

**EDWINA LEMA BEECH AND LEONARDO MANECLANG, PETITIONERS,
VS. HONORABLE JOSE C. DE GUZMAN, IN HIS CAPACITY AS
PRESIDING JUDGE OF BRANCH 93 OF THE REGIONAL TRIAL COURT
OF QUEZON CIT...**

G.R. No. 83319. July 24, 1990

Ponente: PARAS, J.

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PARAS, J.:

Petitioners are engaged in training local talents for overseas employment under the name Veam Enterprises.

In September 1986, private respondent Leticia Badar entered into an agreement with petitioner Edwina Lema Beech as general manager and representative of Veam Enterprises, owned by co-petitioner Leonardo Maneclang, whereby the former dubbed as production manager of said enterprise shall be given fifty dollars (\$50.00) per talent as regular commission and four hundred pesos (P400.00), as processing fee per talent that went to the principal of private respondent.

Respondent Badar was able to send 79 talents to petitioners who were confirmed to leave for Japan, hence, respondent is entitled to a commission of P79,000, as regular commission, and P100,000, as processing fee of the 25 talents that went to respondent's principal. However, petitioners only paid respondent P20,000.00, as her regular commission and P5,600.00 for the processing of the 25 talents, leaving an unpaid balance of P59,000, as regular commission and P4,400, as processing fee.

Respondent sent a demand letter (p. 23, Rollo) to petitioner to make good the claim but petitioner, despite receipt thereof still failed to pay the same.

Thereupon, on February 24, 1987, respondent Badar filed a complaint for sum of money in the Regional Trial Court of Quezon City against petitioner.

On July 24, 1987, finding that respondent had substantiated her causes of action with clear, satisfactory and convincing evidence, the trial court rendered judgment in favor of respondent ordering the petitioner:

"1. To pay plaintiff, jointly and severally, the total amount of P63,400.00, representing the unpaid regular commission and processing fee;

"2. To pay plaintiff, jointly and severally, the amount of P10,000.00, by way of attorney's fees; and

"3. To pay the costs."

(p. 2, Decision; p. 32, Rollo)

Petitioners now raise the issue that the trial court has no jurisdiction over the subject matter and/or nature of the action or suit since the case is one for money claims arising from employer-employee relationship and therefore it is the labor arbiters who have the exclusive and original jurisdiction.

The petition is totally unmeritorious.

Firstly, private respondent is an independent contractor. Badar was not a regular salary paid employee but earns on a per head/talent commission basis. She can work as she pleases, on her own schedule, terms and conditions.

"The principal consideration in determining whether a workman is an employee or an independent contractor is the right to control the manner of doing the work, and it is not the actual exercise of the right by interfering with the work, but the right to control, which constitutes the test." (Feati University vs. Bautista, 18 SCRA 1191)

And secondly, petitioners are estopped from raising the defense of the presence of employer-employee relationship since petitioners in their Answer to the Complaint of private respondent stated:

"As stated above, plaintiff (now private respondent) was never an employee of defendant (now petitioner) being that employee-employer relationship never existed between defendant and plaintiff and therefore plaintiff could not be the production manager of defendant's veam enterprises instead Plaintiff is a free lance talent scout." (p. 26, Rollo)

The trial court had jurisdiction over the case at bar since the suit arose from a contract between petitioners and independent contractor Badar and not one under an employer-employee relationship.

PREMISES CONSIDERED, the petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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