SUPREME COURT
FIRST DIVISION

INSULAR LIFE ASSURANCE CO., LTD.,
***Petitioner*,**

-versus-

G.R. No. 84484
November 15, 1989

NATIONAL LABOR RELATIONS COMMISSION and MELECIO BASIAO,
***Respondents*.**
x----------x

D E C I S I O N

NARVASA, *J.*:

On July 2, 1968, Insular Life Assurance Co., Ltd. (hereinafter simply called the Company) and Melecio T. Basiao entered into a contract[1] by which:

1. Basiao was "authorized to solicit within the Philippines applications for insurance policies and annuities in accordance with the existing rules and regulations" of the Company;

2. he would receive "compensation, in the form of commissions as provided in the Schedule of Commissions" of the contract

to "constitute a part of the consideration of (said) agreement;" and

3. the "rules in (the Company's) Rate Book and its Agent's Manual, as well as all its circulars and those which may from time to time be promulgated by it, x x x" were made part of said contract.

The contract also contained, among others, provisions governing the relations of the parties, the duties of the Agent, the acts prohibited to him, and the modes of termination of the agreement, viz.:

> "RELATION WITH THE COMPANY. The Agent shall be free to exercise his own judgment as to time, place and means of soliciting insurance. Nothing herein contained shall therefore be construed to create the relationship of employee and employer between the Agent and the Company. However, the Agent shall observe and conform to all rules and regulations which the Company may from time to time prescribe.
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> "ILLEGAL AND UNETHICAL PRACTICES. The Agent is prohibited from giving, directly or indirectly, rebates in any form, or from making any misrepresentation or over-selling, and, in general, from doing or committing acts prohibited in the Agent's Manual and in circulars of the Office of the Insurance Commissioner.
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> "TERMINATION. The Company may terminate the contract at will, without any previous notice to the Agent, for or on account of. (explicitly specified causes)

Either party may terminate this contract by giving to the other notice in writing to that effect. It shall become ipso facto cancelled if the Insurance Commissioner should revoke a Certificate of Authority previously issued or should the Agent fail to renew his existing Certificate of Authority upon its expiration. The Agent shall not have any right to any commission on renewal of premiums that may be paid after the termination of this agreement for any cause whatsoever, except when the termination is due to disability or death in line of service. As to commission corresponding to any balance of

the first year's premiums remaining unpaid at the termination of this agreement, the Agent shall be entitled to it if the balance of the first year premium is paid, less actual cost of collection, unless the termination is due to a violation of this contract, involving criminal liability or breach of trust.

> "ASSIGNMENT. No Assignment of the Agency herein created or of commissions or other compensations shall be valid without the prior consent in writing of the Company."

Some four years later, in April 1972, the parties entered into another contract - an Agency Manager's Contract — and to implement his end of it Basiao organized an agency or office to which he gave the name M. Basiao and Associates, while concurrently fulfilling his commitments under the first contract with the Company.[2]

In May, 1979, the Company terminated the Agency Manager's Contract. After vainly seeking a reconsideration, Basiao sued the Company in a civil action and this, he was later to claim, prompted the latter to terminate also his engagement under the first contract and to stop payment of his commissions starting April 1, 1980.[3]

Basiao thereafter filed with the then Ministry of Labor a complaint[4] against the Company and its president. Without contesting the termination of the first contract, the complaint sought to recover commissions allegedly unpaid thereunder, plus attorney's fees. The respondents disputed the Ministry's jurisdiction over Basiao's claim, asserting that he was not the Company's employee, but an independent contractor and that the Company had no obligation to him for unpaid commissions under the terms and conditions of his contract.[5]

The Labor Arbiter to whom the case was assigned found for Basiao. He ruled that the underwriting agreement had established an employer-employee relationship between him and the Company, and this conferred jurisdiction on the Ministry of Labor to adjudicate his claim. Said official's decision directed payment of his unpaid commissions "equivalent to the balance of the first year's premium remaining unpaid, at the time of his termination, of all the insurance

policies solicited by (him) in favor of the respondent company" plus 10% attorney's fees.[6]

This decision was, on appeal by the Company, affirmed by the National Labor Relations Commission.[7] Hence, the present petition for certiorari and prohibition.

The chief issue here is one of jurisdiction: whether, as Basiao asserts, he had become the Company's employee by virtue of the contract invoked by him, thereby placing his claim for unpaid commissions within the original and exclusive jurisdiction of the Labor Arbiter under the provisions of Section 217 of the Labor Code,[8] or, contrarily, as the Company would have it, that under said contract Basiao's status was that of an independent contractor whose claim was thus cognizable, not by the Labor Arbiter in a labor case, but by the regular courts in an ordinary civil action.

The Company's thesis, that no employer-employee relation in the legal and generally accepted sense existed between it and Basiao, is drawn from the terms of the contract they had entered into, which, either expressly or by necessary implication, made Basiao the master of his own time and selling methods, left to his judgment the time, place and means of soliciting insurance, set no accomplishment quotas and compensated him on the basis of results obtained. He was not bound to observe any schedule of working hours or report to any regular station; he could seek and work on his prospects anywhere and at anytime he chose to, and was free to adopt the selling methods he deemed most effective.

Without denying that the above were indeed the expressed or implicit conditions of Basiao's contract with the Company, the respondents contend that they do not constitute the decisive determinant of the nature of his engagement, invoking precedents to the effect that the critical feature distinguishing the status of an employee from that of an independent contractor is control, that is, whether or not the party who engages the services of another has the power to control the latter's conduct in rendering such services. Pursuing the argument, the respondents draw attention to the provisions of Basiao's contract obliging him to "observe and conform to all rules and regulations which the Company may from time to time prescribe," as well as to

the fact that the Company prescribed the qualifications of applicants for insurance, processed their applications and determined the amounts of insurance cover to be issued as indicative of the control, which made Basiao, in legal contemplation, an employee of the Company.[9]

It is true that the "control test" expressed in the following pronouncement of the Court in the 1956 case of Viana vs. Alejo Al-Lagadan:[10]

> "In determining the existence of employer-employee relationship, the following elements are generally considered, namely: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employees' conduct - although the latter is the most important element (35 Am. Jur. 445),"

has been followed and applied in later cases, some fairly recent.[11] Indeed, it is without question a valid test of the character of a contract or agreement to render service. It should, however, be obvious that not every form of control that the hiring party reserves to himself over the conduct of the party hired in relation to the services rendered may be accorded the effect of establishing an employer-employee relationship between them in the legal or technical sense of the term. A line must be drawn somewhere, if the recognized distinction between an employee and an individual contractor is not to vanish altogether. Realistically, it would be a rare contract of service that gives untrammelled freedom to the party hired and eschews any intervention whatsoever in his performance of the engagement.

Logically, the line should be drawn between rules that merely serve as guidelines towards the achievement of the mutually desired result without dictating the means or methods to be employed in attaining it, and those that control or fix the methodology and bind or restrict the party hired to the use of such means. The first, which aim only to promote the result, create no employer-employee relationship unlike the second, which address both the result and the means used to achieve it. The distinction acquires particular relevance in the case of an enterprise affected with public interest, as is the business of insurance, and is on that account subject to regulation by the State

with respect, not only to the relations between insurer and insured but also to the internal affairs of the insurance company.[12] Rules and regulations governing the conduct of the business are provided for in the Insurance Code and enforced by the Insurance Commissioner. It is, therefore, usual and expected for an insurance company to promulgate a set of rules to guide its commission agents in selling its policies that they may not run afoul of the law and what it requires or prohibits. Of such a character are the rules which prescribe the qualifications of persons who may be insured, subject insurance applications to processing and approval by the Company, and also reserve to the Company the determination of the premiums to be paid and the schedules of payment. None of these really invades the agent's contractual prerogative to adopt his own selling methods or to sell insurance at his own time and convenience, hence cannot justifiably be said to establish an employer-employee relationship between him and the company.

There is no dearth of authority holding persons similarly placed as respondent Basiao to be independent contractors, instead of employees of the parties for whom they worked. In Mafinco Trading Corporation vs. Ople,[13] the Court ruled that a person engaged to sell soft drinks for another, using a truck supplied by the latter, but with the right to employ his own workers, sell according to his own methods subject only to prearranged routes, observing no working hours fixed by the other party and obliged to secure his own licenses and defray his own selling expenses, all in consideration of a peddler's discount given by the other party for at least 250 cases of soft drinks sold daily, was not an employee but an independent contractor.

In Investment Planning Corporation of the Philippines vs. Social Security System,[14] a case almost on all fours with the present one, this Court held that there was no employer-employee relationship between a commission agent and an investment company, but that the former was an independent contractor where said agent and others similarly placed were: (a) paid compensation in the form of commissions based on percentages of their sales, any balance of commissions earned being payable to their legal representatives in the event of death or registration; (b) required to put up performance bonds; (c) subject to a set of rules and regulations governing the performance of their duties under the agreement with the company

and termination of their services for certain causes; (d) not required to report for work at any time, nor to devote their time exclusively to working for the company nor to submit a record of their activities, and who, finally, shouldered their own selling and transportation expenses.

More recently, in Sara vs. NLRC,[15] it was held that one who had been engaged by a rice miller to buy and sell rice and palay without compensation except a certain percentage of what he was able to buy or sell, did work at his own pleasure without any supervision or control on the part of his principal and relied on his own resources in the performance of his work, was a plain commission agent, an independent contractor and not an employee.

The respondents limit themselves to pointing out that Basiao's contract with the Company bound him to observe and conform to such rules and regulations as the latter might from time to time prescribe. No showing has been made that any such rules or regulations were in fact promulgated, much less that any rules existed or were issued which effectively controlled or restricted his choice of methods - or the methods themselves of selling insurance. Absent such showing, the Court will not speculate that any exceptions or qualifications were imposed on the express provision of the contract leaving Basiao "free to exercise his own judgment as to the time, place and means of soliciting insurance."

The Labor Arbiter's decision makes reference to Basiao's claim of having been connected with the Company for twenty-five years. Whatever this is meant to imply, the obvious reply would be that what is germane here is Basiao's status under the contract of July 2, 1968, not the length of his relationship with the Company.

The Court, therefore, rules that under the contract invoked by him, Basiao was not an employee of the petitioner, but a commission agent, an independent contractor whose claim for unpaid commissions should have been litigated in an ordinary civil action. The Labor Arbiter erred in taking cognizance of, and adjudicating, said claim, being without jurisdiction to do so, as did the respondent NLRC in affirming the Arbiter's decision. This conclusion renders it

unnecessary and premature to consider Basiao's claim for commissions on its merits.

WHEREFORE, the appealed Resolution of the National Labor Relations Commission is set aside, and that complaint of private respondent Melecio T. Basiao in RAB Case No. VI-0010-83 is dismissed. No pronouncement as to costs.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino and Medialdea, *JJ.*, concur.

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[1] Rollo, pp. 14-15.
[2] Rollo, p. 16.
[3] Rollo, p. 17.
[4] Docketed as RAB Case No. VI-0010-83.
[5] Rollo, p. 17.
[6] Id., pp. 18-22.
[7] Rollo, pp. 23-27.
[8] which at that time conferred upon the Labor Arbiters such jurisdiction over, among others," all money claims of workers, including those based on non-payment or underpayment of wages, overtime compensation, separation pay and other benefits provided by law or appropriate agreement, except claims for employees compensation, social security, medicare and maternity benefits."
[9] Respondents Comments; Rollo, pp. 47-52, 60-69.
[10] 99 Phil. 408, 411-412.
[11] Feati University vs. Bautista, 18 SCRA 119; Dy Keh Beng vs. International Labor and Marine Union of the Phil., 90 SCRA 163; Rosario Bros. vs. Ople, 131 SCRA 72; National Mines and Allied Workers Union (NAMAWU) vs. Valero, 132 SCRA 578.
[12] Am. Jur. 2d, pp. 73-91.
[13] 70 SCRA 139.
[14] 21 SCRA 924 (1967).
[15] G.R. No. 73199, October 26, 1968.