

## FIRST DIVISION

**[ G.R. NO. 167136, December 14, 2005 ]**

**DURBAN APARTMENTS CORPORATION DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF CITY GARDEN HOTEL-MAKATI, REPRESENTED BY MR. FRANCISCO MACASIEB AS PRESIDENT, PETITIONER, VS. MIGUEL GERALDITO R. CATACUTAN, AND NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

This petition for review on certiorari<sup>[1]</sup> under Rule 45 of the Rules of Court seeks to annul and set aside the December 14, 2004 Resolution<sup>[2]</sup> of the Court of Appeals in CA-G.R. SP No. 87716, and its January 31, 2005 Resolution<sup>[3]</sup> denying the motion for reconsideration.

The antecedent facts show that on February 16, 2000, petitioner City Garden Hotel-Makati hired respondent Miguel Geraldito R. Catacutan as Front Office Manager and designated him Acting Sales and Marketing Manager in January 2001.

Respondent alleges that sometime in the afternoon of January 30, 2001, he was summoned to the office of Francisco B. Macasieb, petitioner's President, and was confronted about his alleged dalliance with Michelle Uy, one of the hotel's Guest Service Coordinator, inside Room 1424 in the morning of January 27, 2001.

Respondent claims Macasieb accused him of immorality and dismissed him from the service without furnishing him with a copy of the report of the charges filed against him. There being no formal charges, no investigation and no notice of termination, respondent reported for work on February 1, 2001. However, he was not allowed to perform his usual duties but was instead angrily berated by Macasieb.<sup>[4]</sup>

Respondent alleges that he went back to the hotel the following day with his counsel but Macasieb was not around. Upon inquiry on the status of his employment with petitioner, he was told that only Macasieb can answer his query. Having failed to obtain a categorical answer regarding his employment, respondent filed a complaint for illegal dismissal, non-payment of wages, allowances, separation pay, leave benefits, 13<sup>th</sup> month pay, damages and attorney's fees.

Petitioner, on the other hand, insists that on January 26, 2001, respondent left his post in violation of the hotel's rules and regulations, and joined a drinking spree in a nearby bar with several of his off-duty colleagues. He returned to the hotel in an inebriated state at around 12:30 a.m. of January 27, 2001 and proceeded to rest in Room 1424.

At 5:00 a.m., Uy arrived in the hotel and went up to Room 1424. She was seen by Robert Gonzaga, a room boy, and Vicente Justimbaste, a roving guard. Uy left after some time. Later that morning, respondent came out of the room and checked the log book at the Security Office to see if Uy's visit was reported. As Front Office Manager and Acting Sales and Marketing Manager, respondent is not authorized to read and inspect the entries in the log book. At around 3:00 p.m., respondent was summoned to the office of the Chief Security Officer who apprised him of the consequences of his actions and directed him to submit his explanation on the incident, but respondent failed to comply.

Uy did not report for work after the incident and eventually submitted her resignation effective January 31, 2001. Respondent on the other hand called up his immediate superior Arnold C. Tence<sup>[5]</sup> and expressed embarrassment about the incident and disclosed that he did not want to report for work anymore.<sup>[6]</sup>

Petitioner maintains that Tence advised respondent to report the following day and explain the incident in writing. Respondent showed up the next day and when confronted with the security report, he eventually admitted his infraction and asked for another chance. Macasieb however told respondent to resign effective the following day, January 31, 2001 and to endorse to the hotel's Human Resources Department all company property in his custody.

After due proceedings, Labor Arbiter Gaudencio P. Demaisip found that respondent did not resign because he even prayed for another chance.<sup>[7]</sup> That when he surrendered the company's properties in his custody, it did not signify an intention to resign.<sup>[8]</sup> Thus, the arbiter concluded that respondent was illegally dismissed.<sup>[9]</sup> The dispositive portion of the decision reads:

WHEREFORE, premises considered, respondent, Durban Apartments Corporation doing business under the style City Garden Hotel Makati is directed to pay the complainant his backwages and separation pay in the total amount of FIVE HUNDRED FORTY SIX THOUSAND TWO HUNDRED EIGHT FIVE PESOS AND 07/100 (546,285.07).

Likewise, respondent is directed to pay the complainant attorney's fees in the total amount of P54,628.51.

The rest of the claims are dismissed.

SO ORDERED.<sup>[10]</sup>

Petitioner appealed to the National Labor Relations Commission (NLRC) which rendered a Decision <sup>[11]</sup> the dispositive portion of which reads:

WHEREFORE, premises considered, the decision under review is, MODIFIED by DELETING the award of separation pay and REDUCING the award of attorney's fees in an amount equivalent to ten percent (10%) of the remaining adjudged monetary relief.

In all other respects, particularly on the matter of liability of Durban Apartments Corporation<sup>[12]</sup> for the monetary award, the same is hereby,

AFFIRMED.

SO ORDERED. <sup>[13]</sup>

In so ruling, the NLRC found that there was just cause for terminating respondent's employment. He violated the company's policy when he went on a drinking spree during his tour of duty and worse, when he committed acts of intimacy with a fellow employee while inside the hotel's premises considering that he was married. However, the NLRC noted that respondent was not accorded due process when he was terminated. <sup>[14]</sup>

Petitioner's motion for reconsideration was denied <sup>[15]</sup> hence it appealed to the Court of Appeals which dismissed the same, thus:

The present petition, denominated as Petition for Review by Certiorari, is infirmed with deficiencies, to wit:

1. The material portions of the record referred to in the petition (e.g. NLRC Resolution dated September 17, 2004, Decision of the Labor Arbiter dated July 11, 2003, respondent's Position Paper, transcripts of stenographic notes, Notice of Appeal, Opposition to the Memorandum of Appeal, etc.) are mere photocopies, in violation of Sec. 3, Rule 46 of the Rules of Court.
2. No affidavit of service was attached to the petition as required under Sec. 13, Rule 13, *ibid*.

WHEREFORE, the petition at bar is hereby DISMISSED.

SO ORDERED. <sup>[16]</sup>

Petitioner moved for reconsideration but failed to cure the procedural deficiencies. Consequently, the appellate court denied <sup>[17]</sup> the motion.

Hence, the instant petition for review on *certiorari* alleging that:

THE COURT OF APPEALS WITH DUE RESPECT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT REFUSED TO CONSTRUE LIBERALLY SEC. 3, RULE 46 OF THE 1997 RULES OF CIVIL PROCEDURE IN THE FACE OF THE SERIOUS ERROR COMMITTED BY THE PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION IN ITS DECISIONS DATED JULY 11, 2003 AND JUNE 29, 2004 UNDER THE FOLLOWING REASONS:

1. The Honorable Commission gravely erred in not deleting the award of back wages and attorney's fees in view of the conclusion of the National Labor Relations Commission that the dismissal of private respondent was based on a just cause.
2. The Honorable Commission gravely erred in concluding that thru its Labor Arbiter it has acquired jurisdiction