

**ANGELITO L. LAZARO, PROPRIETOR OF ROYAL STAR MARKETING,
PETITIONER, VS. SOCIAL SECURITY COMMISSION, ROSALINA
LAUDATO, SOCIAL SECURITY SYSTEM AND THE HONORABLE
COURT OF APPEALS, ...**

G.R. No. 138254. July 30, 2004

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TINGA, J.:

Before us is a Petition for Review under Rule 45, assailing the Decision[1] of the Court of Appeals Fifteenth Division[2] in CA-G.R. Sp. No. 40956, promulgated on 20 November 1998, which affirmed two rulings of the Social Security Commission (“SSC”) dated 8 November 1995 and 24 April 1996.

Private respondent Rosalina M. Laudato (“Laudato”) filed a petition before the SSC for social security coverage and remittance of unpaid monthly social security contributions against her three (3) employers. Among the respondents was herein petitioner Angelito L. Lazaro (“Lazaro”), proprietor of Royal Star Marketing (“Royal Star”), which is engaged in the business of selling home appliances.[3] Laudato alleged that despite her employment as sales supervisor of the sales agents for Royal Star from April of 1979 to March of 1986, Lazaro had failed during the said period, to report her to the SSC for compulsory coverage or remit Laudato’s social security contributions.[4]

Lazaro denied that Laudato was a sales supervisor of Royal Star, averring instead that she was a mere sales agent whom he paid purely on commission basis. Lazaro also maintained that Laudato was not subjected to definite hours and conditions of work. As such, Laudato could not be deemed an employee of Royal Star.[5]

After the parties submitted their respective position papers, the SSC promulgated a Resolution[6] dated 8 November 1995 ruling in favor of Laudato.[7] Applying the “control test,” it held that Laudato was an employee of Royal Star, and ordered Royal Star to pay the unremitted social security contributions of Laudato in the amount of Five Thousand Seven Pesos and Thirty Five Centavos (P5,007.35), together with the penalties totaling Twenty Two Thousand Two Hundred Eighteen Pesos and Fifty Four Centavos (P22,218.54). In addition, Royal Star was made liable to pay damages to the SSC in the amount of Fifteen Thousand Six Hundred Eighty Pesos and Seven Centavos (P15,680.07) for not reporting Laudato for social security coverage, pursuant to Section 24 of the Social Security Law.[8]

After Lazaro’s Motion for Reconsideration before the SSC was denied,[9] Lazaro filed a Petition for Review with the Court of Appeals. Lazaro reiterated that Laudato was merely a sales agent who was paid purely on commission basis, not included in the company payroll, and who neither observed regular working hours nor accomplished time cards.

In its assailed Decision, the Court of Appeals noted that Lazaro’s arguments were a reprise of those already presented before the SSC.[10] Moreover, Lazaro had not come forward with particulars and specifics in his petition to show that the Commission’s ruling is not supported by substantial evidence.[11] Thus, the appellate court affirmed the finding that Laudato was an employee of Royal Star, and hence entitled to coverage under the

Social Security Law.

Before this Court, Lazaro again insists that Laudato was not qualified for social security coverage, as she was not an employee of Royal Star, her income dependent on a generation of sales and based on commissions.[12] It is argued that Royal Star had no control over Laudato's activities, and that under the so-called "control test," Laudato could not be deemed an employee.[13]

It is an accepted doctrine that for the purposes of coverage under the Social Security Act, the determination of employer-employee relationship warrants the application of 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 done, but also as to the means and methods by which the same is accomplished.[14] The SSC, as sustained by the Court of Appeals, applying the control test found that Laudato was an employee of Royal Star. We find no reversible error.

Lazaro's arguments are nothing more but a mere reiteration of arguments unsuccessfully posed before two bodies: the SSC and the Court of Appeals. They likewise put to issue factual questions already passed upon twice below, rather than questions of law appropriate for review under a Rule 45 petition. The determination of an employer-employee relationship depends heavily on the particular factual circumstances attending the professional interaction of the parties. The Court is not a trier of facts[15] and accords great weight to the factual findings of lower courts or agencies whose function is to resolve factual matters.[16]

Lazaro's arguments may be dispensed with by applying precedents. Suffice it to say, the fact that Laudato was paid by way of commission does not preclude the establishment of an employer-employee relationship. In *Grepalife v. Judico*,[17] the Court upheld the existence of an employer-employee relationship between the insurance company and its agents, despite the fact that the compensation that the agents on commission received was not paid by the company but by the investor or the person insured.[18] The relevant factor remains, as stated earlier, 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 methods by which the same is to be accomplished.[19]

Neither does it follow that a person who does not observe normal hours of work cannot be deemed an employee. In *Cosmopolitan Funeral Homes, Inc. v. Maalat*,[20] the employer similarly denied the existence of an employer-employee relationship, as the claimant according to it, was a "supervisor on commission basis" who did not observe normal hours of work. This Court declared that there was an employer-employee relationship, noting that "[the] supervisor, although compensated on commission basis, [is] exempt from the observance of normal hours of work for his compensation is measured by the number of sales he makes." [21]

It should also be emphasized that the SSC, also as upheld by the Court of Appeals, found that Laudato was a sales supervisor and not a mere agent.[22] As such, Laudato oversaw and supervised the sales agents of the company, and thus was subject to the control of management as to how she implements its policies and its end results. We are disinclined to reverse this finding, in the absence of countervailing evidence from Lazaro and also in light of the fact that Laudato's calling cards from Royal Star indicate that she is indeed a sales supervisor.

The finding of the SSC that Laudato was an employee of Royal Star is supported by substantial evidence. The SSC examined the cash vouchers issued by Royal Star to Laudato,[23] calling cards of Royal Star denominating Laudato as a "Sales Supervisor" of the company,[24] and Certificates of Appreciation issued by Royal Star to Laudato in recognition of her unselfish and loyal efforts in promoting the company.[25] On the other hand, Lazaro has failed to present any convincing contrary evidence, relying instead on his bare assertions. The Court of Appeals correctly ruled that petitioner has not sufficiently shown that the SSC's ruling was not supported by substantial evidence.

A piece of documentary evidence appreciated by the SSC is Memorandum dated 3 May 1980 of Teresita Lazaro, General Manager of Royal Star, directing that no commissions were to be given on all “main office” sales from walk-in customers and enjoining salesmen and sales supervisors to observe this new policy.[26] The Memorandum evinces the fact that, contrary to Lazaro’s claim, Royal Star exercised control over its sales supervisors or agents such as Laudato as to the means and methods through which these personnel performed their work.

Finally, Lazaro invokes our ruling in the 1987 case of *Social Security System v. Court of Appeals*[27] that a person who works for another at his own pleasure, subject to definite hours or conditions of work, and is compensated according to the result of his effort is not an employee.[28] The citation is odd for Lazaro to rely upon, considering that in the cited case, the Court affirmed the employee-employer relationship between a sales agent and the cigarette firm whose products he sold.[29] Perhaps Lazaro meant instead to cite our 1969 ruling in the similarly-titled case of *Social Security System v. Court of Appeals*,[30] also cited in the later eponymous ruling, whose disposition is more in accord with Lazaro’s argument.

Yet, the circumstances in the 1969 case are very different from those at bar. Ruling on the question whether jockeys were considered employees of the Manila Jockey Club, the Court noted that the jockeys were actually subjected to the control of the racing steward, whose authority in turn was defined by the Games and Amusements Board.[31] Moreover, the jockey’s choice as to which horse to mount was subject to mutual agreement between the horse owner and the jockey, and beyond the control of the race club.[32] In the case at bar, there is no showing that Royal Star was similarly precluded from exerting control or interference over the manner by which Laudato performed her duties. On the contrary, substantial evidence as found by the SSC and the Court of Appeals have established the element of control determinative of an employer-employee relationship. We affirm without hesitation.

WHEREFORE, the Petition is DENIED and the assailed Decision of the Court of Appeals dated 20 November 1998 is AFFIRMED. Costs against petitioner.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1]Rollo, pp. 18-22.

[2]Penned by Justice B. Guerrero, concurred in by Justices Portia Aliño-Hormachuelos and Presbitero J. Velasco, Jr.

[3]Records, p. 17. The two other employers were Buncayo Enterprises and B & E Marketing Co.

[4]Ibid.

[5]Rollo, p. 19.

[6]Written by Commissioner C. Seno, and adopted by the Social Security Commission en banc, composed of Chairman J. Tan, Vice-Chairman R. Valencia, and Commissioners R. Inocentes, B. Hernandez, O. Amarin, and A. Arnaez.

[7]Co-respondents B&E Marketing Co., and Buncayo Enterprises did not appeal the adverse decision against them by the SSC. Rollo, p. 20.

[8]See Section 24(a), Rep. Act No. 1161, as amended.

[9]In an Order dated 24 April 1996. Records, pp. 13-14.

[10]Rollo, p. 21.

[11]Ibid.

[12]Id. at 13.

[13]Id. at 14.

[14]Investment Planning Corp. v. Social Security System, G.R. No. L-19124, 18 November 1967, 21 SCRA 924, 928-929.

[15]See e.g., Naguiat v. Court of Appeals, G.R. No. 118375, 30 September 2003; W-Red Construction and Dev't. Corp. v. CA, G.R. No. 122648, 17 August 2000, 338 SCRA 341, 345.

[16]See, e.g., Cebu Shipyard and Eng'g Works, Inc. v. William Lines, Inc., 366 Phil. 439, 451 (1999); Engreso v. De La Cruz, G.R. No. 148727, 9 April 2003, 401 SCRA 217, 220.

[17]G.R. No. 73887, 21 December 1989, 180 SCRA 445.

[18]Id. at 449-450.

[19]Ibid. See also Social Security System v. Court of Appeals, G.R. No. L-46058, 14 December 1987; 156 SCRA 383, 388; Investment Planning Corp. v. SSS, *supra* note 14.

[20]G.R. No. 86693, 2 July 1990, 187 SCRA 108.

[21]Cosmopolitan Funeral Homes, Inc. v. Maalat; *id.* at 114.

[22]Records, p. 22.

[23]Rollo, pp. 59-70.

[24]Id. at 71.

[25]Id. at 72-73.

[26]Id. at 58.

[27]G.R. No. L-46058, 14 December 1987, 156 SCRA 383.

[28]Rollo, p. 88.

[29]SSS v. Court of Appeals, *supra* note 27 at 391.

[30]G.R. No. L-26146, 31 October 1969, 30 SCRA 210.

[31]Id. at 214.

[32]Ibid.

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