

SOCIAL SECURITY SYSTEM, PETITIONER, VS. COURT OF APPEALS AND THE QUALITY TOBACCO CORPORATION, RESPONDENTS.

G.R. No. L-46058. December 14, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals* dated March 16, 1977 in CA-G.R. No. 05087-SP entitled Romeo Carreon, petitioner-appellee vs. Quality Tobacco Corporation, respondent-appellant and Social Security System, intervenor-appellee, reversing the Resolution dated January 21, 1976 of the Social Security System and dismissing the petition filed by Romeo Carreon.

The facts as found by the Court of Appeals are as follows:

"QTC, formerly U.S. Tobacco Corporation, is a firm engaged in the manufacture and sale of cigarettes. On August 12, 1972, QTC, as VENDOR, entered into an agreement with CARREON, as VENDEE, the salient provisions of which are as follows:

'2. The VENDEE shall purchase one or more brands of cigarettes of the VENDOR on cash basis only, subject to the discretion of the VENDOR as to the brand and quantity thereof;

xxx xxx xxx

'3. The VENDEE shall sell the cigarettes herein mentioned only within Quezon Province and or such other places as may be designated and or limited thereafter by the VENDOR and only to residents of, or retailers or jobbers doing, and having their place of business in, said assigned territory, strictly, at such prices set by the VENDOR from time to time for the aforementioned respective brands of cigarettes in the sale thereof by the VENDEE in said assigned territory. The VENDEE is fully aware that a violation of this particular paragraph will cause grave and serious consequences to the VENDOR and that he shall be liable for all damages caused by said violation.

'4. The VENDEE shall be solely responsible for the cigarettes delivered to him by the VENDOR as well as for the aforementioned proceeds from the sale thereof, and any loss thereof due to any cause shall be solely for his own risk and account.

xxx xxx xxx

'6. The VENDOR may loan a delivery truck or trucks to the VENDEE, which truck or trucks shall be used by the VENDEE exclusively in connection with this contract and at all time maintained by the said VENDEE in good condition; and for as long as the VENDEE may be allowed the use of the VENDOR's truck or trucks, the VENDEE shall pay all the expenses for gasoline, oil, repairs, operating costs, maintenance, tires, spare parts, etc., but the VENDOR may at its discretion assume the payment of major repair.

xxx xxx xxx

'9. This contract, may, however, be terminated upon one (1) week's notice of either party at any time.

'10. In the event a court litigation should be necessary to recover from the VENDEE any amount due to the VENDOR, the VENDEE shall pay to the VENDOR all such damages that the VENDOR may suffer arising from the violation by the VENDEE of any of the terms and conditions of this contract and/or implementation and/or instructions mentioned in Paragraph 7 hereof plus the cost of suit and attorney's fees of at least 20% of the amount sought to be recovered, which in no case shall be less than Five Hundred Pesos (P500.00) for the purposes of this paragraph, venue of actions is hereby agreed to be in the City of Manila and the VENDEE hereby waives any other proper venue in any action which may be brought by or against him in connection with this contract or in connection with other actions which may be brought incident thereto.'

"The contract with CARREON was terminated by QTC on December 18, 1973.

"On April 29, 1974, CARREON filed a petition with the Social Security Commission alleging that he was an employee of QTC, and asking that QTC be ordered to report him for coverage under the Social Security Law. QTC answered claiming that CARREON has not been an employee but was an 'Independent businessman'. The Social Security System intervened and, taking the side of CARREON, also asked that QTC be ordered to pay Social Security contributions in respect of CARREON. On January 21, 1976, the Social Security Commission resolved CARREON's petition, finding him to be an employee of QTC. The rulings in U.S. Tobacco Corporation vs. Benjamin Serna, et al., CA-G.R. No. 32041, September 5, 1967, and The Shell Co. Phil. Ltd. vs. Fireman's Insurance Co. of Newark, et al., 100 Phil. 757, were inter alia, relied upon."

Cognizant of the striking similarities obtaining in the case before it and the Mafinco vs. Ople case decided by this Court on March 25, 1976, and relying solely on the doctrine laid down in said case, the Court of Appeals issued the herein assailed decision dated March 16, 1977, the dispositive part of which reads:

"WHEREFORE, the Resolution of the Social Security Commission of January 21, 1976 in its Case No. 2543 is hereby REVERSED and the petition filed in said case by Romeo Carreon is dismissed."

In a Motion for Reconsideration dated March 25, 1977, the Social Security System sought the reconsideration of the aforequoted decision (Rollo, pp. 43-49). However, finding no merit in said motion, the Court of Appeals denied the same in its resolution dated April 14, 1977 (Rollo, pp. 50-51).

Hence this petition.

The First Division of this Court without giving due course to said petition resolved to require the respondents to comment (Rollo, p. 64). Private respondent filed its Comment on August 9, 1977 (Rollo, p. 69).

Thereafter, this Court resolved to give due course to the petition and required the parties to submit simultaneous memoranda (Rollo, p. 74). On September 23, 1977, private respondent and petitioner filed their respective memoranda (Rollo, pp. 80-118).

The issue raised by the petitioner before this Court is the very same issue resolved by the Court of Appeals - that is, whether or not Romeo Carreon is an employee or an independent contractor under the contract aforequoted. Corollary thereto the question as to whether or not the Mafinco case is applicable to this case was raised by the parties.

The Court took cognizance of the fact that the question of whether or not an employer-employee relationship exists in a certain situation continues to bedevil the courts. Some businessmen with the aid of lawyers have tried to avoid the bringing about of an employer-employee relationship in some of their enterprises because that juridical relation spawns obligations connected with workmen's compensation, social security, medicare, minimum wage, termination pay and unionism.

For this reason, in order to put the issue at rest, this Court has laid down in a formidable line of decisions the

elements to be generally considered in determining the existence of an employer-employee relationship, as follows: a) selection and engagement of the employee; b) the payment of wages; c) the power of dismissal; and d) the employer's power to control the employee with respect to the means and method by which the work is to be accomplished. The last which is the so-called "control test" is the most important element (*Brotherhood Labor vs. Labor Unity Movement of the Phils.*, 147 SCRA 49 [1987]; *Dy Ke Beng vs. International Labor and Marine Union of the Phil.*, 90 SCRA 162 [1979]; *Mafinco Trading Corp. vs. Ople*, 70 SCRA 141 [1976]; *Social Security System vs. Court of Appeals*, 37 SCRA 579 [1971]).

Applying the control test, that is, whether the employer controls or has reserved the right to control the employee not only as to the result of the work to be done but also as to the means and method by which the same is to be accomplished, the question of whether or not there is an employer-employee relationship for purposes of the Social Security Act has been settled in this jurisdiction in the case of *Investment Planning Corp. vs. SSS*, 21 SCRA 924 (1967). In other words, where the element of control is absent; where a person who works for another does so more or less at his own pleasure and is not subject to definite hours or conditions of work, and in turn is compensated according to the result of his effort, the relationship of employer-employee does not exist. (*SSS vs. Court of Appeals*, 30 SCRA 210 [1969]).

It is the contention of petitioner that the Mafinco case which has been the sole basis of the Court of Appeals' finding that Romeo Carreon is an independent contractor is not applicable in the instant petition, there being no substantial parallelism between said contract and the contract of purchase and sale in this case. It pointed out that there are in the Mafinco contract provisions which by express implication point to the status of the peddler as an independent contractor such as: a) that should the peddler employ a driver or helpers, the latter shall be his employee/s and his/their compensation shall be for the peddler's account; that the peddler shall comply with the provisions of the Social Security Act and all applicable laws (par. 2); b) peddler is responsible for damage to property, death or injuries to persons covered by his own acts or omissions or those of his driver or helpers (par. 3); c) peddler is required to secure at his own expense all necessary licenses and permits and to bear all expenses which may be incurred in the sale of soft drinks (par. 5); d) the peddler is to furnish a performance bond of P1,000.00 in favor of Mafinco to assure performance by the peddler of his obligation to his employee under the Social Security Act (par. 11), which provisions are notably absent in the contract in the case at bar (*Rollo*, pp. 103-104).

It further contends that the Court of Appeals in an effort to justify its holding picked out only paragraphs 1, 2, 4, 6 and 9 of the Mafinco contract and thereafter concluded that the two contracts are similar.

Private respondent on the other hand, avers that the Mafinco contract is applicable to the case at bar. The two contracts need not embody almost the same provisions in order that they may be considered similar. It is enough that the aspect of similarity arising from the terms and conditions to be considered because of their relevance to the issue, is relatively much stronger than the dissimilarity.

Private respondent likewise maintains that the decision was correctly concluded not only on the similarity of the two contracts but also on factual evidence adduced at the trial and since respondent Court has already examined the facts and passed judgment on the basis thereof, its decision is no longer subject to review. Stated otherwise, the Court of Appeals "looked behind the contract" but found the evidence insufficient to justify a finding that the terms of the contract were not followed. That the evidence for Carreon and SSS failed to "pierce" the contract (*Rollo*, p. 83).

Private respondent's contention is untenable.

The distinction between a question of law and a question of fact is explained in our jurisprudence in *Ramos vs.*

Pepsi Cola Bottling Co. (19 SCRA 289, 292 [1967]), to wit:

"For a question to be one of law it must involve no examination of the probative value of the evidence presented by the litigants or any of them and the distinction is well-known. There is a question of law in a given case when the doubt or difference arises as to what the law is in a certain state of facts; there is a question of fact when the doubt arises as to the truth or the falsehood of alleged facts."

cited in G.R. No. L-39767, Lorenzo Hernandez vs. The Court of Appeals, March 31, 1987.

In the case at bar, it is evident that the basic contention is what the law is in the given state of facts. More than that, the well-settled rule that the finding of facts of the Court of Appeals is conclusive on the parties, admits of exceptions among which are: (1) when the findings of fact of the Court of Appeals are contrary to those of the trial court and (2) when the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and are contradicted by evidence on record (*Sacay vs. Sandiganbayan*, 142 SCRA 609 [1986]; *Manlapaz vs. Court of Appeals*, 147 SCRA 239 [1987]).

In this case, the Court of Appeals ruled that there is not enough evidence to show that the contract between Carreon and QTC was not reflective of their agreement to warrant reformation. As earlier pointed out, the Court of Appeals did not consider the entirety of the contract but only portions thereof which led to the conclusion that Carreon was an independent contractor.

Thus, after a study of the records and applying the "control test", there appears to be no question that the existence of an employer-employee relationship between Romeo Carreon and QTC has been established, based on the following "undisputed" facts as pointed out by the Solicitor General, to wit: (a) QTC assigned a definite sales territory for Romeo Carreon; (b) QTC provided Romeo Carreon with a delivery truck for the exclusive use of the latter in his sales activities; (c) QTC dictated the price of the cigarettes sold by Romeo Carreon; (d) QTC prescribed what brand of cigarette Romeo Carreon could sell; (e) QTC determined the persons to whom Romeo Carreon could sell; (f) QTC issued circulars and memoranda relative to Romeo Carreon's sales activities; (g) QTC required Romeo Carreon to submit to it daily, weekly and monthly reports; (h) QTC grounded Romeo Carreon for six months in 1966; (i) Romeo Carreon was supervised by sales coordinators of QTC; (j) Romeo Carreon was subject to payment of damages and loss even of accrued rights for any violation of instructions made by QTC in relation to his sales activities; and (k) Romeo Carreon was paid an allowance by QTC. All these indicate control and supervision over Carreon's work.

Moreover, it is elementary that findings of administrative agencies are generally accorded not only respect but also of finality (*Rosario Bros, Inc. vs. Ople*, 131 SCRA 72 [1984]).

PREMISES CONSIDERED, the decision of the Court of Appeals dated March 16, 1987 and its resolution of April 14, 1977 are hereby REVERSED and SET ASIDE, and the resolution of the Social Security Commission dated January 21, 1976 is AFFIRMED and REINSTATED.

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz, and Gancayco, JJ., concur.

* Penned by Justice Corazon Juliano Agrava, concurred in by Justices Lourdes P. San Diego & Mama D. Busran.

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