

## **TWENTY-SECOND DIVISION**

**[ CA-G.R. SP NO. 04262-MIN, February 04, 2014 ]**

**STONE TREASURES INTERNATIONAL TRADING CORP., AND/OR  
MR. JONITO C. RACAL, PETITIONERS, VS. BENJIE C. GIMENA  
AND NATIONAL LABOR RELATIONS COMMISSION (8TH  
DIVISION, CAGAYAN DE ORO CITY), RESPONDENTS.**

### **JUDGMENT BASED ON COMPROMISE AGREEMENT**

**INTING, J.:**

Before Us is a Petition for Certiorari<sup>[1]</sup> under Rule 65 of the 1997 Rules of Civil Procedure assailing the Resolution<sup>[2]</sup> dated December 30, 2010, as well as the Resolution<sup>[3]</sup> dated March 24, 2011 denying petitioners' motion for reconsideration rendered by the National Labor Relations Commission (NLRC) 8<sup>th</sup> Division. The dispositive portion<sup>[4]</sup> of the Resolution dated December 30, 2010, reads:

WHEREFORE, foregoing premises considered, the appeal is DISMISSED for lack of merit and the appealed decision AFFIRMED.

SO ORDERED.

The facts are as follows:

Private respondent Benjie C. Gimena (Gimena for brevity) was hired by petitioner Stone Treasures International Trading Corporation (Stone Treasures) as area manager for its Visayas and Mindanao branches on April 28, 2007.

Sometime in June 2008, private respondent Gimena entered into a sale transaction with Mr. Benny Go (Proprietor) and Jenevev Gantuangco (Manager) of Ultimate Tiles Center in Cagayan de Oro City for the delivery of tiles in the amount of P2,227,968.68. Mr. Go issued sixteen (16) post dated checks to cover the transaction. However, the first check when presented to the drawee bank for encashment was dishonored by reason of insufficiency of funds, subsequently, the rest of the checks were dishonored for the same reason.

On August 20, 2009, private respondent then received a memorandum from petitioner corporation indefinitely suspending him from work without pay for allegedly violating company policy that all provincial dealers are given a maximum credit limit of P300,000.00 only.

Private respondent filed a complaint for constructive dismissal with a prayer for payment of service incentive leave before the Executive Labor Arbiter, NLRC, Regional Arbitration Branch No. XIII, Butuan City. Petitioner Stone Treasures denied that the private respondent was dismissed from his employment. Petitioner Stone Treasures alleged that the private respondent was just preventively suspended pending investigation of his sales transaction with Mr. Go beyond the maximum

credit limit of P300,000.00 alongside the dishonored checks issued by Mr. Go. The petitioner Stone Treasures further alleged that the manner by which the private respondent entered into and conducted such sale transaction violated the company's credit and collection rules and procedures. The petitioner Stone Treasures furthermore alleged that, as such, it has valid and justifiable reasons to place the private respondent under preventive suspension from work.

After considering the allegations of the parties with supporting pieces of evidence, the Executive Labor Arbiter, NLRC, Regional Arbitration Branch No. XIII, Butuan City rendered a Decision on April 30, 2010 in favor of the private respondent and against the petitioners. The dispositive portion of which reads:

WHEREFORE, in the light of the foregoing, judgment is hereby rendered ordering respondents to reinstate complainant to his former or equivalent position without loss of seniority rights and other privileges, and to the payment of his full backwages, inclusive of allowances and to his other benefits of their monetary equivalent, computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

Respondents are likewise notified that the reinstatement aspect of the decision is immediately executory and are directed to submit a report of compliance within ten (10) calendar days from receipt of the decision.

Respondents are further ordered to pay complainant the total amount of P309,803.05 representing his partial backwages from September 2009 to April 2010, including the 1% commission.

SO ORDERED.

Dissatisfied with the Executive Labor Arbiter's decision, petitioners filed an appeal before the public respondent NLRC Eighth Division in Cagayan de Oro City. On December 30, 2010, the public respondent rendered a Resolution dismissing the appeal for lack of merit and affirming entirely the decision of the Executive Labor Arbiter. Subsequently, petitioners filed a motion for reconsideration but the NLRC, Eighth Division denied it on March 24, 2011.

Aggrieved, petitioners interposed the present petition and raised the lone issue of:

WHETHER OR NOT PUBLIC RESPONDENT COMMISSION ACTED IN EXCESS OF JURISDICTION AND/OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN ISSUING THE RESOLUTIONS (ANNEXES "A" AND "B" HEREOF), AFFIRMING THE DECISION RENDERED BY THE HONORABLE LABOR ARBITER AND WHEN IT REFUSED TO HEAR THE POINT RAISED BY THE PETITIONER THAT PRIVATE RESPONDENT WAS NOT ILLEGALLY (CONSTRUCTIVELY) DISMISSED.

On September 12, 2013, this Court issued a Resolution<sup>[5]</sup> referring the instant controversy to the Philippine Center for Mediation (PMC) pursuant to A.M. No. 04-3-15 SC PHILJA dated March 23, 2004 (Resolution No. 04-04), the Revised Guidelines for the Implementation of Mediation in the Court of Appeals.