

RAQUEL P. CONSULTA, PETITIONER, VS. COURT OF APPEALS, PAMANA PHILIPPINES, INC., RAZUL Z. REQUESTO, AND ALETA TOLENTINO, RESPONDENTS.

G.R. NO. 145443. March 18, 2005

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review[1] assailing the Decision of 28 April 2000 and Resolution of 9 October 2000 promulgated by the Court of Appeals (“appellate court”)[2] in CA-G.R. SP No. 50462. The appellate court reversed the Resolution of the National Labor Relations Commission (“NLRC”) which in turn affirmed the Labor Arbiter’s Decision.

The Antecedent Facts

Pamana Philippines, Inc. (“Pamana”) is engaged in health care business. Raquel P. Consulta (“Consulta”) was a Managing Associate of Pamana. Consulta’s appointment dated 1 December 1987 states:

We are pleased to formally confirm your appointment and confer upon you the authority as MANAGING ASSOCIATE (MA) effective on December 1, 1987 up to January 2, 1988. Your area of operation shall be within Metro Manila.

In this capacity, your principal responsibility is to organize, develop, manage, and maintain a sales division and a full complement of agencies and Health Consultants (HealthCons) and to submit such number of enrollments and revenue attainments as may be required of your position in accordance with pertinent Company policies and guidelines. In pursuit of this objective, you are hereby tasked with the responsibilities of recruiting, training and directing your Supervising Associates (SAs) and the Health Consultants under their respective agencies, for the purpose of promoting our corporate Love Mission.

In the performance of such duties, you are expected to uphold and promote the Company’s interests and good image and to abide by its principles and established norms of conduct necessary and appropriate in the discharge of your functions. The authority as MA likewise vests upon you command responsibility for the actions of your SAs and HealthCons; the Company therefore reserves the right to debit your account for any accountabilities/financial obligations arising therefrom.

By your acceptance of this appointment, it is understood that you must represent the Company on an exclusive basis, and must not engage directly or indirectly in activities, nor become affiliated in official or unofficial capacity with companies or organizations which compete or have the same business as Pamana. It is further understood that his [sic] self-inhibition shall be effective for a period of one year from date of official termination with the Company arising from any cause whatsoever.

In consideration of your undertaking the assignment and the accompanying duties and responsibilities, you shall be entitled to compensation computed as follows:

On Initial Membership Fee Entrance Fee 5%

Medical Fee 6%

On Subsequent Membership Fee 6%

You are likewise entitled to participate in sales contests and such other incentives that may be implemented by the Company.

This appointment is on a non-employer-employee relationship basis, and shall be in accordance with the Company Guidelines on Appointment, Reclassification and Transfer of Sales Associates.[3]

Sometime in 1987, Consulta negotiated with the Federation of Filipino Civilian Employees Association (“FFCEA”) working at the United States Subic Naval Base for a Health Care Plan for the FFCEA members. Pamana issued Consulta a Certification[4] dated 23 November 1987, as follows:

This certifies that the Emerald Group under Ms. Raquel P. Consulta, as Managing Consultant, is duly authorized to negotiate for and in behalf of PAMANA with the Federation of Filipino Civilian Employees Association covering all U.S. facilities in the Philippines, the coverage of FFCEA members under the Pamana Golden Care Health Plans.

Upon such negotiation and eventual execution of the contract agreements, entitlements of all benefits due the Emerald Group in it’s [sic] entirely including it’s [sic] Supervising Consultants and Health Consultants, by of commissions, over-rides and other package of benefits is hereby affirmed, obligated and confirmed as long as the contracts negotiated and executed are in full force and effect, including any and all renewals made. And provided further that the herein authorized consultants remain in active status with the Pamana Golden Care sales group.[5]

On 4 March 1988, Pamana and the U.S. Naval Supply Depot signed the FFCEA account. Consulta, claiming that Pamana did not pay her commission for the FFCEA account, filed a complaint for unpaid wages or commission against Pamana, its President Razul Z. Requesto (“Requesto”), and its Executive Vice-President Aleta Tolentino (“Tolentino”).

The Rulings of the Labor Arbiter and the NLRC

In a Decision promulgated on 23 June 1993, Labor Arbiter Alex Arcadio Lopez ruled, as follows:

ACCORDINGLY, respondent is hereby ordered to pay complainant her unpaid commission to be computed as against actual transactions between respondent PAMANA and the contracting Department of U.S. Naval Supply Depot upon presentation of pertinent document.

Respondent is further ordered to pay ten (10%) percent attorney’s fees.

SO ORDERED.[6]

Pamana, Requesto and Tolentino (“Pamana et al.”) appealed the Decision of the Labor Arbiter.

In a Resolution[7] promulgated on 22 July 1994, the NLRC dismissed the appeal and affirmed the Decision of the Labor Arbiter. In its Order promulgated on 3 October 1994, the NLRC denied the motion for reconsideration of Pamana et al.

Pamana et al. filed a petition for certiorari before this Court. In compliance with this Court’s resolution dated 6 February 1995, the Office of the Solicitor General submitted a Manifestation in Lieu of Comment praying to grant the petition on the ground that Consulta was not an employee of Pamana. On 23 November 1998, this Court referred the case to the appellate court pursuant to *St. Martin Funeral Home v. NLRC*. [8]

The Decision of the Appellate Court

In its Decision promulgated on 28 April 2000, the appellate court reversed the NLRC Decision. The appellate court ruled that Consulta was a commission agent, not an employee of Pamana. The appellate court also ruled that Consulta should have litigated her claim for unpaid commission in an ordinary civil action.

Hence, Consulta's recourse to this Court.

The Issues

The issues are:

- Whether Consulta was an employee of Pamana.
- Whether the Labor Arbiter had jurisdiction over Consulta's claim for unpaid commission.

The Ruling of the Court

We affirm the Decision of the appellate court. Consulta was an independent agent and not an employee of Pamana.

The Four-Fold Test

In *Viaña v. Al-Lagadan*,^[9] the Court first laid down the four-fold test to determine the existence of an employer-employee relationship. The four elements of an employer-employee relationship, which have since been adopted in subsequent jurisprudence,^[10] are (1) the power to hire; (2) the payment of wages; (3) the power to dismiss; and (4) the power to control. The power to control is the most important of the four elements.

In *Insular Life Assurance Co., Ltd. v. NLRC*,^[11] the Court explained the scope of the power to control, thus:

x x x It should, however, be obvious that not every form of control that the hiring party reserves to himself over the conduct of the party hired in relation to the services rendered may be accorded the effect of establishing an employer-employee relationship between them in the legal or technical sense of the term. A line must be drawn somewhere, if the recognized distinction between an employee and an individual contractor is not to vanish altogether. Realistically, it would be a rare contract of service that gives untrammelled freedom to the party hired and eschews any intervention whatsoever in his performance of the engagement.

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 or 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.

In the present case, the power to control is missing. Pamana tasked Consulta to organize, develop, manage, and maintain a sales division, submit a number of enrollments and revenue attainments in accordance with company policies and guidelines, and to recruit, train and direct her Supervising Associates and Health Consultants.^[12] However, the manner in which Consulta was to pursue these activities was not subject to the control of Pamana. Consulta failed to show that she had to report for work at definite hours. The amount of time she devoted to soliciting clients was left entirely to her discretion. The means and methods of recruiting and training her sales associates, as well as the development, management and maintenance of her sales division, were left to her sound judgment.

Consulta claims that the documents she submitted show that Pamana had control on the conduct of her work and the means and methods to accomplish the work. However, the documents only prove the absence of the power to

control. The Minutes of the meeting on 31 May 1988 of the Managing Associates with Fely Whitfield, Vice-President for Sales of Pamana, reflect the following:

At this point Mrs. Whitfield gave some pointers on recruitment and selling techniques and reminded the group that the success of an agency is still people. The more recruits you have the better is your chance to achieve your quota.

She also announced June be made a recruitment month, and told the MAs to remind their associates that if you cannot sell to a prospect then recruit him or her.

She also discussed extensively the survey method of selling and recruitment and that the sales associates should be more aggressive in their day to day sales activity. She reminded the MAs to fill up their recruitment requirements to be able to participate in the monthly and quarterly contest.

x x x

4. Recruitment Campaign

In connection with the Recruitment Campaign for June, Mr. R. Canon[13] requested for Management support. He suggested that a recruitment Advertisement be placed in a leading Metropolitan daily Newspaper. The cost of which was unanimously suggested by MAs that Management should share at least 50%.

5. MAs agreed to pay in advance their share for the salary of the MAs Secretary.[14] (Emphasis supplied)

The Minutes of the 7 June 1988 meeting reflect the following:

III. PRODUCTION & RECRUITMENT INCENTIVES

To help the MAs in their recruitment drive Mrs. Whitfield suggested some incentives to be undertaken by the MAs like (1) cash incentives for associates that bring in a recruit, (2) cash incentives based on production brought in by these new recruits.

She said that MAs, as businessm[e]n should invest time, effort & money to their work, because it will redound [sic] to their own good anyway, that the success of their agency should not depend solely on what management could give as incentives but also on incentives of MAs within their agencies. It should be a concerted effort.

After a thorough discussion on the pros & cons of the suggestions it was agreed that a P10.00 per recruit be given to the associate that will recruit and an additional cash prize based on production of these new recruits.[15]

Clearly, the Managing Associates only received suggestions from Pamana on how to go about their recruitment and sales activities. They could adopt the suggestions but the suggestions were not binding on them. They could adopt other methods that they deemed more effective.

Further, the Managing Associates had to ask the Management of Pamana to shoulder half of the advertisement cost for their recruitment campaign. They shelled out their own resources to bolster their recruitment. They shared in the payment of the salaries of their secretaries. They gave cash incentives to their sales associates from their own pocket. These circumstances show that the Managing Associates were independent contractors, not employees, of Pamana.

Finally, Pamana paid Consulta not for labor she performed but only for the results of her labor.[16] Without results, Consulta's labor was her own burden and loss. Her right to compensation, or to commission, depended on the tangible results of her work[17] - whether she brought in paying recruits. Consulta's appointment paper provides:

In consideration of your undertaking the assignment and the accompanying duties and responsibilities, you shall be entitled to compensation computed as follows:

On Initial Membership Fee Entrance Fee 5%

Medical Fee 6%

On Subsequent Membership Fee 6%

You are likewise entitled to participation in sales contests and such other incentives that may be implemented by the Company.[18]The Guidelines on Appointment of Associates show that a Managing Associate received the following commissions and bonuses:

3. Compensation Package of Regular MAs

Regular MAs shall be entitled to the following compensation and benefits:

3.1 Compensation

a) Personal Production

Individual/Family

Institutional Acct.

commission

30%

30%

bonus

40%

-

b) Group Production

overriding commission

6%

6%

bonus

5%

-

3.2 Benefits

Participation in all sales contests corresponding to the MA position plus any such other benefits as may be provided for the MA on regular status.[19]

Aside from commissions, bonuses and other benefits that depended solely on actual sales, Pamana did not pay Consulta any compensation for managing her sales division, or for recruiting and training her sales consultants. As a Managing Associate, she was only entitled to commissions, bonuses and other benefits, which depended solely on her sales and on the sales of her group.

The Exclusivity Provision

Consulta's appointment had an exclusivity provision. The appointment provided that Consulta must represent Pamana on an exclusive basis. She must not engage directly or indirectly in activities of other companies that compete with the business of Pamana. However, the fact that the appointment required Consulta to solicit business exclusively for Pamana did not mean that Pamana exercised control over the means and methods of Consulta's work as the term control is understood in labor jurisprudence.[20] Neither did it make Consulta an employee of Pamana. Pamana did not prohibit Consulta from engaging in any other business, or from being connected with any other company, for as long as the business or company did not compete with Pamana's business.

The prohibition applied for one year after the termination of the contract with Pamana. In one of their meetings, one of the Managing Associates reported that he was transferring his sales force and account from another company to Pamana.[21] The exclusivity provision was a reasonable restriction designed to prevent similar acts prejudicial to Pamana's business interest. Article 1306 of the Civil Code provides that "[t]he contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy."

Jurisdiction over Claim for Unpaid Commission

There being no employer-employee relationship between Pamana and Consulta, the Labor Arbiter and the NLRC had no jurisdiction to entertain and rule on Consulta's money claim.

Article 217 of the Labor Code provides:

ART. 217. Jurisdiction of Labor Arbiters and the Commission. - (a) Except as otherwise provided under this Code the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

- Unfair labor practice cases;
- Termination disputes;
- If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;
- Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;
- Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; and
- Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims, arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (P5,000.00) regardless of whether accompanied with a claim for reinstatement.

(b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.

(c) Cases arising from the interpretation or implementation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements.

Consulta filed her action under Article 217(a)(6) of the Labor Code. However, since there was no employer-employee relationship between Pamana and Consulta, the Labor Arbiter should have dismissed Consulta's claim for unpaid commission. Consulta's remedy is to file an ordinary civil action to litigate her claim.

WHEREFORE, the petition is DISMISSED and the Decision of the Court of Appeals in CA-G.R. SP No. 50462 is AFFIRMED in toto.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, Ynares-Santiago, and Azcuna, JJ., concur.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Fermin A. Martin, Jr. and Romeo A. Brawner, concurring.

[3] Rollo, p. 73.

[4] Signed by its President Razul Z. Requesto.

[5] Rollo, p. 75.

[6] Ibid., p. 64.

[7] Penned by Commissioner Alberto R. Quimpo, with Presiding Commissioner Bartolome S. Carale and Commissioner Vicente S.E. Veloso, concurring.

[8] 356 Phil. 811 (1998). CA Records, p. 193.

[9] 99 Phil. 408 (1956).

[10] *Sonza v. ABS-CBN Broadcasting Corporation*, G.R. No. 138051, 10 June 2004; *Abante v. Lamadrid*, G.R. No. 159890, 28 May 2004; *Sy v. Court of Appeals*, 446 Phil. 404 (2003); *Tiu v. NLRC*, 324 Phil. 202 (1996).

[11] G.R. No. 84484, 15 November 1989, 179 SCRA 459.

[12] Rollo, p. 73.

[13] Raul P. Canon is one of the Managing Associates.

[14] Rollo, pp. 103, 105.

[15] Ibid., p. 109.

[16] See *Investment Planning Corp. of the Phil. v. SSS*, 129 Phil 143 (1967).

[17] Ibid.

[18] Rollo, p. 73.

[19] Ibid., p. 79.

[20] See AFP Mutual Benefit Association, Inc. v. NLRC, G.R. No. 102199, 28 January 1997, 267 SCRA 47.v[21]Rollo, p. 99.

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