



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **02 December 2020** which reads as follows:*

“G.R. No. 209317 (Richard Narvaez, Leonila Dumat, Julieta Madum, Rosalie Bitio, Rustica Mabong, Arsenia Ticala, Starlita Collado, Levita Sabino, Policarpo Cabahug, Feliciano Hinayas, Ignacio Vitacion, Cristituto Abay, Virginia T. Corcilles, Rosalina Martinez, Lucia Delatado, Teodoro Ordaneza, Romeo Lelisa, Maria Aspacio, Reynaldo Awit, and Elsina Centinales, Petitioners, v. Davao Fruits Corp., Ofelia Alvarez, Nelson Democillo, Sergio Servaño, Romeo Nasol, Ronald Sabas, Tabagrow, Nestor Cirunay, Juan Halog, Sosisco, and Ab Davin, Jr.).

The law allows contracting arrangements for the performance of specific jobs, works or services. It is management prerogative to outsource any of its activities, whether peripheral or core in nature, provided it is made to an **independent contractor**.¹ This is because the current rules expressly prohibit **labor-only contracting**,² where the contractor or subcontractor merely recruits, supplies or places workers to perform services for a principal, and where any of the following elements is present:

- (i) the contractor or subcontractor does not have substantial capital or investment which relates to the job, work, or service to be performed and the employees recruited, supplied, or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or
- (ii) the contractor does not exercise the right to control over the performance of the work of the contractual employee.³

Here, the rules on job contracting are inapposite. The respondents did not farm out to the growers the performance of a specific job, work, or

¹ See *Aliviado, et al., v. Procter & Gamble Phils., Inc.*, 665 Phil. 542, 556-557 (2011).

² See LABOR CODE, ARTICLE 106.

³ See *Department of Labor and Employment* Department Order No. 18-02, Series of 2002, Section 5.

1/11/21

service. Instead, the respondents entered into an agreement under which the growers would handle and fund the production of bananas and operation of the plantation. On the other hand, the growers would hire their own workers and pay their wages and benefits, and sell exclusively to the respondents all the bananas produced that meet the specifications agreed upon.⁴ At any rate, the records reveal that the growers have the capital, technical experience, and management qualification to produce and pack bananas. The respondents' participation was limited to buying the bananas from the growers.

Even applying the **four-fold test** of employment relationship, namely: (1) the selection and engagement of the employee or the power to hire; (2) the payment of wages; (3) the power to dismiss; and (4) the power to control the employee,⁵ would reveal that the growers are the true employers of the petitioners. *First*, with regard to the power to hire, it was the growers who individually employed the petitioners. There was no evidence that the respondents participated in or influenced the growers' decision to hire the petitioners. The fact that the petitioners previously worked with the respondents is immaterial. *Second*, with respect to the payment of wages, the agreements are explicit that the petitioners would directly receive their premiums and salaries from the growers. *Third*, as to the power to dismiss, it was the growers which terminated the employment of the petitioners. The release and quitclaim documents established that the petitioners were separated or resigned from their employment with the growers. There is no evidence that the respondents wielded such authority. *Lastly*, concerning the power of control, it was the growers which issued orders and instructions to the petitioners as to the growing, harvesting, and packing of bananas. Notably, the respondents already turned over the production of bananas to the growers.

In sum, a case for illegal dismissal cannot prosper absent employment relationship between the petitioners and the respondents.

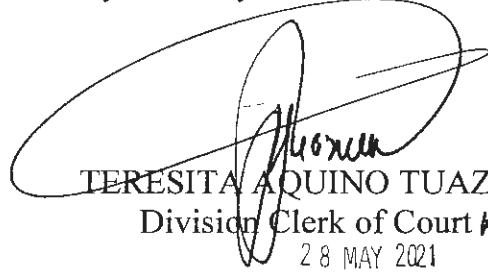
FOR THESE REASONS, the petition is **DENIED**. The Court of Appeals' Decision dated September 28, 2012 in CA-G.R. SP No. 02162-MIN is **AFFIRMED**.

SO ORDERED." (Perlas-Bernabe, J., on official leave. Rosario, J., designated additional Member per Special Order No. 2797 dated November 5, 2020.)"

⁴ *Traveño, et al. v. Bobongan Banana Growers Multi-Purpose Cooperative*, 614 Phil. 222, 233 (2009).

⁵ *Manila Water Co., Inc. v. Dalumpines*, 646 Phil. 383, 390 (2010); *Lakas Sa Industriya ng Kapatirang Haligi ng Alyansa-Pinagbuklodng Manggagawang Promo ng Burlingame v. Burlingame Corporation*, 552 Phil. 58, 63 (2007); *De Los Santos v. NLRC*, 423 Phil. 1020, 1029 (2001); See *Rhone-Poulenc Agrochemicals Phil., Inc. v. NLRC*, 291 Phil. 251, 259 (1993).

By authority of the Court:



TERESITA AQUINO TUAZON
Division Clerk of Court
28 MAY 2021

HAPITAN LAW OFFICE (reg)
(ATTY. LEO C. HAPITAN)
Counsel for Petitioners
Door 8, 2nd Floor, Adalya Bldg.
26 Araullo St., Davao City

ATTY. ELIZALDE BALLO (reg)
Counsel for Davao Fruits Corps., O. Alvarez,
N. Democillo, S. Servano, R. Nasol & R. Sabas
SUMIFRU [Phils.] Corp.
Km. 20, Tibungco
8000 Davao City

ATTY. REMIE A. CALATRAVA (reg)
Counsel for Respondent SOSISCO
2nd Floor, Room 203, Montelibano Building
185 Anda St., Davao City

YAP-DE GALA LAW & REALTY OFFICES (reg)
(ATTY. WEALTHYNEIL YAP)
Counsel for Tabagrow, N. Cirunay, J. Halog &
VP/SOSISCO Ab Davin, Jr.
2nd Floor, Denila Building
cor. Rizal and J. Abad Santos Streets
Tagum City

PASCUA & TORREFRANCA LAW FIRM (reg)
(ATTY. AIMEE S. TORREFRANCA-NERI)
Counsel for Davao Fruits Corporation (DFC)
Door 203, LaCima Building, McArthur Highway
Matina, Davao City

NATIONAL LABOR RELATIONS
COMMISSION (reg)
Regional Arbitration Branch No. XI
8000 Davao City
(NLRC Case No. RAB-11-03-00282-05;
NLRC Case No. RAB-11-04-00366-05)

COURT OF APPEALS (reg)
Mindanao Station
Cagayan de Oro City
CA-G.R. SP No. 02162-MIN

JUDGMENT DIVISION (x)
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)
LIBRARY SERVICES (x)
[For uploading pursuant to A.M. No. 12-7-SC]

OFFICE OF THE CHIEF ATTORNEY (x)
OFFICE OF THE REPORTER (x)
PHILIPPINE JUDICIAL ACADEMY (x)
Supreme Court, Manila

Please notify the Court of any change in your address.
GR209317. 12/02/2020(164)URES