Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **August 10, 2022**, *which reads as follows:*

"**G.R. No. 257841** ***(Jaime S. Bautista vs. Bonkoko Security Agency Services, Alexander T. Lubguban and Samson Lubguban).***— The pivotal issue for this Court's disposition is whether or not Bonkoko Security Agency Services, Alexander T. Lubguban and Samson Lubguban (respondents) should be held liable for the illegal dismissal of Jaime S. Bautista (petitioner).

The Court answers in the negative. The Petition must perforce be denied.

Prefatorily, it bears accentuating that only errors of law may be reviewed by this Court in petitions for review on *certiorari* under Rule 45 of the Rules of Court. Nevertheless, among the well-recognized exceptions to this rule is when the factual findings of the National Labor Relations Commission (NLRC) contradict with those of the Labor Arbiter (LA),[1] as in the case at bench.

In any event, the Court echoes with approbation the conclusions reached by the Court of Appeals (CA) and the NLRC that there was no illegal dismissal on the part of respondents.

Petitioner intransigently asseverates that respondents committed a clear and overt act of dismissal against him, albeit orally. He posits that respondents' verbal termination of his employment was a "cunning and crafty ruse" intended so that "no document or anything physical and tangible can be presented to support his present claim." He postulates that "there can be no better proof of the circumstances surrounding [his] dismissal other than his positive and verified statement."[2]

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[1] See *Doble vs. ABB, Inc./Nitin Desai*, 810 Phil. 210, 288 (2017).
[2] Rollo, p. 21.

substantial evidence the fact of his dismissal from the service. Bare allegations of constructive dismissal, when uncorroborated by the evidence on record, cannot be given credence."[3]

Here, petitioner failed to present any scintilla of proof to bolster his claim of being verbally dismissed or forced to quit his employment. Absent any clear and convincing evidence to support his averments, his plea is doomed to fail. *He who asserts, not he who denies, must prove.*[4]

By contrast, respondents were able to prove through substantial evidence that petitioner resigned out of his own volition. A perusal of the affidavits[5] of Norbie T. Tic-ing and Maribel D. Cuarte, who were present during the emergency meeting, as well as petitioner's summary[6] of attendance records appended to his Reply Position Paper, divulges that he left respondents on his own accord. To quote his own words—

> This is the time that the COO told me that 2 employees will be dismissed because of cost cutting. iba na yung tingin sa kin ng mga matataas na nakakaalam dun. may mga pasaring na. **i resorted to a certain tactic I told them I will voluntarily resigned** (sic) just to know if I was among those who will be dismissed but frankly it was against my will to say so. dahil sino baa ng gusting mawalang ng work ng magpapasko? after kong sinabi yun the COO confirmed to me that I was one of the one (sic) who will be retrenched.[7]

Evidently, petitioner admitted having resigned from his job. Even if he insists that it was "against his will" to do so, and despite his pronouncement that it was merely a "tactic," he utterly failed to present any morsel of evidence that he was compelled to resign. Succinctly put, apart from his bare, uncorroborated, and self-serving assertions, *i.e.,* "*iba na yung tingin sa kin ng mga matataas na nakakalam dun. may mga pasaring na*", petitioner fell short of presenting substantial evidence to prove that his resignation was a result of coercion, intimidation or undue pressure from respondents.

At this juncture, the Court deems it fit to ingeminate its disquisition in the landmark case of *Gan vs. Galderma Philippines, Inc., et al.,*[8] *viz.*:

> 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. 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

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3 See *Italkarat 18, Inc., vs. Gerasmio,* G.R. No. 221411, 28 September 2020.
4 See *Panasonic Manufacturing Philippines Corporation (formerly Matsushita Electric Philippines Corp.) vs. Peckson,* G.R. No. 206316, 20 March 2019, 897 SCRA 526, 541-542.
5 *Rollo,* pp. 126-128.
6 Id. at 80-81.
7 Id. at 81.
8 701 Phil. 612-644 (2013).

> could foreclose any choice by him except to forego his continued employment. **There is involuntary resignation due to the harsh, hostile, and unfavorable conditions set by the employer. 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.**
>
> On the other hand, resignation 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.**[9] [Emphases supplied.]

Considering that petitioner no longer reported for work after his resignation despite the show-cause letter[10] sent by respondents, the Court is convinced of his intention to sever his employment. This, coupled with his own admission and the sworn testimonies of the other employees, are sufficient to prove that he was neither illegally nor constructively dismissed by respondents.

In fealty to prevailing jurisprudence,[11] petitioner is not entitled to monetary claims for the obvious reason that no illegal dismissal took place.

WHEREFORE, the Petition for Review on *Certiorari* is hereby **DENIED.** The *Decision* dated 11 February 2021 and the *Resolution* dated 26 October 2021 of the Court of Appeals in CA-G.R. SP. No. 166529 are **AFFIRMED**.

SO ORDERED."

By authority of the Court:

MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court

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[9] Id. at 639.
[10] Id. at 32-133.
[11] Supra note 3.

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THIRD DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **September 12, 2022**, *which reads as follows:*

"**G.R. No. 258516 [Formerly UDK 17136]** ***(Calata Corporation v. Philippine Stock Exchange Commission).***— The Court resolves to :

(1) **GRANT** petitioner's motion for extension of fifteen (15) days from the expiration of the reglementary period within which to file a petition for review on certiorari; and

(2) **NOTE** petitioner's Ex-Parte Manifestation dated January 4, 2022, submitting anew postal money orders (PMOs) in the amount of ₱4,530.00 as payment for the docket and legal fees, considering that the previously submitted PMOs were returned to sender by the Judicial Records Office, this Court, for being stale.

This Petition for Review on *Certiorari*[1] inveighs against the *Decision*[2] dated 21 December 2020 and the *Resolution*[3] dated 28 June 2021 of the Court of Appeals (CA) in CA-G.R. SP Nos. 158561 and 162029, which upheld the petitioner's delisting from the Philippine Stock Exchange (PSE) for its numerous violations of the PSE's Disclosure Rules, and which denied petitioner's Motion for Reconsideration,[4] respectively.

After a judicious review of the case at bench, the Court resolves to **DENY** outright the Petition for being filed out of time.

As may be gleaned from the Petition itself, petitioner Calata Corporation received on 5 January 2021 the impugned *Decision* and timely

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1 *Rollo*, pp. 14-60.
2 Id. at 64-80. Penned by Associate Justice Ruben Reynaldo G. Roxas, with Associate Justices Myra V. Garcia-Fernandez and Bonifacio S. Pascua, concurring.
3 Id. at 81-83.
4 Id. at 390-410.
5 Id. at 390-410.

6 July 2021, petitioner received the challenged *Resolution* denying its motion for reconsideration. Thus, pursuant to Section 2,[6] Rule 45 of the Rules of Court, it had until 21 July 2021 to either file its petition before this Court or to file a motion for extension of time to do so. On 21 July 2021, petitioner opted to file a Motion for Extension of Time to File Petition for Review on *Certiorari*[7] and requested for an additional period of 15 days, or until 5 August 2021, to file its petition. However, the present Petition was filed only on 31 August 2021, which is way beyond the requested extended period. Petitioner justifies the delay based on its erroneous reliance on Administrative Circular No. 56-2021, which supposedly suspended the time for filing pleadings which fell due between 2 and 23 August 2021.[8]

Petitioner's justification fades into thin air.

Notably, Administrative Circular No. 56-2021 only covers the Appellate Collegial Level Courts and First and Second Level Courts. For the Supreme Court, the applicable issuance is Memorandum Order No. 64-2021, as amended by Memorandum Order No. 65-2021. A plain reading of the foregoing would reveal that there was no suspension of the reglementary period for the filing of petitions notwithstanding the physical closure of the Court given that party litigants could still file these through registered mail, accredited private couriers, or electronic filing. Resultingly, the instant Petition was already late when it was posted on 31 August 2021, hence, the same must be denied.

In any event, even if the Court ignores this procedural *faux pas*, the Petition must still be denied for lack of merit.

As the CA correctly ratiocinated, Section 13.1, Article VII of the Consolidated Listing and Disclosure Rules (Disclosure Rules) of the PSE unequivocally requires issuers, such as petitioner, to disclose "**any** acquisition, disposal, or change in the shareholdings of the Directors and Officers."[9] Hence, each and every transaction which has not been disclosed constitutes a violation of this provision. Moreover, petitioner does not dispute that the PSE has adopted this interpretation since the effectivity of the Disclosure Rules in 2003 and that petitioner agreed to be bound by such interpretation in the Listing Agreement it signed. Hence, the CA aptly

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[6] Section 2. Time for filing; extension. — The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition. (1a, 5a)

[7] *Rollo*, pp. 3-10.

[8] Id. at 16.

[9] Emphasis supplied.

observed that petitioner is now estopped from claiming a contrary interpretation. Likewise, petitioner's contention that it had no material non-public information during the argued "black out period" from 1 October 2016 to 14 March 2017 is equally baseless. The Disclosure Rules clearly define a material fact or information as one that "could result in a change in the market price or value in any of the Issuer's securities, or would potentially affect the investment decision of an investor." The Court concurs with the CA that delays in the completion of the Mactan Leisure City Project, if made public, would have likely affected the market price of petitioner's shares. Having allowed its director to transact shares during this period, petitioner clearly violated Section 13.2,[10] Article VII of the Disclosure Rules. As to the issue on whether or not intent to gain is material to constitute a violation of the aforementioned Section 13.2, the CA properly observed that the provision does not factor in intent, hence, it is immaterial. Lastly, the CA erred not in upholding the penalty imposed on petitioner. The records evince that petitioner committed 29 violations of Section 13.1 and 26 violations of Section 13.2 of Article VII of the Disclosure Rules within a 12-month period, despite having been a listed company for more than five years.[11] As a listed company, it is presumed to be intimately familiar with the PSE's rules already, including the consequences of violations thereof.

SO ORDERED."

By authority of the Court:

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[10] Section 13.2. A Director or a Principal Officer of an Issuer must not deal in the Issuer's securities during the period within which a material non-public information is obtained and up to two (2) full Trading Days after the price sensitive information is disclosed.

[11] *Rollo*, pp. 76-77.

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