

## SECOND DIVISION

[ G.R. NO. 149252, April 28, 2005 ]

### **DONALD KWOK, PETITIONER, VS. PHILIPPINE CARPET MANUFACTURING CORPORATION, RESPONDENT.**

#### **D E C I S I O N**

##### **CALLEJO, SR., J.:**

This is a petition for review of the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 60232 dismissing Donald Kwok's petition for review on *certiorari* and affirming the majority Decision of the National Labor Relations Commission (NLRC), as well as its resolution in NLRC NCR Case No. 00-12-07454-96 dismissing the motion for reconsideration of the said decision.

#### **The Antecedents**

In 1965, petitioner Donald Kwok and his father-in-law Patricio L. Lim, along with some other stockholders, established a corporation, the respondent Philippine Carpet Manufacturing Corporation (PCMC). The petitioner became its general manager, executive vice-president and chief operations officer. Lim, on the other hand, was its president and chairman of the board of directors. When the petitioner retired 36 years later or on October 31, 1996, he was receiving a monthly salary of P160,000.00.<sup>[2]</sup> He demanded the cash equivalent of what he believed to be his accumulated vacation and sick leave credits during the entire length of his service with the respondent corporation, i.e., from November 16, 1965 to October 31, 1996, in the total amount of P7,080,546.00 plus interest.<sup>[3]</sup> However, the respondent corporation refused to accede to the petitioner's demands, claiming that the latter was not entitled thereto.<sup>[4]</sup>

The petitioner filed a complaint against the respondent corporation for the payment of his accumulated vacation and sick leave credits before the NLRC. He claimed that Lim made a verbal promise to give him unlimited sick leave and vacation leave benefits and its cash conversion upon his retirement or resignation without the need for any application therefor. In addition, Lim also promised to grant him other benefits, such as golf and country club membership; the privilege to charge the respondent corporation's account; 6% profit-sharing in the net income of the respondent corporation (while Lim got 4%); and other corporate perquisites. According to the petitioner, all of these promises were complied with, except for the grant of the cash equivalent of his accumulated vacation and sick leave credits upon his retirement.<sup>[5]</sup>

The respondent corporation denied all these, claiming that upon the petitioner's retirement, he received the amount of P6,902,387.19 representing all the benefits due him. Despite this, the petitioner again demanded P7,080,546.00, which demand

was without factual and legal basis. The respondent corporation asserted that the chairman of its board of directors and its president/vice-president had unlimited discretion in the use of their time, and had never been required to file applications for vacation and sick leaves; as such, the said officers were not entitled to vacation and sick leave benefits. The respondent corporation, likewise, pointed out that even if the petitioner was entitled to the said additional benefits, his claim had already prescribed. It further averred that it had no policy to grant vacation and sick leave credits to the petitioner.<sup>[6]</sup>

In his Affidavit<sup>[7]</sup> dated May 19, 1998, Lim denied making any such verbal promise to his son-in-law on the grant of unlimited vacation and sick leave credits and the cash conversion thereof. Lim averred that the petitioner had received vacation and sick leave benefits from 1994 to 1996. Moreover, assuming that he did make such promise to the petitioner, the same had not been confirmed or approved via resolution of the respondent corporation's board of directors.

It was further pointed out that as per the Memorandum dated November 6, 1981, only regular employees and managerial and confidential employees falling under Category I were entitled to vacation and sick leave credits. The petitioner, whose position did not fall under Category I, was, thus, not entitled to the benefits under the said memorandum. The respondent corporation alleged that this was admitted by the petitioner himself and affirmed by Raoul Rodrigo, its incumbent executive vice-president and general manager.

In a Decision<sup>[8]</sup> dated November 27, 1998, the Labor Arbiter ruled in favor of the petitioner. The fallo of the decision reads:

WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered ordering the respondent company to pay complainant the sum of P7,080,546.00, plus ten percent (10%) thereof as and for attorney's fees.

SO ORDERED.<sup>[9]</sup>

Undaunted, the respondent corporation appealed the decision to the NLRC, alleging that:

- I. THE LABOR ARBITER ERRED IN CONCLUDING THAT KWOK WAS COVERED BY THE NOVEMBER 6, 1981 MEMORANDUM ON VACATION AND SICK LEAVE CREDITS.<sup>[10]</sup>
- II. THE LABOR ARBITER ERRED IN CONCLUDING THAT IT WAS DISCRIMINATORY NOT TO GRANT KWOK THESE BENEFITS.<sup>[11]</sup>
- III. KWOK'S CLAIMS ARE BASELESS.<sup>[12]</sup>
- IV. KWOK'S CLAIMS FOR BENEFITS ACCRUING FROM 1966 ARE BARRED BY PRESCRIPTION.<sup>[13]</sup>
- V. THERE IS NO BASIS FOR THE AWARD OF P7,080,546.00.<sup>[14]</sup>

The respondent corporation averred that based on the petitioner's memorandum, his admissions and the contract of employment, the petitioner was not entitled to the cash conversion of his sick and vacation leave credits. While the respondent corporation conceded that the petitioner may have been entitled to unlimited sick and vacation leave benefits during his employment, it maintained that no such promise was made by Lim to convert the same; even assuming that such verbal promise was made, the respondent corporation was not bound thereby since the petitioner failed to adduce the written conformity of its board of directors. The respondent corporation insisted that the claims of the petitioner were barred under Article 291 of the Labor Code.

For his part, the petitioner made the following averments in his memorandum:

The non-performance by PCMC of this particular promise to convert in cash all of his unused cash (sic) and sick leave credits was precipitated by the falling out of the marriage between Mr. Kwok and his wife, the daughter of Mr. Lim. In fact, even while Mr. Kwok was still the Executive Vice-President and General Manager of PCMC, when the falling out of the said marriage became apparent, the other benefits or perquisites which Mr. Kwok used to enjoy were immediately curtailed by Mr. Lim to the prejudice of Mr. Kwok.<sup>[15]</sup>

On November 29, 1999, the NLRC, by majority vote, rendered judgment granting the appeal, reversing and setting aside the decision of the Labor Arbiter.<sup>[16]</sup> The NLRC ordered the dismissal of the complaint. Commissioner Angelita A. Gacutan filed a dissenting opinion.<sup>[17]</sup>

Aggrieved, the petitioner filed a petition for review with the CA, on the following grounds:

### **I**

THE COMMISSION ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DECLARED THAT THE VERBAL PROMISE OF MR. LIM TO PETITIONER WAS UNENFORCEABLE.

### **II**

THE COMMISSION ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT THE VERBAL PROMISE BY MR. LIM TO PETITIONER WAS NOT BINDING AS IT WAS NOT APPROVED BY THE BOARD OF DIRECTORS.

### **III**

THE COMMISSION ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT IGNORED STRONG EVIDENCE THAT PCMC CLOTHED MR. LIM WITH AWESOME POWERS TO GRANT BENEFITS TO ITS EMPLOYEES INCLUDING PETITIONER AND

RATIFIED THE SAME BY ITS SILENCE AND WHEN IT IGNORED TOO EXISTING JURISPRUDENCE ON THE MATTER.

#### **IV**

THE COMMISSION ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT IGNORED STRONG AND CLEAR EVIDENCE THAT IN PCMC THE GIVING OF BENEFITS TO PETITIONER, THOUGH NOT IN WRITING, WAS A PREVALENT PRACTICE.

#### **V**

THE COMMISSION ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT THE MEMORANDUM DATED APRIL 26, 1997 APPLICABLE TO MR. RAOUL RODRIGO WAS ALSO APPLICABLE TO PETITIONER.<sup>[18]</sup>

On February 28, 2001, the CA rendered judgment affirming the decision of the NLRC and dismissing the petition.<sup>[19]</sup> The petitioner's motion for reconsideration thereof was denied by the appellate court, per its Resolution<sup>[20]</sup> dated July 17, 2001.

The petitioner, thus, filed the instant petition for review on *certiorari* with this Court, assailing the decision and resolution of the CA on the following claims:

#### **I**

The Hon. Court of Appeals, contrary to law, gravely erred and disregarded established jurisprudence in ruling that petitioner has not adduced sufficient evidence to support his claim that he was, indeed, promised the cash conversion of his unused vacation and sick leave credits upon retirement.<sup>[21]</sup>

#### **II**

The Hon. Court of Appeals gravely erred in ruling that even if private respondent's (sic) Mr. Lim did make him such promise, the same cannot be enforced.<sup>[22]</sup>

#### **III**

The Hon. Court of Appeals gravely erred and disregarded clear jurisprudence on the matter when it ruled that there is no showing that private respondent, thru its board of directors either recognized, approved or ratified the promise made by Mr. Lim to petitioner.<sup>[23]</sup>

As gleaned from his Memorandum, the petitioner posits that he had adduced substantial evidence to prove that Lim, as president and chairman of the respondent corporation's board of directors, made a verbal promise to give him the cash

conversion of his accumulated vacation and sick leave credits upon his retirement (that is, benefits at par with the number of days to which the officer next in rank to him was entitled). According to the petitioner, his claim is fortified by the fact that his successor, Raoul Rodrigo, has unlimited vacation and sick leave credits. The petitioner further asserts that he would not have accepted the positions in the respondent corporation without such benefit, especially since his subordinates were also enjoying the same. He posits that he was entitled to the said privilege because of his rank. He, likewise, claims that, in contrast to the evidence he has presented, the respondent corporation failed to adduce proof of its affirmative allegations.

The petitioner further argues that his complaint was not time-barred since he filed it on December 5, 1996. Even if this were so, he is, nevertheless, entitled to the cash value of his vacation and sick leave credits for three years before his retirement. Moreover, the evidence on record shows that officers belonging to Category I had been granted the cash conversion of their earned leave credits after the lapse of three years.

The respondent corporation, for its part, asserts that the petitioner failed to adduce substantial evidence to the claims in his complaint. Even if Lim had made such verbal promise to the petitioner, the same is not binding on the respondent corporation absent its conformity through board resolution. Moreover, the petitioner is not covered by the Memorandum dated November 6, 1981 because he had unlimited leave credits; hence, it cannot be gainsaid that he still had unused leave credits to be converted. According to the respondent corporation, the petitioner himself admitted that he was not included in the Memorandum dated November 6, 1981; and even assuming that he was covered by the said memorandum, the fact that his complaint was filed only in 1996 precludes him from claiming the cash conversion of such leave credits for the years 1966 to 1993.

### **The Court's Ruling**

The petition has no merit.

The threshold issue in this case is factual – whether or not the petitioner is entitled, based on the documentary and testimonial evidence on record, to the cash value of his vacation and sick leave credits in the total amount of P7,080,546.00. The resolution of the issue is riveted to our resolution of whether the petitioner's mainly testimonial evidence of an alleged verbal promise made by a corporate officer to grant him the privilege of converting accumulated vacation and sick leave credits after retirement or separation from employment is entitled to probative weight.

Under Rule 45 of the Rules of Court, only questions of law may be raised under a petition for review on *certiorari*. The Court, not being a trier of facts, is not wont to reexamine and reevaluate the evidence of the parties, whether testimonial or documentary. Moreover, the findings of facts of the CA on appeal from the NLRC are, more often than not, given conclusive effect by the Court. The Court may delve into and resolve factual issues only in exceptional circumstances, such as when the findings of facts of the Labor Arbiter, on one hand, and those of the NLRC and the CA, on the other, are capricious and arbitrary; or when the CA has reached an erroneous conclusion based on arbitrary findings of fact; and when substantial justice so requires. In this case, however, the petitioner failed to convince the Court that the factual findings of the CA which affirmed the findings of the NLRC on