



Republic of the Philippines  
**Supreme Court**  
 Manila

**SECOND DIVISION**

**MARILYN B. ASENTISTA,**  
 Petitioner,

**G.R. No. 229404**

Present:

CARPIO, J.,  
*Chairperson,*  
 PERALTA,  
 PERLAS-BERNABE,  
 CAGUIOA, and  
 REYES, JR., JJ.

- versus -

**JUPP & COMPANY, INC., AND/OR**  
**MR. JOSEPH V. ASCUTIA,**  
 Respondents.

Promulgated:

**'24 JAN 2018**

*HM Cabalag/Pingetio*

X-----X

**DECISION**

**REYES, JR., J.:**

Before this Court is a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 filed by Marilyn B. Asentista (Asentista) seeking to set aside the Decision<sup>2</sup> dated August 31, 2016 and Resolution<sup>3</sup> dated November 17, 2016 of the Court of Appeals (CA), in CA-G.R. SP No. 06747-MIN, which set aside and nullified the Resolutions<sup>4</sup> dated November 28, 2014 and February 27, 2015 of the National Labor Relations Commission (NLRC), ordering respondents JUPP & Company, Inc. (JUPP) and/or its President Joseph V. Ascutia (Ascutia) to pay Asentista her remaining unpaid sales commissions in the amount of ₱210,077.95 plus ten percent (10%) total monetary award as attorney's fees.

<sup>1</sup> Rollo, pp. 11-27.

<sup>2</sup> Penned by Associate Justice Oscar V. Badelles, with Associate Justices Romulo V. Borja and Ronaldo B. Martin, concurring; id. at 129-135.

<sup>3</sup> Id. at 144-145.

<sup>4</sup> See CA Decision dated August 31, 2016, id. at 129.

*Reyes*

Asentista was employed by JUPP as sales secretary on April 16, 2007. On March 14, 2008, she became a regular employee of the company as a sales assistant and was later appointed in July 2010 as a sales agent of JUPP for its Northern Mindanao area. As a sales agent, Asentista became entitled to a sales commission of two percent for every attained monthly quota. However, despite reaching her monthly quota, JUPP failed to give Asentista her earned sales commission despite repeated requests.<sup>5</sup>

Meanwhile in 2011, JUPP, through its Administrative and Finance Officer Malou Ramiro, issued a new Toyota Avanza vehicle to Asentista in view of her sales performance in the Cagayan De Oro area. The ownership of the car, however, remains with the company. Notwithstanding lack of agreement, JUPP deducted car plan participation payment amounting to ₱113,000.00 and one year rental payment of ₱68,721.36 from her unpaid sales commission.<sup>6</sup>

On February 4, 2013, Asentista tendered her resignation effective February 28, 2013 and returned the Avanza vehicle to JUPP through Emmanuel P. Pabon.<sup>7</sup> Thereafter, she filed a claim for unpaid commission and refund for car plan deduction based on the computation<sup>8</sup> sent by Ascutia, summarized as follows:

2010-----	₱ 5,361.61
2011-----	₱ 178,105.06
2012-----	₱ 143,295.53
Total Amount:	₱ 334,117.20
Less: ₱85,305.31 (Cash Advances - Asentista's total debts to JUPP)	
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Total Amount: ₱248,811.89	
Less: ₱38,733.94 (deposited commission to Asentista's account)	
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Total Sales Commission due: ₱210,077.99	

As a result of the respondents' incessant refusal to pay, Asentista filed a complaint against JUPP and Ascutia before the NLRC Regional Arbitration Branch No. 10, Cagayan de Oro City for non-payment for sales commission.<sup>9</sup>

For their part, the respondents opposed the allegations of Asentista, arguing the burden of proof to substantiate her claim for unpaid commission and car participation refund rested upon her. Since the employment agreement signed by Asentista did not include any

<sup>5</sup> Id. at 32.

<sup>6</sup> Id. at 32-33.

<sup>7</sup> Id. at 33.

<sup>8</sup> Id. at 37-40.

<sup>9</sup> See Complaint, id. at 28.

*Meyer*

remuneration for a sales commission and car participation plan, her claim lacked any legal basis for entitlement. Further, Asentista was only allowed to use the Toyota Avanza with car participation during the amortization period for both her personal and official use due to the generosity of JUPP.<sup>10</sup>

On the other hand, JUPP admitted that despite lack of explicit provision in the employment agreement, Asentista was given during her employment discretionary sales commission subject to the sole prerogative of the company. JUPP likewise acknowledged sole discretion to allow Asentista to own the vehicle after the amortization period.<sup>11</sup>

In a Decision<sup>12</sup> dated November 28, 2013, Labor Arbiter (LA) Rammex C. Tiglao dismissed the complaint of Asentista for lack of merit. In so ruling, the LA emphasized the non-entitlement of Asentista to claim for sales commission or refund for amortization payment for the use of the company's car as shown by the employment agreement between JUPP and the complainant. Furthermore, the LA opined on the improbability of omission of the entitlement of unpaid commission in the resignation letter of the complainant, given her six years of employment and educational attainment. Finally, the affidavit and supporting documents of Asentista were disregarded for being self-serving, unreliable and unsubstantial evidence. Thus, it was ruled:

**WHEREFORE** the instant complaint is **DISMISSED** for lack of merit.

The respondents' counter-claims for exemplary damages and attorney's fees are dismissed for want of jurisdiction and/or lack of merit.<sup>13</sup>

On appeal, the NLRC in a Resolution<sup>14</sup> dated November 28, 2014 reversed the decision of the LA and gave more credence on Asentista's claim for unpaid commission based on Ascutia's electronic messages. Further, in the absence of express stipulation, the respondents lacked authority to forfeit Asentista's sales commission and apply the same as rentals for the personal use of the vehicle.<sup>15</sup> Accordingly, it was held that:

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<sup>10</sup> Id. at 47-50.

<sup>11</sup> Id.

<sup>12</sup> Id. at 70-74.

<sup>13</sup> Id. at 73-74.

<sup>14</sup> Id. at 81-88.

<sup>15</sup> Id. at 86.

*Meyer*

WHEREFORE, the appeal is GRANTED.

Respondents are hereby ORDERED to pay Complainant her remaining unpaid sales commissions in the amount of ₱210, 077.95 plus ten percent of the total monetary award as attorney's fees.

SO ORDERED.<sup>16</sup>

The motion for reconsideration filed by the respondents was denied for lack of merit in a Resolution<sup>17</sup> dated February 27, 2015.

Aggrieved, the respondents filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA alleging grave abuse of discretion on the part of NLRC for reversing the ruling of the LA and ordering them to pay the complainant the unpaid sales commissions with additional 10% of the total monetary award as attorney's fees.<sup>18</sup>

In a Decision<sup>19</sup> dated August 31, 2016, the CA ruled favorably on the petition and reinstated the decision of the LA. CA agreed with the respondents that Asentista is not entitled to the grant of sales commission based on the "Job Offer for Regular Status of Employment." Further, the CA rejected the email allegedly sent by Ascutia for being "self-serving, unreliable and unsubstantial evidence."

"Nowhere could it be read in the contract that private respondent [Asentista] is entitled to the claimed unpaid commission. The Court cannot give credence to the email allegedly sent by petitioner Ascutia to private respondent detailing the computation of her claimed unpaid commission. x x x."

Granting the petition, it was held that:

**WHEREFORE**, the petition is **GRANTED**. The Resolutions dated November 28, 2014 and February 27, 2015 of the National Labor Relations Commission, Eight Division, Cagayan De Oro City is hereby **SET ASIDE and NULLIFIED**, having been issued in grave abuse of discretion. The Decision of the Labor Arbiter dated November 28, 2013 is hereby **REINSTATED**.

SO ORDERED.<sup>20</sup>

Hence, this petition.

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<sup>16</sup> Id. at 87.

<sup>17</sup> See CA Decision dated August 31, 2016, id. at 129.

<sup>18</sup> Id. at 132.

<sup>19</sup> Id. at 129-134.

<sup>20</sup> Id. at 134.

*Meyer*

### Ruling of the Court

Before this Court, Asentista argues entitlement to sales commission and refund for car plan participation and amortization payment. She avers that the respondents can no longer refute her allegations since they have already admitted her entitlement to a discretionary commission and deduction in the amount of ₱113,000.00 and ₱68,721.36 as payment for her car plan participation and amortization payment.

In their Comment, the respondents reiterate their opposition since the employment agreement did not include sales commission as part of her salary and benefits. The respondents likewise refute the evidentiary value of the alleged email messages of Ascutia for being unsubstantiated and unfounded.

The petition is granted.

The Court reverses the CA's ruling that the respondents have sufficiently established Asentista's non-entitlement in view of the absence of any specific provision in her employment agreement including sales commission as part of her remuneration.

At the outset, the respondents can no longer refute Asentista's entitlement to a discretionary commission since an admission can already be deduced in their position paper.<sup>21</sup> Moreover, the silence of the employment agreement including sales commission as part of remuneration does not affect her entitlement. As provided by Section 97(f) of the Labor Code, employee's wage has been defined as "remuneration of earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered and includes the fair and reasonable value, as determined by the Secretary of Labor and Employment, of board, lodging, or other facilities customarily furnished by the employer to the employee."<sup>22</sup>

In *Toyota Pasig, Inc. v. De Peralta*<sup>23</sup> citing *Iran v. NLRC*,<sup>24</sup> the Court affirmed the inclusion of sales commission as part of a salesman's remuneration for services rendered to the company. In explaining the wisdom behind the inclusion, it was held that:

<sup>21</sup> See Position Paper, id. at 47.

<sup>22</sup> As cited in *Toyota Pasig, Inc. v. De Peralta*, G.R. No. 213488, November 7, 2016, and *Iran v. NLRC*, 352 Phil. 261 (1998). (Underscoring Ours)

<sup>23</sup> G.R. No. 213488, November 7, 2016.

<sup>24</sup> 352 Phil. 261 (1998).



This definition explicitly includes commissions as part of wages. While commissions are, indeed, incentives or forms of encouragement to inspire employees to put a little more industry on the jobs particularly assigned to them, still these commissions are direct remunerations for services rendered. In fact, commissions have been defined as the recompense, compensation or reward of an agent, salesman, executor, trustee, receiver, factor, broker or bailee, when the same is calculated as a percentage on the amount of his transactions or on the profit to the principal. The nature of the work of a salesman and the reason for such type of remuneration for services rendered demonstrate clearly that commissions are part of a salesman's wage or salary.<sup>25</sup>

In the same way, the Court cannot subscribe to the assertion of the respondents that the burden of proof to prove monetary claims rests on the employee.

It is a settled labor doctrine that in cases involving non-payment of monetary claims of employees, the employer has the burden of proving that the employees did receive their wages and benefits and that the same were paid in accordance with law.<sup>26</sup> As elucidated in *De Guzman v. NLRC, et al.*:<sup>27</sup>

It is settled that once the employee has set out with particularity in his complaint, position paper, affidavits and other documents the labor standard benefits he is entitled to, and which he alleged that the employer failed to pay him, it becomes the employer's burden to prove that it has paid these money claims. One who pleads payment has the burden of proving it, and even where the employees must allege non-payment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment.<sup>28</sup>

The rule finds merit in view of the fact that the accessibility over the employment records, pertinent personnel files, payrolls, remittances, and other similar documents which will show that overtime, differentials, service incentive leave, and other claims have been paid to the employee is exclusively within the custody and absolute control of the employer.<sup>29</sup> Otherwise, the feasibility of proving non-payment of monetary claims or benefits will hardly result to fruition.

<sup>25</sup> *Toyota Pasig, Inc. v. De Peralta*, supra note 23; and *Iran v. NLRC*, id.

<sup>26</sup> *Grandteq Industrial Steel Products, Inc. and Abelardo M. Gonzales v. Edna Margallo*, 611 Phil. 612, 629 (2009).

<sup>27</sup> 564 Phil. 600 (2007). See also *Toyota Pasig, Inc. v. De Peralta*, supra note 23 and *Grandteq Industrial Steel Products, Inc. and Abelardo M. Gonzales v. Edna Margallo*, id.

<sup>28</sup> *De Guzman v. NLRC, et al.*, id. at 614-615.

<sup>29</sup> *Heirs of Manuel H. Ridad, et al. v. Gregorio Araneta Foundation*, 703 Phil. 531, 538 (2013). See also *Toyota Pasig, Inc. v. De Peralta*, supra note 23.

*Meyer*

In this case, the Court agrees with Asentista that she has already set out the particularities of her unpaid monetary claims against the respondents based on the electronic messages of Ascutia. The respondents should have presented evidentiary proof based on the employment records and personnel files that Asentista was already paid of her benefits, instead of attributing the burden of proof back to her.

As held in *Toyota Pasig*,<sup>30</sup> the employer's act of simply dismissing the employee's claim "for being purely self-serving and unfounded without even presenting any tinge or proof showing that respondent (employee) was already paid of such benefits or that she was entitled thereto" was rebutted by the Court.<sup>31</sup> Failure on the part of the employer to discharge the burden tilts the balance in favor of the employee.

Similarly, the Court concurs with Asentista that in the absence of any express stipulation, the respondents cannot deduct car participation and amortization payment from her unpaid sales commission.

The case of *Locsin v. Meken*<sup>32</sup> is instructive:

In the absence of specific terms and conditions governing a car plan agreement between the employer and employee, the former may not retain the installment payments made by the latter on the car plan and treat them as rents for the use of the service vehicle, in the event that the employee ceases his employment and is unable to complete the installment payments on the vehicle. The underlying reason is that the service vehicle was precisely used in the former's business; any personal benefit obtained by the employee from its use is merely incidental.<sup>33</sup>

The Court agrees with the factual findings of NLRC that the respondents and Asentista did not agree on any car participation plan. Since the inception of the complaint, Asentista has been adamant that she did not authorize the respondents to deduct a car plan participation payment from her sales commission.<sup>34</sup>

In contrast, the Court disagrees with the justification advanced by the respondents as guided by the principle of equity, since "it would be more equitable if Asentista shares such amount with the company as rentals for the utilization of the company vehicle."<sup>35</sup> Even granting that Asentista was allowed to use the company car even for personal and family use, the sole

<sup>30</sup> Supra note 23.

<sup>31</sup> Id.

<sup>32</sup> *Locsin v. Meken Food Corp.*, 722 Phil. 886 (2013).

<sup>33</sup> Id. at 890.

<sup>34</sup> NLRC Resolution, *rollo*, p. 85.

<sup>35</sup> Id. at 50.



discretion to transfer ownership of the subject vehicle upon completion of the amortization period remains with the respondents.<sup>36</sup>

Any benefit or privilege enjoyed by Asentista from using the service vehicle was merely incidental and insignificant, because for the most part the vehicle was under the respondents' control and supervision. Given the high monthly quota requirement imposed upon Asentista to generate sales for the company, the service vehicle given to her was an absolute necessity. In truth, the respondents were the ones reaping the full benefits of the vehicle assigned to Asentista in the performance of her function.<sup>37</sup>

Under the principle of unjust enrichment, no person may unjustly enrich oneself at the expense of another.<sup>38</sup> As embodied in Article 22 of the New Civil Code, *every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.*<sup>39</sup>

In this case, the respondents committed unjust enrichment against Asentista when it allowed her to use the company vehicle to further the performance of her function as a sales agent then unilaterally, without any consent, deduct car participation and amortization payment to Asentista's sales commission, to the latter's prejudice.

Applying the guiding principles explicated in *Locsin*:<sup>40</sup>

In the absence of specific terms and conditions governing the car plan arrangement between the petitioner and Meken, a quasi-contractual relation was created between them. Consequently, Meken may not enrich itself by charging petitioner for the use of its vehicle which is otherwise absolutely necessary to the full and effective promotion of its business. It may not, under the claim that petitioner's payments constitute rents for the use of the company vehicle, refuse to refund what petitioner had paid, for the reasons that the car plan did not carry such a condition; the subject vehicle is an old car that is substantially, if not fully, depreciated; the car plan arrangement benefited Meken for the most part; and any personal benefit obtained by petitioner from using the vehicle was merely incidental.<sup>41</sup>

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<sup>36</sup> Id. at 47.

<sup>37</sup> *Locsin v. Meken Food Corporation*, supra note 32, at 900.

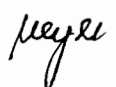
<sup>38</sup> *Grandteq Industrial Steel Products, Inc. and Abelardo M. Gonzales v. Edna Margallo*, supra note

26.

<sup>39</sup> Id. at 627.

<sup>40</sup> Supra note 32.

<sup>41</sup> Id. at 890.





Finally, following the legal precepts<sup>42</sup> laid down in *Nacar v. Gallery Frames, et al.*<sup>43</sup> and *Rivero v. Spouses Chua*,<sup>44</sup> the total amount adjudged in this Decision in favour of Asentista shall further earn legal interest at the rate of six percent (6%) *per annum* computed from its finality until full payment thereof, the interim period being deemed to be a forbearance of credit.

**WHEREFORE**, after judicious review of the records, the Court resolves to **GRANT** the instant petition and **REVERSE AND SET ASIDE** the Decision dated August 31, 2016 and Resolution dated November 17, 2016 of the Court of Appeals in CA-G.R. SP No. 06747-MIN. The Resolution dated November 28, 2014 of the National Labor Relations Commission is hereby **REINSTATED**. Respondents JUPP & Company, Inc. and/or Joseph V. Ascutia are hereby **ORDERED** to pay Marilyn B. Asentista the amount of ₱210,077.95 plus ten percent (10%) of the total monetary award as attorney's fees and legal interest at the rate of six percent (6%) *per annum* computed from its finality until full payment thereof.

**SO ORDERED.**

*Reyes*  
**ANDRES B. REYES, JR.**  
Associate Justice

<sup>42</sup> I. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

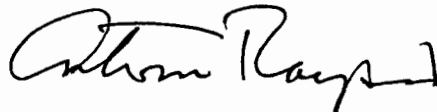
II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the actual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, *i.e.*, from judicial or extra judicial demand under and subject to the provisions of Article 1169 of the Civil Code.
2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.
3. When the judgment of the court awarding a sum of money becomes final and executor, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit. And, in addition to the above, judgments that have become final and executor prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.

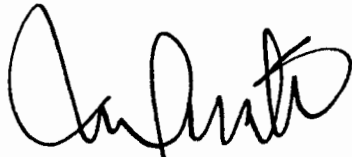
<sup>43</sup> 716 Phil. 267 (2013).

<sup>44</sup> 750 Phil. 663 (2015).


**WE CONCUR:**



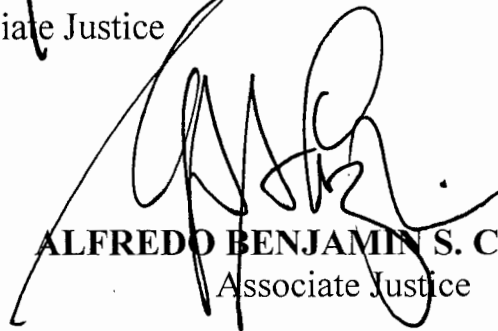
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson



**DIOSDADO M. PERALTA**  
Associate Justice



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



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

**ATTESTATION**


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



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second Division

**CERTIFICATION**

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

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice

*Keyes*