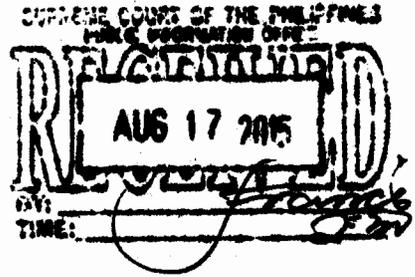




Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated July 6, 2015 which reads as follows:*

**“G.R. No. 209909 (Vicmar Development Corporation/Robert W. Kua v. Cris B. Suerte, Julieta Ponde,\* Lilihan A. Pitulan, Mercedes M. Berongoy, Richel Bual, Virginia Dizon, Ma. Luna Natindim,\*\* Mercedes Sumod-Ong, Roseller Y. Sumod-Ong, Emerita V. Cabugsa, Lorna B. Calix, Jennifer D. Alzula, Danilo B. Berongoy, Arlene M. Abroguena, Virgilio B. Ringon, Mary Ann Taglinao, and Pacita Estrosas). - The petitioners’ compliance stating that the soft copy of the signed reply has been submitted by e-mail and attaching a print-out of the said e-mail showing the time and date when it was sent is **NOTED** and **ACCEPTED**.**

After a judicious review of the records, the Court resolves to **DENY** the instant petition and **AFFIRM** the September 25, 2012 Decision<sup>1</sup> and October 23, 2013 Resolution<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 03080-MIN for failure of petitioner Vicmar Development Corporation/Robert W. Kua (petitioner) to sufficiently show that the CA erred in ruling that: (a) Candole Labor Contracting Services (Candole) is a labor-only contractor and thus, respondents Cris B. Suerte, Julieta Ponde, Lilihan A. Pitulan, *et al.* (respondents) were regular employees of petitioner; and (b) petitioner constructively dismissed respondents from their jobs.

- over – three (3) pages .....

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\* “Donde” in some parts of the *rollo*.

\*\* “Natindim” in some parts of the *rollo*.

<sup>1</sup> *Rollo*, pp. 43-58. Penned by Associate Justice Edgardo A. Camello with Associate Justices Marilyn B. Lagura-Yap and Renato C. Francisco concurring.

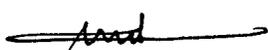
<sup>2</sup> *Id.* at 59-61. Penned by Associate Justice Edgardo A. Camello with Associate Justices Renato C. Francisco and Oscar V. Badelles concurring.

As correctly ruled by the CA, Candole is a labor-only contractor and thus, respondents were regular employees of petitioner, considering further that: (a) respondents worked at petitioner's premises; (b) there was no showing that Candole exercised control over respondents; (c) Candole had no substantial capital, as evidenced by the fact that the tools and equipment used by respondents in their work were owned by petitioner; and (d) respondents performed activities which were directly related to the main business of petitioner, which is plywood making and other wood processing.<sup>3</sup>

Further, the CA was also correct in ruling that petitioner's act of suddenly not giving respondents their usual work assignments constituted constructive dismissal. Constructive dismissal occurs when there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or diminution in pay or both; or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee,<sup>4</sup> as in this case.

**SO ORDERED."**

Very truly yours,

  
**EDGAR O. ARICHETA**  
Division Clerk of Court

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(CA-G.R. SP No. 03080-MIN)

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- over -

<sup>3</sup> “[There is labor-only contracting when] the contractor or sub[-]contractor 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 sub[-]contractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or sub[-]contractor 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. (*Aliviado v. Procter & Gamble Phils., Inc.*, 665 Phil. 542, 554 [2011]; citation omitted).

<sup>4</sup> *La Rosa v. Ambassador Hotel*, 600 Phil. 386, 392 (2009), citing *Uniwide Sales Warehouse Club v. NLRC*, 570 Phil. 535, 549 (2008).

NATIONAL LABOR RELATIONS  
COMMISSION

Fifth Division

9000 Cagayan de Oro City

(NLRC No. MAC-05-010217-2008;

NLRC Case No. RAB 10-04-00322-2006, etc)

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