

SECOND DIVISION

[G.R. No. 229404, January 24, 2018]

MARILYN B. ASENTISTA, PETITIONER, VS. JUPP & COMPANY, INC., AND/OR MR. JOSEPH V. ASCUTIA, RESPONDENTS.

DECISION

REYES, JR., J:

Before this Court is a Petition for Review on *Certiorari*^[1] under Rule 45 filed by Marilyn B. Asentista (Asentista) seeking to set aside the Decision^[2] dated August 31, 2016 and Resolution^[3] dated November 17, 2016 of the Court of Appeals (CA), in CA-G.R. SP No. 06747-MIN, which set aside and nullified the Resolutions^[4] dated November 28, 2014 and February 27, 2015 of the National Labor Relations Commission (NLRC), ordering respondents JUPP & Company, Inc. (JUPP) and/or its President Joseph V. Ascutia (Ascutia) to pay Asentista her remaining unpaid sales commissions in the amount of P210,077.95 plus ten percent (10%) total monetary award as attorney's fees.

Asentista was employed by JUPP as sales secretary on April 16, 2007. On March 14, 2008, she became a regular employee of the company as a sales assistant and was later appointed in July 2010 as a sales agent of JUPP for its Northern Mindanao area. As a sales agent, Asentista became entitled to a sales commission of two percent for every attained monthly quota. However, despite reaching her monthly quota, JUPP failed to give Asentista her earned sales commission despite repeated requests.^[5]

Meanwhile in 2011, JUPP, through its Administrative and Finance Officer Malou Ramiro, issued a new Toyota Avanza vehicle to Asentista in view of her sales performance in the Cagayan De Oro area. The ownership of the car, however, remains with the company. Notwithstanding lack of agreement, JUPP deducted car plan participation payment amounting to P113,000.00 and one year rental payment of P68,721.36 from her unpaid sales commission.^[6]

On February 4, 2013, Asentista tendered her resignation effective February 28, 2013 and returned the Avanza vehicle to JUPP through Emmanuel P. Pabon.^[7] Thereafter, she filed a claim for unpaid commission and refund for car plan deduction based on the computation^[8] sent by Ascutia, summarized as follows:

2010-----	P	5,361.61
2011-----	P	178,105.06
2012-----	P	143,295.53
Total Amount:	P	334,117.20
Less: P85,305.31 (Cash Advances - Asentista's total debts to		

JUPP)

Total Amount: P248,811.89

Less: P38,733.94 (deposited
commission to Asentista's account)

Total Sales Commission due: P 210,077.99

As a result of the respondents' incessant refusal to pay, Asentista filed a complaint against JUPP and Ascutia before the NLRC Regional Arbitration Branch No. 10, Cagayan de Oro City for non-payment for sales commission.^[9]

For their part, the respondents opposed the allegations of Aseptista, arguing the burden of proof to substantiate her claim for unpaid commission and car participation refund rested upon her. Since the employment agreement signed by Asentista did not include any remuneration for a sales commission and car participation plan, her claim lacked any legal basis for entitlement. Further, Asentista was only allowed to use the Toyota Avanza with car participation during the amortization period for both her personal and official use due to the generosity of JUPP.^[10]

On the other hand, JUPP admitted that despite lack of explicit provision in the employment agreement, Asentista was given during her employment discretionary sales commission subject to the sole prerogative of the company. JUPP likewise acknowledged sole discretion to allow Asentista to own the vehicle after the amortization period.^[11]

In a Decision^[12] dated November 28, 2013, Labor Arbiter (LA) Rammex C. Tiglao dismissed the complaint of Asentista for lack of merit. In so ruling, the LA emphasized the non-entitlement of Asentista to claim for sales commission or refund for amortization payment for the use of the company's car as shown by the employment agreement between JUPP and the complainant. Furthermore, the LA opined on the improbability of omission of the entitlement of unpaid commission in the resignation letter of the complainant, given her six years of employment and educational attainment. Finally, the affidavit and supporting documents of Asentista were disregarded for being self-serving, unreliable and unsubstantial evidence. Thus, it was ruled:

WHEREFORE the instant complaint is **DISMISSED** for lack of merit.

The respondents' counter-claims for exemplary damages and attorney's fees are dismissed for want of jurisdiction and/or lack of merit.^[13]

On appeal, the NLRC in a Resolution^[14] dated November 28, 2014 reversed the decision of the LA and gave more credence on Asentista's claim for unpaid commission based on Ascutia's electronic messages. Further, in the absence of express stipulation, the respondents lacked authority to forfeit Asentista's sales

commission and apply the same as rentals for the personal use of the vehicle.^[15]
Accordingly, it was held that:

WHEREFORE, the appeal is GRANTED.

Respondents are hereby ORDERED to pay Complainant her remaining unpaid sales commissions in the amount of P210,077.95 plus ten percent of the total monetary award as attorney's fees.

SO ORDERED.^[16]

The motion for reconsideration filed by the respondents was denied for lack of merit in a Resolution^[17] dated February 27, 2015.

Aggrieved, the respondents filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA alleging grave abuse of discretion on the part of NLRC for reversing the ruling of the LA and ordering them to pay the complainant the unpaid sales commissions with additional 10% of the total monetary award as attorney's fees.^[18]

In a Decision^[19] dated August 31, 2016, the CA ruled favorably on the petition and reinstated the decision of the LA. CA agreed with the respondents that Asentista is not entitled to the grant of sales commission based on the "Job Offer for Regular Status of Employment." Further, the CA rejected the email allegedly sent by Ascutia for being "self-serving, unreliable and unsubstantial evidence."

"Nowhere could it be read in the contract that private respondent [Asentista] is entitled to the claimed unpaid commission. The Court cannot give credence to the email allegedly sent by petitioner Ascutia to private respondent detailing the computation of her claimed unpaid commission. x x x."

Granting the petition, it was held that:

WHEREFORE, the petition is **GRANTED**. The Resolutions dated November 28, 2014 and February 27, 2015 of the National Labor Relations Commission, Eight Division, Cagayan De Oro City is hereby **SET ASIDE and NULLIFIED**, having been issued in grave abuse of discretion. The Decision of the Labor Arbiter dated November 28, 2013 is hereby **REINSTATED**.

SO ORDERED.^[20]

Hence, this petition.

Ruling of the Court

Before this Court, Asentista argues entitlement to sales commission and refund for car plan participation and amortization payment. She avers that the respondents can no longer refute her allegations since they have already admitted her entitlement to a discretionary commission and deduction in the amount of P113,000.00 and P68,721.36 as payment for her car plan participation and amortization payment.

In their Comment, the respondents reiterate their opposition since the employment agreement did not include sales commission as part of her salary and benefits. The respondents likewise refute the evidentiary value of the alleged email messages of Ascutia for being unsubstantiated and unfounded.

The petition is granted.

The Court reverses the CA's ruling that the respondents have sufficiently established Asentista's non-entitlement in view of the absence of any specific provision in her employment agreement including sales commission as part of her remuneration.

At the outset, the respondents can no longer refute Asentista's entitlement to a discretionary commission since an admission can already be deduced in their position paper.^[21] Moreover, the silence of the employment agreement including sales commission as part of remuneration does not affect her entitlement. As provided by Section 97(f) of the Labor Code, employee's wage has been defined as "remuneration of earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered and includes the fair and reasonable value, as determined by the Secretary of Labor and Employment, of board, lodging, or other facilities customarily furnished by the employer to the employee."^[22]

In *Toyota Pasig, Inc. v. De Peralta*^[23] citing *Iran v. NLRC*,^[24] the Court affirmed the inclusion of sales commission as part of a salesman's remuneration for services rendered to the company. In explaining the wisdom behind the inclusion, it was held that:

This definition explicitly includes commissions as part of wages. While commissions are, indeed, incentives or forms of encouragement to inspire employees to put a little more industry on the jobs particularly assigned to them, still these commissions are direct remunerations for services rendered. In fact, commissions have been defined as the recompense, compensation or reward of an agent, salesman, executor, trustee, receiver, factor, broker or bailee, when the same is calculated as a percentage on the amount of his transactions or on the profit to the

principal. The nature of the work of a salesman and the reason for such type of remuneration for services rendered demonstrate clearly that commissions are part of a salesman's wage or salary.^[25]

In the same way, the Court cannot subscribe to the assertion of the respondents that the burden of proof to prove monetary claims rests on the employee.

It is a settled labor doctrine that in cases involving non-payment of monetary claims of employees, the employer has the burden of proving that the employees did receive their wages and benefits and that the same were paid in accordance with law.^[26] As elucidated in *De Guzman v. NLRC, et al.*:^[27]

It is settled that once the employee has set out with particularity in his complaint, position paper, affidavits and other documents the labor standard benefits he is entitled to, and which he alleged that the employer failed to pay him, it becomes the employer's burden to prove that it has paid these money claims. One who pleads payment has the burden of proving it, and even where the employees must allege non-payment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment.^[28]

The rule finds merit in view of the fact that the accessibility over the employment records, pertinent personnel files, payrolls, remittances, and other similar documents which will show that overtime, differentials, service incentive leave, and other claims have been paid to the employee is exclusively within the custody and absolute control of the employer.^[29] Otherwise, the feasibility of proving non-payment of monetary claims or benefits will hardly result to fruition.

In this case, the Court agrees with Asentista that she has already set out the particularities of her unpaid monetary claims against the respondents based on the electronic messages of Ascutia. The respondents should have presented evidentiary proof based on the employment records and personnel files that Asentista was already paid of her benefits, instead of attributing the burden of proof back to her.

As held in *Toyota Pasig*,^[30] the employer's act of simply dismissing the employee's claim "for being purely self-serving and unfounded without even presenting any tinge or proof showing that respondent (employee) was already paid of such benefits or that she was entitled thereto" was rebutted by the Court.^[31] Failure on the part of the employer to discharge the burden tilts the balance in favor of the employee.

Similarly, the Court concurs with Asentista that in the absence of any express stipulation, the respondents cannot deduct car participation and amortization payment from her unpaid sales commission.