

BACOLOD RCC CREDIT & LENDING CORPORATION/ ROMEO COO, PETITIONERS, VS. MARY ANN E. BALBUENA & VENUS BALBUENA, RESPONDENTS.

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

This is a Petition for Certiorari under Rule 65 of the Rules of Court assailing the Decision[1] dated February 28, 2013 and Resolution[2] dated May 20, 2013 both issued by the National Labor Relations Commission, Seventh Division in NLRC Case No. VAC-01-000034-2013.

Factual and Procedural Antecedents

This petition stems from a complaint for illegal dismissal[3], unpaid salary, damages and attorney's fees filed by the respondents Mary Ann Balbuena and Venus Balbuena against petitioners RCC Credit and Lending Corporation (hereafter referred to as "petitioner company" or "RCC" for brevity) and Romeo Coo.

The facts according to petitioner:

The respondent Mary Ann Balbuena was dismissed for cause for failure to liquidate or account for company funds. Mary Ann Balbuena was first employed as field representative of petitioner RCC. The company, which is engaged in the business of lending money, was maintaining field offices in the cities of Cadiz, Sagay, Escalante and San Carlos which receive applications for loans from pensioners in the area. Respondent Mary Ann Balbuena was one of those assigned to these field offices. She was charged with the duty of recruiting and receiving applications for loans and the paying out of loan proceeds to those whose applications were accepted by the company.

RCC maintains its main office at Lacson St., Bacolod City and largely left the business of extending loans in the other cities mentioned above to the field representatives. As field representative, respondent Mary Ann Balbuena was to receive applications, do the credit investigation, and submit the applications and accompanying documents to the main office in Bacolod City. More often than not, the recommendations for extension of loans were accepted by the main office in Bacolod City and the amount corresponding to the loans of these applicants were forwarded to the respondent Mary Ann Balbuena in Sagay City and to the other field representatives assigned in RCC's other branch offices.

In time, it was discovered that these sums and amounts forwarded to respondent Mary Ann Balbuena were not released to the supposed applicants because they were fictitious and non-existent and that the money that were released for these applicants were appropriated by her. These sums and amounts reached millions. The company became suspicious because while it was continually releasing loan amounts to these field representatives, including respondent Mary Ann Balbuena, there were no returns by way of collection from the borrowers.

Consequently, on March 31, 2011, private respondent Mary Ann Balbuena was issued a Memo to Explain[4] this fund shortage. The private respondent acknowledged receipt of this letter through her reply dated April 10,

2011[5] making a general denial of the charges against her.

After conducting a thorough investigation, RCC decided to dismiss respondent Mary Ann Balbuena, finding her guilty of the charges against her. Consequently, the petitioner company issued a Notice of Dismissal[6] dated April 27, 2011, which was to be effective upon receipt thereof. No objection was registered by respondent Mary Ann Balbuena who received said notice on April 28, 2011 as shown by the Registry Return Receipt[7] attached to the notice which was sent to private respondent via registered mail. Petitioner company argues, respondent Balbuena was only prompted to file an illegal dismissal case against petitioner, after the latter sued her for estafa before the City Prosecutor's Office of Bacolod City.

As for the illegal dismissal case filed by respondent Venus Balbuena, petitioner contends that there is no dismissal to speak of since the petitioner company never dismissed Venus Balbuena from work. It was the latter who abandoned her work after filing for the request for conciliation with the NLRC on July 17, 2012.

The facts according to respondents:

In their Position Paper[8] submitted before the Labor Arbiter, the respondents state that they are employees of petitioners assigned at the RCC branch in Sagay City, Negros Occidental. The respondent Mary Ann Balbuena was employed since January 2002 up to March 2011, while respondent Venus Balbuena was employed in March 2003 up to July 2012.

The duties and responsibilities of respondents, being then office secretaries of petitioner RCC, consist mainly in receiving loan applications from pensioners who would wish to borrow money from the corporation, and after the loan applications shall have been completely filled up with the desired amount of loan being indicated therein by the loan applicant and the requirements having been complied with, complainants would forward the same to the petitioner's head office in Bacolod City for processing. The approval of the loan depends solely upon the decision of Charito Coo, wife of petitioner Romeo Coo, owner of RCC.

Sometime in the latter part of February 2011, petitioner RCC claimed that there has been a problem/ shortage in the cash remittances of the Sagay City Branch, for which the respondent Mary Ann Balbuena was made to explain for an alleged failure to remit and/or liquidate company funds in the amount of P5,000,000.00.

The Memo to Explain dated March 31, 2011, which was received by private respondent Mary Ann Balbuena on April 8, 2011, and placed her under preventive suspension for 30 days while the matter was being investigated, did not contain any attachments or documentary proof of the allegedly missing funds.

Eventually, the respondent was dismissed on April 27, 2011. The respondent Mary Ann Balbuena tried to seek the petitioner's reconsideration but to no avail. Instead, she was told never to report or even come near the field offices of RCC. When respondent Mary Ann Balbuena went to RCC's main office in Bacolod City to claim her unpaid benefits, she saw her photograph posted on the RCC bulletin board with the caption "Makawat" and "Wanted". Not contented with having dismissed its former field representative, the petitioner RCC filed a case for Estafa against private respondent Mary Ann Balbuena before the Bacolod City Prosecutor's Office.

For her part, respondent Venus Balbuena alleged in her Position Paper[9] that, she along with a certain Sheena Alburo while both still assigned to the RCC Escalante Branch, were forced by petitioner company to be witnesses in the criminal complaint for Estafa filed by RCC against the respondent Mary Ann Balbuena.

At first, respondent Venus Balbuena refused to cooperate, but due to the undue influence and pressure exerted by Charito Coo, Venus Balbuena was forced to execute a written statement in the vernacular and in her handwriting, the contents of which were written by them according to the dictations made by Charito Coo. However, said

criminal complaint for Estafa was dismissed by the Bacolod City Prosecutor due to wrong venue.

After the dismissal of the Complaint for Estafa before the Bacolod City Prosecutor's Office, the petitioners again tried to file an Estafa case against respondent Mary Ann Balbuena, this time before the City Prosecutor of Sagay City. This time, the respondent Venus Balbuena vehemently refused to execute a statement against the respondent Mary Ann. The petitioner Romeo Co and his wife Charito told the respondent Venus Balbuena that she would be included in the complaint for Estafa if she won't testify against the respondent Mary Ann. Eventually, respondent Venus Balbuena relented.

On July 11, 2012, respondent Venus received a subpoena from the Sagay City Prosecutor's Office , which named her as one of the respondents in a criminal complaint for eleven (11) counts of Estafa, prompting her to resign from RCC, but the petitioners convinced her to stay and that the charges against her would be dropped if she would testify in favor of the RCC. Respondent Venus Balbuena stayed but was transferred from Escalante to the Sagay City branch of RCC. While there, respondent Venus was not allowed to perform her functions, nor entertain loan applicants or even touch company records making her a mere observer inside the work premises on floating status. Respondent Venus Balbuena felt that though she may not have been dismissed from service, the working environment at RCC has become so hostile making it tantamount to a constructive dismissal.

The respondents tried to seek relief from the Regional Arbitration Branch No. VI of the NLRC in Bacolod City, which on December 28, 2012 ruled in the respondents' favor[10], to wit:

“WHEREFORE, premises considered, judgment is hereby rendered ordering respondents BACOLOD RCC CREDIT AND LENDING CORPORATION and/or ROMEO S. COO to pay complainants as follows: (1) MARY ANN E. BALBUENA – a) P25,200.00 as separation pay, b) P16,800.00 as 13th month pay; and (2) VENUS M. BALBUENA – a) P38,250.00 as separation pay; and b)P25,500.00 as 13[th] month pay; and the amount of P10,575.00 as attorney's fees, or a total amount of ONE HUNDRED SIXTEEN THOUSAND THREE HUNDRED TWENTY FIVE PESOS (P116,325.00)

The other claims are DISMISSED for lack of merit.

SO ORDERED.”[11]

Aggrieved by the Labor Arbiter's decision, the petitioners appealed the above-quoted ruling before the NLRC, which then affirmed the Labor Arbiter's finding of illegal dismissal and modified the money judgment, to wit:

“More than this, no link whatsoever can be made between the alleged act of misappropriation and complainant Mary Ann. Respondents simply sent complainant a memorandum to explain and thereafter terminated her from employment stating that after investigation and the evidence collated, complainant was found culpable. Note must, however, be made that no such evidence or minutes of the investigation have been appended to the records sufficient to assist Us in the finding of blameworthiness against complainant Mary Ann. Truth be told, complainant even requested to be furnished with the documents used by respondents as basis for the charges so that she may adequately defend herself, but that request was apparently ignored.

Simply put, the evidence on record or the lack of it fails to link complainant's involvement in the acts complained of. To Us, there is neither direct evidence nor substantial documentary evidence pointing to complainant Mary Ann as culpable. Owing to the lack, if not absence, of substantial evidence justifying complainant Mary Ann Balbuena's dismissal, doubt has crept into Our minds on her guilt. This doubt, therefore, must be resolved in favor of complainant Mary Ann, finding her termination from employment illegal.

As to complainant Venus Balbuena, We rule that she was constructively, and thus illegally, dismissed from employment.

It was unreasonable for respondents to declare complainant to have abandoned her work after she failed to report following the creation of a hostile environment for her, all because complainant Venus refused to act as witness against complainant Mary Ann in the criminal case of Estafa.

X x x

The dismissal of complainants being wanting in substantive due process, the declaration of the illegality of their termination from employment becomes a necessary consequence. However, We find separation pay based on her salary of P5,600.00 (P1,400 per week as indicated in the pro-forma complaint). Thus, complainant Mary Ann Balbuena is entitled to separation pay in the amount of P50,400.00. Complainant Venus Balbuena's separation pay shall also be adjusted based on the amount of P8,500.00 multiplied with 8 years or a total amount of P68,000.00.

Further, contrary to the grant of separation pay sans backwages to complainants, We find the complainants are entitled to be paid backwages as there is no basis for the Arbiter's declaration that complainants were not entirely faultless. It must be stressed that there is no way upon which We can infer that P5,000,000.00 was misappropriated, how respondents arrived at such amount or that complainants were involved. Complainants backwages are computed from the time of their termination temporarily until promulgation of the decision in this case on 28 February 2013.

Thus, complainants are granted backwages as follows:

I. Mary Ann Balbuena (March 2011 – Dec. 2013 = 23 months)

II. Venus Balbuena (14 July 2012-Feb. 2013=6.5 months) $P8,500.00 \times 6.5 \text{ months} = P55,250.00$

As to complainant's 13th month pay, evidence submitted by respondents does not convince Us that the said benefit was actually received by complainants. The logbook allegedly recording the payment of the benefit to complainants was a mere machine copy of Charito Coo's purported entries, albeit unsigned by complainants for acknowledgment. These documents do not inspire Us to reverse the Labor Arbiter's grant.

After complainants' grants are adjusted, the awarded attorneys' fees are likewise adjusted.

In summary, complainants are entitled to be paid as follows:

I. Mary Ann Balbuena:

a. Separation pay

P50,400.00

b. Backwages

128,800.00

c. 13th month pay

16,800.00

II. Venus Balbuena

a. Separation pay

P68,000.00

b. Backwages

55,250.00

c. 13[th] month pay

25,500.00

Total:

P344,750.00

III. Attorneys fees

P34,475.00

Grand Total:

P379,225.00

WHEREFORE, premises considered, respondents' appeal is DISMISSED. The decision of the Labor Arbiter is AFFIRMED WITH MODIFICATION reiterating complainants' illegal dismissal but adjusting the computation of complainants' separation pay and attorney's fees and granting backwages. Respondents are thus ordered to pay complainants the total amount of P379,225.00 in concept of separation pay, backwages, 13[th] month pay and attorney's fees.

SO ORDERED.”[12]

The petitioners sought reconsideration[13] of the above-quoted decision, but the same was denied by the NLRC as per Resolution[14] dated May 20, 2013. Petitioners filed this petition on July 29, 2013. The respondents were required by this Court, as per Resolution[15] dated August 5, 2013, to file their comment to the petition. However, respondents did not submit their comment despite the lapse of the period granted by this court for the filing of the same.[16]Thus, on January 20, 2015, this case was declared submitted for decision.[17]

Issue

The petitioners submit that “the Honorable National Labor Relations Commission (Seventh Division) has palpably erred in affirming the Labor Arbiter's Decision and all the more by increasing the awards to the respondents.”[18]

Ruling of this Court

A petition for certiorari under Rule 65 of the Rules of Court is a pleading limited to correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Its principal office is to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction. It may issue only when the following requirements are alleged in and established by the petition: (1) that the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) that such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) that there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. It is well-settled that a petition for certiorari against a court which has jurisdiction over a case will prosper only if grave abuse of discretion is manifested.[19]

After a careful review of the records of this case, this Court finds the petition to be unmeritorious.

The petition, despite its length and breadth, fails to establish the grave abuse of discretion amounting to lack or excess of jurisdiction supposedly committed by the NLRC in affirming the Labor Arbiter's finding of illegal dismissal and in modifying the money judgment awarded in favor of the respondents.

Moreover, the petitioners failed to address in this petition the following: 1) the obvious lack of evidence to establish the existence of just cause for the termination of the respondent Mary Ann Balbuena; and 2) the failure on the part of petitioners to controvert respondent Venus Balbuena's imputation that RCC forced and intimidated her into testifying against Mary Ann Balbuena and that her refusal to cooperate caused the petitioners to make Venus Balbuena's stay with the company both hostile and oppressive.

In *AMA Computer College-East Rizal v. Ignacio*[20] as reiterated in *Gurango v. Best Chemicals and Plastics, Inc.*,[21] the Supreme Court ruled that:

In termination cases, the burden of proof rests on the employer to show that the dismissal is for just cause. When there is no showing of a clear, valid and legal cause for the termination of employment, the law considers the matter a case of illegal dismissal and the burden is on the employer to prove that the termination was for a valid or authorized cause. And the quantum of proof which the employer must discharge is substantial evidence. An employee's dismissal due to serious misconduct must be supported by substantial evidence. Substantial evidence is that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.

In this case, petitioners, instead of proving the legality of dismissal, continued to rely on the bare allegations contained in its Memo to Explain and Notice of Dismissal but did not bother to submit proof to show as to how and with what scheme respondent Mary Ann Balbuena misappropriated the loan proceeds and with what specific accounts under her control and custody did she accomplish the embezzlement of P5,000,000.00 in company funds.

As for the constructive dismissal of the respondent Venus Balbuena, the records, is bereft of proof to show abandonment on the part of respondent Venus Balbuena. It is settled that for abandonment to be a just cause for termination, the following requisites must concur: 1) the employee's intention to abandon employment, and 2) overt acts from which such intention may be inferred – as when the employee shows no desire to resume work.[22]

The paucity in the petitioners evidence and its continued failure to controvert the respondents' allegations doomed petitioners' cause from the start – from the Labor Arbiter, to the NLRC and now before this Court.

In *Ceferina Lopez Tan vs. Spouses Apolinar P. Antazo, et. al.*[23], the Supreme Court ruled that the burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order.

Our jurisprudence defines grave abuse of discretion as the capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction[24]. Certiorari does not issue to correct an error of judgment or simple abuse of discretion[25]. A mere abuse of discretion by itself is not sufficient to justify the issuance of a writ of certiorari[26]. The abuse of discretion must be so grave and patent and it must be shown that the discretion was exercised in an arbitrary or despotic manner[27]. Petitioners having failed to convince this Court that the NLRC committed grave abuse of discretion, this petition must be denied.

WHEREFORE the petition is hereby DENIED for lack of merit. The Decision[28] dated February 28, 2013 and Resolution[29] dated May 20, 2013 both issued by the National Labor Relations Commission, Seventh Division in NLRC Case No. VAC-01-000034-2013 are hereby AFFIRMED.

SO ORDERED.

Lagura-Yap, M.B., and Lopez, J.Y., JJ., concur.

[1] Rollo, pp. 62-77.

[2] Rollo, pp. 84-86.

[3] Rollo, page 14.

[4] Rollo, page 33.

[5] Rollo, page 34.

[6] Rollo, page 35.

[7] Rollo, page 36.

[8] Rollo, pp. 15-26.

[9] Rollo, pp. 15, 18-21.

[10] Rollo, pp. 49-61.

[11] Rollo, page 61.

[12] Rollo, pp. 72-76.

[13] Rollo, pp. 78-83.

[14] Rollo, pp. 84-86.

[15] Rollo, pp. 87-89.

[16] See JRD Report dated January 8, 2015, back of page 89, rollo.

[17] Rollo, page 90.

[18] Rollo, page 8.

[19] Equitable-PCI Bank Inc. v. Apurillo, G.R. No. 168746, 5 November 2009, 605 SCRA 30, 42-43 citing People v. Court of Appeals, 468 Phil. 1, 10 (2004); Salvacion v. Sandiganbayan, G.R. No. 175006, 27 November 2008, 572 SCRA 163, 180-181.

[20] G.R. No. 178520, 23 June 2009, 590 SCRA 633.

[21] G.R. No. 174593, 25 August 2010, 629 SCRA 311.

[22] Hyatt Taxi Service, Inc. v. Catinoy, 359 SCRA 686.

[23] G.R. No. 187208, February 23, 2011.

[24] University of Mindanao, Inc. vs. Court of Appeals, 643 SCRA 562, 2011; Pahila-Garrido vs. Tortogo, 655 SCRA 553, 2011.

[25] UP vs. CSC, 228 SCRA 207.

[26] Tavera-Luna, Inc. vs. Nable, 72 Phil. 28; Villa Rey Transit, Inc. vs. Bello 7 SCRA 735).

[27] Palma vs. Q and S, Inc., 17 SCRA 97; F.S. Divinagracia Agro-Commercial, Inc. vs. Court of Appeals, 104 SCRA 180; Gold City Integration Port Sevices, Inc. vs. IAC, 171 SCRA 579; San Miguel Corp. vs. Sandiganbayan, 340 SCRA 289.

[28] Rollo, pp. 62-77.

[29] Rollo, pp. 84-86.

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