

## FIRST DIVISION

**[ G.R. No. 159890, May 28, 2004 ]**

**EMPERMACO B. ABANTE, JR., PETITIONER, VS. LAMADRID BEARING & PARTS CORP. AND JOSE LAMADRID, PRESIDENT, RESPONDENTS.**

### D E C I S I O N

**YNARES-SATIAGO, J.:**

This is a petition for review under Rule 45 of the 1997 Revised Rules of Civil Procedure assailing the Decision dated March 7, 2003 of the Court of Appeals in CA-G.R. SP No. 73102 which affirmed the Resolution dated April 2, 2002 of the National Labor Relations Commission.

Petitioner was employed by respondent company Lamadrid Bearing and Parts Corporation sometime in June 1985 as a salesman earning a commission of 3% of the total paid-up sales covering the whole area of Mindanao. His average monthly income was more or less P16,000.00, but later was increased to approximately P20,269.50. Aside from selling the merchandise of respondent corporation, he was also tasked to collect payments from his various customers. Respondent corporation had complete control over his work because its President, respondent Jose Lamadrid, frequently directed him to report to a particular area for his sales and collection activities, and occasionally required him to go to Manila to attend conferences regarding product competition, prices, and other market strategies.

Sometime in 1998, petitioner encountered five customers/clients with bad accounts, namely:

<u>Customers/Clients</u>	<u>Amount</u>
1) A&B Engineering Services	P 86,431.20
2) Emmanuel Engineering Services	126,858.50
3) Panabo Empire Marketing	226,458.76
4) Southern Fortune Marketing	191,208.00
5) Alreg Marketing	56, 901.18
Less Returns: <u>691.02</u>	<u>56, 210.16</u>
Total Bad Accounts	P 687,166.62

Petitioner was confronted by respondent Lamadrid over the bad accounts and

warned that if he does not issue his own checks to cover the said bad accounts, his commissions will not be released and he will lose his job. Despite serious misgivings, he issued his personal checks in favor of respondent corporation on condition that the same shall not be deposited for clearing and that they shall be offset against his periodic commissions.<sup>[1]</sup>

Not contented with the issuance of the foregoing checks as security for the bad accounts, respondents "tricked" petitioner into signing two documents, which he later discovered to be a Promissory Note<sup>[2]</sup> and a Deed of Real Estate Mortgage.<sup>[3]</sup>

Pursuant to the parties' agreement that the checks would not be deposited, as their corresponding values would be offset from petitioner's sales commissions, respondents returned the same to petitioner as evidenced by the undeposited checks and respondent Lamadrid's computations of petitioner's commissions.<sup>[4]</sup>

Due to financial difficulties, petitioner inquired about his membership with the Social Security System in order to apply for a salary loan. To his dismay, he learned that he was not covered by the SSS and therefore was not entitled to any benefit. When he brought the matter of his SSS coverage to his employer, the latter berated and hurled invectives at him and, contrary to their agreement, deposited the remaining checks which were dishonored by the drawee bank due to "Account Closed."

On March 22, 2001, counsel for respondent corporation sent a letter to petitioner demanding that he make good the dishonored checks or pay their cash equivalent. In response, petitioner sent a letter addressed to Atty. Meneses, counsel for respondent corporation, which reads:<sup>[5]</sup>

This has reference to your demand letter dated March 22, 2001 which I received on March 30, 2001, relative to the checks I issued to my employer LAMADRID BEARING PARTS CORPORATION.

May I respectfully request for a consideration as to the payment of the amount covered by the said checks, as follows:

1. I have an earned commission in the amount of P33,412.39 as shown in the hereto attached Summary of Sales as of February 28, 2001 (P22,748.60) and as of March 31, 2001 (P10,664.79), which I offer to be charged or deducted as partial payment thereof;
2. I hereby commit One Hundred Percent (100%) of all my commission to be directly charged or deducted as payment, from date onward, until such time that payment will be completed;

Sir, kindly convey my good faith to your client and my employer, as is shown by my willingness to continue working as Commission Salesman, having served the Company for the last sixteen (16) years.

I'm sincerely appealing to my employer, through you, Sir, to settle these accountabilities which all resulted from the checks issued by my customers which bounced and later charged to my account, in the manner afore-cited.

May this request merit your kindest consideration, Sirs.

Thank you very much.

On April 2, 2001, petitioner sent another letter to respondent Lamadrid, to wit:<sup>[6]</sup>

Dear Mr. Lamadrid,

This is to inform your good office that if you pursue the case against me, I may refer this problem to Mr. Paul Dominguez and Atty. Jesus Dureza to solicit proper legal advice. I may also file counter charges against your company of (sic) unfair labor practice and unfair compensation of 3% commission to my sales and commissions of more or less 90,000,000.00 (all collected and covered with cleared check payments) for 16 years working with your company up to the present year 2001.

If I am not wrong your company did not exactly declare the correct amount of P90,000,000.00 more or less representing my sales and collections (all collected and covered with cleared check payments to the Bureau of Internal Revenue [BIR] for tax declaration purposes). In short your company profited large amount of money to (sic) the above-mentioned sales and collections of P90,000,000.00 more or less for 16 years working with your company.

I remember that upon my employment with your company last 1985 up to the present year 2001 as commission basis salesman, I have not signed any contract with your company stating that all uncollected accounts including bounced checks from Lamadrid Bearing & Parts Corp. will be charged to me. I wonder why your company forcibly instructed me to secure checking account to pay and issue check payment of P15,000.00 per month to cover your company's bad accounts in which this amount is too heavy on my part paying a total bad accounts of more than P650,000.00 for my 16 years employment with your company as commission basis salesman.

Recalling your visit here at my Davao City residence, located at Zone 1 2nd Avenue, San Vicente Buhangin Davao City, way back 1998, you even forced me to sign mortgage contract of my house and lot located at Zone 1 2nd Avenue, San Vicente, Buhangin, Davao City, according to Mr. Jose Lamadrid this mortgage contract of my house and lot will serve as guarantee to the uncollected and bounced checks from Lamadrid Bearing and Parts Corp., customers. I have asked 1 copy of the mortgage contract I have signed but Mr. Jose C. Lamadrid never furnished me a copy.

Very truly yours,

(Sgd) Empermaco B. Abante, Jr.

While doing his usual rounds as commission salesman, petitioner was handed by his customers a letter from the respondent company warning them not to deal with

petitioner since it no longer recognized him as a commission salesman.

In the interim, petitioner received a subpoena from the Office of the City Prosecutor of Manila for violations of Batas Pambansa Blg. 22 filed by respondent Lamadrid.

Petitioner thus filed a complaint for illegal dismissal with money claims against respondent company and its president, Jose Lamadrid, before the NLRC Regional Arbitration Branch No. XI, Davao City.

By way of defense, respondents countered that petitioner was not its employee but a freelance salesman on commission basis, procuring and purchasing auto parts and supplies from the latter on credit, consignment and installment basis and selling the same to his customers for profit and commission of 3% out of his total paid-up sales. Respondents cite the following as indicators of the absence of an employer-employee relationship between them:

- (1) petitioner constantly admitted in all his acts, letters, communications with the respondents that his relationship with the latter was strictly commission basis salesman;
- (2) he does not have a monthly salary nor has he received any benefits accruing to regular employment;
- (3) he was not required to report for work on a daily basis but would occasionally drop by the Manila office when he went to Manila for some other purpose;
- (4) he was not given the usual pay-slip to show his monthly gross compensation;
- (5) neither has the respondent withheld his taxes nor was he enrolled as an employee of the respondent under the Social Security System and Philhealth;
- (6) he was in fact working as commission salesman of five other companies, which are engaged in the same line of business as that of respondent, as shown by certifications issued by the said companies;<sup>[7]</sup>
- (7) if respondent owed petitioner his alleged commissions, he should not have executed the Promissory Note and the Deed of Real Estate Mortgage.<sup>[8]</sup>

Finding no necessity for further hearing the case after the parties submitted their respective position papers, the Labor Arbiter rendered a decision dated November 29, 2001, the decretal portion of which reads:<sup>[9]</sup>

WHEREFORE, premises considered judgment is hereby rendered DECLARING respondents LAMADRID BEARING & PARTS CORPORATION AND JOSE LAMADRID to pay jointly and severally complainant EMPERMACO B. ABANTE, JR., the sum of PESOS ONE MILLION THREE HUNDRED THIRTY SIX THOUSAND SEVEN HUNDRED TWENTY NINE AND 62/100 ONLY (P1,336,729.62) representing his awarded separation pay,

back wages (partial) unpaid commissions, refund of deductions, damages and attorney's fees.

SO ORDERED.

On appeal, the National Labor Relations Commission reversed the decision of the Labor Arbiter in a Resolution dated April 5, 2002, the dispositive portion of which reads:[10]

WHEREFORE, the Appeal is GRANTED. Accordingly, the appealed decision is Set Aside and Vacated. In lieu thereof, a new judgment is entered dismissing the instant case for lack of cause of action.

SO ORDERED.

Petitioner challenged the decision of the NLRC before the Court of Appeals, which rendered the assailed judgment on March 7, 2003, the dispositive portion of which reads:[11]

WHEREFORE, premises considered, petition is hereby DENIED. Let the supersedeas bond dated 09 January 2002, issued the Philippine Charter Insurance Corporation be cancelled and released.

SO ORDERED.

Upon denial of his motion for reconsideration, petitioner filed the instant appeal based on the following grounds:

#### I

THE HONORABLE COURT OF APPEALS IN GRAVE ABUSE OF DISCRETION "MODIFIED" THE IMPORT OF THE "RELEVANT ANTECEDENTS" AS ITS PREMISE IN ITS QUESTIONED DECISION CAUSING IT TO ARRIVE AT ERRONEOUS CONCLUSIONS OF FACT AND LAW.

#### II

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN APPRECIATING THE TRUE FACTS OF THIS CASE THEREBY IT MADE A WRONG CONCLUSION BY STATING THAT THE FOURTH ELEMENT FOR DETERMINING EMPLOYER-EMPLOYEE RELATIONSHIP, WHICH IS THE "CONTROL TEST," IS WANTING IN THIS CASE.

#### III

THE HONORABLE COURT OF APPEALS IS AT WAR WITH THE EVIDENCE PRESENTED IN THIS CASE AS WELL AS WITH THE APPLICABLE LAW AND ESTABLISHED RULINGS OF THIS HONORABLE COURT.

Initially, petitioner challenged the statement by the appellate court that "petitioner, who was contracted a 3% of the total gross sales as his commission, was tasked to sell private respondent's merchandise in the Mindanao area and to collect payments of his sales from the customers." He argues that this statement, which suggests