

FIRST DIVISION

[G.R. No. 112877, February 26, 1996]

SANDIGAN SAVINGS AND LOAN BANK, INC., AND SANDIGAN REALTY DEVELOPMENT CORPORATION, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND ANITA M. JAVIER, RESPONDENTS.

DECISION

HERMOSISIMA, JR., J.:

This Petition for Certiorari, with prayer for the issuance of a temporary restraining order, seeks to review, modify and/or set aside the Resolution^[1] dated 24 September 1993 and the Resolution^[2] dated 19 November 1993 of public respondent National Labor Relations Commission (NLRC) in NLRC CAS RAB-III-05-1560-90. The former affirmed, with modification, the Decision^[3] of the Labor Arbiter of the NLRC Regional Arbitration Branch No. III while the latter denied the motion to reconsider the former.

Private respondent Anita M. Javier (hereinafter referred to as Javier) worked as a realty sales agent of the petitioner Sandigan Realty Development Corporation (hereinafter called the Sandigan Realty) from November 2, 1982 (or November 9, 1982)^[4] to November 30, 1986. Their agreement was that Javier would receive a 5% commission for every sale, or if no sale was made, she would receive a monthly allowance of P500.00.

Subsequently, that is, on 1 December 1986, Javier was hired as a marketing collector of petitioner Sandigan Savings and Loan Bank (hereinafter called the Sandigan Bank) by Angel Andan, the President of both the Sandigan Bank and Sandigan Realty. Javier's monthly salary and allowance were initially in the amount of P788.00 and P5 85.00, respectively.

These were adjusted thereafter (the latest adjustment having been made on 1 July 1989), to P1,840.00 per month as salary and to P510.00 as monthly allowance, per "Notice of Salary Adjustment."^[5]

Meanwhile, respondent Javier continued to be a realty sales agent of Sandigan Realty on the side, and while she still received the 5% commission on her sales, she no longer enjoyed the P5 00.00 monthly allowance.

On 20 April 1990, Javier was advised by Angel Andan not to report for work anymore. This in effect was a notice of dismissal. The manner by which her dismissal was effected has been correctly described by the Solicitor General, thus:

"On April 20, 1990, around 8:30 in the morning, while performing her duties at the Bank, Javier saw and overheard petitioner Andan summon the Bank's personnel officer, Mrs. Liberata G. Fajardo, and instruct her to prepare her (Javier's) termination papers. Immediately thereafter, Andan changed his mind and told Mrs. Fajardo to prepare instead a resignation letter for Javier, saying, "Ayaw ko na siyang makita sa susunod." Turning to private respondent, he said, 'Huwag na ninyong itanong kung anong dahilan, basta 't gusto ko, ito ang desisyon ko. Naawa lang ako sa iyo noon kaya kita tinanggap. Ka Anita, huwag mong isipin na may kinalaman ang mga pan gyayari kay Ditas, wala, wala, hindi iyon, basta 't si Alice, iniskandalo na naman ako.'

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In the afternoon, after she received P50,000.00 from one Mr. Ben Santos as full payment for a lot sold in Sta. Rita Village, Guiguinto, Bulacan, Andan ordered Reynaldo Bordado, her co-employee, to withdraw her commission of P10,000.00 from the account of the Realty, saying, 'Ibigay mo sa ka Anita 'yan para hindi na balikan dito. "[6]

The advice of her termination notwithstanding, Javier reported for work at the bank on the next working day or on 23 April 1990. Though she signed the attendance sheet, she left when she could not find her table.

On 18 May 1990, Javier filed a complaint against petitioners and Angel Andan with the NLRC Regional Arbitration Branch No. III at San Fernando, Pampanga, for illegal dismissal, seeking reinstatement and payment of backwages and moral and exemplary damages.

On October 6, 1992, the labor arbiter rendered judgment in private respondent's favor, the dispositive portion of which reads:

"WHEREFORE, considering the foregoing considerations, and for having unjustly dismissed Anita Javier from employment, respondents are hereby directed to reinstate her to her former position as marketing collector of Sandigan Savings and Loan Bank and sales agent of Sandigan Realty Development Corporation, pay her full backwages from the time of her dismissal, plus 10% attorney's fee and all her monetary award, until her actual reinstatement, and P60,000.00 moral and exemplary damages to compensate for her mental pain and anguish, her social humiliation and besmirched reputation. Should reinstatement be rendered impossible by virtue of the abolition of her position as marketing collector, grant her, in addition to backwages and other benefits, separation pay equivalent to one (1) month for every year of service until after this decision shall have become final and executory." [7]

On appeal, the NLRC affirmed the decision of the Labor Arbiter in its Resolution, dated 24 September 1993, but, deleting the award of damages and attorney's fees, provided the following monetary award of backwages and separation pay:

"Backwages:	Fr:	April 20, 1990-April 20, 1993-36 months
Realty:	P500.00 (allowance) x 36	P18,000.00
Savings Bank:	P2,400.00 x 36	P86,400.00
	TOTAL	P104,400.00
Separation Pay:		

Realty:	Nov. 2, 1982-April 20, 1993 P500.00 (allowance) x10	-10 years P5,000.00
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Savings Bank:	Dec. 1, 1986-April 20, 1993 P2,400.00 x 6	- 6 years P14,400.00
	GRAND TOTAL	P123,800.00"

The petitioners' Motion for Reconsideration of the said Resolution, and that of the private respondent, were denied by the NLRC in its Resolution, dated 19 November 1993, the dispositive portion of which reads:

"It appearing that the issues raised by both parties in their Motions for Reconsideration were thoroughly discussed and duly passed upon in the questioned Resolution promulgated on September 24, 1993, the same are hereby denied for lack of merit with finality.

No further motion for reconsideration shall be entertained.

The petitioners, thus, instituted this petition for certiorari, contending that the NLRC gravely and seriously abused its discretion in holding that:

1. Javier is a regular employee of both Sandigan Realty and Sandigan Bank and entitled to backwages and separation pay from both;
2. Javier was receiving P2,400.00 a month from the bank and that she is entitled to separation pay for six years.^[8]

The records disclose that petitioner Sandigan Bank no longer disputes the finding

that Javier was dismissed by it and that she did not abandon her job thereat. In fact, it would have paid private respondent the monetary award representing backwages and separation pay adjudged against it in the assailed NLRC resolution, if only it found the same to be in the correct amount.^[9]

Consequently, the issues in this case are: (1) whether or not the respondent NLRC abused its discretion in finding that private respondent was a regular employee of the petitioner Sandigan Realty, entitled to backwages and separation pay because of her alleged illegal separation therefrom; and (2) whether the computation of the monetary award owing to the private respondent, as contained in the assailed NLRC resolution, was attended with serious errors as to its bases both in fact and in law.

In determining the existence of an employer-employee relationship, the following elements are generally considered: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished.^[10] This Court has generally relied on the so-called "right of control test" in making such a determination. Where the person for whom the services are performed reserves a right to control not only the end to be achieved but also the means by which such end is reached,^[11] the relationship is deemed to exist. Stated differently, it is the power of control which is the most determinative factor.^[12] It is deemed to be such an important factor that the other requisites may even be disregarded.^[13] Thus, in the case of *Cosmopolitan Funeral Homes, Inc. v. Maalat*, it was held that "to determine whether a person who performs work for another is the latter's employee or is an independent contractor, the prevailing test is 'the right of control test.'" In the said case, the petitioner therein failed to prove that the contract with private respondent was that of a mere agency, an indication that subject person is free to accomplish his work on his own terms and may engage in other means of livelihood.^[14]

Viewed in the light of the foregoing criteria, the features of the relationship between Javier and the Sandigan Realty, as may be gleaned from the facts described herein below by the Office of the Solicitor General, readily negate the existence of an employer-employee relationship between them, the element of control being noticeably absent.

"Javier was hired in 1982 to sell houses or lots owned by the Realty. She was paid 5% commission for every lot or house sold. From 1982 up to 1986 when she was hired as a marketing collector of petitioner bank, she received from the Realty P500.00 monthly allowance if she was unable to make any sale. The P500.00 allowance ceased when she became a regular employee of the petitioner bank.

Javier sold houses or lots according to the manner or means she chose to. The petitioner realty firm, while interested in the result of her work, had no control with respect to the details of how the sale of a house or lot was achieved. She was free to adopt her own selling methods or free to sell at her own time (cf *Insular Life Assurance Co., Ltd. v. NLRC*, 179 SCRA 459 [1989]). Her obligation was merely to turn over the proceeds of each sale to the Realty and, in turn, the Realty paid her by the job,