The Talents of a Talent: *Sonza v. ABS-CBN Broadcasting Corporation*

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"For to everyone who has, more will be given and he will grow rich; but from the one who has not, even the one he has will be taken away."[1]

INTRODUCTION

This Comment begins with an exploration of the case of *Sonza v. ABS-CBN Broadcasting Corporation,*[2] and from there proceeds with an evaluation of the four-fold test in determining the existence of an employer-employee relationship, as well as its application to the media industry. This Comment aims to illustrate that the said industry is not *sui generis*, and hence necessitates the regular and ordinary application of labor jurisprudence. Finally, this

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1. *Matthew* 25:29.

2. Sonza v. ABS-CBN Broadcasting Corporation, 431 SCRA 583 (2004).

Comment celebrates the uniqueness of every potential employee and yet also rejoices in the latter's falling under one class and jurisdiction, subject to the application of the same laws.

I. THE CASE AND THE DECISION

It was in May 1994 when Jose Y. Sonza, a popular tri-media figure, through Mel and Jay Management and Development Corporation (MJMDC), and ABS-CBN Broadcasting Corporation (ABS-CBN or Network), entered into a contract. The Agreement stipulated that Sonza would render services to ABS-CBN in the form of hosting separate radio and television programs, both entitled "Mel and Jay". ABS-CBN agreed to pay Sonza a monthly salary of PhP310,000.00 for the first year and PhP317,000.00 for the second and third years of the Agreement.

Sometime during the period of the Agreement, Sonza resigned. On 1 April 1996, Sonza confirmed his resignation through a letter to ABS-CBN's President, Eugenio Lopez III, citing *recent events concerning his programs and career* as reasons for his irrevocable resignation, and manifested that such actions, which were not described in the letter, were considered by Sonza as violative of their Agreement, and as such the station was in breach thereof. In the same letter, Sonza manifested his intent to effect rescission of the Agreement. Despite the letter, ABS-CBN continued to remit Sonza's monthly talent fee to his personal account with PCIBank, Quezon City, and even opened an account in July 1996, where it deposited Sonza's talent fees and other payments due him under the Agreement.

Sonza, on 30 April 1996, also filed a complaint against ABS-CBN before the Department of Labor and Employment (DOLE), alleging that ABS-CBN did not pay his salaries, separation pay, service incentive leave pay, 13th month pay, signing bonus, travel allowance, and amounts due under the Employees Stock Option Plan (ESOP). The Labor Arbiter dismissed the complaint for lack of jurisdiction, and rationalized:

> [i]t stands to reason that a 'talent' as above-described cannot be considered as an employee by reason of the peculiar circumstances surrounding the engagement of his services.
>
> It must be noted that complainant was engaged by respondent by reason of his peculiar skills and talent as a TV host and a radio broadcaster. Unlike an ordinary employee, he was free to perform the services he undertook to render in accordance with his own style.
>
> Whatever benefits complainant enjoyed arose from specific agreement by parties and not by reason of employer-employee relationship.

> The fact that complainant was made subject to respondent's Rules and Regulations, likewise, does not detract from the absence of employer-employee relationship.[3]

The National Labor Relations Commission (NLRC), in resolving Sonza's appeal, and the Court of Appeals, on a special civil action for certiorari, both issued orders of dismissal. The two tribunals found that there was no employer-employee relationship that existed between Sonza and ABS-CBN, and even highlighted the fact that Sonza himself recognized the nature of the relationship between him and ABS-CBN as contractual, and therefore based on the Civil Code.[4]

Upon elevation to the Supreme Court via a petition for review on certiorari, the Court affirmed the assailed decision of the Court of Appeals.

II. THE NON-COLORED GLASSES: A DIFFERENT LOOK AT LEGAL DOCTRINES

The Supreme Court itself recognized that prior to the case at bar, there was no case law in this jurisdiction *stating that a radio and television program host is an employee of the broadcast station he is affiliated with.* The case's rationale is hinged on one point: that the nature of the relationship between Sonza and ABS-CBN was that of an independent contractor.[5] The author is of the opinion that the case at hand changed the course of history for a number of legal doctrines, and the latter shall be tackled *in seriatim.*

A. Hierarchy of Constitutional Rights

The rights guaranteed to citizens under the Constitution[6] have their corresponding weights and hierarchical values. Two rights were dealt with in the case at hand: the right of freedom to contract and the right to security of tenure of an employee.

A key doctrine laid down by the case has a dangerous tendency to give the impression that the right of freedom to contract — as an independent contractor — is superior to the right to security of tenure. The uniquely crafted statement must be reproduced in full to understand the proposition:

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3. *Id.* at 590 (citing Labor Arbiter decision).
4. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE].
5. *See generally* Mafinco Trading Corp. v. Ople, 70 SCRA 139 (1976); AFP Mutual Benefit Association v. National Labor Relations Commission, 267 SCRA 47 (1997).
6. PHIL. CONST. art III.

> Individuals with special skills, expertise or talent enjoy the freedom to offer their services as independent contractors. The right of labor to security of tenure cannot operate to deprive an individual, possessed with special skills, expertise and talent, of his right to contract as an independent contractor. An individual like an artist or talent has a right to render his services without anyone controlling the means and methods by which he performs his art or craft. The court will not interpret the right of labor to security of tenure to compel artists and talents to render their services only as employees. If radio and television program hosts can render their services only as employees, the station managers and owners can dictate to the radio and television hosts what they say in their shows. This is not conducive to freedom of the press.[7]

The right to security of tenure is defined by the Labor Code[8] as "the right of an employee to be dismissed except upon just cause."[9] These just causes[10] have also been defined by law.

The aforementioned section of the decision seems to suggest that individuals with *special skills, expertise, or talent* are better off peddling their services as independent contractors rather than as employees. It indirectly suggests that the latter type of individuals' talents and skills are compromised by the volatility of security of tenure under an employer-employee relationship and hides behind an attempt to protect the freedom of the press. It could also mean that it would be more appropriate for those individuals who are possessed with more talents, better skills and a higher degree of expertise to enter into independent contractual relationships, while those with lesser qualifications should content themselves as ordinary employees. However, what is most appalling is the underlying meaning of the second to the last statement in the paragraph. If it were not conducive for the freedom of the press if station managers and owners can dictate to the hosts *what they say in their shows*, then by all means, if only to protect this freedom, then the *talents* should not be *employees*, but rather independent contractors.

But the media business does not operate in a vacuum, and it is the responsibility of the business owner to ensure that it regulates the content which it presents to the public for viewing.

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7. Sonza v. ABS-CBN Broadcasting Corporation, 431 SCRA 583, 608 (2004) (emphasis supplied).

8. A Decree Instituting a Labor Code, Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Ensure Industrial Peace Based on Social Justice as amended, Presidential Decree 442 [LABOR CODE] art. 211.

9. *Id.* art. 282.

10. *Id.* arts. 282-85.

B. Business of ABS-CBN as Imbued with Public Interest

The media industry is similar to other industries insofar as the determination of the nature of working relationships is concerned whether as an employer-employee relationship or an independent contractual relationship. Hence, the tests that have long been established by jurisprudence for determining the nature of the relationship likewise apply to the media industry.

However, it must be underscored that an entity engaged in the media business is entrusted with the heavy responsibility of taking into consideration the interests of the viewing public.

As held in the case of *Iglesia Ni Cristo v. Court of Appeals*,[11] the Supreme Court held that:

> [t]elevision is a medium that reaches even the eyes and ears of children. The Court iterates the rule that the exercise of religious freedom can be regulated by the State when it will bring about the clear and present danger of some substantive evil which the State is duty bound to prevent, *i.e.*, serious detriment to the more overriding interest of public health, public morals, or public welfare.[12]

In a separate concurring opinion the following was expounded on:

> In *Gonzales v. Kalaw Katigbak* and *Eastern Broadcasting Corp. (DYRE) v. Dans, Jr.*, this Court early on acknowledged the uniquely pervasive presence of broadcast and electronic media in the lives of everyone, and the easy accessibility of television and radio to just about anyone, especially children. Everyone is susceptible to their influence, even 'the indifferent or unwilling who happen to be within reach of a blaring radio or television set.' And these audiences have less opportunity to cogitate, analyze and reject the utterances, compared to readers of printed materials. It is precisely because the State as *parens patriae* is 'called upon to manifest an attitude of caring for the welfare of the young,'[13]

Hence, ABS-CBN rightfully and properly had to have a say in the content that was going to be presented to the public. In the face of freedom of the press, there is also a great need for the media to keep close tabs on its programming because of the pervasiveness and effectiveness of its medium.

C. The Tests for Determining the Existence of an Employer-Employee Relationship

In negating the existence of an employer-employee relationship between Sonza and ABS-CBN, the Court undertook the process of elimination with

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11. Iglesia Ni Cristo v. Court of Appeals, 259 SCRA 529 (1996).

12. *Id.* at 544.

13. *Id.* at 586-87 (Panganiban, J., sep. op.).

respect to the elements of such a relationship. Hence, the Court stated: "we must consider all the circumstances of the relationship, with the control test being the most important element."[14]

As recognized by jurisprudence, the following are the elements of an employer-employee relationship:[15] (1) Selection and engagement of the employee; (2) Payment of Wages; (3) Power of Dismissal; and (4) Control.

1. Selection and Engagement

The Court said of the first element: "the method of selecting and engaging Sonza does not conclusively determine his status."[16] It also said that the hiring of Sonza for his *unique skills* is indicative of an independent contractor relationship.

2. Payment of wages

As for the second element, the Court observed that ABS-CBN never made any payments to MJMDC. The Court rejected Sonza's claim that the fact of direct payment to him indicates the existence of an employer-employee relationship. The Court believed that this mode of payment was done in such manner by ABS-CBN for the reason that it was stipulated in their Agreement, and went on to point out that even the other benefits and privileges enjoyed by Sonza arose from the *contract,* and not because of an employer-employee relationship. However, the *other benefits and privileges* referred to are those required by law for employees, such as social security and 13th month pay. Indeed it is possible that the parties included these benefits in their contract out of their own free will and not because the law requires it, but a question of their intent remains.

The Court also took notice that the amount of salary that Sonza was enjoying was *so huge and out of the ordinary* that it was indicative of an independent contractual relationship. But nowhere is it in the law that the amount of salary as compared to standard salary package(s) is a consideration for determining the nature of the agreement as an independent contractual relationship. Nevertheless, this was indirectly recognized by the Court: "the power to bargain talent fees way above the salary scales of ordinary

14. Sonza v. ABS-CBN Broadcasting Corporation, 431 SCRA 583, 595 (2004).

15. *See* AFP Mutual Benefit Association v. National Labor Relations Commission, 267 SCRA 47 (1997); Viana v. Al Lagdan and Pica, 99 Phil. 408 (1956); Sy v. Court of Appeals, 398 SCRA 301 (2003); Tan v. Lagrana, 387 SCRA 393 (2002).

16. *Sonza*, 431 SCRA at 595.

employees is a circumstance indicative but *not conclusive*, of an independent contractual relationship."[17] And rightly so. The Labor Code itself makes room for managerial employees and supervisory employees as pitted against rank and file employees, meaning that even these employees, who may be receiving salaries larger than those received by rank and file employees, are still covered by certain portions of the Labor Code as *employees* and not as independent contractors — regardless of their *huge salary*.

3. Power to Dismiss

The third element was considered absent by looking at the contract, which provided that: there shall be no termination to be effected unless either party is in violation of any of the provisions of the contract.

A provision in the Agreement stated: "[p]rovided that the agent and Jay Sonza shall faithfully and completely perform each condition of the Agreement for and in consideration of the aforesaid services by the agent and its talent, the company agrees to pay the agent...."[18] The Court said of this provision: "[e]ven if it suffered business losses, ABS-CBN could not retrench Sonza because ABS-CBN remained obligated to pay Sonza's talent fees during the life of the Agreement. This circumstance indicates an independent contractual relationship between Sonza and ABS-CBN."[19] But retrenchment was never put in issue by any of the parties and it is therefore a futile exercise to use it to hypothesize. Neither would it be useful to consider the other grounds for dismissal under the Labor Code. It is clear that termination of the relationship between Sonza and ABS-CBN could be done in case there of a breach of *any* of the provisions of the contract by *any* of the parties.

There is mention of the fact that the network continued to pay Sonza despite having cancelled the show which the latter was supposed to be hosting. But there is no mention of whether ABS-CBN wielded the *power* to dismiss for any of the grounds provided for by law.[20] Instead, it was emphasized that Sonza *rescinded*[21] the contract, and that such was tantamount to a resignation. This, supposedly, suggests that the relationship of Sonza with ABS-CBN was that of an independent contractor, in addition to Sonza's failure to show that ABS-CBN could terminate his services on grounds other than breach of contract. But even in ordinary employer-

17. *Id.* at 596 (emphasis supplied).

18. *Id.* at 597 (citing n.24).

19. *Id.*

20. *See* LABOR CODE, Book VI.

21. *See generally* CIVIL CODE arts. 1380-09.

employee relationships, the employee has the right to resign even if his employer has the power to dismiss him. This fact was not taken note of. The Court nevertheless emphasized: "the manner by which Sonza terminated his relationship with ABS-CBN is immaterial...[it] does not determine his status as employee or independent contractor."[22]

The question on the distinction between a *live* show and a *taped* show was brought to fore in discussing the element of the power of dismissal. The Decision implies that the fact of *not* broadcasting Sonza's show is *not* an exercise of the power of dismissal. But correlative of this implication is that ABS-CBN always had the choice *not* to broadcast the *taped show*. This bolsters the argument that the service or output sought from Sonza was really the *taped show* and, in the end, leans in favor of the existence of an employer-employee relationship for the reason that ABS-CBN *did have control over the means and methods of Sonza's work*. As will be explained later, Sonza's work consisted of the production of the tape.

ABS-CBN exercised control over Sonza, as illustrated by the fact that despite its lack of control over Sonza's words and actuations during the actual taping, it exercised control as to whether the taped show was fit for public viewing, and that is the control that matters in the broadcasting business. It would be a futile exercise to engage the services of Sonza because of his unique skills and talent but not be able to censure him if the need arose. A network or station would lose profits if it left the business in the hands of its skilled "independent contractors," for the sake of respecting freedom of the press, or of upholding the agreement embodying the independent contractor relationship.

4. Control

The major consideration of the Court in deciding that there was no employer-employee relationship is that there was *no* element of control which is the most important element in an employer-employee that ABS-CBN could exercise over Sonza. In this last, but most crucial element of an employer-employee relationship, the Court began its discussion with the decision of the United States Court of Appeals for the First Circuit in *Alberty-Velez v. Corporacion de Puerto Rico Para La Difusion Publica (WIPR)*.[23] That case involved a female television host, and the suit was for gender

22. *Sonza*, 431 SCRA at 598.

23. Alberty-Velez v. Corporacion de Puerto Rico Para La Difusion Publica (WIPR), 361 F.3d 1 (2004).

discrimination. The plaintiff sought recovery on the basis of Title VII of the Civil Rights Act of 1964[24] and state law.

In that case, plaintiff Alberty-Velez agreed to host a new show "*Desde Mi Pueblo,*" along with two other hosts. Their task involved the presentation of interviews of local residents regarding a chosen topic. Several factors served as the basis for the court in deciding that the plaintiff was not covered by the laws she invoked, as she was not an employee, but an independent contractor. As the court summarized:

> First, a television actress is a skilled position requiring talent and training not available on-the-job. In this regard, Alberty possesses a master's degree in public communications and journalism; is trained in dance, singing and modeling; taught with the drama department at the University of Puerto Rico; and acted in several theater and television productions prior to her affiliation with 'Desde Mi Pueblo.'[25] Second, Alberty provided the *tools and instrumentalities* necessary for her to perform. Specifically, she provided, or obtained sponsors to provide, the costumes, jewelry and other *image-related supplies* and services necessary for her appearance.[26] Third, WIPR could not assign Alberty work in addition to filming 'Desde Mi Pueblo.'[27]

Clearly, the doctrine in the said case cannot be and should not have been made to apply in Sonza's situation. No determination was made of the extent of Sonza's skills and talents. In fact, his credentials as a television and radio host were not mentioned at all in the case. Also, Sonza did not provide the same "tools and instrumentalities" referred to in the case of *Alberty*. Similar to plaintiff Alberty-Velez in the American case, Sonza was bound by an exclusivity clause. But Alberty-Velez still stood on a different plane from Sonza, because she was paid a lump sum for each episode and each of the latter were covered by a separate contract; this made it apparent that each episode was a separate transaction, unlike in Sonza's case where he was paid a fixed "talent fee" every month.

a) Control in Actual Performance

The Court also found that "ABS-CBN was not involved in the actual performance of the actions that resulted in the finished product of Sonza's work."[28] But this statement was supported by yet another U.S. case.[29] In

24. 42 U.S.C.S. § 2000E.

25. *Alberty-Velez,* 361 F.3d at 13.

26. *Id.* at 13-14 (emphasis supplied).

27. *Id.* at 15.

28. Sonza v. ABS-CBN Broadcasting Corporation, 431 SCRA 583, 600 (2004).

29. Zhengxing v. Nathanson, 215 F.Supp.2d 114 (2002).

the latter, the court found that the superior of plaintiff Ms. Zhengxing did not exercise control over the actual performance of the latter's job. The plaintiff was hired as a Purchase Order Vendor with the Mandarin Service, a subdivision of the Chinese branch of Voice of America. The position involved broadcast-related duties such as announcing, translating and producing. She was placed under the tutelage of Mr. Baum, against whom she filed the sexual harassment suit.

The court ruled that the plaintiff was an independent contractor and hence she could not file the suit because the law she invoked required her to be an employee. The "most important criterion" considered by the court was the "extent of the employer's right to control the 'means and manner' of the worker's performance." The court believed that very little control was exercised over Ms. Zhengxing. The editor merely inspected her finished product.

Control is the power wielded by the employer over the means and methods of the work.[30] Hence, the means and methods shall always be linked to what the expected output is. As said by the court in the *Zhengxing* case, "[t]he most important factor to consider is the extent of the employer's right to control the means and manner of the worker's performance."[31] The output in some cases may be a service and in other cases may be a product, but in either case it may be termed as a *finished product.*

The pivotal question that should be addressed is: what is the *finished product*? There is difficulty in resolving this query because of the intangible nature of the output of every "talent." It seems that control shall always be tied to the *finished product*, but the latter was never defined. For Sonza's case it should be the *taped* show, instead of the *aired* show.

The author proposes the following definition for a *finished product* in relation to the determination to the existence of an employer-employee relationship: *the finished product refers to that output, whether tangible or intangible, that is sought to be ultimately placed within the primary control of the party with the reasonable right to expect such, and said party would have utility or use for the output which is the natural consequence of the purpose for which the output is expected.*

Hence, the requisites of a finished product are as follows:

1. There is an output which may be tangible or intangible;
2. It is placed within the primary control of a party;

30. Religious of the Virgin Mary v. NLRC, 316 SCRA 615 (1999); Javelin v. NLRC, 326 SCRA 299 (2000).

31. *Id.*

3. The said party must have a reasonable right to expect the output- such as a written document or an oral agreement;
4. The party on whom the primary control of the output is placed would have use for said output;
5. The same party has a reasonable purpose for the expectation of the output; and
6. The use referred to is natural consequence of purpose for the expectation.

Under the said definition, the finished product under the Agreement between Sonza and ABS-CBN was the *taped show*. The taped show is an intangible output. It is not the tape itself, but the *show* contained in the tape. The tape that contains the show is placed under the primary control of ABS-CBN, as it had the power to broadcast the show or to discard it altogether. ABS-CBN had a reasonable right to expect the taped show by virtue of their written agreement entered into in May 1994. The use to be derived from the taped show was to be able to broadcast an episode, under the sound discretion of the Network. The purpose of ABS-CBN in engaging the services of Sonza as a co-host was to further its business of maintaining and managing a television network. Finally, the use referred to above was a natural consequence of being in the media business, television and radio being the concerned media. Once Sonza rendered the service, and that is to host the shows, he then complied with his end of the stick.

That said, ABS-CBN can be deemed to have had control over the finished product because it solely had the responsibility of deciding whether the taped show would be broadcast or not. For as long as the taped show was in existence, the right to transmit it for public viewing belonged to ABS-CBN, and no greater control can be had over the show than that. Sonza was free to act in any manner and voice his opinions and such would be immortalized on the tape; but the purpose of ABS-CBN in entering into the contract with Sonza was to be able to broadcast the show "Mel and Jay" as a regular program or part of their programming content for a given day.

b) Control by Power to Delete Content

The argument against the existence of an employer-employee relationship is bolstered by another U.S. decision, *Vaughan v. Warner*,[32] which held that vaudeville performers were independent contractors and not employees. Here, the only control retained by managers of the theatres was as the time of their performance and the power to delete objectionable content.

32. Vaughan v. Warner, 157 F.2d 26 (1946).

In that case, the court still decided in favor of an independent contractor relationship even if both parties agreed that the theater owner or receiver had the right to delete objectionable features. *Vaughan* said of control:

> The control of the work reserved in the employer which makes the employee a mere servant is control, not only of the result of the work, but also of the means and manner of the performance thereof, and a reservation of the right to supervise and inspect the work during performance does not make the contractor a mere servant, where the mode and means of performance are within his control.[33]

Sonza argued that the fact that ABS-CBN retained the power *not* to broadcast his *taped* shows evinces the Network's control over the "means and methods" of the performance of his work. The Court believed that this right *did not* amount to control, since "how he delivered his lines and appeared on television"[34] depended on Sonza and was not subject to ABS-CBN's control.

It must be acknowledged that while it is true that ABS-CBN may not have been involved in the actual process of coming up with the show, it nevertheless had all the power to edit the episode. It can remove offensive content; it can control the length of the show; and decide which portions to include in the broadcast. This can be interpreted as control over the "means and methods" of Sonza's work. The contents of the taped show were still subject to ABS-CBN's editorial prerogative.

c) Control by power to broadcast (or not)

The Court also said that the fact that ABS-CBN continued paying his talent fees regardless of the fact that his show was not being broadcast was indicative of an independent contractual relationship.

This argument is hardly persuasive. The fact of payment of talent fees regardless of broadcast is a consideration worthy of attention in analyzing whether there is indeed control and not in immediately debunking the existence of the said element.

For Sonza's case, it has been emphasized that the expected finished product was the *taped* show and not the show actually aired. That Sonza was still paid his talent fees regardless of the non-broadcast by ABS-CBN meant that the actual airing of the show was not the output he was being paid for, but rather, it the *taped* show. ABS-CBN hired him for his "unique skills,

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33. *Id.*

34. Sonza v. ABS-CBN Broadcasting Corporation, 431 SCRA 583, 601 (2004).

talent and celebrity status,"[35] indeed. But it sufficed as performance of Sonza's obligation as an *employee* that he was able to come up with a *taped* show.

ABS-CBN's discretion in airing the tape is an indication of a great deal of control. The business of a network greatly depends on the quality of the shows that it provides its viewers. Its ability to sieve the material that will be ultimately fed to the public is indicative of its high degree of control. Indeed, ABS-CBN could only do so much regarding Sonza's hosting style, diction, voice and comments; but it exercised its control by acting as a wall between the show and the viewer. This portion of the broadcasting process was decisive of the *work* that would be shown to the clients of ABS-CBN, and this is where it exercised control over Sonza. It could not have been exercised while Sonza was in actual performance of the hosting job (taping process), but ABS-CBN wielded the power to determine whether as a whole, the output produced by Sonza may be used for the purpose he was hired for, and that was to show it to the public.

d) Control by Exclusivity Clause

Is exclusivity tantamount to control?

The Agreement between Sonza and ABS-CBN provided that Sonza was hired as an "exclusive talent" of ABS-CBN. This, Sonza insisted, was the "most extreme form of control which ABS-CBN exercised over him."[36] The Court believed that "this argument is futile. Being an exclusive talent does not by itself mean that Sonza is an employee of ABS-CBN. Even an independent contractor can validly provide his services exclusively to the hiring party. In the broadcast industry, exclusivity is not necessarily the same as control."[37] True enough, being an exclusive talent does not immediately mean that one is an employee. But it can be indicative of *control*.

Being tied to one network or station could chart the career of Sonza, or any "talent" for that matter. The manner by which a talent's appearances on television are planned and made greatly influences the image of the talent. It is intimately connected to the programs in which he will be making regular and guest appearances. That a talent is tied to just one network is not necessarily a negative thing, but it is a major factor in the shaping of a talent's career. Hence, it is a great manifestation of *control* as *Sonza* decreed.

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35. *Id.* at 595.

36. *Id.* at 604.

37. *Id.*

The Court took notice of the fact that "the hiring of exclusive talents is a widespread and accepted practice in the entertainment industry." But the import of this practice is not relevant to the matter at hand. Widespread or not, the question is on the exercise of control over Sonza. The Court continued: "This practice is not designed to control the means and methods of work of the talent but to simply protect the investment of the broadcast station. The broadcast station normally spends substantial amounts of money, time and effort in 'building up its talents as well as the programs they appear in and thus expects the said talents to remain exclusive with the station for a commensurate period of time."

The expectation or requirement of exclusivity proceeds from a fiscal interest on the part of one of the Philippines' leading networks and also one of the largest media companies in the country. They do have a right to protect their investments, but an individual like Sonza who can only bank on his "unique talents and skills" cannot level with a business magnate like ABS-CBN. There was clearly no equality of bargaining power between the two parties. Indeed, Sonza entered into the contract with full consent. But it was because he had nothing else to offer and everything else to accept.

In the case of *AFP Mutual Benefit Association v. National Labor Relations Commission*,[38] the Court ruled that there was *no* employer-employee relationship, and ruled instead in favor of an independent contractor relationship. In the said case, the private respondent was an insurance agent for the petitioner and the former was required to solicit business exclusively for the latter. The Court said that this "could hardly be considered as control in labor jurisprudence."[39] The said requirement was issued via a Memo Circular by the Insurance Commission and the Court said thus:

> the exclusivity restriction clearly springs from a regulation issued by the Insurance Commission, and not from an intention by petitioner to establish control over the method and manner by which private respondent shall accomplish his work. This feature is not meant to change the nature of the relationship between the parties, nor does it necessarily imbue such relationship with the quality of control envisioned by the law.[40]

But in *Sonza*, the exclusivity was not imposed by law but was, rather, imposed by ABS-CBN. This should be indicative of intent on the part of ABS-CBN to be able to exercise *control* over Sonza's general conduct in performance of his duties.

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38. AFP Mutual Benefit Association v. National Labor Relations Commission, 267 SCRA 47 (1997).

39. *Id.*

40. *Id.*

D. Definition of "Tools" in an Independent Contracting Relationship in the Media Industry

There exists no clear-cut definition of *tools* in an independent contractor relationship. But since the Court made reference to *Alberty,* it also adopted the definition of *tools* presented in the same case. In that case, *tools and instrumentalities* referred to "costumes, jewelry and other *image-related supplies* and services necessary for her appearance."[41] It was further elucidated that "[t]he equipment necessary for Alberty to conduct her job as host of 'Desde Mi Pueblo' related to her appearance on the show."[42]

No such "image-related supplies" or equipment as described were provided for by Sonza. Or at least, again, there was no mention of the same. All the Court said was that "[t]he equipment, crew and airtime [provided by ABS-CBN] are not the 'tools and instrumentalities' that Sonza needed to perform his job. What [he] principally needed were his *talent or skills and the costumes necessary for his appearance*".[43] In short, what mattered was how he *appeared* to the public.

The tool seems to be a measure of Sonza's reputation, popularity and public image. But these factors are not developed or created in the course of filming an episode. These are intangible attributes of a host which are developed through time, and through other means and media aside from the show concerned, which in this case are the radio show and television program, both entitled "Mel and Jay." The fact that ABS-CBN chose Sonza illustrates that the Network exercised its discretion and independent judgment in selecting Sonza from amongst a pool of prospective hosts. It may be said that ABS-CBN picked Sonza because he already possessed the qualities — which are now synonymous to *tools* — they were looking for in a host, and this leans in favor of an independent contractor relationship. But on the other hand it is also an exercise of *control* over *how* the show will turn out to be, as it greatly depends on the host(s) and how the public regards the said host(s). As recognized by the Court, it is the control test which bears the greatest weight among the elements of an employer-employee relationship.

41. Alberty-Velez v. Corporacion de Puerto Rico Para La Difusion Publica (WIPR), 361 F.3d 1, 13-14 (2004).

42. *Id.*

43. Sonza v. ABS-CBN Broadcasting Corporation, 431 SCRA 583, 600 (2004) (emphasis supplied).

E. Rescission of the contract

There should have been no issue even at the NLRC level because what was sued upon was an *ordinary contract*. In fact, the existence of an employer-employee relationship was in question. How could the NLRC have had acquired jurisdiction over the dispute? The case that should have been brought was a civil action before ordinary courts and *not* before the NLRC. However, the case prospered and went all the way to the Supreme Court. The *ratio decidendi* must then be respected while care must be taken so as not to make it apply to all future similar situations in a sweeping manner.

III. PROPOSAL FOR CONSTRUCTION OF THE DECISION

The Decision should not be taken to automatically apply to television talents. As in the past, courts must look at the uniqueness of the circumstances as no single person is the same as another, in the same manner that no relationship is the same as another. ABS-CBN may have hired Sonza for his unique skills and talent, which can be said to be true for any other person. Thus, there is a need to adhere to the pertinent jurisprudential elements in determining the nature of the relationship between master and servant rather than considering the doctrine of this case as binding on all future contracts of talent.

Further, distinction should not have been made between television and/or radio talents and the rest of the employee pool. These individuals may be working in a different and far more complicated field, but there exists no substantial difference in their relationships with their employers to be analyzed in a different manner. Aesthetics is not a special field that must be treated differently.

Finally, the following caveats must be considered. First, the traditional tests of determining the existence of an employer-employee relationship are still applicable in any industry. And secondly, the intricacies of each element of the four-fold test must be looked into. This is true most especially for the element of control. Every business or field of work admits of different factors to show control, but each is involved with the means and methods of accomplishing the work. This must be understood in connection with the finished product or the service sought from the relationship.

CONCLUSION

Nothing was said about why the relationship between Sonza and ABS-CBN turned sour. And the public may never know what truly happened between the two parties. But Sonza recognized that he had talent, and that he had employment value. He wanted recognition and compensation for such. Meanwhile, ABS-CBN knew its business and how to maintain it, if not to improve its lot. Both parties were part of the media industry and were

burdened with the responsibility of taking into consideration not only their own concerns, but that of the public in general as well.

A man with talent is naturally expected to make the most out of what he has, and to choose that path which he deems most beneficial to his career. Logic dictates that man should not allow his life to decay and his goals to be constricted to the recesses of imagination, to be clouded by cobwebs of indecisiveness and complacency.

It cannot be overemphasized that the parties entered into the contract knowing the exigencies and the risks that were involved in the contract. In every contract, it is presumed that each party is fully apprised of the risks involved in the agreement, and whatever losses, injuries or consequences are sustained are to be borne by the party which suffered it, except if there is a stipulation in their agreement providing otherwise.

Before the courts of justice, decisions are made for what judges see as beneficial, just, and equitable to all the parties. But before the courts of men, decisions are made in consideration of what is given, and what is not; and what one has, and has not.