EN BANC

G.R. No. 205813 – ALFREDO F. LAYA, JR., *petitioner,* **v. COURT OF APPEALS, NATIONAL LABOR RELATIONS COMMISSION, PHILIPINE VETERANS BANK and RICARDO A. BALBIDO, JR.,** *respondents.*

Promulgated:
January 10, 2018

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DISSENTING OPINION

LEONEN, *J:*

Petitioner was not only a lawyer, he was hired by the respondents as its Chief Legal Counsel. For years, he acted on all legal matters on behalf of respondent. As its legal counsel, petitioner was expected to do due diligence on all documents he signed, especially those involving his employment. Effectively, he now claims that he did not understand or was not fully aware of the Bank's Retirement Plan and its rules and regulations.

Furthermore, through a second motion for reconsideration of a decision, which was not only final but already the subject of an entry of judgment, he now wishes to overturn a precedent by belatedly raising an alleged constitutional issue, which was not fully litigated when he first filed his Petition.

To grant his second motion for reconsideration would cause an irregularity that can distort the stability of decisions of this Court. It would also reward the negligence of a lawyer when he signed his employment papers, when he was acting as Chief Legal Counsel and had every opportunity to correct any unconstitutional legal standing of the corporation he was serving, as well as his negligence in raising the issues before this very Court.

For these reasons, I regret that I have to register my dissent.

I

Petitioner Alfredo F. Laya, Jr.'s (Laya) second motion for reconsideration should not have been entertained by the Court. Under Rule 15, Section 3 of the Internal Rules of the Supreme Court, the Court shall not entertain a second motion for reconsideration, except in the higher interest of

justice, and before the finality of the decision being assailed. Higher interest of justice will prevail if there is showing that the "assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties."[1]

For Petitioner Laya's second motion for reconsideration to prosper, there must be showing that the contested decision is not sound in law, and is also manifestly unfair and has the possibility of giving irreparable damage to Petitioner Laya. Furthermore, the second motion for reconsideration must have been filed before the case has attained finality.

The Petition for Review on Certiorari under Rule 45 filed by Petitioner Laya was initially denied by the Court's First Division. Petitioner Laya filed his first motion for reconsideration, and prayed that the case be referred to the Court *En Banc*. However, his prayer was denied with finality, such that on December 6, 2013, the Entry of Judgment was recorded in the "Book of Entries of Judgment."[2] Thus, at the time Petitioner Laya filed his second motion for reconsideration[3] on December 18, 2013, Petitioner Laya's Petition for Review on Certiorari had already been denied with finality.

There is also no showing of compelling reasons that would allow the Court to relax the rule on immutability of judgments. In justifying the allowance of Laya's second motion for reconsideration, the *Ponencia* simply stated that the First Division "inadvertently overlooked that the law required the employees' consent to be bound by the terms of the retirement program providing for a retirement age earlier than the age of 65 years to be express and voluntary,"[4] and that that the Court will be able to review the earlier dismissal if it "produced results patently unjust to the petitioner."[5] The *Ponencia* did not expound on the First Division's alleged inadvertence, or how the dismissal result is patently unjust to Laya, as would warrant his case to be exempt from the doctrine on immutability of judgments.

In previous cases, the Court has recalled the finality of judgments only for the most compelling reasons. In *Lu v. Lu Ym, Sr.*,[6] the Court entertained a second motion for reconsideration since the assailed decision of the Third Decision modified or reversed an established legal doctrine, which can only be done by the Court *En Banc*. In *Apo Fruits Corporation v. Land Bank of the Philippines*,[7] the Court ruled on a second motion for reconsideration, as

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1 Adm. Matter No. 10-4-20-SC, Rule 15, sec. 3.
2 *Rollo*, p. 126.
3 Id. at 135–151.
4 *Ponencia*, p. 12.
5 Id.
6 658 Phil. 156 (2011) [Per J. Carpio Morales, En Banc].
7 662 Phil. 572 (2011) [Per J. Brion, En Banc].

the issue on the correct application of a right guaranteed by the Philippine Constitution on the implementation of the agrarian reform program, involved substantial and paramount public interest. In *Navarro v. Executive Secretary*,[8] the Court recalled an Entry of Judgment since the issue is on the validity of Republic Act No. 9355, a law creating the Province of Dinagat; the issue involved the correct interpretation of Local Government Code provisions on the creation of Local Government Units. In *McBurnie v. Ganzon*,[9] the Court granted the second motion for reconsideration, and prescribed guidelines on filing and accepting of motions to reduce appeal bonds in the National Labor Relations Commission.

Petitioner Laya mainly anchors his request on the alleged erroneous decision of the National Labor Relations Commission. However, an erroneous decision, by itself, is not enough to set aside defined rules of procedure. Once a judgment has become final, it becomes immutable and unalterable. It cannot be changed in any way, even if the modification is for the correction of a perceived error, by the court which promulgated it or by a higher court.[10] Judgments and orders should be final at some definite time based on law, as there would be no end to litigation.[11] While the losing party has a right to appeal his or her case, the winning party has an attendant right to enjoy the finality of the decision issued in his or her favor, through the execution process to satisfy the award given to him or her.[12]

II

In a Rule 45 Petition, only questions of law are at issue.[13] The Court, in the exercise of its certiorari review, is limited to correcting errors of jurisdiction or abuse of discretion which is so grave as to remove the tribunal or court its jurisdiction. Meanwhile, the courts, in the exercise of its appellate jurisdiction, can correct errors of law or errors of fact, or both, depending on the mode of appeal.[14]

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8 663 Phil. 546 (2011) [Per J. Nachura, En Banc].

9 719 Phil. 680 (2013) [Per J. Reyes, En Banc].

10 *Gallardo-Corro v. Gallardo*, 403 Phil. 498, 511 (2000) [Per J. Bellosillo, Second Division]; *Johnson & Johnson (Phils.) Inc. v. Court of Appeals,* 330 Phil. 856, 871–872 (1996) [Per J. Panganiban, Third Division]; *Nunal v. Court of Appeals,* 293 Phil. 28, 34–35 (1993) [Per J. Campos, Jr., Second Division]; *Manning International Corporation v. National Labor Relations Commission*, 272-A Phil. 114, 120 (1991) [Per J. Narvasa, First Division].

11 *Gallardo-Corro v Gallardo*, 403 Phil. 498, 511 (2000) [Per J. Bellosillo, Second Division].

12 *De Leon v. Public Estates Authority*, 640 Phil. 594, 611 (2010) [Per J. Peralta, Second Division]; *Bongcac v. Sandiganbayan*, 606 Phil. 48, 55–56 (2009) [Per J. Carpio, First Division].

13 RULES OF COURT, Rule 45, sec. 1.

14 *See* Rules of Court, Rule 42, sec. 2:
Section 2. Form and Contents. — The petition shall . . .set forth concisely a statement of the matters involved, the issues raised, ***the specification of errors of fact or law, or both***, allegedly committed by the Regional Trial Court, and the reasons or arguments relied upon for the allowance of the appeal[.] (Emphasis supplied)
See RULES OF COURT, Rule 43, sec. 3:
Section 3. Where to Appeal. — An appeal under this Rule may be taken to the Court of Appeals within the period and in the manner herein provided, ***whether the appeal involves questions of fact, of law, or mixed questions of fact and law***. (Emphasis supplied)

Petitioner Laya elevated this case to the Court via Rule 45 of the Rules of Court. The use of this mode of appeal does not open the entire case for the review of the Court. Instead, only questions of law, which arise when there is doubt on the application of laws to a certain set of facts, and which do not require the evaluation of the probative value of the evidence presented, are to be examined by the Court, which is not a trier of facts.[15] It is only upon certain exceptions can the Court look into factual issues.[16]

In putting at issue the validity of Petitioner Laya's early retirement, the *Ponencia* ruled on a question of fact. This issue involves looking into the correctness of the findings of fact of the National Labor Relations Commissions, and is beyond the scope of a petition for review on certiorari under Rule 45 of the Rules of Court. In labor cases, factual findings of labor officials are accorded respect and even finality, especially when backed by substantial evidence. The Court's function does not involve reevaluating the evidence, particularly when the Labor Arbiter, National Labor Relations Commission and the Court of Appeals have the same findings of fact.[17]

III

Even if there was a compelling reason to allow Petitioner Laya's second motion for reconsideration, and for the Court to look into the factual findings of the Labor Arbiter and the National Labor Relations Commission, the Petition for Review of Petitioner Laya still cannot prosper.

Any constitutional issue should be raised at the earliest opportunity,[18] or in pleadings filed before a competent court which can rule on it.[19] If the

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15 *See Reyes v. Court of Appeals,* 328 Phil. 171 (1996) [Per J. Romero, Second Division]. Adm. Matter No. Rule 3, sec. 2.

16 *Co v. Vargas*, 676 Phil. 463, 471 (2011) [Per J. Carpio, Second Division], *citing Development Bank of the Philippines v. Traders Royal Bank,* 642 Phil. 547 (2010) [Per J. Carpio, Second Division], enumerated the exceptions:
[T]he Court enumerated the exceptions to the rule that factual findings of the Court of Appeals are binding on the Court: (1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

17 *See Stamford Marketing Corp. et al. v. Josephine Julian, et al.,* 468 Phil. 34 (2004) [Per J. Quisimbing, Second Division]; *Abalos v. Philex Mining Corporation*, 441 Phil. 386 (2002) [Per J. Quisumbing, Second Division].

18 *Robb v. People*, 68 Phil. 320, 326 (1939) [Per J. Laurel, En Banc].

constitutional issue is "not raised in the pleadings, it cannot be considered at the trial, and, if not considered at the trial, it cannot be considered on appeal."[20] The issue on constitutionality was belatedly raised in this case. Thus, we assume for this case that Philippine Veterans Bank is a private institution. As a private institution, it can impose a separate retirement program as long as it is agreed with by the employee. In this case, the pronouncements of the Labor Arbiter, the National Labor Relations Commission, and the Court of Appeals' pronouncement that Laya did not consent to be bound by Philippine Veterans Bank's Retirement Plan is at issue.

I do not subscribe to the ponencia's determination that Petitioner Laya did not "knowingly and voluntarily [agree]"[21] to Respondent Philippine Veteran Bank's retirement program, which imposed sixty (60) years old as the retirement age of its members under the Retirement Plan Rules and Regulations, and that he was illegally dismissed when he was notified of his retirement, which was effected before the compulsory age of retirement under the Labor Code.

Section 287 of the Labor Code declares the age of sixty-five (65) years old as the compulsory age of retirement. However, the employer may impose a lower retirement age, as long as this is indicated in a collective bargaining agreement, or in any other applicable contract or plan, and agreed to by the employee.[22]

Petitioner Laya was given notice of his early retirement by Respondent Philippine Veterans Bank pursuant to its Retirement Plan Rules and Regulations. Under the Retirement Plan Rules and Regulations,

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19 *Matibag v. Benipayo*, 429 Phil. 554, 578 (2002) [Per J. Carpio, En Banc], *citing* JOAQUIN G. BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 858 (1996), and *People v. Vera*, 65 Phil. 56 (1937) [Per J. Laurel, First Division].

20 Id.

21 *Ponencia*, p. 20.

22 LABOR CODE, art. 287 provides:

Article 287. Retirement. Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided therein.

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Unless the parties provide for broader inclusions, the term 'one-half (1/2) month salary' shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

Retail, service and agricultural establishments or operations employing not more than ten (10) employees or workers are exempted from the coverage of this provision.

Violation of this provision is hereby declared unlawful and subject to the penal provisions under Article 288 of this Code.

Respondent Philippine Veterans Bank set the retirement age of members of the Plan to sixty (60) years old,[23] and on a case to case basis and on an annual renewal, a member may extend his or her service beyond the imposed retirement age under the Plan, but not beyond sixty-five (65) years old.[24] Petitioner Laya became bound under the Retirement Plan Rules and Regulations when he agreed to the letter of employment issued by Respondent Philippine Veterans Bank, which indicated that he is entitled to particular executive benefits, including Membership in the Provident Fund Program/Retirement Program.

The ponencia held that the Retirement Plan is a contract of adhesion, and that the inclusion in the letter of appointment of the provision indicating that Petitioner Laya is a member of Respondent Philippine Veterans Bank's retirement program is not sufficient to show that he was aware of the program's contents.[25]

A contract of adhesion is a ready-made contract imposed by one party, usually a company, and which the other party merely signs to signify his or her agreement. It is not invalid *per se*, as the other party may completely reject it, and it will be struck down as void only if there is showing, based on the circumstances which led to its signing, that the weaker party had no other choice but to agree to it, and that the agreement is inequitable and basically one-sided.[26] As such, when there is showing that the other party "is knowledgeable enough to have understood the terms and conditions of the contract, or one whose stature is such that he is expected to be more prudent and cautious with respect to his [or her] transactions, such party cannot later on be heard to complain for being ignorant or having been forced into merely consenting to the contract."[27]

Petitioner Laya agreed to his letter of appointment without any force from Respondent Philippine Veterans Bank. He was free to reject the offer of the Bank. Part of the provisions of the letter of appointment is his membership to the retirement program of Respondent Philippine Veterans Bank, which has been in effect since January 1, 1996, or even before Petitioner Laya's employment. As such, at the time he agreed to be employed by the Bank, he was aware that a retirement program is in existence and that he is a member of such program. By agreeing to the letter of appointment given by Respondent Philippine Veterans Bank, Petitioner

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23 Section 1 of the Retirement Plan Rules and Regulations provide that: "Section 1. Normal Retirement. The normal retirement date of a Member shall be the first day of the month coincident with or next following his attainment of age 60."

24 Section 3 of the Retirement Plan Rules and Regulations provide that: "Section 3. Late Retirement. A Member may, with the approval of the Board of Directors, extend his service beyond his normal retirement date but not beyond age 65. Such deferred retirement shall be on a case by case and yearly extension basis."

25 *Ponencia*, p. 19.

26 *See Serra v. Court of Appeals*, 299 Phil. 63 (1994) [Per J. Nocon, Second Division].

27 *Philippine Commercial International Bank v. Court of Appeals*, 325 Phil. 588, 598 (1996) [Per J. Francisco, Third Division].

Laya is deemed to have accepted all the rules and regulations of the company,[28] which included the provisions on retirement.

The case of *Cercado v. Uniprom, Inc.*[29] is not applicable to this case. In that case, the Court ruled that the Cercado did not voluntarily agree to the retirement plan and so, was not bound by the early retirement clause. Moreover, in that case, the retirement plan was not in existence at the time Cercado was employed in 1978. Also, there was no Collective Bargaining Agreement, or any other contract, including one for employment, which indicated the compulsory retirement age for employees to be 60 years old. Instead, the retirement plan was codified in 1980, or two years after Cercado had already been employed, and without consultation with the employees.

In this case, the retirement program had long been in existence and in writing even before Petitioner Laya was employed by the Respondent Philippine Veterans Bank. Furthermore, he was informed of the existence of the retirement program when he signed his employment contract – his contract specified that he would automatically become a member of the retirement program upon being hired.

In *Banco De Oro Unibank, Inc. v. Guillermo C. Sagaysay*,[30] the Court ruled that the employee was deemed to have agreed to all the rules and regulations of the company upon accepting the employment offer:

> **[B]y accepting the employment offer of BDO, Sagaysay was deemed to have assented to all existing rules, regulations and policy of the bank, including the retirement plan.** Likewise, he consented to the CBA between BDO and the National Union of Bank Employees Banco De Oro Chapter. Section 2 of Article XVII of the CBA provides that "[t]he Bank shall continue to grant retirement/gratuity pay . . . ." Notably, both the retirement plan and the CBA **recognize that the bank has a continued and existing practice of granting the retirement pay to its employees.**
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> *Third*, on June 1, 2009, BDO issued a memorandum regarding the implementation of its retirement program, reiterating that the normal retirement date was the first day of the month following the employee's sixtieth (60^{th}) birthday. Similar to the case of *Obusan*, the memorandum was addressed to **all employees and officers**. By that time, Sagaysay was already an employee and he did not deny being informed of such memorandum.
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> **For four years, from the time he was employed until his retirement, and having actual knowledge of the BDO retirement plan, Sagaysay had every opportunity to question the same, if indeed he knew it would not be beneficial to him. Yet, he did not express his**

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28 *Banco De Oro Unibank, Inc. v. Sagaysay*, 769 Phil. 897, 910–911 (2015) [Per J. Mendoza, Second Division].

29 647 Phil. 603 (2010) [Per J. Nachura, Second Division].

30 769 Phil. 897 (2015) [Per J. Mendoza, Second Division].

> **dissent.** As observed in *Obusan*, "[t]his deafening silence eloquently speaks of [his] lack of disagreement with its provisions."
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> Lastly, perhaps the most telling detail indicative of Sagaysay's assent to the retirement plan was his e-mails to the bank, dated July 27, 2010 and August 19, 2010. In these communications, *albeit* having been informed of his upcoming retirement, Sagaysay never opposed the company's compulsory age of retirement. In fact, he recognized that "the time has come that BDO Retirement Program will be implemented to those reaching the age of sixty (60)."
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> Glaringly, he even requested that his services be extended, at least until May 16, 2011, so that he could render five (5) years of service. Sagaysay's request reflects the late retirement option where an employee may be allowed by the bank to continue to work on a yearly extension basis beyond his normal retirement date. **The late retirement option is embodied in the same retirement plan, of which, ironically, he claimed to be unaware.** With such inconsistent stance, the Court can only conclude that Sagaysay was indeed notified and had accepted the provisions of the retirement plan. **It was only when his request for late retirement was denied that he suddenly became oblivious to the said plan.**[31] (Emphasis supplied, citations omitted)

Petitioner Laya is not a weaker party that can claim ignorance of the implications of what he is signing or agreeing to. As a lawyer, he is considered to be knowledgeable of the legal effects and ramifications of what he is signing or agreeing to.[32] This is further emphasized by the position he was employed for: as Chief Legal Counsel. He was hired based on his legal prowess. In addition, as Chief Legal Counsel with a Vice President rank, the information regarding the retirement of employees was at his disposal; he cannot claim that the Retirement Plan Rules and Regulations were belatedly shown to him, and that its provisions should not apply to him. In all his years as an employee of Respondent Philippine Veterans Bank, he did not contest the provisions of the Retirement Plan Rules and Regulations, despite his knowledge that he was a member the Bank's retirement program.

It must be noted that when he was notified by Respondent Philippine Veterans Bank of his retirement, he requested for an extension of his service for another two (2) years based on the Retirement Plan Rules and Regulations. This shows that he not only was aware of the provisions of the retirement program, but that his retirement was governed by it. It was only upon the rejection of his request for extension did he allege that he was illegally dismissed.

As an employee with legal expertise, whose educational attainment and professional experience require that he be more prudent in the contracts

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[31] Id. at 910–911.

[32] *See Saludo v. Security Bank Corporation*, 647 Phil. 569 (2010) [Per J. Perez, First Division].

and agreements he enters into, Petitioner Laya cannot simply allege that he was not informed of the provisions of the retirement program at the time he was employed. Part of the work of a lawyer is to exercise due diligence in the review of documents and contracts presented before him. His membership in the retirement program was clearly indicated in his employment contract, which he is presumed to have read and understood. It is his duty, as a lawyer and as the Chief Legal Counsel of Respondent Philippine Veterans Bank, to be aware of the provisions to which he has bound himself to follow.

ACCORDINGLY, I vote to **DENY** the petition for review on certiorari filed by Petitioner Alfredo F. Laya, Jr., and to **AFFIRM** the Decision dated August 31, 2012 of the Court of Appeals, which upheld the National Labor Relations Commission's ruling that Petitioner Laya was not illegally dismissed.

MARVIC M.V.F. LEONEN
Associate Justice

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