Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEDRO D. DUSOL AND MARICEL M. DUSOL, Petitioners,	**G.R. No. 200555**
	Present:
	PERLAS-BERNABE, *S.A.J.*, *Chairperson*,
- versus -	GESMUNDO,
	LAZARO-JAVIER,
	LOPEZ, and
	ROSARIO,* *JJ.*
EMMARCK A. LAZO, AS OWNER OF RALCO BEACH, Respondent.	Promulgated: JAN 20 2021

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D E C I S I O N

LOPEZ, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated May 23, 2011 and Resolution[3] dated January 27, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 03356-MIN, which ruled that petitioners were not employees of respondent.

Antecedents

This case arose from a complaint for illegal dismissal, underpayment of benefits, claim for damages, and attorney's fees filed by petitioners Pedro (Pedro) and Maricel Dusol (Maricel) against respondent Emmarck A. Lazo (Emmarck) as the owner of Ralco Beach. According to Pedro and Maricel, on January 6, 1993, Pedro started working as the caretaker of the Ralco Beach, a beach resort then operated by the parents of Emmarck. As caretaker and the

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* On official leave.

1 *Rollo*, pp. 7-36.

2 *Id.* at 39-48; penned by Associate Justice Edgardo A. Camello, with the concurrence of Associate Justices Melchor Quirino C. Sadang and Zenaida Galapate Laguilles.

3 *Id.* at 50-51.

only employee, Pedro cleaned, watched, and secured the beach area, cottages, rest house, store, and other properties in the resort. He also entertained guests and occupants of the cottages. He worked from 5 a.m. to 9 p.m. every day, including weekends and holidays, and was given an allowance of ₱100.00 *per* week, which was later increased to ₱239.00 in 2001.[4] Sometime in 1995, Pedro was also asked to work in the fishpond business owned by the parents of Emmarck. They agreed that Pedro will be compensated based on the income to be derived from the harvests. However, the arrangement only lasted for two harvest seasons or a span of around seven months. Emmarck's parents discontinued it because the business was not profitable. All the while and even after this endeavor, Pedro continued to serve as caretaker of Ralco Beach.

In 2001, Pedro married Maricel, and on January 28, 2007, Maricel was employed by Emmarck to manage the store in the resort.[5] For her services, she was paid ₱1,000 a month and entitled to 15% commission on the rentals collected from the cottages and rest house. Like Pedro, she also worked from 5 a.m. to 9 p.m. every day. Sometime in July 2008, Emmarck notified Pedro and Maricel that he will be leasing out Ralco Beach because the business was not profitable. Thus, their services are no longer needed. Due to this, on July 31, 2008, Pedro and Maricel no longer reported for work. Subsequently, they filed a complaint asserting that they were illegally dismissed and deprived of procedural due process. To substantiate their claims, they submitted accounting records of the rentals of the resort facilities and the sales of the store. The accounting records showed that the items sold in the store had a 20% mark-up price – with 10% to generate income and the other 10% to cover operational expenses of the resort. The accounting also showed that Pedro's and Maricel's allowances and commission were deducted from the rentals and sales.

For his part, Emmarck denied the employment relationship with Pedro and Maricel, and asserted that they were his industrial partners. Emmarck explained that, in 1993, Pedro became an industrial partner of her mother in the fishpond business with an agreement to be entitled to 1/3 of the total harvest made, as well as receive a weekly allowance of ₱230.00. Emmarck merely adopted this arrangement with Pedro when he took over the business. They agreed that Pedro was entitled to 1/3 of the total harvest made. Pedro was also given a weekly allowance of ₱230 as industrial partner and overseer.[6] Similarly, Maricel was taken in as an industrial partner to manage the store inside the beach property, who was entitled to a ₱1,000.00 monthly allowance and 15% commission on the rent of the resort facilities. She was also allowed to sell anything in the store with the profits solely belonging to her.[7]

Emmarck likewise claimed that, as the fishpond business was not doing good, he put up cottages and a store at their beach property so that Pedro and

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4 *Id.* at 64.
5 *Id.* at 65.
6 *Id.* at 73-74.
7 *Id.* at 74-75.

Maricel would have a means of livelihood.[8] He allowed Pedro and Maricel to reside on the beach property free of charge.[9] They then received an allowance or commission from the income generated by the rentals on the cottages and sales of the store.[10] Their receipt of the share in the profits was in their capacity as business partners. He also asserted that he had no power to dismiss Pedro and Maricel because the existence of a partnership depends on the viability of the business. Since the beach resort did not produce much profit, it was not practicable nor feasible to hire employees. Lastly, Emmarck stressed that he had no control over Pedro and Maricel, and in fact did not control or guide them since he left the entire business operation to them.[11]

Labor Arbiter Decision

In its Decision[12] dated January 26, 2009, the Labor Arbiter (LA) dismissed the complaint for lack of jurisdiction because Pedro and Maricel failed to prove that they were Emmarck's employees. It was not shown that Emmarck controlled or reserved the right to control not only the ends to be achieved, but also the manner they performed their duties. Pedro and Maricel did not state who supervised them, whether they filled up time records, or showed any regulations and the corresponding sanctions imposed by Emmarck. While they submitted accounting records of the proceeds of the income generated by the rentals on the resort facilities and the sales of the store, the documents do not show that these were wages and not commissions or share of income. Finally, the LA stressed that Emmarck need not prove that Pedro and Maricel were not his employees because it was a negative allegation. Aggrieved, Pedro and Maricel appealed to the National Labor Relations Commission (NLRC).

NLRC Decision

In its Resolution[13] dated August 27, 2009, the NLRC granted the appeal, and ruled that Emmarck employed Pedro and Maricel "*as overseers and caretakers of [his] business involving a bangus fishpond and beach resort.*"[14] Applying the four-fold test, the NLRC held that Emmarck engaged the services of Pedro and Maricel. His control over them is manifest because Pedro and Maricel did not undertake other independent productive activities, but solely tended to the duties for Emmarck's business. Records show that Pedro and Maricel were duly compensated for their services in the form of salaries, allowances, and commissions since compensation in the form of a commission based on gross sales is considered as wage.[15]

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8 *Id.* at 78-80.
9 *Id.* at 87.
10 *Id.* at 78-80.
11 *Id.* at 87.
12 *Id.* at 91-94; penned by Labor Arbiter Leon P. Murillo.
13 *Id.* at 114-121; penned by Commissioner Dominador B. Medroso, Jr., with the concurrence of Presiding Commissioner Salic B. Dumarpa and Commissioner Proculo T. Sarmen.
14 *Id.* at 117.
15 *Id.* at 117-118.

The NLRC was skeptical as to the presence of a business partnership, there being no parity of standing between the parties. Pedro and Maricel merely acted as employees. There was no record of profit sharing nor any consultation made pertaining to the affairs of the partnerships, particularly, with respect to the cessation of the businesses.

As employees, Pedro's and Maricel's dismissal were illegal for Emmarck's failure to comply with the procedural requirements under Article 298 of the Labor Code. Accordingly, Pedro and Maricel were awarded separation pay, nominal damages, wage differentials, 13th month pay and attorney's fees. Thus:

> **WHEREFORE,** the assailed Decision dated 26 January 2009 is hereby **VACATED** and **SET ASIDE** and a new one entered:
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> 1. Declaring the complainants as employees of respondents;
> 2. Declaring their dismissal as illegal for lack of due process;
> 3. Directing respondents to jointly and solidarily pay each of the complainants the following:
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> a. MARICEL DUSOL
> Separation Pay
> Nominal Damages - [₱]30,000.00
> Wage Differentials
> 13th Month Pay
>
> b. PEDRO DUSOL
> Separation Pay
> Nominal Damages - [₱]30,000.00
> Wage Differentials
> 13th Month Pay
>
> 4. Directing respondents to jointly and solidarily pay the complainants attorney['s] fees equivalent to 10% of the total award.
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> All other claims are denied for lack of merit.
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> The Fiscal Examiner of the Regional Arbitration Branch is hereby directed to make a computation of the total award which is deemed part of this Resolution.
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> **SO ORDERED.**[16] (Emphases in the original.)

Emmarck then moved for reconsideration, but was denied.[17] Unsatisfied, Emmarck filed a petition for *certiorari* with the CA.

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[16] *Id.* at 120.

[17] *Id.* at 136-137; penned by Commissioner Dominador B. Medroso, Jr., with the concurrence of Presiding Commissioner Salic B. Dumarpa and Commissioner Proculo T. Sarmen.

CA Decision

In its Decision[18] dated May 23, 2011, the CA reversed and set aside the NLRC's Resolutions. The CA disagreed with the NLRC that Pedro and Maricel were employees of Emmarck in the beach resort. Relying on the control test, the CA ruled that they were not employees because Emmarck did not have the power to control them. On the contrary, Emmarck "*allowed [Pedro and Maricel] all the leeway in regard to the means and manner of running the business of the beach resort.*" The CA summarized its reasons for concluding that control was absent and ruled as follows:

> After a careful review of the evidence on record, We find that the power to control over the supposed employees' conduct is absent. Here are at least four reasons:
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> *First*, We noted that [Pedro and Maricel] were free to conduct and promote the operations in the resort. *Second*, no guidelines were imposed by [Emmarck] on how to run the business operations or improve the income of the resort. *Third*, [Pedro and Maricel] were at complete liberty not only in the conduct of their work, but also free to engage in other means of livelihood, there being nothing on record that would show any limitation on the nature and scope of work, and *fourth*, Maricel was allowed to sell anything in the store for her exclusive gain.
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> The total factual picture clearly shows that [Emmarck] did not have the power to control [Pedro and Maricel] with respect to the means and methods by which [their] work were to be accomplished. There is no employer-employee relationship when the element of control is absent.
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> **FOR THESE REASONS**, the petition is GRANTED. The assailed Resolutions of the NLRC are REVERSED and the Decision of the Labor Arbiter dated January 26, 2009 is REINSTATED.
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> **SO ORDERED**.

Thereafter, Pedro and Maricel's motion for reconsideration was denied by the CA it in its Resolution[19] dated January 27, 2012. Hence, this petition.[20]

Pedro and Maricel argue that, as opposed to the absurd claim of Emmarck that they were his business partners, they were able to prove that they were his employees in Ralco Beach. Emmarck and his parents were the ones who engaged and hired them and paid their salaries. Later on, it was Emmarck terminated their employment. Emmarck's control over their work and their conduct is also shown by their regular submission of reports and the other circumstances of their employment.

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[18] *Id.* at 39-48; penned by Associate Justice Edgardo A. Camello, with the concurrence of Associate Justices Melchor Quirino C. Sadang and Zenaida T. Galapate-Laguilles.

[19] *Id.* at 50-51; penned by Associate Justice Edgardo A. Camello, with the concurrence of Associate Justices Melchor Quirino C. Sadang and Zenaida T. Galapate-Laguilles.

[20] *Supra* note 1.

They further argue that the CA erred in concluding that the element of control was lacking. Their daily rendition of work and regular submission of accounting of the rentals and sales of the store is indicative of control.[21] Explicit or written directives and guidelines were not necessary since Ralco Beach was not big and its operation is not complicated.[22] Due to their work load, they can no longer engage in other means of livelihood.[23] There is no proof that Maricel was allowed to sell personal items in the store. Indeed, all the items sold in the store were owned by Emmarck.[24] Emmarck's claim that Pedro was an industrial partner in the fishpond business was unsubstantiated, and as to Ralco Beach, it is absurd that a person who is merely receiving an allowance of ₱230.00 is a business partner.[25]

In response,[26] Emmarck maintains that there is sufficient proof to show that Pedro and Maricel were his industrial partners, especially, since they shared in the profits of the businesses.[27] More importantly, Pedro admitted that he was a partner in the fishpond business. Lastly, Emmarck, echoing the justifications of the CA, insists that Pedro and Maricel were not his employees as he had no control over them.

In their Reply,[28] Pedro and Maricel aver that Emmarck's defense that they were his industrial partners, was a mere afterthought as shown by the lack of evidence presented to support the claim. The truth remains, that they were not industrial partners in either Ralco Beach or the fishpond business, but were employees of Emmarck in Ralco Beach.

Issues

1. Whether Pedro and Maricel are employees or partners of Emmarck.

2. In the event that Pedro and Maricel are employees, whether they were validly dismissed.

Ruling

We find merit in Pedro and Maricel's petition.

Rule 45 of the Rules of Court circumscribes that only questions of law may be raised in a petition for review on *certiorari* as the Court is not a trier of facts. The issue of the existence of relationship, whether that of an employer-employee or a partnership, is ultimately a question of fact. However, by way of exception, when there is a conflict among the factual

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[21] *Rollo*, pp. 24-25.
[22] *Id.* at 25-26.
[23] *Id.* at 26.
[24] *Id.* at 27.
[25] *Id.* at 30.
[26] *Id.* at 189-198.
[27] *Id.* at 190.
[28] *Id.* at 201-209

findings of the LA and the CA as opposed to that of the NLRC, it is proper, in the exercise of the Court's equity jurisdiction, to review and re-evaluate the factual issues and to look into the records of the case and re-examine the questioned findings. [29]

Proof of employment as distinguished from proof of partnership

On one hand, there is a partnership if two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves.[30] A particular partnership may have for its object a particular undertaking.[31] The existence of a partnership is established when it is shown that: (1) two or more persons bind themselves to contribute money, property, or industry to a common fund; and (2) they intend to divide the profits among themselves.[32] Generally, it is not required that the agreement be in writing or in a public instrument. However, when immovable properties or real rights are contributed to the partnership, it is required that an inventory of the real properties or rights contributed be prepared and signed by the parties, and attached to the public instrument, otherwise, the agreement is void.[33]

Undoubtedly, the best evidence to prove the existence of a partnership is the contract or articles of partnership. Nevertheless, in its absence, its existence can be established by circumstantial evidence.[34] Under Article 1769 of the Civil Code,[35] "*the receipt by a person of a share of the profits of a business is a prima facie evidence that he is a partner in the business, [but]* ***no such inference*** *shall be drawn if such profits were received in payment as*

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[29] *Lu v. Enopia*, 806 Phil. 725, 738 (2017).

[30] CIVIL CODE, ART. 1767.

[31] CIVIL CODE, ART. 1783; *Aurbach v. Sanitary Wares Manufacturing Corp.*, 259 Phil. 606 (1989).

[32] *Heirs of Tan Eng Kee v. CA*, 396 Phil. 68 (2000).

[33] CIVIL CODE, ARTS. 1771 and 1773; *Heirs of Tan Eng Kee v. CA*, *supra*; *Agad v. Mabato*, 132 Phil. 634 (1968).

[34] *Heirs of Tan Eng Kee v. CA*, *supra*.

[35] In determining whether a partnership exists, these rules shall apply:
(1) Except as provided by [A]rticle 1825, persons who are not partners as to each other are not partners as to third persons;
(2) Co-ownership or co-possession does not of itself establish a partnership, whether such co-owners or co-possessors do or do not share any profits made by the use of the property;
(3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property which the returns are derived;
(4) The receipt by a person of a share of the profits of a business is a *prima facie* evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:
(a) As a debt by installment or otherwise;
(b) As wages of an employee or rent to a landlord;
(c) As an annuity to a widow or representative of a deceased partner;
(d) As interest on a loan, though the amount of payment vary with the profits of the business;
(e) As the consideration for the sale of a goodwill of a business or other property by installments or otherwise.

wages of an employee *[or rent to a landlord]*."[36] In addition, "*the* ***sharing of gross returns does not of itself establish a partnership****, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.*"[37]

On the other hand, an employee is any person in the service of another under a contract for hire, express, or implied, oral or written.[38] To determine whether an employment relationship exists, the following elements are considered: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the employer's power to control the employee's conduct. The most important element is the employer's control of the employee's conduct, not only as to the result of the work to be done, but also as to the means and methods to accomplish it. However, the power of control refers merely to the existence of the power, and not to the actual exercise thereof.[39] No particular form of evidence is required to prove the existence of an employer-employee relationship. Any competent and relevant evidence to prove the relationship may be admitted.[40] However, a finding that such relationship exists must still rest on some substantial evidence.[41]

Here, it is undisputed that Pedro and Maricel rendered their services in Ralco Beach and received compensation sourced from rentals and sales of the resort. Moreover, Emmarck's allegation that Pedro was his industrial partner in the fishpond business is inconsequential because Pedro's complaint and claims were for his services rendered in the beach resort. Even if it is true, being an industrial partner of the fishpond business is immaterial to Pedro's status as an employee in Ralco Beach. Thus, the crux of controversy is the nature by which Pedro and Maricel rendered their services and the capacity by which they received their compensation.

Emmarck failed to prove the existence of partnership

Based on record, there is no proof that a partnership existed between Pedro or Maricel, and Emmarck in relation to the beach resort. No documentary evidence was submitted by Emmarck to even suggest a partnership. Emmarck relied solely on his own statements that Pedro and Maricel did not receive wages, but merely allowances and commission from the profits of their partnership. However, it is beyond dispute that receipt by a person of share in the profits of a business does not by itself establish the existence of a partnership, if the amounts are received as wages of an employee. Neither does the sharing of gross returns establish partnership,

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[36] *Sardane v. CA*, 249 Phil. 478, 485 (1988); See *Bastida v. Menzi & Co.*, 58 Phil. 188 (1933); See also *Fortis v. Hermanos*, 6 Phil. 100 (1906). (Emphasis supplied.)

[37] CIVIL CODE, ART. 1769(3); *Santiago v. Spouses Garcia*, G.R. No. 228356, March 9, 2020; and *Premium Wash Laundry v. Esguerra*, G.R. No. 194464 (Notice), October 11, 2017. (Emphasis supplied.)

[38] *Negre v. Workmen's Compensation Commission*, 220 Phil. 325, 331 (1985).

[39] *Mendiola v. CA*, 529 Phil. 339, 352 (2006).

[40] *Supra* note 29, at 739.

[41] *Javier v. Fly Ace Corp.*, 682 Phil. 359, 372 (2012).

most especially, in light of the absence of the any other evidence to establish the existence of the partnership.

In *Sy v. CA*,[42] Jaime Sahot served as a truck helper and later on as a truck driver for a trucking business owned and operated by a family corporation. When Jaime filed a complaint for illegal dismissal, the family corporation countered that Jaime was an industrial partner. The Court rejected the defense because the existence of the partnership was not duly proven, to wit:

> Article 1767 of the Civil Code states that in a contract of partnership two or more persons bind themselves to contribute money, property or industry to a common fund, with the intention of dividing the profits among themselves. Not one of these circumstances is present in this case. **No written agreement exists to prove the partnership between the parties. Private respondent did not contribute money, property or industry for the purpose of engaging in the supposed business. There is no proof that he was receiving a share in the profits as a matter of course**, during the period when the trucking business was under operation. Neither is there any proof that he had actively participated in the management, administration and adoption of policies of the business. Thus, the NLRC and the CA did not err in reversing the finding of the Labor Arbiter that private respondent was an industrial partner from 1958 to 1994.[43] (Emphasis supplied; citations omitted.)

We reached the same conclusion in *Corporal, Sr. v. National Labor Relations Commission*,[44] and ignored the defense of the employer that a joint venture existed. Apart from a self-serving affidavit executed by the president of the employer-corporation, no other documentary evidence was presented. The Court also concluded that although barbers enjoy the privilege of profit-sharing with the barber shop, it does not mean that they were not employees. Also, in *Negre v. Workmen's Compensation Commission*,[45] Jose Negre (Jose) owned fishing boats and employed crew members. He paid them a fixed amount plus a percentage in the catch. Unfortunately, all the members of his crew manning one of his ships died due to a typhoon. To avoid payment of death benefits, Jose asserted that the crew member concerned was his industrial partner. The Court rejected Jose's stand since he failed to present evidence to prove the partnership, and noted that payment on a commission basis does not support Jose's theory. Similarly, in *Jo v. National Labor Relations Commission*,[46] Peter Mejila (Peter) worked as a barber and caretaker in Dina's Barber Shop. As a barber, Peter was entitled to 2/3 of the fee paid for every haircut while 1/3 went to the owners. Peter subsequently sued the owners of the barbershop for illegal dismissal. The owners raised the defense that Peter was a "partner in trade" whose compensation was based on a sharing arrangement *per* haircut or shaving job done. The Court disregarded the defense since there was no clear showing that the parties had intended to

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[42] 446 Phil. 404 (2003).
[43] *Id.* at 415.
[44] 395 Phil. 890 (2000).
[45] 220 Phil. 325 (1985).
[46] 381 Phil. 428 (2000).

pursue a relationship of industrial partnership despite the sharing of the fees paid by the customers.

Moreover, in *Santiago v. Spouses Garcia*,[47] the Court ruled that no partnership existed because there was no "unmistakable intention to form a partnership." As in this case, there is no clear indication that the parties agreed to contribute money, property or industry to engage in particular business. Aside from Emmarck's self-serving statements, no other piece of evidence was presented to prove their intent to form a partnership. Neither did Emmarck bother to specify his supposed contributions to the partnership. In addition, there is no proof that there was an intention to divide the profits as partners. The absence of this intention is exemplified by the lack of sharing of profits.[48] In *Santos v. Spouses Reyes*,[49] the Court ruled that net profits, upon which the industrial partner can share, is determined by adding all the gross income from all the transactions of the partnership less the expenses or losses sustained in the business. Here, the allowances and commission which were taken from the gross sales of Ralco Beach, cannot be deemed as their share in the profits. There is no showing that Pedro and Maricel shared in the net profits, as defined by law. The absence of any actual sharing of the profits reinforces the finding that there was no intention to do it. Clearly, Emmarck palpably failed to substantiate that Pedro and Maricel were his industrial partners.

Pedro and Maricel were employees of Emmarck, as owner of Ralco Beach

Considering that no partnership exists, we proceed to determine whether Pedro and Maricel were employees. The records show that all the elements of an employer-employee relationship are present.

First, Ralco Beach engaged the services of Pedro as caretaker and Maricel as a storekeeper. While Emmarck did not personally engage the services of Pedro, he nonetheless retained his services. *Second*, Emmarck paid their wages in the form of allowances and commissions. The term 'wages' encompasses "the **remuneration or 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."[50] *Third*, Emmarck terminated their employment when he notified them that he will be leasing the beach Resort, and that their services were no longer needed.

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47 *Supra* note 37.
48 *Supra* note 42, at 415.
49 420 Phil. 313 (2001).
50 LABOR CODE, ART. 97(6); *David v. Macasio*, 738 Phil. 293, 305 (2014). (Emphasis supplied.)

Finally, and most importantly, Emmarck had the power to control their conduct in the performance of their duties. The existence of control is manifestly shown by Emmarck's express admission that he left the entire business operation of the Resort to Pedro and Maricel. While Pedro and Maricel are to a large extent allowed to carry out their respective duties as caretaker and store keeper on their own, this does not negate the existence of control. It was Emmarck himself, who gave Pedro and Maricel immense flexibility in the performance of their duties. This, alone, clearly shows that Emmarck had control over the conduct of Pedro and Maricel in performing their duties. The apparent high latitude of freedom is to be expected given that Pedro and Maricel were the only employees, and this is coupled with the apparent lackadaisical attitude of Emmarck in the management of the resort. Thus, even if Emmarck claims that he did not control nor supervise their performance of duties – which may indicate lack of control – Emmarck's admission reveals that control resided upon him.

Thus, contrary to the findings of the CA, the lack of guidelines or limitations, and close supervision as to the conduct of operations of the resort cannot be construed as evidence of lack of control. More so that there is no proof that Pedro and Maricel were allowed to engage in other means of livelihood, and that they indeed worked for or engaged in any other business. Similarly, there is no proof that Maricel sold anything in the store for her exclusive gain.[51]

In any case, the record shows that Emmarck had positively exercised control when he imposed a total of twenty percent (20%) mark-up on the items sold in the store. In addition, it is undisputed that Pedro and Maricel labored for long hours every day and even on holidays to meet the demands of the business. With these set up, and considering that Ralco Beach had no other staff or employees, it cannot be certainly said that they worked at their own pleasure, and that they were not subject to definite hours or conditions of work.[52]

To recall, Emmarck admits that Pedro and Maricel have rendered services in the beach resort – but he miserably failed to substantiate his claim that they were his partners. Thus, their relationship can only be characterized as employment.

Failure to observe procedural due process in closure of business as an authorized cause

Article 298[53] of the Labor Code considers closure of business as an authorized cause for the dismissal of employees, whether or not the closure is

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[51] See *Felicilda v. Uy*, 795 Phil. 408 (2016).

[52] See *Aurora Land Projects Corp. v. National Labor Relations Commission*, 334 Phil. 44 (1997).

[53] ART. 298. [283] *Closure of Establishment and Reduction of Personnel.* — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written

due to serious business losses. However, if the closure is not due to serious business losses, the employer is required to pay its employees separation pay equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. In this case, the closure of the business is not disputed by Pedro and Maricel. While closure of the business is an authorized cause, there no proof that it was due to serious business losses. In effect, Pedro and Maricel are entitled to separation pay.

In addition, since Emmarck clearly failed to comply with the required notices,[54] Pedro and Maricel are each entitled to nominal damages in the amount of ₱30,000.[55] Lastly, we sustain the NLRC's award of salary differentials and 13th month pay as Emmarck failed to prove their payment.[56] The total monetary awards shall also be subject to ten percent (10%) attorney's fees.[57] These awards shall earn interest at the rate of six percent (6%) computed from the date of finality of this Decision until it is fully paid.[58]

FOR THESE REASONS, the Decision dated May 23, 2011 and Resolution dated January 27, 2012 of the Court of Appeals in CA-G.R. SP No. 03356-MIN are **REVERSED** and **SET ASIDE**. The Resolutions dated August 27, 2009 and October 30, 2009 of the National Labor Relations Commission in NLRC CASE No. MAC-03-010774-2009 are **REINSTATED**.

SO ORDERED.

MARIO V. LOPEZ
Associate Justice

notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

54 *Id.*

55 *Agabon v. National Labor Relations Commission*, 485 Phil. 248, 291 (2004).

56 See *Minsola v. New City Builders, Inc.*, 824 Phil. 864 (2018).

57 LABOR CODE, ART. 111; *Alva v. High Capacity Security Force, Inc.*, 820 Phil. 677, 687 (2017).

58 *Nacar v. Gallery Frames*, 716 Phil. 267, 280-281 (2013).

WE CONCUR:

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

ALEXANDER G. GESMUNDO
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

(On official leave)
RICARDO R. ROSARIO
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.

ESTELA M. PERLAS-BERNABE
Senior 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.

DIOSDADO M. PERALTA
Chief Justice