



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **September 14, 2022** which reads as follows:

“G.R. No. 248934 (CVM Finance & Credit Corp./Julie Marie M. Aquitania v. Annabelle B. Fuentes). — This present petition seeks to reverse and set aside the October 22, 2018 Decision¹ and August 8, 2019 Resolution² of the Court of Appeals (CA) in CA-G.R. S.P. No. 152859. The CA affirmed the Decision³ of the National Labor Relations Commission (NLRC) finding that CVM Finance & Credit Corp. (CVM) illegally dismissed Annabelle B. Fuentes (*Fuentes*).

Fuentes was employed as an Area Operations Officer at CVM. On October 19, 2016, CVM issued a Notice to Explain (NTE) concerning an unpaid personal debt of ₱17,500.00 from her co-employee Betty Villar (*Villar*).⁴ The pertinent portions of the NTE reads:

Magandang araw, Ms. Fuentes,

This is regarding sa incident report na aming natanggap nuong October 19, 2016.

Based sa incident report na aming natanggap, October 19, 2016 naka received ang HR ng letter mula sa isang agent ng CVM Finance complaining about personal debt amounting to ₱17,500 na mula pa noong 2015. Ang naturang pagkakautang ay may kaakibat na pag abuso sa posisyon bilang Area Operations Officer. Ayon sa written report, inutusan mong mag cash advance ang ating agent amounting to ₱25,000 at ang ₱13,000 ay ibinigay sayo bilang pautang na hanggang sa ngayon ay hindi pa nababayaran.⁵

Fuentes admitted in her written explanation that she is indebted to Villar and was cognizant of the fact that Villar made a cash advance. However, Fuentes vehemently denied that she ordered Villar to ask for a loan to

¹ Penned by Associate Justice Manuel M. Barrios with Associate Justices Japar B. Dimaampao and Henri Jean Paul B. Inting (now members of this Court), concurring, *rollo*, pp. 40-48.

² Id. at 58-59.

³ Id. at 105-113.

⁴ Id. at 41.

⁵ Id. at 41-42.

accommodate her. She claimed that Villar's act of taking a loan was out of her own volition.⁶

On October 25, 2016, CVM conducted a formal administrative investigation. Fuentes admitted during the investigation that the amount she borrowed from Villar came from the latter's cash advance. On the same day, CVM preventively suspended Fuentes for 15 days therefrom. On November 8, 2016, CVM sent Fuentes a Notice of Decision. The Decision in essence terminated the employment of Fuentes on the grounds of breach of trust and confidence for fraudulent transactions against the company and fraud and/or conspiracy to commit fraud against the company.⁷

On February 2, 2017, Fuentes filed a complaint for illegal dismissal, illegal suspension, non-payment of wages, thirteenth month pay, with claim of separation pay and damages.⁸

On April 20, 2017, the Labor Arbiter (*LA*) found no merit on the complaint of Fuentes. The dispositive portion of the Decision dismissing the complaint reads:

WHEREFORE, premises considered, a judgment is hereby rendered declaring complainant to have been **VALIDLY DISMISSED** from his employment and **DISMISSING** the instant complaint for lack of merit.

All other monetary claims are hereby ordered dismissed for lack of merit.

SO ORDERED.⁹

The *LA*, in dismissing the complaint, stated that CVM has lost trust and confidence in Fuentes. This is because there is a connection between CVM's business as a lending company and the position of Fuentes as a manager in the company. The *LA* elaborated that it is axiomatic that managers of lending companies are charged with the handling of significant amounts of money.¹⁰ The *LA* concluded that Fuentes abused her position when she ordered Villar to make a cash advance.¹¹

On review, the NLRC reversed and set aside the findings of the *LA*. The decretal portion of its decision reads:

⁶ Id. at 42.

⁷ Id.

⁸ Id.

⁹ Id. at 104.

¹⁰ Id. at 101.

¹¹ Id. at 102.

WHEREFORE, the appealed decision is hereby **REVERSED** and **SET ASIDE**, and another entered declaring the dismissal of complainant Annabelle B. Fuentes without cause, and hence **ILLEGAL**.

Accordingly, respondent CVM Finance And Credit Corporation is ordered to pay complainant **BACKWAGES** from the time of her dismissal, and **SEPARATION PAY** equivalent to her one month salary for every year of service. Provided, that from the total amount of her monetary entitlement shall be deducted ₱68,393.40 which represents the sum of complainant's outstanding obligations.

The Computation Unit of this Commission is hereby directed to make the necessary computation of the monetary award granted complainant, which shall form an integral part of this decision.

SO ORDERED.¹²

The NLRC opined that the records of the case is bereft of particulars about how Fuentes conducted herself in allegedly abusing his power in engaging Villar to commit a supposed fraudulent transaction. According to the NLRC, what was shown was merely a factual conclusion that Fuentes abused her authority. This alone does not meet up the requirement of substantial evidence to justify Fuentes' dismissal.¹³

Aggrieved, CVM filed a petition for *certiorari* with the CA asking for the reversal of the NLRC's decision. CVM argued that the NLRC decided a question of substance not in accord with law or with applicable jurisprudence.

On October 22, 2018, the CA issued its Decision denying the petition of CVM as follows:

WHEREFORE, premises considered, the petition is **DENIED**.

SO ORDERED.¹⁴

The CA found that there was no fraud committed by Fuentes.¹⁵ The appellate court pointed out that the loan of Fuentes from Villar is a private affair between them. Thus, the company cannot terminate Fuentes' employment on the ground of non-payment of this loan.¹⁶

The CA observed that in the absence of the essential elements of fraud or malicious intent, Fuentes' acts do not constitute a justifiable ground for her dismissal. The CA elaborated that Fuentes' failure to settle her personal loan obligation to Villar does not exhibit moral perverseness, nor a dishonest nor

¹² Id. at 113.

¹³ Id. at 111.

¹⁴ Id. at 48.

¹⁵ Id. at 46.

¹⁶ Id.

deceitful conduct in the performance of her duties that would justify loss of trust and confidence.¹⁷

The CA denied the subsequent motion for reconsideration of CVM.¹⁸

Hence, CVM filed the petition. CVM asserts that Fuentes holds a position of trust and confidence considering she is one of the managers of the company and more so she holds significant amount of money and property of CVM.¹⁹ CVM claims that the act of Fuentes in ordering her subordinate Villar to make cash advance and thereafter failed to pay the same for the longest time clearly shows her fraudulent scheme of using her position for her financial gain.²⁰ CVM maintains Fuentes is misplaced to claim that the transaction is merely personal between her and Villar since the cash advance has a connection with the finances of CVM.²¹

CVM further states that Fuentes is a confidential employee as such she is expected to be circumspect in her actions especially if it concerns money matters.²² CVM claims that if Fuentes can exert influence to direct a subordinate to make a cash advance for her benefit, then it is not farfetched for her to commit a more serious infraction involving money of the company.²³

CVM claims that it was correct in terminating the employment of Fuentes as a valid exercise of management prerogative. CVM points out that employers are allowed a wider latitude of discretion in terminating the services of employees who perform functions which by their nature require the employer's full trust and confidence.²⁴ Thus, according to CVM mere existence of a basis for believing that an employee breached the trust of the employer is sufficient and does not require proof beyond reasonable doubt.²⁵

CVM further claimed that the CA departed from the accepted and usual course of judicial proceedings, and has sanctioned such departure by the commissioners, thus calling for the exercise of this Court of its extra-ordinary power of reviewing grave abuses.²⁶

Fuentes countered that the petition should be denied since the ruling of the NLRC is bereft of any indication that it was made with grave abuse of

¹⁷ Id. at 47.
¹⁸ Id. at 59.
¹⁹ Id. at 20.
²⁰ Id. at 20-21.
²¹ Id. at 21.
²² Id. at 24.
²³ Id.
²⁴ Id. at 29.
²⁵ Id. at 29-30.
²⁶ Id. at 44.

discretion.²⁷ Fuentes claims that there is a manifest absence of the essential elements of fraud or malicious intent. Fuentes submits that her acts do not constitute a justifiable ground for her dismissal from employment.²⁸

The sole issue for this Court's resolution is whether the CA erred in finding that Fuentes was illegally dismissed by CVM.

Our Ruling

The petition lacks merit.

To invoke loss of trust and confidence as a just cause for termination of employment proof must be shown that: (1) the dismissed employee occupied a position of trust and confidence; and (2) the dismissed employee committed "an act justifying the loss of trust and confidence."²⁹

In the case under consideration, even the respondent concedes that she is a managerial employee occupying a position of trust and confidence. Thus, the lone matter to be resolved is whether the act of respondent is of such gravity to justify the loss of trust and confidence.

We find that the CA and the NLRC did not commit an error in finding that there was no act that would justify the petitioner losing its trust and confidence on the respondent. For an act to be considered as loss of trust and confidence, it must be first, work related, and second, founded on clearly established facts.³⁰ The employer's loss of trust and confidence must be based on a willful breach of trust and founded on clearly established facts. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion.³¹

This Court finds the CA's appreciation that there was no willful breach of trust to be in order. The on point observation of the appellate court is reproduced below:

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In this case, the complaint against private respondent pertains to her act of borrowing a sum of money that came from Villar's cash advance from the company. Seemingly, there is no substantial evidence to prove the accusation of petitioner that private respondent deliberately abused

²⁷ Id. at 144.

²⁸ Id. at 146.

²⁹ *Robustan, Inc. v. Court of Appeals*, G.R. No. 223854, March 15, 2021.

³⁰ *Malcaba v. ProHealth Pharma Philippines, Inc.*, 832 Phil. 460, 486 (2018).

³¹ *Pardillo v. Bandojo*, G.R. No. 224854, March 27, 2019.

her authority to commit a fraudulent transaction against the company. The administrative investigation did not focus on determining whether or not there was fraud committed by private respondent against petitioner, or even against Villar, in obtaining the cash advance.

We rule in the negative. For Us, there was no fraud committed by private respondent. Villar readily concedes that she applied for the cash advance, and the company duly approved the same without question. The loan of private respondent from Villar is a private affair between them and the company cannot on that account summarily terminate private respondent's employment on the ground of non-payment of this loan. While a less stringent degree of proof is required in termination cases involving managerial employees such as private respondent, the employers could not invoke the ground of loss of trust and confidence arbitrarily. It is to be noted that only the amount of ₱13,000.00 was loaned by private respondent from Villar, out of the latter's ₱25,000.00 cash advance. Thus, it cannot be gainsaid that only private respondent benefited from that cash advance. Ultimately, it was still the sole prerogative of Villar to decide whether or not she would make a cash advance, considering that the same is completely under her own name and accountability. If at all, private respondent can only be imputed with the failure to pay her personal obligations to Villar, although the records do not state the due date. Case law holds that the misdeed attributed to the employee must be a genuine and serious breach of established expectations required by the exigencies of the position regardless of its designation, and not out of a mere distaste, apathy, or petty misunderstanding.³²

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To sum up, this Court does not view the acts committed by respondent as willful breach of trust. The respondent acknowledged that she was indebted to her co-employee. However, we do not see any indication of moral depravity nor any abuse of authority on the part of the respondent. On the contrary, the Court finds that the respondent's failure to pay the loan on time is not a grave offense that will put a dent on her capacity as a manager in a lending business. We find no correlation between asking a loan from another employee and the alleged propensity to commit a more serious infraction involving the property of the company. Therefore, this Court finds that the petitioners illegally terminated the respondent.

The respondent as she was illegally dismissed is therefore to be reinstated to her former position without loss of seniority rights and other privileges, and is entitled to full back wages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the time of the withholding of the employee's compensation up to the time of actual reinstatement. In case that reinstatement is not possible due to the irreparable relations between the petitioners and the respondent, separation pay should instead be paid to the respondent equivalent to a month of salary for every

³² *Rollo*, pp. 46-47.

year of service, computed from the time of engagement up to the finality of this resolution.³³

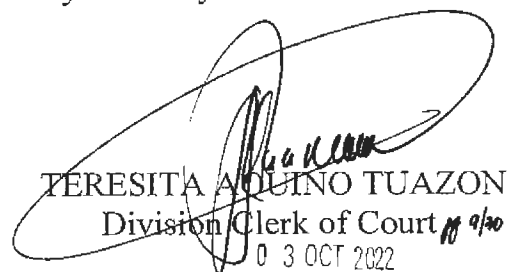
Pursuant to the ruling of this Court in the case of *Nacar v. Gallery Frames*,³⁴ the monetary awards should be subject to a six percent (6%) interest *per annum* from the finality of this Resolution until full payment.

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit. The October 22, 2018 Decision and August 8, 2019 Resolution of the Court of Appeals in CA-G.R. S.P. No. 152859 are hereby **AFFIRMED**. Petitioners CVM Finance & Credit Corp./Julie Marie M. Aquitania in her capacity as officer of CVM are **ORDERED** to reinstate Annabelle B. Fuentes to her former position without loss of seniority rights and other privileges, and to pay full back wages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the time of the withholding of the employee's compensation up to the time of actual reinstatement **OR** if reinstatement is not possible, to pay Annabelle B. Fuentes **SEPARATION PAY** equivalent to one-month salary for every year of service, computed from the time of engagement up to the finality of this Resolution.

The monetary awards are further subject to six percent (6%) interest *per annum* from the finality of this Resolution until full payment. The case is **REMANDED** to the Labor Arbiter for the proper execution of this Resolution.

SO ORDERED." (*Leonen, J., on official leave; Lazaro-Javier, J., Acting Chairperson per Special Order No. 2909 dated September 9, 2022*)

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court *9/30*
O 3 OCT 2022

³³ *M+W Zander Philippines, Inc. v. Enriquez*, 606 Phil. 591 (2009).

³⁴ 716 Phil. 267, 283 (2013) as cited in *Jalit, Sr. v. Cargo Safeway, Inc.*, G.R. No. 238147, September 29, 2021.

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