

**SUSAN G. CARUNGCONG, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, SUN LIFE ASSURANCE CO. OF CANADA, LANCE KEMP AND MERTON DEVEZA, RESPONDENTS.***G.R. No. 118086. December 15, 1997*

Ponente: NARVASA, C.J.

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Susan Carungcong began her career in the insurance industry in 1974 as an agent of Sun Life Assurance Company of Canada (hereinafter Sun Life). She signed an “Agent Agreement” with Sun Life on September 10, 1974 (retroactive to June, 1974), [1] in virtue of which she was designated the latter’s “agent to solicit applications for \*\* (its) insurance and annuity policies.” The contract set out in detail the terms and conditions – particularly those concerning the commissions payable to her – under which her relationship with the company would be governed. This contract was superseded some five years later when she signed two (2) new agreements, both dated July 1, 1979

The first, denominated “Career Agent’s (or Unit Manager’s Agreement,” dealt with such matters as the agent’s commissions, his obligations, limitations on his authority, and termination of the agreement by death, or by written notice “with or without cause.” It declared that the “Agent shall be an independent contractor and none of the terms of \*\* (the ) Agreement shall be construed as creating an employer-employee relationship.” [2]

The second was titled, “MANAGER’S Supplementary Agreement.” Making explicit reference to the first (Agent’s [the Unit Manager’s] Agreement) “which became effective on the 1st day of July, 1979,” said second contract – explicitly described as a “further agreement” – contained provisions regarding remuneration (overriding commissions in accordance with a fixed schedule), limitation of authority, and termination of the agreement inter alia by written notice “without cause.”[3]

Subsequently, Carungcong and Sun Life executed another Agreement – “made and effective as of January 1, 1986” – by which the former was named New Business Manager with the function generally “to manage a New Business Office established by the \*\* (latter), \*\* to obtain applications for life insurance policies and other products offered by or distributed through Sun Life and to perform such other duties in connection therewith as Sun Life may require from time to time.” [4] The Agreement governed such matters as the New Business Manager’s duties: limitations on authority; compensation; expenses; termination of relation, by among others, notice in writing with or without cause. Like the “Career Agent’s (or Unit Manager’s) Agreement” first signed by Carungcong, [5] this latest Agreement stressed that the “New Business Manager in performance of his duties defined herein, shall be considered an independent contractor and not \*\* an employee of Sun Life,” and that “(u)nder no circumstance shall the New Business Manager and/or his employees be considered employees of Sun Life.”

Now, it appears that sometime in November, 1989, Ms. Eleizer Sibayan, Manager of Sun Life’s Internal Audit Department, commenced an inquiry into the special fund availments of Carungcong and other New Business

Managers; this, allegedly because the Company's Vice President for Far East Asia, respondent Lance Kemp, had been receiving reports of anomalies in relation thereto from unit managers and agents. [6] These special fund availments are governed by the following portion of the Agreement of January 1, 1986 under the sub-head, "New Business Manager's Expenses," viz:

"Sun Life agrees to reimburse the New Business Manager for actual reasonable expenses properly incurred in performing his duties as New Business Manager provided such expenses are within the guidelines issued by Sun Life from time to time and are incurred for the purposes of gaining or producing income and that they are accounted for in the manner established by Sun Life and made known to the New Business Manager.

"Such reimbursement by Sun Life of said expenses will be made only upon the submission by the New Business Manager of a statement in form and content acceptable to Sun Life detailing said expenses attached receipts."

It also appears that Ms. Sibayan drew up a report (Summary of Availments) [7] after having examined and analyzed the pertinent records, and interviewed the unit managers and agents mentioned in the receipts presented by Carungcong to support her claims for reimbursement of expenses for 1987, 1988 and 1989. Thereafter, on January 4, 1990, and again on January 10, 1990, Carungcong was confronted with and asked to explain the discrepancies set out in Sibayan's report. On January 11, 1990, she was given a letter signed by "Metron V. Deveza, CLU, Director, Marketing, "which advised of the termination of her relationship with Sun Life, viz.: [8]

"In our meeting with you yesterday we presented the charge of fraudulent reimbursement of the Branch Special Fund against you. Accordingly, you admitted having said act.

"For dishonesty, disloyalty and breach of your Agent's Agreement and New Business Manager's Agreement with Sun Life of Canada dated June 10, 1974 and January 1, 1986, respectively, the Management has decided to terminate you as Agent and New Business Manager of Sun Life of Canada effective immediately."

Carungcong promptly instituted proceedings for vindication in the Arbitration Branch of the National Labor Relations Commissions on January 16, 1990. There she succeeded in obtaining a favorable judgment. [9] Labor Arbiter Ernesto S. Dinopol found that there existed an employer-employee relationship between her and Sun Life; ruled that she had been illegally dismissed, thus entitled to reinstatement without loss of seniority rights and other benefits; and ordered Sun Life, and its co-respondents Lance Kemp and Merton Deveza, [10] jointly and severally to pay her P12,475,973.25 as "back commissions," P8,000,000.00 as moral damages, P2,000,000.00 as exemplary damages, and P2,047,597.32 as attorney's fees – a total of P22,523,570.57. [11]

On appeal, the National Labor Relations Commission reversed the Arbiter's judgment. It affirmed that no employment relationship existed between Carungcong and Sun Life. Nevertheless, it awarded to her P2,696,252.00 as "lost average commission" on the ground that during the appeal, she had neither been restored to work nor reinstated in payroll. [12] However, the NLRC later eliminated this monetary award in a second decision promulgated on October 28, 1994 on the basis of a motion for reconsideration of Sun Life and its co-respondents. The NLRC declared itself without competence to make such an award absent an employment relationship between the parties.[13]

Opting not to file a motion for reconsideration of the Commission's judgment, [14] Carungcong forthwith initiated the special civil action of certiorari at bar (after obtaining an extension of time to do so), in which she seeks invalidation of the Commission's decision of October 28, 1994, and consequent restoration of the Labor Arbiter's awards.

Carungcong claims that although she was not, as "new business manager," required either to account for her time or perform her duties in a fixed manner, she was nonetheless an employee subject to the control and supervision

of Sun Life like any other managerial employee. She brands as ludicrous the accusation leveled against her, of having defrauded Sun Life of the sum of P6,000.00, since her annual income at that time was in excess of P3,000.00. [15] She contends that the accusation was a mere fabrication of her Unit Managers, Jorge Chua and Corazon de Mesa, who were promoted to Branch Managers after termination of her employment, [16] and that she actually had no hand in the preparation of the vouchers involved in the imputed anomaly, this task being entrusted to the branch office secretary, Lilet Ginete, selected and hired by Sun Life.

She also contends that in dismissing her, Sun failed to observe procedural due process. She was not furnished with copies of the audit report of her supposedly fraudulent use of her special fund availments, and was never afforded an opportunity to be heard by Sun Life officials prior to termination of her employment. [17] She assails the decisions of the NLRC as tainted with bias and grave abuse of discretion, particularly in ignoring the “deluge of evidence” adduced before the labor arbiter.

On the other hand, Sun Life and its co-respondents argue that the challenged decisions were in fact precisely based on Carungcong’s so-called “deluge of evidence,” and thus cannot in any sense be deemed “capricious, whimsical, arbitrary or depotic.” [18] They invoke the familiar rule that the findings of fact of administrative agencies are accorded respect, if not indeed finality, by this Court. They assert that jurisprudence and Carungcong’s admissions before the Labor Arbiter negate the existence of an employment relationship: that in truth Carungcong was duly informed of the charge of fraud and dishonesty, a charge supported by adequate proof; and that therefore the cancellation of the business relationship between them and Carungcong was valid and legal, effected with due process and for just cause.

The facts involved in this case are laid bare in considerable detail and the issues identified and extensively discussed by the parties, in their pleadings, namely: respondents’ Comment dated May 4, 1995; [19] petitioner’s Reply thereto dated September 11, 1995; [20] respondents’ Rejoinder of October 31, 1995; [21] their Manifestation dated November 2, 1995, submitting copies of their exhibits in the proceedings a quo; [22] Comment on the petition of the Office of the Solicitor General, dated November 22, 1995 [23] -- in which it makes common cause with Carungcong; petitioner’s Sur-Rejoinder dated December 11, 1995; [24] her Counter-Manifestation of December 11, 1995, submitting copies of her own exhibits in the proceedings below; [25] respondents’ Reply (dated January 8, 1996) to the Comment of the Solicitor General’s Office; [26] the Addendum to Respondents’ Comment, dated July 15, 1997; [27] and petitioner’s “Reply to Private Respondents’ ‘Addendum’ filed without leave of court, with Motion to Expunge \*\*,” dated July 30, 1997.[28]

The record does indeed disclose what Carungcong calls a “deluge of evidence” submitted by the parties before the Labor Arbiter. Carungcong submitted two (2) affidavits of hers (Exhibits A and B) in lieu of her direct examination, and numerous documents marked as Exhibits C to Z, inclusive, and from AA to ZZ, and again from AAA to EEE and EEE-1 (to FFF and FFF-7) [29] Sun Life and its co-respondents in turn submitted more than thirty-eight (38) exhibits, including the affidavits of five witnesses. [30] Facts are thereby established which the Court cannot ignore.

As already mentioned, as Sun Life’s New Business Manager. Carungcong had the prerogative under her contract to claim reimbursement “for actual reasonable expenses properly incurred in performing \*\* (her) duties \*\*.” Reimbursement was to be made by Sun Life “only upon \*\* (her) submission \*\* of a statement in form and content acceptable to Sun Life detailing said expenses with attached receipts.” Availing of this prerogative, Carungcong presented several statements of reimbursable expenses (appending the corresponding receipts), on the strength of which she duly received full reimbursement from Sun Life. These statements included claims for reimbursement for:

1) more than P30,000.00, representing the cost of prizes or awards ostensibly advanced by Susan Carungcong; and

2) several sums of money, representing the cost of food and drinks shouldered by Carungcong for dinner or snacks in various restaurants and on different dates to which she had supposedly invited agents of Sun Life, namely: Jorge Chua, Unit Manager. Prosperity Unit; Corazon de Mesa. Dynamic Unit; Robert Tan. Royal Unit, NNBO; Lucila L. Natividad. Samaritan Unit; Cristina J. Gloton, NNBO; Cynthia Suan; Zenaida B. Lim; Maynard Granados.

The record reveals the fraudulent character of these claims, that is to say, the unclean hands with which Carungcong has come to court. Her claims are categorically belied by no less than the eight (8) insurance managers and agents specifically named by her in her supporting documents, about whose impartiality or credibility the Court has been cited to no persuasive cause for doubt or misgiving. Jorge Chua [31] and Corazon de Mesa [32] deposed that as regards the special fund raised by Carungcong for prizes, awards, and outings, they had in fact contributed thereto but the latter had made it appear that she had raised and disbursed the entire fund by herself, and although she later obtained reimbursement therefor in the sum of more than P30,000.00, she never returned to them what they had contributed.

Chua and de Mesa also denied Carungcong's claim that she had treated them to food and drinks on December 7, 1987 at Kimpura (the bill amounting to P570.90), at Jade Garden on January 20, 1988 (the bill being P734.16), or at Flavors & Spices on November 5, 1988 (the bill coming to P420.66). [33] De Mesa also affirmed that contrary to Carungcong's claim, she had not been treated by the latter at the Kamayan (the chit being in the sum of P1,099.71) or at Tropical Hut (the bill being P378.50). [34]

Robert Tan belied Carungcong's claim that she had paid for their food or drinks at the Emerald Garden (the bill presented being in the sum of P742.33) or at Sugarhouse (the bill being P220.02).[35]

Lucila L. Natividad also belied Carungcong's assertion that she had treated her at Flavours and Spices (the bill being P834.48).[36]

So, too, Cristina J. Gloton gave the lie to Carungcong's claim that she had treated her at the Hotel Intercontinental (the bill on one occasion being P559.98).[37]

Cynthia Suan denied having been entertained by Carungcong at the Manila Peninsula (the bill supposedly being in the sum of P359.75).[38]

Zenaida B. Lim confirmed her earlier denial that Carungcong had paid for their snacks at Bing-Bing's (the bill being P182.40).[39]

Maynard Granados denied, among other things, that he was treated to dinner by Carungcong at the Hotel Intercontinental on March 29, 1988 (the bill being supposedly P473.95).[40]

The record thus appears to establish adequate cause for Sun Life to terminate its relationship with Susan Carungcong. Her attention was drawn to the perfidious nature of her claims for reimbursement; she was accorded an opportunity to explain the same; she refused to do so.

Prescinding therefrom, the contracts she had willingly and knowingly signed with Sun Life [41] repeatedly and clearly provided that said agreements were terminable by either party by written notice with or without cause. Her "Career Agent's (or Unit Manager's) Agreement" inter alia provided for termination of the agreement by death, or by written notice "with or without cause." [42] Her "MANAGER'S Supplementary Agreement," effective July 1, 1979, contained provisions regarding termination of the agreement inter alia by written notice

“without cause.” [43] A subsequent agreement by which she was named Manager for New Business, dated January 1, 1986, similarly provided for termination of relation, by among others, notice in writing with or without cause.

Noteworthy is that this last agreement of January 1, 1986 emphasized, like the “Career Agent’s (or Unit Manager’s) Agreement” first signed by her, [44] that in performance of her duties defined herein. Carungcong would be considered an independent contractor and not \*\* an employee of Sun Life,” and that “(u)nder no circumstance shall the New Business Manager and/or his employees be considered employees of Sun Life.”

It is germane to advert to the fact, which should by now be apparent, that Carungcong was not your ordinary run-of-the-mill employee, nor even your average managerial employee or supervisor. Her stated annual income from her occupation is impressive by any standards: “in excess of P3,000,000.00,” exclusive of overriding commissions. [45] Certainly, she may not be likened to an ordinary person applying for employment, or an ordinary employee striving to keep his job, under the moral dominance of the hiring entity or individual. By no means may Carungcong be considered as dealing, or having dealt, with Sun Life from an inferior position, as a disadvantage, morally-dominated person. She must be deemed as having transacted with Sun Life’s executives on more or less equal terms.

These considerations impel concurrence with the conclusions of the challenged decision and resolution of respondent Commission which considered Carungcong an independent contractor, not an employee of Sun Life. It is significant that this issue of the precise status of Carungcong as an independent contractor, evidently deemed decisive by respondent Commission, was discussed by it at some length not once, but twice, first in its Decision of July 29, 1994, and then in its second Decision of October 28, 1994 resolving the separate motions for reconsideration of the parties.

In the Decision of July 29, 1994, the Commissions said: [46]

“A thorough review of the facts and evidence adduced on record compels us to rule in the negative (on “the question of whether or not complainant Carungcong is a regular employee of respondents”). Complainant, to our considered view is not, contrary to the findings erroneously made in the challenged decision below, a regular employee of respondents but an independent contractor.

Her contracts/ agreement since she started as insurance agent, then as unit manager and finally as business/branch manager expressly say so. Besides, it cannot be gainsaid that complainant was never aware of the status as such, for indicated in the very face of her latest contract is the fact that she was accorded all the chances she needed to seek professional and legal advice relative thereto before she signed the said contract.

Indeed, as adverted to by herein respondents, the contracts/agreements entered into by the parties herein are the laws between the said parties.

Moreover, it is true that complainant Carungcong’s duties and functions derived from her then existing agreements/contracts were made subject to rules and regulations issued by respondent company, and for that matter, have likewise been made subject of certain limitations imposed by said respondent company. Nonetheless, these are not sufficient to accord the effect of establishing employer-employee relationship absent in this case. This is so because the insurance business is not just any other ordinary business. It is one that is imbued with public interest hence, it must be governed by rules and regulations of the state. The controls adverted to by complainant are latent in the kind of business she is into and are mainly aimed at promoting the results the parties so desire and do not necessarily create any employer-employee relationships, where the employers’ controls have to interfere in the methods and means by which the employee would like to employ to arrive at the desired results.

This is not without any jurisprudential support as earlier pointed out by herein respondents. The Supreme

Court in the case of *Insular Life Assurance Co., Ltd., versus National Labor Relations Commission and Melencio Basiao* (179 SCRA 459) emphatically discoursed in this wise:

“Logically, the line should be drawn between rules that merely serve as guidelines towards the achievement of the mutually desired result without dictating the means or methods to be employed in attaining it, and those that control to fix the methodology and bind or restrict the party hired to the use of such means. The first, which aim only to promote the result, create no employer-employee relationship unlike the second, which address both the result and the means used to achieve it. The distinction acquires particular relevance in the case of an enterprise affected with public interest and is on that account subject to regulation by the State with respect, not only to the relations between insurer and insured but also to the internal affairs of the Insurance company. Rules and regulations governing the conduct of the business are provided for in the Insurance Code and enforced by the Insurance Commissioner. It is therefore usual and expected for an insurance company to promulgate a set of rules to guide its commission agents in selling its policies that they may not run afoul of the law and what it requires or prohibits. (Underscoring supplied)

Complainant having admitted that she was free to work as she pleases, at the place and time she felt convenient for her to do so is not unlike Melencio Basiao in the aforequoted case (*supra*) where in spite of the controls imposed by respondents, she suffered no interference whatsoever in relation to the manner and methodology she used for her to achieve her desired results, this is clear from her testimony given in this wise:

‘A. Yes, and as I said as a branch manager, we have no specific time to stay in the office because its either if I am not in the office, I am monitoring my agents in the field or a unit manager I trained them in the field or recruit.’ (pp. 28-29, TSN, 31 May 1991. Underscoring supplied.)

For that matter, complainant Carungcong was never paid a fixed wage or salary but was mainly paid by commissions, depending on the level and volume of her performance/production, the number of trained agents, when taken in and assigned to her, being responsible for her added income as she gets a certain percentage from the said agents’ production as part of her commission.”

In the second judgment of October 28, 1994, [47] respondent Commission stressed the following points:

“Arrayed against complainant’s arguments that she was respondent’s employee are her own admissions during the trial on the merits. Said differently, her admissions completely diluted the supposed potency or her theory that an employer-employee relationship existed. Complainant admitted that her remunerations were based on her levels of production (TSN, June 27, 1991, page 72 et. seq.). She admitted she could solicit insurance anywhere or at any time she deemed convenient (TSN, May 31, 1991, page 33 et. seq.). She never accounted for her working time (TSN, May 20, 1991, page 66 et seq.) or that daily working hours “were never applicable to her situation (TSN, May 20, 1991, page 75). She gave unequivocal testimony that she performed her duties as a New Business Manager, i.e., monitoring, training, recruitment and sales, at her own time and convenience, at however she deemed convenient, and with whomsoever she chose (TSN, May 31, 1991, page 35 et. seq., TSN, May 20, 1991, page 72, et seq.; TSN, May 31, 1991, page 321 et seq.; TSN, May 31, 1991, page 84 et. seq.). We cannot help but agree with respondents’ submission that, plainly, complainant alone judged the elements of time, place and means in the performance of her duties and responsibilities.

Complainant’s theory of the case’ appears to be limited to pointing out that respondent company issued rules and regulations to which she should conform. However, no showing has been made that such rules and regulations effectively and actually controlled or restricted her choice of methods in performing her duties as New Business Manager. Without such proof, there can be no plausible reason to believe that her contractual declaration that she was an independent contractor has been qualified.

Thus, we see no reason to deviate from our original conclusion that complainant was never respondents’ employee. Complainant’s motion for reconsideration is, therefore, denied.”

Of course, Carungcong disagrees with these dispositions. Quite possibly, others may share her opinion, and insist that there was error in either the appreciation of the evidence or the choice of law or jurisprudence applied by the Commission. But such errors of judgment as might be ascribed to the Commission's reasoned conclusions may not be accorded so egregious a cast as to be fairly considered to constitute grave abuse of discretion meriting correction by the extraordinary writ of certiorari,

It should be apparent that no whimsically, capriciousness, or want of logic or foundation may rationally be imputed to NLRC in its marshalling and analysis of the evidence, its identification of the issues, in its assessment of the arguments thereon, and its conclusions on the basis thereof. It is simply not possible in the premises to opine that grave abuse of discretion was attendant on its challenged decisions.

WHEREFORE, the petition is DISMISSED, with costs against petitioner.

SO ORDERED.

Romero, Melo, Francisco, and Panganiban, JJ., concur.

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[1] Rollo, p. 19; Respondents' Exh. 1 (Rollo, p. 560 et seq).

[2] Annex G, petition; Exh.2 in proceeding a quo (Rollo, p. 562).

[3] Exh. 3 (Rollo, p. 564).

[4] Petitioner's Exh. C (Rollo, p. 19); Respondents' Exh. 4 (Rollo, pp. 566 et seq.) N.B. The New Business Office of which Carungcong had charge was the NARRA Office.

[5] SEE Footnote 1, *supra*.

[6] Rollo, pp. 27-28.

[7] *Id.*, pp. 28-29

[8] *Id.*, pp. 29-30, 721. At the bottom is a handwritten notation, apparently by Deveza, reading: "I served this letter personally to Susan in the presence of Mr. Armand Nicolas but she refused to acknowledge receipt of the original sealed in an envelope. I left the envelope on her table before her and informed the 2 NBO staff, Kathrina and Llith to remind Susan of the letter that she left behind. (Sgd)\*\*, 11 Jan 1990, 2:02 p.m."

[9] Promulgated on July 13, 1992, in Case No. NLRC-NCR-00-01-00333-90.

[10] According to the petition, Lance Kemp is SunLife's Vice President for Far East Asia, and Merton Deveza, Director of Sales for Marketing (later of Marketing Service).

[11] Rollo at p. 144.

[12] NLRC decision of July 29, 1994 at pp. 29-30, Annex E of Petition; see Rollo at pp. 173-4. The decision was written by Presiding Commissioner Edna Bonto-Perez, with whom concurred Commissioners Victoriano Calaycay and Rogelio I. Rayala. The latter however dissented in part, opining that since Carungcong was an independent contractor and the Commission had no jurisdiction over her complaint, there was "'no basis in the grant of backwages."

[13] NLRC "Decision" of October 28, 1994, Annex H of Petition; see Rollo at 181, et seq. The decision was written by Presiding Commissioner Raul T. Aquino (Presiding Commissioner Bonto-Perez having retired), with the concurrence of Commissioners Calaycay and Rayala.

[14] Rollo, p.18.

[15] See Petition at p. 60; Rollo at p. 68.

[16] Id. At pp.67-8.

[17] Id. At pp. 71-4.

[18] See comment of private respondents at p. 7, et seq.; Rollo at p. 227.

[19] Rollo, pp. 258 et seq.

[20] Id., pp. 435 et seq.

[21] Id., pp. 494 et seq.

[22] Id., pp. 542 et seq.

[23] Id., pp. 726 et seq.

[24] Id., pp. 755 et seq.

[25] Id., pp. 779 et seq.

[26] Id., pp. 956 et seq.

[27] Temporary rollo.

[28] Temporary rollo.

[29] Rollo, pp. 781-947.

[30] Id., pp. 546-721.

[31] In his sworn statements, Exhibits 24 and 35.

[32] In her sworn statement, Exhibit 26.

[33] Exhs. 25 and 26-A, respectively.

[34] Exh. 27.

[35] Exh. 28.

[36] Exh. 29.

[37] Exhs. 30, 33.

[38] Exhs. 31, 34.

[39] Exh. 32.

[40] Exh. 9. A similar denial is set out in his note to Sibayan dated January 16, 1990 (Exh. 12).

[41] Respondent Commission's finding that "indicated in the very face of her latest contract is the fact that she was accorded all the chances she needed to seek professional and legal advice relative thereto before she signed the said contract." (Rollo, p. 167).

[42] Annex G, petition; Exh. 2 in proceedings a quo (Rollo, p. 562).

[43] Exh. 3 (Rollo, p. 564).

[44] SEE footnote 1, supra.

[45] See Petition at p. 60; Rollo at p. 68.

[46] Rollo, pp. 167 to 171.

[47] Id., pp. 184 et seq.

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