Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

RICO B. ESCAURIAGA, CRISTINE DELA CRUZ, RENE B. SEVERINO, RALPH ERROL MERCADO, and GERALDINE GUEVARRA, *Petitioners,*	**G.R. No. 266552**
- versus -	**Members:** LEONEN, *SAJ*, LAZARO-JAVIER, LOPEZ, M. LOPEZ, J. and KHO, JR. *JJ.*
FITNESS FIRST, PHIL., INC., and LIBERTY CRUZ, *Respondents.*	**Promulgated:** JAN 22 2024

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DECISION

LAZARO-JAVIER, *J.*:

The Case

Petitioners Rico B. Escauriaga (Escauriaga) Cristine Dela Cruz (Dela Cruz), Rene B. Severino (Severino), Ralph Errol Mercado (Mercado), and Geraldine Guevarra (Guevarra) assail the following dispositions of the Court of Appeals in CA-G.R. SP No. 165342 titled *Rico B. Escauriaga, Cristine Dela Cruz, Rene B. Severino, Ralph Errol Mercado, and Geraldine Guevarra*

v. The Honorable National Labor Relations Commission (Fourth Division), Fitness First, Phil., Inc.[,] and Liberty Cruz:

1) **Decision**[1] dated August 18, 2022 affirming the finding of the National Labor Relations Commission (NLRC) that petitioners are independent contractors and the dismissal of petitioners' petition for relief from judgment; and

2) **Resolution**[2] dated March 24, 2023 denying petitioners' motion for reconsideration.

Antecedents

In their Complaint[3] dated June 9, 2017, petitioners sued respondents Fitness First Phil., Inc. (Fitness First) and its Senior Human Resource Manager Liberty Cruz (Cruz) for illegal dismissal, regularization, and other monetary claims.[4] They alleged:[5]

On different dates, respondents engaged them as fitness trainers:[6]

i) Rico Escauriaga	-	May 1, 2008
ii) Junnie Ordoña	-	September 24, 2012
iii) Rene Severino	-	February 1, 2007
iv) Geraldine Guevarra	-	April 1, 2012
v) Cristine Dela Cruz	-	May 26, 2003
vi) Peter John Fullante	-	August 28, 2012
vii) Ralph Errol Mercado	-	September 1, 2006[7]

As fitness trainers, they sold and marketed respondents' physical health training programs and packages. With respondents' equipment, they also conducted actual training sessions for their clients and were paid fixed monthly salaries, 13th month pay, and commissions.[8] On different dates, however, they were reclassified as freelance trainers:

i) Rico Escauriaga	-	May 1, 2012
ii) Junnie Ordoña	-	October 1, 2013
iii) Rene Severino	-	January 1, 2008

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1 *Rollo*, pp. 52–65. Penned by Associate Justice Jose Lorenzo R. Dela Rosa and concurred in by Associate Justices Nina G. Antonio-Valenzuela and Emily Aliño-Geluz of the Thirteenth Division of the Court of Appeals, Manila.

2 *Id.* at 67–68.

3 *Id.* at 104–107.

4 Non-payment of 13th month pay, damages, and attorney's fees.

5 *Rollo*, pp. 108–124. Petitioners' Position Paper.

6 *Id.* at 110.

7 *Id.* at 107.

8 *Id.* at 110.

iv) Geraldine Guevarra - December 1, 2013
v) Cristine Dela Cruz - May 1, 2012
vi) Peter John Fullante - July 1, 2013
vii) Ralph Errol Mercado - July 1, 2007[9]

As freelance fitness trainers, they were paid their salaries but the other labor benefits, *i.e.* 13th month pay, overtime pay, holiday pay, and rest day pay were discontinued. They were allowed to work at their own choice of time so long as they trained clients for a minimum of 90 hours per month and PHP 80,000.00 worth of physical training program or package. Hours in between trainings were excluded in the 90-hour cap and failure to meet quota translated to salary deduction, or worse, disciplinary action such that repeated failure to meet the quota may subject them to warning, suspension, and even termination of employment.[10]

On March 20, 2017, respondents required them to register their alleged freelance business as required by Bureau of Internal Revenue (BIR) Regulation No. 4-2014[11] re: Guidelines and Policies for the Monitoring of Service Fees of Professionals. They were assured a 3% increase in their commission upon compliance. Non compliance, on the other hand, was penalized with 20% deduction in their commission and termination or non-renewal of their freelance agreement. Believing they were regular employees, they did not comply.[12]

Though they did not possess substantial capital or investment in the form of tools, machinery, and work premises, they were engaged to perform activities necessary and desirable in the usual business or trade of respondents—to conduct physical training for the clients of respondents.[13] Lastly, the agreement was a contract of adhesion, and they had no idea about the legal consequences thereof.[14]

Respondents[15] countered that petitioners, who were initially hired as instructors, were later on promoted as freelance personal trainers. As such, they were independent contractors who were not required to observe fixed hours of work. They were required, however, *one,* to guarantee a minimum fixed monthly sale and conduct 90 hours of training; and *two,* to observe relevant house rules in dealing with their clients. Petitioners since then renewed their contract until February 1, 2016. This type of employment

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9 *Id.* at 110–111.
10 *Id.* at 111–112.
11 Accessed: July 27, 2023. https://bir.gov.ph/images/bir_internal_communications_Full%20Text%20RR202014/fulltextRR4_2014.pdf.
12 *Rollo,* pp. 112–113.
13 *Id.* at 110–120.
14 *Id.* at 121.
15 *Id.* at 179–181. Respondents' Position Paper as cited in the Decision of the Labor Arbiter dated April 5, 2018.

arrangement is distinguished from fitness instructors who were required to render work nine hours a day, six days a week.[16]

All trainers start as full-time instructors. A progressive commission scheme allows instructors who have obtained a certain level of skill and training to get promoted as freelance personal trainers to take advantage of the higher commissions and flexible working hours. A freelance personal trainer though may revert to being an instructor by manifesting his or her decision to the human resource department.[17]

In compliance with BIR Revenue Regulation No. 4-2014,[18] it offered a 3% increase in commission for those who will register their freelance business with the BIR. Those who fail to register by October 30, 2017, shall suffer termination or non-renewal of their agreement. Only 62 of its freelance trainers complied. Hence, on March 20, 2017, it revoked its offer of higher commission. On June 29, 2017, they then offered petitioners to revert to being instructors. Petitioners, however, would want to enjoy the benefits of both an instructor and freelance trainer. They reiterated their offer on July 18, 2017 but to no avail.[19]

Ruling of the Labor Arbiter

By Decision[20] dated April 5, 2018, the labor arbiter declared petitioners as independent contractors, *viz.*:

> WHEREFORE, in view of the foregoing, this Office finds that complainants are independent contractors, and there is no basis for their claim of constructive dismissal. The complaint is hereby dismissed for lack of merit.
>
> Other claims are likewise dismissed for lack of merit.[21]

The labor arbiter held that the selection of petitioners based on their expertise was indicative of their nature as independent contractors.[22] They voluntarily signed the freelance agreement, successively renewed for years, and were paid on commission basis.[23] They also undertook the responsibility to pay and remit their respective monthly contributions to the Social Security System without fail and to file the required income tax returns on time.[24] The parties may terminate the agreement with or without cause.[25]

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16 *Id.*
17 *Id.*
18 *Supra note* 11.
19 *Rollo*, pp. 181–182. Penned by Labor Arbiter Laudimer I. Samar.
20 *Id.* at 176–186.
21 *Id.* at 186.
22 *Id.* at 183.
23 *Id.* at 184.
24 *Id.* at 183.
25 *Id.* at 185.

Even if the relationship of the parties was to be gauged under the power of control test, they would still be considered as independent contractors. As freelance trainers, they were not required to report for work on a fixed schedule. They controlled the time and manner they conduct physical training with their respective clients.[26]

As for petitioners' monetary claims, the same were denied for lack of merit.[27]

Ruling of the NLRC

Through its Decision[28] dated December 28, 2018, the NLRC affirmed the labor arbiter. It essentially ruled that there was no employer-employee relationship between the parties as shown by the freelance agreement. Too, petitioners failed to show that respondents reserved not only the right to control the end to be achieved but also the means used in the performance of their work.

Petitioners moved to reconsider but the same got denied by Resolution[29] dated February 28, 2019.

Per Entry of Judgement dated May 23, 2019, the Decision dated December 28, 2018 lapsed into finality on April 12, 2019.[30]

On June 26, 2019, petitioners moved[31] to recall Entry of judgment *ad cautelam* on the ground that they were yet to receive the resolution of their motion for reconsideration.

On August 27, 2019, petitioners filed a Petition for Relief from Judgment[32] praying anew that the Entry of Judgment dated May 23, 2019, be set aside having been entered through extrinsic fraud which precluded them from availing of the remedies provided for by law. Per the Bailiff's Return dated March 27, 2019, it was the Decision dated December 28, 2018 and not the Resolution dated February 28, 2019 as shown by the shaded box beside the words "Decision dated" which was furnished them.

In its Resolution[33] dated October 31, 2019, the NLRC denied the Petition for Relief from Judgment. Contrary to the claim of petitioners, they

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26 *Id.* at 184.
27 *Id.* at 186.
28 *Id.* at 228–246.
29 *Id.* at 267–270.
30 *Id.* at 266.
31 *Id.* at 271–275.
32 *Id.* at 276–290.
33 *Id.* at 300–308.

were duly furnished a copy of the Resolution dated February 28, 2019. Though the box beside the phrase "Decision dated" was shaded, the item beside Resolution dated bore the date 2/28/2019. Too, the date of service "4/2/19" was annotated with "refused to receive." Despite the issuance of the Entry of Judgment, petitioners were not precluded from filing a Petition for *Certiorari*.

Petitioners moved to reconsider but the same got denied by Resolution[34] dated December 27, 2019.

Ruling of the Court of Appeals

Through its assailed Decision[35] dated August 18, 2022, the appellate court affirmed the dismissal of the Petition for Relief from Judgment—a prohibited pleading under the NLRC Rules of Procedure. Despite the inadvertent error of shading the box intended for Decision, it was clear that what was being served was the Resolution dated February 28, 2019, as shown by the handwritten "2/28/19" beside the box intended for Resolution.[36]

At any rate, petitioners' counsel was duly notified of the Resolution dated February 28, 2019 on April 2, 2019. They could have seasonably filed a petition for *certiorari* until June 2, 2019, but they opted to file a prohibited pleading on August 27, 2019.[37]

On the substantive aspect, the appellate court held that there was no employer-employee relationship between the parties and that there could be no trilateral relationship because there were only two parties to the freelance agreement. Petitioners could not be considered as labor-only contractors as they were not in a position or arrangement to provide, recruit, supply, or place workers to perform a job or task for the principal.[38]

The Present Petition

Petitioners now ask the Court to reverse and set aside the questioned rulings of the Court of Appeals. They reiterate that they were not furnished with a copy of the resolution denying their reconsideration before the NLRC. The proper remedy, therefore, was to file a petition for relief from judgment, and not a petition for *certiorari*. Lastly, they maintain their position that they were regular employees of respondents.[39]

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34 *Id.* at 310–313.
35 *Id.* at 52–65.
36 *Id.* at 62.
37 *Id.* at 63.
38 *Id.* at 60.
39 *Id.* at 14–50.

In their Comment,[40] respondents moved to dismiss the Petition on the following grounds: *one*, not all the counsels of petitioners signed the Petition; *two*, petitioners failed to submit a proper verification and certification against forum shopping—petitioner Escauriaga solely signed the Petition sans any authorization from his co-petitioners; *three*, petitioners erroneously impleaded the NLRC as respondent in violation of Rule 45, Section 4 of the Rules of Court;[41] and lastly, the Decision and Resolution dated December 28, 2018 and February 28, 2019, respectively, long attained finality.[42] Bailiff Edilberto C. Arguil of the NLRC personally served the Resolution dated February 28, 2019 on April 2, 2019 at petitioners' counsel of record.[43]

At any rate, the NLRC correctly dismissed petitioners' Petition for Relief for being a prohibited pleading under Rule 5, Section 5[44] of the NLRC Rules of Procedure.[45]

Relying on *Sonza v. ABS-CBN Broadcasting Corp.*,[46] respondents reiterate the absence of employer-employee relationship with petitioners as they are freelance personal trainers or independent contractors. Petitioners were engaged based on their skills and expertise; and earned commissions that were way higher than those of regular employees. In fact, they were offered additional incentives on top of their commissions if they hit a certain number of hours in a given month. Withholding of taxes is required whether the same is charged against the compensation income of employees or commissions given to independent contractors.

Its power to terminate the independent contractor arrangement stemmed solely from breach of the terms of the contract. But petitioners' manner and method of selling health packages/programs and conduct of Personal Trainer (PT) sessions remained solely within their control and

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40 *Id.* at 361–431

41 *Id.* at 376.

42 *Id.* at 378.

43 *Id.* at 379.

44 **SECTION 5. PROHIBITED PLEADINGS AND MOTIONS.** - The following pleadings and motions shall not be allowed and acted upon nor elevated to the Commission:
a) Motion to dismiss the complaint except on the ground of lack of jurisdiction over the subject matter, improper venue, res judicata, prescription and forum shopping;
b) Motion for a bill of particulars;
c) Motion for new trial;
d) Petition for Relief from Judgment
e) Motion to declare respondent in default;
f) Motion for reconsideration of any decision or any order of the Labor Arbiter;
g) Appeal from any interlocutory order of the Labor Arbiter, such as but not limited to, an order:
(1) denying a motion to dismiss;
(2) denying a motion to inhibit;
(3) denying a motion for issuance of writ of execution; or
(4) denying a motion to quash writ of execution.
h) Appeal from the issuance of a certificate of finality of decision by the Labor Arbiter;
i) Appeal from orders issued by the Labor Arbiter in the course of execution proceedings.
j) Such other pleadings, motions and petitions of similar nature intended to circumvent above provisions. (5a, RIII)

45 *Rollo*, p. 382.

46 *See Sonza v. ABS-CBN Broadcasting Corp.*, 475 Phil. 539 (2004) [Per J. Carpio, First Division].

discretion.[47] Petitioners determined the means and methods by which they conduct physical health training based on the individual needs of the clients. They also had freedom on how to execute each fitness routine or PT conduction properly and effectively.[48]

It is basic gym etiquette for the last person to return and wipe off the sweat over the gym equipment to reduce the risk of accident—which should not be considered a badge of control. Its regular performance appraisal with PT complimentary award and company-sponsored team buildings do not also imply control on its part. These were awarded based on their exemplary performance in PT conduction.[49]

The control it exercised over petitioners is limited to the imposition of general guidelines on conduct and performance aimed at upholding Fitness First's standards.

There is no illegal dismissal to speak of since petitioners voluntarily agreed to convert their status from regular employees to freelance personal trainers with full knowledge of the consequences thereof.[50]

It repeatedly offered petitioners the option to revert to their former employment status, but petitioners chose to continue their relationship with the company as freelance personal trainers.[51] In any event, the claim of illegal dismissal by Escauriaga, Dela Cruz, Severino, and Mercado already prescribed considering their claim to have accrued at the time of their engagement as freelance trainers on June 1, 2012, May 1, 2012, January 1, 2008, and June 1, 2007, respectively—beyond the four-year prescriptive period when they filed the illegal dismissal case on June 9, 2017.[52]

Issue

Were respondents able to sufficiently prove that petitioners were independent contractors?

Ruling

The Petition is meritorious.

Procedural considerations

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47 *Rollo*, p. 399.
48 *Id.* at 401.
49 *Id.* at 402–403.
50 *Id.* at 408.
51 *Id.* at 412.
52 *Id.*

Respondents move for the dismissal of the Petition on the following grounds: *one*, only petitioner Escauriaga signed the Petition sans proof that he was duly authorized to sign on behalf of his co-petitioners; *two*, not all the counsels of petitioners signed the pleading; *three*, petitioners erroneously impleaded the NLRC as respondent in violation of Rule 45, Section 4,[53] of the Rules of Court; and *lastly*, the assailed Decision and Resolution dated December 28, 2018 and February 28, 2019 of the NLRC long attained finality.

Generally, the verification and certification against forum shopping must be signed by all petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the rule.[54] Here, Dela Cruz, Severino, Mercado, and Guevarra share the same cause with Escauriaga in advancing their right to regular employment against respondents.

As for the fact that not all the counsels of petitioners signed the pleading before the Court, the same deserves scant consideration since a genuine signature of one counsel suffices to consider a pleading signed.[55]

The NLRC, however, must be dropped as a party following Rule 45, Section 4[56] of the Rules of Court. A petition for review on *certiorari* under Rule 45, unlike a petition for *certiorari* under Rule 65, does not require that the court a quo be impleaded. This distinction proceeds from the nature of these proceedings: a Rule 45 petition involves an appeal from the ruling a quo;

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53 **Section 4.** *Contents of petition.* — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition; (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court a quo and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; and (e) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42. (2a) (Emphasis supplied)

54 *See Altres v. Empleo*, 594 Phil. 246 (2008) [Per J. Carpio-Morales, *En Banc*].

55 *Spouses Mariano, et al., v. Atty. Roberto Abrajano and Atty. Jorico F. Bayaua*. A.C. No. 12690, April 26, 2021. [Per J. Perlas-Bernabe, Second Division].

56 **Section 4.** *Contents of petition.* — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition; (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court a quo and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; and (e) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42. (2a)

a Rule 65 petition is an original special civil action that must implead the lower tribunal alleged to have acted in excess of its jurisdiction.[57]

As for the alleged finality of the assailed NLRC Resolutions, the doctrine on immutability of judgment must yield to substantial justice. True, a final and executory judgment can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land. This Court, however, has relaxed this rule to serve substantial justice considering (a) matters of life, liberty, honor, or property, **(b) the existence of special or compelling circumstances, (c) the merits of the case, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules,** (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby.[58]

To recall, per Entry of Judgment dated May 23, 2019, the Decision dated December 28, 2018 lapsed into finality on April 12, 2019. Petitioners claim that they were never served with the assailed February 28, 2019 Resolution of the NLRC denying their reconsideration. They wasted no time to file, albeit prohibited, a Motion to Recall Entry of Judgment on June 26, 2019 and a Petition for Relief from Judgment on August 27, 2019. The NLRC and the appellate court upheld the presumption of regularity in the performance of duties of Bailiff Edilberto C. Arguil despite his inadvertent shading of "Decision" in the Bailiff's Return when what was clearly being served was the NLRC's Resolution dated February 28, 2019. The lower tribunals added that petitioners could have seasonably filed a Petition for *Certiorari* until June 2, 2019, but they opted to file a prohibited pleading on August 27, 2019.

A departure from the doctrine on immutability of judgment is warranted because its strict application would defeat the constitutional policy on the protection of labor, especially so considering the meritorious stance of petitioners in this case and the apparent misapprehension of facts by the lower tribunals.

The law abhors technicalities that impede the cause of justice. The Court's primary duty is to render or dispense justice. A litigation is not a game of technicalities. Lawsuits, unlike duels, are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. Litigations must be decided on their merits and not on technicality. Every party litigant must be afforded the amplest opportunity for the proper and just

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[57] *Nightowl Watchman & Security Agency, Inc. v. Lumahan*, 771 Phil. 391 (2015) [Per J. Brion, Second Division].

[58] *See Sumbilla v. Matrix Finance Corp.*, 762 Phil. 130 (2015) [Per J. Villarama, Jr., Third Division].

determination of his or her cause, free from the unacceptable plea of technicalities.[59]

In *Republic v. Dagondon*,[60] the Court relaxed the strict application of the rule on immutability of judgments holding that the mandatory character of the rule was not designed to be an inflexible tool to excuse and overlook prejudicial circumstances. Hence, the doctrine must yield to practicality, logic, fairness, and substantial justice.

Lastly, the Court notes that the existence of an employer-employee relationship is ultimately a question of fact.[61] As a general rule, a petition for review on *certiorari* under Rule 45 of the Rules of Court may only raise questions of law. The Court is not duty-bound to analyze anew and weigh again the evidence introduced in the proceedings below and considered by the administrative tribunals.[62] The rule is not without exceptions as when the judgment is based on a misapprehension of facts,[63] as in this case.

We resolve on the merits.

It is established that petitioners rendered services in favor of respondents. The parties, however, differ on the employment status or classification of petitioners. Petitioners claim they are regular employees while respondents counter that they are independent contractors. There is no inflexible rule to determine if one is an employee or an independent contractor; thus, the characterization of the relationship must be made based on the circumstances of each case.[64]

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59 *See Acaylar, Jr. v. Harayo*, 582 Phil. 600 (2008) [Per J. Chico-Nazario, Third Division].

60 785 Phil. 210 (2016) [Per J. Perlas-Bernabe, First Division].

61 *See Atok Big Wedge Company, Inc. v. Gison*, 670 Phil. 615 (2011) [Per J. Peralta, Third Division].

62 *See Upod v. Onon Trucking and Marketing Corp.*, G.R. No. 248299, July 14, 2021. [Per J. Lazaro-Javier, Second Division].

63 This rule provides that the parties may raise only questions of law, because the Supreme Court is not a trier of facts. Generally, we are not duty-bound to analyze again and weigh the evidence introduced in and considered by the tribunals below. When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions:
(1) When the conclusion is a finding grounded entirely on speculation, surmises[,] and conjectures;
(2) When the inference made is manifestly mistaken, absurd or impossible;
(3) Where there is a grave abuse of discretion;
(4) When the judgment is based on a misapprehension of facts;
(5) When the findings of fact are conflating;
(6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
(7) When the findings are contrary to those of the trial court;
(8) When the findings of fact are conclusions without citation of specific evidence on which they are based;
(9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and
(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.
(See *Cirtek Employees Labor Union-FFW v. Cirtek Electronics, Inc.*, 665 Phil. 784 (2011) [Per J. Carpio-Morales, Third Division].

64 *See Orozco v. Court of Appeals*, 584 Phil. 35 (2008) [Per J. Nachura, Third Division].

Notably, the employment status of a person is not defined by what the parties say it should be. Rather, the employment relationship of parties is prescribed **by law**.[65] When the status of the employment is in dispute, the employer bears the burden to prove that the person whose service it pays for is an independent contractor rather than a regular employee with or without fixed terms.[66] The rule is that where a person who works for another performs his or her job more or less at his or her own pleasure, in the manner he or she sees fit, not subject to definite hours or conditions of work, and is compensated according to the result of his or her efforts and not the amount thereof, no employer-employee relationship exists.[67]

An **independent contractor** is one who carries on a distinct and independent business and undertakes to perform the job, work, or service on one's own account and under one's own responsibility according to one's own manner and method, free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof.[68] The independent contractor consists of individuals who possess unique skills and talents which set them apart from ordinary employees and whose means and methods of work are free from the control of the employer. Under this arrangement, there is no trilateral relationship but a bilateral relationship because independent contractors are directly engaged by the principal.[69]

An independent contractor enjoys independence and freedom from the control and supervision of his or her principal as opposed to an **employee** who is subject to the employer's power to control the means and methods by which the employee's work is to be performed and accomplished.[70]

In the resolution of the issue, this Court will employ a two-tiered test: the four-fold test and the economic dependence test.[71]

Under the **four-fold test,** to establish an employer-employee relationship, four factors must be proven:

(a) the employer's selection and engagement of the employee;
(b) the payment of wages;
(c) the power to dismiss; and

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65 *See Insular Life Assurance Co., Ltd. v. National Labor Relations Commission*, 350 Phil. 918 (1998) [Per J. Bellosillo, First Division].
66 *See Ditiangkin v. Lazada E-Services Philippines, Inc.*, G.R. No. 246892, September 21, 2022 [Per J. Leonen, Second Division].
67 *See Loreche-Amit v. Cagayan De Oro Medical Center, Inc.*, 852 Phil. 327 (2019) [Per J. Reyes Jr., Second Division].
68 *See Orozco v. Court of Appeals*, 584 Phil. 35 (2008) [Per J. Reyes, Second Division].
69 *Supra note* 63.
70 *See Paragele v. GMA Network, Inc.*, 877 Phil.140 (2020) [Per J. Leonen, Third Division].
71 *Supra note* 63.

(d) the power to control the employee's conduct. The power of control is the most significant factor in the four-fold test.[72]

On the power of hiring, it is undisputed that respondents engaged petitioners initially as fitness consultants, and on different dates, they transitioned to become freelance personal trainers. Respondents' assertion that petitioners were engaged based on their talents and skills does not necessarily prevent a regular employment status.[73] This is so when read in consonance with petitioners' repeated engagement as an independent contractor on a fixed one-year term which the Court construes as an effort to circumvent security of tenure. In *Dumpit-Murillo v. Court of Appeals*,[74] while the Court recognized the validity of fixed-term employment contracts in a number of cases, it emphasized that when the circumstances of a case show that the periods were imposed to block the acquisition of security of tenure, they should be struck down for being contrary to law, morals, good customs, public order, or public policy.

On the payment of wages, the Freelance Personal Trainer Agreement specifically mentioned that petitioners were paid on commission basis:

ARTICLE IV: COMPENSATION

In consideration of the performance by the FREELANCE PERSONAL TRAINER of the foregoing services, the COMPANY hereby binds itself to pay the FREELANCE PERSONAL TRAINER a commission, net of value-added tax (V.A.T.), in accordance with the schedule provided by the Company.

Also, all other training Packages/Services with corresponding applicable commission schemes/schedule provided by the Company are subject to Value-Added Tax (VAT), if applicable.[75]

Be that as it may, the Labor Code specifically mentions commission basis as one of the forms of paying wages, or anything paid as remuneration of earnings to employees covered by the Labor Code. The amount paid to respondents also indicates the nature of the relationship of the parties.[76]

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72 *See Martinez v. Magnolia Poultry Processing Plant*, G.R. Nos. 231579 & 231636, June 16, 2021 [Per J. Quisumbing, Second Division].

73 See *Dumpit-Murillo v. Court of Appeals*, 551 Phil. 725 (2007) [Per J. Quisumbing, Second Division].

74 *Id.*

75 *Rollo*, p. 86.

76 *See Aniceto v. Lifestyle Therapy Systems, Inc.*, G.R. No. 209423, December 6, 2021 [Notice, Third Division].

(f) "Wage" paid to any employee shall mean the remuneration or earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered and includes the fair and reasonable value, as determined by the Secretary of Labor and Employment, of board, lodging, or other facilities customarily furnished by the employer to the employee. "Fair and reasonable value" shall not include any profit to the employer, or to any person affiliated with the employer. (Labor Code of the Philippines, Presidential Decree No. 442 (Amended & Renumbered), July 21, 2015)

Though the subject Agreement here mentioned that the parties may voluntarily terminate the same with or without cause, the power to dismiss rests with respondents. For one, respondents held the power to dismiss the freelance personal trainer if it became manifest that the latter was unqualified or unfit to discharge his or her duties. Article VII of the Freelance Personal Trainer Agreement reads:

> **ARTICLE VII: TERMINATION OF ENGAGEMENT**
>
> The Company and the FREELANCE PERSONAL TRAINER may voluntarily terminate this Agreement at any time with or without cause, by furnishing written notice to other party.
>
> Notwithstanding the foregoing provisions, the engagement of the FREELANCE PERSONAL TRAINER shall be validly terminated under the following circumstances:
>
> a. If, at any time, during the engagement of the FREELANCE PERSONAL TRAINER, it becomes manifest that the latter is unqualified or unfit to discharge the above-mentioned services or that the FREELANCE PERSONAL TRAINER'S services are no longer required by the COMPANY;
> b. Should there be just or valid cause for the termination of said engagement;
>
> Likewise, the COMPANY may validly terminate the services of the FREELANCE PERSONAL TRAINER for acts inimical to the interest of the COMPANY and such other analogous causes other than those above-mentioned.
>
> In the event the FREELANCE PERSONAL TRAINER leaves the COMPANY for whatever reasons, he or she may not join as a paying member of any Fitness First Club for a period of less than twelve (12) months.[77]

For another, petitioners' failure to comply with the monthly Minimum Performance Standards[78] is a ground for termination pursuant to Article III of the Agreement:

> Provided, however, that if the FREELANCE PERSONAL TRAINER fails to comply with his/her aforementioned monthly minimum for three (3) varying months in the entire duration of this Personal Training

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77 *Rollo*, p. 88.

78 *Id.* at 154. 1. To diligently perform and assume his/her duties and responsibilities as FREELANCE PERSONAL TRAINERS of the COMPANY.
2. To be assigned by the COMPANY to any of the latter's managed health clubs, as the COMPANY may deem necessary;
3. To act as a freelance personal trainer of the members/customers of the COMPANY'S managed health clubs in accordance with the specifications of physical health training program/packages availed of by members/customers as marketed by the Freelance Personal Trainer;
4. To observe rules and regulations, policies[,] and procedure, made known to the FREELANCE PERSONAL TRAINER particularly those related to relationship with customers and conduct within the company managed health clubs including the Fitsync terms and conditions.
5. To attend all educational training sessions and other such events pertaining to Fitness Department. The FREELANCE PERSONAL TRAINER shall be duly notified of all aforementioned events/sessions.

> Agreement, the FREELANCE PERSONAL TRAINER'S status may be reviewed and can be a ground for the termination of the FREELANCE PERSONAL TRAINER's contractual engagement.[79]

Respondents' power to terminate petitioners is better understood concurrently with their power of control.

Under the four-fold test, the right to control is the dominant factor in determining whether one is an employee or an independent contractor.[80] The so-called **control test** is commonly regarded as the most crucial and determinative indicator of the presence or absence of an employer-employee relationship. Under the **control test,** an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end to be achieved, but also the manner and means to be used in reaching that end.[81] Contrary to respondents' claim, petitioners here did not perform their tasks at their own pleasure and in the manner they saw fit.

First, as personal trainers, petitioners performed tasks necessary and desirable to respondents' principal business of providing health programs/packages—to conduct physical training to respondents' clients. In its Amended Articles of Incorporation,[82] as amended on November 1, 2015, Fitness First was formed:

> To provide fully integrated sports facility management services or total club management services which shall include but not limited to providing consultancy service to a diverse range of development projects like hotel health clubs, gyms, large-scale residential facilities, hotels, executive clubs and specialty sports facilities such as tennis clubs and ice rinks, providing an effective and total management service extending to all aspects of club operations like administration and finance, marketing, recreation strategy[,] and food and beverage management, providing a complement of specialized services such as **sports coaching, fitness testing, personal training, pro shops,** food and beverage facilities, and selling (except on retail) club equipment and products like fitness equipment, tennis, squash and golf installation, sports surfaces and ancillary court products, recreational and playground equipment and sport simulation devices to governmental bodies, commercial operators and private developers.[83] (Emphasis supplied)

Second, to ensure the quality of services that respondents provide, petitioners were required to attend all educational training sessions and other such events pertaining to Fitness First Department. In fact, respondents kept track of petitioners' performance such that some of them were even lauded for their exemplary performance.

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79 *Id.* at 86.
80 *See Orozco v. Court of Appeals,* 584 Phil. 35 (2008) [Per J. Nachura, Third Division].
81 *See Halipot v. Jade Palace Restaurant,* G.R. No. 209363, November 10, 2014 [Notice, Third Division].
82 *Rollo,* pp. 431–443.
83 *Id.* at 432.

Fitness First

Presented to

Cristine Dela Cruz

for her outstanding and
Exemplary performance as

TOP 9 in PT Conduction
April 2013 (Philippines)

Given this 6th day of May 2013
Fitness First – North Edsa
5th Level, the Block, SM North Edsa
North Ave. corner Edsa, Quezon City

Jennifer Ciasico
Club General Manager[84]

This shows that respondents were after the quality of service that petitioners, who were deemed as independent contractors, deliver to their clients.

Even if we assess respondents' power of control vis-a-vis the Freelance Personal Trainer Agreement, the same conclusion is reached. At first glance, the Agreement guaranteed that petitioners shall be free of control in the marketing and conduct of the physical health training packages, thus:

ARTICLE II: OBLIGATIONS OF THE FREELANCE PERSONAL TRAINER

> Consonant to the express warranty of qualified training, experience, skill and expertise and in recognition of the status of the FREELANCE PERSONAL TRAINER as an Independent Contractor, he/she shall have free control in the marketing and conduct of the physical heath training packages.[85] (Emphasis supplied)

But the succeeding paragraphs in the Agreement negate the alleged absence of control on the part of respondents. Consider:

One, upon engagement, petitioners were bound to abide by the following Minimum Performance Standards:

> . . . However, in consideration of the fees set forth hereunder, the FREELANCE PERSONAL TRAINER hereby binds himself/herself as follows:

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[84] *Id.* at 136.
[85] *Id.* at 129.

> 1. To diligently perform and assume his/her duties and responsibilities as Freelance Personal Trainers (sic) of the COMPANY.
>
> 2. **To be assigned by the COMPANY to any of the latter's managed health clubs, as the COMPANY may deem necessary.**
>
> 3. To act as a freelance personal trainer of the members/customers of the COMPANY'S managed health clubs in accordance with the specifications of physical health training program/packages availed of by members/customers as marketed by the Freelance Personal Trainer.
>
> **4. To observe rules and regulations, policies[,] and procedure, made known to the FREELANCE PERSONAL TRAINER particularly those related to relationship with customers and conduct within the company managed health clubs including the Fitsync terms and conditions.**
>
> **5. To attend all educational training sessions and other such events pertaining to Fitness Department.**The FREELANCE PERSONAL TRAINER shall be duly notified of all aforementioned events/sessions.[86] (Emphasis supplied)

Two, petitioners were required to guarantee monthly sales and conduct physical training programs/packages as follows:

> . . . It is hereby understood by the parties herein however that the FREELANCE PERSONAL TRAINER binds himself/herself to guarantee the COMPANY the required monthly sales as may be imposed and agreed upon by the parties, and conduction of physical training programs/packages totaling Ninety (90) Hours for Silver Trainers, Eighty[-]five (85) Hours for Gold Trainers[,] and Eighty (80) Hours for Platinum Trainers in a month.[87]

That petitioners were required to conduct physical training for a number of hours is contrary to the nature of independent contractors who is not supposed to be subjected to definite hours or conditions of work.

Three, respondent reserved the right to unilaterally revise the Minimum Performance Standards even without notice:

> The COMPANY reserves the right to revise these Minimum Performance Standards if deemed necessary without notice. Any change will be confirmed in writing. It may also be fairly pro-rated where applicable as decided by the COMPANY.[88]

Surely, respondents' right to assign petitioners to any of its managed health clubs as it may deem necessary and right to impose rules and regulations, particularly the procedure to be followed are manifestations of its exercise of control, if not management prerogative. Too, the Court cannot turn

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[86] *Id.* at 91-92.
[87] *Id.* at 86.
[88] *Id.*

a blind eye to respondents' conduct of educational training sessions which are badges of respondents' right to control the means and methods of providing physical health training packages.

Even applying the economic dependence test, the conclusion would be the same. *Francisco v. National Labor Relations Commission*[89] laid down the circumstances of the whole economic activity to consider in the determination of the relationship between employer and employee such as:

> (1) the extent to which the services performed are an integral part of the employer's business;
> (2) the extent of the worker's investment in equipment and facilities;
> (3) the nature and degree of control exercised by the employer;
> (4) the worker's opportunity for profit and loss;
> (5) the amount of initiative, skill, judgment[,] or foresight required for the success of the claimed independent enterprise;
> (6) the permanency and duration of the relationship between the worker and the employer; and
> (7) the degree of dependency of the worker upon the employer for his continued employment in that line of business.[90]

As earlier discussed, petitioners were made to act as personal trainers in accordance with specifications on the physical health availed of by members/customers as marketed by the freelance personal trainer. But as to what these packages were, respondent categorized them as Single sessions, Fast Track, Lifestyle, and Performance packages. Annexure PT.02 on Personal Training Commission reads:

> 1.1 You will receive all commissions after all government tax deductions, as per the Company's current Personal Training Price List, categorized by Single sessions, Fast Track, Lifestyle[,] and Performance packages.
>
> Freelance Personal Trainers will be paid a commission per single conducted session relating to the Personal Training Package purchased . . .
>
> 1.3 x x x
>
> The Company reserves the right to revise the commission rate or structure if deemed necessary without notice or prior agreement. Any change in your commission rate will be confirmed in writing.[91]

In the performance of their tasks, petitioners as trainers were guided by the packages offered by respondent and purchased by its clients. The performance of these acts is integral to respondent's business of offering various physical health training programs/packages.

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[89] 532 Phil. 399 (2006) [Per J. Ynares-Santiago, First Division].
[90] *Id.*
[91] *Rollo*, p. 96. (Annexure P.T.02).

Too, petitioners were wholly dependent upon respondent for their continued employment in this line of business. Per the Freelance Personal Trainer Agreement, they were required to sell only the company products per its price schedule and were prohibited from providing training outside of the club.

> **ARTICLE IV: COMPENSATION**
>
> . . .
>
> In no circumstances may the FREELANCE PERSONAL TRAINER collect any amount from the members directly. All Personal Training income from the clients must be made payable to the COMPANY.
>
> Personal Training shall not be provided to members outside of the club. All pricing is provided by the COMPANY. ALL FREELANCE PERSONAL TRAINERS are required to sell only the COMPANY products as per the price schedule according to the FREELANCE PERSONAL TRAINER's grade.[92]
>
> **ARTICLE V: EXCLUSIVITY CLAUSE**
>
> The FREELANCE PERSONAL TRAINER is prohibited from dealing with the clients of the COMPANY in his/her personal capacity.
>
> The FREELANCE PERSONAL TRAINER further binds himself/herself not to ask or receive, for his/her personal benefit or gain, any advantage in money or in kind, from members, brokers, clients, dealers[,] or any other such person or entity having business relations with the COMPANY.[93]

The exclusivity clause only strengthens petitioners' position that they are regular employees of respondent.

Petitioners are entitled to backwages, separation pay, pro-rata 13th month pay, and attorney's fees

Contrary to the uniform findings of the lower tribunals, we find that petitioners are regular employees of respondent. Petitioners here did not perform their job at their own pleasure and in the manner they saw fit. Consequently, petitioners should be reinstated to their respective positions with full backwages computed from the time of dismissal up to the time of actual reinstatement. These include their salary for holiday pay and other labor benefits withheld. If reinstatement is no longer feasible, they should be given separation pay in addition to full backwages.[94]

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92 *Rollo*, p. 87.
93 *Id.*
94 *Supra note* 63.

As petitioners were forced to litigate and incur expenses to protect their rights and interests, they should be paid attorney's fees equivalent to 10% of the total monetary award.[95]

Respondent Liberty Cruz is not solidarily liable with Fitness First Philippines

While directors, officers, and human resource managers like respondent Cruz may be solidarily held liable with the corporation in cases of illegal termination of employees, this is the exception rather than the general rule. To be held solidarily liable with the corporation in labor cases, the manager or officer must have acted with **malice or bad faith**.[96]

Here, other than the fact that respondent held the position of human resource Manager, petitioners failed to demonstrate how she abused her position to get petitioners in the situation they found themselves in. Bad faith, therefore, may not be attributed to make her solidarily liable with respondent Fitness First.

Final word

The Court's disposition in this case gives true meaning to the right to security of tenure guaranteed under Article XIII, Section 3 of the 1987 Constitution:

> ARTICLE XIII. SOCIAL JUSTICE AND HUMAN RIGHTS. —
>
> LABOR
>
> Sec. 3.
>
> It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The Labor Code echoes the right to security of tenure:

> **ARTICLE 294.** [279] *Security of Tenure* — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without

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[95] *See Gunday v. Court of Appeals*, G.R. Nos. 240273 & 240325, June 17, 2020 [Per J. Lazaro-Javier, First Division].

[96] *See Jacob v. Villaveran Maintenance Service Corp.*, G.R. No. 243951, January 20, 2021 [Per J. Lazaro-Javier, Second Division]

> 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.[97]

With the precious constitutional guarantee in place for the protection of labor, the Court, in circumstances as in this case, will not hesitate to strike down as invalid any employer act that attempts to undermine workers' tenurial security.[98]

ACCORDINGLY, the Petition for Review is **GRANTED.** The **Decision** and **Resolution** dated August 18, 2022 and March 24, 2023, respectively, of the Court of Appeals in CA–G.R. SP No. 165342 are **REVERSED.**

Petitioners **Rico B. Escauriaga, Cristine Dela Cruz, Rene B. Severino, Ralph Errol Mercado, and Geraldine Guevarra** are DECLARED REGULAR EMPLOYEES of Respondent Fitness First Phil., Inc.

Respondent Fitness First Phil., Inc. is **ORDERED** to:

1) **REINSTATE** petitioners **Rico B. Escauriaga, Cristine Dela Cruz, Rene B. Severino, Ralph Errol Mercado, and Geraldine Guevarra** to their former positions;

2) **PAY** petitioners' full backwages, overtime pay, 13th month pay, cash bond deposit, and other benefits and privileges from the time they were dismissed up to their actual reinstatement; and

3) **PAY** attorney's fees equivalent to 10% of the total monetary award.

All monetary awards shall be subject to the interest rate of 6% per annum from the date of finality of this Decision until full payment.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

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97 Labor Code of the Philippines (2015).

98 *See Imasen Philippine Manufacturing Corp. v. Alcon*, 746 Phil. 172 (2014) [Per J. Brion, Second Division].

WE CONCUR:

MARVIC M.V.F. LEONEN
Senior Associate Justice

MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ANTONIO T. KHO, JR.
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.

MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ALEXANDER G. GESMUNDO
Chief Justice