Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

MARSMAN & COMPANY, INC.,
Petitioner,

- *versus* -

RODIL C. STA. RITA,
Respondent.

G.R. No. 194765

Present:

SERENO,* *CJ.*,
LEONARDO-DE CASTRO,**
Acting Chairperson,
DEL CASTILLO,
JARDELEZA, and
TIJAM, *JJ.*

Promulgated:
APR 23 2018

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DECISION

LEONARDO-DE CASTRO, *J.*:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by Marsman & Company, Inc. (Marsman), now Metro Alliance Holdings & Equities Corporation, seeking the annulment and reversal of the Decision[1] dated June 25, 2010 and the Resolution[2] dated December 9, 2010 of the Court of Appeals in CA-G.R. SP No. 106516. The appellate court's issuances reversed the Decision[3] dated July 31, 2008 of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. 30-01-00362-00 (NLRC CA No. 032892-02) dismissing respondent Rodil C. Sta. Rita's (Sta. Rita's) complaint and the Resolution[4] denying his motion for reconsideration. The Court of Appeals instead found Marsman guilty of illegal dismissal and ordered the company to pay for backwages, separation pay, moral damages, exemplary damages and attorney's fees.

Marsman, a domestic corporation, was formerly engaged in the business of distribution and sale of pharmaceutical and consumer products

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* On leave.

** Per Special Order No. 2540 dated February 28, 2018.

1 *Rollo*, pp. 29-49; penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Josefina Guevara-Salonga and Franchito N. Diamante concurring.

2 Id. at 51-52.

3 CA *rollo*, pp. 96-103; penned by Presiding Commissioner Gerardo C. Nograles with Commissioners Perlita B. Velasco and Romeo L. Go concurring.

4 Id. at 114-115.

for different manufacturers within the country.[5] Marsman purchased Metro Drug Distribution, Inc. (Metro Drug), now Consumer Products Distribution Services, Inc. (CPDSI), which later became its business successor-in-interest. The business transition from Marsman to CPDSI generated confusion as to the actual employer of Sta. Rita at the time of his dismissal.

Marsman temporarily hired Sta. Rita on November 16, 1993 as a warehouse helper with a contract that was set to expire on April 16, 1994, and paid him a monthly wage of ₱2,577.00. After the contract expired, Marsman rehired Sta. Rita as a warehouseman and placed him on probationary status on April 18, 1994 with a monthly salary of ₱3,166.00.[6] Marsman then confirmed Sta. Rita's status as a regular employee on September 18, 1994 and adjusted his monthly wage to ₱3,796.00. Later, Sta. Rita joined Marsman Employees Union (MEU), the recognized sole and exclusive bargaining representative of Marsman's employees.[7]

Marsman administered Sta. Rita's warehouse assignments. Initially, Marsman assigned Sta. Rita to work in its GMA warehouse. Marsman then transferred Sta. Rita to Warehouses C and E of Kraft General Foods, Inc. on September 5, 1995. Thereafter, Marsman reassigned Sta. Rita to Marsman Consumer Product Division Warehouse D in ACSIE, Parañaque.[8]

Sometime in July 1995, Marsman purchased Metro Drug, a company that was also engaged in the distribution and sale of pharmaceutical and consumer products, from Metro Pacific, Inc. The similarity in Marsman's and Metro Drug's business led to the integration of their employees which was formalized in a Memorandum of Agreement,[9] dated June 1996, which provides:

> MARSMAN & COMPANY, INC.
> City of Makati
>
> MEMORANDUM OF AGREEMENT
>
> MARSMAN AND CO., INC. hereinafter referred to as the MANAGEMENT, represented by MR. JOVEN D. REYES, Group President and Chief Executive Officer and the MARSMAN EMPLOYEES UNION-PSMM/DFA as the Union, represented hereinafter by MR. BONIFACIO M. PANALIGAN, PSMM President,
>
> WITNESSETH, THAT:
>
> WHEREAS, Marsman Employees Union–PSMM/DFA is the recognized sole and exclusive bargaining representative of Marsman & Co., Inc. regular employees in the rank and file and non-managerial

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5 *Rollo*, p. 5.
6 CA *rollo*, pp. 15-16.
7 Records, p. 2.
8 *Rollo*, p. 6.
9 Id. at 55-56.

category except those excluded in Article I, Section 2 of their existing CBA signed last June 1995;

WHEREAS, Marsman & Co. Inc. bought Metro Drug Distribution, Inc. from Metro Pacific Inc. last July, 1995;

WHEREAS, the Management of Marsman & Co., Inc. decided to limit Marsman & Co. Inc.'s, functions to those of a holding company and run Metro Drug Distribution, Inc. as the main operating company;

WHEREAS, in view of this, Management decided to integrate the employees of Marsman & Co. Inc. and Metro Drug Distribution, Inc. effective July 1, 1996 under the Metro Drug legal entity;

THEREFORE, Management and Marsman Employees Union-PSMM/DFA agree:

1. That, the Union acknowledges Management's decision to transfer all employees of Marsman, including members of MEU-PSMM/DFA, to Metro Drug Distribution, Inc.

2. That, the Management recognizes the Marsman Employees Union-PSMM/DFA as the exclusive bargaining representative of all the rank and file employees transferred from Marsman & Co. Inc. to Metro Drug Distribution, Inc. and the other employees who may join the Union later.

3. That, the name of Marsman Employees Union-PSMM/DFA is retained.

4. That, the tenure or service years of all employees transferred shall be recognized and carried over and will be included in the computation/consideration of their retirement and other benefits.

5. That, the provisions of the existing Collective Bargaining Agreement signed last June 1995 and the Memorandum of Agreement signed also last June 1995 will be respected, honored and continue to be implemented until expiry or until superseded as per item 8 below.

6. That, there will be no diminution of present salaries and benefits being enjoyed even after the transfer.

7. That, upon transfer of MCI employees to Metro Drug Distribution, Inc. all employees covered by the CBA or otherwise shall enjoy the same terms and conditions of employment prior to transfer and shall continue to enjoy the same including company practice until a new CBA is concluded.

8. That, all of the above rights and obligations of the parties pertaining to the recognition of the union as exclusive bargaining representative, the effectivity, coverage and validity of the CBA and all other issues relative to the representation of the former Marsman employees are subject to and be superseded by the result of a Certification Election between Marsman Employees Union-PSMM/DFA and Metro Drug Corp. Employees Association-FFW in 1996 or at a date to be agreed

upon by MEU and MDCEA as coordinated by the DOLE, and by any agreement that may be entered into by management and the winner in said certification election.

9. That, upon transfer, the Management agrees to address all pending/unresolved grievances and issues lodged by Marsman Employees Union-PSMM/DFA.

10. That, also upon transfer, the Management agrees to continue negotiation of Truckers and Forwarders issue as stipulated in the MOA signed last June, 1995.

11. That, Management and Union may continue to negotiate/discuss other concerns/issues with regard to the transfer and integration.

IN WITNESS WHEREOF, the parties have caused this document to be executed by their authorized representatives this _____ day of June, 1996 at Makati City. [Emphases supplied.]

MARSMAN & COMPANY, INC.
(signed)
JOVEN D. REYES
President & Chief Exec. Officer

MARSMAN EMPLOYEES UNION-PSSM/DFA
(signed)
BONIFACIO M. PANALIGAN
President

Witnessed by:

(signed)
LUISITO N. REYES
Vice-President
Finance & Administration

(signed)
JOSE MILO M. GILLESANIA
1st Vice-President
MEU-PSMM/DFA

Attested by:
(signed)
ABNER M. PADILLA
Conciliator-Mediator
NCMB, DOLE

Concomitant to the integration of employees is the transfer of all office, sales and warehouse personnel of Marsman to Metro Drug and the latter's assumption of obligation with regard to the affected employees' labor contracts and Collective Bargaining Agreement. The integration and transfer of employees ensued out of the transitions of Marsman and CPDSI into, respectively, a holding company and an operating company. Thereafter, on November 7, 1997, Metro Drug amended its Articles of Incorporation by changing its name to "Consumer Products Distribution Services, Inc." (CPDSI) which was approved by the Securities and Exchange Commission.[10]

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[10] Id. at 54.

In the meantime, on an unspecified date, CPDSI contracted its logistic services to EAC Distributors (EAC). CPDSI and EAC agreed that CPDSI would provide warehousemen to EAC's tobacco business which operated in EAC-Libis Warehouse. A letter issued by Marsman confirmed Sta. Rita's appointment as one of the warehousemen for EAC-Libis Warehouse, effective October 13, 1997, which also stated that the assignment was a "transfer that is part of our cross-training program."[11]

Parenthetically, EAC's use of the EAC-Libis Warehouse was dependent upon the lease contract between EAC and Valiant Distribution (Valiant), owner of the EAC-Libis Warehouse. Hence, EAC's operations were affected when Valiant decided to terminate their contract of lease on January 31, 2000. In response to the cessation of the contract of lease, EAC transferred their stocks into their own warehouse and decided to operate the business by themselves, thereby ending their logistic service agreement with CPDSI.[12]

This sequence of events left CPDSI with no other option but to terminate the employment of those assigned to EAC-Libis Warehouse, including Sta. Rita. A letter[13] dated January 14, 2000, issued by Michael Leo T. Luna, CPDSI's Vice-President and General Manager, notified Sta. Rita that his services would be terminated on February 28, 2000 due to redundancy. CPDSI rationalised that they could no longer accommodate Sta. Rita to another work or position. CPDSI however guaranteed Sta. Rita's separation pay and other employment benefits. The letter is reproduced in full as follows:

a MARSMAN company
CONSUMER PRODUCTS DISTRIBUTION SERVICES, INC.
January 14, 2000

MR. RODIL STA. RITA
Warehouse Supervisor
EAC Libis Operation
Libis, Quezon City

Dear Rodil,

As we have earlier informed you, EAC Distributors, Inc. has advised us that their Lessor, Valiant Distribution has terminated their lease contract effective January 31, 2000.

Accordingly, we were informed by EAC Distributors, Inc., that they will no longer need our services effective on the same date. As a result thereof, your position as warehouseman will become redundant thereafter.

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11 CA *rollo*, p. 20.
12 *Rollo*, p. 57.
13 Id. at 58.

We have exerted efforts to find other work for you to do or other positions where you could be accommodated. Unfortunately, our efforts proved futile.

In view thereof, we regret to inform you that your services will be terminated effective upon the close of business hours on the 28th of February, 2000.

You will be paid separation pay and other employment benefits in accordance with the company policies and the law, the details of which shall be discussed with you by your immediate superior.

In order to cushion the impact of your separation from the service and to give you ample time to look for other employment elsewhere, you need not report for work from the 18th of January up the end of February, 2000, although you will remain in the payroll of the company and will be paid the salary corresponding to this period.

We thank you for your contribution to this organization and we wish you well in your future endeavors.

Sincerely,

(signed)
MICHAEL LEO T. LUNA
Vice President & General Manager[14]

CPDSI thereafter reported the matter of redundancy to the Department of Labor and Employment in a letter[15] dated January 17, 2000, conveying therein Sta. Rita's impending termination. The letter stated:

The Regional Director
Department of Labor & Employment
National Capital Region
Palacio De Gobernador
Intramuros, Manila

Dear Sir:

In compliance with the provisions of Article 283 of the Labor Code, as amended, Consumer Products Distribution Services, Inc. (CPDSI) "Company" hereby gives notice that our company is implementing a comprehensive streamlining program affecting levels of employment with the objective of further reducing operating expenses and to cope with the current economic difficulties. The employment of the employees occupying such positions and whose names are enumerated in the attachment list of (Annex "A") will be terminated.

In accordance with law, the above enumerated employees will be paid their separation pay in due course. Individual notices of the termination of employment of said employees have already been served upon them.

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14 Id.
15 Records, pp. 67-69.

Very truly yours,

CONSUMER PRODUCTS DISTRIBUTION SERVICES, INC.

BY:
(signed)
MICHAEL LEO T. LUNA
Vice President and General Manager

x x x x

LIST OF TERMINATED WORKERS

Names of Workers Terminated	x x x	Occupation/Skills	Salary
RION L. V. RUZGAL	x x x	WHSE SUPERVISOR	₱16,000.00
GLENN V. VISTO	x x x	WHSE SUPERVISOR	₱15,600.00
CONRADO C. TIUSINGCO, JR.	x x x	SR. WHSEMAN	₱7,200.00[16]
LOLITA D. JAMERO	x x x	WHSE SUPERVISOR	₱14,500.00
ARTURO G. CASTRO, JR.	x x x	WHSEMAN	₱7,616.00
RODIL C. STA. RITA	x x x	WHSEMAN	₱7,746.00
EMILIO MADRIAGA	x x x	WHSEMAN	₱7,616.00

Aggrieved, Sta. Rita filed a complaint in the NLRC, National Capital Region-Quezon City against Marsman on January 25, 2000 for illegal dismissal with damages in the form of moral, exemplary, and actual damages and attorney's fees. Sta. Rita alleged that his dismissal was without just or authorized cause and without compliance with procedural due process. His affidavit-complaint reads:

> RODIL C. STA RITA, of legal age, single, Filipino citizen, with residence and postal address at 1128 R. Papa Street, Bo. Obrero, Tondo, Manila being under oath hereby deposes and says:
>
> 1. He was employed with Marsman on November 16, 1993, with offices and address at Manalac Avenue, Taguig, Metro Manila, as warehouseman with a basic salary ₱3,790.00 more (*sic*);
>
> 2. As a regular employee, his salary was increased by ₱1,600.00 in 1995; in 1996 was increased by ₱1,300.00; in 1997 was increased by ₱1,050.00, making a total of ₱7,740.00 up to his separation from employment on January 18, 2000 x x x;
>
> 3. He cannot fathom to know why he was terminated from employment, save the better (*sic*) of Mr. Michael Leo T. Luna, Vice President and General Manager of Marsman Company (Consumer Products Distribution Services, Inc.) on January 14, 2000;
>
> 4. His termination from employment is in diametric opposition to Art VI. Sec. 3(d) of the CBA and to Art. 282 of the Labor Code, as amended, i.e., he was no[t] given the 30-day period prior to his termination, making his dismissal as illegal per se;

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16 Id.

> 5. In the absence of any derogatory record of Mr. Rodil Sta. Rita for six (6) years, he is entitled to moral and exemplary damages, in addition to back wages and separation pay, short of reinstatement and without loss of seniority rights.[17]

Marsman filed a Motion to Dismiss[18] on March 16, 2000 on the premise that the Labor Arbiter had no jurisdiction over the complaint for illegal dismissal because Marsman is not Sta. Rita's employer. Marsman averred that the Memorandum of Agreement effectively transferred Sta. Rita's employment from Marsman and Company, Inc. to CPDSI. Said transfer was further verified by Sta. Rita's: 1) continued work in CPDSI's premises; 2) adherence to CPDSI's rules and regulations; and 3) receipt of salaries from CPDSI. Moreover, Marsman asserted that CPDSI terminated Sta. Rita.

Labor Arbiter Gaudencio P. Demaisip, Jr. (Demaisip) rendered his Decision[19] on April 10, 2002 finding Marsman guilty of illegal dismissal, thus:

> This Office finds in favor of the complainant.
>
> Article 167 of the Labor Code defines employer, to wit:
>
> > "Employer means any person, natural or juridical, employing the services of the employee."
>
> Likewise, Article 212 of the Labor Code defines employer in this wise:
>
> > "Employer includes any person acting in the interest of an employer directly or indirectly."
>
> Consumer did not perform any act, thru its responsible officer, to show that it had employed the complainant. Nevertheless, Marsman acted in the interest of Consumer because "sometime in 1996, for purposes of efficiency and economy Marsman integrated its distribution business with the business operations of Consumer Products Distribution Services, Inc. xxx" and "in line with the integration of the distribution businesses of Marsman and CPDSI, the employment of all Marsman office, sales, and warehouse personnel was transferred to CPDSI. x x x"
>
> Thusly, Marsman qualifies as the employer of the complainant under the aforequoted provisions of the Labor Code.
>
> The MOA was concluded between Marsman and Co. Inc. and Marsman Employees Union-PSMM/DFA. A perusal of its contents show that matters, concerning terms and conditions of employment, were contracted and concluded.

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17 Id. at 3.
18 Id. at 14-19.
19 Records, pp. 113-119.

> On the contrary, the MOA is a piece of evidence that Marsman is the employer of complainant because it is solely the employer who can negotiate and conclude the terms and conditions of employment of the workers.
>
> Ironically, the MOA does not establish the contention that Consumer is the employer of the complainant.
>
> Rule XVI of Department Order No. 9, Series of 1997, which took effect on June 21, 1997, requires among others, the ratification by the majority of all workers in the Collective Bargaining Unit of the Agreement. The non-compliance of the requirement, under said Department Order, renders the MOA ineffective.
>
> Further, it may be concluded that the Consumer is an agent of respondent Marsman, because the former does "[t]he employment of all Marsman office sales, and warehouse personnel x x x."
>
> Nevertheless, the employer of the complainant is Marsman and Company, Inc.
>
> In illegal dismissal, the burden, to establish the just cause of termination, rest on the employer. The records of this case [are] devoid of the existence of such cause. Indeed, the respondent Marsman and Company, Inc. failed to show the cause of complainant's dismissal, warranting the twin remedies of reinstatement and backwages. However, insofar as reinstatement is concerned, this remedy appears to be impractical because, as gleaned from the position paper of [Sta. Rita], there is uncertainty in the availability of assignment for the complainant. Instead, the payment of separation pay equivalent to one half month for every year or a fraction of at least six (6) months be considered as one year, would be equitable.
>
> The rest of the claims are dismissed for lack of merit.
>
> WHEREFORE, premises considered, the complainant is herein declared to have been illegally dismissed. Marsman and Company, Inc. is directed to pay the complainant backwages and separation pay on the total amount of ₱152,757.55.[20]

Marsman appealed the foregoing Decision arguing that the Labor Arbiter had no jurisdiction over the complaint because an employer-employee relationship did not exist between the party-litigants at the time of Sta. Rita's termination. Furthermore, Marsman stated that the ratification requirement under Rule XVI of Department Order No. 9, Series of 1997[21]

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20 Id. at 117-119.

21 RULE XVI
REGISTRATION OF COLLECTIVE BARGAINING AGREEMENTS
Section 1. Registration of collective bargaining agreement. - The parties to a collective bargaining agreement shall submit to the appropriate Regional Office two (2) duly signed copies thereof within thirty (30) calendar days from execution. Such copies of the agreement shall be accompanied with verified proof of posting in two conspicuous places in the work place and of ratification by the majority of all the workers in the bargaining unit.
Such proof shall consist of copies of the following documents certified under oath by the union secretary and attested to by the union president:

applied only to Collective Bargaining Agreements, and the Memorandum of Agreement was certainly not a replacement for the Collective Bargaining Agreement which Marsman and MEU entered into in the immediately succeeding year prior to the ratification of the Memorandum of Agreement. Marsman also maintained that it had a personality that was separate and distinct from CPDSI thus it may not be made liable to answer for acts or liabilities of CPDSI and vice-versa. Finally, Marsman claimed that Sta. Rita was validly declared redundant when CPDSI's logistics agreement with EAC was not renewed.[22]

Sta. Rita filed his own appeal, contesting the failure of the Labor Arbiter to award him moral and exemplary damages, and attorney's fees.

The NLRC in its Decision dated July 31, 2008, reversed Labor Arbiter Demaisip's Decision and found that there was no employer-employee relationship between Marsman and Sta. Rita. The NLRC held:

> Applying the four-fold test in determining the existence of employer-employee relationship fails to convince Us that complainant is respondent Marsman's employee.
>
> On selection and engagement, by complainant's transfer to CPDSI, he had become the employee of CPDSI. It should be emphasized that respondent Marsman and CPDSI are corporate entities which are separate and distinct from one another.
>
> On payment of wages, it was CPDSI which paid complainant's salaries and benefits. Complainant never claimed that it was still respondent Marsman which paid his salaries.
>
> On the power of dismissal, after EAC's lease contract expired deciding to transfer its stock to its own warehouse and handle its warehousing operations, complainant was left without any work. CPDSI decided to terminate his services by issuing him a termination notice on January 14, 2000.
>
> On the employer's power to control the employee with respect to the means and methods by which his work is to be accomplished, complainant was under the control and supervision of CPDSI concomitant to the logistic services which respondent Marsman had integrated to that of CPDSI. CPDSI saw to it that its obligation to provide logistic services to its client EAC is carried out with complainant working as warehouseman in the warehouse rented by EAC. The power of control is the most decisive factor in determining the existence of an employer-employee relationship. x x x.
>
> Having determined that employer-employee relationship does not exist between complainant and respondent Marsman, complainant has no

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(a) Statement that the collective bargaining agreement was posted in at least two conspicuous places in the establishment at least five (5) days before its ratification; and

(b) Statement that the collective bargaining agreement was ratified by the majority of the employees in the bargaining unit.

22 Records, p. 149.

> cause of action for illegal dismissal against the latter. There is no necessity to resolve the [other] issues.
>
> **WHEREFORE**, premises considered, the Decision of the Labor Arbiter is VACATED and SET ASIDE. A NEW decision is entered dismissing the complaint for lack of employer-employee relationship.[23]

In a Resolution dated November 11, 2008, the NLRC denied Sta. Rita's motion for reconsideration because his motion "raised no new matters of substance which would warrant reconsideration of the Decision of [the] Commission."[24]

Sta. Rita filed before the Court of Appeals a Petition for *Certiorari*[25] imputing grave abuse of discretion on the part of the NLRC for 1) finding a lack of employer-employee relationship between the party-litigants; and 2) not awarding backwages, separation pay, damages and attorney's fees.

The Court of Appeals promulgated its Decision on June 25, 2010, reversing the NLRC Decision. The Court of Appeals held that Marsman was Sta. Rita's employer because Sta. Rita was allegedly not part of the integration of employees between Marsman and CPDSI. The Court gave credence to Sta. Rita's contention that he purposely refused to sign the Memorandum of Agreement because such indicated his willingness to be transferred to CPDSI. In addition, the appellate court considered Sta. Rita's assignment to the EAC-Libis Warehouse as part of Marsman's cross-training program, concluding that only Sta. Rita's work assignment was transferred and not his employment.

The appellate court also found no merit in the NLRC's contention that CPDSI paid Sta. Rita's salaries and that it exercised control over the means and methods by which Sta. Rita performed his tasks. On the contrary, the Court of Appeals observed that Sta. Rita filed his applications for leave of absence with Marsman. Finally, the Court of Appeals adjudged that CPDSI, on the assumption that it had the authority to dismiss Sta. Rita, did not comply with the requirements for the valid implementation of the redundancy program.

The dispositive portion of the Court of Appeals Decision reads:

> ***WHEREFORE***, the instant petition for *certiorari* is ***GRANTED***. The assailed Decision and Resolution of the public respondent National Labor Relations Commission are ***ANNULLED*** and ***SET ASIDE***. Judgment is rendered declaring petitioner Rodil C. [Sta. Rita's] dismissal from work as illegal and accordingly, private respondent Marsman and Company, Inc. is ordered to pay said [respondent] the following:

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23 CA *rollo*, pp. 102-103.

24 Id. at 114.

25 Id. at 6-14.

1. backwages computed from 18 January 2000 up to the finality of this Decision;

2. separation pay in lieu of reinstatement computed at the rate of one (1) month pay for every year of service from 16 November 1993 up to the finality of this Decision;

3. the amount of ₱15,000.00 as moral damages;

4. the amount of ₱15,000.00 as exemplary damages; and

5. the amount equivalent to 10% of his total monetary award, as and for attorney's fees.

Let this case be REMANDED to the Labor Arbiter for the purpose of computing, with reasonable dispatch, petitioner's monetary awards as above discussed.[26]

Hence, Marsman lodged the petition before us raising the lone issue:

> WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN DECIDING A QUESTION OF SUBSTANCE IN A MANNER NOT IN ACCORD WITH THE LAW, APPLICABLE DECISIONS OF THIS HONORABLE COURT AND EVIDENCE ON RECORD WHEN IT ANNULLED AND SET ASIDE THE NLRC'S DECISION AND RESOLUTION EFFECTIVELY RULING THAT [STA. RITA] WAS ILLEGALLY DISMISSED FROM SERVICE WHEN THE LATTER COULD NOT HAVE BEEN DISMISSED AT ALL ON ACCOUNT OF THE ABSENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN SAID [STA. RITA] AND THE COMPANY[27]

Simply stated, the issue to be resolved is whether or not an employer-employee relationship existed between Marsman and Sta. Rita at the time of Sta. Rita's dismissal.

This petition is impressed with merit.

The issue of whether or not an employer-employee relationship exists in a given case is essentially a question of fact. As a rule, this Court is not a trier of facts and this applies with greater force in labor cases.[28] This petition however falls under the exception because of variance in the factual findings of the Labor Arbiter, the NLRC and the Court of Appeals. Indeed, on occasion, the Court is constrained to wade into factual matters when there is insufficient or insubstantial evidence on record to support those factual findings; or when too much is concluded, inferred or deduced from the bare or incomplete facts appearing on record.[29] The Court in the case of *South Cotabato Communications Corporation v. Sto. Tomas*[30] held that:

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26 *Rollo*, pp. 48-49.
27 Id. at 11.
28 *South East International Rattan, Inc. v. Coming*, 729 Phil. 298, 305 (2014).
29 *Aliviado v. Procter and Gamble Phil., Inc.*, 628 Phil. 469, 480-481 (2010).
30 G.R. No. 217575, June 15, 2016, 793 SCRA 668, 679.

> The findings of fact should, however, be supported by substantial evidence from which the said tribunals can make their own independent evaluation of the facts. In labor cases, as in other administrative and quasi-judicial proceedings, the quantum of proof necessary is substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. Although no particular form of evidence is required to prove the existence of an employer-employee relationship, and any competent and relevant evidence to prove the relationship may be admitted, a finding that the relationship exists must nonetheless rest on substantial evidence. (Citations omitted)

Settled is the tenet that allegations in the complaint must be duly proven by competent evidence and the burden of proof is on the party making the allegation.[31] In an illegal dismissal case, the *onus probandi* rests on the employer to prove that its dismissal of an employee was for a valid cause. However, before a case for illegal dismissal can prosper, an employer-employee relationship must first be established.[32] In this instance, it was incumbent upon Sta. Rita as the complainant to prove the employer-employee relationship by substantial evidence. Unfortunately, Sta. Rita failed to discharge the burden to prove his allegations.

To reiterate the facts, undisputed and relevant to the disposition of this case, Marsman hired Sta. Rita as a warehouseman when it was still engaged in the business of distribution and sale of pharmaceutical and consumer products. Marsman paid Sta. Rita's wages and controlled his warehouse assignments, acts which can only be attributed to a *bona fide* employer. Marsman thereafter purchased Metro Drug, now CPDSI, which at that time, was engaged in a similar business. Marsman then entered into a Memorandum of Agreement with MEU, its bargaining representative, integrating its employees with CPDSI and transferring its employees, their respective employment contracts and the attendant employment obligation to CPDSI. The planned integration was then carried out sometime in 1996, as admitted by Sta. Rita in his pleading.[33]

It is imperative to point out that the integration and transfer was a necessary consequence of the business transition or corporate reorganization that Marsman and CPDSI had undertaken, which had the characteristics of a corporate spin-off. To recall, a proviso in the Memorandum of Agreement limited Marsman's function into that of a holding company and transformed CPDSI as its main operating company. In business parlance, a corporate spin-off occurs when a department, division or portions of the corporate business enterprise is sold-off or assigned to a new corporation that will arise by the process which may constitute it into a subsidiary of the original corporation.[34]

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31 *Sarona v. National Labor Relations Commission*, 679 Phil. 394, 408 (2012).
32 *Reyes v. Glaucoma Research Foundation, Inc.*, 760 Phil. 779, 789 (2015).
33 *Rollo*, p. 40.
34 Villanueva, *Philippine Corporate Law* (2010), p. 705.

The spin-off and the attendant transfer of employees are legitimate business interests of Marsman. The transfer of employees through the Memorandum of Agreement was proper and did not violate any existing law or jurisprudence.

Jurisprudence has long recognized what are termed as "management prerogatives." In *SCA Hygiene Products Corporation Employees Association-FFW v. SCA Hygiene Products Corporation,*[35] we held that:

> The hiring, firing, transfer, demotion, and promotion of employees have been traditionally identified as a management prerogative subject to limitations found in the law, a collective bargaining agreement, or in general principles of fair play and justice. This is a function associated with the employer's inherent right to control and manage effectively its enterprise. Even as the law is solicitous of the welfare of employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. The free will of management to conduct its own business affairs to achieve its purpose cannot be denied. x x x.

Tinio v. Court of Appeals[36] also acknowledged management's prerogative to transfer its employees within the same business establishment, to wit:

> This Court has consistently recognized and upheld the prerogative of management to transfer an employee from one office to another within the business establishment, provided there is no demotion in rank or a diminution of salary, benefits and other privileges. As a rule, the Court will not interfere with an employer's prerogative to regulate all aspects of employment which include among others, work assignment, working methods and place and manner of work. Labor laws discourage interference with an employer's judgment in the conduct of his business.
>
> x x x x
>
> But, like other rights, there are limits thereto. The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which the right is exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. The employer must be able to show that the transfer is not unreasonable, inconvenient, or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges, and other benefits. x x x. (Citations omitted.)

Analogously, the Court has upheld the transfer/absorption of employees from one company to another, as successor employer, as long as the transferor was not in bad faith[37] and the employees absorbed by

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35 641 Phil. 534, 542 (2010).

36 551 Phil. 972, 981-982 (2007).

37 *See* for example *Filipinas Port Services, Inc. Damasticor v. National Labor Relations Commission,* 257 Phil. 1059 (1989).

a successor-employer enjoy the continuity of their employment status and their rights and privileges with their former employer.[38]

Sta. Rita's contention that the absence of his signature on the Memorandum of Agreement meant that his employment remained with Marsman is merely an allegation that is neither proof nor evidence. It cannot prevail over Marsman's evident intention to transfer its employees.

To assert that Marsman remained as Sta. Rita's employer even after the corporate spin-off disregards the separate personality of Marsman and CPDSI. It is a fundamental principle of law that a corporation has a personality that is separate and distinct from that composing it as well as from that of any other legal entity to which it may be related.[39] Other than Sta. Rita's bare allegation that Michael Leo T. Luna was Marsman's and CPDSI's Vice-President and General Manager, Sta. Rita failed to support his claim that both companies were managed and operated by the same persons, or that Marsman still had complete control over CPDSI's operations. Moreover, the existence of interlocking directors, corporate officers and shareholders without more, is not enough justification to pierce the veil of corporate fiction in the absence of fraud or other public policy considerations.[40]

Verily, the doctrine of piercing the corporate veil also finds no application in this case because bad faith cannot be imputed to Marsman.[41] On the contrary, the Memorandum of Agreement guaranteed the tenure of the employees, the honoring of the Collective Bargaining Agreement signed in June 1995, the preservation of salaries and benefits, and the enjoyment of the same terms and conditions of employment by the affected employees.

Sta. Rita also failed to satisfy the four-fold test which determines the existence of an employer-employee relationship. The elements of the four-fold test are: 1) the selection and engagement of the employees; 2) the payment of wages; 3) the power of dismissal; and 4) the power to control the employee's conduct.[42] There is no hard and fast rule designed to establish the aforesaid elements. Any competent and relevant evidence to prove the relationship may be admitted. Identification cards, cash vouchers, social security registration, appointment letters or employment contracts, payrolls, organization charts, and personnel lists, serve as evidence of employee status.[43]

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38 *See* for example *International Container Terminal Services, Inc. v. National Labor Relations Commission,* 326 Phil. 134 (1996).

39 *"G" Holdings, Inc. v. National Mines and Allied Workers Union Local 103 (NAMAWU)*, 619 Phil. 69, 109 (2009).

40 *Zaragoza v. Tan*, G.R. No. 225544, December 4, 2017.

41 *See San Miguel Corp. Employees Union-PTGWO v. Confesor,* 330 Phil. 628, 648 (1996).

42 *Bazar v. Ruizol*, G.R. No. 198782, October 19, 2016.

43 *Meteoro v. Creative Creatures, Inc.*, 610 Phil. 150, 161 (2009).

The Memorandum of Agreement effectively transferred Marsman's employees to CPDSI. However, there was nothing in the agreement to negate CPDSI's power to select its employees and to decide when to engage them. This is in line with Article 1700 of the Civil Code which provides that:

> Art. 1700. The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.

A labor contract merely creates an action *in personam* and does not create any real right which should be respected by third parties.[44] This conclusion draws its force from the right of an employer to select his/her employees and equally, the right of the employee to refuse or voluntarily terminate his/her employment with his/her new employer by resigning or retiring. That CPDSI took Sta. Rita into its employ and assigned him to one of its clients signified the former's acquiescence to the transfer.

Marsman's letter[45] to Sta. Rita dated September 29, 1997 neither assumed nor disturbed CPDSI's power of selection. The letter reads:

> MARSMAN & COMPANY, INC.
>
> TO: MR. RODIL STA. RITA
>
> RE: TRANSFER OF ASSIGNMENT
>
> This is to confirm in writing your appointment as warehouseman for EAC-Libis Warehouse and Mercury Drug effective 13 October 1997. This transfer is part of our cross-training program.
>
> Prior to the effectivity of your appointment, you may be instructed to proceed to EAC-Libis Warehouse for work familiarization and other operational matters related to the job.
>
> You will directly report to Mr. Eusebio Paisaje, warehouse supervisor.
>
> Good luck.
> (signed)
> Irene C. Nagrampa
>
> cc: EDB/QRI
> LRP/Noynoy Paisaje
> HRG-201 file
> file

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44 *Bank of the Philippine Islands v. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank,* 642 Phil. 47, 93 (2010), citing *Sundowner Development Corporation v. Hon.* Drilon, 259 Phil. 481, 485 (1989).

45 CA *rollo*, p. 20.

It would be amiss to read this letter independent of the Memorandum of Agreement because the Memorandum of Agreement clearly reflected Marsman's intention to transfer all employees to CPDSI. When read in isolation, the use of "cross-training program" may be subject to a different interpretation but reading it together with the MOA indicates that the "cross-training program" was in relation to the transition phase that Marsman and CPDSI were then undergoing. It is clear under the terms of the Memorandum of Agreement that Marsman may continue to negotiate and address issues with the Union even after the signing and execution of said agreement in the course of fully implementing the transfer to, and the integration of operations with, CPDSI.

To prove the element on the payment of wages, Sta. Rita submitted forms for leave application, with either Marsman's logo or CPDSI's logo. Significantly, the earlier leave forms bore Marsman's logo but the latest leave application of Sta. Rita already had CPDSI's logo. In any event, the forms for leave application did not sufficiently establish that Marsman paid Sta. Rita's wages. Sta. Rita could have presented pay slips, salary vouchers, payrolls, certificates of withholding tax on compensation income or testimonies of his witnesses.[46] The submission of his Social Security System (SSS) identification card (ID) only proved his membership in the social insurance program. Sta. Rita should have instead presented his SSS records which could have reflected his contributions, and the name and address of his employer.[47] Thus, Sta. Rita fell short in his claim that Marsman still had him in its payroll at the time of his dismissal.

As to the power of dismissal, the letter dated January 14, 2000 clearly indicated that CPDSI, and not Marsman, terminated Sta. Rita's services by reason of redundancy.

Finally, Sta. Rita failed to prove that Marsman had the power of control over his employment at the time of his dismissal. The power of an employer to control the work of the employee is considered the most significant determinant of the existence of an employer-employee relationship.[48] Control in such relationships addresses the details of day to day work like assigning the particular task that has to be done, monitoring the way tasks are done and their results, and determining the time during which the employee must report for work or accomplish his/her assigned task.[49] The Court likewise takes notice of the company IDs attached in Sta. Rita's pleading. The "old" ID bore Marsman's logo while the "new" ID carried Metro Drug's logo. The Court has held that in a business establishment, an identification card is usually provided not only as a security measure but mainly to identify the holder thereof as a *bona fide*

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46 *Lopez v. Bodega City*, 558 Phil. 666, 675 (2007).
47 *Tenazas v. R. Villegas Taxi Transport*, 731 Phil. 217, 230 (2014).
48 *Legend Hotel (Manila) v. Realuyo*, 691 Phil. 226, 236 (2012).
49 *Tesoro v. Metro Manila Retreaders, Inc. (BANDAG)*, 729 Phil. 177, 194 (2014).

employee of the firm that issues it.[50] Thus the "new" ID confirmed that Sta. Rita was an employee of Metro Drug, which, to reiterate, later changed its name to CPDSI.

Having established that an employer-employee relationship did not exist between Marsman and Sta. Rita at the time of his dismissal, Sta. Rita's original complaint must be dismissed for want of jurisdiction on the part of the Labor Arbiter to take cognizance of the case. For this reason, there is no need for the Court to pass upon the other issues raised.

WHEREFORE, premises considered, the petition is **GRANTED.** The Court of Appeals' assailed Decision dated June 25, 2010 and Resolution dated December 9, 2010 in CA-G.R. SP No. 106516 are, accordingly, **REVERSED** and **SET ASIDE**. The NLRC Decision dated July 31, 2008 in NLRC NCR Case No. 30-01-00362-00 (NLRC CA No. 032892-02) is **REINSTATED.**

SO ORDERED.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:

On leave
MARIA LOURDES P. A. SERENO
Chief Justice

MARIANO C. DEL CASTILLO
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

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50 *Domasig v. National Labor Relations Commission*, 330 Phil. 518, 524 (1996).

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.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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.

ANTONIO T. CARPIO
Acting Chief Justice