

## FIRST DIVISION

[ G.R. No. 220978, July 05, 2016 ]

**CENTURY PROPERTIES, INC., PETITIONER, VS. EDWIN J. BABIANO AND EMMA B. CONCEPCION, RESPONDENTS.**

### DECISION

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>[1]</sup> are the Decision<sup>[2]</sup> dated April 8, 2015 and the Resolution<sup>[3]</sup> dated October 12, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 132953, which affirmed, with modification the Decision<sup>[4]</sup> dated June 25, 2013 and the Resolution<sup>[5]</sup> dated October 16, 2013 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 05-001615-12, and ordered petitioner Century Properties, Inc. (CPI) to pay respondents Edwin J. Babiano (Babiano) and Emma B. Concepcion (Concepcion; collectively, respondents) unpaid commissions in the amounts of P889,932.42 and P591,953.05, respectively.

#### The Facts

On October 2, 2002, Babiano was hired by CPI as Director of Sales, and was eventually<sup>[6]</sup> appointed as Vice President for Sales effective September 1, 2007. As CPFs Vice President for Sales, Babiano was remunerated with, *inter alia*, the following benefits: (a) monthly salary of P70,000.00; (b) allowance of P50,000.00; and (c) 0.5% override commission for completed sales. His employment contract<sup>[7]</sup> also contained a "Confidentiality of Documents and Non-Compete Clause"<sup>[8]</sup> which, among others, barred him from disclosing confidential information, and from working in any business enterprise that is in direct competition with CPI "while [he is] employed and for a period of one year from date of resignation or termination from [CPI]." Should Babiano breach any of the terms thereof, his "forms of compensation, including commissions and incentives will be forfeited."<sup>[9]</sup>

During the same period, Concepcion was initially hired as Sales Agent by CPI and was eventually<sup>[10]</sup> promoted as Project Director on September 1, 2007.<sup>[11]</sup> As such, she signed an employment agreement, denominated as "Contract of Agency for Project Director"<sup>[12]</sup> which provided, among others, that she would directly report to Babiano, and receive, a monthly subsidy of P60,000.00, 0.5% commission, and cash incentives.<sup>[13]</sup> On March 31, 2008, Concepcion executed a similar contract<sup>[14]</sup> anew with CPI in which she would receive a monthly subsidy of P50,000.00, 0.5% commission, and cash incentives as per company policy. Notably, it was stipulated in both contracts that no employer-employee relationship exists between Concepcion and CPI.<sup>[15]</sup>

After receiving reports that Babiano provided a competitor with information

regarding CPFs marketing strategies, spread false information regarding CPI and its projects, recruited CPI's personnel to join the competitor, and for being absent without official leave (AWOL) for five (5) days, CPI, through its Executive Vice President for Marketing and Development, Jose Marco R. Antonio (Antonio), sent Babiano a Notice to Explain<sup>[16]</sup> on February 23, 2009 directing him to explain why he should not be charged with disloyalty, conflict of interest, and breach of trust and confidence for his actuations.<sup>[17]</sup>

On February 25, 2009, Babiano tendered<sup>[18]</sup> his resignation and revealed that he had been accepted as Vice President of First Global BYO Development Corporation (First Global), a competitor of CPI.<sup>[19]</sup> On March 3, 2009, Babiano was served a Notice of Termination<sup>[20]</sup> for: (a) incurring AWOL; (b) violating the "Confidentiality of Documents and Non-Compete Clause" when he joined a competitor enterprise while still working for CPI and provided such competitor enterprise information regarding CPFs marketing strategies; and (c) recruiting CPI personnel to join a competitor.<sup>[21]</sup>

On the other hand, Concepcion resigned as CPFs Project Director through a letter<sup>[22]</sup> dated February 23, 2009, effective immediately.

On August 8, 2011, respondents filed a complaint<sup>[23]</sup> for non-payment of commissions and damages against CPI and Antonio before the NLRC, docketed as NLRC Case No. NCR-08-12029-11, claiming that their repeated demands for the payment and release of their commissions remained unheeded.<sup>[24]</sup>

For its part, CPI maintained<sup>[25]</sup> that Babiano is merely its agent tasked with selling its projects. Nonetheless, he was afforded due process in the termination of his employment which was based on just causes.<sup>[26]</sup> It also claimed to have validly withheld Babiano's commissions, considering that they were deemed forfeited for violating the "Confidentiality of Documents and Non-Compete Clause."<sup>[27]</sup> On Concepcion's money claims, CPI asserted that the NLRC had no jurisdiction to hear the same because there was no employer-employee relations between them, and thus, she should have litigated the same in an ordinary civil action.<sup>[28]</sup>

### **The LA Ruling**

In a Decision<sup>[29]</sup> dated March 19, 2012, the Labor Arbiter (LA) ruled in CPI's favor and, accordingly, dismissed the complaint for lack of merit.<sup>[30]</sup>

The LA found that: (a) Babiano's acts of providing information on CPI's marketing strategies to the competitor and spreading false information about CPI and its projects are blatant violations of the "Confidentiality of Documents and Non-Compete Clause" of his employment contract, thus, resulting in the forfeiture of his unpaid commissions in accordance with the same clause;<sup>[31]</sup> and (b) it had no jurisdiction over Concepcion's money claim as she was not an employee but a mere agent of CPI, as clearly stipulated in her engagement contract with the latter.<sup>[32]</sup>

Aggrieved, respondents appealed<sup>[33]</sup> to the NLRC.

### **The NLRC Ruling**

In a Decision<sup>[34]</sup> dated June 25, 2013, the NLRC reversed and set aside the LA ruling, and entered a new one ordering CPI to pay Babiano and Concepcion the amounts of P685,211.76 and P470,754.62, respectively, representing their commissions from August 9, 2008 to August 8, 2011, as well as 10% attorney's fees of the total monetary awards.<sup>[35]</sup>

While the NLRC initially concurred with the LA that Babiano's acts constituted just cause which would warrant the termination of his employment from CPI, it, however, ruled that the forfeiture of all earned commissions of Babiano under the "Confidentiality of Documents and Non-Compete Clause" is confiscatory and unreasonable and hence, contrary to law and public policy.<sup>[36]</sup> In this light, the NLRC held that CPI could not invoke such clause to avoid the payment of Babiano's commissions since he had already earned those monetary benefits and, thus, should have been released to him. However, the NLRC limited the grant of the money claims in light of Article 291 (now Article 306)<sup>[37]</sup> of the Labor Code which provides for a prescriptive period of three (3) years. Consequently, the NLRC awarded unpaid commissions only from August 9, 2008 to August 8, 2011 — *i.e.*, which was the date when the complaint was filed.<sup>[38]</sup> Meanwhile, contrary to the LA's finding, the NLRC ruled that Concepcion was CPI's employee, considering that CPI: (a) repeatedly hired and promoted her since 2002; (b) paid her wages despite referring to it as "subsidy"; and (c) exercised the power of dismissal and control over her.<sup>[39]</sup> Lastly, the NLRC granted respondents' claim for attorney's fees since they were forced to litigate and incurred expenses for the protection of their rights and interests.<sup>[40]</sup>

Respondents did not assail the NLRC findings. In contrast, only CPI moved for reconsideration,<sup>[41]</sup> which the NLRC denied in a Resolution<sup>[42]</sup> dated October 16, 2013. Aggrieved, CPI filed a petition for *certiorari*<sup>[43]</sup> before the CA.

### **The CA Ruling**

In a Decision<sup>[44]</sup> dated April 8, 2015, the CA affirmed the NLRC ruling with modification increasing the award of unpaid commissions to Babiano and Concepcion in the amounts of P889,932.42 and P591,953.05, respectively, and imposing interest of six percent (6%) per annum on all monetary awards from the finality of its decision until fully paid.<sup>[45]</sup>

The CA held that Babiano properly instituted his claim for unpaid commissions before the labor tribunals as it is a money claim arising from an employer-employee relationship with CPI. In this relation, the CA opined that CPI cannot withhold such unpaid commissions on the ground of Babiano's alleged breach of the "Confidentiality of Documents and Non-Compete Clause" integrated in the latter's employment contract, considering that such clause referred to acts done after the cessation of the employer-employee relationship or to the "post-employment" relations of the parties. Thus, any such supposed breach thereof is a civil law dispute that is best resolved by the regular courts and not by labor tribunals.<sup>[46]</sup>

Similarly, the CA echoed the NLRC's finding that there exists an employer-employee relationship between Concepcion and CPI, because the latter exercised control over the performance of her duties as Project Director which is indicative of an employer-employee relationship. Necessarily therefore, CPI also exercised control over Concepcion's duties in recruiting, training, and developing directors of sales because she was supervised by Babiano in the performance of her functions. The CA likewise observed the presence of critical factors which were indicative of an employer-employee relationship with CPI, such as: (a) Concepcion's receipt of a monthly salary from CPI; and (b) that she performed tasks besides selling CPI properties. To add, the title of her contract which was referred to as "Contract of Agency for Project Director" was not binding and conclusive, considering that the characterization of the juridical relationship is essentially a matter of law that is for the courts to determine, and not the parties thereof. Moreover, the totality of evidence sustains a finding of employer-employee relationship between CPI and Concepcion.<sup>[47]</sup>

Further, the CA held that despite the NLRC's proper application of the three (3)-year prescriptive period under Article 291 of the Labor Code, it nonetheless failed to include all of respondents' earned commissions during that time - *i.e.*, August 9, 2008 to August 8, 2011 - thus, necessitating the increase in award of unpaid commissions in respondents' favor.<sup>[48]</sup>

Undaunted, CPI sought for reconsideration,<sup>[49]</sup> which was, however, denied in a Resolution<sup>[50]</sup> dated October 12, 2015; hence, this petition.

### **The Issue Before the Court**

The core issue for the Court's resolution is whether or not the CA erred in denying CPI's petition for *certiorari*, thereby holding it liable for the unpaid commissions of respondents.

### **The Court's Ruling**

The petition is partly meritorious.

#### **I.**

Article 1370 of the Civil Code provides that "[i]f the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control."<sup>[51]</sup> In *Norton Resources and Development Corporation v. All Asia Bank Corporation*,<sup>[52]</sup> the Court had the opportunity to thoroughly discuss the said rule as follows:

**The rule is that where the language of a contract is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids.** The intention of the parties must be gathered from that language, and from that language alone. **Stated differently, where the language of a written contract is clear and unambiguous, the contract must be taken to mean that which, on its face, it purports to mean, unless some good reason can be**

**assigned to show that the words should be understood in a different sense.** Courts cannot make for the parties better or more equitable agreements than they themselves have been satisfied to make, or rewrite contracts because they operate harshly or inequitably as to one of the parties, or alter them for the benefit of one party and to the detriment of the other, or by construction, relieve one of the parties from the terms which he voluntarily consented to, or impose on him those which he did not.<sup>[53]</sup> (Emphases and underscoring supplied)

Thus, in the interpretation of contracts, the Court must first determine whether a provision or stipulation therein is ambiguous. Absent any ambiguity, the provision on its face will be read as it is written and treated as the binding law of the parties to the contract.<sup>[54]</sup>

In the case at bar, CPI primarily invoked the "Confidentiality of Documents and Non-Compete Clause" found in Babiano's employment contract<sup>[55]</sup> to justify the forfeiture of his commissions, viz.:

#### Confidentiality of Documents and Non-Compete Clause

All records and documents of the company and all information pertaining to its business or affairs or that of its affiliated companies are confidential and no unauthorized disclosure or reproduction or the same will be made by you any time during or after your employment.

**And in order to ensure strict compliance herewith, you shall not work for whatsoever capacity, either as an employee, agent or consultant with any person whose business is in direct competition with the company while you are employed and for a period of one year from date of resignation or termination from the company.**

In the event the undersigned breaches any term of this contract, the undersigned agrees and acknowledges that damages may not be an adequate remedy and that in addition to any other remedies available to the Company at law or in equity, the Company is entitled to enforce its rights hereunder by way of injunction, restraining order or other relief to enjoin any breach or default of this contract.

The undersigned agrees to pay all costs, expenses and attorney's fees incurred by the Company in connection with the enforcement of the obligations of the undersigned. The undersigned also agrees to .pay the Company all profits, revenues and income or benefits derived by or accruing to the undersigned resulting from the undersigned's breach of the obligations hereunder. This Agreement shall be binding upon the undersigned, all employees, agents, officers, directors, shareholders, partners and representatives of the undersigned and all heirs, successors and assigns of the foregoing.

**Finally, if undersigned breaches any terms of this contract, forms of compensation including commissions and incentives will be forfeited.**<sup>[56]</sup> (Emphases and underscoring supplied)