

SECOND DIVISION

[G.R. No. 194306, February 06, 2012]

SEBASTIAN F. OASAY, JR. PETITIONER, VS. PALACIO DEL GOBERNADOR CONDOMINIUM CORPORATION AND/OR OMAR T. CRUZ, RESPONDENTS.

RESOLUTION

REYES, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by Sebastian F. Oasay, Jr. (petitioner) assailing the Decision^[1] dated August 27, 2010 and Resolution^[2] dated October 29, 2010 issued by the Court of Appeals (CA) in CA-G.R. SP No. 107843.

Respondent Palacio Del Gobernador Condominium Corporation (PDGCC) is a government-owned and controlled corporation organized for the purpose of owning and arranging the common areas of Palacio Del Gobernador Condominium. The said condominium, all the units therein having been acquired by the government, houses various government agencies such as the Commission on Elections (COMELEC), Bureau of Treasury and the Intramuros Administration. On June 1, 1994, the petitioner was appointed by the PDGCC as its Building Administrator for a three-month probationary period. Consequently, the Board of Directors of PDGCC, through its Board Resolution No. 013^[3] dated October 27, 1994, appointed the petitioner as its permanent Building Administrator effective September 1, 1994.

In a Memorandum^[4] dated September 27, 2005, PDGCC President Omar T. Cruz (Cruz) required the petitioner to submit a written report on the allowances and other compensation, in connection with his duties as Building Administrator, that he received from the government offices housed in the condominium. Apparently, the petitioner had been earning additional income for services that he rendered for the COMELEC.

On October 3, 2005, the petitioner submitted his written report^[5] wherein he admitted that he had received additional compensation from the COMELEC for services which he rendered after his regular working hours and on Saturdays, Sundays and holidays. He explained that the COMELEC had caused the rehabilitation of the 8th floor of the condominium and that he was tasked by the former, for a stated compensation, to supervise and monitor the rehabilitation.

The PDGCC Board of Directors referred the petitioner's written report to Atty. Alberto A. Bernardo (Atty. Bernardo), the Assistant Secretary for Internal Audit, Office of the President and PDGCC Board Member, for study.

Meanwhile, Cruz sent a letter^[6] dated December 9, 2005 to the petitioner requiring

the latter to explain why he allowed the EGB Security Investigation and General Services, Inc., despite its lack of license to operate as a security agency, to render services to the condominium to the detriment of PDGCC. Consequently, the petitioner sent Cruz a letter^[7] dated January 12, 2006 denying any liability on the said matter as he had no power to award any contract as it is the function of the Bids and Awards Committee of PDGCC.

In a letter^[8] dated February 16, 2006, after investigating the allegations against the petitioner, Atty. Bernardo recommended to Cruz and the PDGCC Board of Directors the filing of appropriate charges against the petitioner for violation of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act) and Republic Act No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees). Attached to the said letter was a detailed outline report^[9] prepared by Atty. Bernardo which specified the acts committed by the petitioner which led him to recommend the filing of appropriate charges against the latter.

With respect to the petitioner's receipt of additional compensation from the COMELEC, Atty. Bernardo opined that the services which the former rendered for the latter relates to the duties which he actually performs pursuant to the functions of his office as Building Administrator.^[10] Atty. Bernardo further stated that, in rendering the said services for the COMELEC, the petitioner acted with evident bad faith as he did not seek the permission of PDGCC nor did he inform COMELEC that he was not authorized by PDGCC to do so.^[11]

Likewise, Atty. Bernardo found that the petitioner, as member of the Bids and Awards Committee, maneuvered the bidding process for the security services for the condominium to favor EGB Security Investigation and General Services, Inc. – a security agency which lacks the necessary license to operate as such.^[12]

In a letter^[13] dated March 16, 2006, the petitioner asked the PDGCC Board of Directors and Cruz to allow him to avail of an early retirement in view of the latter's decision to hand over the administration of the condominium to the Bureau of Treasury. The foregoing request was reiterated in the petitioner's letter^[14] dated May 10, 2006.

On October 28, 2006, Cruz sent the petitioner a Memorandum^[15] informing him that the PDGCC Board of Directors found his answers to the allegations against him unsatisfactory and, thus the Bureau of Treasury was being appointed as the new Building Administrator. Cruz then directed the petitioner to turn over all of his accountabilities to PDGCC. The foregoing was acknowledged by the petitioner in his letter^[16] to the PDGCC Board of Directors dated November 17, 2006.

Nevertheless, on January 23, 2007, the petitioner filed a Complaint^[17] for constructive dismissal with the arbitration branch of the National Labor Relations Commission (NLRC) in Quezon City against PDGCC and Cruz, with claims for service incentive leave pay, retirement benefits, PERA differential as well as performance bonus and incentive bonus on important projects and damages.

For its part, PDGCC claimed that the petitioner was not a regular

employee, serving as a Building Administrator on a yearly basis depending on the PDGCC Board of Directors' discretion.^[18] Further, on the assumption that the petitioner is a regular employee, PDGCC asserted that the petitioner was not illegally dismissed as it was based on a just cause for terminating an employment, *i.e.* loss of trust and confidence for receiving unlawful additional compensation for work rendered without its authority.^[19]

On November 12, 2007, the Labor Arbiter (LA) rendered a Decision^[20] dismissing the petitioner's complaint, finding that there was substantial evidence to conclude that the petitioner had breached the trust and confidence of PDGCC.

On appeal, the NLRC, on June 2, 2008, rendered a Decision^[21] upholding the findings of the LA. Nonetheless, invoking equity, the NLRC awarded the petitioner separation pay equivalent to one and a half (1 ½) months pay for every year of service.

The petitioner sought a reconsideration of the June 2, 2008 Decision of the NLRC.^[22] PDGCC likewise filed a motion for partial reconsideration of the same decision seeking the review of the award of separation pay to the petitioner. In a Resolution^[23] dated December 23, 2008, the NLRC denied the foregoing motions. Thus, the petitioner and PDGCC both filed a petition for *certiorari* with the CA, the former seeking a review of the validity of his dismissal and the latter seeking a reversal of the award for separation pay.

On August 27, 2010, the CA rendered the herein assailed Decision^[24] dismissing the petition for *certiorari* filed by the petitioner and granted the PDGCC's prayer for a reversal of the award for separation in favor of the former. The *fallo* of the said decision reads:

WHEREFORE, in view of the foregoing premises, **CA-G.R. SP. No. 107843** appealing the finding of just dismissal is hereby **DISMISSED** for lack of merit while **CA-G.R. SP. No. 107925** questioning the award of separation pay to [petitioner] is hereby **GRANTED**. The assailed decision and resolution of the NLRC, insofar as it awards separation pay to [the petitioner], are hereby **REVERSED and SET ASIDE** and a new judgment is hereby entered finding [petitioner's] dismissal to be valid and for just cause and without any entitlement to separation pay.

SO ORDERED.^[25]

In denying the petition for *certiorari* filed by the petitioner, the CA held that there was a valid ground for the petitioner's dismissal. Thus:

The services Oasay rendered for COMELEC were well within his duties as building administrator. In extending his hours of work and rendering duties within the scope of his work for a fee absent the consent from PDGCC, Oasay abused his position as building administrator and is guilty of contracting his services to PDGCC's occupants to the detriment of

PDGCC. Not only did he maliciously use his position for personal gain, he also misused PDGCC's name and the goodwill it extended to its tenants by rendering his services for a fee in the guise of being authorized to do so when in truth and in fact there was no prior consent given by PDGCC regarding such matter.

On the same note, after an investigation uncovered that Oasay, in connivance with the other members of the BAC, violated the standard bidding process required by law when he allowed the employment and retention of services of EGB Security Agency despite its disqualification and paid the salaries of the agency's security guards out of PDGCC funds are enough reasons for PDGCC to breed mistrust and doubt Oasay's trustworthiness. In fact, the results of the investigation even prompted PDGCC to file criminal and administrative charges against Oasay.^[26]

Moreover, the CA deleted the award of separation pay in favor of the petitioner as he was dismissed for an act which constitutes a palpable breach of trust in him.

Thereupon, the petitioner sought a reconsideration^[27] of the August 27, 2010 Decision, but it was denied by the CA in its Resolution^[28] dated October 29, 2010.

Undaunted, the petitioner instituted the instant petition for review on *certiorari* before this Court alleging the following arguments: (1) the petitioner did not violate the trust and confidence of PDCGG; (2) his right to procedural due process was violated; and (3) he was illegally dismissed and, hence, entitled to all the benefits and monetary award given to illegally dismissed employees.

In its Comment,^[29] PDCGG asserts that the petitioner is not its regular employee and that the dismissal of the petitioner was for just cause, the same being part of its management prerogative.

The petition is denied.

At the crux of the instant controversy is the validity of the termination of the petitioner's employment with PDGCC.

At the outset, we stress that the question of whether the petitioner was illegally dismissed is a question of fact as the determination of which entails an evaluation of the evidence on record. Well-entrenched is the rule in our jurisdiction that only questions of law may be entertained by this Court in a petition for review on *certiorari*.

In *La Union Cement Workers Union v. National Labor Relations Commission*,^[30] we stressed that:

As an overture, clear and unmistakable is the rule that the Supreme Court is not a trier of facts. Just as well entrenched is the doctrine that pure issues of fact may not be the proper subject of appeal by *certiorari* under