

SECOND DIVISION

[G.R. No. 214961, September 16, 2015]

BANCO DE ORO UNIBANK, INC., PETITIONER, VS. GUILLERMO C. SAGAYSAY, RESPONDENT.

DECISION

MENDOZA, J.:

This is a petition for review on *certiorari* seeking to reverse and set aside the March 31, 2014 Decision^[1] and the October 8, 2014 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 126586, which reversed and set aside the February 29, 2012 Decision^[3] and the June 25, 2012 Resolution^[4] of the National Labor Relations Commission (NLRC) and reinstated the July 19, 2011 Decision^[5] of the Labor Arbiter (LA) in NLRC Case No. RAB II 02-0067-11.

The Facts

On May 16, 2006, respondent Guillermo Sagaysay (*Sagaysay*) was hired by petitioner Banco De Oro Unibank, Inc., (*BDO*) as Senior Accounting Assistant 5 in its San Jose, Nueva Ecija, branch as a result of a merger with United Overseas Bank (*UOB*), with BDO as the surviving bank. Sagaysay was previously employed in UOB from 2004 to 2006 or for two (2) years. Prior thereto, he worked for Metropolitan Bank and Trust Co. (*Metrobank*) from 1976 to 2004 for a period of twenty-eight (28) years.

In a letter,^[6] dated January 8, 2010, BDO informed Sagaysay that, pursuant to the retirement policy of the bank which mandated its retirement age to be sixty (60), he would be formally retired effective September 1, 2010, a few days after his 60th birthday. The normal or compulsory retirement age of the bank was based on its retirement plan^[7] which was implemented on July 1, 1994, Section 1, Article V of which reads:

Section 1. Normal Retirement

The Normal Retirement Date of each member shall be the first day of the month coincident with or next following his sixtieth (60th) birthday. The Member's Normal Retirement Benefit shall be a sum determined in accordance with the Retirement Benefit Schedule stated in Section 4 of this Article as of his retirement date.^[8]

In an e-mail,^[9] dated July 27, 2010, Sagaysay wrote that, although the time had come that the BDO Retirement Program would be implemented to those reaching the age of sixty (60), he requested that his services be extended because he had an outstanding loan and his children were still in college. He assured BDO that he was

healthy and could still perform his duties in the branch. BDO denied Sagaysay's request.

In another e-mail,^[10] dated August 19, 2010, Sagaysay appealed to BDO to extend his service for 8.5 months or up to May 16, 2011 so that he could render at least five (5) years of employment which would entitle him to 50% of his basic pay for every year of service upon his retirement. BDO denied Sagaysay's appeal and retired him on September 1, 2010. As of his last day of work, he was earning a monthly salary of P28,048.00.

Sagaysay then signed Release, Waiver and Quitclaim^[11] (*quitclaim*), dated October 22, 2010, for and in consideration of P98,376.14. The quitclaim stated, among others, that in consideration of the foregoing payment, Sagaysay released and discharged the bank, its affiliates and its subsidiaries from any action, suit, claim or demand in connection with his employment.

On January 10, 2011, Sagaysay filed a complaint^[12] for illegal dismissal with prayer for reinstatement and payment of backwages, moral damages, exemplary damages, and attorney's fee against BDO before the Labor Arbiter (LA). He claimed that despite his appeal, BDO compulsory retired him on September 1, 2010. As a result, he and his family suffered damages in the amount of P2,225,403.00 which he would have received if he was made to retire at the age of sixty-five (65).

For its part, BDO countered that after the bank denied Sagaysay's request for extension of services, he was paid the amount of P98,376.14 representing the full and final settlement of his compensation, allowances, benefits and other emoluments. BDO stressed that he was not dismissed but was retired from the service.

The LA Ruling

In a decision, dated July 19, 2011, the LA ruled that Sagaysay was illegally dismissed because he was forced to avail of an optional retirement at the age of sixty (60) which was contrary to the provisions of Article 287 of the Labor Code.^[13] The LA opined that he was terminated on the basis of a provision in a retirement plan to which he did not freely assent. BDO took advantage of his predicament and made him sign a quitclaim in exchange for a small consideration. The decretal portion of the LA decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered declaring that complainant GUILLERMO C. SAGAYSAY was illegally dismissed from work. Hence, respondent BDO UNIBANK, INC. is ordered to REINSTATE complainant to his former position as Senior Accounting Assistant 5 without loss of seniority rights and privileges and to pay him backwages in the sum of P280,480.00 as of July 7, 2011, plus ten percent (10%) thereof as attorney's fees or a total of P308,528.00.

The reinstatement aspect is immediately executory, even pending appeal. Respondent is hereby ordered to show proof that it complied with the reinstatement of complainant within ten (10) calendar days from receipt hereof.

Respondents [are] also ordered to pay complainant P50,000.00 each as moral and exemplary damages.

SO ORDERED.^[14]

Aggrieved, BDO appealed to the NLRC arguing chiefly that Sagaysay freely assented to its retirement plan.

The NLRC Ruling

On February 29, 2012, the NLRC *reversed* and *set aside* the ruling of the LA. The NLRC explained that BDO's retirement plan, which mandated a normal or compulsory retirement date at the age of sixty (60), was effective as early as June 1, 1994. The plan was renamed Banco de Oro Multiemployer Retirement Plan on July 1, 2004, but the compulsory retirement age of sixty (60) was preserved. When Sagaysay was employed on May 16, 2006, the retirement plan was already in full force and effect. Thus, the NLRC concluded that when he accepted his employment with BDO, he assented to the provisions of the retirement plan.

The NLRC found it difficult to believe that Sagaysay started his employment with BDO without familiarizing himself with the bank's retirement policy considering that he had previously retired from two (2) other banks. Further, the NLRC stated that a more concrete proof of his acceptance of BDO's retirement plan was his execution of a quitclaim where he declared that he had no cause of action against the bank and its agents. The dispositive portion of the NLRC decision states:

WHEREFORE, the appeal is GRANTED. The Decision of Labor Arbiter Ma. Lourdes R. Baricaua dated July 19, 2011 is REVERSED and SET ASIDE and a new one entered DISMISSING the complaint.

SO ORDERED.^[15]

Sagaysay filed a motion for reconsideration, but it was denied by the NLRC in its Resolution, dated June 25, 2012.

Undaunted, Sagaysay filed a petition for *certiorari*^[16] before the CA contending that it was neither stated in his employment contract nor stipulated in the collective bargaining agreement (CBA) between BDO and its employees that the compulsory retirement age was sixty (60) years old.

The CA Ruling

On March 31, 2014, the CA rendered the assailed decision which *reversed* the NLRC ruling. The appellate court explained that while the cases of *Pantranco North Express, Inc., v. NLRC*^[17] and *Philippine Airlines v. Airline Pilots Association of the Philippines*^[18] affirmed that the employer may provide an earlier retirement age, the retirement plans therein were the result of negotiations and agreement between employer and employee. The CA continued that, in this case, the retirement plan was not a result of a mutual agreement of employer and employee. This was affirmed by the BDO Memorandum,^[19] dated June 1, 2009, stating that the

retirement plan was to be implemented in the merged bank. Citing *Cercado v. UNIPROM Inc.*^[20] (*Cercado*), the CA ruled that a retirement plan with no voluntary acquiescence on the part of the employee was ineffective.

The CA stated that Sagaysay was forced to participate in the retirement plan. Equally, the quitclaim he executed was not given credence because his subsequent filing of a complaint for illegal dismissal manifested that he had no intention to relinquish his employment. Nonetheless, the CA deleted the awards of moral and exemplary damages for lack of basis. The appellate court disposed the case in this wise:

WHEREFORE, the petition is GRANTED. The Decision dated February 29, 2012 and the Resolution dated June 25, 2012 of the National Labor Relations Commission are REVERSED and SET ASIDE. The July 19, 2011 Decision of the Labor Arbiter is REINSTATED, with MODIFICATION that the awards of moral and exemplary damages are DELETED for lack of basis.

SO ORDERED.^[21]

BDO moved for reconsideration, but the motion was denied by the CA in the assailed resolution, dated October 8, 2014.

Hence, this petition.

The issues presented can be summarized as follows:

I

WHETHER THE RETIREMENT PLAN IS VALID AND EFFECTIVE AND, CONSEQUENTLY, THE MANDATORY RETIREMENT AGE OF 60 YEARS OLD IS ALSO BINDING.

II

WHETHER THE EXECUTION OF A RELEASE, WAIVER AND QUITCLAIM BY RESPONDENT IS VALID.

BDO principally argues that the retirement plan has been valid and effective since June 1, 1994; that having been in place for such a long period, the retirement plan is deemed to have been written into Sagaysay's employment contract, executed on May 16, 2006; that he even asked for an extension to become eligible to avail of the benefits under the same retirement plan; and that the 2005-2010 CBA stated, "[t]he Bank shall continue to grant retirement pay," showing that the CBA likewise recognized the existing retirement plan.

BDO also contends that the CA erred in citing *Cercado* because in that case, the retirement plan was executed only after the employment of petitioner therein. Moreover, Sagaysay, as a veteran banker, fully knew the effects of the release, waiver and quitclaim when he signed it.

In his Comment,^[22] Sagaysay countered that he was retired by BDO against his

will; that there was no provision in any CBA that employees who reached sixty (60) years of age could be compulsorily retired; that there was no agreement either between Sagaysay and BDO that he would be retired upon reaching sixty (60); and that the quitclaim was invalid because BDO took undue advantage of his situation and dire financial problems to obtain his signature therein.

In its Reply,^[23] BDO reiterated that the retirement plan was not forced upon Sagaysay; and that at the time he was employed by BDO in 2006, he had every opportunity to refuse employment if he disagreed with the retirement policy of the bank.

The Court's Ruling

The Court finds the petition meritorious.

The petition essentially centers on whether the June 1, 1994 retirement plan is valid and effective against Sagaysay. To resolve this issue, a review of the relevant laws and jurisprudence regarding the compulsory retirement age is warranted.

Laws and jurisprudence on early age of retirement

Retirement is the result of a bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age, agrees to sever his or her employment with the former.^[24] Article 287 of the Labor Code is the primary provision which governs the age of retirement and states:

Art. 287. Retirement. xxx

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

[Emphasis Supplied]

Doubtless, under this provision, the retirement age is primarily determined by the existing agreement or employment contract. Only in the absence of such an agreement shall the retirement age be fixed by law, which provides for a compulsory retirement age at 65 years, while the minimum age for optional retirement is set at 60 years.^[25]

Retirement plans allowing employers to retire employees who have not yet reached the compulsory retirement age of 65 years are not per se repugnant to the constitutional guaranty of security of tenure. By its express language, the Labor Code permits employers and employees to fix the applicable retirement age at 60 years or below, provided that the employees' retirement benefits under any CBA and other agreements shall not be less than those provided therein.^[26]