



SUPREME COURT OF THE PHILIPPINES
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**Republic of the Philippines
Supreme Court
Manila**

FIRST DIVISION

**SM DEVELOPMENT
CORPORATION, JOANN HIZON,
ATTY. MENA OJEDA, JR., and
ROSALINE QUA,**

Petitioners,

G.R. No. 220434

Present:

**BERSAMIN, C.J.,
Chairperson,
DEL CASTILLO,*
JARDELEZA,**
GESMUNDO, and
CARANDANG, JJ.**

- versus -

**TEODORE GILBERT ANG,
Respondent.**

Promulgated:

JUL 22 2019

X-----

DECISION

CARANDANG, J.:

This is a Petition for Review on *Certiorari*¹ assailing the Decision² dated October 2, 2014 and Resolution³ dated September 1, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 131399. The appellate court nullified and set aside the Decision⁴ dated April 26, 2013 and Resolution⁵ dated June 20, 2013 of the National Labor Relations Commission (NLRC) in NLRC-LAC No. 01-000111-13/NLRC-NCR 04-05825-12 which affirmed the Decision⁶ dated October 29, 2012 of the Labor Arbiter (LA) in NLRC

* On official leave.

** Acting Working Chairperson of the First Division.

¹ *Rollo*, pp. 35-96.

² Penned by Associate Justice Ramon A. Cruz, with Associate Justice Hakim S. Abdulwahid and Associate Justice Romeo F. Barza, concurring; id. at 9-28.

³ Penned by Associate Justice Ramon A. Cruz, with Associate Justice Romero F. Barza and Associate Justice Samuel H. Gaerlan, concurring; id. at 30-33.

⁴ Penned by Commissioner Angelo Ang Palaña, with Presiding Commissioner Herminio V. Suelo and Commissioner Numeriano D. Villena, concurring; id. at 341-351.

⁵ Penned by Commissioner Angelo Ang Palaña, with Presiding Commissioner Herminio V. Suelo and Commissioner Numeriano D. Villena, concurring; id. at 359-360.

⁶ Penned by Labor Arbiter Edgardo M. Madriaga; id. at 249-260.

Case No. NLRC-NCR 04-05825-12, dismissing respondent's complaint for lack of merit.

The Case and the Facts

This case arose from a complaint for illegal dismissal with money claims by respondent Theodore Gilbert Ang (respondent) against the petitioners' SM Development Corporation (SMDC), Joann Hizon (Hizon) SMDC's Head of Human Resources Department, Atty. Mena Ojeda, Jr. (Atty. Ojeda, Jr.) SMDC's Vice President Legal, and Rosaline Qua (Qua) SMDC's President (collectively, petitioners)

The records show that respondent was hired by SMDC as its Project Director since December 2006. In his complaint, he alleged that sometime in January 2012, he applied for a two-week vacation leave, from March 30, 2012 to April 15, 2012, which was approved by Qua.⁷

On March 7, 2012, he received a Notice to Explain from Atty. Ojeda, Jr., concerning the cost status of one of his assigned projects, the Field Residences.

On March 13, 2012, he submitted his explanation on the various issues and concerns affecting the Field Residences. He denied the alleged cost overrun in the general preliminaries and presented the data in relation to other projects which negates the accusation of cost overrun. He included relevant documents affecting the project showing that he was not remiss in his duties. He also submitted the joint response letter of the engineers of the project to refute petitioners' claim that the engineers were not aware of the project construction cost.⁸

On March 20, 2012, Atty. Ojeda, Jr. and Hizon called him for a meeting where he was informed that the management, without stating specific reasons, wants him to resign from his current work.

On March 26, 2012, he received a text message from Atty. Ojeda, Jr., stating that due to his "imminent resignation," Henry Sy, Jr., is requesting him to make the necessary turnover of his functions to Ms. Imee Landicho. He received another text message on March 28, 2012 from Atty. Ojeda, Jr., with the same tenor.

On March 30, 2012, he went on his scheduled vacation and reported back to work on April 16, 2012. After office hours at about 3:30 p.m., he was called by Hizon and was made to receive the Memorandum with subject Show Cause Notice, which contains, among others, the following: (a) direction for him to explain more accusations therein enumerated within five

⁷ Id. at 10.

⁸ Id.

working days; (b) direction for him to turn-over work to Landicho; (c) informing him of a 30-day preventive suspension without pay.⁹

In the Show Cause Notice¹⁰ dated April 16, 2012, he was charged with gross and habitual neglect of duties and loss of trust and confidence due to the following infractions and omissions: (1) SM Synergy's non-collection of ₱4.5M cost of repainting of Clusters 1 & 2 in Chateau Elysee; (2) violation of Chateau's Master Deed and Presidential Decree No. 957 in relation to the discrepancy of residential and parking slots at Field Residences; (3) sale of non-existing parking slots at Field Residences; (4) sale of storage areas at Field Residences not covered by license to sell; (5) failure to clear with the COO the expense in the amount of ₱52,000.00 Philippine Currency, for the holding of the 2010 Chateau Elysee Basketball League; (6) SMDC Subsidy of ₱21M OpEx for Field Residences in 2010-11 due to delay in the amendment of MDDR; and (7) low sales generated from Chateau.

On May 17, 2012, he informed Hizon that his suspension was over and he will report back to work; but he received a phone call from the HRD Manager that he does not need to report to work because he was already dismissed. He then called Hizon asking for an explanation, and the latter asked him for a meeting where he was served with a termination letter dated May 15, 2012.¹¹ He was surprised to learn of an alleged May 7 and 9, 2012 administrative hearing mentioned in the said termination letter because he was never given any notice or even notified of the said hearings.¹²

Consequently, he filed a case for illegal dismissal with money claims against the petitioners.¹³

For their part, the petitioners averred that sometime in 2012, the management of SMDC received reports on several incidents and negligent acts directly involving respondent as Project Director which resulted in pecuniary loss to SMDC or which exposed the corporation and its officers to possible criminal, administrative and civil sanctions. Several meetings were then held between respondent and the management of SMDC to discuss these incidents. These reports were consolidated and attached to a Memorandum dated April 16, 2012 with the subject "Show-[C]ause Notice." However, respondent did not submit any explanation to the charges hurled against him and even failed to attend the administrative hearings despite due notice. Thus, a decision was rendered to dismiss him effective May 16, 2012.¹⁴

In a Decision¹⁵ dated October 29, 2012, the LA dismissed the complaint. The LA found that there were substantial documentary evidence

⁹ *Rollo*, p. 11.
¹⁰ *Id.* at 433-435.
¹¹ *Id.* at 444-445.
¹² *Id.* at 11-12.
¹³ *Id.* at 135-137.
¹⁴ *Id.* at 12-13.
¹⁵ *Supra* note 6.



showing that there was a just and valid cause for respondent's dismissal on the grounds of incompetence and gross and habitual neglect of duties.

The respondent filed an appeal¹⁶ with the NLRC.

In a Decision¹⁷ dated April 26, 2013, the NLRC dismissed the appeal for lack of merit and affirmed the LA's decision. The NLRC held that respondent's position as a Project Director is imbued with trust and confidence. The charges and violations, as well as his neglectful acts, were inadequately met by his explanations; thus, he was dismissed for loss of trust and confidence.

Aggrieved, he filed a Motion for Reconsideration¹⁸ but it was denied. Hence, he filed a Petition for *Certiorari*¹⁹ with the CA.

On October 2, 2014, the CA granted the petition and reversed and set aside the ruling of the labor tribunals. The CA found that respondent has been illegally dismissed and ordered the petitioners to: (1) reinstate respondent without loss of seniority rights and other privileges; (2) pay full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time his compensation was withheld up to the time of his actual reinstatement; and (3) pay attorney's fees equivalent to 10% of the total monetary award.

The CA held that the allegation of gross and habitual neglect of duty is not supported by any substantial evidence. Aside from the Inter-Office Memorandums dated March 27, 2012, March 30, 2012 and April 16, 2012, enumerating the alleged infractions of respondent, there were no other documentary evidence such as but not limited to audit reports or affidavits showing that respondent was responsible for the said infractions. The CA also observed that respondent has been with SMDC since December 2006, and for the past six years he has no previous record of inefficiency, infractions or violations of company rules.

The CA also said that the basis for the loss of trust and confidence was not clearly established because there was no evidence showing that respondent abused the trust reposed in him by the petitioners with respect to his responsibility as Project Director.

The CA further held that the notice requirements have not been properly observed. There was also no compliance with the imperatives of hearing or conference. The CA pointed out that the records of this case was bereft of any showing that a hearing or conference was conducted on May 7 and 9, 2012 to explain respondent's side. Even the computer printout of the shipment tracking form notifying the respondent of the said hearings states, "shipment delivered to Gersally Sambrano/landlady." Thus, the petitioners

¹⁶ *Rollo*, pp. 261-279.

¹⁷ *Supra* note 4.

¹⁸ *Rollo*, pp. 352-357.

¹⁹ *Id.* at 363-381.

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failed to discharge their burden of proving that respondent's dismissal was for a just cause and that he was afforded due process.

Petitioners filed a Motion for Reconsideration but it was denied. Thereafter, they filed this petition.

Issue

The fundamental issue for the Court's resolution is whether respondent may be dismissed from employment on the ground of loss of trust and confidence.

Ruling of the Court

The Court finds merit in the petition.

Settled is the rule that the Court may review factual issues in a labor case where the factual findings of the CA are contrary to those of the labor tribunals which is the case herein. Here, the LA and the NLRC are one in ruling that respondent was validly dismissed from work while the CA ruled otherwise. Considering these divergent positions, the Court deems it necessary to review, re-evaluate, and re-examine the evidence presented and draw conclusions therefrom.²⁰

After a thorough examination of the records, the Court agrees with the findings and conclusion of the labor tribunals.

It has long been established that an employer cannot be compelled to retain an employee who is guilty of acts inimical to his interests. This is more so in cases involving managerial employees or personnel occupying positions of responsibility.

In the present case, respondent was holding an executive position in SMDC as Project Director of Chateau Elysee and Field Residences, both in Parañaque City. As Project Director, respondent was the overall head of the project where he was assigned with the responsibility of ensuring that the expectation and objectives set by management on the project are properly implemented and achieved in terms of business planning, sales, marketing, planning and construction, permits and licenses, finance, sales documentation, property management, customer service, inventory management and legal concerns and requirements.²¹

Clearly, there is no doubt that respondent is a managerial employee. As such, he should have recognized that such intricate position requires the full trust and confidence of his employer.



²⁰ *Stradcom Corporation v. Orpilla*, G.R. No. 206800, July 2, 2018.

²¹ *Rollo*, pp. 143, 163-164.

Due to the nature of his occupation, respondent's employment may be terminated for willful breach of trust under Article 297(c)²² of the Labor Code. To justify a valid dismissal based on loss of trust and confidence, the concurrence of two (2) conditions must be satisfied: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence. These two requisites are present in this case.

The first requisite has already been determined. Respondent, as SMDC's project director, is holding a position of trust and confidence. As to the second requisite, that there must be an act that would justify the loss of trust and confidence, however, the degree of proof required in proving loss of trust and confidence differs between a managerial employee and a rank and file employee. The Court settled the difference in this manner:

In terminating managerial employees based on loss of trust and confidence, proof beyond reasonable doubt is not required, but the mere existence of a basis for believing that such employee has breached the trust of his employer suffices.
x x x

As firmly entrenched in our jurisprudence, loss of trust and confidence, as a just cause for termination of employment, is premised on the fact that an employee concerned holds a position where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected. The betrayal of this trust is the essence of the offense for which an employee is penalized.

It must be noted, however, that in a plethora of cases, this Court has distinguished the treatment of managerial employees from that of rank-and-file personnel, insofar as the application of the doctrine of loss of trust and confidence is concerned. Thus, with respect to rank-and-file personnel, loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient.²³

Set against these parameters, the Court holds that respondent was validly dismissed based on loss of trust and confidence. Respondent was not an ordinary company employee. His position as one of SMDC's Project Director is clearly a position of responsibility demanding an extensive amount of trust from petitioners. The entire project account depended on the accuracy of the classifications made by him. It was reasonable for the petitioners to trust that respondent had basis for his calculations and specifications. The preparation of the project is a complex matter requiring

²² Article 297. Termination by Employer. – An employer may terminate an employee for any of the following causes:

x x x x

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative.

²³ *Casco v. National Labor Relations Commission*, G.R. No. 200571, February 19, 2018.

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attention to details. Not only does these projects involve the company's finances, it also affects the welfare of all the other employees and clients as well.

Respondent's failure to properly manage these projects clearly is an act inimical to the company's interests sufficient to erode petitioners' trust and confidence in him. He ought to know that his job requires that he keep the trust and confidence bestowed on him by his employer untarnished. He failed to perform what he had represented or what was expected of him, thus, petitioners had a valid reason in losing confidence in him which justified his termination.

The right of an employer to freely select or discharge his employees is subject to the regulation by the State in the exercise of its paramount police power. However, there is also an equally established principle that an employer cannot be compelled to continue in employment an employee guilty of acts inimical to the interest of the employer and justifying loss of confidence in him.²⁴

Respondent's lack of previous record of inefficiency, infractions or violations of company rules for almost six years of service cannot serve as justification to reduce the severity of the penalty. There is really no premium for a clean record of almost six years to speak of, for a belated discovery of the misdeed does not serve to sanitize the intervening period from its commission up to its eventual discovery.²⁵

Finally, although there was a just cause for respondent's dismissal, he was not afforded procedural due process. In particular, the records of this case was bereft of any showing that a hearing or conference was conducted on May 7 and 9, 2012. While respondent was given a chance to explain his side and adduce evidence in his defense through his written explanation, he was not afforded the opportunity to confront the witnesses against him through an administrative hearing before he was dismissed.

Following the prevailing jurisprudence on the matter, if the dismissal is based on a just cause, then the non-compliance with procedural due process should not render the termination from employment illegal or ineffectual. Instead, the employer must indemnify the employee in the form of nominal damages.²⁶ Therefore, the dismissal of respondent should be upheld, and petitioners cannot be held liable for the payment of either backwages or separation pay. The law and jurisprudence allow the award of nominal damages in favor of an employee in a case where a valid cause for dismissal exists but the employer fails to observe due process in dismissing the employee.²⁷ Considering all the circumstances surrounding this case, the Courts finds the award of nominal damages in the amount of ₱30,000.00 to be in order.

²⁴ *Punongbayan and Araullo v. Lepon*, 772 Phil. 311 (2015).

²⁵ *Alaska Milk Corporation v. Ponce*, 814 Phil. 975 (2017).

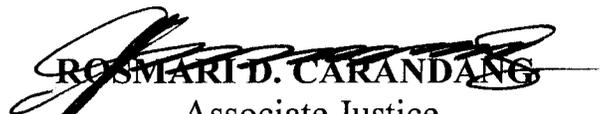
²⁶ *Mendoza v. HMS Credit Corporation*, 709 Phil. 756 (2013).

²⁷ *Libcap Marketing Corporation v. Baquial*, 737 Phil. 349 (2014).



WHEREFORE, the instant petition is **GRANTED**. The Decision dated October 2, 2014 and Resolution dated September 1, 2015 of the Court of Appeals in CA-G.R. SP No. 131399 are **REVERSED** and **SET ASIDE**. The Decision dated April 26, 2013 of the National Labor Relations Commission is hereby **REINSTATED**. For non-compliance with procedural due process, the petitioners are **ORDERED** to pay respondent nominal damages in the amount of ₱30,000.00.

SO ORDERED.


ROSMARI D. CARANDANG
Associate Justice

WE CONCUR:


LUCAS P. BERSAMIN
Chief Justice
Chairperson

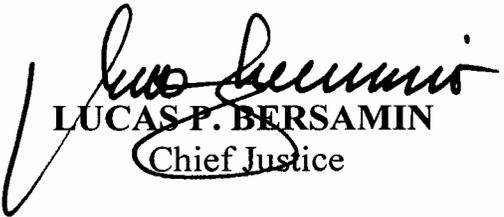
(on official leave)
MARIANO C. DEL CASTILLO
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



LUCAS P. BERSAMIN
Chief Justice