

THE CONTEMPORARY HOTEL (L & R CORPORATION), MARC THOMAS ABLAZA AND LUIS ABLAZA, JR., PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND MA. CARMINA S. FERNANDEZ, RESPONDENTS.

Ponente: DIMAAMPAO, J.

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DIMAAMPAO, J.:

Loss of confidence must not be indiscriminately used as a shield by the employer against a claim that the dismissal of an employee was arbitrary. It must be based on substantial evidence and not on the employer's whims and caprices otherwise, the employee would eternally remain at the mercy of the employer.[1]

This legal aphorism comes to mind in resolving this present controversy.

Petitioners declaim against the Decision[2] and Resolution[3] dated 24 August 2012 and 16 November 2012 of the National Labor Relations Commission (NLRC) reversing the Decision[4] of the Labor Arbiter which dismissed private respondent's complaint for illegal dismissal and denying the Motion for Reconsideration[5] thereof, respectively, in NLRC NCR 05-08197-11.

The precursor facts are not in dispute.

Petitioner L & R Corporation (L & R) is doing business under the name and style, The Contemporary Hotel (hotel), with co-petitioner Luis Ablaza, Jr. (Luis), as President, and Marc Thomas Ablaza (Marc) as General Manager. We shall refer to them collectively as petitioners.

Upon the other hand, private respondent Ma. Carmina Fernandez (Carmina) is the Resident Manager of the hotel, second-in-command to Marc. Carmina handled the day-to-day operations of the hotel and the supervision of its staff.

On 4 April 2011, Marilyn Santos (Marilyn), Chief Accountant, informed Carmina that she needed to sign a Deed of Undertaking[6] which was to be submitted to secure a Fire Safety Certificate and a Business Permit from the Quezon City government. The Undertaking guaranteed that the hotel would install fire sprinklers within its vicinity; at the same time, Carmina was to acknowledge any and all responsibility for damages that the hotel would sustain arising from the breach of its duty to install the sprinklers.

The contents of the Undertaking did not sit well with Carmina as it would, in effect, make her personally liable in case the hotel failed to fulfill its commitment. To allay Carmina's apprehension, Marilyn explained that the Undertaking was for compliance purposes only. Nonetheless, Carmina refused to sign proposing that Marc, as stockholder of the hotel, take her stead. Efforts to persuade Carmina to sign the Undertaking proved futile. She feared that— one, the hotel did not actually have any plans to install the fire sprinklers as it would be too costly, and two, she would be held personal accountable for it.

Marc publicly humiliated Carmina and made it known to her co-employees that she had committed acts of

disloyalty against the hotel. Thence, Carmina was stripped of her duties and the staff members were instructed to report to Marc and not to her.

Ensuingly, a squabble between the parties through writ-ten exchanges of letters[7] occurred. Carmina insisted that there were valid reasons for her refusal to sign the Undertaking,[8]that she was not disrespectful to her superiors,[9] and that she did not abuse her privileges as a Resident Manager.[10] Marc, in his replies, merely shrugged off Carmina's imputations.

Carmina subsequently filed for leave which Marc approved but with a written annotation that her "official retirement starts on May 1, 2011".[11] This, notwithstanding, Carmina continued to report for duty until 24 May 2011. Later on, she filed a Complaint for constructive dismissal.

As it happened, Carmina received a Notice of Termination[12] dated 3 June 2011 which propounded the following reasons of her layoff: (a) gross insubordination; (b) abuse of power and privileges; (c) absences without leave and/or under time without permission; and, (d) violations of the Code of Discipline. Forthwith, Carmina amended her Complaint to Illegal Dismissal and prayed for payment of full backwages, reinstatement, moral damages, exemplary damages, attorney's fees and costs of litigation.[13]

Confuting the averments of the Complaint, petitioners asserted that the termination of Carmina's employment was based on loss of trust and confidence for her refusal to sign the Undertaking despite the assurance that she would not be made liable.

Petitioners avowed that they observed due process by sending four Letters of Inquiry[14] setting forth the specific incidents which led to the charges against Carmina and giving her an opportunity to explain why she should not be disciplined. During the investigation, they took into account relevant pieces of documents and the written explanations of her co-employees on the matter.[15] Carmina having shown to have committed acts of insubordination and abused her privi-leges as a Resident Manager, petitioners rightly terminated her services.

Confronted with the parties' divergent postures, the Labor Arbiter rendered the Decision[16] dated 19 December 2011 dismissing Carmina's Complaint. Unfazed, she appealed before the NLRC which rendered the challenged Decision reversing the Labor Arbiter's judgment and declaring that Carmina was illegally dismissed.[17] Thus, the NLRC disposed as follows:

“WHEREFORE, premises considered, the decision appealed from is hereby ordered VACATED and SET ASIDE. Accordingly, a new DECISION is hereby entered finding that complainant Ma. Carmina S. Fernandez was illegally dis-missed from employment, and, thus, she is entitled to payment of (1) Full Backwages from the date of dismissal up to the promulgation of this decision; (2) Separation Pay equivalent to one (1) month pay for every year of service; (3) Unpaid Salary from May 1 to 15, 2011.

Corollarily, the Contemporary Hotel (L & R Corporation) Marc Thomas R. Ablaza and Luis I. Ablaza, Jr. are ordered, jointly and severally liable to pay the complainant the following:

1)

Full Backwages

=

P1,037,907.39

2)

Separation Pay

=

930,537.66

3)

Unpaid Salary

=

35,789.91

TOTAL AWARD

=

P2,004,234.96

SO ORDERED.”[18]

Petitioners' plea for reconsideration[19] fell on deaf ears as it was denied by the NLRC in the assailed Resolution. Through the instant Petition, they now seek relief before Us imputing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC—

I

WHEN IT CAPRICIOUSLY AND ARBITRARILY DISREGARDED EVIDENCE MATERIAL TO THIS CASE THAT SHOWED THAT PETITIONERS HAD MORE THAN SUFFICIENT BASES TO LOSE THEIR TRUST AND CONFIDENCE ON PRIVATE RESPONDENT, WHO WAS A MANAGERIAL EMPLOYEE.

II

WHEN IT CAPRICIOUSLY, ARBITRARILY, AND WITHOUT EVIDENTIARY BASIS WHATSOEVER, PEGGED PRIVATE RESPONDENT'S MONTHLY COMPENSATION AT PHP71, 579.82, THEREAFTER USING SAID AMOUNT IN ITS COMPUTATION FOR PRIVATE RESPONDENT'S MONETARY AWARD.

III

WHEN IT UNJUSTLY AND ARBITRARILY HELD PETITIONERS MARC THOMAS R. ABLAZA AND LUIS ABLAZA, JR. JOINTLY AND SOLIDARILY LIABLE TO PAY PRIVATE RESPONDENT'S MONETARY AWARD WHEN SAID CORPORATE OFFICERS HAVE PERSONALITIES THAT ARE DISTINCT AND SEPARATE FROM THE CORPORATION, AND ABSENT ANY EVIDENCE OR FINDING OF FRAUD OR BAD FAITH IN THE TERMINATION OF PRIVATE RESPONDENT'S EMPLOYMENT.

A modification of the assailed NLRC judgment is in order.

At the fulcrum of this Petition is whether or not Carmina (now, private respondent) was legally dismissed on the ground of loss of trust and confidence.

As a rule, factual findings of quasi-judicial bodies like the NLRC are accorded respect and even finality. However, where the findings of the NLRC and the Labor Arbiter are contradictory, as in this case, the Court may delve into the records and examine the questioned findings.[20] In the case at bench, the disparity behooves Us to revisit the discordant findings of the labor tribunals.

On loss of trust and confidence—

The Labor Arbiter pronounced that petitioners had a just cause to terminate private respondent's services for loss of trust and confidence. Private respondent refused to sign the Undertaking despite being sufficiently assured that she was merely signing as a representative of the hotel. Moreover, she was guilty of insubordination for engaging her superior in a heated argument, and abused the privileges of her position by keeping a dog inside the hotel.

On the other hand, the NLRC adjudged that private respondent's refusal to sign the Undertaking was not sufficient basis to cause her dismissal as she had a valid excuse not to sign. It was her prerogative to protect herself from personal liability should the hotel breach its obligation to install the fire sprinklers. Her acts did not constitute as refusal to fulfill her responsibility as Resident Manager. Withal, the other alleged infractions against petitioners were not sufficient to warrant her dismissal.

We sustain the ruling of the NLRC.

Article 282(c) of the Labor Code[21] provides that the employer may dismiss an employee based on willful breach of the trust reposed in the employee by the employer. But in order to constitute as a just cause for dismissal, the act complained of must be work related and the loss of trust of confidence must have a basis.[22]

Unlike in other cases where the complainant has the burden of proof to discharge its allegations, the burden of establishing facts as bases for an employer's loss of confidence in an employee — facts which reasonably generate belief by the employer that the employee was connected with some misconduct and the nature of his participation therein is such as to render him unworthy of trust and confidence demanded of his position — is on the employer.[23]

As the Resident Manager of the hotel, private respondent's position requires the trust and confidence of petitioners. On this score, this query leaps to the eye— Did petitioners convincingly show that private respondent committed acts justifying their loss of trust and confidence in her?

We rule in the negative.

Private respondent's refusal to sign the Undertaking for fear that she might incur personal liability in case petitioners would breach their obligation to install the fire sprinklers is justified and cannot be construed as a ground for loss of trust and confidence. This so-called trepidation that cases may be filed against her person could hardly constitute a valid reason for dismissal. The probability that she would be made accountable can be clearly gleaned from the language of the Undertaking, viz:

- I undertake that we will be installing a (sic) sprinklers at THE CONTEMPORARY HOTEL as one of the requirements in securing the Fire safety Inspection Certificate for the year 2011
- Should there be breach of this undertaking, I shall acknowledge and be responsible for any and all damages that the THE CONTEMPORARY HOTEL may sustain arising from such breach."[24]

So, too, private respondent candidly explained to petitioners the reasons for refusing to sign. In her letter dated 8 April 2011, she professed:

"After reading the above-quoted paragraphs, I felt uneasy and hesitant to sign the above-mentioned document because the same would constitute a public document that will hold me personally liable in the event that the hotel and/or its guests sustain any damage arising from the breach of the undertaking to install sprinklers in the Hotel. Thus, I immediately proceeded to your office to discuss the matter.

In your office, I expressed my utmost fear and hesitation in signing the document. I pointed out that such document could prove detrimental to my life and career, and expressed that I DO NOT have the capacity to

pay for any damages in case a fire breaks out in the Hotel, and an investigation is conducted afterwards, thereby pinpointing me as the sole person responsible for everything. x x x

x x x x x x

Regarding my refusal to sign the document, please understand that the same was not an affront to your authority, but based on a valid and genuine concern on my part since the said document would constitute a public document that will hold me personally liable for a breach of the undertaking. This concern was aggravated by the fact that I was informed by Mr. Aldana himself that the Hotel DOES NOT have any intentions (sic) of installing the said sprinklers, which, in fact have long been required for such establishments like ours."[25] (Emphasis Ours)

Pellucidly, private respondent did not intend to willfully defy the orders of her superior but merely wanted to avoid liability. She cannot be expected to carry out an order that would make her amenable to suit. Contrariwise, petitioners evinced no manifest desire to comply with the Undertaking to install the fire sprinklers. Ineludibly, this blows a hole in petitioners' disputation that loss of trust and confidence warranted private respondent's dismissal.

Petitioners asseverate that the dismissal of the private respondent was not merely anchored on her refusal to sign the Undertaking but also on the following grave infractions: (a) gross disrespect against her immediate supervisor; (b) refusal to comply with her superior's directive to endorse and sign bank slips causing difficulties in the operations of the hotel; (c) abuse of power and privilege in the unauthorized use of additional hotel room for the storage of her personal belongings including maintaining a dog within the hotel premises; and, (d) absences without leave and/or under time.

We refuse to pander to petitioners' asseveration.

Here, private respondent's alleged infractions do not merit the penalty of outright dismissal from service. Her alleged raising of voice against a superior officer and abuse of privileges could have been remedied with lesser punitive disciplinary sanctions. We cannot just turn a blind eye to the 12 years of service she has rendered as it was not shown that prior to the incident, she was found guilty of any infraction against them.

Upon this point, the NLRC's discourse deserves Our imprimatur, viz:

"Applying the aforequoted ruling, We find the refusal of the (private respondent) to sign the undertaking as not sufficient basis to cause her dismissal. She is not guilty of insubordination as she had a valid excuse not to sign the undertaking. The reason being that as a signatory thereto she will be held liable in her personally capacity should there be a breach of the undertaking. It is, thus, her prerogative to protect herself from any liability considering that she is not a stockholder or an officer of the Hotel. (Petitioner's) contention that there is no cause for alarm because she was given the assurance that she would not be held liable in case of any breach of the undertaking is not documented. There was no proof of such assurance as it was merely made verbally and was not reduced into writing. Thus, the verbal assurance can later on be denied and disowned. Perhaps, the concern of the (private respondent) would have been addressed if the undertaking was clearly worded in such a way that she was signing it merely as a representative of the (petitioner) Hotel. But, apparently as clearly shown by the words and tenor of the deed of undertaking, she was signing it in her personal capacity and, worse, she would even acknowledge her personal liability in case of a breach of the same.

Thus, (private respondent's) refusal was not done intentionally or willfully to renege on her responsibility as resident manager. (Petitioner) GM Ablaza cannot fault complainant for her refusal to sign and even assuming for the sake of argument that she had engaged him to a heated argument that alone cannot constitute an affront on his authority as superior because she was merely raising a personal concern. Besides, it is complainant's right to express her concern on a valid issue.

Anent the allegation that she has abused her privilege as resident manager for keeping two pet dogs in hotel

rooms appears merely incidental issues to justify the dismissal. Complainant has been respondent's resident manager for twelve years and it is quite improbable that respondent Marc Ablaza would have no knowledge of complainant's penchant for pet dogs. x x x

x x x x x x

x x x However, the improper use of said room will not constitute a loss of confidence as her attention could be called to prevent her from the unsuitable use of the same."[26](Emphasis Ours)

On private respondent's monthly salary—

Petitioners assert that the NLRC arbitrarily fixed private respondent's monthly salary at P71,579.82. They maintain that she had the burden of proving such positive allegation, and her failure to do so rendered her unworthy of such award.

Petitioners' assertion holds no water.

Petitioners cannot cash in on the alleged lack of evidence on the part of private respondent. As employers, they have the burden to prove that she was not indeed receiving a monthly salary of P71,579.82 since the employment records are in their possession. Pertinent personnel files, payrolls, records, remittances and other similar documents — which will show that overtime, differentials, service incentive leave and other claims of workers are not in the possession of the worker but in the custody and absolute control of the employer.[27]

The record reflects that private respondent proffered pieces of evidence that lend credence to the NLRC's adjudication with respect to her salary, viz:

1. In her Amended Complaint and Amended Request for Assistance,[28] she stated that she was receiving monthly salary of P38,738.82 and an allowance of P33,000.00.
2. The assailed Decision discussed that private respondent had averred in her Complaint before the Labor Arbiter that she had a monthly salary of P71,579.82.[29]

On petitioners' liability—

Petitioners take umbrage at the NLRC's finding that petitioners Marc and Luis are jointly and solidarily liable for the payment of backwages, separation pay and unpaid salary in favor of private respondent.

We agree.

In labor cases, corporate directors and officers are solidarily liable with the corporation for the termination of employment of corporate employees done with malice or in bad faith. Bad faith is never presumed. Bad faith does not simply connote bad judgment or negligence — it imports a dishonest purpose or some moral obliquity and conscious doing of wrong. It means a breach of a known duty through some motive or interest or ill-will that partakes of the nature of fraud.[30]

It appearing that the NLRC made no pronouncement that petitioners Marc and Luiz acted in bad faith in dismissing private respondent from service, they must be absolved from liability. In the same vein, petitioner Luis was not shown to have a hand in the illegal dismissal of private respondent.

A final reflection. While it is true that in dismissing an erring employee, employers are allowed a wider latitude of discretion in terminating the services of employees who perform functions by which their nature require the employer's full trust and confidence, this right of an employer must not be exercised arbitrarily and without just cause.[31] In the absence of adequate proof that loss of confidence is justified and that the employee's actions

rendered her unfit to perform her duties, this power of the employer to dismiss must yield to the constitutional guarantee of employees to security of tenure.

WHEREFORE, the assailed Decision dated 24 August 2012 and challenged Resolution dated 16 November 2012 of the National Labor Relations Commission in NLRC NCR 05-08197-11, are AFFIRMED with MODIFICATION in that petitioners Marc Thomas Ablaza and Luis Ablaza, Jr. are ABSOLVED from liability.

SO ORDERED.

Ybañez, and Paredes,* JJ; concur.

* Vice Justice Carmelita S. Manahan, per Office Order No. 149-14-RSF dated 21 April 2014.

[1] See *Lopez v. Alturas Group of Companies*, 647 SCRA 568, 573 (11 April 2011).

[2] *Rollo*, pp. 50-66.

[3] *Id.*, pp. 67-69.

[4] *Rollo*, pp. 253-270.

[5] *Id.*, pp. 319-344.

[6] Annex "A" Position Paper; *Id.*, p. 179.

[7] *Rollo*, pp. 180-181.

[8] See Letter dated 8 April 2011; *Id.*, pp.182-184.

[9] See *Ibid.*

[10] See *Id.*, pp. 185-187.

[11] See Application for Leave of Absence Form; *Id.*, p. 193.

[12] *Id.*, pp. 195-198.

[13] See Amended Complaint; *Id.*, pp. 71-72.

[14] *Id.*, pp. 103, 12, 142 and 146.

[15] See Reply to Complainant's Position Paper; *Rollo*, p. 214.

[16] *Id.*, pp. 253-270.

[17] See Decision dated 24 August 2012; *Id.*, pp. 50-66.

[18] *Id.*, pp. 64-65.

[19] See Motion for Reconsideration; *Id.*, pp. 319-345.

[20] See *Antiquina v. Magsaysay Maritime Corporation*, 648 SCRA 659, 669 (13 April 2011).

[21] 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.

[22] See *Jerusalem v. Keppel Monte Bank*, 647 SCRA 313, 322 (6 April 2011).

[23] See *Jerusalem v. Keppel Monte Bank*, 647 SCRA 313, 323 (6 April 2011).

[24] *Rollo*, p. 179.

[25] *Rollo*, pp. 183-184.

[26] *Rollo*, pp. 61-63.

[27] See *G & M (Phil.), Inc. vs. Batomalaque*, 461 SCRA 111, 118 (23 June 2005).

[28] *Rollo*, p. 73.

[29] See Annex "A" to Petition; *Id.*, p. 50.

[30] *Solidbank Corporation v. Gamier*, 634 SCRA 554, 584-585 (15 November 2010).

[31] See *Century Canning Corporation v. Ramil*, 627 SCRA 192, 203 (9 August 2010).

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