



Republic of the Philippines  
 Supreme Court  
 Manila

SECOND DIVISION

EDITA SANTOS DEGAMO,

*Petitioner,*

G.R. No. 249737

Present:

PERLAS-BERNABE, S.A.J.,

*Chairperson,*

HERNANDO,

INTING,

GAERLAN, and

ROSARIO,\* JJ.

- versus -

MY CITIHOMES (CITIHMES  
 BUILDER & DEVELOPMENT  
 CORPORATION), JOHN WANG,  
 and ROSIE WANG,

*Respondents.*

Promulgated:

SEP 15 2021

X ----- X

RESOLUTION

INTING, J.:

Before the Court is a Petition for Review on *Certiorari*<sup>1</sup> assailing the Decision<sup>2</sup> dated October 1, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 160961 which affirmed the Decision<sup>3</sup> dated December 21, 2018 and the Resolution<sup>4</sup> dated February 28, 2019 of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. 12-18785-17/NLRC LAC No. 11-004255-18. The NLRC vacated and set aside the Decision<sup>5</sup> dated October 4, 2018 of the Labor Arbiter and

\* Designated additional member per Special Order No. 2835 dated July 15, 2021.

<sup>1</sup> *Rollo*, pp. 12-34.

<sup>2</sup> *Id.* at 39-51-A; penned by Associate Justice Pedro B. Corales with Associate Justices Marlene B. Gonzales-Sison and Ruben Reynaldo G. Roxas, concurring.

<sup>3</sup> *Id.* at 76-88; penned by Presiding Commissioner Grace E. Maniquiz-Tan with Commissioners Dolores M. Peralta-Beley and Mercedes R. Posada-Lacap, concurring.

<sup>4</sup> *Id.* at 90-96; penned by Presiding Commissioner Grace E. Maniquiz-Tan with Commissioners Dolores M. Peralta-Beley and Mercedes R. Posada-Lacap, concurring.

<sup>5</sup> *Id.* at 145-151; penned by Labor Arbiter Marion Shane T. Madeja

dismissed the Complaint<sup>6</sup> of Edita Santos Degamo (petitioner) for lack of jurisdiction over the case.

### *The Antecedents*

Respondent My Citihomes (Citihomes) is a domestic corporation engaged in the development and construction of real properties, with Rosie Wang and John Wang as its owners.<sup>7</sup>

On December 28, 2017, petitioner filed a Complaint<sup>8</sup> for non-payment of commission fees against Citihomes.<sup>9</sup>

In her Position Paper,<sup>10</sup> petitioner alleged that she was hired by Citihomes on March 1, 2015 as an agent to work in Citi Pro, a group of real estate agents sanctioned by Citihomes. Eventually, she was promoted as sales manager with the following tasks: (1) solicit potential clients to buy or sell real properties; (2) advise clients on prices, conditions, and other related information on real properties; (3) supervise property consultants; (4) man the booths of Citihomes or Citi Pro; and (5) report to the office of Citihomes.<sup>11</sup>

Due to low sales, petitioner filed a resignation letter<sup>12</sup> effective April 30, 2017 but it was not accepted by her direct superior, Ms. Evelyn Abapo (Ms. Abapo). Citihomes also refused to pay her commission fees for the 18 real properties she successfully sold. Thus, petitioner prayed that Citihomes be ordered to pay her commission fees plus moral and exemplary damages.<sup>13</sup>

In its Position Paper,<sup>14</sup> Citihomes averred: (1) that petitioner was not its employee being a mere sales agent of Ms. Abapo, a licensed broker, who possessed the power to hire and terminate petitioner; (2) that it did not pay the wages of petitioner as the fees of sales agents

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<sup>6</sup> *Id.* at 98-99.

<sup>7</sup> *Id.* at 53

<sup>8</sup> *Id.* at 98-99.

<sup>9</sup> *Id.* at 40.

<sup>10</sup> *Id.* at 103-110.

<sup>11</sup> *Id.* at 104.

<sup>12</sup> *Id.* at 111.

<sup>13</sup> *Id.* at 106-108.

<sup>14</sup> *Id.* at 127-137.

come from the commissions it pays to Ms. Abapo who will then make an allocation among her sales agents; (3) that it did not exercise control over the means and methods by which petitioner performed her job as she devised her own techniques and methods in soliciting buyers of real properties; and (4) that there being no employer-employee relationship between the parties, Citihomes contended that the Labor Arbiter has no jurisdiction over petitioner's complaint.<sup>15</sup>

In her Reply,<sup>16</sup> petitioner stated: (1) that she was an employee of Citihomes, who hired her through Ms. Abapo, regularly paid her commission fees, and closely monitored her work three times a week from 9:00 a.m. to 6:00 p.m. in accordance with its rules and regulations; (2) that Citihomes required her to maintain a monthly quota of ₱5,000,000.00; and (3) that she performed services which were usually necessary and desirable to the main business of Citihomes.<sup>17</sup>

#### *Ruling of the Labor Arbiter*

In the Decision<sup>18</sup> dated October 4, 2018, the Labor Arbiter found the in-house broker of Citihomes, Ms. Abapo, to be a labor-only contractor and ruled that Citihomes was the real employer of petitioner. The Labor Arbiter ordered Citihomes to pay petitioner her unpaid commission fees for the 10 accounts she sold in the amount of ₱117,121.21, explaining as follows:

x x x the nature of business of CITIHOMES is real estate, while the job of the complainant [was to] find buyers for the real estate properties owned by the respondent CITIHOMES. Hence, it is obvious that the job being performed by the complainant is directly related to the real estate business of CITIHOMES. Complainant's job is also usually necessary or desirable in the usual business or trade of CITIHOMES. Therefore, complainant is a regular employee of the CITIHOMES.

x x x x

x x x complainant's position is analogous to a situation wherein a worker was contracted out by a labor only contractor. In this case, CITIHOMES's [sic] in-house broker, Evelyn Abapo, acted

<sup>15</sup> *Id.* at 128-133.

<sup>16</sup> *Id.* at 121-126.

<sup>17</sup> *Id.* at 122-123.

<sup>18</sup> *Id.* at 145-151.

as a labor only contractor and hired complainant in behalf of the principal CITIHOMES.<sup>19</sup>

For lack of factual and legal basis, the Labor Arbiter denied petitioner's prayer for damages.<sup>20</sup>

Both parties appealed<sup>21</sup> before the NLRC.

Using as evidence the buyers' final computations, petitioner prayed for the payment of the additional eight real properties she allegedly sold which were put on hold by Citihomes.<sup>22</sup>

In defense, Citihomes maintained: (1) that petitioner was not its employee; (2) that she failed to prove by substantial evidence the four elements of employer-employee relationship; and (3) that the Labor Arbiter's conclusion that it is engaged in labor-only contracting is misleading because it only hires registered licensed brokers, such as Ms. Abapo, who select, gather, guide, and control their own pool of sales agents like petitioner.<sup>23</sup>

#### *Ruling of the NLRC*

In the Decision<sup>24</sup> dated December 21, 2018, the NLRC set aside the findings of the Labor Arbiter and ruled that there was no employer-employee relationship between Citihomes and petitioner, ratiocinating as follows:

Notably, complainant did not present any contract, service agreement or any other form of instrument that would fortify her claim that indeed she was hired by CITIHOMES as its employee.

It should be noted that in CITIHOMES' business of selling real estate properties, the marketing of these properties was done through real estate brokerage. The sales operations were primarily

<sup>19</sup> *Id.* at 150.

<sup>20</sup> *Id.* at 151.

<sup>21</sup> See Memorandum of Appeal dated November 5, 2018 of Edita Santos Degamo. *id.* at 152-164; see also Memorandum of Appeal dated November 1, 2018 of Citihomes Builder & Development Inc., *id.* at 181-193.

<sup>22</sup> *Id.* at 162-163.

<sup>23</sup> *Id.* at 183-190.

<sup>24</sup> *Id.* at 76-88.

conducted by an independent authorized broker in the name of Ms. Evelyn Abapo, who secured the services of her own sales representatives, financed her own office expenses. Thus, it is clear that it was not CITIHOMES but Ms. Abapo who engaged complainant as part of her sales workforce.

On the CITIHOME's [*sic*] exercise [of] control and supervision over complainant's work, not every form of control that a party reserves to himself over the conduct of the other party in relation to the services being rendered may be accorded the effect of establishing an employer-employee relationship. x x x

We agree with CITIHOMES that complainant, just like Ms. Abapo, was free to conduct and promote her sales operations. She was not subjected to definite hours or conditions of work and in turn was compensated according to the result of her efforts. By the nature of the business of soliciting sales, agents are normally left free to devise ways and means of persuading people to buy real estate property. Complainant had complete control over her occupation and CITIHOMES did not exercise any right of control and supervision over her performance except as to the payment of commission the amount of which entirely depends on her sole effort. She was also free to engage in other means of livelihood.

The periodic reports to CITIHOMES alluded to by complainant were but necessary to update the company of the latter's performance. It did not involve control over the means and methods by which she was to perform her job.<sup>25</sup>

Petitioner moved for reconsideration, but the NLRC denied it in the Resolution<sup>26</sup> dated February 28, 2019.

Aggrieved, petitioner filed with the CA a Petition for *Certiorari*<sup>27</sup> praying for the reinstatement of the Decision<sup>28</sup> of the Labor Arbiter.

### *Ruling of the CA*

In the Decision<sup>29</sup> dated October 1, 2019, the CA dismissed the petition for *certiorari* for lack of merit and ruled that the NLRC did not gravely abuse its discretion when it reversed the ruling of the Labor

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<sup>25</sup> *Id.* at 85-86.

<sup>26</sup> *Id.* at 90-96.

<sup>27</sup> *Id.* at 52-73.

<sup>28</sup> *Id.* at 145-151.

<sup>29</sup> *Id.* at 39-51-A.

Arbiter and in holding that no employer-employee existed between Citihomes and petitioner, explaining as follows:

Notably, Degamo consistently alleged that her services was engaged by MY Citihomes “through Abapo” and she tendered her resignation letter to the latter in April 2017. To this Court’s mind, these admissions bolster private respondents’ stance that MY Citihomes only hires registered licensed brokers who select, gather, guide, and control their own pool of sales agents and the company has “no say” on how their licensed brokers would manage the affairs of their respective “workforce[s]. x x x

Likewise, the payments of commissions and other incentives to petitioner is not determinative of the existence of an employer-employee relationship. x x x

Degamo also failed to cite specific rules, regulations, or codes of ethics that private respondents supposedly controlled the means and methods of soliciting sales and dealing with prospective clients. x x x

x x x x

Indeed, under the attendant circumstances, there is no employer-employee relationship between the parties.<sup>30</sup>

Hence, the instant petition before the Court.

Petitioner imputes error on the part of the CA in holding that no employer-employee relationship existed between her and Citihomes. Using the four-fold test, petitioner alleges: (1) that she was selected and engaged by Citihomes through their licensed real estate broker, Ms. Abapo; (2) that Citihomes paid her commission fees on a per buyer basis; (3) that having been hired by Citihomes, it has the power to dismiss her; and (4) that it exercised control over the means and methods of her job.<sup>31</sup>

Petitioner likewise contends: (1) that Ms. Abapo was a labor-only contractor who has no substantial capital or investment of her own; (2) that Citihomes carries the burden of establishing that Ms. Abapo was a legitimate job contractor because the law presumes a contractor to be a labor-only contractor; and (3) that for failing to prove that Ms. Abapo

<sup>30</sup> *Id.* at 48-50.

<sup>31</sup> *Id.* at 21.

was not a labor-only contractor, Citihomes was indubitably the actual employer of petitioner.<sup>32</sup>

### *Issue*

Whether there was employer-employee relationship between Citihomes and petitioner.

### *Ruling of the Court*

While the Court may resolve only questions of law in a petition for review on *certiorari*, an exception may be made when the factual findings of the labor tribunals are conflicting, such as in this case.<sup>33</sup> Here, the Labor Arbiter found that an employer-employee relationship existed between Citihomes and petitioner; while the NLRC and the CA held that there was none, petitioner being an independent contractor of Citihomes.

*The NLRC and the CA aptly determined that the four elements of employer-employee relationship are not present at bar.*

To ascertain the existence of an employer-employee relationship, jurisprudence has invariably adhered to the four-fold test, to wit: (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 employee's conduct or the so-called "control test."<sup>34</sup> Verily, the power of the employer to control the work of the employee is considered the most significant determinant of the existence of an employer-employee relationship.<sup>35</sup> This is premised on whether the person for whom the services are performed reserves the right to control both the end

<sup>32</sup> *Id.* at 27.

<sup>33</sup> *Microsoft Corporation, et al. v. Farajallah, et al.*, 742 Phil. 744, 775 (2014), citing *Local Superior of the Servants of Charity, Inc. v. Jody King Construction & Development Corp.*, 509 Phil. 426, 432 (2005).

<sup>34</sup> *Felicilda v. Uy*, 795 Phil. 408, 415 (2016), citing *South East International Rattan, Inc., et al. v. Coming*, 729 Phil. 298, 306 (2014), further citing *Atok Big Wedge Co., Inc. v. Gison*, 670 Phil. 615, 626-627 (2011).

<sup>35</sup> *Id.*

achieved and the manner and means used to achieve that end.<sup>36</sup>

Settled is the rule that allegations in the complaint must be duly proven by competent evidence and the burden of proof is on the party making the allegation.<sup>37</sup> Before a case for money claim filed against an alleged employer can prosper, an employer-employee relationship must first be established. Thus, in filing a complaint before the Labor Arbiter for non-payment of commission fees, based on the premise that she was an employee of Citihomes, it is incumbent upon petitioner to prove the employer-employee relationship by substantial evidence for the burden of proof rests upon the party who asserts the affirmative of an issue. Petitioner claims to be an employee of Citihomes; hence, it is her duty to proffer evidence to prove the existence of employer-employee relationship.

However, other than petitioner's allegation that the four elements of employer-employee relationship are present in the case, she did not submit any relevant proof that Citihomes engaged her services as a sales agent, paid her salary, and had the power to dismiss her services. Notably, the only evidence which petitioner adduced pertained to her alleged unpaid commission fees. Petitioner even made allegations which are inconsistent with the four-fold test of employment. She stated that Ms. Abapo was the one who engaged her services and that she tendered her resignation letter to Ms. Abapo. The circumstances support the allegation of Citihomes that Ms. Abapo, as an independent contractor, actually selected, gathered, and controlled her own pool of sales agents like petitioner.

In arguing that Citihomes exercised control over the means and method of her work, petitioner alleges that Citihomes required her to maintain a monthly sales quota of ₱5,000,000.00. Citihomes also monitored her work three times a week from 9:00 a.m. to 6:00 p.m. in accordance with its rules and regulations, beginning from the initial processing of the documents and requirements of a buyer until the turnover of the property to the buyer.<sup>38</sup>

<sup>36</sup> *Id.*, citing *Legend Hotel (Manila), et al. v. Reahyo*, 691 Phil. 226, 240 (2012), further citing *Leonardo v. Court of Appeals*, 524 Phil. 221, 231 (2006).

<sup>37</sup> *Atienza v. Saluta*, G.R. No. 233413, June 17, 2019, citing *Marsman & Company, Inc. v. Sta. Rita*, 830 Phil. 470, 489 (2018), further citing *Sarona v. National Labor Relations Commission, et al.*, 679 Phil. 394, 408 (2012).

<sup>38</sup> *Rollo*, pp. 23-24.

*Citihomes exercised no control over the means and method of petitioner's work.*

The significant factor in determining the relationship of the parties is the presence or absence of supervisory authority to control the method and the details of the performance of the service being rendered and the degree to which the alleged employer may intervene to exercise such control. The presence of such power of control is indicative of an employment relationship, while the absence thereof is indicative of independent contractorship.<sup>39</sup> In other words, the test to determine the existence of independent contractorship is whether one has contracted to do the work according to his own methods and without being subject to the control of the employer except only as to the result of the work.<sup>40</sup>

In *Royale Homes Marketing Corp. v. Alcantara*,<sup>41</sup> the Court held that there is no employer-employee relationship between a real estate corporation and a sales broker when the latter : (a) is subject to rules and regulations which do not interfere with the means and methods of accomplishing the assigned tasks; (b) is not required to observe definite working hours; (c) can engage in selling other products or engage in unrelated business; (d) is paid compensation consisting of commission override, budget allocation, sales incentive and other forms of company support but not fixed monthly salary; and (e) is not entitled to statutorily mandated benefits.<sup>42</sup>

Here, petitioner failed to present any proof of the purported procedure or regulations which Citihomes allegedly implemented and imposed in the solicitation of sales and dealing with prospective clients.

At any rate, that Citihomes required petitioner to maintain a monthly sales quota of ₱5,000,000.00 and closely monitored her work three times a week in accordance with its rules and regulations does not indicate that it had control over the means and methods on petitioner's work. By the nature of the business of soliciting sales on behalf of a real estate corporation, sales agents are normally left free to devise ways and means of persuading people to buy properties. Besides,

<sup>39</sup> *AFP Mutual Benefit Assn., Inc. v. NLRC*, 334 Phil. 712, 721-722 (1997).

<sup>40</sup> *Id.*, citing *Investment Planning Corp. of the Phil. v. SSS*, 129 Phil. 143, 147 (1967).

<sup>41</sup> 739 Phil. 744 (2014).

<sup>42</sup> *Id.* at 758-762.

even assuming that Citihomes monitored petitioner's working hours and set a certain sales quota on her, it is not the kind of control which the law contemplates that would result in an employer-employee relationship. It is merely imposed to achieve a certain production level wherein incentives are given when a particular performance is reached. Simply put, the purported rules and regulations do not pertain to the means and methods of accomplishing the task of petitioner.

Moreover, to the Court's mind, if petitioner indeed considered herself as an employee of Citihomes, then she should have also complained that she was being denied her statutorily mandated benefits for two consecutive years. But she did not. As a matter of fact, petitioner filed her Complaint only to claim for her unpaid commissions. This signifies that she understands not being entitled to those employee benefits because she is an independent contractor. Neither did she complain about her non-membership to Social Security System, PhilHealth, or Pag-Ibig which are the usual deductions from employees' salaries. Indubitably, the circumstances strengthen the fact that petitioner is an independent contractor and not an employee of Citihomes.

As an independent contractor, petitioner's claim for the unpaid commission should be litigated in an ordinary civil action.<sup>43</sup> The jurisdiction of the Labor Arbiter and the NLRC pertains to cases or disputes arising out of or in connection with an employer-employee relationship. Without this critical element of employment relationship, the labor tribunals can never acquire jurisdiction over a dispute as in the case at bar.<sup>44</sup>

**WHEREFORE**, the petition is **DENIED** for lack of merit. The Decision dated October 1, 2019 of the Court of Appeals in CA-G.R. SP No. 160961 is hereby **AFFIRMED**.

**SO ORDERED.**

  
**HENRI JEAN PAUL B. INTING**  
*Associate Justice*

<sup>43</sup> See *AFP Mutual Benefit Asso., Inc. v. NLRC*, *supra* note 39.

<sup>44</sup> *Id.* at 724-725.

WE CONCUR:

  
**ESTELA M. PERLAS-BERNABE**  
*Senior Associate Justice*  
*Chairperson*

  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*

  
**SAMUEL H. GAERLAN**  
*Associate Justice*

  
**RICARDO R. ROSARIO**  
*Associate Justice*

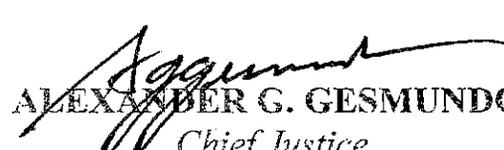
**ATTESTATION**

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ESTELA M. PERLAS-BERNABE**  
*Senior Associate Justice*  
*Chairperson*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ALEXANDER G. GESMUNDO**  
*Chief Justice*

