SUPREME COURT
SECOND DIVISION

PROGRESS HOMES and ERMELO ALMEDA,
***Petitioners*,**

-versus-

G.R. No. 106212
March 7, 1997

NATIONAL LABOR RELATIONS COMMISSION, GREGORIO A. MEDRANO, DANTE BAGUIO, JAIME GUAN, JOSE SAPALARAN, RONNIE DELPINO, DIONISIO FRANCISCO and ELMER BAGUIO,
***Respondents*.**
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D E C I S I O N

ROMERO, *J.*:

Petitioners seek to set aside the Decision of the National Labor Relations Commission (NLRC) which affirmed the decision of the Labor Arbiter, the dispositive portion of which states:

> "WHEREFORE, judgment (sic) is rendered directing respondents Progress Homes and Ermelo Almeda jointly and severally liable to pay the petitioners within ten (10) days from

receipt hereof thru this Branch the aggregate amount of EIGHTY THREE THOUSAND EIGHT HUNDRED PESOS (P83,800.00) as Backwages and Separation pay.

All other claims are denied for lack of merit.

SO ORDERED."

Petitioner Progress Homes Subdivision (Progress Homes), is a housing project undertaken by the Ermelo M. Almeda Foundation, Inc., a non-stock organization duly registered with the Securities and Exchange Commission (SEC). When it engaged in constructing low-cost housing units for low-income employees, it named its project "Progress Homes Subdivision" in Camarines Sur. The other petitioner, Ermelo Almeda, is the President and General Manager of Progress Homes and the owner of the land where the Progress Homes Subdivision is located.

Private respondents allegedly were among the workers employed by petitioners in their construction and development of the subdivision from 1986 to 1988. They were paid varying salaries.

Forty of these workers, including private respondents, filed before the NLRC Arbitration Branch a petition for reinstatement, salary adjustment, ECOLA, overtime pay and 13th month pay.

Petitioners amicably settled the case with thirty-three of the laborers, leaving private respondents as the only claimants. Private respondents alleged that they worked as laborers and carpenters for 8.5 hours a day at a salary below the minimum wage and that when they demanded payment of the benefits due them, they were summarily dismissed and barred from entering the workplace.

Petitioners denied that private respondents were regular employees claiming that they were only project employees and that there was no employer-employee relationship between them.

On December 27, 1991, the Labor Arbiter in Legazpi City forthwith issued a decision in favor of private respondents.

On appeal, the NLRC affirmed the Labor Arbiter's decision.

Hence, this petition.

Petitioners maintain that there never existed an employer- employee relationship between them and private respondents and that due process was denied them in proceedings before the Labor Arbiter and in the NLRC.

Moreover, they point out that private respondents could not say who hired them, nor could they produce pay slips to prove that they were on petitioners' payroll. Petitioners present the affidavit of their foreman stating that he never hired the workers, as evidence of the alleged non-hiring of private respondents.

We find merit in this petition.

The Labor Arbiter, in finding that an employer-employee relationship existed between the parties, said:

> "This Branch holds that herein petitioners were illegally dismissed by the respondents, it being an established fact that employer-employee relationship exists; Respondents hired all the petitioners thru the former's foreman Rodolfo Badillo. Although this foreman denied hiring the petitioners an admission was made that oftentimes said foreman saw these petitioners working in the residential units which the respondents were constructing at that time. The affidavit of foreman Rodolfo Badillo to the contrary is without merit for being self-serving, particularly in the light that the same was never alleged and/or utilized when the amicable settlement was entered into by and between the respondents and the other co-employees/co- petitioners of herein petitioners. To argue that the affiant considers the latter employees who opted to amicably settle their disputes with the same respondents, as having 'actually work (sic) for Progress Homes Subdivision' while maintaining that the former (petitioners) were not, without any other basis other than said self-serving allegation, is patently untenable. The least that the respondents could have done was to present the alleged written contracts of all the

> petitioners expressly stating therein the terms and conditions of their employment if indeed they were executed. Finding none in the records except a xerox copy of one supposedly entered by a certain Salvador B. Añonuevo, who is not even one of the petitioners in the instant cases respondents' argument not only lack factual basis but borders on insult to ones (sic) sensibility. Apparently, said piece of document (Annex 'D') together with the xerox copy of the alleged Certificate of Filing of Amended Articles of Incorporation from the Securities and Exchange Commission (SEC) were not even certified true copies and/or properly authenticated."

The evidence on record fails to convince the Court that private respondents were indeed employed by petitioners. The Labor Arbiter does not give credence to the affidavit of petitioners' foreman that he did not hire private respondents.

Said affidavit cannot just be perfunctorily dismissed as "self-serving," absent any showing that he was lying when he made the statements therein. The question that obtrudes itself at this stage is: who did hire them? Private respondents have not presented any evidence that petitioners were their immediate employers.

It does not make sense to require petitioners to produce contracts when they categorically deny having entered into any contract of employment with private respondents.

To determine the existence of an employer-employee relationship, the courts have generally sought the answer to these guidelines:

> (1) the selection and engagement of the employee;
> (2) the payment of wages;
> (3) the power of dismissing; and
> (4) the power to control the employee's conduct.[1]

Under the so-called "right of control" test, the person for whom the services are performed reserves a right to control, not only the end to be achieved, but the means to be used in reaching such an end. In addition, this Court has also considered the existing economic

conditions prevailing between the parties, such as the inclusion of the employee in the payroll.[2]

It was speculative and conjectural on the part of the NLRC to declare petitioners' argument as "mere alibi." The employment contract presented by petitioners, while admittedly defective, did not refer to any of the private respondents. No evidence was presented to show that petitioners engaged the services of private respondents.

As regards the matter of evidence, it is clear that the Labor Arbiter relied solely on the bare allegations of the parties in their position papers in rendering his now assailed decision. Rule V, Sections 4 and 5(b) of The New Rules of Procedure of the National Labor Relations Commission states:

> "Section 4. Determination of Necessity of Hearing. — Immediately after the submission by the parties of their position papers/memorandum, the Labor Arbiter shall motu proprio determine whether there is need for a formal trial or hearing. At this stage, he may, at his discretion and for the purpose of making such determination, ask clarificatory questions to further elicit facts or information, including but not limited to the subpoena of relevant documentary evidence, if any from any party or witness.
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> Section 5. x x x
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> (b) If the Labor Arbiter finds no necessity of further hearing after the parties have submitted their position papers and supporting documents, he shall issue an Order to that effect and shall inform the parties, stating the reasons therefor. In any event, he shall render his decision in the case within the same period provided in paragraph (a) hereof."

In Greenhills Airconditioning and Services, Inc. vs. NLRC,[3] whose issues are similar to instant case, we stated that there was grave abuse of discretion on the part of the labor arbiter when he submitted the case for decision solely on the basis of the position papers:

> "It is of note that certain important issues are raised by the position papers filed before the labor arbiter among which are:
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> 1. whether respondent Abellano was a project employee whose employment was deemed ended when the project was cancelled or whether he was a regular employee;
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> 2. If he was a regular employee, whether he voluntarily resigned as alleged by petitioners or was dismissed; and
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> 3. If he was dismissed, whether there were valid grounds for his dismissal.

The nature of the above issues shows that there was indeed grave abuse of discretion on the part of the labor arbiter in issuing the order dated 18 September 1992 submitting the case for decision, without any hearing.

Article 221 of the Labor Code states in part:

> 'Art. 221. Technical Rules Not Binding and Prior Resort to Amicable Settlement.— In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process.'

In rendering his now assailed decision, the labor arbiter relied solely on the bare allegations of the parties in their position papers. There is nothing in the labor arbiter's decision to show how he arrived at the conclusion that it was respondent Abellano's allegations that deserved belief. The prudent and logical action which the labor arbiter should have taken was to set the case for hearing particularly on the abovementioned three (3) issues to avoid any impression of denial of due process to either or both of the parties.

While it is true that the employer has the burden of proving the presence of valid grounds for dismissal of a worker, the abovestated issues in this case require a hearing and reception of evidence before the issue of the validity of Abellano's dismissal can be resolved. The respondent NLRC in sustaining and affirming the decision of the labor arbiter which was arrived at without hearing on the vital issues involved, itself committed grave abuse of discretion."

The same issues are raised in the instant case and the Labor Arbiter should have set the case for further presentation of evidence considering the dearth of evidence supporting private respondents' claims.

Furthermore, the NLRC committed grave abuse of discretion when it affirmed the Labor Arbiter's decision holding petitioner Almeda jointly and severally liable with Progress Homes. The Court has held that corporate directors and officers are solidarily liable with the corporation for the termination of employment of employees only if the termination is done with malice or in bad faith.[4] The Labor Arbiter's decision failed to disclose why Almeda was made personally liable. There appears no evidence on record that he acted maliciously or in bad faith in terminating the services of private respondents.[5] Petitioner Almeda, therefore, should not have been made personally answerable for the payment of private respondents' salaries.

WHEREFORE, the decision of respondent National Labor Relations Commission is hereby **SET ASIDE**. The complaint of private respondents against herein petitioner is hereby **REMANDED** to the Labor Arbiter of Naga City for hearing, reception of evidence and decision. No pronouncement as to costs.

SO ORDERED.

Regalado, Puno, Mendoza and Torres, Jr., *JJ*., concur.

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[1] Zanotte Shoes vs. NLRC, 241 SCRA 261 (1995); Wiluga vs. NLRC, 225 SCRA 537 (1993).

[2] Sevilla vs. Court of Appeals, 160 SCRA 171 (1988): Visayan Stevedore Trans. Co. vs. Court of Industrial Relations, 19 SCRA 426 (1967) .
[3] 245 SCRA 390 (1995).
[4] MAM Realty Development Corp. vs. NLRC, 244 SCRA 803 (1995).
[5] Sunio vs. NLRC, 127 SCRA 390 (1984); General Bank and Trust Co. vs. CA, 135 SCRA 569 (1985).