

**GENERALI PILIPINAS LIFE ASSURANCE COMPANY, INC.,
PLAINTIFF-APPELLEE, VS. GERRY SANTOS MOJICA,
DEFENDANT-APPELLANT.**

Ponente: GARCIA-FERNANDEZ, J.

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GARCIA-FERNANDEZ, J.:

This is an appeal by defendant-appellant Gerry Santos Mojica from the decision[1] of the Regional Trial Court of Makati City, Branch 141 (RTC) in an action for collection of money with damages in Civil Case No. 04-1111 on June 24, 2010, which ordered him to pay plaintiff-appellee Generali Pilipinas Life Assurance Company, Inc. the amount of P514,639.17 as unpaid monthly drawing allowances he advanced, HMI membership dues, group premium and other liabilities, plus an interest computed at 6% per annum from the finality of the decision until fully paid and to pay plaintiff-appellee the amount of P70,000.00 as attorney's fees and costs of suit.

The factual antecedents of the case are as follows:

Plaintiff-appellee is a domestic corporation engaged in the business of life and non-life insurance. To market its products, it contracted defendant-appellant's services under a "Unit Manager's Agreement" on January 19, 2001 and subsequently, under an "Associate Branch Manager Agreement" on January 24, 2002. Defendant-appellant's task as a manager was to recruit, train and appoint sales underwriters and see to it that they are productive for the benefit of plaintiff-appellee. Defendant-appellant served as a unit manager from 2001 to 2002 and as an associate branch manager from 2002 to 2003. Pursuant to the aforesaid contracts and in order to provide funds to organize, develop and maintain strong sales force, plaintiff-appellee and defendant-appellant executed a "Memorandum of Agreement" on February 19, 2001, which granted the latter Monthly Drawing Allowance (MDA) of P40,000.00. The MDA was later reduced to P30,000.00 subject to meeting the monthly validation requirements and performance standards. According to plaintiff-appellee, a MDA is released to qualified leaders of the company to serve as support for initial development of a branch or unit subject to the attainment of certain production parameters, which does not form part of the manager's compensation but has to be offset by his future commissions.

From February 1, 2001 to July 2002 or for 18 months, defendant-appellant received a total of P660,000.00 drawing allowances from plaintiff-appellee through check vouchers and bank credit advice. Defendant-appellant admitted that plaintiff-appellee granted him a MDA of P40,000.00 which was later reduced to P30,000.00. Defendant-appellant confirmed his signatures in the check vouchers for the first two months of his contract with plaintiff-appellee while the allowances for the succeeding months were credited through his BDO-ATM account. However, after July 2002, plaintiff-appellee stopped releasing further drawing allowances to defendant-appellant as the latter allegedly failed to meet the validation requirements set by the company. Defendant-appellant allegedly failed to comply with his production targets as stated in his Business Plan compared with his Schedule of Special Drawing Allowance. During the 18-month period when defendant-appellant received the MDA, he earned a total of P232,493.00 as sales commission out of which he received P80,100.00 while the remaining P151,000.00 was used as repayment of his drawing allowances and other obligations. Aside from the unpaid

drawing allowances, defendant-appellant allegedly owed plaintiff-appellee the HMI contributions from 2001 to 2003 amounting to P5,700.00 and a group insurance premium of P308.00. At the time defendant-appellant resigned in March 2003, his remaining total obligation to plaintiff-appellee amounted to P514,000.00. For defendant-appellant's failure to return said amount, plaintiff-appellee filed a complaint for collection of sum of money with damages before the RTC.

On November 18, 2004, defendant-appellant filed his answer with counterclaim.[2] He alleged that the complaint filed by plaintiff-appellee was baseless; that defendant-appellant was a regular employee of plaintiff-appellee and as such he had no obligation to return the MDA to the latter considering that he received the same as his monthly salaries; and that the trial court had no jurisdiction over the subject matter of the case which involved an employer-employee relationship.

After the issues were joined, the case was referred by the RTC to the Philippine Mediation Center for amicable settlement. The parties, however, failed to settle. Trial on the merits ensued thereafter. Plaintiff-appellee presented three witnesses, namely: 1.) Rafael Navarro Gaba, plaintiff's Senior Assistant Vice-President for Organization; 2.) Jane R. Alejo, plaintiff's Agency Compensation and Benefits Officer; 3.) Atty. Jeffrey Punzalan, an associate of Tan Acut and Lopez Law Offices, plaintiff's counsel. Meanwhile, defendant-appellant filed a Motion to Dismiss[3], which assailed the trial court's jurisdiction. Plaintiff-appellee filed an Opposition to defendant-appellant's motion.[4] In an Order dated July 7, 2008, the RTC denied defendant-appellant's motion to dismiss.[5] The motion for reconsideration thereof was likewise denied.[6]

Defendant-appellant filed a petition for certiorari with the Court of Appeals[7], which was denied in a decision[8] dated June 23, 2009 in CA-G.R. SP No. 107227. Defendant-appellant's motion for reconsideration was likewise denied in a resolution[9] dated September 24, 2009.

On June 24, 2010, the RTC rendered a decision[10], the dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff, ordering the defendant:

- 1) To pay the plaintiff the amount of P514,639.17 as unpaid monthly drawing allowances he advanced, HMI membership dues, group premium and other liabilities, plus an interest computed at 6% per annum from the finality of this decision until fully paid;
- 2) To pay the plaintiff the amount of P70,000.00 as attorney's fees and costs of suit.

SO ORDERED."

Hence, this appeal. Defendant-appellant assigned the following errors to the RTC:

- I.
THE TRIAL COURT ERRED IN FINDING THAT DEFENDANT-APPELLANT WAS A CONTRACTUAL EMPLOYEE OF PLAINTIFF-APPELLEE.
- II.
THE TRIAL COURT ERRED IN FINDING THAT DEFENDANT-APPELLANT HAD SOMETHING TO LIQUIDATE TO PLAINTIFF-APPELLEE FOR THE MDA HE RECEIVED.
- III.
THE TRIAL COURT ERRED IN ACQUIRING JURISDICTION OVER THE INSTANT CASE.
- IV.
THE TRIAL COURT ERRED, GRANTING WITHOUT ADMITTING THAT IT HAS JURISDICTION, IN NOT GRANTING DEFENDANT-APPELLANT'S COUNTER- CLAIM.

Defendant-appellant contends that he has no obligation to return the monthly drawing allowances (MDA) he received from plaintiff-appellee because the same were his salaries, being a regular employee of the latter; that he used the MDA to pay office space rentals of his unit as well as other operating expenses; that the proceedings in the trial court are null and void for lack of jurisdiction because the issues are properly lodged in labor tribunals; that he suffered social humiliation with what plaintiff-appellee did to him; and thus, he is entitled to P100,000.00 as moral damages, P75,000.00 as exemplary damages and P100,000.00 as attorney's fees.

The appeal is bereft of merit.

The cardinal rule in the interpretation of contracts is embodied in Article 1370 of the Civil Code which provides that "if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control." As explained by the Supreme Court in one case[11], this provision is akin to the "plain meaning rule" applied by Pennsylvania courts, which assumes that the intent of the parties to an instrument is embodied in the writing itself, and when the words are clear and unambiguous the intent is to be discovered only from the express language of the agreement. A court's purpose in examining a contract is to interpret the intent of the contracting parties, as objectively manifested by them. The process of interpreting a contract requires the court to make a preliminary inquiry as to whether the contract before it is ambiguous. A contract provision is ambiguous if it is susceptible of two reasonable alternative interpretations. Where the written terms of the contract are not ambiguous and can only be read one way, the court will interpret the contract as a matter of law. If the contract is determined to be ambiguous, then the interpretation of the contract is left to the court, to resolve the ambiguity in the light of the intrinsic evidence.[12]

In *Bautista vs. Court of Appeals*, the Supreme Court further elucidated, viz:[13]

"The rule is that where the language of a contract is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids. The intention of the parties must be gathered from that language, and from that language alone. Stated differently, where the language of a written contract is clear and unambiguous, the contract must be taken to mean that which, on its face, it purports to mean, unless some good reason can be assigned to show that the words should be understood in a different sense. Courts cannot make for the parties better or more equitable agreements than they themselves have been satisfied to make, or rewrite contracts because they operate harshly or inequitably as to one of the parties, or alter them for the benefit of one party and to the detriment of the other, or by construction, relieve one of the parties from the terms which he voluntarily consented to, or impose on him those which he did not."

This Court agrees with the RTC in ruling that defendant-appellant is an independent contractor under the clear terms of the agreements, thus:

According to the Unit Manager's Agreement:

The Unit Manager, in the performance of his duties required herein, shall be considered an independent contractor and not an employee of Generali Pilipinas. He shall be free to exercise his own judgment as to time, place and means of soliciting insurance. However, he shall observe and conform to all existing rules and regulations as may be prescribed by Generali Pilipinas from time to time. Under no circumstances shall the Unit Manager (and/or his agents) be considered employees of Generali Pilipinas.

According to the Associate Branch Manager's Agreement:

The Branch Manager, in the performance of his duties required herein, shall be considered an independent contractor and not an employee of Generali Pilipinas. He shall be free to exercise his own judgment as to time, place and means of soliciting insurance. However, he shall observe and conform to all existing rules and regulations as may be prescribed by Generali Pilipinas from time to time.

In *Investment Planning Corporation of the Philippines vs. Social Security System*[14], the High Court held that there was no employer-employee relationship between a commission agent and an investment company, but that the former was an independent contractor where said agent and others similarly placed were: (a) paid compensation in the form of commissions based on percentages of their sales, any balance of commissions earned being payable to their legal representatives in the event of death or registration; (b) required to put up performance bonds; (c) subject to a set of rules and regulations governing the performance of their duties under the agreement with the company and termination of their services for certain causes; (d) not required to report for work at any time, nor to devote their time exclusively to working for the company nor to submit a record of their activities, and who, finally, shouldered their own selling and transportation expenses.

In the case at bar, upon defendant-appellant's appointment as a branch manager, he was expected to carry on the business of his unit independently. He was authorized to recruit insurance agents over whom he exercised the right to assign, control and supervise the performance of activities necessary for the operations of his unit; to supply his branch with the necessary tools, with an option of availing himself of the MDA to meet his requirement pursuant to the terms of the Memorandum of Agreement; and to choose how to conduct his business. Further, defendant-appellant received commissions and not salaries or wages. Based on the guidelines provided for under *Investment Planning Corporation of the Philippines* case, defendant-appellant is an independent contractor of plaintiff-appellee.

Since, defendant-appellant is an independent contractor, not being an employee of plaintiff-appellee, then the labor tribunals have no jurisdiction over the subject matter of the case. Plaintiff-appellee's monetary claims for unpaid cash advances in the form of monthly drawing allowances, Health Maintenance Inc. dues, group premium for hospitalization and other payables arose from breach of an obligation, which is a civil dispute properly cognizable by the trial court.

Under the Memorandum of Agreement, defendant-appellant agreed to the following terms:

"At the end of the eighteen months or sooner, should the branch Manager be disqualified from the program on account of non-meeting of validation requirements, resignation or termination, the total debits (advances) and total credits (commissions earned) will be determined and this will put the Manager on either a net debit or net credit balance. Any net credit balance will be given in lump sum to the Manager at the end of the Program or if he opts to get out of the program sooner, or upon resignation. In case of resignation or termination, however, any debit will have to be repaid in full within three (3) days from date of Company's acceptance of the resignation." [15]

Based on records, defendant-appellant continuously availed of the MDA from January 2001 until July 2002 in the total amount of P660,000.00.[16] This is evidenced by various documents marked as exhibits[17] and by defendant-appellant's admission that he availed of the MDA. Defendant-appellant even confirmed that the signatures in the check vouchers, evidencing his availment of the MDA are his.[18] On March 6, 2003, plaintiff-appellee sent a letter to defendant-appellant, which accepted the resignation of the latter and demanded payment of the latter's outstanding obligation to it. Through offsetting, defendant-appellant was able to pay plaintiff-appellee P151,368.95, leaving an unpaid balance of P508,631.05.[19] As of January 31, 2004, defendant-appellant's outstanding obligation to plaintiff-appellee amounted to P514,639.17.[20] Defendant-appellant failed to repay or return the entire monthly drawing allowance to plaintiff-appellee upon his resignation under the terms of the above mentioned Memorandum of Agreement, thus, the RTC correctly ruled that the former is liable to plaintiff-appellee for the said amount.

The agreement or contract between the parties is the formal expression of the parties' rights, duties and obligations. It is the best evidence of the intention of the parties. Thus, when the terms of an agreement have been

reduced to writing, it is considered as containing all the terms agreed upon and there can be no evidence of such terms other than the contents of the written agreement between the parties and their successors in interest. Time and again, the Supreme Court stressed the rule that a contract is the law between the parties, and courts have no choice but to enforce such contract so long as it is not contrary to law, morals, good customs or public policy. Otherwise, courts would be interfering with the freedom of contract of the parties. Simply put, courts cannot stipulate for the parties or amend the latter's agreement, for to do so would be to alter the real intention of the contracting parties when the contrary function of courts is to give force and effect to the intention of the parties.[21]

The applicable interest rate is six percent (6%) per annum of the total amount computed from the date of default, or from date of extrajudicial demand on March 6, 2003. If the obligation is not satisfied, the interest rate of six percent (6%) per annum shall also apply from the date of finality of judgment until the total amount awarded is fully paid.

Plaintiff-appellee was compelled to file an action against defendant-appellant but this reason alone will not warrant an award of attorney's fees. It is settled that the award of attorney's fees is the exception rather than the rule. Counsel's fees are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. Attorney's fees, as part of damages, are not necessarily equated to the amount paid by a litigant to a lawyer. In the ordinary sense, attorney's fees represent the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter; while in its extraordinary concept, they may be awarded by the court as indemnity for damages to be paid by the losing party to the prevailing party. Attorney's fees as part of damages are awarded only in the instances specified in Article 2208 of the Civil Code which demands factual, legal, and equitable justification. Its basis cannot be left to speculation or conjecture. In this regard, none was proven. Moreover, in the absence of stipulation, a winning party may be awarded attorney's fees only in case plaintiff's action or defendant's stand is so untenable as to amount to gross and evident bad faith. This case cannot be similarly classified.[22]

WHEREFORE, the decision of the Regional Trial Court of Makati City, Branch 141 in Civil Case No. 04-1111 dated June 24, 2010 is **AFFIRMED** with **MODIFICATION**. Defendant-appellant Gerry Santos Mojica shall pay plaintiff-appellee Generali Pilipinas Life Assurance Company, Inc. the principal amount of Five Hundred Fourteen Thousand Six Hundred Thirty-nine and 17/100 Pesos (P514,639.17), with interest of six (6%) percent delete per annum on the aforesated principal obligation computed from March 6, 2003 until finality of this decision and additional interest of six (6%) per annum on the judgment award until the same is satisfied. The award of attorney's fees is **DELETED**.

SO ORDERED.

Lampas Peralta, (Chairperson) and Acosta, JJ., concur.

[1] Rollo, pp. 25-32.

[2] Rollo, pp. 55-63.

[3] Records, pp. 346-350.

[4] Records, pp. 355-368.

[5] Records, pp. 377-380.

[6] Records, p. 466.

- [7] Records, pp. 402-414.
- [8] Records, pp. 564-568.
- [9] Records, p. 600.
- [10] Rollo, pp. 25-32.
- [11] Enrique C. Abad, et al., vs. Goldloop Properties, Inc., G. R. No. 168108, April 13, 2007, 521 SCRA 131 citing County of Dauphin Pa v. Fidelity & Deposit Co. of Maryland, 770 Supp. 248, 251 (1991).
- [12] Ibid.
- [13] G.R. No. 123655, January 19, 2000.
- [14] G.R. No. L-19124, November 18, 1967.
- [15] Paragraph 2.7 of the Memorandum of Agreement.
- [16] TSN dated April 3, 2006, p. 34.
- [17] Records, pp. 237-298.
- [18] TSN dated July 19, 2006, pp. 23-24; TSN dated December 1, 2009, pp. 24-25.
- [19] Records, p. 234.
- [20] Records, p. 235.
- [21] Norton Resources And Development Corporation vs. All Asia Bank Corporation, G.R. No. 162523, November 25, 2009.
- [22] Virgilio S. David vs. Misamis Occidental II Electric Cooperative, Inc., G.R. No. 194785, July 11, 2012.

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