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This Court, however, finds it proper to still remand the records to the Labor Arbiter to conduct further proceedings for the sole purpose of determining the compensation that respondent was actually receiving during the period that he was the General Manager of petitioner corporation for the proper computation of his separation pay.

Costs against petitioners.

SO ORDERED.

Carpio (Chairperson), Brion, Sereno, and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 182915. December 12, 2011]

MARIALY O. SY, VIVENCIA PENULLAR, AURORA AGUINALDO, GINA ANIANO,* GEMMA DELA PEÑA, EFREMIA* MATIAS, ROSARIO BALUNSAY, ROSALINDA PARUNGAO, ARACELI* RUAZA, REGINA RELOX, TEODORA VENTURA, AMELIA PESCADERO, LYDIA DE GUZMAN, HERMINIA HERNANDEZ, OLIVIA ABUAN, CARMEN PORTUGUEZ, LYDIA PENNULAR,* EMERENCIANA WOOD, PRISCILLA* ESPINEDA, NANCY FERNANDEZ, EVA* MANDURIAGA, CONSOLACION SERRANO, SIONY CASILLAN, LUZVIMINDA GABUYA, MYRNA TAMIN, EVELYN REYES, EVA AYENG, EDNA YAP, RIZA* DELA CRUZ ZUÑIGA, TRINIDAD RELOX, MARLON FALLA, MARICEL

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* Also Spelled as Anano, Eufemia, Aracelli, Penullar Priscila, Eve and Liza in some parts of the records.

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OCON, and ELVIRA MACAPAGAL, *petitioners, vs.* **FAIRLAND KNITCRAFT CO., INC.,** *respondent.*

[G.R. No. 189658. December 12, 2011]

SUSAN T. DE LEON, *petitioner, vs.* **FAIRLAND KNITCRAFT CO., INC., MARIALY O. SY, VIVENCIA PENULLAR, AURORA AGUINALDO, GINA ANIANO, GEMMA DELA PEÑA, EFREMIA MATIAS, ROSARIO BALUNSAY, ROSALINDA PARUNGAO, ARACELI RUAZA, REGINA RELOX, TEODORA VENTURA, AMELIA PESCADERO, RICHON APARRE, LYDIA DE GUZMAN, HERMINIA HERNANDEZ, OLIVIA ABUAN, CARMEN PORTUGUEZ, LYDIA PENNULAR, EMERENCIANA WOOD, PRISCILLA ESPINEDA, NANCY FERNANDEZ, EVA MANDURIAGA, CONSOLACION SERRANO, SIONY CASILLAN, LUZVIMINDA GABUYA, MYRNA TAMIN, EVELYN REYES, EVA AYENG, EDNA YAP, RIZA DELA CRUZ ZUÑIGA, TRINIDAD RELOX, MARLON FALLA, MARICEL OCON, and ELVIRA MACAPAGAL,** *respondents*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; LABOR-ONLY CONTRACTING; ELEMENTS. — "There is labor-only contracting when the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal. In labor-only contracting, the following elements are present: (a) 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 (b) The workers recruited and placed by such person are performing activities which are directly related to the principal business of the employer."

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2. ID.; ID.; ID.; A CONTRACTOR IS PRESUMED TO BE A LABOR-ONLY CONTRACTOR UNLESS SUCH CONTRACTOR OVERCOMES THE BURDEN OF PROVING THAT IT HAS SUBSTANTIAL CAPITAL, INVESTMENT, TOOLS AND THE LIKE. — [T]he Court finds that Susan's effort to negate Fairland's ownership of the work premises is futile. The logical conclusion now is that Weesan does not have its own workplace and is only utilizing the workplace of Fairland to whom it supplied workers for its garment business. Suffice it to say that "[t]he presumption is that a contractor is a labor-only contractor unless such contractor overcomes the burden of proving that it has substantial capital, investment, tools and the like." As Susan/Weesan was not able to adduce evidence that Weesan had any substantial capital, investment or assets to perform the work contracted for, the presumption that Weesan is a labor-only contractor stands.

3. ID.; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CLOSURE OR CESSATION OF BUSINESS; REQUIREMENTS. — Article 283 of the Labor Code allows as a mode of termination of employment the closure or termination of business. "Closure or cessation of business is the complete or partial cessation of the operations and/or shut-down of the establishment of the employer. It is carried out to either stave off the financial ruin or promote the business interest of the employer." "The decision to close business [or to temporarily suspend operation] is a management prerogative exclusive to the employer, the exercise of which no court or tribunal can meddle with, except only when the employer fails to prove compliance with the requirements of Art. 283, to wit: a) that the closure/cessation of business is *bona fide*, *i.e.*, its purpose is to advance the interest of the employer and not to defeat or circumvent the rights of employees under the law or a valid agreement; b) that written notice was served on the employees and the DOLE at least one month before the intended date of closure or cessation of business; and c) in case of closure/cessation of business ***not*** due to financial losses, that the employees affected have been given separation pay equivalent to ½ month pay for every year of service or one month pay, whichever is higher."

4. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; SUBSTITUTION OF PARTIES; FORMAL SUBSTITUTION OF PARTIES IS NOT NECESSARY WHEN

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THE HEIRS THEMSELVES VOLUNTARILY APPEARED, PARTICIPATED, AND PRESENTED EVIDENCE DURING THE PROCEEDINGS. — [T]he lack of formal substitution of the deceased worker Richon did not result to denial of due process as to affect the validity of the proceedings before the NLRC since his heir, Luzvilla, was aware of the proceedings therein. In fact, she is considered to have voluntarily appeared before the said tribunal when she signed the workers' Memorandum of Appeal filed therewith. "This Court has ruled that formal substitution of parties is not necessary when the heirs themselves voluntarily appeared, participated, and presented evidence during the proceedings." Hence, the NLRC did not err in giving due course to the appeal with respect to Richon.

5. ID.; ID.; JURISDICTION OVER THE PERSON OF THE DEFENDANT; HOW ACQUIRED. —"It is basic that the Labor Arbiter cannot acquire jurisdiction over the person of the respondent without the latter being served with summons." However, "if there is no valid service of summons, the court can still acquire jurisdiction over the person of the defendant by virtue of the latter's voluntary appearance."

6. ID.; ID.; ID.; MAY BE ACQUIRED THROUGH VOLUNTARY APPEARANCE IN COURT; CASE AT BAR. — From the records, it appears that Atty. Geronimo first entered his appearance on behalf of Susan/Weesan in the hearing held on April 3, 2003. Being then newly hired, he requested for an extension of time within which to file a position paper for said respondents. On the next scheduled hearing on April 28, 2003, Atty. Geronimo again asked for another extension to file a position paper for all the respondents considering that he likewise entered his appearance for Fairland. Thereafter, said counsel filed pleadings such as Respondents' Position Paper and Respondents' Consolidated Reply on behalf of all the respondents namely, Susan/Weesan, Fairland and Debbie. The fact that Atty. Geronimo entered his appearance for Fairland and Debbie and that he actively defended them before the Labor Arbiter raised the presumption that he is authorized to appear for them. As held in *Santos*, it is unlikely that Atty. Geronimo would have been so irresponsible as to represent Fairland and Debbie if he were not in fact authorized. As an officer of the Court, Atty. Geronimo is presumed to have acted with due propriety. Moreover, "[i]t strains credulity that a counsel who

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has no personal interest in the case would fight for and defend a case with persistence and vigor if he has not been authorized or employed by the party concerned."

7. LEGAL ETHICS; ATTORNEYS; AUTHORITY OF ATTORNEY TO APPEAR; THE PRESUMPTION OF AUTHORITY OF COUNSEL TO APPEAR IN BEHALF OF A CLIENT IS FOUND IN THE RULES OF COURT AND IN THE NEW RULES OF PROCEDURE OF THE NATIONAL LABOR RELATIONS COMMISSION; EXPLAINED. — The presumption of authority of counsel to appear on behalf of a client is found both in the Rules of Court and in the New Rules of Procedure of the NLRC. x x x Between the two provisions providing for such authority of counsel to appear, the Labor Arbiter is primarily bound by the latter one, the NLRC Rules of Procedure being specifically applicable to labor cases. As Atty. Geronimo consistently indicated his PTR and IBP numbers in the pleadings he filed, there is no reason for the Labor Arbiter not to extend to Atty. Geronimo the presumption that he is authorized to represent Fairland. Even if we are to apply Sec. 21, Rule 138 of the Rules of Court, the Labor Arbiter cannot be expected to require Atty. Geronimo to prove his authority under said provision since there was no motion to that effect from either party showing reasonable grounds therefor. Moreover, the fact that Debbie signed the verification attached to the position paper filed by Atty. Geronimo, without a secretary's certificate or board resolution attached thereto, is not sufficient reason for the Labor Arbiter to be on his guard and require Atty. Geronimo to prove his authority. Debbie, as General Manager of Fairland is one of the officials of the company who can sign the verification without need of a board resolution because as such, she is in a position to verify the truthfulness and correctness of the allegations in the petition.

8. ID.; ID.; ID.; THE PRESUMPTION OF AUTHORITY CANNOT BE OVERCOME BY A MERE DENIAL BY A PARTY THAT HE AUTHORIZED AN ATTORNEY TO APPEAR FOR HIM, IN THE ABSENCE OF A COMPELLING REASON. — Although we note that Fairland filed a disbarment case against Atty. Geronimo due to the former's claim of unauthorized appearance, we hold that same is not sufficient to overcome the presumption of authority. Such mere filing is not proof of Atty. Geronimo's alleged unauthorized appearance. Suffice it to say that an

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attorney's presumption of authority is a strong one. "A mere denial by a party that he authorized an attorney to appear for him, in the absence of a compelling reason, is insufficient to overcome the presumption, especially when the denial comes after the rendition of an adverse judgment," such as in the present case.

9. LABOR AND SOCIAL LEGISLATION; LABOR CODE; APPEALS; NATIONAL LABOR RELATIONS COMMISSION; THE FINALITY OF DECISIONS, ORDERS OR AWARDS IS RECKONED FROM THE COUNSEL'S DATE OF RECEIPT THEREOF. — Article 224 [of the Labor Code] contemplates the furnishing of copies of final decisions, orders or awards *both* to the parties and their counsel in connection with the execution of such final decisions, orders or awards. However, for the purpose of computing the period for filing an appeal from the NLRC to the CA, same shall be counted from receipt of the decision, order or award by the counsel of record pursuant to the established rule that notice to counsel is notice to party. And since the period for filing of an appeal is reckoned from the counsel's receipt of the decision, order or award, it necessarily follows that the reckoning period for their finality is likewise the counsel's date of receipt thereof, if a party is represented by counsel. Hence, the date of receipt referred to in Sec. 14, Rule VII of the then in force New Rules of Procedure of the NLRC which provides that decisions, resolutions or orders of the NLRC shall become executory *after 10 calendar days from receipt of the same*, refers to the date of receipt by counsel. Thus contrary to the CA's conclusion, the said NLRC Decision became final, as to Fairland, 10 calendar days after Atty. Tecson's receipt thereof. In sum, we hold that the Labor Arbiter had validly acquired jurisdiction over Fairland and its manager, Debbie, through the appearance of Atty. Geronimo as their counsel and likewise, through the latter's filing of pleadings on their behalf.

10. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF QUASI-JUDICIAL AGENCIES; WHEN AFFIRMED BY THE COURT OF APPEALS, ARE CONCLUSIVE UPON THE PARTIES AND BINDING ON THE SUPREME COURT. – [A] careful examination of the records reveals other telling facts that Fairland is Susan/Weesan's principal, to wit: (1) aside from sewing machines, Fairland also

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lent Weesan other equipment such as fire extinguishers, office tables and chairs, and plastic chairs; (2) no proof evidencing the contractual arrangement between Weesan and Fairland was ever submitted by Fairland; (3) while both Weesan and Fairland assert that the former had other clients aside from the latter, no proof of Weesan's contractual relationship with its other alleged client is extant on the records; and (4) there is no showing that any of the workers were assigned to other clients aside from Fairland. Moreover, as found by the NLRC and affirmed by both the Special Former Special Eighth Division in CA-G.R. SP No. 93860 and the First Division in CA-G.R. SP No. 93204, the activities, the manner of work and the movement of the workers were subject to Fairland's control. It bears emphasizing that "factual findings of quasi-judicial agencies like the NLRC, when affirmed by the Court of Appeals, as in the present case, are conclusive upon the parties and binding on this Court."

11. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; LABOR-ONLY CONTRACTING; THE PRINCIPAL EMPLOYER IS SOLIDARILY LIABLE WITH THE LABOR-ONLY CONTRACTOR FOR THE RIGHTFUL CLAIMS. — Viewed in its entirety, we thus declare that Fairland is the principal of the labor-only contractor, Weesan. Fairland, therefore, as the principal employer, is solidarily liable with Susan/Weesan, the labor-only contractor, for the rightful claims of the employees. Under this set-up, Susan/Weesan, as the "labor-only" contractor, is deemed an agent of the principal, Fairland, and the law makes the principal responsible to the employees of the "labor-only" contractor as if the principal itself directly hired or employed the employees.

APPEARANCES OF COUNSEL

Rogelio De Guzman for Marialy Sy, *et al.*

Malabanan & Andico-Malabanan Law Offices for Susan T. De Leon.

Merlina O. Tecson for Fairland Knitcraft Co., Inc.

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D E C I S I O N

DEL CASTILLO, *J.*:

The issues of labor-only contracting and the acquisition of a labor tribunal of jurisdiction over the person of a respondent are the matters up for consideration in these consolidated Petitions for Review on *Certiorari.*

Assailed in G.R. No. 182915 is the May 9, 2008 Resolution[1] of the Special Ninth Division of the Court of Appeals (CA) in CA-G.R. SP No. 93204 which reversed and set aside the July 25, 2007 Decision[2] of the CA's First Division and ordered the exclusion of Fairland Knitcraft Co., Inc. (Fairland) from the decisions of the labor tribunals. Said July 25, 2007 Decision, on the other hand, affirmed the November 30, 2004 Decision[3] and August 26, 2005 Resolution[4] of the National Labor Relations Commission (NLRC) which, in turn, reversed and set aside the November 26, 2003 Decision[5] of the Labor Arbiter finding the dismissal as valid.

On the other hand, assailed in G.R. No. 189658 is the July 20, 2009 Decision[6] of the CA's Special Former Special Eighth Division in CA-G.R. SP No. 93860, which affirmed the aforesaid November 30, 2004 Decision and August 26, 2005 Resolution of the NLRC.

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[1] CA *rollo* (CA-G.R. SP No. 93204), pp. 1093-1109; penned by Associate Justice Bienvenido L. Reyes (now a member of this Court) and concurred in by Associate Justices Vicente Q. Roxas and Pampio A. Abarintos.

[2] *Id*. at 819-844; penned by Associate Justice Celia C. Librea-Leagogo and concurred in by then Presiding Justice Ruben T. Reyes (later to become a member of this Court) and Associate Justice Regalado E. Maambong.

[3] Records, Vol. 1, pp. 231-255; penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan.

[4] *Id.* at 281-282.

[5] *Id.* at 115-120.

[6] CA *rollo* (CA-G.R. SP No. 93860), pp. 802-823; penned by Associate Justice Martin S. Villarama, Jr. (now a Member of this Court) and concurred in by Associate Justices Arturo G. Tayag and Ramon M. Bato, Jr.

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Likewise assailed is the October 1, 2009 CA Resolution[7] denying the Motion for Reconsideration thereto.

Factual Antecedents

Fairland is a domestic corporation engaged in garments business, while Susan de Leon (Susan) is the owner/proprietress of Weesan Garments (Weesan). On the other hand, the complaining workers (the workers) are sewers, trimmers, helpers, a guard and a secretary who were hired by Weesan as follows:

NAME	DATE HIRED	SALARIES
Marialy O. Sy	06-23-97	₱ 1,500.00/week
Lydia Penullar	04-99	1,000.00/week
Lydia De Guzman	08-01-98	1,000.00/week
Olivia Abuan	08-95	1,300.00/week
Evelyn Reyes	11-2000	1,000.00/week
Myrna Tamin	11-2000	1,000.00/week
Elvira Macapagal	04-01-02	1,000.00/week
Edna Yap	10-24-99	700.00/week
Rosario Balunsay	01-21-98	1,400.00/week
Rosalinda P. Parungao	03-02-01	1,000.00/week
Gemma Dela Peña	11-24-99	1,000.00/week
Emerenciana Wood	01-98	1,400.00/week
Carmen Portuguez	11-2000	800.00/week
Gina G. Anano	09-98	1,500.00/week
Aurora Aguinaldo	01-2000	1,000.00/week
Amelia Pescadero	01-96	1,000.00/week
Siony Casillan	05-2002	1,000.00/week
Consolacion Serrano	10-2001	900.00/week
Teodora Ventura	01-2000	1,000.00/week
Regina Relox	05-97	1,500.00/week
Eufemia Matias	03-2000	1,000.00/week
Herminia Hernandez	08-95	1,000.00/week
Richon Aparre	07-99	1,200.00/week
Eve Manduriaga	02-2000	1,000.00/week
Priscila Espineda	11-2000	1,300.00/week
Aracelli Ruaza	03-2000	1,000.00/week
Nancy Fernandez	11-2000	1,400.00/week
Eva Ayeng	11-2000	1,000.00/week
Luzviminda Gabuya	11-2000	1,000.00/week
Liza Dela Cuz Zuñiga	10-2001	1,200.00/week
Vivencia Penullar	01-2000	1,500.00/week
Trinidad Relox	08-96	1,200.00/week
Marlon Falla	06-24-00	840.00/week
Maricel Ocon	01-15-01	1,500.00/week[8]

[7] *Id.* at 879.

[8] Records, Vol. I, p. 30.

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On December 23, 2002, workers Marialy O. Sy, Vivencia Penullar, Aurora Aguinaldo, Gina Aniano, Gemma dela Peña and Efremia Matias filed with the Arbitration Branch of the NLRC a Complaint[9] for underpayment and/or non-payment of wages, overtime pay, premium pay for holidays, 13th month pay and other monetary benefits against Susan/Weesan. In January 2003, the rest of the aforementioned workers also filed similar complaints. Eventually all the cases were consolidated as they involved the same causes of action.

On February 5, 2003, Weesan filed before the Department of Labor and Employment-National Capital Region (DOLE-NCR) a report on its temporary closure for a period of not less than six months. As the workers were not anymore allowed to work on that same day, they filed on February 18, 2003 an Amended Complaint,[10] and on March 13, 2003, another pleading entitled Amended Complaints and Position Paper for Complainants,[11] to include the charge of illegal dismissal and impleaded Fairland and its manager, Debbie Manduabas (Debbie), as additional respondents.

A Notice of Hearing[12] was thereafter sent to Weesan requesting it to appear before Labor Arbiter Ramon Valentin C. Reyes (Labor Arbiter Reyes) on April 3, 2003, at 10:00 a.m. On said date and time, Atty. Antonio A. Geronimo (Atty. Geronimo) appeared as counsel for Weesan and requested for an extension of time to file his client's position paper.[13] On the next hearing on April 28, 2003, Atty. Geronimo also entered his appearance for Fairland and again requested for an extension of time to file position paper.[14]

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[9] *Id.* at 2.

[10] *Id.* at 25-28.

[11] *Id.* at 29-35.

[12] *Id.* at 38.

[13] See Constancia for the April 3, 2003 hearing, *id.* at 43.

[14] *Id.* at 44.

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On May 16, 2003, Atty. Geronimo filed two separate position papers – one for Fairland[15] and another for Susan/Weesan.[16] The Position Paper for Fairland was verified by Debbie while the one for Susan/Weesan was verified by Susan. To these pleadings, the workers filed a Reply.[17]

Atty. Geronimo then filed a Consolidated Reply[18] verified[19] both by Susan and Debbie.

On November 25, 2003, the workers submitted their Rejoinder.[20]

Ruling of the Labor Arbiter

On November 26, 2003, Labor Arbiter Reyes rendered his Decision,[21] the dispositive portion of which reads:

> WHEREFORE, premises all considered, judgment is hereby rendered, as follows:
>
> Dismissing the complaint for lack of merit; and ordering the respondents to pay each complainant ₱5,000.00 by way of financial assistance.
>
> SO ORDERED.[22]

Ruling of the National Labor Relations Commission

The workers filed their appeal which was granted by the NLRC. The dispositive portion of the NLRC Decision[23] reads:

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[15] *Id.* at 45-48.

[16] *Id.* at 52-56.

[17] *Id.* at 97-100.

[18] *Id.* at 105-108.

[19] *Id.* at 108.

[20] *Id.* at 111-112.

[21] *Supra* note 5.

[22] Records, Vol. I, p.120.

[23] *Supra* note 3.

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WHEREFORE, premises considered, the appealed decision is hereby set aside and the dismissal of complainants is declared illegal.

Respondents are, therefore, ordered to reinstate complainants to their original or equivalent position with full backwages with legal interests thereon from February 5, 2003, until actually reinstated and fully paid, with retention of seniority rights and are further ordered to pay solidarily to the complainants the difference of their underpaid/ unpaid wages, unpaid holidays, unpaid 13th month pays and unpaid service incentive leaves with legal interests thereon, to wit:

xxx xxx xxx

In the event that reinstatement is not possible, respondents are ordered to pay solidarily to complainants their respective separation pays computed as follows:

xxx xxx xxx

Respondents are likewise ordered to pay ten (10%) percent of the gross award as and by way of attorney's fees.

SO ORDERED.[24]

Hence, Atty. Geronimo filed a Motion for Reconsideration.[25] However, Fairland filed another Motion for Reconsideration[26] through Atty. Melina O. Tecson (Atty. Tecson) assailing the jurisdiction of the Labor Arbiter and the NLRC over it, claiming that it was never summoned to appear, attend or participate in all the proceedings conducted therein. It also denied that it engaged the services of Atty. Geronimo.

The NLRC however, denied both motions for lack of merit.[27]

Fairland and Susan thus filed their separate Petitions for *Certiorari* before the CA docketed as CA-G.R. SP No. 93204 and CA-G.R. SP No. 93860, respectively.

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[24] Records, Vol. I, pp. 249-254.

[25] *Id.* at 259-261.

[26] *Id.* at 261A-274.

[27] *Supra* note 4.

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Ruling of the Court of Appeals in CA-G.R. SP No. 93204

On July 25, 2007, the CA's First Division denied Fairland's petition.[28] It affirmed the NLRC's ruling that the workers were illegally dismissed and that Weesan and Fairland are solidarily liable to them as labor-only contractor and principal, respectively.

Fairland filed its Motion for Reconsideration[29] as well as a Motion for Voluntary Inhibition[30] of Associate Justices Celia C. Librea-Leagogo and Regalado E. Maambong from handling the case. As the Motion for Voluntary Inhibition was granted through a Resolution[31] dated November 8, 2007, the case was transferred to the CA's Special Ninth Division for resolution of Fairland's Motion for Reconsideration.[32]

On May 9, 2008, the CA's Special Ninth Division reversed[33] the First Division's ruling. It held that the labor tribunals did not acquire jurisdiction over the person of Fairland, and even assuming they did, Fairland is not liable to the workers since Weesan is not a mere labor-only contractor but a bona fide independent contractor. The Special Ninth Division thus annulled and set aside the assailed NLRC Decision and Resolution insofar as Fairland is concerned and excluded the latter therefrom. The dispositive portion of said Resolution reads:

WHEREFORE**,** the Motion for Reconsideration filed by the movant is GRANTED.

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[28] *Supra* note 2.

[29] CA *rollo* (CA-G.R. SP No. 93204), pp. 954-988.

[30] *Id.* at 989-992.

[31] *Id.* at 1037-1045; penned by Associate Justices Regalado E. Maambong and Celia C. Librea-Leagogo.

[32] Upon the inhibition of Justices Leagogo (*ponente*) and Maambong, the case was re-raffled to Justice Monina Arevalo-Zenarosa as new *ponente* on November 14, 2007. The case was again re-raffled on January 16, 2008 to Justice Bienvenido L. Reyes (*ponente*) and the members of his Division. See *rollo* cover of CA-G.R. SP No. 93204.

[33] *Supra* note 1.

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The July 25, 2007 Decision of the First Division of this Court finding that the NLRC did not act with grave abuse of discretion amounting to lack or excess of jurisdiction and denying the Petition is REVERSED and SET ASIDE.

Consequently, the Decision and Resolution issued by the public respondent on November 30, 2004 and August 26, 2005, respectively, are hereby ANNULLED and SET ASIDE insofar as [it] concerns the petitioner Fairland Knitcraft Co., Inc. [which] is hereby ordered dropped and excluded therefrom.

SO ORDERED.[34]

Aggrieved, the workers filed before us their Petition for Review on *Certiorari* docketed as G.R. No. 182915.

Ruling of the Court of Appeals in CA-G.R. SP No. 93860

With regard to Susan's petition, the CA Special Ninth Division issued on May 11, 2006 a Resolution[35] temporarily restraining the NLRC from enforcing its assailed November 30, 2004 Decision and thereafter the CA Special Eighth Division issued a writ of preliminary prohibitory injunction.[36] On July 20, 2009, the Special Former Special Eighth Division of the CA resolved the case through a Decision,[37] the dispositive portion of which reads:

WHEREFORE, premises considered, the present petition is hereby DENIED DUE COURSE and accordingly DISMISSED for lack of merit. The Decision dated November 30, 2004 and Resolution dated August 26, 2005 of the National Labor Relations Commission (NLRC) in CA No. 039375-04 (NLRC NCR 00-12-11294-02, 00-01-00027-03, 00-01-00131-

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[34] CA *rollo* (CA-G.R. SP No. 93204), p. 1109.

[35] CA *rollo* (CA-G.R. SP No. 93860), pp. 730-737; penned by Associate Justice Lucas P. Bersamin (now a Member of this Court) and concurred in by Associate Justices Renato C. Dacudao and Mariflor Punzalan Castillo.

[36] See Resolution dated July 13, 2006, *id*. at 789-798; penned by Associate Justice Lucas P. Bersamin (now a member of this Court) and concurred in by Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Ramon M. Bato, Jr.

[37] *Supra* note 6.

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03, 00-01-00820-03 and 00-01-01249-03) are hereby AFFIRMED and UPHELD.

The writ of preliminary prohibitory injunction issued by this Court on July 13, 2006 is hereby LIFTED and SET ASIDE.

With cost against petitioner.

SO ORDERED.[38]

Susan moved for reconsideration[39] which was denied by the CA in its October 1, 2009 Resolution.[40]

Hence, she filed before this Court a Petition for Review on *Certiorari* docketed as G.R. No. 189658 which was denied in this Court's December 16, 2009 Resolution[41] on technicality and for failure to sufficiently show any reversible error in the assailed judgment.

Susan and Fairland filed their respective Motions for Reconsideration.[42] But before said motions could be resolved, the Court ordered the consolidation of Susan's petition with that of the workers.[43]

Susan's Motion for Reconsideration of this Court's December 16, 2009 Resolution in G.R. No. 189658 is granted. Consequently, her Petition for Review on Certiorari is reinstated.

With Susan and Fairland's respective Motions for Reconsideration still unresolved, this Court shall first address them.

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[38] CA *rollo* (CA-G.R. SP No. 93860), p. 823.

[39] See Susan's Motion for Reconsideration, *id*. at 855-862.

[40] *Supra* note 7.

[41] *Rollo* (G.R. No. 189658), pp. 455-456.

[42] See Susan's Motion for Reconsideration, *id*. at 529-537 and Fairland's Motion for Reconsideration, *id.* at 459-509.

[43] *Rollo* (G.R. No. 182915), p. 597.

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One of the grounds for the denial of Susan's petition was her failure to indicate the date of filing her Motion for Reconsideration with the CA as required under Section 4(b),[44] Rule 45 of the Rules of Court. However, "failure to comply with the rule on a statement of material [date] in the petition may be excused [if] the [date is] evident from the records."[45] In the case of Susan, records show that she received the copy of the Decision of the CA on July 24, 2009. She then timely filed her Motion for Reconsideration *via* registered mail on August 7, 2009 as shown by the envelope[46] with stamped receipt of the Batangas City Post Office bearing the date August 7, 2009. The fact of such filing was also stated in the Motion for Extension of Time to File Petition for Review[47] that she filed before this Court which forms part of the records of this case. Hence, it is clear that Susan seasonably filed her Motion for Reconsideration.

Moreover, while we note that Susan's petition was also denied on the ground of no reversible error committed by the CA, we deem it proper, in the interest of justice, to take a second look on the merits of Susan's petition and reinstate G.R. No. 189658. This is also to harmonize our ruling in these consolidated petitions and avoid confusion that may arise in their execution. Hence, we grant Susan's Motion for Reconsideration and consequently, reinstate her Petition for Review on *Certiorari*.

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[44] Section 4. *Contents of petition.* — The petition shall x x x

x x x x x x x x x

(b) 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;

x x x x x x x x x

[45] *Great Southern Maritime Services Corp. v. Acuña,* 492 Phil. 518, 527 (2005).

[46] Stitched to the *rollo* of CA-G.R. SP No. 93860 between pp. 855 and 856 where the first and second pages of Susan's Motion for Reconsideration may be found.

[47] *Rollo* (G.R. No. 189658), p. 3.

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As to Fairland's Motion for Reconsideration, we shall treat the same as its comment to Susan's petition, Fairland being one of the respondents therein.

Issues

In G.R. No. 189658, Susan imputes upon the CA the following errors:

I.

THE COURT OF APPEALS ERRED IN FINDING THAT PETITIONER IS A LABOR-ONLY CONTRACTOR ACTING AS AN AGENT OF RESPONDENT FAIRLAND.

II.

THE COURT OF APPEALS ERRED IN FINDING THAT THE INDIVIDUAL PRIVATE RESPONDENTS WERE ILLEGALLY DISMISSED.

III.

THE COURT OF APPEALS ERRED IN NOT RESOLVING THE ISSUE RAISED BY PETITIONER IN HER REPLY DATED JULY 8, 2006 REGARDING THE PROPRIETY OF THE APPEAL TAKEN BY PRIVATE RESPONDENT RICHON CAINOY APARRE WHO WAS ALREADY DEAD PRIOR TO THE FILING OF THE MEMORANDUM OF APPEAL BEFORE THE NLRC.[48]

Susan's Arguments

Susan insists that the CA erred in ruling that Weesan is a labor-only contractor based on the finding that its workplace is owned by Fairland. She maintains that the place is owned by De Luxe Shirt Factory, Inc. (De Luxe) and not by Fairland as shown by the Contracts of Lease between Weesan and De Luxe.

Susan also avers that the CA erred in ruling that Weesan was guilty of illegal dismissal. She maintains that the termination of the workers was due to financial losses suffered by Weesan

[48] *Id*. at 20.

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as shown by various documents submitted by the latter to the tribunals below. In fact, Weesan submitted its Establishment Termination Report with the DOLE-NCR and same was duly received by the latter.

Lastly, Susan argues that the appeal of one of the workers, Richon Cainoy Aparre (Richon), should not have been given due course because in the Notice of Appeal with Appeal Memorandum filed with the NLRC, a certain Luzvilla A. Rayon (Luzvilla), whose identity was never established, signed for and on his behalf. However, there is no information submitted before the NLRC that Richon is already dead, and in any event, no proper substitution was ever made.

The Workers' Arguments

The workers claim that Weesan is a labor-only contractor because it does not have substantial capital or investment in the form of tools, equipment, machineries, and work premises, among others, and that the workers it recruited are performing activities which are directly related to the garments business of Fairland. Hence, Weesan should be considered as a mere agent of Fairland, who shall be responsible to the workers as if they were directly employed by it (Fairland).[49]

The workers also allege that the temporary suspension of operations of Weesan was motivated not by a desire to prevent further losses, but to discourage the workers from ventilating their claims for non-payment/underpayment of wages and benefits. The fact that Weesan was experiencing serious business losses was not sufficiently established and therefore the termination of the workers due to alleged business losses is invalid.[50]

Fairland's Arguments

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[49] See Memorandum for Petitioners, *rollo* (G.R. No. 182915), pp. 408-482.

[50] *Id.*

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Fairland maintains that it was never served with summons to appear in the proceedings before the Labor Arbiter nor furnished copies of the Labor Arbiter's Decision and Resolution on the workers' complaints for illegal dismissal; that it never voluntarily appeared before the labor tribunals through Atty. Geronimo;[51] that it is a separate and distinct business entity from Weesan; that Weesan is a legitimate job contractor, hence, the workers were actually its (Weesan's) employees; and that, consequently, the workers have no cause of action against Fairland.[52]

At any rate, assuming that the workers have a cause of action against Fairland, their claims are already barred by prescription. Of the 34 individual complainants (the workers), only six were employees of Weesan during the period of its contractual relationship with Fairland in 1996 and 1997. They were Marialy Sy, Olivia Abuan, Amelia Pescadero, Regina Relox, Hermina Hernandez and Trinidad Relox. These workers filed their complaints in December 2002 and January 2003 or more than four years from the expiration of Weesan's contractual arrangement with Fairland in 1997. Article 291 of the Labor Code provides that all money claims arising from employer-employee relationship shall be filed within three years from the time the cause of action accrued; otherwise, they shall be forever barred. Illegal dismissal prescribes in four years and damages due to separation from employment for alleged unjustifiable causes injuring a plaintiff's right must likewise be brought within four years under the Civil Code. Clearly, the claims of said six employees are already barred by prescription.[53]

In G.R. No. 182915, the workers advance the following issues:

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[51] See Fairland's Motion for Reconsideration, *supra* note 42.

[52] *Id*.

[53] *Id*.

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I.

Whether x x x the National Labor Relations Commission acquired jurisdiction over the [person of the] respondent[;]

II.

Whether x x x the decision of the National Labor Relations Commission became final and executory[; and]

III.

Whether x x x respondent is solidarily liable with WEESAN GARMENT/ SUSAN DE LEON[.][54]

The Workers' Arguments

The workers contend that the Labor Arbiter and the NLRC properly acquired jurisdiction over the person of Fairland because the latter voluntarily appeared and actively participated in the proceedings below when Atty. Geronimo submitted on its behalf a Position Paper verified by its manager, Debbie. As manager, Debbie knew of all the material and significant events which transpired in Fairland since she had constant contact with the people in the day-to-day operations of the company. Thus, the workers maintain that the Labor Arbiter and the NLRC acquired jurisdiction over the person of Fairland and the Decisions rendered by the said tribunals are valid and binding upon it.

Lastly, the workers aver that Fairland is solidarily liable with Susan/Weesan because it was shown that the latter was indeed the sewing arm of the former and is a mere "labor-only contractor."

Fairland's Arguments

In gist, Fairland contests the labor tribunals' acquisition of jurisdiction over its person either through service of summons or voluntary appearance. It denies that it engaged the services of Atty. Geronimo and asserts that it has its own legal counsel, Atty. Tecson, who would have represented it had it known of the pendency of the complaints against Fairland.

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[54] *Rollo* (G.R. No. 182915), p. 17.

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Fairland likewise emphasizes that when it filed its Motion for Reconsideration with the NLRC, it made an express reservation that the same was without prejudice to its right to question the jurisdiction over its person and the binding effect of the assailed decision. In the absence, therefore, of a valid service of summons or voluntary appearance, the proceedings conducted and the judgment rendered by the labor tribunals are null and void as against it. Hence, Fairland cannot be held solidarily liable with Susan/Weesan.

Our Ruling

We grant the workers' petition (G.R. No. 182915) but deny the petition of Susan (G.R. No. 189658).

G.R. No. 189658

Susan/Weesan is a mere labor-only contractor.

"There is labor-only contracting when the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal. In labor-only contracting, the following elements are present:

(a) 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

(b) The workers recruited and placed by such person are performing activities which are directly related to the principal business of the employer."[55]

Here, there is no question that the workers, majority of whom are sewers, were recruited by Susan/Weesan and that they performed activities which are directly related to Fairland's principal business of garments. What must be determined is whether Susan/Weesan has substantial capital or investment in the form of tools, equipment, machineries, work premises, among others.

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[55] *Escario v. National Labor Relations Commission,* 388 Phil. 929, 938 (2000).

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We have examined the records but found nothing therein to show that Weesan has investment in the form of tools, equipment or machineries. The records show that Fairland has to furnish Weesan with sewing machines for it to be able to provide the sewing needs of the former.[56] Also, save for the Balance Sheets[57] purportedly submitted by Weesan to the Bureau of Internal Revenue (BIR) indicating its fixed assets (factory equipment) in the amount of ₱243,000.00, Weesan was unable to show that apart from the borrowed sewing machines, it owned and possessed any other tools, equipment, and machineries necessary to its being a contractor or sub-contractor for garments. Neither was Weesan able to prove that it has substantial capital for its business.

Likewise significant is the fact that there is doubt as to who really owns the work premises occupied by Weesan. As may be recalled, the workers emphasized in their Appeal Memorandum[58] filed with the NLRC that Susan/Weesan was a labor-only contractor and that Fairland was its principal. To buttress this, they alleged that the work premises utilized by Weesan is owned by Fairland, which significantly, was not in the business of renting properties. They also advanced that there was no showing that Susan/Weesan paid any rentals for the use of the premises. They contended that all that Susan had was a Mayor's Permit for Weesan indicating 715 Ricafort Street, Tondo, Manila as its address.

Susan failed to refute these allegations before the NLRC and attributed such failure to her former counsel, Atty. Geronimo. But when Susan's petition for *certiorari* was given due course by the CA, she finally had the chance to answer the same by denying that Fairland owned the work premises. Susan instead claimed that Weesan rented the premises from another entity, De Luxe. To support this, she attached to her petition two

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[56] Records, Vol. I, pp. 49-51.

[57] For the years 2000, 2001 and 2002, *id*. at 208, 211 & 214.

[58] *Id*. at 129-152.

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Contracts of Lease[59] purportedly entered into by her and De Luxe for the lease of the premises covering the periods August 1, 1997 to July 31, 2000 and January 1, 2001 to December 31, 2004.

On the other hand, the workers in their Comment[60] filed in CA-G.R. SP No. 93204 (Fairland's petition for *certiorari* before the CA), pointed out that in Fairland's Amended Articles of Incorporation,[61] five out of the seven incorporators listed therein appeared to be residents of the same 715 Ricafort St., Tondo, Manila. To the workers, this is a clear indication that Fairland indeed owned Weesan's work premises. Fairland, for its part, tried to explain this by saying that its incorporators, just like Weesan, were also mere lessees of a portion of the multi-storey building owned by De Luxe located at 715 Ricafort St., Tondo, Manila. It also claimed that two years prior to Weesan's occupation of said premises in 1996, the five incorporators alluded to already transferred.[62]

We cannot, however, ignore the apt observation on the matter made by the CA's Special Former Special Eighth Division in its Decision in CA-G.R. SP No. 93860, *viz*:

> The work premises are likewise owned by Fairland, which petitioner tried to disprove by presenting a purported Contract of Lease with another entity, De Luxe Shirt Factory Co., Inc. **However, there is no competent proof it paid the supposed rentals to said 'owner'**. **Curiously, under the item 'Rent Expenses' in its audited financial statement, only equipment rental was listed therein without any disbursement/expense for rental of factory premises**, which only buttressed the claim of private respondents that the place where they reported to and performed sewing jobs for petitioner [Susan] and Fairland at No. 715 Ricafort St., Tondo, Manila, belonged to Fairland.[63] (Emphasis supplied.)

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[59] CA *rollo* (CA-G.R. SP No. 93860), pp. 383-388.

[60] *Id.* (CA-G.R. SP No. 93204), pp. 516-521.

[61] *Id*. at 522-526.

[62] See Petitioner's (Fairland) Reply, *id*. at 543-554.

[63] *Id.* (CA-G.R. SP No. 93860), p. 817.

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Susan contests this pronouncement by pointing out that although only sewing machines were specified under the entry "Rent Expenses" in its financial statement, the rent for the factory premises is already deemed included therein since the contracts of lease she entered into with De Luxe referred to both the factory premises and machineries.

We, however, find this contention implausible.

We went over the said contracts of lease and noted that same were principally for the lease of the premises in 715 Ricafort St., Tondo, Manila. Only incidental thereto is the inclusion therein of the equipment found in said premises. Hence, we cannot see why the rentals for the work premises, for which Susan even went to the extent of executing a contract with the purported lessor, was not included in the entry for rent expenses in Weesan's financial statement. Even if we are to concede to Susan's claim that the entry for rent expenses already includes the rentals for the work premises, we wonder why the rental expenses for the year 2000 which was ₱396,000.00 is of the same amount with the rental expenses for the year 2001. As borne out by the Contract of Lease covering the period August 1, 1997 to July 31, 2000, the monthly rent for the work premises was pegged at ₱25,000.00.[64] However, in January to December 2001, same was increased to ₱27,500.00.[65] There being an increase in the rentals for the work premises, how come that Weesan's rental expenses for the year 2001 is still ₱396,000.00? This could only mean that said entry really only refers to the rentals of sewing machines and does not include the rentals for the work premises. Moreover, we note that Susan could have just simply submitted receipts for her payments of rentals to De Luxe. However, she failed to present even a single receipt evidencing such payment.

In an attempt to prove that it is De Luxe and not Fairland which owned the work premises, Susan attached to her petition the following: (1) a plain copy of Transfer Certificate of Title

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[64] *Rollo* (G.R. No. 189658), p. 311.

[65] *Id.* at 314.

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(TCT) No. 139790[66] and Declaration of Real Property[67] both under the name of De Luxe; and, (2) Real Property Tax receipts issued to De Luxe for the years 2000-2004.[68] However, the Court finds these documents wanting. Nowhere from the said TCT and Declaration of Real Property can it be inferred that the property they refer to is the same property as that located at 715 Ricafort St., Tondo, Manila. Although in said Declaration, 715 Ricafort St., Tondo is the indicated address of the declarant (De Luxe), the address of the property declared is merely "*Ricafort, Tondo I-A*". The same thing can also be said with regard to the real property tax receipts. The entry under the box *Location of Property* in the receipt for 2001 is "I - 718 Ricafort" and in the receipts for 2002, 2003, and 2004, the entries are either "I – Ricafort St., Tondo" or merely "I-Ricafort St."

In sum, the Court finds that Susan's effort to negate Fairland's ownership of the work premises is futile. The logical conclusion now is that Weesan does not have its own workplace and is only utilizing the workplace of Fairland to whom it supplied workers for its garment business.

Suffice it to say that "[t]he presumption is that a contractor is a labor-only contractor unless such contractor overcomes the burden of proving that it has substantial capital, investment, tools and the like."[69] As Susan/Weesan was not able to adduce evidence that Weesan had any substantial capital, investment or assets to perform the work contracted for, the presumption that Weesan is a labor-only contractor stands.[70]

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[66] *Id.* at 440-442.

[67] *Id.* at 443-444.

[68] *Id.* at 445-449.

[69] *7K Corporation v. National Labor Relations Commission*, G.R. No. 148490, November 22, 2006, 507 SCRA 509, 523.

[70] *Id*.

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The National Labor Relations Commission and the Court of Appeals did not err in their findings of illegal dismissal.

To negate illegal dismissal, Susan relies on the due closure of Weesan pursuant to the Establishment Termination Report it submitted to the DOLE-NCR.

Indeed, Article 283[71] of the Labor Code allows as a mode of termination of employment the closure or termination of business. "Closure or cessation of business is the complete or partial cessation of the operations and/or shut-down of the establishment of the employer. It is carried out to either stave off the financial ruin or promote the business interest of the employer."[72] "The decision to close business [or to temporarily suspend operation] is a management prerogative exclusive to the employer, the exercise of which no court or tribunal can meddle with, except only when the employer fails to prove compliance with the requirements of Art. 283, to wit: a) that

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[71] Art. 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 termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. 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.

[72] *Eastridge Golf Club, Inc. vs. Eastridge Golf Club Inc., Labor Union-Super*, G.R. No. 166760, August 22, 2008, 563 SCRA 93, 105.

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the closure/cessation of business is *bona fide*, *i.e.*, its purpose is to advance the interest of the employer and not to defeat or circumvent the rights of employees under the law or a valid agreement; b) that written notice was served on the employees and the DOLE at least one month before the intended date of closure or cessation of business; and c) in case of closure/ cessation of business ***not*** due to financial losses, that the employees affected have been given separation pay equivalent to ½ month pay for every year of service or one month pay, whichever is higher."[73]

Here, Weesan filed its Establishment Termination Report[74] allegedly due to serious business losses and other economic reasons. However, we are mindful of the doubtful character of Weesan's application for closure given the circumstances surrounding the same.

First, workers Marialy Sy, Vivencia Penullar, Aurora Aguinaldo, Gina Aniano, Gemma Dela Peña and Efremia Matias filed before the Labor Arbiter their complaint for underpayment of salary, non-payment of benefits, damages and attorney's fees against Weesan on December 23, 2002.[75] Summons[76] was accordingly issued and same was received by Susan on January 15, 2003.[77] Meanwhile, other workers followed suit and filed their respective complaints on January 2, 6, 17 and 28, 2003.[78] Shortly thereafter or merely eight days after the filing of the last complaint, Weesan filed with the DOLE-NCR its Establishment Termination Report.

Second, the Income Tax Returns[79] for the years 2000, 2001 and 2002 attached to the Establishment Termination Report,

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[73] *Id.* at 106-107.

[74] Records, Vol. I, p. 57.

[75] *Id.* at 1.

[76] *Id.* at 5.

[77] See the Return Card attached to the Summons, *id*.

[78] *Id.* at 9, 13, 19 and 24.

[79] *Id.* at 58-60.

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although bearing the stamped receipt of the Revenue District Office where they were purportedly filed, contain no signature or initials of the receiving officer. The same holds true with Weesan's audited financial statements.[80] This engenders doubt as to whether these documents were indeed filed with the proper authorities.

Third, there was no showing that Weesan served upon the workers written notice at least one month before the intended date of closure of business, as required under Art. 283 of the Labor Code. In fact, the workers alleged that when Weesan filed its Establishment Termination Report on February 5, 2003, it already closed the work premises and did not anymore allow them to report for work. This is the reason why the workers on February 18, 2003 amended their complaint to include the charge of illegal dismissal.[81]

It bears stressing that "[t]he burden of proving that x x x a temporary suspension is *bona fide* falls upon the employer."[82] Clearly here, Susan/Weesan was not able to discharge this burden. The documents Weesan submitted to support its claim of severe business losses cannot be considered as proof of financial crisis to justify the temporary suspension of its operations since they clearly appear to have not been duly filed with the BIR. Weesan failed to satisfactorily explain why the Income Tax Returns and financial statements it submitted do not bear the signature of the receiving officers. Also hard to ignore is the absence of the mandatory 30-day prior notice to the workers.

Hence, the Court finds that Susan failed to prove that the suspension of operations of Weesan was *bona fide* and that it complied with the mandatory requirement of notice under the law. Susan likewise failed to discharge her burden of proving that the termination of the workers was for a lawful cause.

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[80] *Id.* at 62-63, 65-66 and 68-69.

[81] *Id.* at 25.

[82] *San Pedro Hospital of Digos, Inc. v. Sec. of Labor*, 331 Phil. 390, 406 (1996).

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Therefore, the NLRC and the CA, in CA-G.R. SP No. 93860, did not err in their findings that the workers were illegally dismissed by Susan/Weesan.

The formal substitution of the deceased worker Richon Aparre is not necessary as his heir voluntarily appeared and participated in the proceedings before the National Labor Relations Commission.

In *Sarsaba v. Fe Vda. de Te*, we held that:[83]

The rule on substitution of parties is governed by Section 16,[84] Rule 3 of the [Rules of Court].

Strictly speaking, the rule on substitution by heirs is not a matter of jurisdiction, but a requirement of due process. The rule on substitution was crafted to protect every party's right to due process. It was designed to ensure that the deceased party would continue to be properly represented in the suit through his heirs or the duly appointed legal representative of his estate. Moreover, non-compliance

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[83] G.R. No. 175910, July 30, 2009, 594 SCRA 410, 428-429.

[84] Section 16. *Death of party; duty of counsel*. – Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

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with the Rules results in the denial of the right to due process for the heirs who, though not duly notified of the proceedings, would be substantially affected by the decision rendered therein. Thus, it is only when there is a denial of due process, as when the deceased is not represented by any legal representative or heir, that the court nullifies the trial proceedings and the resulting judgment therein.

Here, the lack of formal substitution of the deceased worker Richon did not result to denial of due process as to affect the validity of the proceedings before the NLRC since his heir, Luzvilla, was aware of the proceedings therein. In fact, she is considered to have voluntarily appeared before the said tribunal when she signed the workers' Memorandum of Appeal filed therewith. "This Court has ruled that formal substitution of parties is not necessary when the heirs themselves voluntarily appeared, participated, and presented evidence during the proceedings."[85] Hence, the NLRC did not err in giving due course to the appeal with respect to Richon.

Fairland's claim of prescription deserves scant consideration.

Fairland asserts that assuming that the workers have valid claims against it, same only pertain to six out of the 34 workers-complainants. According to Fairland, these six workers were the only ones who were in the employ of Weesan at the time Fairland and Weesan had existing contractual relationship in 1996 to 1997. But then, Fairland contends that the claims of these six workers have already been barred by prescription as they filed their complaint more than four years from the expiration of the alleged contractual relationship in 1997. However, the Court notes that the records are bereft of anything that provides for such alleged contractual relationship and the period covered by it. Absent anything to support Fairland's claim, same deserves scant consideration.

Interestingly, we noticed Fairland's letter[86] dated January 31, 2003 informing Weesan that it would temporarily not be availing

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[85] *Regional Agrarian Reform Adjudication Board v. Court of Appeals*, G.R. No. 165155, April 13, 2010, 618 SCRA 181, 201.

[86] Records, Vol. I, p. 51.

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of the latter's sewing services and at the same time requesting for the return of the sewing machines it lent to Weesan. Assuming said letter to be true, why was Fairland terminating Weesan's services only on January 31, 2003 when it is now claiming that its contractual relationship with the latter only lasted until 1997? Thus, we find the contentions rather abstruse.

G.R. No. 182915

"It is basic that the Labor Arbiter cannot acquire jurisdiction over the person of the respondent without the latter being served with summons."[87] However, "if there is no valid service of summons, the court can still acquire jurisdiction over the person of the defendant by virtue of the latter's voluntary appearance."[88]

Although not served with summons, jurisdiction over Fairland and Debbie was acquired through their voluntary appearance.

It can be recalled that the workers' original complaints for non-payment/ underpayment of wages and benefits were only against Susan/Weesan. For these complaints, the Labor Arbiter issued summons[89] to Susan/Weesan which was received by the latter on January 15, 2003.[90] The workers thereafter amended their then already consolidated complaints to include illegal dismissal as an additional cause of action as well as Fairland and Debbie as additional respondents. We have, however, scanned the records but found nothing to indicate that summons with respect to the said amended complaints was ever served upon Weesan, Susan, or Fairland. True to their claim, Fairland and Debbie were indeed never summoned by the Labor Arbiter.

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[87] *Larkins v. National Labor Relations Commission*, 311 Phil. 687, 693 (1995).

[88] *Rapid City Realty and Development Corp. v. Villa*, G.R. No. 184197, February 11, 2010, 612 SCRA 302, 305.

[89] Records, Vol. I, p. 5.

[90] See the return card attached to the Summons, *id*.

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The crucial question now is: *Did Fairland and Debbie voluntarily appear before the Labor Arbiter as to submit themselves to its jurisdiction?*

Fairland argued before the CA that it did not engage Atty. Geronimo as its counsel. However, the Court held in *Santos v. National Labor Relations Commission*,[91] *viz*:

> In the instant petition for *certiorari*, petitioner Santos reiterates that he should not have been adjudged personally liable by public respondents, the latter not having validly acquired jurisdiction over his person whether by personal service of summons or by substituted service under Rule 19 of the Rules of Court.
>
> Petitioner's contention is unacceptable. The fact that Atty. Romeo B. Perez has been able to timely ask for a deferment of the initial hearing on 14 November 1986, coupled with his subsequent active participation in the proceedings, should disprove the supposed want of service of legal processes. Although as a rule, modes of service of summons are strictly followed in order that the court may acquire jurisdiction over the person of a defendant, such procedural modes, however, are liberally construed in quasi-judicial proceedings, substantial compliance with the same being considered adequate. Moreover, jurisdiction over the person of the defendant in civil cases is acquired not only by service of summons but also by voluntary appearance in court and submission to its authority. 'Appearance' by a legal advocate is such 'voluntary submission to a court's jurisdiction'. It may be made not only by actual physical appearance but likewise by the submission of pleadings in compliance with the order of the court or tribunal.
>
> To say that petitioner did not authorize Atty. Perez to represent him in the case is to unduly tax credulity. Like the Solicitor General, the Court likewise considers it unlikely that Atty. Perez would have been so irresponsible as to represent petitioner if he were not, in fact, authorized. Atty. Perez is an officer of the court, and he must be presumed to have acted with due propriety. The employment of a counsel or the authority to employ an attorney, it might be pointed out, need not be proved in writing; such fact could [be] inferred from circumstantial evidence. x x x[92] (Citations omitted.)

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[91] 325 Phil. 145 (1996).

[92] *Id.* at 155-156.

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From the records, it appears that Atty. Geronimo first entered his appearance on behalf of Susan/Weesan in the hearing held on April 3, 2003.[93] Being then newly hired, he requested for an extension of time within which to file a position paper for said respondents. On the next scheduled hearing on April 28, 2003, Atty. Geronimo again asked for another extension to file a position paper for all the respondents considering that he likewise entered his appearance for Fairland.[94] Thereafter, said counsel filed pleadings such as Respondents' Position Paper[95] and Respondents' Consolidated Reply[96] on behalf of all the respondents namely, Susan/Weesan, Fairland and Debbie. The fact that Atty. Geronimo entered his appearance for Fairland and Debbie and that he actively defended them before the Labor Arbiter raised the presumption that he is authorized to appear for them. As held in *Santos*, it is unlikely that Atty. Geronimo would have been so irresponsible as to represent Fairland and Debbie if he were not in fact authorized. As an officer of the Court, Atty. Geronimo is presumed to have acted with due propriety. Moreover, "[i]t strains credulity that a counsel who has no personal interest in the case would fight for and defend a case with persistence and vigor if he has not been authorized or employed by the party concerned."[97]

We do not agree with the reasons relied upon by the CA's Special Ninth Division in its May 9, 2008 Resolution in CA-G.R. No. 93204 when it ruled that Fairland, through Atty. Geronimo, did not voluntarily submit itself to the Labor Arbiter's jurisdiction.

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[93] See Constancia for the hearing held on April 3, 2003, records, vol. I, p. 43.

[94] See Constancia for the hearing held on April 28, 2003, *id*. at 44.

[95] *Id.* at 45-48 & 52-56.

[96] *Id.* at 105-108.

[97] *Paramount Insurance Corporation v. Japzon*, G.R. No. 68037, July 29, 1992, 211 SCRA 879, 886.

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In so ruling, the CA noted that Atty. Geronimo has no prior authorization from the board of directors of Fairland to handle the case. Also, the alleged verification signed by Debbie, who is not one of Fairland's duly authorized directors or officers, is defective as no board resolution or secretary's certificate authorizing her to sign the same was attached thereto. Because of these, the Special Ninth Division held that the Labor Arbiter committed grave abuse of discretion in not requiring Atty. Geronimo to show his proof of authority to represent Fairland considering that the latter is a corporation.

The presumption of authority of counsel to appear on behalf of a client is found both in the Rules of Court and in the New Rules of Procedure of the NLRC.[98]

Sec. 21, Rule 138 of the Rules of Court provides:

> Sec. 21. *Authority of attorney to appear* – An attorney is presumed to be properly authorized to represent any cause in which he appears, and no written power of attorney is required to authorize him to appear in court for his client, but the presiding judge may, on motion of either party and reasonable grounds therefor being shown, require any attorney who assumes the right to appear in a case to produce or prove the authority under which he appears, and to disclose whenever pertinent to any issue, the name of the person who employed him, and may thereupon make such order as justice requires. An attorney willfully appearing in court for a person without being employed, unless by leave of the court, may be punished for contempt as an officer of the court who has misbehaved in his official transactions.

On the other hand, Sec. 8, Rule III of the New Rules of Procedure of the NLRC,[99] which is the rules prevailing at that time, states in part:

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[98] The NLRC Rules in force at that time.

[99] The present Section 8, Rule III of the 2005 Revised Rules of Procedure of the NLRC partly reads:

> SECTION 8. APPEARANCES. – a) A lawyer appearing for a party is presumed to be properly authorized for that purpose. In every case, he shall indicate in his pleadings and motions his Attorney's Roll Number, as well as his PTR and IBP numbers for the current year. x x x

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SECTION 8. APPEARANCES. — An attorney appearing for a party is presumed to be properly authorized for that purpose. However, he shall be required to indicate in his pleadings his PTR and IBP numbers for the current year.

Between the two provisions providing for such authority of counsel to appear, the Labor Arbiter is primarily bound by the latter one, the NLRC Rules of Procedure being specifically applicable to labor cases. As Atty. Geronimo consistently indicated his PTR and IBP numbers in the pleadings he filed, there is no reason for the Labor Arbiter not to extend to Atty. Geronimo the presumption that he is authorized to represent Fairland.

Even if we are to apply Sec. 21, Rule 138 of the Rules of Court, the Labor Arbiter cannot be expected to require Atty. Geronimo to prove his authority under said provision since there was no motion to that effect from either party showing reasonable grounds therefor. Moreover, the fact that Debbie signed the verification attached to the position paper filed by Atty. Geronimo, without a secretary's certificate or board resolution attached thereto, is not sufficient reason for the Labor Arbiter to be on his guard and require Atty. Geronimo to prove his authority. Debbie, as General Manager of Fairland is one of the officials of the company who can sign the verification without need of a board resolution because as such, she is in a position to verify the truthfulness and correctness of the allegations in the petition.[100]

Although we note that Fairland filed a disbarment case against Atty. Geronimo due to the former's claim of unauthorized appearance, we hold that same is not sufficient to overcome the presumption of authority. Such mere filing is not proof of Atty. Geronimo's alleged unauthorized appearance. Suffice it to say that an attorney's presumption of authority is a strong one.[101] "A mere denial by a party that he authorized an attorney

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[100] *Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue*, G.R. No. 151413, February 13, 2008, 545 SCRA 10, 18-19.

[101] AGPALO, RUBEN E., *LEGAL AND JUDICIAL ETHICS*, Eighth Ed. (2009), p. 328.

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to appear for him, in the absence of a compelling reason, is insufficient to overcome the presumption, especially when the denial comes after the rendition of an adverse judgment,"[102] such as in the present case.

Citing *PNOC Dockyard and Engineering Corporation v. National Labor Relations Commission*,[103] the CA likewise emphasized that in labor cases, both the party and his counsel must be duly served their separate copies of the order, decision or resolution unlike in ordinary proceedings where notice to counsel is deemed notice to the party. It then quoted Article 224 of the Labor Code as follows:

> ARTICLE 224. *Execution of decisions, orders or awards.* – (a) the Secretary of Labor and Employment or any Regional Director, the Commission or any Labor Arbiter, or med-arbiter or voluntary arbitrator may, *motu proprio* or on motion of any interested party, issue a writ of execution on a judgment within five (5) years from the date it becomes final and executory, requiring a sheriff or a duly deputized officer to execute or enforce final decisions, orders or awards of the Secretary of Labor and Employment or [R]egional Director, the Commission, the Labor Arbiter or Med-Arbiter, or Voluntary Arbitrators. In any case, it shall be the duty of the responsible officer to **separately furnish immediately the counsels of record and the parties with copies of said decision, orders or awards.** Failure to comply with the duty prescribed herein shall subject such responsible officer to appropriate administrative sanctions x x x (Emphasis in the original).[104]

The CA then concluded that since Fairland and its counsel were not separately furnished with a copy of the August 26, 2005 NLRC Resolution denying the motions for reconsideration of its November 30, 2004 Decision, said Decision cannot be enforced against Fairland. The CA likewise concluded that because of this, said November 30, 2004 Decision which held

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[102] *Id.* at 328-329.

[103] 353 Phil. 431 (1998).

[104] See pp. 11-12 of the Resolution dated May 9, 2008 of the CA's Special Ninth Division, CA *rollo* (CA-G.R. No. 93204), pp. 1103-1104.

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Susan/Weesan and Fairland solidarily liable to the workers, has not attained finality.

We cannot agree. In *Ginete v. Sunrise Manning Agency*[105] we held that:

The case of *PNOC Dockyard and Engineering Corporation vs. NLRC* cited by petitioner enunciated that 'in labor cases, *both* the party and its counsel must be duly served their separate copies of the order, decision or resolution; unlike in ordinary judicial proceedings where notice to counsel is deemed notice to the party.' Reference was made therein to Article 224 of the Labor Code. But, as correctly pointed out by private respondent in its Comment to the petition, Article 224 of the Labor Code does not govern the procedure for filing a petition for *certiorari* with the Court of Appeals from the decision of the NLRC but rather, it refers to the execution of 'final decisions, orders or awards' and requires the sheriff or a duly deputized officer to furnish both the parties and their counsel with copies of the decision or award for that purpose. There is no reference, express or implied, to the period to appeal or to file a petition for *certiorari* as indeed the caption is 'execution of decisions, orders or awards'. Taken in proper context, Article 224 contemplates the furnishing of copies of 'final decisions, orders or awards' and could not have been intended to refer to the period for computing the period for appeal to the Court of Appeals from a non-final judgment or order. The period or manner of 'appeal' from the NLRC to the Court of Appeals is governed by Rule 65 pursuant to the ruling of the Court in the case of *St. Martin Funeral Homes vs. NLRC*. Section 4 of Rule 65, as amended, states that the 'petition may be filed not later than sixty (60) days from notice of the judgment, or resolution sought to be assailed'.

Corollarily, Section 4, Rule III of the New Rules of Procedure of the NLRC expressly mandates that '(F)or the purposes of computing the period of appeal, the same shall be counted from receipt of such decisions, awards or orders by the counsel of record.' Although this rule explicitly contemplates an appeal before the Labor Arbiter and the NLRC, we do not see any cogent reason why the same rule should not apply to petitions for *certiorari* filed with the Court of Appeals from decisions of the NLRC. **This procedure is in line with the**

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[105] 411 Phil. 953. 957-958 (2001).

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established rule that notice to counsel is notice to party and when a party is represented by counsel, notices should be made upon the counsel of record at his given address to which notices of all kinds emanating from the court should be sent. It is to be noted also that Section 7 of the NLRC Rules of Procedure provides that '(A)ttorneys and other representatives of parties shall have authority to bind their clients in all matters of procedure'' a provision which is similar to Section 23, Rule 138 of the Rules of Court. More importantly, Section 2, Rule 13 of the 1997 Rules of Civil Procedure analogously provides that if any party has appeared by counsel, service upon him shall be made upon his counsel. (Citations omitted; emphasis supplied)

To stress, Article 224 contemplates the furnishing of copies of final decisions, orders or awards *both* to the parties and their counsel in connection with the execution of such final decisions, orders or awards. However, for the purpose of computing the period for filing an appeal from the NLRC to the CA, same shall be counted from receipt of the decision, order or award by the counsel of record pursuant to the established rule that notice to counsel is notice to party. And since the period for filing of an appeal is reckoned from the counsel's receipt of the decision, order or award, it necessarily follows that the reckoning period for their finality is likewise the counsel's date of receipt thereof, if a party is represented by counsel. Hence, the date of receipt referred to in Sec. 14, Rule VII of the then in force New Rules of Procedure of the NLRC[106] which provides that decisions, resolutions or orders of the NLRC shall become executory *after 10 calendar days from receipt of the same*, refers to the date of receipt by counsel. Thus contrary to the CA's conclusion, the said NLRC Decision

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[106] Sec. 14, Rule VII of the 2005 Revised NLRC Rules now reads:

Sec. 14. FINALITY OF DECISION OF THE COMMISSION AND ENTRY OF JUDGMENT – a) Finality of the Decisions, Resolutions or Orders of the Commission. – Except as provided in Section 9 of Rule X, the decisions, resolutions or orders of the Commission shall become final and executory after ten (10) calendar days from receipt thereof by the parties. x x x

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became final, as to Fairland, 10 calendar days after Atty. Tecson's receipt[107] thereof.[108] In sum, we hold that the Labor Arbiter had validly acquired jurisdiction over Fairland and its manager, Debbie, through the appearance of Atty. Geronimo as their counsel and likewise, through the latter's filing of pleadings on their behalf.

Fairland is Weesan's principal.

In addition to our discussion in G.R. No. 189658 with respect to the finding that Susan/Weesan is a mere labor-only contractor which we find to be likewise significant here, a careful examination of the records reveals other telling facts that Fairland is Susan/Weesan's principal, to wit: (1) aside from sewing machines, Fairland also lent Weesan other equipment such as fire extinguishers, office tables and chairs, and plastic chairs;[109] (2) no proof evidencing the contractual arrangement between Weesan and Fairland was ever submitted by Fairland; (3) while both Weesan and Fairland assert that the former had other clients aside from the latter, no proof of Weesan's contractual relationship with its other alleged client is extant on the records; and (4) there is no showing that any of the workers were assigned to other clients aside from Fairland. Moreover, as found by the NLRC and affirmed by both the Special Former Special Eighth Division in CA-G.R. SP No. 93860 and the First Division in CA-G.R. SP No. 93204, the activities, the manner of work and the movement of the workers were subject to Fairland's control. It bears emphasizing that "factual findings of quasi-judicial agencies like the NLRC, when affirmed by the Court of Appeals, as in the present case, are conclusive upon the parties and binding on this Court."[110]

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[107] See proof of receipt, records, vol. I, p. 284.

[108] By then, Fairland was already being represented by Atty. Melina O. Tecson after the latter filed before the NLRC a Motion for Reconsideration claiming that Fairland was not aware of the complaints filed against it and that it never engaged the services of Atty. Geronimo.

[109] Records, Vol. I, p. 50.

[110] *Association of Integrated Security Force of Bislig (AISFB)-ALU v. Court of Appeals*, 505 Phil. 10, 24 (2005).

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Viewed in its entirety, we thus declare that Fairland is the principal of the labor-only contractor, Weesan.

Fairland, therefore, as the principal employer, is solidarily liable with Susan/Weesan, the labor-only contractor, for the rightful claims of the employees. Under this set-up, Susan/Weesan, as the "labor-only" contractor, is deemed an agent of the principal, Fairland, and the law makes the principal responsible to the employees of the "labor-only" contractor as if the principal itself directly hired or employed the employees.[111]

WHEREFORE, the Court,

1) in G.R. No. 189658, *DENIES* the Petition for Review on *Certiorari*. The assailed Decision dated July 20, 2009 and Resolution dated October 1, 2009 of the Special Former Special Eighth Division of the Court of Appeals in CA-G.R. No. 93860 are *AFFIRMED*.

2) in G.R. No. 182915, *GRANTS* the Petition for Review on *Certiorari*. The assailed Resolution dated May 9, 2008 of the Special Ninth Division of the Court of Appeals in CA-G.R. No. 93204 is hereby *REVERSED and SET ASIDE* and the Decision dated July 25, 2007 of the First Division of the Court of Appeals is *REINSTATED and AFFIRMED*.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Brion,[**] *and Perlas-Bernabe,*[**] *JJ.,* concur.

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[111] *7K Corporation v. National Labor Relations Commission, supra* note 69.

[**] Designated as additional member per raffle dated October 10, 2011.