

SECOND DIVISION

[G.R. No. 222455, September 18, 2019]

**GERRY S. MOJICA, PETITIONER, VS GENERALI PILIPINAS LIFE
ASSURANCE COMPANY, INC., RESPONDENT.**

DECISION

CARPIO, ACTING C.J.:

The Case

This petition for review^[1] assails the 31 October 2014 Decision^[2] and the 13 January 2016 Resolution^[3] of the Court of Appeals in CA-G.R. CV No. 96584. The Court of Appeals affirmed with modification the 24 June 2010 Decision^[4] of the Regional Trial Court, Branch 141, Makati City in Civil Case No. 04-1111.

The Facts

Petitioner Gerry S. Mojica (petitioner) used to be a Unit Manager and Associate Branch Manager of respondent Generali Pilipinas Life Assurance Company, Inc. (respondent). Respondent is a domestic corporation engaged in the business of life and non-life insurance.

On 28 September 2004, respondent filed a Complaint^[5] for collection of sum of money and damages against petitioner. Respondent sought to collect from petitioner the amount of P514,639.17 representing unpaid monthly drawing allowances, unpaid Health Maintenance Insurance dues, group insurance premium and other liabilities, plus legal interest from the time of demand, exemplary damages, attorney's fees and litigation expense.

Respondent alleged that petitioner used to be its agent, designated as Unit Manager and later as Associate Branch Manager. Respondent maintains that under the Unit Manager's Agreement^[6] and Associate Branch Manager's Agreement,^[7] executed by the parties on 19 January 2001 and 24 January 2002, respectively, respondent hired petitioner as an agent and independent contractor, and not as employee of respondent. Furthermore, under the Memorandum of Agreement^[8] executed by the parties on 19 February 2001, petitioner was granted a P40,000 monthly drawing allowance as an advance against the Unit Manager's total expected future override commission earnings. According to respondent, the monthly drawing allowance was a start-up fund for petitioner to organize, develop and maintain a strong branch sales force. The P40,000 monthly drawing allowance, which was later reduced to P30,000, was however subject to meeting monthly validation requirements and performance standards and must be repaid by petitioner over a period of eighteen (18) months or less by applying his override commission earnings and commissions on personal business. Respondent claimed that petitioner failed to comply with the

premium production and manpower requirements and did not reach the targets which he himself set in his business plan. As a consequence, respondent stopped releasing monthly drawing allowances to petitioner, in accordance with the Memorandum of Agreement.

Respondent averred that petitioner resigned on 1 March 2003 without paying the monthly drawing allowances he advanced. On 6 March 2003, respondent sent petitioner a letter,^[9] accepting petitioner's resignation and demanding payment of petitioner's outstanding obligations. Respondent alleged that from January 2001 to July 2002, petitioner drew a total of P660,000 from his monthly drawing allowances, but only repaid P151,368.95, leaving a balance of P508,631.05. In addition, petitioner had unpaid Health Maintenance Insurance dues, group insurance premium for hospitalization, and other payables amounting to P6,008.12.

On the other hand, petitioner asserted that he was an employee of respondent, and not its agent or independent contractor. Petitioner insisted that as an employee of respondent, he had no obligation to liquidate the monthly drawing allowances and that he was entitled to the P40,000 monthly drawing allowance which was not even enough to cover all his expenses in maintaining respondent's branch office and the recruitment of insurance agents for respondent. Although petitioner admitted receiving the monthly drawing allowances, petitioner claimed that he had no obligation to return such allowances since these were his salaries as full time unit manager.

Petitioner also questioned the trial court's jurisdiction and maintained that the National Labor Relations Commission (NLRC) has jurisdiction because of the existence of an employer-employee relationship between the parties. Thus, petitioner moved to dismiss the case for lack of jurisdiction,^[10] which the trial court denied for lack of merit.^[11] The Court of Appeals, in a Decision^[12] dated 23 June 2009, affirmed the trial court's Orders denying petitioner's motion to dismiss. The Court of Appeals, in ruling that the trial court has jurisdiction and not the Labor Arbiter, held that the "three (3) agreements executed by the parties clearly stipulated that petitioner in the performance of his duties shall be considered an independent contractor and not an employee."^[13]

The Ruling of the Trial Court

On 24 June 2010, the trial court rendered a Decision, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff, ordering the defendant:

1. To pay the plaintiff the amount of Php514,639.17 as unpaid monthly drawing allowances he advanced, HMI membership dues, group premium and other liabilities, plus an interest computed at 6% per annum from the finality of this decision until fully paid;
2. To pay the plaintiff the amount of Php70,000 as attorney's fees and costs of suit.

SO ORDERED.^[14]

The trial court held that the contractual relationship between the parties as expressly provided in the Unit Manager's Agreement, Associate Branch Manager's Agreement, and the Memorandum of Agreement shows that petitioner was respondent's agent and not its employee. Under the Memorandum of Agreement, the monthly drawing allowance given to petitioner was subject to meeting monthly validation requirements. Thus, petitioner should have liquidated the allowances he received for a period of 18 months from February 2001 to July 2002 under the terms specified in the Memorandum of Agreement. Petitioner himself testified that he failed to liquidate the allowances he received. The trial court ruled that petitioner failed to prove that he satisfied the monthly validation requirements specified in the Memorandum of Agreement, and he is thus obliged to repay respondent the monthly drawing allowances he advanced.

The Ruling of the Court of Appeals

The Court of Appeals denied petitioner's appeal, and affirmed with modification the 24 June 2010 Decision of the trial court. The dispositive portion of the Decision of the Court of Appeals reads:

WHEREFORE, the decision of the Regional Trial Court of Makati City, Branch 141 in Civil Case No. 04-1111 dated June 24, 2010 is AFFIRMED with MODIFICATION. Defendant-appellant Gerry Santos Mojica shall pay plaintiff-appellee Generali Pilipinas Life Assurance Company, Inc. the principal amount of Five Hundred Fourteen Thousand Six Hundred Thirty-Nine and 17/100 Pesos (P514,639.17), with interest of six (6%) percent delete [sic] per annum on the aforestated principal obligation computed from March 6, 2003 until finality of this decision and additional interest of six [percent] (6%) per annum on the judgment award until the same is satisfied. The award of attorney's fees is DELETED.

SO ORDERED.^[15]

The Court of Appeals held that petitioner is an independent contractor under the terms of the Unit Manager's Agreement and the Associate Branch Manager's Agreement. The Court of Appeals found that petitioner was authorized to: (1) recruit insurance agents with whom he exercised the right to assign, control and supervise the performance of activities necessary for the operations of his unit; (2) supply his branch with the necessary tools, with an option of availing the monthly drawing allowance to meet his requirement pursuant to the terms of the Memorandum of Agreement; and (3) choose how to conduct his business. Furthermore, petitioner received commissions and not salaries or wages. Thus, the Court of Appeals concluded that petitioner is an independent contractor and not an employee of respondent.

On the issue of unliquidated allowances, the Court of Appeals found that petitioner continuously availed of the monthly drawing allowance from January 2001 until July 2002 in the total amount of P660,000, as evidenced by various documents marked as exhibits and by petitioner's own admission that he availed of the monthly drawing allowance. On 6 March 2003, respondent sent a letter to petitioner, accepting petitioner's resignation and demanding that he pay his outstanding balance. Petitioner was able to offset the amount of P151,368.95, leaving an unpaid balance of P508,631.05. Based on the records, the Court of Appeals concurred with the

finding of the trial court that petitioner's outstanding obligation to respondent amounted to P514,639.17.

The Court of Appeals, however, modified the reckoning period for the application of the 6% *per annum* interest rate on the principal obligation. The Court of Appeals ruled that the interest rate of 6% *per annum* should be applied on the unpaid amount of P514,639.17 from the date of extrajudicial demand on 6 March 2003. Furthermore, if the obligation is still not satisfied, an interest rate of 6% *per annum* shall also be applied from the date of finality of the judgment until the total amount awarded is fully paid.

The Court of Appeals also deleted the attorney's fees awarded by the trial court for lack of factual, legal, and equitable justification.

The Issue

Whether the Court of Appeals erred in ruling that petitioner is an independent contractor and in ordering petitioner to refund the monthly drawing allowances he received.

The Court's Ruling

We find the petition without merit. We affirm the ruling of the Court of Appeals with modification.

Petitioner is an Independent Contractor

We affirm the ruling of the trial and appellate courts that petitioner is an independent contractor and not an employee of respondent, as clearly stipulated in the contractual agreements entered into between petitioner and respondent.

The Unit Manager's Agreement dated 19 January 2001 pertinently provides:

xxx. **The Unit Manager in performance of his duties defined herein, shall be considered an independent contractor and not an employee of Generali Pilipinas. He shall be free to exercise his own judgment as to time, place and means of soliciting insurance.** However, he shall observe and conform to all existing rules and regulations as may be prescribed by Generali Pilipinas from time to time. Under no circumstance shall the Unit Manager (and/or his agents) be considered employees of Generali Pilipinas.^[16] (Emphasis supplied)

The Associate Branch Manager's Agreement dated 24 January 2002 similarly states:

The Branch Manager, in the performance of his duties defined herein, shall be considered an independent contractor and not an employee of Generali Pilipinas. He shall be free to exercise his own judgment as to time, place and means of soliciting insurance. However, he shall observe and conform to all existing rules and regulations as may be prescribed by Generali Pilipinas from time to time.^[17] (Emphasis supplied)

As an independent contractor, petitioner earned through commissions and was not paid a fixed salary or wage. Petitioner's remuneration on a commission basis is expressly provided under the Unit Manager's Compensation Schedule^[18] which was incorporated in the Unit Manager's Agreement, and the Associate Branch Manager's Compensation Schedule^[19] which formed part of the Associate Branch Manager's Agreement.

The Unit Manager's Compensation Schedule provides:

II. BASIC REMUNERATION

Override Commissions

<u>Policy Year</u>	<u>% of Basic Commissions*</u>
1	20%
2	10%
3	10%

* Applies to all plans except Five-Year Renewable & Convertible Term, Decreasing Term and other Bancassurance plans. Also excludes the Unit Manager's commissions on his personal businesses.

x x x x^[20]

Similarly, the Associate Branch Manager's Compensation Schedule provides:

II. BASIC COMPENSATION

Override Commissions

<u>Policy Year</u>	<u>% of Basic Commissions*</u>
1	8%
2	4%
3	4%

* Applies to all Plans except 5-Year Renewable & Convertible Term, Decreasing Term and other Bancassurance Plans. Also excludes the Branch Manager's commissions on his personal business.

x x x x^[21]

Another factor which militates against the claim of petitioner that he is an employee of respondent is the latter's lack of control over the means and methods employed by petitioner in the performance of his duties. Under the four-fold test in determining the existence of an employer-employee relationship which considers the following elements: (1) the power to hire; (2) the payment of wages; (3) the power to dismiss; and (4) the power to control, the last is the most important factor.^[22] As found by the trial court and the Court of Appeals, petitioner carried on the business of his unit independently and exercised wide latitude in the conduct of his business.