Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

TAMBLOT SECURITY & GENERAL SERVICES, INC., Petitioner, *- versus -* **FLORENCIO ITEM, LEONARDO PALMA, RICARDO UCANG, FLORENCIO AMORA, REYNALDO DANO, APOLLO JOTOJOT, TEODORO BARONG, JUAN T. CUSI, TEODORO DE LOS REYES, EFREN ESCOL, JOVANNE COSE, DARIO S. GEALON, JULIO ESPADA and DARIO PAJE,** Respondents.	**G.R. No. 199314** [Formerly UDK No. 14553] **Present:** VELASCO, JR., *J.*, *Chairperson*, PERALTA, VILLARAMA, JR., REYES, and JARDELEZA, *JJ.* **Promulgated:** December 7, 2015

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D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Decision[1] of the Court of Appeals (*CA*) promulgated on May 28, 2010, and its Resolution[2] dated July 8, 2011, denying petitioner's Motion for Reconsideration be reversed and set aside.

Respondents were employed by petitioner as security guards and deployed at Marcela Mall. Respondent Florencio Item (*hereinafter referred to as Florencio*) had a misunderstanding with the security officer of Marcela Mall, thus, he was recalled and relieved from duty by petitioner. Florencio

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[1] Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Edgardo L. Delos Santos and Eduardo B. Peralta, Jr., concurring; *rollo*, pp. 25-36.

[2] Penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Edgardo L. Delos Santos and Ramon Paul L. Hernando, concurring; *id.* at 19-23.

then consulted a lawyer who told him that he was also underpaid. He shared this information with his co-respondents, which prompted the rest of them to file a letter-complaint with the Department of Labor and Employment (*DOLE*) for labor standards benefits. During their meeting for said case, petitioner's representatives tried to convince them to withdraw their complaint but they refused. As a result of their refusal, all the other respondents were also relieved from their duties at Marcela Mall. Respondents then withdrew their complaint with the DOLE and instead filed complaints for illegal dismissal before the NLRC.

Petitioner countered that it did not dismiss respondents; rather, it was respondents who refused to return to work. Letters notifying respondents of their new assignments and directing them to report to the office were allegedly sent to respondents, but they never reported for work. Hence, petitioner faulted respondents for abandonment of work.

The Labor Arbiter dismissed respondents' complaint. The Arbiter's Decision was appealed to the National Labor Relations Commission (*NLRC*), and in a Decision dated March 30, 2006, the NLRC ruled that the complaint for illegal dismissal was prematurely filed since at the time of filing of the complaint, respondents could still be considered to be on reserve status, as the period of six (6) months from the date they were relieved from duty has not yet lapsed. The NLRC, however, pointed out that because only respondents Florencio and Leonardo Palma signed the Verification and Certification of the Notice of Appeal, they were the only ones who could be deemed to have appealed the Labor Arbiter's Decision to the NLRC. Thus, petitioner was ordered to pay only Florencio and Leonardo Palma their separation pay, refund of cash bonds and attorney's fees. In a Resolution dated July 26, 2006, respondents' motion for reconsideration of said Decision was denied, while petitioner's motion for reconsideration thereof was partially granted by absolving Marcela Mall from any liability.

Elevating the case to the CA via a petition for *certiorari*, herein respondents (*petitioners below*) argue that the NLRC erred in not giving due course to the appeal of the other respondents and in not categorically ruling that herein respondents were constructively dismissed, entitling all respondents to all their money claims and other benefits.

The CA then promulgated the assailed Decision dated May 28, 2010, the dispositive portion of which reads as follows:

> **IN LIGHT OF THE FOREGOING**, the instant petition is hereby **GRANTED**. The Resolutions of [the] NLRC dated April 30, 2008 and July 28, 2008, in NLRC VAC-02-000105-2008 are hereby **SET ASIDE** and a new one is hereby **ENTERED**, as follows:

> 1. Declaring the twelve (12) other petitioners [herein respondents] to have validly taken their appeal with the NLRC;
> 2. Declaring petitioners to have been constructively dismissed by Tamblot Security & General Services, Inc.;
> 3. Ordering Tamblot Security & General Services, Inc. to pay petitioners their full backwages from the time their compensation were withheld up to the time of their actual reinstatement, refund cash bond at the rate of ₱50.00 per month of service and Attorney's fees equivalent to 10% of the monetary award. In the event that reinstatement is impossible, Tamblot Security & General Services, Inc. is liable to pay separation pay computed at one month salary for every year of service, a fraction of at least six (6) months considered as one whole year.
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> Further, this case is **REMANDED** to the labor arbiter for the computation of backwages, refund of cash bond and attorney's fees.
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> **SO ORDERED**.[3]

Hence, the present petition wherein petitioner security agency contends that there was no constructive dismissal as it was respondents who are guilty of abandonment of work; hence, they are not entitled to any monetary award.

The Court finds the petition devoid of merit.

In *Protective Maximum Security Agency, Inc. v. Fuentes*,[4] the Court reiterated the rule that:

> x x x for abandonment of work to exist, it is essential (1) that the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) that there must have been a clear intention to sever the employer-employee relationship manifested by some overt acts. . . . Absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore. And the burden of proof to show that there was unjustified refusal to go back to work rests on the employer.
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> . . . It is not enough to simply allege that the private respondent had "mysteriously disappeared" and that "[a]s usual and routine, private respondent should have reported to his Team Leader or Officer-in-Charge."[5]

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3 *Rollo*, pp. 35-36. (Emphasis in the original)

4 G.R. No. 169303, February 11, 2015.

5 *Protective Maximum Security Agency, Inc. v. Fuentes, supra.* (Underscoring in the original; citation omitted.

Here, the NLRC, affirmed by the CA, made the factual finding that petitioner failed to present evidence sufficiently proving its defense of abandonment of work, so as to make the termination of respondents' employment a valid one. Petitioner should be reminded of the oft-repeated rule that in petitions for review on *certiorari*, the jurisdiction of this Court is generally limited to reviewing errors of law or jurisdiction. This Court cannot be tasked to analyze or weigh evidence all over again as the evaluation of facts is best left to the lower courts.[6] This was further elaborated in *Stanley Fine Furniture v. Gallano*,[7] thus:

> Specifically, in reviewing a CA labor ruling under Rule 45 of the Rules of Court, the Court's review is limited to:
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> > (1) Ascertaining the correctness of the CA's decision in finding the presence or absence of a grave abuse of discretion. This is done by examining, on the basis of the parties' presentations, whether the CA correctly determined that at the NLRC level, all the adduced pieces of evidence were considered; no evidence which should not have been considered was considered; and the evidence presented supports the NLRC findings; and
> >
> > (2) Deciding any other jurisdictional error that attended the CA's interpretation or application of the law. (Citation omitted)
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> Thus, the proper issue in this case is whether the Court of Appeals correctly determined the presence of grave abuse of discretion on the part of the National Labor Relations Commission.[8]

A perusal of the records convinced us that the CA correctly concluded that the NLRC did not commit any grave abuse of discretion because the NLRC's findings are firmly grounded on the evidence on record. Indeed, petitioner failed to discharge its burden to prove that it was respondents who refused to report for duty. Nothing on record shows that respondents actually received the notices to report for duty which petitioner supposedly sent them. The Court notes with approval the finding of the NLRC in its Decision promulgated on March 30, 2006, to wit:

> x x x records disclosed that the advice regarding transfer of assignment involving complainant Item was made on March 9, 2004 and March 12, 2004 although no proof of receipt by the party concerned was adduced by the respondents [herein petitioner]. While complainants Espada, Paje and Jotojot were notified of the vacancy at Bohol Beach Club in a letter dated June 23, 2004. On the other hand, complainants Dano, Crusit, De los Reyes and Cose were offered the assignment at

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6 *Gan v. Galderma Philippines, Inc.*, G.R. No. 177167, January 17, 2013, 688 SCRA 666, 693; *Padalhin v. Laviña*, G.R. No. 183026, November 14, 2012, 685 SCRA 549.

7 G.R. No. 190486, November 26, 2014.

8 *Stanley Fine Furniture v. Gallano, supra*.

> Tambuli Beach Resorts in a letter dated June 28, 2004. Both notices however does (sic) not show that the parties concerned have acknowledged receipt of the same. Such being the case respondent's [herein petitioner's] defense of abandonment is wanting considering that there are essential requisites that have to be met for abandonment to apply, x x x.[9]

The failure to firmly establish that respondents were actually notified or informed that they were being ordered to report back for duty is fatal to petitioner's cause. Without proof that respondents were aware of their new assignments or were being ordered to report back for duty, it cannot be said that the employee failed to report for work. There is, therefore, no showing of any overt act of the respondents that would point to an intention to abandon their work. On the contrary, since respondents almost immediately filed a complaint for illegal dismissal after they were relieved from duty, there is a clear indication that they had the desire to continue with their employment. As held in *Fernandez v. Newfield Staff Solutions, Inc.*,[10] to wit:

> x x x Employees who take steps to protest their dismissal cannot logically be said to have abandoned their work. A charge of abandonment is totally inconsistent with the immediate filing of a complaint for illegal dismissal. The filing thereof is proof enough of one's desire to return to work, thus negating any suggestion of abandonment.[11]

In fine, petitioner utterly failed to establish the requisites for abandonment of work to exist, *i.e.*, (1) that the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) that there must have been a clear intention to sever the employer-employee relationship manifested by some overt acts.[12]

Since there is nothing extraordinary with the facts and circumstances of this case, then there is no justifiable reason for the Court to overturn the longstanding view that the immediate filing of a complaint for illegal dismissal negates a charge for abandonment of work.

WHEREFORE, the petition is **DENIED** for utter lack of merit. The Decision of the Court of Appeals in CA-G.R. CEB-SP No. 02281 is **AFFIRMED** with **MODIFICATION**, by ordering petitioner to **PAY INTEREST** of six percent (6%) *per annum* from finality of this Decision until its full satisfaction.

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9 *Rollo*, p. 121.
10 G.R. No. 201979, July 10, 2013, 701 SCRA 109.
11 *Fernandez v. Newfield Staff Solutions, Inc., supra*, at 120-121.
12 *Protective Maximum Security Agency, Inc. v. Fuentes*, *supra* note 4.

The Labor Arbiter is hereby **ORDERED** to make another recomputation of the total monetary benefits awarded and due to respondents in accordance with this Decision.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

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

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
JAN 13 2016