

LIMA LAND, INC., LEANDRO JAVIER, SYLVIA DUQUE, AND PREMY ANN BELOY, PETITIONER VS. MARLYN CUEVAS, RESPONDENT.

G.R. No. 169523. June 16, 2010

Ponente: PERALTA, J.

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PERALTA, J.:

This resolves the instant Petition for Review on Certiorari under Rule 45 of the Rules of Court praying for the reversal of the Decision[1] and Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 83808 dated January 26, 2005 and August 31, 2005, respectively. The challenged Decision of the CA affirmed the Resolutions[3] of the National Labor Relations Commission (NLRC) dated December 30, 2003 and February 27, 2004 in NLRC CA No. 035384-03, while the assailed Resolution denied petitioners' Motion for Reconsideration.

The factual and procedural antecedents, as narrated by the CA, are as follows:

Petitioner Lima Land, Inc. (Lima) is a company engaged in the real estate business and a member of the Alcantara Group of Companies (Alcantara Group). Petitioners Leandro D. Javier [Javier] and Premy Ann G. Beloy [Beloy] are Lima's Executive Vice-President and Operating Officer, and Assistant Corporate Secretary, respectively. Petitioner Sylvia M. Duque [Duque] is the Vice-President-Director of the Human Resources Department of the Alcantara Group. Private respondent Marlyn G. Cuevas [Cuevas] was the Finance and Administration Manager of Lima.

In 1996, Lima entered into several lease agreements known as "arriendo contracts" with different persons whereby [the former transferred to the latter] its right to harvest [coconuts as well as other fruits planted on the lands it owned] in consideration of certain monetary equivalent. The collection of the proceeds were under the direct supervision of Jonas Senia [Senia], Operation and Estate Manager at the Lima Land Estate, Batangas City. He was assisted by Flor San Gabriel [San Gabriel], Site Assistant and Imelda Melo [Melo], Liaison Assistant. The arriendo collections were, thereafter, remitted to the Head Office in Makati and booked as company income.

In February 2000, irregularities in [the] arriendo collections were discovered. Petitioners formed an investigating panel to conduct a thorough investigation on the status of the collections. Several employees were interviewed including Private Respondent. Investigation showed that the arriendo collections were last remitted to the Head Office on September 1, 1999 without the succeeding collections remitted, despite proof of receipt of payments made to San Gabriel and Melo. San Gabriel and Melo also entered into other contracts on behalf of the Company which were not reported to the Head Office.

Private Respondent issued a Memorandum directing Senia to report any information regarding the collections and disbursement of the arriendo funds after September 1, 1999. Senia reported that the total collection which he failed to remit was P101,200.00. However, in April 2000, the Accounting Department determined that the actual unremitted amount was P142,100.00.

The initial findings of the investigating panel revealed fraudulent activities and irregularities committed by the Private Respondent relative to the Company funds. Consequently, Private Respondent was served with a notice

to explain and was placed under preventive suspension on May 22, 2002. She was, thereafter, ordered to turn over all documents and keys in her possession to Mrs. Venus Quieta.

On May 23, 2002, Private Respondent received another notice charging her with the following: 1) failure to exercise reasonable diligence to inquire about the status of the unremitted arriendo collections; 2) approving a patently false request for reimbursement of representation expenses; and 3) failure to institute sufficient accounting standards.

During the initial hearing scheduled on May 24, 2002, Private Respondent failed to appear. Petitioners gave her until May 30, 2002 to submit her written reply. Private Respondent requested that the hearing be conducted on June 5, 2002, but she again failed to attend. Private Respondent submitted her written reply on June 4, 2002. Although Petitioners gave her until June 14, 2002 to submit additional evidence, Private Respondent did not submit any.

On June 21, 2002, Petitioners dismissed Private Respondent on the ground of loss of trust and confidence effective May 22, 2002, the date of her preventive suspension. The notice of termination was received by the Private Respondent on the same date.

On July 3, 2002, Private Respondent filed a Complaint with the Labor Arbiter for illegal suspension, illegal dismissal, and non-payment of salaries, holiday pay, service incentive leave pay and 13th month pay against the Petitioners. She also prayed for her reinstatement, payment of backwages, damages, attorney's fees and other monetary claims.

x x x x

On March 27, 2003, the Labor Arbiter rendered a Decision dismissing the Complaint for lack of merit. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered dismissing the complaint for lack of merit. However, as above discussed, respondents are hereby directed to pay the complainant the amount of P18,664.58, representing pro-rata 13th month pay from January to May 2002.

Other claims are dismissed for lack of merit.

SO ORDERED.

x x x x

On April 15, 2003, Private Respondent filed an appeal [with] the National Labor Relations Commission (NLRC)

x x x

x x x x

On December 30, 2003, the Public Respondent [NLRC] issued a Resolution setting aside the decision of the Labor Arbiter, the dispositive portion of the Resolution states:

WHEREFORE, in view thereof, the assailed decision dated March 27, 2003 is hereby SET ASIDE; and declare the suspension and dismissal of the Complainant-appellant illegal. Therefore, Respondent-appellee is hereby ordered to:

a) Reinstatement-appellant to her former position without loss of seniority or diminution of benefits with full backwages from the time of her suspension up to the time of finality of the decision. If reinstatement is not anymore possible, payment of separation pay equivalent to 1 month salary per year of service;

b) Pay Complainant-appellant her unused leave credits;

c) Pay Complainant-appellant her 13th month pay and holiday pay plus legal interest, plus other benefits such as but not limited to the award of the company car to the Complainant-appellant, as gasoline allowance (150 liters per month), rice subsidy of 1 sack per month, and health card manager package;

d) Pay 10% of the total amount to be collected as attorney's fees.

SO ORDERED.

x x x x

On February 27, 2004, Petitioners filed a Motion for Reconsideration on the said Resolution of the Public Respondent, but the motion was denied x x x.[4]

Petitioners then filed a special civil action for certiorari with the CA contending that the NLRC committed grave abuse of discretion amounting to lack of jurisdiction in declaring respondent's dismissal illegal. Petitioners averred that the dismissal was justified on the ground that respondent, as the Finance and Administration Manager, had supervision over all matters, including the arriendo collections; that it took respondent three years from the last remittance of the said collection before she made an inquiry as to the status of the collections, thus, making her remiss in her duties.

On January 26, 2005, the CA rendered its presently assailed Decision.

Hence, the instant petition with the following assignment of errors:

THE COURT OF APPEALS SERIOUSLY ERRED IN DISMISSING THE PETITION FOR CERTIORARI CONSIDERING THAT:

- ITS FINDING THAT RESPONDENT WAS NOT RESPONSIBLE FOR MONITORING THE ARRIENDO COLLECTIONS AND, THEREFORE, CANNOT BE DISMISSED ON THE GROUND OF LOSS OF TRUST AND CONFIDENCE IS CONTRARY TO LAW AND PREVAILING JURISPRUDENCE;

- ITS FINDING THAT THE PENALTY OF DISMISSAL FROM THE SERVICE IMPOSED ON RESPONDENT WAS TOO HARSH IS CONTRARY TO LAW AND PREVAILING JURISPRUDENCE; AND

- ITS FINDING THAT RESPONDENT WAS DENIED DUE PROCESS OF LAW UNDER THE LABOR CODE IS CONTRARY TO LAW AND PREVAILING JURISPRUDENCE.[5]

The petition is without merit.

It is a settled rule that only errors of law are generally reviewed by this Court in petitions for review on certiorari of CA decisions.[6] However, there are well-recognized exceptions to this rule, as in this case, when the factual findings of the NLRC as affirmed by the CA contradict those of the Labor Arbiter.[7] In cases like this, it is this Court's task, in the exercise of its equity jurisdiction, to re-evaluate and review the factual issues by looking into the records of the case and re-examining the questioned findings.[8]

The basic issue in the present case is whether petitioners validly dismissed respondent from her employment.

The requisites for a valid dismissal are: (a) the employee must be afforded due process, i.e., he must be given an opportunity to be heard and defend himself; and (b) the dismissal must be for a valid cause, as provided in Article 282[9] of the Labor Code, or for any of the authorized causes under Articles 283[10] and 284[11] of the same Code.[12]

In the instant case, the Court agrees with petitioners' contention that respondent was afforded due process prior to

her dismissal.

Well-settled is the rule that the essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.[13]

Moreover, in dismissing an employee, the employer has the burden of proving that the former worker has been served two notices: (1) one to apprise him of the particular acts or omissions for which his dismissal is sought, and (2) the other to inform him of his employer's decision to dismiss him.[14] The first notice must state that dismissal is sought for the act or omission charged against the employee, otherwise, the notice cannot be considered sufficient compliance with the rules.[15]

The first written notice to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period.[16] "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense.[17] This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint.[18] Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees.[19] A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, were violated and/or which among the grounds under Article 282 is being charged against the employees.[20]

In the case before the Court, the requirements of procedural due process were complied with by petitioners when they sent a notice dated May 23, 2002 informing respondent of the specific charges leveled against her and giving her the opportunity to be heard and to present evidence in her defense, with the aid of counsel if she so chooses, in a hearing which was supposed to be held on May 24, 2002. Respondent failed to appear on the scheduled date but was given the chance to submit a written reply until May 30, 2002. Upon request of respondent, the scheduled hearing was again moved to June 5, 2002. Respondent was finally able to submit her written reply on June 4, 2002. Subsequently, in a letter dated June 21, 2002, respondent was informed of her dismissal from employment.

The foregoing notwithstanding, the Court notes that the CA and the NLRC did not err in ruling that petitioners failed to comply with the other requisite of valid dismissal as there was no sufficient evidence to prove that petitioners are justified in terminating respondent's employment on the basis of loss of trust and confidence.

It must be noted that in termination cases, the burden of proof rests upon the employer to show that the dismissal of the employee is for just cause and failure to do so would mean that the dismissal is not justified.[21] This is in consonance with the guarantee of security of tenure in the Constitution and elaborated in the Labor Code.[22] A dismissed employee is not required to prove his innocence of the charges leveled against him by his employer.[23] The determination of the existence and sufficiency of a just cause must be exercised with fairness and in good faith and after observing due process.[24]

As firmly entrenched in our jurisprudence, loss of trust and confidence, as a just cause for termination of employment, is premised on the fact that an employee concerned holds a position where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected.[25] This includes managerial personnel entrusted with confidence on delicate matters, such as the custody, handling, or care and protection of the employer's property.[26] The betrayal of this trust is the essence of the offense for which an employee is

penalized.[27]

It must be noted, however, that in a plethora of cases, this Court has distinguished the treatment of managerial employees from that of rank-and-file personnel, insofar as the application of the doctrine of loss of trust and confidence is concerned.[28] 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.[29] 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.[30] Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded of his position.[31]

On the other hand, loss of trust and confidence as a ground of dismissal has never been intended to afford an occasion for abuse because of its subjective nature.[32] It should not be used as a subterfuge for causes which are illegal, improper, and unjustified.[33] It must be genuine, not a mere afterthought intended to justify an earlier action taken in bad faith.[34] Let it not be forgotten that what is at stake is the means of livelihood, the name, and the reputation of the employee.[35] To countenance an arbitrary exercise of that prerogative is to negate the employee's constitutional right to security of tenure.[36]

Stated differently, the loss of trust and confidence must be based not on ordinary breach by the employee of the trust reposed in him by the employer, but, in the language of Article 282 (c) of the Labor Code, on willful breach.[37] A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.[38] It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer.[39] It should be genuine and not simulated; nor should it appear as a mere afterthought to justify earlier action taken in bad faith or a subterfuge for causes which are improper, illegal or unjustified.[40] There must, therefore, be an actual breach of duty committed by the employee which must be established by substantial evidence.[41] Moreover, the burden of proof required in labor cases must be amply discharged.[42]

Petitioners contend that respondent's unexplained omission and/or gross neglect to carry out her duties and to exercise the extraordinary diligence required of her position gave the other employees of petitioner company, whose duties and activities should have been properly monitored by her, the opportunity to commit fraud against the company. However, this supposed function of respondent - monitoring duties and activities of other employees - is not subsumed in what petitioners claim as respondent's duties which are (a) to manage, direct and control record-keeping and financial reportorial requirements; (b) to ensure the accuracy and integrity of all financial reports; (c) to be responsible for the funds management and financial planning activities of the company; and (d) to manage the disbursement of funds.

Moreover, logic dictates that the monitoring of the duties and activities of the employees who are reporting at the Batangas site would fall on the person appointed to oversee the operations of the company in that area. In the present case, the Batangas site where the arriendo collections were made was managed by an estate manager in the person of one Jonas Senia. Petitioners did not refute respondent's claim that Senia was the one directly responsible for the management, operation and overall monitoring of the Batangas estate. In fact, petitioners admitted in their Position Paper[43] submitted to the Labor Arbiter that Senia was the one who exercised direct supervision over the contracting, collecting and remitting activities of the arriendo; that from 1999 until 2002 Senia and his team in the Batangas site continued to collect arriendo proceeds but never remitted these collections

to the head office. Hence, it is Senia who should have been called to answer for any fraud committed at the Batangas site. Despite these admissions, petitioners charged respondent with gross negligence and made her principally and solely liable for the non-remittance of the arriendo collections. Indeed, there is no evidence to show that any of the employees of the petitioners' Batangas site, who were directly responsible for the supposed fraud committed against petitioner company, were made liable.

Respondent's duty insofar as the arriendo collections are concerned, is to see to it that these are timely remitted to the head office. In the present case, the Court agrees with petitioners that respondent was remiss in this particular duty.

Respondent's negligence or carelessness in handling the arriendo collections, however, are not justifiable grounds for petitioners' loss of trust and confidence in her, especially in the absence of any malicious intent or fraud on respondent's part. Loss of trust and confidence stems from a breach of trust founded on a dishonest, deceitful or fraudulent act.^[44] In the case at bar, respondent did not commit any act which was dishonest or deceitful. She did not use her authority as the Finance and Administration Manager to misappropriate company property nor did she abuse the trust reposed in her by petitioners with respect to her responsibility to implement company rules. The most that can be attributed to respondent is that she was remiss in the performance of her duties. This, though, does not constitute dishonest or deceitful conduct which would justify the conclusion of loss of trust and confidence. There was no demonstration of moral perverseness that would justify the claimed loss of trust and confidence attendant to respondent's job. As such, she does not deserve the penalty of dismissal from employment, especially in the absence of any showing that she has committed prior infractions in her six years of service to petitioner company before her dismissal. There has been no showing nor allegation that respondent had been previously found guilty of any misconduct or had violated established company rules that would warrant the charge of gross negligence and failure to exercise extraordinary diligence as basis for the petitioner company's loss of trust and confidence in her.

It also bears to point out that respondent's dismissal inspires suspicion of ill motive on the part of petitioners considering that Senia, the Operations and Estate Manager in their Batangas estate, was cleared of any accountability and allowed to resign when he should be the first to be made liable, considering that he was the one who had direct and immediate control and supervision over the arriendo transactions and collections. Conversely, if there was indeed no basis to hold Senia liable, then the Court agrees with respondent that with more reason should she be exonerated of the charges of loss of trust and confidence arising from the alleged non-remittance of the arriendo collections. There is also no showing that petitioners took steps to hold accountable the other employees who, admittedly, were guilty of failing to remit their arriendo collections.

As to the alleged false request for reimbursement signed by respondent, the Court finds that petitioners failed to present substantial evidence to show that there was irregularity in respondent's approval of the questioned reimbursement for the expenses incurred during the birthday celebration of one of the company's former officers. The Court agrees with the respondent that the request went through the normal process of disbursement and did not cut short the process of reimbursement. Such reimbursement was not made in respondent's name. Moreover, petitioners did not refute respondent's contention that, in two instances, petitioner company paid the bills during birthday celebrations of its officers. Hence, it cannot be concluded that respondent was deceitful or had intended to defraud petitioners in signing the subject request for reimbursement.

In the same manner, the Court finds as unsubstantiated petitioners' allegation regarding the supposed failure of respondent to institute sufficient accounting standards leading to irregularities committed in handling the company's Petty Cash Fund. The Court agrees with respondent that in the six years that she rendered service to petitioners, her attention was never called to any insufficient accounting standards that supposedly exist in the

company. On the contrary, respondent was able to present evidence to show that certain procedures were followed with respect to cash and check disbursements and collections. In fact, the Executive Vice-President and Chief Operating Officer of petitioner company who preceded herein petitioner Javier and with whom respondent worked with for six years, executed an affidavit attesting to the competence, integrity and honesty of respondent as Manager and Finance Officer of petitioner company.[45]

As a final note, the Court is wont to reiterate that while an employer has its own interest to protect, and pursuant thereto, it may terminate a managerial employee for a just cause, such prerogative to dismiss or lay off an employee must be exercised without abuse of discretion. Its implementation should be tempered with compassion and understanding. The employer should bear in mind that, in the execution of the said prerogative, what is at stake is not only the employee's position, but his very livelihood, his very breadbasket.[46] Indeed, the consistent rule is that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. The employer must affirmatively show rationally adequate evidence that the dismissal was for justifiable cause.[47] Thus, when the breach of trust or loss of confidence alleged is not borne by clearly established facts, as in this case, such dismissal on the cited grounds cannot be allowed.[48]

WHEREFORE, the instant petition is DENIED. The Decision of the Court of Appeals, dated January 26, 2005, and its Resolution dated August 31, 2005 in CA-G.R. SP No. 83808, are AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Nachura, Abad, and Perez,[*] JJ., concur.

[*] Designated as an additional member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 842 dated June 3, 2010.

[1] Penned by Associate Justice Noel G. Tijam, with Associate Justices Jose L. Sabio, Jr. and Edgardo P. Cruz, concurring, rollo, pp. 632-639.

[2] Rollo, p. 665.

[3] Id. at 404-417; 437-438.

[4] Id. at 633-640.

[5] Id. at 16-17.

[6] *Mitsubishi Motors Philippines Corporation v. Chrysler Philippines Labor Union*, G.R. No. 148738, June 29, 2004, 433 SCRA 206, 217.

[7] *Lopez v. Bodega City*, G.R. No. 155731, September 3, 2007, 532 SCRA 56, 64.

[8] Id.

[9] Art. 282. Termination by employer. - An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

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

representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

[10] Art. 283. Closure of establishment and reduction of personnel. - The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving-devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

[11] Art. 284. Disease as ground for termination. - An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

[12] *Estacio v. Pampanga I Electric Cooperative, Inc.*, G.R. No. 183196, August 19, 2009, 596 SCRA 542, 563-564.

[13] *Telecommunications Distributors Specialist, Inc. v. Gabriel*, G.R. No. 174981, May 25, 2009, 588 SCRA 165, 176.

[14] *Ace Promotion and Marketing Corporation v. Ursabia*, G.R. No. 171703, September 22, 2006, 502 SCRA 645, 655.

[15] *Id.*

[16] *Inguillo v. First Philippine Scales, Inc.*, G.R. No. 165407, June 5, 2009, 588 SCRA 471, 491.

[17] *King of Kings Transport, Inc. v. Mamac*, G.R. No. 166208, June 29, 2007, 526 SCRA 116, 125.

[18] *Id.*

[19] *Id.*

[20] *R.B. Michael Press v. Galit*, G.R. No. 153510, February 13, 2008, 545 SCRA 23, 36.

[21] *Philippine Transmarine Carriers, Inc. v. Carilla*, G.R. No. 157975, June 26, 2007, 525 SCRA 586, 594.

[22] *Skippers United Pacific, Inc. v. Maguad*, G.R. No. 166363, August 15, 2006, 498 SCRA 639, 658.

[23] *Id.*

[24] *Id.*

[25] *Caingat v. NLRC*, G.R. No. 154308, March 10, 2005, 453 SCRA 142, 151-152.

[26] Id. at 152.

[27] Id.

[28] Triumph International (Phils.), Inc. v. Apostol, G.R. No. 164423, June 16, 2009, 589 SCRA 185, 201-202; Uniwide Sales Warehouse Club v. NLRC, G.R. No. 154503, February 29, 2008, 547 SCRA 220, 240; Philippine Long Distance Telephone Company v. Buna, G.R. No. 143688, August 17, 2007, 530 SCRA 444, 454; Cruz, Jr. v. CA, G.R. No. 148544, July 12, 2006, 494 SCRA 643, 654; Etcuban, Jr. v. Sulpicio Lines, Inc., G.R. No. 148410, January 17, 2005, 448 SCRA 516, 529.

[29] Triumph International (Phils.), Inc. v. Apostol, *supra*, at 202.

[30] Id.

[31] Id.

[32] Davao Contractors Development Cooperative (DACODECO) v. Pasawa, G.R. No. 172174, July 9, 2009, 592 SCRA 334, 344-345.

[33] Philippine National Construction Corporation v. Mandagan, G.R. No. 160965, July 29, 2008, 559 SCRA 121, 135.

[34] Id.

[35] Id.

[36] Id.

[37] Salas v. Aboitiz One, Inc., G.R. No. 178236, June 27, 2008, 556 SCRA 374, 388.

[38] Id.

[39] Id.

[40] Id.

[41] Id. at 388-389.

[42] Philippine National Construction Corporation, v. Mandagan, *supra* note 33, at 134.

[43] See rollo, p. 91.

[44] M+W Zander Philippines, Inc. v. Enriquez, G.R. No. 169173, June 5, 2009, 588 SCRA 590, 606.

[45] Annex "T" to Respondent's Position Paper, records, vol. I, p. 105.

[46] Marival Trading, Inc. v. NLRC, G.R. No. 169600, June 26, 2007, 525 SCRA 708, 730.

[47] Fujitsu Computer Products Corporation of the Philippines v. Court of Appeals, G.R. No. 158232, March 31, 2005, 454 SCRA 737, 771.

[48] Id. at 766.

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