

## THIRD DIVISION

[ G.R. No. 197011, January 28, 2015 ]

**ESSENCIA Q. MANARPIIS, PETITIONER, VS. TEXAN PHILIPPINES, INC., RICHARD TAN AND CATHERINE P. RIALUBIN-TAN, RESPONDENTS.**

### DECISION

**VILLARAMA, JR., J.:**

Before us is a petition for review on certiorari under Rule 45 assailing the Decision<sup>[1]</sup> dated March 24, 2010, and Resolution<sup>[2]</sup> dated May 19, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 106661. The CA reversed and set aside the Decision<sup>[3]</sup> dated January 25, 2008 and Resolution<sup>[4]</sup> dated September 22, 2008 of the First Division of the National Labor Relations Commission (NLRC) in NLRC CA No. 029806-01, which affirmed the Decision<sup>[5]</sup> dated June 28, 2001 of the Labor Arbiter (LA) in NLRC Case No. 00-08-04110-2000.

Texan Philippines, Inc. (TPI), which is owned and managed by Catherine Rialubin-Tan and her Singaporean husband Richard Tan (respondents), is a domestic corporation engaged in the importation, distribution and marketing of imported fragrances and aroma and other specialized products and services. In July 1999, respondents hired Essencia Q. Manarpiis (petitioner) as Sales and Marketing Manager of the company's Aroma Division with a monthly salary of P33,800.00.<sup>[6]</sup>

Claiming insurmountable losses, respondents served a written notice (July 27, 2000) addressed to all their employees that TPI will cease operations by August 31, 2000.<sup>[7]</sup>

On August 7, 2000, petitioner filed a complaint for illegal dismissal, non-payment of overtime pay, holiday pay, service incentive leave pay, unexpired vacation leave and 13th month pay and with prayer for moral and actual damages. Subsequently, petitioner amended her complaint to state the true date of her dismissal which is July 27, 2000 and not August 31, 2000. She averred that on the same day she was served with notice of company closure, respondents barred her from reporting for work and paid her last salary up to the end of July 2000.<sup>[8]</sup>

On September 18, 2000, petitioner received the following memorandum<sup>[9]</sup>:

September 15, 2000

MEMO TO : **MS. ESSENCIA MANARPIIS**  
*Sales and Marketing Manager*  
Aroma Division

SUBJECT : **Notice Of Investigation And Grounding**

**Dear Ms. Manarpiis,**

You are hereby notified that an investigation will be conducted on 20 September 2000 at 2:00 p.m. in our office regarding your alleged violation of company rules and regulations, specifically:

I (par. B) - - Fraudulent Expense/Disbursement expenses

I (par. G) - - Collusion/Connivance with Intent to Defraud

II (Section 6) - - Sabotage

II (Section 12) - - Loss of Confidence

III (Section 2) - - Libel/Slander

III (Section 8 par. e) - - Other acts of Insubordination

V (par. C & D) - - AWOL/Abandonment

V (par. I) - - Committing other acts of gross inefficiency or incompetence

said acts constitutive of gross misconduct, gross insubordination and dishonesty. You may bring your witnesses and counsel if you so desire. In the meantime, you will not be allowed to perform your usual functions, but will instead report to the undersigned.

Additionally, you are directed to submit to the undersigned your explanation in writing, within (72) hours from receipt hereof (but in no case later than 20 September 2000), why no appropriate disciplinary action and/or penalties may be imposed against you relative to the foregoing.

Failure to submit said written explanation within the prescribed period and/or attend the investigation hearing on 20 September 2000 shall constitute an implied admission of the charges and waiver on your part to due process.

For your information and compliance.

(SGD.) **RICHARD TAN**  
(*President*)

Petitioner alleged that as sales and marketing manager, she received the agreed commission based on actual sales collection on the first quarter of 2000 and was expecting to also receive such commission on the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> quarters. However, on July 27, 2000, after receiving a text message from respondent Richard Tan, she proceeded to her office and learned that her table drawers were forcibly opened and her files confiscated. She protested the company closure asserting that

the alleged business losses were belied by TPI's financial documents. But despite her pleas, she was asked to pack up her things and by the end of the month her salary was discontinued. She then received the memorandum regarding the company closure and was required to turn over the company car, pager and cellphone. She was told not to report for work anymore.<sup>[10]</sup>

After receiving the September 15, 2000 memorandum, petitioner's counsel sent a reply stating that there was no point in the investigation because respondents already dismissed petitioner purportedly on the ground of cessation of business due to insurmountable losses, and also it was impossible for petitioner to respond to the charges which are devoid of particulars as to the alleged irregularities she committed. It was pointed out that respondents should have investigated the supposed violations of company rules and fraudulent acts earlier and not when petitioner had filed an illegal dismissal complaint.<sup>[11]</sup>

Subsequently, petitioner received the following memorandum<sup>[12]</sup>:

September 25, 2000

TO : **MS. ESSENCIA MANARPIIS**  
Sales and Marketing Manager  
Aroma Division

SUBJECT : **NOTICE OF TERMINATION**

**Ms. Manarpiis,**

This is to inform you that your employment with the Company is terminated effective today, September 25, 2000, due to Dishonesty, Loss of Confidence, and Abandonment of Work.

An internal audit of the Company shows that several obligations of the Company were paid twice to the same supplier. Considering the level of your position, the inescapable conclusion is that you have colluded with the Company supplier to defraud the Company of its finances.

Moreover, you have fraudulently caused to be reimbursed representation expenses and other expense statements purporting to be that of your sales representatives while in truth and in fact they were yours, and you received the corresponding payments therefor.

Also, your attendance record showed that you have been absent without official leave (AWOL) since August 3, 2000 up to date.

A notice of AWOL dated September 14, 2000 has been sent to you but you refused to accept the same, much less, refused to act on it.

For your information and guidance

(SGD.) **RICHARD TAN**  
President

Believing that her dismissal was without just cause, petitioner prayed for reinstatement if still viable, and if not, award of separation pay with back wages from August 1, 2000, and payment of her monetary claims for sales commissions, pro-rated 13<sup>th</sup> month pay, five days service incentive leave pay and sick leaves, as well as moral and exemplary damages plus attorney's fees.<sup>[13]</sup>

Respondents denied the charge of illegal dismissal and explained that TPI's closure was averted by a new financing package obtained by respondent Richard Tan. They asserted that the requisite notices of business closure to government authorities and to their employees were complied with, and notwithstanding that TPI has in fact continued its operations, petitioner was found to have committed infractions resulting in loss of confidence which was the ground for the termination of her employment. They likewise averred that respondent Rialubin-Tan gave specific instructions to petitioner for her to continue reporting for work even after August 31, 2000 but she instead went AWOL and subsequently abandoned her job, to the utmost prejudice of the company.<sup>[14]</sup>

On June 28, 2001, LA Melquiades Sol D. Del Rosario rendered a Decision declaring the dismissal of petitioner as illegal:

**CONFORMABLY WITH THE FOREGOING**, judgment is hereby rendered finding complainant's dismissal to be illegal. Consequently, she should be paid in solidum by respondents the following:

- a) P304,200.00 as backwages as of May 31, 2001[;]
- b) P101,400.00 as separation pay for 3 years[;]
- c) 1% of the gross sales of complainant and .75% on other sales as determined by the parties as complainant's commissions;
- d) 10% for and as attorney's fees of the money awards.

**SO ORDERED.**<sup>[15]</sup>

Respondents appealed to the NLRC which affirmed the LA's decision. Their motion for reconsideration was also denied.

In a petition for certiorari filed with the CA, respondents argued that the subsequent termination of petitioner on the grounds of dishonesty, loss of confidence and abandonment, after TPI was able to regain financial viability, was made in view of the fact that commission of the said offenses surfaced only during the audit investigation conducted after notice of cessation of business operation was sent to the employees. Despite advice for her to continue reporting for work after August 31, 2000, the effectivity date of the intended closure, petitioner just stopped doing so and instead filed the complaint for illegal dismissal and likewise failed to turn over all company documents and records in her possession. They also discovered that petitioner put up her own company "Vita VSI Scents," enticing clients to buy the same products they used to purchase from TPI.

By Decision dated March 24, 2010, the CA reversed the NLRC and ruled that petitioner was validly dismissed:

**WHEREFORE**, the petition is hereby **GRANTED**. The assailed Decision dated January 25, 2008 and the Resolution dated September 22, 2008 of

the National Labor Relations Commission are hereby **REVERSED** and **SET ASIDE**. Resultantly, Essencia Manarpiis' complaint for illegal dismissal against Texan Philippines, Inc., Richard Tan and Catherine Realubin-Tan is hereby **DISMISSED** for lack of merit. No costs.

**SO ORDERED.**<sup>[16]</sup>

Petitioner filed a motion for reconsideration but it was denied by the CA.

Hence, this petition arguing that the CA committed patent reversible errors when it: (1) granted the unverified/unsworn certification of non-forum shopping accompanying respondents' petition for certiorari; (2) granted respondents' petition for certiorari without finding any grave abuse of discretion on the part of NLRC; (3) disturbed the consistent factual findings of the LA and NLRC which were duly supported by substantial evidence and devoid of any unfairness and arbitrariness; and (4) substituted its own findings of facts to those of the LA and NLRC, the CA's findings being unsupported by substantial evidence.<sup>[17]</sup>

The petition is meritorious.

We first address petitioner's contention on the alleged formal infirmity of the petition for certiorari filed before the CA. Petitioner argued that the same was defective as the *jurat* therein was based on the mere community tax certificate of respondent Rialubin-Tan, instead of a government-issued identification card required under the 2004 Rules on Notarial Practice. Such ground was never raised by herein petitioner in her comment on the CA petition, thus, it cannot be validly raised by the petitioner at this stage.<sup>[18]</sup>

Furthermore, we have consistently held that verification of a pleading is a formal, not a jurisdictional, requirement intended to secure the assurance that the matters alleged in a pleading are true and correct. Thus, the court may simply order the correction of unverified pleadings or act on them and waive strict compliance with the rules. It is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification; and when matters alleged in the petition have been made in good faith or are true and correct.<sup>[19]</sup>

Under the Rules of Court and settled doctrine, a petition for review on certiorari under Rule 45 of the Rules of Court is limited to questions of law. As a rule, the findings of fact of the CA are final and conclusive, and this Court will not review them on appeal.<sup>[20]</sup>

However, there are instances in which factual issues may be resolved by this Court, to wit: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) the CA goes beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellee; (7) the findings of fact of the CA are contrary to those of the trial court; (8) said findings of facts are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply