

BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. ELIZABETH G. SARMIENTO, RESPONDENT

G.R. NO. 146021. March 10, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a petition for review on certiorari filed by Bank of the Philippine Islands (petitioner) seeking to annul the Decision dated September 15, 2000[1] and the Resolution dated November 13, 2000[2] of the Court of Appeals (CA) in CA G.R. CV No. 50135 affirming in toto the decision of the Regional Trial Court of Quezon City dismissing the complaint for sum of money filed by petitioner against Elizabeth Sarmiento (respondent).

The factual backdrop as found by the CA is as follows:

Appellee Sarmiento was the assistant manager of appellant bank's España Branch. Sometime in 1987, the España Branch was investigated for several alleged anomalous transactions involving time deposits (Exhibit A). Among the suspects in the alleged scam was appellee Sarmiento. From October 10, 1987 to June 30, 1988, appellee Sarmiento did not regularly report for work but went to her office in the bank only once in a while. She however received her full salary for the said period totaling P116,003.52. Subsequently, she received a demand from the appellant bank to return said amount because it was mistakenly paid to her. She refused to do so and so appellant bank instituted an action for collection in the court below.

Appellant bank asserted that since appellee Sarmiento did not actually work during the period adverted to, she was not therefore, entitled to receive any salary. The payment to her of said salary was a mistake.

According to appellee Sarmiento however, when an internal audit was being undertaken in connection with the investigation of the alleged bank scam, Vice President Arturo Kimseng of the Audit Department of appellant bank verbally directed her to stop working while the investigation was going on. This directive was obviously for the purpose of preventing appellee Sarmiento from tampering with the records or from influencing her subordinates to cover-up for her. It was because of said oral instruction that appellee Sarmiento went to office sparingly.[3]

On April 3, 1995, the Regional Trial Court of Quezon City, Branch 98, dismissed [4] the complaint for failure of petitioner to establish its case by preponderance of evidence with costs against it. The trial court found that the principle of solutio indebiti upon which petitioner based its complaint for a sum of money is untenable. It ruled that since respondent was petitioner's Assistant Manager at the España Branch, she was a managerial employee who was not under obligation to punch in her card in the Bundy clock; that she was allowed to visit the business establishments of petitioner's several clients thus she could not be seen reporting for work which was not a conclusive proof that she was not rendering service to her employer; that respondent was lawfully entitled for payment of her salaries for the period from October 10, 1987 to June 30, 1988, amounting to P116,003.52; that petitioner's averment that during the periods aforementioned respondent had already ceased reporting rest on a very shaky ground since respondent claimed that she was instructed by petitioner's Assistant Vice-President of the Auditing Department to refrain from reporting regularly inasmuch as there was an on-going internal audit; that

petitioner failed to present countervailing evidence on this point, hence such claim remained un rebutted; and that petitioner did not even bother to adduce clear and convincing evidence when the services of respondent was terminated.

Petitioner filed its appeal with the CA which in a Decision dated September 15, 2000 affirmed the Decision of the trial court and dismissed the appeal. Petitioner's motion for reconsideration was likewise denied in a Resolution dated November 13, 2000.

In finding for the respondent, the CA made the following disquisition:

These are admitted or fully established facts which constitute the foundation of this Court's verdict, to wit:

- Appellee Sarmiento was an assistant manager of appellant bank's España Branch and therefore was a managerial employee.
- As a managerial employee, appellee Sarmiento was not required to report for work in accordance with a definite time schedule.
- For the period, October 10, 1987 to June 30, 1988, appellee Sarmiento went to her office only once in a while but received her full salary for said period.
- According to appellant bank, appellee Sarmiento's services in said bank were terminated on August 26, 1988. Consequently, for the period, October 10, 1987 to June 30, 1988, appellee was still an employee of the bank.
- During the period in question, appellee Sarmiento was not suspended from office.
- No criminal, civil or administrative action has been instituted by appellant bank against appellee Sarmiento.

In this suit, the basis of appellant's bank's claim for reimbursement of the salary paid to appellee Sarmiento for the period in question is the rule of "no work, no pay". Since she did not work during the period in question, she was not entitled to any salary. Appellee Sarmiento counters this position with the argument that the reason why she did not report for work regularly was because she was verbally instructed by Vice-President Arturo Kimseng not to report for work while the investigation in the bank was going on. Consequently, it was not her desire, much less her fault, that she went to office very rarely.

The only issue to resolve is whether or not appellee Sarmiento was indeed verbally instructed by Vice President Arturo Kimseng not to report for work while the investigation was still going on.

It is true that Vice President Arturo Kimseng denied having given said oral instruction to appellee Sarmiento. That notwithstanding, this Court shares the view of the lower court that indeed appellee Sarmiento was enjoined from reporting for work during the period of investigation.

This is plausible because it jibes with the common practice in the business world. When a managerial employee is under investigation, the employer has three options. First: to suspend the managerial employee during the period of investigation — but this entails notice and hearing to comply with the demands of administrative due process. Second: to allow the managerial employee to continue working during the period of investigation so that the employer can derive benefit out of the salary being paid to the former. Third: to let the managerial employee discontinue working during the period of investigation but continue paying his salary. Usually, the employers choose the third option because they consider the salary paid without work a reasonable price to pay for ensuring the integrity of the records under the control and to avoid influence being exerted upon subordinate employees who may be potential witnesses against the former.

If there had been no such instruction to appellee Sarmiento, why did not the branch manager or even higher corporate officials call her attention for not reporting to office regularly? If her attention was called but she continued to be absent, why was she not suspended? Why was her salary paid? These questions were not

satisfactorily answered by appellant bank.

Accordingly, this Court holds that the payment of the salary to appellee Sarmiento during the period in question was correct and the latter's receipt was legal. She has therefore, no obligation to return it.[5]

Hence, the instant petition for review on the following grounds:

- The Honorable Court of Appeals erred in holding based on a misapprehension of facts that the "only issue to resolve is whether it is true or not that appellee Sarmiento was indeed verbally instructed by Vice President Arturo Kimseng not to report for work while the investigation was still going on."
- In connection with the foregoing, the Honorable Court of Appeals also erred in holding without any basis at all, that it "shares the view of the lower court that indeed appellee Sarmiento was enjoined from reporting for work during the period of investigation."
- The Honorable Court of Appeals erred in holding based entirely on speculations, surmises or conjectures that "the payment of the salary to appellee Sarmiento during the period in question was correct and the latter's receipt (thereof) was legal" and accordingly, "she has therefore no obligation to return it."
- The Honorable Court of Appeals erred in dismissing the appeal of BPI and affirming the Decision under appeal. [6]

Respondent filed her Comment. Subsequently, upon directive of the Court, the parties submitted their respective memoranda.

Petitioner claims that: when the CA declared that the only issue to resolve is whether it is true or not that appellee Sarmiento was indeed verbally instructed by Assistant Vice-President Arturo Kimseng (AVP Kimseng) not to report for work while the investigation was still going on, the CA impliedly acknowledged that it is convinced that respondent did not report for work while the investigation was going on; petitioner fully agrees with the CA in making such an assumption as it was based on the evidence on record; it was even respondent who admitted in her Answer to the complaint as well as in her testimony in cross-examination that she stopped reporting for work on September 12, 1987; the CA erred in its assumption that AVP Kimseng had the power or authority to order or direct respondent not to report for work since no evidence was presented by the defense to that effect; AVP Kimseng rebutted such claim when he testified that he had no authority to do so; if it was really petitioner's intention not to allow respondent to report for work and yet pay her salaries, there is no reason why it should now proceed to recover from her; it is not uncommon for an employee who is under investigation to cease from reporting for work on her own because she does not want to cooperate or to participate in the investigation being conducted.

The Court dismisses the petition.

It is a settled rule that in the exercise of the Supreme Court's power of review, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the CA are conclusive and binding on the Court.[7] Jurisprudence has recognized several exceptions in which factual issues may be resolved by this Court, such as: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the

petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[8] None of these exceptions find application in the present case.

After a thorough review of the instant case, the Court finds that the petition raises no substantial question of law. The questions raised as to whether or not respondent was verbally instructed not to report for work by petitioner's AVP Kimseng while the investigation was going on and whether he possesses such authority considering that on rebuttal, he denied having given such instruction claiming that he had no authority to do so, are patently questions of fact beyond the pale of Rule 45 of the Rules of Court which mandates that only questions of law be raised in the petition.

The Court finds no cogent reason to deviate from the findings of the trial court and the CA that respondent is entitled to the payment of her salary from October 10, 1987 to June 30, 1988. Petitioner's witness, Eduardo Cascarro, Head of the Branches Division Investigation Unit, testified that respondent was terminated only on August 26, 1988,[9] thus, there is no question that respondent was still an employee of petitioner during the period in question. There was no showing that respondent was even suspended during the said period.

Although respondent testified that she stopped reporting for work on September 12, 1987, she also testified on cross-examination that she still went to her office from September to December 1987 although admittedly she was not doing anything but she still received her salary. The Court likewise agrees with the CA that respondent could not be faulted for not reporting for work because she merely complied with the verbal instruction of AVP Kimseng not to report for work when the latter was conducting the investigation of the branch for anomalies. While AVP Kimseng denied that he made such instruction and declared that he had no authority to give such instruction, the trial court gave more credence to the testimony of respondent that indeed she was instructed not to report for work.

We find no cogent reason to disturb the findings of the trial court in light of the settled rule that the evaluation of the testimonies of witnesses by the trial court is entitled to the highest respect because such court has the direct opportunity to observe the witnesses' demeanor and manner of testifying and thus, is in a better position to assess their credibility.[10]

The CA finding was supported by the evidence on record. Petitioner contends that respondent was not reporting for work from October 10, 1987 to June 30, 1988, however, petitioner failed to show why its España Branch Manager allowed respondent to be absent or not to do anything during that period if indeed there was no such instruction from AVP Kimseng for her not to report for work. It bears stressing that as an Assistant Branch Manager, respondent has some official duties to perform pertaining to the internal operation of petitioner's branch and yet her Branch Manager allowed her to be absent for such a long period of time without calling her attention on such absences. The only plausible explanation is that, as declared by respondent, which remained unrebutted, she had relayed to her Branch Manager the verbal instruction of AVP Kimseng for her not to report for work while the investigation was on-going. If indeed there was no such instruction, the Branch Manager could have immediately called respondent's attention regarding her absences and that she should have been required to perform her official duties inside the branch office. And if she continued to be absent, she could have been sanctioned or given the corresponding memorandum. Moreover, there is no evidence to show that such absences, if unauthorized, were reported by the Branch Manager to higher authorities of petitioner. On the contrary, without qualification or reservation, respondent's salary and other benefits were given to her by petitioner during the said period.

Petitioner insists that its payment of respondent's salary was by mistake since respondent who chose not to report for work was not entitled to it under the principle of "no work, no pay", thus she has the obligation to return the same. Petitioner based such contention on the principle of solutio indebiti under Article 2154[11] of the Civil Code.

There is solutio indebiti where: (1) payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause. x x x The quasi-contract of solutio indebiti is based on the ancient principle that no one shall enrich himself unjustly at the expense of another.[12]

Both elements are lacking in the present case. Mr. Cascarro, the Head of the Branches Division Investigation Unit, had categorically stated that respondent was only terminated from service on August 26, 1988. Respondent was not suspended from office. Consequently, during the period in question, there still existed an employer-employee relationship between petitioner and respondent which entitled respondent to the payment of her salary during the said period. Thus, there can be no mistaken payment in this case. Moreover, it has been shown that the payment of respondent's salary was with the knowledge and approval of respondent's immediate superior officers. Hence, the principle of solutio indebiti finds no application in this case.

WHEREFORE, the petition is DENIED and the Decision dated September 15, 2000 and the Resolution dated November 13, 2000 of the Court of Appeals are AFFIRMED.

Costs against petitioner.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Rollo, pp. 8-12; Penned by Justice Hilarion L. Aquino (now retired), concurred in by Justices Buenaventura J. Guerrero (now retired) and Mercedes Gozo-Dadole (now retired).

[2] Id., p. 14.

[3] Id., pp. 8-9.

[4] Penned by Judge Justo M. Sultan, docketed as Civil Case No. Q-91-9539, rollo, pp. 49-53.

[5] Id., pp. 9-11.

[6] Id., pp. 20-21.

[7] *Spouses Almendrala v. Spouses Ngo*, G.R. No. 142408, September 30, 2005, 471 SCRA 311, 322.

[8] Id.

[9] TSN, November 15, 1993, p. 4.

[10] *Aclon v. Court of Appeals*, 436 Phil. 219, 232 (2002), citing *Concepcion v. Court of Appeals*, 381 Phil. 91, 96 (2000); *Bugatti v. Court of Appeals*, 397 Phil. 377, 388 (2000); *Viron Transportation Co., Inc. v. Delos Santos*, 399 Phil. 243, 250 (2000).

[11] Art. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

[12] *Power Commercial and Industrial Corporation v. Court of Appeals*, G.R. No. 119745, June 20, 1997, 274

SCRA 597, 612, 613.

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