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[G.R. No. 167622, January 25, 2011]

GREGORIO V. TONGKO, PETITIONER, VS. THE MANUFACTURERS LIFE INSURANCE CO. (PHILS.), INC. AND RENATO A. VERGEL DE DIOS, RESPONDENTS.

R E S O L U T I O N

BRION, J.:

We resolve petitioner Gregorio V. Tongko's bid, through his *Motion for Reconsideration,*[1] **to set aside our June 29, 2010 Resolution that reversed our Decision of November 7, 2008**.[2] With the reversal, the assailed June 29, 2010 Resolution effectively affirmed the Court of Appeals' ruling[3] in CA-G.R. SP No. 88253 that the petitioner was an insurance agent, not the employee, of the respondent The Manufacturers Life Insurance Co. (Phils.), Inc. (*Manulife*).

In his Motion for Reconsideration, petitioner reiterates the arguments he had belabored in his petition and various other submissions. He argues that for 19 years, he performed administrative functions and exercised supervisory authority over employees and agents of Manulife, in addition to his insurance agent functions.[4] In these 19 years, he was designated as a Unit Manager, a Branch Manager and a Regional Sales Manager, and now posits that he was not only an insurance agent for Manulife but was its employee as well.

We find no basis or any error to merit the reconsideration of our June 29, 2010 Resolution.

A. Labor Law Control = Employment Relationship

Control over the performance of the task of one providing service - both with respect to the means and manner, and the results of the service - is the primary element in determining whether an employment relationship exists. We resolve the petitioner's Motion against his favor since he failed to show that the control Manulife exercised over him was the control required to exist in an employer-employee relationship; Manulife's control fell short of this norm and carried only the characteristic of the relationship between an insurance company and its agents, as defined by the Insurance Code and by the law of agency under the Civil Code.

The petitioner asserts in his Motion that Manulife's labor law control over him was demonstrated (1) when it set the objectives and sales targets regarding production, recruitment and training programs; and (2) when it prescribed the Code of Conduct for Agents and the Manulife Financial Code of Conduct to govern his activities.[5] We find no merit in these contentions.

In our June 29, 2010 Resolution, we noted that there are built-in elements of control specific to an insurance agency, which do not amount to the elements of control that characterize an employment relationship governed by the Labor Code. The Insurance Code provides definite parameters in the way an agent negotiates for the sale of the company's insurance products, his collection activities and his delivery of the insurance contract or policy.[6] In addition, the Civil Code defines an agent as a person who binds himself to do something in behalf of another, with the consent or authority of the latter.[7] Article 1887 of the Civil Code also provides that in the execution of the agency, the agent shall act in accordance with the instructions of the principal.

All these, read without any clear understanding of fine legal distinctions, appear to speak of control by the insurance company over its agents. They are, however, controls aimed only at specific results in undertaking an insurance agency, and are, in fact, parameters set by law in defining an insurance agency and the attendant duties and responsibilities an insurance agent must observe and undertake. They do not reach the level of control into the means and manner of doing an assigned task that invariably characterizes an employment relationship as defined by labor law. From this perspective, the petitioner's contentions cannot prevail.

To reiterate, guidelines indicative of labor law "control" do not merely relate to the mutually desirable result intended by the contractual relationship; they must have the nature of dictating the means and methods to be employed in attaining the result.[8] Tested by this norm, Manulife's *instructions regarding the objectives and sales targets*, in connection with the training and engagement of other agents, are among the directives that the principal may impose on the agent to achieve the assigned tasks. They are targeted results that Manulife wishes to attain through its agents. Manulife's codes of conduct, likewise, do not necessarily intrude into the insurance agents' means and manner of conducting their sales. Codes of conduct are norms or standards of behavior rather than employer directives into how specific tasks are to be done. These codes, as well as insurance industry rules and regulations, are not *per se* indicative of labor law control under our jurisprudence.[9]

The duties[10] that the petitioner enumerated in his Motion are not supported by evidence and, therefore, deserve scant consideration. Even assuming their existence, however, they mostly pertain to the duties of an insurance agent such as remitting insurance fees to Manulife, delivering policies to the insured, and after-sale services. For agents leading other agents, these include the task of overseeing other insurance agents, the recruitment of other insurance agents engaged by Manulife as principal, and ensuring that these other agents comply with the paperwork necessary in selling insurance. That Manulife exercises the power to assign and remove agents under the petitioner's supervision is in keeping with its role as a principal in an agency relationship; they are Manulife agents in the same manner that the petitioner had all along been a Manulife agent.

The petitioner also questions Manulife's act of investing him with different titles and positions in the course of their relationship, given the respondents' position that he simply functioned as an insurance agent.[11] He also considers it an unjust and inequitable situation that he would be unrewarded for the years he spent as a unit manager, a branch manager, and a regional sales manager.[12]

Based on the evidence on record, the petitioner's occupation was to sell Manulife's insurance policies and products from 1977 until the termination of the Career Agent's Agreement (*Agreement*). The evidence also shows that through the years, Manulife permitted him to exercise guiding authority over other agents who operate under their own agency agreements with Manulife and whose commissions he shared.[13] Under this scheme - *an arrangement that pervades the insurance industry* - petitioner in effect became a "lead agent" and his own commissions increased as they included his share in the commissions of the other agents;[14] he also received greater reimbursements for expenses and was allowed to use Manulife's facilities. His designation also changed from unit manager to branch manager and then to regional sales manager, to reflect the increase in the number of agents he recruited and guided, as well as the increase in the area where these agents operated.

As our assailed Resolution concluded and as we now similarly conclude, these arrangements, and the titles and positions the petitioner was invested with, did not change his status from the insurance agent that he had always been (as evidenced by the Agreement that governed his relationship with Manulife from the start to its disagreeable end). The petitioner simply progressed from his individual agency to being a lead agent who could use other agents in selling insurance and share in the earnings of these other agents.

In sum, we find absolutely no evidence of labor law control, as extensively discussed in our Resolution of June 29, 2010, granting Manulife's motion for reconsideration. The Dissent, unfortunately, misses this point.

B. No Resulting Inequity

We also do not agree that our assailed Resolution has the effect of fostering an inequitable or unjust situation. The records show that the petitioner was very amply paid for his services as an insurance agent, who also shared in the commissions of the other agents under his guidance. In 1997, his income was P2,822,620; in 1998, P4,805,166.34; in 1999, P6,797,814.05; in 2001, P6,214,737.11; and in 2002, P8,003,180.38. All these he earned as an insurance agent, as he failed to ever prove that he earned these sums as an employee. In technical terms, he could not have earned all these as an employee because he failed to provide the substantial evidence required in administrative cases to support the finding that he was a Manulife employee. No inequity results under this legal situation; what would be unjust is an award of backwages and separation pay - amounts that are not due him because he was never an employee.

The Dissent's discussion on this aspect of the case begins with the wide disparity in the status of the parties - that Manulife is a big Canadian insurance company while Tongko is but a single agent of Manulife. The Dissent then went on to say that "[i]f is but just, it is but right, that the Court interprets the relationship between Tongko and Manulife as one of employment under labor laws and to uphold his constitutionally protected right, as an employee, to security of tenure and entitlement to monetary award should such right be infringed."[15] We cannot simply invoke the magical formula by creating an employment relationship even when there is none because of the unavoidable and inherently weak position of an

individual over a giant corporation.

The Dissent likewise alluded to an ambiguity in the true relationship of the parties after Tongko's successive appointments. We already pointed out that the legal significance of these appointments had not been sufficiently explained and that it did not help that Tongko never bothered to present evidence on this point. The Dissent recognized this but tried to excuse Tongko from this failure in the subsequent discussion, as follows:

> [o]ther evidence was adduced to show such duties and responsibilities. For one, in his letter of November 6, 2001, respondent De Dios addressed petitioner as sales manager. And as I wrote in my Dissent to the June 29, 2010 Resolution, it is difficult to imagine that Manulife did not issue promotional appointments to petitioner as unit manager, branch manager, and, eventually, regional sales manager. Sound management practice simply requires an appointment for any upward personnel movement, particularly when additional functions and the corresponding increase in compensation are involved. Then, too, the adverted affidavits of the managers of Manulife as to the duties and responsibilities of a unit manager, such as petitioner, point to the conclusion that these managers were employees of Manulife, applying the "four-fold" test.[16]

This Court (and all adjudicators for that matter) cannot and should not fill in the evidentiary gaps in a party's case that the party failed to support; ***we cannot and should not take the cudgels for any party****.* Tongko failed to support his cause and we should simply view him and his case as they are; our duty is to sit as a judge in the case that he and the respondent presented.

To support its arguments on equity, the Dissent uses the Constitution and the Civil Code, using provisions and principles that are all motherhood statements. *The mandate of the Court, of course, is* ***to decide cases based on the facts and the law****, and not to base its conclusions on fundamental precepts that are far removed from the particular case presented before it. When there is no room for their application, of capacity of principles, reliance on the application of these fundamental principles is misplaced.*

C. Earnings were Commissions

That his earnings were **agent's commissions** arising from his work as an insurance agent is *a matter that the petitioner cannot deny, as these are the declarations and representations he stated in his income tax returns through the years.* It would be doubly unjust, particularly to the government, if he would be allowed at this late point to turn around and successfully claim that he was merely an employee after he declared himself, through the years, as an independent self-employed insurance agent with the privilege of deducting business expenses. This aspect of the case alone - considered together with the probative value of income tax declarations and returns filed prior to the present controversy -- should be enough to clinch the present case against the petitioner's favor.

D. The Dissent's Solution:

Unwieldy and Legally Infirm

The Dissent proposes that Tongko should be considered as part employee (as manager) and part insurance agent; hence, the original decision should be modified to pertain only to the termination of his employment as a manager and not as an insurance agent. Accordingly, the backwages component of the original award to him should not include the insurance sales commissions. This solution, according to the line taken by the Dissent then, was justified on the view that this was made on a case-to-case basis.

Decisions of the Supreme Court, as the Civil Code provides, form part of the law of the land. When the Court states that the determination of the existence of an employment relationship should be on a case-to-case basis, this does not mean that there will be as many laws on the issue as there are cases. In the context of this case, the four-fold test is the established standard for determining employer-employee relationship and the existence of these elements, most notably control, is the basis upon which a conclusion on the absence of employment relationship was anchored. This simply means that a conclusion on whether employment relationship exists in a particular case largely depends on the facts and, in no small measure, on the parties' evidence *vis-à-vis* the clearly defined jurisprudential standards. Given that the parties control *what* and *how* the facts will be established in a particular case and/or how a particular suit is to be litigated, deciding the issues on a case-to-case basis becomes an imperative.

Another legal reality, a more important one, is that *the duty of a court is to say what the law is.*[17] This is the same duty of the Supreme Court that underlies the *stare decisis* principle. This is how the public, in general and the insurance industry in particular, views the role of this Court and courts in general in deciding cases. The lower courts and the bar, most specially, look up to the rulings of this Court for guidance. Unless extremely unavoidable, the Court must, *as a matter of sound judicial policy*, resist the temptation of branding its ruling *pro hac vice*.

The compromise solution of declaring Tongko both an employee and an agent is legally unrealistic, unwieldy and is, in fact, legally infirm, as it goes against the above basic principles of judicial operation. Likewise, it does not and cannot realistically solve the problem/issue in this case; it actually leaves more questions than answers.

As already pointed out, there is no legal basis (be it statutory or jurisprudential) for the part-employee/part-insurance agent status under an essentially principal-agent contractual relation which the Dissent proposes to accord to Tongko. If the Dissent intends to establish one, this is highly objectionable for this would amount to judicial legislation. A legal relationship, be it one of employment or one based on a contract other than employment, exists as a matter of law pursuant to the facts, incidents and legal consequences of the relationship; it cannot exist devoid of these legally defined underlying facts and legal consequences unless the law itself creates the relationship - an act that is beyond the authority of this Court to do.

Additionally, the Dissent's conclusion completely ignores an unavoidable legal reality - that the parties are bound by a contract of agency that clearly subsists notwithstanding the successive designation of Tongko as a unit manager, a branch