BMG RECORDS (PHILS.), INC. AND JOSE YAP, JR., PETITIONERS, VS. AIDA C. APARECIO AND NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

G.R. No. 153290. September 05, 2007

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for review under Rule 45 of the Rules of Court assailing the November 20, 2001 Decision[1] and April 26, 2002 Resolution[2] of the Court of Appeals (CA) in C.A. G.R. SP No. 65403 affirming the August 23, 2000 Decision[3] of the National Labor Relations Commission (NLRC) which reversed and set aside the October 27, 1998 Decision[4] of the Labor Arbiter finding that private respondent voluntarily resigned and was not illegally dismissed.

Petitioner BMG Records (Phils.), Inc. (BMG) is engaged in the business of selling various audio records nationwide. On September 2, 1990, it hired private respondent Aida C. Aparecio (Aparecio) as one of the promo girls in its Cebu branch. For working from Monday to Sunday, she received a salary of P181.00 per day.

On May 25, 1998, Aparecio filed a complaint against BMG and its Branch Manager, Jose Yap, Jr., co-petitioner herein, for illegal dismissal and non-payment of overtime pay, holiday pay, premium pay for rest day, 13th month pay, service incentive leave, and separation pay.[5] In her Position Paper, she alleged:

> x x x
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> b. That she was illegally dismissed or terminated [from] employment on April 30, 1998; that before said date[,] however, she was asked by respondent to resign and will be paid (sic) all her benefits due — like a one-month pay for every year of service, payment of services rendered, overtime and holiday pay, rest day, 13[th] month, service incentive leave and separation pay — and to [execute] a letter of resignation;
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> c. That in view of respondent's insistence to prepare and [execute] a letter-resignation[,] even without proper accounting of any accountability, the complainant was lured, induced and compelled to submit a letter of resignation believing on respondent's promise and assurance to pay all the benefits due her as aforesaid;
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> d. That after executing said resignation letter, the respondent did not make good its promise and [instead] did an accounting by themselves in the absence of herein complainant and arrived on a computation that complainant's liability per their accounting reached to the staggering amount of P8,000.00; that since they offered to pay a separation pay of only P12,000.00, minus complainant's alleged accountability of P8,000.00, they are ready to pay the balance thereof any time;
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> e. That herein complainant was under respondent's employ for seven (7) years, seven (7) months and twenty-eight (28) days when illegally terminated [from] her employment xxx. [6]

Petitioners, however, proffer a different version of the facts. They narrate that Aparecio was initially performing well as an employee but as years passed by she seemed to be complacent in the performance of her job and had

been comparing the salaries of promo girls in other companies. It appeared that she was no longer interested in her job. In April 1998, Aparecio and two other promo girls, Jovelina V. Soco and Veronica P. Mutya, intimated to their supervisor that they were intending to resign and were requesting for some financial assistance. BMG made it clear that, as a company policy, an employee who resigns from service is not entitled to financial assistance, but considering the length of their service and due to humanitarian consideration it would accede to the request after they secure their respective clearances. Forthwith, the three employees tendered their resignations, which were accepted. When they processed the required individual clearance, it was found out that they had incurred some shortages after inventory. Per agreement, said shortages were deducted from the amounts due them. Thus, Soco and Mutya received their last salary, a proportion of the 13[th] month pay, tax refund and financial assistance less the deductions, and they executed their releases and quitclaims. Except for the financial assistance, Aparecio also obtained the same yet refused to sign the release and quitclaim, protesting the amount of P9,170.12 deducted from the financial assistance. She was adamant but BMG stood by the previous agreement.

Attached to petitioners' Position Paper[7] were the sworn statements of Jose Yap, Jr. and Evangeline A. Magno, supervisor of BMG.

On October 27, 1998, the labor arbiter dismissed Aparecio's complaint. Since the letter of resignation showed no signs that it was made through duress or compulsion, it was concluded that the severance of her employment in BMG was brought about by her resignation and not by the illegal dismissal supposedly committed by the latter. Nonetheless, realizing petitioners' promise to pay financial assistance to Aparecio, the labor arbiter ordered the payment of P18,824.00 (fixed at half month pay for every year of service, with a fraction of at least six [6] months being considered as one year) instead of P9,170.12 which was not amply substantiated.[8]

Upon appeal, however, the NLRC found that Aparecio was illegally dismissed from service, disposing in its August 23, 2000 Decision[9] thus:

> WHEREFORE, prescinding from the foregoing consideration, the Decision appealed from is REVERSED and SET ASIDE and a new one ENTERED finding the dismissal of complainant illegal thus ordering the respondent to pay her backwages from April 30, 1998 up to date hereof and in lieu of reinstatement, the respondent is further ordered to pay complainant separation pay computes at the rate of one (1) month pay for every year of service from date of hiring on September 2, 1990 up to the finality of this decision.
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> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[10]

The NLRC admitted its dilemma in determining whether Aparecio offered to resign on the condition that she would be paid with termination benefits or whether the resignation was triggered by BMG which offered the monetary consideration. While saying that Aparecio "offered no other evidence except her bare allegations," it was held that the sworn statement of Magno was not sufficient to establish the position of petitioners. For the NLRC, the testimonies of Soco and Mutya would have been helpful had these been presented by either side. Notwithstanding the "scanty data" available, it concluded:

> x x x We find that the elements of a valid resignation are not obtaining in this case. It must be stressed that resignation is inconsistent with the filing of the complaint. Moreover, even in the absence of physical force, duress or compulsion applied upon complainant when she executed the alleged resignation letter, factual circumstances tend to show the strong and irresistible economic pressure originating from respondent if only to push the complainant into accepting the offer. For, as ever, "[i]n the matter of employment bargaining, there is no doubt that the employer stands on higher footing than the employee. First of all, there is greater supply than demand for labor. Secondly, the need for employment by labor comes from vital, and even desperate, necessity. Consequently, the law must protect labor, at least, to the extent of raising him to equal footing in

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> bargaining relations with capital and to shield him from abuses brought about by the necessity of survival. It is safe therefore to presume that an employee or laborer who waives in advance any benefit granted him by law does so, certainly not in his interest or through generosity, but under the forceful intimidation or urgent need, and hence, he could not have done so acted freely and voluntarily." xxx (citations omitted)[11]

A motion for reconsideration of the Decision was filed by petitioners. Attached therein were the sworn statements of Soco and another promo girl, Marietta Cinco, both dated September 21, 2000, confirming Aparecio's voluntary resignation. The NLRC, however, resolved to deny the motion.[12]

On appeal, the CA affirmed in toto the judgment of the NLRC. In its November 20, 2001 Decision,[13] the appellate court held:

> x x x
>
> Based on the evidence submitted, the [petitioners] failed to support [their] claim that [Aparecio's] resignation was made out of her own volition. Granting arguendo that [Aparecio] executed a resignation letter, it appears that she did it in consideration of the separation pay and other benefits promised by the petitioner.
>
> Resignation, moreover, is inconsistent with the filing of a complaint for illegal dismissal. It would have been illogical for the employee to resign and then file a complaint for illegal dismissal x x x Thus, had the private respondent been determined to resign and relinquish her position in the petitioner company, she would not have commenced an action for illegal dismissal.
>
> It must be remembered that the petitioner is in a more advantageous position than [Aparecio] considering the ratio of the demand for workers and the number of unemployed persons, so much so that the employee is vulnerable to submit to whatever offer the employer may give. Most often than not, employees are placed in a position where there is only one choice which is to accede to the employer's proposal.[14]
>
> x x x

Petitioners' motion for reconsideration was subsequently denied on April 26, 2002;[15] hence, this petition.

In a Resolution dated August 12, 2002, this Court initially resolved to deny the petition for:

> (a.) failure of the petitioners to sufficiently show that the Court of Appeals committed any reversible error in the challenged decision and resolution as to warrant the exercise by this Court of its discretionary appellate jurisdiction in this case; and
>
> (b.) failure of the petition to show extraordinary circumstance justifying a departure from the established doctrine that findings of facts of the Court of Appeals are well-nigh conclusive on this Court and will not be reviewed or disturbed on appeal.[16]

Considering, however, the Motion for Reconsideration[17] filed and the Comment[18] as well as the Reply[19] thereon, this Court resolved[20] on April 23, 2003 to reinstate the petition and require the parties to submit their respective memoranda.

The petition is meritorious.

As a rule, only questions of law may be raised in and resolved by this Court on petitions brought under Rule 45 of the Rules of Court. The reason being that the Court is not a trier of facts; it is not duty-bound to re-examine and calibrate the evidence on record. Moreover, findings of facts of quasi-judicial bodies like the NLRC, as affirmed by the CA, are generally conclusive on this Court.[21] In exceptional cases, however, we may be constrained to delve into and resolve factual issues when there is insufficient or insubstantial evidence to support the findings of the tribunal or court below, or when too much is concluded, inferred or deduced from the bare or incomplete facts

submitted by the parties.[22] The present case is an exception to the rule. Hence, this Court finds the need to review the records to determine the facts with certainty not only because the NLRC and the labor arbiter have come up with conflicting positions but also because the findings of the NLRC, as supported by the CA on substantial matters, appear to be contrary to the evidence at hand.

Reading through the records would ineluctably reveal that the evidence upon which both the NLRC and the CA based their conclusion rests on rather shaky foundation. After careful analysis, this Court finds and so holds that the submissions of Aparecio in all her pleadings failed to substantiate the allegation that her consent was vitiated at the time she tendered her resignation and that petitioners are guilty of illegal dismissal.

In her memorandum of appeal before the NLRC, Aparecio asserted in main:

> xxx The arbiter should have seriously considered the temper of the time in relation to our deteriorating economy on the issue [of] whether or not the resignation letter was voluntary. But he did not. To the arbiter[,] resignation letter can only be set aside if it is shown that it was made through duress or compulsion. What about FRAUD? The complainant did not offer to resign. She was offered by respondents that all labor standard benefits including but not limited to payment of overtime, salary differentials and separation pay should be given if she [would] resign. This she was made to believe by the respondents. And complainant really believed them. Unfortunately, however, complainant found herself jobless and penniless. Her resignation was obtained through fraud xxx It is clear that complainant submitted her resignation letter not because she has some accountabilities but because of respondents' offer which was hard to resist xxx[23]

On the other hand, her Comment before the CA stated further:

> x x x
>
> At any rate, respondents wish to point out that the finding of the NLRC that private respondent (employee) did not voluntarily resign but was illegally dismissed is well-supported by evidence. The following considerations clearly show this, to wit:
>
> One. It is admitted by both petitioners and the respondents that the supposed resignation of private respondent was conditional in nature. It was premised on petitioners' (employers) performance of certain prestations or petitioners' compliance with certain conditions.
>
> Two. The supposed decision of private respondent to tender a resignation is vitiated by vices of consent. The resignation letter was wrongfully obtained from private respondent on petitioners' inducement and promise to pay employment benefits and financial assistance without any deductions. However, it is now very clear that right from the start, petitioners did not intend to comply with their promise. After private respondent handed in a resignation letter, petitioners raised all obstacles to prevent private respondent from actually receiving the promised employment benefits and financial assistance. Accordingly, it can be easily said that fraud vitiated private respondent's consent.
>
> Three. The resignation letter was also obtained from private respondent through undue pressure and influence which again vitiates the same. The respondent NLRC made this finding:
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> "Moreover, even in the absence of physical force, duress or compulsion applied upon complainant when she executed the alleged resignation letter, factual circumstances tend to show the strong and irresistible economic pressure originating from respondent if only to push the complainant into accepting the offer." (NLRC Decision, 23 August 2000, p. 5; underscoring ours)
> Four. At the very least, it could be easily said that the decision to resign is vitiated by mistake. It is unrebutted that private respondent handed in a resignation letter on the firm belief that petitioners would pay her the promised employment benefits and financial assistance without deductions. Resignation is also a form of contract. Like any other contracts, it can be vitiated by mistake and other vices of consent x x x

> Five. Finally, it could also be said that the resignation letter was ineffective because there was no meeting of the minds on the matter of resignation. As pointed out earlier, it is an admitted fact that the supposed resignation was conditional in character in the sense that it was premised on certain conditions. Accordingly, the resignation letter could only be considered as a mere offer. Since the petitioners obviously did not accept the conditions attendant to the offer to resign, there is no resignation to speak of. (emphasis supplied) [24]
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> x x x

In a nutshell, Aparecio submits that fraud, undue influence, intimidation, and/or mistake were attendant upon her resignation from BMG. As her consent was allegedly vitiated, the act of resigning became involuntary; hence, petitioners are guilty of illegal dismissal.

The argument is not tenable.

Based on the pleadings, this Court finds nothing to support Aparecio's allegation that fraud was employed on her to resign. Fraud exists only when, through insidious words or machinations, the other party is induced to act and without which, the latter would not have agreed to.[25] This Court has held that the circumstances evidencing fraud and misrepresentation are as varied as the people who perpetrate it, each assuming different shapes and forms and may be committed in as many different ways. Fraud and misrepresentation are, therefore, never presumed; it must be proved by clear and convincing evidence and not mere preponderance of evidence.[26] Hence, this Court does not sustain findings of fraud upon circumstances which, at most, create only suspicion; otherwise, it would be indulging in speculations and surmises.[27]

In this case, Aparecio alleged that her resignation was wrongfully obtained when petitioners did not keep the promise of giving her employment benefits and financial assistance without any deductions. Without a showing of the nature and extent of such "inducement," however, such submission fails to establish that there was in fact a deception on the part of petitioners. Even if it is considered that there was an assurance given by petitioners and that they later reneged on their promise, this Court still finds no injustice made since Aparecio, who only questioned the manner by which the inventory was conducted — that it was held without her presence — but did not categorically deny her accountabilities with BMG, would unjustly be enriched without the deduction.

Likewise, Aparecio did not adduce any competent evidence to prove that force or threat was applied by petitioners. For intimidation to vitiate consent, the following requisites must be present: (1) that the intimidation caused the consent to be given; (2) that the threatened act be unjust or unlawful; (3) that the threat be real or serious, there being evident disproportion between the evil and the resistance which all men can offer, leading to the choice of doing the act which is forced on the person to do as the lesser evil; and (4) that it produces a well-grounded fear from the fact that the person from whom it comes has the necessary means or ability to inflict the threatened injury to his person or property. In the instant case, not one of these essential elements was amply proven by Aparecio. Bare allegations of threat or force do not constitute substantial evidence to support a finding of forced resignation.[28]

On the contrary, petitioners correctly point out that the NLRC finding, which the CA erroneously affirmed, of a "strong and irresistible economic pressure originating from [petitioners] if only to push [Aparecio] into accepting the offer" is not supported by any evidence in the records but is merely based on conjectures and guesswork. Truly, the factual circumstances upon which the legal conclusion was based were lacking as no less than the NLRC itself admitted the absence of proof of any kind of pressure, economic or otherwise, that petitioners applied to force Aparecio's resignation. What is clear is that there is no concrete evidence, direct or circumstantial, showing that undue influence was used by petitioners in such a way that it took improper advantage of its power over the will of Aparecio and deprived the latter of a reasonable freedom of choice.[29] Granting for the sake of

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argument that BMG was in a "more advantageous position," as the CA had opined, it would nonetheless be unfair to presume that it utilized the same against Aparecio. Indeed, the allegation of exploitation is a very serious matter and should not be taken lightly. Proof is absolutely essential.

Resignation is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment. It is a formal pronouncement or relinquishment of an office, with the intention of relinquishing the office accompanied by the act of relinquishment. As the intent to relinquish must concur with the overt act of relinquishment, the acts of the employee before and after the alleged resignation must be considered in determining whether in fact, he or she intended to sever from his or her employment.[30]

Thus, this Court agrees with petitioners' contention that the circumstances surrounding Aparecio's resignation should be given due weight in determining whether she had intended to resign. In this case, such intent is very evident:

First, Aparecio already communicated to other people that she was about to resign to look for a better paying job since she had been complaining that employees like her in other companies were earning much more;

Second, prior to the submission of her resignation letter, Aparecio and two other promo girls, Soco and Mutya, approached their supervisor, intimated their desire to resign, and requested that they be given financial assistance, which petitioners granted on the condition that deductions would be made in case of shortage after inventory;

Third, Aparecio, Soco, and Mutya submitted their duly signed resignation letters, which were accepted by petitioners; and

Fourth, Aparecio already initiated the processing of her clearance; thus, she was able to receive her last salary, 13[th] month pay, and tax refund but refused to receive the financial assistance less the deductions made.

The foregoing facts were affirmatively narrated and attested to in the notarized affidavit of Soco and Cinco and have remained incontrovertible as they were never denied by Aparecio. The NLRC, thus, erred when it did not give probative weight to their testimonies even if belatedly presented in petitioners' motion for reconsideration.

Now, the acceptance by petitioners of Aparecio's resignation rendered the same effective.[31] Upon such acceptance, it may not be unilaterally withdrawn without the consent of petitioners.[32] When the employee later signified the intention of continuing his or her work, it was already up to the employer to accept the withdrawal of his or her resignation. The mere fact that the withdrawal was not accepted does not constitute illegal dismissal, the acceptance of the withdrawal of the resignation being the employer's sole prerogative. As held in Intertrod Maritime, Inc. v. NLRC:[33]

> Once an employee resigns and his resignation is accepted, he no longer has any right to the job. If the employee later changes his mind, he must ask for approval of the withdrawal of his resignation from his employer, as if he were re-applying for the job. It will then be up to the employer to determine whether or not his service would be continued. If the employer accepts said withdrawal, the employee retains his job. If the employer does not x x x the employee cannot claim illegal dismissal for the employer has the right to determine who his employees will be. To say that an employee who has resigned is illegally dismissed, is to encroach upon the right of employers to hire persons who will be of service to them.[34]

Subsequently, in Philippine Today, Inc. v. NLRC,[35] it was further held that:

> Obviously, this is a recognition of the contractual nature of employment which requires mutuality of consent between the parties. An employment contract is consensual and voluntary. Hence, if the employee "finds himself in a situation where he believes that personal reasons cannot be sacrificed in favor of the exigency of

> the service, then he has no other choice but to disassociate himself from his employment". If accepted by the employer, the consequent effect of resignation is severance of the contract of employment.
>
> A resigned employee who desires to take his job back has to re-apply therefor, and he shall have the status of a stranger who cannot unilaterally demand an appointment. He cannot arrogate unto himself the same position which he earlier decided to leave. To allow him to do so would be to deprive the employer of his basic right to choose whom to employ. Such is tantamount to undue oppression of the employer. It has been held that an employer is free to regulate, according to his own discretion and judgment, all aspects of employment including hiring. The law, in protecting the rights of the laborer, impels neither the oppression nor self-destruction of the employer.[36]

Certainly, what transpired here was caused by an employee's error of judgment and not by the employer's application of means vitiating the consent to resign. It would be utterly unfair to attribute to petitioners the commission of illegal dismissal and to impose upon them the burden of accepting back Aparecio who unequivocally manifested her intent and willingness to sever her employment ties.

WHEREFORE, the petition is GRANTED and the November 20, 2001 Decision and April 26, 2002 Resolution of the Court of Appeals in C.A. G.R. SP No. 65403 affirming the August 23, 2000 Decision of the National Labor Relations Commission are hereby REVERSED AND SET ASIDE. The October 27, 1998 Decision of the Labor Arbiter finding that private respondent was not illegally dismissed is hereby REINSTATED AND AFFIRMED.

No costs.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

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[1] Penned by Associate Justice Eliezer R. De Los Santos, with Associate Justices Eubulo G. Verzola and Rodrigo V. Cosico concurring.

[2] Rollo, p. 41.

[3] Penned by Commissioner Bernabe S. Batuhan, with Commissioners Irenea E. Ceniza and Edgardo E. Enerlan concurring.

[4] Penned by Ernesto F. Carreon.

[5] CA rollo, p. 49.

[6] Id. at 95.

[7] Id. at 73-79.

[8] Id. at 29-32.

[9] Id. at 33-35.

[10] Id. at 35.

[11] Id. at 37.

[12] Id. at 39.

[13] Id. at 197-202.

[14] Id. at 200-201.

[15] Id. at 208-215, 224.

[16] Rollo, p. 51.

[17] Id. at 53-60

[18] Id. at 64-70.

[19] Id. at 5-81.

[20] Id. at 83-84.

[21] Acevedo v. Advanstar Company, Inc., G.R. No. 157656, November 11, 2005, 474 SCRA 656, 664.

[22] Pascua v. NLRC (3rd Div.), 351 Phil. 48, 61 (1998).

[23] Id. at 124-125.

[24] CA rollo, pp. 153-155.

[25] See Art. 1338, New Civil Code.

[26] Solidbank Corporation v. Mindanao Ferroalloy Corporation, G.R. No. 153535, July 28, 2005, 464 SCRA 409, 426; Republic of the Philippines v. Institute for Social Concern, G.R. No. 156306, January 28, 2005, 449 SCRA 512, 521-522; Spouses Morandarte v. Court of Appeals, G.R. No. 123586, August 12, 2004, 436 SCRA 213, 223; and Maestrado v. Court of Appeals, 384 Phil. 418, 435 (2000).

[27] Republic of the Philippines v. Institute for Social Concern, id. and Maestrado v. Court of Appeals, id.

[28] St. Michael Academy v. NLRC, 354 Phil. 491, 509-510 (1998) and Callanta v. National Labor Relations Commission, G.R. No. 105083, August 20, 1993, 225 SCRA 526, 535.

[29] See Art. 1337, New Civil Code.

[30] Fortuny Garments v. Castro, G.R. No. 150668, December 15, 2005, 478 SCRA 125, 130.

[31] See Shie Jie Corporation/Seastar Ex-Im Corp. v. National Federation of Labor, G.R. No. 153148, July 15, 2005, 463 SCRA 569, 575.

[32] See Digitel Telecommunications Philippines, Inc. v. Soriano, G.R. No. 166039, June 26, 2006, 492 SCRA, 704, 743 and Philippine Today, Inc. v. NLRC, 334 Phil. 854, 877 (1997), citing Intertrod Maritime, Inc. v. NLRC, G.R. No. 81087, June 19, 1991, 198 SCRA 318.

[33] Supra.

[34] Id. at 324.

[35] Supra.

[36] Id. at 877.

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