

**JAYSON A. AGUIMBAG AND CHITO M. BONGALOTA, PETITIONERS,
VS. HON. NATIONAL LABOR RELATIONS COMMISSION,
ALC-FORTUNE CORPORATION AND EDWARD CABANGON,
RESPONDENTS.**

Ponente: LANTION, J.A.C., J.

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LANTION, J.A.C., J.:

Before Us is a Petition for Certiorari[1] under Rule 65 of the Rules of Court assailing the Decision[2] dated 13 April 2011 and Resolution³ dated 27 June 2011 both rendered by the National Labor Relations Commission (NLRC) in NLRC LAC No. 11-002992-10 [NLRC NCR Case No. 04-05154-10], the dispositive portions of which read:

Decision dated 13 April 2011

“WHEREFORE, the complainants' appeal is DISMISSED for lack of merit. The decision of the Labor Arbiter dated September 22, 2010 stands affirmed.

SO ORDERED.”

Resolution dated 27 June 2011

“WHEREFORE, premises considered, complainants' Motion for Reconsideration is DENIED for lack of merit.

SO ORDERED.”

THE FACTS

This case emanated from the Amended Complaint[4] for unfair labor practice, constructive illegal dismissal, non-payment of overtime pay and separation pay, illegal suspension and damages filed by petitioners Jayson A. Aguimbag (Aguimbag) and Chito M. Bongalonta (Bongalonta), (collectively referred to as petitioners) against private respondents ALC-Fortune Corporation (ALC) and Edward Cabangon, its president (collectively referred to as respondents) before the NLRC.

In their Position Paper,[5] petitioners averred that they were initially employed as Audit Assistant by ALC on 30 November 2005 and 16 June 2006, respectively. Petitioners narration of the incidents which led to the filing of their Amended Complaint is as follows:

At the commencement of their employments, respondents' agents informed petitioners that employees in ALC were prohibited from forming and joining employee's union.[6]

During the course of their employment with ALC, petitioners enrolled in law school for the enrichment of their professional careers. However, it became apparent that the “middle management team” of ALC was not in favor of their schooling when on various occasions, petitioners were outright asked by the “middle management team” to choose between their jobs or their schooling. Despite this, however, petitioners persevered and persisted with

their job and schooling.[7]

On 23 July 2007, petitioner Aguimbag was promoted from being an Audit Assistant of the Audit Department to the position of Senior Accounting Staff of the Finance Department.[8]

Early in March 2010, petitioners discovered that the compressed work schedule instilled by the respondents lacked the proper approval of the Department of Labor and Employment (DOLE) as required by DOLE Advisory No. 022 dated 02 December 2004. Thereafter, petitioners proceeded to make investigations on the validity of the compressed work schedule. On 16 March 2010, petitioners requested some documents from the Human Resources Department of ALC. However, the Human Resources Department headed by Ms. Teresita C. Eugenio insisted that there must be a written request from petitioners before any document could be released. She was “visibly upset” as she knew that the said compressed work schedule would result in payment of overtime pay to employees.[9]

On 17 March 2010, Audit Manager Mr. Ronnie Aguilar told petitioners that instead of pursuing whatever discovery they have over the company, they might as well resign.[10]

On 20 March 2010, petitioner Aguimbag was demoted to Audit Assistant from being a Senior Accountant Staff.[11]

On 26 March 2010, petitioners filed a request for assistance for preventive conciliation/mediation with the NLRC which was docketed as NLRC Reference No. NCR CM-03-10129-10 and set for conference on 12 April 2010 with the sole grievance of nonpayment of overtime pay.[12]

On 29 March 2010, petitioner Aguimbag was personally served by respondents a copy of a Notice of Infraction with Preventive Suspension dated 29 March 2010 and was ordered to immediately leave the premises of ALC. The following day, petitioner Bongalonta was similarly served a copy of a Notice of Infraction with Preventive Suspension dated 30 March 2010 and was likewise ordered to leave the premises of ALC. In the Notices, petitioners were directed to submit within forty-eight (48) hours from receipt thereof written explanation on why they should not be disciplined or dismissed for serious misconduct, insubordination and performing acts inimical to employer's interest. Petitioners were also informed that they were placed under preventive suspension for a maximum period of thirty (30) days pending investigation of the said infractions leveled against them.[13]

Thereafter, petitioners received a Notice of Administrative Hearing informing them of an administrative hearing on 12 April 2012 regarding their infractions and noting that they failed to submit the required written explanation. Eventually, petitioners submitted their written explanation on the infractions and the scheduled administrative hearing was conducted.[14]

On 13 April 2010, petitioners amended their previous complaint for nonpayment of overtime pay before the NLRC to include, among others, constructive illegal dismissal, illegal suspension. On 29 April 2010, Complainants received the Notice of Termination dated 28 April 2010.[15]

For their part, respondents, in their Position Paper,[16] alleged that petitioners were validly dismissed from employment since they were duly notified of the charges against them and hearings were conducted. They alleged that they were terminated from employment for gross misconduct, inefficiency, gross and repeated negligence, hurling of insulting words to superior officers, tardiness, loitering during office hours and absenting from work without leave, which they committed in this wise:

“1. On March 16-17, 2010, they [petitioners] insulted and provoked their Audit Supervisor, Ms. Raquel Austria, after they were told to refrain from loitering and chatting during office hours and wait for the break time to do personal stuff but instead of heeding her advice they retorted insulting words such as “Wala kang

pakialam sa personal na ginagawa namin, masyado kang pakialamera, hindi ikaw ang pina-uusapan naming? Sip-sip ka kasi sa management, Sita ka ng sita, ang yabang-yabang mo”;

2. On March 18, 2010, they caused a commotion in the office of the central HRD by confronting Ms. Susan Zifra, saying: “Eh puta ayaw lang ata ako issuehan ng certificate ng manager mo eh? Kailangan ko lang naman sa HSBC application ko. Eh kung ganyan ganyan lang eh bastusan na to”;

3. On March 24, 2010, complainants interposed another issue against the HRD by saying that “At saka pansin ko kami lang lagi dinidisciplinary action n'yo dapat kung dinidisciplinary action nyo kami mga rank and file dapat pati supervisor din.” “Di nyo ginagawa trabaho nyo” and further boasted that “[l]aw student ako alam nyo yan, alam ko yang mga ganyang style di ko palalampasin yan”;

4. Non-submission of accomplishment report for the period March 16-19, 2010 as required but instead complainant Bongalanta rudely answered that “wala akong isusubmit sa iyo, wala akong nagawa, konti nga lang ang ipinasok ko eh”;

5. On March 25, 2010, between 9:00 to 9:30 am, complainants went again to the HRD office arrogantly shouting and demanding for an outright copies of the company policies on the compressed workweek, separation pay and other company benefits stubbornly saying: “Ayaw nyo lang kami bigyan kasi may tinatago kayo. Alam namin mga illegal na ginagawa nyo dito, isa yung compressed work week ninyo bawal yan” even with the presence of the visitors where and other employees were shocked of complainants outburst;

6. Also on March 25, 2010 between 10:00 a.m. to 10:20 a.m., they made a scenario of again arrogantly asking for a copy of Aguimbag's former performance evaluation made by his former supervisor Mr. Alwyn Valenzuela. When they were told that they were already given a copy of the documents being requested, they arrogantly answered that “Eh nakalimutan namin nakasulat dun hindi na namin matandaan kung ano nakasulat dun.” Instead of making a written request for the documents they needed, they said “Nakakatawa ang HRD walang kopya ng manual at evaluation sheet. Pagsisihan nyo ito, magkita na lang tayo sa labor.”;

7. From March 16, 2010 up to March 25, 2010, complainant Aguimbag loitered around during working hours on several occasions, and was caught sleeping on duty last March 23, 2010 between 1 pm to 2 pm; and

8. Absence without official leave last March 26, 2010.”[17]

After an exchange of pleadings between the parties, the Labor Arbiter[18] rendered the Decision[19] dated 22 September 2010 in favor of respondents disposing the case in this wise:

“WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the complaint for lack of merit.

SO ORDERED.”

On appeal by petitioners, the NLRC, in the herein assailed Decision dated 13 April 2011, affirmed the Decision of the Labor Arbiter. The NLRC found that petitioners were validly dismissed for serious misconduct by respondents. The NLRC observed that petitioners were furnished with written notices apprising of the specific charges against them and they were given the opportunity to explain and defend themselves. The NLRC also found that petitioners' preventive suspension did not mean that their “guilt was prejudged” by respondents as the same was merely intended as a measure of protection of the company's property pending the outcome of the investigation. Finally, the NLRC ruled that petitioner failed to substantiate their claim for unpaid overtime pay.[20]

Aggrieved, petitioners filed a Motion for Reconsideration[21] of the Decision dated 13 April 2011 which the NLRC denied in the assailed Resolution dated 27 June 2011.

Hence, this petition.

ISSUES

I.

WHETHER THE RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT IGNORED AND DISREGARDED PRIVATE RESPONDENT'S VIOLATION OF DOLE ADVISORY NO. 02-04 REGULATING THE COMPRESSED WORK WEEK SCHEME.

II.

WHETHER THE RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO A LACK OR EXCESS OF JURISDICTION WHEN IT IGNORED AND DISREGARDED PETITIONERS' CLAIM OF UNFAIR LABOR PRACTICE.

III.

WHETHER THE RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO A LACK OR EXCESS OF JURISDICTION IN HOLDING THAT PETITIONERS WERE NOT CONSTRUCTIVELY DISMISSED.[22]

OUR RULING

In the instant Petition for Certiorari, the essential issue for Our resolution is whether or not the NLRC gravely abused its discretion in issuing the assailed Decision and Resolution.

Petitioners impute grave abuse of discretion on the NLRC when it ruled that they were validly dismissed by respondents from employment. They insist that they were constructively dismissed from employment and contend that they are entitled for payment of overtime pay for failure of respondents to comply with the requirements provided under DOLE Advisory No. 02-04 or the Implementation of Compressed Workweek (CWW) Schemes. They aver that the NLRC abused its discretion when it failed to find that respondents committed unfair labor practice even when respondents, through HR Department Manager Teresita Eugenio, prohibited employees from joining or organizing labor union.[23]

Petitioners' contentions fail to persuade.

The term "grave abuse of discretion" means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. To justify judicial intervention, the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[24]

In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, inter alia, its findings and the conclusions reached thereby are not supported by substantial evidence. This requirement is clearly expressed in Section 5, Rule 133 of the Rules of Court which provides that "[i]n cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." [25]

Guided by the aforestated considerations, We find that the NLRC correctly ruled in favor of respondents.

There was no constructive dismissal.

Constructive dismissal occurs when there is cessation of work, because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay and other benefits. Aptly called a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not, constructive dismissal may, likewise, exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment.[26] The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances.[27]

Well-settled is the rule that before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service. Bare allegations of constructive dismissal, when uncorroborated by the evidence on record, cannot be given credence.

An act, to be considered as amounting to constructive dismissal, must be a display of utter discrimination or insensibility on the part of the employer so intense that it becomes unbearable for the employee to continue with his employment.[28]

Here, the records are bereft of substantial evidence that will unmistakably establish a case of constructive dismissal. In trying to prove constructive dismissal, petitioners alleged that they found the treatment of the “middle management team” of ALC to be insufferable as they were assigned to “out of town assignments which invariably affect[ed] their enrollment [in] law school” and they looked upon petitioners' further studies with disfavor as they were on various occasions asked “to choose between their jobs or their schooling.” They further contend that petitioner Aguimbag was promoted from being an Audit Assistant of the Audit Department to Senior Accounting Staff of the Finance Department and then due to their discovery of the purported illegal application of CWW of respondents, petitioner Aguimbag was demoted back to the position of Audit Assistant.[29]

We note, however, that while petitioners alleged that the “middle management team” despised their enrollment in law school, they likewise alleged that respondent Edward Cabangon, the president of ALC, “hailed” their decision to enroll in law school. This gives Us the impression that the ALC was not against their schooling as long as it did not negatively affected their work performance. It is equally worth noting that petitioners failed to indicate who are the persons consisting of the “middle management team” and what authority these persons have to give them out of town assignments. Giving a closer look on these allegations shows that it is their schooling and not their work which was affected by the purported act of the “middle management team”.

Furthermore, neither the records support their contention regarding the promotion and demotion of petitioner Aguimbag. To prove demotion, they submitted documents entitled “Special Order Number 034-2007”[30] dated 16 July 2007 and “ Special Order Number 005-2010”[31] dated 10 March 2010 issued by respondents. A reading of these documents, however, shows otherwise. In the Special Order Number 034-2007, eight (8) employees including petitioner Aguimbag from the Audit Department of ALC were “transferred to Finance Department”. In Special Order Number 005-2010, three (3) employees, including petitioner Aguimbag, were informed that they “have been assigned/transferred to Audit Department” and three (3) other employees were “retained under Finance Department”. There is dearth of evidence showing that petitioner Aguimbag was promoted. What the Special Orders invariably connote is petitioner Aguimbag's reassignment from one department to another, which showed no diminution in rank and/or salary.

We opine that the aforementioned bare allegations failed to establish circumstances that were clear-cut indications of bad faith or some malicious design on the part of respondents to make petitioners working environment insufferable, which would compel the latter to give up their position.

While admittedly petitioners ceased to work for respondents, it should be stressed that petitioners' cessation of

work was not on account of constructive dismissal but of actual dismissal imposed by respondents, as aptly found by the NLRC and Labor Arbiter.

Petitioners were validly dismissed from employment.

In ascertaining the validity and legality of petitioners' dismissal, it is imperative that the employer observe both substantive and procedural due process requirements.[32] Substantive due process requires that the dismissal must be pursuant to either a just or an authorized cause. Procedural due process, on the other hand, mandates that the employer must observe the twin requirements of notice and hearing before a dismissal can be effected.[33]

Thus, to determine the validity of petitioners' dismissal from employment, We first discuss whether the substantive aspect has been complied with by respondents.

Here, the Labor Arbiter and NLRC determined that petitioners were dismissed from employment for serious misconduct, a just cause for termination of employment. The Labor Arbiter's Decision, as affirmed by the NLRC took into consideration the documentary evidence presented by respondents consisting, among others, of the reports of Ms. Racquel Austria, the audit supervisor of petitioners and disciplinary action reports concerning petitioners' tardiness.[34]

We agree.

Article 282 of the Labor Code enumerates the just causes for the termination of employment of an employee by the employer, to wit:

Art. 282. Termination by Employer. — An employer may terminate an employment for any of the following causes:

- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (b) Gross and habitual neglect by the employee of his duties;
- (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
- (e) Other causes analogous to the foregoing.

Article 282 (a) provides that an employer may dismiss an employee for the latter's serious misconduct. Misconduct is defined as "transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment." [35] Serious misconduct to be a just cause for dismissal, it must (1) be serious; (2) relate to the performance of the employee's duties; and (3) show that the employee has become unfit to continue working for the employer.[36]

Here, records bear that both petitioners made insulting remarks and acted with disrespect to their supervisor Ms. Raquel Austria. Their assailed actions were related to their work as they were merely advised by Ms. Austria to stop loitering around the premises of ALC and submit their accomplishment reports. It reflects their unwillingness to comply with reasonable management directives, thus, leading respondents to conclude petitioners' unfitness to continue working for the company.

In the case of *Philippines Today, Inc. v. NLRC*, [37] the Supreme Court underscored the importance of respect

that an employee is expected to imbibe, especially when dealing with the employer, in order to maintain a harmonious relationship in the workplace, viz:

“xxx A cordial or, at the very least, civil attitude, according due deference to one's superiors, is still observed, especially among high-ranking management officers. The Court takes judicial notice of the Filipino values of pakikisama and paggalang which are not only prevalent among members of a family and community but within organizations as well, including work sites. An employee is expected to extend due respect to management, the employer being the "proverbial hen that lays the golden egg," so to speak. xxx No matter how the employee dislikes his employer professionally, and even if he is in a confrontational disposition, he cannot afford to be disrespectful and dare to talk with an ungarded tongue and/or with a baleful pen.xxx”

In arrogantly talking and failing to give due respect to their supervisor, We agree with the Labor Arbiter and NLRC in ruling that petitioners were dismissed based on serious misconduct.

Perusing further the records, We opine that another just cause for dismissal exists, i.e. gross and habitual neglect by the employee of his duties. This cause includes gross inefficiency, negligence and carelessness. Such just cause is derived from the right of the employer to select and engage his employees.[38]

Gross negligence connotes want of care in the performance of one's duties, while habitual neglect implies repeated failure to perform one's duties for a period of time, depending on the circumstances. Gross negligence has been defined as the want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[39]

Here, petitioner Bongalota was habitually tardy for the period between March 1 to March 25, 2010. He also failed to submit his accomplishment reports. These infractions reflect his indifferent attitude to and lack of motivation in his work.[40] Thus, petitioner Bongalota's dismissal is also warranted for neglect of duty.

Furthermore, aside from arrogantly answering to Ms. Austria, petitioners were also liable for other infractions. As for petitioner Aguimbag, it appears that he performed the following: a) loitering around during working hours on several occasions from 16 to 25 of March 2010; b) sleeping while on duty last 23 March 2010; and c) absent without filing an official leave on 26 March 2010. As for petitioner Bongalota, he was also absent without filing a leave on 26 March 2010.

It bears noting that an employee's past misconduct and present behavior must be taken together in determining the proper imposable penalty. The totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee. The offenses committed by him should not be taken singly and separately but in their totality. Fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct, and ability separate and independent of each other. Hence, the totality of such infractions that petitioners had committed also justified their dismissal.[41]

We now proceed to determine respondents' compliance of procedural due process.

Procedural due process consists of the twin requirements of notice and hearing.[42] This is provided for under Book VI, Rule I, Section 2(d), of the Omnibus Rules Implementing the Labor Code, to wit:

“xxx

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just causes as defined in Article 282 of the Labor Code:

(i)

A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.

(ii)

A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.

(iii)

A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination."

It is imperative that the employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him.[43] A formal "trial-type" hearing, although preferred, is not absolutely necessary to satisfy the employee's right to be heard. The following serve as the guiding principles for hearings in dismissal cases:

a) "ample opportunity to be heard" means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him and submit evidence in support of his defense, whether in a hearing, conference or some other fair, just and reasonable way. b) a formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it.

c) the "ample opportunity to be heard" standard in the Labor Code prevails over the "hearing or conference" requirement in the implementing rules and regulations.[44]

In this case, records clearly show that respondents furnished petitioners their individual Notices of Infraction with Preventive Suspension[45] containing the specific charges against the latter and directing them to submit within forty-eight (48) hours from receipt their written explanation. Respondents likewise gave petitioners another notice informing them of the schedule of the hearing of the case against them.[46] Petitioners then submitted their individual written explanations[47] and thereafter attended the scheduled administrative hearing. Undoubtedly, petitioners were given ample opportunity to explain their side. Records likewise bear that petitioners were given their respective Notices of Termination[48] informing them of respondents' decision to terminate them from employment. In sum, We are convinced that respondents duly accorded petitioners procedural due process.

Petitioners failed to prove unfair labor practice and nonpayment of overtime pay.

Unfair labor practice refers to 'acts that violate the workers' right to organize.' The prohibited acts are related to the workers' right to self-organization and to the observance of a CBA." There should be no dispute that all the prohibited acts constituting unfair labor practice in essence relate to the workers' right to self-organization. Thus, an employer may only be held liable for unfair labor practice if it can be shown that his acts affect in whatever manner the right of his employees to self-organize. Corollary thereto, basic is the principle that good faith is presumed and he who alleges bad faith has the duty to prove the same.[49] By imputing bad faith on the part of

respondents regarding unfair labor practice, petitioners have the burden of proof to present substantial evidence to support the allegation of unfair labor practice. A perusal, however, of the allegations and arguments raised by petitioners will readily disclose that they failed to discharge said onus probandi as there is no evidence other than their bare contention of unfair labor practice in order to make certain the propriety or impropriety of the unfair labor practice charge hurled against petitioners.

As regards the claim of nonpayment of overtime pay due to failure of respondents to comply with the requirements imposed on DOLE Advisory No. 02-04 or the Implementation of Compressed Workweek (CWW) Schemes, We cannot again sustain petitioners' bare allegations without proof.

In the light of the foregoing, the NLRC's rulings in the assailed Decision and Resolution can hardly be considered tainted with arbitrariness or unfairness that is the essence of grave abuse of discretion.

WHEREFORE, premises considered, the instant Petition for Certiorari is DENIED. The Decision dated 13 April 2011 and Resolution dated 27 June 2011 rendered by the National Labor Relations Commission in NLRC LAC No. 11-002992-10 [NLRC NCR Case No. 04-05154-10] are AFFIRMED.

SO ORDERED.

De Leon, M.M., Chairperson and Antonio-Valenzuela, N.G., JJ., concur.

[1] Rollo, pp. 3-15.

[2] Decision penned by Commissioner Dolores M. Peralta-Beley and concurred in by Presiding Commissioner Leonarda L. Leonida and Commissioner Mercedes R. Posada-Lacap; Rollo, pp. 21-36.

[3] Rollo, pp. 18-19.

[4] Id., pp. 38-39.

[5] Id., pp. 48-65.

[6] Ibid.

[7] Ibid.

[8] Ibid.

[9] Ibid.

[10] Ibid.

[11] Ibid.

[12] Ibid.

[13] Ibid.

[14] Ibid.

[15] Ibid.

[16] Rollo, pp. 93-108.

[17] Id., pp. 24-27.

- [18] Labor Arbiter Elias H. Salinas
- [19] Rollo, pp. 203-223.
- [20] Id., pp. 21-36.
- [21] Id., pp. 265-276.
- [22] Id., p. 8.
- [23] Id., pp. 9-13.
- [24] Unilever Philippines, Inc. vs. Tan, G.R. No. 179367, January 29, 2014.
- [25] Ayungo vs. Beamko Shipmanagement Corp., G.R. No. 203161, February 26, 2014.
- [26] Gemina, Jr. vs. Bankwise, Inc., G.R. No. 175365, October 23, 2013.
- [27] And vs. San Joaquin, Jr., G.R. No. 185549, August 7, 2013.
- [28] Gemina, Jr. vs. Bankwise, Inc., G.R. No. 175365, October 23, 2013.
- [29] Rollo, p. 50.
- [30] Id., p. 73.
- [31] Id., p. 76.
- [32] New Puerto Commercial, et al. vs. Lopez, G.R. No. 169999, July 26, 2010.
- [33] ALPS Transportation vs. Rodriguez, G.R. No. 186732, June 13, 2013.
- [34] Rollo, p. 249.
- [35] Yabut vs. Meralco, G.R. No. 190436, January 16, 2012.
- [36] Solid Development Corporations Association vs. Solid Development Corporation, G.R. No. 165995. August 14, 2007.
- [37] G.R. No. 112965. January 30, 1997, cited in the case of Punzal vs. ETSI Technologies, Inc., G.R. Nos. 170384-85, March 9, 2007.
- [38] Challenge Socks Corporation vs. Court of Appeals, G.R. No. 165268, November 8, 2005.
- [39] PNB vs. Padao, G.R. Nos. 180849 and 187143,. November 16, 2011.
- [40] See Valiao vs. Court of Appeals, G.R. No. 146621, July 30, 2004.
- [41] Challenge Socks Corporation vs. Court of Appeals
- [42] New Puerto Commercial, et al. vs. Lopez, et al., G.R. No. 169999, July 26, 2010.
- [43] Pharmacia And Upjohn, Inc. (NOW Pfizer Philippines, Inc.), et al. vs. Albayda, G.R. No. 172724, August 23, 2010.
- [44] Abbott Laboratories Philippines vs. Alcaraz, G.R. No. 192571,. July 23, 2013.
- [45] Rollo, pp. 112-115.
- [46] Id., pp. 116-117.

[47] *Id.*, pp. 120-122.

[48] *Id.*, pp. 142-145.

[49] *Culili vs. Eastern Telecommunivcations Philippines, Inc.*, G.R. No. 165381,. February 9, 2011.

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