

SECOND DIVISION

[G.R. No. 111148, October 10, 1997]

**ENRIQUE A. SOBREPEÑA, JR., PETITIONER, VS. COURT OF
APPEALS AND PACIFIC MEMORIAL PLANS, INC., RESPONDENTS.
D E C I S I O N**

TORRES, JR., J.:

The principal issue facing us in this Petition is whether or not the petitioner, upon his retirement as the president of the Pacific Memorial Plans, Inc., is entitled to Overriding Commissions, arising from the sales of Memorial Plans effected during his presidency, but the premium payments of which are collected after his retirement.

When petitioner Enrique A. Sobrepeña, Jr. retired from the Pacific Memorial Plans, Inc., he was the company's president for 13 years (from 1966 to 1979), and had been in its service for an aggregate of 20 years and ten months, having previously held various other positions. He was 53 years old at the time of his retirement.

As president of the respondent corporation, petitioner received, by way of compensation, overriding commissions, derived from premium payments on memorial plans sold by Pacific Memorial Plans, and computed upon the net sales of the corporation's operations, until October 1974, when the computation was based by the company on gross sales. As acknowledged by the petitioner, the overriding commission became due and payable only upon receipt by the respondent corporation of seven percentum (7%) of the purchase price of a memorial plan sold.

Upon his retirement, petitioner received from the company the balance of overriding commissions due him in the amount of P86,266.28, and retirement benefits amounting to P47,558.62, as computed by the respondent corporation.^[1] Petitioner, however, disagreed with the computation of the said amounts, and wrote the respondent corporation for re computation of his benefits.^[2] Without the parties agreeing upon a mutually acceptable accounting of petitioner's benefits, the latter instituted this present action for damages in the Regional Trial Court of Quezon City. The suit was docketed as Civil Case No. Q-31590 in Branch 90 of the said Court.

In his complaint,^[3] petitioner alleged that he was entitled to overriding commissions and other benefits, but which amounts were refused to be given him by the respondent corporation, computed as follows: a) Unpaid commissions totaling 991,390.75; b) Unused vacation leaves equivalent to 240 days or eight months commuted into cash at P50,000 per month, totaling P400,000; and c) Retirement benefits amounting to P614,292.00, all of which amount to P2,005,682.75. Petitioner prayed for payment of such amount as actual damages, besides moral and exemplary damages and attorney's fees.

In its answer,^[4] private respondent corporation traversed the material allegations of the complaint, counter-alleging that the petitioner's overriding commissions and

retirement benefits were overpaid as a result of petitioner's machinations, and pleaded in counterclaim the refund of said overpayments, besides claiming damages as well.

After trial, the Regional Trial Court ruled in favor of the private respondent. The dispositive portion of the court's decision^[5] dated May 27, 1991, reads:

"ACCORDINGLY, judgment is hereby rendered;

1. Dismissing the instant complaint;
2. Ordering plaintiff to pay defendant the following:

- a. The sum of P94,903.06 representing the overpayment made by defendant to plaintiff as retirement benefits;
- b. The sum of P50,000 as exemplary damages; and,
- c. The sum of P150,000.00 as attorney's fees and expenses of litigation.

With costs against the plaintiff.

SO ORDERED."

While striking out the respondent's claim of overpayment of overriding commissions, the court, in the same breath, dismissed the petitioner's claim for unpaid commissions, the same being bereft of any factual basis. It declared that the petitioner's right to overriding commissions was coterminous with his employment with the respondent company, or only up to November, 1979, there being no evidence pointing to the petitioner's entitlement to the same beyond his employment with defendant. The court, in sum found that petitioner was paid all his overriding commissions due him from 1966 until his retirement in November, 1979.

The court likewise dismissed plaintiff's claims for commutation of unused vacation leaves and unpaid retirement benefits. On the contrary, the court found sufficient evidence to sustain the respondent's claim that petitioner's retirement benefits were overpaid to the extent of P94,903.06. This became the basis of the court's award of one counterclaims of the respondent.

Unable to accept the foregoing ruling, petitioner appealed the trial court's decision to the Court of Appeals raising the following as errors.

I. THE LOWER COURT ERRED IN DISMISSING THE COMPLAINT.

A. THE COURT A QUO ERRED IN FINDING THAT PLAINTIFF-APPELLANT FAILED TO PRESENT SUFFICIENT DOCUMENTARY EVIDENCE TO SUBSTANTIATE HIS CLAIM FOR UNPAID OVERRIDING COMMISSIONS (ORCs).

A.1. THE LOWER COURT ERRED IN FINDING THAT PLAINTIFF-APPELLANT FAILED TO

PRESENT CONVINCING EVIDENCE THAT ENTITLEMENT TO THE ORCs MAY EVEN EXTEND BEYOND HIS EMPLOYMENT WITH DEFENDANT-APPELLEE.

B. THE COURT A QUO ERRED IN FINDING THAT PLAINTIFF APPELLANT IS NOT ENTITLED TO HIS CLAIM FOR UNUSED VACATION LEAVES INTO CASH.

C. THE COURT A QUO ERRED IN FINDING THAT PLAINTIFF-APPELLANT IS NOT ENTITLED TO HIS CLAIM FOR UNPAID RETIREMENT BENEFITS AND THAT, ON THE OTHER HAND, IT IS PLAINTIFF-APPELLANT WHO HAS BEEN OVERPAID HIS RETIREMENT BENEFITS.

II. THE COURT A QUO ERRED IN AWARDING EXEMPLARY DAMAGES, ATTORNEY'S FEES, EXPENSES OF LITIGATION AND COSTS OF SUIT TO DEFENDANT-APPELLEE.

III. THE LOWER COURT ERRED IN FINDING THAT PLAINTIFF-APPELLANT IS NOT ENTITLED TO DAMAGES, ATTORNEY'S FEES AND COSTS.

The appellate court, in its decision dated February 24, 1993,^[6] upheld the findings of the lower court and dismissed the petitioner's claim for overriding commissions. The court said:

"With respect to the first argument refers to several pieces of documentary evidence, viz; Exhibit "BB", Exhibit "FF", Exhibits "EE" to "EE-39" and ORC payments for Guam operations, which according to him were not considered by the court a quo in deciding the instant case. However, as shown in the preceding paragraphs, these pieces of documents will not suffice to render a judgment of reversal.

Exhibit "BB" is appellee's own computer hard copy which shows that there were 78.756 commissionable plans or plans where 7% of the purchase price have already been paid as August 31, 1984 with a total purchase price of P205,668,708.25 sold during appellant's term as appellee's president. It will be noteworthy to observe, however, that the exhibit at hand indicates the number of commissionable plans sold as of August 31, 1984 or more than four (4) years after appellant retired from the appellee in November 1979. Said retirement should therefore divest him of any right to claim ORCs after the severance of ties inasmuch as such entitlement is coterminous with his continued employment with the appellee corporation.

Conjunctively, appellant's contention that he is entitled to ORCs beyond November 1979 (an argument ascribed corollarily with the first argument) must necessarily."^[7]

On the issues of commutation of unused vacation leave benefits and underpayment of retirement benefits, the appellate court adopted the pronouncements of the trial court, thus:

"On the issue of entitlement of monetization of unused vacation leaves, We find that the trial court correctly declared that cash conversion of unused vacation is not possible considering the clarity of the pertinent provisions of Administrative Standard No. 1005. Thus:

'On the issue of vacation leaves, this Court finds for defendant in the plaintiff's claim for the cash conversion of his alleged unused vacation leaves has both no factual and legal bases. Both parties admitted during the trial that Administrative Standard and operative policy of defendant with respect to vacation leave benefits of its employees. The said Administrative Standard contains no provision whatsoever to support plaintiff's claim for conversion into cash of unused vacation leaves of 240 days. While Section 12.0 of the said Administrative Standard deals with commutation of leave, this section deals with a situation where an employee is not allowed by defendant to enjoy his vacation leaves on the dates scheduled, thus, the employee shall have the option either to commute the unenjoyed vacation into cash or carry over the unenjoyed vacation to the succeeding year. In the instant case, plaintiff failed to submit convincing evidence to prove that the above stated section of the Administrative Standard should apply to his case. Neither was plaintiff able to present convincing evidence that other employees of defendant received the cash conversion of their unused vacation leaves in excess of thirty (30) days. On the other hand, defendant was able to present documentary evidence (Ex. "13") to prove that an employee may only commute into cash unused vacation leave credits to a maximum of only thirty (30) days.' (Decision, pp. 7-8 Original Records, pp. 678-679)

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Clearly, Section 12.00 of Administrative Standard No. 1005 provides for only one instance wherein an employee may be allowed to have his unused vacation leaves commuted into cash is when the said employee is not allowed by the appellee to enjoy his scheduled vacation leave, thus, giving the employee the option either to commute the unenjoyed vacation leave to the succeeding year. Appellant's case, therefore, is evidently obtaining.

Third. On the issue of whether or not appellant is still entitled to unpaid retirement benefits in the amount of P612,292.00 (sic), We agree with the trial court's findings, hence, We hereby quote the same with approval to wit:

'With respect to the third issue on whether or not plaintiff is entitled to his claim for unpaid retirement benefits in the amount of P614,292.00, the parties' respective contentions are as follows:

Plaintiff claims that his retirement benefits should be computed on the basis of the terminal five (5) years earning average, thus resulting to a total amount of P614,292.00.

On the other hand, defendant alleged that plaintiff has been overpaid his retirement

benefits in an amount of equivalent to P94,903.06. To support its claim, defendant alleged that there was an error in the computation of plaintiff's retirement benefits since the latter's gross salary, including commissions was taken into account when the computation should only pertain to the basic pay.

It has been established that the retirement plan applicable to plaintiff's case at the time he retired in 1979 was the Amended Employee's Retirement Plan amended on January 1, 1972 (Exh. "4"). Article V of the said Plan clearly states that for a retiree to be entitled to retirement benefits equivalent to one month's pay per year of employment based on the average monthly salary during the last five (5) years of employment, he must have rendered at least 20 years of continuous service upon attainment of age 65. In sum, these two conditions, at least 20 years of continuous service and attainment of age 65 must exist together. Such a situation clearly does not apply to plaintiff's case there is no dispute that while he rendered over 20 years of continuous service with the Grepalife group of companies, he was only 53 years old when he opted to retire in November 1979. Thus, he is only entitled to retirement benefits equivalent to a lump sum payment of one month's pay per year of employment based on the average monthly salary over his entire employment with the defendant company (career average). There is, therefore, no basis for plaintiff to claim the amount of P614,292.00 as retirement benefits which he computed on the basis of his terminal five (5) years earning average' (Decision, pp. 9-10; Original Records, pp. 680-681)."[8]

The award of attorney's fees was found to be exorbitant, and was thus reduced to P50,000.00. In such wise, the trial court's judgment was affirmed by the appellate court, which held:

"WHEREFORE, premises considered, the judgment appealed from is hereby AFFIRMED subject to the reduction of the attorney's fees to P50,000.00.

SO ORDERED."[9]

Petitioner filed a motion for reconsideration of the appellate court's decision, arguing mainly that the ruling of the honorable court that petitioner is not entitled to commissions which accrued during his employment but became payable after he retired from the respondent corporation is contrary to law. Petitioner likewise reiterated his claim for unused vacation leave and unpaid retirement benefits.

On July 20, 1993, the appellate court denied petitioner's motion for reconsideration, [10] ruling that the issue of the legality of appellant's non-entitlement to overriding commissions after his retirement was never raised in the proceedings below, and cannot therefore be entertained at this late stage. His other claims were similarly denied.

Petitioner is now before the Court, seeking the reversal of the lower courts' pronouncements. The thrust of the petition is that the petitioner should be awarded overriding commissions on gains derived from memorial plans sold by the respondent corporation during his tenure, even though 7% of the collectible