DONALD KWOK, PETITIONER, VS. PHILIPPINE CARPET MANUFACTURING CORPORATION, RESPONDENT.

G.R. NO. 149252. April 28, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 60232 dismissing Donald Kwok's petition for review on certiorari and affirming the majority Decision of the National Labor Relations Commission (NLRC), as well as its resolution in NLRC NCR Case No. 00-12-07454-96 dismissing the motion for reconsideration of the said decision.

The Antecedents

In 1965, petitioner Donald Kwok and his father-in-law Patricio L. Lim, along with some other stockholders, established a corporation, the respondent Philippine Carpet Manufacturing Corporation (PCMC). The petitioner became its general manager, executive vice-president and chief operations officer. Lim, on the other hand, was its president and chairman of the board of directors. When the petitioner retired 36 years later or on October 31, 1996, he was receiving a monthly salary of P160,000.00.[2] He demanded the cash equivalent of what he believed to be his accumulated vacation and sick leave credits during the entire length of his service with the respondent corporation, i.e., from November 16, 1965 to October 31, 1996, in the total amount of P7,080,546.00 plus interest.[3] However, the respondent corporation refused to accede to the petitioner's demands, claiming that the latter was not entitled thereto.[4]

The petitioner filed a complaint against the respondent corporation for the payment of his accumulated vacation and sick leave credits before the NLRC. He claimed that Lim made a verbal promise to give him unlimited sick leave and vacation leave benefits and its cash conversion upon his retirement or resignation without the need for any application therefor. In addition, Lim also promised to grant him other benefits, such as golf and country club membership; the privilege to charge the respondent corporation's account; 6% profit-sharing in the net income of the respondent corporation (while Lim got 4%); and other corporate perquisites. According to the petitioner, all of these promises were complied with, except for the grant of the cash equivalent of his accumulated vacation and sick leave credits upon his retirement.[5]

The respondent corporation denied all these, claiming that upon the petitioner's retirement, he received the amount of P6,902,387.19 representing all the benefits due him. Despite this, the petitioner again demanded P7,080,546.00, which demand was without factual and legal basis. The respondent corporation asserted that the chairman of its board of directors and its president/vice-president had unlimited discretion in the use of their time, and had never been required to file applications for vacation and sick leaves; as such, the said officers were not entitled to vacation and sick leave benefits. The respondent corporation, likewise, pointed out that even if the petitioner was entitled to the said additional benefits, his claim had already prescribed. It further averred that it had no policy to grant vacation and sick leave credits to the petitioner.[6]

In his Affidavit[7] dated May 19, 1998, Lim denied making any such verbal promise to his son-in-law on the grant of unlimited vacation and sick leave credits and the cash conversion thereof. Lim averred that the petitioner had received vacation and sick leave benefits from 1994 to 1996. Moreover, assuming that he did make such promise to the petitioner, the same had not been confirmed or approved via resolution of the respondent corporation's board of directors.

It was further pointed out that as per the Memorandum dated November 6, 1981, only regular employees and managerial and confidential employees falling under Category I were entitled to vacation and sick leave credits. The petitioner, whose position did not fall under Category I, was, thus, not entitled to the benefits under the said memorandum. The respondent corporation alleged that this was admitted by the petitioner himself and affirmed by Raoul Rodrigo, its incumbent executive vice-president and general manager.

In a Decision[8] dated November 27, 1998, the Labor Arbiter ruled in favor of the petitioner. The fallo of the decision reads:

> WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered ordering the respondent company to pay complainant the sum of P7,080,546.00, plus ten percent (10%) thereof as and for attorney's fees.
>
> SO ORDERED.[9]

Undaunted, the respondent corporation appealed the decision to the NLRC, alleging that:

> - THE LABOR ARBITER ERRED IN CONCLUDING THAT KWOK WAS COVERED BY THE NOVEMBER 6, 1981 MEMORANDUM ON VACATION AND SICK LEAVE CREDITS.[10]
>
> - THE LABOR ARBITER ERRED IN CONCLUDING THAT IT WAS DISCRIMINATORY NOT TO GRANT KWOK THESE BENEFITS.[11]
>
> - KWOK'S CLAIMS ARE BASELESS.[12]
>
> - KWOK'S CLAIMS FOR BENEFITS ACCRUING FROM 1966 ARE BARRED BY PRESCRIPTION.[13]
>
> - THERE IS NO BASIS FOR THE AWARD OF P7,080,546.00.[14]

The respondent corporation averred that based on the petitioner's memorandum, his admissions and the contract of employment, the petitioner was not entitled to the cash conversion of his sick and vacation leave credits. While the respondent corporation conceded that the petitioner may have been entitled to unlimited sick and vacation leave benefits during his employment, it maintained that no such promise was made by Lim to convert the same; even assuming that such verbal promise was made, the respondent corporation was not bound thereby since the petitioner failed to adduce the written conformity of its board of directors. The respondent corporation insisted that the claims of the petitioner were barred under Article 291 of the Labor Code.

For his part, the petitioner made the following averments in his memorandum:

> The non-performance by PCMC of this particular promise to convert in cash all of his unused cash (sic) and sick leave credits was precipitated by the falling out of the marriage between Mr. Kwok and his wife, the daughter of Mr. Lim. In fact, even while Mr. Kwok was still the Executive Vice-President and General Manager of PCMC, when the falling out of the said marriage became apparent, the other benefits or perquisites which Mr. Kwok used to enjoy were immediately curtailed by Mr. Lim to the prejudice of Mr. Kwok.[15]

On November 29, 1999, the NLRC, by majority vote, rendered judgment granting the appeal, reversing and setting aside the decision of the Labor Arbiter.[16] The NLRC ordered the dismissal of the complaint.

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Commissioner Angelita A. Gacutan filed a dissenting opinion.[17]

Aggrieved, the petitioner filed a petition for review with the CA, on the following grounds:

> I
>
> THE COMMISSION ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DECLARED THAT THE VERBAL PROMISE OF MR. LIM TO PETITIONER WAS UNENFORCEABLE.
>
> II
>
> THE COMMISSION ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT THE VERBAL PROMISE BY MR. LIM TO PETITIONER WAS NOT BINDING AS IT WAS NOT APPROVED BY THE BOARD OF DIRECTORS.
>
> III
>
> THE COMMISSION ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT IGNORED STRONG EVIDENCE THAT PCMC CLOTHED MR. LIM WITH AWESOME POWERS TO GRANT BENEFITS TO ITS EMPLOYEES INCLUDING PETITIONER AND RATIFIED THE SAME BY ITS SILENCE AND WHEN IT IGNORED TOO EXISTING JURISPRUDENCE ON THE MATTER.
>
> IV
>
> THE COMMISSION ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT IGNORED STRONG AND CLEAR EVIDENCE THAT IN PCMC THE GIVING OF BENEFITS TO PETITIONER, THOUGH NOT IN WRITING, WAS A PREVALENT PRACTICE.
>
> V
>
> THE COMMISSION ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT THE MEMORANDUM DATED APRIL 26, 1997 APPLICABLE TO MR. RAOUL RODRIGO WAS ALSO APPLICABLE TO PETITIONER.[18]

On February 28, 2001, the CA rendered judgment affirming the decision of the NLRC and dismissing the petition.[19] The petitioner's motion for reconsideration thereof was denied by the appellate court, per its Resolution[20] dated July 17, 2001.

The petitioner, thus, filed the instant petition for review on certiorari with this Court, assailing the decision and resolution of the CA on the following claims:

> I
>
> The Hon. Court of Appeals, contrary to law, gravely erred and disregarded established jurisprudence in ruling that petitioner has not adduced sufficient evidence to support his claim that he was, indeed, promised the cash conversion of his unused vacation and sick leave credits upon retirement.[21]
>
> II
>
> The Hon. Court of Appeals gravely erred in ruling that even if private respondent's (sic) Mr. Lim did make him such promise, the same cannot be enforced.[22]

III

The Hon. Court of Appeals gravely erred and disregarded clear jurisprudence on the matter when it ruled that there is no showing that private respondent, thru its board of directors either recognized, approved or ratified the promise made by Mr. Lim to petitioner.[23]

As gleaned from his Memorandum, the petitioner posits that he had adduced substantial evidence to prove that Lim, as president and chairman of the respondent corporation's board of directors, made a verbal promise to give him the cash conversion of his accumulated vacation and sick leave credits upon his retirement (that is, benefits at par with the number of days to which the officer next in rank to him was entitled). According to the petitioner, his claim is fortified by the fact that his successor, Raoul Rodrigo, has unlimited vacation and sick leave credits. The petitioner further asserts that he would not have accepted the positions in the respondent corporation without such benefit, especially since his subordinates were also enjoying the same. He posits that he was entitled to the said privilege because of his rank. He, likewise, claims that, in contrast to the evidence he has presented, the respondent corporation failed to adduce proof of its affirmative allegations.

The petitioner further argues that his complaint was not time-barred since he filed it on December 5, 1996. Even if this were so, he is, nevertheless, entitled to the cash value of his vacation and sick leave credits for three years before his retirement. Moreover, the evidence on record shows that officers belonging to Category I had been granted the cash conversion of their earned leave credits after the lapse of three years.

The respondent corporation, for its part, asserts that the petitioner failed to adduce substantial evidence to the claims in his complaint. Even if Lim had made such verbal promise to the petitioner, the same is not binding on the respondent corporation absent its conformity through board resolution. Moreover, the petitioner is not covered by the Memorandum dated November 6, 1981 because he had unlimited leave credits; hence, it cannot be gainsaid that he still had unused leave credits to be converted. According to the respondent corporation, the petitioner himself admitted that he was not included in the Memorandum dated November 6, 1981; and even assuming that he was covered by the said memorandum, the fact that his complaint was filed only in 1996 precludes him from claiming the cash conversion of such leave credits for the years 1966 to 1993.

The Court's Ruling

The petition has no merit.

The threshold issue in this case is factual – whether or not the petitioner is entitled, based on the documentary and testimonial evidence on record, to the cash value of his vacation and sick leave credits in the total amount of P7,080,546.00. The resolution of the issue is riveted to our resolution of whether the petitioner's mainly testimonial evidence of an alleged verbal promise made by a corporate officer to grant him the privilege of converting accumulated vacation and sick leave credits after retirement or separation from employment is entitled to probative weight.

Under Rule 45 of the Rules of Court, only questions of law may be raised under a petition for review on certiorari. The Court, not being a trier of facts, is not wont to reexamine and reevaluate the evidence of the parties, whether testimonial or documentary. Moreover, the findings of facts of the CA on appeal from the NLRC are, more often than not, given conclusive effect by the Court. The Court may delve into and resolve factual issues only in exceptional circumstances, such as when the findings of facts of the Labor Arbiter, on one hand, and those of the NLRC and the CA, on the other, are capricious and arbitrary; or when the CA has reached an erroneous conclusion based on arbitrary findings of fact; and when substantial justice so requires. In this case, however, the petitioner failed to convince the Court that the factual findings of the CA which affirmed the findings of the NLRC on appeal, as well as its conclusions based on the said findings, are capricious and arbitrary.

While the petitioner was unequivocal in claiming that the respondent corporation, through its president and chairman of the board of directors, obliged itself, as a matter of policy, to grant him the cash value of his vacation and sick leave credits upon his retirement, he was burdened to prove his claim by substantial evidence.[24] The petitioner failed to discharge this burden.

We agree with the petitioner's contention that for a contract to be binding on the parties thereto, it need not be in writing unless the law requires that such contract be in some form in order that it may be valid or enforceable or that it be executed in a certain way, in which case that requirement is absolute and independent.[25] Indeed, corporate policies need not be in writing. Contracts entered into by a corporate officer or obligations or prestations assumed by such officer for and in behalf of such corporation are binding on the said corporation only if such officer acted within the scope of his authority or if such officer exceeded the limits of his authority, the corporation has ratified such contracts or obligations.

In the present case, the petitioner relied principally on his testimony to prove that Lim made a verbal promise to give him vacation and sick leave credits, as well as the privilege of converting the same into cash upon retirement. The Court agrees that those who belong to the upper corporate echelons would have more privileges. However, the Court cannot presume the existence of such privileges or benefits. The petitioner was burdened to prove not only the existence of such benefits but also that he is entitled to the same, especially considering that such privileges are not inherent to the positions occupied by the petitioner in the respondent corporation, son-in-law of its president or not.

In dismissing the petition before it, the CA disbelieved the petitioner's testimony and gave credence and probative weight to the collective testimonies of the respondent corporation's witnesses, who were its employees and officers, including Lim, whom the petitioner presented as a hostile witness. We agree with the appellate court's encompassing synthesis and analysis of the evidence on record:

> Except for his bare assertions, petitioner has not adduced sufficient evidence to support his claim that he was, indeed, promised the cash conversion of his unused vacation and sick leaves upon retirement. Petitioner harps on what he calls the prevalent practice in PCMC of giving him benefits, such as the use of golf and country club facilities, salary increases, the use of the company vehicle and driver, and sharing in PCMC's annual net income, without either a written contract or a Board resolution to back it up. Respondent PCMC denies all these, however. According to respondent, petitioner's share in the income of the company is actually part of the consultancy fee which PCMC pays DK Management Services, Inc., a firm owned by petitioner's company. PCMC adds that the yearly salary increases of corporate officers were always with the prior approval of the Board.
>
> Nevertheless, assuming that petitioner was, indeed, given the benefits which he so claimed, it does not necessarily follow that among those is the cash conversion of his accumulated leaves. It is a basic rule in evidence that each party must prove his affirmative allegation. Since the burden of proof lies with the party who asserts an affirmative allegation, the plaintiff or complainant has to prove his affirmative allegations in the complaint and the defendant or respondent has to prove the affirmative allegations in his affirmative defenses and counterclaim. Petitioner, in the case at bar, has failed to discharge this burden.[26]

The CA made short shift of the claim of the petitioner that per Memorandum dated November 6, 1981, he was not entitled to the benefits of the company policy of commutation of leave credits. Indeed, the company policy of conversion into equivalent cash of unused vacation and sick leave credits applied only to its regular employees. The petitioner failed to offer evidence to rebut the testimony of Nel Gopez, Chief Accountant of the respondent, that the petitioner was not among the regular employees covered by the policy for the simple reason that he had unlimited vacation leave benefits. As stated by the CA, the petitioner no less corroborated the testimony of Gopez, thus:

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ATTY. PIMENTEL

And, so you mention[ed] earlier that ... the policy on vacation leave benefits apply for category one employee(s) and rank-and-file employee(s)?

WITNESS (Mr. Nel Gopez)

Yes.

ATTY. PIMENTEL

And who are considered category one employee(s)?

WITNESS

Category One employees are from the rank and of Senior Vice-President and Assistant General Manager and below, up to the level of department managers.

ATTY. PIMENTEL

How about the complainant, Mr. Kwok, does he falling (sic) to the category one?

WITNESS

As far as I can remember, he is (sic) not belong to category one employee.

ATTY. PIMENTEL

Therefore, he is not entitled to the lump sum benefit?

WITNESS

Yes, Ma'am.

ATTY. PIMENTEL

And would you know, Mr. Witness, why he is (sic) not given the conversion of the vacation leave benefits at the time category one employees sectors (sic) are given?

WITNESS

Because he has, as far as I can remember, he has unlimited vacation leave."

This was corroborated by petitioner himself when he testified in this wise:

ATTY. PIMENTEL

Mr. Witness, you occupied the position of Executive Vice-President and General Manager. You agree with me that this position or this office of Executive Vice-President and General Manager are not covered by this policy.

WITNESS (Donald Kwok)

Yes, it is not covered by this policy.

...

ATTY. PIMENTEL

So this policy applies to persons below you and your father-in-law?

WITNESS

Yes, right.

ATTY. PIMENTEL

And this policy does not apply to you?

WITNESS

As far as I'm concerned, it does not apply for (sic) me.

In all respects, therefore, petitioner, by virtue of his position as Executive Vice-President, is not covered by the November 6, 1981 Memorandum granting PCMC employees the conversion of their unused vacation and sick leaves into cash.[27]

We have reviewed the records and found no evidence to controvert the following findings of the CA and its ratiocinations on its resolution of the petitioner's submissions:

Second, even assuming that petitioner is included among the "regular employees" of PCMC referred to in said memorandum, there is no evidence that he complied with the cut-off dates for the filing of the cash conversion of vacation and sick leaves. This being so, we find merit in respondent's argument that petitioner's money claims have already been barred by the three-year prescriptive period under Article 291 of the Labor Code, as amended.

Third, and this is of primordial importance, there is no proof that petitioner has filed vacation and sick leaves with PCMC's personnel department. Without a record of petitioner's absences, there is no way to determine the actual number of leave credits he is entitled to. The P7,080,546.00 figure arrived at by petitioner supposedly representing the cash equivalent of his earned sick and vacation leaves is thus totally baseless.

And, fourth, even assuming that PCMC President Patricio Lim did promise petitioner the cash conversion of his leaves, we agree with respondent that this cannot bind the company in the absence of any Board resolution to that effect. We must stress that the personal act of the company president cannot bind the corporation. As explicitly stated by the Supreme Court in People's Aircargo and Warehousing Co., Inc. v. Court of Appeals:"The general rule is that, in the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation. A corporation is a juridical person, separate and distinct from its stockholders and members, 'having xxx powers, attributes and properties expressly authorized by law or incident to its existence.'

...

"... the power and the responsibility to decide whether the corporation should enter into a contract that will bind the corporation is lodged in the board, subject to the articles of incorporation, by-laws, or relevant provisions of law."

Anent the third assigned error, petitioner maintains that the PCMC Board of Directors has granted its President, Patricio Lim, awesome powers to grant benefits to its employees, adding that the Board has always given its consent to the way Lim ran the affairs of the company especially on matters relating to the benefits that its corporate officers enjoyed.

True, jurisprudence holds that the president of a corporation possesses the power to enter into a contract for the corporation when "the conduct on the part of both the president and corporation [shows] that he had been in the habit of acting in similar matters on behalf of the company and that the company had authorized him so to act and had recognized, approved and ratified his former and similar actions."

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In the case at bar, however, there is no showing that PCMC had either recognized, approved or ratified the cash conversion of petitioner's leave credits as purportedly promised to him by Lim. On the contrary, PCMC has steadfastly maintained that "the Company, through the Board, has long adopted the policy of granting its earlier mentioned corporate officers unlimited leave benefits denying them the privilege of converting their unused vacation or sick leave benefits into their cash equivalent."

As to the last assigned error, petitioner faults the NLRC for holding as applicable to petitioner, the April 26, 1997 Memorandum issued by PCMC to Raoul Rodrigo, Donald Kwok's successor as company executive vice-president. The said memo granted Rodrigo unlimited sick and vacation leave credits but disallowed the cash conversion thereof. Before he became executive vice-president, Rodrigo was senior vice-president and enjoyed the commutation of his unused vacation and sick leaves.

We note that the April 26, 1997 memo was issued to Rodrigo when petitioner was already retired from PCMC. While said memorandum was particularly directed to Rodrigo, however, this does not necessarily mean that petitioner, as former executive vice-president, was then not prohibited from converting his earned vacation and sick leaves into cash since he was not issued a similar memo. On the contrary, the memo simply affirms the long-standing company practice of excluding PCMC's top two positions, that of president and executive vice-president, from the commutation of leaves. As heretofore discussed, among the perks of those occupying these posts is the privilege of having unlimited leaves, which is totally incompatible with the concept of converting unused leave credits into their cash equivalents.[28]

We are not convinced by the petitioner's claim that Lim capriciously deprived him of his entitlement to the cash conversion of his accumulated vacation and sick leave credits simply because of his estrangement from his wife, who happens to be Lim's daughter. The petitioner did not adduce any evidence to show that he appealed to the respondent corporation's board of directors for the implementation of the said privilege which was allegedly granted to him. Even if Lim was the president and chairman of the respondent corporation's board of directors, the rest of the membership of the board could have overruled him and granted to the petitioner his claim if, indeed, the latter was entitled thereto. Indeed, even the petitioner admitted that, after his retirement, the board of directors granted to him salary increase for two years prior to his retirement. If the claim of the petitioner had been approved by the board of directors, for sure, it would have approved the same despite his falling out with the daughter of Lim.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit. Costs against the petitioner.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

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[1] Penned by Associate Justice Salvador J. Valdez, Jr., with Associate Justices Salome A. Montoya (retired) and Wenceslao I. Agnir, Jr. (retired), concurring.

[2] Rollo, p. 74.

[3] Id. at 75.

[4] Id. at 57.

[5] Id. at 132-148.

[6] Id. at 73-95.

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[7] Id. at 90.

[8] Id. at 96-102.

[9] Id. at 102.

[10] Id. at 107.

[11] Id. at 112.

[12] Id. at 118.

[13] Id. at 119.

[14] Id. at 126.

[15] Id. at 133.

[16] Id. at 149-162.

[17] Id. at 163-180.

[18] Id. at 185-186.

[19] Id. at 228-243.

[20] Id. at 275.

[21] Id. at 14.

[22] Id. at 25.

[23] Id. at 47-48.

[24] Rural Bank of San Miguel (Bohol), Inc. v. NLRC, G.R. No. 82144, 8 March 1989, 171 SCRA 158.

[25] Article 1356 of the New Civil Code.

[26] Rollo, pp. 234-235.

[27] Rollo, pp. 236-239.

[28] Rollo, pp. 239-242.

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