

FRANCIS RAY TALAM, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, 4TH DIVISION, CEBU CITY, THE SOFTWARE FACTORY, INC. AND/OR TERESA GRAPILON, OFFICE MANAGER, AND WOLFGANG ...

G.R. No. 175040. April 06, 2010

Ponente: BRION, J.

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BRION, J.:

We resolve the present Petition for Review on Certiorari [1] filed by Francis Ray Talam (Talam) seeking to set aside the Decision[2] of the Nineteenth Division of the Court of Appeals (CA) dated July 31, 2006 and its Resolution[3] dated September 29, 2006 rendered in CA-G.R.-SP No. 01760.[4]

THE ANTECEDENTS

The facts of the case are summarized below.

The respondent, The Software Factory, Inc. (TSFI), is a domestic corporation engaged in providing information technology and computer consultancy to the public. It holds office in Makati City. In April 2001, it employed Talam as a full-time programmer.

In the latter part of 2001 and in 2002, TSFI suffered financial reverses. Its external financial auditor advised that it cut on its payroll expenses which accounted for 41% of its total operating costs.[5] TSFI heeded the advice and decided to retrench some of its employees, using as basis its employees' service income and contribution margins to the company. TSFI found that Talam was one of two employees with the least or with no income contribution for the year 2002. Consequently, respondents Teresa Grapilon (Grapilon), TSFI's Office Manager, and Wolfgang Hermle (Hermle), Chief Executive Officer, verbally informed Talam that his services with the company would be terminated thirty (30) days after September 27, 2002. Thereafter, TSFI notified Talam in writing of the termination of his employment.[6] The notice was dated October 1, 2002, but received by Talam on October 4, 2002.[7] On November 6, 2002, or after a month, Talam signed a Release and Quitclaim [8] in consideration and receipt of P89,954.00 in compensation and other benefits.[9]

On November 29, 2002, Talam questioned the legality of his separation from the service through a complaint for illegal dismissal and illegal deduction, with claims for service incentive leave pay, damages and attorney's fees against TSFI, Grapilon and Hermle, before the National Labor Relations Commission (NLRC) in Cebu City.

THE COMPULSORY ARBITRATION PROCEEDINGS

Talam alleged before the Labor Arbiter that his dismissal from employment was illegal because the company did not comply with the requisites under Article 283 of the Labor Code for a valid retrenchment action.

On the other hand, TSFI argued that Talam had been validly dismissed. It contended that retrenchment is one of

the authorized causes under the Labor Code for termination of employment, and sought the dismissal of the complaint on the ground of improper venue; Talam should have filed the complaint in the City of Makati, his place of work, rather than in Cebu City, his homeplace.

On October 28, 2003, Executive Labor Arbiter Reynoso A. Belarmino rendered a decision^[10] declaring Talam's dismissal illegal and directing TSFI to pay Talam separation benefits, backwages and 13th month pay in the aggregate amount of P260,560.00. The arbiter held that while it is TSFI's right to reduce its workforce to prevent losses, it failed to present evidence that the company adopted a retrenchment program and there was also no evidence showing clearly that Talam should be retrenched. He disregarded the release and quitclaim executed by Talam declaring that he was compelled to accept the monetary consideration behind it out of necessity. He however ruled out reinstatement as "the parties can no longer work together in mutual trust."

TSFI appealed to the NLRC. In a Decision dated February 21, 2005,^[11] the NLRC Fourth Division set aside the labor arbiter's ruling and dismissed Talam's complaint without prejudice, for improper venue. It ruled that Talam should have filed the complaint with the NLRC-Regional Arbitration Branch in the National Capital Region which has jurisdiction over the workplace in Makati City. Talam sought a reconsideration which the NLRC granted in a resolution promulgated on May 25, 2005.^[12] It set aside its earlier decision and rendered a new one affirming with modification the labor arbiter's decision. Like the Labor Arbiter, it nullified the release and quitclaim signed by Talam. The NLRC found Talam's dismissal valid by reason of retrenchment, but deleted the award of separation pay "in view of payment."

TSFI moved for reconsideration of the NLRC resolution which was partially granted in another resolution dated September 27, 2005.^[13] This time, the NLRC deleted the award of backwages and 13th month pay, but ordered the company to pay Talam P30,000.00 as nominal damages for violating his right to procedural due process, citing *Jaka Food Processing Corp. v. Darwin Pacot, et al.*,^[14] where the Court held that although the complainant's dismissal was based on an authorized cause, nominal damages were awarded because of the respondent's failure to comply with the notice requirement. The NLRC ruled that the non-observance of the notice requirement will not invalidate Talam's separation on the ground of retrenchment; thus, the award of full backwages was not proper.

Talam moved for reconsideration, but the NLRC denied the motion on January 31, 2006.^[15] Talam thereafter sought relief from the CA through a petition for certiorari under Rule 65 of the Rules of Court,^[16] charging the NLRC with grave abuse of discretion for its resolutions of September 27, 2005 and January 31, 2006. In particular, Talam questioned the deletion of the award to him of backwages and 13th month pay.

THE CA DECISION

In its decision rendered on July 31, 2006,^[17] the CA denied the petition for lack of merit. It found Talam's separation from the service by reason of retrenchment to be valid. However, while it acknowledged that TSFI was suffering from financial losses as confirmed by the report of independent external auditor Leah A. Villanueva,^[18] it ruled that the company failed to give Talam the notice required by law.^[19] It noted that on September 27, 2002, TSFI, through Grapilon and Hermle, verbally advised Talam of his separation from the service due to retrenchment. On October 1, 2002,^[20] TSFI sent Talam and the Department of Labor and Employment (DOLE) separate notices with different effectivity dates of Talam's termination of employment: the notice to Talam was to be effective October 27, 2002, while the notice to DOLE was effective October 16, 2002. The CA also noted that Talam's employment contract provided for two month's notice.^[21]

The CA opined that although the law mandated that the written notice of termination of employment for authorized causes should be served at least one month before the effective date of the termination, the

employment contract should prevail because it does not violate the minimum requirement under Article 283 of the Labor Code. Even if Article 283 were to be followed, the CA added, TSFI still failed to comply with the notice requirement considering that the notices to Talam and to DOLE were for less than thirty (30) days.

Although Talam's dismissal was due to a cause authorized by law, the CA deemed TSFI liable for nominal damages for violation of Talam's right to procedural due process. The appellate court affirmed with modification the assailed NLRC decision. It increased to P50,000.00 the nominal damages of P30,000.00 awarded by the NLRC. The CA found support in the Court's ruling in the Jaka Food Processing case,[22] the same ruling relied upon by the NLRC, for its award of nominal damages. Specifically, the CA found appropriate the Court's pronouncement in Jaka that "if the dismissal is based on an authorized cause under Article 283, but the employer failed to comply with the notice requirement, the sanction should be stiffer because the dismissal process was initiated by the employer's exercise of management prerogative," as distinguished from *Agabon v. National Labor Relations Commission* [23] where the dismissal was for a just cause but due to non-compliance with procedural due process, the employer was made to pay P30,000.00 in nominal damages.

Talam moved for reconsideration of the decision, but the CA denied the motion in a resolution promulgated on September 29, 2006.[24] Hence, the present recourse to the Court.

THE PETITION

The petition submits that the CA seriously erred and/or committed grave abuse of discretion in: (1) justifying the retrenchment of Talam on the basis alone of the report of the external auditor; (2) justifying the retrenchment despite the TSFI's failure to observe fair and reasonable standards for a valid retrenchment and to first institute cost reduction measures; and (3) applying the cases of *Jaka Food Processing Corporation v. Darwin Pacot, et al.* and *Agabon v. NLRC*.

Talam contends that while it may be true that audited financial statements normally serve as proofs of the profit and loss performance of a company, the financial statements relied upon by the company do not show that TSFI was in dire financial straits nor was it suffering, or will imminently suffer, drastic business losses; the losses were insubstantial or inconsequential; contrary to TSFI's claim, a closer look at the Schedule of Operating Expenses for the year ended December 31, 2002 and September 2002 would show that the company's payroll did not actually cover 41% of its total operating expenses but only 16%, considering that much of the expense is allotted to management fees, not to mention that there were expenses incurred for recruitment services; the alleged losses were not imminent as there were only two (2) employees (Ronilo Raymundo and Talam) who were retrenched; in fact, TSFI immediately hired employees for the position occupied by Talam; at the time Talam was retrenched, there were five (5) probationary employees who became regular employees on October 1, 2002, four (4) of whom had lower contribution margins.

Talam further contends that if TSFI was indeed experiencing financial difficulties, it could also have reduced its other operating expenses to abate the losses. Further, Talam argues that TSFI failed to provide reasonable criteria in implementing its retrenchment program as the alleged cause of Talam's dismissal - that he had the least contribution margin to the company - is not a valid cause for dismissal under Articles 282 and 283 of the Labor Code; be that as it may, he did not have the highest negative contribution margin.

To prove his point, Talam claims that the table of contribution margins[25] relied upon by TSFI is incomplete and inaccurate as there was a total of nineteen (19) consultants at the time, yet the table listed only seventeen (17); he had a negative contribution because the TSFI management did not give him the chance to be engaged in projects; while it is true that he had no service income for 2002, this was primarily because he was assigned to work in the office on a special project.

On November 23, 2007, Talam filed a Memorandum[26] reiterating essentially the same arguments raised in the petition.

THE CASE FOR TSFI

By way of a Comment filed on February 16, 2007[27] and a Memorandum dated November 3, 2007,[28] TSFI prays for the dismissal of the petition for lack of merit, contending that Talam's arguments are merely a rehash of his previous arguments before the NLRC and the CA. Specifically, it argues that the petition raises only factual issues which are not proper subjects of appeal under the Rules of Court;[29] Talam is estopped from questioning the CA decision because what he wanted had already been granted by the CA; Talam's retrenchment is valid and supported by evidence and he is only entitled to nominal damages pursuant to law and jurisprudence.

TSFI contends that the petition's procedural defect is evident in the following questions it raised: (1) was the company suffering from substantial financial losses to justify a retrenchment? (2) was the retrenchment based on fair and reasonable standards? (3) did Talam have the highest negative contribution margin to justify his dismissal? These questions, TSFI posits, cannot be resolved without the Court reviewing or evaluating the evidence. On the assumption that Talam may properly raise these questions, TSFI contends that the factual determination regarding the validity of the retrenchment cannot be disturbed anymore because findings of fact of administrative bodies like the NLRC, as well as those of the CA, are binding upon the Court.

Despite the foregoing, TSFI maintains that Talam is estopped from assailing the CA decision of July 31, 2006 because what he wanted had already been granted by the appellate court. It then explains that the NLRC resolution of September 27, 2005,[30] which Talam questioned before the CA, deleted the award of backwages and 13[th] month pay to Talam, but awarded him nominal damages of P30,000.00 for the company's non-compliance with procedural due process. The CA affirmed the award but increased the amount to P50,000.00. This CA response elicited a reaction from Talam with the statement that "if factual circumstances of the Jaka case are the same as in this instant case, then the indemnity in favor of the Petitioner should have been fixed also in the amount of Fifty Thousand Pesos (P50,000.00)."[31] TSFI submits that by his very own words, Talam "has conceded" that an increase in the amount of indemnity awarded to him would already be acceptable and this the CA already granted.

On the validity of its retrenchment action, TSFI posits that the cost-cutting measure it carried out measured up to the standard imposed by law and jurisprudence. It maintains that it did not only expect but had already suffered substantial losses, as reported by its external auditor and as established by its financial records;[32] as of December 31, 2002, it had accumulated losses amounting to P2,475,418.00 which constituted 96.41% of stockholders' equity of P7,700,000.00.[33] It argues further that the fact that it retrenched only two employees did not mean its losses were not imminent; it did not have to dismiss all its employees because it also needed to survive, not to completely shut down; in any event, reducing its 17 consultants by two represented already 11% of its workforce.

TSFI likewise disputes Talam's submission that its payroll expense did not actually represent 41% but only 16%. Talam's salary is a direct cost included in the account of "salaries and wages and incentives" in the schedule of direct cost as shown in the financial statements, not in the schedule of operating expenses; this account indicates an expense of P6,397,568.00, which is at least 43% of the total direct costs. It adds that supervisors and managerial employees should also be compensated for their work. With respect to the five (5) probationary employees who were made regular employees in October 2002, TSFI explains that they were working on a project that was then in mid-stream and, considering their know-how in the project, could not just be assigned to Talam.

TSFI takes exception to Talam's claim that it has increased the number of its consultants to twenty (20) and is

preparing to transfer or has transferred to a new and bigger office space. It maintains that there is absolutely no proof to the allegation; it was a factual matter not raised in the earlier proceedings and cannot thus be raised for the first time on appeal; assuming it is true, the conditions during the years 1999 to 2002 were different from the present conditions and if the company was able to weather the financial crisis during those years, it was because it undertook measures that enabled it to survive and become financially able again; it used as an office a small room (a mere cubicle) during the crises years; it had only a two-person support staff in the persons of Grapilon and Hermle, and it had reduced the salaries of its employees by as much as 30%.

TSFI insists that Talam was retrenched because he had the highest negative contribution margin, contrary to his claim that he "did not have the lowest contribution margin among the consultants of the company." It argues that as shown in the profit and loss statement,[34] Talam had the highest negative contribution margin of P511,621.77, followed by another consultant with a negative contribution margin of P501,582.46; Talam's performance as a consultant resulted in a net loss to the company of P511,621.77. It submits that Talam was not chosen by any of its clients as shown by the fact that since January 2002 until his separation, he had no service income. It posits that it cannot be expected to maintain an employment consultant whose services the clients do not need. It insists that the contribution margin or service income is a fair and reasonable criterion in deciding who to retrench.

THE RULING OF THE COURT

On Matters of Procedure

TSFI asks the Court to dismiss the present petition on the ground that it is procedurally defective as, allegedly, it raises only questions of fact, in contravention of the requirement under Rule 45 of the Rules of Court that an appeal by certiorari shall raise only questions of law. While the petition indeed poses factual issues - i.e., whether the company was suffering from substantial losses to justify a retrenchment measure, whether it observed fair and reasonable standards in implementing a retrenchment, and whether Talam deserved to be retrenched - we deem it proper to examine the facts ourselves in view of the conflicting factual findings among the Labor Arbiter, the NLRC and the CA.[35]

Additionally, TSFI preliminarily submits that Talam is estopped from assailing the CA decision because the appellate court already granted what he asked for when the CA increased to P50,000.00 the amount of nominal damages awarded to him.

On this point, TSFI is wrong. It took out of context Talam's statement in his petition[36] that if the facts in the Jaka case were similar to his case, then the nominal damages should have been fixed at P50,000.00. TSFI overlooked the fact that Talam prayed for annulment of the NLRC resolutions of September 27, 2005 and January 31, 2006, particularly with respect to the deletion of the grant of backwages and 13[th] month pay. The statement alluded to cannot, by itself, bar Talam from pursuing what he prayed for, which was not limited to nominal damages alone. He was simply making a statement regarding the need for consistency in the application of the Court's rulings.

Another issue for preliminary consideration is Talam's insistent questioning of the validity of the retrenchment TSFI had undertaken. TSFI posits that he is barred from harping on the issue because he failed to move for reconsideration of the NLRC's May 25, 2005 resolution declaring the validity of his dismissal by reason of retrenchment.[37]

Again, TSFI's argument is untenable. TSFI itself filed a motion for reconsideration of the said resolution,[38] which the NLRC disposed of through its resolution of September 27, 2005, a copy of which was furnished Talam's counsel. Having failed to file a motion for reconsideration of the May 25, 2005 resolution, can Talam

move for reconsideration of the NLRC's September 27, 2005 resolution?

In the case of *Sadol v. Pilipinas Kao, Inc., et al.* [39] where the company lost the right to appeal from a decision of the NLRC but the other party appealed from the same decision, the Court ruled that the company could file a motion for reconsideration of the NLRC decision on appeal. The procedural situation in this case being the same as in *Sadol*, we hold that Talam did not lose the right to question the validity of his dismissal as, in fact, he sought a reconsideration of the NLRC September 27, 2005 resolution sustaining his dismissal on the ground of retrenchment. As we said in *Sadol*, the rules of technicality must yield to the broader interest of justice.

The Merits of the Case

We now resolve the issue of whether there was a valid cause for Talam's dismissal.

We answer in the affirmative.

The CA committed no reversible error in affirming the NLRC ruling that Talam was validly dismissed on the ground of retrenchment. We come to this conclusion based on the following considerations:

First. The decision to retrench had a basis; it was not simulated nor resorted to for the purpose of getting rid of employees. The decision was upon the recommendation of the company's external auditor Leah A. Villanueva, as contained in her letter to the TSFI Board of Directors in October 2002.[40] The letter reads:

I have reviewed your Profit and Loss Statement for the period January to September 2002 and the Accompanying Projected Profit and Loss Statement for the last quarter of 2002. Net Loss for the period ending amounted to CHF337,616. Average Operating Expenses per month amounted to CHF100,117 and Average Actual Revenue per month amounted to CHF63,163. Based on existing clients, revenue for the last quarter is projected at CHF191,400 and Operating Expenses for the last quarter is projected at CHF341,507 resulting to a projected Net Loss of CHF150,107 at the end of year 2002.

To minimize net loss and cash deficiency, I recommend cost cutting measures on your Payroll Expenses Account which makes 41% of your Total Operating Expenses. I suggest that you review contribution margin per consultant and compensation packages of personnel in the executive and support group. [underscoring supplied]

As the CA noted, the standard proof of a company's financial standing is its financial statements duly audited by credible external auditors.[41] We see nothing in the records which impugns Villanueva's assessment of the financial condition of TSFI at the time material to the case.

Second. The cost-cutting measure recommended involved reduction of TSFI's payroll expense account which, as the auditor found, makes up 41% of the company's total operating expenses. Talam insinuates that the share in the company's operating costs of personnel expenses is misleading, contending that the bulk of the expense goes into management fees. While this may be so, it cannot be denied that the management group is still part of the personnel component of the company, and absent any showing of bad faith, the choice of who should be retrenched must be conceded to the company for as long as there exists a basis for it.

In the present case, we note that the auditor suggested that TSFI "review the contribution margin per consultant and compensation packages of personnel in the executive and support group." Again, absent any showing of bad faith, we cannot fault the company for choosing the option of looking at the margins of contribution of the consultants to the income of the company as primary retrenchment standard. It is just unfortunate that based on this yardstick, Talam came out as one of two consultants with very high negative contribution margins and was therefore chosen for retrenchment.

Talam disputes the unfavorable assessment of his performance as a consultant, arguing that among nineteen (19) consultants of the company (not seventeen [17], as listed by TSFI), there were four (4) employees who had lower contribution margins; he had no contribution income for 2002 because he was assigned to do office work and was not being given projects.

While Talam may not have the least contribution margin, he himself admitted that he had no contribution income for 2002 and tried to explain this away by saying that he was assigned at the office and he was not being given projects. Management, however, countered that TSFI's clients did not choose him or ask for his services - a management claim Talam did not dispute. The company satisfactorily explained, too, how it viewed and compared the negative contribution margin. In these lights, TSFI cannot be blamed for choosing him after considering the employees' respective contributions to the company's main business of computer consultancy.

Third. Talam was dismissed due to a cause authorized by law - retrenchment to prevent losses.[42] At the time of Talam's dismissal, TSFI's financial condition, as found by the external auditor, showed that it was not just expecting losses, it already suffered a net income loss of P2,474,418.00 and retained earnings deficit of P7,424,250.00 for the period ending December 31, 2002.[43]

Talam tried to negate this dire financial picture claiming that the very financial statement cited by TSFI showed a net income of P298,725.00,[44] referring to the period ending on September 30, 2002. Such a claim, however, cannot erase the fact that the company had suffered substantial accumulated losses of P2,474,418.00 as of the end of December 2002.[45] For a small company like TSFI (with only twenty [20] employees), the losses it suffered were not merely de minimis in extent but were, at the time Talam was dismissed, actual and with more losses reasonably imminent. Significantly, the employer objectively and in good faith perceived the imminence of more losses as it was based on the report of its external auditor.

Fourth. TSFI resorted to other measures to abate its losses. It claimed that during the crises period, it used as an office a small-room (a mere cubicle) with only a two-person support staff in the persons of Grapilon and Hermle; it reduced the salaries of its employees by as much as 30%. This submission by the company is substantiated by the schedule of Operating Expenses for the year ended December 31, 2002 and September 30, 2002.[46] A quick glance at the schedule readily shows a reduction of TSFI's operating expenses across the board. The schedule indicates a substantial decrease in the operating expenses, from P5,733,735.00 in September 2002 to P1,698,552.36 as of the end of December 2002.

On the whole, we find that TSFI satisfied the requisites for a valid retrenchment.[47]

The Release and Quitclaim

Independently of the above considerations, we note that Talam executed a Release and Quitclaim[48] on November 6, 2002 at about the time his separation from the service was to take effect, in consideration of P89,954.00 in compensation and other benefits.[49] The labor arbiter and the NLRC did not consider the release and quitclaim as a bar to the filing of the complaint, saying that Talam had no choice but to sign the document out of necessity. The CA chose to be silent about it; in effect, affirming the labor tribunal's findings on the matter.

The CA erred in glossing over the legal effect of Talam's release and quitclaim. It should not have been nullified. Talam was not an unlettered employee;[50] he was an information technology consultant and must have been fully aware of the consequences of what he was entering into.[51] The quitclaim was a voluntary act as there is no showing that he was coerced into executing the instrument; he received a valuable consideration for his less than two years of service with the company. Thus, from all indications, the release and quitclaim was a valid and binding undertaking that should have been recognized by the labor authorities and the CA.

While the law looks with disfavor upon releases and quitclaims by employees who are inveigled or pressured into signing them by unscrupulous employers seeking to evade their legal responsibilities, a legitimate waiver representing a voluntary settlement of a laborer's claims should be respected by the courts as the law between the parties.[52] In our view, Talam's release and quitclaim fall into the category of legitimate waivers as defined by the Court.

In executing the release and quitclaim, Talam had unequivocally signified his acceptance of his separation from the service as communicated to him in writing by TSFI on October 1, 2002,[53] after the company management verbally discussed the matter with him. In fact, on the day he received the written notice of his separation (October 4, 2002), he was issued, upon his request, a certification[54] that he "is a former employee of The Software Factory Inc." who joined the company "on April 15, 2001 until October 31, 2002 as a Programmer."

With the foregoing backdrop in Talam's execution of the release and quitclaim, we find the filing of the illegal dismissal case tainted with bad faith on his part for he has already "released and forever discharged" the company "from any and all claims of damages and other liability, any from any and all manner of claims, cause or causes of actions whatsoever x x x against them." [55]

Given the release and quitclaim, we do not see how TSFI can be made to answer for failure to afford Talam procedural due process. The release and quitclaim, to our mind, erased whatever infirmities there might have been in the notice of termination as Talam had already voluntarily accepted his dismissal through the release and quitclaim. With this acceptance, the written notice became academic; the notice, after all, is merely a protective measure put in place by law and serves no useful purpose after protection has been assured. We thus find no basis for the conclusion that TSFI violated procedural due process and should pay nominal damages.

All told, we find the petition to be without merit. The complaint should be dismissed.

WHEREFORE, premises considered, the petition is hereby DENIED. The assailed decision and resolution of the Court of Appeals are AFFIRMED but MODIFIED to DELETE the award of nominal damages. Accordingly, the complaint is DISMISSED. Costs against the petitioner.

SO ORDERED.

Carpio, (Chairperson), Del Castillo, Abad, and Perez, JJ., concur.

[1] Rollo, pp. 3-24; filed under Rule 45 of the Rules of Court.

[2] Id. at 28-39; penned by Associate Justice Isaias P. Dicdican, with Associate Justice Apolinario D. Bruselas, Jr. and Associate Justice Agustin S. Dizon concurring.

[3] Id. at 40-41.

[4] Francis Ray Talam v. NLRC , 4th Division, et al.

[5] Rollo, p. 106.

[6] Id. at 102.

[7] Id., bottom left hand corner.

[8] Id. at 107.

[9] Id. at 108.

- [10] Id. at 129-135.
- [11] Id. at 223-229.
- [12] Id. at 270-295.
- [13] Id. at 306-311.
- [14] 494 Phil. 114 (2005).
- [15] Rollo, pp. 326-327.
- [16] Id. at 329-352.
- [17] Supra note 2.
- [18] Rollo, pp. 162-193; TSFI's Appeal to the NLRC, Annex "O."
- [19] LABOR CODE, Article 283.
- [20] Rollo, pp. 154-158.
- [21] Id. at 63-70; Talam's Position Paper before the NLRC, Exhibit "I," item 6.
- [22] Supra note 14.
- [23] G.R. No. 158693, November 17, 2004, 442 SCRA 573; 485 Phil 248 (2004).
- [24] Supra note 3.
- [25] Rollo, pp. 192-193; TSFI's Appeal to the NLRC, Annex "14."
- [26] Id. at 445-472.
- [27] Id. at 382-391.
- [28] Id. at 415-441.
- [29] Rule 45, Section 1.
- [30] Supra note 13.
- [31] Rollo, p. 351; Petition for Certiorari, p. 23.
- [32] Id. at 181-190.
- [33] Id. at 429; TSFI erroneously computed the percentage ratio between the accumulated losses of P2,475,418.00 and the stockholders' equity of P7,700,000.00; the figure was overstated at 96.41% when it should have been 32.14%.
- [34] Supra note 23.
- [35] Fujitsu Computer Products Corporation of the Philippines v. Court of Appeals, G.R. No. 158232, March 31, 2005, 454 SCRA 737; see also Rosario Textile Mills v. CA, 456 Phil. 828 (2003).
- [36] Supra note 31.
- [37] Rollo, p. 436; TSFI's Memorandum, p. 22, pars. 4.37 & 4.38.
- [38] Id. at 296-304; TSFI's Motion for Reconsideration of the NLRC Resolution dated May 25, 2005.

[39] G.R. No. 87530, June 13, 1990, 186 SCRA 491.

[40] Supra note 5.

[41] Dela Salle University v. Dela Salle Employees Association, G.R. No. 110072, April 12, 2000, 330 SCRA 363; 386 Phil. 569 (2000).

[42] LABOR CODE, Article 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 Department 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 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) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

[43] Rollo, p. 184; Statement of Income and Retirement Earnings (deficit) for the year ended December 31, 2002 and September 2002.

[44] Id., column 2 under net income.

[45] Id. at 156, Establishment Termination Report.

[46] Id. at 186.

[47] Juvy M. Manatad v. Philippine Telegraph and Telephone Corporation, G.R. No. 1723, March 7, 2008, 548 SCRA 64 citing F.F. Marine Corporation v. NLRC, 435 SCRA 154.

[48] Supra note 8.

[49] Supra note 9.

[50] Periquet v. NLRC, G.R. No. 91298, June 22, 1990, 186 SCRA 724.

[51] Alcosero v. NLRC, 351 Phil 368 (1998).

[52] Veloso and Liguaton v. DOLE, et. al., G.R. No. 87297, August 5, 1992, 200 SCRA 201.

[53] Supra note 7.

[54] Rollo, p. 103.

[55] RELEASE and QUITCLAIM, par. 2.

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