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respondents'] entry into and possession of the disputed premises was illegal from the beginning and remain to be so until the present. There is no question, therefore, that as between the plaintiffs [herein petitioners] who had been judicially declared the owners of the land and the defendants [herein respondents] who are mere squatters therein, the former are entitled to such legal protection.[21]

On the basis of the foregoing, the CA erred in ruling that the judgments of the RTC (in Civil Case No. 1645) and the CA (in CA-G.R. CV No. 66508-R) on the suit for *accion reivindicatoria* filed by petitioners against persons other than herein respondents are not binding upon the latter. Respondents, being trespassers on the subject lots are bound by the said judgments, which find petitioners to be entitled to the possession of the subject lots as owners thereof.

WHEREFORE, the instant petition is **GRANTED**. The July 31, 2013 Decision of the Court of Appeals in CA-G.R. SP No. 04500 is **REVERSED** and **SET ASIDE**. The Omnibus Judgment of the Municipal Trial Court in Cities, Branch 1, Surigao City, dated February 25, 2011, is **REINSTATED**.

SO ORDERED.

Carpio (Chairperson), Perlas-Bernabe, Caguioa, and *Reyes, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 210961. January 24, 2018]

LEO V. MAGO and LEILANIE E. COLOBONG, *petitioners, vs.* **SUNPOWER MANUFACTURING LIMITED,** *respondent.*

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[21] *Rollo,* pp. 54-55.

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SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; JOB CONTRACTING; SUBSTANTIAL CAPITAL OR INVESTMENT; THE CONTRACTOR IS REQUIRED TO HAVE SUBSTANTIAL CAPITAL OR INVESTMENT IN ORDER TO BE CONSIDERED A LEGITIMATE AND INDEPENDENT CONTRACTOR.— The law and the relevant regulatory rules require the contractor to have substantial capital or investment, in order to be considered a legitimate and independent contractor. *Substantial capital or investment* was defined in DOLE DO No. 18-02 as "capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out." DOLE initially did not provide a specific amount as to what constitutes substantial capital. It later on specified in its subsequent issuance, DOLE DO No. 18-A, series of 2011, that *substantial capital* refers to paid-up capital stocks/shares of at least Php 3,000,000.00 in the case of corporations. x x x DOLE DO No. 18-02 and DO No. 18-A, as well as Article 106 of the Labor Code itself, all use the conjunctive term "*or*" in prescribing that the contractor should have substantial capital *or* investment. Having established that Jobcrest had substantial capital, it is unnecessary for this Court to determine whether it had sufficient investment in the form of tools, equipment, machinery and work premises.

2. ID.; ID.; ID.; ELEMENT OF CONTROL; THE CONTRACTOR SHOULD UNDERTAKE THE PERFORMANCE OF THE SERVICES UNDER ITS CONTRACT ACCORDING TO ITS OWN MANNER AND METHOD, FREE FROM THE CONTROL AND SUPERVISION OF THE PRINCIPAL.— In most cases, despite proof of substantial capital, the Court declared a contractor as a labor-only contractor whenever it is established that the principal—not the alleged legitimate contractor—actually controls the manner of the employees' work. x x x [T]he contractor should undertake the performance of the services under its contract according to its own manner and method, free from the control and supervision of the principal. Otherwise, the contractor is deemed an illegitimate or labor-only contractor. The control over the employees'

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performance of the work is, as the Court ruled in some cases, usually manifested through the power to hire, fire, and pay the contractor's employees, the power to discipline the employees and impose the corresponding penalty, and more importantly, the actual supervision of the employees' performance.

3. ID.; ID.; ID.; CONSIDERED PERMISSIBLE WHETHER THE WORK OR SERVICE IS TO BE PERFORMED OR COMPLETED WITHIN OR OUTSIDE THE PREMISES OF THE PRINCIPAL FOR AS LONG AS THE ELEMENTS OF A LABOR-ONLY CONTRACTOR ARE NOT PRESENT.— The fact that the petitioners were working within the premises of Sunpower, by itself, does not negate Jobcrest's control over the means, method, and result of the petitioners' work. Job contracting is permissible "whether such job, work, or service is to be performed or completed within or outside the premises of the principal" for as long as the elements of a labor-only contractor are not present. Since Jobcrest was a provider of business process services, its employees would necessarily work within the premises of its client companies in order for Jobcrest to perform its contractual undertaking. Mere physical presence in Sunpower's plant does not necessarily mean that Sunpower controlled the means and method of the petitioners' work.

4. ID.; ID.; EMPLOYER-EMPLOYEE RELATIONSHIP; ELEMENTS.— The four-fold test is the established standard for determining the existence of an employer-employee relationship: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the power of control over the employee's conduct. Of the four elements, the power of control is the most important.

APPEARANCES OF COUNSEL

Banzuela & Associates for petitioners.
Cruz Enverga & Lucero for respondent.

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D E C I S I O N

REYES, JR., *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, seeking the review of the Decision[2] dated October 8, 2013 and Resolution[3] dated January 13, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 131059. In these assailed issuances, the CA reversed the decision[4] of the National Labor Relations Commission (NLRC) declaring Leo V. Mago (Leo) and Leilanie E. Colobong (Leilanie) (petitioners) as employees of Sunpower Philippines Manufacturing Limited (Sunpower) and consequently, holding that Jobcrest Manufacturing, Incorporated (Jobcrest) was a labor-only contractor. The NLRC in turn reversed the ruling[5] of the labor arbiter (LA) dismissing the petitioners' complaint for illegal dismissal.

Factual Antecedents

The petitioners are former employees of Jobcrest, a corporation duly organized under existing laws of the Philippines, engaged in the business of contracting management consultancy and services.[6] Jobcrest was licensed by the Department of Labor and Employment (DOLE) through Certificate of Registration No. NCR-MUNTA-64209-0910-087-R.[7] During the time material to this case, the petitioners' co-habited together.[8]

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[1] *Rollo*, pp. 9-47.

[2] Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Franchito N. Diamante and Melchor Q. C. Sadang, concurring; *id*. at 385-412.

[3] *Id*. at 439-442.

[4] *Id*. at 229-252.

[5] *Id*. at 164-190.

[6] *Id*. at 145-151.

[7] *Id*. at 139.

[8] *Id*. at 13.

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On October 10, 2008, Jobcrest and Sunpower entered into a Service Contract Agreement, in which Jobcrest undertook to provide business process services for Sunpower, a corporation principally engaged in the business of manufacturing automotive computer and other electronic parts.[9] Jobcrest then trained its employees, including the petitioners, for purposes of their engagement in Sunpower.[10] After the satisfactory completion of this training, the petitioners were assigned to Sunpower's plant in Laguna Technopark. Leo was tasked as a Production Operator in the Coinstacking Station on July 25, 2009,[11] while Leilanie was assigned as a Production Operator, tasked with final visual inspection in the Packaging Station on June 27, 2009.[12] Jobcrest's On-site Supervisor, Allan Dimayuga (Allan), supervised the petitioners during their assignment with Sunpower.[13]

It was alleged that sometime in October 2011, Sunpower conducted an operational alignment, which affected some of the services supplied by Jobcrest. Sunpower decided to terminate the Coinstacking/Material Handling segment and the Visual Inspection segment.[14] Meanwhile, Leo and Leilanie were respectively on paternity and maternity leave because Leilanie was due to give birth to their common child.[15]

When Leo reported for work to formally file his paternity leave, Allan purportedly informed Leo that his employment was terminated due to his absences. Leo, however, further alleged that he was asked to report to Jobcrest on December 14, 2011

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[9] *Id*. at 140.

[10] *Id*. at 404-405.

[11] *Id*. at 88-94.

[12] *Id*. at 96-102.

[13] *Id*. at 404.

[14] *Id*. at 445.

[15] *Id*. at 14, 103.

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for his assignment to Sunpower.[16] In their defense, both Jobcrest and Allan denied terminating Leo's employment from Jobcrest.[17]

Leo complied with the directive to go to Jobcrest's office on December 14, 2011. While he was there, Jobcrest's Human Resource Manager, Noel J. Pagtalunan (Noel), served Leo with a "Notice of Admin Charge/Explanation Slip."[18] The notice stated that Leo violated the Jobcrest policy against falsification or tampering because he failed to disclose his relationship with Leilanie. Leo denied the charges and explained that he already filed a complaint for illegal dismissal with the NLRC.[19]

Leilanie, on the other hand, alleged that when she reported for work at Jobcrest on November 29, 2011, she was informed by one of the Jobcrest personnel that she will be transferred to another client company. She was likewise provided a referral slip for a medical examination, pursuant to her new assignment.[20]

Instead of complying with Jobcrest's directives, Leo and Leilanie filed a complaint for illegal dismissal and regularization on December 15, 2011, with the NLRC Regional Arbitration Branch No. IV. Leo alleged that he was dismissed on October 30, 2011, while Leilanie alleged that she was dismissed from employment on December 4, 2011.[21] Despite the filing of the complaint, Leilanie returned to Jobcrest on December 16, 2011, where she was served with a similar "Notice of Admin Charge/ Explanation Slip," requiring her to explain why she failed to disclose her co-habitation status with Leo.[22]

During the mandatory conference, Jobcrest clarified that the petitioners were not dismissed from employment and offered

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[16] *Id.* at 54.

[17] *Id.* at 185.

[18] *Id.* at 54, 107.

[19] *Id.* at 107.

[20] *Id.* at 69.

[21] *Id.* at 109-110

[22] *Id.* at 55, 108.

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to accept them when they report back to work. The petitioners refused and insisted that they were regular employees of Sunpower, not Jobcrest.[23]

There being no amicable settlement of the matter among the parties, they proceeded to file their respective position papers.[24]

Ruling of the LA

In a Decision[25] dated July 3, 2012, the LA held that Jobcrest is a legitimate independent contractor and the petitioners' statutory employer:

> WHEREFORE, premises considered, the complaint for illegal dismissal against [Sunpower] and Dwight Deato is DISMISSED for lack of employer-employee relationship. [Jobcrest] is declared as the statutory employer and is ordered to reinstate complainants sans backwages to substantially equivalent positions within ten (10) days from receipt hereof.
>
> SO ORDERED.[26]

The LA found the capital of Jobcrest substantial enough to comply with the requirements for an independent contractor, and that Jobcrest exercised control over the petitioners' work.[27] The LA likewise rejected the petitioners' claim that they were illegally dismissed, ruling that the petitioners failed to establish the fact of dismissal itself.[28]

Jobcrest partially appealed the LA's Decision dated July 3, 2012. Among its arguments is the assertion that the petitioners refused to be reinstated. Hence, they were considered constructively resigned from their employment with Jobcrest,

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[23] *Id.* at 237, 535.

[24] *Id.* at 44-154.

[25] Issued by LA Renell Joseph R. Dela Cruz; *id.* at 164-190.

[26] *Id.* at 190.

[27] *Id.* at 187-189.

[28] *Id.* at 189-190.

especially because they obtained a job somewhere else. As an alternative relief, Jobcrest prayed that it be directed to pay the petitioners' separation pay instead of reinstating them to their former positions.[29]

The petitioners, on the other hand, attributed serious error on the LA for ruling against their complaint.[30]

Ruling of the NLRC

The NLRC reversed the LA's findings in its Decision[31] dated April 24, 2013 and ruled favorably for the petitioners, *viz*.:

> WHEREFORE, the decision appealed from is hereby SET ASIDE and a NEW ONE ENTERED declaring that [the petitioners] are regular employees of respondent [Sunpower], respondent [Jobcrest] being a mere labor-only contractor that [petitioners] were illegally dismissed; hence, respondent [Sunpower] is hereby ordered to reinstate them to their former position with full backwages, from the time they were refused to work on October 31, 2011 until reinstated, within ten (10) days from notice plus 10% of the total monetary awards as and for attorney's fees.
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> SO ORDERED.[32]

According to the NLRC, the contract between Jobcrest and Sunpower was for the sole supply of manpower. The tools and equipment for the performance of the work were for the account of Sunpower, which supposedly contradicted the claim that Jobcrest has the required capital for a legitimate contractor.[33] The NLRC also disagreed that Jobcrest exercised control over the petitioners and likewise gave more credence to the petitioners' sworn statements, which narrate that Sunpower employees

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[29] *Id*. at 237-238.

[30] *Id*. at 191-225.

[31] Penned by Commissioner Erlinda T. Agus, with Presiding Commissioner Raul T. Aquino and Commissioner Teresita D. Castillon-Lora, concurring; *id*. at 229-252.

[32] *Id*. at 252.

[33] *Id*. at 241.

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allegedly supervised their work.[34] Lastly, on the basis of the "Notice of Administrative Charge/Explanation Slip" furnished to the petitioners, the NLRC reversed the LA's ruling and held that the petitioners were illegally dismissed from employment.[35]

Sunpower moved for the reconsideration of the NLRC's Decision dated April 24, 2013.[36] Unconvinced, the NLRC denied this motion in its Resolution[37] dated May 28, 2013 as follows:

> WHEREFORE, the instant Motion for Reconsideration is hereby DENIED for lack of merit.
>
> No further motion of this nature shall be entertained.
>
> SO ORDERED.[38]

As a result of the NLRC's ruling, Sunpower filed a petition for *certiorari* with the CA, with a prayer for the issuance of an injunctive writ.[39] Sunpower attributed grave abuse of discretion, amounting to lack or excess of jurisdiction, on the NLRC for holding that the petitioners were regular employees of Sunpower despite evidence to the contrary.[40] Sunpower also disagreed that Jobcrest is a labor-only contractor, and further submitted that the NLRC misinterpreted its Service Contract Agreement with Jobcrest.[41]

Ruling of the CA

In a Decision[42] dated October 8, 2013, the CA granted Sunpower's petition for *certiorari* and enjoined the implementation of the assailed NLRC ruling:

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[34] *Id*. at 242-246.

[35] *Id*. at 249-251.

[36] *Id*. at 271-283.

[37] *Id*. at 287-289.

[38] *Id*. at 288.

[39] *Id*. at 290-322.

[40] *Id*. at 300-308.

[41] *Id*. at 296-300, 308-311.

[42] *Id*. at 385-412.

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WHEREFORE, premises considered, the Petition is GRANTED. The Decision dated 24 April 2013 and Resolution dated 28 May 2013 of the [NLRC] (Second Division) in NLRC-LAC No. 09-002582-12; NLRC RAB-IV-12-01978-11-B are NULLIFIED. All the respondents and/or persons acting for and on their behalf are ENJOINED from enforcing or implementing the same. The Decision dated 03 July 2012 of LA Renell Joseph R. Dela Cruz is hereby REINSTATED. No pronouncement as to costs.

SO ORDERED.[43]

The CA ruled that Sunpower was able to overcome the presumption that Jobcrest was a labor-only contractor, especially considering that the DOLE Certificate of Registration issued in favor of Jobcrest carries the presumption of regularity. In contrast with the NLRC ruling, the CA found that the Service Contract Agreement between Sunpower and Jobcrest specifically stated the job or task contracted out by stating that it was for the performance of various business process services.[44] The CA also held that Jobcrest has substantial capital and as such, it was no longer necessary to prove that it has investment in the form of tools, equipment, machinery, and work premises.[45]

Also, the CA found that there is an employer-employee relationship between Jobcrest and the petitioners under the four-fold test. The CA appreciated the affidavits of Jobcrest employees, as well as the sworn statements of Sunpower employees who the petitioners claim to supervise their work. In these statements, the Sunpower employees categorically denied under oath that they supervised the manner of the petitioners' work. Taken together with other pieces of evidence, the CA ruled that there was no employer-employee relationship between Sunpower and the petitioners. Finally, the CA held that any form of supervision, which Sunpower exercised over the results of the petitioners' work, was necessary and allowable under the circumstances.[46]

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[43] *Id.* at 408.

[44] *Id.* at 399-400, 406-407.

[45] *Id.* at 401-402.

[46] *Id.* at 402-405.

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Consequently, the CA rejected the claim that the petitioners were illegally dismissed from employment, especially in light of Jobcrest's earlier offer to accept the petitioners' return to work.[47]

Following their receipt of the CA's Decision dated October 8, 2013, the petitioners filed their Motions for Reconsideration and to Investigate the Reviewer Who Recommended the Palpably Erroneous Decision.[48] The CA firmly denied these motions in its Resolution[49] dated January 13, 2014 for failure to raise any substantial argument that would warrant the reconsideration of its decision:

> WHEREFORE, premises considered, the Motions for Reconsideration and to Investigate the Reviewer Who Recommended the Palpably Erroneous Decision are DENIED for sheer lack of merit.
>
> SO ORDERED.[50]

The petitioners are now before this Court, seeking to reverse and set aside the CA's issuances, and to reinstate the NLRC's decision.[51] The petitioners insist that Jobcrest is a labor-only contractor, and that the DOLE Certificate of Registration is not conclusive of Jobcrest's legitimate status as a contractor.[52] They further argue that, aside from lacking substantial capital, Jobcrest only supplied manpower to Sunpower.[53] These services, the petitioners allege, are directly related and necessary to Sunpower's business.[54]

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[47] *Id*. at 406-407.

[48] *Id*. at 413-437.

[49] *Id*. at 439-442.

[50] *Id*. at 442.

[51] *Id*. at 9-43.

[52] *Id*. at 21-22.

[53] *Id*. at 26-34.

[54] *Id*. at 34-35.

Furthermore, the petitioners submit that it was Sunpower that controlled their work. They refute the evidentiary weight and value of the sworn statements of Jobcrest and Sunpower employees.[55] The petitioners assert that the NLRC was correct in ruling that Sunpower was their statutory employer, and in ordering their reinstatement with payment of full backwages and attorney's fees.[56] The petitioners thus pray that this Court reverse and set aside the Decision dated October 8, 2013 and Resolution dated January 13, 2014 of the CA.[57]

Ruling of the Court

The Court resolves to deny the petition.

Jobcrest is a legitimate and independent contractor.

Article 106 of the Labor Code defines *labor-only contracting* as a situation "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."[58]

DOLE Department Order (DO) No. 18-02, the regulation in force at the time of the petitioners' assignment to Sunpower, reiterated the language of the Labor Code:

Section 5. ***Prohibition against labor-only contracting.*** x x x [L]abor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present:

i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service

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[55] *Id*. at 35-37.

[56] *Id*. at 38-42.

[57] *Id*. at 43.

[58] Emphasis Ours.

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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.

Thus, in order to become a legitimate contractor, the contractor must have substantial capital or investment, and must carry a distinct and independent business free from the control of the principal. In addition, the Court requires the agreement between the principal and the contractor or subcontractor to assure the contractual employees' entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social welfare benefits.[59]

Furthermore, the Court considers job contracting or subcontracting as permissible when the principal agrees to farm out the performance of a specific job, work or service to the contractor, for a definite or predetermined period of time, regardless of whether such job, work, or service is to be performed or completed within or outside the premises of the principal.[60] Ordinarily, a contractor is presumed to be a labor-only contractor, unless the contractor is able to discharge the burden of overcoming this presumption. In cases when it's the principal claiming the legitimacy of the contractor, then the burden is borne by the principal.[61]

Preliminarily, the Court finds that there is no such burden resting on either Sunpower or Jobcrest in this case. It is true that Sunpower maintained its position that Jobcrest is a legitimate and independent contractor.[62] But since the petitioners do not dispute that Jobcrest was a duly-registered contractor under

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[59] *Babas, et al. v. Lorenzo Shipping Corp.*, 653 Phil. 421, 432 (2010); See *Vinoya v. NLRC*, 393 Phil. 441, 445 (2000).

[60] *Babas, et al. v. Lorenzo Shipping Corp., id.*

[61] *Alilin. et al. v. Petron Corporation*, 735 Phil. 509, 513 (2014).

[62] *Rollo*, pp. 448-462.

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Section 11 of DOLE DO No. 18-02,[63] there is no operative presumption that Jobcrest is a labor-only contractor.[64]

Conversely, the fact of registration with DOLE does not necessarily create a presumption that Jobcrest is a legitimate and independent contractor. **The Court emphasizes, however, that the DOLE Certificate of Registration issued in favor of Jobcrest is presumed to have been issued in the regular performance of official duty.**[65] In other words, the DOLE officer who issued the certificate in favor of Jobcrest is presumed, unless proven otherwise, to have evaluated the application for registration in accordance with the applicable rules and regulations.[66] The petitioners must overcome the presumption of regularity accorded to the official act of DOLE, which is no less than the agency primarily tasked with the regulation of job contracting.[67]

For the reasons discussed below, the Court is constrained to give more weight to the substantiated allegations of Sunpower, as opposed to the unfounded self-serving accusations of the petitioners.

Jobcrest has substantial capital.

The law and the relevant regulatory rules require the contractor to have substantial capital or investment, in order to be considered a legitimate and independent contractor. *Substantial capital or investment* was defined in DOLE DO No. 18-02 as "capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor

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[63] *Id.* at 139, 166.

[64] *Cf. Rollo*, p. 399; *De Castro v. Court of Appeals*, G.R. No. 204261, October 5, 2016, 805 SCRA 265.

[65] *Sasan, Sr., et al. v. NLRC 4th Division, et al.*, 590 Phil. 685, 707 (2008).

[66] *See* DOLE DO No. 18-02, Section 12; *Gallego v. Bayer Philippines, Inc., et al.*, 612 Phil. 250, 263 (2009).

[67] LABOR CODE OF THE PHILIPPINES, Article 106.

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in the performance or completion of the job, work or service contracted out." DOLE initially did not provide a specific amount as to what constitutes substantial capital. It later on specified in its subsequent issuance, DOLE DO No. 18-A, series of 2011, that *substantial capital* refers to paid-up capital stocks/shares of at least Php 3,000,000.00 in the case of corporations.[68] Despite prescribing a threshold amount under DO No. 18-A, certificates of registration issued under DO No. 18-02, such as that of Jobcrest, remained valid until its expiration.[69]

The records show that as early as the proceedings before the LA, Jobcrest established that it had an authorized capital stock of Php 8,000,000.00, Php 2,000,000.00 of which was subscribed, and a paid-up capital stock of Php 500,000.00, in full compliance with Section 13 of the Corporation Code.[70] **For the year ended December 31, 2011, the paid-up capital of Jobcrest increased to Php 8,000,000.00,**[71] **notably more than the required capital under DOLE DO No. 18-A.**[72]

The balance sheet submitted by Jobcrest for the year ending on December 31, 2010 also reveals that its **total assets for the year 2009 amounted to Php 11,280,597.94, and Php 16,825,271.30 for the year 2010, which were comprised of office furniture, fixtures and equipment, land, building, and motor vehicles, among others**.[73] As of December 31, 2012, the total assets for the years 2011 and 2012 also increased to Php 35,631,498.58 and Php 42,603,167.16, respectively.[74]

Evidently, Jobcrest had substantial capital to perform the business process services it provided Sunpower. It has its own

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[68] DOLE DO No. 18-A, Section 3(1).

[69] *Id.* at Section 38.

[70] *Rollo*, pp. 148-149, 514.

[71] *Id.* at 334.

[72] *Id.* at 139, 166.

[73] *Id.* at 152, 523.

[74] *Id.* at 332.

office, to which the petitioners admittedly reported to, possessed numerous assets for the conduct of its business, and even continuously earned profit as a result.[75] The Court can therefore reasonably conclude from Jobcrest's financial statements that it carried its own business independent from and distinctly outside the control of its principals.

The petitioners argue that the amount of substantial capital is irrelevant because Sunpower provided the tools and owned the work premises. These supposedly negate the claim that Jobcrest has substantial capital.[76]

The Court does not agree with the petitioners.

DOLE DO No. 18-02 and DO No. 18-A, as well as Article 106 of the Labor Code itself, all use the conjunctive term "*or*" in prescribing that the contractor should have substantial capital *or* investment. Having established that Jobcrest had substantial capital, it is unnecessary for this Court to determine whether it had sufficient investment in the form of tools, equipment, machinery and work premises.

In *Neri v. NLRC*,[77] the Court rejected the same argument put forward by the petitioners, arid ruled that proof of either substantial capital or investment is sufficient for purposes of determining whether the first element of labor-only contracting is absent:

> Based on the foregoing, BCC cannot be considered a "labor-only" contractor because it has substantial capital. While there may be no evidence that it has investment in the form of tools, equipment, machineries, work premises, among others, it is enough that it has substantial capital, as was established before the Labor Arbiter as well as the NLRC. In other words, the law does not require both substantial capital and investment in the form of tools, equipment,

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[75] *Id*. at 326-345, 522-525. See also *Sasan, et al. v. NLRC 4th Division, et al*., *supra* note 65, at 704- 705; *Gallego v. Bayer Philippines, Inc., et al*., *supra* note 66, at 263-264; *Escario v. NLRC*, 388 Phil. 929, 938-939 (2000).

[76] *Rollo*, pp. 29-34.

[77] 296 Phil. 610 (1993).

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machineries, etc. This is clear from the use of the conjunction "or". **If the intention was to require the contractor to prove that he has both capital and the requisite investment, then the conjunction "and" should have been used.** But, having established that it has substantial capital, it was no longer necessary for BCC to further adduce evidence to prove that it does not fall within the purview of "labor-only" contracting. There is even no need for it to refute petitioners' contention that the activities they perform are directly related to the principal business of respondent bank.[78] (Emphasis Ours)

The agreement between Jobcrest and Sunpower also complied with the statutory requirement of ensuring the observance of the contractual employees' rights under the law. Specifically, paragraph 7 of the Service Contract Agreement obligates Jobcrest to observe all laws, rules and regulations pertaining to the employment of its employees.[79]

Suncrest does not control the manner by which the petitioners accomplished their work.

In most cases, despite proof of substantial capital, the Court declared a contractor as a labor-only contractor whenever it is established that the principal—not the alleged legitimate contractor—actually controls the manner of the employees' work.[80] The element of *control* was defined under DOLE DO No. 18-02 as:

> The "right to control" shall refer to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.[81]

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[78] *Id.* at 616.

[79] *Rollo*, p. 142.

[80] *Vinoya v. NLRC, supra* note 59, at 444-445.

[81] *See* DOLE DO No. 18-A, Section 6; *See* also *Locsin, et al. v. Philippine Long Distance Telephone Company*, 617 Phil. 955, 964 (2009), citing *Francisco v. NLRC*, 532 Phil. 399, 407 (2006).

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In other words, the contractor should undertake the performance of the services under its contract according to its own manner and method, free from the control and supervision of the principal.[82] Otherwise, the contractor is deemed an illegitimate or labor-only contractor.

The control over the employees' performance of the work is, as the Court ruled in some cases, usually manifested through the power to hire, fire, and pay the contractor's employees,[83] the power to discipline the employees and impose the corresponding penalty,[84] and more importantly, the actual supervision of the employees' performance.[85] On this point, the petitioners claim that Sunpower employees supervised their work while in the premises of Sunpower's own plant. They also disclaim the affidavits of Sunpower employees, which denied exercising any form of supervision over the petitioners,[86] by alleging that these are self-serving assertions. The petitioners also refute the veracity of the sworn statements of Jobcrest's employees.[87]

Upon review of the records, the Court finds that the evidence clearly points to Jobcrest as the entity that exercised control over the petitioners' work with Sunpower. Upon the petitioners' assignment to Sunpower, Jobcrest conducted a training and certification program, during which time, the petitioners reported directly to the designated Jobcrest trainer.[88] The affidavit of Jobcrest's Operations Manager, Kathy T. Morales (Kathy), states

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[82] *Vinoya v. NLRC, supra* note 59, at 445.

[83] *Coca-Cola Bottlers Phils., Inc. v. Agito, et al.*, 611 Phil. 327 (2009).

[84] *Manila Water Co., Inc. v. Pena*, 478 Phil. 68, 81 (2004).

[85] *Philippine Airlines, Inc. v. Ligan, et al.*, 570 Phil. 497, 508 (2008); *Lakas sa Industriya ng Kapatirang Haligi ng Alyansa - Pinagbuklod ng Manggagawang Promo ng Burlingame v. Burlingame Corporation*, 552 Phil. 58, 61-62 (2007).

[86] *Rollo*, pp. 247-248.

[87] *Id.* at 35-40.

[88] *Id.* at 403-404.

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that operational control over Jobcrest employees was exercised to make sure that they conform to the quantity and time specifications of the service agreements with Jobcrest's clients. She narrated that manager and shift supervisors were assigned to the premises of Sunpower, with the task to oversee the accomplishment of the target volume of work. She also mentioned that there is administrative control over Jobcrest employees because they monitor the employees' attendance and punctuality, and the employees' observance of other rules and regulations.[89]

The affidavit of Kathy was markedly corroborated by the sworn statement of Jobcrest's On-site Supervisor, Allan, in which he affirmed that he directly supervised the petitioners while they were stationed in Sunpower. He also confirmed that during this period, he issued several memoranda to the petitioners for violating rules and regulations, and provided their hourly output performance assessment, which "determine[s] their fitness to continue their employment with Jobcrest."[90]

The petitioners' very own sworn statements further establish this point. In his statement, Leo averred that when he reported for work to file his application for paternity leave, he reported to Allan, Jobcrest's supervisor, who then approved his leave application. He likewise narrated that it was Jobcrest's Human Resource Manager, Noel, who informed Leo about the disciplinary charge against him for allegedly violating the Jobcrest Code of Conduct.[91]

The same conclusion holds for Leilanie. In her statement, Leilanie narrated that she reported for work to the Jobcrest office on November 29, 2011 after giving birth to her second child. She also alleged in her affidavit that similar to Leo, it was Noel who informed her of the disciplinary action against her, through the service of a copy of the "Notice of Admin Charge/Explanation Slip."[92]

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[89] *Id.* at 404, 455-456.

[90] *Id.* at 404-405, 455.

[91] *Id.* at 54.

[92] *Id.* at 54-55.

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Notably, other documentary evidence plainly show that Leo's paternity leave application was indeed filed with Jobcrest,[93] and the respective notices of disciplinary action against the petitioners were prepared and signed by the Jobcrest Human Resource Manager.[94] These are clear indications that Jobcrest exercised control over the petitioners' work.

The fact that the petitioners were working within the premises of Sunpower, by itself, does not negate Jobcrest's control over the means, method, and result of the petitioners' work.[95] Job contracting is permissible "whether such job, work, or service is to be performed or completed within or outside the premises of the principal"[96] for as long as the elements of a labor-only contractor are not present. Since Jobcrest was a provider of business process services, its employees would necessarily work within the premises of its client companies in order for Jobcrest to perform its contractual undertaking. Mere physical presence in Sunpower's plant does not necessarily mean that Sunpower controlled the means and method of the petitioners' work. The petitioners, despite working in Sunpower's plant for most of the time, admit that whenever they file their leave application, or whenever required by their supervisors in Jobcrest, they report to the Jobcrest office. Designated on-site supervisors from Jobcrest were the ones who oversaw the performance of the employees' work within the premises of Sunpower.

Besides, while the Court repeatedly recognizes that there are employers who abuse the system of subcontracting, **we also acknowledge that contracts for services does not necessarily provide "untrammeled freedom" to the contractor in undertaking the engagement.**[97] What is important, as

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[93] *Id.* at 103.

[94] *Id.* at 107-108.

[95] *Escasinas, et al. v. Shangri-La's Mactan Island Resort, et al.*, 599 Phil. 746, 755 (2009).

[96] *Babas, et al. v. Lorenzo Shipping Corp., supra* note 59, at 432.

[97] *Gallego v. Bayer Philippines, Inc., supra* note 66, at 265.

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incontrovertibly established in this case, is that the principal's right to control is limited to the results of the work of the contractor's employees.

The petitioners were regular employees of Jobcrest.

The four-fold test is the established standard for determining the existence of an employer-employee relationship:[98] (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the power of control over the employee's conduct. Of the four elements, the power of control is the most important.[99] Having found that Jobcrest exercised control over the petitioners' work, the Court is constrained to determine whether the petitioners were regular employees of Jobcrest by virtue of the three other elements of the four-fold test.

The petitioners themselves admit that they were hired by Jobcrest.[100] In their subsequent engagement to Sunpower, it was Jobcrest that selected and trained the petitioners.[101] Despite their assignment to Sunpower, Jobcrest paid the petitioners' wages, including their contributions to the Social Security System (SSS), Philippine Health Insurance Corporation (Philhealth), and Home Development Mutual Fund (HDMF, also known as Pag-IBIG).[102] The power to discipline the petitioners was also retained by Jobcrest, as evidenced by the "Notice of Admin Charge/ Explanation Slip" furnished the petitioners through Jobcrest's Human Resource department.[103]

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[98] *Tongko v. The Manufacturers Life Insurance Co. (Phils.), Inc., et al.*, 655 Phil. 384, 407 (2011).

[99] *Manila Water Co., Inc. v. Dalumpines, et al.*, 646 Phil. 383, 398-399 (2010).

[100] *Rollo*, p.51.

[101] *Id.* at 88-102.

[102] *Id.* at 95, 186-187, 492-504.

[103] *Id.* at 107-108.

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The Court further notes that on December 27, 2010 and January 25, 2011, Leilanie and Leo were respectively confirmed as regular employees of Jobcrest.[104] Jobcrest did not even deny that the petitioners were their regular employees. Consequently, the petitioners cannot be terminated from employment without just or authorized cause.[105]

A review of the petitioners' repeated submissions reveals that while they claim to have been illegally dismissed from employment,[106] Jobcrest actually intended to assign Leo again to Sunpower, and provide Leilanie with another engagement with a different client company. The petitioners all admitted to these facts in their sworn statement, heavily quoted in their position paper filed with the LA:[107]

> 41. Noong December 14, 2011, **ako [Leo Mago] ay tinawagan sa aking cellular phone ng nagpakilalang Julie at taga HR ng JOBCREST at ang sabi sa akin ay magreport umano ako sa opisina upang ipadala sa SUNPOWER**;
>
> x x x x x x x x x
>
> 44. Noong November 29, 2011, **ako [Leilani Colobong] ay nagreport sa JOBCREST at aking nakausap ang isa sa staff ng JOBCREST na hindi ko alam ang pangalan at ang sabi niya sa akin ay ililipat umano ako sa kompanyang FIRST SUMIDEN** dahil hindi na umano ako pwedeng m[a]gtrabaho sa SUNPOWER na hindi niya sinabi kung anu ang dahilan;
>
> 45. Noong December 1, 2011, ako ay bumalik sa JOBCREST at ako ay binigyan nila ng referral para magpamedical para sa aking bagong requirements diumano sa aking bagong trabaho sa FIRST SUMIDEN dahil hindi na talaga umano ako tatanggapin sa SUNPOWER sa aking pagbabalik trabaho ng December 4, 2011 na hindi naman niya sinabi kung anu

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[104] *Id*. at 94, 102.

[105] LABOR CODE OF THE PHILIPPINES, Article 279.

[106] *Rollo*, p. 109.

[107] *Id*. at 54-55.

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> ang dahilan; Kalakip nito ang nas[a]bing referral slip bilang Exhibit "S"[108] (Emphasis Ours)

It was also uncontroverted that Jobcrest offered to accept the petitioners' return to work, but they refused this offer during the mandatory conference.[109] Clearly, the petitioners were not illegally dismissed, much less terminated from their employment. There is nothing on record that established the dismissal of the petitioners in the first place.

In *MZR Industries, et al. v. Colambot*,[110] the employee claimed to have been illegally dismissed through a verbal directive. The employer denied this and alleged waiting for the employee to report for work, only to later find out that a complaint for illegal dismissal was filed against them. The Court recognized that while the employer is generally required to establish the legality of the employee's termination, the employee should first establish the fact of dismissal from service. Failing such, as in this case, the Court cannot rule that the employee was illegally dismissed.

The "Notice of Admin Charge/Explanation Slip" is also insufficient proof of the petitioners' termination from employment. The notice merely required the petitioners to explain whether they violated Jobcrest's Code of Conduct. No penalty was imposed on the petitioners yet when they were furnished with a copy of the notices.[111] In fact, Jobcrest was unable to take the appropriate action on the charge, considering that the petitioners immediately filed their complaint for illegal dismissal with the NLRC the following day, or on December 15, 2011.[112]

All things considered, Sunpower is not the statutory employer of the petitioners. The circumstances obtaining in this case, as

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[108] *Id*.

[109] *Id*. at 237, 535.

[110] 716 Phil. 617, 624 (2013).

[111] *Rollo*, pp. 107-108.

[112] *Id*. at 109-110.

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supported by the evidence on record, establish that Jobcrest was a legitimate and independent contractor. There is no reason for this Court to depart from the CA's findings.

WHEREFORE, premises considered, the present petition is hereby **DENIED** for lack of merit. The Court of Appeals' Decision dated October 8, 2013 and Resolution dated January 13, 2014 in CA-G.R. SP No. 131059 are **AFFIRMED**, which nullified the National Labor Relations Commission's Decision dated April 24, 2013 and Resolution dated May 28, 2013, and reinstated the Labor Arbiter's decision dated July 3, 2012. No costs.

SO ORDERED.

Carpio (Chairperson), Peralta, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

SECOND DIVISION

[G.R. No. 213945. January 24, 2018]

LUCILA YARED and HEIRS OF THE LATE ERNESTO YARED, SR., *petitioners, vs.* **LAND BANK OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; INHERENT POWERS OF THE STATE; EXPROPRIATION; JUST COMPENSATION; REFERS TO THE FULL AND FAIR EQUIVALENT OF THE PROPERTY WHICH MUST BE PAID TO THE OWNERS OF THE LAND WITHIN A REASONABLE TIME FROM ITS TAKING.— The concept of just compensation has long been settled by the Court as the full and fair equivalent of the property which must be paid to the owners of the land within a reasonable time from its taking. This is because without prompt payment, "compensation cannot be considered "just"