NORTHWEST TOURISM CORP., DOING BUSINESS BY THE NAME ASIAWORLD RESORT HOTEL PALAWAN, REPRESENTED BY ITS AUTHORIZED REPRESENTATIVE, ANGEL TOLENTINO, PETITIONER, VS. FORMER SPECIAL...

G.R. NO. 150591. June 27, 2005

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review[1] of the Decision[2] dated 22 June 2001 and the Resolution dated 31 October 2001 of the Court of Appeals in CA-G.R. SP No. 62591. The Court of Appeals affirmed the Decision of the National Labor Relations Commission ("NLRC") directing Northwest Tourism Corporation to pay backwages and separation pay to Raymundo Oclarit I. The Court of Appeals, however, modified the NLRC Decision by absolving the Resident Manager, Assistant Resident Manager and Personnel Manager from petitioner's corporate liability.

The Facts

Petitioner Northwest Tourism Corporation ("petitioner") owns and operates Asiaworld Resort Hotel Palawan ("Asiaworld Hotel"). Private respondent Raymundo Oclarit I ("Oclarit") was the Night Auditor of Asiaworld Hotel until 5 August 1996. Asiaworld Hotel hired Oclarit as Outlet Cashier on 3 May 1994 and promoted him to the position of Night Auditor on 20 February 1996.[3]

Petitioner alleged that on 27 May 1996, Asuncion Del Rosario ("Del Rosario") deposited P6,000 with Asiaworld Hotel for the account of her guests, Ceasar Roque, Pepito Santos and Ben Roque ("guests"). Asiaworld Hotel billeted the guests at Room 216. The guests checked out of Asiaworld Hotel on 28 May 1996 and Del Rosario paid their bills amounting to P3,097.80. Del Rosario signed the paid out voucher for the refund of the excess deposit but then decided to leave the cash refund with Asiaworld Hotel since her guests would be returning there the following day.

On 30 May 1996 around 2:00 o'clock in the morning, the guests checked in at Asiaworld Hotel again. Petitioner claimed that Oclarit required the guests to pay a deposit of P3,050 although he was aware of the excess deposit left by Del Rosario for the account of the guests. Petitioner further alleged that Oclarit then asked Ceasar Roque ("Roque"), one of the guests, to sign a certain document without explaining to Roque the nature of the document. Around 9:30 in the morning, the guests checked out and later learned from Del Rosario about the excess deposit intended for their account. Roque demanded for the refund of the excess deposit from the duty cashier who showed Roque the paid out voucher which bore Roque's signature. Roque asserted that he learned only then that the document he signed earlier was the paid out voucher for the refund of the excess deposit.

The guests and Del Rosario complained to Asiaworld Hotel, prompting the personnel manager to require Oclarit

to explain the matter. Asiaworld Hotel decided to conduct an investigation and issued a memorandum preventively suspending Oclarit for 30 days effective 20 June 1996. The House Detective and Acting Security Supervisor ("House Detective") conducted an investigation and concluded that Oclarit pocketed the excess deposit. Petitioner further alleged that Oclarit failed to report to work at the end of the preventive suspension. Thus, Asiaworld Hotel dismissed Oclarit effective 5 August 1996 on the ground of loss of trust and confidence due to acts of dishonesty and abandonment of work.

On 5 August 1996, Oclarit filed before the Labor Arbitration Branch, Regional Office No. IV in Puerto Princesa City, Palawan, a complaint for illegal dismissal against Asiaworld Hotel.

Oclarit alleged that on 30 May 1996 around 2:00 o'clock in the morning, the guests inquired about checking into a room. Oclarit was the night auditor on duty and night clerk, Benjamin Adriano ("Adriano") assisted him. The guests, who were wearing reporter's vests, presented their media identification cards and requested for a lower rate. Adriano explained that the rates presented to them were already discounted rates. The guests then gave P3,050 as deposit to Adriano, who gave the amount to Oclarit. While Oclarit was processing their accommodation, one of the guests informed Oclarit that they recently stayed in the hotel on 26 May 1996. Oclarit scanned the old folio and informed Roque that they still had a remaining deposit of P2,716. To facilitate the refund, Oclarit prepared the paid out voucher for the refund of the deposit which Roque signed. Meanwhile, Adriano and the other guests made their way to the elevator. Roque could no longer wait for the cash refund and informed Oclarit that he would just return for the refund because he was exhausted. After a while, one of the guests went down to the lobby. Noticing the familiar reporter's vest, Oclarit inquired whether he was one of Roque's companions and the person answered yes. Oclarit handed to the person the old folio, the cash refund and a "Thank You" envelope for Roque. Adriano, the hotel clerk, witnessed the incident.

On 10 June 1996, Oclarit received a memo[4] from the Asiaworld Hotel's Assistant Resident Manager, Angelita Miranda ("Miranda"), requesting Oclarit to submit within 48 hours a written explanation on Roque's claim for excess deposit. On 12 June 1996, Oclarit submitted to Miranda his written explanation.[5]

On 19 June 1996, Asiaworld Hotel's Personnel Manager, Erlinda B. Java ("Java") issued a memo placing Oclarit under preventive suspension for one month effective 20 June 1996 pending investigation.[6] In a letter[7] dated 22 July 1996, Asiaworld Hotel informed Oclarit that his preventive suspension ended on 20 July 1996. The letter also directed Oclarit to see Java on or before 28 July 1996 otherwise he would be terminated. On 26 July 1996, Oclarit reported to Java. Java told Oclarit that his explanation on the excess deposit was not acceptable. According to Oclarit, Java told him to resign otherwise he would be terminated with a bad record. Oclarit refused to resign.

On 1 August 1996, Java issued a memo[8] to Oclarit that Asiaworld Hotel was terminating his services effective 5 August 1996. The memo stated that Oclarit committed dishonesty about the excess deposit. Furthermore, Oclarit's failure to report for work starting 21 July 1996, after the end of his preventive suspension, constituted abandonment of work. On 5 August 1996, Oclarit filed a complaint for illegal dismissal against Asiaworld Hotel.

On 17 January 2000, Acting Executive Labor Arbiter Pedro C. Ramos ("Labor Arbiter") dismissed the complaint for illegal dismissal for lack of merit. The Labor Arbiter found there was no clear evidence that Oclarit pocketed the excess deposit. However, the Labor Arbiter held that Asiaworld Hotel still had valid reason to lose the trust and confidence reposed on Oclarit for his failure to show by convincing evidence that he indeed refunded the excess deposit to Roque.[9]

On appeal, the NLRC reversed the Labor Arbiter's decision and found that Asiaworld Hotel illegally dismissed Oclarit. The NLRC held that Asiaworld Hotel has no legal justification for dismissing Oclarit based on mere

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suspicion and baseless conclusions. Furthermore, the NLRC ruled that petitioners failed to establish that Oclarit abandoned his job. The dispositive portion of the NLRC Decision[10] promulgated on 29 September 2000 reads:

> WHEREFORE, in the light of the foregoing, the appeal is hereby GRANTED. The assailed Decision dated January 17, 2000 is hereby rendered VACATED and SET ASIDE and a new one is hereby entered ordering respondents to pay complainant Raymund[o] Olacrit I, as follows:
>
> 1. Backwages from August 5, 1996 up to the date of this Decision;
>
> 2. In addition thereto, separation pay equivalent to one month salary for every year of service, a fraction of at least six (6) months to be considered as one whole year, computed from August 3, 1994 up to the date of this Decision. This is in lieu of reinstatement.
>
> All other reliefs herein sought and prayed for are hereby denied for lack of merit.
>
> SO ORDERED.[11]

Petitioner appealed to the Court of Appeals, which modified the NLRC Decision by absolving the Resident Manager, Assistant Resident Manager and Personnel Manager of Asiaworld Hotel from petitioner's liability. The Court of Appeals ruled that obligations incurred by the corporation acting through its directors, officers and employees are the corporation's sole liability. Directors and officers are solidarily liable with the corporation only when they act with malice or bad faith in terminating an employee. There is no evidence of such malice or bad faith in this case.

Issue

The sole issue for resolution is whether there was sufficient legal ground for petitioner to terminate the employment of Oclarit.

The Ruling of the Court

The petition is without merit.

Asiaworld Hotel terminated the employment of Oclarit on the ground of loss of trust and confidence due to acts of dishonesty and abandonment of work. Petitioner relies on Article 282(c) of the Labor Code which states that an employee may be terminated on the ground of fraud or willful breach by the employee of the trust reposed on him by his employer.

Loss of Trust and Confidence

Petitioner alleges that Oclarit committed dishonesty by deceiving Roque into signing the paid out voucher without giving him the corresponding amount representing the excess deposit. According to petitioner, based on the investigation conducted by Asiaworld Hotel's House Detective, Oclarit pocketed the excess deposit.

The Court is not convinced. Petitioner relied mainly on the following evidence to support its claim that Oclarit pocketed the excess deposit: (1) the letter[12] of Roque addressed to Asiaworld Hotel's personnel manager stating that he did not receive the refund of the excess deposit; (2) the joint affidavit[13] of Roque's companions stating that they never received the refund for the excess deposit from Oclarit; and (3) the investigation report[14] of Asiaworld Hotel's House Detective with his conclusion that Oclarit pocketed the excess deposit. These evidences relied upon by petitioner fail to establish its allegation that Oclarit pocketed the excess deposit.

The records show that petitioner never presented Roque as a witness. Petitioner relied on Roque's letter to prove that Oclarit deceived Roque into signing the paid out voucher without giving Roque the corresponding amount representing the excess deposit. Oclarit denied Roque's accusation that Oclarit made him sign the paid out

voucher without explaining its purpose and content. According to Oclarit, he explained to Roque that the amount indicated on the paid out voucher represented the excess deposit for refund to Roque. However, Roque could not wait for the refund and told Oclarit that he would just return to get the refund. Adriano, the night clerk who was on duty with Oclarit on 30 May 1996, corroborated Oclarit's account of the events. Adriano testified that he saw Oclarit give the excess deposit to Roque's companion. Likewise, Adriano declared in his Affidavit:

- That I was employed in Asia World Resort Hotel Palawan since September 1994 up to July 1996 as Night Clerk;

- That I wanted to give my testimony about what happened last May 30, 1996. I was the duty Night Clerk at that time;

- That on May 30, 1996, past 2:00 o'clock in the morning, I was availing my graveyard meal when Night Auditor, Raymundo Oclarit called me up to go to the front desk to facilitate check in of the guests. I saw Mr. Raymundo Oclarit explaining about the rates then he let me continue the transaction when I got there;

- That there were three (3) guests infront of the desk and another one (1) sitting in the GRO table. The said guests were wearing vests like that of the reporters and showed us a media ID and demanded if they could have lower rates because they were reporters. I explained that the rates we gave them has already been discounted compared with our rack rates and is intended for Filipinos only. The said guests agreed and gave me Three Thousand Fifty (P3,050.00) Pesos for one night deposit which I also gave to Mr. Raymundo Oclarit;

- That one of the guests added that they were in the hotel last May 28, 1996 and gave their names. I scanned the logged (sic) book and saw their records. Upon knowing it, I immediately told Mr. Raymundo Oclarit that they were the slept-out guests;

- That Mr. Oclarit got the old folio, presented it to the guests and I heard him explaining the previous rates of the guests as well as their remaining deposit;

- That afterwards, I went to the elevator to assist the in a hurried (sic) guests while Mr. Roque was still infront of Mr. Raymundo Oclarit having arrangements and after a while he finally joined us. I assisted them to their room and after which, I went down to the front office;

- That I was at the back of the Front Office reading some newspapers, at that time the door of the Front Desk was open, when I saw one companion of Mr. Roque at the Front Desk and Mr. Raymundo Oclarit gave him the old folio, cash, and a "Thank You" envelop[e];

- That the same person gave me back the "Thank You" envelope and said to include that envelop[e] when they will check out. I just placed the said envelop[e] beside the printer since Mr. Raymundo Oclarit was in the Cafeteria at that time;

- That I am executing this Affidavit to state the true circumstances of the above narrated incident.[15]

Cirilo Hernando ("Hernando"), the Night Auditor of Asiaworld Hotel, attested that Roque already knew about the excess deposit. According to Hernando, he informed Roque about the excess deposit when Roque checked out of the hotel on 28 May 1996. In his Affidavit, Hernando stated:

x x x

> 4. That it is not true that Mr. Roque, our hotel guest, was unaware that he had an excess deposit for his room accommodation, because previous to Mr. Oclarit's duty, I personally informed Mr. Roque of his excess deposit;
>
> 5. That at more or less 4:30 in the morning of May 28, 1996, Mr. Roque went down to the Front desk and

> informed me that they were going to check out and that they would like to see their bills. After telling me this, they immediately sat down in the lobby. After a while, Mr. Roque approached me and ordered coffee. Asked him if he was Mr. Roque and he said yes;
>
> 6. That I immediately informed Mr. Roque that he still had an excess deposit and he replied that Mrs. [D]el Rosario will be the one to settle their bills;
>
> 7. That when Mrs. [D]el Rosario arrived, I informed her about the excess deposit and she signed the Cash Paid out voucher which I also explained the contents and particulars therein;
>
> 8. That after they had coffee, Mrs. [D]el Rosario approached me and said that they decided to retain the excess deposit because they will be coming back on May 29, 1996;
>
> 9. That Mrs. [D]el Rosario together with Mr. Roque and their companions left the hotel premises after that;[16]

Roque's companions alleged in their joint affidavit that they did not receive the excess deposit. However, Oclarit testified that he gave the refund to one of Roque's companions. Adriano, the night clerk who witnessed Oclarit hand over the excess refund to Roque's companion, corroborated Oclarit's testimony.

The investigation report of Asiaworld Hotel's House Detective merely contained the different versions of facts as alleged by Roque and Oclarit. Asiaworld Hotel did not conduct any in-depth investigation of the incident. Asiaworld Hotel's House Detective based his conclusion merely on assumptions and conjectures. The House Detective did not even bother to interview Adriano who was on duty with Oclarit when the guests checked in on 30 May 1990 around 2:00 o'clock in the morning. The House Detective knew that Adriano was the night clerk on duty and he even stated in his report that Adriano registered the guests on 30 May 1996 and required them to pay a deposit.

Petitioner was, however, aware that Adriano witnessed the events leading to the incident. In fact, the records reveal that Assistant Resident Manager Miranda questioned Adriano on the incident. But for some unexplained reason, Asiaworld Hotel's management disregarded the statements of Adriano on the incident.[17]

Loss of trust and confidence as a ground for dismissal does not entail proof beyond reasonable doubt of the employee's misconduct. However, the evidence must be substantial and must establish clearly and convincingly the facts on which the loss of confidence in the employee rests.[18] To be a valid reason for dismissal, loss of confidence must be genuine. Uncorroborated assertions and accusations by the employer will not suffice,[19] otherwise it will jeopardize the constitutional guaranty of security of tenure of the employee.

In the present case, petitioner did not base Oclarit's dismissal on clearly established facts sufficient to warrant separation from work. Petitioner failed to prove that the dismissal of Oclarit was for just and authorized cause. Petitioner's evidence does not justify Oclarit's dismissal based on loss of trust and confidence. Petitioner failed to establish its allegation that Oclarit deceived Roque into signing the paid out voucher and pocketing the amount indicated in the voucher. The testimonies of Oclarit and other hotel employees in fact prove the contrary: (1) that Roque was already aware of the excess deposit; (2) that Oclarit explained to Roque that the amount indicated in the paid out voucher represented the excess deposit for refund to him; (3) that Oclarit handed the excess deposit to Roque's companion; and (4) that Oclarit did not keep the excess deposit.

Abandonment of Work

To constitute abandonment of work, two elements must concur: (1) the employee must have failed to report for work or must have been absent without valid or justifiable reason, and (2) there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act.[20] The employer has the burden of proof to show the employee's deliberate and unjustified refusal to resume his

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employment without any intention of returning.[21] Mere absence is not sufficient. There must be an unequivocal intent on the part of the employee to discontinue his employment.[22]

Petitioner alleges that Oclarit failed to report for work when his one- month preventive suspension ended. Oclarit allegedly ignored the letter dated 22 July 1996 of Asiaworld Hotel's personnel manager informing Oclarit that his preventive suspension had ended on 20 July 1996 and requiring him to see the personnel manager on or before 28 July 1996.

The record shows otherwise. The entry in Asiaworld Hotel's security logbook[23] proves that Oclarit indeed went to see personnel manager Java on 26 July 1996. The actuations of Oclarit clearly show his intent to return to work. However, Java prevented Oclarit from returning to work by telling him to resign otherwise petitioner would terminate him with a bad record. When Oclarit refused to resign, petitioner terminated him effective 5 August 1996. Oclarit filed a complaint for illegal dismissal against Asiaworld Hotel on 5 August 1996.

Petitioner failed to adduce proof of overt acts of Oclarit showing his clear intention to abandon his work. On the contrary, Oclarit's filing of a complaint for illegal dismissal on the day of effectivity of his dismissal is proof of Oclarit's desire to return to work and negates the charge of abandonment of work.[24]

WHEREFORE, we AFFIRM with MODIFICATION the Decision of the Court of Appeals dated 22 June 2001 and its Resolution dated 31 October 2001. Petitioner Northwest Tourism Corporation, doing business by the name of Asiaworld Resort Hotel Palawan, is ORDERED to pay Raymundo Oclarit I the following: (1) full backwages from 5 August 1996 until finality of this decision; and (2) separation pay, equivalent to one month salary for every year of service, computed from 3 May 1994 until finality of this decision.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, Ynares-Santiago, and Azcuna, JJ., concur.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Buenaventura J. Guerrero, with Associate Justices Eriberto U. Rosario, Jr. and Edgardo P. Cruz, concurring.

[3] CA Rollo, p. 97.

[4] CA Rollo, p. 66.

[5] Ibid., p. 67.

[6] Ibid., p. 68.

[7] Ibid., p. 92.

[8] Ibid., p. 71.

[9] Rollo, pp. 49-62.

[10] Ibid., pp. 63-75.

[11] Ibid., p. 74.

[12] CA Rollo, p. 64.

[13] Ibid., pp. 62-63.

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[14] Ibid., pp. 69-70.

[15] CA Rollo, pp. 86-87. (Emphasis supplied)

[16] Ibid., p. 96. (Emphasis supplied)

[17] Rollo, pp. 85-86.

[18] Felix v. National Labor Relations Commission, G.R. No. 148256, 17 November 2004; Condo Suite Club Travel, Inc. v. NLRC, 380 Phil. 660 (2000).

[19] Manila Midtown Commercial Corp. v. Nuwhrain (Ramada Chapter), G.R. No. L-57268, 25 March 1988, 159 SCRA 212.

[20] R.P. Dinglasan Construction, Inc. v. Atienza, G.R. No. 156104, 29 June 2004, 433 SCRA 263; ACD Investigation Security Agency, Inc. v. Daquera, G.R. No. 147473, 30 March 2004, 426 SCRA 494; Samarca v. Arc-Men Industries, Inc., G.R. No. 146118, 8 October 2003, 413 SCRA 162.

[21] Labor v. National Labor Relations Commission, G.R. No. 110388, 14 September 1995, 248 SCRA 183.

[22] Lambo v. NLRC, 375 Phil. 855 (1999).

[23] CA Rollo, pp. 93-94.

[24] Samarca v. Arc-Men Industries, Inc., G.R. No. 146118, 8 October 2003, 413 SCRA 162; Anflo Management & Investment Corp. v. Bolanio, 439 Phil. 309 (2002).

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