



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NELSON B. GAN,

Petitioner,

G.R. No. 177167

Present:

- versus -

VELASCO, JR., J., Chairperson,
PERALTA,
ABAD,
PEREZ,* and
MENDOZA, JJ.

GALDERMA PHILIPPINES,
INC. and ROSENDO C.
VENERACION,

Respondents.

Promulgated:

January 17, 2013

X-----

J. Lopez
X

DECISION

PERALTA, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure seeking the reversal of the March 21, 2007 Decision¹ of the Court of Appeals in CA-G.R. SP No. 91118, which upheld the assailed resolutions of the National Labor Relations Commission (NLRC) affirming the Labor Arbiter's ruling that petitioner Nelson B. Gan voluntarily resigned and was not constructively dismissed by respondent Galderma Philippines, Inc.

Now the facts.

* Designated additional member, in lieu of Associate Justice Marvic Mario Victor F. Leonen, per Special Order No. 1412 dated January 16, 2013.

¹ Penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr. concurring; *rollo*, pp. 76-93.

N

Respondent Galderma Philippines, Inc. (Galderma), a wholly-owned subsidiary of Galderma Pharma S.A., is engaged in the business of selling, marketing, and distribution of Cetaphil Brand Product Lines (CBPL) that include Cetaphil liquid and bar cleansers, and pharmaceutical products, such as Locetar, Benzac and other prescription drugs. CBPL, which are over-the-counter products sold and/or distributed through supermarkets and health and beauty outlets, are handled by Galderma's Consumer Products Division, while pharmaceutical products, which are mostly prescription drugs sold and/or distributed through drug stores, are handled by its Ethical Products Division.

On February 9, 2001, petitioner Nelson B. Gan (Gan) was hired by Galderma as Product Manager for its Consumer Products Division to handle the marketing of CBPL effective March 1, 2001 with salary and benefits as follows:

1. Monthly Salary - PHP 30,000.00 (Guaranteed 13 months)
2. Sales Incentives Scheme
 - Monthly Incentive (should the monthly sales target for the CBPL be achieved) – PHP 8,000.00
 - Year-to-Date (YTD) Incentive (should the monthly sales target for the CBPL be consistently achieved) – PHP 2,000.00
 - Annual Incentive (should the annual sales target for the CBPL be achieved) – PHP 15,000.00
3. Others
 - Provision and free use of company car
 - Monthly car allowance – PHP 3,200.00
 - Vision care annual subsidy for Gan and his dependents – PHP 1,200.00
 - Rice subsidy – PHP 1,500 every other month
 - Grocery items – worth PHP 900.00 upon attainment of the monthly sales target, subject to upgrade to PHP 1,300.00 at the end of every quarter upon national attainment of quarter targets
 - Funeral assistance – PHP 10,000
 - Monthly cellular telephone reimbursement – PHP 500.00
 - Paid vacation leave of ten (10) working days per annum after one (1) year of employment
 - Paid sick leave of ten (10) working days per annum after six (6) months of employment
 - Paid funeral leave of five (5) days in case of death of an immediate family member (legitimate wife, children and parents)
 - Paternity Leave
 - Group Life Insurance

- Group Personal Accident Insurance
- Retirement Plan
- Foreign travel incentive like any other employee of Galderma depending on their performance for the year²

Gan was initially under the immediate supervision of Sales and Marketing Manager, Stephen C. Peregrino (Peregrino). Starting September 1, 2001, however, in view of Peregrino's resignation, he directly reported to Galderma's President and General Manager, respondent Rosendo C. Veneracion (Veneracion).³

With his satisfactory performance during the first year, Gan was acknowledged and rewarded by Galderma through positive performance appraisal, salary and benefits increases, and informal notations on his marketing reports:

18.1 [Gan] was given a FULLY EFFECTIVE RATING by [Veneracion] in his Overall Performance Evaluation for the year 2001, particularly -

Result Assessment

KEY RESULT AREAS	RATING	DESCRIPTION
Brand Growth	5	Fully effective.
Business Expansion	5	Fully effective.
Profitability	5	Fully effective.
Marketing Plan Implementation	5	Fully effective.

Behavioral Assessment

AREAS OF BEHAVIOR	RATING	DESCRIPTION
Client Orientation – understands clients; produces services and products for clients; uses knowledge to equip clients; meets clients' needs.	5	Fully effective.
Drive for Results – makes	5	Fully effective.

² *Rollo*, pp. 211-217.

³ *Id.* at 390, 465.

things happen; is proactive, balances analysis with doing; sets high standards for self; commits to organizational goals.		
Teamwork – collaborates with others; shares knowledge; acknowledges [other's] contributions; works effectively in diversity; seeks help as needed.	6	Exceptionally effective.

NOTE: “6” being the highest rate and “1” the lowest.

18.2. [Gan] was given a 40% increase in his gross monthly salary, that is, from PHP 30,000.00 to PHP 42,000.00 effective [1] January 2002 through the 10 December 2001 Office Correspondence (or memorandum) of [Veneracion] x x x.

18.3. [Gan's] PHP 8,000.00 monthly sales incentive was also increased to PHP 9,000.00 effective [1] January 2002 through [Veneracion's] Office Correspondence of 14 December 2001 x x x.

18.4. [Gan's] PHP 3,200.00 monthly car allowance was likewise increased to PHP 4,125.00. This increase, however, was not evidenced by any memorandum and was merely implemented by [Galderma] and included in his monthly pay.

18.5. [Gan] was also included among the select group of employees of [Galderma] entitled to and given an all expense paid overseas trip for 2001 (in Sydney, Australia), but he was unable to join the same due to visa problem.⁴

Gan's above-average performance in handling CBPL continued in the first quarter of 2002:

19.1. The total 1st quarter net sales of the CBPL was almost double the 2000 annual net sales and already 53% of the 2001 annual net sales x x x

19.2. The average monthly net sales for 2002 was already 96% higher than the average monthly net sales for 2001. If this trend continues, the annual net sales for the CBPL is expected at PHP 14,020,232.00 or more than double the annual net sales for 2001.

⁴

Id. at 15-17; 245-250.

19.3. The excellent year 2002 1st quarter performance of [Gan] was acknowledged by [Veneracion] with his handwritten comments on the CBPL Marketing Report for February 2002 prepared and submitted by [Gan] x x x to wit –

19.3.1. [Veneracion] commended [Gan] for the good sales results for the 1st 2 months of 2002 when he commented – “*Good sales results! Looks like we’re off to a good start!! Keep it up!*” – when [Gan] reported that the CBPL generated total gross sales of PHP 1.65 million [or] a 144% attainment vs. the February forecast, which sales total surpassed the previous high of PHP 1.46 million for January 2002.

19.3.2. [Veneracion] commented as “*EXCELLENT*” the eight (8) Press Releases or Articles for the CBPL for the month of February 2002.⁵

Pursuant to its intention to give him additional product management responsibilities, Galderma provided Gan with product knowledge training on Benzac and Locetar brands in December 2001. Thereafter, Gan’s incentive program was revised and took effect in April 2002, thus:

MONTHLY INCENTIVE

Earn cash incentive upon achieving monthly national trade sales forecasts of the Cetaphil Consumer line, Locetar line and Benzac line as follows:

Cetaphil consumer line	₱ 4,500.00
Locetar line	3,000.00
Benzac line	1,500.00

Earn monthly cash incentive as YTD Consistency Award as follows:

Cetaphil consumer line	₱ 1,000.00
Locetar line	750.00
Benzac line	250.00

ANNUAL INCENTIVE

Earn cash incentive upon achieving Annual Trade Forecasts of the following:

Cetaphil consumer line	₱ 7,500.00
Locetar line	5,000.00
Benzac line	2,500.00 ⁶

⁵ *Id.* at 17; 251-253.

⁶ *Id.* at 253.

The above policy actually modified the 2002 Incentive Program previously communicated to Gan per December 14, 2001 Office Correspondence,⁷ the mechanics of which were as follows:

MONTHLY INCENTIVE:

Earn Ps 9,000 cash incentive upon achievement of monthly national trade sales forecast of the Cetaphil consumer line and/or any product line that management may add to the line-up of consumer products promoted to supermarket accounts.

Earn Ps 2,000 monthly cash incentive as YTD Consistency Award for the Cetaphil consumer line and/or any product line that management may add to the line-up of consumer products promoted to supermarket accounts.

ANNUAL INCENTIVE:

Earn Ps 15,000 cash incentive upon achievement of annual trade sales forecast of the Cetaphil consumer line and/or any product line that management may add to the line-up of consumer products promoted to supermarket accounts.

The December 14, 2001 Office Correspondence further advised that Galderma's management "*reserves the prerogative to modify or cancel [the] incentive program dependent on the company's financial capability to continue with the program*" and that "*[i]n such an event, a 30-day advance notice shall be provided [to] personnel affected by the change.*"

On April 11, 2002, Gan severed his employment ties with Galderma. His resignation letter reads:

April 11, 2002

Gerry Castro
Sr. Product Manager

Please accept my resignation as OTC Product Manager effective July 15, 2002.

I am giving the company this notice in advance so that Galderma Philippines may have ample time to find a suitable replacement for my position.

⁷

Id. at 250.

I plan to pursue the establishment of my own business or explore opportunities with other companies.

(Signed)
NELSON GAN⁸

On the same day, Gerry M. Castro (Castro), his immediate superior at the time, accepted the resignation tendered:

April 11, 2002

G.M. Castro
Marketing

Nelson Gan

c.c.: R.C. Veneracion
W.M. Marquez

Acceptance

This is to accept your resignation which will take effect on July 15, 2002. We appreciate your gesture for providing the company three months advance notice to recruit and train suitable replacement. We wish you success in your future endeavor.

(Signed)
GERRY M. CASTRO⁹

Three months passed, on July 25, 2002, Gan filed a Complaint¹⁰ for illegal constructive dismissal, full backwages, separation pay, damages, attorney's fees, and cost of suit against respondents Galderma and Veneracion.

Gan has consistently alleged his version of facts:

The start of [Gan's]
Calvary in [Galderma].

20. [In] the morning of [4] March 2002, [Gan] was summoned by [Veneracion], who informed him of his disgust in [Gan's] act of taking an emergency sick leave on 28 February 2002, immediately after availing of a five (5)-day vacation leave from 21-27 February 2002. [Veneracion] also informed [Gan] that he disliked his act in applying for the emergency sick leave, that is, by merely "texting" (short message service or SMS)

⁸ *Id.* at 254.

⁹ *Id.* at 255.

¹⁰ *Id.* at 181-210.

[Veneracion's] executive secretary instead of informing [Veneracion] himself. [Gan] apologized to [Veneracion] and informed him that it will not be repeated, as in fact it was never repeated x x x.

Incident with
[Veneracion] on [7]
March 2002.

21. [Gan], as previously required by [Veneracion], submitted a five (5)-year sales forecast and marketing program for a Benzac brand anti-acne product (an ethical product, thus not covered by the CBPL). [Veneracion] wanted to include the said product under the brand management functions of [Gan] in the CBPL x x x.

22. [Veneracion] did not like the sales forecast and marketing program prepared by [Gan] to the point that he questioned the competence of [Gan] as product manager. To appease the irritated [Veneracion], [Gan] politely stated that x x x –

22.1. The matters stated in his sales forecast and marketing programs are merely his professional views and should the same be unacceptable to [Veneracion], the decision of the latter would naturally prevail and be implemented by [Gan].

22.2. Perhaps the reason why [Veneracion] did not like the sales forecast and marketing programs submitted by [Gan] is because the Benzac Brand is not within [Gan's] expertise, being an ethical product, and not among the products understood by [Gan] to be covered by his responsibility as product manager when he accepted the work in [Galderma].

23. [Veneracion], however, did not accept the explanation of [Gan] and started enumerating his dissatisfaction with [Gan] unfairly branding the latter as - “*slow, lacking in initiative and uncooperative*” (THE 1st ACT OF HARASSMENT). Not satisfied, [Veneracion] continued and then asked [Gan] to reconsider his stay [in] [Galderma] (in other words to leave or resign) because of his aforementioned negative attitudes (THE 2nd ACT OF HARASSMENT). [Gan], naturally and considering his excellent performance in 2001-2002 and his immense contribution to [Galderma's] success, refuted as false the unfair allegations of [Veneracion] x x x.

Incident with
[Veneracion] on 15
March 2002 x x x.

24. On or about 10:00 [a.m.], [Veneracion] went to the office cubicle of [Gan] to ask for a list of the advertising rates of the leading newspaper publications, which he [needed] as reference in studying the five (5)-year business plan of [Galderma]. [Gan] respectfully informed [Veneracion] that he does not have a list, but he would ask for one (as in fact he did) from [Galderma's] retained PR Agency, Agatep and Associates x x x.

25. About 10 minutes later, [Veneracion] returned to the office cubicle of [Gan] again asking for the list of ad rates. [Gan] explained to [Veneracion] that he has already requested it from Agatep and Associates, but the PR Agency has not yet forwarded a copy to him as he requested. He informed [Veneracion] that he [would] again call the PR Agency for a copy of the list of ad rates x x x.

26. But even before [Gan] [could] call the PR Agency, [Veneracion], surprisingly, again got angry at [Gan] with his reply. *[Veneracion] again unfairly and falsely accused [Gan] of being remiss in his duties as product manager for not having a ready copy of the list of ad rates (THE 3rd ACT OF HARASSMENT).* [Gan] explained to [Veneracion] that he does not have a copy of the said list as he does not use paid advertisement as a means of promoting the CBPL, as what he uses are PR articles and paid newspaper advertisements in magazines (not newspapers). This further infuriated [Veneracion] who was still *insisting that [Gan] should have a ready copy of the said list of ad rates and again unfairly and without basis questioned his competence as product manager* x x x.

27. [Veneracion], still furious, thereafter summoned [Gan] to his office for a *closed-door meeting where he continued lambasting [Gan] for his alleged negative work behavior and his poor performance as product manager in [Galderma] (THE 4th ACT OF HARASSMENT).* [Gan] defended himself through his good performance record x x x.

28. [Veneracion], notwithstanding the explanation of [Gan], again *accused [Gan] of being a distraction in [Galderma] and for the second time asked him to reconsider his stay in [Galderma] (THE 5th ACT OF HARASSMENT).* After the outburst of [Veneracion], [Gan] asked him what he wants [Gan] to do to satisfy [Veneracion], to which *[Veneracion] replied – “make your move” - insinuating that [Gan] resign from [Galderma].* Shocked at the statement of [Veneracion] for him to resign, *[Gan] replied - “no you make your move” - insinuating that [Veneracion] should fire him if he is not satisfied with his performance. [Veneracion] thereafter warned [Gan] not to give a reason to terminate him.* At this, [Gan] stated that he will not resign his employment in [Galderma], as he knows he is doing his job very well, as reflected by his sales record x x x.

29. Immediately after their meeting, [Veneracion] verbally ordered that from that time onwards *[Gan] [would] start to report directly to the Senior Product Manager Mr. Gerry M. Castro [“Castro”], instead of to [Veneracion] directly* x x x.

Incident with [Castro]
on [3] April 2002 x x
x.

30. [Gan] was called to the office of [Castro]. There[,] [Gan] was informed that his 2002 INCENTIVE SCHEME was revised (hereinafter the “REVISED 2002 INCENTIVE SCHEME” - THE 6th ACT OF HARASSMENT), as follows x x x:

2002 INCENTIVE SCHEME	REVISED 2002 INCENTIVE SCHEME	EFFECTS
<p>PHP 9,000 – <i>monthly incentive</i> for meeting the monthly sales target for the CBPL.</p>	<p>SAME AMOUNT of <i>Monthly incentive</i> was distributed as follows:</p> <ul style="list-style-type: none"> * PHP 4,500.00 for meeting the monthly sales target for the CBPL. * PHP 3,000.00 for meeting the monthly sales target for the Locetar Brand. * PHP 1,500.00 for meeting the monthly sales target for the Benzac Brand 	<p>50% DECREASE in monthly incentive for meeting the SAME CBPL monthly sales target. Represents 33% of the monthly incentive for the CBPL DEDUCTED from [Gan]. Represents 17% of the monthly incentive for the CBPL DEDUCTED from [Gan].</p>
<p>PHP 2,000.00 – <i>YTD incentive</i> for regularly meeting the monthly sales target for the CBPL.</p>	<p>SAME AMOUNT OF <i>YTD incentive</i> was distributed as follows:</p> <ul style="list-style-type: none"> * PHP 1,000.00 for the CBPL. * PHP 750.00 for the Locetar Brand. * PHP 250.00 for the Benzac Brand. 	<p>50% DECREASE in YTD incentive for meeting the same CBPL sales target. Represents 37.5% of the YTD incentive for the CBPL DEDUCTED from [Gan]. Represents 12.5% of the YTD incentive for the CBPL DEDUCTED from [Gan]</p>
<p>PHP 15,000.00 – <i>annual incentive</i> for meeting the annual sales target for the CBPL.</p>	<p>SAME AMOUNT of <i>Annual incentive</i> was distributed as follows:</p> <ul style="list-style-type: none"> * PHP 7,500.00 for the CBPL. * PHP 5,000.00 for the Locetar Brand. * PHP 2,500.00 for the Benzac Brand. 	<p>50% DECREASE in the annual incentive for meeting the same sales target for the CBPL. Represents 33% of the annual incentive for the CBPL DEDUCTED from [Gan] Represents 17% of the annual incentive for the CBPL DEDUCTED from [Gan]</p>

31. [Gan] requested from [Castro] the following x x x:

31.1. A one (1)-month transition period to familiarize himself with the new products added to his responsibilities and to study its market.

31.2. Not to implement his revised incentive scheme during the requested transition period.

[Castro] informed [Gan] that he understood his position and he [would] discuss the matter with [Veneracion] immediately upon the return of the latter from Singapore. On his way out of [Castro's] office, [Gan] was handed a copy of the memorandum dated [2] April 2002 (to take effect [1] April 2002) revising, or to be specific – REDUCING – his incentive scheme for his signature evidencing conformity x x x. [Gan] asked [Castro] if he [could] delay the signing until after [Veneracion] has decided on his above requests, to which [Castro] readily agreed.

Incident with [Castro]
on 10 April 2002 x x x.

32. [Gan] was instructed by [Castro] to formally put in writing his request for reconsideration on his REVISED 2002 INCENTIVE SCHEME as they previously discussed on [3] April 2002. [Gan][,] fearing that this [might] only fuel another of [Veneracion's] recent and numerous outbursts against him[,], informed [Castro] that “*kung magiging issue lang huwag na tanggapin ko na*” but [Castro] insisted that he put it in writing. [Gan] did so as instructed by [Castro] x x x.

Incident with
[Veneracion] on 11
April 2002 x x x.

33. Early that morning, [Gan] and [Castro] were having a discussion in the latter's office when [Veneracion] arrived and started lambasting [Gan] for his alleged incompetence as product manager. [Gan] allegedly failed to consider some details in the CBPL presentation for the Getz Bros. April cycle meeting. [Veneracion] continued his attack on the alleged incompetence of [Gan] and [Veneracion's] inclination to remove the CBPL responsibility from him. [Veneracion] said he [would] handle it himself – THE 7th ACT OF HARASSMENT x x x.

34. Not satisfied, [Veneracion] thereafter summoned both [Gan] and [Castro] in his office where he continued lambasting and humiliating [Gan]. This time, [Veneracion] was furious because of [Gan's] written request for reconsideration on his REVISED 2002 INCENTIVE SCHEME telling [Gan] outright that he has no right to reject management's decision on compensation matters. Not satisfied, [Veneracion] continued that [Gan] has become a liability in [Galderma] and that [Galderma] [would] be better off without him (stated another way, that [Gan] leave [Galderma]) – THE 8th ACT OF HARASSMENT x x x.

35. [Veneracion], thereafter[,], asked [Gan] if he has had any luck in looking for another employment. Surprised at [Veneracion], [Gan] replied that he was not looking for another job. [Veneracion] replied that he was surprised that [Gan] was not planning to leave [Galderma] considering their conflicts. [Veneracion] also asked [Gan] if he has

consulted a lawyer and when [Gan] answered no, [Veneracion] again expressed his surprise – THE 9th ACT OF HARASSMENT x x x.

36. Not satisfied with the humiliation inflicted on [Gan], [Veneracion] for the *n*th time told [Gan] to reconsider his stay in [Galderma] (in other words[,] that [Gan] leave [Galderma]). [Veneracion] told [Gan] that he [would] be given 15 days to look for another job (in short, he [would] be terminated in 15 days), as a gesture of his good will – THE 10th ACT OF HARASSMENT x x x.

The forced resignation
of [Gan].

37. Shocked and humiliated at the turn of events, [Gan] requested to talk privately with [Veneracion] (which request was granted). [Gan], who had just lost his job (with the 15-day notice given by [Veneracion]) notwithstanding his excellent performance record, wanted to talk privately with [Veneracion] in the hope of salvaging a better term for his forced exit in [Galderma] (as [Gan] was of the belief, [and] rightfully so, that [Veneracion] [would] not allow him to remain employed in [Galderma] as he [had] clearly and numerously manifested). Finally, [Veneracion] offered him the following, as an alternative to him being terminated in 15 days x x x:

37.1. [Gan] was required to file his voluntary resignation that day, 11 April 2002, which resignation shall take effect on 15 July 2002 or 90 days thereafter.

It must be noted that the initial offer of [Veneracion] to [Gan] was 60 days pay in exchange for his forced resignation, but [Veneracion] increased it to 90 days pay INSTEAD of granting the request of [Gan] to include with the 60 days pay the cash amount equivalent of the Sydney trip incentive, which he failed to avail of because of visa problems x x x.

37.2. In exchange for [Gan's] resignation, [Gan] [would] no longer be required to report for work in [Galderma] starting 12 April 2002 until 15 July 2002 to afford him time to look for another employment.

37.3. Notwithstanding that he [would] no longer [be] reporting for work in [Galderma], [Gan] [would] still be paid his salary and all benefits until 15 July 2002 (the 90-day pay sweetener) *in exchange for the resignation.*

37.4. To hide their unwritten agreement from the internal auditors of [Galderma] and to justify the continued payment of his salary and benefits, [Gan] was required by [Veneracion] to submit periodic field reports (on the CBPL), on a twice a month basis, until 15 July 2002 to make it appear that he was still working for [Galderma].

38. As required by [Veneracion] and for [Gan] to receive his pay and all benefits until 15 July 2002 (the 90-day pay sweetener), [Gan] was forced to submit his required voluntary resignation x x x on the same day and which resignation was immediately accepted x x x by [Galderma] x x x.

39. [Veneracion] even dictated to [Gan] the reasons to be stated in his forced resignation letter, that - *“the 90 days is necessary to afford [Galderma] time to find suitable replacement and to afford [Gan] time to pursue his own business or to explore opportunities outside [Galderma]”* x x x.

What transpired after
the forced resignation.

40. After his forced resignation and as agreed upon, [Gan][,] starting 12 April 2002[,], stopped reporting for work in the offices of [Galderma]. He, however, continued to do occasional field work for [Galderma] and submitted the required periodic field reports on a twice a month basis x x x.

x x x x

41. [Veneracion], likewise, complied with his undertaking to continue paying [Gan] his salary and benefits x x x.

x x x x

42. On 23 July 2002, [Gan] received, by parcel delivery (LBC), the 22 July 2002 letter of [Galderma] signed by its Finance Manager, Winston Marquez x x x, informing him of the availability for pick-up of his last pay (period 1-15 July 2002) and other benefits (June incentive, pro-rated 13th month pay, reimbursement of expenses, tax refund) amounting to PHP 50,425.02. Payment of the check, however, was conditioned on [Gan] signing a quitclaim in favor of [Galderma], which he refused considering the filing of the instant suit. The said amount[,],thus[,], remains unpaid x x x.¹¹

Respondents' narration of events differs in material details. They aver:

5. In December of 2001, the company provided [Gan] with product knowledge training on the Benzac and Locetar brands. The training was pursuant to the company's intention to give additional product responsibilities to [Gan]. Multi-brand assignment is a usual practice in the company because the product management team of the company is composed of only three persons – the Senior Product Manager, the Product Manager[,], and the Assistant Product Manager. There is no clear division between personnel who handle ethical brands and those who handle consumer products. For example, the company's Assistant Product Manager, Annalyn Gamboa (“Gamboa”), handles some Cetaphil (consumer) products in addition to the ethical products that she manages.

¹¹ *Id.* at 17-25.

Senior Product Manager Gerry M. Castro (“Castro”) also handles both consumer and ethical products. Since Cetaphil was the only consumer brand of the company, it was only natural that the additional product responsibilities given to [Gan] were ethical products.

6. Galderma's senior managers noticed that [Gan] had a change of attitude from the time the management decided to include the Benzac and Locetar brands under his responsibility. Despite the fact that the company provided [Gan] with product knowledge training on the said brands, he initially refused to accept the additional assignment. The company had to remind [Gan] that the assignment was part of his Job Description, which allowed the company to assign him to undertake additional tasks as may be deemed necessary by operations.

7. On 4 March 2002, respondent Veneracion summoned [Gan] to his office in order to discuss the latter's failure to report to work after taking a five-day vacation leave. [Gan] previously undertook to come to the office after his vacation leave. However, [Gan] merely sent a “text message” to Executive Assistant Abigail R. Peralta (“Peralta”), saying that he was “still tired” from his trip and will not report to the office. After their discussion, [Gan] apologized and Veneracion accepted his apology. Veneracion refrained from issuing a show-cause memorandum to [Gan] because Veneracion thought that the matter was already settled with [Gan's] apology and undertaking to refrain from repeating the same infraction.

8. On 7 March 2002, Veneracion and [Gan] discussed [Gan's] five-year sales forecast and marketing program for a Benzac brand anti-acne product. In the course of their discussion, Veneracion reiterated to [Gan] that the latter's additional assignment is included in his Job Description. While Veneracion had some comments on [Gan's] sales forecast and marketing program, Veneracion neither asked [Gan] to reconsider his stay in Galderma nor insinuated that [Gan] should resign.

9. On 15 March 2002, Veneracion went to [Gan's] office to ask for a list of the advertising rates of the leading newspaper publications. [Gan] informed Veneracion that he did not have a list, but that he would ask one from Galderma's retained public relations agency. When Veneracion returned to [Gan's] office for the list, [Gan] explained that the public relations agency had not yet forwarded him a copy. Veneracion then requested Peralta to call up the Philippine Daily Inquirer directly, and they were able to secure the advertising rates within minutes through fax. After obtaining the advertising rates, Veneracion summoned [Gan] for a closed-door meeting for him to explain why a basic consumer marketing data was not available in his fact book. At that point [Gan] raised his voice in a very disrespectful manner. Nevertheless, Veneracion limited the discussion to [Gan's] duties as Product Manager and did not dwell on personal matters.

10. On 3 April 2002, Castro called [Gan] to his (Castro's) office to discuss [Gan's] revised incentive program, which was brought about by the inclusion of the Locetar and Benzac lines among [Gan's] product management responsibilities. Prior to their discussion, Castro gave [Gan] his copy of the revised incentive scheme. [Gan] expressed his disappointment over the change in the program and sought a one-month transition period. Castro told [Gan] that he (Castro) would discuss [Gan's]

request with Veneracion, upon Veneracion's return from a business trip abroad. After their discussion, [Gan] returned his copy of the revised incentive program to Castro. Pursuant to company practice on circulation of inter-office correspondence, Castro requested [Gan] to get his copy and to acknowledge receipt thereof. However, [Gan] refused to receive his copy and told Castro to first discuss his request with Veneracion. To avoid further confrontation, Castro let [Gan] leave without him receiving his copy.

11. On 4 April 2002, Castro again requested [Gan] to receive his copy of the revised incentive scheme. [Gan] still refused to receive the copy and even dictated what the management should do in case additional brands are assigned to a product manager. To appease [Gan], Castro reiterated that he would discuss [Gan's] request with Veneracion upon the latter's return from his trip abroad. [Gan] retorted that if Castro should decide to take it up with Veneracion, then Castro should do it quickly. Only then did [Gan] finally agree to receive his copy of the revised incentive scheme, but not without first saying: "Anyway, I will only put it on my file."

12. On 8 April 2002, Castro had a meeting with Veneracion regarding recent developments within the company. In the course of their discussion, Castro gave Veneracion an update about [Gan's] training and scheduled "revalida" or oral examination. In order to help [Gan] manage his newly assigned brands, Veneracion instructed Castro to give [Gan] additional exposure to the ethical marketing operations of the company by asking [Gan] to do clinic visits. Part of Castro's discussion with Veneracion was [Gan's] verbal request for consideration regarding the implementation of the new incentive program. Castro told Veneracion that he (Castro) would ask [Gan] to formalize the request so Castro could put a written endorsement or recommendation for approval. At that time, Veneracion already approved [Gan's] request in principle. Castro immediately told [Gan] to formalize his request so that the former could submit the request to Veneracion's office with Castro's endorsement. After Castro got [Gan's] letter in the afternoon, Castro put his endorsement on it and left it on Veneracion's desk.

13. On 11 April 2002, [Gan] and Castro had a discussion regarding [Gan's] presentation for the Getz Brothers April Cycle Meeting. Veneracion later joined them and informed Castro of the revisions that Veneracion asked [Gan] to make on his presentation. Veneracion further asked [Gan] some information relating to the Cetaphil consumer sales operation, as well as some directions that he expected [Gan] to take. Veneracion also explained to [Gan] that the incentive program offered by the company was subject to change. There was an impassioned discussion between [Gan] and Veneracion, but Veneracion was only reacting to the provocative responses and negative behavior of [Gan]. While the meeting was intense, it covered only business matters. Veneracion did not lambast [Gan], or insinuate that [Gan] should resign from Galderma.

14. Right after the discussion, [Gan] asked for a private meeting with Veneracion. During this meeting, [Gan] informed Veneracion of his desire to leave the company and requested that his resignation be made to take effect after 60 days. [Gan] asked if he could use the period to find another job or evaluate the feasibility of opening up a business. At that

time, [Gan] told Veneracion that he was thinking of exploring the possibility of opening a drugstore. In addition, [Gan] requested for the cash conversion of his Sydney Trip Incentive. Veneracion did not immediately respond to [Gan's] requests, but asked for time to think about it. As [Gan's] proposal was seen to be a precedent-setting arrangement, Veneracion decided to consult the senior managers of the company.

15. At around 11:00 a.m. of 11 April 2002, [Gan] sent a "text message" to the company's Finance Manager, Winston M. Marquez ("Marquez"). [Gan] said that he wanted to ask for help on his request for favorable terms from the company concerning his resignation. At around noon, while [Gan] and Marquez were having lunch, [Gan] told Marquez that he asked the company to give him a sixty-day grace period, which he will use either to explore the possibility of a (sic) setting up his own business or to look for other employment opportunities. [Gan] also told Marquez that he requested for the cash conversion of his Trip Incentive. At no time did [Gan] mention anything about being forced to resign by Veneracion.

16. In the afternoon of 11 April 2002, Veneracion met with Galderma's senior managers (*i.e.*, Executive Assistant Peralta, Finance Manager Marquez[,] and Senior Product Manager Castro) in order to discuss [Gan's] requests. The assessment of the group was that [Gan's] proposal would be a "win-win" situation, considering [Gan's] apparent change in attitude pertaining to his job assignment and sales incentive. As a gesture of goodwill, the group agreed to grant [Gan's] request for a grace period to allow him to either find a new job or set up his own business. It was further agreed that in lieu of [Gan's] Trip Incentive, which was not convertible to cash under company policy, the grace period arrangement could be extended for another 30 days.

17. Immediately after the meeting, Veneracion advised [Gan] of the company's agreement to [Gan's] proposal. [Gan] then submitted his letter of resignation, which was accepted by his immediate superior, Senior Product Manager Castro. Throughout this meeting, [Gan] was very calm and gave the impression to everybody that he was quite pleased with the approval of his requested grace period arrangement.

18. From April to June 2002, [Gan] continued to receive his salaries from the company. During the same period, [Gan] also submitted periodic field reports to the company.¹²

On April 21, 2003, Labor Arbiter Manuel M. Manansala dismissed the complaint for constructive dismissal.¹³ He noted that Gan's separation from Galderma was voluntarily initiated and was concluded by the written resignation letter which was accepted in a business-like manner through a formal office correspondence. The text of Gan's letter was treated as

¹² *Id.* at 874-879.

¹³ *Id.* at 536-556.

conclusive, *res ipsa loquitur*. Agreeing with respondents' contention, the Labor Arbiter cited the case of *St. Michael Academy v. NLRC*¹⁴ insofar as it enumerated the requisites of intimidation which would vitiate one's consent, but are wanting in Gan's case. Likewise pointed out was the presence of the sworn affidavits separately executed by Gan's former co-workers – Gerry M. Castro, Annalyn M. Gamboa, Winston M. Marquez, and Abigail R. Peralta – which were fully supportive of respondents' defenses. Lastly, applying *Samaniego v. NLRC*,¹⁵ *Dizon, Jr. vs. NLRC*,¹⁶ *Habana v. NLRC*,¹⁷ and *San Miguel Brewery Sales Force Union (PTGWO) v. Ople*¹⁸ invoked by respondents, the Labor Arbiter ruled that Gan surely understood the legal effects of his resignation letter considering that he is an Industrial Engineering graduate of the Mapua Institute of Technology and has Master of Business Administration (MBA) units in Letran College. The *fallo* of the Decision disposed:

WHEREFORE, premises considered, judgment is hereby rendered:

1. Declaring respondent Galderma Philippines, Inc. (GPI) not guilty of constructive dismissal-illegal constructive dismissal for the reasons above-discussed. Consequently, all the money claims as enumerated and prayed for in complainant Nelson B. Gan's Complaint are hereby denied/dismissed for lack of merit for the reasons above-discussed.

2. Declaring complainant Nelson B. Gan as entitled to his final pay amounting to ₱50,425.02 which he failed to receive from respondent GPI since 15 July 2002. Thus, respondent GPI is hereby directed to pay complainant Gan the aforestated amount.

3. Dismissing the charges against individual respondent Rosendo C. Veneracion as President and General Manager of respondent GPI for lack of merit.

SO ORDERED.¹⁹

¹⁴ G.R. No. 119512, July 13, 1998, 292 SCRA 478; 354 Phil. 491 (1998).

¹⁵ G.R. No. 93059, June 3, 1991, 198 SCRA 111.

¹⁶ G.R. No. 69018, January 29, 1990, 181 SCRA 472; 260 Phil. 501 (1990).

¹⁷ G.R. No. 121486, November 16, 1998, 298 SCRA 537; 359 Phil. 65 (1998).

¹⁸ G.R. No. 53515, February 8, 1989, 170 SCRA 25; 252 Phil. 27 (1989).

¹⁹ *Rollo*, pp. 555-556.

On appeal, the NLRC affirmed the Labor Arbiter's Decision.²⁰ It said that Gan's resignation letter is more determinative in the present controversy as it “distinctly speaks of [his] reasons for resigning x x x in a mild and sober expression as to graciously give [advance notice to Galderma] without a tinge of remorse on his part.” In accord with the Labor Arbiter's findings, the NLRC held:

The interchange of words and ideas between the parties herein appurtenant to [Gan's] resignation does not in any manner show a color of frustration or an iota of anger by any of the parties. Thus, We cannot see nor perceive that [Gan's] resignation letter is a sham or irregular on its face as the same is made by the forced dictation of [respondent Veneracion] and is involuntary on the part of [Gan]. For no reason is convincingly adduced on record for us to rationally conclude that [Gan] was forced, threatened, intimidated or dictated against his will in the absence of a substantial evidence to the contrary. Indeed, [Gan's] resignation letter speaks well of itself. *Res ipsa [loquitur]*.

In fine, We concur and affirm the Arbiter's disquisition that [Gan's] resignation from work is indeed voluntary on his part. [Gan's] strongly worded supposition that acts of harassment on the part of [respondents] forced him to execute and sign the demanded and dictated resignation letter as he has no other choice considering the options given him by [respondents] which were (a) termination in 15 days, or (b) execute and sign the demanded and dictated letter and get 90 days pay is essentially naked for being unsubstantiated if not totally unfounded. [Gan's] bare allegation of force or “dictation” has no place to support the “involuntariness” of forced resignation.

It is more telling to consider that [Gan] is a managerial employee who holds a sensitive position as Product Manager of respondent company. Undeniably, [Gan] is a man of letters holding a bachelor's degree in Industrial Engineering and possesses a Master's degree in Business Administration (MBA). As a highly educated individual, [Gan] must fully understand if not totally comprehend the import of his own words and the consequences of his own acts. Thus, the natural import of the words and expressions of his ideas as manifested by [Gan] himself should be accorded a literal meaning for being unambiguous. To say the least that the questioned letter is forced is far-fetched and floats in the realm of imagination.²¹

When Gan's motion for reconsideration was denied by the NLRC on June 22, 2005,²² he subsequently filed before the CA a petition for *certiorari*

²⁰ CA *rollo*, pp. 66-83.

²¹ *Id.* at 81-82.

²² *Id.* at 85-86.

under Rule 65 of the 1997 Revised Rules on Civil Procedure.²³ On March 21, 2007, the CA denied the petition, finding no grave abuse of discretion on the part of the NLRC.²⁴ In adopting the NLRC's recitation of facts, which was substantially lifted from the factual findings of the Labor Arbiter, the legal conclusions reached by the NLRC were likewise adhered to by the CA. Further, it opined:

x x x While (*sic*) it may be true that Respondent VENERACION appeared to be hostile towards [Gan]. However, the latter's allegations failed to show persuasive proof of Respondent VENERACION's desire to deprive him of his employment. [Gan] would like us to believe that the peculiar circumstances alluded to by him is constitutive of his involuntary act to resign from his post. However, this is belied by his allegation in this Petition which in effect is an implied admission of the non-existence of any hint of anger, dictation, force or harassment employed upon him in the execution of the subject resignation letter.²⁵

Hence, this petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure, with the following assigned errors:

I. THE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT [GAN] VOLUNTARILY RESIGNED AND WAS NOT ILLEGALLY OR CONSTRUCTIVELY DISMISSED, AS EVIDENCED SOLELY BY THE TENOR OF THE SUBJECT RESIGNATION LETTER, WITHOUT CONSIDERING, AS MANDATED BY ESTABLISHED JURISPRUDENCE, THE PECULIAR CIRCUMSTANCES SURROUNDING ITS EXECUTION.

II. COROLLARILY, THE COURT OF APPEALS LIKEWISE COMMITTED GRAVE ABUSE OF DISCRETION IN AFFIRMING THE ERRONEOUS LAMM AND NLRC DECISION DISMISSING ALL OF [GAN'S] COUNTERCLAIMS.

III. FINALLY, THE COURT OF APPEALS ALSO COMMITTED GRAVE ABUSE OF DISCRETION IN AFFIRMING THE ERRONEOUS LAMM AND NLRC DECISION DISMISSING THE COMPLAINT AGAINST RESPONDENT [VENERACION].²⁶

We deny the petition.

²³ *Id.* at 2-63.

²⁴ *Rollo*, pp. 76-93.

²⁵ *Id.* at 89.

²⁶ *Id.* at 33.

Settled is the rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only with respect but even finality by the courts when supported by substantial evidence, *i.e.*, such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.²⁷ Likewise, factual findings arrived at by a trier of facts, who is uniquely positioned to observe the demeanor of the witnesses appearing before him and is most competent in judging the credibility of the contending parties, are accorded great weight and certitude.²⁸

In the same vein, the jurisdiction of this Court in cases brought before it from the CA *via* Rule 45 is generally limited to reviewing errors of law or jurisdiction. In the exercise of its power of review, the findings of fact of the CA are conclusive and binding. The reason is that this Court does not entertain factual issues. It is not our function to analyze or weigh evidence all over again as the evaluation of facts is best left to the trial or administrative agencies/quasi-judicial bodies and appellate court which are better equipped for the task.²⁹

Admittedly, the above rule is not ironclad.³⁰ There are instances in which factual issues may be resolved by this Court, to wit: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) the Court of Appeals goes beyond the issues of the case, and its findings are contrary to the admissions of both appellant and appellees; (7) the findings

²⁷ *Julie's Bakeshop v. Arnaiz*, G.R. No. 173882, February 15, 2012, 666 SCRA 101, 113-114; *Philippine Veterans Bank v. NLRC (Fourth Division)*, G.R. No. 188882, March 30, 2010, 617 SCRA 204, 212; and *Merck Sharp and Dohme (Philippines) v. Robles*, G.R. No. 176506, November 25, 2009, 605 SCRA 488, 494.

²⁸ *Metro Transit Organization, Inc. v. NLRC*, G.R. No. 122046, January 16, 1998, 284 SCRA 308, 314; 348 Phil. 334, 340 (1998).

²⁹ *See Dimagan v. Dacworks United, Incorporated*, G.R. No. 191053, November 28, 2011, 661 SCRA 438, 445 and *Pharmacia and Upjohn, Inc. v. Albayda, Jr.*, G.R. No. 172724, August 23, 2010, 628 SCRA 544, 557.

³⁰ *Dimagan v. Dacworks United, Incorporated, supra*.

of fact of the CA are contrary to those of the trial court (in this case, the Labor Arbiter and NLRC); (8) said findings of fact are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent; and (10) the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record.³¹

This case, however, does not fall under any of the recognized exceptions. After a judicious consideration of the pleadings filed by both parties, the Court finds no compelling reason to reverse the findings of fact as well as conclusions of law of the CA, which sustained the decision of the NLRC affirming the labor arbiter. Indeed, there is no arbitrary disregard or misapprehension of evidence of such nature as to compel a contrary conclusion.

To begin with, constructive dismissal is defined as quitting or cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or a diminution of pay and other benefits.³² It exists if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment.³³ There is involuntary resignation due to the harsh, hostile, and unfavorable conditions set by the employer.³⁴ The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his employment/position under the circumstances.³⁵

³¹ *Galang v. Malasugui*, G.R. No. 174173, March 7, 2012, 667 SCRA 622, 631-632; *Pharmacia and Upjohn, Inc. v. Albayda, Jr.*, *supra* note 29; and *Merck Sharp and Dohme (Philippines) v. Robles*, *supra* note 27, at 494-495.

³² *Morales v. Harbour Centre Port Terminal, Inc.*, G.R. No. 174208, January 25, 2012, 664 SCRA 110, 117 and *Dimagan v. Dacworks United, Incorporated*, *supra* note 29, at 446.

³³ *Morales v. Harbour Centre Port Terminal, Inc.*, *supra*, at 117-118; *Gilles v. Court of Appeals*, G.R. No. 149273, June 5, 2009, 588 SCRA 298, 316.

³⁴ *Gilles v. Court of Appeals*, *supra*.

³⁵ *Dimagan v. Dacworks United, Incorporated*, *supra* note 29, at 446; *Philippine Veterans Bank v.*

On the other hand, “[r]esignation is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment. It is a formal pronouncement or relinquishment of an office, with the intention of relinquishing the office accompanied by the act of relinquishment. As the intent to relinquish must concur with the overt act of relinquishment, the acts of the employee before and after the alleged resignation must be considered in determining whether he or she, in fact, intended to sever his or her employment.”³⁶

Since Gan submitted a resignation letter, it is incumbent upon him to prove with clear, positive, and convincing evidence that his resignation was not voluntary but was actually a case of constructive dismissal; that it is a product of coercion or intimidation.³⁷ He has to prove his allegations with particularity.

Gan could not have been coerced. Coercion exists when there is a reasonable or well-grounded fear of an imminent evil upon a person or his property or upon the person or property of his spouse, descendants or ascendants.³⁸ Neither do the facts of this case disclose that Gan was intimidated. In *St. Michael Academy v. NLRC*,³⁹ We enumerated the requisites for intimidation to vitiate one’s consent, thus:

x x x (1) that the intimidation caused the consent to be given; (2) that the threatened act be unjust or unlawful; (3) that the threat be real or serious, there being evident disproportion between the evil and the resistance which all men can offer, leading to the choice of doing the act which is forced on the person to do as the lesser evil; and (4) that it produces a

NLRC (Fourth Division), supra note 27, at 213; and *CRC Agricultural Trading v. NLRC*, G.R. No. 177664, December 23, 2009, 609 SCRA 138, 149.

³⁶ *Nationwide Security and Allied Services, Inc. v. Valderama*, G.R. No. 186614, February 23, 2011, 644 SCRA 299, 307-308. See also *BMG Records (Phils.), Inc. v. Aparecio*, G.R. No. 153290, September 5, 2007, 532 SCRA 300, 313-314.

³⁷ *Vicente v. Court of Appeals*, G.R. No. 175988, August 24, 2007, 531 SCRA 240, 250.

³⁸ *Globe Telecom v. Crisologo*, G.R. No. 174644, August 10, 2007, 529 SCRA 811, 820.

³⁹ *Supra* note 14.

well-grounded fear from the fact that the person from whom it comes has the necessary means or ability to inflict the threatened injury to his person or property. x x x⁴⁰

The instances of “harassment” alleged by Gan are more apparent than real. Aside from the need to treat his accusations with caution for being self-serving due to lack of substantial documentary or testimonial evidence to corroborate the same, the acts of “harassment,” if true, do not suffice to be considered as “peculiar circumstances” material to the execution of the subject resignation letter.

First, the words allegedly uttered by Veneracion which asked Gan to “reconsider his stay,” “make [his] move,” or that “[Galderma] will be better off without him,” are ambivalent and susceptible of varying interpretations depending on one’s feelings, bias, and emotional threshold. All these are subjective and highly speculative or even presumptuous. Veneracion’s intent to dismiss Gan cannot reasonably be inferred therefrom. Much less, the words do not definitely show Veneracion’s firm resolve to act on such intent. At the most, the remarks may be regarded as sarcastic or suggestive of a plan of action which *may or may not* include a plot to actually, or even constructively, dismiss Gan.

Second, Gan repeatedly boasts of his “*excellent performance*” in and “*immense contribution*” to Galderma’s success. If that is the case, his proper mindset towards Veneracion’s attacks on his purported work ethics (such as “*slow*,” “*lacking in initiative*,” “*uncooperative*,” “*negative attitude*,” “*remiss in duties as product manager*,” “*negative work behaviour*,” “*poor performance*,” “*incompetence*,” “*distraction/liability in Galderma*”) should have been to simply brush them aside and continue doing what he is supposed to do as the product manager of CBPL, Locetar and Benzac

⁴⁰ *Supra* note 14, at 496; 509-510, citing *Guatson International Travel and Tours, Inc. v. NLRC*, G.R. No. 100322, March 9, 1994, 230 SCRA 815, 822. See also *Mandapat v. Add Force Personnel Services, Inc.*, G.R. No. 180285, July 6, 2010, 624 SCRA 155, 165; *BMG Records (Phils.), Inc. v. Aparecio*, *supra* note 36, at 312-313; and *Vicente v. Court of Appeals*, *supra* note 37, at 251.

brands. He should have thought that his “*good performance record*” would speak for itself and would stand the test of any baseless accusation, whether it be hurled to him in close-door or in full view of others. Gan did not see it this way. He considered the comments as manifestations of “harassment.” His oversensitivity, which is rather surprising for an experienced sales and marketing manager who should have been so used to customer rejection or indifference and to superior's assertive or temperamental side due to constant pressure of keeping up and beating market competition, would not help him make a case.

Third, the revision of Gan’s 2002 incentive scheme cannot be considered as a form of harassment. The change is not a diminution of benefits, since Gan would have also received the same sum if he achieved the desired targets for the Locetar and Benzac brands, the two new products which were added under his watch. Gan admitted that such act is a valid exercise of management prerogative; hence, he should have realized that their inclusion necessarily called for a corresponding modification of the incentive scheme so as to accurately measure his effectiveness in handling all three products, not just one or two of them. Nonetheless, while this Court holds that the 2002 revised incentive scheme is a reasonable and valid exercise of management prerogative, We agree with Gan that its immediate implementation, taking effect in April 2002, is improper for want of 30-day prior notice. Thus, for April 2002, Gan should have received the same monetary benefits granted under the 2002 incentive scheme per December 14, 2001 Office Correspondence.

A pivotal argument raised by Gan in this petition is that Veneracion’s 10th act of harassment – his statement that Gan “[*would*] be given 15 days to look for another job” – already constitutes actual illegal dismissal, a termination without just or valid cause. In support thereof, he cited the case of *Far East Agricultural Supply, Inc. v. Lebatique*.⁴¹

⁴¹ G.R. No. 162813, February 12, 2007, 515 SCRA 491; 544 Phil. 420 (2007).

We disagree.

Unlike in Gan's case, the employee involved in *Far East Agricultural Supply, Inc.* did not submit a resignation letter. Instead, Lebatique's employer alleged that he abandoned his job. Hence, this Court held:

The records show that petitioners failed to prove that Lebatique abandoned his job. Nor was there a showing of a clear intention on the part of Lebatique to sever the employer-employee relationship. When Lebatique was verbally told by Alexander Uy, the company's General Manager, to look for another job, Lebatique was in effect dismissed. Even assuming earlier he was merely suspended for illegal use of company vehicle, the records do not show that he was afforded the opportunity to explain his side. It is clear also from the sequence of the events leading to Lebatique's dismissal that it was Lebatique's complaint for nonpayment of his overtime pay that provoked the management to dismiss him, on the erroneous premise that a truck driver is a field personnel not entitled to overtime pay.⁴²

What the records of this case reveal is that Gan deliberately wrote and filed a resignation letter that is couched in a clear, concise, and categorical language. Its content confirmed his unmistakable intent to resign. The resignation letter indicates that he was resigning "*to pursue the establishment of [his] own business or explore opportunities with other companies.*" The reasons stated for relinquishing his position are but logical options for a person of his experience and standing.

Further, distinct from *Far East Agricultural Supply, Inc.*, respondent Veneracion disputed the allegation that Gan was given 15 days to look for another job. His categorical denial was backed up by Castro, who was also present when the alleged incident happened on April 11, 2002. Their duly sworn statements, unless proven to be false or perjured, bear more weight and credence than Gan's lonesome representations.

Lastly, in contrast with Lebatique who was a mere truck driver of animal feeds receiving a daily wage of Php 223.50 at 1996 rate, Gan is no ordinary laborer with limited education and skills; he is not a rank-and-file

⁴² *Far East Agricultural Supply, Inc. v. Lebatique, supra*, at 497-498.

employee with inadequate understanding such that he would be easily beguiled or forced into doing something against his will. He was a managerial employee holding a responsible position and receiving more than the mandated minimum wage. He also appears to have a good professional track record that highlights his marketability.⁴³ At the time he resigned, he had more than a decade of experience in sales and marketing with expertise in product management.⁴⁴ Indeed, it would be absurd to assume that he did not understand the full import of the words he used in his resignation letter and the consequences of executing the same.

What is evident, therefore, is that Gan's resignation is NOT “*a case of adherence, not of choice,*” but was a product of a mutually beneficial arrangement. We agree with respondents that the result of the negotiation leading to Gan's resignation is a “win-win” solution for both parties. On one hand, Gan was able to obtain a favorable severance pay while getting flexible working hours to implement his post-resignation career options. On the other hand, Galderma was able to cut its relation with an employee perceived to be unwilling to perform additional product responsibilities while being given ample time to look for an alternative to hire and train. Indeed, Gan voluntarily resigned from Galderma for a valuable consideration. He negotiated for an improvement of the resignation package offered and he managed to obtain an acceptable one. As opposed to the case of *San Miguel Corporation v. NLRC*,⁴⁵ Gan was not tricked or was “morally and psychologically hoodwinked” to draft, sign, and tender his resignation letter. It was not made without proper discernment and time to reflect; nor was it a knee-jerk reaction that left him with no alternative but to accede.⁴⁶

⁴³ See *Domondon v. NLRC*, G.R. No. 154376, September 30, 2005, 471 SCRA 559, 568; 508 Phil. 541, 549 (2005).

⁴⁴ *Rollo*, p. 391.


⁴⁵ G.R. No. 107693, July 23, 1998, 293 SCRA 13; 354 Phil. 815 (1998).

⁴⁶ See *Metro Transit Organization, Inc. v. NLRC*, *supra* note 28, at 312; 338.

Having resolved the case on the basis of the foregoing, it is needless to delve into Gan's second and third assigned errors.


WHEREFORE, the March 21, 2007 Decision of the Court of Appeals in CA-G.R. SP No. 91118, which upheld the resolutions of the NLRC affirming the Labor Arbiter's ruling that dismissed Gan's complaint for constructive dismissal, is hereby **AFFIRMED WITH MODIFICATION** insofar as Our ruling that, for April 2002, Gan is still entitled to the monetary benefits provided under the original 2002 incentive scheme. The Labor Arbiter is hereby **DIRECTED** to include in Gan's final pay of ₱50,425.02, the difference in the amount he actually received as incentive/s per his payslip of April 2002.

SO ORDERED.




DIOSDADO M. PERALTA
Associate Justice


WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



ROBERTO A. ABAD
Associate Justice



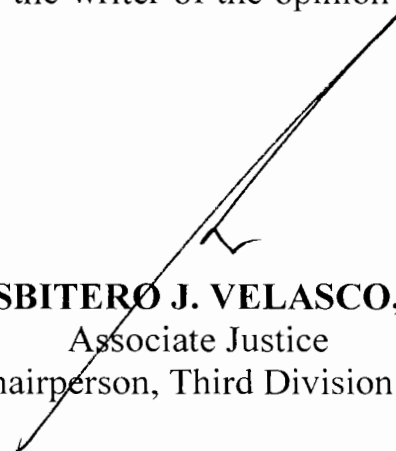
JOSE PORTUGAL PEREZ
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.




PRESBITERO J. VELASCO, JR.

Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice