

SECOND DIVISION

[G.R. No. 173169, September 22, 2010]

**IRENE MARTEL FRANCISCO, PETITIONER, VS. NUMERIANO
MALLEN, JR., RESPONDENT.**

D E C I S I O N

CARPIO, J.:

The Case

This petition for review^[1] assails the 16 September 2005 Decision^[2] of the Court of Appeals in CA-G.R. SP No. 72115. The Court of Appeals set aside the 21 December 2001 Decision^[3] of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 022641-00 and reinstated the 25 August 1999 Decision^[4] of the Labor Arbiter in NLRC-NCR Case No. 00-07-05608-98.

The Facts

On 5 April 1994, respondent Numeriano Mallen, Jr. was hired as a waiter for VIPS Coffee Shop and Restaurant, a fine dining restaurant which used to operate at the Harrison Plaza Commercial Complex in Manila.

On 30 January 1998 to 1 February 1998, respondent took an approved sick leave. On 15 February 1998, respondent took a vacation leave. Thereafter, he availed of his paternity leave.

On 18 April 1998, respondent suffered from tonsillitis, forcing him to take a three-day sick leave from 18 April 1998 to 20 April 1998. However, instead of his applied three-day sick leave, respondent was given three months leave. The memorandum dated 28 April 1998 reads:

TO : Mr. Numeriano Mallen, Jr.
FROM : VIPS Dining Head
DATE : 28 April 1998
RE : AS STATED

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After a thorough review of your performance and the series of Vacation Leaves (8 days), Paternity Leave (7 days) and Sick Leave (7 days) due to several illness within the first quarter of the year, we have concluded that you are not physically fit and needs to recharge to enable you to regain your physical fitness.

As such, we are awarding to you the rest of your Vacation/Sick Leave plus Two and a half (2 ½) months (without pay) to rest and regain your physical health within the prescribed vacation.

During your vacation, you are not allowed to loiter within the premises of VIPS RESTAURANT; but instead to rest and do some health exercise and medical check-up for your physical fitness recovery program.

Moreover, when you report back to work, you are to present to the management a certificate indicating that you are fit to work regularly.

Your vacation shall take effect on April 30, 1998 up to August 1, 1998.

For your information and guidance.

Sgd.
Mr. Patty C. Bocar

Noted By:

Sgd.
Ms. Ma. Theresa Linaja^[5]

On 5 May 1998, respondent filed before the Department of Labor and Employment-National Capital Region (DOLE-NCR) a complaint for underpayment of wages and non-payment of holiday pay.

Sometime in June 1998, respondent reported back to work with a medical certificate stating he was fit to work but he was refused work.

On 22 June 1998, the DOLE-NCR endorsed respondent's complaint to the NLRC when it determined that the issue of constructive dismissal was involved. On 23 July 1998, respondent filed a complaint for illegal dismissal before the NLRC-NCR. On 3 August 1998, respondent again attempted to return to work but was refused again.

The Ruling of the Labor Arbiter

On 25 August 1999, Labor Arbiter Madjayran H. Ajan rendered a decision in favor of respondent. The Labor Arbiter found that "complainant's dismissal was the price of his having filed a case with DOLE-NCR against the respondents, plus his perennial absences, which nevertheless is not a just cause. We likewise agree that the gesture of respondents to reinstate or re-employ complainant unconditionally during the proceedings did not cure the illegality of complainant's dismissal."

The dispositive portion of the Labor Arbiter's decision reads:

WHEREFORE, premises above considered a decision is hereby issued declaring the dismissal of the complainant illegal. Consequently,

respondents VIP's Coffee Shop & Restaurant and/or Irene Francisco are ordered to reinstate complainant to his former or equivalent position without loss of seniority rights, and to pay complainant jointly and severally his backwages hereby fixed at P88,000.00 as of August 31, 1999, plus his paternity pay, and attorney's fees equivalent to the monetary award, all in the aggregate of ninety nine thousand three hundred fifty pesos and 90/100 centavos (P99,350.90).

Respondents are likewise ordered to pay complainant P50,000.00 for moral damages and P20,000.00 for exemplary damages.

SO ORDERED.^[6]

The Ruling of the NLRC

The NLRC found respondent's filing of a complaint for illegal dismissal premature. The NLRC stated "[t]his conclusion is supported by the fact that in respondent's memorandum to complainant directing him to avail of his vacation/sick leave, the same is to last from April 30, 1998 to August 1, 1998. The complaint therefore filed on May 5, 1998 has no legal basis to support itself. When he filed his complaint on May 5, 1998, his cause of action based on illegal dismissal has not yet accrued."

Nevertheless, the NLRC noted, "a supervening event occurred during the pendency of the instant case which is the closure of VIPS Coffee Shop and Restaurant effective 26 August 1999, as evidenced by the Notice and report to the Department of Labor and Employment (Annexes "1" and "2" of Appeal). x x x This being the case, and in the spirit of compassion, respondents are directed to pay complainant his separation pay equivalent to one half month pay for every year of service x x x."

The dispositive portion of the NLRC's decision reads:

WHEREFORE, the Decision of the Labor Arbiter dated August 25, 1999 is hereby **MODIFIED** and respondents are instead directed to pay the complainant separation pay in the amount of P13,750.00 plus his paternity leave pay in the amount of P1,519.00 (P217.00 x 7 days). The award for moral and exemplary damages are deleted and set aside for lack of merit.

SO ORDERED.^[7]

The Ruling of the Court of Appeals

The Court of Appeals found respondent constructively dismissed for having been granted an increased three months leave instead of the three days leave he applied for.

The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, the petition is hereby **GRANTED**. The decision of the NLRC, First Division, dated December 21, 2001, is hereby **SET ASIDE** and the decision of Labor Arbiter Madjayran H. Ajan dated August 25, 1999 is hereby **REINSTATED**.

SO ORDERED.^[8]

The Issue

The main issue in this case is whether petitioner is personally liable for the monetary awards granted in favor of respondent arising from his alleged illegal termination.

The Ruling of this Court

The petition has merit.

In *Santos v. National Labor Relations Commission*,^[9] the Court held that "A corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. The rule is that obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities."^[10]

To hold a director or officer personally liable for corporate obligations, two requisites must concur: (1) **complainant must allege in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith;**^[11] and (2) **complainant must clearly and convincingly prove such unlawful acts, negligence or bad faith.**^[12]

In *Carag v. National Labor Relations Commission*,^[13] the Court did not hold a director personally liable for corporate obligations because the two requisites are lacking, to wit:

Complainants did not allege in their complaint that Carag willfully and knowingly voted for or assented to any patently unlawful act of MAC. Complainants did not present any evidence showing that Carag willfully and knowingly voted for or assented to any patently unlawful act of MAC. Neither did Arbiter Ortiguerra make any finding to this effect in her Decision.

Complainants did not also allege that Carag is guilty of gross negligence or bad faith in directing the affairs of MAC. Complainants did not present any evidence showing that Carag is guilty of gross negligence or bad faith in directing the affairs of MAC. Neither did Arbiter Ortiguerra make any finding to this effect in her Decision.

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