

SECOND DIVISION

[G.R. No. 188882, March 30, 2010]

**PHILIPPINE VETERANS BANK, PETITIONER, VS. NATIONAL
LABOR RELATIONS COMMISSION (FOURTH DIVISION) AND
BENIGNO MARTINEZ, RESPONDENTS.**

R E S O L U T I O N

BRION, J.:

Submitted for our review in this petition for review on *certiorari* (with a prayer for temporary restraining order and/or writ of preliminary injunction)^[1] are the decision^[2] and the resolution^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 00708. The CA decision affirmed the December 8, 2004 decision^[4] and March 14, 2005^[5] resolution of the National Labor Relations Commission (NLRC), Fourth Division, Cebu City. The NLRC, in turn, reversed the decision of the Labor Arbiter (LA) that dismissed the respondent's complaint for constructive dismissal.

On February 20, 2003, respondent Benigno B. Martinez (*respondent*) filed a complaint for illegal dismissal, with a claim for backwages, reinstatement and damages against petitioner Philippine Veterans Bank (*petitioner*).

In his position paper, the respondent alleged that he was the manager of the petitioner's Dumaguete Branch from September 1, 2001 until January 8, 2003, when his supposed resignation from the petitioner became effective. The respondent claimed that his resignation stemmed from a report published by the Philippine Daily Inquirer regarding the anomalies hounding the petitioner's high-ranking officials. This controversy according to the respondent resulted in huge withdrawals of major depositors. Concerned, the respondent approached Mr. Wilfredo S. Aniñon (*Mr. Aniñon*), the petitioner's Area Head for Visayas and Mindanao to discuss how to resolve the matter. When Mr. Aniñon just brushed off the issue, the respondent requested the Mayor of Valencia (a known big depositor of the Dumaguete Branch) to talk to Mr. Aniñon. The latter apparently misinterpreted the respondent's actions and angrily confronted him the next day, saying - "You fool, you went to the mayor of Valencia to seek support. Let them pull out all their deposits, they cannot threaten me! Let them pull out immediately! I will see to it that you will be replaced there! If not, I'd manage the branch myself! Or I'll have Dumaguete Branch made under the Luzon area so that I have nothing to do with your branch."

On October 14, 2002, Mr. Aniñon went to the Dumaguete Branch and brought along with him Mr. Mansueto Quijote as the respondent's replacement and new branch manager. Mr. Aniñon then instructed the respondent to go to the petitioner's head office in Makati to report to the Vice President and Head of Branch Banking Division, Mr. Jose D. Lloren, Jr (*VP Lloren*).

The respondent flew to Manila and reported to the Makati Office, as ordered. VP

Lloren told him that he would undergo training, but no such training took place. Instead, he was made to do clerical jobs. To compound the unjust treatment, the respondent had to travel at least 4 hours daily from his rented house in Cavite to Makati; his travel and living expenses consumed at least half of his salary. On January 8, 2003, the respondent tendered his resignation citing that "it is so expensive for [him] to be staying away from [his] family."

The petitioner in its Position Paper claimed that the respondent's transfer was not motivated by bad faith. It argued that Special Order No. 880, which ordered the respondent's transfer to the Branch Banking Division to undergo Branch Head Training effective October 21, 2002, authorized the respondent's transfer. The same Order stated that the respondent's transfer will not entail any change in rank and compensation and that he is also entitled to per diem and housing allowance amounting to six thousand pesos. The petitioner further claimed that the respondent's transfer was neither unceremonious nor without his consent since he agreed in his contract of employment that he can be given a different assignment at any given time. Finally, the petitioner claimed that the respondent was not placed on "floating status;" after his training on October 29, 2002, he was assigned to the Due Head Office Task Force to hold the sensitive position of reconciling all book entries of all the petitioner's branches. Thus, to the petitioner, the respondent was not constructively dismissed; he voluntarily resigned from his job.

The LA and NLRC Rulings

On June 30, 2003, the LA dismissed the respondent's complaint for lack of merit. The LA found that the petitioner was not guilty of constructive dismissal and that the respondent voluntarily resigned from the service.

On appeal, the NLRC reversed the LA's decision and held that the respondent was constructively dismissed. The NLRC awarded backwages, separation pay in lieu of reinstatement, moral and exemplary damages in the aggregate amount of P933,350.00. The NLRC found that the "unceremonious replacement" of the respondent on October 14, 2002 is akin to constructive dismissal. It also found that the events following the respondent's transfer, including the inconvenience that he had to face on a daily basis while working in Makati, left him with no other option but to resign.

On December 8, 2004, the petitioner filed a petition for *certiorari* before the Court of Appeals (CA) contending that the NLRC committed grave abuse of discretion in ruling that the respondent was constructively dismissed. During the pendency of the petition for *certiorari*, the petitioner filed a supplemental petition raising the theory that the present case involves the termination of an elected corporate officer, which issue is not within the jurisdiction of the LA, but within the exclusive and original jurisdiction of the Regional Trial Courts.

The CA Ruling

On February 27, 2009, the CA affirmed the NLRC's decision with modification on the award of backwages (to be reckoned from January 16, 2003 up to the finality of the decision) and attorney's fees. Procedurally, the CA found the petitioner's petition for *certiorari* to be defective and, therefore, dismissible since the Head of the Legal Department (who signed the Certification of Non-Forum Shopping) was not duly

authorized to file the petition in the petitioner's behalf. The CA held that in the absence of any authority from the board of directors, no person, not even the officers of the corporation, can validly bind the corporation.

On the merits, the CA held that the petitioner is estopped from raising the issue of lack of jurisdiction for the very first time on appeal. The CA held that the respondent's unceremonious replacement amounted to constructive dismissal; it was clearly an act of clear discrimination, insensibility or disdain on the part of the petitioner.

The CA noted that jurisprudence prohibits transfers or reassignments of employees that are unreasonable and that inconvenience or prejudice them. In this case, the CA found that the respondent's transfer from Dumaguete to Makati City was clearly unreasonable, inconvenient and put him in the difficult predicament of choosing whether to live away from his family or to bring them to Manila which will entail additional expenses on his part. The CA also found no compelling reason (*i.e.* any urgency or genuine business necessity) to justify the petitioner's order of transfer. The petitioner's stated reason about branch head training because of the respondent's gross inefficiency is unconvincing, since the petitioner failed to present any evidence that the latter had a record of gross inefficiency. Finally, the CA opined that the petitioner failed to show any valid reason why it had to require the respondent to go to Makati City to undergo branch head training when it could just as easily require the latter to undergo the same training in the VISMIN area. Based on these considerations, the CA concluded that the respondent's resignation amounted to constructive dismissal.

The present petition raises the following issues:

- 1) Whether or not the petitioner is already estopped from raising the issue of lack of jurisdiction;
- (2) Whether or not the petitioner's act of transferring the respondent to its head office in Makati was a valid exercise of management prerogative; and
- (3) Whether or not the respondent's severance from employment was voluntary or was he constructively dismissed.

We DENY the petition for lack of merit.

Petitioner is estopped from belatedly raising the issue of lack of jurisdiction

As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court will not be permitted to change theory on appeal.^[6] Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. It would be unfair to the adverse party who would have no opportunity to present further