

**TEAM PACIFIC CORPORATION, FEDERICO M. FERNANDEZ, AND
AURORA Q. GARCIA, PETITIONERS, VS. LAYLA M. PARENTE,
RESPONDENT.**

G.R. No. 206789. July 15, 2020

Ponente: LEONEN, J.

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LEONEN, J.:

All the requisites for a valid retrenchment must be present in order for a dismissal to be lawful. The employer must not only show that it incurred substantial and serious business losses, but must also prove that the retrenchment was done in good faith and the retrenched employees were selected through fair and reasonable criteria.[1]

This Court resolves a Petition for Review on Certiorari[2] assailing the Decision[3] and Resolution[4] of the Court of Appeals, which reversed the National Labor Relations Commission's and Labor Arbiter's rulings and found that Layla M. Parente (Parente) was illegally dismissed by Team Pacific Corporation (Team Pacific).

In February 1999, Team Pacific hired Parente as a production operator in its Hermetic Department.[5] Later, Parente was promoted to being a quality assurance calibration technician.[6]

On April 23, 2009, Parente filed for and commenced her 60-day maternity leave, which would end on June 21, 2009. She gave birth on April 27, 2009.[7]

On May 8, 2009, while on her maternity leave, Parente was asked to see Team Pacific's human resource and administrative manager, Aurora Q. Garcia (Garcia). Parente protested, saying that she was still on maternity leave and experiencing post-natal weakness, dizziness, and shakiness. However, when she was told that there were reports circulating within the plant that she would be terminated from employment, Parente acceded.[8]

During their meeting on May 21, 2009, Garcia handed Parente a letter and informed her of her dismissal, effective on June 22, 2009, the day after the end of her maternity leave. She was told that she would receive her separation pay on the same date. Parente was about to ask why she was being dismissed, but Garcia interrupted her and asked her to just affix her name and signature on the space provided in the letter.[9]

The Termination Letter dated May 21, 2009 states:

In view of the global economic crisis that started last year, management implemented survival measures such as energy saving program, forced leaves, and a compressed workweek arrangement. Starting December 2008, there has been a 30% reduction in business volume resulting to substantial losses which cannot be allowed to continue as it threatens the organization's survival.

To minimize continuing losses and to ensure survival of the company, management has no alternative but to implement a retrenchment program. As such, Management, in accordance with the 30-day notice required by law, is constrained to advise that your services will be terminated effective close of business hours of June 22, 2009.

You shall be paid separation pay equivalent of not just ½ month's pay as required by law, but one month's pay for every year of service, plus payment of earned but unpaid vacation and sick leave credits and pro-rated 13[th] Month Pay.

You will receive your separation pay and other earned benefits as above-mentioned on June 22, 2009 upon execution of the necessary quit claims.

We would like to thank you for your services and we wish you the best in your future endeavors.[10]

Parente then went to the Department of Labor and Employment, where she was advised to first accept her separation pay before filing a complaint.[11] Thus, on June 8, 2009, after she had been required to process her clearance and sign several documents, Parente received her separation pay.[12]

On July 9, 2009, Parente lodged her Complaint for illegal dismissal.[13]

A copy of the Complaint and summons were served on Team Pacific, Garcia, and the company president,[14] Federico M. Fernandez (Fernandez). These were returned to the Labor Arbitration Office with the notation "Refused to Receive." [15]

Thus, a Notice of Hearing was sent to Team Pacific, Fernandez, and Garcia, informing them of the conference on September 8, 2009. None of them attended the hearing. The Labor Arbiter noted further that they did not even verify the charges against them and tried to hold the Labor Arbitration Office accountable for their failure to attend.[16] Thus, the Labor Arbiter rendered a decision only based on Parente's evidence.[17]

In a January 29, 2010 Decision,[18] the Labor Arbiter dismissed Parente's Complaint. It found her dismissal valid,[19] noting that the Termination Letter clearly stated that the retrenchment was to prevent losses amid the global economic crisis,[20] which had led to establishment closures and layoffs.[21]

The Labor Arbiter ruled that Team Pacific complied with the Labor Code's requirements for retrenchment, as there was no showing of bad faith or malice, and Parente was duly notified one month prior to the date of her dismissal.[22] Parente was also held to be bound by the clearance certificate she signed and the separation pay she received, which was more than the amount required under the Labor Code.[23]

In its May 28, 2010 Resolution,[24] the National Labor Relations Commission affirmed the Labor Arbiter's Decision. It found that Parente's documents contradicted her claim of illegal dismissal.[25] It ruled that Parente's acts of receiving the notice of termination, processing her clearance, accepting her separation pay, and receiving her employment certificate were conclusive on her. It ruled that Parente had been estopped from suing Team Pacific, which believed that she voluntarily accepted her dismissal.[26]

On July 30, 2010, the National Labor Relations Commission also denied Parente's Motion for Reconsideration. Thus, Parente filed a Petition for Certiorari before the Court of Appeals.[27]

In its October 30, 2012 Decision,[28] the Court of Appeals reversed the ruling of the National Labor Relations Commission. It held that Parente was illegally dismissed.[29]

The Court of Appeals noted that Team Pacific did not submit to the Labor Arbiter's jurisdiction when it refused to receive summons and file its position paper and other documents. Thus, no evidence was found to support Team Pacific's claim of business losses to justify the dismissal.[30]

Moreover, the Court of Appeals held that Parente was not estopped from questioning her dismissal just because she accepted her separation pay.[31] It ruled that waivers and quitclaims are frowned upon, especially as to employees who may have been pressured by employers seeking to evade legal responsibilities.[32] It also noted

how Parente was in no position to resist the money offered as she had just given birth, as well as the Department of Labor and Employment's advice that she accept her separation pay before filing a complaint.[33] It found that by proceeding with the illegal dismissal case, Parente showed that she did not sleep on her rights.[34] The Court of Appeals disposed:

WHEREFORE, premises considered, the Resolution dated May 28, 2010 issued by the National Labor Relations Commission as well as the Decision dated January 29, 2010 rendered by the Labor Arbiter are hereby REVERSED and SET ASIDE. In lieu thereof, a judgment adjudging private respondents liable for illegally dismissing Layla M. Parente as follows:

1. Ordering private respondents to REINSTATE Parente to her former position without loss of seniority rights and other privileges; and
2. Holding private respondents JOINTLY and SEVERALLY liable to PAY Parente full backwages, inclusive of allowances, and other benefits or their monetary equivalent to be computed and determined by the Labor Arbiter from the time her compensation was withheld from her up to the time of her actual reinstatement.

Let a copy of this Decision be furnished the Labor Arbiter who is directed to conduct with dispatch the computation and determination of the backwages, allowances and other benefits which are due to Parente.

SO ORDERED.[35]

Team Pacific, Fernandez, and Garcia moved for reconsideration, but the Court of Appeals denied this in its March 27, 2013 Resolution.[36] Thus, they filed this Petition[37] against Parente.

Maintaining that the dismissal was valid, petitioners assert that the labor tribunals' findings were substantiated.[38] They claim that respondent herself made admissions and submitted documents that estopped her from suing the company.[39] She allegedly admitted that the company had religiously observed the required process.[40] They add that she even obtained her clearances, received her separation pay, and executed a waiver and quitclaim without being forced to do so.[41] They also note that respondent is not a feeble-minded, gullible person who could be put at a disadvantage.[42] They insist that respondent voluntarily accepted her dismissal.[43]

Petitioners further argue that respondent's dismissal was justified.[44] They maintain that the requirements of procedural and substantive due process were observed.[45]

Petitioners further assert that the company had been suffering from severe financial losses that it had to retrench employees to stay afloat.[46] The company's Audited Financial Statements from 2006 to 2009 allegedly show net losses and aggregate deficits amounting to millions of pesos.[47] They claim that its financial condition had been so distressed that it had to file a Petition for Corporate Rehabilitation.[48] Petitioners maintain that the retrenchment was done in good faith and as a last option, after trying various cost-cutting measures, including revised work schedules, forced leaves, and compressed workweek schemes, among others.[49]

Petitioners also claim that they served the written notices on the Department of Labor and Employment and all the affected employees one month prior to the retrenchment's effectivity, and paid their separation pay.[50]

Petitioners maintain that the retrenchment was within the company's management prerogative, and the wisdom and soundness of its authority may not be questioned.[51]

Moreover, petitioners contend that petitioners Garcia and Fernandez should not have been made solidarity liable with petitioner Team Pacific as they showed no bad faith. Likewise, they insist that the company has a separate personality from its directors, officers, and stockholders.[52]

In her Comment,[53] respondent maintains that she was illegally dismissed. She claims that petitioners failed to

show substantial evidence to support the validity of the company's retrenchment program, including its compliance with the 30-day prior notice rule with the Department of Labor and Employment.[54]

Respondent points out that since petitioners did not submit to the Labor Arbiter's jurisdiction, and did not file any pleadings or evidence to support their claims, they waived their right to prove their case.[55] She contends that petitioners only presented documents before the Court of Appeals, violating due process.[56] She also argues that only questions of law may be raised in a petition for review on certiorari.[57]

Respondent further asserts that it is inequitable to bar her by estoppel. She points out that employees are usually in no position to resist money, especially in her case where she found herself out of work just after giving birth. She asserts that her filing of complaint proves that she did not waive her rights to question her dismissal.[58]

Respondent also maintains that her dismissal was in bad faith. She notes how this was oppressively carried out while she was still on maternity leave, made effective on the date she was supposed to return to work.[59] Thus, she asserts that petitioners Fernandez and Garcia should be solidarity liable as her dismissal would not have been carried out without their participation.[60]

In their Reply,[61] petitioners argue that the submission of documents on appeal should be allowed to afford this Court the fullest opportunity to determine the truth behind the legal and factual issues raised.[62] They also point out that this Court reviews factual findings when they are conflicting or when the Court of Appeals manifestly overlooked relevant facts, which if properly considered, would lead to a different conclusion.[63]

In any case, petitioners maintain that the labor tribunals' findings that the company complied with the requirements for retrenchment.[64]

Petitioners add that they have submitted the following documents to this Court: (a) Audited Financial Statements for the years 2006 to 2009, showing millions in losses; (b) its April 29, 2008 Letter advising the Department of Labor and Employment of the compressed work week arrangement it would be implementing; (c) its Notice of Retrenchment dated May 8, 2009; (d) its duly accomplished Establishment Employment Report; and (e) its list of affected workers by displacements.[65]

Petitioners also point out that the Regional Trial Court of Pasig City had granted the company's Petition for Corporate Rehabilitation, stating that the financial distress was not of its own doing and no clear evidence of mismanagement or any attempt to escape its inherited liabilities was shown.[66]

Finally, petitioners again insist that petitioners Garcia and Fernando should not be made solidarity liable with petitioner Team Pacific.[67]

The issues in this case are as follows:

First, whether or not petitioners Team Pacific Corporation, Federico M. Fernandez, and Aurora Q. Garcia may submit new documents and evidence in a Petition for Certiorari in the Court of Appeals;

Second, whether or not petitioners complied with the standards and requirements for a valid retrenchment;

Third, whether or not respondent is estopped by her acceptance of separation pay and execution of a waiver and quitclaim; and

Finally, whether or not petitioners Garcia and Fernando should be solidarity liable with petitioner Team Pacific.

This Court denies the Petition.

I

Respondent alleges that petitioners had waived their right to present evidence, and thus the documents it presented to the Court of Appeals showing its business losses should not be considered for being abusive of the right to due process.[68]

The Court of Appeals is not precluded from considering the new evidence presented by petitioner Team Pacific. Section 9 of Batas Pambansa Blg. 129, as amended by Republic Act No. 7902,[69] states:

SECTION 9. Jurisdiction. — The Court of Appeals shall exercise:

....

The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings. Trials or hearings in the Court of Appeals must be continuous and must be completed within three (3) months, unless extended by the Chief Justice. (Emphasis supplied)

In *Spouses Marcelo v. LBC Bank*,[70] this Court held that the Court of Appeals has the authority to consider new evidence and perform what is necessary to resolve factual issues:

Spouses Marcelo fault the Court of Appeals for admitting and considering the Affidavit of Ma. Tara O. Aznar, dated 10 July 2006, and the Secretary's Certificates dated 27 June 2006 and 1 July 2005 in resolving LBC Bank's motion for reconsideration of the Court of Appeals' 16 June 2006 Decision. Spouses Marcelo contend that in a special civil action for certiorari, the Court of Appeals cannot admit new evidence. Spouses Marcelo further submit that the sole office of the writ of certiorari is the correction of errors of jurisdiction, and thus, the Court of Appeals erred in admitting the "additional evidence."

The Court is not convinced.

In *Maralit v. Philippine National Bank*, where petitioner Maralit questioned the appellate court's admission and appreciation of a belatedly submitted documentary evidence, the Court held that "[i]n a special civil action for certiorari, the Court of Appeals has ample authority to receive new evidence and perform any act necessary to resolve factual issues." . . .

....

Clearly, the Court of Appeals did not err in admitting the evidence showing LBC Bank's express ratification of Milan's consolidation of the title over the subject property. Further, the Court of Appeals did not err in admitting such evidence in resolving LBC Bank's motion for reconsideration in a special civil action for certiorari. To rule otherwise will certainly defeat the ends of substantial justice.[71] (Citations omitted)

Thus, the Court of Appeals may consider the new evidence presented by a party in a petition for certiorari.

However, here, the Court of Appeals ruled that petitioners waived their right to present evidence, and thus, reversed the labor tribunals' rulings and found that Parente was illegally dismissed.[72] Hence, petitioners came to this Court through a Petition for Review under Rule 45 of the Rules of Court.

It is well established that a Rule 45 petition should raise only questions of law. This Court is not a trier of facts and it is not its function to weigh the evidence all over again. In *Fuji Television Network, Inc. v. Espiritu*: [73]

When a decision of the Court of Appeals under a Rule 65 petition is brought to this court by way of a petition for review under Rule 45, only questions of law may be decided upon. As held in *Meralco Industrial v. National Labor Relations Commission*:

This Court is not a trier of facts. Well-settled is the rule that the jurisdiction of this Court in a petition for review on certiorari under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are completely devoid of support from the evidence on record, or the assailed judgment is based on a gross misapprehension of facts. Besides, factual findings of quasi-judicial agencies like the NLRC, when affirmed by the Court of Appeals, are conclusive upon the parties and binding on this Court.

Career Philippines v. Serna, citing *Montoya v. Trammed*, is instructive on the parameters of judicial review under Rule 45:

As a rule, only questions of law may be raised in a Rule 45 petition. In one case, we discussed the particular parameters of a Rule 45 appeal from the CA's Rule 65 decision on a labor case, as follows:

In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for certiorari it ruled upon was presented to it; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it.[74] (Emphasis in the original, citations omitted)

Thus, when this Court reviews a decision of the Court of Appeals on a Rule 65 petition, what it determines is whether the Court of Appeals correctly ruled on whether grave abuse of discretion exists.

In this case, we find that the Court of Appeals correctly ruled that the National Labor Relations Commission and the Labor Arbiter gravely abused their discretion in finding that the retrenchment was valid.

II

Under Article 298 of the Labor Code, retrenchment is one of the authorized causes to dismiss an employee. It involves a reduction in the workforce, resorted to when the employer encounters business reverses, losses, or economic difficulties, such as "recessions, industrial depressions, or seasonal fluctuations." [75] This is usually done as a last recourse when other methods are found inadequate. [76]

A valid retrenchment may only be exercised after the employer has proved compliance with the procedural and substantive requisites of valid retrenchment. Absent any of these, then the dismissal is illegal. [77]

The procedural requisites for a valid retrenchment are provided for in the Labor Code:

ARTICLE 298. [283] Closure of Establishment and Reduction of Personnel. — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. . . . In case of 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. (Emphasis supplied)

Thus, the employer must serve a written notice on the employee and the Department of Labor and Employment one month before the date of the dismissal, and pay the required amount of separation pay.

Meanwhile, in *La Consolacion College of Manila v. Pascua*,^[78] this Court enumerated three substantive requisites for a valid retrenchment:

While a legitimate business option, retrenchment may only be exercised in compliance with substantive and procedural requisites.

As to the substantive requisites, an employer must first show "that the 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." Second, an employer must also show "that [it] 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." Third, an employer must demonstrate "that [it] used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status (i.e., whether they are temporary, casual, regular or managerial employees), efficiency, seniority, physical fitness, age, and financial hardship for certain workers."^[79] (Emphasis supplied, citations omitted)

Thus, for a valid retrenchment, the employer must show that: (a) retrenchment was a necessary measure to prevent substantial and serious business losses; (b) it was done in good faith and not to defeat employees' rights; and (c) the employer was fair and reasonable in selecting the employees who will be retrenched.

For the first requirement, the employer must prove the "existence or imminence of substantial losses" that would warrant the retrenchment.^[80] In *Lopez Sugar Corporation v. Federation of Free Workers*:^[81]

Firstly, the losses expected should be substantial and not merely de minimis in extent. If the loss purportedly sought to be forestalled by retrenchment is clearly shown to be insubstantial and inconsequential in character, the bonafide nature of the retrenchment would appear to be seriously in question. Secondly, the substantial loss apprehended must be reasonably imminent, as such imminence can be perceived objectively and in good faith by the employer. There should, in other words, be a certain degree of urgency for the retrenchment, which is after all a drastic recourse with serious consequences for the livelihood of the employees retired or otherwise laid-off. Because of the consequential nature of retrenchment, it must, thirdly, be reasonably necessary and likely to effectively prevent the expected losses. The employer should have taken other measures prior or parallel to retrenchment to forestall losses, i.e., cut other costs than labor costs. An employer who, for instance, lays off substantial numbers of workers while continuing to dispense fat executive bonuses and perquisites or so-called "golden parachutes," can scarcely claim to be retrenching in good faith to avoid losses. To impart operational meaning to the constitutional policy of providing "full protection" to labor, the employer's prerogative to bring down labor costs by retrenching must be exercised essentially as a measure of last resort, after less drastic means — e.g., reduction of both management and rank-and-file bonuses and salaries, going on reduced time, improving manufacturing efficiencies, trimming of marketing and advertising costs, etc. — have been tried and found wanting.

Lastly, but certainly not the least important, alleged losses if already realized, and the expected imminent losses sought to be forestalled, must be proved by sufficient and convincing evidence. The reason for requiring this quantum of proof is readily apparent: any less exacting standard of proof would render too easy the abuse of this ground for termination of services of employees.^[82] (Emphasis supplied)

In this case, the Labor Arbiter based its ruling only on the documents respondents submitted, after petitioners had refused to receive summons, attend hearings, or file pleadings.^[83] Nonetheless, the Labor Arbiter found that the retrenchment was valid because the Termination Letter, citing the global economic crisis as its reason, was served one month prior to respondent's dismissal.^[84] The Labor Arbiter also declared that respondent was bound by her acceptance of separation pay and her execution of a waiver and quitclaim.^[85]

The National Labor Relations Commission merely affirmed this ruling, saying that respondent was estopped from

questioning her dismissal.[86]

The labor tribunals' factual findings are not sufficient to rule that the retrenchment is valid. Petitioners did not prove in any way that the company incurred or is about to incur substantial business losses that would warrant retrenchment.

Independently audited financial statements are of high evidentiary value in terms of proving the employer's serious business losses. In *Manatad v. Philippine Telegraph and Telephone Corporation*:[87]

The financial statements audited by independent external auditors constitute the normal method of proving the profit and loss performance of a company as enunciated in *San Miguel Corporation v. Abella*:

Normally, the condition of business losses is shown by audited financial documents like yearly balance sheets, profit and loss statements and annual income tax returns. The financial statements must be prepared and signed by independent auditors failing which they can be assailed as self-serving documents.

No evidence can best attest to a company's economic status other than its financial statement. We defined the evidentiary weight accorded to audited financial statements in *Asian Alcohol Corporation v. National Labor Relations Commission*:

The condition of business losses is normally shown by audited financial documents like yearly balance sheets and profit and loss statements as well as annual income tax returns. It is our ruling that financial statements must be prepared and signed by independent auditors. Unless duly audited, they can be assailed as self-serving documents. But it is not enough that only the financial statements for the year during which retrenchment was undertaken, are presented in evidence. For it may happen that while the company has indeed been losing, its losses may be on a downward trend, indicating that business is picking up and retrenchment, being a drastic move, should no longer be resorted to. Thus, the failure of the employer to show its income or loss for the immediately preceding year or to prove that it expected no abatement of such losses in the coming years, may bespeak the weakness of its cause. It is necessary that the employer also show that its losses increased through a period of time and that the condition of the company is not likely to improve in the near future.

....

That the financial statements are audited by independent auditors safeguards the same from the manipulation of the figures therein to suit the company's needs. The auditing of financial reports by independent external auditors are strictly governed by national and international standards and regulations for the accounting profession.

...

In addition, the fact that the financial statements were audited by independent auditors settles any doubt on the authenticity of these documents for lack of signature of the person who prepared it. As reported by *SGV & Co.*, the financial statements presented fairly, in all material aspects, the financial position of the respondent as of 30 June 1998 and 1997, and the results of its operations and its cash flows for the years ended, in conformity with the generally accepted accounting principles.[88](Citations omitted)

This Court has likewise ruled that presenting the audited financial statement for the year of retrenchment may not be sufficient. The employer must prove that the losses increased or have been increasing for a period of time and the company's condition will not improve in the near future:

Jurisprudence requires that the necessity of retrenchment to stave off genuine and significant business losses or reverses be demonstrated by an employer's independently audited financial statements. Documents that have not been the subject of an independent audit may very well be self-serving. Moreover, it is not enough that it presents its audited financial statement for the year that retrenchment was undertaken for even as it may be

incurring losses for that year, its overall financial status may already be improving. Thus, it must "also show that its losses increased through a period of time and that the condition of the company is not likely to improve in the near future." [89]

There may be instances when presenting audited financial statements is not necessary, [90] but this does not dispense with the employer's burden of providing a basis for alleging that it has incurred serious business losses.

Here, the Labor Arbiter did not consider any audited financial statement or any other evidence in determining whether there were business losses. He only referred to the Termination Letter, as if its bare allegations are enough to be given full faith and credence. He merely assumed that the global economic crisis affected petitioners, and thus concluded that respondent was rightfully dismissed.

Mere allegations of a global economic crisis are not sufficient. In *Me-Shurn Corporation v. Me-Shurn Workers Union-FSM*: [91]

The reason invoked by petitioners to justify the cessation of corporate operations was alleged business losses. Yet, other than generally referring to the financial crisis in 1998 and to their supposed difficulty in obtaining an export quota, interestingly, they never presented any report on the financial operations of the corporation during the period before its shutdown. Neither did they submit any credible evidence to substantiate their allegation of business losses.

Basic is the rule in termination cases that the employer bears the burden of showing that the dismissal was for a just or authorized cause. Otherwise, the dismissal is deemed unjustified. Apropos this responsibility, petitioner corporation should have presented clear and convincing evidence of imminent economic or business reversals as a form of affirmative defense in the proceedings before the labor arbiter or, under justifiable circumstances, even on appeal with the NLRC.

However, as previously stated, in all the proceedings before the two quasi-judicial bodies and even before the CA, no evidence was submitted to show the corporation's alleged business losses. It is only now that petitioners have belatedly submitted the corporation's income tax returns from 1996 to 1999 as proof of alleged continued losses during those years.

Again, elementary is the principle barring a party from introducing fresh defenses and facts at the appellate stage. This Court has ruled that matters regarding the financial condition of a company — those that justify the closing of its business and show the losses in its operations — are questions of fact that must be proven below. Petitioners must bear the consequence of their neglect. Indeed, their unexplained failure to present convincing evidence of losses at the early stages of the case clearly belies the credibility of their present claim. [92] (Citations omitted)

Furthermore, in the proceedings before the Labor Arbiter and the National Labor Relations Commission, petitioners submitted no evidence that the retrenchment notice was served on the Department of Labor and Employment one month prior to the retrenchment. Thus, the labor tribunals' findings were unsupported by substantial evidence. They failed to consider the law's requirements in determining whether the retrenchment was valid.

Even if this Court were to consider the evidence now presented by petitioners, we still find it insufficient to render the retrenchment valid.

Petitioners submitted the following documents to prove it incurred substantial and serious business losses:

(a) Audited Financial Statements for the years 2006 [93] to 2009, [94] showing the company's net losses and deficits amounting to millions; [95]

- (b) Letter dated April 29, 2008 advising the Department of Labor and Employment of the compressed work week arrangement it will be implementing;[96]
- (c) Notice of Retrenchment dated May 8, 2009, served on the Department of Labor and Employment;[97]
- (d) Duly accomplished Establishment Employment Report received by the Department of Labor and Employment on May 8, 2009;[98]
- (e) List of Affected Workers by Displacements received by the Department of Labor and Employment on May 8, 2009;[99] and
- (f) The Decision granting petitioners' Petition for Corporate Rehabilitation.[100]

While these documents may suffice to show the company's business losses and compliance with notice requirements, petitioners still failed to show that the employees chosen for retrenchment were selected through fair and reasonable criteria. In *La Consolacion College of Manila*: [101]

As early as 1987, this Court in *Asia World Publishing House, Inc. v. Ople* considered seniority, along with efficiency rating and less-preferred status, as a crucial facet of a fair and reasonable criterion for effecting retrenchment. *Emcor, Inc. v. Sienes* was categorical, a "[r]etrenchment scheme without taking seniority into account rendered the retrenchment invalid":

Records do not show any criterion adopted or used by petitioner in dismissing respondent. Respondent was terminated without considering her seniority. Retrenchment scheme without taking seniority into account rendered the retrenchment invalid.

...

In *Philippine Tuberculosis Society, Inc. v. National Labor Union*, this Court quoted with approval the following discussion by the National Labor Relations Commission:

We noted with concern that the criteria used by the Society failed to consider the seniority factor in choosing those to be retrenched, a failure which, to our mind, should invalidate the retrenchment, as the omission immediately makes the selection process unfair and unreasonable. . . . In *Villena vs. NLRC*, 193 SCRA 686. February 7, 1991, the Supreme Court considered the seniority factor an important ingredient for the validity of a retrenchment program. According to the Court, the following legal procedure should be observed for a retrenchment to be valid: (a) one-month prior notice to the employee as prescribed by Article 282 of the Labor Code; and b) use of a fair and reasonable criteria in carrying out the retrenchment program, such as 1) less preferred status (as in the case of temporary employees), 2) efficiency rating, 3) seniority and 4) proof of claimed financial losses.

....

Indeed, it may have made mathematical sense to dismiss the highest paid employee first. However, appraising the propriety of retrenchment is not merely a matter of enabling an employer to augment financial prospects. It is as much a matter of giving employees their just due. Employees who have earned their keep by demonstrating exemplary performance and securing roles in their respective organizations cannot be summarily disregarded by nakedly pecuniary considerations. The Labor Code's permissiveness towards retrenchments aims to strike a balance between legitimate management prerogatives and the demands of social justice. Concern for the employer cannot mean a disregard for employees who have shown not only their capacity, but even loyalty. *La Consolacion's* pressing financial condition may invite commiseration, but its flawed standard for retrenchment constrains this Court to maintain that respondent was illegally dismissed.[102] (Emphasis supplied)

As stated, the use of fair and reasonable criteria is necessary in a retrenchment program. Failure to do so affects the employees' substantive rights to get what is their due.

Petitioners failed to prove that it used fair and reasonable criteria in carrying out the retrenchment program. They likewise failed to explain why it included respondent, who had already been employed for 10 years. Clearly, petitioners did not comply with the requirements of retrenchment under law and jurisprudence.

III

This Court likewise holds that respondent was not barred by estoppel.

Neither accepting separation pay nor signing a waiver and quitclaim bars the employee from contesting the legality of the dismissal. Such acts are generally taken with a grain of salt, considering that employees are usually at an economic disadvantage and are often left with no choice, since they are suddenly faced with the pressure to meet financial burdens. In *American Home Assurance Company v. National Labor Relations Commission*:^[103]

The fact that private respondent signed a document of waiver and quitclaim does not bar him from pursuing the P50,000.00 bonus under the SERP. His receipt of the separation pay and the execution of the release documents cannot militate against him. That acceptance of separation pay does not amount to estoppel, and the satisfaction receipt does not result in a waiver. The law does not consider as valid any agreement to receive less compensation than what a worker is entitled to recover nor prevent him from demanding benefits to which he is entitled. Quitclaims executed by employees are thus commonly frowned upon as contrary to public policy and ineffective to bar claims for the full measure of the workers' legal rights, considering the economic disadvantage of the employee and the inevitable pressure upon him by financial necessity.^[104] (Emphasis supplied, citation omitted)

Filing a complaint for illegal dismissal likewise negates any claim that the dismissal was voluntarily accepted. In *Molave Tours Corporation v. National Labor Relations Commission*:^[105]

The fact that private respondent immediately filed a complaint for illegal dismissal against petitioner and repudiated his alleged resignation completely negated petitioner's claim that respondent Bolocon voluntarily resigned. By vigorously pursuing the litigation of his action against petitioner, private respondent clearly manifested that he has no intention of relinquishing his employment, which act is wholly incompatible to petitioner's assertion that he voluntarily resigned.^[106] (Emphasis supplied)

In this case, the Department of Labor and Employment had advised respondent to first accept her separation pay before filing her complaint. To accept her separation pay, she had to process her clearance and sign the waivers and quitclaims. Not long after, she filed the case.

Notably, respondent was dismissed when she had just given birth. Her dismissal's effectivity was set on the date she was supposed to return from her maternity leave. She was at a clear disadvantage, having found herself without a job and a source of income right at a time when finances were crucial.

Thus, her acceptance of her separation pay and the execution of her waiver and quitclaim cannot be deemed as her waiving her right to file a complaint. She was not estopped from contesting the legality of her dismissal.

IV

Nonetheless, we find that petitioners Garcia and Fernandez should not be solidarily liable with petitioner Team Pacific Corporation.

In case of dismissals, directors and officers of corporations may only be held solidarily liable with the corporation

if they acted in bad faith or with malice. In *Mandaue Dinghow Dimsum House, Co., Inc. v. National Labor Relations Commission*:^[107]

It must be emphasized that a corporation is invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other legal entity to which it may be related. Because of this, the doctrine of piercing the veil of corporate fiction must be exercised with caution.

In *Malayang Samahan ng mga Manggagawa sa M. Greenfield v. Ramos*, this Court reiterated the rule that corporate directors and officers are solidarily liable with the corporation for the termination of employees done with malice or bad faith. It has been held that 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.^[108] (Citations omitted)

In *MAM Realty Development Corporation v. National Labor Relations Commission*:^[109]

A corporation, being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, acting as such corporate agents, are not theirs but the direct accountabilities of the corporation they represent. True, solidary liabilities may at times be incurred but only when exceptional circumstances warrant such as, generally, in the following cases:

1. When directors and trustees or, in appropriate cases, the officers of a corporation —

(a)

vote for or assent to patently unlawful acts of the corporation;

(b)

act in bad faith or with gross negligence in directing the corporate affairs;

(c)

are guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons.

2. When a director or officer has consented to the issuance of watered stock or who, having knowledge thereof, did not forthwith file with the corporate secretary his written objection thereto.

3. When the director, trustee or officer has contractually agreed or stipulated to hold himself personally and solidarily liable with the Corporation.

4. When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action.

In labor cases, for instance, the Court has held corporate directors and officers solidarily liable with the corporation for the termination of employment of employees done with malice or in bad faith.^[110] (Emphasis in the original, citations omitted)

Here, respondent's dismissal was not shown to have been done in bad faith or with malice. The documents submitted by petitioners reveal that the company may have indeed been suffering business losses. The Regional Trial Court has even granted its Petition for Corporate Rehabilitation.^[111]

While petitioners failed to show that they applied fair and reasonable criteria in selecting the employees to be entrenched, it does not mean that the dismissals were automatically done in bad faith or with malice. They may

have simply failed to strictly comply or to sufficiently prove compliance with the stringent rules for a valid retrenchment. As such, bad faith or malice must still be proved.

Respondent failed to present clear and convincing evidence that petitioners Garcia or Fernandez acted in bad faith or with malice. They did not breach any duty or were motivated by ill will. Absent proof, the corporation's separate and distinct personality must be respected.

WHEREFORE, the Petition is DENIED. The Court of Appeals' October 30, 2012 Decision and March 27, 2013 Resolution are AFFIRMED with MODIFICATION.

Respondent Layla M. Parente was illegally dismissed. Petitioner Team Pacific Corporation is ordered to REINSTATE her to her former position without loss of seniority rights and other privileges, and to PAY HER FULL BACKWAGES, inclusive of allowances and other benefits or their monetary equivalent. The Labor Arbiter is directed to compute these amounts, from the time compensation was withheld up to her actual reinstatement.

The Complaint against petitioners Federico M. Fernandez and Aurora Q. Garcia is DISMISSED.

SO ORDERED.

Gesmundo, Carandang, Zalameda, and Gaerlan, JJ., concur.

[1] La Consolacion College of Manila v. Pascua, 828 Phil. 182, 192 (2018) [Per J. Leonen, Third Division].

[2] Rollo, pp. 13-51.

[3] Id. at 54-69. The October 30, 2012 Decision in CA-G.R. SP No. 116371 was penned by Associate Justice Danton Q. Bueser, and concurred in by Associate Justices Amelita G. Tolentino and Ramon R. Garcia of the Fourth Division, Court of Appeals, Manila.

[4] Id. at 71-72. The March 27, 2013 Resolution in CA-G.R. SP No. 116371 was penned by Associate Justice Danton Q. Bueser, and concurred in by Associate Justices Amelita G. Tolentino and Ramon R. Garcia of the Fourth Division, Court of Appeals, Manila.

[5] Id. at 54.

[6] Id. at 55.

[7] Id.

[8] Id.

[9] Id. at 55-56.

[10] Id. at 131.

[11] Id. at 56.

[12] Id.

[13] Id.

[14] Id. at 183.

[15] Id. at 56-57 and 147.

[16] Id. at 57.

[17] Id. at 57-58.

[18] Id. at 147-152. The Decision was penned by Labor Arbiter Eduardo J. Carpio.

[19] Id. at 150.

[20] Id.

[21] Id. at 151.

[22] Id.

[23] Id. at 151-152.

[24] Id. at 154-160. The Resolution was penned by National Labor Relations Commissioner Pablo C. Espiritu, Jr. and concurred in by Commissioner Gregorio O. Bilog III of the National Labor Relations Commission, Quezon City, Third Division.

[25] Id. at 158.

[26] Id. at 159-160.

[27] Id. at 58-59.

[28] Id. at 68.

[29] Id. at 54-69.

[30] Id. at 63.

[31] Id. at 64.

[32] Id. at 65.

[33] Id. at 67.

[34] Id.

[35] Id. at 67-68.

[36] Id. at 71-72.

[37] Id. at 17-51.

[38] Id. at 34.

[39] Id. at 35.

[40] Id. at 37.

[41] Id.

[42] Id. at 38.

[43] Id. at 37.

[44] Id. at 38.

[45] Id. at 39.

[46] Id.

[47] Id.

[48] Id.

[49] Id. at 40.

[50] Id.

[51] Id. at 41.

[52] Id. at 42.

[53] Id. at 172-185.

[54] Id. at 174 and 179.

[55] Id. at 176-177.

[56] Id. at 177-178.

[57] Id. at 178.

[58] Id. at 180-181.

[59] Id. at 182.

[60] Id. at 183.

[61] Id. at 201-211.

[62] Id.

[63] Id. at 206.

[64] Id. at 203.

[65] Id. at 204.

[66] Id. at 205. See also rollo, pp. 97-109. Decision on Petition for Corporate Rehabilitation.

[67] Id. at 208.

[68] Id. at 178.

[69] An Act Expanding the Jurisdiction of the Court of Appeals, amending for the purpose of Section Nine of Batas Pambansa Blg. 129 as amended, known as the Judiciary Reorganization Act of 1980.

[70] 663 Phil. 67 (2011) [Per J. Carpio, Second Division].

[71] Id. at 72-73.

[72] Rollo, p. 63.

[73] 749 Phil. 388 (2014) [Per J. Leonen, Second Division].

[74] Id. at 415-416.

[75] *La Consolacion College of Manila v. Pascua*, 828 Phil. 182, 191-192 (2018) [Per J. Leonen, Third Division].

[76] *Id.* at 191-192.

[77] *Me-Shurn Corp. v. Me-Shurn Workers Union-FSM*, 489 Phil. 37, 45-47 (2005) [Per J. Panganiban, Third Division].

[78] 828 Phil. 182 (2018) [Per J. Leonen, Third Division].

[79] *Id.* at 192.

[80] *Somerville Stainless Steel Corp. v. National Labor Relations Commission*, 350 Phil. 859, 871-872 (1998) [Per J. Panganiban, First Division].

[81] 267 Phil. 212 (1990) [Per J. Feliciano, Third Division].

[82] *Id.* at 221-222.

[83] *Rollo*, p. 58, Court of Appeals Decision.

[84] *Id.* at 150-151.

[85] *Id.* at 159-160.

[86] *Id.*

[87] 571 Phil. 494 (2008) [Per J. Chico-Nazario, Third Division].

[88] *Id.* at 508-510.

[89] *La Consolacion College of Manila v. Pascua*, 828 Phil. 182, 191-192 (2018) [Per J. Leonen, Third Division].

[90] *Flight Attendants and Stewards Association of the Philippines v. Philippine Airlines, Inc.*, 827 Phil. 680 (2018) [Per J. Bersamin, En Banc].

[91] 489 Phil. 37, 45-47 (2005) [Per J. Panganiban, Third Division].

[92] *Id.* at 45-47.

[93] *Rollo*, p. 113. The Independent Auditor's Report dated April 23, 2008 and the Financial Statements of Team Pacific for December 31, 2007 and 2006 by Certified Public Accountant Antonio S. Veloria states:

I draw attention to Note 2 of the financial statements which indicates that the Company incurred net losses amounting to about P46.09 million and P270.65 million for the years ended December 31, 2007 and 2006, respectively, resulting in deficit of about P462.09 million and P435.73 million as of December 31, 2007 and 2006, respectively. Further, the Company was not able to meet its obligations as they matured. Consequently, the Company filed a petition for corporate rehabilitation with the Regional Trial Court of Pasig City on December 29, 2006. These conditions, among others, raise substantial doubt about the Company's ability to continue as a going concern. The financial statements do not include any adjustments relating to the recoverability and classification of the asset carrying amounts and the amounts and classification of liabilities that might result from these uncertainties.

[94] *Id.* at 120. The Independent Auditors' Report dated April 7, 2010 and the Financial Statements of Team Pacific for December 31, 2009 by Certified Public Accountant Franklin R. Casado states:

We draw attention to Note 2 of the financial statements which indicates that the Company incurred net losses amounting to about P73.81 million and P7.63 million for the years ended December 31, 2009 and 2008,

respectively, resulting in deficit of about P502.57 and P450 million as of December 31, 2009 and 2008, respectively. Further, the Company was not able to meet its obligations as they matured. Consequently, the Company filed a petition for corporate rehabilitation, which the court approved. The success of the rehabilitation plan depends on the Company's ability to generate income and cash from operating activities to support its operations during the rehabilitation period. These conditions, among others, raise substantial doubt about the Company's ability to continue as a going concern. The financial statements do not include any adjustments relating to the recoverability and classification of the asset carrying amounts and the amounts and classifications of liabilities that might result from these uncertainties.

[95] Id. at 110-124.

[96] Id. at 125-126. The Letter signed by petitioner Garcia was received on April 30, 2008 by the Department of Labor and Employment. It states:

Team Pacific Corporation, a "corporation" existing and duly organized under Philippine Laws and with principal business address at Electronics Avenue, Food Terminal Complex, Taguig City would like to inform this Honorable Office that due to Company's Rehabilitation Program which was approved recently by the Regional Trial Court of Pasig, the Company is constrained to come up with measures to ensure long-term employment of employees not to say the need to comply with the approved conditions of the court, through the implementation of a Compressed Work Week Arrangement.

We communicated this business condition to employees who will be covered by the Compressed Work Week Arrangement (Copy of Attendance Sheet attached)

[97] Id. at 127. The Letter dated May 8, 2009 signed by petitioner Garcia and received by the Department of Labor and Employment on the same date, states:

Team Pacific Corporation, a "corporation" existing and duly organized under Philippine Laws with principal business address at Electronics Ave., FTI Complex, Taguig City would like to inform this Honorable Office that because of the continuous decrease in the semiconductor business volumes beyond our control, the Corporation has suffered and continues to suffer substantial losses of business as well as continuous reduction of workdays of the whole plant up to the present thereby affecting the employees' take home pay.

Due to the foregoing reasons, the Corporation has no alternative but to implement a retrenchment program.

As such, the Corporation would like to inform your Honorable Office that the following employees (Attachment A) will be retrenched effective June 8, 2009 in accordance with the 30-day notice requirement by DOLE.

We would like to also inform this Honorable Office that the affected employees shall be paid a separation pay equivalent to not just ½ month's pay but one (1) month's pay for every year of service, plus payment for their earned but unpaid vacation leave and sick leave credits and pro-rated 13th Month Pay.

[98] Id. at 128.

[99] Id. at 204 and 129-130.

[100] Id. at 97-109.

[101] 828 Phil. 182 (2018) [Per J. Leonen, Third Division].

[102] Id. at 194-196.

[103] 328 Phil. 606 (1996) [Per J. Regalado, Second Division].

[104] Id. at 621-622.

[105] 320 Phil. 398 (1995) [Per J. Francisco, Second Division].

[106] Id. at 405.

[107] 571 Phil. 108 (2008) [Per J. Nachura, Third Division].

[108] Id. at 121.

[109] 314 Phil. 838 (1995) [Per J. Vitug, Third Division].

[110] Id. at 844-845.

[111] Rollo, pp. 125-126. The Letter signed by petitioner Garcia and received on April 2008 by the Department of Labor and Employment, states:

Team Pacific Corporation, a "corporation" existing and duly organized under Philippine Laws with principal business address at Electronics Avenue, Food Terminal Complex, Taguig City would like to inform this Honorable Office that due to Company's Rehabilitation Program which was approved recently by the Regional Trial Court of Pasig, the Company is constrained to come up with measures to ensure long-term employment of employees not to say the need to comply with the approved conditions of the court, through the implementation of a Compressed Work Week Arrangement.

We communicated this business condition to employees who will be covered by the Compressed Work Week arrangement (Copy of Attendance Sheet attached)

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