SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ALASKA MILK CORPORATION,
Petitioner,

G.R. No. 237277

- versus -

RUBEN P. PAEZ, FLORENTINO M. COMBITE, JR., SONNY O. BATE, RYAN R. MEDRANO, and JOHN BRYAN S. OLIVER,
Respondents.

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ASIAPRO MULTIPURPOSE COOPERATIVE,
Petitioner,

G.R. No. 237317

- versus -

RUBEN P. PAEZ, FLORENTINO M. COMBITE, JR., SONNY O. BATE, RYAN R. MEDRANO, and JOHN BRYAN S. OLIVER,
Respondents.

Present:

PERLAS-BERNABE, *S.A.J.*,
Chairperson,
A. REYES, JR.,
HERNANDO,
INTING, and
ZALAMEDA,* *JJ.*

Promulgated:

27 NOV 2019

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* Designated as additional Member per Special Order No. 2727.

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DECISION

A. REYES, JR., *J.*:

Before the Court are two consolidated Rule 45 petitions, both seeking the reversal of the July 10, 2017 Decision[1] and February 1, 2018 Resolution[2] rendered by the Court of Appeals (CA) in CA-G.R. SP No. 139418.

The Factual Antecedents

Alaska Milk Corporation (Alaska), the petitioner in G.R. No. 237277, is a duly organized domestic corporation engaged in the business of manufacturing dairy products,[3] while Asiapro Multipurpose Cooperative (Asiapro), the petitioner in G.R. No. 237317, is a duly registered cooperative that contracts out the services of its worker-members.[4]

Ruben P. Paez, Florentino M. Combite, Jr., Sonny O. Bate, Ryan R. Medrano, and John Bryan S. Oliver (the respondents, collectively) worked as production helpers at Alaska's San Pedro, Laguna milk manufacturing plant (the San Pedro plant). All of them were originally members of Asiapro until respondents Bate, Combite, and Oliver transferred to 5S Manpower Services (5S) on June 26, 2013.[5]

Through several Joint Operating Agreements, Asiapro and 5S undertook to provide Alaska with personnel who could perform "auxiliary functions" at the San Pedro plant.[6] By virtue of one such agreement, respondents Medrano and Paez, who became members of Asiapro on March 1 and May 4, 2009, respectively, were assigned to work at the San Pedro plant immediately upon the acquisition of their membership.[7] On the other hand, respondents Bate, Combite, and Oliver were assigned to work at the same plant beginning September 2008, June 2010, and May 2007, respectively,[8] and despite their transfer to 5S, they continued to work thereat.[9]

As production helpers, the respondents performed various post-production activities. They prepared raw materials, operated machinery, and

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1 Penned by Associate Justice Filomena D. Singh, with Associate Justices Ricardo R. Rosario and Edwin D. Sorongon concurring; *rollo* (G.R. No. 237277), pp. 52-73.
2 Id. at 75-80.
3 Id. at 6.
4 *Rollo* (G.R. No. 237317), p. 6.
5 Id. at 38.
6 Id. at 37.
7 Id. at 38.
8 *Rollo* (G.R. No. 237277), pp. 336-337.
9 *Rollo* (G.R. No. 237317), p. 38.

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monitored the release of defective products.[10] Additionally, they assisted other workers at the San Pedro plant by packaging finished milk products for delivery.[11]

On different dates in 2013, the respondents were informed through separate memoranda that their respective assignments at Alaska were to be terminated later that year. Paez's was then relieved of duty on July 10;[12] Bate, Combite, and Oliver on October 15;[13] and Medrano on November 27.[14] Subsequently, Paez and Medrano requested that Asiapro transfer them to a different client-principal, while Bate, Combite, and Oliver made a similar request with 5S.[15]

However, before the cooperatives acted on said requests, the respondents filed with the Labor Arbiter (LA) separate complaints for illegal dismissal, regularization, and payment of money claims. Owing to the related antecedents of and issues presented in each case, the LA resolved to consolidate the respondents' complaints.[16]

The LA's Ruling

On August 14, 2014, the LA rendered a Decision[17] against the respondents, dismissing their complaints for lack of merit. It was found that Asiapro and 5S had the capacity to carry on an independent business, and that the cooperatives exercised control over the respondents through coordinators assigned at the premises of Alaska.[18] Since the respondents were not Alaska's employees, the LA concluded that there was no illegal dismissal to speak of.[19] The dispositive portion of the decision reads:

> **WHEREFORE**, premises considered, the instant consolidated complaints for illegal dismissal and regularization are hereby dismissed for lack of merit. However, respondent 5S Manpower Services Cooperative and Alaska Milk Corporation, in solidum, are hereby ordered to pay complainants John Bryan S. Oliver and Mark M. Magpili the sum P7,301.66 each as unpaid proportionate 13th month pay for the year 2013.
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> All other claims are hereby dismissed for lack of basis.

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10 Id. at 50.
11 Id at 17.
12 Id. at 38.
13 Id. at 39.
14 Id.
15 Id. at 38-39.
16 Id. at 39.
17 *Rollo* (G.R. No. 237277), pp. 336-353.
18 Id. at 352.
19 Id. at 352-353.

SO ORDERED.[20]

Dissatisfied, the respondents appealed the LA's decision to the National Labor Relations Commission (NLRC).

The NLRC's Ruling

Finding no merit in the respondents' appeal, the NLRC issued a Resolution[21] dated October 29, 2014, affirming the LA's decision *in toto*. Since Asiapro and 5S had sufficiently established their capacity to carry on an independent business, the NLRC agreed with the LA's finding that the cooperatives were engaged in legitimate contracting operations. In addition, it was ruled that the respondents were members of 5S and Asiapro, respectively, and not employees of Alaska.[22] Thus, the NLRC did not find any error on the part of the LA when the latter ruled that there was no illegal dismissal in this case.[23] The appeal was therefore disposed of, *viz.*:

> WHEREFORE, premises considered, Complainant-Appellant's appeal is hereby **DISMISSED** for lack of merit. The 14 August 2014 decision of the Labor Arbiter is hereby **AFFIRMED in toto**.
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> SO ORDERED.[24]

The respondents, after the NLRC denied their motion for reconsideration, filed a petition for *certiorari* before the CA.

The CA's Ruling

On July 10, 2017, the CA promulgated the herein assailed Decision in favor of the respondents, granting their appeal and reversing the NLRC's October 29, 2014 Resolution. The appellate court opined that Asiapro and 5S were engaged in labor-only contracting, and that the respondents were regular employees of Alaska.[25] It was noted that the two cooperatives lacked investments in the form of tools and equipment,[26] and that the workers they farmed out (*i.e.*, the respondents) performed functions that were necessary and desirable to Alaska's operations.[27] Consequently, the respondents were

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20 Id. at 353.
21 Id. at 127-135.
22 Id. at 133.
23 Id. at 135.
24 Id.
25 Id. at 62-68.
26 Id. at 64.
27 Id. at 65.

found to have been illegally dismissed.[28] The decretal part of the CA's decision reads:

> **WHEREFORE**, the petition for certiorari is hereby **GRANTED**. The assailed Resolutions dated 29 October 2014 and 12 December 2014, both issued by the Third Division of the National Labor Relations Commission in NLRC LAC No. 10-002482-14, are **ANNULLED** and **SET ASIDE.**
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> Petitioners Ruben P. Paez, Florentino M Combite, Jr., Sonny O. Bate, Ryan R. Medrano, and John Bryan S. Oliver are declared regular employees of Alaska Milk Corporation. As a result of their illegal dismissal, petitioners are entitled to backwages from the time they were not allowed to report to work, and to reinstatement without loss of seniority rights and other privileges. However, if reinstatement is no longer feasible, petitioners are entitled to receive separation pay equivalent to one month salary for every year of service. Alaska Milk Corporation and 5S Manpower Services Cooperative are solidarily liable for the payment of backwages, and separation pay if applicable, to Sonny O. Bate, Florentino M. Combite, Jr. and Bryan S. Oliver. Alaska Milk Corporation and Asiapro Cooperative are solidarily liable for the payment of backwages, and separation pay if applicable, to Ruben P. Paez and Ryan R. Medrano.
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> **SO ORDERED.**[29]

Disgruntled, Alaska and Asiapro filed a motion for reconsideration of the July 10, 2017 Decision, which the CA denied on February 1, 2018. Notably, 5S took no part in the proceedings after the rendition of said decision.

Hence, the instant petitions, through which Alaska and Asiapro argue that the CA erred in ruling that the respondents were illegally dismissed. In support of the contention, they maintain that Asiapro and 5S are legitimate job contractors, as evidenced by their substantial capital and registration with the Department of Labor and Employment (DOLE).[30] Asiapro further pointed out[31] that its status as an independent contractor had been previously recognized by the Court in *Rep. of the Philippines v. Asiapro Cooperative*.[32]

The Issues

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28 Id. at 71.
29 Id. at 72-73.
30 Id. at 16-29.
31 *Rollo* (G.R. No. 237317), pp. 22-25.
32 563 Phil. 979 (2007).

The core issue to be resolved by the Court is *whether or not the respondents were illegally dismissed.* This in turn will depend on *whether or not Asiapro and 5S are engaged in labor-only contracting.*

The Court's Ruling

The CA's decision must be modified.

At the outset, it must be made clear that the status of Asiapro and 5S as contractors—that is, whether they are engaged in legitimate job contracting or proscribed labor-only contracting—involves the determination of factual matters, not ordinarily within the purview of the Court's appellate jurisdiction under Rule 45.[33] Nevertheless, in view of the divergent findings of the CA, on one hand, and the labor tribunals, on the other, the Court is left with no alternative other than to review the antecedents that prodded the respondents to file their complaints before the LA.

After a meticulous scrutiny of the evidence on record, the Court is firmly convinced that Asiapro is a legitimate independent contractor. The same, however, cannot be said of 5S.

Article 106 of the Labor Code[34] defines ***labor-only contracting*** as an arrangement where a person without substantial capital or investment in the form of tools, equipment, machinery, or work premises, among other things, supplies workers to an employer, and such workers perform activities directly related to the principal business of the latter. In agreements of this nature, the contractor merely acts as an agent in recruiting workers on account of the principal with the intent to circumvent the constitutional and statutory rights of employees.[35] There is no question that the practice is inimical to the national interest and that it runs contrary to public policy. As such, it is proscribed by law.

Nevertheless, not all forms of contracting are prohibited. ***Job contracting*** is the permissible yet regulated practice of farming out a specific job or service to a contractor for a definite or predetermined period of time, regardless of whether the contractor's employees perform their assigned tasks within or outside the principal employer's premises.[36] In job contracting, the contractor carries out a business distinct and independent

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33 *Royale Homes Marketing Corp. v. Alcantara*, 739 Phil. 744, 755 (2014).
34 Presidential Decree No. 442 as amended (1974).
35 *Coca-Cola Bottlers Phils., Inc., v. Agito, et al.*, 598 Phil. 909, 923 (2009).
36 *Mago v. Sun Power Manufacturing, Limited*, G.R. No. 210961, January 24, 2018, 853 SCRA 1, 15.

from the principal's, and undertakes the work or service on its own account, using its own manner and methods in doing so. Also, the contractor's employees are free from the control of the principal employer, save only as to the result thereof.[37]

As mentioned, job contracting is a regulated practice. Accordingly, the law authorizes the Secretary of Labor to promulgate administrative rules that distinguish between valid job contracting and prohibited labor-only contracting, keeping with the fundamental state policy of protecting labor.[38] In view of this statutory directive, the Department of Labor and Employment (DOLE) requires contractors to register themselves with the DOLE Regional Office in which they operate,[39] so as to monitor their compliance with the law's guiding principles.[40] Failure to comply with the registration requirement gives rise to a presumption that the contractor is engaged in labor-only contracting.[41]

In this case, both Asiapro and 5S failed to register in accordance with the exact tenor of the rules. Asiapro's registration is evidenced by Certificate of Registration No. NCR-PFO-9199090111-199, dated September 1, 2011,[42] while that of 5S is evidenced by Certificate of Registration No. ROIVA-LPO-18A-06140-51, dated June 27, 2014.[43] Evidently, Asiapro failed to show that it was registered with the proper DOLE Regional Office. In this regard, Asiapro, to show compliance with the registration requirement, presented a certificate issued by the National Capital Region (NCR) branch of the DOLE, when it should have instead presented one issued by the DOLE, Region IV-A office, which exercises territorial jurisdiction over the San Pedro plant. It must be remembered that the rules require contractors to register themselves in the regional office of the place where they principally operate.[44] Since Asiapro failed to allege that its principal place of operation is the NCR, its certificate of registration did not comply with the requirement set forth in the rules.

Further, the registration of Asiapro is irregular on another matter. The record reveals that all of the respondents' assignments at the San Pedro, Laguna plant antedated Asiapro's registration with the DOLE. As mentioned earlier, the respondents began working at Alaska's premises on various dates from 2007 to 2010, while Asiapro's certificate of registration was issued

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37 *Petron Corporation v. Cabrete, et al.*, 759 Phil. 353, 366 (2015).

38 LABOR CODE, Art. 106.

39 Department of Labor and Employment Order No. 18-2, s. 2002, Sec. 11 and Department of Labor and Employment Order No. 18-A, s. 2011, Sec. 14.

40 *Consolidated Building Maintenance, Inc. v. Asprec, Jr.*, G.R. No. 217301, June 6, 2018.

41 *Valencia v. Classique Vynil Products Corporation*, 804 Phil. 492, 507 (2017).

42 *Rollo* (G.R. No. 237317), p. 428.

43 Id. at 45.

44 Department of Labor and Employment Order No. 18-2, s. 2002, Sec. 13 and Department of Labor and Employment Order No. 18-A, s. 2011, Sec. 14.

only in 2011. This must necessarily be taken against Asiapro, as there is no basis to give the certificate of registration a retroactive effect.[45]

5S, for its part, faces the same problem. While it was registered with the proper DOLE Regional Office, its certificate of registration was issued only in 2014, after the respondents had been separated from Alaska.

Nevertheless, the failure of Asiapro and 5S to register in accordance with the rules merely gave rise to a presumption of labor-only contracting. Stated otherwise, the flaw was not conclusive as to their status as contractors. After all, "in distinguishing between permissible job contracting and prohibited labor-only contracting, the totality of the facts and the surrounding circumstances of the case are to be considered, each case to be determined by its own facts, and all the features of the relationship assessed.[46]"

Asiapro successfully and thoroughly rebutted the presumption, while 5S failed to do so.

First, as stated above, Article 106 of the Labor Code defines a labor-only contractor as one who "does not have ***substantial capital or investment*** in the form of tools, equipment, machineries, work premises, among others.[47]" This was reiterated in the rules[48] prevailing at the time pertinent to this case. To be sure, two sets of DOLE regulations are relevant to the discussion herein—Department Order (D.O.) No. 18-2, series of 2002, which was effective when the respondents first became worker-members of Asiapro and 5S, and D.O. No. 18-A, series of 2011, effective during the respondents' respective assignments at and separation from Alaska. For clarity, the relevant provisions of both sets of rules are quoted below. D.O. No. 18-2 states the requirement, *viz.*:

> ***Section 5. Prohibition against labor-only contracting***. — Labor-only contracting is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present:
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> (i) **The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed** and the employees recruited, supplied or placed

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45 *Almeda, et al. v. Asahi Glass Philippines, Inc.*, 586 Phil. 103, 115 (2008).

46 *Gallego v. Bayer Philippines, Inc., et al.*, 612 Phil. 250, 262 (2009).

47 LABOR CODE, Art. 106.

48 Department of Labor and Employment Order No. 18-2, s. 2002 and Department of Labor and Employment Order No. 18-A, s. 2011.

> by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or
>
> (ii) the contractor does not exercise the right to control over the performance of the work of the contractual employee.[49] (Emphasis and underscoring supplied)

On the other hand, D.O. No. 18-A states:

> **Section 6. Prohibition against labor-only contracting**. Labor-only contracting is hereby declared prohibited. For this purpose, labor only contracting shall refer to an arrangement where:
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> (a) **The contractor does not have substantial capital or investments in the form of tools, equipment, machineries, work premises, among others**, and the employees recruited and placed are performing activities which are usually necessary or desirable to the operation of the company, or directly related to the main business of the principal 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; or
>
> (b) The contractor does not exercise the right to control over the performance of the work of the employee. (Emphasis and underscoring supplied)[50]

Unlike the registration requirement, which serves only to raise a disputable presumption of job contracting, the possession of substantial capital or investments is indispensable in proving a contractor's legitimacy.[51] Apropos, D.O. No. 18-A provides a concrete numerical threshold for determining substantial capital. Under Section 3(l) thereof, the capitalization requirement is met by corporations, partnerships, and cooperative that have at least ₱3,000,000.00 in paid-up capital stocks/shares.

Here, Asiapro, through its audited financial statements,[52] was able to prove that it possessed the requisite substantial capital. As of 2010, it had ₱3,130,000.00 in paid-up capital shares, broken down into ₱630,000.00 in common shares and ₱2,500,000.00 in preferred shares. In 2011, its paid-up capital increased to ₱4,000,000.00, broken down into ₱1,500,000.00 in common shares and ₱2,500,000.00 in preferred shares. Clearly, therefore, Asiapro adequately met the capitalization requirement found in the rules, and, having done so, it no longer needed to establish that it possessed investments in the form of tools or equipment that facilitated the performance of the respondents' work with Alaska. Verily, case law dictates

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49 Department of Labor and Employment Order No. 18-2, s. 2002, Sec. 5.
50 Department of Labor and Employment Order No. 18-A, s. 2011, Sec. 6.
51 *Consolidated Building Maintenance, Inc., v. Asprec, Jr.*, supra note 40.
52 *Rollo* (G.R. No. 237317), p. 139.

that evidence of substantial capitalization entails that proof of investments in form of tools, equipment, machineries, or work premises may be dispensed with.[53]

5S, for its part, failed to prove that it possessed substantial capital or investments, and since it never bothered to appeal the adverse CA decision, this burden of proof shifted to Alaska.[54] For one, the record is bereft of any financial statements revealing the paid-up capital of 5S. In fact, the LA, in ruling that 5S was a legitimate independent contractor, relied not on the latter's capitalization, but on the showing that 5S had total assets amounting to ₱8,373,044.00.[55] However, a sum of assets, without more, is insufficient to prove that an entity is engaged in valid job contracting. In the plain language of D.O. No. 18-2, such assets must be manifested as investments relating to the job, work, or service to be performed,[56] and as clarified by D.O. No. 18-A, these investments may come in form of tools, equipment, machineries, and work premises, among others.[57] While the labor tribunals believed that 5S had an adequate amount of assets, it was never established that the contractor furnished its worker-members with the tools or equipment necessary to carry out the services of a production helper at Alaska's milk manufacturing plant. This heavily militates against the ability of 5S to engage in its own independent business.[58] Certainly, Alaska, considering that the services in question were rendered the San Pedro plant, could have easily adduced evidence showing that the respondents, in the performance of their duties, used tools and equipment provided by 5S. Nevertheless, Alaska failed to even mention what these tools and equipment were, averring instead that 5S, based on its total assets, is an independent job contractor. The Court will not readily presume that said assets were those contemplated by the rules, especially since Alaska's bare allegation, a conclusion of law, no less, is not supported by the evidence on record.[59]

On this score alone, 5S cannot be considered a legitimate job contractor.

Second, under D.O. No. 18-2 and D.O. No. 18-A, the fact that the contractor does not exercise ***control*** over its purported employees is another conclusive indicator of labor-only contracting.[60] Jurisprudence is replete with rulings stating that the most important criterion in determining the existence of an employer-employee relationship is the power to control the

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53 *Neri v. National Labor Relations Commission*, 296 Phil. 610, 616 (1993).
54 *Quintanar, et al. v. Coca-Cola Bottlers, Philippines, Inc.*, 788 Phil.385, 405 (2016).
55 *Rollo* (G.R. No. 237277), p. 352.
56 Department of Labor Order No. 18-2, s. 2002, Sec. 5.
57 Department of Labor Order No. 18-A, s. 2011, Sec. 6.
58 *DOLE Philippines, Inc. v. Esteva*, 538 Phil. 817, 867-868 (2006).
59 *Coca Cola Bottlers Phils., Inc. v. Agito, et al.*, supra note 35, at 929-930.
60 Department of Labor Order No. 18-A, s. 2011, Sec. 5(ii) and Department of Labor Order No. 18-A, s. 2011, Sec. 6(b).

means and methods by which employees perform their work.[61] Pursuant to the so-called "control test," the employer is the person who has the power to control both the end achieved by his or her employees, and the manner and means they use to achieve that end.[62] To emphasize, it is not essential that the employer actually exercises the power of control, as the ability to wield the same is sufficient.[63]

The evidence on record clearly established that Asiapro controlled the means and methods used by its worker-members (*i.e.* respondents Paez and Medrano) in carrying out their duties at the San Pedro plant. The Joint Operating Agreement between Alaska and Asiapro unequivocally indicates that the latter retained the right to control the means and methods by which Paez and Medrano performed their work, *viz.*:

ANNEX "A"

The Cooperative assumes the following operating responsibilities:

x x x x

8. Regularly monitor the performance based on specific metrics agreed upon of its owners to ALASKA designated place of work to ensure the required standards of quality and quantity of the activity or operation are met.[64]

While the language of the Joint Operating Agreement cannot be determinative of the nature of the relationship between and among the parties thereto, the labor tribunals found that the realities of workplace operations were such that Asiapro indeed controlled the means and methods utilized by its worker-members at the San Pedro plant.[65] As aptly pointed out by the LA, the performance of respondents Medrano and Paez was monitored by Asiapro's Project Coordinator, Alan Obligacion (Obligacion), who was stationed at said plant precisely to ensure that the cooperative could supervise the manner and methods utilized by its worker-members in fulfilling their duties.[66] Thus, through Obligacion's oversight,[67] Asiapro manifested the degree of control contemplated and required by jurisprudence.

To add, there is other evidence to bolster Asiapro's contention that it exercised control over respondents Medrano and Paez. First, under the Joint

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61 *Alba v. Espinosa, et al.*, 816 Phil. 694, 705-706 (2017).
62 *Valeroso v. Skycable Corporation*, 790 Phil. 93, 102 (2016).
63 *Felicilda v. Uy*, 795 Phil. 408, 415 (2016).
64 *Rollo* (G.R. No. 237317), p. 187.
65 *Coca-Cola Bottlers, Phils., Inc. v. Dela Cruz et al.*, 622 Phil. 866, 900 (2009).
66 *Rollo* (G.R. No. 237277), p. 352.
67 *Mago v. Sun Power Manufacturing Limited*, supra note 36, at 23.

Operating Agreement, the cooperative warranted that its worker-members possessed the skills, knowledge, qualifications, and experience needed to meet the exigencies of Alaska's business.[68] To this end, Asiapro conducted training and orientation seminars to enhance productivity, and undertook to present satisfactory evidence showing the competence of its worker-members.[69] Second, it appears that respondents Medrano and Paez, upon learning of their separation from Alaska, met with Obligacion to discuss their transfer to a new client principal.[70] The fact that they met with an Asiapro representative, and not one from Alaska, is a strong indicator of the former's control over them.

In fine, taking the foregoing into consideration, the Court is convinced that it was Asiapro, not Alaska, that possessed the means and methods by which respondents Medrano and Paez performed their work. Accordingly, the cooperative cannot be considered a labor-only contractor under Section 5 (ii) of D.O. No. 18-2 and Section 6 (b) of D.O. No. 18-A.

Third, a perusal of the totality of the circumstances surrounding the separate businesses of Asiapro and 5S lends credence to the conclusion that the former is engaged in valid job contracting while the latter is not. In *Garden of Memories Park and Life Plan, Inc., et al. v. NLRC, et al.*,[71] the Court enumerated several factors that must be appraised in determining a contractor's legitimacy, thus:

> [W]hether or not the contractor is carrying on an independent business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the performance of specified pieces of work; the control and supervision of the work to another; the employers power with respect to the hiring, firing and payment of the contractors workers; the control of the premises; the duty to supply premises, tools, appliances, materials and labor; and the mode, manner and terms of payment.[72]

Here, Asiapro was clearly able to substantiate its assertion that it carried on its own independent business. Aside from its substantial capital, Asiapro showed that its existence began as far back as 1999,[73] and that it has since provided services to a noteworthy clientele, which includes Stanfilco, Del Monte Philippines, and Dole Asia.[74] In fact, Asiapro's list of top accounts in billings for the year 2013 reveals that Alaska is only the

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68 *Rollo* (G.R. No. 237277), p. 242.
69 Id.
70 Id. at 54.
71 681 Phil. 299 (2012).
72 Id. at 310.
73 *Rollo* (G.R. No. 237317), p. 131.
74 Id. at 181.

cooperative's third largest client.[75] This is in stark contrast to the operations of 5S, which was not registered as a cooperative until 2011.[76] Moreover, unlike Asiapro, it was not shown that 5S had clients other than Alaska. Worse, 5S merely has five regular employees, and does not own any tools, machinery, or equipment that its worker-members can use in the performance of their duties.[77] These, taken together, make it highly improbable that 5S had the ability to carry on its own independent business, and are detrimental to the claim that 5S is a legitimate job contractor.

Having settled the nature of Asiapro and 5S as contractors, the Court shall now move on to the illegal dismissal issue.

Regular employees may only be terminated for just or authorized cause.[78] This applies in cases of labor-only contracting, where the law creates an employer-employee relationship between the principal and the employees of the purported contractor.[79]

It is uncontroverted that respondents Bate, Combite, and Oliver were terminated from Alaska due to the expiration of their contracts with 5S, through which they were assigned to render services at the San Pedro plant. However, because of the finding that 5S was engaged in labor-only contracting, they are, by fiction of law, considered as Alaska's regular employees. Hence, having been terminated without lawful cause, they are entitled to reinstatement without loss of seniority rights and other privileges, in addition to full backwages, inclusive of allowances and benefits, pursuant to Article 279 of the Labor Code.

On the other hand, respondents Medrano and Paez were not illegally dismissed. In fact, they were not dismissed at all. As found by the NLRC, after their contracts with Alaska expired, they refused to report to Asiapro for reassignment to another client-principal, *viz.*:

> In the case of Complainant-Appellant[s] Medrano and Paez, both were not dismissed[,] but [were] actually recalled to the office of Respondent-Appellee ASIAPRO for reassignment. Nothing was presented to show that the Complainant-Appellant[s] were dismissed from work or prevented to work for Respondent-Appellee ASIAPRO[, of] which they are registered members. In fact, they were advised during the hearings to report back to the office for reassignment x x x.[80]

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75 Id.
76 *Rollo*, (G.R. No. 237277), p. 655.
77 Id. at 62.
78 LABOR CODE, Art. 279.
79 *Polyfoam-RGC International, Corp., et al. v. Concepcion*, 687 Phil. 137, 150 (2012).
80 *Rollo* (G.R. No. 237277), p. 134.

Thus, considering that respondents Medrano and Paez were not illegally dismissed, their prayer for reinstatement must perforce fail.[81]

WHEREFORE, the petitions are **PARTIALLY GRANTED**. The July 10, 2017 Decision and February 1, 2018 Resolution of the Court of Appeals in CA-G.R. SP No. 139418 are hereby **REVERSED** and **SET ASIDE**.

As regards respondents Sonny O. Bate, Florentino M. Combite, Jr., and John Bryan S. Oliver, Alaska Milk Corporation is **ORDERED** to reinstate them to their former positions, or the equivalents thereof, without loss of seniority rights.

As regards respondents Ruben P. Paez and Ryan R. Medrano, their complaints for illegal dismissal and regularization are hereby **DISMISSED** for lack of merit.

Let this case be **REMANDED** to the Labor Arbiter for computation, within thirty (30) days from receipt of this Decision, of the backwages and other benefits due.

SO ORDERED.

ANDRES B. REYES, JR.
Associate Justice

WE CONCUR:

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

RAMON PAUL L. HERNANDO
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

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81 *Atok Big Wedge Co. Inc. v. Gison*, 670 Phil. 615, 629 (2011).

RODIL V. ZALAMEDA
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.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

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

DIOSDADO M. PERALTA
Chief Justice