



Republic of the Philippines  
**Supreme Court**  
 Manila

**FIRST DIVISION**

SUPREME COURT OF THE PHILIPPINES  
 PUBLIC INFORMATION OFFICE

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**RUBY C. DEL ROSARIO,**  
 Petitioner,

**G.R. No. 211105**

- versus -

Present:

**BERSAMIN, CJ.,**  
*Chairperson,*

**CW MARKETING &  
 DEVELOPMENT  
 CORPORATION/KENNETH  
 TUNG,**

**DEL CASTILLO,  
 JARDELEZA,  
 GESMUNDO, and  
 CARANDANG, JJ.**

Respondents.

Promulgated:

**FEB 20 2019**

X ----- X

**DECISION**

**JARDELEZA, J.:**

Petitioner Ruby C. Del Rosario (Del Rosario) appeals the Decision<sup>1</sup> dated October 9, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 126846, which affirmed the Decision<sup>2</sup> dated June 6, 2012 of the National Labor Relations Commission (NLRC) in NLRC-LAC-No-02-000791-12, dismissing her complaint for illegal dismissal against respondents CW Marketing & Development Corporation (CW Marketing) and Mr. Kenneth Tung. Initially, the Labor Arbiter (LA), in NLRC Case No. NCR-07-10542-11, granted the complaint of Del Rosario and ruled that she was illegally dismissed by CW Marketing.<sup>3</sup>

Since 2007, Del Rosario has been in the employ of CW Marketing, initially as Sales Consultant and eventually as Sales Supervisor, detailed at its Home Depot, Balintawak Branch. As Sales Supervisor, she was assigned a computer which is part of a shared network of computer users of CW Marketing and is connected to a printer/scanner.<sup>4</sup> Del Rosario alone was taught by CW Marketing's Information Technology (IT) personnel how to

<sup>1</sup> *Rollo*, pp. 202-209; penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Presiding Justice Andres B. Reyes, Jr. (now a Member of the Court) and Associate Justice Rodil V. Zalameda.

<sup>2</sup> *Id.* at 143-153; rendered by Commissioner Angelo Ang Palana and concurred in by Presiding Commissioner Hermynio V. Suelo.

<sup>3</sup> *Id.* at 109-117; rendered by Labor Arbiter Michelle P. Pagtalunan.

<sup>4</sup> *Id.* at 202-204.

operate the machine<sup>5</sup> although the network connection enabled other computer users to print documents through the printer/scanner connected to Del Rosario's computer.<sup>6</sup>

Sometime in October 2010, CW Marketing received a report from Hongkong and Shanghai Banking Corporation (HSBC) that several individuals applying for credit cards submitted ostensibly falsified payslips and identification cards issued by CW Marketing's Balintawak Branch. The questionable documents indicated higher positions and salaries of purported CW Marketing employees.<sup>7</sup>

Based on the report prepared by its IT Department, which conducted an investigation on the information given by HSBC,<sup>8</sup> CW Marketing issued a Notice to Explain<sup>9</sup> dated November 4, 2010 addressed to Del Rosario. This notice gave her 48 hours to explain in writing her alleged participation in the falsification of various documents which pertain to her subordinates at Home Depot, namely Elaine Hernandez, Mary Rose Cruz, and Jomarie Cayco; and were obtained by the IT Department from her (Del Rosario's) computer.

The following day, November 5, 2010, Del Rosario wrote an email<sup>10</sup> to CW Marketing, addressed to the HR Manager, Barbara M. Aragon, with carbon copies (CCs) addressed to five of the company's officers. While Del Rosario admitted that she knew the three mentioned individuals and the occasions they used her computer and the printer/scanner, she denied that she had a hand in the falsification of the documents. In the vernacular, Del Rosario responded:

Madam, for me bakit po ako ang bibigyan ng sanction hindi naman po ako nag falsify ng document, nakikigamit sila ng computer ko kasi ako lang po binigyan ng access sa USB and Scanner ng IT. x x x Ang alam ko po si Ms. Ailene Duldulao and nag e-edit ng mga payslips ng Section Heads, Customer Service, Merchandiser at kahit asawa nya sya ang nag edit and with Ms. Cruz ang alam ko friend nya na hindi connected talaga sa depot ang ginawaan nya ng [ID] at payslip. Sila din po ang nag-kuwento sakin kaya ko nalaman mga pinag gagagawa nila. Sa kanila lahat nagsimula yan at wala po akong kinalalaman sa mga pinag gagagawa nila. Unfair naman po sa part ko na ako ang masusunctionan ng walang ginagawang mali. At hindi ako nag e-edit ng document or [ID] nila sila mismo ang nag scanned sa pc ko.<sup>11</sup>

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<sup>5</sup> *Id.* at 71.

<sup>6</sup> *Id.* at 144.

<sup>7</sup> *Id.* at 202-203.

<sup>8</sup> *Id.* at 71.

<sup>9</sup> *Id.* at 78.

<sup>10</sup> *Id.* at 79.

<sup>11</sup> *Id.*

CW Marketing issued a second Notice to Explain,<sup>12</sup> dated November 9, 2010, requiring her to answer why she should not be dismissed for additional violations of CW Marketing's Employee Handbook: (1) Section 3.5 – offenses against company property: negligence or misuse of company properties, machines, and equipment; and (2) Section 3.7 – unauthorized use or allowing unauthorized persons to use company supplies, materials, facilities, tools and/or equipment resulting in loss or damage. CW Marketing pointed out Del Rosario's presence on the floor, as allegedly seen on the CCTV footage, while the concerned individuals used the computer and printer/scanner assigned to Del Rosario to scan and print documents.

In another email<sup>13</sup> dated November 10, 2010, Del Rosario explained further that she did not falsify the questioned documents nor was she the sole user of the computer assigned to her:

This refer [sic] to my explanation last November 5, 2010. I'm not the only one who is authorize [sic] to use the scanner and USB port, all of us can use the said scanner and USB port ako lang po ang nilagyan ng IT at Supervisor lang po ang pwedeng pagsaksakan ng USB dahil [tinanggal] na ng IT ang port ng consultant. Sa scanner/printer naman po sa akin po naka [access] printer network [nila]. Hindi sila makakapag print [nang] hindi nakabukas pc ko kaya dapat bukas computer ko at puwede po sila mag scan any time since nakakabit sya sa pc ko at ako lang din po ang nilagyan ng IT. Sir Bryan of IT Dept. allocate [sic] the cs a folder of their scanned documents and they can send it to their pc through Shared Network. Based on CCTV nanduon po ako pero may ginagawa po ako at pa-alis-alis po ako sa area since nag-iisa lang po ako na supervisor hindi ko na po namonitor lahat ng ginagawa nila. Sila na po nag scan at gumagamit sa pc ko since pc ko na lang gumagana sa E-MAIL at SAP transaction at nandun yung scanner.<sup>14</sup>

On November 18, 2010, Del Rosario attended the administrative inquiry on the charges against her, signed her conformity on the handwritten minutes of the meeting, and made the following admissions:

1. She had no idea for the tampering of documents like payslips and [IDs] found in the computer assigned to her.
2. That the computer she is presently using is the same computer that was assigned to her in Ortigas.
3. That she was aware that the said computer was her accountability and any transaction/and or item found there in is her responsibility[.]

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<sup>12</sup> *Rollo*, p. 80.

<sup>13</sup> *Id.* at 81

<sup>14</sup> *Id.* 

4. She knew and understood that she was the only one who was given access to the scanner, printer and connections by network place.
5. She allowed all CS Consultants/Coordinators to use her computer even if she was not around, because she claimed they can only access their outlook to her computer.
6. That she attended the coordination meeting dated July 2010 where in she was reminded that Supervisors are the only one who must have access to their computers.
7. That she was able to talked [sic] to Eric of HSBC agent only one time. However, she retracted her statement, when HR Candy Rubio mentioned that HR was able to verify with Mr. Eric of HSBC regarding her participation and/or the number of times [Del Rosario] spoke to him.
8. That she denied any involvement in convincing/distributing of HSBC credit card application forms to her co-employees.
9. That she gave her statement at her own free will and that she insisted that she should not be terminated and leave the final decision to the management on the negligent acts she committed.<sup>15</sup>

On November 30, 2010, CW Marketing found Del Rosario liable for three violations of its Employee Handbook and terminated her employment.<sup>16</sup>

Forthwith, Del Rosario filed before the Arbitration Branch of the NLRC the complaint (NLRC Case No. NCR-07-10542-11) for illegal dismissal; non-payment of wages/salary, overtime pay, holiday pay, service incentive leave pay, 13<sup>th</sup> month pay, separation pay, emergency cost of living allowance (ECOLA), and commission; and other causes of action.<sup>17</sup>

Essentially, Del Rosario maintained that she did not falsify the documents reported by HSBC to CW Marketing<sup>18</sup> and that, although copies of the document were found in the computer assigned to her, she could not constantly monitor the use of her computer whilst she attended to her other responsibilities.<sup>19</sup>

CW Marketing countered, on the other hand, that it validly dismissed Del Rosario for gross incompetence, dishonesty, and negligence tantamount to loss of trust and confidence. It argued that the dismissal of Del Rosario for violating the said provisions of its Employee Handbook, which is punishable by lawful termination of employment, is a legitimate exercise of management prerogative. CW Marketing emphasized Del Rosario's

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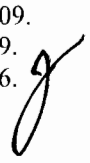
<sup>15</sup> *Rollo*, pp. 83-84.

<sup>16</sup> *Id.* at 85.

<sup>17</sup> *Id.* at 109.

<sup>18</sup> *Id.* at 79.

<sup>19</sup> *Id.* at 46.



sensitive position as a supervisor and her admission that she freely allowed others to use her computer and that she was aware of her subordinates' activities to fabricate employee documents in connection with their credit card applications. On the whole, it decried the falsification of documents which happened under the watch of Del Rosario and its negative effect to CW Marketing's reputation and credit standing with banks.<sup>20</sup>

As for Del Rosario's other money claims, CW Marketing denied her entitlement for the following reasons: (1) Del Rosario's outstanding obligation to CW Marketing in the amount of ₱24,083.20; and (2) her group's failure to reach the set quota for payment of commission.<sup>21</sup>

In the Decision<sup>22</sup> dated January 25, 2012, the LA held that CW Marketing failed to establish that Del Rosario directly committed the falsification of the questioned documents. It granted the complaint of Del Rosario, ruling that her dismissal was illegal, and ordered CW Marketing to pay her backwages in the amount of ₱195,335.83 and separation pay in the amount of ₱65,000.00, in lieu of reinstatement. However, the LA denied Del Rosario's other money claims for "lack of particulars" and failure to deny CW Marketing's claim of her outstanding obligation in the amount of ₱24,083.20.<sup>23</sup>

Both CW Marketing and Del Rosario appealed the ruling of the LA to the NLRC, the former questioning the finding that it illegally dismissed Del Rosario, and the latter questioning the denial of her other money claims.<sup>24</sup>

As previously adverted to, the NLRC, in its Decision<sup>25</sup> dated June 6, 2012, reversed the ruling of the LA and found that CW Marketing correctly dismissed Del Rosario for loss of trust and confidence. Contrary to the LA's holding that there was no cause for Del Rosario's dismissal, the NLRC highlighted the following: (1) Del Rosario admitted accountability over the assigned computer, thus, her lack of participation in the falsification of the documents did not exculpate her from liability for the acts of her subordinates; (2) Del Rosario's negligence in handling and protecting company property; (3) Del Rosario's apathy towards the activities and acts of her subordinates relating to their use of company property assigned to her; and (5) the falsification of documents by her subordinates, which were effected without her supervision, would not have prospered had Del Rosario exercised care and control over the use of her computer. Ultimately, the NLRC held that Del Rosario's actions rendered her unworthy of the trust and confidence demanded by her position.<sup>26</sup>

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<sup>20</sup> *Id.* at 63-66.

<sup>21</sup> *Id.* at 68-69.

<sup>22</sup> *Id.* at 109-117.

<sup>23</sup> *Id.* at 114-116.

<sup>24</sup> *Id.* at 205.

<sup>25</sup> *Supra* note 2.

<sup>26</sup> *Rollo*, pp. 148-152.

Thereafter, Del Rosario filed a petition for *certiorari*<sup>27</sup> under Rule 65 of the Rules of Court before the CA, alleging grave abuse of discretion in the NLRC's reversal of the LA's ruling.

In its Decision<sup>28</sup> dated October 9, 2013, the CA ruled that there is no grave abuse of discretion in the NLRC's ruling that Del Rosario was validly dismissed for loss of trust and confidence. Echoing the pronouncements of the NLRC, the CA noted Del Rosario's awareness of the following facts: (1) the computer assigned to her was her accountability; (2) the transactions and documents found therein were her responsibility; (3) as supervisor, she was the lone employee given access to the printer/scanner; (4) yet, her subordinates were able to freely use the computer and printer/scanner unsupervised; and (5) the falsified documents were submitted by her subordinates to HSBC to support their credit card applications.<sup>29</sup>

For the CA, Del Rosario should have at least called the attention of the concerned subordinates and instructed them to stop using company property for personal transactions, more so for editing and falsifying documents issued by CW Marketing.<sup>30</sup>

Hence, this appeal by *certiorari* of Del Rosario under Rule 45 of the Rules of Court. Del Rosario is adamant that it was a grave error for the CA to affirm the NLRC's Decision to dismiss her complaint for illegal dismissal. In short, CW Marketing did not have just cause to dismiss her.

We deny the petition.

Two requisites must concur to constitute a valid dismissal from employment: (1) the dismissal must be for any of the causes expressed in Article 282 (now Article 297) of the Labor Code;<sup>31</sup> and (2) the employee must be given an opportunity to be heard and to defend himself.<sup>32</sup>

Article 282 (now Article 297) of the Labor Code lists loss of trust and confidence in an employee, who is entrusted with fiducial matters, or with the custody, handling, or care and protection of the employer's property, as a

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<sup>27</sup> *Id.* at 26-40.

<sup>28</sup> *Supra* note 1.

<sup>29</sup> *Rollo*, pp. 206-208.

<sup>30</sup> *Id.* at 208.

<sup>31</sup> Art. 282 (Now 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.

<sup>32</sup> See Sections 2 and 5, Rule XIV, Book V of the Omnibus Rules Implementing the Labor Code.

just cause for an employee's dismissal.<sup>33</sup> In these cases, We have recognized the employer's authority to sever the relationship with an employee.<sup>34</sup> The right to terminate employment based on just and authorized causes stems from a similarly protected constitutional guarantee to employers of reasonable return on investments.<sup>35</sup>

We are hard-pressed to reverse the NLRC's and the CA's uniform factual findings that, as Sales Supervisor, Del Rosario held a fiduciary position. The NLRC's finding was supported by substantial evidence, or such evidence as a reasonable mind might accept as adequate to support a conclusion. We have previously ruled that in the case of supervisors or personnel occupying positions of responsibility, loss of trust justifies termination.<sup>36</sup> Loss of confidence as a just cause for termination of employment is premised on the fact that an employee concerned holds a position of trust and confidence. Specifically in this instance, Del Rosario was entrusted with the custody, handling, or care and protection of the employer's property.<sup>37</sup> In fact, she was assigned the lone computer at the Home Depot Branch, which was connected to the printer/scanner, and as a result, she was the only user taught by the company's IT personnel how to operate the machine.

We cannot overemphasize that, although loss of trust and confidence constitutes a valid cause for termination, it must, nonetheless, rest on solid grounds that reasonably evince an actual breach thereof by an employee. The burden of proof lies on the employer to first convincingly establish valid bases for that loss of trust and confidence.<sup>38</sup>

In this case, Del Rosario herself unwittingly provided proof of her infractions.<sup>39</sup> At the outset and repeatedly thereafter, Del Rosario admitted to the assignment to her of the main computer connected to a shared network and a printer/scanner which became her accountability. She then admitted knowledge and awareness of others' usage of her computer; the edited and falsified documents authored by her subordinates through the same computer; and even their submission of these falsified documents to HSBC in connection with their credit card applications.

Del Rosario attempted to extricate herself from liability by insisting that she never falsified any of the questioned documents and that only her subordinates who used her computer effected the falsification thereof. Unfortunately for Del Rosario, the charge against her is not the criminal act

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<sup>33</sup> *Condo Suite Club Travel, Inc. v. NLRC*, G.R. No. 125671, January 28, 2000, 323 SCRA 679, 688.

<sup>34</sup> *Moya v. First Solid Rubber Industries, Inc.*, G.R. No. 184011, September 18, 2013, 706 SCRA 58, 68-69.

<sup>35</sup> See fourth paragraph, Sec. 3, Art. XIII of the CONSTITUTION.

<sup>36</sup> *Moya v. First Solid Rubber Industries, Inc.*, *supra* at 69.

<sup>37</sup> *Etcuban, Jr. v. Sulpicio Lines, Inc.*, G.R. No. 148410, January 17, 2005, 448 SCRA 516, 529.

<sup>38</sup> *Mapalo v. National Labor Relations Commission*, G.R. No. 107940, June 17, 1994, 233 SCRA 266, 271.

<sup>39</sup> *Rollo*, pp. 79, 81. See her emails dated November 5 and 10, 2010.

of falsification<sup>40</sup> but the totality of her acts as supervisor, including her negligence and want of care for company property entrusted to her. At the very least, this nonchalance caused CW Marketing damage to its reputation and standing with banks since the individuals pretending to be in its employ, or have higher salaries, might have no real capacity to pay for purchases made with the credit card. Worse, CW Marketing may even be held liable by the credit card companies for allowing the falsifications.

On this point, We quote with favor the CA's reasoning:

[Del Rosario] was not an ordinary rank-and-file employee. She was the supervisor of [CW Marketing's] Home Depot Balintawak Branch. In view of her delicate position, [Del Rosario] was the only one given a computer with USB port and scanner. Had [CW Marketing] wanted its other employees to have access to a USB port and scanner, then its IT Department could have easily arranged the matter. But as it is, it was never the intention of [CW Marketing] to provide its other employees with unbridled access to the USB port and scanner. [Del Rosario's] acquiescence to the unauthorized use of her computer is in violation of Sections 3.5 and 3.7 of [CW Marketing's] employee handbook.

As gleaned from her admission in the administrative hearing on 18 November 2010, [Del Rosario] was aware that the said computer was her accountability and any transaction or item found therein is her responsibility; and that she knew and understood that she was the only one who was given access to the scanner. Nonetheless, she allowed others to use her computer. Per her Explanation dated 05 November 2010, she knew that different individuals scanned and edited pay slips and identification cards in the computer assigned to her. She was also aware that the edited [payslips] and identification cards were emailed to HSBC.<sup>41</sup>

In the case of *Etcuban, Jr. v. Sulpicio Lines, Inc.*,<sup>42</sup> We found the amount immaterial in determining the culpability of the employee for the fraudulent scheme on which his dismissal for loss of trust and confidence was based. Neither was the minuscule value of the financial prejudice to the employer considered, thus:

Whether or not the respondent was financially prejudiced is immaterial. Also, what matters is not the amount involved, be it paltry or gargantuan; rather the fraudulent scheme in which the petitioner was involved, which constitutes a clear betrayal of trust and confidence. In fact, there are indications that this fraudulent act had been done before,

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<sup>40</sup> Art. 172 of the REVISED PENAL CODE.

<sup>41</sup> *Rollo*, pp. 207-208.

<sup>42</sup> *Supra* note 37.



and probably would have continued had it not been discovered.

Moreover, the records show that the petitioner is not as blameless as he claimed to be. In 1979 and 1980, he was suspended by the respondent for several company infractions, which the petitioner did not deny. It must also be stressed that when an employee accepts a promotion to a managerial position or to an office requiring full trust and confidence, he gives up some of the rigid guaranties available to an ordinary worker. Infractions which, if committed by others, would be overlooked or condoned or penalties mitigated may be visited with more serious disciplinary action.

It cannot be over emphasized [sic] that there is no substitute for honesty for sensitive positions which call for utmost trust. Fairness dictates that the respondent should not be allowed to continue with the employment of the petitioner who has breached the confidence reposed on him. Unlike other just causes for dismissal, trust in an employee, once lost, is difficult, if not impossible, to regain. There can be no doubt that the petitioner's continuance in the extremely sensitive fiduciary position of Chief Purser would be patently inimical to the respondent's interests. It would be oppressive and unjust to order the respondent to take him back, for the law, in protecting the rights of the employee, authorizes neither oppression nor self-destruction of the employer.<sup>43</sup>

We are not unaware that loss of trust and confidence, to be a valid cause for dismissal, ought to be work-related such as would show the employee concerned to be unfit to continue working for the employer. The loss of trust must be based on a willful breach of trust and founded on clearly established facts. Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently. The loss of trust and confidence must spring from the voluntary or willful act of the employee, or by reason of some blameworthy act or omission on the part of the employee.<sup>44</sup>

Clearly, while the actions of Del Rosario do not point to her direct participation in the fraudulent scheme, which negatively bore on CW Marketing's reputation and credit standing with banks, in general, and HSBC in particular, her actions evinced that she knew fully well that some of her subordinates were falsifying documents using company property. From this point on, Del Rosario deliberately kept silent over her subordinates' actions resulting in damage to CW Marketing. Moreover, her

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<sup>43</sup> *Id.* at 532-533.

<sup>44</sup> *Bluer than Blue Joint Ventures Company v. Esteban*, G.R. No. 192582, April 7, 2014, 720 SCRA 765, 775. Emphasis and citations omitted.

awareness of the identities of the culprits and her insistence that she did not herself falsify documents demonstrate her sheer apathy to CW Marketing not worthy of her position as Sales Supervisor. Thus, the CA correctly ruled:

As the supervisor, [Del Rosario] should have called the attention of those responsible for the scanning and editing of [payslips] and identification cards. However, she kept her silence and only divulged her knowledge thereof when the results of the investigation pointed out that the tampered documents originated from her computer. Her failure to call her subordinates' attention and take the necessary precaution with regard to her computer, adversely reflected on her competence and integrity, sufficient enough for her employer to lose trust and confidence in her.<sup>45</sup>

**WHEREFORE**, the petition is **DENIED**. The Decision dated October 9, 2013 of the Court of Appeals in CA-G.R. SP No. 126846 is **AFFIRMED**. No costs.

**SO ORDERED.**



**FRANCIS H. JARDELEZA**

*Associate Justice*

WE CONCUR:



**LUCAS P. BERSAMIN**

*Chief Justice*

*Chairperson*



**MARIANO C. DEL CASTILLO**

*Associate Justice*



**ALEXANDER G. GESMUNDO**

*Associate Justice*



**ROSMARI D. CARANDANG**

*Associate Justice*

<sup>45</sup> Rollo, p. 208.

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I hereby 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.



**LUCAS P. BERSAMIN**  
*Chief Justice*