

Republic of the Philippines
 Supreme Court
 Manila

FIRST DIVISION

**BUENAFLOR CAR SERVICES,
 INC.,**

G.R. No. 222730

Petitioner,

Present:

- versus -

SERENO, C.J., Chairperson,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 PERLAS-BERNABE, and
 CAGUIOA, JJ.

**CEZAR DURUMPILI DAVID,
 JR.,**

Respondent.

Promulgated:

NOV 07 2016

X-----X

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ are the Decision² dated November 3, 2015 and the Resolution³ dated February 9, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 139652, which affirmed with modification the Resolutions dated November 28, 2014⁴ and February 9, 2015⁵ of the National Labor Relations Commission (NLRC) in NLRC LAC No. 11-002727-14, finding respondent Cezar Durumpili David, Jr. (respondent) to have been illegally dismissed, and holding petitioner Buenaflor Car Services, Inc. (petitioner) solely liable for the monetary award.

¹ Rollo, pp. 20-61.

² Id. at 64-71. Penned by Associate Justice Agnes Reyes-Carpio with Associate Justices Romeo F. Barza and Elihu A. Ybañez concurring.

³ Id. at 72-73.

⁴ CA rollo, pp. 49-53. Penned by Commissioner Pablo C. Espiritu, Jr. with Presiding Commissioner Alex A. Lopez concurring.

⁵ Id. at 54-55.

U

The Facts

Respondent was employed as Service Manager by petitioner, doing business under the trade name "Pronto! Auto Services." In such capacity, he was in charge of the overall day-to-day operations of petitioner, including the authority to sign checks, check vouchers, and purchase orders.⁶

In the course of its business operations, petitioner implemented a company policy with respect to the purchase and delivery of automotive parts and products. The process begins with the preparation of a purchase order by the Purchasing Officer, Sonny D. De Guzman (De Guzman), which is thereafter, submitted to respondent for his review and approval. Once approved and signed by respondent and De Guzman, the duplicate copy of the said order is given to petitioner's supplier who would deliver the goods/supplies. De Guzman was tasked to receive such goods and thereafter, submit a copy of the purchase order to petitioner's Accounting Assistant, Marilyn A. Del Rosario (Del Rosario), who, in turn, prepares the request for payment to be reviewed by her immediate supervisor,⁷ Finance Manager and Chief Finance Officer Ruby Anne B. Vasay (Vasay). Once approved, the check voucher and corresponding check are prepared to be signed by any of the following officers: respondent, Vasay, or Vice President for Operations Oliver S. Buenaflor (Buenaflor).⁸ It was company policy that all checks should be issued in the name of the specific supplier and not in "cash," and that the said checks are to be picked up from Del Rosario at the company's office in Muntinlupa City.⁹

On August 8, 2013, Chief Finance Officer Cristina S. David (David) of petitioner's affiliate company, Diamond IGB, Inc., received a call from the branch manager of ChinaBank, SM City Bicutan Branch, informing her that the latter had cleared several checks issued by petitioner bearing the words "OR CASH" indicated after the payee's name. Alarmed, David requested for petitioner's Statement of Account with scanned copies of the cleared checks bearing the words "OR CASH" after the payee's name. The matter was then immediately brought to petitioner's attention through its President, Exequiel T. Lampa (Lampa), and an investigation was conducted.¹⁰

On August 22, 2013, Lampa and petitioner's Human Resource Manager, Helen Lee (Lee), confronted Del Rosario on the questioned checks. Del Rosario readily confessed that upon respondent's instruction, she inserted the words "OR CASH" after the name of the payees when the same had been signed by all the authorized signatories. She also implicated

⁶ Id. at 6.

⁷ See id. at 103.

⁸ See id. at 133.

⁹ Id. at 7.

¹⁰ Id. at 8.

2

De Guzman, who was under respondent's direct supervision, for preparing spurious purchase orders that were used as basis in issuing the subject checks, as well as petitioner's messenger/driver, Jayson G. Caranto (Caranto), who was directed to encash some of the checks, with both persons also gaining from the scheme.¹¹ Her confession was put into writing in two (2) separate letters both of even date (extrajudicial confession).¹²

As a result, respondent, together with Del Rosario, De Guzman, and Caranto, were placed under preventive suspension¹³ for a period of thirty (30) days, and directed to submit their respective written explanations. The ensuing investigation revealed that there were twenty-seven (27) checks with the words "OR CASH" inserted after the payee's name, all signed by respondent and either Vasay or Buenaflor, in the total amount of ₱1,021,561.72.¹⁴

For his part,¹⁵ respondent vehemently denied the charges against him. He claimed that he has no control over the company's finance and billing operations, nor the authority to instruct Del Rosario to make any check alterations, which changes, if any, must be made known to Vasay or Buenaflor.

On September 20, 2013, respondent and his co-workers were served their respective notices of termination¹⁶ after having been found guilty of violating Items B (2), (3) and/or G (3) of the company's Code of Conduct and Behavior, particularly, serious misconduct and willful breach of trust. Aggrieved, respondent, De Guzman, and Caranto filed a complaint¹⁷ for illegal dismissal with prayer for reinstatement and payment of damages and attorney's fees against petitioner, Diamond IGB, Inc., and one Isagani Buenaflor before the NLRC, docketed as NLRC RAB No. NCR-10-13915-13.

In the meantime, Lee, on behalf of petitioner, filed a criminal complaint¹⁸ for twenty-seven (27) counts of Qualified Theft through Falsification of Commercial Documents against respondent, De Guzman, Caranto, and Del Rosario, before the Office of the Muntinlupa City Prosecutor, alleging that the said employees conspired with one another in devising the afore-described scheme. In support thereof, petitioner submitted the affidavits of Buenaflor¹⁹ and Vasay,²⁰ which stated that at the time they

¹¹ See *id.* at 8 and 51.

¹² *Id.* at 56-57.

¹³ *Id.* at 60.

¹⁴ *Id.* at 10-11.

¹⁵ See *Sinumpaang Salaysay* dated January 15, 2014; *id.* at 132-138.

¹⁶ *Id.* at 96-99.

¹⁷ *Id.* at 378-379.

¹⁸ See *Complaint-Affidavit* dated October 11, 2013; *id.* at 246-260.

¹⁹ *Id.* at 124-125.

²⁰ *Id.* at 126-128.

signed the questioned checks, the same did not bear the words “OR CASH,” and that they did not authorize its insertion after the payee’s name. While the City Prosecutor initially found probable cause only against Del Rosario in a Resolution²¹ dated November 25, 2014, the same was reconsidered²² and all the four (4) employees were indicted in an Amended Information²³ filed before the Regional Trial Court of Muntinlupa City, docketed as Criminal Case No. 14-1065.

The LA Ruling

In a Decision dated September 29, 2014, the Labor Arbiter (LA) ruled that respondent, De Guzman, and Caranto were illegally dismissed, and consequently, awarded backwages, separation pay and attorney’s fees.²⁴ The LA observed that petitioner failed to establish the existence of conspiracy among respondent, De Guzman, Caranto, and Del Rosario in altering the checks and that the latter’s extrajudicial confession was informally made and not supported by evidence.²⁵

Dissatisfied, petitioner appealed to the NLRC.

The NLRC Ruling

In a Resolution²⁶ dated November 28, 2014, the NLRC affirmed with modification the LA’s Decision, finding De Guzman and Caranto to have been dismissed for cause, but sustained the illegality of respondent’s termination from work.

In so ruling, the NLRC held that since De Guzman prepared the purchase orders that were the basis for the issuance of the questioned checks, it could not be discounted that the latter may have participated in the scheme, benefited therefrom, or had knowledge thereof. Similarly, it did not give credence to Caranto’s bare denial of the illegal scheme, noting that he still encashed the questioned checks upon the instruction of Del Rosario despite knowledge of the company’s policy on the matter. On the other hand, the NLRC found Del Rosario’s extrajudicial confession against respondent insufficient, holding that the records failed to show that the latter had a hand in the preparation and encashment of the checks; hence, his dismissal was without cause and therefore, illegal.²⁷

²¹ Id. at 339-345. Signed by Assistant City Prosecutor Donabelle V. Gonzalez, Senior Assistant City Prosecutor Leopoldo B. Macinas, and City Prosecutor Aileen Marie S. Gutierrez.

²² Resolution dated February 4, 2015; id. at 261-264. Signed by Senior Assistant City Prosecutor Leopoldo B. Macinas and approved by City Prosecutor Aileen Marie S. Gutierrez.

²³ Id. at 265-267. Signed by Senior Assistant City Prosecutor Tomas Ken D. Romaquin, Jr.

²⁴ See *rollo*, p. 65.

²⁵ See *CA rollo*, p. 51.

²⁶ Id. at 49-53.

²⁷ Id. at 51-53.

Unperturbed, petitioner filed a motion for partial reconsideration,²⁸ which the NLRC denied in a Resolution²⁹ dated February 9, 2015, prompting the former to elevate the matter to the CA *via* a petition for *certiorari*.³⁰

The CA Ruling

In a Decision³¹ dated November 3, 2015, the CA found no grave abuse of discretion on the part of the NLRC in holding that respondent was illegally dismissed. It ruled that Del Rosario's extrajudicial confession only bound her as the confessant but constitutes hearsay with respect to respondent and the other co-accused under the *res inter alios acta* rule. Moreover, while respondent was a signatory to the checks in question, the CA noted that at the time these checks were signed, the words "OR CASH" were not yet written thereon. As such, the CA held that no substantial evidence existed to establish that respondent had breached the trust reposed in him.

However, the CA absolved petitioner's corporate officer, Isagani Buenaflor, from payment of the monetary awards for failure to show any malicious act on his part, stating the general rule that obligations incurred by the corporation, acting thru its directors, officers, and employees, are its sole liabilities. In the same vein, Diamond IGB, Inc. was also absolved from liability, considering that, as a subsidiary, it had a separate and distinct juridical personality from petitioner.³²

Petitioner moved for partial reconsideration,³³ which the CA denied in a Resolution³⁴ dated February 9, 2016; hence, the instant petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA committed reversible error in upholding the NLRC's ruling that respondent was illegally dismissed.

The Court's Ruling

The petition is meritorious.

²⁸ Dated December 17, 2014; *id.* at 301-314.

²⁹ *Id.* at 54-55.

³⁰ *Id.* at 3-48.

³¹ *Rollo*, pp. 64-71.

³² *Id.* at 67-71.

³³ Dated March 20, 2015; *CA rollo*, pp. 449-456.

³⁴ *Rollo*, pp. 72-73.

Fundamental is the rule that an employee can be dismissed from employment only for a valid cause. The burden of proof rests on the employer to prove that the dismissal was valid, failing in which, the law considers the matter a case of illegal dismissal.³⁵

Article 297 of the Labor Code, as renumbered,³⁶ enumerates the just causes for termination of an employment, to wit:

ART. 297. **Termination by Employer.** – An employer may terminate an employment for any of the following causes:

- (a) **Serious misconduct** or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (b) Gross and habitual neglect by the employee of his duties;
- (c) Fraud or **willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;**
- (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
- (e) Other causes analogous to the foregoing. (Emphases supplied)

In the case at bar, respondent's termination was grounded on his violation of petitioner's Code of Conduct and Behavior, which was supposedly tantamount to (a) serious misconduct and/or (b) willful breach of the trust reposed in him by his employer.

Misconduct is defined as an improper or wrong conduct. **It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment.**³⁷ For serious misconduct to be a just cause for dismissal, the concurrence of the following elements is required: (a) the misconduct must be serious; (b) it must relate to the performance of the employee's duties showing that the employee has become unfit to continue working for the employer; and (c) it must have been performed with wrongful intent.³⁸

On the other hand, for loss of trust to be a ground for dismissal, the employee must be holding a position of trust and confidence, and there must be an act that would justify the loss of trust and confidence.³⁹ While loss of trust and confidence should be genuine, it does not require proof beyond reasonable doubt, **it being sufficient that there is some basis for the misconduct and that the nature of the employee's participation therein**

³⁵ *Surigao Del Norte Electric Cooperative, Inc. v. Gonzaga*, 710 Phil. 676, 687 (2013).

³⁶ See Department of Labor and Employment's Department Advisory No. 1, Series of 2015, entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED," dated July 21, 2015.

³⁷ *Imasen Philippine Manufacturing Corporation v. Alcon*, G.R. No. 194884, October 22, 2014, 739 SCRA 186, 196.

³⁸ See *Universal Robina Sugar Milling Corporation v. Ablay*, G.R. No. 218172, March 16, 2016.

³⁹ *Jerusalem v. Keppel Monte Bank*, 662 Phil. 676, 686 (2011).

rendered him unworthy of the trust and confidence demanded by his position.⁴⁰

Petitioner's claims of serious misconduct and/or willful breach of trust against respondent was hinged on his alleged directive to petitioner's Accounting Assistant, Del Rosario, to insert the word "OR CASH" in the checks payable to petitioner's supplier/s after the same had been signed by the authorized officers contrary to company policy. Accordingly, respondent was accused of conspiring with his co-employees in the irregular issuance of twenty-seven (27) checks which supposedly resulted in the defraudation of the company in the total amount of ₱1,021,561.72.⁴¹

While there is no denying that respondent holds a position of trust as he was charged with the overall day-to-day operations of petitioner, and as such, is authorized to sign checks, check vouchers, and purchase orders, he argues, in defense, that he had no control over the company's finance and billing operations, and hence, should not be held liable. Moreover, he asserts that he had no power to instruct Del Rosario to make any check alterations, which changes, if any, must be made known to Vasay or Buenaflor.

Although respondent's statements may be true, the Court, nonetheless, observes that it is highly unlikely that respondent did not have any participation in the above-mentioned scheme to defraud petitioner. It is crucial to point out that the questioned checks would not have been issued if there weren't any spurious purchase orders. As per company policy, the procurement process of petitioner begins with the preparation of purchase orders by the Purchasing Officer, De Guzman. **These purchase orders have to be approved by respondent himself before the delivery and payment process can even commence.** It is only after the issuance of the approved purchase orders that petitioner's suppliers are directed to deliver the ordered goods/supplies, and from there, requests for payment and the issuance of checks (through Del Rosario) would be made. Thus, being the approving authority of these spurious purchase orders, respondent cannot disclaim any culpability in the resultant issuance of the questioned checks. Clearly, without the approved purchase orders, there would be no delivery of goods/supplies to petitioner, and consequently, the payment procedure would not even begin. These purchase orders were, in fact, missing from the records, and respondent, who had the primary authority for their approval, did not, in any manner, account for them.

Notably, the fact that respondent signed the checks prior to their alterations does not discount his participation. To recall, the checks prepared by Del Rosario were first reviewed by her immediate supervisor, Finance

⁴⁰ *P.J. Lhuillier, Inc. v. Velayo*, G.R. No. 198620, November 12, 2014, 740 SCRA 147, 162.

⁴¹ *Rollo*, p. 27.

Manager and Chief Finance Officer, Vasay, and once approved, the check vouchers and corresponding checks were signed by respondent, followed by either Vasay, or Vice President for Operations Buenaflor. To safeguard itself against fraud, the company implemented the policy that all checks to its suppliers should be issued in their name and not in “cash.” Thus, if the checks would be altered prior to the signing of all these corporate officers, then they would obviously not pass petitioner’s protocol. It is therefore reasonable to conclude that the alterations were calculated to be made after all the required signatures were obtained; otherwise, the scheme would not come into fruition.

Respondent was directly implicated in the controversy through the extrajudicial confession of his co-employee, Del Rosario, who had admitted to be the author of the checks’ alterations, although mentioned that she did so only upon respondent’s imprimatur. The NLRC, as affirmed by the CA, however, deemed the same to be inadmissible in evidence on account of the *res inter alios acta* rule, which, as per Section 30,⁴² Rule 130 of the Rules of Court, provides that the rights of a party cannot be prejudiced by an act, declaration, or omission of another. Consequently, an extrajudicial confession is binding only on the confessant and is **not admissible against his or her co-accused because it is considered as hearsay against them.**⁴³

However, the NLRC should not have bound itself by the technical rules of procedure as it is allowed to be liberal in the application of its rules in deciding labor cases.⁴⁴ The NLRC Rules of Procedure state that “[t]he rules of procedure and evidence prevailing in courts of law and equity shall not be controlling and the Commission shall use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure x x x.”⁴⁵

In any case, even if it is assumed that the rule on *res inter alios acta* were to apply in this illegal dismissal case, the treatment of the extrajudicial confession as hearsay is bound by the exception on independently relevant statements. “Under the doctrine of independently relevant statements, regardless of their truth or falsity, the fact that such statements have been made is relevant. The hearsay rule does not apply, and the statements are admissible as evidence. Evidence as to the making of such statement is not secondary but primary, for the statement itself may constitute a fact in issue or be circumstantially relevant as to the existence of such a fact.”⁴⁶ Verily, Del Rosario’s extrajudicial confession is independently relevant to prove the participation of respondent in the instant controversy considering his vital

⁴² SEC. 30. *Admission by conspirator.* – The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration.

⁴³ *People v. Cachuela*, 710 Phil. 728, 741 (2013).

⁴⁴ *Opinaldo v. Ravina*, 719 Phil. 584, 598 (2013).

⁴⁵ Id., citing Section 10, Rule VII of the 2011 NLRC Rules of Procedure.

⁴⁶ *People v. Estibal*, G.R. No. 208749, November 26, 2014, 743 SCRA 215, 240.

role in petitioner's procurement process. The fact that such statement was made by Del Rosario, who was the actual author of the alterations, should have been given consideration by the NLRC as it is directly, if not circumstantially, relevant to the issue at hand.

Case law states that "labor suits require only substantial evidence to prove the validity of the dismissal."⁴⁷ Based on the foregoing, the Court is convinced that enough substantial evidence exist to support petitioner's claim that respondent was involved in the afore-discussed scheme to defraud the company, and hence, guilty of serious misconduct and/or willful breach of trust which are just causes for his termination. Substantial evidence is defined as such amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion,⁴⁸ which evidentiary threshold petitioner successfully hurdled in this case. As such, the NLRC gravely abused its discretion in holding that respondent was illegally dismissed. Perforce, the reversal of the CA's decision and the granting of the instant petition are in order. Respondent is hereby declared to be validly dismissed and thus, is not entitled to backwages, separation pay, as well as attorney's fees.

WHEREFORE, the petition is **GRANTED**. The Decision dated November 3, 2015 and the Resolution dated February 9, 2016, of the Court of Appeals in CA-G.R. SP No. 139652 are hereby **REVERSED** and **SET ASIDE**.

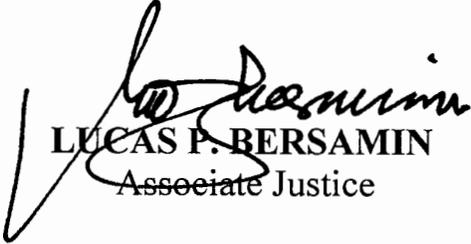
SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

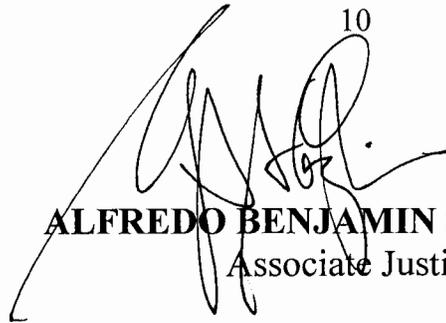

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice

⁴⁷ *Paulino v. NLRC*, 687 Phil. 220, 226 (2012).

⁴⁸ *Travelaire & Tours Corp v. NLRC*, 355 Phil. 932, 936 (1998).



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice