

INVESTMENT PLANNING CORPO-RATION OF THE PHILIPPINES, PETITIONER-APPELLANT, VS. SOCIAL SECURITY SYSTEM, RESPONDENT-APPELLEE.

G.R. No. 19124. November 18, 1967

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Petitioner is a domestic corporation engaged in business management and the sale of securities. It has two classes of agents who sell its investment plans: (1) salaried employees who keep definite hours and work under the control and supervision of the company; and (2) registered representatives who work on commission basis.

On August 27, 1960 petitioner, through counsel, applied to respondent Social Security Commission for exemption of its so-called registered representatives from the compulsory coverage of the Social Security Act. The application was denied in a letter signed by the Secretary to the Commission on January 16, 1961. A motion to reconsider was filed and also denied, after hearing, by the Commission itself in its resolution dated September 8, 1961. The matter was thereafter elevated to this Court for review.

The issue submitted for decision here is whether petitioner's registered representatives are employees within the meaning of the Social Security Act (R.A. No. 1161 as amended). Section 8 (d) thereof defines the term "employee" - for purposes of the Act - as "any person who performs services for an 'employer' in which either or both mental and physical efforts are used and who receives compensation for such services, where there is an employer-employee relationship." (As amended by Sec. 4, R.A. No. 2658) These representatives are in reality commission agents. The uncontradicted testimony of petitioner's lone witness, who was its assistant sales director, is that these agents are recruited and trained by him particularly for the job of selling "Filipinas Mutual Fund" shares, made to undergo a test after such training and, if success-ful, are given license to practice by the Securities and Exchange Commission. They then execute an agreement with petitioner with respect to the sale of FMF shares to the general public. Among the features of said agreement which respondent Commission considered pertinent to the issue are: (a) an agent is paid compensation for services in the form of commission; (b) in the event of death or resignation he or his legal representative shall be paid the balance of the commission corresponding to him; (c) he is subject to a set of rules and regulations governing the performance of his duties under the agreement; (d) he is required to put up a performance bond; and (e) his services may be terminated for certain causes. At the same time the Commission found from the evidence and so stated in its resolution that the agents "are not required to report (for work) at any time; they do not have to devote their time exclusively to or work solely for petitioner; the time and the effort they spend in their work depend entirely upon their own will and initiative; they are not required to account for their time nor submit a record of their activities; they shoulder their own selling expenses as well as transportation; and they are paid their commission based on a certain percentage of their sales." The record also reveals that the commission earned by an agent on his sales is directly deducted by him from the amount he receives from the investor and turns over to the company the amount invested after such deduction is made. The majority of the agents are regularly employed elsewhere - either in the government or in

private enterprises.

Of the three requirements under Section 8 (d) of the Social Security Act it is admitted that the first is present in respect of the agents whose status is in question. They exert both mental and physical efforts in the performance of their services. The compensation they receive, however, is not necessarily for those efforts but rather for the results thereof, that is, for actual sales that they make. This point is relevant in the determination of whether or not the third requisite is also present, namely, the existence of employer-employee relationship. Petitioner points out that in effect such compensation is paid not by it but by the investor, as shown by the basis on which the amount of the commission is fixed and the manner in which it is collected.

Petitioner submits that its commission agents, engaged under the terms and conditions already enumerated, are not employees but independent contractors, as defined in Article 1713 of the Civil Code, which provides:

"ART. 1713. By the contract for a piece of work the contractor binds him-self to execute a piece of work for the employer, in consideration of a certain price or compensation. The contractor may either employ only his labor or skill, or also furnish the material."

We are convinced from the facts that the work of petitioner's agents or registered representatives more nearly approximates that of an independent contractor than that of an employee. The latter is paid for the labor he performs, that is, for the acts of which such labor consists; the former is paid for the result thereof. This Court has recognized the distinction in *Chartered Bank et al. vs. Constantino*, 56 Phil. 717, where it said:

"On this point, the distinguished commentator Manresa in referring to Article 1588 of the (Spanish) Civil Code has the following to say. x x x

"The code does not begin by giving a general idea of the subject matter, but by fixing its two dis-tinguishing characteristics.

"But such an idea was not absolutely necessary because the dif-ference between the lease of work by contract or for a fixed price and the lease of services of hired servants or laborers is sufficiently clear. In the latter, the direct object of the contract is the lessor's labor; the acts in which such labor consists, performed for the benefit of the lessee, are taken into account immediately. In work done by contract or for a fixed price, the lessor's labor is indeed an important, a most important factor; but it is not the direct object of the contract, nor is it immediately taken into account. The object which the parties consider, which they bear in mind in order to determine the cause of the contract, and upon which they really give their consent, is not the labor but its result, the complete and finished work, the aggregate of the lessor's acts embodied in something material, which is the useful object of the contract. x x x' (Manresa *Commentarios al Codigo Civil*, Vol. X, 3d ed., pp. 774-775.)"

Even if an agent of petitioner should devote all of his time and effort trying to sell its investment plans he would not necessarily be entitled to compensation therefor. His right to compensation depends upon and is measured by the tangible results he produces.

The specific question of when there is "employer?employee relationship" for purposes of the Social Security Act has not yet been settled in this jurisdiction by any decision of this Court. But in other connections wherein the term is used the test that has been generally applied is the so-called 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 methods by which the same is to be accomplished.

Thus in *Philippine Manufacturing Company vs. Geronimo et al.*, L-6968, November 29, 1954, involving the Workmen's Compensation Act, we read:

“ . . . Garcia, a painting contractor, had a contract undertaken to paint a water tank belonging to the Company ‘in accordance with specifications and price stipulated,’ and with ‘the actual supervision of the work (being) taken care of by’ himself. Clearly, this made Garcia an independent contractor, for while the company prescribed what should be done, the doing of it and the supervision thereof was left entirely to him, all of which meant that he was free to do the job according to his own method without being subject to the control of the company except as to the result.”

Cruz et al. vs. The Manila Hotel Company, L-9110, April 30, 1957, presented the issue of who were to be considered employees of the defendant firm for purposes of separation gratuity. LVN Pictures, Inc. vs. Phil. Musicians Guild et al., L-12582, January 28, 1961, involved the status of certain musicians for purposes of determining the appropriate bargaining representative of the employees. In both instances the "control" test was followed. (See also Mensal vs. P.P. Gocheco Lumber Co., L-8017, April 30, 1955; and Viana vs. Alagadan, et al., L-8967, May 31, 1956.)

In the United States, the Federal Social Security Act of 1935 set forth no definition of the term 'employee' other than that 'it includes an officer of a corporation.' Under that Act the U.S. Supreme Court adopted for a time and in several cases the so-called "economic reality" test instead of the "control" test. (U.S. vs. Silk and Harrison, 91 Law Ed. 1757; Bartels vs. Birmingham Ibid, 1947, both decided in June 1947). In the Bartels case the Court said:

"In United States v. Silk, No. 312, 331 US 704, ante, 1957, 67 S Ct 1463, supra, we held that the relationship of employer-employee, which determines the liability for employment taxes under the Social Security Act was not to be deter-mines solely by the idea of control which an alleged employer may or could exercise over the details of the service rendered to his business by the worker or workers. Obviously control is character-istically associated with the employer-employee relationship, but in the application of social legislation employees are those who as a matter of economic reality are dependent upon the business to which they render service. In Silk, we pointed out that permanency of the relation, the skill required, the investment in the facilities for work and opportunities for profit or less from the activities were also factors that should enter into judicial determination as to the coverage of the Social Security Act. It is the total situation that controls. These standards are as important in the entertainment field as we have just said, in Silk, that they were in that of distribution and transportation." (91 Law, Ed. 1947, 1953;)

However, the "economic-reality" test was subsequently abandoned as not reflective of the intention of Congress in the enactment of the original Security Act of 1935. The change was accomplished by means of an amendatory Act passed in 1948, which was construed and applied in later cases. In Benson vs. Social Security Board, 172 F. 2d. 682, the U.S. Supreme Court said:

"After the decision by the Supreme Court in the Silk case, the Treasury Department revamped its Regulation, 12 Fed. Reg. 7966, using the test set out in the Silk case for determining the existence of an employer-employee relationship. Apparently this was not the concept of such a relationship that Congress had in mind in the passage of such remedial acts as the one involved here because thereafter on June 14, 1948, Congress enacted Public Law 642, 42 U.S. C.A. Sec. 1301(a) (6). Section 1101(a) (6) of the Social Security Act was amended to read as follows:

“‘The term ‘employee’ includes an officer of a corpora-tion, but such term does not include (1) any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an independent contractor or (2) any individual (except an officer of a corporation) who is not an employee under such common-law rules.’

"While it is not necessary to explore the full effect of this enactment in the determination of the existence of employer-employee relationships arising in the future, we think it can fairly be said that the intent of Congress was to say that in deter-mining in a given case whether under the Social Security Act such a relationship

exists, the common-law elements of such a relationship, as recognized and applied by the courts generally at the time of the passage of the Act, were the standard to be used"

The common-law principles expressly adopted by the United States Congress are summarized in *Corpus Juris Secundum* as follows:

"Under the common-law principles as to tests of the independent contractor relationship, discussed in *Master and Servant*, and applicable in determining coverage under the Social Security Act and related taxing provisions, the significant factor in determining the relationship of the parties is the presence or absence of a supervisory power to control the method and detail of performance of the service, and the degree to which the principal may intervene to exercise such control, the presence of such power of control being indicative of an employment relationship and the absence of such power being indicative of the relationship of independent contractor. In other words, the test of existence of the relationship of independent contractor, which relationship is not taxable under the Social Security Act and related provisions, is whether the one who is claimed to be an independent contractor has contracted to do the work according to his own methods and without being subject to the control of the employer except as to the result of the work." (81 C.J.S. Sec. 5, pp. 24-25;) See also *Millard's Inc. vs. United States*, 146 F. Supp. 385; *Schmidt vs. Ewing*, 108 F. Supp. 505; *Rambin vs. Ewing*, 106 F. Supp. 268.

In the case last cited (*Rambin v. Ewing*) the question presented was whether the plaintiff there, who was a sales representative of a cosmetics firm working on a commission basis, was to be considered an employee. Said the Court:

"Plaintiff's only remuneration was her commission of 40% plus \$5 extra for every \$250 of sales. Plaintiff was not guaranteed any minimum compensation and she was not allowed a drawing account or advance of any kind against unearned commissions. Plaintiff paid all of her traveling expenses and she even had to pay the postage for sending orders to Avon.

"The only office which Avon maintained in Shreveport was an office for the city manager. Plaintiff worked from her own home and she was never furnished any leads. The relationship between plaintiff and Avon was terminable at will x x x

"x x x

"x x x A long line of decisions holds that commissions sales representatives are not employees within the coverage of the Social Security Act. The under-lying circumstances of the relationship between the sales representatives and company often vary widely from case to case, but commission sales representatives have uniformly been held to be out-side the Social Security Act."

Considering the similarity between the definition of "employee" in the Federal Social Security Act (U.S.) as amended and its definitions in our own Social Security Act, and considering further that the local statute is admittedly patterned after that of the United States, the decisions of American courts on the matter before us may well be accorded persuasive force. The logic of the situation indeed dictates that 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 efforts and not the amount thereof, we should not find that the relationship of employer and employee exists.

We have examined the contract form between petitioner and its registered representatives and found nothing therein which would indicate that the latter are under the control of the former in respect of the means and methods they employ in the performance of their work. The fact that for certain specified causes the relationship may be terminated (e.g. failure to meet the annual quota of sales, inability to make any sales production during a six-month period, conduct detrimental to petitioner, etc.) does not mean that such control exists, for the causes of

termination thus specified have no relation to the means and methods of work that are ordinarily required of or imposed upon employees.

In view of the foregoing considerations, the resolution of respondent Social Security Commission sub-ject of this appeal is reversed and set aside, without pronouncement as to costs.

Reyes, Dizon, Bengzon, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.
Concepcion, C.J., did not take part.

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