

FIRST DIVISION

[G.R. No. 153290, September 05, 2007]

**BMG RECORDS (PHILS.), INC. AND JOSE YAP, JR., PETITIONERS,
VS. AIDA C. APARECIO AND NATIONAL LABOR RELATIONS
COMMISSION, RESPONDENTS.**

DECISION

AZCUNA, J.:

This is a petition for review under Rule 45 of the Rules of Court assailing the November 20, 2001 Decision^[1] and April 26, 2002 Resolution^[2] of the Court of Appeals (CA) in C.A. G.R. SP No. 65403 affirming the August 23, 2000 Decision^[3] of the National Labor Relations Commission (NLRC) which reversed and set aside the October 27, 1998 Decision^[4] of the Labor Arbiter finding that private respondent voluntarily resigned and was not illegally dismissed.

Petitioner BMG Records (Phils.), Inc. (BMG) is engaged in the business of selling various audio records nationwide. On September 2, 1990, it hired private respondent Aida C. Aparecio (Aparecio) as one of the promo girls in its Cebu branch. For working from Monday to Sunday, she received a salary of P181.00 per day.

On May 25, 1998, Aparecio filed a complaint against BMG and its Branch Manager, Jose Yap, Jr., co-petitioner herein, for illegal dismissal and non-payment of overtime pay, holiday pay, premium pay for rest day, 13th month pay, service incentive leave, and separation pay.^[5] In her Position Paper, she alleged:

x x x

b. That she was illegally dismissed or terminated [from] employment on April 30, 1998; that before said date[,], however, she was asked by respondent to resign and will be paid (sic) all her benefits due — like a one-month pay for every year of service, payment of services rendered, overtime and holiday pay, rest day, 13th month, service incentive leave and separation pay — and to [execute] a letter of resignation;

c. That in view of respondent's insistence to prepare and [execute] a letter-resignation[,], even without proper accounting of any accountability, the complainant was lured, induced and compelled to submit a letter of resignation believing on respondent's promise and assurance to pay all the benefits due her as aforesaid;

d. That after executing said resignation letter, the respondent did not make good its promise and [instead] did an accounting by themselves in the absence of herein complainant and arrived on a computation that complainant's liability per their accounting reached to the staggering

amount of P8,000.00; that since they offered to pay a separation pay of only P12,000.00, minus complainant's alleged accountability of P8,000.00, they are ready to pay the balance thereof any time;

e. That herein complainant was under respondent's employ for seven (7) years, seven (7) months and twenty-eight (28) days when illegally terminated [from] her employment xxx. [6]

Petitioners, however, proffer a different version of the facts. They narrate that Aparecio was initially performing well as an employee but as years passed by she seemed to be complacent in the performance of her job and had been comparing the salaries of promo girls in other companies. It appeared that she was no longer interested in her job. In April 1998, Aparecio and two other promo girls, Jovelina V. Soco and Veronica P. Mutya, intimated to their supervisor that they were intending to resign and were requesting for some financial assistance. BMG made it clear that, as a company policy, an employee who resigns from service is not entitled to financial assistance, but considering the length of their service and due to humanitarian consideration it would accede to the request after they secure their respective clearances. Forthwith, the three employees tendered their resignations, which were accepted. When they processed the required individual clearance, it was found out that they had incurred some shortages after inventory. Per agreement, said shortages were deducted from the amounts due them. Thus, Soco and Mutya received their last salary, a proportion of the 13th month pay, tax refund and financial assistance less the deductions, and they executed their releases and quitclaims. Except for the financial assistance, Aparecio also obtained the same yet refused to sign the release and quitclaim, protesting the amount of P9,170.12 deducted from the financial assistance. She was adamant but BMG stood by the previous agreement.

Attached to petitioners' Position Paper^[7] were the sworn statements of Jose Yap, Jr. and Evangeline A. Magno, supervisor of BMG.

On October 27, 1998, the labor arbiter dismissed Aparecio's complaint. Since the letter of resignation showed no signs that it was made through duress or compulsion, it was concluded that the severance of her employment in BMG was brought about by her resignation and not by the illegal dismissal supposedly committed by the latter. Nonetheless, realizing petitioners' promise to pay financial assistance to Aparecio, the labor arbiter ordered the payment of P18,824.00 (fixed at half month pay for every year of service, with a fraction of at least six ^[6] months being considered as one year) instead of P9,170.12 which was not amply substantiated.^[8]

Upon appeal, however, the NLRC found that Aparecio was illegally dismissed from service, disposing in its August 23, 2000 Decision^[9] thus:

WHEREFORE, prescinding from the foregoing consideration, the Decision appealed from is **REVERSED and SET ASIDE** and a new one **ENTERED** finding the dismissal of complainant illegal thus ordering the respondent to pay her backwages from April 30, 1998 up to date hereof and in lieu of reinstatement, the respondent is further ordered to pay complainant separation pay computes at the rate of one (1) month pay for every year

of service from date of hiring on September 2, 1990 up to the finality of this decision.

All other claims are dismissed for lack of merit.

SO ORDERED.^[10]

The NLRC admitted its dilemma in determining whether Aparecio offered to resign on the condition that she would be paid with termination benefits or whether the resignation was triggered by BMG which offered the monetary consideration. While saying that Aparecio "offered no other evidence except her bare allegations," it was held that the sworn statement of Magno was not sufficient to establish the position of petitioners. For the NLRC, the testimonies of Soco and Mutya would have been helpful had these been presented by either side. Notwithstanding the "scanty data" available, it concluded:

x x x We find that the elements of a valid resignation are not obtaining in this case. It must be stressed that resignation is inconsistent with the filing of the complaint. Moreover, even in the absence of physical force, duress or compulsion applied upon complainant when she executed the alleged resignation letter, factual circumstances tend to show the strong and irresistible economic pressure originating from respondent if only to push the complainant into accepting the offer. For, as ever, "[i]n the matter of employment bargaining, there is no doubt that the employer stands on higher footing than the employee. First of all, there is greater supply than demand for labor. Secondly, the need for employment by labor comes from vital, and even desperate, necessity. Consequently, the law must protect labor, at least, to the extent of raising him to equal footing in bargaining relations with capital and to shield him from abuses brought about by the necessity of survival. It is safe therefore to presume that an employee or laborer who waives in advance any benefit granted him by law does so, certainly not in his interest or through generosity, but under the forceful intimidation or urgent need, and hence, he could not have done so acted freely and voluntarily." xxx (citations omitted)^[11]

A motion for reconsideration of the Decision was filed by petitioners. Attached therein were the sworn statements of Soco and another promo girl, Marietta Cinco, both dated September 21, 2000, confirming Aparecio's voluntary resignation. The NLRC, however, resolved to deny the motion.^[12]

On appeal, the CA affirmed *in toto* the judgment of the NLRC. In its November 20, 2001 Decision,^[13] the appellate court held:

x x x

Based on the evidence submitted, the [petitioners] failed to support [their] claim that [Aparecio's] resignation was made out of her own volition. Granting *arguendo* that [Aparecio] executed a resignation letter, it appears that she did it in consideration of the separation pay and other benefits promised by the petitioner.

Resignation, moreover, is inconsistent with the filing of a complaint for illegal dismissal. It would have been illogical for the employee to resign and then file a complaint for illegal dismissal x x x Thus, had the private respondent been determined to resign and relinquish her position in the petitioner company, she would not have commenced an action for illegal dismissal.

It must be remembered that the petitioner is in a more advantageous position than [Aparecio] considering the ratio of the demand for workers and the number of unemployed persons, so much so that the employee is vulnerable to submit to whatever offer the employer may give. Most often than not, employees are placed in a position where there is only one choice which is to accede to the employer's proposal.^[14]

x x x

Petitioners' motion for reconsideration was subsequently denied on April 26, 2002; ^[15] hence, this petition.

In a Resolution dated August 12, 2002, this Court initially resolved to deny the petition for:

(a.) failure of the petitioners to sufficiently show that the Court of Appeals committed any reversible error in the challenged decision and resolution as to warrant the exercise by this Court of its discretionary appellate jurisdiction in this case; and

(b.) failure of the petition to show extraordinary circumstance justifying a departure from the established doctrine that findings of facts of the Court of Appeals are well-nigh conclusive on this Court and will not be reviewed or disturbed on appeal.^[16]

Considering, however, the Motion for Reconsideration^[17] filed and the Comment^[18] as well as the Reply^[19] thereon, this Court resolved^[20] on April 23, 2003 to reinstate the petition and require the parties to submit their respective memoranda.

The petition is meritorious.

As a rule, only questions of law may be raised in and resolved by this Court on petitions brought under Rule 45 of the Rules of Court. The reason being that the Court is not a trier of facts; it is not duty-bound to re-examine and calibrate the evidence on record. Moreover, findings of facts of quasi-judicial bodies like the NLRC, as affirmed by the CA, are generally conclusive on this Court.^[21] In exceptional cases, however, we may be constrained to delve into and resolve factual issues when there is insufficient or insubstantial evidence to support the findings of the tribunal or court below, or when too much is concluded, inferred or deduced from the bare or incomplete facts submitted by the parties.^[22] The present case is an exception to the rule. Hence, this Court finds the need to review the records to determine the facts with certainty not only because the NLRC and the labor arbiter have come up with conflicting positions but also because the findings of the NLRC, as supported by the CA on substantial matters, appear to be contrary to the

evidence at hand.

Reading through the records would ineluctably reveal that the evidence upon which both the NLRC and the CA based their conclusion rests on rather shaky foundation. After careful analysis, this Court finds and so holds that the submissions of Aparecio in all her pleadings failed to substantiate the allegation that her consent was vitiated at the time she tendered her resignation and that petitioners are guilty of illegal dismissal.

In her memorandum of appeal before the NLRC, Aparecio asserted in main:

xxx The arbiter should have seriously considered the temper of the time in relation to our deteriorating economy on the issue [of] whether or not the resignation letter was voluntary. But he did not. To the arbiter[,] resignation letter can only be set aside if it is shown that it was made through duress or compulsion. What about FRAUD? The complainant did not offer to resign. She was offered by respondents that all labor standard benefits including but not limited to payment of overtime, salary differentials and separation pay should be given if she [would] resign. This she was made to believe by the respondents. And complainant really believed them. Unfortunately, however, complainant found herself jobless and penniless. Her resignation was obtained through fraud xxx It is clear that complainant submitted her resignation letter not because she has some accountabilities but because of respondents' offer which was hard to resist xxx^[23]

On the other hand, her Comment before the CA stated further:

x x x

At any rate, respondents wish to point out that the finding of the NLRC that private respondent (employee) did not voluntarily resign but was illegally dismissed is well-supported by evidence. The following considerations clearly show this, to wit:

One. It is admitted by both petitioners and the respondents that the supposed resignation of private respondent was **conditional** in nature. It was premised on petitioners' (employers) performance of certain prestations or petitioners' compliance with certain conditions.

Two. The supposed decision of private respondent to tender a resignation is **vitiated by vices of consent**. The resignation letter was wrongfully obtained from private respondent on petitioners' inducement and promise to pay employment benefits and financial assistance without any deductions. However, it is now very clear that right from the start, petitioners did not intend to comply with their promise. After private respondent handed in a resignation letter, petitioners raised all obstacles to prevent private respondent from actually receiving the promised employment benefits and financial assistance. Accordingly, it can be easily said that fraud vitiated private respondent's consent.

Three. The resignation letter was also obtained from private respondent