

NIPPON HOUSING PHIL. INC., AND/OR TADASHI OTA, HOROSHI TAKADA, YUSUHIRO KAWATA, MR. NOBOYUSHI AND JOEL REYES PETITIONERS, VS. MAIAH ANGELA LEYNES, RESPONDENT.

G.R. No. 177816. August 03, 2011

Ponente: PEREZ, J.

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PEREZ, J.:

Assailed in this petition for review on certiorari[1] filed pursuant to Rule 45 of the 1997 Rules of Civil Procedure is the 23 November 2006 Decision rendered by the Sixteenth Division of the Court of Appeals (CA) in CA-G.R. SP No. 84781,[2] the decretal portion of which states:

WHEREFORE, the foregoing considered, the petition is GRANTED and the assailed Decision and Resolution are REVERSED and SET ASIDE. Accordingly, the Decision of the Labor Arbiter is REINSTATED.

SO ORDERED.[3]

The Facts

From its original business of providing building maintenance, it appears that petitioner Nippon Housing Philippines, Inc. (NHPI) ventured into building management, providing such services as handling of the lease of condominium units, collection of dues and compliance with government regulatory requirements. Having gained the Bay Gardens Condominium Project (the Project) of the Bay Gardens Condominium Corporation (BGCC) as its first and only building maintenance client, NHPI hired respondent Maiah Angela Leynes (Leynes) on 26 March 2001 for the position of Property Manager, with a salary of P40,000.00 per month. Tasked with surveying the requirements of the government and the client for said project, the formulation of house rules and regulations and the preparation of the annual operating and capital expenditure budget, Leynes was also responsible for the hiring and deployment of manpower, salary and position determination as well as the assignment of the schedules and responsibilities of employees.[4]

On 6 February 2002, Leynes had a misunderstanding with Engr. Honesto Cantuba (Cantuba), the Building Engineer assigned at the Project, regarding the extension of the latter's working hours. Aside from instructing the security guards to bar Engr. Cantuba from entry into the Project and to tell him to report to the NHPI's main office in Makati, Leynes also sent a letter dated 8 February 2002 by telefax to Joel Reyes (Reyes), NHPI's Human Resources Department (HRD) Head, apprising the latter of said Building Engineer's supposed insubordination and disrespectful conduct.[5] With Engr. Cantuba's submission of a reply in turn accusing Leynes of pride, conceit and poor managerial skills,[6] Hiroshi Takada (Takada), NHPI's Vice President, went on to issue the 12 February 2002 memorandum, attributing the incident to "simple personal differences" and directing Leynes to allow Engr. Cantuba to report back for work.[7]

Disappointed with the foregoing management decision, Leynes submitted to Tadashi Ota, NHPI's President, a letter dated 12 February 2002, asking for an emergency leave of absence for the supposed purpose of coordinating

with her lawyer regarding her resignation letter.[8] While NHPI offered the Property Manager position to Engr. Carlos Jose on 13 February 2002[9] as a consequence Leynes' signification of her intention to resign, it also appears that Leynes sent another letter to Reyes by telefax on the same day, expressing her intention to return to work on 15 February 2002 and to call off her planned resignation upon the advice of her lawyer.[10] Having subsequently reported back for work and resumed performance of her assigned functions, Leynes was constrained to send out a 20 February 2002 written protest regarding the verbal information she supposedly received from Reyes that a substitute has already been hired for her position.[11] On 22 February 2002, Leynes was further served by petitioner Yasuhiro Kawata and Noboyushi Hisada, NHPI's Senior Manager and Janitorial Manager,[12] with a letter and memorandum from Reyes, relieving her from her position and directing her to report to NHPI's main office while she was on floating status.[13]

Aggrieved, Leynes lost no time in filing against NHPI and its above-named officers the 22 February 2002 complaint for illegal dismissal, unpaid salaries, benefits, damages and attorney's fees docketed before the arbitral level of the National Labor Relations Commission (NLRC) as NLRC-NCR South Sector Case No. 30-02-01119-02.[14] Against Leynes' claim that her being relieved from her position without just cause and replacement by one Carlos Jose amounted to an illegal dismissal from employment,[15] NHPI and its officers asserted that the management's exercise of the prerogative to put an employee on floating status for a period not exceeding six months was justified in view of her threatened resignation from her position and BGCC's request for her replacement.[16] During the pendency of the case, however, Reyes eventually served the Department of Labor and Employment (DOLE)[17] and Leynes with the 8 August 2002 notice terminating her services effective 22 August 2002, on the ground of redundancy or lack of a posting commensurate to her position at the Project.[18] Leynes was offered by NHPI the sum of P28,188.16 representing her unpaid wages, proportionate 13th month pay, tax refund and service incentive leave pay (SILP).

On 14 January 2003, Labor Arbiter Manuel Manansala rendered a decision, finding that NHPI's act of putting Leynes on floating status was equivalent to termination from employment without just cause and compliance with the twin requirements of notice and hearing. Likewise finding that NHPI's officers acted with bad faith in effecting Leynes' termination,[19] the Labor Arbiter disposed of the case in the following wise:

WHEREFORE, premises considered, judgment is hereby rendered:

1. Declaring respondent Nippon Housing Philippines, Inc. (NHPI) guilty of illegal dismissal for the reasons above-discussed. Consequently, the aforementioned respondent is hereby directed to reinstate complainant Maiah Angela Leynes to her former position as Property Manager without loss of seniority rights and with full backwages from the time of her unjust dismissal up to the time of her actual reinstatement. The backwages due to complainant Leynes is initially computed at P471,844.87 x x x subject to the finality of this Decision.

Be that as it may, on account of strained relationship between the parties brought about by the institution of the instant case/complaint plus the fact that complainant Leynes occupied a managerial position, it is better for the parties to be separated. Thus, in lieu of reinstatement, respondent NHPI is hereby directed to pay complainant Leynes the sum of P80,000.00 representing the latter's initial separation pay subject to the finality of this Decision x x x.

2. Declaring respondent NHPI and individual respondents Tadashi Ota (President), Hirochi Takada (Vice President for Finance), Yasuhiro Kawata (Senior Manager), Noboyushi [Hisada] (Janitorial Manager), and Joel Reyes (HRD Manager) guilty of evident bad faith in effecting the dismissal of complainant Leynes from the service. Consequently, the aforementioned respondents are hereby directed to pay, jointly and severally, complainant Leynes the sum of P20,000.00 for moral damages and the sum of P20,000.00 for exemplary damages;

3. Directing respondent NHPI to pay complainant Leynes the total sum of P56,888.44 representing her unpaid salary, proportionate 13th month pay, and proportionate service incentive leave pay x x x
4. Directing the aforementioned respondent NHPI to pay complainant Leynes ten (10%) percent attorney's fees based on the total monetary award for having been forced to prosecute and/or litigate the instant case/complaint by hiring the services of legal counsel.
5. Dismissing the other mon[e]y claims and/or charges of complainant Leynes for lack of merit.

SO ORDERED.[20]

On appeal, the foregoing decision was reversed and set aside in the 30 September 2003 decision rendered by the NLRC in NLRC NCR CA No. 035229. In ordering the dismissal of the complaint for lack of merit, the NLRC ruled that NHPI's placement of Leynes on floating status was necessitated by the client's contractually guaranteed right to request for her relief.[21] With Leynes' elevation of the case to the CA on a Rule 65 petition for certiorari,[22] the NLRC's decision was, however, reversed and set aside in the herein assailed 23 November 2006 decision, upon the following findings and conclusions: (a) absent showing that there was a bona fide suspension of NHPI's business operations, Leynes' relief from her position - even though requested by the client - was tantamount to a constructive dismissal; (b) the bad faith of NHPI and its officers is evident from the hiring of Engr. Jose as Leynes' replacement on 13 February 2002 or prior to her being relieved from her position on 22 February 2002; and, (c) the failure of NHPI and its officers to prove a just cause for Leynes' termination, the redundancy of her services and their compliance with the requirements of due process renders them liable for illegal dismissal.[23]

The motion for reconsideration of the foregoing decision filed by NHPI and its officers[24] was denied for lack of merit in the CA's 8 May 2007 resolution, hence, this petition.[25]

The Issues

Petitioners NHPI and Kawata urge the grant of their petition on the following grounds, to wit:

- THE HONORABLE COURT OF APPEALS' RULING THAT PETITIONERS' DECISION TO PLACE RESPONDENT ON FLOATING STATUS IS TANTAMOUNT TO CONSTRUCTIVE DISMISSAL IS CONTRARY TO LAW AND SETTLED JURISPRUDENCE.
- THE HONORABLE COURT OF APPEALS' DECLARATION THAT NHPI'S DECISION TO REDUNDATE RESPONDENT IS UNJUSTIFIED, IS CONTRARY TO LAW AND SETTLED JURISPRUDENCE.[26]

The Court's Ruling

We find the petition impressed with merit.

Petitioners argue that the CA erred in finding that Leynes was constructively dismissed when she was placed on floating status prior to her termination from employment on the ground of redundancy. Maintaining that the employee's right to security of tenure does not give him a vested right thereto as would deprive the employer of its prerogative to change his assignment or transfer him to where he will be most useful, petitioners call our attention to the supposed fact that Leynes was unacceptable to BGCC which had a contractually guaranteed right to ask for her relief. Rather than outrightly terminating Leynes' employment as a consequence of her threats to resign from her position, moreover, petitioners claim that she was validly placed on floating status pursuant to Article 286 of the Labor Code of the Philippines which provides as follows:

Art. 286. When employment not deemed terminated. - The bona fide suspension of the operation of a business

undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a 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.

Although the CA correctly found that the record is bereft of any showing that Leynes was unacceptable to BGCC, the evidence the parties adduced a quo clearly indicates that petitioners were not in bad faith when they placed the former under floating status. Disgruntled by NHPI's countermanding of her decision to bar Engr. Cantuba from the Project, Leynes twice signified her intention to resign from her position to Ota on 12 February 2002. Upon receiving the copy of the memorandum issued for Engr. Cantuba's return to work, Leynes inscribed thereon the following handwritten note addressed to Ota, "Good Morning! I'm sorry but I would like to report to you my plan of resigning as your Prop. Manager. Thank You." [27] In her application letter for an immediate emergency leave, [28] Leynes also distinctly expressed her dissatisfaction over NHPI's resolution of her dispute with Engr. Cantuba and announced her plan of coordinating with her lawyer regarding her resignation letter, to wit:

This is in line with the Management decision re: Return to work order of Mr. Honesto Cantuba at Bay Gardens. I would like to express my deepest disappointed (sic) for having received this kind of decision from Nippon Housing Philippines, Inc.

Mr. Ota, I have been working with NHPI, as your Building Property Manager, for almost a year now. I had exerted all my effort to set-up the Property Management, experienced each and every pain and sacrifice[d] everything before we were able to get the Bay Gardens project. Mr. Hiro Matsumoto, Hiroshi Takada and Yasuhiro Kawata had witnessed these things.

Given your decision, I am respecting this. The most painful thing for me is that the management did not value my effort for what I have done to the Company.

I am therefore submitting my letter for emergency leave of absence starting today, while I am still coordinating with my Lawyer re: my resignation letter.

Thank you for your support. [29]

In view of the sensitive nature of Leynes' position and the critical stage of the Project's business development, NHPI was constrained to relay the situation to BGCC which, in turn, requested the immediate adoption of remedial measures from Takada, including the appointment of a new Property Manager for the Project. Upon BGCC's recommendation, [30] NHPI consequently hired Engr. Jose on 13 February 2002 as Leynes' replacement. [31] Far from being the indication of bad faith the CA construed the same to be, these factual antecedents suggest that NHPI's immediate hiring of Engr. Jose as the new Property Manager for the Project was brought about by Leynes' own rash announcement of her intention to resign from her position. Although she subsequently changed her mind and sent Reyes a letter by telefax on 13 February 2002 announcing the reconsideration of her planned resignation and her intention to return to work on 15 February 2002, [32] Leynes evidently had only herself to blame for precipitately setting in motion the events which led to NHPI's hiring of her own replacement.

Acting on Leynes' 20 February 2002 letter protesting against the hiring of her replacement and reiterating her lack of intention to resign from her position, [33] the record, moreover, shows that NHPI simply placed her on floating status "until such time that another project could be secured" for her. [34] Traditionally invoked by security agencies when guards are temporarily sidelined from duty while waiting to be transferred or assigned to a new post or client, [35] Article 286 of the Labor Code has been applied to other industries when, as a consequence of the bona fide suspension of the operation of a business or undertaking, an employer is constrained to put

employees on floating status for a period not exceeding six months.[36] In brushing aside respondents' reliance on said provision to justify the act of putting Leynes on floating status, the CA ruled that no evidence was adduced to show that there was a bona fide suspension of NHPI's business. What said court clearly overlooked, however, is the fact that NHPI had belatedly ventured into building management and, with BGCC as its only client in said undertaking, had no other Property Manager position available to Leynes.

Considering that even labor laws discourage intrusion in the employers' judgment concerning the conduct of their business, courts often decline to interfere in their legitimate business decisions,[37] absent showing of illegality, bad faith or arbitrariness. Indeed, the right of employees to security of tenure does not give them vested rights to their positions to the extent of depriving management of its prerogative to change their assignments or to transfer them.[38] The record shows that Leynes filed the complaint for actual illegal dismissal from which the case originated on 22 February 2002 or immediately upon being placed on floating status as a consequence of NHPI's hiring of a new Property Manager for the Project. The rule is settled, however, that "off-detailing" is not equivalent to dismissal, so long as such status does not continue beyond a reasonable time and that it is only when such a "floating status" lasts for more than six months that the employee may be considered to have been constructively dismissed.[39] A complaint for illegal dismissal filed prior to the lapse of said six-month and/or the actual dismissal of the employee is generally considered as prematurely filed.[40]

Viewed in the light of the foregoing factual antecedents, we find that the CA reversibly erred in holding petitioners liable for constructively dismissing Leynes from her employment. There is said to be constructive dismissal when an act of clear discrimination, insensitivity or disdain on the part of the employer has become so unbearable as to leave an employee with no choice but to forego continued employment.[41] Constructive dismissal exists where there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay.[42] Stated otherwise, it is a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not.[43] In constructive dismissal cases, the employer is, concededly, charged with the burden of proving that its conduct and action or the transfer of an employee are for valid and legitimate grounds such as genuine business necessity.[44] To our mind, respondents have more than amply discharged this burden with proof of the circumstances surrounding Engr. Carlos' employment as Property Manager for the Project and the consequent unavailability of a similar position for Leynes.

With no other client aside from BGCC for the building management side of its business, we find that NHPI was acting well within its prerogatives when it eventually terminated Leynes' services on the ground of redundancy. One of the recognized authorized causes for the termination of employment, redundancy exists when the service capability of the workforce is in excess of what is reasonably needed to meet the demands of the business enterprise.[45] A redundant position is one rendered superfluous by any number of factors, such as overhiring of workers, decreased volume of business, dropping of a particular product line previously manufactured by the company or phasing out of service activity priorly undertaken by the business.[46] It has been held that the exercise of business judgment to characterize an employee's service as no longer necessary or sustainable is not subject to discretionary review where, as here, it is exercised there is no showing of violation of the law or arbitrariness or malice on the part of the employer.[47] An employer has no legal obligation to keep more employees than are necessary for the operation of its business.[48]

Considering that Leynes was terminated from service upon an authorized cause, we find that the CA likewise erred in faulting NHPI for supposedly failing to notify said employee of the particular act or omission leveled against her and the ground/s for which she was dismissed from employment. Where dismissal, however, is for an authorized cause like redundancy, the employer is, instead, required to serve a written notice of termination on the

worker concerned and the DOLE, at least one month from the intended date thereof.[49] Here, NHPI specifically made Leynes' termination from service effective 22 August 2002, but only informed said employee of the same on 8 August 2002[50] and filed with the DOLE the required Establishment Termination Report only on 16 August 2002.[51] For its failure to comply strictly with the 30-day minimum requirement for said notice and effectively violating Leynes' right to due process, NHPI should be held liable to pay nominal damages in the sum of P50,000.00. The penalty should understandably be stiffer because the dismissal process was initiated by the employer's exercise of its management prerogative.[52]

Having been validly terminated on the ground of redundancy, Leynes is entitled to separation pay equivalent to one month salary for every year of service but not to the backwages adjudicated in her favor by the Labor Arbiter.[53] Hired by NHPI on 26 March 2001 and terminated effective 22 August 2002, Leynes is entitled to a separation pay in the sum of P40,000.00, in addition to her last pay which, taking into consideration her proportionate 13[th] month pay, tax refund and SILP, was computed by NHPI at P28,188.16.[54] For lack of showing of bad faith, malice or arbitrariness on the part of NHPI, there is, however, no justifiable ground for an award of moral and exemplary damages.[55] For lack of factual or legal bases, we find no cause to award attorney's fees in favor of Leynes. In the absence of the same showing insofar as NHPI's corporate officers are concerned, neither is there cause to hold them jointly and severally liable for the above-discussed monetary awards.

WHEREFORE, premises considered, the petition is GRANTED and the assailed 23 November 2006 Decision is, accordingly, REVERSED and SET ASIDE. In lieu thereof, another is entered ordering NHPI to pay Leynes the following sums: (a) P40,000.00 as separation pay; (b) P28,188.16 representing her unpaid wages, proportionate 13[th] month pay, tax refund and SILP; and (c) P50,000.00 by way of nominal damages.

SO ORDERED.

Carpio, (Chairperson), Leonardo-De Castro,[*] Brion, Perez, and Sereno, JJ., concur.

[*] Associate Justice Teresita J. Leonardo-De Castro is designated as Acting Member of the Second Division as per Special Order No. 1006 dated 10 June 2011.

[1] Rollo, pp. 8-34, Petition.

[2] CA rollo, CA-G.R. SP No. 84781, CA's 23 November 2006 Decision, pp. 283-295.

[3] Id. at 295.

[4] Record, NLRC NCR (South) Case No. 30-02-01119-02, Leynes' Position Paper, pp. 9-10.

[5] Leynes' 8 February 2002 Letter, id. at 31-33.

[6] Cantuba's 8 February 2002 Letter, id. at 34-36.

[7] Takada's 12 February 2002 Memorandum, id. at 38.

[8] Leynes' 12 February 2002 Letter and Application for Leave, id. at 39-40.

[9] Carlos Jose's 10 June 2002 Affidavit, id. at 262.

[10] Leynes' 13 February 2002 Letter, id. at 18.

[11] Leynes' 20 February 2002 Letter, id. at 19.

- [12] Marlette Lagradilla's 20 April 2002 Affidavit, id. at 62.
- [13] Reyes' 22 February 2002 Letter and Memorandum, id. at 41-42.
- [14] Leynes' 22 February 2002 Complaint, id. at 1-2.
- [15] Leynes' 20 March 2002 Position Paper, id. at. 7-14.
- [16] NHPI's 18 March 2002 Position Paper, id. at 23-29.
- [17] DOLE Establishment Termination Report, id. at 269.
- [18] Reyes' 8 August 2002 Letter, id. at 266.
- [19] Labor Arbiter's 14 January 2003 Decision, id. at 298-316.
- [20] Id. at 314-316.
- [21] NLRC's 30 September 2003 Decision, id. at 472-484.
- [22] CA rollo, CA-G.R. SP No. 84781, Leynes' Rule 65 Petition for Certiorari, pp. 2-33.
- [23] CA's 23 November 2006 Decision, id. at 283-295.
- [24] NHPI's 19 December 2006 Motion for Reconsideration, id. at 299-314.
- [25] CA's 8 May 2007 Resolution, id. at 320-321.
- [26] Rollo, p. 19
- [27] Records, NLRC-NCR South Sector Case No. 30-02-01119-02, p. 38.
- [28] Id. at 39.
- [29] Id.
- [30] Chan Say Lim's 19 April 2002 Affidavit; Id., at 227, Lian Lian Lim's 24 April 2002, id. at 76-77.
- [31] Eng. Carlos Jose's 10 June 2002 Affidavit, id. at 262.
- [32] Id. at 18.
- [33] Id. at 19.
- [34] Id. at 42.
- [35] Nationwide Security and Allied Services, Inc. v. Ronald P. Valderama, G.R. 186614, 23 February 2011.
- [36] JPL Marketing Promotions v. Court of Appeals, 501 Phil. 440, 449 (2005).
- [37] Coca-Cola Bottlers Philippines, Inc. v. Del Villar, G.R. No. 163091, 6 October 2010, 632 SCRA 293, 312.
- [38] Mendoza v. Rural Bank of Lucban, G.R. No. 155421, 7 July 2004, 433 SCRA 756, 766.
- [39] Megaforce Security and Allied Services, Inc. v. Lactao, G.R. No. 160940, 21 July 2008, 559 SCRA 110, 117.
- [40] Sasan, Sr. v. National Labor Relations Commission 4th Division, G.R. No. 176240, 17 October 2008, 569 SCRA 670, 696.
- [41] Soliman Security Services, Inc. v. Court of Appeals, 433 Phil. 902, 910 (2002).

- [42] *Endico v. Quantum Foods Distribution Center*, G.R. No. 161615, 30 January 2009, 577 SCRA 299, 310 citing *Blue Dairy Corporation v. NLRC*, 373 Phil. 179, 186.
- [43] *Uniwide Sales Warehouse Club v. National Labor Relations Commission*, G.R. No. 154503, 29 February 2008, 547 SCRA 220, 236.
- [44] *Philippine Veterans Bank v. National Labor Relations Commission (Fourth Division)*, G.R. No. 188882, 30 March 2010, 617 SCRA 204, 212.
- [45] *Edge Apparel, Inc. v. National Labor Relations Commission*, G.R. No. 121314, 19 February 1998, 286 SCRA 302, 311.
- [46] *AMA Computer College v. Garcia*, G.R. No. 166703, 14 April 2008, 551 SCRA 254, 264.
- [47] *DOLE Philippines, Inc. v. National Labor Relations Commission*, 417 Phil. 428, 440 (2001).
- [48] *Almodiel v. National Labor Relations Commission*, G.R. No. 100641, 14 June 1993, 223 SCRA 341, 348.
- [49] *Serrano v. National Labor Relations Commission*, 380 Phil. 416, 439 (2000).
- [50] Record, NLRC NCR (South) Case No. 30-02-01119-02, pp. 266-268.
- [51] *Id.* at 269.
- [52] *Smart Communications, Inc. v. Astorga*, G.R. Nos. 148132, 151079, 151372, 28 January 2008, 542 SCRA 434, 452 citing *Jaka Food Processing Corporation v. Pacot*, G.R. No. 151378, 28 March 2005, 454 SCRA 119, 125-126.
- [53] *Lowe, Inc. v. Court of Appeals*, G.R. Nos. 164813 & 174590, 14 August 2009, 596 SCRA 140, 154.
- [54] Record, NLRC NCR (South) Case No. 30-02-01119-02, p. 267.
- [55] *Lambert Pawnbrokers & Jewelry Corporation v. Binamira*, G.R. No. 170464, 12 July 2010, 624 SCRA, 705, 720-721.

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