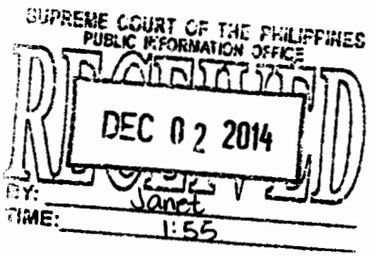
REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION



NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **10 November 2014** *which reads as follows*:

G.R. No. 209363 – *Thelma F. Halipot, petitioner, versus Jade Palace Restaurant and Ms. Amperita Vallera, respondents.*

For resolution is the petition for review on *certiorari* under Rule 45 of the Rules of Court filed by petitioner Thelma F. Halipot *(petitioner)* questioning the March 22, 2013 Decision[1] and the October 1, 2013 Resolution[2] of the Court of Appeals *(CA),* in CA-G.R. SP No. 125847. Through the assailed issuances, the CA affirmed both the Decision[3] and Resolution[4] of the National Labor Relations Commission *(NLRC)*, as well as the October 27, 2011 Decision[5] of Labor Arbiter Enrique L. Flores, Jr. *(LA)*, which all ruled to dismiss her complaint against Jade Palace Restaurant and Amperita Vallera *(respondents)* for illegal dismissal and underpayment of salaries and other labor standard benefits for lack of merit.

The Facts:

In her complaint, petitioner alleged that on January 10, 2007, she was hired by respondents to work as a utility worker. She was required to work for six (6) days a week from 7:00 o'clock in the morning until 4:00 o'clock in the afternoon for a daily wage of ₱300.00. Among her duties was to clean the comfort rooms of the restaurant, from the first to the fourth floor. After more than four (4) years of service, she was informed by respondent Amperita Vallera *(Vallera)* that Ng Lun Yun *(Lun Yun)*, the part-owner and consultant of the restaurant, decided to terminate her employment. She was then issued a certificate of employment[6] that indicated her length of service at the restaurant. Petitioner contended that she was dismissed without cause and without affording her due process.[7]

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[1] Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Michael P. Elbinias and Edwin D. Sorongon, concurring; *rollo*, pp. 38-47.
[2] Id. at 49-50.
[3] Id. at 141-145.
[4] Id. at 159-161.
[5] Id. at 107-111.
[6] Id. at 90.
[7] Id. at 75-76.

For their part, respondents denied having employed petitioner in the restaurant. They claimed that she was directly hired by Lun Yun to work as his housemaid and that Lun Yun paid her salaries using his own money. According to respondents, Lun Yun, who happened to reside at the penthouse of the same building where the restaurant was located, was the one who decided to terminate her services due to loss of trust and confidence and her declining performance.[8]

In support of their denial that an employer-employee relationship existed between them and petitioner, respondents pointed out that petitioner never applied for any job, and so was never hired by respondents to work in the restaurant. There was neither any employment contract entered into between them nor was there any time card or identification card to show that petitioner was their employee. They cited the affidavit[9] of Visitacion L. Mercene *(Mercene)*, accounting head of respondents, attesting that petitioner was never in their list of payroll employees. They also cited the affidavit of Carmelita B. Esperanzate *(Esperanzate)*, the human resource development manager of respondents, which attested that petitioner was the housemaid of Lun Yun and that she never worked in the restaurant. Esperanzate also clarified that she only issued the certificate of employment to accommodate petitioner's request so that she could acquire future employment elsewhere, and that the certification was, nevertheless, invalid because it only bore her signature, had no company seal and was not signed by the company's operations manager. In all, respondents asserted that they never shared an employer-employee relationship with petitioner as they never exercised any power of control over her.[10]

On October 27, 2007, the LA resolved to dismiss the complaint for lack of merit. In his decision,[11] the LA found that there was substantial evidence on record to rebut petitioner's allegation that she was employed by respondents. In finding that none of the four elements existed to establish an employer-employee relationship, the arbitration office took into consideration the absence of petitioner's name in the payroll documents submitted by respondents and also the affidavit of Esperanzate that she only issued the certificate of employment to accommodate petitioner's future employment elsewhere. The LA was of the considered view that the certificate of employment could not be that which determines the existence of an employer-employee relationship between the parties.

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[8] Id. at 92-93.
[9] Id. at 96.
[10] Id. at 92-93.
[11] Id. at 107-111.

Petitioner then appealed the decision to the NLRC.

On March 15, 2012, the NLRC rendered its decision affirming the findings and conclusions arrived at by the LA.[12] It found that no competent and relevant evidence was presented to prove that an employer-employee relationship actually existed between the parties. According to the NLRC, despite the claim of petitioner that she was a regular employee and she worked in the comfort rooms of the restaurant, she failed to present anything to prove her claim of employment. It noted that petitioner relied only on the certificate of employment issued to her to support her claim of employment. It added that petitioner failed to present any company identification card, payslip or any communication from respondents as an employee, despite claiming to have worked for them for over four years. The NLRC, instead, considered the affidavit of Mercene and the payroll records of respondents which did not bear the name of petitioner as one of respondents' employees.

Petitioner filed a motion for reconsideration, but it was denied by the NLRC in its March 25, 2012 Resolution.[13]

Aggrieved, petitioner filed a petition for review under Rule 65 of the Rules of Court before the CA questioning the decision and the resolution of the NLRC.

In ruling in favor of respondents, the CA was of the considered view that petitioner was not selected or engaged by any of the respondents. It pointed out that petitioner never disputed the contention of respondents that she was directly hired by Lun Yun and that she failed to submit any employee ID, contract of employment or time card to prove that she was under the employ of respondents. She did not present any ATM card either which respondents normally issued to its regular employees. The CA also noted the payrolls submitted by respondents which showed that petitioner was not among the employees of the restaurant.

As for the certificate of employment, the CA agreed with the findings of the LA and the NLRC that respondents' evidence proved that the same was issued only to accommodate her request so that she could find another work elsewhere. It concurred with the conclusions of the LA and the NLRC that the certification was insufficient to prove her employment with respondents.

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[12] Id. at 141-145.
[13] Id. at 159-161.

In disposing the petition, the CA found no evidence to prove that respondents ever supervised the performance of petitioner's duties or that it wielded the power of control over her.

Petitioner sought reconsideration, but to no avail.

Hence, this petition.

The petition lacks merit.

Section 1, Rule 45, of the Revised Rules of Court provides:

> Section 1. *Filing of petition with Supreme Court.* – A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. **The petition shall raise only questions of law which must be distinctly set forth.** (Emphasis supplied)

Applied to this case, it should be pointed out that it is a hornbook doctrine that the existence of an employer-employee relationship is ultimately a question of fact.[14] Settled is the rule that this Court is not a trier of facts and this doctrine applies with greater force in labor cases. Questions of fact are for the labor tribunals to resolve.[15] It is not the Court's function to assess and evaluate the evidence all over again, particularly where the findings of the labor arbiter, the labor commission and the appellate court concur.[16]

It is true that the foregoing doctrine admits of exceptions.[17] A cursory review of the records, however, reveals that none of the exceptions are applicable in this case.

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[14] *Aklan v. San Miguel Corporation*, 594 Phil. 344, 357 (2008); *Abante, Jr. v. Lamadrid Bearing & Parts Corp.*, G.R. No. 159890, May 28, 2004, 430 SCRA 368, 378.

[15] *Tagle v. Anglo Eastern Crew Management, Phils., Inc.*, G.R. No. 209304, July 9, 2014; *Alfaro v. Court of Appeals*, 416 Phil. 310, 318 (2001).

[16] *Stamford Marketing Corp. v. Julian*, 468 Phil. 34, 54 (2004).

[17] Such as: (1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings 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 petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

On this ground alone, the petition must be dismissed.

Even if the Court considers the factual issues raised by petitioner, the Court still finds the petition to be dismissible for lack of merit.

It is a basic rule of evidence that each party must prove his affirmative allegation. In labor cases, as in other administrative proceedings, substantial evidence or such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion is required. In other words, the *onus probandi* falls on petitioner to establish or substantiate such claim by the requisite quantum of evidence.[18] In this case, the LA, the NLRC and the CA all concluded that petitioner failed to establish her employment with respondents. By way of evidence to counter these findings, all that petitioner ever presented to insist on her contention that she shared an employer-employee relationship with respondents were: 1) her allegation that it was her duty to clean the restrooms of the restaurant; and 2) the Certificate of Employment issued by respondents' human resource manager that she was their employee.

The Court finds the evidence offered by petitioner insufficient to establish the employer-employee relationship with respondents.

As correctly ruled by the LA, the NLRC, and the CA, the certification alone that petitioner was an employee of respondents is not sufficient to establish an employer-employee relationship in the presence of countervailing evidence. Considering that the human resource manager explained that the said certification was issued simply for petitioner's future employment elsewhere, it behooves upon petitioner to discharge the burden of evidence against her by presenting other competent evidence to clearly establish the claimed employer-employee relationship between her and respondents.

As to her allegation that she cleaned the comfort rooms of the restaurant, suffice it to say that it was neither corroborated by any other evidence nor supported by any other allegation as to the time, manner and upon whose authority she received the instruction on her alleged duty. Indeed, whoever claims entitlement to the benefits provided by law should establish his or her right thereto.[19]

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[18] *UST Faculty Union v. University of Sto. Tomas*, 602 Phil. 1016, 1031 (2009).
[19] *Alex C. Cootauco v. MMS Phil. Maritime Services, Inc.*, G.R. No. 184722, March 15, 2010, 615 SCRA 529, 544-545.

At any rate, it must be remembered that in the ascertainment of the existence of an employer-employee relationship, the four-fold test must be applied, that is: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct, or the so-called "control test."[20] Of these four, the last one is the most important.[21] 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 achieved, but also the manner and means to be used in reaching that end.[22]

Applying the aforementioned test, the Court is not convinced that an employer-employee relationship existed between the parties in the case at bench. The record is bereft of any showing that respondents exerted any control over petitioner. The latter's complaint is devoid of any indication as to who, how and in what manner respondents exercised control over her. Moreover, petitioner failed to submit corroborative proof that respondents engaged her services as a regular employee; that respondents paid her wages as an employee, or that respondents could dictate what her conduct should be while at work. In other words, petitioner's allegations did not establish that her relationship with respondents had the attributes of an employer-employee relationship on the basis of the above-mentioned four-fold test. Worse, petitioner was not able to refute respondents' assertion that she was instead the househelp of Lun Yun.

The Court is, thus, convinced that the lack of any payslip, entry in the company payroll, company identification card or any other communication, memorandum or notice from any other employee of respondents that may show that they exercised control over petitioner – is proof of the simple fact that petitioner was never employed by respondents.

In all, the Court finds that petitioner failed to pass the substantiality requirement to support her claims. Consequently, the Court sees no reason to depart from the findings made by the courts below.

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[20] *Philippine Global Communication, Inc. v. De Vera*, 498 Phil. 301, 308-309 (2005).
[21] *Ushio Marketing v. NLRC*, 356 Phil. 174, 187 (1998); *Insular Life Assurance Co., Ltd. v. NLRC*, 350 Phil. 918, 925 (1998).
[22] *Abante, Jr. v. Lamadrid Bearing & Parts Corp.*, G.R. No. 159890, May 28, 2004, 430 SCRA 368, 379.

For lack of factual and legal basis to sustain them, the ancillary claims of monetary awards are dismissed.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

Very truly yours,

MA. LOURDES C. PERFECTO
Division Clerk of Court

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