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Third Division
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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

JULIUS Q. APELANIO, Petitioner,	**G.R. No. 227098**
	Present:
- *versus* –	PERALTA, *J., Chairperson*, LEONEN, GESMUNDO,* REYES, J., JR., and HERNANDO,* *JJ.*
ARCANYS, INC. and CEO ALAN DEBONNEVILLE, Respondents.	**Promulgated:** November 14, 2018

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DECISION

PERALTA, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking the reversal of the Decision[2] dated November 19, 2015 and the Resolution[3] dated July 22, 2016 of the Court of Appeals in CA-G.R. SP No. 08340, reversing the Decision[4] dated August 30, 2013 and the Resolution[5] dated December 19, 2013 of the National Labor Relations Commission (*NLRC*) in NLRC Case No. VAC-06-000360-2013 (RAB Case No. VII-11-1700-12) which set aside the Decision[6] dated April 30, 2013 of the Labor Arbiter.

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* On wellness leave.

1 *Rollo,* pp. 8-21.

2 *Id.* at 25-31. Penned by Associate Justice Edward B. Contreras, and concurred in by Associate Justices Edgardo L. Delos Santos and Germano Francisco D. Legaspi.

3 *Id.* at 22-23.

4 *Id.* at 96-105.

5 *Id.* at 109-110.

6 *Id.* at 72-82.

The facts are as follows:

On April 10, 2012, petitioner Julius Q. Apelanio was hired by respondents Arcanys, Inc. and Chief Executive Officer (*CEO*) Alan Debonneville as a Usability/Web Design Expert. He was placed on a "probationary status" for a period of six months. During the said period, respondent corporation evaluated his performance in terms of his dependability, efficiency, initiative, cooperation, client responsiveness, judgment, punctuality, quality and quantity of work, professionalism, and attitude towards customers, colleagues, and respondent corporation as a whole. Although petitioner was aware that he was undergoing evaluation, he was allegedly not informed of what the passing grade was or what constituted as "reasonable standards of satisfactory performance."

During his second (2nd) month evaluation on July 3, 2012, petitioner received a rating of 3.06. On his fourth (4th) month evaluation, he received a rating of 2.99. On October 3, 2012, his sixth (6th) month evaluation, he received a rating of 2.77. Respondents then served petitioner a letter[7] informing him that they were not converting his status into a regular employee since his performance fell short of the stringent requirements and standards set by respondent corporation. Petitioner was given his final pay[8] and he signed a Waiver, Release and Quitclaim[9] in favor of respondents.

Petitioner averred that when his probationary contract was terminated, he was immediately offered a retainership agreement lasting from October 10, 2012 until October 24, 2012, which involved a similar scope of work and responsibilities. He was told that he did not meet the "reasonable standards of satisfactory performance," but was nevertheless offered said retainership agreement with identical requirements on a project basis, without security of tenure, with lesser pay, and without any labor standard benefits. Petitioner was confused with the arrangement, but agreed since he had a family to support. He believed that he was still undergoing respondents' evaluation.

On October 26, 2012, after the lapse of the retainership agreement, petitioner was offered another retainership agreement, from October 25, 2012 to November 12, 2012, again with an identical scope of work but at a reduced daily rate of ₱857.14, down from the daily rate of ₱1,257.15 from the initial agreement.

As a result, petitioner became suspicious of the respondent corporation's motives and consulted with a lawyer, who informed him that

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[7] CA *rollo*, p. 84.
[8] *Id.* at 83.
[9] *Id.* at 84.

said practice was illegal. He then refused to sign the second retainership agreement, and questioned why they offered him another retainership agreement if he was deemed unqualified for the position. Petitioner alleged that respondents found him qualified for the position, but opted to hire his services on a per project basis, justifying the lesser pay and the lack of security of tenure and labor standard benefits.

On the other hand, respondents stated that they hired petitioner as a web designer and was made aware that he would be placed on probationary status, and that his failure to meet the stringent requirements and standards set forth would terminate his employment contract.

As a matter of fact, several days before the end of petitioner's probationary contract on October 5, 2012, respondents requested petitioner to sign the termination notice. Petitioner signed the termination notice; and respondents released and paid petitioner his final pay on October 23, 2012. Petitioner also executed a Waiver, Release, and Quitclaim dated November 16, 2012[10] in favor of respondents, indicating therein that he had no further claim whatsoever against the company and that he had received his full pay.

Respondents also alleged that at the time petitioner's probationary employment ended, respondent corporation experienced several hacking incidents that were reported to the police authorities. The hacking incidents caused severe losses and damage to respondents, and the management was determined to go after the perpetrator.

Respondents claimed that petitioner took advantage of their predicament when he personally approached respondent corporation's CEO and represented that he had information about the hacking perpetrator. Petitioner allegedly dangled the information to respondents in exchange for a retainership contract, and respondents were lured in. The first retainership agreement was prepared, but it was for the specific purpose of obtaining from petitioner information about the hacking incidents. Petitioner, however, wanted a bigger salary and an extended duration; hence, a second agreement was prepared. Ultimately, however, it dawned on respondents that petitioner did not actually have information or leads about the hacking and that he just took advantage of their situation.

When respondents stopped transacting with petitioner, he sued them before the Labor Arbiter for unfair labor practice, illegal dismissal, and damages. Respondents vehemently deny that they violated petitioner's right to organize; and that the charge of unfair labor practice is baseless, misleading, and irrelevant.

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10 *Id.*

The Labor Arbiter rendered a Decision[11] dismissing petitioner's illegal dismissal complaint against respondents, the dispositive portion of which reads:

> **WHEREFORE**, above premises considered, this Court hereby dismisses the complaint of **JULIUS APELANIO against respondents ARCANY's INC. and ALLAN DEBONNEVILLE** on charges of illegal dismissal and other money claims, for lack of merit.
>
> SO ORDERED.[12] (Emphasis in the original.)

The Labor Arbiter held that the circumstances surrounding the present case unequivocally show neither bad faith nor deceit on the part of respondents. Petitioner's dismissal was an exercise of an employer's management prerogative to retain only those it deems fit. In addition, petitioner was aware that he failed to qualify when he knowingly signed a quitclaim and waiver in favor of respondents after he received his final pay.[13]

Aggrieved, petitioner appealed the decision before the NLRC, questioning whether or not he was: (a) illegally dismissed; and (b) entitled to his money claims.

On August 30, 2013, the NLRC rendered a Decision,[14] the dispositive portion of which reads as follows:

> **WHEREFORE**, premises considered, the Decision of Labor Arbiter Maria Ada Aniceto-Veloso, dated 30 April 2013, is hereby REVERSED and SET ASIDE. Complainant is a regular employee of respondent ARCANY'S INC. In view of complainant's illegal dismissal, ARCANY's INC. is hereby ordered to pay complainant the total amount of THREE HUNDRED TWENTY-SEVEN THOUSAND THREE HUNDRED SIXTY PESOS & 00/100 (₱327,360.00) representing his backwages and to reinstate complainant to his former position without loss of seniority rights and other privileges within ten (10) days from receipt of this Decision. Individual respondent Allan Debonneville is absolved of any personal civil liability.
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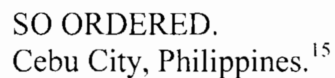
> 
>
> SO ORDERED.
> Cebu City, Philippines.[15]

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11 *Supra* note 6.
12 *Id.* at 82.
13 *Id.* at 81-82.
14 *Supra* note 4.
15 *Id.* at 104-105.

The NLRC rejected respondents' argument that the retainership agreements were mere drafts that did not even contain petitioner's signature. On the contrary, the NLRC agreed with petitioner that it is normal for an employee not to sign his own copy of the agreement. The NLRC likewise held that, due to respondents' failure to deny the authenticity of their Information Technology General Manager (*GM*) Jake Q. Bantug's signature on the retainership agreements, petitioner was indeed rehired by respondent corporation for the period of October 10 to 24, 2012. The NLRC was not convinced that petitioner failed to meet respondents' reasonable standards of satisfactory performance, and that they only wanted to prevent petitioner from acquiring a regular status.

Respondents filed a motion for reconsideration but the NLRC denied it. Thus, *via* a petition for *certiorari* under Rule 65 of the Rules of Court, respondents went to the Court of Appeals and sought that the Decision dated August 30, 2013 and the Resolution dated December 19, 2013 of the NLRC be reversed and set aside.

In the assailed Decision[16] dated November 19, 2015, the Court of Appeals granted the petition and reversed the NLRC's Decision and Resolution, and reinstated the Decision dated April 30, 2013 of the Labor Arbiter dismissing petitioner's complaint for illegal dismissal.

The Court of Appeals ruled that petitioner was properly terminated at the end of the probationary period since he failed to qualify by the standards that were made known to him at the commencement of his engagement.

Petitioner moved for reconsideration of the decision, but the Court of Appeals denied the same in its Resolution[17] dated July 22, 2016.

Thus, *via* Rule 45 of the Rules of Court, before this Court, petitioner raised the lone issue:

> WHETHER OR NOT THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN REVERSING AND SETTING ASIDE THE WELL-REASONED DECISION AND RESOLUTION OF PUBLIC RESPONDENT NLRC.[18]

The petition is unmeritorious.

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16 *Supra* note 2.
17 *Supra* note 3.
18 *Rollo*, p. 15.

Petitioner maintains that the retainership agreements offered to him contained GM Bantug's signature, and that said signature signified the validity of the subject agreements. We disagree.

Jurisprudence is replete with circumstances stating that an employer may unilaterally prepare an employment contract, stating the terms and conditions required of a potential employee, and that a potential employee had only to adhere to it by signing it.[19] Such contract is known as a contract of adhesion, which is allowed by law albeit construed in favor of the employee in case of ambiguity. In *Philippine Commercial International Bank v. CA*,[20] the Court defined in detail the meaning of a contract of adhesion, to wit:

> A contract of adhesion is defined as one in which one of the parties imposes a ready-made form of contract, which the other party may accept or reject, but which the latter cannot modify. One party prepares the stipulation in the contract, while the other party merely affixes his signature or his "adhesion" thereto, giving no room for negotiation and depriving the latter of the opportunity to bargain on equal footing. Nevertheless, these types of contracts have been declared as binding as ordinary contracts, the reason being that the party who adheres to the contract is free to reject it entirely.[21] (Citations omitted.)

It bears emphasis that in contracts of adhesion, "[o]ne party prepares the stipulation in the contract, while the other party merely affixes his signature or his `adhesion' thereto[.]"[22] Besides, "[t]he one who adheres to the contract is in reality free to reject it entirely; if he adheres, he gives his consent."[23] In this case, however, it cannot be denied that in the retainership agreements provided by petitioner, his signature or "adherence" is notably absent. As a result, said retainership agreements remain ineffectual and cannot be used as evidence against respondents.

Notably, the Court of Appeals correctly pointed out the significance of petitioner's failure to sign said agreements, *viz.*:

> The first agreement, which supposedly re-hired [petitioner] for the same position, did not bear his signature. This fact alone stirs doubt on whether the aforementioned agreement really got finalized. The NLRC gave full credence to [petitioner]'s proposition that it is normal for an employee not to sign his copy and that if [petitioner] really wanted to, he could have signed his copy before submitting it as evidence.

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19 *Villanueva v. NLRC*, 356 Phil. 638 (1998).

20 325 Phil. 588 (1996).

21 *Id.* at 597.

22 *Polotan, Sr. v. CA (Eleventh Div.)*, 357 Phil. 250, 257 (1998).

23 *Rizal Commercial Banking Corp. v. CA*, 364 Phil. 947, 953-954 (1999).

> Unfortunately, We cannot align Our view with that of the NLRC considering that x x x the absence of [petitioner]'s signature in the first agreement was also coupled with other indicators that support the conclusion that such agreement was never really carried out.
>
> *First*, the draft of the second agreement, which [petitioner] claimed to be another extension of the first, indicated that such agreement was entered into, and supposed to be signed by the parties on the 10th of October 2012. *Second*, the Skype conversation between [petitioner] and [respondents'] representative on October 24, 2012 x x x showed that they were discussing possible compensation at ₱18,000.00, which was the remuneration indicated in the first agreement. If the first agreement got finalized and was already implemented, then why would the draft of the second one still indicate the 10th of October 2012 as the date of execution and signing of the first agreement? Although it may be argued that the dates were merely clerical errors or unreplaced entries resulting to oversight, the Skype conversation between [petitioner] and [respondents'] representative on October 24, 2012, confirmed the non-conclusion of the first agreement; for it would be illogical for the parties to still discuss the remuneration indicated in the first agreement if the same had already been implemented, and, in fact, was about to end on the day that the conversation took place.[24]

Furthermore, a review of the retainership agreements indicates that petitioner was merely engaged as a consultant, in relation to the hacking incidents endured by respondents. Petitioner merely alleged that he was hired as an employee under said retainership agreements, but has yet to provide evidence to support such claim. "It is a basic rule in evidence that each party must prove his affirmative allegations."[25] Therefore, Article 281 of the Labor Code finds no application in this case, absent any evidence to prove that petitioner worked beyond his probationary employment.

Thus, the Court of Appeals suitably found grave abuse of discretion on the part of the NLRC in ordering respondents to pay petitioner the total amount of THREE HUNDRED TWENTY-SEVEN THOUSAND THREE HUNDRED SIXTY PESOS (₱327,360.00) when he was validly terminated at the end of his probationary employment. "To sanction such action would not only be unjust, but oppressive on the part of the employer as emphasized in *Pampanga Bus Co., Inc., v. Pambusco Employer Union, Inc.* (68 Phil. 541 [1939])."[26]

WHEREFORE, in view of the foregoing, the instant petition for review on *certiorari* is **DENIED**. The Decision of the Court of Appeals in CA-G.R. SP No. 08340, which reversed the Decision dated August 30, 2013

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24 *Supra* note 2, at 29.

25 *Jimenez v. NLRC, et al.*, 326 Phil. 89, 95 (1996).

26 *International Catholic Migration Commission v. NLRC*, 251 Phil. 560, 569 (1989).

and the Resolution dated December 19, 2013 of the National Labor Relations Commission, is **AFFIRMED** *in toto*.

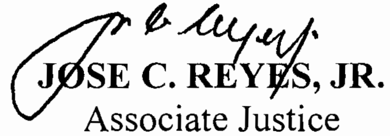
SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

MARVIC M.V.F. LEONEN
Associate Justice

On wellness leave
ALEXANDER G. GESMUNDO
Associate Justice

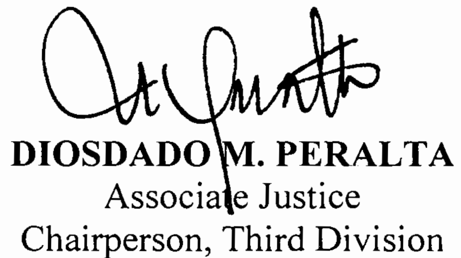


JOSE C. REYES, JR.
Associate Justice

On wellness leave
RAMON PAUL L. HERNANDO
Associate Justice

ATTESTATION

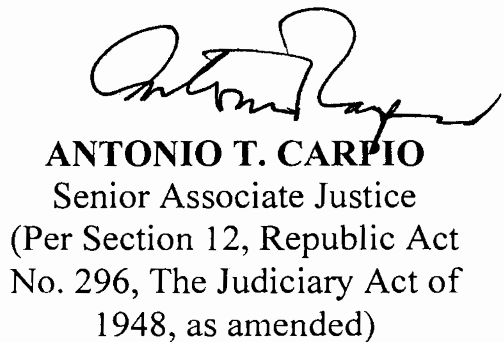
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



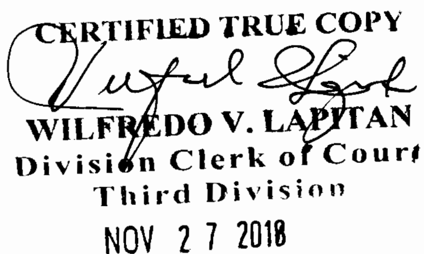
DIOSDADO M. PERALTA
Associate Justice
Chairperson, Third Division

CERTIFICATION

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



ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, Republic Act No. 296, The Judiciary Act of 1948, as amended)



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