

# THIRD DIVISION

[ G.R. No. 209437, March 17, 2021 ]

## PHILAM HOMEOWNERS ASSOCIATION, INC., AND MARCIA CAGUIAT, PETITIONERS, VS. SYLVIA DE LUNA AND NENITA BUNDOC, RESPONDENTS.

### DECISION

#### HERNANDO, J.:

Petitioners Philam Homeowners Association, Inc. (PHAI) and Marcia Caguiat (Caguiat) filed this Petition for Review on Certiorari<sup>[1]</sup> assailing the February 21, 2013 Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 117257 which affirmed with modification the July 26, 2010 Resolution<sup>[3]</sup> of the National Labor Relations Commission (NLRC) in NLRC LAC No. 06-001367-10. The October 3, 2013 Resolution<sup>[4]</sup> of the appellate court denied petitioner's motion for reconsideration.

The appellate court sustained the ruling of the labor tribunal that respondents were dismissed for cause with modification that PHAI must pay nominal damages to Nenita Bundoc (Bundoc) for PHAI's failure to comply with procedural due process and to pay Sylvia De Luna (De Luna) her salary for 10 days which exceeded the mandatory 30-day preventive suspension.

#### The Antecedents:

PHAI is a non-stock, non-profit organization of the homeowners at Philam Homes, Quezon City; Caguiat was its President and Chief Executive Officer at the time of the termination of employment of respondents De Luna and Bundoc.<sup>[5]</sup>

De Luna's job as PHAI's Office Supervisor consisted of managing the reservations for rental facilities and accepting payments from clients, among others. Bundoc, as Cashier, performed the following duties and responsibilities: (a) receiving membership dues and other incomes; (b) preparing daily abstract of collections; (c) being in charge of petty cash fund; (d) making daily deposits of collections; and (e) preparing checks and other disbursements.<sup>[6]</sup>

During an audit of PHAI's books of accounts sometime in September 2008, several irregularities were discovered such as issuance of unauthorized official and provisional receipts, unrecorded and undeposited collections, and encashment of personal checks. The Investigating Committee disclosed that De Luna and Bundoc were involved in said fraudulent activities particularly in the disbursement of PHAI's funds, specifically:<sup>[7]</sup>

Sylvia De Luna		
1	P718,990.00	- understatement in functions/events

2	P24,325.00	-	OR issued but unrecorded
3	P14,315.00	-	Provisional receipts issued but unrecorded
P757,630.00			

<b>Nenita Bundoc</b>			
1	P718,990.00	-	Joint liability with Sylvia De Luna
2	P107,990.00	-	Unrelated check deposits - estimated
3	P27,000.00	-	Unrecorded provision receipts
4	P10,650.00	-	Alteration in official receipts
5	P2,000.00	-	Damage deposit - Mike David
6	P4,000.00	-	Damage deposit - Charlotte delos Reyes
P870,630.00			

On January 20, 2009, De Luna and Bundoc participated in the probe before the investigating committee. During the audit process conducted by the independent auditor, Ellen Baquiran (Baquiran), Bundoc took a leave of absence for 30 days.<sup>[8]</sup> On February 17, 2009, PHAI required an explanation from Bundoc regarding the issuance of unauthorized provisional receipts.<sup>[9]</sup> However, as there was a standing instruction from Bundoc not to receive any correspondence from PHAI, the letter was sent through registered mail instead. PHAI then terminated the services of Bundoc on February 26, 2009.<sup>[10]</sup>

After submission of the final audit report by Baquiran, PHAI required De Luna and Bundoc to appear before the investigating committee and to explain the irregularities and anomalies as well as to account for the total amount misappropriated.<sup>[11]</sup> PHAI asserted that despite said opportunity given to De Luna and Bundoc, they still failed to participate and attend in the investigation.<sup>[12]</sup> Accordingly, on May 23, 2009, PHAI's Board of Directors issued a Memorandum addressed to De Luna demanding payment for the amount of P757,315.00, and informing her of her dismissal from service by reason of dishonesty, misappropriation and malversation of funds.<sup>[13]</sup>

This prompted De Luna and Bundoc to initiate separate complaints<sup>[14]</sup> for illegal dismissal, underpayment and non-payment of wages, underpayment of retirement benefits, illegal suspension, attorney's fees and damages. Both contended that they were subjected to an investigation and were made to answer questions without the documents supporting the alleged irregularities they committed.<sup>[15]</sup>

Bundoc further asserted that her written statement was prepared without assistance of a counsel and that she was required to file a 30-day leave of absence. After its expiration, PHAI already dismissed her from service. On the other hand, De Luna recounted that her request to be furnished copies of the supporting documents in order to give an intelligent answer remained unheeded.

Similarly, after the final audit report was submitted, she was once again required to explain the anomalies, but PHAI still refused to give her the details of the final audit report. De Luna recalled that PHAI did not agree to conduct a formal hearing on the matter. She was put under preventive suspension for 15 days which was extended twice for 15 days each.<sup>[16]</sup>

PHAI asserted that De Luna and Bundoc were dismissed for just cause, particularly under Article 282 (c) of the Labor Code for fraud or willful breach of trust and confidence by an employee.<sup>[17]</sup> They were likewise afforded due process before their services were terminated, and no force was employed in the execution of Bundoc's written statement or in the filing of leave of absence.<sup>[18]</sup>

### **Ruling of the Labor Arbiter:**

The Arbiter, in an April 30, 2010 Decision,<sup>[19]</sup> found that the termination of both De Luna and Bundoc was legal since it was based on a just cause, and that due process was observed.<sup>[20]</sup>

First, the Arbiter held that respondents' issuance of official and provisional receipts and not recording them, as well as alteration of official receipts, among others, were irregularities in the performance of their duties as Office Supervisor and Cashier, resulting to PHAI's loss of confidence which is one of the just causes under the Labor Code. Since their positions are imbued with trust and confidence, it is sufficient that there is some basis for the loss of trust and confidence or that the employer had reasonable ground to believe that the erring employee's participation rendered him/her unworthy of the trust required by the position.<sup>[21]</sup>

Second, the Arbiter emphasized that a trial-type hearing is not at all times required as long as the parties were given the opportunity to be heard, as in the case of De Luna and Bundoc. The lack thereof does not make the dismissal flawed. Finally, the monetary claims were likewise denied due to insufficiency of evidence.<sup>[22]</sup>

Aggrieved, De Luna and Bundoc appealed the case to the NLRC. They claimed that there was no clear and convincing evidence of the acts of dishonesty and misappropriation that would merit their dismissal; they also averred that they were not afforded due process before their termination.<sup>[23]</sup>

### **Ruling of the NLRC:**

In its Resolution<sup>[24]</sup> dated July 26, 2010, the NLRC affirmed *in toto* the findings of the Arbiter that De Luna and Bundoc held positions of trust and confidence, hence, they are expected to exercise greater fidelity, honesty and integrity in the performance of their duties. Further, the loss of trust and confidence as just cause for dismissal should relate to the performance of their duties. The NLRC relied on Baquiran's Affidavit and Exhibits "1" to "68" which clearly showcased the fraudulent acts and misappropriation committed by the respondents resulting in PHAI's loss of trust and confidence in them.<sup>[25]</sup>

De Luna and Bundoc filed a Motion for Reconsideration which the NLRC likewise denied for lack of merit in its September 30, 2010 Resolution.<sup>[26]</sup>

Hence, respondents filed a Petition for *Certiorari*<sup>[27]</sup> with the appellate court.

### **Ruling of the Court of Appeals:**

The appellate court dismissed respondents' Petition in the challenged Decision<sup>[28]</sup> It affirmed the ruling of the NLRC with modification as to the monetary award.<sup>[29]</sup> The appellate court found that respondents' dismissal were anchored on loss of trust and confidence hence, valid. It affirmed the finding that the positions of De Luna and Bundoc were imbued with trust and confidence as both handled PHAI's finances, transactions and expenditures. Respondents' acts of collecting but failing to deposit checks as well as altering provisional receipts sufficed as grounds for PHAI's loss trust and confidence, which is a just cause for termination.<sup>[30]</sup>

With regard to the due process requirement and the matter of preventive suspension, the appellate court found that PHAI failed to comply with the procedural due process requirement as regards Bundoc. PHAI failed to present proof that it notified Bundoc and gave her the opportunity to be heard and explain her side of the controversy. The letter informing Bundoc that she could no longer transact business on behalf of PHAI and that she had to turn over the keys of PHAI's properties did not constitute as notice of her infractions. This procedural misstep rendered PHAI liable to pay Bundoc P30,000.00 as nominal damages.<sup>[31]</sup>

Finally, with respect to De Luna's preventive suspension, the appellate court found that the same exceeded the allowable number of days and thus ordered PHAI to pay De Luna her salary, allowances and benefits corresponding to the 10 days since the period of her preventive suspension went beyond the mandated period of 30 days.<sup>[32]</sup>

In sum, the appellate court decreed, in this wise:

**WHEREFORE**, the petition is **DENIED**. The assailed Resolutions of the NLRC dated July 26, 2010 and September 30, 2010 are hereby **AFFIRMED with MODIFICATIONS** as follows: Philam Homeowners Association, Inc. (PHAI) is hereby ordered to pay petitioner Sylvia De Luna her corresponding salary, allowances and other benefits from May 13, 2009 to May 23, 2009 or for a period of ten (10) days and to pay petitioner Nenita Bundoc the amount of Thirty Thousand Pesos (Php30,000.00) as and by way of nominal damages.

**SO ORDERED.**<sup>[33]</sup>

PHAI and Caguiat filed a Motion for Reconsideration<sup>[34]</sup> and a Supplement to the Motion for Reconsideration.<sup>[35]</sup> However, it was denied by the appellate court in its October 3, 2013 Resolution.<sup>[36]</sup>

Aggrieved by the appellate court's judgment, PHAI and Caguiat filed this Petition for Review on *Certiorari*<sup>[37]</sup> raising the issues, to wit:

VI. GROUNDS RELIED UPON FOR THE ALLOWANCE OF THE HEREIN PETITION

1. THE COURT OF APPEALS ERRED IN MODIFYING THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) BY FINDING THAT PETITIONER NENITA BUNDOC WAS DENIED THE DUE PROCESS OF LAW AND AWARDING HER NOMINAL DAMAGES IN THE AMOUNT OF

P30,000.00.

2. THE COURT OF APPEALS ERRED IN MODIFYING THE DECISION OF THE NLRC BY FINDING THAT THE PREVENTIVE SUSPENSION OF PETITIONER SYLVIA DE LUNA WAS IN EXCESS OF 10 DAYS AND ORDERING THE PAYMENT THEREOF.

3. THE HON. COURT OF APPEALS EXCEEDED ITS APPELLATE JURISDICTION BY MAKING ITSELF A TRIER OF FACTS IN ITS REVIEW OF THIS CASE UNDER THE PETITION FOR CERTIORARI (RULE 65 OF THE RULES OF COURT) CONSIDERING THAT IT CAN DO SO ONLY WHEN THE FACTUAL FINDINGS OF THE LABOR ARBITER CONTRADICT OR ARE AT VARIANCE WITH THOSE OF THE NLRC.<sup>[38]</sup>

Petitioners, in their Petition<sup>[39]</sup> and Reply,<sup>[40]</sup> argue that the appellate court can review the factual findings of the NLRC *via* Rule 65 of the Rules of Court only when there is a variance between the findings of the LA and the NLRC. Here, since the LA and the NLRC uniformly found that De Luna and Bundoc were afforded due process, the appellate court could no longer review, much less reverse or modify, this finding.<sup>[41]</sup>

Moreover, petitioners assert that the alleged 10-day excess in De Luna's preventive suspension was not raised as an issue before the LA and the NLRC, hence the same should not have been taken cognizance by the appellate court. They pray for the deletion of the award of nominal damages in favor of Bundoc, and the payment of De Luna's 10-day salary in excess of the 30-day preventive suspension.<sup>[42]</sup>

In their Comment,<sup>[43]</sup> respondents claim that while the appellate court is not a trier of facts, there are certain exceptions such as when the findings are not supported by substantial evidence or when the conclusions reached were manifestly erroneous. They essentially argue that the conclusions of the Arbiter and the NLRC have no substantial evidence to support them, paving the way for the appellate court to rule in their favor to the extent of the modifications made.<sup>[44]</sup>

All told, the issues presented before Us are the following: *first*, whether or not the appellate court exceeded its appellate jurisdiction by extending its review to the factual matters of the case; and *second*, whether or not the appellate court erred in modifying the NLRC Decision insofar as the award of nominal damages and payment of 10-day salary, allowances and benefits.

### **Our Ruling**

The Petition is bereft of merit.

In labor cases, the proper recourse from the adverse decision or final order of the NLRC is via a special civil action for *certiorari* under Rule 65 of the Rules of Court to the appellate court on the ground that the labor tribunal acted with grave abuse of discretion amounting to excess or lack of jurisdiction.<sup>[45]</sup> This judicial review presupposes that the NLRC's disposition of the case has already attained finality, and the appellate court is to ascertain whether it should reverse or modify the NLRC decision on the aforesaid exclusive ground.<sup>[46]</sup>