Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

SQUARE METER TRADING CONSTRUCTION AND LITO C. PASCUAL, Petitioners,	**G.R. No. 225914** Present:
- versus -	PERALTA, *C.J.*, *Chairperson*, CAGUIOA, CARANDANG, ZALAMEDA, and GAERLAN, *JJ.*
COURT OF APPEALS, RICARDO GALLANO, FELIMON FRANCISCO, OSCAR BORJA, ET AL, Respondents.	Promulgated: JAN 26 2021

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DECISION

CARANDANG, *J.*:

In this petition for *certiorari*[1] under Rule 65, petitioners assail the Decision[2] of the Court of Appeals (CA) dated February 24, 2016 and Resolution[3] dated June 8, 2016 in CA-G.R. SP No. 130349 for grave abuse of discretion amounting to lack or excess of jurisdiction by supposedly violating the doctrine of *res judicata.*

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1 *Rollo*, pp. 3-19.

2 Penned by Associate Justice Zenaida T. Galapate-Laguilles, with the concurrence of Associate Justices Mariflor P. Punzalan Castillo and Florito S. Macalino; id. at 22-40.

3 Id. at 41-43.

Antecedents

The primary issue in this petition arises from the fact that in an earlier case (CA-G.R. SP No. 124979)[4] involving pure money claims for underpayment of wages, overtime pay, holiday pay, service incentive leave and the 13th month pay, the 12th Division of the CA had made a factual finding that that private respondents are project employees. Said decision attained finality.[5] Subsequently, the 10th Division of the CA, in a case for illegal dismissal involving the same parties, ruled that they are regular employees.[6] It is this ruling now being challenged by herein petitioners, who argue that the earlier ruling of the CA 12th Division is binding upon the 10th Division under the doctrine of *res judicata* in the concept of "conclusiveness of judgment".[7]

Petitioner Lito C. Pascual is the sole proprietor of petitioner Square Meter Trading Construction, a company engaged in the construction industry. Petitioners hired private respondents on various years between 2002 to 2008[8] are now separated from employment.[9] On February 14, 2011, private respondents lodged with the Labor Arbiter (LA) a complaint against petitioners for underpayment of wages, overtime pay, holiday pay, service incentive leave, and the 13th month pay for the years 2007-2010. This first complaint was docketed as NCR-02-02511-11 (*first case*) and assigned to Labor Arbiter (LA) Adela S. Damasco.[10]

On April 29, 2011, private respondents filed a second complaint docketed as NCR-04-06754-11,[11] (*second case*) alleging illegal dismissal and unfair labor practices and praying for an award of actual, moral, and exemplary damages as well as attorney's fees. This complaint was assigned to LA Jenneth B. Napiza and was consolidated with a separate complaint filed on June 1, 2011 by the Philippine Association of Free Labor Union (PAFLU), Regilan Andres, and Ronald Ebuenga, and docketed as NCR-06-08563-11, which also alleged illegal dismissal and unfair labor practice.[12] The instant petition proceeds from this *second case*.

Proceedings in the first case (NCR-02-02511-11/ CA-G.R. SP No. 124979)

In the *first case*, only two issues were raised: (1) whether the complainants are entitled to their money claims; and (2) whether complainant Oscar Borja was an employee of the respondents.[13] In a Decision[14] dated August 15, 2011, LA Damasco held that, as to the first issue, private

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4 Id. at 104.
5 Id. at 117-118.
6 Id. at 17-19.
7 Id. at 8.
8 Id. at 47.
9 Id. at 105.
10 Id. at 78-79.
11 Id. at 44-48.
12 Id. at 50-52.
13 Id. at 86.
14 Penned by Labor Arbiter Adela S. Damasco; id. at 81-90.

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respondents are construction workers who worked at different projects for the petitioners. At the end of the projects, they would be employed with other construction companies.[15] She dismissed their complaint for lack of merit primarily because their main supporting documents, in the form of photocopies of the payroll and employment data sheets, were self-serving and without probative value.[16] As to the second issue, she found that although Borja claimed to work as a driver for the petitioners, he failed to provide proof of employment. Borja, who is the uncle of petitioner Pascual, would offer his services only whenever he needed money but would refuse work when he did not need any. On this basis, LA Damasco ruled that, according to the four-fold test, there was no employer-employee relationship between petitioners and Borja.[17]

The private respondents appealed to the National Labor Relations Commission (NLRC), which affirmed LA Damasco in its Decision[18] dated February 9, 2012. They moved for reconsideration but was denied by the NLRC in its Resolution[19] dated March 14, 2012.

Undeterred, private respondents assailed the NLRC's decision in a petition for *certiorari* before the CA.[20] On August 29, 2014, the CA reversed the NLRC and declared that private respondents, except Oscar Borja, are entitled to wage differentials, proportionate 13th month pay, SIL, and holiday pay for the years 2008-2010.[21] The CA agreed with LA Damasco that private respondents, except Borja, were project employees,[22] but could not compute the exact amount of said monetary benefits on the basis of the records. The CA adopted the LA and NLRC's finding that Borja was not an employee. Consequently, the CA remanded the case to LA Damasco for computation of the monetary awards.[23] This decision became final and executory on March 19, 2015.[24]

Proceedings in the second case (NCR-04-06754-11 & NCR-06-08563-11/CA-G.R. SP No. 130349)

Meanwhile, the second case went about its own trajectory.

After conciliation proceedings failed, LA Napiza ordered the submission of position papers. Private respondents maintained in their position papers that in mid-December of 2010, PAFLU campaigned for

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15 Id. at 88.
16 Id. at 87-88.
17 Id. at 88-90.
18 Penned by Commissioner Nieves E. Vivar-De Castro, with the concurrence of Presiding Commissioner Joseph Gerard E. Mabilog and Commissioner Isabel G. Panganiban-Ortiguerra; id. at 92-100.
19 Id. at 102-103.
20 Id. at 109.
21 Id. at 113.
22 Id. at 111.
23 Id. at 113.
24 Id. at 117-118.

membership among petitioners' regular rank-and-file employees. Upon learning of this, petitioners summarily dismissed respondents Gallano, Francisco, Borja, Casim, Alcantara, Tanamor, Ebuenga, and two other co-workers without just or authorized cause. On February 14, 2011, Gallano and 14 other co-workers filed the *first case*. The following day, petitioners dismissed respondents Lacap and Sondia. On February 17, 2011, PAFLU filed a petition for direct certification election among petitioners' rank and file workers. A week later, petitioners terminated respondents Aris and Celso Del Rosario. On March 10, 2011, prior to the formation of the union, petitioner dismissed respondents Mariano, Calumpiano, and Reymond and Reynaldo Carmona.[25]

Petitioners maintained that, except for Borja, private respondents were project employees and that their separation employment naturally followed the end of the projects to which they had been respectively assigned. As petitioners had explained in the *first case,* Borja worked for the company on a voluntary arrangement on account of his familial relationship with petitioner Pascual. Borja would only approach petitioner Pascual whenever he needed money. When Pascual had nothing to give, Borja would not offer his services.[26]

LA Napiza ruled that it was petitioners' burden to prove that complainants are project employees based on Section 2.2 of Department of Labor and Employment (DOLE) Department Order (DO) No. 19, Series of 1993, which provides the following indicators of project employment in the construction industry,[27] to wit:

> Either one or more of the following circumstances, among others, may be considered as indicator/s that an employee is a project employee:
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> (a) The duration of the specific/identified undertaking for which the worker is engaged is reasonably determinable.
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> (b) Such duration, as well as the specific work/service to be performed, is defined in an employment agreement and is made clear to the employee at the time of hiring.
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> (c) The work/service is performed by the employee is in connection with the particular project/undertaking for which he is engaged.
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> (d) The employee, while not employed and awaiting engagement, is free to offer his services to any other employer.

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25 Id. at 55-56.
26 Id. at 56.
27 Id. at 57.

> (e) The termination of his employment in the particular project/undertaking is reported to the Department of Labor And Employment (DOLE) Regional Office having jurisdiction over the workplace within thirty (30) days following the date of his separation from work using the prescribed form on employees' terminations or dismissals or suspensions.
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> (f) An undertaking in the employment contract by the employer to pay completion bonus to the project employee as practiced by most construction companies.[28]

Petitioners had failed to adduce any evidence of project employment consistent with the aforesaid indicators, so LA Napiza ruled that private respondents were regular employees.[29] Petitioners failed to present the private respondents' private employment contracts. Neither did they produce evidence that private respondents were free to offer their services to other employers. Most importantly, petitioners failed to present evidence that they reported the termination of private respondents' projects with the nearest DOLE Regional Office.[30] Citing, *PLDT v. Ylagan*,[31] she ruled that petitioners should have shown that they have filed as many reports of project termination as there were construction projects actually finished by private respondents. On account of petitioners' failure to prove that private respondents are project employees, LA Napiza ruled that the latter are regular employees.[32]

Consequently, it fell upon petitioners to prove that private respondents were dismissed upon a just or authorized cause and was effected with due process of law. Again, petitioners failed to do so. Thus, LA Napiza ruled that private respondents were illegally dismissed. However, she did not find substantial evidence to support private respondents' allegation that petitioners were guilty of unfair labor practice.[33] Thus, the dispositive portion of her decision states:

> WHEREFORE, premises considered, judgment is hereby rendered:
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> 1. declaring complainants Ricardo Gallano, Felimon Francisco, Oscar Borja, Virgilio Lacap, Jun Casim, Jerry Nasam, Reynaldo Ramos, Maximo Alcantara, Antonio Costiniano, Romulo Tañamor, Richard Sondia, Celso Del Rosario, Reymond Carmona, Aris Del Rosario, Marcos Balasta, Salvador Magaan, Richard Mariano, Reynaldo Carmona, Jessie Calumpiano, Regilan Andres, and Ronald Ebuenga to be regular employees of respondent Square Meter Trading and Construction;

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28 Id. at 58.
29 Id.
30 Id.
31 537 Phil. 840 (2006).
32 *Rollo*, p. 59.
33 Id.

2. ordering respondents Square Meter Trading and Construction and Lito C. Pascual to reinstate complainants to their former positions without loss of seniority rights and privileges with full backwages computed from the time they were dismissed from work until they are reinstated computed as follows:

Name of Complainant	**Date Dismissed**	**Full Backwages**
Ricardo Gallano	February 2, 2011	P 142,787.64
Felimon Francisco	December 23, 2010	P 157,799.61
Oscar Borja	December 23, 2010	P 157,799.61
Virgilio Lacap	February 15, 2011	P 137,822.14
Jun Casim	February 2, 2011	P 142,787.64
Jerry Nasam	March 10, 2011	P 128,122.10
Reynaldo Ramos	December 23, 2010	P 157,799.61
Maximo Alcantara	February 2, 2011	P 142,787.64
Antonio Costiniano	March 10, 2010	P 264,020.99
Romulo Tañamor	December 23, 2010	P 157,799.61
Richard Sondia	February 15, 2011	P 137,822.14
Celso Del Rosario	February 24, 2011	P 173,619.91
Reymond Carmona	November 12, 2010	P 134,357.84
Aris Del Rosario	February 24, 2011	P 173,619.91
Marcos Balasta	March 10, 2011	P 134,357.84
Salvador Magaan	March 10, 2011	P 128,122.10
Richard Mariano	August 12, 2010	P 208,262.91
Reynaldo Carmona	October 18, 2010	P 182,858.04
Jessie Calumpiano	October 30, 2010	P 178,238.98
Regilan Andres	March 10, 2011	P 128,122.10
Ronald Ebuenga	February 2, 2011	P 142,787.64

The respondents are directed to submit a report of compliance on the reinstatement aspect within ten (10) calendar days from receipt of this Decision pursuant to Section 18, second paragraph, Rule V of the 2011 NLRC Rules of Procedure.

3. pay the attorney's fees equivalent to ten (10) percent of the judgment award.

All other claims are dismissed for lack of merit.

SO ORDERED.[34]

Petitioners filed a Notice of Appeal with a Motion to Reduce Bond and posted an appeal bond of ₱100,000.00. In a Resolution dated May 22, 2012, the NLRC found no merit in the motion to reduce bond and dismissed petitioners' appeal for failing to post the total bond amount of ₱3,266,198.20, equivalent to the total monetary awards.[35] Before the said Resolution could become final, petitioners filed a motion for reconsideration, attaching a copy of LA Damasco's decision and a supersedeas bond of ₱3,266,198.20. In a Resolution[36] dated February 20, 2013, NLRC granted the motion and allowed

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34 Id. at 60-61.
35 Id. at 24.
36 Id. at 68-74.

the appeal. However, it also set aside and reversed LA Napiza's decision on the ground that the finality of LA Damasco's decision in the *first case* meant that *res judicata* had set in.[37] Private respondents moved for reconsideration, but were denied in the NLRC's Resolution dated March 27, 2013.[38]

Private respondents filed a petition for *certiorari* with the CA, arguing that the NLRC erred in granting petitioners' appeal and for reversing LA Napiza's decision on the ground of *res judicata.*[39] The petitioners maintained that private respondents are project employees. In support of this, petitioners attached to their Comment certifications from other construction companies stating that private respondents were also working for them.[40]

On February 24, 2016, the CA promulgated the assailed decision. It ruled that the NLRC correctly allowed petitioners' appeal as they were eventually able to post the full bond amount before the right to appeal was totally foreclose.[41] The CA, however, disagreed with the NLRC's dismissal of the complaint on the basis of *res judicata.* The CA ruled that there was no identity of causes of action between the *first case* and the *second case*; therefore, the latter was not barred by the former.[42]

The CA then affirmed LA Napiza's ruling that the private respondents were regular employees who were illegally dismissed.[43]

Grounded on our ruling in *Hanjin Heavy Industries and Construction Co., Ltd. v. Ibañez*,[44] the CA held that private respondents may be treated as project employees if it is shown that they were hired to carry out a job, the scope and duration of which has been determined and made known to them at the time of employment. Unless such standards are specified in the terms of employment, the employees cannot be considered project employees. Simply put, the employees must have known, at the time of hiring, that they are being engaged as project employees.[45] Given that petitioners failed to produce the written contracts stating the scope and duration of the projects worked on by the private respondents, the CA could only conclude that they were regular employees. Additional documents, which certified that other private respondents worked for other companies, could not convince the CA otherwise. Noting that petitioners could have simply presented project employees or termination reports as required by DOLE Department Order No. 19,[46] the CA held that said certifications only added vagueness to the circumstances surrounding the hiring of the private respondents. If doubt exists between the evidence presented by the employer and that by the employee, the scales of justice must be tilted in favor of the latter. Regrettably

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37 Id. at 73.
38 Id. at 26.
39 Id.
40 Id. at 35.
41 Id. at 31.
42 Id. at 33-34.
43 Id. at 39.
44 578 Phil. 497 (2008).
45 377 Phil. 55 (1999).
46 *Rollo*, p. 38.

for petitioners, their failure to substantiate their claim gave the CA ample reason to reverse the NLRC on this issue.[47]

Since regular employees enjoy security of tenure and may only be terminated upon a just or authorized cause, the CA held that private respondents were illegally dismissed. Thus, the CA disposed of the case as follows:

> WHEREFORE, the instant Petition is partly **GRANTED.** The assailed Resolutions dated February 20, 2013 and March 27, 2013 of the public respondent [in] LAC NO. 03-001112-12, NCR-04-06754-11; LAC No. 06-08563-11, NCR-02-02511-11 are MODIFIED in that the ruling of the public respondent in this case that res judicata had already set in is hereby REVERSED and SET ASIDE.
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> After a thorough review of the case on the merits, We hereby **AFFIRM** the Decision of the Labor Arbiter dated January 31, 2012 declaring that the petitioners are regular employees, who have been illegally dismissed from work. Thus, the private respondents are ordered to reinstate the petitioners without loss of seniority rights and privileges and to pay the petitioners their full backwages computed from the time they were dismissed from work until they are reinstated plus attorney's fees equivalent to ten (10) percent of the judgment award.
>
> **SO ORDERED.** (Emphasis in the original)[48]

Petitioners moved for reconsideration, but the same was denied by the CA for having been filed four days too late.[49] Hence, this petition.

Petitioners' principal argument is that the CA violated the principle of *res judicata.* They cite the case of *Degayo v. Magbanua-Dingalasan,*[50] where the court said that *res judicata*, in the concept of "conclusiveness of judgment" or "issue preclusion," precludes the relitigation of a particular fact of issue in another action between the same parties on a different claim or cause of action. Premised on this, they argue that the CA violated *res judicata* by passing upon the nature of private respondents' employment twice.[51]

In their Comment,[52] private respondents argue that petitioners have availed of the wrong remedy. They maintain that petitioners should have challenged the CA's decision under Rule 45 – not under Rule 65. Since the petitioners had not filed a Rule 45 petition within 15 days from the notice of the assailed decision, private respondents argue that said decision has already attained finality.[53] They reiterate that the CA was correct in its understanding

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47 Id. at 38-39.
48 Id. at 39-40.
49 Id. at 41-43.
50 757 Phil. 376 (2015).
51 *Rollo*, pp. 9-11.
52 Id. at 123-131.
53 Id. at 123-125.

and application of the principle of *res judicata*.[54] Citing DOLE D.O. No. 19, Series of 1993, they clarify that construction workers may either be project or non-project employees. The former if their employment is co-terminous with a particular project; the latter if their employment is without reference to any particular construction project or phase of a project. They also point to the fact that it was LA Napiza who directly resolved the issue of the nature of private respondents' employment using the criteria in DOLE D.O. No. 19. They maintain that such finding is correct and should no longer be disturbed in this Rule 65 petition which they assert is frivolous and dilatory.[55]

Issues

The court is tasked to resolve whether the CA committed grave abuse of discretion amounting lack or excess of jurisdiction on the following issues:

1) whether a petition under Rule 65 is a proper remedy in this case;
2) whether the CA 12th Division's Decision dated August 29, 2014 in CA-G.R. SP No. 124979 finding the private respondents as project employees precluded litigation of the issues in the present case on the basis of *res judicata*;
3) whether the private respondents were regular employees of petitioners; and
4) whether petitioners dismissed private respondents with just or authorized cause and with due process.

Ruling of the Court

The petition is partially meritorious.

A petition for certiorari under Rule 65 is not a proper remedy to assail the decisions of the Court of Appeals when appeal under Rule 45 is available in the ordinary course of law.

At the outset, there is a need to make it painfully clear that a special civil action of *certiorari* for under Rule 65 is not the proper remedy to assail the decision of the Court of Appeals. In *Malayang Manggawa Ng Stayfast Phils., Inc. v. NLRC*,[56] We dismissed a Rule 65 petition because there was no absence of appeal or any plain, speedy, and adequate remedy in the ordinary course of law.[57] Furthermore, We said that it is not and cannot be made a substitute for an appeal where the latter remedy is available but was lost through fault or negligence.[58]

Just like the petitioners in *Malayang Manggawa Ng Stayfast Phils., Inc.*, herein petitioners had the remedy of appeal by *certiorari*, under Rule 45,

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54 Id. at 39-40.
55 Id. at 130.
56 716 Phil. 500 (2013).
57 Id. at 512.
58 Id. at 513

to assail the CA's decision; however, they squandered their chance to avail of such remedy when they filed their motion for reconsideration four days too late. It stands to reason that this petition should be dismissed outright. Nevertheless, in the interest justice and because this case involves the proper application of *res judicata* in labor cases, the court will delve into the substantive merits.

Res judicata in the concept of conclusiveness of judgment only applies to private respondent Oscar Borja.

Petitioners argue that the court *a quo* committed grave abuse of discretion by violating the principle of *res judicata* in the concept of "conclusiveness of judgment" when it ruled that private respondents are regular employees thereby deviating from its previous ruling in CA-G.R. SP No. 124979 that private respondents are project employees.

For the most part, petitioners are incorrect.

The principle of res judicata finds basis in Section 47, Rule 39 of the Rules of Court, *viz.*:

> Section 47. Effect of judgments or final orders. – The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows: x x x
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> (a) In case of a judgment or final order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a deceased person, or in respect to the personal, political, or legal condition or status of a particular person or his relationship to another, the judgment or final order is conclusive upon the title to the thing, the will or administration, or the condition, status or relationship of the person; however, the probate of a will or granting of letters of administration shall only be prima facie evidence of the death of the testator or intestate;
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> (b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and
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> (c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order **which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto**. (Emphasis supplied)

Section 47(b), Rule 39 of the Rules of Court lays out "bar by prior judgment," while Section 47(c) thereof lays out the concept of "conclusiveness of judgment." There is "bar by prior judgment" when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action.[59] But where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of res judicata known as "conclusiveness of judgment."[60]

As correctly ruled by the CA, *res judicata* as "bar by prior judgment" does not apply to this case. In reaching such conclusion, the CA referred to Our decision in *Dela Rosa Liner, Inc. v. Borela & Amarille.*[61] which does bear many similarities with this case. In *Dela Rosa Liner*, there were also two complaints: one for illegal suspension, unfair labor practice, damages, and attorney's fees; and another was a claim for labor standard benefits, wage order violations, nonpayment of sick and vacation leaves, 13th month pay, service incentive leave, overtime pay, and night shift differential. Like herein petitioners, Dela Rosa Liner, Inc., the employer, argued that the second complaint was identical to the first and barred by forum shopping and *res judicata*.[62] Citing *Yap v. Chua*,[63] We said in *Dela Rosa* that the test determine whether causes of action are identical is to ascertain whether the same evidence would support both actions, or whether there is an identity in the facts essential to the maintenance of the two actions. If the same facts or evidence would support both actions, then they are considered the same; a judgment in the first case would be a bar to the subsequent action. Premised on this, We ruled against Dela Rosa Liner, Inc. as follows:

> As the CA correctly held, the same facts or evidence would not support both actions. To put it simply, the facts or the evidence that would determine whether respondents were illegally dismissed, illegally suspended, or had been the subject of an unfair labor practice act by the petitioners are not the same facts or evidence that would support the charge of noncompliance with labor standards benefits and several wage orders.[64]

As observed by the CA, res judicata to bar the institution of a subsequent action applies upon the concurrence of the following requisites: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity

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59 646 Phil. 90, 99 (2010)
60 Id.
61 765 Phil. 251 (2015).
62 Id. at 258.
63 687 Phil. 392 (2012).
64 Supra note 61 at 259.

of parties, subject matter, and causes of action.[65] Here, the CA ruled that *first case* did not bar the institution of the *second case as there was no identity of causes of action.*

That said, petitioners here invoke the other concept of *res judicata*, which is "conclusiveness of judgment." There is a fine difference between the two concepts of res judicata, but it is sufficient for this court to hold that *Dela Rosa* is not squarely applicable to this case and therefore alter the outcome of the case.

In *Ligtas v. People of the Philippines*,[66] We elucidated on "conclusiveness of judgment," as follows:

> But where there is identity of parties in the first and second cases, but no identity of causes of action, **the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein.** This is the concept of res judicata known as "conclusiveness of judgment." Stated differently, **any right, fact or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated** between the parties and their privies, whether or not the claim, demand, purpose, or subject matter of the two actions is the same.
>
> Thus, if a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, **a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit.** [67] (Emphasis supplied)

Thus, there is "conclusiveness of judgment" if there is identity of issues in the *first case* and the *second case*. We hold that there was none. It is worth recalling that LA Damasco framed and decided the *first case* exclusively according to the issues of: (1) whether private respondents are entitled to their money claims; and (2) whether private respondent Oscar Borja was an employee of respondents.[68] Meanwhile, LA Napiza resolved the second case on the following issues: (1) whether private respondents are project employees; (2) whether private respondents were illegally dismissed; (3) whether petitioners are guilty of unfair labor practice; and (4) whether private respondents are entitled to moral and exemplary damages and attorney's fees.[69] The CA did not deviate from these sets issues in resolving the two cases.

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65 *Samson v. Sps. Gabor*, 739 Phil 429, 443 (2014).
66 766 Phil. 750 (2015).
67 Id. at 772.
68 *Rollo*, p. 86.
69 Id. at 57.

However, the manner by which LA Damasco framed the issues in the first case requires us to resolve the issue of *res judicata* with respondent Borja separately from the other private respondents. Putting aside respondent Borja for a moment, it is apparent that petitioners have, for the most part, misapplied the doctrine of conclusiveness of judgment. While the CA 12th Division said in the *first case* that the private respondents are project employees, there is no reason to believe that the nature of respondents' employment was a "matter actually and directly controverted and determined" in their decision. In the CA 12th Division's Decision in CA G.R. SP No. 124979,[70] the only issue resolved by the CA, based on the assignment of errors, was "whether or not [private respondents] are entitled to their claim of underpayment of wages and other monetary benefits."[71] Except for Borja, the nature of private respondents' employment was not squarely contended nor fully litigated by the parties in the *first case* as the complaint was on pure money claims. In the language of Section 39(c), Rule 47, the nature of private respondents' employment does not "appear upon its face to have been so adjudged" nor was it "actually and necessarily included" in the issues adjudged in the *first case.* Whether or not the private respondents were entitled to their money claims in the *first case* is simply not contingent on whether they are project or regular employees. An employee, whether regular or irregular, is entitled to a salary and other benefits that the law may provide him. Therefore, We find that the CA 12th Division's ruling in the *first case* did not bar the CA 10th Division from ruling in this *second case* that the private respondents are regular employees.

That said, a consistent application of the rules requires that We treat respondent Borja differently from the other respondents. Petitioners' argument is correct only insofar as Borja is concerned. The CA had affirmed the LA and NLRC's finding in the *first case* that he was not petitioners' employee to begin with. Logically, it means that he could neither be a project nor a regular employee. The existence of an employer-employee relationship is an issue that is "actually and necessarily included" in a complaint for illegal dismissal.[72] Indeed, it is impossible to illegally dismiss someone who is not an employee. Accordingly, unlike the other private respondents, Borja was precluded from filing an illegal dismissal case. The CA's prior finding that Borja is not an employee is now final and conclusive upon the court. A decision that has acquired finality becomes immutable and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact.[73] It follows that the court cannot now provide any relief to private respondent Borja. Otherwise, it would do violence to the doctrine of finality of judgment, which is necessary for the orderly administration of justice.

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70 Id. at 104.
71 Id. at 110.
72 *Reyes v. Glaucoma Research Foundation, Inc.*, 760 Phil. 779 (2015).
73 *People v. Santiago*, G.R. No. 228819, July 24, 2019.

Private respondents, except Oscar Borja, are regular employees who are entitled to security of tenure

Petitioners do not contest they had an employer-employee relationship with the private respondents, except for Borja. The disagreement is whether the employment was regular or project-based. With the exception of Borja, we find that the CA correctly affirmed the LA's ruling that private respondents are regular employees.

Generally, for an employee to be considered project-based, the employer must show that: (a) the employee was assigned to carry out a specific project or undertaking; and (b) the duration and scope of such project.[74] Failure to do so will accord the dismissed employee with the presumption of regularity of employment.[75] Aside from this, the court has also made use of parameters specific to workers in the construction industry. In *Samson vs. NLRC*,[76] the court had relied on the indicators of enumerated in Section 2.2 of Department Order No. 19, Series of 1993 to determine whether the complainant was a project employee in the construction industry. The employer's failure to prove any of these indicators is evidence that the employment was regular.

In *Samson*,[77] We also applied the reportorial requirement in Section 6.1. of said Department Order, to wit:

> 6.1. Requirements of labor and social legislations. (a) The construction company and the general contractor and/or subcontractor referred to in Sec. 2.5 shall be responsible for the workers in its employ on matters of compliance with the requirements of existing laws and regulations on hours of work, wages, wage related benefits, health, safety and social welfare benefits, **including submission to the DOLE-Regional Office of Work Accident/Illness Report, Monthly Report on Employees' Terminations/Dismissals/Suspensions** and other reports x x x[78] (Emphasis supplied)

We have since consistently stressed the importance of this reportorial requirement for employers in the construction industry. In a line of cases, We have applied the well-established rule that the employer's failure to file termination reports after every project completion is proof that the construction workers are not project employees.[79]

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74 *Dacles v. Millenium Erectors Corporation*, 763 Phil. 550, 558 (2015).

75 *Universal Robina Sugar Milling Corporation v. Acibo*, 724 Phil. 489 (2014), citing *Violeta v. NLRC*, 345 Phil. 762, 771 (1997).

76 323 Phil. 135 (1996).

77 Id.

78 Id. at 146.

79 *Pasos v. Philippine National Construction Corporation*, 713 Phil. 416 (2013), citing *Tomas Lao Construction v. NLRC*, 344 Phil. 268 (1997).

Judged against the foregoing criteria, the court finds it proper to accord private respondents, except Oscar Borja, the presumption of regularity of employment. Petitioners have absolutely failed to present any evidence that each of the private respondent were assigned to a particular project with a defined scope or duration. They failed to offer contrary evidence to any of the enumerated indicators of project employment under Section 2.2 Department Order No. 19, Series of 1993. Likewise, there is no proof that termination reports were filed with the DOLE after each project completion. Thus, private respondents must be accorded the presumption of regularity of employment under Article 295 of the Labor Code.[80]

Petitioners dismissed private respondents without due process and just or authorized cause

Under Article 294 of the Labor Code,[81] private respondents, as regular employees, are entitled to security tenure and may be dismissed only upon a just or authorized cause. Since the beginning, petitioners have erroneously insisted that private respondents are project employees and consequently, failed to cite any just or authorized cause for dismissal. Naturally, they have also failed to comply with the two-notice requirement to accord the employees with due process, *i.e.*: (1) a notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice after due hearing which informs the employee of the employer's decision to dismiss him.[82]

As a general rule, illegal dismissal entitles the employee to reinstatement. However, in their Motion for Early Resolution dated February 5, 2018,[83] and their Urgent Motion to Resolve dated January 23, 2019,[84] private respondents, through their counsel, manifested that in their almost decade-long wait for a final resolution of this case, most of them are now old and sickly. For many of them, it appears that reinstatement may no longer be feasible and would no longer be in the interest of the parties. In such instances we have ruled that as an alternative to reinstatement, separation pay equivalent to one-month salary for every year of service should be awarded. The payment of separation pay is in addition to payment of backwages.[85]

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80 Previously Article 280. Renumbered according to DOLE Department Advisory No. 1, Series of 2015. See Universal Robina Sugar Milling Corporation v. Acibo et al., G.R. No. 186439, January 15, 2014.

81 As renumbered by DOLE Department Advisory No. 1, Series of 2015. Previously Article 279. Article 294. Security of Tenure. – In cases of regular employment, the employer shall not terminate the services of an employee except for a just case or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

82 *Gopio v. Bautista*, 832 Phil. 411,423 (2018); See also *Unilever Philippines, Inc. v. Rivera*, 710 Phil. 124 (2013)

83 *Rollo*, pp. 142-144.

84 Id. at 153-154.

85 *Macasero v. Southern Industrial Gases Philippines*, 597 Phil. 494, 501 (2009).

Separation pay in lieu of reinstatement will necessarily alter how backwages shall be computed. In the case of *Bani Rural Bank Inc. v. De Guzman*,[86] We summarized the guidelines on this matter as follows:

> First, when reinstatement is ordered, the general concept under Article [294] of the Labor Code, as amended, computes the backwages from the time of dismissal until the employee's reinstatement. The computation of backwages (and similar benefits considered part of the backwages) can even continue beyond the decision of the labor arbiter or NLRC and ends only when the employee is actually reinstated.
>
> Second, when separation pay is ordered in lieu of reinstatement (in the event that this aspect of the case is disputed) or reinstatement is waived by the employee (in the event that the payment of separation pay, in lieu, is not disputed), backwages is computed from the time of dismissal until the finality of the decision ordering separation pay.
>
> Third, when separation pay is ordered after the finality of the decision ordering the reinstatement by reason of a supervening event that makes the award of reinstatement no longer possible (as in the case), backwages is computed from the time of dismissal until the finality of the decision ordering separation pay.[87]

The second guideline is applicable to this case. Accordingly, private respondents, except Borja, are entitled to backwages computed from the time of their respective dates of dismissal, as previously found by LA Napiza, until the finality of this decision.

Private respondents, except Oscar Borja, are entitled to moral and exemplary damages and attorneys' fees equivalent to 10% of the total monetary award

Finally, We observe that the established facts justify an award of moral and exemplary damages as well as attorney's fees.

In *Montinola v. Philippine Airlines*,[88] citing *Garcia v. NLRC*,[89] the court said that exemplary damages may be awarded if the dismissal was effected in a wanton, oppressive or malevolent manner. Furthermore, we said the employee is entitled to moral damages when the employer acted (a) in bad faith or fraud; (b) in a manner oppressive to labor; or (c) in a manner contrary to morals, good customs, or public policy.[90] In Our view, the petitioners had gone about the dismissal of the private respondents with ill will. They were

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86 721 Phil. 84 (2013).
87 Id. at 101-102.
88 742 Phil. 487 (2014).
89 304 Phil. 798 (1994).
90 Supra note 88 at 505.

whimsically complacent in their baseless assertion that private respondents were project employees. This is confirmed by the fact that they could not muster an ounce of evidence to prove that respondents were employed on a project basis. To the eyes of the court, the abject denial of substantive and procedural due process, especially in light of the fact that petitioners began to dismiss the private respondents one day after the filing of the *first case,* is also an indication that the dismissals were done in bad faith. Accordingly, the private respondents, except for Borja, are entitled to moral and exemplary damages.

As in the case of *Montinola,*[91] the following sections of Article 2208 of the New Civil Code also justify the award of attorney's fees in this case:

> Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
>
> (1) When exemplary damages are awarded;
>
> (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
>
> x x x x
>
> (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
>
> x x x x[92]

Finally, consistent with the guidelines set in *Nacar v. Gallery Frames*[93] for the proper application of legal interest in light of BSP-MB Circular No. 799, We find petitioners liable to pay the legal interest of twelve percent (12%) on the monetary awards counted from the respective dates of dismissal as found by the LA Napiza until June 30, 2013 and six percent (6%) from July 1, 2013 until the said awards are fully paid.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The Decision dated February 24, 2016 and the Resolution dated June 8, 2016 of the Court of Appeals in CA-G.R. SP No. 130349 are hereby **REVERSED** and **SET ASIDE** with respect to private respondent Oscar Borja. The same are **AFFIRMED** with **MODIFICATION** with respect to the other private respondents.

Petitioners are ordered to pay to each of respondents, except Oscar Borja:

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91 Supra note 88.
92 Id. at 511-512.
93 716 Phil. 267 (2013).

1. full backwages, inclusive of allowances, and other benefits or their monetary equivalent to be computed from the dates of dismissal up to the time of the finality of this judgment;
2. separation pay, in lieu of reinstatement, equivalent to one month salary for every year of their respective service up to the time of the finality of this judgment;
3. interest of twelve percent (12%) *per annum* of the total monetary awards computed from the dates of dismissal, as found by the Labor Arbiter, until June 30, 2013 and six percent (6%) *per annum* from July 1, 2013 until said monetary awards are fully paid; and
4. moral damages and exemplary damages in the amount of ₱25,000.00.

Petitioners are likewise **ORDERED** to pay attorney's fees, which shall be ten percent (10%) of the total monetary award.

The case is hereby **REMANDED** to the Labor Arbiter for purposes of computing the monetary awards in accordance with this decision.

SO ORDERED.

ROSMARI D. CARANDANG
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.

DIOSDADO M. PERALTA
Chief Justice