



Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILS.  
MARIA LOURDES P. A. SERENO  
CHIEF JUSTICE

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SECOND DIVISION

THE NEW PHILIPPINE  
SKYLANDERS, INC. and/or  
JENNIFER M. EÑANO-BOTE,  
Petitioners,

- versus -

FRANCISCO N. DAKILA,

Respondent.

G.R. No. 199547

Present:

CARPIO, J., Chairperson,  
LEONARDO-DE CASTRO,\*  
BRION,  
PEREZ, and  
PERLAS-BERNABE, JJ.

Promulgated:

SEP 24 2012

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RESOLUTION

PERLAS-BERNABE, J.:

The Petition for Review on Certiorari<sup>1</sup> assails the August 31, 2011<sup>2</sup> and November 23, 2011<sup>3</sup> Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 113015 which affirmed the September 10, 2009 Decision<sup>4</sup> and

\* Acting Member per Special Order No. 1308 dated September 21, 2012.

<sup>1</sup> Under Rule 45 of the Rules of Court.

<sup>2</sup> Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Amelita G. Tolentino and Rodil V. Zalameda, *rollo*, pp. 43-45.

<sup>3</sup> Id. at 47-48.

<sup>4</sup> Penned by Presiding Commissioner Benedicto R. Palacol, with Commissioners Isabel G. Panganiban-Ortiguerra and Nieves Vivar-De Castro, concurring, id. at 300-306.

December 15, 2009 Resolution<sup>5</sup> of the National Labor Relations Commission (NLRC) finding respondent Francisco N. Dakila (respondent Dakila) to have been illegally dismissed.

### **The Factual Antecedents**

Respondent Dakila was employed by petitioner corporation as early as 1987 and terminated for cause in April 1997 when the corporation was sold. In May 1997, he was rehired as consultant by the petitioners under a Contract for Consultancy Services<sup>6</sup> dated April 30, 1997.

Thereafter, in a letter<sup>7</sup> dated April 19, 2007, respondent Dakila informed petitioners of his compulsory retirement effective May 2, 2007 and sought for the payment of his retirement benefits pursuant to the Collective Bargaining Agreement. His request, however, was not acted upon. Instead, he was terminated from service effective May 1, 2007.

Consequently, respondent Dakila filed a complaint for constructive illegal dismissal, non-payment of retirement benefits, under/non-payment of wages and other benefits of a regular employee, and damages against petitioners, The New Philippine Skylanders, Inc. and its President and General Manager, Jennifer M. Eñano-Bote, before the NLRC. He averred, among others, that the consultancy contract was a scheme to deprive him of the benefits of regularization, claiming to have assumed tasks necessary and

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<sup>5</sup> Id. at 325-327.

<sup>6</sup> Id. at 60-61.

<sup>7</sup> Id. at 145-146.

desirable in the trade or business of petitioners and under their direct control and supervision. In support of his claim, he submitted, among others, copies of his time cards, Official Business Itinerary Slips, Daily Attendance Sheets and other documents prescribing the manner in which his tasks were to be accomplished under the control of the petitioners and acknowledging his status as a regular employee of the corporation.

On the other hand, petitioners, in their position paper,<sup>8</sup> asserted that respondent Dakilawas a consultant and not their regular employee. The latter was not included in petitioners' payroll and paid a fixed amount under the consultancy contract. He was not required to observe regular working hours and was free to adopt means and methods to accomplish his task except as to the results of the work required of him. Hence, no employer-employee relationship existed between them. Moreover, respondentDakila terminated his contract in a letter dated April 19, 2007, thus, negating his dismissal.

### **Ruling of the Labor Arbiter**

On May 28, 2008, Labor Arbiter Thomas T. Que, Jr. rendered a decision<sup>9</sup> finding respondent Dakila to have been illegally dismissed and ordered his reinstatement with full backwages computed from the time of his dismissal on May 1, 2007 until his actual reinstatement as well as the payment of his unpaid benefits under the Collective Bargaining Agreement (CBA). He declared respondent Dakila to be a regular employee on the basis of the unrebutted documentary evidence showing that he was under the

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<sup>8</sup> Id. at 64-72.

<sup>9</sup> Id. at 198-206.

petitioners' direct control and supervision and performed tasks that were either incidental or usually desirable and necessary in the trade or business of petitioner corporation for a period of ten years. Having been dismissed without cause and notice, respondent Dakila was awarded moral and exemplary damages in the amount of ₱50,000.00 each. He is also entitled to avail of the corporation's retirement benefits upon his reinstatement.

### **Ruling of the NLRC**

On appeal, the NLRC sustained the Labor Arbiter's (LA) finding that respondent Dakila was a regular employee and that his dismissal was illegal. However, it noted that since he was already beyond the retirement age, his reinstatement was no longer feasible. As such, it ordered the payment of his retirement pay to be computed from 1997 until the date of the decision. Moreover, it found respondent Dakila entitled to reinstatement wages from the time petitioners received a copy of the LA's Decision on July 7, 2008 up to the date of the NLRC's decision. Thus, it ordered the petitioners to pay respondent Dakila the additional amount of ₱278,508.33 representing reinstatement wages and retirement pay.<sup>10</sup>

The petitioners' motion for reconsideration having been denied in the Resolution<sup>11</sup> dated December 15, 2009, they filed a petition for *certiorari*<sup>12</sup> before the CA raising the following errors:

- (1) the complaint should have been dismissed against petitioner Jennifer M. Eñano-Bote absent any showing of bad faith;

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<sup>10</sup> Id. at 305.

<sup>11</sup> Id. at 325-327.

<sup>12</sup> Id. at 329-354.

- (2) respondent Dakila is not a regular employee;
- (3) respondent was not illegally dismissed as it was the respondent who resigned; and
- (4) theLA's monetary award has no basis.

### **Ruling of the CA**

In the Resolution<sup>13</sup> dated August 31, 2011, the CA dismissed the petition for failure to show that the NLRC committed grave abuse of discretion in affirming the LA's Decision. It found the factual findings of the LA and the NLRC to be supported by substantial evidence and thus, should be accorded respect and finality. Petitioners' motion for reconsideration therefrom was likewise denied in the Resolution<sup>14</sup> dated November 23, 2011.

Hence, the instant petition reiterating the arguments raised before the CA.

### **Ruling of the Court**

The issue of illegal dismissal is premised on the existence of an employer-employee relationship between the parties herein. It is essentially a question of fact, beyond the ambit of a petition for review on *certiorari* under Rule 45 of the Rules of Court unless there is a clear showing of

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<sup>13</sup> Id. at 43-45.

<sup>14</sup> Id. at 47-48.

palpable error or arbitrary disregard of evidence which does not obtain in this case. Records reveal that both the LA and the NLRC, as affirmed by the CA, have found substantial evidence to show that respondent Dakila was a regular employee who was dismissed without cause.

Following Article 279 of the Labor Code, an employee who is unjustly dismissed from work is entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages computed from the time he was illegally dismissed. However, considering that respondent Dakila was terminated on May 1, 2007, or one (1) day prior to his compulsory retirement on May 2, 2007, his reinstatement is no longer feasible. Accordingly, the NLRC correctly held him entitled to the payment of his retirement benefits pursuant to the CBA. On the other hand, his backwages should be computed only for days prior to his compulsory retirement which in this case is only a day. Consequently, the award of reinstatement wages pending appeal must be deleted for lack of basis.

Similarly, the Court finds no basis to hold petitioner Jennifer M. Eñano-Bote, President and General Manager of The New Philippine Skylanders, Inc., jointly and severally liable with the corporation for the payment of the monetary awards. The mere lack of authorized or just cause to terminate one's employment and the failure to observe due process do not *ipso facto* mean that the corporate officer acted with malice or bad faith.<sup>15</sup> There must be independent proof of malice or bad faith which was not established in this case. Perforce, petitioner Jennifer M. Eñano-Bote cannot be made personally liable for the liabilities of the corporation which, by legal fiction, has a personality separate and distinct from its officers,

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<sup>15</sup> *Lambert Pawnbrokers and Jewelry Corporation v. Binamira*, G.R. No. 170464, July 12, 2010, 624 SCRA 705.


stockholders and members. Moreover, for lack of factual and legal bases, the awards of moral and exemplary damages cannot also be sustained.<sup>16</sup>

**WHEREFORE**, premises considered, the petition is **PARTLY GRANTED**. The assailed August 31, 2011 and November 23, 2011 Resolutions of the Court of Appeals in CA-G.R. SP No. 113015 are **MODIFIED** as follows:

- (1) petitioner Jennifer M. Eñano-Bote is **ABSOLVED** from liability for payment of respondent Francisco N. Dakila's monetary awards;
- (2) the awards of reinstatement wages pending appeal as well as the moral and exemplary damages are ordered **DELETED**; and
- (3) the computation of backwages should be limited only for a day prior to his compulsory retirement.

The rest of the decision stands.


**SO ORDERED.**

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

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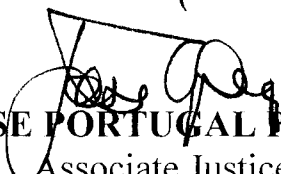
<sup>16</sup> *Aliling v. Feliciano*, G.R. No. 185829, April 25, 2012.

**WE CONCUR:**

  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson


  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**ARTURO D. BRION**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Resolution 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, Second 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 Resolution 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