

## THIRD DIVISION

[ G.R. Nos. 178382-83, September 23, 2015 ]

**CONTINENTAL MICRONESIA, INC., PETITIONER, VS. JOSEPH BASSO, RESPONDENT.**

### D E C I S I O N

**JARDELEZA, J.:**

This is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Revised Rules of Court assailing the Decision<sup>[2]</sup> dated May 23, 2006 and Resolution<sup>[3]</sup> dated June 19, 2007 of the Court of Appeals in the consolidated cases CA-G.R. SP No. 83938 and CA-G.R. SP No. 84281. These assailed Decision and Resolution set aside the Decision<sup>[4]</sup> dated November 28, 2003 of the National Labor Relations Commission (NLRC) declaring Joseph Basso's (Basso) dismissal illegal, and ordering the payment of separation pay as alternative to reinstatement and full backwages until the date of the Decision.

#### The Facts

Petitioner Continental Micronesia, Inc. (CMI) is a foreign corporation organized and existing under the laws of and domiciled in the United States of America (US). It is licensed to do business in the Philippines.<sup>[5]</sup> Basso, a US citizen, resided in the Philippines prior to his death.<sup>[6]</sup>

During his visit to Manila in 1990, Mr. Keith R. Braden (Mr. Braden), Managing Director-Asia of Continental Airlines, Inc. (Continental), offered Basso the position of General Manager of the Philippine Branch of Continental. Basso accepted the offer.<sup>[7]</sup>

It was not until much later that Mr. Braden, who had since returned to the US, sent Basso the employment contract<sup>[8]</sup> dated February 1, 1991, which Mr. Braden had already signed. Basso then signed the employment contract and returned it to Mr. Braden as instructed.

On November 7, 1992, CMI took over the Philippine operations of Continental, with Basso retaining his position as General Manager.<sup>[9]</sup>

On December 20, 1995, Basso received a letter from Mr. Ralph Schulz (Mr. Schulz), who was then CMI's Vice President of Marketing and Sales, informing Basso that he has agreed to work in CMI as a consultant on an "as needed basis" effective February 1, 1996 to July 31, 1996. The letter also informed Basso that: (1) he will not receive any monetary compensation but will continue being covered by the insurance provided by CMI; (2) he will enjoy travel privileges; and (3) CMI will advance Php1,140,000.00 for the payment of housing lease for 12 months.<sup>[10]</sup>

On January 11, 1996, Basso wrote a counter-proposal<sup>[11]</sup> to Mr. Schulz regarding his employment status in CMI. On March 14, 1996, Basso wrote another letter addressed to Ms. Marty Woodward (Ms. Woodward) of CMI's Human Resources Department inquiring about the status of his employment.<sup>[12]</sup> On the same day, Ms. Woodward responded that pursuant to the employment contract dated February 1, 1991, Basso could be terminated at will upon a thirty-day notice. This notice was allegedly the letter Basso received from Mr. Schulz on December 20, 1995. Ms. Woodward also reminded Basso of the telephone conversation between him, Mr. Schulz and Ms. Woodward on December 19, 1995, where they informed him of the company's decision to relieve him as General Manager. Basso, instead, was offered the position of consultant to CMI. Ms. Woodward also informed Basso that CMI rejected his counter-proposal and, thus, terminated his employment effective January 31, 1996. CMI offered Basso a severance pay, in consideration of the Php1,140,000.00 housing advance that CMI promised him.<sup>[13]</sup>

Basso filed a Complaint for Illegal Dismissal with Moral and Exemplary Damages against CMI on December 19, 1996.<sup>[14]</sup> Alleging the presence of foreign elements, CMI filed a Motion to Dismiss<sup>[15]</sup> dated February 10, 1997 on the ground of lack of jurisdiction over the person of CMI and the subject matter of the controversy. In an Order<sup>[16]</sup> dated August 27, 1997, the Labor Arbiter granted the Motion to Dismiss. Applying the doctrine of *lex loci contractus*, the Labor Arbiter held that the terms and provisions of the employment contract show that the parties did not intend to apply our Labor Code (Presidential Decree No. 442). The Labor Arbiter also held that no employer-employee relationship existed between Basso and the branch office of CMI in the Philippines, but between Basso and the foreign corporation itself.

On appeal, the NLRC remanded the case to the Labor Arbiter for the determination of certain facts to settle the issue on jurisdiction. NLRC ruled that the issue on whether the principle of *lex loci contractus* or *lex loci celebrationis* should apply has to be further threshed out.<sup>[17]</sup>

#### Labor Arbiter's Ruling

Labor Arbiter Madjayran H. Ajan in his Decision<sup>[18]</sup> dated September 24, 1999 dismissed the case for lack of merit and jurisdiction.

The Labor Arbiter agreed with CMI that the employment contract was executed in the US "since the letter-offer was under the Texas letterhead and the acceptance of Complainant was returned there."<sup>[19]</sup> Thus, applying the doctrine of *lex loci celebrationis*, US laws apply. Also, applying *lex loci contractus*, the Labor Arbiter ruled that the parties did not intend to apply Philippine laws, thus:

Although the contract does not state what law shall apply, it is obvious that Philippine laws were not written into it. More specifically, the Philippine law on taxes and the Labor Code were not intended by the parties to apply, otherwise Par. 7 on the payment by Complainant U.S. Federal and Home State income taxes, and Pars. 22/23 on termination by 30-day prior notice, will not be there. The contract was prepared in

contemplation of Texas or U.S. laws where Par. 7 is required and Pars. 22/23 is allowed.<sup>[20]</sup>

The Labor Arbiter also ruled that Basso was terminated for a valid cause based on the allegations of CMI that Basso committed a series of acts that constitute breach of trust and loss of confidence.<sup>[21]</sup>

The Labor Arbiter, however, found CMI to have voluntarily submitted to his office's jurisdiction. CMI participated in the proceedings, submitted evidence on the merits of the case, and sought affirmative relief through a motion to dismiss.<sup>[22]</sup>

#### NLRC's Ruling

On appeal, the NLRC Third Division promulgated its Decision<sup>[23]</sup> dated November 28, 2003, the decretal portion of which reads:

WHEREFORE, the decision dated 24 September 1999 is VACATED and SET ASIDE. Respondent CMI is ordered to pay complainant the amount of US\$5,416.00 for failure to comply with the due notice requirement. The other claims are dismissed.

SO ORDERED.<sup>[24]</sup>

The NLRC did not agree with the pronouncement of the Labor Arbiter that his office has no jurisdiction over the controversy. It ruled that the Labor Arbiter acquired jurisdiction over the case when CMI voluntarily submitted to his office's jurisdiction by presenting evidence, advancing arguments in support of the legality of its acts, and praying for reliefs on the merits of the case.<sup>[25]</sup>

On the merits, the NLRC agreed with the Labor Arbiter that Basso was dismissed for just and valid causes on the ground of breach of trust and loss of confidence. The NLRC ruled that under the applicable rules on loss of trust and confidence of a managerial employee, such as Basso, mere existence of a basis for believing that such employee has breached the trust of his employer suffices. However, the NLRC found that CMI denied Basso the required due process notice in his dismissal.<sup>[26]</sup>

Both CMI and Basso filed their respective Motions for Reconsideration dated January 15, 2004<sup>[27]</sup> and January 8, 2004.<sup>[28]</sup> Both motions were dismissed in separate Resolutions dated March 15, 2004<sup>[29]</sup> and February 27, 2004,<sup>[30]</sup> respectively.

Basso filed a Petition for *Certiorari* dated April 16, 2004 with the Court of Appeals docketed as CA-G.R. SP No. 83938.<sup>[31]</sup> Basso imputed grave abuse of discretion on the part of the NLRC in ruling that he was validly dismissed. CMI filed its own Petition for *Certiorari* dated May 13, 2004 docketed as CA-G.R. SP No. 84281,<sup>[32]</sup> alleging that the NLRC gravely abused its discretion when it assumed jurisdiction over the person of CMI and the subject matter of the case.

In its Resolution dated October 7, 2004, the Court of Appeals consolidated the two cases<sup>[33]</sup> and ordered the parties to file their respective Memoranda.

## The Court of Appeal's Decision

The Court of Appeals promulgated the now assailed Decision<sup>[34]</sup> dated May 23, 2006, the relevant dispositive portion of which reads:

**WHEREFORE**, the petition of Continental docketed as CA-G.R. SP No. 84281 is **DENIED DUE COURSE** and **DISMISSED**.

On the other hand the petition of Basso docketed as CA-G.R. SP No. 83938 is **GIVEN DUE COURSE** and **GRANTED**, and accordingly, the assailed Decision dated November 28, 2003 and Resolution dated February 27, 2004 of the NLRC are **SET ASIDE** and **VACATED**. Instead judgment is rendered hereby declaring the dismissal of Basso illegal and ordering Continental to pay him separation pay equivalent to one (1) month pay for every year of service as an alternative to reinstatement. Further, ordering Continental to pay Basso his full backwages from the date of his said illegal dismissal until date of this decision. The claim for moral and exemplary damages as well as attorney's fees are dismissed.

<sup>[35]</sup>

The Court of Appeals ruled that the Labor Arbiter and the NLRC had jurisdiction over the subject matter of the case and over the parties. The Court of Appeals explained that jurisdiction over the subject matter of the action is determined by the allegations of the complaint and the law. Since the case filed by Basso is a termination dispute that is "undoubtedly cognizable by the labor tribunals", the Labor Arbiter and the NLRC had jurisdiction to rule on the merits of the case. On the issue of jurisdiction over the person of the parties, who are foreigners, the Court of Appeals ruled that jurisdiction over the person of Basso was acquired when he filed the complaint for illegal dismissal, while jurisdiction over the person of CMI was acquired through coercive process of service of summons to its agent in the Philippines. The Court of Appeals also agreed that the active participation of CMI in the case rendered moot the issue on jurisdiction.

On the merits of the case, the Court of Appeals declared that CMI illegally dismissed Basso. The Court of Appeals found that CMI's allegations of loss of trust and confidence were not established. CMI "failed to prove its claim of the incidents which were its alleged bases for loss of trust or confidence."<sup>[36]</sup> While managerial employees can be dismissed for loss of trust and confidence, there must be a basis for such loss, beyond mere whim or caprice.

After the parties filed their Motions for Reconsideration,<sup>[37]</sup> the Court of Appeals promulgated Resolution<sup>[38]</sup> dated June 19, 2007 denying CMI's motion, while partially granting Basso's as to the computation of backwages.

Hence, this petition, which raises the following issues:

### I.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN REVIEWING THE FACTUAL FINDINGS OF THE NLRC INSTEAD OF LIMITING ITS INQUIRY INTO WHETHER OR NOT THE NLRC COMMITTED GRAVE ABUSE OF

DISCRETION.

## II.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT THE LABOR ARBITER AND THE NLRC HAD JURISDICTION TO HEAR AND TRY THE ILLEGAL DISMISSAL CASE.

## III.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING THAT BASSO WAS NOT VALIDLY DISMISSED ON THE GROUND OF LOSS OF TRUST OR CONFIDENCE.

We begin with the second issue on the jurisdiction of the Labor Arbiter and the NLRC in the illegal dismissal case. The first and third issues will be discussed jointly.

***The labor tribunals had jurisdiction over the parties and the subject matter of the case.***

CMI maintains that there is a conflict-of-laws issue that must be settled to determine proper jurisdiction over the parties and the subject matter of the case. It also alleges that the existence of foreign elements calls for the application of US laws and the doctrines of *lex loci celebrationis* (the law of the place of the ceremony), *lex loci contractus* (law of the place where a contract is executed), and *lex loci intentionis* (the intention of the parties as to the law that should govern their agreement). CMI also invokes the application of the rule of *forum non conveniens* to determine the propriety of the assumption of jurisdiction by the labor tribunals.

We agree with CMI that there is a conflict-of-laws issue that needs to be resolved first. Where the facts establish the existence of foreign elements, the case presents a conflict-of-laws issue.<sup>[39]</sup> The foreign element in a case may appear in different forms, such as in this case, where one of the parties is an alien and the other is domiciled in another state.

In *Hasegawa v. Kitamura*,<sup>[40]</sup> we stated that in the judicial resolution of conflict-of-laws problems, three consecutive phases are involved: jurisdiction, choice of law, and recognition and enforcement of judgments. In resolving the conflicts problem, courts should ask the following questions:

1. "Under the law, do I have jurisdiction over the subject matter and the parties to this case?"
2. "If the answer is yes, is this a convenient forum to the parties, in light of the facts?"
3. "If the answer is yes, what is the conflicts rule for this particular problem?"
4. "If the conflicts rule points to a foreign law, has said law been properly pleaded and proved by the one invoking it?"