

**COMMUNITY RURAL BANK OF SAN ISIDRO (N.E.), INC.,
REPRESENTED BY MR. ABELARDO P. SAMSON, PRESIDENT-GENERAL
MANAGER, PETITIONER, VS. YSAGANI V. PAEZ, RESPONDENT.**

G.R. NO. 158707. November 27, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure assailing the Decision[2] dated July 30, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 64027 which dismissed for lack of merit the petition for certiorari of Community Rural Bank of San Isidro (N.E.), Inc. (petitioner), and the CA Resolution[3] dated June 2, 2003 which denied petitioner's Motion for Reconsideration.

The factual background of the case is as follows:

On March 1, 1983, Ysagani V. Paez (respondent) started working with petitioner.[4] He was later promoted as Chief of the Loans Division. Sometime in February 1996, he was promoted to the position of Officer-In-Charge (OIC)-Manager of petitioner's extension office in San Isidro, Nueva Ecija.

On March 20, 1997, Angelito Santos (Santos), one of petitioner's client-depositors, deposited to his Current Account No. 61-00022 several checks amounting to P4,344,545.00.[5] As of said date, he had a balance of P108,482.93.[6] On the same day, despite the fact that the checks had not yet been cleared, Santos was allowed to instantly withdraw the amount of P4,344,545.00, leaving a balance of P108,482.93.[7] Subsequently, the checks were dishonored for "account closed".[8]

Twelve days later, in a Memorandum dated April 1, 1997, Abelardo P. Samson (Samson), petitioner's President and General Manager, required respondent to explain within forty-eight (48) hours why no administrative action should be taken against him for accepting a demand deposit of a client whose previous account was closed by one of the branch offices and allowing an unfunded check to be cleared.[9]

In a Memorandum dated April 2, 1997, Samson required respondent to further explain within forty-eight (48) hours why the matter was not immediately reported to the Office of the President/General Manager or to the Head Office upon its occurrence.[10]

In a Letter dated April 3, 1997, respondent, replying to the Memorandum dated April 1, 1997, explained that the client was just a walk-in depositor and he had no knowledge that the client's account in one of the branch offices was already closed. He further stated that he does not allow unfunded checks to be cleared and he earlier instructed his staff not to allow withdrawal of unfunded checks unless the depositor has sufficient deposit for the withdrawal.[11]

In a Letter dated April 4, 1997, respondent, replying to the Memorandum dated April 2, 1997, explained that Santos's transaction was handled solely by Joey M. Aligora (Aligora), the bookkeeper, without his permission and that he did not immediately tell management the incident because he was still investigating the matter. He also

stated that he learned of the incident and proceeded to investigate the matter only when informed by Rogelio Vargas (Vargas), petitioner's Internal Auditor, on March 26, 1997.[12]

On April 11, 1997, petitioner placed respondent under preventive suspension.[13] While the suspension was initially for fifteen (15) days, it was extended to another sixty (60) days.[14] In a Memorandum dated June 11, 1997, petitioner requested that respondent appear before the Board of Directors' Special Meeting scheduled on June 14, 1997.[15] In a Letter dated June 14, 1997 addressed to the Board of Directors, respondent stressed that the transactions took place without his approval and he was not signing the daily proof sheets unless the statement of accounts on demand deposits were attached.[16]

Jaime S. Vergel de Dios (Vergel de Dios), petitioner's External Auditor, was tasked to investigate the mishandled demand deposit account of Santos. In his Memorandum to the Board of Directors, he submitted the following observations:

- The OIC, Mr. Ysagani Paez was comparatively new in this position, being his first appointment as officer of the bank. Before this, he was with the Loan department and his work orientation and experience was mainly in lending operation so that there was a radical shift from what he used to do.

A more experienced Manager would not have allowed his bookkeeper and cashier to transact business with the clients without his knowing what was going on. He could have overheard the frequent pleadings of Mr. Santos' sisters who generally attended to this type of transaction as Mr. Santos was allegedly out of town. The working area in the Extension Office is so small, but what happened then may not have registered with him as significant. He was probably more concerned with loan transactions, its processing and collection and attending meetings of the managers with the President.

- According to the internal auditors, the posting in the general ledger was delayed for about a week. In my interview of Mr. Paez he said that the proof sheet he recalled signing was March 7, 1997, so that he was about two weeks delayed in the review of the transactions. Since his work orientation or experience was in loans, the significance of entries or information such as the returned [sic] of checks, amount of checks being received and deposited daily, penalty charges being imposed on returned checks may have been overlooked or underestimated.

Mr. Paez could have inquired from his bookkeeper certain explanation for such entries and in the process discover or even discourage irregularities which may already be in the offing, or forewarn his employees in the violation of bank policies. (Emphasis supplied)[17]

In a Letter dated July 7, 1997, respondent was given an opportunity to explain why the management should not dismiss him from employment for "acts and omissions which constitute gross dishonesty, negligence, and misconduct and/or serious breach of trust and confidence" in the mishandling of account of Santos[18] which resulted in the bank loss. In his Letter-Explanation dated July 17, 1997, respondent reiterated that he had no participation in the mishandling of the account of Santos.[19]

On August 13, 1997, petitioner's Board of Directors approved a Resolution terminating the employment of respondent, together with Aligora and Maricel B. Ferraris (Ferraris), the cashier, "for acts and omissions which constitute gross dishonesty, negligence and misconduct and/or serious breach of trust and confidence that resulted to great loss to the Rural Bank." [20] On August 15, 1997, respondent received his letter of termination.[21]

On September 11, 1997, respondent filed a complaint for illegal suspension and illegal dismissal with prayer for reinstatement, backwages and damages, docketed as NLRC-RAB-III Case No. 09-0274-97.[22]

On September 24, 1999, the Labor Arbiter rendered his Decision holding that respondent is entitled to be paid his salary for three (3) months and six (6) days of his preventive suspension since his preventive suspension went

beyond the allowed maximum period of thirty (30) days; that respondent's dismissal was illegal since the documentary evidence proved that the persons responsible for the consummation of Santos's transaction were Aligora and Ferraris; and that respondent's involvement in the transaction was never established.[23] Thus, the dispositive portion of the Decision reads:

WHEREFORE, all the foregoing considered, judgment is hereby rendered declaring the dismissal of the complainant illegal. Respondent Community Rural Bank of San Isidro (N.E.), Inc. is ordered to reinstate complainant to his former or equivalent position without loss of seniority rights and to pay complainant the following:

1. Backwages (illegal suspension) - - - - - P 39,064.00

2. Backwages (amounting to - - - - - 244,150.00

at the promulgation of the decision) until

actual reinstatement

Total - - - - - P 283,214.00

All other claims are denied for lack of merit.

SO ORDERED.[24]

Petitioner filed an appeal with the National Labor Relations Commission (NLRC), docketed as NLRC CA No. 022081-00.[25] On November 29, 2000, the NLRC affirmed the Decision of the Labor Arbiter.[26] The NLRC held that petitioner failed to prove the participation or involvement of respondent in Santos's transaction; that the only ones involved were Aligora, Ferraris and Ben Eligino (Eligino), the clearing clerk; that Internal Auditor Vargas, in his testimony before the Nueva Ecija Prosecutor's Office in the preliminary investigation in the criminal case,[27] practically exonerated respondent and pointed to Aligora, Eligino and Ferraris as the only bank employees involved in the subject transaction; that respondent as OIC-Manager had no authority to approve/disapprove checks for payment since the Memorandum providing for the guidelines in the clearing and approval for payment of in-cleared checks was issued only on August 7, 1997 or several months after April 11, 1997 when respondent was placed on preventive suspension.

On January 3, 2001, petitioner filed a Motion for Reconsideration[28] but it was denied by the NLRC in its Resolution dated January 24, 2001. [29]

Subsequently, petitioner filed a petition for certiorari with the CA, docketed as CA-G.R. SP No. 64027.[30] On July 30, 2002, the CA rendered its Decision dismissing the petition for certiorari for lack of merit.[31] The CA held that the NLRC's consideration of the stenographic notes on Internal Auditor Vargas's testimony in the preliminary investigation was not improper since there is no showing that petitioner objected to the admission of the stenographic notes; that petitioner has not established that the clearing and payment of checks, and the accomplishment of daily proof sheets were among respondent's duties when he assumed the position of OIC-Manager of petitioner's extension office in San Isidro, Nueva Ecija.[32]

On August 20, 2002, petitioner filed a Motion for Reconsideration[33] but it was denied by the CA in its Resolution dated June 2, 2003.[34]

Hence, the present petition anchored on the following grounds:

- The Court of Appeals committed serious errors of law and had ruled in a manner contrary to prevailing jurisprudence when it affirmed the decision of the NLRC, thus consequently preventing Petitioner Bank from exercising its management prerogative of dismissing Respondent, who clearly was liable for gross negligence of his duties and had breached the trust and confidence of Petitioner Bank.

- The Court of Appeals erred in giving undue attention and probative value to the Petitioner Bank's internal auditor, Rogelio Vargas' testimony in the preliminary investigation (I.S. No. 4711 to 4712-97), entitled Community Rural Bank of San Isidro (N.E.) vs. Angelito Santos et al., considering that the same was an investigation of the existence of criminal liability as opposed to a determination of the existence (sic) gross negligence and loss or breach of trust as grounds to dismiss the Respondent.
- The Honorable Court of Appeals erred in not considering the grossly negligent acts of Respondent while performing his duties as OIC/Manager of Respondent Bank which by themselves are sufficient for Petitioner Bank to lose its trust and confidence in respondent.[35]

Anent the first ground, petitioner argues that after a determination of respondent's incompetence and untrustworthiness, petitioner's decision to dismiss him for gross negligence and/or loss of trust and confidence must be respected since it is a lawful exercise of its management prerogative, which should not be interfered with by judicial or quasi-judicial bodies.

As to the second ground, petitioner contends that the NLRC and CA should not have placed undue emphasis on Internal Auditor Vargas's testimony in the preliminary investigation of the criminal case since: (a) the issue in this case is respondent's dismissal from employment for a just cause under the Labor Code, not his criminal liability for the fraud committed upon the petitioner; (b) respondent merely filed a Supplement with the Labor Arbiter attaching the stenographic notes which did not include a certification that it was a certified true copy; and, (c) petitioner was not given an opportunity to contest the inclusion of the stenographic notes as part of the record.

On the third ground, petitioner maintains that respondent, as an OIC/ Manager, was a managerial employee and he held a position of trust and confidence such that his direct involvement in the fraud need not be proved to support his dismissal since it is enough that petitioner showed respondent's gross negligence in the conduct of his duties; that it was respondent's duty as OIC-Manager to go over the bank ledgers on a daily basis, perform occasional cross-credit checks with petitioner's other branches, accomplish the required daily proof sheets and supervise his subordinates; and that his negligence to perform the foregoing acts made it possible for his subordinates to commit fraud and resulted to a great loss of money to petitioner.

In his Comment respondent submits that the factual findings of the Labor Arbiter, as affirmed by the NLRC and CA, should not only be accorded respect but even finality, and thus binding upon the Court; that petitioner never objected to the introduction of the stenographic notes on Internal Auditor Vargas's testimony in the preliminary investigation; that at the time of Santos's transaction, respondent had no power to approve or disapprove check withdrawals since such authority was only granted to managers after respondent was placed under preventive suspension.

Parties filed their respective Memoranda in compliance with the Court's Resolution dated March 27, 2006.[36]

The petition is partly meritorious.

The Labor Code provides that an employer may terminate the services of an employee for just cause and this must be supported by substantial evidence.[37] The settled rule in administrative and quasi-judicial proceedings is that proof beyond reasonable doubt is not required in determining the legality of an employer's dismissal of an employee, and not even a preponderance of evidence is necessary as substantial evidence is considered sufficient.[38] Substantial evidence is more than a mere scintilla of evidence or relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[39]

Since only substantial evidence is required, and not proof beyond reasonable doubt, reliance by the NLRC and CA upon the stenographic notes on the testimony of Internal Auditor Vargas in the preliminary investigation of

the criminal case is misplaced. A labor arbiter or tribunal may legally sustain an employee's dismissal for loss of trust and confidence even if the employee has not been convicted in a criminal case arising from the same act.[40] The dropping of the charges by the prosecutor[41] or the acquittal of the employee[42] would not necessarily negate the existence of lack of trust and confidence as a ground for dismissal.

Furthermore, law[43] and jurisprudence have long recognized the right of employers to dismiss employees by reason of loss of trust and confidence.[44] More so, in the case of supervisors or personnel occupying positions of responsibility, loss of trust justifies termination.[45] Loss of confidence as a just cause for termination of employment is premised on the fact that an employee concerned holds a position of trust and confidence. This situation holds where a person is entrusted with confidence on delicate matters, such as the custody, handling, or care and protection of the employer's property. But, in order to constitute a just cause for dismissal, the act complained of must be "work-related" such as would show the employee concerned to be unfit to continue working for the employer.[46]

Recent decisions of this Court distinguished the treatment of managerial from that of rank-and-file personnel insofar as the application of the doctrine of loss of trust and confidence is concerned. Thus, with respect to rank-and-file personnel, loss of trust and confidence as ground for valid dismissal requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient.[47] But as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal[48] because:

[w]hen an employee accepts a promotion to a managerial position or to an office requiring full trust and confidence, she gives up some of the rigid guaranties available to ordinary workers. Infractions which if committed by others would be overlooked or condoned or penalties mitigated may be visited with more severe disciplinary action. A company's resort to acts of self-defense would be more easily justified.[49]

In the present case, there is no dispute that respondent is not an ordinary rank-and-file employee. He was an OIC-Manager, reposed with managerial duties in overseeing petitioner's business. As a managerial employee, respondent was tasked to perform key and sensitive functions, and thus "bound by more exacting work ethics." [50] The position carried authority for the exercise of independent judgment and discretion characteristic of sensitive posts in corporate hierarchy where a wide latitude could be supposed in setting up stringent standards for continued employment.[51]

Petitioner has clearly and convincingly established that it has a just and valid cause to terminate the respondent. Petitioner rightfully lost its trust and confidence in respondent when depositor Santos was allowed to withdraw the amount of P4,344,545.00 on the very same day that the checks representing said amount were deposited and despite the fact that there was no sufficient fund in his account to cover said amount.

It must be stressed that a single withdrawal of P4,344,545.00 is not a measly sum that can be withdrawn unnoticed, even at the end of the day when respondent was duty bound to review the bank transactions in the daily proof sheets. His pathetic excuse that he did not sign the daily proof sheets because the statements of accounts on demand deposits were not attached shows his lackadaisical attitude towards the demands of his job. He should have demanded the submission of the required documents from the employees concerned so the he could properly review and approve the daily proof sheets. He should have strictly followed procedures and policies intended to safeguard the interests of the bank.

Respondent's admission in his Letter dated April 4, 1997 that he learned of the irregular incident and proceeded to investigate the matter only when informed by Internal Auditor Vargas on March 26, 1997 is another indication that he was an ineffective OIC-Manager. He should have discovered the irregularity and timely informed

Management about the incident, even before Internal Auditor Vargas did, so that they could have gotten to the bottom of the irregularity the earliest possible time. Respondent should have been aware of the goings-on in his Branch.

The NLRC and the CA misplaced reliance on a supposed Memorandum dated August 7, 1997 which allegedly clothed the Branch Manager with authority to approve checks for payment only after the incident occurred. Such alleged Memorandum was not attached nor its contents reproduced in full in any pleading submitted by the parties before the Labor Arbiter or the NLRC. It was only briefly cited in the Resolution dated January 6, 1999 of the Provincial Prosecutor in I.S. Nos. 4711 to 4712-97, the Criminal Case for Estafa filed by petitioner against respondent, Ferraris and Aligora, which is Annex "A" of respondent's Urgent Manifestation dated February 19, 1999 before the Labor Arbiter.[52] Thus, no positive or adverse inference can be drawn from a document not part of the records of the present case. No evidentiary value can be given to absent evidence.

Thus, even if respondent had no actual and direct participation in the alleged fraud, being a managerial employee, his duty was to supervise the members of his staff in the actual performance of their duties. Evidently, his failure to do so coupled with his failure to review the daily proof sheets and detect the irregularity and timely inform management about the incident, amounted to gross negligence and incompetence which are justifiable grounds for petitioner's loss of trust and confidence in him. Petitioner's actuations then, as described in the Memorandum of External Auditor Vergel de Dios,[53] were more than sufficient to sow in his employer the seed of mistrust and loss of confidence. His management style left much to be desired, especially in the banking business where the highest degree of diligence[54] is expected,[55] and high standards of integrity and performance are even required, of it.[56]

It is worth stressing that a bank owes great fidelity to the public it deals with, its operation being essentially imbued with public interest. In turn, it cannot be compelled to continue in its employ a person in whom it has lost trust and confidence and whose continued employment would patently be inimical to the bank's interest. Thus, it would be oppressive and unjust to order the petitioner to take respondent back. Unlike other just causes for dismissal, trust in an employee, once lost, is difficult, if not impossible, to regain.[57] The law, in protecting the rights of employees authorizes neither oppression nor self-destruction of the employer which itself is possessed of rights that must be entitled to recognition and respect.[58]

Be that as it may, the Court finds that respondent's suspension from April 11, 1997 until he was dismissed from employment on August 15, 1997, for a total of one hundred twenty-six (126) days, is clearly beyond the maximum period allowed by law. The Implementing Rules of Book V: Rule XXIII (Termination of Employment) of the Labor Code provides:

Sec. 9. Period of suspension. - No preventive suspension shall last longer than thirty (30) days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearings, to dismiss the worker.

The rule clearly provides that a preventive suspension shall not exceed a maximum period of thirty (30) days, after which period the employee must be reinstated to his former position. If the suspension is otherwise extended, the employee shall be entitled to his salaries and other benefits that may accrue to him during the period of such suspension. Thus, respondent is entitled to backwages for ninety-six (96) days or the period of his preventive suspension beyond the maximum thirty-day period allowed by law.

WHEREFORE, the present petition is PARTLY GRANTED. The Decision and Resolution of the Court of

Appeals in CA-G.R. SP No. 64027 are REVERSED and SET ASIDE. The Complaint for illegal dismissal is DISMISSED; however, the LA Decision awarding P39,064.00 as backwages for illegal suspension is AFFIRMED.

No costs.

SO ORDERED.

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

[1] Spelled as "Isagani" in some parts of the records.

[2] Penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate Justices Elvi John S. Asuncion and Edgardo F. Sundiam, CA rollo, p. 270.

[3] CA rollo, p. 321.

[4] NLRC records, p. 1.

[5] Id. at 23-26.

[6] Id. at 27.

[7] Id.

[8] Id. at 110-113.

[9] Id. at 29.

[10] Id. at 30.

[11] Id. at 31.

[12] Id. at 32.

[13] Id. at 33.

[14] Id. at 69.

[15] Id. at 36.

[16] Id. at 28.

[17] Id. at 80-81.

[18] Id. at 37.

[19] Id. at 70.

[20] Id. at 38.

[21] Id.

[22] Id. at 1. Subsequently, the case became docketed as NLRC Case No. SUB-RAB-III-08-0765-98.

[23] Id. at 297.

[24] Id. at 306.

[25] Id. at 317.

[26] CA rollo, p. 33.

[27] I.S. No. 4711 to 4712-97 entitled "Community Rural Bank of San Isidro (N.E.), etc. v. Angelito Santos, Ismaela Santos, Celerina Cardano, Isidro Cardano, Isagani Paez, Jose Aligora and Maricel Ferraris" for estafa.

[28] CA rollo, p. 53.

[29] Id. at 52.

[30] Id. at 8.

[31] Id. at 278.

[32] Id. at 280-289.

[33] Id. at 302.

[34] Id. at 321.

[35] Rollo, p. 16.

[36] Id. at 178.

[37] *Salvador v. Philippine Mining Services Corp.*, 443 Phil. 880, 888 (2003); *Pili v. National Labor Relations Commission*, G.R. No. 96895, January 21, 1993, 217 SCRA 338, 345.

[38] *Salvador v. Philippine Mining Services Corp.*, supra; *Pangasinan III Electric Cooperative, Inc. v. National Labor Relations Commission*, G.R. No. 89876, November 13, 1992, 215 SCRA 669, 673.

[39] *Philippine Long Distance Telephone Company, Inc. v. Tiamson*, G.R. No. 164884-85, November 1, 2005, 474 SCRA 761, 771; *Salvador v. Philippine Mining Services Corporation*, supra at 888-889.

[40] *Metro Transit Organization, Inc. v. Court of Appeals*, 440 Phil. 743, 754 (2002); *Nicolas v. National Labor Relations Commission*, 327 Phil. 883, 887 (1996).

[41] *Starlite Plastic Industrial Corporation v. National Labor Relations Commission*, G.R. No. 78491, March 16, 1989, 171 SCRA 315, 324.

[42] *Philippine Geothermal, Inc. v. National Labor Relations Commission*, G.R. No. L-55249-50, October 19, 1982, 117 SCRA 692, 695.

[43] As provided for in the Labor Code, Art. 282. An employer may terminate an employment for any of the following causes: ...

(c) Fraud or willful breach of the trust reposed in him by his employer or his duly-authorized representative. ...

[44] *Etcuban, Jr. v. Sulpicio Lines, Inc.*, G.R. No. 148410, January 17, 2005, 448 SCRA 516, 528-529; *Caoile v. National Labor Relations Commission*, 359 Phil. 399, 405 (1998).

[45] *Etcuban, Jr. v. Sulpicio Lines, Inc.*, supra; *Kwikway Engineering Works v. National Labor Relations Commission*, G.R. No. 85014, March 22, 1991, 195 SCRA 526, 529.

[46] *Etcuban, Jr. v. Sulpicio Lines, Inc.*, supra; *Caoile v. National Labor Relations Commission*, supra.

[47] *Maquiling v. Philippine Tuberculosis Society, Inc.*, G.R. No. 143384, February 4, 2005, 450 SCRA 465,

475-476; *Asia Pacific Chartering (Phils.) Inc. v. Farolan*, 441 Phil. 776, 791 (2002).

[48] *Maquiling v. Philippine Tuberculosis Society, Inc.*, *supra*.

[49] *Philippine Long Distance Telephone Company v. Tolentino*, G.R. No.143171, September 21, 2004, 438 SCRA 555, 560; *Villanueva v. National Labor Relations Commission*, 354 Phil. 1056, 1063 (1998).

[50] *Alcazaren v. Univet Agricultural Products, Inc.*, G.R. No. 149628, November 2, 2005, 475 SCRA 636, 653-654; *Villarama v. National Labor Relations Commission*, G.R. No. 106341, September 2, 1994, 236 SCRA 280, 289.

[51] *Philippine Commercial Industrial Bank v. Cabrera*, G.R. No. 160368, March 31, 2005, 454 SCRA 792, 803; *Dayan v. Bank of the Philippine Islands*, 421 Phil. 620, 630 (2001).

[52] *Id.* at 247.

[53] *Id.* at 75.

[54] *Bank of the Philippine Islands v. Court of Appeals*, 383 Phil. 538, 554 (2000); *Philippine Bank of Commerce v. Court of Appeals*, 336 Phil. 667, 681 (1997).

[55] *Philippine Commercial International Bank v. Court of Appeals*, 403 Phil. 361, 389 (2001).

[56] §2 of Republic Act No. 8791, otherwise known as "The General Banking Law of 2000."

[57] *Etcuban, Jr. v. Sulpicio Lines, Inc.*, *supra* note 44 at 533; *Salvador v. Philippine Mining Services Corp.*, *supra* note 37 at 892.

[58] *Philemploy Services and Resources, Inc. v. Rodriguez*, G.R. No. 152616, March 31, 2006, 487 SCRA 302, 317; *Philippine Commercial Industrial Bank v. Cabrera*, *supra* note 51.

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