

WATERFRONT CEBU CITY HOTEL, PETITIONER, VS. MA. MELANIE P. JIMENEZ, JACQUELINE C. BAGUIO, LOVELLA V. CARILLO, AND MAILA G. ROBLE, RESPONDENTS.

G.R. No. 174214. June 13, 2012

Ponente: PEREZ, J.

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PEREZ, J.:

The closure of a department or division of a company constitutes retrenchment by, and not closure of, the company itself.[1]

It is upon this principle that both parties to this case, the employer Hotel and the complaining employees repose their argument.

Assailed in this petition for review on certiorari under Rule 45 of the Rules of Court are the 5 July 2006 Decision[2] of the Court of Appeals reversing the National Labor Relations Commission (NLRC) and its 15 August 2006 Resolution denying the motion for reconsideration.

The factual milieu follows:

Respondents Ma. Melanie P. Jimenez, Jacqueline C. Baguio, Lovella V. Carillo, and Maila G. Roble were hired for Club Waterfront (the Club), a division under petitioner Waterfront Cebu City Hotel (the Hotel) which catered to foreign high stakes gamblers,[3] for different positions and dates as indicated below:

NAME

POSITIONS

DATE HIRED

MONTHLY SALARY

Ma. Melanie P. Jimenez

Guest Services Assistant

Sept. 4, 1996

P15,148.67

Jacqueline Cosep Baguio

Treasury Supervisor

June 1, 1996

P16,082.22

Lovella V. Carillo

Guest Services Assistant

May 26, 1998

P15,652.00

Maila G. Roble

Pit Supervisor

Sept. 1, 1999

P16,452.00[4]

On 12 May 2003, respondents received identical letters of termination from petitioner's Director of Human Resources informing them of the temporary suspension of business of the Club. A total of 45 employees were notified of the imminent closure.

On the following day, petitioner served the notice of suspension of business with the Department of Labor and Employment (DOLE).

The dismissed employees were offered separation pay equivalent to half-month pay for every year of service. The Club's closure took effect on 15 June 2003.

On 26 June 2003, respondents filed a complaint before the Labor Arbiter for illegal dismissal, illegal suspension, and non-payment of salaries and other monetary benefits. They likewise prayed for damages and attorney's fees.[5]

Respondents refused to believe that the Club was suffering from losses because they knew exactly the number of arrivals as well as junket clients of the Club. They presented documents[6] to show the arrival of foreign guests at the Club.

Respondents maintained that upon the other hand, they are employees of petitioner assigned to the Club, hence they should have been allowed to work in other departments of the hotel.

Oppositely, petitioner averred that since April 2002, the Club has been incurring losses that it had to temporarily cease its operations effective 15 June 2003. To support the allegations of losses, petitioner presented financial statements of Waterfront Promotion, Ltd. Petitioner argued that pursuant to Article 286 of the Labor Code, the temporary suspension of business operations does not terminate employment. Thus, respondents have no cause of action against them.

On 12 December 2003, Labor Arbiter Ernesto F. Carreon ruled in favor of petitioner and upheld the closure of the Club's business operations as a management prerogative. The petitioner was, however, directed to comply with Article 283 of the Labor Code and to pay complainants their separation pay equivalent to one-half month pay for every year of service, a fraction of at least 6 months being considered as one year. The dispositive portion reads:

WHEREFORE, premises considered judgment is hereby rendered ordering Waterfront Cebu City Hotel and Casino to pay the complainants as follows:

1. Maria Melanie P. Jimenez

P53,020.00

2. Josephine C. Baguio

P56,286.00

3. Evangeline A. Balazuela

P24,678.00

4. Sydel Agatha E. Binghay

P54,782.00

5. Lovella V. Carillo

P29,680.00

6. May T. Flores

P29,650.00

7. Maila G. Roble

P32,904.00

Attorney's fee

P28,001.00

Total Award

P309,002.00

The other claims and the case against individual respondents are dismissed for lack of merit.[7]

Respondents appealed to the NLRC[8] which issued a Decision affirming the ruling of the Labor Arbiter. The NLRC observed that petitioner was able to substantiate the losses suffered by the Club through financial statements properly audited by an independent auditor.

After the denial of respondents' motion for reconsideration, they elevated the case to the Court of Appeals.

Respondents argued that the NLRC should have considered the financial statements of the petitioner Hotel and not merely of the Club, which is only a division of the Hotel. According to respondents, the permanent closure of the Club resulted in retrenchment but petitioner failed to prove that it complied with the standards for retrenchment.

On 5 July 2006, the Court of Appeals rendered a Decision reversing the findings and conclusions of the NLRC, thus:

WHEREFORE, premises considered, the petition for certiorari is hereby GRANTED. The decision dated June 27, 2005 issued by the National Labor Relations Commission, Fourth Division, Cebu City in NLRC Case No. V-000482-2004 (RAB Case No. VII-06-1141-2003) is hereby VACATED and SET ASIDE.

A new decision is hereby entered directing Waterfront Cebu City Hotel and Casino, Inc. to pay full backwages from date of illegal dismissal until date of reinstatement, plus 13th month pay, holiday pay, service incentive leave pay and moral damages equivalent to 10% of the compensable amount, to petitioners Ma. Melanie P. Jimenez, Jacqueline C. Baguio, Evangeline Balazuela, Sydel Agatha Binghay, Lovella Carillo, May T. Flores, Meila G. Roble.

At the election of the petitioners, full backwages, 13th month pay, holiday pay, service incentive leave pay and separation pay at one month for every year of service, plus moral damages equivalent to 10% of the

compensable amount.

Attorney's fees of 10% of the total compensable amount is also awarded.

The Labor Arbiter is directed to compute the amounts herein awarded.[9]

The appellate court found that petitioner Hotel is the actual employer of respondents, thus the evidence of losses and closure of the Club is immaterial and irrelevant. The appellate court stated that there is no independent evidence on record that petitioner Hotel incurred losses sufficient to sustain the termination of respondents. Absent a clear, valid and legal cause for the termination of employment, the appellate court opined that there is illegal dismissal. The appellate court disregarded the audited financial statement of Waterfront Promotions, Ltd. on the ground that said statement does not prove that the Club has become a losing proposition because it was not shown that the Club is a division of Waterfront Promotions. Neither was it proven that Waterfront Promotions and petitioner are one and the same.[10]

Petitioner filed a motion for reconsideration but it was denied in a Resolution dated 15 August 2006.

Hence, this petition for review on certiorari imputes the following errors on the Court of Appeals, to wit:

I.

When it ruled that evidence of losses and closure of Club Waterfront is immaterial and irrelevant to the termination of petitioners;

II.

When it ruled that the audited financial statement of Waterfront Promotions, Ltd. is not proof to show that respondent incurred losses or that Club Waterfront has become a losing proposition;

III.

When it ruled that there is no evidence on record that Waterfront Cebu City Hotel and Casino, Inc. incurred losses sufficient to sustain the termination of herein respondents from employment;

IV.

When it found that respondents are entitled to full backwages and reinstatement without loss of seniority rights and moral damages;

V.

When it ruled in the dispositive portion that its decision was effective for Balazuela, Bingham and Flores.[11]

Initially, the respondents were laid off as a result of the suspension of the Club's operation. Under Art. 286 of the Labor Code,[12] a bona fide suspension of business operations for not more than six (6) months does not terminate employment. After six (6) months, the employee may be recalled to work or be permanently laid off. In this case, more than six (6) months have elapsed from the time the Club ceased to operate. Hence, respondents' termination became permanent.

Petitioner anchors its arguments mainly on the thesis that retrenchment to prevent losses was undertaken to justify the dismissal of respondents. Petitioner likened the closure of the Club, which it deemed as a division/department, to retrenchment. Acting on the same premise that the Club is a division of petitioner, respondents demanded that they should be transferred to another department of petitioner, instead of being dismissed from employment. Respondents also claim that petitioner failed to prove losses to support retrenchment.

At the outset, it should be stated that the respondents cannot be accommodated in other departments of the Hotel. The duties and functions they perform are peculiar to the positions they hold in the Club. It is likewise undisputed that the Club remained closed and there is no other department in the Hotel similar to the Club and which catered to foreign high stakes gamblers. Verily, reinstatement cannot be and could not have been an option for petitioner Hotel.

For the purpose of proving financial losses, petitioner presented the financial statements of Waterfront Promotion, Ltd. which petitioner describes as the company which promotes, markets and finances the Club.[13]

A review of the corporate structure of the Club as contained in the financial statements submitted by petitioner reveals that it is actually a wholly-owned subsidiary of Waterfront Promotion, Ltd. Their corporate relationship is described as follows:

Waterfront Promotion Ltd (“WPL”) and its wholly-owned subsidiary, Club Waterfront International Limited (“CWIL”), were incorporated in the Cayman Islands on March 6, 1995 and June 11, 1996, respectively. WPL is a wholly-owned subsidiary of Waterfront Philippines, Incorporated (“WPI”), a company registered with the Philippine Securities and Exchange Commission (“SEC”).

WPL and CWIL invite and organize groups of foreign casino players to play in Philippine casinos pursuant to certain agreements entered into with the Philippine Amusement and Gaming Corporation (“PAGCOR”) under the latter’s Foreign Highroller Marketing Program (“the Program”).

To support the Program, WPL and CWIL entered into several agreements with certain parties also known as junket operators to market and promote the Philippine casinos to foreign casino players. In consideration for marketing and promoting the Philippine casinos, these operators receive certain incentives such as free hotel accommodations, free airfares, and rolling commissions from WPL and CWIL.

The financial statements have been prepared on a going concern basis, which assumes that WPL and CWIL will continue in existence. The validity of this assumption is dependent upon WPL and CWIL to meet their financing requirements on a continuing basis and the success of their future operations. Management continues to look for other business opportunities and intends to run WPL and CWIL as going concerns.

At present, both WPL and CWIL have temporarily stopped their operations. The Management decided to temporarily cease the operations of WPL and CWIL on June 2003 and November 2001 respectively, due to unfavorable economic conditions. However, the Management of Waterfront Philippines, Incorporated (WPI), the Ultimate Parent Company, has given an undertaking to provide necessary support in order for the Company to continue as a going concern.

WPL’s principal office is located in George Town, Grand Cayman, Cayman Islands, British West Indies.[14]

In turn, Waterfront Promotion, Ltd. is a wholly-owned subsidiary of Waterfront Philippines. Petitioner Hotel, as shown in the official records, is also another subsidiary of Waterfront Philippines.[15] Strictly speaking, the Club is not related to petitioner except to say that they are two different subsidiaries of one parent corporation, i.e., Waterfront Philippines. Petitioner, then, could have right at the beginning avoided the conflict with respondents by setting itself apart from them. Petitioner could have invoked the separateness from the Hotel of the Club which employed respondents. Petitioner did not do so. Instead, and at the outset, it formally presented itself as the respondents’ employer when, through its Director of Human Resources, it informed respondents about the temporary suspension of the business of the Club and forthwith served the notices of suspension of business on DOLE.

We find the consolidated financial statements that were prepared in the name of Waterfront Promotion refer to the casino operations of the Club. A consolidated financial statement is usually prepared for a parent company and its

subsidiaries, the purpose of which is to provide an overview of the financial condition of the group of companies as a single entity. The Club, being a wholly-owned subsidiary of Waterfront Promotion, Ltd. operates under the management, supervision and control of Waterfront Promotion, Ltd. The relationship between these two companies is so intertwined that the Club is practically considered a department or division of Waterfront Promotion, Ltd.

A review of the consolidated financial statement shows that for the fiscal years 2002 and 2003, the parent company and the consolidated companies reflect the same amounts of losses: United States (U.S.) \$2,791,104.00 for 2002 and U.S. \$765,222.00 for 2003. This proves petitioner's assertion that the losses there reflected refer to the losses of the Club.

The consolidated financial statement and the corporate relationships it indicates, cannot, however, be relied upon by petitioner to avoid this particular labor dispute because, as already stated, petitioner itself has been claiming from the very beginning that the Club is only a division/department of the hotel.

Verily, retrenchment and not closure was effected to warrant the valid dismissal of respondents. Petitioner has not totally ceased its operations. It merely closed down a department.

Retrenchment is the termination of employment initiated by the employer through no fault of and without prejudice to the employees. It is resorted to during periods of business recession, industrial depression, or seasonal fluctuations or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program or the introduction of new methods or more efficient machinery or of automation.[16] It is an act of the employer of dismissing employees because of losses in the operation of a business, lack of work, and considerable reduction on the volume of his business.[17]

In case of retrenchment, proof of financial losses becomes the determining factor in proving its legitimacy. In establishing a unilateral claim of actual or potential losses, financial statements audited by independent external auditors constitute the normal method of proof of profit and loss performance of a company. The condition of business losses justifying retrenchment is normally shown by audited financial documents like yearly balance sheets and profit and loss statements as well as annual income tax returns.[18]

Retrenchment is subject to faithful compliance with the substantive and procedural requirements laid down by law and jurisprudence.[19] For a valid retrenchment, the following elements must be present:

(1)

That retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely de minimis, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer;

(2)

That the employer served written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment;

(3)

That the employer pays the retrenched employees separation pay equivalent to one (1) month pay or at least ½ month pay for every year of service, whichever is higher;

(4)

That the employer exercises its prerogative to retrench employees in good faith for the advancement of its

interest and not to defeat or circumvent the employees' right to security of tenure; and

(5)

That the employer used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers.[20]

All these elements were successfully proven by petitioner. First, the huge losses suffered by the Club for the past two years had forced petitioner to close it down to avert further losses which would eventually affect the operations of petitioner. Second, all 45 employees working under the Club were served with notice of termination. The corresponding notice was likewise served to the DOLE one month prior to retrenchment.[21] Third, the employees were offered separation pay, most of whom have accepted and opted not to join in this complaint. Fourth, cessation of or withdrawal from business operations was bona fide in character and not impelled by a motive to defeat or circumvent the tenurial rights of employees.[22] As a matter of fact, as of this writing, the Club has not resumed operations. Neither is there a showing that petitioner carried out the closure of the business in bad faith. No labor dispute existed between management and the employees when the latter were terminated.

Finally, we affirm the NLRC's award and computation of separation pay in favor of respondents.

WHEREFORE, the petition is hereby GRANTED. The 5 July 2006 Decision and 15 August 2006 Resolution of the Court of Appeals in CA- G.R. SP No. 01548 are REVERSED and SET ASIDE. The 27 June 2005 Decision and 18 November 2005 Resolution of the National Labor Relations Commission in NLRC NCR Case No. V-000482-2004 are REINSTATED.

SO ORDERED.

Carpio, (Chairperson), Brion, Sereno, and Reyes, JJ., concur.

[1] Construction and Development Corporation of the Philippines v. Leogardo, Jr., G.R. Nos. L-64207-08, 25 November 1983, 125 SCRA 863, 867.

[2] Penned by Associate Justice Vicente L. Yap with Associate Justices Isaias P. Dicdican and Romeo F. Barza, concurring. Rollo, pp. 24-34.

[3] Id. at 5.

[4] Id. at 55.

[5] Id. at 242-245.

[6] Records, pp. 279-352.

[7] Rollo, pp. 42-43.

[8] Penned by Presiding Commissioner Gerardo C. Nograles with Commissioners Oscar S. Uy and Aurelio D. Menzon, concurring. Id. at 45-46.

[9] Id. at 33.

[10] Id. at 30.

[11] Id. at 11.

[12] ART. 286. When employment not deemed terminated. - The bona fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment of the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

[13] Rollo, p. 131.

[14] Id. at 100.

[15] Taken from Waterfront Philippines' Quarterly Report Pursuant to Section 17 of the Securities Regulation Code and SRC Rule 17(2)(b) Thereunder, March 31, 2011.

[16] *Anabe v. Asian Construction (ASIAKONSTRUKT)*, G.R. No. 183233, 23 December 2009, 609 SCRA 213, 217-218 citing *Mobilia Products, Inc. v. Demecillo*, G.R. No. 170669, 4 February 2009, 578 SCRA 39, 47.

[17] *Polymart Paper Industries v. National Labor Relations Commission*, G.R. No. 118973, 12 August 1998, 294 SCRA 159, 166 citing *Uichico v. National Labor Relations Commission*, G.R. No. 121434, 2 June 1997, 273 SCRA 35, 42; *LVN Pictures Employees and Workers Association v. LVN Pictures, Inc.*, G.R. No. L-23495, 30 September 1970, 35 SCRA 147, 155-156; *Columbia Development Corporation v. Minister of Labor and Employment*, G.R. No. L-57769, 29 December 1986, 146 SCRA 421, 428.

[18] *Flight Attendants and Stewards Association of the Philippines v. Philippine Airlines, Inc.*, G.R. No. 178083, 22 July 2008, 559 SCRA 252, 277 citing *TPI Philippines Cement Corporation v. Cajucom VII*, 518 Phil. 637, 645-646 (2006); *Danzas Intercontinental, Inc. v. Daguman*, 496 Phil. 279, 288 (2005).

[19] *Sari-Sari Group of Companies, Inc. v. Piglas Kamao (Sari-Sari Chapter)*, G.R. No. 164624, 11 August 2008, 561 SCRA 569, 591-592 citing *Central Azucarera de la Carlota v. National Labor Relations Commission*, G.R. No. 100092, 29 December 1995, 251 SCRA 589, 595.

[20] *Shimizu Phils. Contractors, Inc. v. Callanta*, G.R. No. 165923, 29 September 2010, 631 SCRA 529, 540 citing *Asian Alcohol Corporation v. National Labor Relations Commission*, 364 Phil. 912, 926-927 (1999); *Lambert Pawnbrokers and Jewelry Corporation v. Binamira*, G.R. No. 170464, 12 July 2010, 624 SCRA 705, 716; *Bio Quest Marketing, Inc. v. Rey*, G.R. No. 181503, 18 September 2009, 600 SCRA 721, 727-728 citing *Flight Attendants and Stewards Association of the Philippines v. Philippine Airlines, Inc.*, supra note 18 at 273-274 citing further *Casimiro v. Stern Real Estate Inc. Rembrandt Hotel and/or Meehan*, 519 Phil. 438, 456-457 (2006); *Philippine Carpet Employees Association v. Sto. Tomas*, 518 Phil. 299, 316 (2006); *Ariola v. Philex Mining Corp.*, 503 Phil. 765, 784-785 (2005).

[21] Rollo, pp. 262-265.

[22] *Danzas Intercontinental Inc. v. Daguman*, supra note 18 at 289 citing *Reahs Corporation v. National Labor Relations Commission*, 337 Phil. 698, 708 (1997).

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