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Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

EDITHA SALINDONG AGAYAN,  
*Petitioner,*

G.R. No. 229703

Present:

PERLAS-BERNABE,\* J.,  
*Chairperson,*  
REYES, A., JR.,\*\*  
HERNANDO,  
INTING, and  
ZALAMEDA,\*\*\* JJ.

-versus-

KITAL PHILIPPINES CORP.,  
RICARDO CONSUNJI III and  
JOCELYN CAVANEYRO,  
*Respondents.*

Promulgated:

04 DEC 2019

X-----X

DECISION

INTING, J.:

This Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court assails the Decision<sup>2</sup> dated September 22, 2016 and the Resolution<sup>3</sup> dated February 1, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 144376, which dismissed Editha Salindong Agayan's (petitioner) petition for *certiorari*, and effectively dismissing her complaint for illegal dismissal against Kital Philippines Corporation, Ricardo Consunji III and Jocelyn Cavaneyro (respondents).

\* On official business.  
\*\* Designated acting chairperson per Special Order No. 2750 dated November 27, 2019.  
\*\*\* Designated additional member per Special Order No. 2724 dated October 25, 2019. On official leave.  
<sup>1</sup> *Rollo*, Vol. I, pp. 10-43.  
<sup>2</sup> *Id.* at 46-60; penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Fernanda Lampas Peralta and Nina G. Antonio-Valenzuela, concurring.  
<sup>3</sup> *Id.* at 62-63.


The antecedents, as culled from the records, are as follows:

Private Respondent Kital Philippines Corporation ("Kital") is a domestic corporation in the business of importing and exporting telecommunications, medical, cosmetic, and dental equipment, among others. Private Respondents Ricardo Consunji III ("Consunji") and Jocelyn Cavaneyro ("Cavaneyro") are the President of Kital and Head of Accounting, respectively.

This case stemmed from a complaint filed by Petitioner against Private Respondents for illegal dismissal, non-payment of wages, service incentive leave pay, 13<sup>th</sup> month pay, retirement benefits, illegal suspension, moral damages, and exemplary damages.

Records show that Petitioner was hired by Kital on 30 March 2011 to work as the Head of Telecommunications. Prior to her dismissal on 08 September 2014, Petitioner supposedly earned a monthly basic salary of Eighty Thousand Pesos (P80,000.00), excluding other benefits, as well as commissions on sales based on the amount(s) collected.

Petitioner averred that, sometime in 2014, she received information of anomalies and dishonesty committed by Cavaneyro, specifically, that the latter had been terminated due to four (4) counts of dishonesty. Petitioner reported her findings to Consunji, the company President, for verification, but the same was not acted upon. Thereafter, Consunji's behavior became irritable as he would shout at and bully Petitioner. In one instance, Consunji ordered her to fire a certain Rosalinda Maranan ("Maranan"), an employee of Kital, but Petitioner refused to comply with the directive as she opined that there was no valid ground for termination. In another instance, Consunji demanded Petitioner to provide him with the names of Kital's Relations Managers (RMs), which are employees of other companies that assist Kital in doing business in exchange for a commission. Petitioner, however, did not provide the information asked of her as she believed that it was the company's practice that the RM's names should be kept confidential, and also that Consunji will use the same information to blackmail her in the future. Subsequently, the working relationships between Petitioner and Consunji and Cavaneyro worsened. Petitioner expressed her concerns via e-mail to the foreign principal of Kital, a certain Mr. Kuti Mor, and explained that Consunji had assaulted her and threatened her in the office. Eventually, petitioner was served a notice to




explain and demanded to vacate the company premises. On 08 September 2014, Kital sent a notice of termination.

Petitioner claimed that she was illegally dismissed from employment without just cause due to Private Respondents' disdain for her. She did not follow the instructions to terminate Maranan because she, Petitioner, was Maranan's superior and believed in good faith that there was no justifiable ground for the dismissal in view of the latter's satisfactory performance. Furthermore, Petitioner insisted that the company was committed to keep the confidentiality of the names of the RMs, and that this was the practice for several years. She did not accede to Consunji's demand as she feared that the latter will use the same to harass her and cause her to submit to unjust orders. Additionally, Petitioner did not breach the trust and confidence reposed on her.

As a consequence of her unlawful dismissal, Petitioner alleged that she is entitled to reinstatement, backwages, and other monetary benefits such as service incentive leave pay and 13<sup>th</sup> month pay. Petitioner further claimed that she is also entitled to several commissions including a PLDT leasing commission that she earned, but had not received amounting to Three Million Six Hundred Sixty Five Thousand Six Hundred Forty Eight Pesos and Ninety Centavos (P3,665,648.90). Finally, as Private Respondents acted in bad faith in terminating her, she is likewise entitled to the payment of moral damages, exemplary damages, and attorney's fees.

For their part, Private Respondents countered that Petitioner committed several infractions in the course of her employment: she e-mailed Mr. Kuti Mor (Kital's foreign principal) and falsely accused Consunji and Cavaneyuro (*sic*) of creating chaos and disruption in the office; she refused to accept Consunji's authority as company president, even declaring that she will no longer report to him; she was organizing another company in direct or indirect competition with the business of Kital, and had formulated a business concept/plan for that purpose; she refused to follow the established disciplinary procedure(s) when she interfered and meddled in the disciplinary actions taken against Maranan; she refused to follow the lawful order of Consunji who had instructed her to provide him with a list of PLDT accounts and the names of RMs that handle the accounts; and she allowed Maranan to use the title of "Telecom Sales and Business Development Manager" despite the fact that no such position exists.



On 22 August 2014, Private Respondents sent Petitioner a notice informing her of the decision to impose preventive suspension of thirty (30) days, charging her with several violations of company policy, directing her to explain why she should not be subjected to disciplinary action in view of the foregoing incidents, and notifying her of a hearing to be held on 29 August 2014. Petitioner submitted her response on 27 August 2014, but did not attend the scheduled hearing. Subsequently, on 08 September 2014, a Notice of Termination was issued against Petitioner.<sup>4</sup>

In the Decision<sup>5</sup> dated July 14, 2015, Labor Arbiter Imelda C. Alforte-Ganancial (Labor Arbiter) dismissed petitioner's complaint for illegal dismissal for lack of merit. Nevertheless, the Labor Arbiter awarded to petitioner certain sums as stated in the *fallo* of the decision as follows:

WHEREFORE, premises considered, the complaint for illegal dismissal is hereby DISMISSED for lack of merit. However, respondent Kital Philippines Corporation is directed to pay complainant the following, to wit:

1) Last Pay	- P72,527.70;
2) PLDT Leasing unpaid commission	- P3,625,515.87; and
TOTAL	- P3,698,043.57
3) 10% Attorney's fees	- P369,804.35
GRAND TOTAL	- P4,067,847.92.

Other claims are DISMISSED for lack of merit.

SO ORDERED.<sup>6</sup>

Both parties appealed to the NLRC.

In the Decision<sup>7</sup> dated September 23, 2015, the NLRC modified the Labor Arbiter's Decision. The dispositive portion of the NLRC's Decision reads:

<sup>4</sup> *Id.* at 47-49.

<sup>5</sup> *Id.* at 427-442.

<sup>6</sup> *Id.* at 441-442.

<sup>7</sup> *Id.* at 477-496; penned by Presiding Commissioner Gregorio O. Bilog III with Commissioners Erlinda T. Agus and Alan A. Ventura, concurring.

WHEREFORE, the appeal filed by complainant Editha Salindong Agayan is DISMISSED.

The appeal filed by Kital Philippines Corporation, Ricardo Consunji and Jocelyn Cavaneyro is PARTLY GRANTED.

The decision of the Labor Arbiter is MODIFIED, in that, respondents are ordered to pay complainant's salary plus allowances and benefits, equivalent to 27 days, plus 10% thereof as attorney's fees.

The PLDT leasing unpaid commission granted by the Labor Arbiter is DELETED.

SO ORDERED.<sup>8</sup>

Petitioner sought reconsideration of the NLRC Decision, but it was denied in the Resolution<sup>9</sup> dated November 26, 2015.

Petitioner thereafter filed a Petition for *Certiorari*<sup>10</sup> before the CA. However, in the Decision<sup>11</sup> dated September 22, 2016, the CA dismissed the petition and affirmed the NLRC. Petitioner's subsequent motion for reconsideration was denied in the Resolution<sup>12</sup> dated February 1, 2017.

Hence, this petition raising the following issues:

A.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED AND DECIDED IN A WAY NOT IN ACCORD WITH LAW AND APPLICABLE JURISPRUDENCE [IN AFFIRMING] THE NLRC DECISION AND FINDING THAT PETITIONER'S DISMISSAL IS VALID.

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<sup>8</sup> *Id.* at 495.

<sup>9</sup> *Rollo*, Vol. II, pp. 540-550.

<sup>10</sup> *Id.* at 552-580.

<sup>11</sup> *Rollo*, Vol. I, pp. 46-60.

<sup>12</sup> *Id.* at 62-63.

## B.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED AND DECIDED IN A WAY NOT IN ACCORD WITH LAW AND APPLICABLE JURISPRUDENCE IN AFFIRMING THE NLRC DECISION AND RULING THAT PETITIONER IS NOT ENTITLED TO MORAL AND EXEMPLARY DAMAGES.

## C.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED AND DECIDED IN A WAY NOT IN ACCORD WITH LAW AND APPLICABLE JURISPRUDENCE [IN AFFIRMING] THE NLRC DECISION AND RULING THAT PETITIONER IS NOT ENTITLED TO THE UNPAID PLDT LEASING COMMISSION.<sup>13</sup>

*The Court's Ruling*

The petition lacks merit.

Preliminarily, the question of whether petitioner was validly dismissed is a question of fact which is beyond the province of a petition for review on *certiorari*.<sup>14</sup> A review of the CA decision in a labor case brought under Rule 45 of the Rules of Court is limited only to a review of errors of law imputed to the CA.<sup>15</sup>

Thus:

In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on

<sup>13</sup> *Id.* at 22.

<sup>14</sup> *Skippers United Pacific, Inc. v. NLRC*, 527 Phil. 248, 256 (2006).

<sup>15</sup> *Abing v. NLRC, et al.*, 742 Phil. 647, 653 (2014).

the basis of whether the NLRC decision on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?<sup>16</sup> (Emphasis and italics omitted.)

The Labor Arbiter and the NLRC have already determined the factual issues, except for the issue on petitioner's entitlement to the unpaid PLDT leasing commission, where they differ in findings. Then, the CA affirmed the NLRC's findings. These findings are accorded great respect, and are deemed binding on Us as long as they are supported by substantial evidence.<sup>17</sup>

After a careful study of the case, We hold that the finding that petitioner's dismissal was valid has legal basis and is supported by the evidence on record and jurisprudence.

The two-fold requirements for a valid dismissal are the following: (1) dismissal must be for a cause provided for in the Labor Code, which is substantive; and (2) the observance of notice and hearing prior to the employee's dismissal, which is procedural.<sup>18</sup>

Petitioner committed willful disobedience and breach of trust which are just causes for dismissal under the Labor Code.<sup>19</sup> In its Decision, the CA held:

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<sup>16</sup> *Id.* at 653-654.

<sup>17</sup> *Hantex Trading Co., Inc. v. Court of Appeals*, 438 Phil. 737, 743 (2002).

<sup>18</sup> *Ranises v. NLRC*, 330 Phil. 936, 942 (1996) citing *San Miguel Corporation v. NLRC*, 294 Phil. 842 (1993); *China City Restaurant Corp. v. NLRC*, 291 Phil. 468 (1993); *Mapalo v. NLRC*, G.R. No. 107940, June 17, 1994, 233 SCRA 266.

<sup>19</sup> Art. 297[282] 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; x x x
- (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative; x x x

In this case, it is not disputed that Petitioner refused to follow Consunji's instruction to provide him with the list of names comprising the RMs (Relations Managers). As the chief executive of Kital, Consunji is ultimately responsible, *inter alia*, for the general oversight of company operations, and by virtue thereof, he has the right to direct his subordinates to furnish him with information relative to the business. Since the primary function of the RMs is to assist Kital in doing business, albeit for a commission, it stands to reason that Consunji's order to Petitioner was within the purview of the company's operations, and therefore, the said instruction was reasonable and lawful. In fact, the evidence on record is bereft of any evidence showing that there is a bonafide covenant/agreement to the effect that the identities of the RMs must be kept strictly confidential. Quite the opposite, in [the] past correspondence to Consunji, Petitioner had provided him with the names of the RMs as requested. It thus stands to reason that Petitioner was unjustified in complying with the directive given to her.

Moreover, Petitioner's outright refusal to respect the authority of Consunji, her superior, strengthens the conclusion that she committed willful disobedience. Although perhaps there is nothing inherently wrong with the act of an employee in expressing his or her grievances to the company's principals, such is not the case here. It is highlighted that in an e-mail message addressed to Mr. Kuti Mor (the foreign principal of Kital), Petitioner proclaimed, "I already declare to him (sic) that I will no longer reporting to him (sic) starting the beginning of business hour today and moving forward." Considering that herein Petitioner is a former managerial employee, her declaration, by itself, is highly unprofessional as it serves no purpose except to sow great discord in a working environment. Lest other employees be influenced by such a negative, combative disposition, it behooves upon her to behave in a civil or diplomatic way towards the president of the company, which she failed to do. Hence, based on these circumstances, the wrongfulness or perverseness of Petitioner's conduct is apparent.

Second. Petitioner's actions also constitute **loss of trust and confidence** reposed on her.

x x x

It is not disputed that Petitioner had formulated a business concept/plan which appeared to be in conflict with



the operations of Kital. Considering that Petitioner was the former Telecommunications Head of Kital, which is a managerial position, it logically follows that she necessarily has sufficient knowledge of the inner workings of the company. On this premise, it is not difficult to see why Private Respondents believed that Petitioner's actions were detrimental to the company since, naturally, the former would try to protect their own interests. Furthermore, jurisprudence has held that "[w]ith respect to a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal."<sup>20</sup> (Emphasis in the original.)

Willful disobedience requires the concurrence of the following: the employee's assailed conduct has been willful or intentional, the willfulness being characterized by a "wrongful and perverse attitude;" and the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.<sup>21</sup>

Indeed, petitioner's refusal to provide Consunji the names of the RMs is not justified. She had no reason to keep the information confidential from the CEO of the company where she worked for. Consunji, as the CEO, had every right to obtain this kind of information from petitioner, especially, as the latter herself admits that these RMs are non-employees of Kital. The RMs are actually from different companies, but, nevertheless, maintain a close association with Kital.

As regards loss of trust and confidence, for there to be a valid dismissal, the breach of trust must be willful, *i.e.*, it must be done intentionally, knowingly, and purposely, without justifiable excuse. In a dismissal based on this ground, the premise is that the employee concerned holds a position of trust and confidence. It is the breach of this trust that results in the employer's loss of confidence in the employee.<sup>22</sup>

As aforesaid, petitioner was the former Telecommunications Head of Kital which is a managerial position. She readily admits to having

<sup>20</sup> *Rollo*, Vol. I, pp. 54-55.

<sup>21</sup> *Acesite Corp. v. National Labor Relations Commission*, 490 Phil. 249, 260 (2005).

<sup>22</sup> *Baron, et al. v. National Labor Relations Commission et al.*, 627 Phil. 158, 171 (2010).

formulated a business plan which, as found below, seemed to be in conflict with the business operations of Kital. In attempting to defend her act, petitioner could only say that she did it because her relationship with Kital was already strained. But for obvious reasons, her justification is not acceptable. It is thus easy to see that there was sufficient basis for the loss of confidence on the part of Kital.

Further, petitioner is not entitled to the unpaid PLDT leasing commission.

Stated in Annex A<sup>23</sup> of petitioner's Employee Contract<sup>24</sup> with Kital are the Employee Benefits. Item No. 6 thereof on Commission reads:

6. Commission	<p>P20,000 committed PLDT commission for total minimum monthly collection of PhP1.2Million. If less, the commission will be prorated based on the amount of the collection.</p> <p>-New leasing/installation: 5% net profit (after recovering all expenses)</p> <p style="text-align: center;">x x x</p> <p>Note: Upon closing the deal, the first month commission will be given affront. Then the remaining commission will be after return of investment.</p>
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Petitioner submits that she is entitled to the 5% commission on the PLDT leasing/installation that she had obtained on behalf of Kital. According to her, upon Kital's recovery of expenses, such as cost of sales, and there is already a return of investment, she is entitled to the 5% commission regardless of whether or not there have actually been monthly collections. She illustrates in the following manner:

<sup>23</sup> *Rollo*, Vol. 1, p. 65.

<sup>24</sup> *Id.* at 64-66.

x x x For example, if petitioner was able to obtain a One Million Peso (Php1,000,000.00) contract and Two Hundred Thousand Pesos (Php200,000.00) is the cost of sales (inclusive of sales, materials, equipments, etc.) then the basis for the five percent (5%) commission is Php1 Million less P200,000.00 or Eight Hundred Thousand Pesos (Php800,000.00). This is given after the cost of sales has been deducted. It does not depend on the monthly collections by the company, unlike the PLDT commissions.<sup>25</sup> (Underscoring omitted.)

The CA held that petitioner cannot claim for the amounts for contracts to expire in 2018 as these commissions may or may not accrue. To hold otherwise would not be fair to Kital.

Petitioner is imposing a manner of computation that has no sufficient basis. Viewed against the following findings of the NLRC Decision and CA Decision, petitioner's contentions easily fail.

As culled from the NLRC Decision:

The PLDT commission should not extend beyond the complainant's employment contract. Complainant's computation of the leasing periods is based on the lease period itself, and not the actual lease payments made by the lessors until August 22, 2014, her date of suspension. The prospective claims have no support and basis as she was suspended without pay and the contract was subsequently terminated. Therefore, she is not entitled to such claims.

As shown in the above Employee Benefit, the commissions are due upon actual monthly collections. The contract of lease with PLDT is up to 2018. *To pay her the 5% commission outright when there is no assurance that it would last until 2018 would not be in consonance with the terms of the Employee Benefit. It is a wrong business judgment to pay the commission outright at the time of sale. Either party may terminate the contract, which indeed happened. Complainant did not refute the respondent's claim that the contract was subsequently terminated.*

There is a NOTE indicated therein that "Upon closing the deal, the first month commission will be given affront.

<sup>25</sup> *Id.* at 33.

Then the remaining commission will be after return of investment.”

It is therefore clear that the 5% commission is due monthly or upon payment of the lessee, not outright 5% commission. It is only the first month commission that is paid immediately.

The complainant computed the purported PLDT commission based on the Installation Commission Report for 2011-2014 and the Estimated Monthly Revenues for contractual periods ranging from 48 to 60 months. It does not show the actual monthly payments. The computation should be based on actual collections as provided in the Employee Benefit.

Although complainant is entitled to commissions, the same should be based on actual collections. Complainant failed to show proof of actual collections made.<sup>26</sup> (Citations omitted; italics supplied.)

As culled from the CA Decision:

The evidence on record shows that Petitioner had already been given her *PLDT commission* of P20,000.00 starting from June 2011 until August 2014. On the other hand, however, she is not entitled to the *leasing commission*. By express stipulation in the Employee Benefits, it is clear that Petitioner is only entitled to receive leasing commissions upon actual collection, with the sole exception being the leasing commission of the first month. Since the leasing commission only accrues upon return of investment or actual collection, it was therefore erroneous for Petitioner to compute the amount due to her up to 2018, which is the end of the lease contracts. This is because Petitioner was placed under preventive suspension for thirty (30) days beginning on 22 August 2014, and shortly thereafter, her employment in Kital ceased on 08 September 2014. Besides, if for whatever reason it should occur that the lease contracts were terminated prior to 2018, then it would be contrary to fairness to hold Kital liable to pay Petitioner commissions that never came to fruition. Hence, the NLRC did not err in finding that Petitioner should be denied the unpaid PLDT leasing commission.<sup>27</sup> (Italics in the original.)

<sup>26</sup> *Id.* at 493-494.


<sup>27</sup> *Id.* at 58.

Further, the deletion of the award of moral and exemplary damages is sustained for lack of sufficient basis to justify them.

A dismissed employee is entitled to moral damages when the dismissal is attended by bad faith or fraud or constitutes an act oppressive to labor, or is done in a manner contrary to good morals, good customs or public policy.<sup>28</sup> As for exemplary damages, they may be awarded if the dismissal is effected in a wanton, oppressive or malevolent manner.<sup>29</sup> None of the circumstances were shown to be present in this case. Thus, petitioner is not entitled to either moral or exemplary damages.

**WHEREFORE**, the petition for review is **DENIED**. The Decision dated September 22, 2016 and the Resolution dated February 1, 2017 of the Court of Appeals in CA-G.R. SP No. 144376 are **AFFIRMED**.

**SO ORDERED.**

  
**HENRI JEAN PAUL B. INTING**  
*Associate Justice*

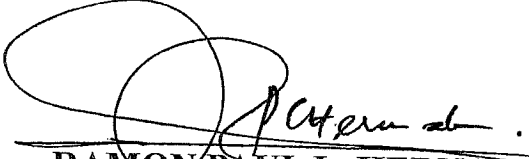
WE CONCUR:

(On official business)  
**ESTELA M. PERLAS-BERNABE**  
*Senior Associate Justice*  
*Chairperson*

<sup>28</sup> *Quadra v. Court of Appeals*, 529 Phil. 218, 223 (2006).

<sup>29</sup> *Id.* at 223-224.

*Reyes*  
**ANDRES B. REYES, JR.**  
*Associate Justice*

  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*

(On official leave)  
**RODIL V. ZALAMEDA**  
*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.

*Reyes*  
**ANDRES B. REYES, JR.**  
*Associate Justice*  
*Acting Chairperson*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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.

  
**DIOSDADO M. PERALTA**  
*Chief Justice*