

THIRD DIVISION

[G.R. No. 150488, July 28, 2008]

**SIEMENS PHILIPPINES, INC. AND MR. ERNST H. BEHRENS,
PETITIONERS, VS. ENRICO A. DOMINGO, RESPONDENT.**

DECISION

NACHURA, J.:

On appeal *via* petition for review on *certiorari* under Rule 45 of the Rules of Court are the Decision^[1] and Resolution^[2] of the Court of Appeals dated March 12, 2001 and October 18, 2001, respectively, in CA-G.R. SP No. 58512 entitled *Enrico A. Domingo versus National Labor Relations Commission (First Division) and Siemens Philippines, Inc., and/or Mr. E. H. Behrens*.

This is an offshoot of an illegal dismissal case filed by Enrico A. Domingo (Domingo) against Siemens Philippines, Inc., Manila (Siemens Philippines) in July 1995 wherein Domingo got a favorable decision from the Labor Arbiter (LA). On appeal, however, the National Labor Relations Commission (NLRC) reversed the decision of the LA and dismissed the case. Aggrieved, Domingo filed a petition for review on *certiorari*^[3] with the Court of Appeals (CA). Finding merit in his petition, the CA reversed the judgment of the NLRC and reinstated the decision of the LA.

The Facts

On March 16, 1987, Domingo signed an Employment Contract with Maschinen & Technik, Inc. (MATEC) as a consultant, with a compensation package of Php8,000.00/month salary and an allowance of Php400.00/month. MATEC is a subsidiary of Siemens Philippines.^[4] Thereafter, Domingo was given additional work by MATEC, in which he was paid DM1,800.00/month on top of his original salary. The extra work was the result of a contract entered into by MATEC and Siemens Aktiengesellschaft^[5] (Siemens Germany), whereby MATEC, at the request of Siemens Germany, hired Domingo to handle the operation of OEN OEV TD.^[6] Siemens Germany is a German company which has an investment in Siemens Philippines.^[7]

On January 28, 1992, Electronic Telephone System Industries, Inc. (ETSI) availed of Domingo's services as assistant manager. ETSI, like MATEC is a subsidiary of Siemens Philippines.^[8] The Contract of Employment^[9] of Domingo with ETSI provides that the latter shall have the right to assign the said contract in favor of Siemens Philippines, which is a corporation to be incorporated under the laws of the Philippines.^[10]

On March 16, 1992, while still an assistant manager of ETSI, Domingo was hired as a consultant by Siemens Germany in the field of text and data networks for a period

of twelve (12) months.^[11] As compensation, he received DM20,000.00, payable once for every twelve-month period.^[12]

On March 31, 1992, Siemens Germany sent a letter to ETSI guaranteeing the consultancy agreement between Siemens Germany and Domingo. The pertinent portion of the letter reads:

Under Item 7.1, the consultancy agreement is valid for 12 months. To give Mr. R. Domingo the necessary security, we guarantee you that we will extend the Consultancy Agreement with Mr. R. Domingo for as long as he has an employment relationship with you.

Please tell him that you (ETSI) will ensure that the [sic] Siemens AG will extend the Consultancy Agreement for as long as an employment relationship exists between ETSI and Mr. R. Domingo.^[13]

On June 1, 1992, Domingo signed a Contract of Employment with Siemens Philippines. The relevant portions of the contract read:

WITNESSETH : That

WHEREAS, the COMPANY, is taking over the greater part of the business activities, of ELECTRONIC TELEPHONE SYSTEMS INDUSTRIES, INC. (ETSI),

WHEREAS, the COMPANY has offered to engage the services of the EMPLOYEE as **Assistant Manager** and the EMPLOYEE has agreed to accept such employment under the terms and conditions mutually acceptable to both parties.

NOW THEREFORE, for and in consideration of the foregoing premises and the mutual covenants hereinafter contained, the parties hereto have agreed as follows:

1. The COMPANY hereby engages the services of the EMPLOYEE as Assistant **Manager - Public Communications Systems** and the EMPLOYEE hereby accepts such employment, as a regular employee of the COMPANY in accordance with the terms and conditions of this contract. The term of the EMPLOYEE's employment shall begin on 01 June 1992. The EMPLOYEE shall cease from this date to be an employee of ETSI and the EMPLOYEE's contract of employment with ETSI is thereby deemed terminated and superseded by this Contract.

x x x x

3. The EMPLOYEE shall suffer no diminution in salary, benefits and privileges that he enjoyed as a former employee of ETSI. It is hereby agreed that the EMPLOYEE's length of service with ETSI shall be credited and recognized by the COMPANY. For this purpose, the COMPANY acknowledges that the EMPLOYEE's hiring date with ETSI is 01 January 1992.

6. The COMPANY shall pay the EMPLOYEE a salary of **Twenty-Four Thousand One Hundred Fifty Pesos** (P24,150.00) per month. The payments will be made [during] the 15 and 30 of each month.
7. During the period of his employment, the EMPLOYEE shall not be connected in any other work capacity or employments, nor be otherwise involved, directly or indirectly, with any other business or concern whatsoever without first having obtained the written consent of the COMPANY. It is the COMPANY's intention that the EMPLOYEE devote[s] all of his efforts towards the fulfillment of his obligations under this contract.^[14]

On March 11, 1993, while Domingo was already in the employ of Siemens Philippines, Siemens Germany extended the consultancy agreement with Domingo for another twelve (12) months. Again, on March 16, 1994, Siemens Germany renewed the consultancy agreement with Domingo for another six (6) months.^[15] Domingo's consultancy contract expired in September 1994.^[16] Complacent that the consultancy agreement would be renewed in accordance with the guarantee letter, Domingo continued to render service as a consultant despite the absence of a formal notice of renewal.^[17] He had every reason to feel secure because, in January 1995, without his contract being renewed, he was even made to accompany to Hong Kong the General Manager of Siemens Germany and the Division Manager of Siemens Philippines to seal an agreement between Siemens Philippines and Philippine Long Distance Telephone Company involving a US\$1.09M Packet Switching Contract.^[18]

Earlier, on October 31, 1994, Siemens Philippines sent a letter^[19] to Domingo proposing a new incentive scheme. The letter was signed by Sepp E. Tietze, General Manager, VS Regional Manager Singapore; and by Ernst H. Behrens (Behrens), President and Chief Operating Officer of Siemens Philippines Inc., Manila. The relevant portions of the letter read:

We refer to your special arrangement with VS Munich (formally OEN VD) which expired September 1994.

It is the VS policy to let all sales-related employees contribute on the success of the group.

Consequently, an incentive scheme will shortly be introduced for all VS Divisions in South East (sic) Asia. As already discussed with you and agreed upon[,] you will receive a new contract incorporating the incentive scheme adapted to the conditions within the Philippines.^[20]

The incentive scheme was, in effect, a replacement of his consultancy contract with Siemens Germany. Under the scheme, Domingo would receive a sales compensation package of 20% of his peso salary, or a maximum of about Php70,000.00 per annum, whereas under the consultancy agreement, he was receiving a fixed salary of Php370,000.00 (DM20,000.00) per annum. Feeling humiliated by the diminution of his salary, Domingo was forced to resign. On February 27, 1995, Domingo tendered his Resignation Letter^[21] to Siemens Philippines, the pertinent portion of which reads:

Under the present circumstances and with the result of our discussions with Mr. Tietze and Mr. Behrens, I am tendering my resignation effective close of office on March 31, 1995. I regret that I have to make this decision but I hope you will understand that I am forced to do it. I wish you good luck in the VS Division and hope to see you again in the future.

On July 6, 1995, Domingo filed a complaint for illegal dismissal and prayed for the payment of salaries, 13th month pay, backwages, damages, separation pay and attorney's fees.^[22] Domingo alleged that he was forced to resign because of the act of Siemens Philippines of not renewing the consultancy agreement.^[23] Siemens Philippines countered that Domingo's resignation was voluntary and that they were not privy to the consultancy agreement between Domingo and Siemens Germany.^[24]

On May 28, 1997, the Labor Arbiter rendered a Decision,^[25] disposing, as follows:

WHEREFORE, judgment is hereby rendered finding complainant [Domingo] to have been illegally dismissed and the respondent[s] are ordered, jointly and severally, to pay complainant his backwages and other benefits from April 1, 1995 up to October 5, 1995, consultancy fees of DM20,000.00 from October 1, 1994 to October 5, 1995 but rounded up to one year, or its peso equivalent at the time [of] payment, moral damages of Five Hundred Thousand Pesos (P500,000.00); exemplary damages of Five Hundred Thousand Pesos P500,000.00, separation pay equivalent to two months pay per year of service and attorney's fees of 10% of whatever amount complainant will recover in this case. Complainant's consultancy fee shall be included in the computation of his separation pay using the following formula: DM20,000.00 over 12 multiplied by 2 and the product multiplied by 3.

SO ORDERED.^[26]

On appeal, the NLRC reversed the ruling of the LA in a Decision^[27] dated August 25, 1999, and declared that Domingo was not illegally terminated. The *falla* of the said Decision reads:

WHEREFORE, the appealed decision is set aside. The complaint below is dismissed for being without merit.

SO ORDERED.

Domingo filed a Motion for Reconsideration, but the same was denied by the NLRC in an Order^[28] dated January 26, 2000.

Hard pressed, Domingo filed a petition for *certiorari*^[29] before the CA assailing the NLRC for grave abuse of discretion in declaring that Domingo was not forced to resign, and for its erroneous appreciation of the evidence on record that resulted in the reversal of the Decision of the LA.^[30]

On March 12, 2001, the CA rendered a Decision^[31] declaring that Domingo was constructively dismissed. His resignation was adjudged to be involuntary, the

substantial decrease in compensation having made Domingo's employment with Siemens Philippines unbearable. The decretal portion of the Decision reads:

WHEREFORE, premises considered, the petition is granted. The appealed decisions of the NLRC are hereby REVERSED and SET

ASIDE. In lieu thereof, the decision of the Labor Arbiter is hereby reinstated.

SO ORDERED.^[32]

A motion for reconsideration was filed by Siemens Philippines and Behrens, but the same was denied in a Resolution^[33] dated October 18, 2001.

On December 13, 2001, Siemens Philippines and Behrens filed the present petition for review on *certiorari*. They raise the following arguments:

Siemens, Inc. was not a party to the consultancy agreement, hence, it could not guarantee its extension/renewal.

The non-extension/renewal of respondent's consultancy agreement with Siemens AG may not be taken as a circumstance leaving respondent with no alternative but to resign.

Since respondent's resignation was purely voluntary, Siemens, Inc. did not commit illegal dismissal. Hence, there is absolutely no basis in holding petitioners liable to respondent for backwages, consultancy fee, separation pay, damages and attorney's fees.^[34]

The Issue

The crucial issue in this case is whether there was constructive dismissal that would entitle Domingo to his monetary claims.

The Ruling of the Court

I. On Illegal Dismissal

We believe, and so hold, that Domingo was constructively dismissed from employment.

A diminution of pay is prejudicial to the employee and amounts to constructive dismissal.^[35] The gauge for constructive dismissal is whether a reasonable person in the employee's position would feel compelled to give up his employment under the prevailing circumstances. Constructive dismissal is defined as quitting when continued employment is rendered impossible, unreasonable or unlikely as the offer of employment involves a demotion in rank or diminution in pay.^[36] It exists when the resignation on the part of the employee was involuntary due to the harsh, hostile and unfavorable conditions set by the employer. It is brought about by the clear discrimination, insensibility or disdain shown by an employer which becomes unbearable to the employee. An employee who is forced to surrender his position through the employer's unfair or unreasonable acts is deemed to have been illegally