

THIRD DIVISION

[G.R. No. 191460, January 31, 2018]

**PERFECTO M. PASCUA, PETITIONER, V. BANK WISE, INC. AND
PHILIPPINE VETERANS BANK, RESPONDENTS.**

[G.R. No. 191464, January 31, 2018]

**BANKWISE, INC., PETITIONER, V. PERFECTO M. PASCUA AND
PHILIPPINE VETERANS BANK, RESPONDENTS.**

D E C I S I O N

LEONEN, J.:

There is constructive dismissal when an employee is compelled by the employer to resign or is placed in a situation where there would be no other choice but to resign. An unconditional and categorical letter of resignation cannot be considered indicative of constructive dismissal if it is submitted by an employee fully aware of its effects and implications.

For resolution are two (2) separate Petitions for Review on Certiorari^[1] assailing the July 13, 2009 Decision^[2] and February 22, 2010 Resolution^[3] of the Court of Appeals in CA-G.R. SP No. 103453. The Court of Appeals affirmed the Labor Arbiter and National Labor Relations Commission's finding that Perfecto M. Pascua (Pascua) was constructively dismissed. The Court of Appeals, however, absolved Philippine Veterans Bank from liability and held only Bankwise, Inc. (Bankwise) liable for Pascua's money claims.

Pascua was employed by Bankwise as its Executive Vice President for Marketing on July 1, 2002.^[4]

On September 29, 2004, Philippine Veterans Bank and Bankwise entered into a Memorandum of Agreement for the purchase of Bankwise's entire outstanding capital stock.^[5] On January 12, 2005, Philippine Veterans Bank allegedly assumed full control and management of Bankwise.^[6] Philippine Veterans Bank allegedly elected new members of the Board of Directors and appointed a new set of officers, including the President and Chief Operating Officer.^[7]

Pascua was reassigned to a Special Accounts Unit but his duties, functions, and responsibilities were not clearly delineated or defined.^[8]

On February 3, 2005, Pascua was informed by Roberto A. Buhain (Buhain), President of Bankwise, that as part of the merger or trade-off agreement with Philippine Veterans Bank, he should tender his resignation.^[9] Buhain assured Pascua that he would be paid all his money claims during this transition.^[10] Instead

of tendering his resignation, Pascua wrote a letter dated February 7, 2005, wherein he pleaded, among others, that he stay in office until the end of the year.^[11]

Seeing as Pascua had yet to submit his resignation, Vicente Campa (Campa), a director of Bankwise, told him that it was imperative that he submit his resignation and assured his continued service with Philippine Veterans Bank.^[12] Based on Campa's assurance, Pascua tendered his resignation on February 22, 2005. His letter of resignation read:

SIR:

IN ACCORDANCE WITH THE INSTRUCTIONS OF THE PREVIOUS OWNERS
OF THE BANK, I HEREBY TENDER MY RESIGNATION FROM THE BANK.^[13]

On March 6, 2005, Pascua wrote a letter to Campa reminding him of his money claims due to his resignation.^[14] Because of "the urgency of [his] financial needs,"^[15] he proposed the initial payment of his midyear bonus of P150,000.00 or the transfer of his Bankwise loan amounting to P1,000,000.00 to offset his claim.^[16] Pascua alleged that he was summoned by Buhain to his office on March 8, 2005 and handed a letter of acceptance of his resignation effective March 31, 2005.^[17]

In a letter dated March 12, 2005, Pascua informed Buhain that per Buhain's suggestion, he asked Campa to request Bankwise's Board of Directors for the extension of his service until August 30, 2005. Both Philippine Veterans Bank and Bankwise, however, denied the request. Pascua allegedly inquired from Buhain how his money claims would be paid in view of "the passive attitude" of the banks. Buhain allegedly assured him that he already sought a meeting with Campa on the matter. During the meeting Campa also assured him that all his money claims would be paid by the previous owners of Bankwise.^[18]

Due to the inaction of Philippine Veterans Bank and Bankwise, Pascua sent Buhain a letter dated April 13, 2005, demanding the early settlement of his money claims.^[19] The demand was not heeded. Thus, Pascua filed a Complaint for illegal dismissal, non-payment of salary, overtime pay, holiday pay, premium pay for holiday, service incentive leave, 13th month pay, separation pay, retirement benefits, actual damages, moral damages, exemplary damages, and attorney's fees against Bankwise and Philippine Veterans Bank.^[20]

In his November 25, 2005 Decision,^[21] the Labor Arbiter dismissed the Complaint on the ground that Pascua had voluntarily resigned. The Labor Arbiter relied on Pascua's resignation letter dated February 22, 2005 and paragraph 8 of his Contract of Employment^[22] stating that no verbal agreement between the employee and Bankwise may alter the terms of employment. The Labor Arbiter found that there was no evidence in writing to prove the alleged private agreement among Pascua, Buhain, and Campa.^[23]

Pascua appealed to the National Labor Relations Commission. In its October 31, 2007 Decision,^[24] the National Labor Relations Commission reversed the Labor Arbiter's findings and held that Pascua was constructively dismissed.^[25] It found that Pascua was separated from service as part of the merger or trade-off deal between Bankwise and Philippine Veterans Bank and was forced to accept his

separation from service on the promise that he would be paid severance pay and his other benefits.^[26] The dispositive portion of this Decision read:

WHEREFORE, premises considered, the assailed Decision is hereby REVERSED and SET ASIDE and a NEW one rendered whereby, the respondents Bank Wise, Inc. and Philippine Veterans Bank are hereby ordered to pay complainant Perfecto M. Pascua the amount of Php7,608,543.54 representing his backwages, separation pay and attorney's fees as above computed.

SO ORDERED.^[27]

Philippine Veterans Bank and Bankwise filed separate Motions for Reconsideration dated December 14, 2007^[28] and December 17, 2007,^[29] respectively, before the National Labor Relations Commission. In its March 14, 2008 Resolution, the National Labor Relations Commission resolved to deny the Motions for Reconsideration filed "by the respondents" even though it only mentioned the December 14, 2007 Motion for Reconsideration.^[30]

Philippine Veterans Bank filed a Petition for Certiorari before the Court of Appeals, arguing that Pascua's resignation was voluntary. It also argued that even assuming Pascua was constructively dismissed, it should not be made liable with Bankwise since it was separate and distinct from it.^[31]

On February 7, 2008, during the pendency of the Petition for Certiorari with the Court of Appeals, the Monetary Board of the Bangko Sentral ng Pilipinas determined that Bankwise was insolvent and adopted Resolution No. 157 forbidding Bankwise from further doing business in the Philippines.^[32] In the same Resolution, the Monetary Board placed Bankwise under receivership and designated Philippine Deposit Insurance Corporation as its receiver.^[33] On October 30, 2008, the Monetary Board issued Resolution No. 1386 directing the Philippine Deposit Insurance Corporation to proceed with the liquidation of Bankwise.^[34]

On July 13, 2009, the Court of Appeals rendered its assailed Decision,^[35] finding that Pascua was constructively dismissed but held that only Bankwise should be made liable to Pascua for his money claims.^[36] The dispositive portion of this Decision read:

WHEREFORE, the petition is DISMISSED while the assailed decision of the NLRC is PARTLY AFFIRMED with the modification that only respondent Bank Wise is ordered to pay Perfecto M. Pascua backwages, separation pay and attorney's fees.

SO ORDERED.^[37]

The Court of Appeals found that there was no certificate of merger between Bankwise and Philippine Veterans Bank; hence, Bankwise retained its separate corporate identity.^[38] The Court of Appeals also pointed out that the National Labor Relations Commission's finding of Philippine Veterans Bank's liability was an error of judgment, and not of jurisdiction; hence, it did not commit grave abuse of discretion.^[39]

Pascua and Bankwise separately filed Motions for Reconsideration of this Decision. Both Motions, however, were denied by the Court of Appeals in its February 22, 2010 Resolution.^[40]

Pascua filed a Petition for Review on Certiorari^[41] with this Court docketed as GR. No. 191460. Bankwise also filed a Petition for Review on Certiorari^[42] with this Court, docketed as G.R. No. 191464. This Court consolidated both Petitions on April 26, 2010.^[43]

Pascua argues that the Court of Appeals erroneously absolved Philippine Veterans Bank of its liability since it had already taken over the management and business operations of Bankwise by the time he was constructively dismissed.^[44] He insists that since Bankwise was already declared insolvent, Philippine Veterans Bank should be held solidarily liable as Bankwise's assets are already exempt from execution.^[45]

Bankwise, on the other hand, claims that the Court of Appeals erred in finding it liable since the National Labor Relations Commission never resolved its Motion for Reconsideration.^[46] Considering that its Motion for Reconsideration was still pending, the decision of the National Labor Relations Commission against it has not yet become final.^[47]

Bankwise also contends that assuming Pascua was enticed to resign in exchange for severance pay, it should not be held liable for the actions of Buhain and Campa, who acted beyond their authority.^[48] It insists that paragraph 8 of Pascua's Contract of Employment states that no verbal agreement can alter or vary the terms of the contract unless it is reduced in writing.^[49] It alleged that even assuming it was liable to Pascua, the liability could not be enforced since it was undergoing liquidation by the Philippine Deposit Insurance Corporation.^[50] It also points out that legal compensation should be an applicable defense since Pascua had three (3) outstanding loan obligations to it in the amount of P4,902,364.88.^[51]

For its part, Philippine Veterans Bank asserts that it is a distinct and separate entity from Bankwise since the Memorandum of Agreement between them was not consummated.^[52] Even assuming that their Memorandum of Agreement was consummated, Bankwise expressly freed Philippine Veterans Bank from liability arising from money claims of its employees.^[53] It also points out that even if Pascua was found to have been constructively dismissed, only Bankwise's corporate officers should be held liable for their unauthorized acts.^[54]

Philippine Veterans Bank likewise posits that Pascua was not constructively dismissed since he had voluntarily resigned. It points out three (3) letters of resignation that Pascua drafted demanding payment of his severance pay according to the terms he had specified. It argues that Pascua voluntarily resigned knowing that it was acquiring Bankwise and it is not obliged to absorb Bankwise's employees.^[55]

This Court is asked to resolve the sole issue of whether or not Pascua was constructively dismissed. Assuming that Pascua is found to have been constructively dismissed, this Court must also resolve the issue of whether or not Philippine Veterans Bank should be solidarily liable with Bankwise, Inc. for his money claims.

At the outset, however, this Court must first address the issue of whether or not the National Labor Relations Commission March 14, 2008 Resolution also resolved Bankwise, Inc.'s Motion for Reconsideration dated December 17, 2007.

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The National Labor Relations Commission October 31, 2007 Decision^[56] already attained finality when the records of the case were remanded to the Labor Arbiter and a writ of execution was issued in Pascua's favor.

Philippine Veterans Bank filed a Motion for Reconsideration^[57] dated December 14, 2007 while Bankwise filed a Motion for Reconsideration^[58] dated December 17, 2007. On March 14, 2008, the National Labor Relations Commission resolved both motions in a Resolution^[59] which read:

Acting on the Motion for Reconsideration dated December 14, 2007 filed by *the respondents* relative to the Decision promulgated by this Commission on October 31, 2007, We resolve to DENY the same as the motion raised no new matters of substance which would warrant reconsideration of the Decision of this Commission.^[60] (Emphasis supplied)

The Philippine Deposit Insurance Corporation, on behalf of Bankwise, entered its appearance before the National Labor Relations Commission during the pendency of the Motions for Reconsideration.^[61] In a Comment dated August 27, 2008, it argued that the National Labor Relations Commission October 31, 2008 Decision could not have attained finality as to Bankwise since its Motion for Reconsideration was still pending.^[62] What may have been an unfortunate typographical error in the March 14, 2008 Resolution gave the impression that Bankwise's Motion for Reconsideration remained unacted upon.

Under the 2005 NLRC Revised Rules of Procedure,^[63] execution proceedings only commence upon the finality of the National Labor Relations Commission's judgment. Rule XI, Section 1 states:

RULE XI EXECUTION PROCEEDINGS

Section 1. *Execution Upon Finality of Decision or Order.* - a) A writ of execution may be issued *motu proprio* or on motion, upon a decision or order that finally disposes of the action or proceedings after the parties and their counsels or authorized representatives are furnished with copies of the decision or order in accordance with these Rules, but only after the expiration of the period to appeal if no appeal has been filed, as shown by the certificate of finality. If an appeal has been filed, a writ of execution may be issued when there is an entry of judgment as provided for in Section 14 of Rule VII.

b) No motion for execution shall be entertained nor a writ of execution be issued unless the Labor Arbiter or the Commission is in possession of the records of the case which shall include an entry of judgment if the case was appealed; except that, as provided for in Section 14 of Rule V and Section 6 of this Rule, and in those cases where partial execution is