



Republic of the Philippines
 Supreme Court
 Manila

SECOND DIVISION

LEO'S RESTAURANT AND
 BAR CAFÉ, MOUNTAIN SUITE
 BUSINESS APARTELLE,
 LEO Y. LUA and AMELIA LUA,
Petitioners,

G.R. No. 208535

Present:

CARPIO, *Chairperson,*
 BRION,
 DEL CASTILLO,
 MENDOZA, *and*
 LEONEN, *JJ.*

- versus -

LAARNE¹ C. DENSING,
Respondent.

Promulgated:
 19 OCT 2016

X

DECISION

DEL CASTILLO, J.:

This is a Petition for Review on *Certiorari* assailing the November 27, 2012 Decision² of the Court of Appeals (CA) in CA-GR. SP No. 03222-MIN. The CA set aside the June 4, 2009³ and July 31, 2009⁴ Resolutions of the National Labor Relations Commission (NLRC) in NLRC Case No. MAC-02-010081-2008, and reinstated the November 28, 2008 NLRC Resolution⁵ finding illegal respondent Laarne C. Densing's (respondent) dismissal from work. Also assailed is the July 12, 2013 CA Resolution⁶ denying petitioners' Motion for Reconsideration.

Factual Antecedents

On January 2, 2002, Kimwa Construction & Development Corporation (Kimwa) employed respondent as liaison officer.⁷ Allegedly, Kimwa also

* On official leave.
¹ Spelled as Laarni in some parts of the records.
² CA *rollo*, pp. 332-346; penned by Associate Justice Oscar V. Badelles and concurred in by Associate Justices Edgardo A. Camello and Renato C. Francisco.
³ Id. at 33-39; penned by Commissioner Dominador B. Medroso, Jr. and concurred in by Presiding Commissioner Salic B. Dumarpa. Commissioner Proculo T. Sarmen dissented.
⁴ Id. at 41-42.
⁵ Id. at 193-201; penned by Commissioner Proculo T. Sarmen and concurred in by Presiding Commissioner Salic B. Dumarpa and Commissioner Dominador B. Medroso, Jr.
⁶ Id. at 367-368.
⁷ Id. at 333.

operated Leo's Restaurant and Bar Café (Restobar), and the Mountain Suite Business Apartelle (Apartelle); on July 4, 2005, it appointed respondent as Administrative Officer/Human Resource (HR) Head of these establishments with a salary of ₱15,000.00 per month; and, said appointment took effect on October 18, 2005 when the establishments became fully operational.⁸

Thereafter, Leo Y. Lua (Leo), the Manager of the Restobar and the Apartelle, issued upon respondent a Memorandum⁹ requesting her to temporarily report at Kimwa's Main Office starting December 30, 2005.

On December 30, 2005, respondent received another Memorandum¹⁰ from Leo requiring her to explain the circumstances surrounding the agreement between the Restobar and Pepsi Products Philippines, Inc. (Pepsi), and the benefits she derived therefrom. Leo accused her of having signed said contract without authority from him and of not informing him of the benefits arising from the contract. The Memorandum also indicated that Pepsi gave the Restobar 10 cases of soft drinks during its opening night, and additional 67 cases for December 2005 but its records reflected receiving only 20 out of said 67 cases.

In her Explanation,¹¹ respondent stated that on October 24, 2005, in the presence of Jovenal¹² Ablanque (Ablanque), Sales Manager of Pepsi, Leo verbally authorized her to sign the contract with Pepsi on behalf of the Restobar. The following day, Ablanque returned to the Restobar, and respondent signed the contract pursuant to Leo's verbal instruction. She gave no explanation anent the benefits arising from the contract as she purportedly did not intervene in Leo and Ablanque's discussion on the matter. She added that the Restobar received only 10 and additional 20 cases of Pepsi drinks, and she did not receive personal benefits arising from the contract.

On January 2, 2006, Leo issued another Memorandum¹³ requiring respondent to answer why she signed the Pepsi contract even without authority to do so, and to explain whether her apology addressed to Leo was an acceptance of her fault on the charges against her.

In her Answer,¹⁴ respondent remained firm that she did not receive any personal benefits from Pepsi. Also, she stated that she apologized to Leo because she knew that the latter had "feelings of doubt" about her but it was not because she accepted the accusations against her.

⁸ Id. at 55-56.

⁹ Id. at 57.

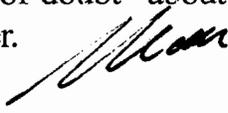
¹⁰ Id. at 58.

¹¹ Id. at 59-60.

¹² Id. at 75.

¹³ Id. at 61.

¹⁴ Id. at 62.



Later, in a Memorandum¹⁵ dated January 3, 2006, respondent was required to answer these charges: 1) she committed dishonesty when she charged to the Restobar's account 50% of the food she ordered therefrom without approval of its Owner or Manager; 2) she violated her duties when she did not inform Leo of the signing of the Pepsi contract; and, 3) she failed to account for 47 soft drinks cases that Pepsi gave the Restobar.

In her Explanation,¹⁶ respondent asserted that the charge of dishonesty was not related to the Pepsi contract such that she opted not to answer said accusation. With regard to the alleged missing Pepsi drinks, she affirmed that Pepsi clarified the matter already, particularly to where these soft drinks were placed or given.

In a Letter¹⁷ dated January 4, 2006, Pepsi, through its Settlement and Credit Manager Jerome T. Eslabon, certified that Pepsi gave the Restobar 10 cases of Pepsi products on its opening day, and 20 cases of Pepsi 12 oz. on December 7, 2005. It stressed that it did not give cash assistance or cash equivalent to any staff of the Restobar. It also asked Leo to disregard the erroneous volume of documents it inadvertently gave him, and assured him that Pepsi already adjusted his records to reflect the correct figures.

However, on January 12, 2006, on the ground of loss of trust and confidence, Leo terminated respondent effective January 15, 2006.¹⁸

Respondent thus filed an Amended Complaint¹⁹ for illegal dismissal, illegal suspension, non-payment of 13th month pay, separation pay in lieu of reinstatement, moral and exemplary damages, and attorney's fees against Kimwa, and herein petitioners, the Restobar, the Apartelle, Leo, and/or Amelia Y. Lua (Amelia).

In her Position Paper,²⁰ respondent claimed that petitioners and Kimwa failed to establish that she was dismissed for valid causes. She argued that as Administrative Officer/HR Head, she was tasked to oversee the operations of the Restobar and the Apartelle, including the authority to sign the agreement with Pepsi. According to her, Leo also authorized her to sign the agreement in his behalf, and such authority was communicated to her in the presence of the Sales Manager of Pepsi.

In addition, respondent emphasized that she received no personal benefits in connection with the Pepsi contract, and there was no proof that she received

¹⁵ Id. at 63.

¹⁶ Id. at 64.

¹⁷ Id. at 67-68.

¹⁸ Id. at 66.

¹⁹ Id. at 70.

²⁰ Id. at 43-53.

anything from Pepsi. She also stressed that Pepsi was delivering its products to the Restobar and the Apartelle, not to her. In fine, she argued that her having entered the Pepsi contract was insufficient basis for petitioners and Kimwa to lose their trust in her, and use the same to terminate her.

For their part, petitioners and Kimwa, in their Position Paper,²¹ argued that it was Amelia, Leo's sister, who owned the Restobar and the Apartelle. They averred that these establishments were separate entities from Kimwa, and Leo was merely its Manager. They further claimed that on October 15, 2005, respondent resigned from Kimwa and transferred to the Restobar and the Apartelle for higher pay.

In addition, petitioners and Kimwa asserted that respondent was validly terminated as she committed dishonesty, abuse of confidence, and breach of trust against her employer. They explained that respondent entered into a contract with Pepsi, whereby the Restobar committed to purchase 2,400 cases of Pepsi products per year for a period of two years or from October 2005 to October 2007. They stressed that respondent entered this contract without prior authority from Leo or Amelia, and without disclosure to them of the benefits arising therefrom. They also alleged that respondent committed dishonesty when she charged some of her meals and offer/invitation expenses to the Restobar, without approval of its Owner or Manager. They likewise stated that respondent was given opportunity to explain her side before she was terminated.

Furthermore, petitioners and Kimwa insisted that while under the employ of Kimwa, respondent received advance payment of her benefits, separation pay and other claims. They added that having received monetary benefits, respondent had no more cause of action against them.

Ruling of the Executive Labor Arbiter

On November 20, 2007, the Executive Labor Arbiter (LA) rendered a Decision²² dismissing the Complaint for lack of merit. The LA, nonetheless, ordered petitioners and Kimwa to pay respondent separation pay amounting to ₱15,000.00.

The LA decreed that petitioners and Kimwa validly dismissed respondent on the ground of loss of trust and confidence. He pointed out that employers cannot be compelled to retain the services of their employees who were guilty of acts inimical to the interests of the employer; and, the dismissal of an erring employee was a measure of self-protection.

²¹ Id. at 118-136.

²² Id. at 170-180; penned by Executive Labor Arbiter Noel Augusto S. Magbanua.

The LA also declared that respondent committed acts contrary to the interest of her employer when she charged personal food consumption to the Restobar, entered into an exclusive contract with Pepsi, and failed to account for the Pepsi products donated to the Restobar. He further stated that petitioners and Kimwa complied with the required procedural due process when they issued memoranda informing respondent of the charges against her and giving her notice of her dismissal.

Nevertheless, the LA granted respondent one month salary as separation pay ratiocinating that respondent entered the Pepsi contract in good faith and she presumed that she was authorized to enter the same.

Respondent appealed the LA Decision.

Ruling of the National Labor Relations Commission

On November 28, 2008, the NLRC issued its Resolution²³ finding respondent's dismissal illegal. It set aside the LA Decision and ordered petitioners to pay respondent backwages, separation pay, moral and exemplary damages, 13th month pay differential, and attorney's fees. The dispositive portion of the NLRC Resolution reads:

WHEREFORE, premises laid, the appealed Decision of the Executive Labor Arbiter dated November 20, 2007 is hereby set aside and a new one is entered finding complainant Laarne Densing illegally dismissed and respondents Leo Restaurant and Bar Café and Mountain Suite Apartelle and/or Leo Y. Lua and Amelia Y. Lua, proprietors of the said establishment, to be solidarily liable to pay complainant Laarne Densing's backwages, based on her latest salary, to be computed from the date of her dismissal on January 15, 2006 up to the finality of this resolution; separation pay, based on her latest salary, to be computed from the inception of her employment on January 2, 2002 up to the finality of this Resolution; moral and exemplary damages in the amount of Fifty Thousand (Php50,000.00) each; 13th month pay differential in the amount of Php1,250.00; and ten percent (10%) attorney's fees computed from the total monetary awards.

SO ORDERED.²⁴

According to the NLRC, respondent's claim that she had the authority to enter the contract with Pepsi was supported by evidence, which included the Sworn Statement of the Sales Manager of Pepsi, and a Certification from concerned Pepsi Managers that Pepsi donated only 10 cases of softdrinks and additional 20 cases of Pepsi 12 oz. to the Restobar.

²³ Id. at 193-201.

²⁴ Id. at 200-201.

The NLRC added that even assuming that respondent was without explicit authority from the owner of the Restobar, she still validly entered the contract with Pepsi as the signing thereof was within her duty as the one in charge of the operations of the Restobar. It also noted that there was no showing that respondent was ill-motivated in signing the Pepsi contract; and she signed it to the best interest of the Restobar.

The NLRC ruled that the imputation that respondent charged food to the Restobar was related to her representation privilege granted her by the Restobar; and, there was no evidence that she abused this privilege.

Petitioners and Kimwa moved for a reconsideration of the November 28, 2008 NLRC Resolution.

On June 4, 2009, the NLRC granted the Motion for Reconsideration. It set aside its November 28, 2008 Resolution, and dismissed the Complaint for lack of merit.²⁵

In reversing itself, the NLRC held that respondent's functions did not include any authority to sign or execute contracts for and in behalf of the Restobar. It added that even assuming that Leo verbally authorized her to sign the Pepsi agreement, respondent signed the same in her name, as if she was the Restobar's owner. It also held that if not for the fact that respondent was suspended and later dismissed, the whereabouts of the donated Pepsi products would not have been traced. It likewise faulted respondent for charging 50% of her meals to the Restobar without approval from its Owner or Chief Officer. It added that respondent was given opportunity to be heard when various memoranda were issued to her.

On July 31, 2009, the NLRC denied²⁶ respondent's Motion for Reconsideration.

Ruling of the Court of Appeals

Respondent filed with the CA a Petition for *Certiorari* essentially reiterating that she was illegally dismissed.

On November 27, 2012, the CA rendered the assailed Decision²⁷ setting aside the June 4, 2009 and July 31, 2009 Resolutions of the NLRC, and reinstating the November 28, 2008 NLRC Resolution.

²⁵ Id. at 33-39.

²⁶ Id. at 41-42.

²⁷ Id. at 332-346.

The CA reasoned that as Administrative Officer/HR Head, respondent held a position of trust and confidence. Nevertheless, it explained that petitioners failed to prove that respondent committed any of the following acts imputed against her: a) signing the Pepsi agreement on behalf of the Restobar without authority from Leo; b) failure to account for the products donated by Pepsi to the Restobar; and, c) unauthorized charges of food on the account of the Restobar.

The CA stressed that the foregoing grounds had been adequately passed upon in the NLRC November 28, 2008 Resolution before it reversed itself and issued its June 4, 2009 and July 31, 2009 Resolutions. It added that even if respondent had no express authority to sign the agreement with Pepsi, her having entered it was not sufficient to dismiss her from work, especially in the absence of malicious intent or fraud on her part. It pointed out that the Restobar did not suffer damage because of respondent's act.

According to the CA, respondent even acted in good faith when she signed the contract with Pepsi on the impression that it was part of her duties and responsibilities. It also quoted with approval the November 28, 2008 NLRC Resolution declaring that there was no evidence that respondent abused her representation privilege, which included the charging of food expense when entertaining guests of the Restobar. Finally, it held that respondent did not deserve the penalty of dismissal especially so since she committed no prior infractions in her more than three years of service.

On July 12, 2013, the CA denied²⁸ petitioners' Motion for Reconsideration.

Petitioners thus filed this Petition raising these grounds:

1. [T]he Honorable Appellate Court erred in [a]ccepting the [t]heory of the Respondent that Kimwa Construction operated Leo's Restobar or Leo's Restaurant and Bar Café, Mountain Suite Business Apartelle.²⁹
2. [T]he Honorable Appellate Court erred when it [h]eld that x x x to justify the dismissal of an employee base[d] on loss of trust and confidence, the acts of said employee should be proven by substantial evidence and founded on clearly established facts.³⁰
3. [T]he Petition for Review [r]aises a question of law and of facts that justif[y r]eview of the Appellate Court's Decision and its denial of the Motion for Reconsideration.³¹
4. [T]he Appellate Court also erred in [granting] Moral and Exemplary

²⁸ Id. at 367-368.

²⁹ *Rollo*, p. 17.

³⁰ Id. at 18.

³¹ Id. at 22.



Damages [to respondent].³²

Petitioners argue that the CA erred in holding that Kimwa owned and operated the Restobar and the Apartelle. They assert that these establishments are single proprietorships owned by Amelia and managed by Leo. They also asseverate that there are sufficient bases to dismiss respondent as she signed the exclusivity contract with Pepsi as if she was the owner of the Restobar, and she did not account for the products donated by Pepsi to the latter. Finally, they submit that respondent is not entitled to moral and exemplary damages as they did not act in bad faith in dismissing her.

Respondent, on her end, counters that although she held a position of trust and confidence, there is no showing that she committed willful breach of trust against her employer. She argued that she acted in good faith when she signed the exclusivity contract with Pepsi such that there is no reason to hold that she committed any dishonest conduct that would warrant her employer's loss of trust in her.

Issue

Whether respondent was validly dismissed on the ground of loss of trust and confidence.

Our Ruling

The Court denies the Petition.

As a rule, the findings of fact of the CA when fully supported by evidence are conclusive and binding on the parties and are not reviewable by the Court. However, this rule admits of exceptions including such instance where the factual findings of the CA are contrary to those of the labor tribunals.³³

In this case, the LA and the NLRC are one in ruling that respondent was validly dismissed from work. The CA ruled otherwise. Considering these divergent positions, the Court deems it necessary to review, re-evaluate, and re-examine the findings of the CA as they are contrary to those of the LA and the NLRC.³⁴

First, petitioners deny that Kimwa owned and operated the Restobar and

³² Id.

³³ *Torres v. Rural Bank of San Juan, Inc.*, 706 Phil. 355, 368 (2013).

³⁴ Id.



the Apartelle. They claim that Amelia owned these establishments, and Leo only managed them.

The Court is unconvinced.

As will be discussed hereunder, sufficient pieces of evidence show that Kimwa, Leo, and Amelia owned, managed, and operated the Restobar and the Apartelle. They also continuously employed respondent, previously as liaison officer and thereafter as Administrative Officer/HR Head of the Restobar and the Apartelle.

On July 4, 2005, while respondent was still a liaison officer of Kimwa, Leo, as “Proprietor/Chief Executive Officer of Kimwa Construction & Development Corp./Mountain Suite Business Apartelle” appointed her as Administrative Officer/HR Head of the Restobar and the Apartelle to be effective as soon as the establishments were officially operational.³⁵ On October 19, 2005, Leo, in the same capacity as cited above, confirmed the appointment of respondent and declared its effectivity beginning October 18, 2005.³⁶

Moreover, in his January 2, 2006 Memorandum,³⁷ while respondent was acting as Administrative Officer/HR Head of the Restobar and the Apartelle, Leo required her to temporarily report at Kimwa’s Main Office. Apart from this, all Memoranda³⁸ to Explain issued by Leo to respondent as well as the Notice³⁹ of her Termination were written under the heading “Kimwa Construction & Dev. Corp.” It is also worth noting that the Restobar is a namesake of Leo as the same is named “Leo’s Restaurant and Bar Café.” As regards Amelia, petitioners repeatedly alleged that she is the owner of the Restobar and the Apartelle and she never disputed this matter.

At the same time, it is settled that where it shows that business entities are owned, controlled, and conducted by the same parties, law and equity will disregard the legal fiction that they are distinct and shall treat them as one entity in order to protect the rights of third persons. Here, it appearing that Kimwa, Leo, and Amelia owned, controlled and managed the Restobar and the Apartelle, they are treated as a single entity accountable for the dismissal of respondent.⁴⁰

Based on the foregoing, petitioners continually employed respondent from the time she was assigned in Kimwa until she was appointed Administrative Officer/HR Head of the Restobar and the Apartelle.

³⁵ CA rollo, p. 55.

³⁶ Id. at 56.

³⁷ Id. at 57.

³⁸ Id. 57-58, 61, 63, 65.

³⁹ Id. at 66.

⁴⁰ See *Vicmar Development Corporation v. Elarcosa*, G.R. No. 202215, December 9, 2015.

Second, petitioners argue that respondent was validly terminated for loss of trust and confidence.

Such argument is without merit.

An employer has the right to dismiss an employee for just causes, which include willful breach of trust and confidence reposed on him or her by the employer. To temper such right to dismiss, and to reconcile it with the employee's security of tenure, it is the employer who has the burden to show that the dismissal of the employee is for a just cause.⁴¹ Such determination of just cause must also be made with fairness, in good faith, and only after observance of due process of law.⁴²

Moreover, to dismiss an employee on the ground of loss of trust and confidence, two requisites must concur: (a) the concerned employee must be holding a position of trust; and, (b) the loss of trust must be based on willful breach of trust based on clearly established facts.⁴³

Loss of trust and confidence as a ground for dismissal is never intended for abuse by reason of its subjective nature. It must be pursuant to a breach done willfully, knowingly and purposely without any valid excuse. It must rest on substantial grounds and not on mere suspicion, whims, or caprices of the employer.⁴⁴

In fine, "loss of confidence should not be simulated. It should not be used as a subterfuge for causes which are improper, illegal, or unjustified. Loss of confidence may not be arbitrarily asserted in the face of overwhelming evidence to the contrary. It must be genuine, not a mere afterthought to justify earlier action taken in bad faith."⁴⁵

Here, respondent, as Administrative Officer/HR Head of the Restobar and the Apartelle, had the following duties and functions:

1. Has the authority/information in all operation, administrative and functional matters.
2. Reports directly to the owner.
3. Oversees the entire operations of the business that includes over-all property/furnitur[e] maintenance & expenditures.

⁴¹ *Torres v. Rural Bank of San Juan, Inc.*, supra note 33 at 369.

⁴² *Lima Land, Inc. v. Cuevas*, 635 Phil. 36, 48 (2010).

⁴³ *Torres v. Rural Bank of San Juan, Inc.*, supra note 33 at 369-370.

⁴⁴ *Lima Land, Inc. v. Cuevas*, supra note 42 at 49-50.

⁴⁵ *General Bank & Trust Co. v. Court of Appeals*, 220 Phil. 243, 252 (1985).

4. Handles all employees of the establishments.
5. Carries out HR policies & procedures[.]
6. Responsible in the recruitment, screening & selection of new employment for vacant position.
7. Plans & conducts new employee orientation to foster positive attitude towards company goals.
8. Develops & maintains a human resourc[e] system that meets top management information needs.
9. Wage and salary administration.
10. Labor & Employee relations, welfare & benefits.⁴⁶

As far as the first requisite is concerned, respondent is shown to occupy a position of trust as her managerial work was directly related to management policies, and generally required exercise of discretion and independent judgment.⁴⁷

Nonetheless, the second requirement is wanting since petitioners failed to prove that their loss of trust on respondent was founded on clearly established facts.

Records show that on December 30, 2005, Leo required respondent to explain her supposed infractions when she signed, without the approval of the owner, the contract between the Restobar and Pepsi; and her failure to account the items Pepsi donated to the Restobar.

Respondent aptly explained these matters to Leo. According to her, Leo verbally authorized her to sign the agreement with Pepsi. This verbal instruction was given in the presence of Ablanque, Sales Manager of Pepsi.

In his Affidavit⁴⁸ dated February 9, 2006, Ablanque corroborated respondent's assertion. He certified that during his visits in the Restobar, he discussed with Leo his proposal of an exclusivity contract between Pepsi and the Restobar. In the course of their negotiation in September 2005, Leo agreed to the contract and authorized respondent to sign the same.

Also, as declared by the CA, even granting for the sake of argument that respondent signed the Pepsi contract without the express authority from Leo, her act was well within her functions. As above quoted, respondent 1) had the

⁴⁶ CA rollo, p. 74.

⁴⁷ M+Z Zander Philippines, Inc. v. Enriquez, 606 Phil. 591, 607 (2009).

⁴⁸ CA rollo, p. 75.

authority in all operational, administrative and functional matters of the Restobar and the Apartelle; and, 2) had the duty to oversee the entire operations of the business, including the over-all property/furniture, maintenance and expenditures.⁴⁹

Therefore, having entered the Pepsi contract is not sufficient basis for petitioners to lose their trust in respondent. Leo authorized her to enter said agreement. Even assuming that there was no explicit order for her to do so, respondent still acted within her authority as in-charge of all operation, administrative and functional matters of the establishments.

Notably, although the LA ruled that respondent was validly dismissed, the LA (in granting separation pay), recognized that respondent acted in good faith when she entered into the Pepsi contract, viz.:

[Respondent] x x x nonetheless entered into said agreement in good faith. [Respondent] presumed that she was authorized to enter into said Exclusivity Agreement. In this regard, the undersigned is inclined to grant [respondent's] claim for separation pay considering that her dismissal is premised on a vague authority. x x x⁵⁰

Indeed, there was no malice or any fraudulent intent on the part of respondent when she signed the Pepsi contract. There is likewise no evidence that she personally benefited therefrom. In fact, the Restobar itself received the items donated by Pepsi, and the Restobar did not suffer any damage arising from the Pepsi contract.

Loss of trust and confidence must stem from dishonest, deceitful or fraudulent acts. In the absence of such malicious intent or fraud on the part of respondent, she committed no willful breach of trust against her employer.⁵¹

In addition, the Court finds that the charge that respondent failed to account for a certain number of products Pepsi donated to the Restobar is without basis.

On January 4, 2006, Pepsi clarified that it donated only 10 cases of its products on the opening night of the Restobar, and an additional 20 cases of Pepsi 12 oz. on December 7, 2005. It added that Pepsi gave no other donation to the Restobar or its staff. Pepsi admitted its lapses, and apologized to Leo; it also requested him to disregard the inadvertent entries in the documents it gave him.

⁴⁹ Id at. 74.

⁵⁰ Id. at 179.

⁵¹ *Lima Land, Inc. v. Cuevas*, supra note 42 at 51-52



Since Pepsi clarified the matter and as established, there is no unaccounted donation made by Pepsi to the Restobar, then the allegation – that respondent committed loss of trust because of unaccounted donation from Pepsi – is untenable. Indeed, petitioners' loss of trust and confidence was merely simulated. It was arbitrarily asserted despite sufficient evidence to the contrary.⁵²

Moreover, the charge of dishonesty against respondent for purportedly charging 50% of the food she personally ordered to the account of the Restobar is unsubstantiated. This accusation was cited in Leo's January 3, 2006 Memorandum but was not at all specified in the Notice of Termination against respondent as said notice centered on respondent's act of having entered the contract with Pepsi. In any case, as correctly observed in the November 28, 2008 Resolution of the NLRC, Restobar "was not really saddled by those entertainment expenses because the foods and meals were eventually deducted against [respondent's] salary, which for one reason or another [respondent] offered no objection."⁵³

Finally, the Court sustains the grant of moral and exemplary damages, and attorney's fees in favor of respondent.

Moral damages is awarded to an illegally dismissed or suspended employee when the employer acted in bad faith or fraud, or in such manner oppressive to labor or contrary to morals, good customs or public policy,⁵⁴ as in this case.

As discussed, petitioners primarily charged respondent of having entered the contract with Pepsi without authority from the Owner or the Manager of the Restobar. Nevertheless, as also established, Leo was well aware of this contract, as Pepsi itself attested. The Restobar also directly received the Pepsi products. Moreover, despite respondent having explained herself, and Pepsi having fully and timely clarified the matters surrounding the contract, petitioners still dismissed respondent. It thus appears that such dismissal was pre-determined by petitioners even before respondent explained herself regarding the charges against her.

For having shown bad faith or such "conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity,"⁵⁵ petitioners are liable to pay respondent moral damages amounting to ₱50,000.00. They are likewise liable to pay respondent exemplary damages amounting to ₱50,000.00 as it is also shown that her dismissal was carried out in such a malicious and oppressive manner. Such grant of exemplary damages is deemed necessary to deter employers from committing the same or similar acts. The award of attorney's fees is likewise sustained since exemplary damages is awarded here, and considering

⁵² *General Bank & Trust Co. v. Court of Appeals*, supra note 45.

⁵³ CA rollo, p. 199.

⁵⁴ *Montinola v. Philippine Airlines*, G.R. No. 198656, September 8, 2014, 734 SCRA 439, 458.

⁵⁵ *Id.*

further that respondent has been compelled to file this case and incurred expenses to protect her interest.⁵⁶

To recapitulate, in order to dismiss an employee on the ground of loss of trust and confidence, the employee must be guilty of an actual and willful breach of duty duly supported by substantial evidence.⁵⁷ Since petitioners failed to show that respondent actually and willfully breached their trust, then the CA properly ruled that petitioners dismissed her without any valid cause. Henceforth, the CA properly set aside the NLRC Resolutions dated June 4, 2009 and July 31, 2009, and reinstated the NLRC Resolution dated November 28, 2008.

WHEREFORE, the Petition is **DENIED**. The Decision dated November 27, 2012 and Resolution dated July 12, 2013 of the Court of Appeals in CA-G.R. SP No. 03222-MIN are **AFFIRMED**.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


ARTURO D. BRION
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice

(On official leave)
MARVIC M.V.F. LEONEN
Associate Justice

⁵⁶ Id. at 464-466.

⁵⁷ *Lima Land, Inc. v. Cuevas*, supra note 42 at 50.

ATTESTATION

I attest 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.



ANTONIO T. CARPIO

Associate Justice

Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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

