Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

MARIAN B. NAVARETTE, Petitioner, - versus - **MANILA INTERNATIONAL FREIGHT FORWARDERS, INC./MIFFI LOGISTICS COMPANY, INC., MR. HARADA, and MBI MILLENNIUM EXPERTS, INC.,** Respondents.	**G.R. No. 200580** Present: VELASCO, JR., *J.*, Chairperson, VILLARAMA, JR., PEREZ,* REYES, and JARDELEZA, *JJ.* Promulgated: February 11, 2015

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D E C I S I O N

VELASCO, JR., *J.*:

The Case

Before Us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the October 4, 2011 Decision of the Court of Appeals (CA), as effectively reiterated in its January 30, 2012 Resolution, in CA-G.R. SP No. 112102, entitled *Manila International Freight Forwarders, Inc./MIFFI Logistics Company, Inc. v. National Labor Relations Commission and Marian B. Navarette*. The CA issuances reversed and set aside the February 27, 2009 Decision and October 19, 2009 Resolution of the National Labor Relations Commission (NLRC) and reinstated the May 24, 2004 Decision of the Labor Arbiter which dismissed the complaint for illegal dismissal.

The Facts

Respondents Manila International Freight Forwarders, Inc. (MIFFI) and MIFFI Logistics Company, Inc. (MCLI) are corporations engaged in the business of freight and cargo forwarding, hauling, carrying, handling, distributing, loading and unloading of general cargoes and all classes of goods, wares and merchandise.

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* Additional member per Raffle dated March 28, 2012.

MIFFI had, during the period material, entered into a contract with MBI Millennium Experts, Inc. (MBI) for the provision of production workers and technical personnel for MIFFI's projects or temporary needs, including the assignment of employees to temporarily replace those in the Packaging Department who are on maternity leave. To be able to address the immediate concerns of the employees detailed to the aforesaid department, MBI assigned a supervisor/coordinator, Ma. Glynnis Quindo (Quindo), to MIFFI.

On January 15, 2002, MBI hired petitioner Marian Navarette (Navarette) and, on the same day, assigned her as a temporary project employee to MIFFI's Packaging Department. There, for a fixed period of three (3) months, or until April of 2002, she worked amongst MIFFI's regular employees who performed the same tasks as hers. She also used MIFFI's equipment and was supervised by Gidey Fajiculay and Sonny Porto, both employees of MIFFI.

A second contract was later concluded between Navarette and MBI, under which she was to serve as MIFFI's warehouse staff from April 16, 2002 to October 1, 2002. Another contract effective March 1, 2003 until August 1, 2003 resulted in Navarette being transferred to respondent MLCI – MIFFI's subsidiary.

On July 29, 2003, Navarette, joined by other employees, filed a complaint for inspection against MIFFI, MLCI, MBI and a certain PAMS with the Department of Labor and Employment (DOLE) Regional Arbitration Branch IV. Following an inspection of respondents' premises on August 5, 2003, certain violations of labor laws were uncovered, including labor-only contracting by MBI. Several hearings were had and eventually, the parties decided to submit an agreement to be signed by all concerned and to be approved by DOLE officials.

Pursuant to said covenant, MBI called a meeting where Navarette and her co-workers were handed and asked to sign a document entitled "Minutes of the Hearing/Agreement, [DOLE], Region IV." Navarette found the contents of the document to be erroneous since it stated that the parties had already come to an agreement on the issues and conditions when, in fact, no such agreement was made. This angered Navarette, causing her to throw the document and to say, "*Hindi ito ang pinag-usapan natin sa* DOLE! *Niloloko niyo lang kami*." Her actuations, to MBI, constituted serious misconduct, for which a show cause memorandum was issued directing her to explain herself. Dissatisfied with her explanation—that her actuations were so because the Minutes did not reflect the truth—MBI issued another memorandum which Navarette, upon perusal, tore and threw away.

After issuing several memoranda setting conferences on the matter to which Navarette could not attend because of her work schedule, MBI finally

terminated Navarette's employment on October 6, 2003.[1] On October 23, 2003, Navarette filed a complaint for illegal dismissal before the NLRC against MBI, MIFFI and MCLI, docketed as NLRC-NCR Case No. 00-10-11705-03.

In a Decision dated May 24, 2004, Labor Arbiter Dolores M. Peralta-Beley dismissed the complaint on the finding that Navarette's acts complained of constituted serious misconduct, a valid cause for dismissal. Too, MBI, being a legitimate job contractor, is Navarette's employer, not MIFFI or MCLI. The *fallo* of the Decision reads:

> In the light of the foregoing, the complaint for illegal dismissal must be dismissed for want of factual and legal basis. Necessarily, the claim for back wages must likewise be dismissed as it is granted only to illegally dismissed employees by way of relief.
>
> x x x x
>
> **WHEREFORE**, premises considered, judgment is hereby rendered dismissing the instant complaint for lack of merit.
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> **SO ORDERED**.[2]

On appeal,[3] the NLRC reversed the Decision of the Labor Arbiter and ordered Navarette's reinstatement with backwages and other benefits. To the commission, MBI is a labor-only contractor, thus making MIFFI and MCLI Navarette's employer. The NLRC disposed of the case in this wise:

> **WHEREFORE**, premises considered, the appeal is **GRANTED**. The Decision of the Labor Arbiter dated May 24, 2004 is **REVERSED** and **SET ASIDE**, and a **NEW ONE** rendered finding respondent MBI as a labor-only contractor. Consequently, respondents MIFFI/MCLI are declared to be complainant's employer, and accordingly respondents MIFFI/MCLI are ordered to:
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> 1. Reinstate complainant to her former position or equivalent position without loss of seniority rights;
> 2. Pay complainant her full backwages computed from the time she was illegally dismissed up to the finality of this Decision; and
> 3. Pay complainant attorney's fees in an amount equivalent to ten (10%) of the total monetary award.
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> Complainant's monetary award is provisionally computed as follows:
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> Backwages
> 1.) Basic Salary

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[1] *Rollo*, pp. 78 & 114.

[2] Id. at 204-205.

[3] Docketed as NLRC CA No. 040934-04. The Decision, penned by NLRC Commissioner Gerardo C. Nograles and concurred in by Commissioners Perlita B. Velasco and Romeo L. Go, was promulgated on February 27, 2009.

10/6/03-6/15/05			
250x26x20.30	131,950.00		
6/16/05-7/10/06			
275x26x12.83	91,734.50		
7/11/06-8/27/07			
300x26x13.57	105,846.00		
8/28/07-6/13/08			
362x26x9.53	89,696.36		
6/14/08-8/27/08			
377x26x2.47	24,210.94		
8/28/08-2/3/09			
382x26x5.17	51,348.44	494,786.24	
2.) 13th mo pay			
494,786.24/12		41,232.19	
3.) SILP			
250x5/12x20.30	2,114.58		
275x5/12x12.83	1,470.10		
300x5/12x13.57	1,696.25		
362x5/12x9.53	1,437.44		
377x5/12x2.47	387.99		
382x5/12x5.17	822.89	7,929.25	
4.) COLA			
10/6/03-7/9/04			
50x26x9.10	11,830.00		
7/10/04-8/27/07			
50x26x37.60	48,880.00		
6/14/08-8/27/08			
5x26x24.7	321.10	61,031.10	604,978.78
Attorney's fee 10%			60,497.88
Total Award			P665,476.66[4]

Aggrieved, respondents moved for reconsideration, alleging that Navarette is not their employee, MBI being a legitimate job contractor, as held by the NLRC in the related case of *Manlangit v. MIFFI and/or MCLI and MBI*.[5] The NLRC, however, in its October 19, 2009 Resolution, found no merit therein and sustained its earlier Decision.

Respondents, thus, sought a review of the NLRC Decision and Resolution before the CA via a Petition for Certiorari under Rule 65 of the Rules of Court. Before the CA could dispose of said petition, the Court, on August 31, 2011, in *Manlangit, et al. v. MIFFI, et al.*,[6] issued a Resolution where it dismissed the *Manlangit* petition and upheld the ruling of the CA that MBI's contract with MIFFI/MCLI, respondents in said case as well as in

[4] *Rollo*, pp. 276-277.

[5] Per NLRC Resolution penned by Commissioner Victoriano R. Calaycay with the concurrence of Commissioners Raul I. Aquino and Angelita A. Gacutan, dated May 24, 2007 in NLRC Case No. RAB-IV-11-18467-03-L.

[6] G.R. No. 196175.

the case at bar, was one of legitimate job contracting, contrary to the assertions of therein petitioners.

Eventually, the CA, in the present case, ordered the reversal of the NLRC Decision and the reinstatement of the Labor Arbiter's ruling. The dispositive portion of the appellate court's Decision is hereunder quoted:

> **WHEREFORE,** the petition is **GRANTED**. The Decision dated February 27, 2009 and Resolution dated October 19, 2009 of the [NLRC] are **REVERSED** and **SET ASIDE**. The Decision of the Labor Arbiter dated May 24, 2004, which dismissed the complaint for lack of merit is **REINSTATED**.
>
> **SO ORDERED**.[7]

Petitioner's motion for reconsideration was also denied.

The Issues

Petitioner presently seeks a review of the CA Decision on the following grounds:

> The Honorable [CA] misapplied the law and misapprehended the facts in ruling that there is absence of employer-employee relationship between the petitioner and the respondent [MIFFI].
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> The Hon. [CA] misapplied the law in ruling that petitioner is not entitled to the reliefs prayed for.

The issues in the case at bar are as follows: (1) whether petitioner Navarette is respondents' employee; and (2) whether her dismissal is illegal.

Our Ruling

We resolve to deny the petition.

Navarette is MBI's employee

A fundamental principle in Philippine labor law is the application of the four-fold test in determining the existence of an employer-employee relationship, thus: (1) selection and engagement; (2) payment of wages; (3) power to dismiss; and (4) power of control over the means and methods by which the work is to be accomplished.[8] There are, however, instances when these elements are not exercised by a single person or entity. There are cases where one or more of the said factors are assumed by another entity, for which reason, the Court made it clear that of the four tests mentioned, it is

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[7] *Rollo*, p. 405. The Decision dated October 4, 2011 was penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Fernanda Lampas Peralta and Priscilla J. Baltazar-Padilla.

[8] *Garcia v. Philippine Airlines*, G.R. No. 162868, July 14, 2008, 558 SCRA 171.

the power of control that is determinative.[9] One such instance is whenever an employer supplies workers to another pursuant to a contracting agreement, i.e., job contracting.

Per DOLE Order No. 3, Series of 2001, there is contracting or subcontracting whenever an employer, referred to as the principal, farms out the performance of a part of its business to another, referred to as the contractor or subcontractor, and for the purpose of undertaking the principal's business that is farmed out, the contractor or subcontractor then employs its own employees. In such an arrangement, the four-fold test must be satisfied by the contractor or subcontractor.[10] Otherwise, it is the principal that shall be considered as the employer.

Not all forms of contracting arrangements are, however, permitted. In contrast, there is the so-called labor-only contracting.

Labor-only contracting exists when: (1) the person supplying workers to the purported principal does not have substantial capital or investments in the form of tools, equipment, machineries, work premises, among others; and (2) the workers recruited and placed by such person/entity perform activities which are directly related to the principal business of the alleged principal.[11] Finding that a contractor is engaged in labor-only contracting is then equivalent to declaring that there exists an employer-employee relationship between the supposed principal and the employee of the purported contractor.[12] It also results in the following: (1) the subcontractor will be treated as the agent of the principal whose acts and representations bind the latter; (2) the principal, being the employer, will be responsible to the employees for all their entitlements and benefits under labor laws; and (3) the principal and the subcontractor will be solidarily treated as the employer.

With the mentioned effects of labor-only contracting on employment status, a determination of the legitimacy or illegality of the contracting arrangement between the principal and the contractor is necessary not only to determine who between the two entities is the real employer of the employee but also to determine upon whom liability should be imposed in the event that the employee is illegally dismissed, as here, among others.

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[9] See *Television and Production Exponents, Inc. v. Servaña*, G.R. No. 167648, January 28, 2008, 542 SCRA 578.

[10] *See* DOLE Primer on Contracting and Subcontracting (Effects of Department Order No. 3, Series of 2001).

[11] See *Sy v. Fairland Knitcraft Co., Inc.*, G.R. Nos. 182915 & 189658, December 12, 2011, 662 SCRA 67.

[12] *Aliviado v. Procter & Gamble Phils., Inc.*, G.R. No. 160506, June 6, 2011, 650 SCRA 400.

In this respect, respondents contend that MBI is a legitimate job contractor[13] and consequently, Navarette is MBI's employee, invoking the application of the principle of *res judicata*. According to respondents, the Court has already passed upon and ruled on the legitimacy of MBI's contract with them—that it is one of permissible job contracting—when We affirmed the contract's status through a Resolution dated August 31, 2011 in the adverted case of *Manlangit, et al. v. MIFFI, et al.*, docketed as G.R. No. 196175.

Briefly, *Manlangit* involved a complaint for regularization, illegal deduction, wage distortion and attorney's fees, later amended to include illegal dismissal, filed by Gabriel Manlangit and thirty six (36) other workers against MIFFI, MLCI, and MBI. Like Navarette, Manlangit, et al. were also hired by MBI and assigned to MIFFI.

After due proceedings, the Labor Arbiter found for MIFFI, MLCI and MBI and dismissed the complaint, ruling that Manlangit, et al. were project employees of MBI, whose employments were coterminous with the service agreement between MBI and MIFFI/MLCI. Therefrom, Manlangit, et al. went to the NLRC which dismissed their appeal for lack of merit and for non-perfection in view of their failure to comply with the mandatory provision on verification and certification of non-forum shopping. Upon the review of the case, the CA, then later this Court, veritably affirmed the Decision of the Labor Arbiter, as effectively upheld by the NLRC.[14]

In light of *Manlangit*, respondents add, the ruling on the legality of MBI and respondents' contractual relationship, being one of permissible job contracting, can no longer be disturbed.

We agree with respondents that Our adjudication in *Manlangit* of the issue of the legitimacy of MBI's contract with respondents and necessarily, the question who between MBI and MIFFI is Navarette's employer, have already been settled by the Court and must not be disturbed. Per *Manlangit*, MBI is respondents' employer and *res judicata* by conclusiveness of judgment bars further challenge on this issue.

For *res judicata* by conclusiveness of judgment to apply, the following elements should be present, viz*:* (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the

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[13] Permissible job contracting or subcontracting refers to an arrangement whereby a principal agrees to put out or farm out to a contractor or subcontractor the performance or completion of a specific job, work, or service within a definite or predetermined period, regardless of whether such job, work, or service is to be performed or completed within or outside the premises of the principal. A job contractor or subcontractor (job contractor), for its part, directly undertakes a specific job or service for a principal, and for this purpose, employs its own workers. Thus, the person hired is an employee of the job contractor. (*Sasan, Sr. v. NLRC 4th Division*, G.R. No. 176240, October 17, 2008 569 SCRA 670; DOLE Primer on Contracting and Subcontracting [Effects of Department Order No. 3, Series of 2001]).

[14] *Rollo* (G.R. No. 19617), pp. 12-13, 258-269.

disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, but not identity of causes of action.[15]

When applicable, the doctrine of conclusiveness of judgment has this effect: the prior judgment is *conclusive in the second case only as to those matters actually and directly controverted and determined* and not as to matters merely involved therein. Stated differently, conclusiveness of judgment finds application *when a fact or question has been squarely put in issue, judicially passed upon, and adjudged in a former suit by a court of competent jurisdiction.*[16]

As to the first requisite, *Manlangit* which is being set as a bar to the instant case is a final judgment. With respect to the second requisite, the decision was rendered by the Court of Appeals which was affirmed by this Court, both of which have jurisdiction over the subject matter and the parties. Anent the third requisite, the dispositions were judgments on the merit.

Regarding the fourth requisite, there is identity or similarity of parties but no identity of causes of action. While Navarette is not a party in Manlangit, there is commonality or similarity of parties in the two cases. Navarette and the petitioners in *Manlangit* are similarly situated, being co-workers performing the same tasks of packaging, barcoding, and sealing, among others. Too, their assignment to herein respondents proceeded from the same job contracting agreement between MBI and respondents.[17] In fact, it was the petitioners in *Manlangit* who supported herein petitioner, Navarette, their leader, when she filed the complaint for inspection against respondents before the DOLE which, as previously mentioned, yielded a finding that there is a labor-only contracting arrangement between MBI and respondents. It is this complaint for inspection that triggered the chain of events which eventually led to the filing by therein petitioners of a complaint for regularization, later converted into one for illegal dismissal,[18] as well as Navarette's subsequent filing of her own complaint for illegal dismissal against MBI and herein respondents. Thus, based on these circumstances, there is commonality or similarity of parties. An absolute identity of parties is not necessary because a shared identity of interest will suffice for *res judicata* to apply. A mere substantial identity of parties or even community of interests between the parties in the prior and subsequent cases would be sufficient.[19]

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[15] See *Oropeza Marketing Corporation v. Allied Banking Corporation*, 441 Phil. 551, 564-565 (2002).

[16] *Antonio v. Sayman Vda. de Monje*, G.R. No. 149624, September 29, 2010, 631 SCRA 471.

[17] *Manlangit, et al. v. MIFFI, et al., rollo* (G.R. No. 196175), pp. 22, 26, 50, 167-169.

[18] Id. at 45.

[19] *Heirs of Marcelo Sotto v. Palicte*, G.R. No. 159691, June 13, 2013, 698 SCRA 294, 306-307.

With respect to the causes of action, the cause of action in this petition is for illegal dismissal, while in *Manlangit*, the causes of action are for regularization, illegal deduction, wage distortion and attorney's fees.

Thus, all the requisites of *res judicata* by conclusiveness of judgment are present. The Court applies *Manlangit* to the instant petition moored on *res judicata* by conclusiveness of judgment. To rule otherwise will not enhance and strengthen stability of judicial decisions.

With the finding that MBI is a legitimate labor contractor and is the employer of petitioner Navarette, the Court cannot, however, pass upon the issue of whether MBI is guilty of illegal dismissal. The antecedents show that while the MBI is a party respondent in NLRC-NCR Case No. 00-10-11705-03 together with respondents MIFFI and MLCI, the ruling of Labor Arbiter Peralta-Beley is to dismiss petitioner's complaint upon a finding of a valid dismissal grounded on serious misconduct.

Petitioner appealed said adverse decision to the NLRC against the MBI and herein respondents in NLRC CA No. 040934-04, and the NLRC found MIFFI and MLCI liable but not MBI. As a consequence, respondents MIFFI and MLCI filed a petition under Rule 65 with the CA in CA-G.R. SP No. 112102. MBI did not join said respondents since it was not adjudged liable by the NLRC. On the other hand, petitioner did not file a petition with the CA questioning the NLRC decision declaring MIFFI and MLCI liable but absolving MBI. Thus, the NLRC decision dated February 27, 2004 excluding MBI from any liability to petitioner became FINAL when petitioner no longer challenged said ruling before the CA.

WHEREFORE, premises considered, the instant petition is hereby **DENIED**. Accordingly, the Decision of the Court of Appeals dated October 4, 2011 and its Resolution dated January 30, 2012 in CA-G.R. SP No. 112102 are hereby **AFFIRMED**.

No pronouncement as to costs.

SO ORDERED.

PRESBITERO J. VELASCO, JR.
Associate Justice

WE CONCUR:

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

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

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

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