

## FIRST DIVISION

[ G.R. No. 180285, July 06, 2010 ]

### MA. SOCORRO MANDAPAT, PETITIONER, VS. ADD FORCE PERSONNEL SERVICES, INC. AND COURT OF APPEALS, RESPONDENTS.

#### D E C I S I O N

##### PEREZ, J.:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking to reverse and set aside the 27 July 2007 Decision<sup>[1]</sup> and the 17 October 2007 Resolution of the Court of Appeals in CA-G.R. SP No. 98868.

The factual premise of the case follows -

On 15 September 2003, petitioner Ma. Socorro Mandapat was hired as Sales and Marketing Manager for respondent Add Force Personnel Services, Inc. As detailed in her appointment letter, her duties include negotiation and consummation of contracts with clients who wanted to avail of respondent's services. She reported directly to the Chief Executive Officer (CEO), Colwyn Ron C. Longstaff (Longstaff).<sup>[2]</sup>

Respondent claims that during her five-month stint as sales manager, petitioner failed to close a single deal or contract with any client. In addition, petitioner issued several proposals to clients which were either grossly disadvantageous to respondent or disregarded the client's budget ceiling. Petitioner also sent out several communications to clients containing erroneous data and computations; submitted fictitious daily activity reports and reimbursement slips; and consistently failed to submit her reports, such as the daily activity report, expense report, weekly sales call plan and internet-based calendar system on time.<sup>[3]</sup>

These infractions were contained in a show-cause notice sent to petitioner on 23 February 2004, directing her to explain why she should not be disciplined for gross and habitual neglect of duties and willful breach of trust. Petitioner was also preventively suspended and was asked to turn over pending tasks and to leave the office premises. We quote the pertinent portion of the memorandum:

x x x x

Please remember that as Sales Manager and head of the Sales Department, the company demands from you a disciplined approach on the implementation of the sales plans of the company as well as ability to lead your people by example. However, from Management's evaluation of your performance these last five (5) months, you have not only failed

to set a good example to your subordinates but you have, in fact, been the first one to violate company rules and procedures.

On account of the sensitivity of the position you currently hold, please be informed that Management has decided to put you on PREVENTIVE SUSPENSION during the course of the investigation of this matter. Accordingly, you are requested to immediately turnover to Ms. Abigail E. Villavert all of your pending tasks and, thereafter, leave the office premises.

For your information and appropriate action.

From:

MARIA CRISTINA S. SAMSON  
Corporate Counsel

Approved by:

JACQUES A. DUPASQUIER  
Chairman

Accompanied by her letter in response to the show-cause memorandum, petitioner tendered her resignation dated 25 February 2004 supposedly in protest of the preventive suspension meted on her.<sup>[4]</sup>

On 15 March 2004, petitioner filed a complaint for constructive dismissal with the labor arbiter.

In her position paper, petitioner alleged that she was constructively dismissed, as indicated by the following actions of respondent - first, she was illegally placed on preventive suspension; second, her access to the internet was cut off; and third, she was pressured by respondent into resigning in exchange for payment of separation pay.<sup>[5]</sup>

Petitioner also questioned as illegal her preventive suspension because she did not pose any danger to the lives of respondent's officers, as well as its properties.<sup>[6]</sup>

Petitioner denied that she was negligent and proffered that she faithfully and painstakingly performed her duties as sales manager. She faulted Longstaff for his indecisiveness and the lack of support personnel and staff for the sales department.<sup>[7]</sup>

Respondent insisted that petitioner was not dismissed, that instead, she tendered her resignation. Hence, the claim for reinstatement had no basis. Respondent countered that petitioner was properly placed on preventive suspension because of the risk she posed on the property and business of respondent.<sup>[8]</sup>

On 30 September 2005, the labor arbiter rendered judgment<sup>[9]</sup> finding petitioner to

have been illegally and constructively dismissed, thus:

WHEREFORE, premises considered, judgment is hereby entered finding that complainant was illegally and constructively dismissed on 2/23/04 thus, ORDERING:

- 1) Respondent company ADD Force Personnel Services, Inc. to pay her full backwages from date illegally dismissed on 6/23/04 until actual payment and/or finality of this decision, which as of date amounts to basic P1,311,360.00 (P68,300.00 x 19.2 months), 13<sup>th</sup> month pay of P109,280.00, and the combined amounts of her leaves (VL & SL) of P107,913.68 (30 days/year x P2,276.66/day x 1.58 years);
- 2) Respondent company ADD Force Personnel Services, Inc., in lieu of complainant's reinstatement, to pay her separation pay of one (1) month per year of service/putative service reckoned from 09/15/03 until finality of this decision or actual payment which as of date, amounts to P136,600.00 (P68,300.00 x 2 years);
- 3) Respondents ADD Force Personnel Services, Inc., JACQUES A. DUPASQUIER (Chairman), COLWYN RON C. LONGSTAFF (CEO), ATTY. CRISTINA SAMSON (Corporate Counsel), to pay her *in solido* moral damages of P200,000.00 and exemplary damages of P100,000.00;
- 4) Respondent ADD Force Personnel Services, Inc. to pay her proportionate 13<sup>th</sup> month pay (Jan. to 02/23/04), last month's salary (February, 01-23, 2003) and reimbursements P2,000.00;
- 5) Respondent ADD Force Personnel Services, Inc. to pay her 10% of the total award as attorney's fees.<sup>[10]</sup>

The labor arbiter found that petitioner was illegally suspended without basis. The charges of gross and habitual neglect of duties, as well as the loss of trust and confidence were not substantiated. Thus, the labor arbiter concluded that petitioner was constructively dismissed by respondent.<sup>[11]</sup>

The National Labor Relations Commission (NLRC)<sup>[12]</sup> affirmed with modification the findings of the labor arbiter. The NLRC deleted the award of moral and exemplary damages for lack of sufficient basis. A motion for reconsideration was filed by respondent but it was denied for lack of merit.

On 21 June 2007, respondent filed a manifestation and motion stating that the NLRC had issued a writ of execution for the amount of money claims. Unable to satisfy these claims, the sheriff garnished the bank accounts of respondent.

On 27 July 2007, the Court of Appeals, to which the case was elevated, enjoined the execution of the NLRC decision and subsequently reversed its decision, as well as that of the labor arbiter's.

The dispositive portion provides:

WHEREFORE, the petition for certiorari is GRANTED. The Decision of the National Labor Relations Commission dated 27 November 2006 affirming the Labor Arbiter's decision; its Resolution, dated 28 February 2007, denying petitioner's motion for reconsideration; and the Decision of the Labor Arbiter, dated 30 September 2005, are SET ASIDE. Ma. Socorro Mandapat's Complaint for illegal dismissal is DISMISSED.<sup>[13]</sup>

The Court of Appeals ruled that petitioner was not constructively dismissed but that the latter chose to resign from her job. Petitioner's bare allegation that she was coerced into resigning was not given credence by the appellate court. With respect to the allegation of illegal suspension, the Court of Appeals upheld the exercise by respondent of its management prerogative in suspending petitioner pending investigation for a perceived violation of company rules.

Furthermore, the appellate court declared that the issue of preventive suspension had been rendered moot by petitioner's resignation.<sup>[14]</sup>

Petitioner moved for reconsideration but it was denied in a Resolution issued on 17 October 2007.<sup>[15]</sup>

The principal issue to be resolved in the instant petition is whether petitioner was constructively dismissed.

Constructive dismissal exists when an act of clear discrimination, insensibility or disdain by an employer has become so unbearable to the employee leaving him with no option but to forego with his continued employment.<sup>[16]</sup>

Upon perusal of the records of this case, we find no evidence to support discrimination which led to constructive dismissal.

Petitioner reiterates that she was constructively dismissed. She harps on the alleged pattern of harassment committed by respondent as tantamount to constructive dismissal, such as, illegally placing her under preventive suspension, the disconnection of her internet account, and the pressure exerted by respondent to force her to resign.<sup>[17]</sup>

Petitioner claims that the preventive suspension meted upon her is illegal for being indefinite, as the duration of her suspension was not stated in the company's memorandum.

On the other hand, respondent employer argues that petitioner's preventive suspension for one day can hardly be considered indefinite, given the fact that petitioner immediately resigned one day after the suspension.

We find that there was no act of discrimination committed against petitioner that would render her employment unbearable.