



Republic of the Philippines  
 Supreme Court  
 Manila

SUPREME COURT OF THE PHILIPPINES  
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THIRD DIVISION

**GEORGE S. GALBINEZ, JR.,**  
 Petitioner,

**G.R. No. 205597**

Present:

- versus -

**CAGUIOA, J.,**  
*Chairperson,*  
**ZALAMEDA,\***  
**GAERLAN,**  
**DIMAAMPAO,**  
**SINGH, JJ.**

**MC GERRY'S RESTAURANT,**  
**HOKIAN and KIM CO\*\* and**  
**GERRY VELASQUEZ,**  
 Respondents.

Promulgated:  
September 28, 2022

X-----Mis-ADCBAH-----X

**DECISION**

**GAERLAN, J.:**

Challenged in the instant Petition for Review on *Certiorari*<sup>1</sup> is the June 28, 2012 Decision<sup>2</sup> and January 21, 2013 Resolution<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 114946.

\* Designated additional Member per Raffle dated January 10, 2022

\*\* Include Kim Co as one of the respondents in the title of the instant case. Title of the Case in the initial parts of the proceeding includes Kim Co as one of the respondents. It appears that her name's non-inclusion in the title of subsequent pleadings and court issuances was due to mere inadvertence there being no record showing that she has been dropped as a party in the instant case. Moreover, Minute Resolutions issued by this Court dated: June 17, 2013; September 18, 2013; January 29, 2014; April 23, 2014; October 10, 2016; January 16, 2017; July 19, 2017; and August 16, 2017 include Kim Co in the title of the case.

<sup>1</sup> *Rollo*, pp. 10-26.

<sup>2</sup> *Id.* at 156-167; penned by Associate Justice Mario V. Lopez (now a Member of this Court) with Associate Justices Fernanda Lampas Peralta and Socorro B. Inting, concurring.

<sup>3</sup> *Id.* at 180-182.

A

### The Facts

George S. Galbinez, Jr. (petitioner) alleged that on January 6, 2006, he was hired by spouses Hokian and Kim Co (respondent spouses) as delivery boy, dishwasher and janitor at Mc Gerry's Restaurant (Mc Gerry's). He was paid at a daily rate of ₱100.00 for work from 7:00 a.m. to 8:00 p.m., Mondays to Sundays. He was not paid overtime pay, premium pay for rest days and holidays, and holiday pay. While he was given free food, petitioner claims that they were leftovers of the customers.<sup>4</sup>

Petitioner alleged that Mc Gerry's is an entity engaged in restaurant business and employs around 20 personnel. He claims that the owners of the restaurant, albeit registered under the name of respondent Gerry Velasquez (Velasquez), are respondent spouses who are both Chinese nationals.<sup>5</sup>

Sometime in September 2006, petitioner averred that due to his persistent airing of grievances, his salary was suddenly coursed through Metro's Manpower Agency (MMA). His work time was adjusted to 7:00 a.m. to 4:30 p.m., Mondays to Fridays, still without overtime pay, premium pay for rest days and holidays, and holiday pay. Although he was not given leftover foods anymore, he was being fed instead mostly of *galunggong*.<sup>6</sup> On December 30, 2007, petitioner was barred from entering the premises of the restaurant and was told that respondent spouses no longer wanted his services.<sup>7</sup>

On June 4, 2008, petitioner filed an Amended Complaint<sup>8</sup> before the National Labor Relations Commission (NLRC) for actual illegal dismissal, underpayment to non-payment of wages and other monetary benefits against Mc Gerry's, respondent spouses, Gerry Velasquez (Velasquez) and Bobby Velasco (Velasco).

For their part, Mc Gerry's alleged that the restaurant is a single proprietorship business registered under the name of respondent Velasquez. Velasquez denied that petitioner is their employee.<sup>9</sup> He averred that their restaurant caters to delivery orders requiring the services of a rider to do the task.<sup>10</sup> Sometime in October 2007, Velasquez engaged the services of a manpower agency, MMA, for that purpose. The agency assigned petitioner to them. However, by the end of 2007, petitioner stopped reporting for work.

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<sup>4</sup> Id. at 12.

<sup>5</sup> Id., 74; 103. 122-123; 134.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Id. at 61-63.

<sup>9</sup> Id. at 69.

<sup>10</sup> Id. at 217.

Velasquez was surprised to receive summons from the NLRC informing him that a complaint for illegal dismissal and other money claims was filed by petitioner against Mc Gerry's together with MMA.<sup>11</sup>

Records show that respondent spouses, despite having been duly served with summons, did not file any position paper. No service of summons was done on MMA and Bobby Velasco (Velasco).<sup>12</sup>

After evaluating the issues raised in the parties' respective pleadings, the Labor Arbiter (LA) in its Decision<sup>13</sup> dated June 2, 2009 found no employer-employee relationship between Mc Gerry's and petitioner. Petitioner admitted that his salaries were being paid by MMA and that it was MMA who did not assign him any work. By petitioner's admission that MMA was the entity that exercises control over his work assignments, the LA deduced that MMA was petitioner's employer.<sup>14</sup>

The LA disposed, thus:

WHEREFORE, in view of all the foregoing, respondents METRO'S MANPOWER AGENCY and BOBBY VELASCO are hereby ordered to reinstate [petitioner] to his former position without loss of seniority rights and other privileges and benefits with full backwages computed from the time of [petitioner's] illegal dismissal up to his actual reinstatement which up to this promulgation, already amounted to EIGHTY-EIGHT THOUSAND SEVEN HUNDRED THREE (P88,703.87) PESOS (sic) and 87/100.

For lack of employer-employee relationship, the complaint against respondents MC GERRY'S RESTAURANT and HOKIAM and KIM CO is, as it is hereby DISMISSED.

**SO ORDERED.**<sup>15</sup>

Feeling aggrieved, petitioner filed a Memorandum of Appeal<sup>16</sup> before the NLRC insisting that he was illegally dismissed, Mc Gerry's and respondent spouses, (collectively, respondents) should be held solidarily liable with their labor-only contractor, MMA.<sup>17</sup>

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<sup>11</sup> Id. at 218.

<sup>12</sup> Id. at 158

<sup>13</sup> Id. at 95-101; penned by Labor Arbiter Jovencio Ll. Mayor, Jr.

<sup>14</sup> Id. at 97-100.

<sup>15</sup> Id. at 100-101

<sup>16</sup> Id. at 102-114.

<sup>17</sup> Id. at 108-110.

On February 25, 2010, the NLRC, Sixth Division, issued a Decision<sup>18</sup> which reversed and set aside the findings of the LA. The Commission found that petitioner is a regular employee of respondents, and not of MMA. The *fallo* of the Decision provides:

**WHEREFORE**, the foregoing premises considered, the appeal is hereby GRANTED and the Decision of the Labor Arbiter is hereby REVERSED and SET ASIDE.

A new Decision is hereby entered ORDERING [respondents] spouses Hokian and Kim Co. Mc Gerry's Restaurant and Gerry Velasquez, jointly and severally, to pay [petitioner]:

1. separation pay equivalent to one (1) month salary for every year of service computed from January 6, 2006 up to the finality of this Decision;
2. backwages from the time it was withheld from him until finality of this Decision;
3. underpaid wages from January 6, 2006 until December 30, 2007 when he was dismissed;
4. overtime pay from January 6, 2006 until August 15, 2006;
5. unpaid rest day and holiday premium from January 6, 2006 to December 30, 2007;
6. ECOLA and 13<sup>th</sup> month pay from January 6, 2006 until the finality of this Decision; and
7. Attorney's fees equivalent to [petitioner's] total money claims.

Attached is the computation prepared by this Commission and made an integral part of this Decision.

The complaint against x x x Metro's Manpower Agency and Bobby Velasco are hereby DISMISSED for lack of jurisdiction

**SO ORDERED.**<sup>19</sup>

Respondents moved for reconsideration<sup>20</sup> but was denied by the NLRC *via* Resolution<sup>21</sup> dated April 28, 2010.

<sup>18</sup> Id. at 40-51; rendered by Presiding Commissioner Benedicto R. Palacol, with Commissioners Isabel G. Panganiban-Ortiguerra and Nieves Vivar-De Castro, concurring.

<sup>19</sup> Id. at 50-51.

<sup>20</sup> Id. at 115-121.

<sup>21</sup> Id. at 55-57.

Undeterred, respondents filed a Petition for *Certiorari*<sup>22</sup> on July 23, 2010 before the CA imputing grave abuse of discretion on the part of the NLRC for finding employer-employee relationship between petitioner and respondents.

In a Decision<sup>23</sup> dated June 28, 2012, the CA partly granted the Petition for *Certiorari*. The CA sustained the finding of employer-employee relationship between petitioner and the respondents but ruled against the finding of illegal dismissal. The CA decreed:

**FOR THESE REASONS**, the petition is **PARTIALLY GRANTED**, thus:

1. The February 25, 2010 Decision of the National Labor Relations Commission declaring [petitioner] George S. Galbinez, Jr. illegally dismissed is **NULLIFIED** and the awards of separation pay, backwages, overtime pay, unpaid rest day and holiday premium are **DELETED**; and
2. The finding of employer-employee relationship between private [petitioner] George S. Galbinez, Jr. and [respondents] spouses Hokian and Kim Co, Mc. Gerry's Restaurant and Gerry Velasquez is **AFFIRMED**, including the awards of underpaid wages, ECOLA, 13<sup>th</sup> month pay and attorney's fees.

The case is **REMANDED** to the NLRC for a detailed computation of the monetary benefits due [petitioner] George S. Galbinez, Jr. which [respondents] spouses Hokian and Kim Co, Mc. Gerry's Restaurant and Gerry Velasquez should pay jointly and severally without delay.

SO ORDERED.<sup>24</sup>

Petitioner filed a Motion for Partial Reconsideration<sup>25</sup> but was denied<sup>26</sup> for lack of merit there being no substantial matters raised therein that would warrant reversal of the assailed ruling.

Hence, a Petition for Review on *Certiorari*<sup>27</sup> was filed on March 25, 2013 by petitioner based on the following issues:

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<sup>22</sup> Id. at 27-39.

<sup>23</sup> Id. at 156-167.

<sup>24</sup> Id. at 166-167.

<sup>25</sup> Id. at 168-173.

<sup>26</sup> Id. at 180-182.

<sup>27</sup> Id. at 10-25.

## I

WHETHER THE DECISION OF THE HONORABLE [CA], WHICH FAILED TO RECOGNIZE THAT THE PETITIONER WAS ILLEGALLY DISMISSED, IS IN ACCORD WITH BOTH LAW AND JURISPRUDENCE.

## II

WHETHER THE DENIAL BY THE [CA] OF THE AWARD FOR SEPARATION PAY, BACKWAGES AND OTHER MONEY CLAIMS TO THE PETITIONER IS IN ACCORD WITH BOTH LAW AND JURISPRUDENCE.<sup>28</sup>

### The Court's Ruling

This is one of those cases where the employee alleged that he was illegally dismissed by his employer; while the employer denied the dismissal and claimed that the latter has decided to no longer report for work and essentially abandoned his job.

## I.

In illegal termination cases, the employer bears the burden to prove that the termination was for a valid or authorized cause.<sup>29</sup> However, before the employer discharges this burden, the employees must first establish by substantial evidence that indeed they were dismissed. Without substantial evidence that the employee was indeed dismissed, it is futile to determine the legality or illegality of the supposed dismissal.<sup>30</sup>

Petitioner alleged that respondents dismissed him from employment on December 30, 2007.<sup>31</sup> However, petitioner failed to present substantial evidence to substantiate this allegation. It is not sufficient for petitioner to claim that he was barred from entering the premises of Mc Gerry's Restaurant and was told that the respondent spouses no longer want his services.

In *Italkarat 18, Inc. v. Gerasmio*,<sup>32</sup> We pronounced:

[I]f the fact of dismissal is disputed, it is the complainant who should substantiate his claim for dismissal and the one burdened with the responsibility of proving that he was dismissed from employment, whether

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<sup>28</sup> Id. at 17.

<sup>29</sup> *San Miguel Corporation v. Gomez*, G.R. No. 200815, August 24, 2020.

<sup>30</sup> *Villola v. United Philippine Lines, Inc.*, G.R. No. 230047, October 9, 2019.

<sup>31</sup> *Rollo*, p. 12.

<sup>32</sup> G.R. No. 221411, September 28, 2020.

actually or constructively. Unless the fact of dismissal is proven, the validity or legality thereof cannot even be an issue.

Bare allegations deserve no legal credit for being self-serving.<sup>33</sup> The Court finds no basis to declare petitioner illegally dismissed.

## II.

On respondents' part, they averred that petitioner stopped reporting for work by the end of 2007. Initially, they thought petitioner was merely enjoying an extended holiday vacation. Respondents were surprised when they received summons from the NLRC informing them that petitioner lodged a complaint for illegal dismissal and other money claims against them, MMA and Velasco.<sup>34</sup> Essentially, respondents charge petitioner with abandonment. This claim cannot stand.

Abandonment is a matter of intention and cannot lightly be inferred or legally presumed from certain equivocal acts.<sup>35</sup> For abandonment to exist, two requisites must concur: (1) the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) there must have been a clear intention to sever the employer-employee relationship manifested by some overt acts.<sup>36</sup> Mere absence from work is insufficient to prove abandonment.<sup>37</sup> Absence must be accompanied by manifest acts pointing definitely to the fact that the employee simply does not want to work anymore.<sup>38</sup> The burden of proof to show that there was unjustified refusal to go back to work rests on the employer,<sup>39</sup> which respondents failed to establish.

Petitioner's filing of a complaint for illegal dismissal, albeit more or less six months after the claimed dismissal, negates any intention on his part to sever his employment relations with respondents. Needless to state, respondents failed to present any proof of petitioner's overt conduct, which clearly manifested his desire to end his employment.

## III.

Consequently, with petitioner's unsubstantiated claim of illegal dismissal and respondent's failure to prove the fact abandonment of work, reinstatement of the employee to his former position without backwages is in

<sup>33</sup> *Gososo v. Leyte Lumber Yard and Hardware, Inc.*, G.R. No. 205257, January 13, 2021.

<sup>34</sup> *Rollo*, p. 218.

<sup>35</sup> *Jolo's Kiddie Carts v. Caballa*, 821 Phil. 1101, 1115 (2017).

<sup>36</sup> *Gososo v. Leyte Lumber Yard and Hardware, Inc.*, supra note 34.

<sup>37</sup> *Lusabia v. Super K Drug Corp.*, G.R. No. 223314, July 15, 2020.

<sup>38</sup> *Geraldo v. The Bill Sender Corp.*, G.R. No. 222219, October 3, 2018.

<sup>39</sup> *Roxas v. Baliwag Transit, Inc.*, G.R. No. 231859, February 19, 2020.

order. Normally, where the employee's failure to work was occasioned neither by his abandonment nor by the termination of employment, each party must bear his own loss. This is for the reason that it is not right to shift the burden of employee's economic loss to the employer.<sup>40</sup> However, given that a considerable period of time had passed since the filing of this case rendering reinstatement impracticable, an award of separation pay equivalent to one-month salary for every year of service computed up to the time he stopped working for respondents in lieu of reinstatement without backwages, is more in accord with equity.

The question now arises, who is liable for petitioner's separation pay and other monetary awards?

Petitioner consistently alleged that Mc Gerry's real owners are respondent spouses and merely registered under the name of Velasquez.<sup>41</sup> He also alleged that he was hired by said respondent spouses as delivery boy, dishwasher and janitor on January 6, 2006.<sup>42</sup> This averment was not denied. Note that respondent spouses did not file any position paper, despite having been duly served with summons.<sup>43</sup> For petitioner, respondent spouses should also be made solidarily liable for his monetary claims.<sup>44</sup>

Petitioner's allegation as to who the real owner of Mc Gerry's, however, fails to negate the fact that the registered sole owner of the same is Velasquez. As sole proprietorship business, Mc Gerry's does not possess a juridical personality separate and distinct from the personality of its owner. Its existence is legally recognized merely as a form of business organization conducted for profit by a single individual and requires its proprietor or owner to secure licenses and permits, register its business name, and pay taxes to the national government, among others.<sup>45</sup> Because Mc Gerry's does not have a separate legal personality, Velasquez, as the registered sole proprietor thereof becomes personally liable for all the debts and obligations of the business.<sup>46</sup>

Also, absent any credible proof that respondent spouses acted in bad faith in the alleged illegal dismissal, they cannot be held solidarily liable with Velasquez.

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<sup>40</sup> *Radar Security & Watchman Agency, Inc. v. Castro*, 774 Phil. 185, 197 (2015).

<sup>41</sup> *Rollo*, pp. 12.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 43; 158.

<sup>44</sup> *Id.* at 108-110.

<sup>45</sup> *Stanley Fine Furniture v. Gallano*, 748 Phil. 624, 636 (2014).

<sup>46</sup> *Excellent Quality Apparel, Inc. v. Win Multi Rich Builders, Inc.*, 598 Phil. 94, 101 (2009).



## IV

A point of clarification. Article 111 of the Labor Code, as amended, governs the grant of attorney's fees in labor cases:

Art. 111. *Attorney's fees.* — (a) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

(b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of wages, attorney's fees which exceed ten percent of the amount of wages recovered.

Section 8, Rule VIII, Book III of its Implementing Rules further provides:

Section 8. *Attorney's fees.* — Attorney's fees in any judicial or administrative proceedings for the recovery of wages shall not exceed 10% of the amount awarded. x x x<sup>47</sup>

Here, the CA affirmed the award of attorney's fees by the NLRC. A portion of the dispositive portion of the affirmed NLRC Decision dated February 25, 2010 states:

**WHEREFORE**, the foregoing premises considered, the appeal is hereby GRANTED and the Decision of the Labor Arbiter is hereby REVERSED and SET ASIDE.

A new Decision is hereby entered ORDERING [respondents] spouses Hokian and Kim Co. Mc Gerry's Restaurant and Gerry Velasquez, jointly and severally, to pay [petitioner]:

x x x x

7. Attorney's fees equivalent to [petitioner's] total money claims.

Attached is the computation prepared by this Commission and made an integral part of this Decision.

x x x x

**SO ORDERED.**<sup>48</sup>

<sup>47</sup> *Tangga-an v. Philippine Transmarine Carriers, Inc.*, 706 Phil 339, 353 (2013).


<sup>48</sup> *Rollo*, pp. 50-51.

While the decretal portion stated attorney's fees equivalent to the total money claims, in the mentioned attached computation<sup>49</sup> prepared by the NLRC and made integral part of the NLRC Decision, the attorney's fees awarded was pegged at ten percent (10%) of the total award. However, to avoid confusion as an order of execution is based on the disposition, and not on the body, of the decision,<sup>50</sup> it is clarified that the affirmed awarded attorney's fees is equivalent only to ten percent (10%) of the total award.

**WHEREFORE**, the petition is **PARTLY GRANTED**. The June 28, 2012 Decision and the January 21, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 114946 are **AFFIRMED with the following MODIFICATIONS**.

1. In lieu of an order of reinstatement without backwages, respondents are **ORDERED** to pay petitioner George S. Galbinez, Jr. separation pay computed at one (1) month salary for every year of service until petitioner stopped working for respondents in 2007.
2. Respondent Gerry Velasquez is **ORDERED** to pay petitioner attorney's fees equivalent to ten percent (10%) of the total monetary award;
3. All amounts due shall earn interest at the rate of six percent (6%) *per annum* from date of finality of this Decision until fully paid. The case is hereby **REMANDED** to the Labor Arbiter for an immediate re-computation of the monetary benefits due the petitioner George S. Galbinez, Jr. which respondent Gerry Velasquez, should pay without delay.

**SO ORDERED.**

  
**SAMUEL H. GAERLAN**  
Associate Justice

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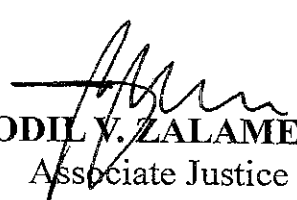
<sup>49</sup> Id. at 54.

<sup>50</sup> *PH Credit Corp. v. Court of Appeals*, 421 Phil 821, 833 (2001).

WE CONCUR:



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



**RODIL V. ZALAMEDA**  
Associate Justice



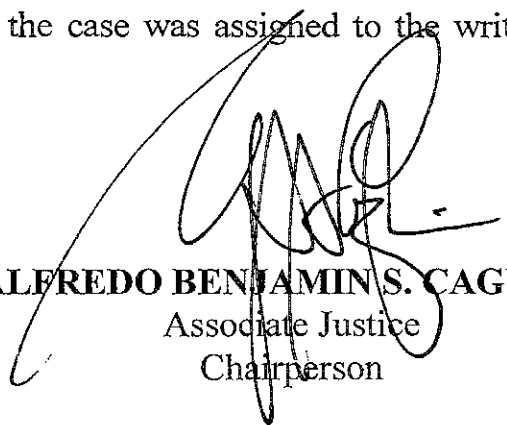
**JAPAR B. DIMAAMPAO**  
Associate Justice



**MARIA FILOMENA D. SINGH**  
Associate Justice

**ATTESTATION**

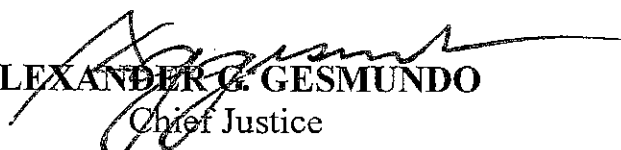
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice  
Chairperson

**CERTIFICATION**

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

  
**ALEXANDER G. GESMUNDO**  
Chief Justice