496 Phil. 279

SECOND DIVISION

[G.R. NO. 154368, April 15, 2005]

DANZAS INTERCONTINENTAL, INC., AND CLAUDE F. SCHAER, PETITIONERS, VS. HENRY M. DAGUMAN, AMADOR T. CASTRO, RICHARD F. SALVADOR AND JONAS CULALA, RESPONDENTS.

D E C I S I O N

TINGA, J.:

Danzas Intercontinental, Inc. (company), a corporation registered under Philippine laws, is engaged in the business of forwarding. It also used to engage in the brokerage business.

In this *Petition for Review*,[1] the company and Claude F. Schaer (collectively, petitioners) assail the *Decision*[2] of the Court of Appeals dated May 27, 2002 which ruled that private respondents were illegally dismissed by petitioners as the latter failed to substantiate their claim of serious business losses that would justify the closure of the company's brokerage operations. The appellate court set aside the resolutions[3] of the National Labor Relations Commission (NLRC) upholding the labor arbiter's dismissal of private respondents' complaints for illegal dismissal.[4]

The antecedent facts[5] are as follows:

> The position of the complainants is that in a letter dated August 14, 1999, they were notified by the respondents that due to losses the brokerage department of the respondent company to which the complainants belonged shall be closed on September 14, 1999 for which they will be given a separation pay equal to one month or one half month for every year of service which ever is higher. However, the brokerage department was not really closed but its responsibilities just transferred to Ms. Elizabeth Gotiam and her staff, hence, their dismissal should be considered illegal and they should be reinstated to their former positions and should be awarded backwages plus moral and exemplary damages.
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> It is also the position of the complainants that they should be paid holiday pay for the holidays they have actually worked, service incentive leave pay, 13th month pay and other bonuses for the year 1999 or a retirement pay in lieu of reinstatement in the amount of P100,000.00 for each complainant.
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> On the other hand, the position of the respondent (sic) is that they had to close the brokerage department because its accumulated losses had already amounted to P5,449,000.00 and that as a consequence of such closure they had to resort to the retrenchment of the personnel

belonging to the brokerage department which include the complainants. It is also the position of the respondents that the complainants are now barred from questioning their dismissal in view of the quitclaims they have executed in favor of the respondents.

With respect to the claims of overtime pay, service incentive pay and 13th month pay, the position of respondent (sic) is for complainants to prove the same.

In their reply to respondents' Position Paper, the complainants insist that the brokerage department was not closed and is in fact under operation by Elizabeth Gotiam, Sevilla Enzon, Shelbie Ocampo, Jenie Prado, Roden Reyes and Rodel Trias who are newly hired personnel of the respondents precisely to take over the tasks of complainants and that the name (sic) of these people appear as such newly hired employees in the company's payroll and in the lists of employees that were submitted to the SSS and the HMDF. Complainants also contend that their execution of the so called quitclaims is of no importance considering that if ever they agreed thereto it was with the understanding that the brokerage department will really be closed and since it was not really closed then the quitclaim (sic) do not bind them anyway. Lastly, the complainants are contesting whether the alleged losses incurred by the company are attributable to the brokerage department only.

By way of rejoinder which was belatedly filed, the respondents mentioned that whether they like it or not the brokerage department can no longer be opened because respondent company is no longer allowed to engage in the business of brokerage under Executive Order No. 11 which limits the exercise of the broker's profession to Filipino nationals only.

On September 6, 2000, the Labor Arbiter promulgated a decision dismissing the complaint filed by petitioners.

Aggrieved by the aforesaid judgment, petitioners elevated the case to the National Labor Relations Commission which handed down a decision on August 27, 2001, the decretal portion of which reads:

'ACCORDINGLY, premises considered, the decision appealed from is hereby AFFIRMED and instant appeal DISMISSED for want of merits (sic).

SO ORDERED.'

Petitioners moved for a reconsideration of the afore-quoted ruling of public respondent but the same was denied in a resolution promulgated on October 8, 2001. Hence, this recourse.

Petitioners claim that the NLRC committed grave abuse of discretion in affirming the findings of the Labor Arbiter that there was sufficient evidence to prove that the Brokerage Department of Danzas Intercontinental has been suffering losses to justify its closure.

Petitioners likewise contend that NLRC failed to declare that the

> Brokerage Department of respondents continued to operate despite the alleged closure.
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> Furthermore, petitioners argue that public respondent abused its discretion when it held that the quitclaims signed by the petitioners were valid and binding and that there was no illegal dismissal.[6]

Granting private respondents' petition, the Court of Appeals ruled that petitioners should have presented the audited financial statements and documents such as balance sheets, profit and loss statements and annual income tax returns in support of its claim that it incurred substantial losses on account of its brokerage department for which the department should be closed. The affidavit of petitioners' corporate officer to prove this claim is insufficient as it is self-serving.

The appellate court likewise ruled that the hiring of new employees to oversee the needs of petitioners' remaining clients negates the need for the termination of private respondents. Moreover, the quitclaims signed by private respondents were not validly executed because their consent thereto was obtained through fraud or deceit on the part of petitioners. Private respondents signed the quitclaims on the belief that the brokerage department was closing down due to business losses.

On petitioners' contention that the new employees were not hired to perform private respondents' functions as such would contravene Executive Order No. 11 (E.O. 11) which prohibits foreign entities from engaging in brokerage services, the Court of Appeals held that there was no difference between private respondents' functions and those of the new hires. There is thus no indication that petitioners complied with E.O. 11 since they still maintained their clients in the brokerage department albeit through its new employees.

The Court of Appeals denied for lack of merit petitioners' *Motion for Reconsideration*[7] dated June 5, 2002 in its *Resolution*[8] dated July 23, 2002.

In the instant petition, petitioners assert that it was only the brokerage department which was closed due to business losses. Petitioners admit that they did not submit in evidence the audited financial statements of the company but only because they did not know that private respondents appealed the case to the NLRC. Allegedly, they only came to know of the appeal when they received a copy of the NLRC decision affirming the findings of the Labor Arbiter. Had they known about the appeal, they could have presented the financial documents in support of their claim of business losses, and the NRLC, being authorized to receive evidence on appeal, would have been able to consider these documents. They assert, in this regard, that the Court of Appeals may receive the financial documents in evidence to resolve the factual issue of whether the company was indeed suffering from business losses on account of its brokerage department.

They further aver that new employees were hired not to replace private respondents but to monitor the activities of outside brokers who were engaged to finish the work for the company's remaining clients. Thus, the engagement of new employees was coterminous with the completion of the work for these clients and only for the purpose of winding up the company's brokerage business on account of E.O. 11.

Petitioners maintain that the quitclaims executed by private respondents, in which

the latter acknowledged receipt of their salaries, 13th month pay, vacation leave conversion, retrenchment pay and refund of withholding taxes, were not procured through fraud or deceit on their part. They claim that the brokerage department was indeed closed down due to business losses. Hence, private respondents were not illegally dismissed and their reinstatement should not be ordered.

Private respondents filed their *Opposition/Comment (To Petitioners' Petition for Review)*[9] dated April 10, 2003 asserting that petitioners were not able to prove that the brokerage department was incurring substantial business losses which would justify retrenchment. Citing *Asian Alcohol Corporation v. NLRC*,[10] private respondents insist that the company should have presented its audited financial statements to evince losses. The quarterly report submitted by petitioners does not suffice as the same is self-serving.

Petitioners' contention that only the brokerage department was to be closed down does not make any difference with respect to the degree of evidence that should be presented to prove substantial losses. Further, the appellate court cannot admit or evaluate evidence in certiorari proceedings because its inquiry is limited only to whether the NLRC committed grave abuse of discretion.

The prohibition under E.O. 11 does not necessarily indicate that petitioners no longer operated the brokerage department. Private respondents insist that petitioners continued to operate its brokerage department and even hired new employees to take over their functions. Petitioners' invocation of E.O. 11 was merely an afterthought designed to frustrate private respondents' claims.

Finally, private respondents aver that their consent in executing quitclaims was vitiated by fraud perpetrated by petitioners.

Petitioners filed a *Reply to Comment/Opposition to Petition for Review*[11] dated May 14, 2003 reiterating their arguments.

The petition should be denied.

Petitioners aver that they were compelled to close the company's brokerage department, to which losses were allegedly traceable due to incorrect handling of sales, in order to prevent further losses which threatened the company's viability. Essentially, petitioners invoke a blend of retrenchment to prevent losses and closure of a section of the company's business to justify the termination of private respondents.

The labor arbiter and the NLRC both found that petitioners validly exercised their management prerogatives recognized under Article 283 of the Labor Code, *viz*:

> ART. 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 worker and the Ministry of Labor and Employment at least one (1)