



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **October 7, 2020** which reads as follows:*

“G.R. No. 236634 (*Anna Ernestina Mendoza Ong vs. ACM Landholdings, Inc. and Sarah Joelle Lintag*). – On August 1, 2010, respondent ACM Landholdings, Inc. (*ACM*) hired petitioner Anna Ernestina Mendoza Ong (*Ong*) as Vice-President for Marketing with a monthly salary of ₱236,000.00 plus other incentives. Her task was to organize and lead a dynamic marketing team that would implement ACM’s complex marketing strategies. On November 13, 2014, Ong, who was pregnant at the time, sent her Schedule of Leaves *via* an electronic mail (e-mail) discussing therein that her expected delivery date was January 15, 2015 and that she will be going on leave beginning December 16, 2014. The same, however, was not sent to her immediate supervisor for approval, nor in the forms required under the rules of the company. On November 17, 2014, Ong was rushed to the Asian Hospital because of threatened premature delivery. She was required to stay at the intensive care unit (ICU) to ensure that her baby would reach its full term. On November 26, 2014, she was discharged from the hospital. She, however, remained home as she needed to take a complete bed rest again, without the approval of her immediate supervisor and without submission of the required documents for leave. But ACM considered Ong’s circumstances and liberally applied her remaining leave credits for 2014 to her absence of one (1) month prior to her delivery. On December 21, 2014, Ong delivered her baby *via* caesarean operation. Her maternity leave was from December 22, 2014 to March 9, 2015.¹

After the lapse of her maternity leave, she sent an e-mail to respondent Atty. Sarah Joelle Lintag (*Atty. Lintag*), the head of ACM’s Human Resources Department, Ms. Tonette De Guzman, and

¹ *Rollo*, pp. 10-11.

Ms. Carol Osteria, both ACM's Managing Directors, informing them that she would not be able to report to work until April 15, 2015 due to the delicate condition of her baby. On March 31, 2015, her then 3-month old baby underwent an emergency surgery at the Cardinal Santos Hospital due to a congenital defect known as "malrotation of the intestines." Meanwhile, Ong e-mailed a revised computation of her vacation and sick leaves indicating therein that she still had leave credits until April 24, 2015 and will be exhausting the same. But Atty. Lintag replied that her available leave credits were only until April 14, 2015. As such, she advised Ong that the latter is expected to report to work on April 15, 2015. On April 13, 2015, Ong sent another e-mail admitting that her leave credits were only until April 14, 2015 and that she should report back to work on April 15, 2015. But because of her baby's illness, she requested for yet another extension of her leave until May 15, 2015. Unfortunately, due to her prolonged absence of five (5) months and because the company badly needed her services as head of its marketing arm, ACM was constrained to deny her request. The next day, on April 14, 2015, Ong sent another e-mail, in disregard of company rules and regulations, this time, to the ACM's President, Mr. Al Roy (*Mr. Roy*), reiterating her request.²

On April 15, 2015, Ong did not report for work. In the meantime, Mr. Roy informed Ong that he would defer her request to ACM's management who has the prerogative and discretion to rule on the same. On April 21, 2015, Atty. Lintag called and asked Ong if she would definitely be reporting to work on her requested date of May 15, 2015, but the latter answered that she was still unsure. Thus, ACM was constrained to send her a notice on the same day, requiring her to explain within forty-eight (48) hours the reason for her continued absence. Ong gave no response. ACM followed up with Ong several times, but to no avail. All this time, no effort was done to properly endorse and turn-over pending works since Ong's leave on November 2014. In view of this, ACM sent her a Notice of Termination on May 25, 2015, informing her that because of her continued absence without approval, the company was left with no other recourse but to terminate her employment. The notice cited the Company's Code of Conduct and Discipline which provides that an absence of four (4) consecutive days or more without approval shall constitute abandonment and shall result in the employee's dismissal. It also cited the Labor Code, which provides that an employer may terminate an employment for serious misconduct or willful disobedience by the employee of the lawful orders of his employer, gross and habitual

² *Id.* at 11 and 383.

neglect by the employee of his duties, and fraud or willful breach by the employee of the trust reposed on him by his employer.³

On June 3, 2015, Ong acknowledged that she received the termination notice and informed ACM that she will be surrendering her company-issued laptop, but requested that she be allowed to retain the company-issued phone and vehicle. On June 5, 2015, while talks were on-going for the transfer of the phone and vehicle, Ong filed a complaint for illegal dismissal with prayer for reinstatement and full backwages, non-payment of salary and 13th month pay, moral and exemplary damages, transfer of vehicle, and compensation for loss of tenure and other opportunities.⁴

In their Position Paper, AMC and Atty. Lintag maintained, among others, that: (1) Ong was dismissed due to loss and trust of confidence predicated on her unauthorized absences and continued violation of rules and regulations of the company; (2) since she was terminated for just cause, she cannot be entitled to her monetary claims; (c) the Labor Arbiter has no jurisdiction to order the transfer of the company-issued vehicle to Ong; and (d) Atty. Lintag cannot be held liable in her personal capacity as the corporation has a personality separate and distinct from the individuals composing it.⁵

On November 27, 2015, the Labor Arbiter (LA) dismissed Ong's complaint for lack of merit.⁶ According to the LA, ACM validly terminated Ong's employment on the ground of loss of trust and confidence grounded on her failure and/or refusal to report for work. As the company's Vice-President, Ong was tasked to perform key and sensitive functions, and thus, bound by more exacting work ethics. The position carried authority for the exercise of independent judgment and discretion, characteristic of sensitive posts in corporate hierarchy, while a wide latitude could be supposed in setting up stringent standards for continued employment. As a consequence of Ong's continued omissions, the company suffered millions in losses resulting in ACM's loss of trust and confidence in her. Thus, the LA ruled that there being no illegal dismissal, Ong is not entitled to backwages and reinstatement. With respect to her monetary claims, the LA stated that Ong failed to specify the details thereof. While she indicated non-payment of wages as one of her causes of action, she did not allege the periods during which ACM failed to pay her

³ *Id.* at 11-12.

⁴ *Id.* at 12.

⁵ *Id.* at 12-13.

⁶ Penned by Labor Arbiter Reynate L. San Gaspar; *id.* at 95-108.

salaries. As a consequence, there would be no basis in arriving at a computation assuming the same could even be granted. Neither did she mention her entitlement to 13th month pay or the period thereof. Nevertheless, the LA deemed it wise to award her ₱200,000.00 as nominal damages.⁷ Thus, the LA disposed of the case as follows:

WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the complaint for lack of merit. However, respondent ACM Landholdings, Inc. is hereby ordered to pay complainant the sum of Php 200,000.00 as Nominal Damages.

SO ORDERED.⁸

On February 9, 2016, the National Labor Relations Commission (NLRC) affirmed the LA's findings.⁹ It held that there is no dispute that Ong was holding a position of trust and confidence, and that due to her willful failure to comply with ACM's procedure and code of conduct, there was sufficient basis for the latter to lose the trust reposed on the former.

In a Decision¹⁰ dated August 16, 2017, the Court of Appeals (CA) also affirmed the rulings of the LA and NLRC. According to the appellate court, Ong's claim that she was dismissed on account of her pregnancy has no basis. On the contrary, ACM was able to show that Ong's termination was due to her continuous refusal to comply with the order to report back to work on April 15, 2015 and even thereafter. This was despite the fact that ACM had been accommodating her situation from the beginning. As such, Ong was validly dismissed on the ground of loss of trust and confidence having established that: (a) Ong occupied a position of trust and confidence as Vice-President of Marketing; (b) Ong committed a willful breach of trust on clearly established facts; and (c) such loss of trust relates to Ong's performance of duties.

When the CA denied Ong's Motion for Reconsideration in its Resolution¹¹ dated January 8, 2018, Ong filed a petition for review on *certiorari* before the Court on March 5, 2018 insisting that her dismissal was illegal for being pregnancy related. According to Ong, it was not possible to report back to work on April 15, 2015 due to the

⁷ *Id.* at 105-108.

⁸ *Id.* at 13; 108.

⁹ Penned by Commissioner Romeo L. Go, with Presiding Commissioner Gerardo C. Nograles and Commissioner Gina F. Cenit-Escoto, concurring; *id.* at 109-122.

¹⁰ Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Ramon R. Garcia and Maria Filomena D. Singh, concurring; *id.* at 9-19.

¹¹ *Id.* at 31-33.

precarious condition of her child who needed her personal presence and care. Besides, her absences up until April 14, 2015 were all condoned by ACM and all allegations related thereto should be considered moot and academic. Ong added that the Notice of Termination only stated the ground of “abandonment of work” as basis for her termination. Thus, the ground of “loss of trust and confidence” should not be considered for she was neither informed thereof, nor given due process therefor. Be that as it may, records reveal that contrary to the findings of the LA, NLRC, and CA, she was in constant communication with ACM before and after April 15, 2015. Thus, there was no clear showing of her intention to sever the employer-employee relationship.¹²

In a Resolution¹³ dated April 11, 2018, the Court resolved to deny Ong’s petition for failure to sufficiently show any reversible error in the assailed CA judgment to warrant the exercise of the Court’s discretionary appellate jurisdiction. We held that Ong failed to show that the factual findings of the LA, NLRC, and CA are not based on substantial evidence, or that their decisions are contrary to applicable law and jurisprudence.

This notwithstanding, Ong filed a Motion for Reconsideration on March 15, 2019 essentially reiterating the arguments in her petition. First, she maintained that the penalty of dismissal was too harsh for her failure to comply with the company rules in securing her superior’s prior approval and filing proper leave forms. Besides, it must be noted that she sent e-mails on her computation of her leaves and had been in constant communication with her superiors, which must be considered as a substantial compliance with the rules. Second, Ong argued that her absences from November 18, 2014 to April 15, 2015 constituting sick leave, vacation leave, and maternity leave benefits, were hers by right and not merely an accommodation by ACM. Third, she added that while she did not reply to ACM’s April 21, 2015 Notice to Explain, her e-mail on April 13, 2015 already contained the explanation requested from her therein. Fourth, contrary to the findings that ACM suffered irreversible business losses from her prolonged absence, Ong maintained that ACM actually hired Gina Magsanoc, a Group Vice President for Corporate Marketing and Business Development. As such, there was someone heading the marketing group during her absence. Besides, ACM presented no

¹² *Id.* at 40-63.

¹³ *Id.* at 353.

proof that the specific losses suffered by the company were a direct consequence of her absence.

In a Resolution¹⁴ dated July 3, 2019, the Court granted Ong's Motion for Reconsideration, set aside the April 11, 2018 Resolution, reinstated Ong's petition, and required ACM and Atty. Lintag to submit their Comment. The Court also noted without action the Motion to Expunge filed by ACM and Atty. Lintag praying that Ong's Motion for Reconsideration be expunged from the records for being filed out of time as well as Ong's Motion for Leave to file Incorporated Opposition to the Motion to Expunge. There, she argued that there was no proper service of the assailed April 18, 2019 Resolution of the Court upon her former counsel who had died on June 9, 2018. Records reveal that the said resolution was received "by a certain Vita Pailao" who was neither her counsel, Atty. Luis Dizon Flores, nor the latter's duly authorized representative for purposes of receiving his correspondence.¹⁵

In their Comment, ACM and Atty. Lintag essentially argued that the petition should be dismissed for violating the rule that a petition for review on *certiorari* must only raise questions of law. They also argued that contrary to Ong's contention, her employment was validly terminated based on her continued violation of company rules and regulations, unauthorized absences, and failure to report to work despite notice, which are not in any way related to her pregnancy. Since the termination of Ong's employment was legal, she is not entitled to her claims for reinstatement, backwages, actual damages, moral and exemplary damages, and attorney's fees. Finally, ACM and Atty. Lintag argued that Atty. Lintag's inclusion as respondent in the present case is baseless for corporate officers may not be held jointly liable with the company for the obligations of the latter.¹⁶

We deny the petition.

Prefatorily, it bears stressing that in petitions for review on *certiorari*, the scope of the Court's judicial review of decisions of the CA is generally confined only to errors of law and does not extend to a reevaluation of the sufficiency of the evidence upon which the proper labor tribunal has based its determination. Whether Ong was legally dismissed on the ground of loss of trust is a question of fact

¹⁴ *Id.* at 390-391.

¹⁵ *Id.* at 401-407.

¹⁶ *Id.* at 419-450.

better left for determination by quasi-judicial agencies which have acquired expertise because their jurisdiction is confined to specific matters.¹⁷ Corollarily, the rule is settled that the factual findings of the LA and the NLRC, especially when affirmed by the CA, are accorded not only great respect, but also finality, and are deemed binding upon this Court so long as they are supported by substantial evidence. We have reiterated the dictum that the Supreme Court is not a trier of facts and this applies with greater force in labor cases.¹⁸

This notwithstanding, the Court finds no cogent reason to deviate from the findings of the LA, NLRC, and CA that Ong was validly dismissed on the ground of loss of trust and confidence. Loss of trust and confidence is a just cause for dismissal under Article 282(c) of the Labor Code, which provides that an employer may terminate an employment for fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative. In order for the employer to properly invoke this ground, the employer must satisfy two conditions: (1) the employer must show that the employee concerned holds a position of trust and confidence; (2) the employer must establish the existence of an act justifying the loss of trust and confidence.¹⁹

The foregoing elements are present in the instant case. First, as ACM's Vice-President of Marketing no less, Ong clearly held the position of trust and confidence. As duly found by the LA, her position carried with it the authority for the exercise of independent judgment and discretion, characteristic of sensitive posts in corporate hierarchy while a wide latitude could be supposed in setting up stringent standards for continued employment. Second, it was sufficiently established that Ong is guilty of a willful breach of trust. Time and again, the Court has ruled that the complained act must be work related such as would show the employee concerned to be unfit to continue working for the employer and it must be based on a willful breach of trust and founded on clearly established facts.²⁰ Proof beyond reasonable doubt is not needed to justify the loss as long as the employer has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of the trust and confidence demanded of his position.²¹

¹⁷ *Tan Brothers Corp. of Basilan City v. Escudero*, 713 Phil. 392, 399-400 (2013).

¹⁸ *Id.* at 400.

¹⁹ *Distribution & Control Products, Inc./Tiamsic v. Santos*, 813 Phil. 423, 434 (2017).

²⁰ *Alvarez v. Golden Tri Bloc, Inc., et al.*, 718 Phil. 415, 426 (2013).

²¹ *Supra* note 19, at 434-435.

Here, it is undeniable from the facts of the case that Ong's actions and inactions constitute sufficient basis for ACM to lose the trust reposed on her. While Ong's absences from November 17, 2014 to April 14, 2015 were taken from her remaining sick and vacation leaves, one must not lose sight of the other reasons why ACM was left with no other recourse but to terminate her employment. It cannot be denied that Ong refused to report to work at the end of her authorized leaves on April 15, 2015 despite having agreed to do so. In fact, from April 15, 2015 onwards, she neither reported to work nor gave any notice as to when she would finally be able to go back or even as to whether she even intended on doing so. Contrary to Ong's claim that she has been in constant communication with ACM after April 15, 2015, a simple perusal of the record of her text messages shows that she was, in truth, completely silent from April 15, 2015 and it was not until May 15, 2015 that she contacted ACM again.²² Note though that in said May 15, 2015 text message, Ong merely gave an update on the condition of her child without any reassurance that she intended on returning. Prior to the text message, she made no reply whatsoever to the Notice to Explain sent by ACM on April 21, 2015 or the other attempts made by ACM to follow-up on her reply. It must be remembered that under the Company's Code of Conduct and Discipline, an absence of four (4) consecutive days or more without approval shall constitute abandonment and shall result in the employee's dismissal.

Further, We agree with the findings of the LA that contrary to Ong's contention that she did not abandon her job, her following acts belie her claim: (1) her acts of not responding to ACM's Notice to Explain and subsequent Notice of Termination clearly show her lack of intention to return to the company and re-assume her post as Vice-President for Marketing; (2) she already informed Atty. Lintag that she will be surrendering her company-issued laptop though she requested that the company phone be transferred to her name and that she be allowed to purchase the company-assigned vehicle at book value; (3) she already waived her remaining salary or benefit from AMC in order to allow the company to use the same as her payment of the vehicle; and (4) she admitted that she was already applying for a new job.²³

To the Court, there were numerous ways by which she could have saved her relationship with ACM, and ultimately, her job. Note

²² *Rollo*, p. 51.

²³ *Id.* at 14.

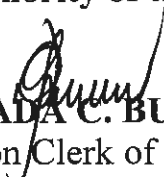
that We are not unmindful of Ong's unfortunate circumstances and, in fact, empathize with the challenges she is faced with. Yet after the many concessions and special considerations that ACM granted Ong, she could have simply shown ACM that in spite of her circumstances, she had every intention of going back to fulfilling her duty as the company's Vice-President of Marketing. It was, after all, what she was hired to be and was being paid good money to do. In the meantime, nothing prevented her from proposing some sort of middle ground, such as work-from-home arrangements, to gradually get back on track. It would simply not be fair to compel ACM to indefinitely retain in its employ Ong as its Vice-President of Marketing who, as shown by the records, was clearly no longer interested in fulfilling the obligations inherent in her position.

At the end of the day, it is well to bear in mind that an employee's right to security of tenure does not give him a vested right to his position. An employer has the prerogative to prescribe reasonable rules and regulations necessary for the conduct of its business and to provide certain disciplinary measures in order to implement said rules and to assure that the same would be complied with. While the State affords the constitutional blanket of affording protection to labor, the rule is settled that it must also protect the right of employers to exercise what are clearly management prerogatives, so long as the exercise is without abuse of discretion.²⁴

WHEREFORE, premises considered, the petition is **DENIED**. The Decision dated August 16, 2017 of the Court of Appeals is **AFFIRMED**.

SO ORDERED.” *Gaerlan, J., Additional Member per Special Order No. 2788, dated September 16, 2020.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *12/23*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
65-B

²⁴ *Sy v. Neat, Inc.*, G.R. No. 213748, November 27, 2017, 846 SCRA 612, 638.

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