THIRD DIVISION

G.R. No. 171482 – ASHMOR M. TESORO, PEDRO ANG, and GREGORIO SHARP, Petitioners, **v. METRO MANILA RETREADERS, INC., (BANDAG) AND/OR NORTHERN LUZON RETREADERS, INC. (BANDAG) and/or POWER TIRE AND RUBBER CORPORATION (BANDAG) and COURT OF APPEALS,** Respondents.

. Promulgated:

March 12, 2014

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DISSENTING OPINION

LEONEN, *J.*:

I dissent.

I disagree with the majority in holding that petitioners ceased to be private respondents' employees on account of the service franchise agreements they entered into. The rulings of the National Labor Relations Commission (NLRC) and of the Labor Arbiter have been made with such disregard of material evidence amounting to an evasion of their positive duty to render judgment after only a meticulous consideration of the circumstances of a case. As such, the Court of Appeals is in error for sustaining the Labor Arbiter and the NLRC.

I vote to grant the present petition and to reverse and set aside the assailed decision dated July 29, 2005 and the assailed resolution dated February 7, 2006 of the Court of Appeals.

The July 29, 2005 decision of the Court of Appeals affirmed *in toto* the June 30, 2003 and November 28, 2003 resolutions of the National Labor Relations Commission. The resolutions of the NLRC, in turn, upheld the February 26, 2003 decision of Labor Arbiter Monroe C. Tabingan in NLRC RAB-CAR Case No. 11-0588-01, which dismissed petitioners' complaint (for illegal/constructive dismissal) for lack of merit.

The February 7, 2006 resolution of the Court of Appeals denied petitioners' motion for reconsideration.

Petitioners Ashmor Tesoro, Pedro Ang, and Gregorio Sharp were all employed as sales representatives/salesmen of respondents Metro Manila

Retreaders, Inc. and/or Northern Luzon Retreaders, Inc. and/or Power Tire and Rubber Corporation (referred here collectively and interchangeably as "Bandag").[1] Petitioners commenced employment with Bandag on various dates: July 1997 for Tesoro; August 1991 for Ang; and June 3, 1998 for Sharp.[2] Respondent Bandag is in the business of tire repairs and providing retreading services.[3]

On various dates in 1999 and 2000, petitioners entered into separate Service Franchise Agreements or SFAs with Bandag. These SFAs provided for the terms and conditions of Bandag's grant of service franchises to petitioners. Under the SFAs, petitioners were considered as Bandag's appointed service franchisees within defined territories.[4] From the records, there was no indication that in the period in which petitioners supposedly transitioned from being employees to franchisees, petitioners underwent procedures which customarily attend the termination of one's employment, e.g., clearance, turnover of equipment, settlement of obligations, and receipt of final pay.

Bandag effectively financed petitioners' franchise operations. Per Section 4.1 of the SFA, Bandag was to provide petitioners with revolving funds. These revolving funds, as defined in Section 4.1 of the SFA consisted of a franchisee's operating fund and take-home fund.

In its position paper, Bandag emphasized that the revolving funds were subject to periodic liquidation. The value of the revolving funds was to be deducted from petitioners' sales; the difference constituting petitioners' income as franchisees.[5] Bandag asserted that despite a series of reminders, warnings, and even threats of legal action, petitioners failed to liquidate their revolving funds and, instead, kept the payments of their clients for themselves. This led Bandag to consider the SFAs *ipso facto* terminated per the Service Franchise Manual's provisions on kiting, unremitted collections, and other related offenses. Bandag then initiated collection suits against petitioners.[6]

In their complaint, petitioners claimed that despite the execution of the SFAs, they continued to be regular employees of Bandag because Bandag remained in control of the manner and method by which petitioners carried out their franchise operations.[7] Petitioners added that they never ceased to receive monthly salaries, albeit these were "converted x x x into

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1 *Rollo,* pp. 142-143.
2 Id. at 68-69.
3 Id. at 98.
4 For instance, Baguio City in the case of petitioner Tesoro
5 *Rollo*, p. 101.
6 Id. at 105-109.
7 Id. at 71-73.

revolving funds" under the SFAs.[8] Petitioners theorized that the SFAs were nothing more than Bandag's means to disguise its employer-employee relationship with petitioners and to circumvent the requisite security of tenure by making it appear that petitioners were no longer employees but mere franchisees.[9]

To support their assertion that Bandag exercised control over the manner and method by which they carried out their franchise operations, petitioners pointed to provisions in the SFAs which: (1) prohibited the sale of competitor products; (2) designated defined areas of operations; (3) required petitioners to submit reports; (4) required petitioners to meet volume requirements; (5) provided petitioners with service vehicles; and (6) required the use of uniforms.[10]

As it is their position that they were constructively dismissed, petitioners claimed that they were entitled to reinstatement with full backwages, on top of their wage differentials and other (unpaid) benefits. In lieu of reinstatement, petitioners sought the award of separation pay.[11]

While admitting that petitioners used to be their sales personnel, Bandag claimed that petitioners either resigned or retired from the service. It alleged that petitioners became their service franchisees under a scheme that would allow employees to own and operate their own tire repair and retreading businesses.[12] It also emphasized that it validly terminated the SFAs as petitioners failed to properly liquidate their revolving funds.

In his decision, Labor Arbiter Monroe C. Tabingan dismissed petitioners' complaint for lack of merit. He noted that there was no longer any employer-employee relationship between petitioners and Bandag since petitioners ceased to be route salesmen but became dealers themselves who procured their own supplies and provided services to their own customers.[13] Labor Arbiter Tabingan held that petitioners could not have been constructively dismissed as they had either voluntarily resigned or availed of Bandag's early retirement package[14] and had become independent franchisees when they entered into the SFAs.[15] Labor Arbiter Tabingan also emphasized that petitioners were enjoying the status of franchise holders two (2) years prior to the filing of their complaint.[16]

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8 Id. at 70.
9 Id.
10 Id. at 71-73.
11 Id. at 86.
12 Id. at 25.
13 Id. at 142.
14 Id.
15 Id. at 143.
16 Id. at 144.

Aggrieved, petitioners appealed Labor Arbiter Tabingan's decision to the NLRC. In a resolution dated June 30, 2003, the NLRC denied petitioners' appeal. The NLRC agreed with Labor Arbiter Tabingan's findings that there was no employer-employee relationship between the parties as petitioners themselves severed their employment when they voluntarily entered into the SFAs. The NLRC noted that Bandag did not exercise control over how petitioners operated their independent franchises – Bandag having merely provided guidelines which were necessary both to protect petitioners and to ensure the viability of its own enterprise.[17] In a resolution dated November 28, 2003, the NLRC denied petitioners' motion for reconsideration.

Petitioners then filed with the Court of Appeals a petition for certiorari under Rule 65, alleging grave abuse of discretion on the part of the NLRC in upholding the decision of the Labor Arbiter. Acting on the petition, the Court of Appeals, in a resolution dated March 26, 2004, directed Bandag to file a comment. However, Bandag failed to file its comment.

In the Court of Appeals' assailed decision dated July 29, 2005, the Court of Appeals dismissed the petition for certiorari and agreed with the findings of Labor Arbiter Tabingan and of the NLRC that petitioners were independent businesspersons dealing in the products and services of Bandag.[18] The Court of Appeals held that the issue raised by petitioners on the existence of an employer-employee relationship was fundamentally factual and beyond its power to review since the findings of the NLRC were in accordance with those of the Labor Arbiter. Nonetheless, the Court of Appeals reviewed the records of the case and concluded that no employer-employee relationship existed between the parties because petitioners never disputed Bandag's allegation that they voluntarily severed employment ties with Bandag.[19] In the assailed resolution dated November 28, 2003, the Court of Appeals denied petitioners' motion for reconsideration.

Thereafter, petitioners filed the present petition before this court assigning as errors:

1. the Court of Appeals' having issued a ruling that is adverse to them despite the allegations in the petition for certiorari having been (supposedly) deemed admitted and uncontroverted since Bandag failed to file its comment in compliance with the Court of Appeals' March 26, 2004 resolution;

2. the Court of Appeals' failure to appreciate the SFAs as a means to circumvent security of tenure, despite the SFAs' illegality

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17 Id. at 64.
18 Id. at 28.
19 Id. at 27.

and invalidity for neither having been notarized nor registered with the Securities and Exchange Commission (SEC) or with any other government agency; and

3. the Court of Appeals' having sustained the findings of the NLRC and of Labor Arbiter Tabingan that no employer-employee relationship existed between petitioners and Bandag despite Bandag's having (supposedly) exercised control and supervision over petitioners' work.[20]

Apart from the three errors specifically assigned by petitioners, they also claim that: (1) they could not have been franchise holders because they are not corporations; (2) neither could they have been independent contractors because they had no substantial capital.[21] As to the manner by which they were "dismissed", petitioners also claim that they were not afforded an opportunity to be heard.[22]

On June 8, 2006, Bandag filed its opposition to the present petition.[23] In it, Bandag argued that the Court of Appeals correctly upheld the factual findings of the NLRC despite the lack of opposition from it.[24] It also claimed that the complaint for illegal dismissal was filed by petitioners merely as leverage for the collection cases filed by Bandag against petitioners. It added that petitioners attempted to have these collection cases suspended on the ground of the prejudicial question supposedly posed by the present (labor) case.[25] Bandag likewise noted that petitioners had operated the franchises for at least two (2) years and that it was only upon Bandag's filing of its collection cases that petitioners pursued the present (labor) case.[26]

Per the averments in the petition, for resolution are the following issues:

1. Whether the allegations in the petition for certiorari (which was filed with the Court of Appeals) were deemed admitted and uncontroverted because of Bandag's failure to file its comment;

2. Whether the SFAs are invalid for neither having been notarized nor registered with the SEC (or other appropriate government agency) or for having natural persons, as opposed to corporations, as franchisees;

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20 Id. at 11.
21 Id. at 17.
22 Id.
23 Treated as private respondents' comment on the petition in the resolution dated July 19, 2006.
24 *Rollo*, pp. 174-175.
25 Id. at 173 and 177.
26 Id. at 181.

3. Whether there existed an employer-employee relationship between petitioners and Bandag, notwithstanding the execution of the SFAs; and

4. If an employer-employee relationship existed between petitioners and Bandag, whether petitioners were dismissed in accordance with the requirements of substantive and procedural due process.

Bandag's failure to file a comment was not fatal to its cause and did not *ipso facto* render petitioners' allegations admitted and uncontroverted

Petitioners make much of Bandag's failure to heed the Court of Appeals' March 26, 2004 resolution requiring Bandag to file its comment to the petition for certiorari which petitioners filed before the Court of Appeals. Specifically, petitioners point to "Rule 9, Section 11 [sic] of the Rules of Court which supplements the NLRC Rules, which provides that an allegation which is not specifically denied is deemed admitted."[27] Petitioners, without citing any specific legal basis, further appeal to the "settled policy of this Honorable Court that x x x all matters not included x x x are deemed waived,"[28] and how, as a result of Bandag's failure to file a comment, "private respondents had waived whatever defenses they have and therefore the allegations and arguments of petitioners were deemed admitted and uncontroverted."[29]

In the first place, there is no such provision as "Rule 9, Section 11" in the Rules of Court (Rules). Rule 9 is comprised of all of three (3) sections. It is true that Rule 9, Section 1 of the Rules provides that "[d]efenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived." But, precisely, Rule 9, Section 1 of the Rules refers to a *motion to dismiss or an answer*, not to a comment to a Rule 65 petition. Petitioners use the words "comment,"[30] "answer,"[31] and "memorandum"[32]

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27 Id. at 9-10.

28 Id at 10.

29 Id.

30 The first of petitioners' three assignments of errors reads: "Whether the Court of Appeals committed a serious reversible error in issuing a decision in favor of private respondents and against petitioners considering that the issues and arguments raised in the petition were deemed admitted and uncontroverted because private respondents failed to submit their **comment** despite repeated orders from the Court of Appeals, in derogation to Rule 9, Section 11 [sic], of the Rules of Court which supplements the NLRC Rules, which provides that an allegation which is not specifically denied is deemed admitted." (Emphasis supplied). Petition for review on certiorari, *rollo*, p. 9, repeated in *rollo*, p. 10.

31 In the petition for review on certiorari, *rollo*, p. 10, petitioners state: "The allegations and arguments in the Petition are deemed admitted and uncontroverted because private respondents failed to submit the required **answer**, first in a Resolution dated March 26, 2004 directing them to submit **answer** [sic] and second, in a Resolution dated May 26, 2004 requiring them anew to submit their **answer**. Private

interchangeably. With this, petitioners mistakenly suggest that the rules applicable to one are applicable to the others. Indeed, petitioners' indiscriminate recourse to Rule 9 of the Rules reveals petitioners' failure to appreciate the specificity of the rules governing a petition for certiorari under Rule 65 of the Rules of Court.

Each of the remedies in the Rules is designed for a specific purpose and is calibrated to signal to a judge and to the other party a genre of issues that may be touched and the most efficient procedure to deal with them. Counsels of parties are supposed to guide their clients. Sadly, in this case, counsel for petitioners seems to have obfuscated the issues with her lack of understanding of the Rules of Court.

A petition for certiorari under Rule 65 is a special civil action. As such, while it is also governed by the general provisions of the Rules of Court which are applicable to ordinary civil actions, the specific rules prescribed for it take precedence. It follows, therefore, that while a petition for certiorari under Rule 65 is an original action (as opposed to an appeal) for which a pleading filed by the adverse party in response to the petition is proper, the specific rules governing responsive pleadings in Rule 65 petitions take precedence over the rules applicable to ordinary civil actions.

Rule 65, Section 6 provides:

> Section 6. *Order to comment.*-
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> x x x
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> In petitions for certiorari before the Supreme Court and the Court of Appeals, the provisions of section 2, Rule 56, shall be observed. Before giving due course thereto, the court ***may*** *require the respondents to file their comment* to, and not a motion to dismiss, the petition. Thereafter, the court may require the filing of a reply and such other responsive or other pleadings as it may deem necessary and proper. (Emphasis supplied)

Further, Rule 65, Section 8 (as amended by A.M. No. 07-7-12-SC) provides:

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respondents failed to comply with the two orders to submit **answer** [sic] even after almost two years when public respondent Court of Appeals promulgated its decision on July 29, 2005." (Emphasis supplied)

[32] In the petition for review on certiorari, *rollo*, p. 10, petitioners state: "It is the settled policy of this Honorable Court that in the submission of **MEMORANDA**, all matters and arguments not included in a party's **Memorandum** are deemed waived. Hence it is the respectful submission of petitioners that due to private respondents failure to submit the required **answer** despite a very long period of time, private respondents had waived whatever defenses they have and therefore the allegations and arguments of petitioners were deemed admitted and uncontroverted pursuant to Rule 9, Section 11 [sic] of the Rules of Court which provides that an allegation which is not specifically denied is deemed admitted." (Emphasis supplied)

> Section 8. *Proceedings after comment is filed.*—After the comment or other pleadings required by the court are filed, **or the time for the filing thereof has expired**, the court may hear the case or require the parties to submit memoranda. If, after such hearing or filing of memoranda or upon the expiration of the period for filing, the court finds that the allegations of the petition are true, it shall render judgment for such relief to which the petitioner is entitled.
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> However, the court may dismiss the petition if it finds the same patently without merit or prosecuted manifestly for delay, or if the questions raised therein are too unsubstantial to require consideration. In such event, the court may award in favor of the respondent treble costs solidarily against the petitioner and counsel, in addition to subjecting counsel to administrative sanctions under Rules 139 and 139-B of the Rules of Court.
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> The Court may impose *motu proprio*, based on *res ipsa loquitur*, other disciplinary sanctions or measures on erring lawyers for patently dilatory and unmeritorious petitions for *certiorari*. (Emphasis supplied)

It is clear from Rule 65, Sections 6 and 8 that a comment is not, in all cases, imperative and that the respondent's failure to file a comment is not necessarily fatal to its cause. Section 6 establishes that the need for a comment rests on the sound discretion of the court. A respondent's non-compliance neither automatically entails its admission of all the averments made in the petition nor the rendition of a decision adverse to it. Section 8 allows the case to proceed even after the period for the filing of a comment has lapsed without the respondent having filed a comment. Even after the lapse of such period, the court may still entertain the parties' memoranda or set the case for hearing and, thereafter, render its decision.

Accordingly, petitioners' insinuation that all the allegations in their petition were deemed admitted and uncontroverted must fail. Again, it betrays a fundamental lack of understanding of the nature and purpose of a Rule 65 special civil action.

Judicial review of decisions of the National Labor Relations Commission: Procedural parameters

At this juncture, it is crucial to clarify the procedural context in which this review is being made. This procedural context defines the parameters of what is permissible in this review.

As established in *St. Martin Funeral Home v. NLRC*,[33] while judicial

[33] 356 Phil. 811 (1998) [Per J. Regalado, En Banc].

review of a decision of the NLRC is permitted, such review is by way of a petition for certiorari (i.e., special civil action for certiorari) under Rule 65 of the Rules of Court, rather than by way of an appeal. Moreover, even as this court has concurrent jurisdiction with the Court of Appeals as regards petitions for certiorari, such petitions (after the NLRC's denial of a motion for reconsideration) are filed with the Court of Appeals, rather than directly with this court, consistent with the principle of hierarchy of courts. From an adverse ruling of the Court of Appeals, a party may then come to this court by way of a petition for ***review*** on certiorari (i.e., appeal by certiorari) under Rule 45 of the Rules of Court.[34]

As explained in *Odango v. NLRC*,[35] a special civil action for certiorari is an extraordinary remedy which is allowed "only and restrictively in truly exceptional cases."[36] The remedy of a writ of certiorari may be availed of only when there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. Nevertheless, this requirement has been relaxed in cases where what is at stake is public welfare and the advancement of public policy.[37]

Moreover, when availing of such a remedy, a party is not at liberty to assail an adverse ruling on grounds of such party's own choosing. A petition for certiorari is "confined to issues of jurisdiction or grave abuse of discretion."[38] Its sole office is "the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction."[39]

A petition for certiorari under Rule 65 is an original action. It is independent of the action from which the assailed ruling arose. In contrast, a petition for ***review*** on certiorari under Rule 45 is a mode of appeal. It is, therefore, a continuation of the case subject of the appeal. Being such a continuation, it cannot go beyond the issues which were properly the subject of the original action from which it arose.

With these premises, two points must be underscored with respect to reviews of decisions of the NLRC. First, when a decision of the NLRC is elevated to the Court of Appeals, what is involved is not an appeal but an

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34 Rule 45, Sec. 1. *Filing of petition with Supreme Court.*—A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

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

36 Id. at 639.

37 *Metropolitan Bank & Trust Company, v. Santos*, G.R. No. 157867, December 15, 2009, 608 SCRA 222 [Per J. Brion, Second Division], *citing Hon. Jose v. Zulueta and CA*, 112 Phil. 470 (1961) [Per J. Barrera, En Banc].

38 *Odango v. NLRC,* G.R. No. 147420, June 10, 2004, 431 SCRA 633 [Per J. Carpio, First Division], *citing Sea Power Shipping Enterprises, Inc. v. Court of Appeals*, 412 Phil. 603 (2001).

39 Id., *citing Oro v. Judge Diaz*, 413 Phil. 416 (2001).

entirely independent action where the matter for resolution is limited to issues of jurisdiction or grave abuse of discretion. Second, any subsequent elevation to this court of an adverse decision of the Court of Appeals, being by way of an appeal (i.e, continuation) of the independent action originally lodged with the Court of Appeals is, itself, limited to the issue which was properly taken up in the Court of Appeals, that is, jurisdiction or grave abuse of discretion.

In this regard, both the Court of Appeals and this court are to be guided by the established standard as to what constitutes grave abuse of discretion:

> By grave abuse of discretion is meant capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[40]

That the adverse ruling of the Court of Appeals in a petition for certiorari under Rule 65 is elevated to this court via a petition for review on certiorari under Rule 45 bears significantly on the manner by which this court shall treat findings of fact. As a general rule, it becomes improper for this court to consider factual issues.

This is for two reasons. First, since the appeal is an offshoot of a Rule 65 petition, as this court explained in *Odango*, a petition for certiorari assailing a ruling of the NLRC "does not include correction of the NLRC's evaluation of the evidence or of its factual findings. Such findings are generally accorded not only respect but also finality."[41] Second, since the appeal is being made via a Rule 45 petition, it is elementary that "[a]s a rule, only questions of law, not questions of fact, may be raised in a Petition for Review on *Certiorari* under Rule 45."[42]

Nevertheless, there are exceptions which will allow this court to overturn the factual findings with which it is confronted. For one, to the extent that petitioner in a Rule 65 petition can show that "the tribunal acted capriciously and whimsically or in total disregard of evidence material to the

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40 *Aurelio v. Aurelio*, G.R. No. 175367, June 6, 2011, *citing Solvic Industrial Corporation v. NLRC*, 357 Phil. 430, 438 (1998) [Per J. Panganiban, First Division]; *Tomas Claudio Memorial College, Inc. v. Court of Appeals*, 374 Phil 859, 864 (1999) [Per J. Quisumbing, Second Division].

41 *Odango v. NLRC,* G.R. No. 147420, June 10, 2004, 431 SCRA 633, 639-640 [Per J. Carpio, First Division], *citing Flores vs. NLRC*, 323 Phil. 589 (1996) [Per J. Panganiban, Third Division].

42 *Heirs of Deauna v. Fil-Star Maritime Corporation*, G.R. No. 191563, June 20, 2012, 674 SCRA 284, 302 [Per J. Reyes, Second Division], *citing Antiquina v. Magsaysay Maritime Corporation,* G.R. No. 168922, April 13, 2011, 648 SCRA 659 [Per J. Leonardo-de Castro, First Division].

controversy,"[43] the assailed Court of Appeals ruling (in the Rule 65 proceedings) will be reversed and the factual findings on which it rests may be rejected. Moreover, there are the following recognized exceptions:

> 1. When the conclusion is a finding grounded entirely on speculation, surmises, and conjectures;
> 2. When the inference made is manifestly mistaken, absurd or impossible;
> 3. Where there is a grave abuse of discretion;
> 4. When the judgment is based on a misapprehension of facts;
> 5. When the findings of fact are conflicting;
> 6. When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
> 7. When the findings are contrary to those of the trial court;
> 8. When the findings of fact are conclusions without citation of specific evidence on which they are based;
> 9. When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and
> 10. When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. [44]

Given these considerations, it must be emphasized that **what is involved in the present petition is a matter of public welfare and public policy**. It is settled that relations pertaining to labor and employment are impressed with public interest. They are deemed matters of public policy which weigh heavily on public welfare. Article 1700 of the Civil Code is clear on this point:

> Article 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. (Emphasis supplied)

Moreover, the present petition raises the novel issue of a franchise agreement being utilized to disguise an employer-employee relationship and to circumvent the requirement of security of tenure. This court must avail of this opportunity to scrutinize what is assailed to be an innovative and ingenious way of undermining a person's livelihood as well as the safeguard which our laws have placed to protect such source of livelihood — security of tenure. Needless to say, contracts designed to circumvent the legal requirement of security of tenure run afoul of our laws and of public policy.

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[43] *Odango v. NLRC,* G.R. No. 147420, June 10, 2004, 431 SCRA 633, 640 [Per J. Carpio, First Division], *citing Sajonas vs. NLRC*, G.R. No. 49286, March 15, 1990, 183 SCRA 182.

[44] *Cirtek Employees Labor Union v. Cirtek Electronics, Inc.,* G.R. No. 190515, June 6, 2011, 650 SCRA 656, 660.

They are detrimental to the public welfare.

In making a determination of the extent to which the franchise arrangement between petitioners and Bandag is a circumvention of security of tenure, emphasis must be given to the primacy of the provisions of the contract entered into by the parties. While Bandag questioned petitioners' motives in filing their complaint, such motives are extraneous to the issue of whether the franchise arrangement, as spelled out in and carried out under the SFAs, circumvented security of tenure.

From a careful review of the facts of this case, as borne by the records, and from a thorough consideration of the arguments of the parties, it will be culled that the rulings of the NLRC and of the Labor Arbiter have been made with such disregard of material evidence. Properly considered in their totality, the evidence points to the SFAs as a means to conceal Bandag's employer-employee relationship with respondents as well as to subvert their security of tenure. The inferences and conclusions drawn by the NLRC and by the Labor Arbiter are unsupported by an exacting and critical scrutiny of the evidence — chiefly the SFAs — and are, thus, manifestly mistaken. As such, the NLRC and the Labor Arbiter committed such gross errors amounting to an evasion of their positive duty to render judgment after only a meticulous consideration of the circumstances of a case.

The Labor Arbiter, in concluding that petitioners ceased to be route salesmen, failed to realize that petitioners were actually still performing the same roles and functions. There has not even been a distinguishable demarcation of the supposed end of their employment as typified by procedures customarily attending resignation and/or retirement, or otherwise signifying the end of an employer-employee relationship (such as clearance procedures, settlements of obligations, and final payments or benefits). That the SFAs had been in effect for about two (2) years when petitioners filed their complaint is of no consequence. It proves nothing more than the fact of such duration and does not at all support the conclusion that petitioners' employment ceased, and, more so, that such cessation was out of petitioners' own volition.

The NLRC's conclusion that Bandag merely provided guidelines and did not exercise control over petitioners is not supported by a meticulous and thorough review of the SFAs. A proper reading of the SFA provisions reveals that petitioners were not independent businessmen but remained under the employ of Bandag. The NLRC was even all too willing to lend validity to SFAs, not noticing that the SFA (as submitted to this court) was not even signed by the parties.

As such, the Court of Appeals is in error for sustaining the Labor

Arbiter and the NLRC. The Court of Appeals' finding that the Labor Arbiter and the NLRC did not commit grave abuse of discretion was unwarranted. The Court of Appeals' conclusions are borne by the same misapprehension of facts initiated by the Labor Arbiter and the NLRC.

The SFAs' validity is not diminished by their non-notarization and non-registration nor by the fact that the franchisees under it are natural persons

The Service Franchise Agreement or SFA attached to the present petition (as Annex "D-1") is not signed, whether by a representative of Bandag or by the franchisee. While not specifically raised by petitioners as an issue, this detail, along with other observations (as will be laid out and explained subsequently), raises questions about the regularity of the circumstances surrounding the execution of the SFAs and should weigh heavily on this court's appreciation and ultimate disposition of the present petition.

Likewise, it must be reiterated that there has not been a distinguishable delineation of the supposed end of petitioners' employment through procedures which, in the normal course of things, are customary to resignation and/or retirement. The regular process would have been for petitioners to properly end their employment through these procedures and, *after which*, enter into new contracts with the former employer which is now a franchisor. Absent these procedures, it appears that the SFAs did not really signal the start of a significantly new relationship. That the parties did not even bother to sign the SFAs only buttresses this. For that matter, even if the parties had signed copies, the fact that they never submitted these signed copies to this court (as in fact the only copy available for our perusal is an unsigned SFA) only shows the devaluing with which the SFAs are looked at, not only by the parties in general, but more so by Bandag.

These circumstances, by themselves, would have resolved this case. But, even going beyond these, and embarking on a more thorough scrutiny of the other facts and the relevant contractual provisions, there is only greater certainty that the franchise agreement between petitioners and Bandag is, in fact, a subterfuge for compliance with legal requirements.

Turning however to the specific issues raised by petitioners, neither notarization nor registration is decisive of the validity of the Service Franchise Agreements.

In *Bernardo v. Ramos*,[45] this court had the occasion to explain the significance of notarization:

> Notarization converts a private document into a public document thus making that document admissible in evidence without further proof of its authenticity. A notarial document is by law entitled to full faith and credit upon its face.[46]

Also, in *Ruiz, Sr. v. Court of Appeals*,[47] this court emphasized that:

> Documents acknowledged before notaries public are public documents and public documents are admissible in evidence without necessity of preliminary proof as to their authenticity and due execution. They have in their favor the presumption of regularity, and to contradict the same, there must be evidence that is clear, convincing and more than merely preponderant.[48]

As is clear from the cited authorities, the import of notarization rests, not on the validity they lend to private documents, but on bolstering the reliability and evidentiary weight of such documents. Thus, notarization may be relied upon only with respect to the authenticity and due execution of a document *but not* with respect to its intrinsic validity. It is, therefore, inconsequential, with respect to the validity of the SFAs between the parties, that they have not been notarized.

Neither is the SFAs' non-registration with the Securities and Exchange Commission (or with another government agency) fatal to the validity of the SFAs.

To begin with, petitioners' understanding of "franchise" is erroneous.

In arguing against the validity of the SFAs, petitioners rely on the definitions of "franchise" from two sources: first, Francisco B. Moreno's Philippine Law Dictionary which (as cited by petitioners) defines 'franchise' as "[a] special privilege conferred by governmental authority";[49] and second, this court's pronouncement in *Del Mar v. Philippine Amusement and Gaming Corporation*,[50] which defines 'franchise' as "a special privilege conferred upon a corporation or individual by a government duly empowered legally to grant it."[51] On the basis of these, petitioners conclude that "[w]hether it is a corporate franchise, general franchise, primary

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45 433 Phil. 8 (2002) [Per J. Bellosillo, Second Division].
46 Id. at 15, *citing* RULES OF COURT, Rule 132, sec. 30.
47 414 Phil. 310 (2001) [Per J. Kapunan, First Division].
48 Id. at 325, *citing Salame v. Court of Appeals,* G.R. No. 104373, December 22, 1994, 239 SCRA 356 [Per J. Romero, Third Division].
49 As cited in the petition for review on certiorari, *rollo*, p. 13.
50 400 Phil. 307 (2000) [Per J. Puno, En Banc].
51 As cited in the petition for review on certiorari, *rollo*, p. 13.

franchise, secondary franchise, special franchise, it means '**the franchise to exist as a corporation**.'"[52]

Petitioners' reasoning is erroneous: first, the definitions they cited are idiosyncratic and restrictive and are not appropriate to the facts of this case; second, it does not even follow from the definitions they cited that a franchise must necessarily and exclusively mean "the franchise to exist as a corporation." Petitioners are insisting upon this court a myopic understanding of 'franchise' which is clearly not within the ballpark of what the parties may have intended. It is this erroneous reasoning that cultivates the equally erroneous conclusion that just because the Securities and Exchange Commission has "jurisdiction and supervision over all corporations, partnerships or associations who are the grantees or primary *franchises* and/or a license or permit issued by the Government"[53] then, the SFAs, referring, as they do, to 'franchises', must be registered with the SEC.

A distinction must be made between franchise as bestowed by government, as against franchise as the right or license granted by a franchisor company to a "related company."[54] It is the latter which is involved in the present case.

Franchise, as bestowed by government, refers to "a privilege conferred by government authority, which does not belong to citizens of the country generally as a matter of common right."[55] Further, a franchise bestowed by government may be either of two kinds: (1) a general or primary franchise or (2) a special or secondary franchise. As this court explained in *National Power Corporation v. City of Cabanatuan*:[56]

> [A general or primary franchise] relates to the right to exist as a corporation, by virtue of duly approved articles of incorporation, or a charter pursuant to a special law creating the corporation. The right under a primary or general franchise is vested in the individuals who compose the corporation and not in the corporation itself. On the other hand, [a special or secondary franchise] refers to the right or privileges conferred upon an existing corporation such as the right to use the streets of a municipality to lay pipes of tracks, erect poles or string wires.[57]

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52 *Rollo*, p. 13.

53 Republic Act No. 8799 (Securities Regulation Code), Sec. 5 (a).

54 *See* V. B. AMADOR, INTELLECTUAL PROPERTY FUNDAMENTALS 67-68 (2007), *citing Mr. Rooter Corp. v. Morris,* 188 USPQ 392 (E.D. La. 1975) and *Southland Corp. v. Schubert*, 297 F.Supp. 477, 160 USPQ 375 (C.D. Cal. 1968): "Stores which are operating pursuant to franchise agreements from another party are considered 'related companies' of that party, and use of the mark by the franchised store inures to the benefits of the franchisor."

55 *National Power Corp. v. City of Cabanatuan*, 449 Phil. 233, 251 (2003) [Per J. Puno, Third Division], *citing J.R.S. Business Corp., et al. v. Ofilada, et al.*, 120 Phil. 618, 623 (1964) [Per J. Paredes, En Banc].

56 Id.

57 Id. at 252, *citing* J. Campos, Jr., I Corporation Code 2 (1990).

On the other hand, franchise as granted by a franchisor company to a related company refers to "the right or license granted to an individual or group to market a company's goods or services in a particular territory."[58] It is a widely recognized commercial practice or means of doing business. In the United States, the Federal Trade Commission defines franchising as:

> x x x any continuing commercial relationship or arrangement, whatever it may be called, in which the terms of the offer or contract specify, or the franchise seller promises or represents, orally or in writing, that:
>
> (1) The franchisee will obtain the right to operate a business that is identified or associated with the franchisor's trademark, or to offer, sell, or distribute goods, services, or commodities that are identified or associated with the franchisor's trademark;
>
> (2) The franchisor will exert or has authority to exert a significant degree of control over the franchisee's method of operation, or provide significant assistance in the franchisee's method of operation; and
>
> (3) As a condition of obtaining or commencing operation of the franchise, the franchisee makes a required payment or commits to make a required payment to the franchisor or its affiliate.[59]

Through a franchise agreement, parties enter into a commercial arrangement whereby the franchisee (i.e., related company) is given the right by the franchisor to engage in the franchisor's business, while using the franchisor's trademark/s and/or tradename and capitalizing on the franchisor's goodwill, subject to compliance with standards and guidelines established by the franchisor. In these arrangements, it is recognized that benefits will inure to both parties: to the franchisee by relieving itself of the need to establish an enterprise from scratch and by enabling it to utilize the goodwill established by the franchisor; and to the franchisor by enabling it to enlarge its market and multiply its capacity while minimizing costs.

In this case, what is involved is a franchise as granted by a franchisor company to a related company. The SFAs *ostensibly* allow petitioners themselves to engage in the business of tire repairs and providing retreading services. This, they shall do under the name and marks of, as well as in conformity with the guidelines and standards established by, Bandag. The SFAs avowedly devise an arrangement whereby petitioners are to operate outlets providing tire repair and retreading services which are identified by the name and marks of Bandag. On the part of Bandag, the SFAs enable it to expand its business, reaching more clients through outlets which act as

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58 Merriam Webster's Collegiate Dictionary (10th ed., 1995) p. 463.

59 UNITED STATES CODE OF FEDERAL REGULATIONS, 72 FR 15544 (2007).

frontline units.

"Franchise," in this case, simply means dealership. It has nothing to do with the definitions insisted upon by petitioners. The business of providing tire repairs and retreading services does not entail an extraordinary privilege which must be specially conferred or sanctioned by government. Tire repairs and retreading services, while certainly beneficial to Bandag's and petitioners' clientele, do not entail public interest such that engaging in them becomes impossible unless *specially* sanctioned by the government.

To disregard the distinction — between franchise as bestowed by government, as against franchise as a right or license granted by a franchisor company to a related company — and to insist on the application of the former to the present case is to insist on an absurd interpretation which will lead to unjust and unreasonable consequences. Indeed, petitioners' call for this court to vest its imprimatur on their reasoning is, effectively, a call to invalidate, in one fell swoop, all commercial arrangements configured along the lines of the franchise business model because of non-registration with the Securities and Exchange Commission.

Republic Act No. 8799, otherwise known as the Securities Regulation Code (SRC), in spelling out the jurisdiction of the Securities and Exchange Commission is clear. Such jurisdiction is qualified and extends only to "all corporations, partnerships or associations who are the grantees of *primary franchises and/or a license or permit issued by the Government.*"[60] At no point does the statutory recital of the Securities and Exchange Commission's jurisdiction claim to cover dealerships between a franchisor and a related company or franchisee.

There is simply no need to register the SFAs with the Securities and Exchange Commission. The SFAs do not purport to create a corporation, a partnership or any other artificial being which requires legal fiat in order that it may juridically exist and be capacitated for rights and obligations. Being a means to effectuate a business model, neither do the SFAs involve securities which, per the state policy articulated in Section 2 of the SRC, necessitate full and fair disclosure to "enabl[e] the public to make an informed investment decision"[61] and for which registration is necessary as "[t]he principal device to ferret out the truth."[62]

Parenthetically, that a franchise need not be registered with the Securities and Exchange Commission does not mean that franchises are not subject to appropriate regulation (e.g., by the Department of Trade and

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60 Republic Act No. 8799 (Securities Regulation Code), Sec. 5 (a).

61 R. A. MORALES, THE PHILIPPINE SECURITIES REGULATION CODE (ANNOTATED) 61 (2005), *citing* SECURITIES REGULATION CODE, Sec. 2.

62 Id.

Industry, Intellectual Property Office, and other agencies). In any case, the records are bereft of any indication that these have been complied with.

Having clarified the concept of 'franchise,' petitioners' assertion that the SFAs are invalid because it makes franchisees out of natural persons, rather than corporations, must also fail. As will be gleaned from the discussion in *National Power Corporation v. City of Cabanatuan*,[63] the question of the person/s upon whom the franchise is vested is material when what is involved is a franchise bestowed by government; that is, in distinguishing between a primary or general franchise, on the one hand, and a special or secondary franchise, on the other. Here, since what is involved is a franchise granted by a franchisor to a franchisee, it is of no consequence that the franchisees are natural persons. Simply, natural persons could, just as easily as juridical persons, "market a company's goods or services in a particular territory."[64]

Despite the execution of the SFAs, there continued to be an employer-employee relationship between petitioners and Bandag

As clarified in *Aklan v. San Miguel Corporation,*[65] "the existence of an employer-employee relationship is ultimately a question of fact and the findings by the Labor Arbiter and the NLRC on that score shall be accorded not only respect but even finality when supported by ample evidence."[66]

Given this and the earlier discussed procedural parameters of a judicial review of decisions of the NLRC, it will be noted that the Court of Appeals, the NLRC, and the Labor Arbiter uniformly ruled that no employer-employee relationship existed between the parties at the time of the filing of petitioners' complaint.

In the decisions and resolutions rendered by the Court of Appeals, the NLRC and the Labor Arbiter, it was consistently held that petitioners voluntarily applied for SFAs with Bandag.[67] The Court of Appeals and the NLRC likewise sustained the Labor Arbiter's conclusion that petitioners' entry into the SFAs effectively changed the relationship between petitioners and Bandag; that is, that petitioners were no longer employees but engaged

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63 *National Power Corp. v. City of Cabanatuan*, 449 Phil. 233 (2003) [Per J. Puno, Third Division].

64 Merriam Webster's Collegiate Dictionary (10th ed., 1995); UNITED STATES CODE OF FEDERAL REGULATIONS, 72 FR 15544 (2007).

65 594 Phil. 344 (2008) [Per J. Reyes, Third Division].

66 Id. at 357, *citing AFP Mutual Benefit Association, Inc. v. National Labor Relations Commission,* 334 Phil. 712 (1997) [Per J. Panganiban, Third Division].

67 *Rollo*, p. 28, *citing* the June 30, 2003 resolution of the National Labor Relations Commission.

in their own enterprises.

These findings notwithstanding, petitioners contend that an employer-employee relationship must have continued to exist. They anchor this contention on Bandag's supposedly having continued to exercise control over the manner and method by which they carried out their franchise operations. Specifically, petitioners point to provisions in the SFAs which: (1) prohibited the sale of competitor products; (2) designated defined areas of operations; (3) required petitioners to submit reports; (4) required petitioners to meet volume requirements; (5) provided petitioners with service vehicles; and (6) required the use of uniforms,[68] as representing such degree of control as would validate the existence of an employer-employee relationship.

In addition to Bandag's continuing control over their operations, petitioners claim that they continued to receive salaries, albeit denominated as "revolving funds". Petitioners also add that they did not have sufficient capital to embark on their own enterprise and that all capital and equipment were provided by Bandag.

To determine the existence of an employer-employee relationship, the following four-fold test is generally[69] applied:

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[68] Id. at 71-73.

[69] The four-fold test, with emphasis on the right of control, was first applied in the 1956 *Viaña v. Al-Lagadan and Piga* (99 Phil. 408 (1956) [En Banc]). A reading of *Viaña* will reveal that the four-fold test is of American origin (*Viaña* cites as its source "35 Am. Jur. 445" but fails to specify the case which American Jurisprudence itself cited).

As this court clarified in *Francisco v. NLRC* (532 Phil. 399 (2006) [First Division, per Ynares-Santiago, J.]), the four-fold test has since been generally relied upon by courts in determining the existence of an employer-employee relationship. Nevertheless, in *Francisco,* this court underscored that:

> x x x [I]n certain cases the control test is not sufficient to give a complete picture of the relationship between the parties, owing to the complexity of such a relationship where several positions have been held by the worker. There are instances when, aside from the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished, economic realities of the employment relations help provide a comprehensive analysis of the true classification of the individual, whether as employee, independent contractor, corporate officer or some other capacity.
>
> The better approach would therefore be to adopt a two-tiered test involving: (1) the putative employer's power to control the employee with respect to the means and methods by which the work is to be accomplished; and (2) the underlying economic realities of the activity or relationship.
>
> This two-tiered test would provide us with a framework of analysis, which would take into consideration the totality of circumstances surrounding the true nature of the relationship between the parties. This is especially appropriate in this case where there is no written agreement or terms of reference to base the relationship on; and due to the complexity of the relationship based on the various positions and responsibilities given to the worker over the period of the latter's employment.

Under this 'broader economic reality test,' "the determination of the relationship between employer

1. the selection and engagement of the employee;
2. the payment of wages;
3. the power of dismissal; and
4. the employer's power to control the employee with respect to the means and methods by which the work for which the latter is engaged is to be accomplished.[70]

Of these, it is the fourth or the 'control test' — "where the person for whom the services are performed reserves the right to control not only the end to be achieved, but also the manner and means to be used in reaching that end"[71] — which assumes primacy. The 'control test' is the most important element in determining the existence of an employer-employee relationship.[72]

However, not every manner of control establishes an employer-employee relationship. As this court noted in *Insular Life Assurance Co., Ltd., v. NLRC*:[73]

> Logically, [a] 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.[74]

A franchise agreement is typified by two features: (1) collaboration and (2) a shared interest (i.e., risk) in the success or failure, the gains or losses, of the enterprise. These features indicate that a franchisee is himself engaged in a business concern, albeit in association with another (i.e., the franchisor). It is these features which, despite the presence of some degree of control by the franchisor, negate the existence of an employer-employee relationship.

Since a franchise arrangement is designed to serve the business interests of both the franchisor and the franchisee, it is but natural that

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and employee depends upon the circumstances of the whole economic activity." Moreover, citing *Weisel v. Singapore Joint Venture, Inc*. (602 F.2d. 1185 [5th Cir. 1979]), this court noted in *Francisco* that the foremost consideration is that of dependency or "whether the worker is dependent on the alleged employer for his continued employment in that line of business." (*Halferty v. Pulse Drug Company*, 821 F.2d 261 [5th Cir. 1987]).

70 *"Brotherhood" Labor Unity Movement of the Philippines v. Zamora*, 231 Phil. 53, 59 (1987) [Per J. Gutierrez, Jr., Second Division].

71 *Cosmopolitan Funeral Homes v. Maalat*, G.R. No. 86693, July 2, 1990, 187 SCRA 108, 112-113.

72 *"Brotherhood" Labor Unity Movement of the Philippines v. Zamora*, 231 Phil. 53, 59 (1987) [Per J. Gutierrez, Jr., Second Division].

73 259 Phil. 65 (1989) [Per J. Narvasa, First Division].

74 Id. at 71.

parameters be established to ensure the viability of the shared enterprise — that is, to ensure the attainment of mutually desired results. Moreover, as it is the franchisee which effectively involves itself with the pre-established enterprise of the franchisor — the benefits it enjoys precisely being that it is relieved of the need to establish an enterprise from scratch and/or that it is able to utilize the goodwill established by the franchisor — it is a matter of course that the franchisee's activities be in line with standards established by the franchisor.

Conversely, where an arrangement purporting to be a franchise agreement does not cater to the mutual interests of the franchisor and the franchisee — as collaborating entrepreneurs — and instead reveals a lopsided relation that funnels gains only to the supposed franchisor, courts must decline from recognizing it as a valid franchise agreement. Where a supposed franchise agreement fails to clearly manifest that a franchisee is pursuing its own business concern, and shows, instead, that it is an artifice to conceal and circumvent safeguards established by law — such as security of tenure — courts must refuse to sanction such an illicit and iniquitous arrangement. Indeed, tribunals must take caution lest they be reduced to a rubberstamp that validates unlawful undertakings.

In this case, while the Court of Appeals, the NLRC, and the Labor Arbiter uniformly ruled that no employer-employee relationship existed between the parties at the time of the filing of petitioners' complaint, such determination is manifestly mistaken and based on a misapprehension of facts. The rulings of the Court of Appeals, the NLRC, and the Labor Arbiter must, thus, be reversed.

The complete text of the substantive provisions of the Service Franchise Agreements[75] reads:

> IT IS AGREED:
>
> 1. *APPOINTMENT*
>
> COMPANY hereby appoints FRANCHISEE, and FRANCHISEE hereby accepts the appointment, as service franchisee for Sarman-Bandag retreads in Baguio City. ("Territory")
>
> 2. *TERRITORY*
>
> 2.1 The Territory shall not be exclusive to FRANCHISEE. COMPANY reserves the right to maintain its Area Sales Representatives (ASR) in the Territory or grant a service franchise therein to other ASRs if, in its sole discretion, the Territory will be better served by more than one (I) ASR or service franchisee.

[75] A specimen was attached to petitioner's position paper before the Labor Arbiter, *rollo* pp. 88-94.

2.2 FRANCHISEE may likewise solicit and serve accounts beyond the Territory ("Extra territory"); provided that, the account in the Extra-territory is not served by another ASR or service franchise. The Territory may be extended to include the Extra-territory if, in COMPANY's sole discretion, FRANCHISEE has the aptitude for responsibility over a greater area.

3. *CUSTOMERS*

3.1 FRANCHISEE's customers in the Territory while still an ASR of COMPANY shall comprise FRANCHISEE's initial list of accounts. The list shall be updated regularly to include new accounts solicited by FRANCHISEE.

3.2 A customer shall be credited to FRANCHISEE's account on a "first- come-first-serve" basis, that is, a customer shall be included in the list of accounts of the first FRANCHISEE to solicit a paid order for COMPANY's services or products.

3.3 Accounts in FRANCHISEE's list shall be exclusive to FRANCHISEE, unless (i) in COMPANY's sole discretion, FRANCHISEE's service to his account/s does not meet the service standard required in the current Company Manual; or (ii) FRANCHISEE is suspended for failure to observe the credit policies set forth in the current Company Manual; or (iii) the account is reclassified by COMPANY as a lost account, i.e., a customer who, in the immediately preceding six (6) months, did not procure any service or obtain any product from COMPANY. COMPANY shall notify FRANCHISEE in writing of the foregoing, and the account may be solicited by other ASRs or service franchisees.

4. *COMPANY SUPPORT FOR FRANCHISEE*

4.1 COMPANY shall advance to FRANCHISEE his revolving fund for the first three (3) months of operations. The revolving fund consists of FRANCHISEE's take-home fund (approximately equivalent to the salary, allowance, commission and incentives of an ASR) and operating fund (for gasoline, repairs and maintenance and other miscellaneous expenses).

4.2 COMPANY shall provide FRANCHISEE a service vehicle through the Bandag Vehicle Acquisition Plan ("BVAP").

4.3 COMPANY shall haul the tires from FRANCHISEE's sales office to the processing plant and back.

4.4 COMPANY shall conduct year-round training and development programs and seminars for service franchisees.

4.5 COMPANY shall provide receipts, invoices and other forms, including: (i) selling kits and testimonials; (ii) information and updates regarding Sarman-Bandag products; (iii) information and market intelligence on competing products; and (iv)

processed tire updates, customer updates, credit information, etc.

5. *MINIMUM REQUIREMENTS*

5.1 To remain in good standing, FRANCHISEE shall comply with the monthly minimum processed tire requirement (MPR) set forth in the current Company Manual. As long as FRANCHISEE complies with the MPR, FRANCHISEE need not satisfy the ideal tire mix of sixty percent (60%) truck tire and forty percent (40%) light truck.

5.2 Upon FRANCHISEE's failure to meet the MPR for three (3) consecutive months, COMPANY may, at its sole option, terminate this Agreement effective upon receipt of written notice thereof by FRANCHISEE, without prejudice to the rights and obligations accrued as of date thereof.

6. *PRICES AND CHARGES*

FRANCHISEE's charges for products and services, inclusive of freight and handling, shall conform to the rates prescribed by COMPANY set forth in the current Company Manual, and COMPANY reserves the right to adjust the rates without prior notice.

7. *FRANCHISE DISCOUNTS AND REBATES*

7.1 COMPANY shall give FRANCHISEE a franchise discount based on FRANCHISEE's total equivalent points for processed tires for the past month. The schedule of franchise discounts is set forth in the current Company Manual.

7.2 The rebate is computed as follows:

FRANCHISEE shall receive his rebates for the month, net of all amounts due to COMPANY from FRANCHISEE, on the fifteenth day of the month following.

8. *CREDIT TERMS AND LIMITS*

8.1 COMPANY shall review and approve customers' credit applications recommended by FRANCHISEE. However, COMPANY's approval of customer's credit application shall not relieve FRANCHISEE of his obligations under this Agreement.

8.2 FRANCHISEE shall only render service or sell products on credit to customers with COMPANY-approved credit applications. FRANCHISEE shall also abide by the credit terms and limits approved by COMPANY and observe the credit policies set forth in the current Company Manual.

9. *OTHER PROVISIONS*

9.1 FRANCHISEE shall render service to customers in accordance

with the standards and specifications set forth in the current Company Manual.

9.2 During the term of this Agreement, FRANCHISEE shall not, directly or indirectly, sell, distribute, promote or solicit orders for the sale of services or products which compete with the services and products of COMPANY, whether for his own account or on behalf of third parties, without the prior written approval of COMPANY.

9.3 This Agreement shall not be construed to establish an employer-employee relationship between (i) COMPANY and FRANCHISEE; or (ii) COMPANY and FRANCHISEE's employees, if any.

9.4 FRANCHISEE shall hold COMPANY free and harmless from liability for (i) unpaid wages and benefits of FRANCHISEE's employees, if any; (ii) loss or damage to the property of, or death or injury to, third parties caused by the acts or omissions of FRANCHISEE or his employees, if any; (iii) non-compliance with any law, rule or regulation of the government or any of its subdivisions or agencies; or (iv) non-payment of any tax, fee or assessment.

9.5 FRANCHISEE shall not make any warranties to its customers other than the warranties stated herein, that is, that SARMAN-BANDAG retreads, repairs, tread transfers and slightly used treads shall be free from defects in workmanship and materials for the life of the tread; there is no warranty on the casing. FRANCHISEE shall hold COMPANY free and harmless from liability for breach of warranty not expressly allowed herein.

9.6 FRANCHISEE acknowledges COMPANY's ownership of the trademark and service mark "Sarman-Bandag".

9.7 FRANCHISEE shall attend, participate in and successfully complete the training and development programs conducted by COMPANY.

9.8 FRANCHISEE shall wear uniforms prescribed by COMPANY and carry calling cards setting forth the complete company name, address and telephone numbers.

9.9 True and accurate books of account shall be maintained in accordance with generally accepted accounting principles and the procedures prescribed by COMPANY. The books of account shall be available for inspection by COMPANY at all times during regular business hours.

9.10 FRANCHISEE shall submit [monthly/quarterly] financial reports in the form prescribed by COMPANY.

9.11 COMPANY shall have the right to enter and inspect FRANCHISEE's sales offices to (i) ascertain FRANCHISEE's compliance with his obligations under this Agreement; and (ii) evaluate FRANCHISEE's performance.

10. *BOND*

10.1 FRANCHIISEE shall post a surety bond from a reputable company acceptable to COMPANY or a cash bond in such amount equivalent to FRANCHISEE's accounts receivable during his last month as ASR to guarantee the faithful performance of his obligations and the duties and responsibilities set forth herein.

10.2 FRANCHISEE shall, within thirty (30) days from receipt of written notice, pay to COMPANY such amounts sufficient to replenish the cash bond.

10.3 COMPANY may, at its discretion, increase the amount of the bond by mere written notice. FRANCHISEE shall pay to COMPANY the increase in the amount of the cash bond or cause the increase in the surety bond within thirty (30) days from receipt of notice.

10.4 Should FRANCHISEE fail to replenish the cash bond or deposit the amount of the increase in the cash bond, the amount due shall bear interest of two percent (2%) per month or fraction thereof until paid in full as and by way of penalty, without prejudice to other remedies available to COMPANY under the law and this Agreement. In the case of the surety bond, FRANCHISEE shall pay COMPANY a penalty of _____ PESOS (₱____) for every [day/week/month] of delay in effecting the increase in the surety bond, without prejudice to other remedies available to COMPANY under the law and this Agreement.

10.5 The bond shall be effective for the term of this Agreement. The cash bond shall be refunded to FRANCHISEE within fifteen (15) days from date of expiration or termination of this Agreement, less any charges thereto.

11. *TERM AND TERMINATION; RENEWAL*

11.1 This Agreement shall be effective for a period of one (1) year, commencing on January 1, 2001. Renewal shall be at the option of COMPANY based on its evaluation of FRANCHISEE's performance.

11.2 Except as otherwise provided, FRANCHISEE shall have thirty (30) days from receipt of written notice to cure a breach or default in the performance of any term or condition of this Agreement or the Company Manual to the satisfaction of COMPANY, otherwise, the notice shall be deemed effective, and this Agreement shall terminate forthwith. In either case, FRANCHISEE shall be liable to pay damages.

11.3 In case of fraud committed by FRANCHISEE, COMPANY shall have the right to terminate this Agreement effective upon receipt of written notice thereof by FRANCHISEE. COMPANY shall be entitled to liquidated damages of twenty

five percent (25%) of the amount involved but in no case less than Fifty Thousand Pesos (₱50,000.00), without prejudice to other remedies available to COMPANY under the law and this Agreement.

11.4 Within thirty (30) days from the expiration or termination of this Agreement, FRANCHISEE shall, without need of demand, settle his outstanding obligations to COMPANY. Should FRANCHISEE fail to settle his outstanding obligations on due date, COMPANY shall be entitled to a late payment surcharge of two percent (2%) of the outstanding obligations and interest on the total amount of two percent (2%) per month or fraction thereof until paid in full, without prejudice to other remedies available to COMPANY under the law and this Agreement.

11.5 Upon expiration or termination of this Agreement, FRANCHISEE shall (i) cease to use the trademark and service mark of COMPANY in any form or manner and (ii) within fifteen (15) days, return to COMPANY all forms and material provided by COMPANY to, or otherwise in the possession of, FRANCHISEE, including copies made thereof.

11.6 The expiration or termination of this Agreement shall be without prejudice to any rights or obligations accrued as of date thereof.

12. *GENERAL PROVISIONS*

12.1 The provisions of the Company Manual and all subsequent amendments thereto are deemed incorporated herein and made integral parts of this Agreement by reference.

12.2 The information and materials received by FRANCHISEE from COMPANY pursuant to this Agreement or which otherwise come to the knowledge or possession of FRANCHISEE shall be kept strictly confidential for the duration of this Agreement and for a period of three (3) years after its expiration or termination. Confidential information and materials shall be used only for the purpose for which it was disclosed and shall be disclosed to third parties only with the prior written consent of COMPANY. However, confidentiality shall not apply to the following: (i) those available from generally public sources other than as a result of a breach of this Agreement; (ii) those received from a third party with a lawful right to disclose such information; (iii) those which the parties specifically agree upon in writing at the time of disclosure as not subject to this provision; (iv) those required by law to be submitted to government regulatory agencies; and (v) those disclosed under legal compulsion; provided that, FRANCHISEE shall have previously advised COMPANY thereof and consulted in good faith as to the scope of disclosure.

12.3 Notices required to be served under this Agreement shall be made in writing and delivered personally or sent by registered mail or courier service at the address of the party indicated in

this Agreement or to such other address designated by the parties in writing.

12.4 This Agreement or any part hereof shall not be assigned by FRANCHISEE.

12.5 This Agreement may be amended only by the written agreement of the parties through their duly authorized officers or representatives.

12.6 The failure to take any action or assert any right hereunder shall not be deemed a waiver of such right in the event of the continuation or repetition of the circumstance giving rise to such right.

12.7 All actions or proceedings arising out of or in connection with this Agreement shall be brought exclusively before the courts of Pasig City.

A review of the text of the SFAs will lead to the conclusion that Bandag intended to conceal its employer-employee relationship with petitioners and to undermine petitioners' security of tenure. The SFAs contain provisions which, *taken in their totality*, do not merely establish standards of success or facilitate the achievement of desired results, but instead indicate such an exacting degree of control by Bandag that petitioners become mere subalterns whose own means and methods must remain compliant with the conventions imposed by Bandag:

1. Section 6 reserves to Bandag the right to adjust prices and rates "without prior notice."[76]

2. Subsection 5.1 requires a franchisee to comply with monthly minimum processed tire requirements (MPR); otherwise, a franchisee must satisfy "the ideal tire mix of sixty percent (60%) truck tire and forty percent (40%) light truck."[77] Sub-section 5.2 of the SFA also vests upon Bandag the "sole option" to terminate the SFA upon the franchisee's failure to meet the minimum processed tire requirement (MPR) for three consecutive months.[78]

3. Section 8 makes compulsory the review by Bandag of all credit

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[76] FRANCHISEE's charges for products and services, inclusive of freight and handling, shall conform to the rates prescribed by COMPANY set forth in the current Company Manual, and COMPANY reserves the right to adjust the rates without prior notice.

[77] 5.1 To remain in good standing, FRANCHISEE shall comply with the monthly minimum processed tire requirement (MPR) set forth in the current Company Manual. As long as FRANCHISEE complies with the MPR, FRANCHISEE need not satisfy the ideal tire mix of sixty percent (60%) truck tire and forty percent (40%) light truck.

[78] 5.2 Upon FRANCHISEE's failure to meet the MPR for three (3) consecutive months, COMPANY may, at its sole option, terminate this Agreement effective upon receipt of written notice thereof by FRANCHISEE, without prejudice to the rights and obligations accrued as of date [sic] hereof.

applications and restrains the franchisee to provide services (on credit) only to customers with "[Bandag]-approved credit applications."[79]

4. Subsection 3.3 enables Bandag, at its "sole discretion" to prevent the franchisee from providing services to accounts in the latter's list should it fail to meet the required service standard.[80]

Section 5 does not just set productivity targets. Rather, the franchisee is placed in a predicament where, if it fails to meet the MPR, Bandag substitutes its judgment for what the franchisee may otherwise determine to be the proper composition of its clientele and/or mix of services performed. Section 8 and Subsection 3.3 similarly inhibit the composition of the franchisee's clientele, even going so far as to prohibit the franchisee from doing business with certain parties. (Worse, Subsection 3.3 places the franchisee on equal footing with and readily replaceable by an employee of Bandag, i,e., an Area Sales Representative or ASR.) These, taken together with Section 6 of the SFA, through which the franchisee is able to conduct business only at rates dictated by Bandag, effectively *deprive the supposed franchisee of the opportunity to conduct the business according to its own strategy and acumen*. Worse still, should a franchisee fail to meet the MPR for three (3) consecutive months, Bandag is vested with practically unrestrained authority to terminate the SFA; that is, to put an end to the franchisee's operations.

Also, Section 2[81] of the SFA practically places the franchisee at Bandag's beck and call. A critical examination of Section 2 of the SFA reveals that it does not merely provide the terms for the territorial extent of a franchisee's operations. Section 2 enables Bandag to unilaterally determine

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79 8 CREDIT TERMS AND LIMITS
8.1 COMPANY shall review and approve customers' credit applications recommended by FRANCHISEE. However, COMPANY's approval of customer's [sic] credit application shall not relieve FRANCHISEE of his obligations under this Agreement.
8.2 FRANCHISEE shall only render service or sell products on credit to customers with COMPANY-approved credit applications. FRANCHISEE shall also abide by the credit terms and limits approved by COMPANY and observe the credit policies set forth in the current Company Manual.

80 3.3 Accounts in FRANCHISEE's list shall be exclusive to FRANCHISEE unless: (i) in COMPANY's sole discretion, FRACHISEE's service to his account/s does not meet the service standard required in the current Company Manual; or (ii) FRANCHISEE is suspended for failure to observe the credit policies set forth in the current Company Manual; or (iii) the account is reclassified by COMPANY as a lost account, i.e., a customer who, in the immediately preceding six (6) months, did not procure any service or obtain any product from COMPANY. COMPANY shall notify FRANCHISEE in writing of the foregoing, and the account may be solicited by other ASRs or service franchisees.

81 2 TERRITORY
2.1 The Territory shall not be exclusive to FRANCHISEE. COMPANY reserves the right to maintain its Area Sales Representative (ASR) in the Territory or grant a service franchise therein to other ASRs if, in its sole discretion, the territory will be better served by more than one (1) ASR or service franchisee.
2.2 FRANCHISEE may likewise solicit and serve accounts beyond the Territory (Extra-territory); provided that, the account in the Extra-territory is not served by another ASR or service franchisee. The Territory may be extended to include the Extra-territory, if in COMPANY's sole discretion, FRANCHISEE has the aptitude for responsibility over a greater area.

who will service a given territory. In so doing, Bandag has the option to tap the franchisee or call upon its ordinary employees. Section 2 also allows Bandag to dictate, the geographical extent of the activities of its supposed franchisees. Subsection 2.1 provides that a given territory shall not be exclusive to a franchisee and that Bandag may maintain its own ASRs, or, at its "sole discretion," grant another person a service franchise if the territory will be better served by more than one (1) franchisee. Conversely, Subsection 2.2 allows Bandag to, at its "sole discretion," extend a franchisee's operations beyond its initially defined territory. These provisions reduce the franchisees' supposed territories to nothing more than empty formalities which Bandag may disregard on its whim.

Also of note are the following: (1) Subsection 4.4[82] which provides for year-round training and development programs and seminars; (2) Subsection 4.5[83] which makes Bandag responsible for providing receipts, invoices, and other forms; (3) Subsection 9.8[84] which requires the use of uniforms and the carrying of calling cards; (4) Subsection 9.9[85] which requires the maintenance of books of account and their being made available for Bandag's inspection at all times during regular business hours; and (5) Subsection 9.10[86] which requires the submission of financial reports in the form prescribed by Bandag.

It may be true that these provisions cater to valid, common interests between a franchisor and a franchisee (e.g., transparency, compliance with standards and attainment of targets, marketing/branding). However, these provisions must not be read in isolation. Read in light of the SFA's other provisions, they support the finding that the SFA creates a relation that is devised to favor Bandag and to reduce the supposed franchisees to mere deputies doing Bandag's bidding.

In this regard, Subsections 9.11 and 11.2 are particularly insightful. Subsection 9.11[87] obliges the franchisee to allow Bandag to enter and inspect its sales offices to ascertain its compliance with the obligations under the

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82 4.4 COMPANY shall conduct year-round training and development programs and seminars for service franchisees

83 4.5 COMPANY shall provide receipts, invoices and other forms, including: (i) selling kits and testimonials; (ii) information and updates regarding Sarman-Bandag products; (iii) information and market intelligence on competing products; and (iv) processed tire updates, customer updates, credit information, etc.

84 9.8 FRANCHISEE shall wear uniforms prescribed by COMPANY and carry calling cards setting forth the complete company name, address and telephone numbers.

85 9.9 True and accurate books of account shall be maintained in accordance with generally accepted accounting principles and the procedures prescribed by COMPANY. The books of account shall be available for inspection by COMPANY at all times during regular business hours.

86 9.10 FRANCHISEE shall submit [monthly/quarterly] financial reports in the form prescribed by COMPANY.

87 9.11 COMPANY shall have the right to enter and inspect FRANCHISEE's sales offices to (i) ascertain FRANCHISEE's compliance with his obligations under this Agreement; and (ii) evaluate FRANCHISEE's performance.

SFA and to evaluate its performance. Further, Subsection 11.2[88] gives the franchisee thirty (30) days from receipt of written notice within which to rectify, *to Bandag's satisfaction*, a breach or default of the SFA or company manual; otherwise the SFA is deemed terminated.

The sheer leeway that Subsection 11.2 gives to Bandag for it to terminate its relation with its supposed franchisees reveals the extent to which an otherwise mutually beneficial commercial association, marked by collaboration and shared interests, is skewed to favor only Bandag. It reveals that the standards established in the SFA are intended to serve Bandag's purposes by not just promoting results but in going so far as to restrict the strategies and systems which the franchisees may use to obtain such results. It reveals that the supposed franchisees are nothing more than individuals at Bandag's employ in order that Bandag may satisfy its own business objectives.

Similarly, the SFA provisions on revolving funds indicate that indeed, petitioners continued to receive salaries and that Bandag advanced the costs incurred by petitioners' operations. Subsection 4.1 defines the revolving fund as consisting of the franchisee's: (1) take-home fund which is "approximately equivalent" to the salary, allowance, commission, and incentives of an Area Sales Representative (i.e, petitioner's original designation as employees before they supposedly became franchisees); and (2) operating fund for gasoline, repairs, and maintenance and other miscellaneous expenses. Bandag's continuing assumption of the burden of shouldering petitioners' operations indicates that petitioners were not engaged in their own enterprise but were merely in Bandag's employ. Also, apart from Bandag's continuing control over petitioners' operations, the payment of wages indicates a continuing employer-employee relationship.

It is of no consequence that Subsection 9.3 of the SFA explicitly provides that "[t]his Agreement shall not be construed to establish an employer-employee relationship between x x x COMPANY and FRANCHISEE", nor that Subsection 9.4[89] seems to affirm the status of the franchisee as an independent entity. It is elementary that the status of employment is defined and prescribed by law and not by what the parties claim.[90]

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88 11.2 Except as otherwise provided, FRANCHISEE shall have thirty (30) days from receipt of written notice to cure a breach or default in the performance of any term or condition of this Agreement or the Company Manual to the satisfaction of COMPANY, otherwise the notice shall be deemed effective, and this Agreement shall terminate fortwith. In either case, FRANCHISEE shall be liable to pay damages.

89 9.4 FRANCHISEE shall hold COMPANY free and harmless from liability for (i) unpaid wages and benefits of FRANCHISEE's employees, if any; (ii) loss or damage to the property of, or death or injury to, third parties caused by the acts or omissions of FRANCHISEE or his employees, if any; (iii) non-compliance with any law, rule or regulation of the government or any of its subdivisions or agencies; or (iv) non-payment of any tax, fee or assessment.

90 *Insular Life Assurance Co. Ltd., v. NLRC*, 350 Phil. 918, 926 (1998) [Per J. Bellosillo, First Division], *citing Industrial Timber Corporation v. NLRC*, 251 Phil. 324 (1989) [Per J. Gancayco, First Division].

Petitioners were unjustly and illegally terminated

To reiterate, relations pertaining to labor and employment are impressed with public interest. Article 1700 of the Civil Code puts it very clearly: "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." As such, contracts designed to circumvent the legal requirement of security of tenure run afoul of our laws and of public policy. They are detrimental to the public welfare.

Article 1306 of the Civil Code provides that while the parties to a contract are free to establish such stipulations, clauses, terms, and conditions as they may deem convenient, such stipulations, clauses, terms, and conditions must not be contrary to law, morals, good customs, public order or public policy. Further, Article 1409 of the Civil Code identifies as inexistent and void from the beginning those contracts whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy. The SFAs are, therefore, void. They are ineffectual, whether for purposes of terminating petitioners' employer-employee relationship with Bandag or for any other purposes.

It being established that there continued to be an employer-employee relationship between petitioners and Bandag, it is incumbent upon Bandag to ensure that the termination of petitioners' employment is in accord with the requirements of due process. Hence, they can only be dismissed for just or authorized causes as provided in Articles 282, 283, and 284 of the Labor Code, and after due notice and hearing.

Petitioners were not served with written notices that: (1) specify the ground/s for termination and/or (2) formally inform them of Bandag's decision to terminate their employment. Neither were petitioners given an opportunity to respond to whatever charges or to rebut whatever evidence there may have been against them. While it may be true, as Bandag claims, that it charged petitioners with failing to properly liquidate their revolving funds, it is not enough that an employee be charged with wrongdoing. Such "charge must be established in a manner consistent with due process."[91]

Moreover, Bandag's claim that petitioners committed a wrongdoing is rooted in provisions contained in the void SFAs. The SFAs, however, do not govern petitioners' employer-employee relationship with Bandag. It is elementary that a void contract produces no effect; it does not create, modify

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[91] *Philippine Associated Smelting and Refining Corp. (PASAR) v. NLRC*, 256 Phil. 311, 317 (1989) [Per J. Bidin, Third Division].

or extinguish a juridical relation; it cannot be the source of rights.[92]

As such, (albeit without meaning to make a pronouncement on the factual veracity of and ultimate liability arising from Bandag's charges against petitioners for failing to liquidate their revolving funds) even if Bandag attributes wrongdoing to petitioners for their failure to liquidate their revolving funds, it could not be said that petitioners committed a wrongdoing *in relation to* their employment, that is: engaged in serious misconduct *in connection with their employment*; willfully disobeyed the lawful orders of their employer (or its representative) *in connection with their employment*; grossly and habitually neglected their duties *as employees*; committed fraud or willful breach of the trust reposed in them *by their employer*; or any other analogous (just) cause for their employment to be terminated. Neither is there any clear indication that petitioners committed a crime *against their employer*. Thus, petitioners' termination from employment could not be said to have been for just cause per Article 282 of the Labor Code.

So too, there is no indication that petitioners' employment was terminated because of their having contracted a disease, or pursuant to the installation of labor-saving devices, out of redundancy, by way of retrenchment to prevent losses, or as a consequence of the closure or cessation of their employer's business. Thus, such termination could not have been for authorized cause.

Having been illegally and unjustly dismissed, petitioners are entitled to full backwages and benefits in the appropriate amount, reckoned from the time of their termination (i.e., March 31, 2001 for petitioner Ashmor Tesoro; September 30, 2001 for petitioner Pedro Ang; and September 16, 2001 for petitioner Gregorio Sharp). They are likewise entitled to appropriate separation pay in the amount of one (1) month's salary for every year of service (counted from July 1997, with respect to petitioner Tesoro; August 1991 with respect to petitioner Ang; and June 3, 1998 with respect to petitioner Sharp), with a fraction of a year of at least six (6) months being counted as one (1) whole year.

Moreover, "[m]oral damages are awarded in termination cases where the employee's dismissal was attended by bad faith, malice or fraud, or where it constitutes an act oppressive to labor, or where it was done in a manner contrary to morals, good customs or public policy."[93] In this case,

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92 *Hulst v. PR Builders, Inc.,* 558 Phil. 683, 699 (2007) [Per J. Austria-Martinez, Third Division].

93 *San Miguel Properties Philippines, Inc. v. Gucaban,* G.R. No. 153982, July 18, 2011, 654 SCRA 18, 33 [Per J. Peralta, Third Division], *citing Mayon Hotel and Restaurant v. Adana,* 497 Phil. 892, 922 (2005) [Per J. Puno, Second Division]; *Litonjua Group of Companies v. Vigan*, 412 Phil. 627, 643 (2001) [Per J. Gonzaga-Reyes, Third Division]; *Equitable Banking Corp. v. NLRC*, 339 Phil. 541, 565 (1997) [Per J. Vitug, First Division]; *Airline Pilots Association of the Philippines v. NLRC*, 328 Phil. 814, 830 (1996) [Per J. Francisco, Third Division]; and *Maglutac v. NLRC*, G.R. Nos. 78345 and

Bandag crafted a novel, inventive way of circumventing the requirement of security of tenure, thereby running afoul of public policy and acting in a manner that is patently oppressive to petitioners. As such, petitioners are entitled to moral damages. For the same reasons and, more specifically, to provide an "example or correction for the public good" as against innovative schemes that circumvent legally established standards and requirements, petitioners are likewise entitled to exemplary damages.

Having been compelled to litigate to seek reliefs for their having been illegally and unjustly dismissed, petitioners are likewise entitled to attorney's fees in the amount of ten percent (10%) of the total monetary award.[94]

ACCORDINGLY, I vote to **GRANT** the petition for review on certiorari. The assailed decision dated July 29, 2005 and the assailed resolution dated February 7, 2006 of the Court of Appeals in CA-G.R. SP No. 82447 which affirmed *in toto* the June 30, 2003 and November 28, 2003 resolutions of the National Labor Relations Commission (NLRC) and the February 26, 2003 decision of Labor Arbiter Monroe C. Tabingan in NLRC RAB-CAR Case No. 11-0588-01 must be **REVERSED and SET ASIDE.** Moreover, respondents must pay petitioners: (1) full backwages and other benefits in the appropriate amount; (2) separation pay in the appropriate amount; (3) moral damages; (4) exemplary damages; and (5) attorney's fees.

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

78637, September 21, 1990, 189 SCRA 767 [Per J. Peralta, Third Division].

94 *Aliling v. Feliciano*, G.R. No. 185829, April 25, 2012, 671 SCRA 186, 220 [Per J. Velasco, Jr., Third Division], *citing Exodus International Construction Corporation v. Biscocho,* G.R. No. 166109, February 23, 2011, 644 SCRA 76, 91 [Per J. Del Castillo, First Division]; and *Lambert Pawnbrokers and Jewelry Corporation v. Binamira*, G.R. No. 170464, July 12, 2010, 624 SCRA 705, 721 [Per J. Del Castillo, First Division].