

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
FIRST DIVISION**

**LOTTE PHIL. CO., INC.,  
*Petitioner,***

***-versus-***

**G.R. No. 166302  
July 28, 2005**

**ERLINDA DELA CRUZ, LEONOR  
MAMAUAG, LOURDES CAUBA,  
JOSEPHINE DOMANAIS, ARLENE  
CAGAYAT, AMELITA YAM, VIVIAN  
DOMARAIS, MARILYN ANTALAN,  
CHRISTOPHER RAMIREZ, ARNOLD  
SAN PEDRO, MARISSA SAN PEDRO,  
LORELI JIMENEZ, JEFFREY BUENO,  
CHRISTOPHER CAGAYAT, GERARD  
CABILES, JOAN ENRIQUEZ, JOSEPH  
DE LA CRUZ, NELLY CLERIGO, DULCE  
NAVARETTE, ROWENA BELLO,  
DANIEL RAMIREZ, AILEEN BAUTISTA  
and BALTAZAR FERRERA,**

***Respondents.***

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**DECISION**

**YNARES-SANTIAGO, J.:**

This Petition for Review on Certiorari<sup>[1]</sup> assails the July 9, 2004 Decision<sup>[2]</sup> of the Court of Appeals in CA-G.R. SP No. 72732 and its November 26, 2004 Resolution<sup>[3]</sup> denying reconsideration thereof.

The established facts of this case are as follows:

Private respondent (petitioner herein) Lotte Phils., Inc. (Lotte) is a domestic corporation. Petitioners (respondents herein) are among those who were hired and assigned to the confectionery facility operated by private respondent.

On December 14, 1995 – and yearly thereafter until the year 2000 – 7J Maintenance and Janitorial Services (“7J”) entered into a contract with private respondent to provide manpower for needed maintenance, utility, janitorial and other services to the latter. In compliance with the terms and conditions of the service contract, and to accommodate the needs of private respondent for personnel/workers to do and perform “piece works,” petitioners, among others, were hired and assigned to private respondent as repackers or sealers.

However, either in October, 1999 or on February 9, 2000, private respondent dispensed with their services allegedly due to the expiration/termination of the service contract by respondent with 7J. They were either told “hwag muna kayong pumasok at tatawagan na lang kung may gawa”; or were asked to wait “pag magrereport sila sa trabaho.” Unfortunately, petitioners were never called back to work again.

Aggrieved, petitioners lodged a labor complaint against both private respondent Lotte and 7J, for illegal dismissal, regularization, payment of corresponding backwages and related employment benefits, 13<sup>th</sup> month pay, service incentive leave, moral and exemplary damages and attorney’s fees based on total judgment award.<sup>[4]</sup>

On February 28, 2001, Labor Arbiter Cresencio G. Ramos, Jr., rendered judgment<sup>[5]</sup> declaring 7J as employer of respondents.<sup>[6]</sup> The arbiter also found 7J guilty of illegal dismissal<sup>[7]</sup> and ordered to reinstate respondents,<sup>[8]</sup> pay P2,374,710.00 as backwages,

P713,648.00 as 13<sup>th</sup> month pay and P117,000.00 as service incentive leave pay.<sup>[9]</sup>

Respondents appealed to the National Labor Relations Commission (NLRC) praying that Lotte be declared as their direct employer because 7J is merely a labor-only contractor. In its decision<sup>[10]</sup> dated April 24, 2002, the NLRC found no cogent reason to disturb the findings of the labor arbiter and affirmed its ruling that 7J is the employer of respondents and solely liable for their claims.

Respondents' motion for reconsideration was denied by the NLRC in a resolution dated June 18, 2002.

Undaunted, they filed a petition for certiorari in the Court of Appeals<sup>[11]</sup> against the NLRC and Lotte, insisting that their employer is Lotte and not 7J.

Lotte, however, denied that respondents were its employees. It prayed that the petition be dismissed for failure to implead 7J who is a party interested in sustaining the proceedings in court, pursuant to Section 3, Rule 46 of the Revised Rules of Civil Procedure.

On July 9, 2004, the Court of Appeals reversed and set aside the rulings of the Labor Arbiter and the NLRC. In its decision, the Court of Appeals declared Lotte as the real employer of respondents and that 7J who engaged in labor-only contracting was merely the agent of Lotte. Respondents who performed activities directly related to Lotte's business were its regular employees under Art. 280 of the Labor Code. As such, they must be accorded security of tenure and their services terminated only on "just" and "authorized" causes.

Lotte's motion for reconsideration was denied, hence this petition, on the following issues:

8. Whether or not petitioner herein had the burden of proof to establish before the proceedings in the Court of Appeals that 7J Maintenance and Janitorial Service was not a labor-only contractor.

8.1. Whether or not the Petition in CA-G.R. SP No. 72732 is dismissible for failure to comply with Section 3, Rule 46 in relation to Section 5, Rule 65 of the 1997 Rules of Civil Procedure.<sup>[12]</sup>

We first resolve the procedural issue raised by petitioner. Lotte asserts that 7J is an indispensable party and should have been impleaded in respondents' petition in the Court of Appeals. It claims that the petition before the Court of Appeals was dismissible for failure to comply with Section 3,<sup>[13]</sup> Rule 46 in relation to Section 5<sup>[14]</sup> of Rule 65 of the Revised Rules of Civil Procedure.

Petitioner's contention is tenable.

An indispensable party is a party in interest without whom no final determination can be had of an action,<sup>[15]</sup> and who shall be joined either as plaintiffs or defendants.<sup>[16]</sup> The joinder of indispensable parties is mandatory.<sup>[17]</sup> The presence of indispensable parties is necessary to vest the court with jurisdiction, which is "the authority to hear and determine a cause, the right to act in a case".<sup>[18]</sup> Thus, without the presence of indispensable parties to a suit or proceeding, judgment of a court cannot attain real finality.<sup>[19]</sup> The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.<sup>[20]</sup>

In the case at bar, 7J is an indispensable party. It is a party in interest because it will be affected by the outcome of the case. The Labor Arbiter and the NLRC found 7J to be solely liable as the employer of respondents. The Court of Appeals however rendered Lotte jointly and severally liable with 7J who was not impleaded by holding that the former is the real employer of respondents. Plainly, its decision directly affected 7J.

In *Domingo vs. Scheer*,<sup>[21]</sup> we held that the non-joinder of indispensable parties is not a ground for the dismissal of an action<sup>[22]</sup> and the remedy is to implead the non-party claimed to be indispensable.<sup>[23]</sup> Parties may be added by order of the court on motion of the party or on its own initiative at any stage of the action and/or such times as are just. If the petitioner refuses to implead an

indispensable party despite the order of the court, the latter may dismiss the complaint/petition for the petitioner/plaintiff's failure to comply therefor.<sup>[24]</sup>

Although 7J was a co-party in the case before the Labor Arbiter and the NLRC, respondents failed to include it in their petition for certiorari in the Court of Appeals. Hence, the Court of Appeals did not acquire jurisdiction over 7J. No final ruling on this matter can be had without impleading 7J, whose inclusion is necessary for the effective and complete resolution of the case and in order to accord all parties with due process and fair play.

In light of the foregoing, the Court sees no need to discuss the second issue raised by petitioner.

**WHEREFORE**, the July 9, 2004 decision of the Court of Appeals in CA-G.R. SP No. 72732 and the November 26, 2004 resolution, are **SET ASIDE**. Let the case be **REMANDED** to the Court of Appeals to include 7J Maintenance and Janitorial Services as an indispensable party to the case for further proceedings.

**SO ORDERED.**

**Davide, Jr., C.J., (Chairman), Quisumbing, Carpio, and Azcuna, JJ., concur.**

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[1] Rollo, pp. 9-24.

[2] Id. at 26-35; penned by Associate Justice Ruben T. Reyes, with Associate Justices Perlita J. Tria Tirona and Jose C. Reyes, Jr., concurring.

[3] Id. at 37-38.

[4] Id. at 27-28.

[5] Id. at 40-54.

[6] Id. at 51.

[7] Id. at 53.

[8] Except Joseph dela Cruz.

[9] Id. at 54.

[10] Id. at 55-61. Penned by Commissioner Victoriano R. Calaycay and concurred in by Commissioners Raul T. Aquino and Angelita A. Gacutan.

[11] Id. at 62-77.

[12] Id. at 11-12.

[13] SEC. 3. Contents and filing of petition; effect of non-compliance with requirements. – The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

In actions filed under Rule 65, the petition shall further 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.

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The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

[14] SEC. 5. Respondents and costs in certain cases. – When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as private respondent or respondents with such public respondent or respondents, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents.

[15] *China Banking Corp. vs. Oliver*, 439 Phil. 50, 59-60 (2002).

[16] Section 7, Rule 3, Revised Rules of Civil Procedure.

[17] *Domingo vs. Scheer*, G.R. No. 154745, 29 January 2004, 421 SCRA 468, 483.

[18] *Metropolitan Bank & Trust Company vs. Hon. Alejo*, 417 Phil. 303, 317 (2001).

[19] *Bank of the Philippine Islands vs. Court of Appeals*, 450 Phil. 532, 541 (2003), citing *BA Finance Corporation vs. CA*, 327 Phil. 716, 728 (1996).

[20] *Galindo vs. Roxas*, G.R. No. 147969, 17 January 2005.

[21] *Supra*.

[22] *Id.* at 483.

[23] *Id.* at 484.

[24] *Id.* at 483-484.