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SECOND DIVISION

[G.R. No. 169247, June 02, 2014]

MA. CONSOLACION M. NAHAS, DOING BUSINESS UNDER THE NAME AND STYLE PERSONNEL EMPLOYMENT AND TECHNICAL RECRUITMENT AGENCY, PETITIONER, VS. JUANITA L. OLARTE, RESPONDENT.

DECISION

DEL CASTILLO, J.:

"A party will not be allowed to make a mockery of justice by taking inconsistent positions which, if allowed, would result in brazen deception."^[1]

Assailed in this Petition for Review on *Certiorari* is the April 29, 2005 Decision^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 79028 which denied the Petition for *Certiorari* filed therewith and affirmed the February 28, 2003 Decision^[3] and June 30, 2003 Resolution^[4] of the National Labor Relations Commission (NLRC) in NLRC CA No. 032482-02. The NLRC dismissed the appeal from the Labor Arbiter's March 20, 2002 Decision⁵ in NLRC-NCR OFW Case No. (L) 01-07-1411-00 which held Personnel Employment and Technical Recruitment Agency (PETRA), Royal Dream International Agency (Royal Dream) and petitioner Ma. Consolacion M. Nahas (Nahas) jointly and severally liable for the unpaid salaries, compensation for the unexpired portion employment contract, moral and exemplary damages and attorney's fees of respondent Juanita L. Olarte (Olarte).

Factual Antecedents

On August 27, 1999, Olarte was deployed as a domestic helper to Hail, Saudi Arabia for a contract term of two years. Per her employment contract,^[6] she was to serve her employer, Fahad Abdulaziz Mohammed Al-Mijary (Fahad) for a basic monthly salary of US\$200.00. Fahad's information sheet, on the other hand, provides that there are two adults and three children living in his household and that no disabled or sick person is to be put under Olarte's care.

Upon arriving in Fahad's home, Olarte was surprised that there were four children with one suffering from serious disability. This notwithstanding, Olarte served Fahad's family diligently. However, she was not paid her salaries. It was only in December 1999 that she was given US\$200.00 which was the only pay she received for the whole duration that she worked for Fahad.

In the succeeding months, Olarte started feeling intense pain in her legs. Since she was

not given immediate medical attention, her condition became critical such that in February 2000 she had to be operated on due to water retention in her leg bones. She was later diagnosed to be suffering from osteo-arthritis. Because of her condition, Olarte requested Fahad to just allow her go home to the Philippines. But her pleas fell on deaf ears. At that point, Fahad was already frequently maltreating her since she could no longer accomplish all the household chores due to her illness.

Olarte finally saw an opportunity to escape from the abusive hands of her employer when she was allowed to go to Riyadh, Saudi Arabia on June 16, 2000 and there sought refuge at the Philippine Embassy. Notwithstanding her worsening condition, she could not be repatriated immediately because her passport was being withheld by Fahad and had to stay for a while in the office of the Overseas Workers Welfare Administration (OWWA). When at last she was able to return to the Philippines on August 21, 2000, Olarte had to be brought home from the airport by an emergency ambulance.

Several months later, Olarte filed a Complaint^[7] for illegal dismissal, damages, attorney's fees and refund of placement fees against her foreign employer Fahad and Nahas/PETRA/Royal Dream.

Ruling of the Labor Arbiter

In her pleadings,^[8] Olarte alleged that she went to the office of PETRA/ Royal Dream at Room 401, Gochangco Building, T.M. Kalaw, Ermita, Manila to apply for work abroad as a domestic helper. She was met and interviewed by Nahas, the manager and owner of the said agencies, who instructed her to sign what appeared to be a contract of employment for work as a domestic helper. Subsequently and upon completion of all the necessary papers, she was deployed to Hail, Saudi Arabia in August 1999 and there experienced her horrible ordeal. As the ones responsible for her deployment abroad, Olarte sought that Nahas, PETRA and Royal Dream be held jointly and severally liable with her foreign employer for all her claims.

In the Position Paper^[9] she filed for PETRA, Nahas acknowledged that she is the President/Manager of the said agency. Nevertheless, she denied having a hand in Olarte's deployment abroad. While she admitted that Olarte indeed went to PETRA's office as a walk-in applicant sometime in May 1999, the latter allegedly withdrew her application on the pretext that she would just go home to the province. To support this, Nahas purportedly attached to the said pleading the alleged withdrawal request of Olarte as Annex "A." However, the said Annex "A" turned out to be a filled-up bio-data form of Olarte bearing the letterhead of Royal Dream,^[10] the local agency which according to Nahas was the one responsible for Olarte's deployment.

In a Decision^[11] dated March 20, 2002, the Labor Arbiter ruled that PETRA/ Royal Dream/Nahas failed to discharge the burden of proving that Olarte's termination and repatriation were for just cause; and also rejected their claim against liability after giving weight to the fact that Nahas admitted to have interviewed Olarte but failed to substantiate the claim that the latter withdrew her application. The dispositive portion of the said Decision reads:

WHEREFORE, prescinding from the foregoing considerations, respondents Petra Agency/Royal [Dream] International Services/Consolacion "Marla" Nahas are hereby jointly and severally ordered to pay the complainant her unpaid salaries for eight (8) months in the amount of US\$1,600.00; three (3) months salary of the unexpired portion of the contract in the amount [of] US\$600.00; moral damages in the amount of P100,000.00 and exemplary damages amounting to P50,000.00 and attorney's fees equivalent to ten (10%) percent of the total monetary awards.

SO ORDERED.^[12]

Nahas appealed to the NLRC.

Ruling of the National Labor Relations Commission

In her Memorandum of Appeal,^[13] Nahas recanted her earlier admission that Olarte went to PETRA as a walk-in applicant sometime in May 1999, claiming that the same was a mistake. She asserted that Olarte could not have possibly applied with PETRA during that time as the latter was issued a license by the POEA only on July 16, 1999. Moreover, Fahad was not one of PETRA's accredited foreign employers.

To further avoid personal liability, Nahas denied involvement in Olarte's deployment. She made a new allegation, though, *i.e.*, that if at all, her only involvement was that she interviewed Olarte when she was still connected with Royal Dream as a mere employee. Even with this participation, she averred that she could not be made liable for Olarte's claims because she was neither the owner nor an officer of Royal Dream. Lastly, while Nahas was quick in passing the buck to Royal Dream she nevertheless stressed that no summons was served upon the latter. Thus, the Labor Arbiter's Decision is not binding on it.

The NLRC, however, was not persuaded and disposed of the case in its Decision^[14] of February 28, 2003 as follows:

The facts of this case are never disputed by herein appellants, and as such they are now the law of the case. Records will disclose, as admitted by the herein parties that it was with respondent PETRA that complainant applied for overseas employment as domestic helper. It was respondent Nahas herself who interviewed complainant and in all probability furnished her all the requisite[s] for her deployment. All along she (Nahas) represented [to be the owner of] and [was connected] with both PETRA and Royal Dream to facilitate her deployment. In fact complainant was successfully deployed by Royal Dream as represented to by Nahas. Obviously, complainant's overseas employment was made possible by respondent[']s agencies, thru the efforts of [respondent] Nahas.

While it was claimed by PETRA that the application of complainant was

withdrawn, no evidence on [record] appear to support it.

The same holds true with appellants['] claim that respondent Nahas was no longer connected with respondent Royal Dream when complainant was deployed abroad.

The fact that complainant was finally deployed thru the intercession of [respondent] Nahas with the aid of both respondent agencies, convinces us, as the Labor Arbiter ruled, that both agencies, indeed did so in recognition of the former's authority.

Suffice it to [state] therefore that We find no cogent reason to deviate from the findings of the Labor Arbiter a quo, and finding the same in order, [affirm] it en toto.

WHEREFORE, the instant appeal should be, as it is hereby dismissed for lack of merit.

SO ORDERED. [15]

Nahas filed a Motion for Reconsideration [16] which was denied in a Resolution [17] dated June 30, 2003. Hence, the recourse to the CA via a Petition for *Certiorari*.

Ruling of the Court of Appeals

Nahas advanced the same arguments she raised before the labor tribunals, but failed to convince the CA as in its Decision [18] dated April 29, 2005 it ruled in this wise:

Private respondent Olarte unequivocally declared at the [outset] that it was Nahas who interviewed her and facilitated her application for work abroad as a domestic helper by instructing the former to sign the Contract of Employment. Nahas, in her Position Paper, her Reply to Olarte's Position Paper and her Rejoinder, admitted to having interviewed Olarte for her application to work abroad. Though she quickly added that she did so only because Olarte applied with PETRA first and that the latter eventually withdrew the same, Nahas subsequently recanted this and instead admitted that her agency PETRA was only granted a license by the POEA on 16 July 1999 or after Olarte accomplished and filed her application form with ROYAL on 18 May 1999. In the same vein, Nahas likewise admitted being connected with ROYAL before and that she was the one who met and entertained Olarte when the latter applied with ROYAL. While Nahas claim[s] that she is neither the proprietress nor one of the officers of ROYAL at that time, her role or position with ROYAL was undeniably significant considering that she took charge [of] interviewing Olarte and eventually made her sign the Contract of Employment. Clearly, Nahas exercised discretion in determining who among the applicants of ROYAL should be accepted and deployed. It is

also worthy to point out that the accomplished bio-data of Olarte with the letterhead of ROYAL referred to earlier was attached by no less than Nahas herself in her earlier pleading before the Labor Arbiter supposedly to show that Olarte withdrew her application with PETRA. It would be uncanny for Nahas to have in her possession and custody such document, if indeed she was but a mere staff of ROYAL or that she is no longer connected in any way with ROYAL, unless there remains an intimate relationship between her and ROYAL or that she once held an important position in the same.

With the foregoing, We find nothing capricious or whimsical with the NLRC's finding and thus affirm Nahas' liability in accordance with Section 64 of the Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995 (RA 8024), to wit:

'Section 64. Solidary Liability - The liability of the principal/employer and the recruitment placement agency on any and all claims under this Rule shall be [joint] and solidary. x x x.

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.

x x x x

WHEREFORE, the instant petition is DENIED and the assailed

Decision of the NLRC dated 28 February 2003 and its Resolution of 30 June 2003 are hereby AFFIRMED.

SO ORDERED.^[19]

The Motion for Reconsideration^[20] thereto having been denied in the CA Resolution²¹ dated July 8, 2005, Nahas now comes to this Court *via* the present Petition for Review on *Certiorari*.

The Parties' Arguments

Nahas insists that it is Royal Dream which is solely responsible for Olarte's deployment and thus should be the one to answer for her claims. Be that as it may, she contends that Royal Dream was not served with summons; hence, the proceedings in this case is not binding upon it. Nahas also refutes the CA's conclusion that since she interviewed and caused Olarte to sign an employment contract, she held an important position in Royal Dream. She maintains that she is a mere employee of Royal Dream and that interviewing and entertaining applicants *per se* do not establish that she is a corporate officer, director or partner in said company who could be held solidarily liable. Lastly, she avers that Olarte's Complaint is bereft of allegations of attendant circumstances which warrant the grant of moral and exemplary damages.

On the other hand, Olarte asserts that the argument that PETRA is different from Royal Dream is clearly an attempt on the part of Nahas, PETRA and Royal Dream to evade liability. She stresses that it was Nahas, for and in behalf of PETRA/Royal Dream, who performed the acts of recruitment which led to her deployment abroad; hence, all of them should be held jointly and solidarily liable with their foreign principal.

Our Ruling

The Petition has no merit.

The Court is not a trier of facts; factual findings of the labor tribunals when affirmed by the CA are generally accorded not only respect, but even finality, and are binding on this Court.

It must be stressed, at the outset, that the resolution of the issue of whether Nahas acted for and in behalf of PETRA and/or Royal Dream in deploying Olarte abroad is a question of fact. "Well-settled is the rule that this Court is not a trier of facts and this doctrine applies with greater force in labor cases. Questions of fact are for the labor tribunals to resolve. Only errors of law are generally reviewed in petitions for review on *certiorari* criticizing decisions of the CA."^[22] Also "[s]ettled is the rule that the findings of the [Labor Arbiter], when affirmed by the NLRC and the CA, are binding on the Supreme Court, unless patently erroneous."^[23] In this case, the Labor Arbiter, the NLRC, and the CA are one in their factual conclusion that Nahas, acting for and in behalf of PETRA and Royal Dream, interviewed Olarte, caused her to sign an employment contract, and facilitated and made possible her deployment abroad. The Court is, therefore, not duty-bound to inquire into the accuracy of this factual finding, particularly in this case where there is no showing that it was arbitrary and bereft of any rational basis.^[24]

Nahas' inconsistent positions militate against her case; her claim of lack of service of summons upon Royal Dream is likewise untenable.

The Court notes that in her quest to evade liability, Nahas introduced several conflicting assertions. Before the Labor Arbiter, she admitted that Olarte indeed applied with PETRA and was interviewed by her but later withdrew the application. While Nahas intended to support this position with a document showing that Olarte requested for the withdrawal of her application, the same was, however, never submitted. What was instead unwittingly attached to her Position Paper was Olarte's accomplished bio-data bearing the letterhead of Royal Dream. This did not escape the Labor Arbiter's attention such that her March 20, 2002 Decision states:

x x x While [PETRA/Nahas] admits that complainant was a [walk]-in applicant, respondent [PETRA] Agency's claim that [Olarte] subsequently

withdrew her application has not been satisfactorily established by concrete evidence. x x x [I]t is incumbent upon the party who asserts a fact [to prove the same].

More significantly, respondent Consolacion "Marla" Nahas never denied [OlarTE's claim] that it was [Nahas] who interviewed her.

It is basic that mere [allegation] is neither equivalent to proof nor evidence. [25]

Later in her Memorandum of Appeal with the NLRC, Nahas repudiated her earlier admission and averred that Olarte did not at all apply with PETRA. While still maintaining that she interviewed Olarte, she now claimed to have done so when she was still connected with Royal Dream as a mere employee.

It is quite obvious that Nahas started singing a different song, so to speak, after the Labor Arbiter did not buy her claim that Olarte withdrew her application with PETRA due to her utter failure to support the same. And with her still seeming inability to produce the alleged withdrawal request before the NLRC, the most convenient way out is for her to claim that Olarte did not at all apply with PETRA. While Nahas attempted to bolster this new allegation by averring that PETRA was issued a license only on July 16, 1999 thereby making it impossible for Olarte to apply in May 1999, the same, however, hardly convinces. Aside from the lack of any evidence showing the date of the POEA's issuance of license to PETRA, the fact that it was yet to be issued a license does not preclude the possibility that it was already accepting applicants on behalf of Royal Dream which at that time already possesses the required license. This explains why the accomplished bio-data of Olarte dated May 18, 1999 bears the letterhead of Royal Dream and also why the pertinent documents from POEA and OWWA26 reflect the said agency as Olarte's local agency.

Neither does the unsupported averment of Nahas before the NLRC that she was previously connected with Royal Dream as a former employee help her cause. For one, she could have easily submitted a certificate of employment from Royal Dream showing that she was a mere employee of the latter during the time material to this case. But she failed to do so. It must be stressed "that he who alleges must prove." [27]

Clearly, Nahas' vacillating from one story to another and not being able to support them is nothing but a mere ruse to evade the lawful claims of Olarte. This cannot be tolerated. It has been held that "[a] party will not be allowed to make a mockery of justice by taking inconsistent positions which, if allowed, would result in brazen deception." [28] Inconsistent and unsupported as they are, the labor tribunals and the CA correctly rejected the contentions of Nahas.

Anent the assertion that Royal Dream was not served with summons, it must be stressed that Olarte had categorically declared at the outset that it was in the office of PETRA/Royal Dream at Room 401, Gochangco Building, T.M. Kalaw, Ermita, Manila where she applied for work as domestic helper, was interviewed, and made to sign an

employment contract. This was effectively corroborated by Nahas herself when she admitted before the Labor Arbiter that Olarte was a walk-in applicant in the said office. When finally deployed, the local agency appearing in Olarte's papers was Royal Dream. Hence, when Olarte was repatriated and later filed a Complaint, she lodged it against Nahas and PETRA/ Royal Dream and summons was served upon them at Room 401, Gochangco Building, T.M., Kalaw, Ermita, Manila.^[29] Besides, to concede to this claim of Nahas would in effect allow her, PETRA and Royal Dream to hide behind the cloak of corporate fiction in order to evade the rightful claims of Olarte. It bears emphasizing that "the statutorily granted privilege of a corporate veil may be used only for legitimate purposes."^[30] "[T]he corporate vehicle cannot be used as a shield to protect fraud or justify wrong,"^[31] which clearly in this case is what Nahas, PETRA and Royal Dream are attempting to achieve but which the Court cannot allow.

The propriety of the grant of moral and exemplary damages in favor of Olarte is being raised for the first time with this Court.

Notably, Nahas did not question before the NLRC and the CA the Labor Arbiter's grant of moral and exemplary damages in favor of Olarte; hence, the Court need not belabor upon the same. "[P]oints of law, theories, issues, and arguments not adequately brought to the attention of the lower court (or in this case, the appropriate quasi-judicial administrative body) need not be considered by the reviewing court as they cannot be raised for the first time on appeal x x x because this would be offensive to the basic rules of fair play, justice and due process."^[32]

As a final note, it is worth stating that recruitment agencies, as part of their bounden duty to protect the welfare of the Filipino workers sent abroad from whom they take their profit,^[33] should in conscience not add to the misery of maltreated and abused Filipino workers by denying them the reparation to which they are entitled. Instead, they must "faithfully comply with their government prescribed responsibilities"^[34] and be the first to ensure the welfare of the very people upon whose patronage their industry thrives.^[35]

WHEREFORE, the Petition is **DENIED**. The assailed Decision dated April 29, 2005 and Resolution dated July 8, 2005 of the Court of Appeals in CA G.R. SP No. 79028 are **AFFIRMED**.

SO ORDERED.

Carpio, (Chairperson), Velasco, Jr., Brion, and, Perez, JJ., concur.*

* Per raffle dated April 29, 2013.

^[1] *Depositaria v. Hervias*, 206 Phil. 651, 653 (1983).

[2] CA *rollo*, pp. 240-246; penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Rebecca De Guia-Salvador and Estela M. Perlas-Bemabe (now a Member of this Court).

[3] *Id.* at 110-115; penned by Commissioner Victoriano R. Calaycay and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan.

[4] *Id.* at 127-128.

[5] *Id.* at 85-90; penned by Labor Arbiter Daisy G. Cauton-Barcelona.

[6] *Id.* at p. 51-53.

[8] See Olarte's Position Paper, *id.* at 36-50 and Reply to Respondent's Position Paper, *id.* at 66-71.

[9] *Id.* at 28-31.

[10] *Id.* at 32.

[11] *Id.* at 85-90.

[12] *Id.* at 90.

[7] *Id.* at 21.

[13] *Id.* at 104-109.

[14] *Id.* at 110-115.

[15] *Id.* at 114-115. Underlining in the original.

[16] *Id.* at 116-126.

[17] *Id.* at 127-128.

[18] *Id.* at 240-246.

[19] *Id.* at 243-245.

[20] *Id.* at 248-255.

[21] *Id.* at 272-273.

- [22] *Vigilla v. Philippine College of Criminology, Inc.*, G.R. No. 200094, June 10, 2013.
- [23] *Letran Calamba Faculty and Employees Association v. National Labor Relations Commission*, 567 Phil. 26, 38 (2008).
- [24] *Aujero v. Philippine Communications Satellite Corporation*, G.R. No. 193484, January 18, 2012, 663 SCRA 467, 485.
- [25] CA rollo, p. 89.
- [26] *Id.* at 55.
- [27] *Morales v. Skills International Co. and/or Maher Daas*, 531 Phil. 579, 590 (2006).
- [28] *Depositario v. Hervias*, *supra* note 1.
- [29] CA rollo, p. 21.
- [30] *Carlos v. Court of Appeals*, 558 Phil. 209, 225 (2007).
- [31] *Sta. Monica Industrial and Development Corp. v. The Department of Agrarian Reform Regional Director for Region III*, 578 Phil. 91, 104 (2008).
- [32] *Victory Liner, Inc. v. Race*, 593 Phil. 606, 615-616 (2008).
- [33] *Datuman v. First Cosmopolitan Manpower and Promotion Services, Inc.*, 591 Phil. 662, 677-678 (2008).
- [34] *Asia World Recruitment Inc. v. National Labor Relations Commission*, 371 Phil. 745,759 (1999).
- [35] *Datuman v. First Cosmopolitan Manpower and Promotion Services, Inc.*, *supra*.



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