

FIRST DIVISION

[G.R. No. 222730, November 07, 2016]

**BUENAFLOR CAR SERVICES, INC., PETITIONER, VS. CEZAR
DURUMPILI DAVID, JR., RESPONDENT.**

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated November 3, 2015 and the Resolution^[3] dated February 9, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 139652, which affirmed with modification the Resolutions dated November 28, 2014^[4] and February 9, 2015^[5] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 11-002727-14, finding respondent Cezar Durumpili David, Jr. (respondent) to have been illegally dismissed, and holding petitioner Buenaflor Car Services, Inc. (petitioner) solely liable for the monetary award.

The Facts

Respondent was employed as Service Manager by petitioner, doing business under the trade name "Pronto! Auto Services." In such capacity, he was in charge of the overall day-to-day operations of petitioner, including the authority to sign checks, check vouchers, and purchase orders.^[6]

In the course of its business operations, petitioner implemented a company policy with respect to the purchase and delivery of automotive parts and products. The process begins with the preparation of a purchase order by the Purchasing Officer, Sonny D. De Guzman (De Guzman), which is thereafter, submitted to respondent for his review and approval. Once approved and signed by respondent and De Guzman, the duplicate copy of the said order is given to petitioner's supplier who would deliver the goods/supplies. De Guzman was tasked to receive such goods and thereafter, submit a copy of the purchase order to petitioner's Accounting Assistant, Marilyn A. Del Rosario (Del Rosario), who, in turn, prepares the request for payment to be reviewed by her immediate supervisor,^[7] Finance Manager and Chief Finance Officer Ruby Anne B. Vasay (Vasay). Once approved, the check voucher and corresponding check are prepared to be signed by any of the following officers: respondent, Vasay, or Vice President for Operations Oliver S. Buenaflor (Buenaflor).^[8] It was company policy that all checks should be issued in the name of the specific supplier and not in "cash," and that the said checks are to be picked up from Del Rosario at the company's office in Muntinlupa City.^[9]

On August 8, 2013, Chief Finance Officer Cristina S. David (David) of petitioner's affiliate company, Diamond IGB, Inc., received a call from the branch manager of ChinaBank, SM City Bicutan Branch, informing her that the latter had cleared

several checks issued by petitioner bearing the words "OR CASH" indicated after the payee's name. Alarmed, David requested for petitioner's Statement of Account with scanned copies of the cleared checks bearing the words "OR CASH" after the payee's name. The matter was then immediately brought to petitioner's attention through its President, Exequiel T. Lampa (Lampa), and an investigation was conducted.^[10]

On August 22, 2013, Lampa and petitioner's Human Resource Manager, Helen Lee (Lee), confronted Del Rosario on the questioned checks. Del Rosario readily confessed that upon respondent's instruction, she inserted the words "OR CASH" after the name of the payees when the same had been signed by all the authorized signatories. She also implicated De Guzman, who was under respondent's direct supervision, for preparing spurious purchase orders that were used as basis in issuing the subject checks, as well as petitioner's messenger/driver, Jayson G. Caranto (Caranto), who was directed to encash some of the checks, with both persons also gaining from the scheme.^[11] Her confession was put into writing in two (2) separate letters both of even date (extrajudicial confession).^[12]

As a result, respondent, together with Del Rosario, De Guzman, and Caranto, were placed under preventive suspension^[13] for a period of thirty (30) days, and directed to submit their respective written explanations. The ensuing investigation revealed that there were twenty-seven (27) checks with the words "OR CASH" inserted after the payee's name, all signed by respondent and either Vasay or Buenaflor, in the total amount of P1,021,561.72.^[14]

For his part,^[15] respondent vehemently denied the charges against him. He claimed that he has no control over the company's finance and billing operations, nor the authority to instruct Del Rosario to make any check alterations, which changes, if any, must be made known to Vasay or Buenaflor.

On September 20, 2013, respondent and his co-workers were served their respective notices of termination^[16] after having been found guilty of violating Items B (2), (3) and/or G (3) of the company's Code of Conduct and Behavior, particularly, serious misconduct and willful breach of trust. Aggrieved, respondent, De Guzman, and Caranto filed a complaint^[17] for illegal dismissal with prayer for reinstatement and payment of damages and attorney's fees against petitioner, Diamond IGB, Inc., and one Isagani Buenaflor before the NLRC, docketed as NLRC RAB No. NCR-10-13915-13.

In the meantime, Lee, on behalf of petitioner, filed a criminal complaint^[18] for twenty-seven (27) counts of Qualified Theft through Falsification of Commercial Documents against respondent, De Guzman, Caranto, and Del Rosario, before the Office of the Muntinlupa City Prosecutor, alleging that the said employees conspired with one another in devising the afore-described scheme. In support thereof, petitioner submitted the affidavits of Buenaflor^[19] and Vasay,^[20] which stated that at the time they signed the questioned checks, the same did not bear the words "OR CASH," and that they did not authorize its insertion after the payee's name. While the City Prosecutor initially found probable cause only against Del Rosario in a Resolution^[21] dated November 25, 2014, the same was reconsidered^[22] and all the four (4) employees were indicted in an Amended Information^[23] filed before the

The LA Ruling

In a Decision dated September 29, 2014, the Labor Arbiter (LA) ruled that respondent, De Guzman, and Caranto were illegally dismissed, and consequently, awarded backwages, separation pay and attorney's fees.^[24] The LA observed that petitioner failed to establish the existence of conspiracy among respondent, De Guzman, Caranto, and Del Rosario in altering the checks and that the latter's extrajudicial confession was informally made and not supported by evidence.^[25]

Dissatisfied, petitioner appealed to the NLRC.

The NLRC Ruling

In a Resolution^[26] dated November 28, 2014, the NLRC affirmed with modification the LA's Decision, finding De Guzman and Caranto to have been dismissed for cause, but sustained the illegality of respondent's termination from work.

In so ruling, the NLRC held that since De Guzman prepared the purchase orders that were the basis for the issuance of the questioned checks, it could not be discounted that the latter may have participated in the scheme, benefited therefrom, or had knowledge thereof. Similarly, it did not give credence to Caranto's bare denial of the illegal scheme, noting that he still encashed the questioned checks upon the instruction of Del Rosario despite knowledge of the company's policy on the matter. On the other hand, the NLRC found Del Rosario's extrajudicial confession against respondent insufficient, holding that the records failed to show that the latter had a hand in the preparation and encashment of the checks; hence, his dismissal was without cause and therefore, illegal.^[27]

Unperturbed, petitioner filed a motion for partial reconsideration,^[28] which the NLRC denied in a Resolution^[29] dated February 9, 2015, prompting the former to elevate the matter to the CA *via* a petition for *certiorari*.^[30]

The CA Ruling

In a Decision^[31] dated November 3, 2015, the CA found no grave abuse of discretion on the part of the NLRC in holding that respondent was illegally dismissed. It ruled that Del Rosario's extrajudicial confession only bound her as the confessant but constitutes hearsay with respect to respondent and the other co-accused under the *res inter alios acta* rule. Moreover, while respondent was a signatory to the checks in question, the CA noted that at the time these checks were signed, the words "OR CASH" were not yet written thereon. As such, the CA held that no substantial evidence existed to establish that respondent had breached the trust reposed in him.

However, the CA absolved petitioner's corporate officer, Isagani Buenaflor, from payment of the monetary awards for failure to show any malicious act on his part, stating the general rule that obligations incurred by the corporation, acting thru its directors, officers, and employees, are its sole liabilities. In the same vein, Diamond

IGB, Inc. was also absolved from liability, considering that, as a subsidiary, it had a separate and distinct juridical personality from petitioner.^[32]

Petitioner moved for partial reconsideration,^[33] which the CA denied in a Resolution^[34] dated February 9, 2016; hence, the instant petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA committed reversible error in upholding the NLRC's ruling that respondent was illegally dismissed.

The Court's Ruling

The petition is meritorious.

Fundamental is the rule that an employee can be dismissed from employment only for a valid cause. The burden of proof rests on the employer to prove that the dismissal was valid, failing in which, the law considers the matter a case of illegal dismissal.^[35]

Article 297 of the Labor Code, as renumbered,^[36] enumerates the just causes for termination of an employment, to wit:

ART. 297. **Termination by Employer.** An employer may terminate an employment for any of the following causes:

- (a) **Serious misconduct** or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (b) Gross and habitual neglect by the employee of his duties;
- (c) Fraud or **willful breach by the employee of the trust reposed in him by his employer or duly authorized representative**;
- (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
- (e) Other causes analogous to the foregoing. (Emphases supplied)

In the case at bar, respondent's termination was grounded on his violation of petitioner's Code of Conduct and Behavior, which was supposedly tantamount to (a) serious misconduct and/or (b) willful breach of the trust reposed in him by his employer.

Misconduct is defined as an improper or wrong conduct. **It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment.**^[37] For serious misconduct to be a just cause for dismissal, the concurrence of the following elements is required: (a) the misconduct must be serious; (b) it must relate to the performance of the employee's duties showing that the employee has become unfit to continue working for the employer; and (c) it must have been performed with wrongful intent.^[38]