# WENSHA SPA CENTER, INC. AND/OR XU ZHI JIE, PETITIONERS, VS. LORETA T. YUNG, RESPONDENT.

*G.R. No. 185122. August 16, 2010*

Ponente: MENDOZA, J.

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**MENDOZA, J.:**

This is a petition for review on certiorari under Rule 45 of the Rules of Court filed by an employer who was charged before the National Labor Relations Commission (NLRC) for dismissing an employee upon the advice of a Feng Shui master. In this action, the petitioners assail the May 28, 2008 Decision[1] and October 23, 2008 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 98855 entitled Loreta T. Yung v. National Labor Relations Commission, Wensha Spa Center, Inc. and/or Xu Zhi Jie.

**THE FACTS:**

Wensha Spa Center, Inc. (Wensha) in Quezon City is in the business of sauna bath and massage services. Xu Zhi Jie a.k.a. Pobby Co (Xu) is its president,[3] respondent Loreta T. Yung (Loreta) was its administrative manager at the time of her termination from employment.

In her position paper,[4] Loreta stated that she used to be employed by Manmen Services Co., Ltd. (Manmen) where Xu was a client. Xu was apparently impressed by Loreta's performance. After he established Wensha, he convinced Loreta to transfer and work at Wensha. Loreta was initially reluctant to accept Xu's offer because her job at Manmen was stable and she had been with Manmen for seven years. But Xu was persistent and offered her a higher pay. Enticed, Loreta resigned from Manmen and transferred to Wensha. She started working on April 21, 2004 as Xu's personal assistant and interpreter at a monthly salary of P12,000.00.

Loreta introduced positive changes to Wensha which resulted in increased business. This pleased Xu so that on May 18, 2004, she was promoted to the position of Administrative Manager.[5]

Loreta recounted that on August 10, 2004, she was asked to leave her office because Xu and a Feng Shui master were exploring the premises. Later that day, Xu asked Loreta to go on leave with pay for one month. She did so and returned on September 10, 2004. Upon her return, Xu and his wife asked her to resign from Wensha because, according to the Feng Shui master, her aura did not match that of Xu. Loreta refused but was informed that she could no longer continue working at Wensha. That same afternoon, Loreta went to the NLRC and filed a case for illegal dismissal against Xu and Wensha.

Wensha and Xu denied illegally terminating Loreta's employment. They claimed that two months after Loreta was hired, they received various complaints against her from the employees so that on August 10, 2004, they advised her to take a leave of absence for one month while they conducted an investigation on the matter. Based on the results of the investigation, they terminated Loreta's employment on August 31, 2004 for loss of trust and confidence.[6]

The Labor Arbiter (LA) Francisco Robles dismissed Loreta's complaint for lack of merit. He found it more

probable that Loreta was dismissed from her employment due to Wensha's loss of trust and confidence in her. The LA's decision[7] partly reads:

> However, this office has found it dubious and hard to believe the contentions made by the complainant that she was dismissed by the respondents on the sole ground that she is a "mismatch" in respondents' business as advised by an alleged Feng Shui Master. The complainant herself alleged in her position paper that she has done several improvements in respondents' business such as uplifting the morale and efficiency of its employees and increasing respondents' clientele, and that respondent Co was very much pleased with the improvements made by the complainant that she was offered twice a promotion but she nevertheless declined. It would be against human experience and contrary to business acumen to let go of someone, who was an asset and has done so much for the company merely on the ground that she is a "mismatch" to the business. Absent any proof submitted by the complainant, this office finds it more probable that the complainant was dismissed due to loss of trust and confidence.[8]

This ruling was affirmed by the NLRC in its December 29, 2006 Resolution,[9] citing its observation that Wensha was still considering the proper action to take on the day Loreta left Wensha and filed her complaint. The NLRC added that this finding was bolstered by Wensha's September 10, 2004 letter to Loreta asking her to come back to personally clarify some matters, but she declined because she had already filed a case.

Loreta moved for a reconsideration of the NLRC's ruling but her motion was denied. Loreta then went to the CA on a petition for certiorari. The CA reversed the ruling of the NLRC on the ground that it gravely abused its discretion in appreciating the factual bases that led to Loreta's dismissal. The CA noted that there were irregularities and inconsistencies in Wensha's position. The CA stated the following:

> We, thus, peruse the affidavits and documentary evidence of the Private Respondents and find the following: First, on the affidavits of their witnesses, it must be noted that the same were mere photocopies. It was held that [T]he purpose of the rule in requiring the production of the best evidence is the prevention of fraud, because if a party is in possession of such evidence and withholds it, and seeks to substitute inferior evidence in its place, the presumption naturally arise[s] that the better evidence is withheld for fraudulent purposes which its production would expose and defeat. Moreover, the affidavits were not executed under oath. The rule is that an affiant must sign the document in the presence of and take his oath before a notary public as evidence that the affidavit was properly made. Guided by these principles, the affidavits cannot be assigned any weighty probative value and are mere scraps of paper the contents of which are hearsay. Second, on the sales report and order slips, which allegedly prove that Yung had been charging her food and drinks to Wensha, the said pieces of evidence do not, however, bear Yung's name thereon or even her signature. In fact, it does not state anyone's name, except that of Wensha. Hence, it would simply be capricious to pinpoint, or impute, on Yung as the author in charging such expenses to Wensha on the basis of hearsay evidence. Third, while the affidavit of Wensha's Operations Manager, Princess delos Reyes (delos Reyes), may have been duly executed under oath, she did not, however, specify the alleged infractions that Yung committed. If at all, delos Reyes only made general statements on the alleged complaints against Yung that were not even substantiated by any other piece of evidence. Finally, the daily time records (DTRs) of Yung, which supposedly prove her habitual tardiness, were mere photocopies that are not even signed by Wensha's authorized representative, thus suspect, if not violative of the best evidence rule and, therefore, incompetent evidence. x x x [Emphases appear in the original]
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> x x x x.
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> Finally, after the Private Respondents filed their position paper, they alleged mistake on the part of their former counsel in stating that Yung was dismissed on August 31, 2004. Thus, they subsequently moved for the admission of their rejoinder. Notably, however, the said rejoinder was dated October 4, 2004, earlier than the date when their position paper was filed, which was on November 3, 2004. It is also puzzling that their position


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> paper was dated November 25, 2004, much later than its date of filing. The irregularities are simply too glaring to be ignored. Nevertheless, the Private Respondents' admission of Yung's termination on August 31, 2004 cannot be retracted. They cannot use the mistake of their counsel as an excuse considering that the position paper was verified by their Operations Manager, delos Reyes, who attested to the truth of the contents therein.[10] [Emphasis supplied]

Hence, the fallo of the CA decision reads:

> WHEREFORE, the instant petition is GRANTED. Wensha Spa Center, Inc. and Xu Zhi Jie are ORDERED to, jointly and severally, pay Loreta T. Yung her full backwages, other privileges, and benefits, or their monetary equivalent, corresponding to the period of her dismissal from September 1, 2004 up to the finality of this decision, and damages in the amounts of fifty thousand pesos (Php50,000.00) as moral damages, twenty five thousand pesos (Php25,000.00) as exemplary damages, and twenty thousand pesos (Php20,000.00) as attorney's fees. No costs.
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> SO ORDERED.[11]

Wensha and Xu now assail this ruling of the CA in this petition presenting the following:

> V. GROUNDS FOR THE ALLOWANCE OF THE PETITION
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> 5.1 The following are the reasons and arguments, which are purely questions of law and some questions of facts, which justify the appeal by certiorari under Rule 45 of the 1997 Revised Rules of Civil Procedure, as amended, to this Honorable SUPREME COURT of the assailed Decision and Resolution, to wit:
>
> 5.1.1 The Honorable COURT OF APPEALS gravely erred in reversing that factual findings of the Honorable Labor Arbiter and the Honorable NLRC (Third Division) notwithstanding recognized and established rule in our jurisdiction that findings of facts of quasi-judicial agencies who have gained expertise on their respective subject matters are given respect and finality;
>
> 5.1.2 The Honorable COURT OF APPEALS committed grave abuse of discretion and serious errors when it ruled that findings of facts of the Honorable Labor Arbiter and the Honorable NLRC are not supported by substantial evidence despite the fact that the records clearly show that petitioner therein was not dismissed but is under investigation, and that she is guilty of serious infractions that warranted her termination;
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> 5.1.3 The Honorable COURT OF APPEALS grave[ly] erred when it ordered herein petitioner to pay herein respondent her separation pay, in lieu of reinstatement, and full backwages, as well as damages and attorney's fees;
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> 5.1.4 The Honorable COURT OF APPEALS committed grave abuse of discretion and serious errors when it held that petitioner XU ZHI JIE to be solidarily liable with WENSHA, assuming that respondent was illegally dismissed;
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> 5.2 The same need to be corrected as they would work injustice to the herein petitioner, grave and irreparable damage will be done to him, and would pose dangerous precedent.[12]

**THE COURT'S RULING:**

Loreta's security of tenure is guaranteed by the Constitution and the Labor Code. The 1987 Philippine Constitution provides in Section 18, Article II that the State shall protect the rights of workers and promote their welfare. Section 3, Article XIII also provides that all workers shall be entitled to security of tenure. Along that line, Article 3 of the Labor Code mandates that the State shall assure the rights of workers to security of tenure.

Under the security of tenure guarantee, a worker can only be terminated from his employment for cause and after due process. For a valid termination by the employer: (1) the dismissal must be for a valid cause as provided in

Article 282, or for any of the authorized causes under Articles 283 and 284 of the Labor Code; and (2) the employee must be afforded an opportunity to be heard and to defend himself. A just and valid cause for an employee's dismissal must be supported by substantial evidence, and before the employee can be dismissed, he must be given notice and an adequate opportunity to be heard.[13] In the process, the employer bears the burden of proving that the dismissal of an employee was for a valid cause. Its failure to discharge this burden renders the dismissal unjustified and, therefore, illegal.[14]

As a rule, the factual findings of the court below are conclusive on Us in a petition for review on certiorari where We review only errors of law. This case, however, is an exception because the CA's factual findings are not congruent with those of the NLRC and the LA.

According to Wensha in its position paper,[15] it dismissed Loreta on August 31, 2004 after investigating the complaints against her. Wensha asserted that her dismissal was a valid exercise of an employer's right to terminate a managerial employee for loss of trust and confidence. It claimed that she caused the resignation of an employee because of gossips initiated by her. It was the reason she was asked to take a leave of absence with pay for one month starting August 10, 2004.[16]

Wensha also alleged that Loreta was "sowing intrigues in the company" which was inimical to Wensha. She was also accused of dishonesty, serious breach of trust reposed in her, tardiness, and abuse of authority.[17]

In its Rejoinder, Wensha changed its position claiming that it did not terminate Loreta's employment on August 31, 2004. It even sent her a notice requesting her to report back to work. She, however, declined because she had already filed her complaint.[18]

As correctly found by the CA, the cause of Loreta's dismissal is questionable. Loss of trust and confidence to be a valid ground for dismissal must have basis and must be founded on clearly established facts.[19]

The Court finds the LA ruling that states, "[a]bsent any proof submitted by the complainant, this office finds it more probable that the complainant was dismissed due to loss of trust and confidence,"[20] to be utterly erroneous as it is contrary to the applicable rules and pertinent jurisprudence. The onus of proving a valid dismissal rests on the employer, not on the employee.[21] It is the employer who bears the burden of proving that its dismissal of the employee is for a valid or authorized cause supported by substantial evidence. [22]

According to the NLRC, "[p]erusal of the entire records show that complainant left the respondents' premises when she was confronted with the infractions imputed against her."[23] This information was taken from the affidavit[24] of Princess Delos Reyes (Delos Reyes) which was dated March 21, 2005, not in Wensha's earlier position paper or pleadings submitted to the LA. The affidavits[25] of employees attached to Delos Reyes' affidavit were all dated November 19, 2004 indicating that they were not yet executed when the complaints against Loreta were supposedly being investigated in August 2004.

It is also noteworthy that Wensha's position paper related that because of the gossips perpetrated by Loreta, a certain Oliva Gonzalo (Gonzalo) resigned from Wensha. Because of the incident, Gonzalo, whose father was a policeman, "reportedly got angry with complainant and of the management telling her friends at respondent company that she would retaliate thus creating fear among those concerned."[26] As a result, Loreta was advised to take a paid leave of absence for one month while Wensha conducted an investigation.

According to Loreta, however, the reason for her termination was her aura did not match that of Xu and the work environment at Wensha. Loreta narrated:

> On August 10, 2004 however, complainant was called by respondent Xu and told her to wait at the lounge area while the latter and a Feng Shui Master were doing some analysis of the office. After several hours of waiting,

> respondent Xu then told complainant that according to the Feng Shui master her Chinese Zodiac sign is a "mismatch" with that of the respondents; that complainant should not enter the administrative office for a month while an altar was to be placed on the left side where complainant has her table to allegedly correct the "mismatch" and that it is necessary that offerings and prayers have to be made and said for about a month to correct the alleged "jinx." Respondent Xu instructed complainant not to report to the office for a month with assurance of continued and regular salary. She was ordered not to seek employment elsewhere and was told to come back on the 10[th] of September 2004.[27]

Although she was a little confused, Loreta did as she was instructed and did not report for work for a month. She returned to work on September 10, 2004. This is how Loreta recounted the events of that day:

> On September 10, 2004, in the morning, complainant reported to the office of respondents. As usual, she punched-in her time card and signed in the logbook of the security guard. When she entered the administrative office, some of its employees immediately contacted respondent Xu. Respondent Xu then contacted complainant thru her mobile phone and told her to leave the administrative office immediately and instead to wait for him in the dining area.
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> Complainant waited for respondent Xu in the dining area. After waiting for about two (2) hours, respondent Xu was nowhere. Instead, it was Jiang Xue Qin a.k.a Annie Co, the Chinese wife of respondent Xu, who arrived and after a short conversation between them, the former frankly told complainant that she has to resign allegedly she is a mismatch to respondent Xu according to the Feng Shui master and therefore she does not fit to work (sic) with the respondents. Surprised and shocked, complainant demanded of Jiang Xue Qin to issue a letter of termination if it were the reason therefor.
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> Instead of a termination letter issued, Jiang Xue Qin insisted for the complainant's resignation. But when complainant stood her ground, Jian Xue Qin shouted invectives at her and told to leave the office immediately.
>
> Respondent Xu did not show up but talked to the complainant over the mobile phone and convinced her likewise to resign from the company since there is no way to retain her because her aura unbalanced the area of employment according to the Feng Shui, the Chinese spiritual art of placement. Hearing this from no lees than respondent Xu, complainant left the office and went straight to this Office and filed the present case on September 10, 2004. xxx[28]

Loreta also alleged that in the afternoon of that day, September 10, 2004, a notice was posted on the Wensha bulletin board that reads:

> TO ALL EMPLOYEES OF WENSHA SPA CENTER
>
> WE WOULD LIKE TO INFORM YOU THAT MS. LORIE TSE YUNG, FORMER ADMINISTRATIVE OFFICER OF WENSHA SPA CENTER IS NO LONGER CONNECTED TO THIS COMPANY STARTING TODAY SEPTEMBER 10, 2004.
>
> ANY TRANSACTION MADE BY HER IS NO LONGER A LIABILITY OF THE COMPANY.
>
> (SGD.) THE MANAGEMENT [Italics were in red letters.][29]

The Court finds Loreta's complaint credible. There is consistency in her pleadings and evidence. In contrast, Wensha's pleadings and evidence, taken as a whole, suffer from inconsistency. Moreover, the affidavits of the employees only pertain to petty matters that, to the Court's mind, are not sufficient to support Wensha's alleged loss of trust and confidence. To be a valid cause for termination of employment, the act or acts constituting breach of trust must have been done intentionally, knowingly, and purposely; and they must be founded on clearly established facts.


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The CA decision is supported by evidence and logically flows from a review of the records. Loreta's narration of the events surrounding her termination from employment was simple and straightforward. Her claims are more credible than the affidavits which were clearly prepared as an afterthought.

More importantly, the records are bereft of evidence that Loreta was duly informed of the charges against her and that she was given the opportunity to respond to those charges prior to her dismissal. If there were indeed charges against Loreta that Wensha had to investigate, then it should have informed her of those charges and required her to explain her side. Wensha should also have kept records of the investigation conducted while Loreta was on leave. The law requires that two notices be given to an employee prior to a valid termination: the first notice is to inform the employee of the charges against her with a warning that she may be terminated from her employment and giving her reasonable opportunity within which to explain her side, and the second notice is the notice to the employee that upon due consideration of all the circumstances, she is being terminated from her employment.[30] This is a requirement of due process and clearly, Loreta did not receive any of those required notices.

We are in accord with the pronouncement of the CA that the reinstatement of Loreta to her former position is no longer feasible in the light of the strained relations between the parties. Reinstatement, under the circumstances, would no longer be practical as it would not be in the interest of both parties. Under the law and jurisprudence, an illegally dismissed employee is entitled to two reliefs - backwages and reinstatement, which are separate and distinct. If reinstatement would only exacerbate the tension and further ruin the relations of the employer and the employee, or if their relationship has been unduly strained due to irreconcilable differences, particularly where the illegally dismissed employee held a managerial or key position in the company, it would be prudent to order payment of separation pay instead of reinstatement.[31] In the case of Golden Ace Builders v. Talde,[32] We wrote:

> Under the doctrine of strained relations, the payment of separation pay has been considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On the one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other, the payment releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust.

In the case at bench, the CA, upon its own assessment, pronounced that the relations between petitioners and the respondent have become strained because of her dismissal anchored on dubious charges. The respondent has not contested the finding. As she is not insisting on being reinstated, she should be paid separation pay equivalent to one (1) month salary for every year of service.[33] The CA, however, failed to decree such award in the dispositive portion. This should be rectified.

Nevertheless, the Court finds merit in the argument of petitioner Xu that the CA erred in ruling that he is solidarily liable with Wensha.

Elementary is the rule that a corporation is invested by law with a personality separate and distinct from those of the persons composing it and from that of any other legal entity to which it may be related. "Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality."[34]

In labor cases, corporate directors and officers may be held solidarily liable with the corporation for the termination of employment only if done with malice or in bad faith.[35] Bad faith does not connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of a known duty through some motive or interest or ill will; it partakes of the nature of fraud.[36]

In the subject decision, the CA concluded that petitioner Xu and Wensha are jointly and severally liable to

Loreta.[37] We have read the decision in its entirety but simply failed to come across any finding of bad faith or malice on the part of Xu. There is, therefore, no justification for such a ruling. To sustain such a finding, there should be an evidence on record that an officer or director acted maliciously or in bad faith in terminating the services of an employee.[38] Moreover, the finding or indication that the dismissal was effected with malice or bad faith should be stated in the decision itself.[39]

WHEREFORE, the petition is PARTIALLY GRANTED. The decretal portion of the May 28, 2008 Decision of the Court of Appeals, in CA-G.R. SP No. 98855, is hereby MODIFIED to read as follows:

> WHEREFORE, the petition is GRANTED. Wensha Spa Center, Inc. is hereby ordered to pay Loreta T. Yung her full backwages, other privileges, and benefits, or their monetary equivalent, and separation pay reckoned from the date of her dismissal, September 1, 2004, up to the finality of this decision, plus damages in the amounts of Fifty Thousand (P50,000.00) Pesos, as moral damages; Twenty Five Thousand (P25,000.00) Pesos as exemplary damages; and Twenty Thousand (P20,000.00) Pesos, as attorney's fees. No costs.

**SO ORDERED.**

Carpio, (Chairperson), Nachura, Peralta, and Abad, JJ., concur.

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[1] Rollo, pp. 47-63. Penned by Associate Justice Normandie B. Pizarro with the concurrence of Associate Justice Josefina Guevara-Salonga and Associate Justice Magdangal M. de Leon.

[2] Id. at 64-65.

[3] Id. at 109, Labor Arbiter's Decision.

[4] Id. at 70-79.

[5] Id. at 108.

[6] Id. at 81-82, respondent's Position Paper.

[7] Id. at 107-121.

[8] Id. at 117.

[9] Id. at 137-143. Penned by Commissioner Gregorio O. Bilog, III and concurred in by Commissioner Tito F. Genilo; Presiding Commissioner Lourdes C. Javier was on leave.

[10] Id. at 54-60.

[11] Id. at 62.

[12] Id. at 19-20.

[13] Solid Development Corporation Workers Association [SDCWA-UWP] v. Solid Development Corporation, G.R. No. 165995, August 14, 2007, 530 SCRA 132.

[14] National Bookstore, Inc. v. Court of Appeals, 428 Phil. 235 (2002).

[15] Rollo, p. 80.

[16] Id. at 81.

[17] Id. at 82-85.


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[18] Id. at 90-92.

[19] Garcia v. National Labor Relations Commission, 351 Phil. 960 (1998).

[20] Rollo, p. 117.

[21] Royal Crown Internationale v. National Labor Relations Commission, G.R. No. 78085, October 16, 1989, 178 SCRA 569.

[22] Philippine Long Distance Telephone Company, Inc. v. Tiamson, G.R. Nos. 164684-85, November 11, 2005, 474 SCRA 761.

[23] Rollo, p. 141, NLRC Resolution dated December 29, 2006.

[24] Id. at 93-94.

[25] Id. at 98-104.

[26] Id. at 81.

[27] Id. at 72.

[28] Id. at 73.

[29] Id. at 73-74.

[30] Book V, Rule XXIII of the Omnibus Rules Implementing the Labor Code.

[31] Quijano v. Mercury Drug Corporation, 354 Phil. 112 (1998).

[32] G. R. No. 187200, May 5, 2010.

[33] Golden Ace Builders v. Talde, supra note 32.

[34] "G" Holdings, Inc. v. National Mines and Allied Workers Union Local 103 (NAMAWU), G.R. No. 160236, October 16, 2009, 604 SCRA 73, 114 and Elcee Farms v. NLRC, G.R. No. 126428, January 25, 2007, 512 SCRA 602, 616-617.

[35] Petron Corporation v. NLRC, G. R. No. 154532, October 27, 2006, 505 SCRA 596.

[36] Elcee Farms v. NLRC, supra note 34.

[37] Rollo, p. 62.

[38] M+W Zander Philippines, Inc. and Rolf Wiltschek v. Trinidad Enriquez, G.R. No. 169173, June 5, 2009, 588 SCRA 590.

[39] See Alba v. Yupangco, G. R. No. 188233, June 29, 2010.


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