Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ARMANDO N. SERRANO,
Petitioner,

- versus -

LOXON PHILIPPINES, INC.,
Respondent.

G.R. No. 249092

Present:

LEONEN, *J.*,
Chairperson,
GESMUNDO,
CARANDANG,
ZALAMEDA, and
GAERLAN, *JJ.*

Promulgated:

September 30, 2020

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DECISION

CARANDANG, *J.*:

This is a Petition for Review on *Certiorari*[1] of the Decision[2] dated March 8, 2019 of the Court of Appeals (CA), affirming the Decision[3] of the National Labor Relations Commission (NLRC). The Commission affirmed the findings of the Labor Arbiter (LA)[4] that Loxon Philippines Inc. did not illegally dismiss Armando S. Serrano from employment.

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1 *Rollo*, pp. 10-36.

2 Penned by Associate Justice Gabriel T. Robeniol, with the concurrence of Associate Justices Ramon R. Garcia and Eduardo B. Peralta; id. at 730-742.

3 Penned by Commissioner Isabel G. Panganiban-Ortiguerra, with the concurrence of Presiding Commissioner Joseph Gerard E. Mabilog and Commissioner Nieves E. Vivar-De Castro; id. at 536-548.

4 Penned by Labor Arbiter Fe S. Cellan; id. at 447-459.

Antecedents

Loxon Philippines Inc. (Loxon) is engaged in the business of building management. It supplies, installs, and maintains smoke detectors, fire alarms, sprinklers, CCTV cameras, etc.[5] In 1994, Loxon hired Armando N. Serrano (Armando) as a Helper Service Technician. Armando's main task is focused on the installation and maintenance of smoke detectors and fire alarms installed by Loxon.[6] He was continuously and repeatedly hired for 21 years to perform the same tasks or nature of tasks for various projects of Loxon, namely:

Project	Duration
PCIB Tower – FPS Project	July 11, 1996 – June 11, 1997
PCIB Tower Project	June 12, 1997 – July 31, 1999
NWH, HIM, PRC – FAS Servicing Project	August 2, 1999 – December 31, 1999
MSH, TSP FAS Servicing Project	January 1, 2000 – December 31, 2000
SVC, HIM, NWH, ROB & BAS System Project	January 1, 2001 – December 31, 2001
NWH/HIM/PRC/ROB. APP/MJC/AIS/GSD. R.M. SIA Project	January 2, 2002 – December 31, 2002
FAS SVC, HIM, NWH, ROB, ULP, AIS, GSD & MJC Project	January 1, 2003 – December 31, 2003
AFDAS SVC – New World Hotel Project	January 19, 2004 – December 31, 2004
New World Hotel Project	January 17, 2005 – December 31, 2005
New World Hotel – AFDAS SVC Project	January 16, 2006 – December 31, 2006
Service – Robinson Apartelle Project	January 2, 2007 – September 30, 2007
Service – HIM – FAS Project	October 8, 2007 – March 31, 2009
Unilever Philippines (S-ULP-FAS-025) Project	April 13, 2009 – March 31, 2012
Ayala Center Area 1 Project	May 2, 2012 – December 2, 2012
Manila Area 1 Project	January 1, 2013 – December 31, 2013
Ayala Center Project Area	January 3, 2015 – December 31, 2015[7]

On December 12, 2015, Loxon required Armando and its other employees to sign a document stating that their contract would expire at the end of December 2015. They were informed that they will be re-hired upon signing another contract valid for three months. Submission of NBI Clearance and Medical Certification was also required. Armando refused. To his mind, there was no need for him to sign the new employment contract since he is a regular employee who worked long enough with Loxon.[8] Armando went to the Human Resource Department of Loxon to voice out his concern. In response, Loxon clarified to Armando that he cannot continue with his work unless he signs the document because his existing contract is already about to end. Despite his doubts, Armando submitted his NBI Clearance and his Medical Certificate on January 12, 2016.[9]

5 Id. at 447.
6 Id. at 448.
7 Id. at 452-453.
8 Id. at 448-449.
9 Id. at 449.

Armando then inquired about his employment status from both the Human Resource Department and the Service Department of Loxon. However, he did not obtain any answer and was merely sent back and forth to both departments. Armando was also not assigned to any work or project despite repeatedly reporting to the office of Loxon. With no choice left, Armando filed a complaint for illegal dismissal. Mainly, Armando avers that he is a regular employee of Loxon and cannot be terminated on the ground of project completion.[10]

In a Decision[11] dated August 30, 2016, the LA dismissed the complaint filed by Armando. The Labor Arbiter found that Armando belongs to the regular work pool of Loxon. As such, Armando "could be tapped and rehired immediately or given priority, as needed in their new projects" and that he "was not free to contract out his services to other employers during those days that [Loxon is] without any project."[12] The LA ruled that there was no dismissal since Armando merely assumed that his employment had been "terminated when he was required to sign another employment contract for only three months and, as a requirement for his new contract, he needs to first undergo medical examinations and submit his NBI Clearance."[13] Armando's contract simply expired. Hence, Loxon offered him another employment contract valid for another three months. The requirement to submit a medical certificate and NBI Clearance is to update the employee's files, which is a valid exercise of management prerogative. The claim for damages was denied for lack of basis. Further, the complaint filed against the officers of Loxon was dismissed with prejudice on the ground that they are separate and distinct from Loxon. However, the LA ordered Loxon to give priority employment to Armando. On the other hand, Armando was ordered to return to work immediately. Further, Loxon was ordered to report compliance within 15 days from receipt of copy of the Decision.[14]

On appeal, the NLRC affirmed the dismissal of the complaint. In its Decision[15] dated December 29, 2016, the NLRC considered Armando a project employee whose employment contract had already ended. The project employment contract Armando signed effectively apprised him at the time of his engagement of the following: (1) his status as a project employee; (2) that Armando was hired for a specific or identified project to carry out a specific undertaking; and (3) the duration of the project from January 3, 2015 to December 31, 2015. In addition, Loxon complied with DOLE Department Order No. 19 when it filed an Establishment Employment Report after the expiration of the project employment contract.[16] Therefore, Armando cannot claim illegal dismissal when his employment ended upon the expiration of his project employment contract.[17] The NLRC also ruled that Armando's length of service with Loxon did not remove him from the category of project

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10 Id.
11 Supra note 4.
12 *Rollo*, p. 456.
13 Id. at 458.
14 Id. at 457-458.
15 Supra note 3.
16 *Rollo*, p. 547.
17 Id. at 546.

employees since length of service is not the controlling determinant of the tenure of employment of a project employee.[18]

Armando's Petition for *Certiorari*[19] filed before the CA was also denied. According to the CA, the NLRC correctly relied on the *Kontrata sa Pagtatrabaho sa Proyekto* which Armando signed.[20] The *Kontrata sa Pagtatrabaho sa Proyekto* clearly indicated the name, scope, and duration of the last project for which Armando was engaged.[21] By presenting the *Kontrata* and the Establishment Employment Report, Loxon effectively overturned the presumption of regular employment and proved that Armando is a project employee. Furthermore, the CA upheld the Quit Claim signed by Armando and did not find any indication that it was secured through fraud, deceit, intimidation, error or mistake, or coercion.[22] Lastly, the CA held that Armando's refusal to comply with the company requirement to sign an end of contract document was not the cause of his termination from employment. Rather, his refusal to sign a new contract disqualified him from receiving another project employment contract with Loxon.[23]

In this Petition for Review on *Certiorari*,[24] Armando strongly pushes the argument that he is a regular, and not a project employee because he was continuously and repeatedly hired by Loxon for more than two decades to do tasks which are necessary and indispensable to the usual trade and business of the company.[25] Armando prays for the payment of backwages, separation pay, attorney's fees, and damages.[26]

Loxon, in its Comment[27] dated June 9, 2020, reiterated its position that Armando was engaged for specific projects or undertakings and the completion or termination of his employment is determined at the time of his engagement as a project employee.[28] For the last project for which Armando was engaged, he signed a "*Kontrata sa Pagtatrabaho sa Proyekto*," which states that:

> 1. Ikaw a[y] kinukuha bilang isang 'project employee' at ito a[y] magsisimula Enero 03, 2015 hanggang sa Disyembre 31, 2015 [o] hanggang sa aktwal na pagk[a]kumpleto [o] pagtapos ng proyekto, [o] bahagi ng proyekto, kung saan ikaw ay tinanggap. Ang proyekto na kung saan ikaw ay magtatrabaho ay sa Ayala Center Project Area[.][29]

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18 Id. at 547.
19 Id at. 574-606.
20 Id. at 738.
21 Id. at 738-739.
22 Id. at 740.
23 Id. at 741.
24 Supra note 1.
25 *Rollo*, p. 26.
26 Id. at 35.
27 Id. at 796-840.
28 Id. at 817.
29 Id. at 820.

Issue

The issue in this case is whether Armando is a regular employee of Loxon.

Ruling of the Court

Armando is a regular employee of Loxon, and cannot be considered a project employee.

In order to safeguard the rights of workers against the arbitrary use of the word "**project**" to prevent employees from attaining the status of regular employees, employers claiming that their workers are project employees should not only prove that the duration and scope of the employment was specified at the time they were engaged, but also the project where the employee has been assigned.[30] A project for which a project employee may be engaged to perform may refer to either: (a) a particular job or undertaking that is within the regular or usual business of the employer company, but which is *distinct* and separate, and identifiable as such, from the other undertakings of the company; or (b) a particular job or undertaking that is *not* within the regular business of the corporation.[31]

In *Paregele v. GMA*,[32] where GMA repeatedly engaged camera operators for its television programs, the Court ruled that:

> It would be absurd to consider the nature of their work of operating cameras as distinct or separate from the business of GMA, a broadbasting company that produces, records, and airs television programs. From this alone, the [camera operators] cannot be considered project employees for there is no distinctive (project) to even speak of... There is no denying that a reasonable connection exists between petitioners' work as camera operators and GMA's business as both a television and broadcasting company. The repeated engagement of petitioners over the years only reinforces the indispensability of their services to GMA's business.[33]

This case of the camera operators and GMA squarely applies to the case now before this Court.

First, although Armando's employment contracts considered him as a project employee, the undeniable fact remains that he was hired to perform technical services which were not shown as distinct, separate, and identifiable from the usual undertakings of the company. Certainly, the task of installing and maintaining the devices or equipment provided to its clients is well within the regular or usual business of Loxon. Armando's work as a service technician is not even classified as one distinct, separate, and identifiable from the other undertakings of Loxon, but in the pursuit of its business rendered to

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30 *GMA Network, Inc. v. Pabriga*, 722 Phil. 161, 172 (2013).
31 *ALU-TUCP v. NLRC*, 304 Phil. 844, 851 (1994).
32 G.R. No. 235315, July 13, 2020.
33 Id.

its clients to install and maintain smoke detectors, fire alarms, sprinklers, and CCTV cameras.

In fact, true to the nature of its business of building management that supplies, installs, and maintains necessary building devices or equipment, Loxon has its *own* service department where Armando was assigned. This department needs to employ service technicians like Armando to fulfill its undertaking to its clients. The necessity for a service helper technician does not merely arise on the availability of a project, but one that is *indispensable* for the regular business of Loxon. Verily, Armando was hired continuously for the various clients of Loxon and was only out of work for a few days in between, one month being the longest.[34] This re-hiring continued for 21 long years.[35] While length of time may not be the controlling test for project employment, it is crucial in determining if the employee is hired for a specific undertaking to perform functions vital, necessary, and indispensable to the *usual* business of the company.[36] It is obvious in this case that his periodic contracts of employment were resorted to in order to prevent Armando from becoming a regular employee of Loxon. Where the employee has been a project employee several times over as he was repeatedly re-hired due to the demands of the employer's business, as in this case, the periods indicated in the project employment contract or *Kontrata sa Pagtatrabaho sa Proyekto* should be struck down as contrary to public policy, morals, good customs or public order.[37]

Here, the Court re-affirms the principle held in *Fuji Television Network v. Espiritu*[38] that an employment contract indicating a fixed term did not automatically mean that the employee could never be a regular employee. This is what Article 295[39] of the Labor Code seeks to avoid:

> Article 295. [280] *Regular and Casual Employment.* – The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the

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34 *Rollo*, p. 457.

35 Id. at 4.

36 *Filipinas Pre-Fabricated Building Systems (Filsystems), Inc. v. Puente*, 493 Phil. 923 (2005).

37 *Integrated Contractor and Plumbing Works Inc. v. NLRC*, 503 Phil. 875 (2005).

38 749 Phil. 388, 439 (2014).

39 Article 295. [280] *Regular and Casual Employment.* – The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season. An employment shall be deemed to be casual if it is not covered by the preceding paragraph: *Provided*, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

> work or service to be performed is seasonal in nature and the employment is for the duration of the season.
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: *Provided,* That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.[40]

Where an employee's contract had been continuously extended or renewed to the same position, with the same duties and under the same employ without any interruption, then such employee is a regular employee. The continuous renewal is a scheme to prevent regularization.[41]

Second, Department Order No. 19, issued by the Department of Labor and Employment (DOLE) on April 1, 1993, requires employers to submit a report of termination of employees after every completion of project or phase thereof.[42] Loxon failed to present proof of compliance for all the project assignments of Armando from 1994 to 2014. Also, the Court cannot consider the Termination Reports dated May 15, 2015 and September 15, 2015 because the name of Armando is not included in the list of project employees reported therein.[43] Jurisprudence abounds with the consistent rule that the failure of an employer to report to the DOLE the termination of its workers' services *every time* a project or a phase thereof is completed indicates that said workers are not project employees. With no termination reports to be considered except for the Establishment Employment Report[44] dated January 26, 2016, the Court can only conclude that Armando was not a project employee of Loxon.

Third, it cannot escape the attention of the Court that Armando was included in the 2014 payroll[45] of Loxon despite not being assigned to any project during that year. Since Loxon did not bother to provide an explanation, the Court has no other way of interpreting this circumstance but that Armando is a regular employee of Loxon.

As a regular employee, Armando is entitled to security of tenure under Article 294[46] of the Labor Code, and can only be removed for just or authorized cause. Armando was dismissed by Loxon on the basis of his refusal to sign a new project employment contract. This was not removal for causes contemplated under Article 294. In the first place, there was no need to sign a

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40 Id.

41 Supra note 37.

42 *Dacuital v. L.M. Camus Engineering Corp.*, 644 Phil. 158, 172 (2010); *Equipment Technical Service v. CA*, 589 Phil. 116 (2008); *Goma v. Pamplona Plantation, Inc.*, 579 Phil. 402 (2008); *Belle Corp. v. Macasusi*, 575 Phil. 350 (2008)

43 *Rollo*, p. 365.

44 Id. at 239-242.

45 Id. at 351-364.

46 Article 294. [279] Security of Tenure. – In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

new project employment contract because Armando's employment as a regular employee subsists despite project completions.[47] Armando's dismissal was therefore *illegal*. Backwages and separation pay in lieu of reinstatement shall be granted to Armando. Aside from that, this Court also finds that the awards of moral and exemplary damages are in order. For 21 years, Armando suffered from the bad faith of Loxon when he was treated as a project employee, and yet was repeatedly and continuously re-hired to perform services which are vital, necessary, and indispensable to the trade or business of his employer. The working man has long been exploited and his employer has to learn its lesson.

WHEREFORE, the Petition for Review on *Certiorari* is **GRANTED**. The Decision dated March 8, 2019 of the Court of Appeals in CA-G.R. SP No. 150812 is **REVERSED** and **SET ASIDE**. Loxon Philippines Inc. is **ORDERED** to pay Armando N. Serrano the following:

(1) Backwages computed from January 2016 until finality of this Decision;
(2) Separation pay in lieu of reinstatement equivalent to one (1) month salary for every year of service from the start of his employment;
(3) Moral damages in the amount of ₱50,000.00;
(4) Exemplary damages in the amount of ₱50,000.00; and
(5) Attorney's fees equivalent to ten percent (10%) of the total monetary award.

All monetary awards shall earn interest at the legal rate of six percent (6%) *per annum* from the date of finality of this Decision until full paid.[48]

SO ORDERED.

ROSMARI D. CARANDANG
Associate Justice

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47 *Freyssinet Filipinas Corp. v. Lapuz*, G.R. No. 226722, March 18, 2019.
48 *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

WE CONCUR:

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

SAMUEL H. GAERLAN
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.

MARVIC MARIO VICTOR F. LEONEN
Associate Justice
Chairperson, Third 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