

## SECOND DIVISION

[ G.R. No. 185122, August 16, 2010 ]

**WENSHA SPA CENTER, INC. AND/OR XU ZHI JIE, PETITIONERS,  
VS. LORETA T. YUNG, RESPONDENT.**

### D E C I S I O N

#### **MENDOZA, J.:**

This is a petition for review on certiorari under Rule 45 of the Rules of Court filed by an employer who was charged before the National Labor Relations Commission (NLRC) for dismissing an employee upon the advice of a Feng Shui master. In this action, the petitioners assail the May 28, 2008 Decision<sup>[1]</sup> and October 23, 2008 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 98855 entitled *Loreta T. Yung v. National Labor Relations Commission, Wensha Spa Center, Inc. and/or Xu Zhi Jie*.

#### **THE FACTS:**

Wensha Spa Center, Inc. (*Wensha*) in Quezon City is in the business of sauna bath and massage services. Xu Zhi Jie a.k.a. Pobby Co (*Xu*) is its president,<sup>[3]</sup> respondent Loreta T. Yung (*Loreta*) was its administrative manager at the time of her termination from employment.

In her position paper,<sup>[4]</sup> Loreta stated that she used to be employed by Manmen Services Co., Ltd. (*Manmen*) where Xu was a client. Xu was apparently impressed by Loreta's performance. After he established Wensha, he convinced Loreta to transfer and work at Wensha. Loreta was initially reluctant to accept Xu's offer because her job at Manmen was stable and she had been with Manmen for seven years. But Xu was persistent and offered her a higher pay. Enticed, Loreta resigned from Manmen and transferred to Wensha. She started working on April 21, 2004 as Xu's personal assistant and interpreter at a monthly salary of P12,000.00.

Loreta introduced positive changes to Wensha which resulted in increased business. This pleased Xu so that on May 18, 2004, she was promoted to the position of Administrative Manager.<sup>[5]</sup>

Loreta recounted that on August 10, 2004, she was asked to leave her office because Xu and a Feng Shui master were exploring the premises. Later that day, Xu asked Loreta to go on leave with pay for one month. She did so and returned on September 10, 2004. Upon her return, Xu and his wife asked her to resign from Wensha because, according to the Feng Shui master, her aura did not match that of Xu. Loreta refused but was informed that she could no longer continue working at Wensha. That same afternoon, Loreta went to the NLRC and filed a case for illegal dismissal against Xu and Wensha.

Wensha and Xu denied illegally terminating Loreta's employment. They claimed that two months after Loreta was hired, they received various complaints against her from the employees so that on August 10, 2004, they advised her to take a leave of absence for one month while they conducted an investigation on the matter. Based on the results of the investigation, they terminated Loreta's employment on August 31, 2004 for loss of trust and confidence.<sup>[6]</sup>

The Labor Arbiter (LA) Francisco Robles dismissed Loreta's complaint for lack of merit. He found it more probable that Loreta was dismissed from her employment due to Wensha's loss of trust and confidence in her. The LA's decision<sup>[7]</sup> partly reads:

However, this office has found it dubious and hard to believe the contentions made by the complainant that she was dismissed by the respondents on the sole ground that she is a "mismatch" in respondents' business as advised by an alleged Feng Shui Master. The complainant herself alleged in her position paper that she has done several improvements in respondents' business such as uplifting the morale and efficiency of its employees and increasing respondents' clientele, and that respondent Co was very much pleased with the improvements made by the complainant that she was offered twice a promotion but she nevertheless declined. It would be against human experience and contrary to business acumen to let go of someone, who was an asset and has done so much for the company merely on the ground that she is a "mismatch" to the business. Absent any proof submitted by the complainant, this office finds it more probable that the complainant was dismissed due to loss of trust and confidence.<sup>[8]</sup>

This ruling was affirmed by the NLRC in its December 29, 2006 Resolution,<sup>[9]</sup> citing its observation that Wensha was still considering the proper action to take on the day Loreta left Wensha and filed her complaint. The NLRC added that this finding was bolstered by Wensha's September 10, 2004 letter to Loreta asking her to come back to personally clarify some matters, but she declined because she had already filed a case.

Loreta moved for a reconsideration of the NLRC's ruling but her motion was denied. Loreta then went to the CA on a petition for certiorari. The CA *reversed* the ruling of the NLRC on the ground that it gravely abused its discretion in appreciating the factual bases that led to Loreta's dismissal. The CA noted that there were irregularities and inconsistencies in Wensha's position. The CA stated the following:

We, thus, peruse the affidavits and documentary evidence of the Private Respondents and find the following: *First*, on the affidavits of their witnesses, it must be noted that the same were mere photocopies. It was held that *[T]he purpose of the rule in requiring the production of the best evidence is the prevention of fraud, because if a party is in possession of such evidence and withholds it, and seeks to substitute inferior evidence in its place, the presumption naturally arise[s] that the*

*better evidence is withheld for fraudulent purposes which its production would expose and defeat.* Moreover, the affidavits were not executed under oath. The rule is that an affiant must sign the document in the presence of and take his oath before a notary public as evidence that the affidavit was properly made. Guided by these principles, the affidavits cannot be assigned any weighty probative value and are mere scraps of paper the contents of which are hearsay. *Second*, on the sales report and order slips, which allegedly prove that Yung had been charging her food and drinks to Wensha, the said pieces of evidence do not, however, bear Yung's name thereon or even her signature. In fact, it does not state anyone's name, except that of Wensha. Hence, it would simply be capricious to pinpoint, or impute, on Yung as the author in charging such expenses to Wensha on the basis of hearsay evidence. *Third*, while the affidavit of Wensha's Operations Manager, Princess delos Reyes (delos Reyes), may have been duly executed under oath, she did not, however, specify the alleged infractions that Yung committed. If at all, delos Reyes only made general statements on the alleged complaints against Yung that were not even substantiated by any other piece of evidence. *Finally*, the daily time records (DTRs) of Yung, which supposedly prove her habitual tardiness, were mere photocopies that are not even signed by Wensha's authorized representative, thus suspect, if not violative of the best evidence rule and, therefore, incompetent evidence. x x x [Emphases appear in the original]

x x x x.

Finally, after the Private Respondents filed their position paper, they alleged mistake on the part of their former counsel in stating that Yung was dismissed on August 31, 2004. Thus, they subsequently moved for the admission of their rejoinder. Notably, however, the said rejoinder was dated October 4, 2004, earlier than the date when their position paper was filed, which was on November 3, 2004. It is also puzzling that their position paper was dated November 25, 2004, much later than its date of filing. The irregularities are simply too glaring to be ignored. Nevertheless, the Private Respondents' admission of Yung's termination on August 31, 2004 cannot be retracted. They **cannot use the mistake of their counsel as an excuse considering that the position paper was verified by their Operations Manager, delos Reyes**, who attested to the truth of the contents therein.<sup>[10]</sup> [Emphasis supplied]

Hence, the *fallo* of the CA decision reads:

WHEREFORE, the instant petition is GRANTED. Wensha Spa Center, Inc. and Xu Zhi Jie are ORDERED to, jointly and severally, pay Loreta T. Yung her full backwages, other privileges, and benefits, or their monetary equivalent, corresponding to the period of her dismissal from September 1, 2004 up to the finality of this decision, and damages in the amounts of fifty thousand pesos (Php50,000.00) as moral damages, twenty five thousand pesos (Php25,000.00) as exemplary damages, and twenty thousand pesos (Php20,000.00) as attorney's fees. No costs.

SO ORDERED.<sup>[11]</sup>

Wensha and Xu now assail this ruling of the CA in this petition presenting the following:

## **V. GROUNDS FOR THE ALLOWANCE OF THE PETITION**

5.1 The following are the reasons and arguments, which are purely questions of law and some questions of facts, which justify the appeal by certiorari under Rule 45 of the 1997 Revised Rules of Civil Procedure, as amended, to this Honorable SUPREME COURT of the assailed Decision and Resolution, to wit:

5.1.1 The Honorable COURT OF APPEALS gravely erred in reversing that factual findings of the Honorable Labor Arbiter and the Honorable NLRC (Third Division) notwithstanding recognized and established rule in our jurisdiction that findings of facts of quasi-judicial agencies who have gained expertise on their respective subject matters are given respect and finality;

5.1.2 The Honorable COURT OF APPEALS committed grave abuse of discretion and serious errors when it ruled that findings of facts of the Honorable Labor Arbiter and the Honorable NLRC are not supported by substantial evidence despite the fact that the records clearly show that petitioner therein was not dismissed but is under investigation, and that she is guilty of serious infractions that warranted her termination;

5.1.3 The Honorable COURT OF APPEALS grave[ly] erred when it ordered herein petitioner to pay herein respondent her separation pay, in lieu of reinstatement, and full backwages, as well as damages and attorney's fees;

5.1.4 The Honorable COURT OF APPEALS committed grave abuse of discretion and serious errors when it held that petitioner XU ZHI JIE to be solidarily liable with WENSHA, assuming that respondent was illegally dismissed;

5.2 The same need to be corrected as they would work injustice to the herein petitioner, grave and irreparable damage will be done to him, and would pose dangerous precedent.<sup>[12]</sup>

## **THE COURT'S RULING:**

Loreta's security of tenure is guaranteed by the Constitution and the Labor Code. The 1987 Philippine Constitution provides in Section 18, Article II that the State shall protect the rights of workers and promote their welfare. Section 3, Article XIII also provides that all workers shall be entitled to security of tenure. Along that line, Article 3 of the Labor Code mandates that the State shall assure the rights of

workers to security of tenure.

Under the security of tenure guarantee, a worker can only be terminated from his employment for cause and after due process. For a valid termination by the employer: (1) the dismissal must be for a valid cause as provided in Article 282, or for any of the authorized causes under Articles 283 and 284 of the Labor Code; and (2) the employee must be afforded an opportunity to be heard and to defend himself. A just and valid cause for an employee's dismissal must be supported by substantial evidence, and before the employee can be dismissed, he must be given notice and an adequate opportunity to be heard.<sup>[13]</sup> In the process, the employer bears the burden of proving that the dismissal of an employee was for a valid cause. Its failure to discharge this burden renders the dismissal unjustified and, therefore, illegal.<sup>[14]</sup>

As a rule, the factual findings of the court below are conclusive on Us in a petition for review on certiorari where We review only errors of law. This case, however, is an exception because the CA's factual findings are not congruent with those of the NLRC and the LA.

According to Wensha in its position paper,<sup>[15]</sup> it dismissed Loreta on August 31, 2004 after investigating the complaints against her. Wensha asserted that her dismissal was a valid exercise of an employer's right to terminate a managerial employee for loss of trust and confidence. It claimed that she caused the resignation of an employee because of gossips initiated by her. It was the reason she was asked to take a leave of absence with pay for one month starting August 10, 2004.<sup>[16]</sup>

Wensha also alleged that Loreta was "sowing intrigues in the company" which was inimical to Wensha. She was also accused of dishonesty, serious breach of trust reposed in her, tardiness, and abuse of authority.<sup>[17]</sup>

In its Rejoinder, Wensha *changed its position* claiming that it did not terminate Loreta's employment on August 31, 2004. It even sent her a notice requesting her to report back to work. She, however, declined because she had already filed her complaint.<sup>[18]</sup>

As correctly found by the CA, the cause of Loreta's dismissal is questionable. Loss of trust and confidence to be a valid ground for dismissal must have basis and must be founded on clearly established facts.<sup>[19]</sup>

The Court finds the LA ruling that states, "[a]bsent any proof submitted by the complainant, this office finds it more probable that the complainant was dismissed due to loss of trust and confidence,"<sup>[20]</sup> to be utterly erroneous as it is contrary to the applicable rules and pertinent jurisprudence. The onus of proving a valid dismissal rests on the employer, not on the employee.<sup>[21]</sup> It is the employer who bears the burden of proving that its dismissal of the employee is for a valid or authorized cause supported by substantial evidence. <sup>[22]</sup>

According to the NLRC, "[p]erusal of the entire records show that complainant left the respondents' premises when she was confronted with the infractions imputed against her."<sup>[23]</sup> This information was taken from the affidavit<sup>[24]</sup> of Princess Delos