



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated August 4, 2014, which reads as follows:*

**“G.R. No. 201955 (Riverhead Property Management, Inc./Rivers of Life Property Development Corporation and/or Wainwright Rivera, John Patrick Rivera v. National Labor Relations Commission and Aletho M. Cruz).** - This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by petitioners assailing the Decision<sup>1</sup> dated July 21, 2011 and Resolution<sup>2</sup> dated May 18, 2012 of the Court of Appeals (CA).

The factual antecedents follow.

Respondent Cruz was initially engaged as consultant in connection with petitioner Wainwright’s unsuccessful bid for the mayoralty of Pasig City. Subsequently, respondent Cruz was asked by petitioner Wainwright to join his new company as Chief Marketing Officer with a promised salary of ₱100,000.00 a month, 2% commission on gross sales, a cellphone allowance of ₱2,000.00, and a car plan of ₱30,000.00.

Respondent Cruz accepted the offer and worked for petitioner Riverhead Property Management, Inc. as Chief Marketing Officer starting January 2000.

During his employment with petitioner Riverhead Property Management, Inc., it did not make good with its promises. Respondent Cruz was not paid his 2% commission as well as his cellphone and car plan allowances. Also, he was paid only part of his promised monthly salary with a promise to pay the balance once the business had settled, and yet, he continued to perform his work. He eventually discovered that petitioners had directed him to market their columbarium without the proper HLURB licenses and thus exposed him to liability for such unauthorized marketing.

<sup>1</sup> Rollo, pp. 41-57.

<sup>2</sup> *Id.* at 70-73.

Accordingly, respondent Cruz resigned from his job as Chief Marketing Officer effective June 6, 2001.

On July 13, 2001, respondent Cruz filed a Complaint for illegal dismissal, underpayment of salary, non-payment of 2% commission, cellphone and car plan allowances, with the Labor Arbiter.

In a Decision dated July 25, 2003, the Labor Arbiter dismissed the case for lack of merit.

In the interim, respondent Cruz appealed the dismissal of his case to the National Labor Relations Commission (*NLRC*) without furnishing petitioners nor their counsel a copy of his appeal memorandum. Resultantly, the *NLRC* ruled in favor of respondent Cruz on April 28, 2004.

On August 24, 2004, the *NLRC* issued an Entry of Judgment while respondent Cruz filed a Motion for Issuance of a Writ of Execution without a Notice of Hearing.

On September 17, 2004, the *NLRC* Computation Unit placed the monetary award at ₱7,000,533.14. Respondent Cruz filed a Comment to Computation with his own recomputation of monetary awards, alleging that the award should be in the total amount of ₱5,178,779.81.

On September 22, 2004, the Labor Arbiter issued a Notice of Hearing to the parties setting the case for a pre-execution conference on October 20, 2004.

On November 5, 2004, petitioners filed before the *NLRC* Third Division an Omnibus Motion to Recall the Records of the Case from the Labor Arbiter and direct the elevation of the same to the *NLRC*; to set aside and nullify the Entry of Judgment dated August 24, 2004; and, to annul the decision dated April 28, 2004.

On November 8, 2004, petitioners also filed before the Labor Arbiter an Opposition to the Motion for Issuance of a Writ of Execution.

Notwithstanding petitioners' opposition, the Labor Arbiter ordered execution against them in the total amount of ₱7,000,533.14 and the *NLRC* eventually denied their Omnibus Motion, in a Resolution dated December 14, 2004, citing as a ground petitioners' failure to pay the appeal fee.

On appeal to the CA, it reversed and set aside: (1) the April 28, 2004 decision of the NLRC, and (2) the December 14, 2004 resolution denying petitioners' Omnibus Motion. The CA further ordered that the NLRC should allow petitioners to be heard and to contest the appeal of respondent Cruz fairly and squarely.

Respondent Cruz elevated the matter to the Supreme Court, but the same was denied in a Resolution dated September 17, 2007.

Soon after, upon respondent Cruz's motion, the NLRC set the case for conference/hearing and with the subsequent filing of petitioners' Comment/Opposition, it rendered a decision in favor of respondent Cruz. It ordered petitioners to pay respondent Cruz: (1) full backwages and benefits based on his ₱100,000.00 monthly salary from the time he was dismissed up to the finality of this decision; (2) separation pay equivalent to one month's salary for every year of service a fraction of six (6) months to be considered as one whole year amounting to ₱910,000.00; and (3) salary differentials computed from May 2000 to June 2011 or ₱910,000.00.

Petitioners filed a motion for reconsideration against said decision, but the same was denied by the NLRC in a Resolution dated June 21, 2010.

Unfazed, petitioners filed an appeal with the CA.

In a Decision dated July 21, 2011, the CA held that an employer-employee relationship exists between the parties. However, it ruled that respondent Cruz was not constructively dismissed from his employment as he had voluntarily resigned therefrom and thus not entitled to separation pay. The *fallo* of said decision reads:

WHEREFORE, the May 11, 2010 Decision and June 21, 2010 Resolution of the National Labor Relations Commission are hereby REVERSED and a NEW ONE entered ordering petitioners to pay private respondent his unpaid salaries at ₱100,000.00 per month from June 2000 to June 2001 as well as the benefits of the 13<sup>th</sup> month pay, plus 6% interest per annum from the date of judicial demand on July 13, 2001 until finality hereof.

SO ORDERED.

Both parties filed a motion for reconsideration against said Decision. However, both motions were denied by the CA in a Resolution dated May 18, 2012.

Hence, the present petition.

The issue now before us is whether the CA erred in reversing the ruling of the NLRC and ordering petitioners to pay the unpaid salaries of respondent Cruz as well as 13<sup>th</sup> month pay.

We rule in the negative.

After a review of the case, we uphold the CA findings that there is no constructive dismissal in the instant case.

Constructive dismissal is defined as a quitting because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or a diminution in pay. The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances. It is an act amounting to dismissal but is made to appear as if it were not. Constructive dismissal is therefore a *dismissal in disguise*. The law recognizes and resolves this situation in favor of employees in order to protect their rights and interests from the coercive acts of the employer.<sup>3</sup>

In *Morales v. Harbour Centre Port Terminal, Inc.*,<sup>4</sup> this Court further held that constructive dismissal exists where there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay and other benefits. Aptly called a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not, constructive dismissal may, likewise, exist 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.<sup>5</sup>

Here, it is evident that respondent Cruz was not constructively dismissed from his employment but rather voluntarily resigned therefrom. He was not forced to sever his ties with the employer by reason of demotion in rank or diminution in pay, or by reason of coercive or discriminating acts of the employer. In fact, a perusal of the records of the case would reveal that respondent Cruz was determined to sever his ties from the company but expected to be paid the remuneration still owing to him.

<sup>3</sup> *Dimagan v. Dacworks United, Incorporated*, G.R. No. 191053, November 28, 2011, 661 SCRA 438, 446.

<sup>4</sup> G.R. No. 174208, January 25, 2012, 664 SCRA 110.

<sup>5</sup> *Morales v. Harbour Centre Port Terminal, Inc.*, *supra*, at 117-118. (Citations omitted)

As held by this Court in *Bilbao v. Saudi Arabian Airlines*,<sup>6</sup> 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.<sup>7</sup>

In the present case, the CA aptly held that respondent Cruz's resignation letter was marked, not by involuntariness, but by his thoughtful consideration of the many months that he persevered and willingly sacrificed for the hope of success in the company's business and the personal rewards it would have eventually brought him. It further held that no value should be given to respondent Cruz's assertion that he was subjected to the oppressive working condition of being exposed to liability for marketing an unlicensed columbarium business. The lack of HLURB permit to sell the columbarium cannot be considered as a "hostile act" consciously done by the employer against its employee to make the latter's employment unbearable, leaving him no option but to forego his employment, giving cause for a case of constructive illegal dismissal.

However, despite the non-existence of constructive dismissal, petitioners are still liable for the underpayment of respondent Cruz's salaries as well as payment of the 13<sup>th</sup> month pay. As appropriately discussed by the CA:

x x x In his resignation letter, [respondent Cruz] asserted his entitlement to a monthly salary of ₱100,000.00. Petitioners allowed these assertions to pass without comment and such failure, coupled with petitioners' issuance of an employment certificate attesting to [respondent Cruz's] monthly remuneration of ₱100,000.00 led the NLRC to conclude that petitioners have impliedly admitted the correctness of [respondent Cruz's] salary claims.

That the certificate of employment was issued in connection with [respondent Cruz's] application for a US Visa, is not incompatible with the fact that [respondent Cruz] was assured of ₱100,000.00 monthly salary working initially as a "full-time" consultant to Wainwright's mayoralty candidacy and then as Chief Marketing Officer of Riverhead, x x x.

x x x x

The vouchers indicating partial payment of salary every fifteen-period is just proof that [respondent Cruz] was not really paid in full of the ₱100,000.00 monthly (*sic*), as he cited in his resignation letter.<sup>8</sup>

<sup>6</sup> G.R. No. 183915, December 14, 2011, 662 SCRA 540.

<sup>7</sup> *Bilbao v. Saudi Arabian Airlines*, *supra*, at 549.

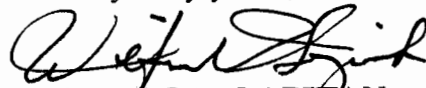
<sup>8</sup> *Rollo*, pp. 53-55.

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Thus, after careful review of the facts and circumstances of the present case, this Court resolves to **DENY** the present petition. (Villarama, Jr., J., designated Acting Member, per Special Order No. 1691 dated May 22, 2014; in view of the vacancy in the Third Division; Mendoza, J., no part; Perez, J., designated Acting Member, per Raffle dated September 16, 2013)

**SO ORDERED.”**

Very truly yours,

  
**WILFREDO V. LAPITAN**  
Division Clerk of Court

*NA 8/13/14*

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