

## SECOND DIVISION

### [ G.R. No. 170029, November 21, 2012 ]

**SAMEER OVERSEAS PLACEMENT AGENCY, INC. AND RIZALINA LAMSON, PETITIONERS, VS. MARICEL N. BAJARO, PAMELA P. MORILLA, DAISY L. MAGDAONG, LEAH J. TABUJARA, LEA M. CANCINO, MICHIEL D. MELIANG, RAQUEL SUMIGCAY, ROSE R. SARIA, LEONA L. ANGULO AND MELODY B. INGAL, RESPONDENTS.**

### DECISION

#### PERLAS-BERNABE, J.:

Assailed in this Petition for Review is the August 22, 2005 Decision<sup>[1]</sup> and October 11, 2005 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 87672 which nullified and set aside the March 31, 2004 Decision<sup>[3]</sup> and September 22, 2004 Resolution<sup>[4]</sup> of the National Labor Relations Commission (NLRC) and reinstated *in toto* the July 12, 2002 Decision<sup>[5]</sup> of the Labor Arbiter in NLRC OFW CASE No. (M) 01-07-1366-00.

#### The Facts

It is undisputed that sometime in 1999,<sup>[6]</sup> petitioner company Sameer Overseas Placement Agency, Inc. deployed respondents Maricel N. Bajaro (Bajaro), Pamela P. Morilla (Morilla), Daisy L. Magdaong, Leah J. Tabujara, Lea M. Cancino, Michiel D. Meliang, Raquel Sumigcay (Sumigcay), Rose R. Saria, Leona L. Angulo and Melody B. Ingala to Taiwan to work as operators for its foreign principal, Mabuchi Motors Company, Ltd. under individual two-year employment contracts,<sup>[7]</sup> with a monthly salary of Taiwan Dollars (NT\$) 15,840.00 each. Prior to their deployment, each respondent paid petitioner company the amount of P47,900.00 as placement fee.

However, after working for only a period of eleven (11) months and before the expiration of the two-year period, respondents' employment contracts were terminated and they were repatriated to the Philippines. This prompted the filing of a complaint for illegal dismissal against petitioner company and its President and General Manager, individual petitioner Rizalina Lamson,<sup>[8]</sup> with prayer for the payment of salaries and wages covering the unexpired portion of their employment contracts in lieu of reinstatement, and with allegations of illegal deductions and illegal collection of placement fees. Respondents Bajaro, Morilla and Sumigcay likewise sought reimbursement of the amount they personally expended for their plane tickets for their return flight, alleging that their employment contracts provided for free transportation expenses in going to and from Taiwan. Collectively, respondents prayed for the award of damages as well as attorney's fees.

In defense, petitioners claimed that respondents were validly retrenched due to severe business losses suffered by their foreign principal. They denied the alleged deductions amounting to NT\$7,500.00 from petitioners' monthly salaries and that, consequently, petitioners are not entitled to damages and attorney's fees.

### **The Labor Arbiter's Ruling**

In its July 12, 2002 Decision,<sup>[9]</sup> the Labor Arbiter found respondents to have been illegally dismissed for petitioners' failure to substantiate their defense of a valid retrenchment. Hence, the Labor Arbiter granted respondents' money claims, citing Section 10 of Republic Act (R.A.) No. 8042<sup>[10]</sup> as then applicable,<sup>[11]</sup> which provides:

#### Section 10. *Money claims.* – x x x

The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. *If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.*

Such liabilities shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment or modification made locally or in a foreign country of the said contract.

Any compromise/amicable settlement or voluntary agreement on money claims inclusive of damages under this section shall be paid within four (4) months from the approval of the settlement by the appropriate authority.

In case of termination of overseas employment *without just, valid or authorized cause* as defined by law or contract, the workers shall be entitled to the *full reimbursement of his placement fee with interest of twelve percent (12%) per annum plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.* (Emphasis supplied)

x x x

Accordingly, petitioners were directed to pay each respondent, jointly and solidarily, the amount of P47,900.00 as full reimbursement of their individual placement fees, with an interest of 12% *per annum*; the amount of NT\$47,520.00 each, representing three (3) months' worth of their salary amounting to NT\$15,840.00; the amount of NT\$7,500.00 which had been illegally deducted from respondents' monthly salaries; the amount of NT\$6,000.00 each as reimbursement for the transportation expenses of respondents Bajaro, Sumigcay and Morilla in going home to the Philippines; and attorney's fees of 10% of the total monetary award.

The dispositive portion of the Labor Arbiter's Decision reads:

WHEREFORE, all the foregoing premises considered, respondents SAMEER OVERSEAS PLACEMENT AGENCY, INCORPORATED and RIZALINA LAMZON, are hereby ordered jointly and severally to:

- (a) pay each complainant an amount equivalent to three (3) months salary which is NT\$47,520 or a total of FOUR HUNDRED SEVENTY FIVE THOUSAND TWO HUNDRED TAIWAN DOLLARS (NT\$475,200) or its Philippine currency equivalent at the time of payment;
- (b) pay each complainant NT\$82,500.00 representing the amount that has been illegally deducted from their salaries for a period of eleven (11) months or a total of EIGHT HUNDRED TWENTY FIVE THOUSAND TAIWAN DOLLARS (NT\$825,000) or its Philippine currency equivalent at the time of payment;
- (c) pay each complainant, Php47,900.00 by way of reimbursement of placement fees or a total of FOUR HUNDRED SEVENTY NINE THOUSAND PESOS (Php479,000.00) plus twelve percent (12%) interest per annum;
- (d) pay complainants MARICEL BAJARO; RAQUEL SUMIGCAY and PAMELA MORILLA NT\$6,000.00 as and by way of reimbursement to their transportation expenses in going home to the Philippines, or its Philippine currency at the time of payment;
- (e) pay attorney's fees equivalent to ten percent (10%) of the total monetary award.

SO ORDERED.

### **The NLRC's Ruling**

On appeal, the NLRC vacated and set aside<sup>[12]</sup> the Labor Arbiter's Decision upon a finding that all the requirements for a valid retrenchment have been established, thus, the respondents were not illegally dismissed. Therefore, it found that the awards of salaries corresponding to the unexpired portion of the contracts and the refund of placement fees to be bereft of any basis in fact and in law. The award for the payment of the salary deductions was also not considered for respondents' failure to substantiate

it, and the claim for reimbursement of expenses for the return flight of respondents Bajaro, Sumigcay and Morilla was similarly disallowed, not having been raised as a cause of action in their complaint.

Lastly, the NLRC absolved petitioner Lamson of any personal liability for dearth of evidence showing that she acted in bad faith, following the oft-repeated principle that corporate officers cannot be held jointly and severally liable for the obligations of a corporation arising from employment-related claims.

Respondents sought reconsideration<sup>[13]</sup> of the NLRC's Decision, which was subsequently denied in the Resolution<sup>[14]</sup> dated September 22, 2004.

### **The Court of Appeals' Ruling**

Aggrieved, respondents elevated the case via petition for certiorari before the CA which, in its assailed August 22, 2005 Decision,<sup>[15]</sup> nullified and set aside the previous issuances of the NLRC and reinstated in toto the July 12, 2002 Decision of the Labor Arbiter. The CA concurred with the findings of the Labor Arbiter that petitioners failed to comply with the substantive and procedural requirements to effect a valid retrenchment.

Petitioners' motion for reconsideration was likewise denied in the Resolution<sup>[16]</sup> dated October 11, 2005.

### **Issues Before The Court**

In this petition for review, petitioners impute reversible error on the part of the CA in nullifying the NLRC issuances and in reinstating *in toto* the Decision of the Labor Arbiter, as the latter failed to take into consideration the principles of private international law, which form part of the law of the land, as well as the labor standards laws of the Republic of China, in resolving the complaint filed before it. Petitioners also contend that the Labor Arbiter misconstrued and misapplied Section 10 of R.A. 8042.

### **The Court's Ruling**

The petition is bereft of merit.

At the outset, the Court notes that petitioners are raising before the Court *for the first time*, the applicability of the principles of private international law and the labor standards laws of the Republic of China in the proper interpretation of respondents' employment contracts. Records show that petitioners never advanced this issue at the first opportunity before the Labor Arbiter, and even in the subsequent proceedings before the NLRC and the CA. Instead, petitioners' arguments consistently centered on the existence of a valid retrenchment and compliance with the requirements to legally effect the same. It bears stressing that issues not raised in the proceedings below cannot be raised for the first time on appeal.<sup>[17]</sup> Specifically, points of law, theories and arguments not raised before the appellate court will not be considered by the Court.<sup>[18]</sup>

The Court, therefore, shall limit the resolution of this case on the sole question of whether the Labor Arbiter's Decision, as reinstated *in toto* by the CA, properly applied and interpreted Section 10 of R.A. 8042, the pertinent portions of which state:

Sec. 10. *Money Claims.* – Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after filing of the complaint, the *claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment* including claims for actual, moral, exemplary and other forms of damages.

x x x

In case of termination of overseas employment *without just, valid or authorized* cause as defined by law or contract, x x x (Emphasis supplied)

Indisputably, respondents' illegal dismissal complaint with money claims is anchored on the overseas employment contracts with petitioners and the allegations that they were dismissed without just, valid or authorized cause. With these allegations, Section 10 afore-quoted clearly applies in this case.<sup>[19]</sup> As petitioners failed to establish a valid retrenchment, respondents were clearly dismissed without just, valid or authorized cause.

Consequently, petitioner Lamzon is jointly and severally liable with petitioner company. To reiterate, Section 10 of R.A. 8042 provides that "[i]f the recruitment/placement agency is a juridical being, the corporate officers and directors x x x shall themselves be jointly and solidarily liable with the corporation x x x" for any claims and damages that may be due to the overseas workers.

Notwithstanding the foregoing, however, the Court finds that a modification of the monetary award in the amount of NT\$47,520.00 per respondent – corresponding to three (3) months' worth of salaries – granted by the Labor Arbiter is in order, conformably with the pronouncement in the case of *Serrano v. Gallant Maritime Services and Marlow Navigation Co. Inc.*<sup>[20]</sup> (*Serrano case*) where the Court En Banc declared unconstitutional, for being violative of the Constitutionally-guaranteed rights to equal protection and due process of the overseas workers, the clause "or for three months for every year of the unexpired term, whichever is less" found in Section 10 of R.A. 8042, which originally reads:

In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the workers shall be entitled to the full reimbursement of his placement fee with interest of twelve percent (12%) per annum plus his salaries for the unexpired portion of his employment contract *or for three*

(3) months for every year of the unexpired term, whichever is less.

In *Skippers United Pacific, Inc. and Skippers Maritime Services, Inc. Ltd. v. Doza*,<sup>[21]</sup> the Court declared that an unconstitutional clause in the law, being inoperative at the outset, confers no rights, imposes no duties and affords no protection. Hence, even if respondents' illegal dismissal occurred sometime in August 2000,<sup>[22]</sup> the declaration of unconstitutionality found in the *Serrano* case promulgated in March 2009 shall retroactively apply.

Since the unexpired portion of respondents' individual two-year contracts is still for 13 months, as they worked in Taiwan for a period of only 11 months, each respondent is therefore entitled to a total amount of NT\$205,920.00<sup>[23]</sup> or its current equivalent in Philippine Peso, by way of unpaid salaries, in addition to the other monetary awards granted by the Labor Arbiter.

**WHEREFORE**, the instant petition is **DENIED**. The assailed Decision and Resolution of the Court of Appeals reinstating *in toto* the July 12, 2002 Decision of the Labor Arbiter is **AFFIRMED** with the **MODIFICATION** awarding the amount of **NT\$205,920.00** or its current equivalent in Philippine Peso to each of the respondents by way of unpaid salaries for the unexpired portion of their employment contracts. The rest of the Decision stands.

**SO ORDERED.**

*Carpio, (Chairperson), Brion, Del Castillo, and Perez, JJ., concur.*

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[1] Penned by Associate Justice Renato C. Dacudao, with Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao, concurring. *Rollo*, pp. 36-51.

[2] *Id.* at 86-87.

[3] Penned by Presiding Commissioner Raul T. Aquino (OFW [M] 01-07-1366-00[CA NO. 030717-02]). *Id.* at 304-314.

[4] *Id.* at 354-363.

[5] Penned by Executive Labor Arbiter Joselito Cruz Villarosa. *Id.* at 222-228.

[6] Per respondents' Employment Contracts. *Id.* at 165-180.

[7] *Id.* at 165-180.

8 Also referred to as "Lamzon" in the records.

[9] *Rollo*, pp. 222-228.

[10] Otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995."

[11] On March 8, 2010, Section 7 of R.A. 10022, amended Section 10 of the *Migrant Workers Act*; See *Skippers United Pacific, Inc. and Skippers Maritime Services, Inc. Ltd. v. Doza*, G.R. No. 175558, February 8, 2012. See also *Serrano v. Gallant Maritime Services and Marlow Navigation, Inc.*, G.R. No. 167614, March 24, 2009, 582 SCRA 254.

[12] *Rollo*, pp. 304-314.

[13] *Id.* at 315-320.

[14] *Id.* at 354-363.

[15] *Id.* at 36-51.

[16] *Id.* at 304-314.

[17] *Rubio v. Munar*, G.R. No. 155952, October 4, 2007.

[18] *Garcia v. KJ Commercial and Reynaldo Que*, G.R. No. 196830, February 29, 2012.

[19] *International Management Services/Marilyn C. Pascual v. Logarta*, G.R. No. 163657, April 18, 2012.

[20] G.R. No. 167614, March 24, 2009, 582 SCRA 254.

[21] *Supra*.

[22] Respondents' employment contracts were dated September 4, 1999, and they were repatriated to the Philippines after working in Taiwan for only 11 months, or until August 2000.

[23] NT\$15,840.00 [monthly salary] x 13 months [unexpired portion of employment contract].



