one is an independent contractor. Wages may also indicate that an employee is able to bargain with the employer for better pay. However, wages should not be the conclusive factor in determining whether one is an employee or an independent contractor.

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192 *Dumpit-Murillo v. Court of Appeals*, 551 Phil. 725, 736 (2007) [Per J. Quisumbing, Second Division].
193 *Sonza v. ABS-CBN Broadcasting Corporation*, G.R. No. 138051, June 10, 2004, 431 SCRA 583, 601 [Per J. Carpio, First Division].
194 *Dumpit-Murillo v. Court of Appeals*, 551 Phil. 725, 730, and 740 (2007) [Per J. Quisumbing, Second Division].
195 *Sonza v. ABS-CBN Broadcasting Corporation*, G.R. No. 138051, June 10, 2004, 431 SCRA 583, 600 [Per J. Carpio, First Division].
196 Id. at 600.
197 Id. at 601.
198 *Dumpit-Murillo v. Court of Appeals*, 551 Phil. 725, 737–738 (2007) [Per J. Quisumbing, Second Division].
199 *Rollo*, p. 722.

Fuji had the power to dismiss Arlene, as provided for in paragraph 5 of her professional employment contract.[200] Her contract also indicated that Fuji had control over her work because she was required to work for eight (8) hours from Monday to Friday, although on flexible time.[201] Sonza was not required to work for eight (8) hours, while Dumpit-Murillo had to be in ABC to do both on-air and off-air tasks.

On the power to control, Arlene alleged that Fuji gave her instructions on what to report.[202] Even the mode of transportation in carrying out her functions was controlled by Fuji. Paragraph 6 of her contract states:

> 6. During the travel to carry out work, if there is change of place or change of place of work, the train, bus, or public transport shall be used for the trip. If the Employee uses the private car during the work and there is an accident the Employer shall not be responsible for the damage, which may be caused to the Employee.[203]

Thus, the Court of Appeals did not err when it upheld the findings of the National Labor Relations Commission that Arlene was not an independent contractor.

Having established that an employer-employee relationship existed between Fuji and Arlene, the next questions for resolution are the following: Did the Court of Appeals correctly affirm the National Labor Relations Commission that Arlene had become a regular employee? Was the nature of Arlene's work necessary and desirable for Fuji's usual course of business?

Arlene was a regular employee with a fixed-term contract

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[200] Id. at 205–206. The National Labor Relations Commission's decision quoted paragraph 5 of Arlene's "Professional Employment Contract," stating the following:

> 5. It shall be lawful for the Employer to dismiss the Employee or terminate the contract without notice and any compensation which may occur including but not limit (sic) to the severance pay, for the acts of misconduct:
> 5.1 performing duties dishonestly or intentionally committing a criminal act;
> 5.2 intentionally causing damage to the Employee;
> 5.3 causing serious damage to the Employer as the result of negligence;
> 5.4 violating work rules or regulations or orders of the Employer which are lawful and just after warning has been given by the Employer, except in a serious case, for which the Employer is not required to give warning. Such written warning shall be valid for not more than one year from the date the Employee committed the offense;
> 5.5 neglecting duties without justifiable reason for three consecutive working days regardless of whether there is holiday in between or not;
> 5.6 being imprisoned by a final judgment of imprisonment with the exception of a penalty for negligence or petty offence.
> In this regard, the Employee shall receive wages of the last day of work (by calculating the work per day).

[201] Id. at 205.

[202] Id. at 728.

[203] Id. at 206.

The test for determining regular employment is whether there is a reasonable connection between the employee's activities and the usual business of the employer. Article 280 provides that the nature of work must be "necessary or desirable in the usual business or trade of the employer" as the test for determining regular employment. As stated in *ABS-CBN Broadcasting Corporation v. Nazareno*:[204]

> In determining whether an employment should be considered regular or non-regular, the applicable test is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. The standard, supplied by the law itself, is whether the work undertaken is necessary or desirable in the usual business or trade of the employer, a fact that can be assessed by looking into the nature of the services rendered and its relation to the general scheme under which the business or trade is pursued in the usual course. It is distinguished from a specific undertaking that is divorced from the normal activities required in carrying on the particular business or trade.[205]

However, there may be a situation where an employee's work is necessary but is not always desirable in the usual course of business of the employer. In this situation, there is no regular employment.

In *San Miguel Corporation v. National Labor Relations Commission*,[206] Francisco de Guzman was hired to repair furnaces at San Miguel Corporation's Manila glass plant. He had a separate contract for every furnace that he repaired. He filed a complaint for illegal dismissal three (3) years after the end of his last contract.[207] In ruling that de Guzman did not attain the status of a regular employee, this court explained:

> Note that the plant where private respondent was employed for only seven months is engaged in the manufacture of glass, an integral component of the packaging and manufacturing business of petitioner. The process of manufacturing glass requires a furnace, which has a limited operating life. Petitioner resorted to hiring project or fixed term employees in having said furnaces repaired since said activity is not regularly performed. Said furnaces are to be repaired or overhauled only in case of need and after being used continuously for a varying period of five (5) to ten (10) years.
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> In 1990, one of the furnaces of petitioner required repair and upgrading. This was an undertaking distinct and separate from petitioner's

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204 534 Phil. 306 (2006) [Per J. Callejo, Sr., First Division].

205 Id. at 330–331, *citing Magsalin v. National Organization of Working Men*, 451 Phil. 254, 261 (2003) [Per J. Vitug, First Division].

206 357 Phil. 954 (1998) [Per J. Quisumbing, First Division].

207 Id. at 958.

> business of manufacturing glass. For this purpose, petitioner must hire workers to undertake the said repair and upgrading. . . .
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> . . . .
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> Clearly, private respondent was hired for a specific project that was not within the regular business of the corporation. For petitioner is not engaged in the business of repairing furnaces. Although the activity was necessary to enable petitioner to continue manufacturing glass, the necessity therefor arose only when a particular furnace reached the end of its life or operating cycle. Or, as in the second undertaking, when a particular furnace required an emergency repair. In other words, the undertakings where private respondent was hired primarily as helper/bricklayer have specified goals and purposes which are fulfilled once the designated work was completed. Moreover, such undertakings were also identifiably separate and distinct from the usual, ordinary or regular business operations of petitioner, which is glass manufacturing. These undertakings, the duration and scope of which had been determined and made known to private respondent at the time of his employment, clearly indicated the nature of his employment as a project employee.[208]

Fuji is engaged in the business of broadcasting,[209] including news programming.[210] It is based in Japan[211] and has overseas offices to cover international news.[212]

Based on the record, Fuji's Manila Bureau Office is a small unit[213] and has a few employees.[214] As such, Arlene had to do all activities related to news gathering. Although Fuji insists that Arlene was a stringer, it alleges that her designation was "News Talent/Reporter/Producer."[215]

A news producer "plans and supervises newscast . . . [and] work[s] with reporters in the field planning and gathering information. . . ."[216] Arlene's tasks included "[m]onitoring and [g]etting [n]ews [s]tories, [r]eporting interviewing subjects in front of a video camera,"[217] "the timely submission of news and current events reports pertaining to the Philippines[,] and traveling [sic] to [Fuji's] regional office in Thailand."[218] She also had to report for work in Fuji's office in Manila from Mondays to

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208 Id. at 963–964.

209 *Rollo*, p. 259.

210 Fuji Television Network Inc.'s official website <http://www.fujitv.co.jp/en/greeting.html> (visited January 5, 2015).

211 *Rollo*, p. 21.

212 Fuji Television Network Inc.'s official website <http://www.fujitv.co.jp/en/overseas_offices.html> (visited January 5, 2015).

213 *Rollo*, p. 24. Fuji's Manila Bureau Office is in Diamond Hotel, Manila.

214 In the records of this case, the only employees mentioned by Fuji and Arlene are Ms. Corazon Acerden and Mr. Yoshiki Aoki.

215 *Rollo*, p. 59.

216 University of Wisconsin-Eau Claire, Glossary of Broadcasting/Broadcast News Terms <http://www.uwec.edu/kapferja/02-Fall08/335/GlossaryofBroadcastNewsTerms.htm> (visited January 5, 2015).

217 *Rollo*, p. 59.

218 Id. at 208.

Fridays, eight (8) hours per day.[219] She had no equipment and had to use the facilities of Fuji to accomplish her tasks.

The Court of Appeals affirmed the finding of the National Labor Relations Commission that the successive renewals of Arlene's contract indicated the necessity and desirability of her work in the usual course of Fuji's business. Because of this, Arlene had become a regular employee with the right to security of tenure.[220] The Court of Appeals ruled that:

> Here, Espiritu was engaged by Fuji as a stinger [sic] or news producer for its Manila Bureau. She was hired for the primary purpose of news gathering and reporting to the television network's headquarters. Espiritu was not contracted on account of any peculiar ability or special talent and skill that she may possess which the network desires to make use of. Parenthetically, if it were true that Espiritu is an independent contractor, as claimed by Fuji, the fact that everything that she uses to perform her job is owned by the company including the laptop computer and mini camera discounts the idea of job contracting.[221]

Moreover, the Court of Appeals explained that Fuji's argument that no employer-employee relationship existed in view of the fixed-term contract does not persuade because fixed-term contracts of employment are strictly construed.[222] Further, the pieces of equipment Arlene used were all owned by Fuji, showing that she was a regular employee and not an independent contractor.[223]

The Court of Appeals likewise cited *Dumpit-Murillo,* which involved fixed-term contracts that were successively renewed for four (4) years.[224] This court held that "[t]his repeated engagement under contract of hire is indicative of the necessity and desirability of the petitioner's work in private respondent ABC's business."[225]

With regard to Fuji's argument that Arlene's contract was for a fixed term, the Court of Appeals cited *Philips Semiconductors, Inc. v. Fadriquela*[226] and held that where an employee's contract "had been continuously extended or renewed to the same position, with the same duties and remained in the employ without any interruption,"[227] then such employee is a regular employee. The continuous renewal is a scheme to

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219 Id. at 205.
220 Id. at 119.
221 Id. at 120.
222 Id. at 118–119.
223 Id. at 120.
224 Id.
225 *Dumpit-Murillo v. Court of Appeals,* 551 Phil. 725, 739 (2007) [Per J. Quisumbing, Second Division].
226 471 Phil. 355 (2004) [Per J. Callejo, Sr., Second Division].
227 *Rollo*, p. 119.

prevent regularization. On this basis, the Court of Appeals ruled in favor of Arlene.

As stated in *Price, et al. v. Innodata Corp., et al.*:[228]

> The employment status of a person is defined and prescribed by law and not by what the parties say it should be. Equally important to consider is that a contract of employment is impressed with public interest such that labor contracts must yield to the common good. Thus, provisions of applicable statutes are deemed written into the contract, and the parties are not at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by simply contracting with each other.[229] (Citations omitted)

Arlene's contract indicating a fixed term did not automatically mean that she could never be a regular employee. This is precisely what Article 280 seeks to avoid. The ruling in *Brent* remains as the exception rather than the general rule.

Further, an employee can be a regular employee with a fixed-term contract. The law does not preclude the possibility that a regular employee may opt to have a fixed-term contract for valid reasons. This was recognized in *Brent*: For as long as it was the employee who requested, or bargained, that the contract have a "definite date of termination," or that the fixed-term contract be freely entered into by the employer and the employee, then the validity of the fixed-term contract will be upheld.[230]

V
Whether the Court of Appeals correctly affirmed the National Labor Relations Commission's finding of illegal dismissal

Fuji argues that the Court of Appeals erred when it held that Arlene was illegally dismissed, in view of the non-renewal contract voluntarily executed by the parties. Fuji also argues that Arlene's contract merely expired; hence, she was not illegally dismissed.[231]

Arlene alleges that she had no choice but to sign the non-renewal contract because Fuji withheld her salary and benefits.

With regard to this issue, the Court of Appeals held:

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228 588 Phil. 568 (2008) [Per J. Chico-Nazario, Third Division].
229 Id. at 580.
230 *Brent School, Inc. v. Zamora*, 260 Phil. 747, 760–762 (1990) [Per J. Narvasa, En Banc].
231 *Rollo*, p. 81.

> We cannot subscribe to Fuji's assertion that Espiritu's contract merely expired and that she voluntarily agreed not to renew the same. Even a cursory perusal of the subject Non-Renewal Contract readily shows that the same was signed by Espiritu under protest. What is apparent is that the Non-Renewal Contract was crafted merely as a subterfuge to secure Fuji's position that it was Espiritu's choice not to renew her contract.[232]

As a regular employee, Arlene was entitled to security of tenure and could be dismissed only for just or authorized causes and after the observance of due process.

The right to security of tenure is guaranteed under Article XIII, Section 3 of the 1987 Constitution:

> **ARTICLE XIII. SOCIAL JUSTICE AND HUMAN RIGHTS**
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> . . . .
>
> **LABOR**
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> . . . .
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> It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. **They shall be entitled to security of tenure**, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

Article 279 of the Labor Code also provides for the right to security of tenure and states the following:

> **Art. 279. Security of tenure.** In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause of when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

Thus, on the right to security of tenure, no employee shall be dismissed, unless there are just or authorized causes and only after compliance with procedural and substantive due process is conducted.

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[232] Id. at 122–123.

Even probationary employees are entitled to the right to security of tenure. This was explained in *Philippine Daily Inquirer, Inc. v. Magtibay, Jr.*:[233]

> Within the limited legal six-month probationary period, probationary employees are still entitled to security of tenure. It is expressly provided in the afore-quoted Article 281 that a probationary employee may be terminated only on two grounds: (a) for just cause, or (b) when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement.[234] (Citation omitted)

The expiration of Arlene's contract does not negate the finding of illegal dismissal by Fuji. The manner by which Fuji informed Arlene that her contract would no longer be renewed is tantamount to constructive dismissal. To make matters worse, Arlene was asked to sign a letter of resignation prepared by Fuji.[235] The existence of a fixed-term contract should not mean that there can be no illegal dismissal. Due process must still be observed in the pre-termination of fixed-term contracts of employment.

In addition, the Court of Appeals and the National Labor Relations Commission found that Arlene was dismissed because of her health condition. In the non-renewal agreement executed by Fuji and Arlene, it is stated that:

> WHEREAS, the SECOND PARTY *is undergoing chemotherapy which prevents her from continuing to effectively perform her functions* under the said Contract such as the timely submission of news and current events reports pertaining to the Philippines and travelling [sic] to the FIRST PARTY's regional office in Thailand.[236] (Emphasis supplied)

Disease as a ground for termination is recognized under Article 284 of the Labor Code:

> **Art. 284. Disease as ground for termination.** An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

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233 555 Phil. 326 (2007) [Per J. Garcia, First Division].
234 Id. at 334.
235 *Rollo*, p. 27.
236 Id. at 208.

Book VI, Rule 1, Section 8 of the Omnibus Rules Implementing the Labor Code provides:

> Sec. 8. *Disease as a ground for dismissal.* – Where the employee suffers from a disease and his continued employment is prohibited by law or prejudicial to his health or to the health of his co-employees, the employer shall not terminate his employment unless there is a certification by a competent public health authority that the disease is of such nature or at such a stage that it cannot be cured within a period of six (6) months even with proper medical treatment. If the disease or ailment can be cured within the period, the employer shall not terminate the employee but shall ask the employee to take a leave. The employer shall reinstate such employee to his former position immediately upon the restoration of his normal health.

For dismissal under Article 284 to be valid, two requirements must be complied with: (1) the employee's disease cannot be cured within six (6) months and his "continued employment is prohibited by law or prejudicial to his health as well as to the health of his co-employees"; and (2) certification issued by a competent public health authority that even with proper medical treatment, the disease cannot be cured within six (6) months.[237] The burden of proving compliance with these requisites is on the employer.[238] Non-compliance leads to the conclusion that the dismissal was illegal.[239]

There is no evidence showing that Arlene was accorded due process. After informing her employer of her lung cancer, she was not given the chance to present medical certificates. Fuji immediately concluded that Arlene could no longer perform her duties because of chemotherapy. It did not ask her how her condition would affect her work. Neither did it suggest for her to take a leave, even though she was entitled to sick leaves. Worse, it did not present any certificate from a competent public health authority. What Fuji did was to inform her that her contract would no longer be renewed, and when she did not agree, her salary was withheld. Thus, the Court of Appeals correctly upheld the finding of the National Labor Relations Commission that for failure of Fuji to comply with due process, Arlene was illegally dismissed.[240]

VI
Whether the Court of Appeals properly modified the National Labor Relations Commission's decision

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237 *Solis v. National Labor Relations Commission*, 331 Phil. 928, 933–934 (1996) [Per J. Francisco, Third Division]; *Manly Express, Inc. v. Payong, Jr.*, 510 Phil. 818, 823–824 (2005) [Per J. Ynares-Santiago, First Division].

238 *Crayons Processing, Inc. v. Pula*, 555 Phil. 527, 537 (2007) [Per J. Tinga, Second Division].

239 Id.

240 *Rollo*, p. 122.

when it awarded reinstatement, damages, and attorney's fees

The National Labor Relations Commission awarded separation pay in lieu of reinstatement, on the ground that the filing of the complaint for illegal dismissal may have seriously strained relations between the parties. Backwages were also awarded, to be computed from date of dismissal until the finality of the National Labor Relations Commission's decision. However, only backwages were included in the dispositive portion because the National Labor Relations Commission recognized that Arlene had received separation pay in the amount of US$7,600.00.

The Court of Appeals affirmed the National Labor Relations Commission's decision but modified it by awarding moral and exemplary damages and attorney's fees, and all other benefits Arlene was entitled to under her contract with Fuji. The Court of Appeals also ordered reinstatement, reasoning that the grounds when separation pay was awarded in lieu of reinstatement were not proven.[241]

Article 279 of the Labor Code provides:

> **Art. 279. Security of tenure.** In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. *An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.* (Emphasis supplied)

The Court of Appeals' modification of the National Labor Relations Commission's decision was proper because the law itself provides that illegally dismissed employees are entitled to reinstatement, backwages including allowances, and all other benefits.

On reinstatement, the National Labor Relations Commission ordered payment of separation pay in lieu of reinstatement, reasoning "that the filing of the instant suit may have seriously abraded the relationship of the parties so as to render reinstatement impractical."[242] The Court of Appeals reversed this and ordered reinstatement on the ground that separation pay in lieu of

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[241] Id. at 123–124. The Court of Appeals decision states: "By law, separation pay in lieu of reinstatement is proper only under the following circumstances: 1) When company operations have ceased; 2) When the employee's position or an equivalent thereof is no longer available; 3) When the illegal dismissal case has engendered strained relations between the parties, in cases of just causes and usually when the position involved requires the trust and confidence of the employer; and, 4) When a substantial amount of years have lapsed from the filing of the case to its finality. In this case, it was not amply shown that reinstatement is no longer possible as none of the situations contemplated by law obtains."

[242] Id. at 219.

reinstatement is allowed only in several instances such as (1) when the employer has ceased operations; (2) when the employee's position is no longer available; (3) strained relations; and (4) a substantial period has lapsed from date of filing to date of finality.[243]

On this matter, *Quijano v. Mercury Drug Corp.*[244] is instructive:

> Well-entrenched is the rule that an illegally dismissed employee is entitled to reinstatement as a matter of right. . . .
>
> To protect labor's security of tenure, we emphasize that the doctrine of "strained relations" should be strictly applied so as not to deprive an illegally dismissed employee of his right to reinstatement. Every labor dispute almost always results in "strained relations" and the phrase cannot be given an overarching interpretation, otherwise, an unjustly dismissed employee can never be reinstated.[245] (Citations omitted)

The Court of Appeals reasoned that strained relations are a question of fact that must be supported by evidence.[246] No evidence was presented by Fuji to prove that reinstatement was no longer feasible. Fuji did not allege that it ceased operations or that Arlene's position was no longer available. Nothing in the records shows that Arlene's reinstatement would cause an atmosphere of antagonism in the workplace. Arlene filed her complaint in 2009. Five (5) years are not yet a substantial period[247] to bar reinstatement.

On the award of damages, Fuji argues that Arlene is not entitled to the award of damages and attorney's fees because the non-renewal agreement contained a quitclaim, which Arlene signed.

Quitclaims in labor cases do not bar illegally dismissed employees from filing labor complaints and money claim. As explained by Arlene, she signed the non-renewal agreement out of necessity. In *Land and Housing Development Corporation v. Esquillo*,[248] this court explained:

> We have heretofore explained that the reason why quitclaims are commonly frowned upon as contrary to public policy, and why they are

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243 Id. at 124.

244 354 Phil. 112 (1998) [Per J. Puno, Second Division].

245 Id. at 121–122.

246 *Rollo*, p. 123.

247 In *Association of Independent Unions in the Philippines v. National Labor Relations Commission* (364 Phil. 697, 713 (1999) [Per J. Purisima, Third Division]), this court considered "more than eight (8) years" as substantial. In *San Miguel Properties Philippines, Inc. v. Gucaban* (G.R. No. 153982, July 18, 2011, 654 SCRA 18, 34 [Per J. Peralta, Third Division]), more than 10 years had lapsed. In *G & S Transport Corporation v. Infante* (559 Phil. 701, 716 (2007) [Per J. Tinga, Second Division]), 17 years had lapsed from the time of illegal dismissal. In these cases, this court deemed it proper to award separation pay in lieu of reinstatement.

248 508 Phil. 478 (2005) [Per J. Panganiban, Third Division].

> held to be ineffective to bar claims for the full measure of the workers' legal rights, is the fact that the employer and the employee obviously do not stand on the same footing. The employer drove the employee to the wall. The latter must have to get hold of money. Because, out of a job, he had to face the harsh necessities of life. He thus found himself in no position to resist money proffered. His, then, is a case of adherence, not of choice.[249]

With regard to the Court of Appeals' award of moral and exemplary damages and attorney's fees, this court has recognized in several cases that moral damages are awarded "when the dismissal is attended by bad faith or fraud or constitutes an act oppressive to labor, or is done in a manner contrary to good morals, good customs or public policy."[250] On the other hand, exemplary damages may be awarded when the dismissal was effected "in a wanton, oppressive or malevolent manner."[251]

The Court of Appeals and National Labor Relations Commission found that after Arlene had informed Fuji of her cancer, she was informed that there would be problems in renewing her contract on account of her condition. This information caused Arlene mental anguish, serious anxiety, and wounded feelings that can be gleaned from the tenor of her email dated March 11, 2009. A portion of her email reads:

> I WAS SO SURPRISED . . . that at a time when I am at my lowest, being sick and very weak, you suddenly came to deliver to me the NEWS that you will no longer renew my contract. I knew this will come but I never thought that you will be so 'heartless' and insensitive to deliver that news just a month after I informed you that I am sick. I was asking for patience and understanding and your response was not to RENEW my contract.[252]

Apart from Arlene's illegal dismissal, the manner of her dismissal was effected in an oppressive approach with her salary and other benefits being withheld until May 5, 2009, when she had no other choice but to sign the non-renewal contract. Thus, there was legal basis for the Court of Appeals to modify the National Labor Relations Commission's decision.

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249 Id. at 487, *citing Marcos v. National Labor Relations Commission*, G.R. No. 111744, September 8, 1995, 248 SCRA 146, 152 [Per J. Regalado, Second Division].

250 *Quadra v. Court of Appeals*, 529 Phil. 218, 223 (2006) [Per J. Puno, Second Division]. *See also San Miguel Properties Philippines, Inc. v. Gucaban*, G.R. No. 153982, July 18, 2011, 654 SCRA 18, 33 [Per J. Peralta, Third Division]; *Culili v. Eastern Telecommunications Philippines, Inc.*, G.R. No. 165381, February 9, 2011, 642 SCRA 338, 365 [Per J. Leonardo-De Castro, First Division].

251 *Quadra v. Court of Appeals*, 529 Phil. 218, 223–224 (2006) [Per J. Puno, Second Division]. *See also Culili v. Eastern Telecommunications Philippines, Inc.*, G.R. No. 165381, February 9, 2011, 642 SCRA 338, 365 [Per J. Leonardo-De Castro, First Division].

252 *Rollo*, p. 27.

However, Arlene received her salary for May 2009.[253] Considering that the date of her illegal dismissal was May 5, 2009,[254] this amount may be subtracted from the total monetary award.

With regard to the award of attorney's fees, Article 111 of the Labor Code states that "[i]n cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered." Likewise, this court has recognized that "in actions for recovery of wages or where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable."[255] Due to her illegal dismissal, Arlene was forced to litigate.

In the dispositive portion of its decision, the Court of Appeals awarded legal interest at the rate of 12% per annum.[256] In view of this court's ruling in *Nacar v. Gallery Frames*,[257] the legal interest shall be reduced to a rate of 6% per annum.

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253 Id. at 208 and 779. The National Labor Relations Commission's decision quoted the entire non-renewal agreement, where it is shown that Arlene received US$1,900.00 as salary for May 2009. In the comment, Arlene attached a copy of the non-renewal agreement as Annex "E-27," showing that she received US$1,900.00 as salary for May 2009.

254 Id. at 208–209. The first paragraph of the non-renewal agreement, executed on May 5, 2009, states:
1. RELEASE FROM CONTRACTUAL OBLIGATION
The FIRST PARTY hereby releases the SECOND PARTY from all of her employment responsibilities under the Contract upon the execution of this Agreement. Likewise, the SECOND PARTY hereby releases the FIRST PARTY from all its responsibilities as an employer. Upon the execution of this Agreement, the SECOND PARTY shall no longer be connected, in whatever nature or capacity, with the FIRST PARTY.

255 *Aliling v. Feliciano*, G.R. No. 185829, April 25, 2012, 671 SCRA 186, 220 [Per J. Velasco, Jr., Third Division], *citing Rutaquio v. National Labor Relations Commission*, 375 Phil. 405, 418 (1999) [Per J. Purisima, Third Division].

256 *Rollo*, p. 126.

257 G.R. No. 189871, August 13, 2013, 703 SCRA 439, 457–458 [Per J. Peralta, En Banc].
In *Nacar*, this court held:

> To recapitulate and for future guidance, the guidelines laid down in the case of *Eastern Shipping Lines* are accordingly modified to embody BSP-MB Circular No. 799, as follows:
> I. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.
> II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
>
> 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% *per annum* to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
> 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% *per annum*. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual

WHEREFORE, the petition is **DENIED**. The assailed Court of Appeals decision dated June 25, 2012 is **AFFIRMED** with the modification that backwages shall be computed from June 2009. Legal interest shall be computed at the rate of 6% per annum of the total monetary award from date of finality of this decision until full satisfaction.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

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base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% *per annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

And, in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.

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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII 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 the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice