Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PHILIPPINE PIZZA, INC.,
Petitioner,

-versus-

ROMEO GREGORIO OLADIVE, JR., ARNEL D. LABOG, JOHN LAURENCE R. VERDIDA, PAUL WILLIAM S. SOLIMAN, ROMMEL N. CACCAM, RAMIL D. DELOS SANTOS, GABRIEL S. MONTANA, TEOFILO N. BERGANTIN, ARTHUR A. DE GUZMAN, and CONSOLIDATED BUILDING MAINTENANCE, INC.,
Respondents.

G.R. No. 243349

Present:

CAGUIOA, *J., Chairperson*,
INTING,
GAERLAN,
DIMAAMPAO, and
SINGH, *JJ.*

Promulgated:

February 26, 2024

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DECISION

SINGH, *J.:*

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by petitioner Philippine Pizza, Inc. (**PPI**) assailing the Decision,[2] dated May 23, 2018, and the Resolution,[3] dated November 27, 2018, of the Court of Appeals (**CA**) in CA-G.R. SP No. 140927. The CA ruled that the National Labor Relations Commission (**NLRC**) committed grave abuse of discretion, in reversing the Decision of the Labor Arbiter finding that an employer-employee relationship exists between respondents

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1 *Rollo*, pp. 10–58.

2 *Id.* at 1072–1106. Penned by Associate Justice Rafael Antonio M. Santos and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Carmelita Salandanan Manahan of the Special Twelfth Division of the Court of Appeals, Manila.

3 *Id.* at 1144–1152. Penned by Associate Justice Rafael Antonio M. Santos and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Carmelita Salandanan Manahan of the Former Special Twelfth Division of the Court of Appeals, Manila.

Romeo G. Oladive, Jr., Arnel D. Labog, John Laurence R. Verdida, Paul William S. Soliman, Rommel N. Caccam, Ramil D. Delos Santos, Gabriel S. Montana, Teofilo N. Bergantin, and Arthur A. De Guzman (collectively, **respondents**) and PPI; that Consolidated Building Maintenance, Inc. (**CBMI**) is engaged in labor-only contracting; and that the respondents were illegally dismissed from their employment.

The Facts

The present case stemmed from three separate complaints for illegal dismissal filed by the respondents against PPI and CBMI.

PPI is the franchise holder of the Pizza Hut fast food chain in the Philippines, and is represented by its owner, Jorge L. Araneta.[4] On the other hand, CBMI is represented by its President, Salvador S. Ortañez, and Director, Juan Carlo A. Ortañez,[*] and claims to be a legitimate job contractor which entered into successive service agreements with PPI in order to supply the latter with workers to perform specific tasks.

In the respondents' Consolidated Position Paper,[5] dated December 12, 2013, they claimed that: (1) they were regular employees of PPI by operation of law considering the years of service they have rendered with PPI; (2) their jobs were considered necessary and desirable in the usual business or trade of PPI; (3) they were under the direct control and supervision of PPI's managers; (4) the tools and machines they used were all owned by PPI; and (5) they were directly hired by PPI but were later transferred to CBMI to avoid their regularization under the former.[6]

The respondents further averred that during the pendency of the regularization case they filed against PPI, they were dismissed by the latter without just and valid reasons and without proper observance of due process of law. Hence, they filed a case for illegal dismissal and damages against PPI and CBMI.[7]

For its part, PPI denied having an employer-employee relationship with the respondents. Instead, PPI alleged that the respondents are delivery riders employed by CBMI.[8] PPI further alleged that: (1) CBMI was incorporated and duly registered with the Securities and Exchange Commission;[9] (2)

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4 *Id.* at 283, Position Paper for Respondents Philippine Pizza, Inc. and Jorge L. Araneta.

* Also referred as Juan Manolo O. Ortañez and Juan Ortañez in some parts of the records; see *Rollo*, p. 335, 351, 548, 834, and 857.

5 *Id.* at 545–556.

6 *Id.* at 547, Consolidated Position Paper for Complainants.

7 *Id.* at 548.

8 *Id.* at 282, Position Paper for Respondents Philippine Pizza, Inc. and Jorge L. Araneta.

9 *Id.* at 283.

through the years, CBMI has established its name and goodwill of rendering janitorial, messengerial, sanitation, medical, bussing on tables, kitchen, delivery services, warehousing services, etc.;[10] (3) for more than two (2) decades now, CBMI had been rendering janitorial, bussing, kitchen, cashiering, warehousing and delivery services to PPI, as per the Contract of Services entered into by and between PPI and CBMI, wherein the latter undertook to perform the contracted services according to its own manner and method, free from the control and direction of PPI in all matters connected with the performance of the work except as to the results thereof;[11] (4) the Contract of Services specifically provides for the absence of fiduciary and employer-employee relationship between PPI and CBMI's employees;[12] (5) CBMI hired the respondents who were assigned to PPI as delivery riders.[13] Therefore, PPI argued that it is not the real party-in-interest against whom the respondents may avail of reliefs.

On the other hand, CBMI claimed that: (1) it is registered as a legitimate job contractor with the Department of Labor and Employment (**DOLE**);[14] (2) PPI engaged the services of CBMI and contracted out motorized delivery services;[15] (3) throughout their deployment in their respective branch assignments, the respondents regularly received their wages and other benefits from CBMI;[16] (4) it was CBMI that deducted respondents' Social Security System, Philhealth and Pag-IBIG contributions and remitted the same; and (5) during the respondents' deployment, it was also CBMI that approved the former's applications for leave, as well as imposed the disciplinary sanctions for respondents' violation of company rules and regulations; (6) given the foregoing, it cannot be denied that the respondents were employees of CBMI and not PPI.[17]

CBMI argued that it is not liable for illegal dismissal because the respondents were not dismissed but were placed on floating status as a result of the change in circumstance of PPI, which had a reduction in manpower.[18]

The Ruling of the Labor Arbiter

Labor Arbiter Fedriel S. Panganiban (**Labor Arbiter**) ruled that CBMI is a labor-only contractor and thus PPI is considered the employer of the respondents. The pertinent portion of the disposition reads:

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10 *Id.* at 284.
11 *Id.*
12 *Id.*
13 *Id.* at 285, Position Paper for Respondents Philippine Pizza, Inc. and Jorge L. Araneta.
14 *Id.* at 336, Position Paper for Respondent Consolidated Building Maintenance, Inc.
15 *Id.*
16 *Id.* at 340, Position Paper for Respondent Consolidated Building Maintenance, Inc.
17 *Id.*
18 *Id.* at 722, Reply of Consolidated Building Maintenance, Inc

WHEREFORE, all the foregoing considered, judgment is hereby rendered:

1. Declaring that an employer-employee relationship exists between the complainants and respondent Philippine Pizza Inc.;
2. Declaring respondent Consolidated Building Maintenance Inc., to be a labor-only contractor with respect to these cases;
3. Declaring complainants to have been illegally dismissed;
4. Ordering respondent Philippine Pizza Inc., to reinstate complainants to their previous positions without loss of seniority rights;
5. Ordering Philippine Pizza Inc., to pay complainants back wages reckoned from their illegal dismissal up to their actual/payroll reinstatement, which is tentatively computed, to wit:
    a. Romeo Gregorio Oladive, Jr. – P187,445.40;
    b. Arnel D. Labog – P185,796.23;
    c. John Lawrence R. Verdida – P196,184.92;
    d. Arthur A. De Guzman – P182,292.97;
    e. Paul William S. Soliman – P183,593.62;
    f. Rommel Caccam – P183,593.62;
    g. Ramil D. Delos Santos – P183,593.62;
    h. Gabriel S. Montana – P183,593.62; and
    i. Teofilo N. Bergantin – P183,593.62.
    TOTAL – **P1,472,247.22**
6. Ordering respondent Philippine Pizza Inc., to pay complainant's ten percent (10%) attorney's fees.

All other claims are dismissed for lack of merit.

SO ORDERED.[19] (Emphasis in the original)

In so ruling, the Labor Arbiter took note of the fact that neither PPI nor CBMI were able to dispute the respondents' positive and categorical declarations in their *Sinumpaang Salaysay*, wherein they expressly and individually stated that they initially worked for PPI as delivery drivers but were subsequently referred by PPI to CBMI. Therafter, the respondents were deployed to the same branch where they last worked directly under PPI, with the same position held prior to their endorsement by PPI to its purported contractor, CBMI.[20]

Further, the respondents were consistent in their declaration that they were supervised and monitored by supervisors of PPI for the duration of their assignment, and that they used the equipment and tools of PPI.[21]

After ruling that there exists an employer-employee relationship between the respondents and PPI, the Labor Arbiter proceeded to rule that the respondents were illegally dismissed because PPI failed to comply with the requirements for a reduction of manpower, thus:

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19 *Id.* at 866–867.
20 *Id.* at 862–863.
21 *Id.* at 863.

> Indeed, the employer is free to regulate all aspects of employment according to his own discretion and judgment. This prerogative flows from the established rule that labor laws do not authorize substitution of judgment of the employer in the conduct of its business and that for as long as management prerogatives are exercised in good faith, and is not undertaken to deprive the workers of their tenure and enjoyment of earned employment benefits, the decision of the employer to cease operations or close shop or reduce manpower must be upheld and respected. All these, subject to compliane with the conditions set forth under Art. 283 as above-quoted.
>
> In these cases, however, there is no showing that the respondent had complied with the requirements for a reduction of manpower. There is no showing that the reduced manpower stemmed from imminent company losses, or introduction of systems that would render the complainants' tasks moot or unnecessary to the continued business operations of respondent PPI. On the contrary, complainants were just relieved from their assignments and returned to respondent CBMI, on the pretext that the latter was the complainants' employer and those complainants' services at respondent PPI could cease at any time.[22]

Both PPI and CBMI appealed to the NLRC.

The Ruling of the NLRC

The NLRC reversed the ruling of the Labor Arbiter.

The NLRC found that CBMI satisfied all the criteria set by Department Order No. 18-A (Series of 2011) (**D.O. No. 18-A**) with regard to legitimate job contractors: (1) that the contractor must be registered in accordance with its rules and carries its business distinctly and independently, using its own manner and method, and free from the control and direction of the principal in all matters connected with the performance of work except as to the results thereof; (2) that the contractor has substantial capital and/or investment; and (3) that there is a service agreement between the contractor and principal ensuring compliance with labor laws.[23] The NLRC held that all these were established by CBMI.

The NLRC found that CBMI is a legitimate job contractor, and is presumed to have complied with all the requirements of a legitimate job contractor in light of the Certificate of Registration issued by the DOLE.[24] The NLRC also observed that CBMI has sufficient capital and investment to properly carry out its obligation to PPI, as well as adequate funds to cover its operational expenses.[25] The NLRC held and disposed, in relevant part:

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22 *Id.* at 864–865. Citations omitted.
23 *Id.* at 926–927, NLRC Decision.
24 *Id.* at 927.
25 *Id.* at 928.

What was contracted was that of a "Delivery Rider". (*sic*)

A Rider is one who is assigned to deliver the products of PPI, by motorcycle, to phone-in patrons of respondent PPI.

A Rider does not cook or take the orders from phoned-in patrons nor serve food for walk-in customers when inside the PPI outlet and standing idle. He is simply instructed by the coordinator to deliver the products to the address of the phone-in customer, without being directed to pass to an establish (*sic*) route and if necessary bring change if ever there will be for the payment of the products, with the use of a motorcycle.

Incidentally, the motorcycle and fuel thereof is supplied by CBMI as contractor and not by PPI.

These matters are brought out to show that respondent CBMI undertakes to perform the job on its own responsibility, according to its own manner and method, except as to the results thereof which is the delivery of the product to the one who ordered.

. . . .

Finally, that they are under the control and direction of the coordinators of CBMI.

We do not deny that there are rules crafted by PPI which even herein complainants are to follow. But this is not control as envisioned by law. As ruled in Lolita Lopez vs. Bodega City, "xxx the lines could be drawn between rules that merely serve as guidelines towards the achievement of the mutually desired result without dictating the means or methods to be employed in attaining it, and those that control or fix the methodology and bend or restrict the party hired to the case of such means. The first aim is only to promote the result and the means used to achieve it."

In this regard, We echo the Court's pronouncement in Sasan vs. NLRC where it was declared "that in deciding whether or not an entity is a labor contractor, the totality of the facts and the surrounding circumstances of the case are to be considered. Each case must be determined by its own facts and all the features of the relationship are to be considered.

. . . .

In the case before Us, We note that these complainants applied with CBMI as shown by their biodatas; they received their pay from said respondents, as shown by pay slips. On top of these CBMI paid and remitted the complainants' contributions/premiums to SSS, Pag-ibig, and Philhealth, as employer of complainants and imposed sanctions upon the erring employees it assigned at respondent PPI.

. . . .

On the other hand, respondent PPI presented a decision, involving the other complainants who are similarly situated like complainants as Delivery Riders declaring that CBMI is a legitimate job contractor and as such is the employer of complainants Jenny Cayetano, Rizaldo Avenido (Delivery Rider), Pee Jay Gurion (Deliver Rider), Rumel Recto (Delivery

> Rider), Rogelio T. Sumbang, Jr. (Delivery Rider) and dismissed their prayer for illegal dismissal and money claims . . .
>
> WHEREFORE, the Appeals interposed by respondents CBMI and PPI being impressed with merit are granted.
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> The judgment a quo is REVERSED and SET ASIDE and new one rendered which reads as follows:
>
> 1. Respondent CBMI is a legitimate job contractor and is considered the complainants' true employer;
> 2. That their recall from respondent PPI is not illegal dismissal;
> 3. That respondent CBMI is ordered to reinstate complainants within fifteen (15) days from finality of this decision to their former work as Delivery Rider or to an equivalent position without loss of seniority rights and privileges.
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> SO ORDERED.[26]

The respondents filed a Motion for Reconsideration,[27] but this was denied.[28]

Thereafter, the respondents filed a Petition for *Certiorari*[29] before the CA.

The Ruling of the CA

The CA granted the Petition, thus:

> WHEREFORE, the petition is GRANTED. The *Decision* of the National Labor Relations Commission, Third Division, promulgated on 27 February 2015 and its Resolution dated 31 March 2015, are hereby ANNULED and SET ASIDE. The *Decision* of Labor Arbiter Fedriel S. Panganiban dated 30 July 2014 is REINSTATED in its entirety.[30]

The CA held that the facts clearly show that PPI is guilty of contracting out work in bad faith, as prohibited under Section 7 of D.O. No 18-A, and thus, the NLRC committed grave abuse of discretion when it reversed the Labor Arbiter's finding that there exists an employer-employee relationship between the respondents and PPI.[31]

The CA ruled that considering the totality of the context and circumstances surrounding the respondents' prior employment with PPI and

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26 *Id.* at 930–935.
27 *Id.* at 938–949.
28 *Id.* at 960–961.
29 *Id.* at 962–980.
30 *Id.* at 1105.
31 *Id.* at 1093.

their subsequent transfer to CBMI performing the same work, the subject contracting agreement was for the purpose of circumventing the provisions on legitimate job contracting, and undermining the respondents' right to security of tenure.[32]

Furthermore, considering that the respondents performed work which are necessary and desirable to the usual trade or business of PPI, and used tools and equipment of the latter in their work, the CA concluded that CBMI falls under the definition of a "labor only contractor," which is prohibited under Article 106 of the Labor Code.[33]

PPI filed a Motion for Reconsideration,[34] but this was denied.[35]

Hence, this Petition.

PPI imputes error on the part of the CA in ruling that it is the employer of the respondents[36] and that CBMI is engaged in labor-only contracting.[37]

The Issue

Did the CA correctly determine the presence of grave abuse of discretion in the NLRC's decision?

The Ruling of the Court

The Petition has no merit.

At the outset, it must be emphasized that the issue of whether CBMI is an independent contractor, and the matter of respondents' status are questions of fact that are not the proper subjects of a petition for review under Rule 45 of the Rules of Court. However, an exception may be made when the factual findings of the Labor Arbiter and the CA on the one hand, and the NLRC on the other, are contradictory.[38]

In the present case, the Court finds that the CA did not err in finding that the NLRC committed grave abuse of discretion in reversing the Labor

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32 *Id.* at 1092.
33 *Id.* at 1100–1102.
34 *Id.* at 1107–1141.
35 *Id.* at 1144–1152.
36 *Id.* at 24.
37 *Id.* at 23.
38 *Wahing v. Spouses Daguio*, G.R. No. 219755, April 18, 2022 [Per J. Leonen, Third Division].

Arbiter's ruling that CBMI is a labor-only contractor and thus PPI is the true employer of the respondents.

PPI and CBMI were engaged in labor-only contracting

As a rule, contracting arrangements for the performance of specific jobs or services under the law and its implementing rules are allowed. However, contracting must be made to a legitimate and independent job contractor since labor rules expressly prohibit labor-only contracting.[39]

Permissible contracting or subcontracting, and labor-only contracting is provided for under Article 106 of the Labor Code:

> **ARTICLE 106.** *Contractor or Subcontractor.* — Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.
>
> In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.
>
> The Secretary of Labor and Employment may, by appropriate regulations, restrict or prohibit the contracting-out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.
>
> **There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.** (Emphasis supplied)

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39 *Manila Memorial Park Cemetery, Inc. v. Lluz*, 780 Phil. 425 (2016) [Per J. Carpio, Second Division].

Labor-only contracting is prohibited and is not condoned by law as it is seen as a circumvention of labor laws; thus, the labor-only contractor is treated as a mere agent of its principal.[40]

Section 6 of the D.O. No. 18-A, which implements the Labor Code provisions on job contracting, provides for the elements of labor-only contracting:

> (a) The contractor does not have substantial capital or investments in the form of tools, equipment, machineries, work premises, among others, and the employees recruited and placed are performing activities which are usually necessary or desirable to the operation of the company, or directly related to the main business of the principal within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal; or
>
> (b) The contractor does not exercise the right to control over the performance of the work of the employee.

In this case, CBMI was able to meet the threshold provided in Section 3 (l), which defines "substantial capital" as "paid-up capital stocks/shares of at least Three Million Pesos (PHP 3,000,000.00) in the case of corporations, partnerships and cooperatives." In 2012, CBMI had paid-up capital in the amount of PHP 3,500,000.00 and total assets amounting to PHP 59,836,152.00.[41] To further support its allegation that it is a legitimate job contractor, CBMI also submitted its Certificates of Registration[42] and Contracts of Services.[43]

Although these may indicate legitimate job contracting, it does not necessarily mean that an entity is not guilty of labor-only contracting because in the issue of labor-only contracting, the totality of the facts and the surrounding circumstances of the case shall be considered.[44]

Jurisprudence further provides that the true nature of the relationship between the principal, contractor, and employee cannot be dictated by mere expedience of a unilateral declaration in a contract.[45]

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40 *Abuda v. Natividad Poultry Farms*, 835 Phil. 554 (2018) [Per J. Leonen, Third Division].

41 *Rollo*, p. 336, Position Paper for Consolidated Building Maintenance, Inc.

42 *Rollo*, pp. 59–60.

43 *Id.* at 67–76, 79–82, 83–86, 87–90, 91–96, 97–102, 103–107, 108–112, 113–117, 118–122, 123–127, 128–138, 139–148, 149–158.

44 *Manila Cordage Company-Employees Labor Union v. Manila Cordage Company*, 885 Phil. 764 (2020) [Per J. Leonen, Third Division].

45 *Conjusta v. PPI Holdings, Inc.*, G.R. No. 252720, August 22, 2022 [Per J. M. V. Lopez, Second Division].

D.O. No. 18-A enumerates certain prohibited acts:

Section 7. Other Prohibitions. Notwithstanding Section 6 of these Rules, the following are hereby declared prohibited for being contrary to law or public policy:

A. Contracting out of jobs, works or services when not done in good faith and not justified by the exigencies of the business such as the following:

(1) Contracting out of jobs, works or services when the same results in the termination or reduction of regular employees and reduction of work hours or reduction or splitting of the bargaining unit.

(2) Contracting out of work with a "Cabo".

(3) **Taking undue advantage of the economic situation or lack of bargaining strength of the contractor's employees, or undermining their security of tenure or basic rights, or circumventing the provisions of regular employment, in any of the following instances:**

> **(i) Requiring them to perform functions which are currently being performed by the regular employees of the principal; and**
>
> **(ii) Requiring them to sign, as a precondition to employment or continued employment, an antedated resignation letter; a blank payroll; a waiver of labor standards including minimum wages and social or welfare benefits; or a quitclaim releasing the principal, contractor or from any liability as to payment of future claims.**

(4) Contracting out of a job, work or service through an in-house agency.

(5) Contracting out of a job, work or service that is necessary or desirable or directly related to the business or operation of the principal by reason of a strike or lockout whether actual or imminent.

(6) Contracting out of a job, work or service being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization as provided in Art. 248 (c) of the Labor Code, as amended.

(7) Repeated hiring of employees under an employment contract of short duration or under a Service Agreement of short duration with the same or different contractors, which circumvents the Labor Code provisions on Security of Tenure.

(8) Requiring employees under a subcontracting arrangement to sign a contract fixing the period of employment to a term shorter than the term of the Service Agreement, unless the contract is divisible into phases for which

> substantially different skills are required and this is made known to the employee at the time of engagement.
>
> (9) Refusal to provide a copy of the Service Agreement and the employment contracts between the contractor and the employees deployed to work in the bargaining unit of the principal's certified bargaining agent to the sole and exclusive bargaining agent (SEBA).
>
> (10) Engaging or maintaining by the principal of subcontracted employees in excess of those provided for in the applicable Collective Bargaining Agreement (CBA) or as set by the Industry Tripartite Council (ITC).
>
> B. Contracting out of jobs, works or services analogous to the above when not done in good faith and not justified by the exigencies of the business. (Emphasis supplied)

Clearly, the law prohibits instances under which an employer or contractor exploits the economic situation or weak bargaining position of their employees, and actions that undermine the security of tenure and basic rights of employees, among others.

The law protects contracted workers from unjust labor arrangements designed to avoid compliance with labor rights and standards, and seeks to uphold decent and secure employment even in contracted contexts.

In this case, the CA correctly found that PPI's contracting out of the respondents' work to CBMI was not a legitimate job contracting arrangement:

> The context and surrounding circumstances on how petitioners came to be "employees" of CBMI is revealing. In this case, it is undisputed that petitioners, prior to being employed by CBMI, worked for PPI and performed for the latter the very same tasks as delivery riders. The fact that petitioners were employed by PPI prior to working for CBMI can be seen in petitioners' SSS Employment History.
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> More so, consistent in petitioners' allegations, which were uncontroverted by private respondents, was that petitioners, upon being hired by Pizza Hut as delivery riders, worked for a period of 1,248 hours. After working as delivery riders for said period, they were told to go on "vacation" by PPI. Thereafter, petitioners were called back by PPI, and were told that if they wanted to continue with their work as delivery riders, they should sign an *Employment Contract* with CBMI.
>
> These facts have been established by evidence on record and were not refuted by private respondents, nor did they present any evidence to the contrary. Instead, private respondents focused on their argument that CBMI is a legitimate job contractor because it possessed all the legal and formal requirements to be considered as such. However, considering the totality of the context and circumstances surrounding petitioners' prior employment

> with PPI and their subsequent transfer to CBMI performing the same work, the Court rules that the subject contracting agreement was for the purpose of circumventing the provisions on legitimate job contracting, and undermining petitioners' right to security of tenure, which is the situation contemplated under Section 8, paragraph A, item 3.ii of D.O No. 18-A …
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> ….
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> In this case, although there was no quitclaim signed by petitioners releasing PPI or CBMI from payment of future claims, the *Employment Contract* signed by petitioners, making them employees of CBMI but performing the same tasks they previously did for PPI, has the very same effect, since it also ***takes undue advantage of petitioners' economic situation, undermines their security of tenure, and circumvents their right to be considered regular employees*** of PPI. Hence, given this backdrop, PPI and CBMI contracted out petitioners' positions to the latter ***in bad faith***, because there exists no other reason for such contracting out except to transfer petitioners' employment to an allegedly legitimate job contractor. Otherwise stated, the transfer of petitioners' jobs to CBMI and the contracting of the latter to supply the same jobs to PPI is not a legitimate job contracting arrangement.[46] (Emphasis in the original)

Although no quitclaim was signed, the respondents were made to sign an employment contract with CBMI to transfer their employment but continue to perform the same roles. Clearly, the act of contracting out respondents was unjustified and only intended to undermine their rights and tenure as regular employees.

Based on the evidence and application of the cited provision, the Court finds that PPI and CBMI are guilty of engaging in the practice of labor-only contracting. The circumstances surrounding the arrangement and the treatment of the respondents are inconsistent with the principles of fair and just employment.

Hence, the Court finds that the respondents are employees of PPI. Necessarily, CBMI, regardless of its substantial capitalization and proof of financial capacity and submission of service contracts with PPI and employment contracts with the respondents, is deemed a mere agent of PPI, with respect to the employment of the respondents as delivery riders.

The respondents were illegally dismissed

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[46] *Rollo*, pp. 1091–1093, CA Decision.

Having settled the nature of the arrangement of the respondents with PPI and CBMI, the Court delves into the issue of whether the respondents were illegally dismissed.

In this case, the respondents' separation were occasioned by their pull-out from their respective branches, allegedly due to the need to reduce manpower. This is akin to retrenchment, which is recognized as an authorized cause for dismissal under Article 298 of the Labor Code:

> ARTICLE 298. [283] Closure of Establishment and Reduction of Personnel. — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. . . . In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

To effect a valid retrenchment, the employer must prove: (1) that the retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer; (2) that the employer served written notice both to the employees and to the DOLE, at least one month, prior to the intended date of retrenchment; (3) that the employer pays the retrenched employees separation pay equivalent to one month pay or at least 1/2 month pay for every year of service, whichever is higher; (4) that the employer exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and (5) that the employer used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status (*i.e.*, whether they are temporary, casual, regular or managerial employees), efficiency, seniority, physical fitness, age, and financial hardship for certain workers.[47]

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47 *Keng Hua Paper Products Co., Inc. v. Ainza*, G.R. No. 224097, February 22, 2023 [Per J. Zalameda, First Division].

A valid retrenchment may only be exercised after the employer has proved compliance with the procedural and substantive requisites of valid retrenchment. Absent any of these, the dismissal is illegal.[48]

In this case, there is no showing that PPI complied with the requirements for a reduction of manpower. There is no showing that the reduced manpower stemmed from imminent company losses. On the contrary, the respondents were relieved from their assignments and subsequently referred to CBMI, on the pretext that the latter was the respondents' employer. Thereafter, the respondents were deployed to the same branch where they had previously worked directly under PPI, and for the same positions they held before PPI referred them to its purported contractor CBMI.

Hence, having been terminated without authorized cause, the respondents are entitled to reinstatement without loss of seniority rights and to their full backwages, pursuant to Article 294 of the Labor Code.[49]

The respondents are entitled to moral and exemplary damages and attorney's fees

Moral damages are awarded in illegal dismissal cases 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. In addition to moral damages, exemplary damages may be imposed by way of example or correction for the public good.[50]

In *Monsanto Philippines, Inc. v. NLRC*,[51] the Court held that the transfer of the employees from the employer to the labor-only contractor for the purpose of ending their regular status constitutes oppression to labor, and violates the principles of good morals, good customs, and public policy.

In this case, PPI and CBMI clearly acted in bad faith and in violation of the principles of good morals, good customs, and public policy. As discussed, PPI took undue advantage of the economic situation of the respondents, undermined the respondents' security of tenure, and

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48 *Team Pacific Corporation v. Parente*, 877 Phil. 479 (2020) [Per J. Leonen, Third Division].

49 Art. 294. *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 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.

50 *Añonuevo v. CBK Power Company, Ltd.*, G.R. No. 235534, January 23, 2023 [Per J. Singh, Third Division].

51 880 Phil. 161 (2020) [Per J. Reyes, Jr., First Division].

circumvented the respondents' right to be considered regular employees when it contracted out the respondents' positions to CBMI.

Since the respondents' dismissal resulted from prohibited labor-only contracting and considering that the respondents were illegally dismissed and impelled to litigate to protect their interests, the Court deems it proper to award moral damages and exemplary damages in the amount of PHP 50,000.00 each for every respondent and ten percent (10%) attorney's fees.[52]

PPI and CBMI are solidarily liable

Should a competent authority find that an entity is guilty of labor-only contracting, D.O. No. 18-A further provides:

> Section 27. Effects of finding of labor-only contracting and/or violation of Sections 7. 8 or 9 of the Rules. A finding by competent authority of labor-only contracting shall render the principal jointly and severally liable with the contractor to the latter's employees, in the same manner and extent that the principal is liable to employees directly hired by him/her, as provided in Article 106 of the Labor Code, as amended.
>
> A finding of commission of any of the prohibited activities in Section 7, or violation of either Sections 8 or 9 hereof, shall render the principal the direct employer of the employees of the contractor or subcontractor, pursuant to Article 109 of the Labor Code, as amended.

Consequently, PPI and CBMI are solidarily liable for the respondents' monetary claims, consistent with the Court's ruling in *Valencia v. Classique Vinyl Products Corporation*:[53]

> In any event, it must be stressed that "in labor-only contracting, the statute creates an employer-employee relationship for a comprehensive purpose: to prevent a circumvention of labor laws. The contractor is considered merely an agent of the principal employer and the latter is responsible to the employees of the labor-only contractor as if such employees had been directly employed by the principal employer. The principal employer therefore becomes solidarily liable with the labor-only contractor for all the rightful claims of the employees.[54]

Finally, in line with the Court's ruling in *Lara's Gifts & Decors Inc. v. Midtown Industrial Sales, Inc.*,[55] the monetary awards are subject to six

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52 *Id.*
53 804 Phil. 492 (2017) [Per J. Del Castillo, First Division].
54 *Id.* at 494.
55 G.R. No. 225433, September 20, 2022 [Per J. Leonen, *En Banc*].

percent (6%) interest per annum, from the finality of this Decision until full payment.

ACCORDINGLY, the Petition for Review on *Certiorari* is **DENIED.** The Decision, dated May 23, 2018, and the Resolution, dated November 27, 2018, of the Court of Appeals in CA-G.R. SP No. 140927 are **AFFIRMED with MODIFICATION.** Consolidated Building Maintenance, Inc. is declared as a labor-only contractor and is adjudged solidarily liable with Philippine Pizza, Inc., the employer of respondents Romeo G. Oladive, Jr., Arnel D. Labog, John Laurence R. Verdida, Paul William S. Soliman, Rommel N. Caccam, Ramil D. Delos Santos, Gabriel S. Montana, Teofilo N. Bergantin, and Arthur A. De Guzman, who shall each be entitled to the payment of:

1. Full backwages from their illegal dismissal up to their actual reinstatement;
2. Moral damages of PHP 50,000.00;
3. Exemplary damages of PHP 50,000.00; and
4. Attorney's fees equivalent to ten percent (10%) of the total monetary award.

The monetary awards shall bear the legal interest rate of six percent (6%) per annum, to be computed from the finality of this Decision until full payment.

SO ORDERED.

MARIA FILOMENA D. SINGH
Associate Justice

WE CONCUR:

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

JAPAR B. DIMAAMPAO
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.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

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

ALEXANDER G. GESMUNDO
Chief Justice