

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**DANZAS INTERCONTINENTAL, INC.,
and CLAUDE F. SCHAER,**
Petitioners,

-versus-

**G.R. No. 154368
April 15, 2005**

**HENRY M. DAGUMAN, AMADOR T.
CASTRO, RICHARD F. SALVADOR and
JONAS CULALA,**
Respondents.

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DECISION

TINGA, J.:

Danzas Intercontinental, Inc. (company), a corporation registered under Philippine laws, is engaged in the business of forwarding. It also used to engage in the brokerage business.

In this Petition for Review,^[1] the company and Claude F. Schaer (collectively, petitioners) assail the Decision^[2] of the Court of Appeals dated May 27, 2002 which ruled that private respondents were illegally dismissed by petitioners as the latter failed to substantiate their claim of serious business losses that would justify the closure of the company's brokerage operations. The appellate court set aside

the resolutions^[3] of the National Labor Relations Commission (NLRC) upholding the labor arbiter's dismissal of private respondents' complaints for illegal dismissal.^[4]

The antecedent facts^[5] are as follows:

The position of the complainants is that in a letter dated August 14, 1999, they were notified by the respondents that due to losses the brokerage department of the respondent company to which the complainants belonged shall be closed on September 14, 1999 for which they will be given a separation pay equal to one month or one half month for every year of service whichever is higher. However, the brokerage department was not really closed but its responsibilities just transferred to Ms. Elizabeth Gotiam and her staff, hence, their dismissal should be considered illegal and they should be reinstated to their former positions and should be awarded backwages plus moral and exemplary damages.

It is also the position of the complainants that they should be paid holiday pay for the holidays they have actually worked, service incentive leave pay, 13th month pay and other bonuses for the year 1999 or a retirement pay in lieu of reinstatement in the amount of P100,000.00 for each complainant.

On the other hand, the position of the respondent (sic) is that they had to close the brokerage department because its accumulated losses had already amounted to P5,449,000.00 and that as a consequence of such closure they had to resort to the retrenchment of the personnel belonging to the brokerage department which include the complainants. It is also the position of the respondents that the complainants are now barred from questioning their dismissal in view of the quitclaims they have executed in favor of the respondents.

With respect to the claims of overtime pay, service incentive pay and 13th month pay, the position of respondent (sic) is for complainants to prove the same.

In their reply to respondents' Position Paper, the complainants insist that the brokerage department was not closed and is in fact under operation by Elizabeth Gotiam, Sevilla Enzon, Shelbie Ocampo, Jenie Prado, Roden Reyes and Rodel Trias who are newly hired personnel of the respondents precisely to take over the tasks of complainants and that the name (sic) of these people appear as such newly hired employees in the company's payroll and in the lists of employees that were submitted to the SSS and the HMDF. Complainants also contend that their execution of the so called quitclaims is of no importance considering that if ever they agreed thereto it was with the understanding that the brokerage department will really be closed and since it was not really closed then the quitclaim (sic) do not bind them anyway. Lastly, the complainants are contesting whether the alleged losses incurred by the company are attributable to the brokerage department only.

By way of rejoinder which was belatedly filed, the respondents mentioned that whether they like it or not the brokerage department can no longer be opened because respondent company is no longer allowed to engage in the business of brokerage under Executive Order No. 11 which limits the exercise of the broker's profession to Filipino nationals only.

On September 6, 2000, the Labor Arbiter promulgated a decision dismissing the complaint filed by petitioners.

Aggrieved by the aforesaid judgment, petitioners elevated the case to the National Labor Relations Commission which handed down a decision on August 27, 2001, the decretal portion of which reads:

'ACCORDINGLY, premises considered, the decision appealed from is hereby AFFIRMED and instant appeal DISMISSED for want of merits (sic).

SO ORDERED.'

Petitioners moved for a reconsideration of the afore-quoted ruling of public respondent but the same was denied in a resolution promulgated on October 8, 2001. Hence, this recourse.

Petitioners claim that the NLRC committed grave abuse of discretion in affirming the findings of the Labor Arbiter that there was sufficient evidence to prove that the Brokerage Department of Danzas Intercontinental has been suffering losses to justify its closure.

Petitioners likewise contend that NLRC failed to declare that the Brokerage Department of respondents continued to operate despite the alleged closure.

Furthermore, petitioners argue that public respondent abused its discretion when it held that the quitclaims signed by the petitioners were valid and binding and that there was no illegal dismissal.^[6]

Granting private respondents' petition, the Court of Appeals ruled that petitioners should have presented the audited financial statements and documents such as balance sheets, profit and loss statements and annual income tax returns in support of its claim that it incurred substantial losses on account of its brokerage department for which the department should be closed. The affidavit of petitioners' corporate officer to prove this claim is insufficient as it is self-serving.

The appellate court likewise ruled that the hiring of new employees to oversee the needs of petitioners' remaining clients negates the need for the termination of private respondents. Moreover, the quitclaims signed by private respondents were not validly executed because their consent thereto was obtained through fraud or deceit on the part of petitioners. Private respondents signed the quitclaims on the belief that the brokerage department was closing down due to business losses.

On petitioners' contention that the new employees were not hired to perform private respondents' functions as such would contravene Executive Order No. 11 (E.O. 11) which prohibits foreign entities from engaging in brokerage services, the Court of Appeals held that there was no difference between private respondents' functions and those

of the new hires. There is thus no indication that petitioners complied with E.O. 11 since they still maintained their clients in the brokerage department albeit through its new employees.

The Court of Appeals denied for lack of merit petitioners' Motion for Reconsideration^[7] dated June 5, 2002 in its Resolution^[8] dated July 23, 2002.

In the instant petition, petitioners assert that it was only the brokerage department which was closed due to business losses. Petitioners admit that they did not submit in evidence the audited financial statements of the company but only because they did not know that private respondents appealed the case to the NLRC. Allegedly, they only came to know of the appeal when they received a copy of the NLRC decision affirming the findings of the Labor Arbiter. Had they known about the appeal, they could have presented the financial documents in support of their claim of business losses, and the NLRC, being authorized to receive evidence on appeal, would have been able to consider these documents. They assert, in this regard, that the Court of Appeals may receive the financial documents in evidence to resolve the factual issue of whether the company was indeed suffering from business losses on account of its brokerage department.

They further aver that new employees were hired not to replace private respondents but to monitor the activities of outside brokers who were engaged to finish the work for the company's remaining clients. Thus, the engagement of new employees was coterminous with the completion of the work for these clients and only for the purpose of winding up the company's brokerage business on account of E.O. 11.

Petitioners maintain that the quitclaims executed by private respondents, in which the latter acknowledged receipt of their salaries, 13th month pay, vacation leave conversion, retrenchment pay and refund of withholding taxes, were not procured through fraud or deceit on their part. They claim that the brokerage department was indeed closed down due to business losses. Hence, private respondents were not illegally dismissed and their reinstatement should not be ordered.

Private respondents filed their Opposition/Comment (To Petitioners' Petition for Review)^[9] dated April 10, 2003 asserting that petitioners were not able to prove that the brokerage department was incurring substantial business losses which would justify retrenchment. Citing *Asian Alcohol Corporation v. NLRC*,^[10] private respondents insist that the company should have presented its audited financial statements to evince losses. The quarterly report submitted by petitioners does not suffice as the same is self-serving.

Petitioners' contention that only the brokerage department was to be closed down does not make any difference with respect to the degree of evidence that should be presented to prove substantial losses. Further, the appellate court cannot admit or evaluate evidence in certiorari proceedings because its inquiry is limited only to whether the NLRC committed grave abuse of discretion.

The prohibition under E.O. 11 does not necessarily indicate that petitioners no longer operated the brokerage department. Private respondents insist that petitioners continued to operate its brokerage department and even hired new employees to take over their functions. Petitioners' invocation of E.O. 11 was merely an afterthought designed to frustrate private respondents' claims.

Finally, private respondents aver that their consent in executing quitclaims was vitiated by fraud perpetrated by petitioners.

Petitioners filed a Reply to Comment/Opposition to Petition for Review^[11] dated May 14, 2003 reiterating their arguments.

The petition should be denied.

Petitioners aver that they were compelled to close the company's brokerage department, to which losses were allegedly traceable due to incorrect handling of sales, in order to prevent further losses which threatened the company's viability. Essentially, petitioners invoke a blend of retrenchment to prevent losses and closure of a section of the company's business to justify the termination of private respondents.

The labor arbiter and the NLRC both found that petitioners validly exercised their management prerogatives recognized under Article 283 of the Labor Code, viz:

ART. 283. Closure of establishment and reduction of personnel. -- The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

It is neither the function of the law nor its intent to supplant the prerogative of management in running its business, such as, to compel the latter to operate at a continuing loss simply because it has to maintain its workers in employment. Such an act would be tantamount to a taking of property without due process of law. (*Industrial Timber Corporation vs. NLRC*, 339 Phil. 395 [1997]; *San Pedro Hospital of Digos, Inc. vs. Secretary of Labor, et al.*, G.R. No. 104624, October 11, 1996).^[12]

However, the burden of proving that the termination was for a valid or authorized cause rests on the employer who must comply with certain substantive and procedural requirements. For instance, the requirements for a valid retrenchment which must be proved by clear and convincing evidence are: (1) that retrenchment is reasonably necessary and likely to prevent

business losses which, if already incurred, are not merely de minimis, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer; (2) that the employer served written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment; (3) that the employer pays the retrenched employees separation pay equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher; (4) that the employer exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and (5) that the employer used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers.^[13]

The condition of business losses justifying retrenchment is normally shown by audited financial documents like yearly balance sheets and profit and loss statements as well as annual income tax returns. Financial statements must be prepared and signed by independent auditors. Otherwise, they may be assailed as self-serving. Since the losses incurred must be substantial and actual or reasonably imminent, it is necessary that the employer show that the losses increased through a period of time and that the condition of the company is not likely to improve in the near future.^[14]

The same evidence is generally required when the termination of employees is by reason of closure of the establishment or a division thereof for economic reasons, although the more overriding consideration is, of course, good faith. The employer must prove that the cessation of or withdrawal from business operations was bona fide in character and not impelled by a motive to defeat or circumvent the tenorial rights of employees.^[15]

Parenthetically, if the business losses that justify the closure of the establishment are duly proved, the right of affected employees to separation pay is lost for obvious reasons. Otherwise, the employer

closing his business is obligated to pay his employees their separation pay.^[16]

It is worth noting in this regard that the employer's prerogative to close or abolish a department or section of his establishment for economic reasons such as to minimize expenses and reduce capitalization is as much recognized as management's prerogative to close the entire establishment and cease operations due to adverse economic conditions.^[17]

In the instant case, petitioners presented in evidence an affidavit of the company's financial comptroller, financial statements for the year 1999 and a quarterly report in support of the company's claim of losses. Petitioners maintain that they were not given an opportunity to present the company's audited financial statements before the NLRC because private respondents' appeal thereto was dismissed without notice to petitioners. Since the case was brought to the Court of Appeals on certiorari under Rule 65 of the 1997 Rules of Civil Procedure, the audited financial statements attached to petitioners' Comment on Petition^[18] dated March 5, 2002 were no longer considered. Consequently, the appellate court ruled that the financial documents presented by petitioners are insufficient to prove their claim of business losses.

As they have the burden of proving the existence of an authorized cause, petitioners should have presented the company's audited financial statements before the labor arbiter who is in the position to evaluate evidence. That they failed to do so and only presented these documents to the Court of Appeals on certiorari is lamentable considering that the admission of evidence is outside the sphere of the appellate court's certiorari jurisdiction.^[19] Neither can this Court in the present petition admit in evidence the company's audited financial statements much more make a ruling on the question of whether the company incurred substantial losses justifying retrenchment on the basis thereof as this Court is not a trier of facts.^[20] Besides, it cannot even be ascertained from the audited financial statements attached to the instant petition whether the losses incurred by the company were indeed attributable to the brokerage department. We therefore agree with the appellate court

that petitioners failed to substantiate their claim of valid retrenchment.

We now proceed to consider the more decisive issue of whether the brokerage department was indeed closed down. The labor arbiter and the NLRC are one in ruling that the engagement of new employees was only for the purpose of overseeing the work of outside brokers who had to be hired to wind up the affairs of the company's remaining brokerage clients. The Court of Appeals ruled on the contrary saying that the brokerage department continued in operation based on its assessment of the evidence.

That the Court of Appeals weighed the evidence presented by the parties does not escape notice. As a general rule, in certiorari proceedings under Rule 65 of the Rules of Court under which the petition was brought to the Court of Appeals, the appellate court does not assess and weigh the sufficiency of evidence upon which the labor arbiter and the NLRC based their conclusions, the query being limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its resolution, except if the findings of the NLRC are not supported by substantial evidence.^[21]

We are inclined to agree with the appellate court that petitioners' evidence in support of their claim that the company's brokerage department was closed down is wanting. For instance, the records contain a letter dated August 16, 1999 from petitioners addressed to their clients insinuating that private respondents voluntarily left the company and that the brokerage department was merely reorganized and not closed down. The pertinent portions of the letter read:

Dear Ladies and Gentlemen:

Please be informed that in conjunction with the restructuring of the Danzas Brokerage Department, the following personnel has left the Company, with immediate effect.

- Mr. Arnulfo Cuevas
- Mr. Henry M. Daguman

- Mr. Amador T. Castro
- Mr. Jonas T. Culala
- Mr. Richard F. Salvador

The responsibility for brokerage activities has been transferred to Ms. Elizabeth Gotiam and her staff.

The management believes that with this step taken, brokerage services can be improved considerably.

If you should have any questions, please do not hesitate to contact Elizabeth directly.^[22] (*Emphasis supplied*)

Petitioners' assertion that the brokerage department was closed down because it has been found to be unprofitable and because the company did not want to run afoul of E.O. 11 which prohibits corporations with foreign equity to engage in the brokerage business is controverted by the foregoing letter which clearly expresses that the brokerage department was merely restructured to improve brokerage services. Moreover, petitioners' allegations are unsubstantiated and self-serving. Apart from a letter dated January 27, 2000 from the Securities and Exchange Commission requiring the company to appear and show cause why its articles of incorporation should not be amended to delete the business of customs brokerage from its primary purpose, which does not even appear to have been complied with, petitioners have not presented any evidence in support of its bullish claim that the brokerage department has been closed down.

On the contrary, private respondents' contention to the effect that the company continued in operation is supported by documentary evidence such as affidavits, transshipment permit and certificate of importation to the effect that the brokerage department continued in operation at least until June 2000.

We agree, likewise, with the keen observation of the Court of Appeals that the hiring of new employees purportedly to oversee the performance of outside brokers negates the need for the termination of private respondents due to closure of the brokerage department. The termination of private respondents was therefore unjustified either as retrenchment to prevent losses because petitioners' evidence

to prove business losses was insufficient, or closure of the establishment because the brokerage department did not actually cease operations.

Finally, we hold that the quitclaims executed by private respondents are not valid. The requisites for a valid quitclaim are: (1) that there was no fraud or deceit on the part of any of the parties; (2) that the consideration for the quitclaim is credible and reasonable; and (3) that the contract is not contrary to law, public order, public policy, morals or good customs or prejudicial to a third person with a right recognized by law.^[23] In this case, the consent of private respondents was procured through fraud and deceit on the part of petitioners who made it appear that the brokerage department was going to be closed down when it was not.

WHEREFORE, the petition is **DENIED**. The Decision of the Court of Appeals dated May 27, 2002 and its Resolution dated July 23, 2002 are hereby **AFFIRMED**. Costs against petitioners.

SO ORDERED.

PUNO, J., Chairman, AUSTRIA-MARTINEZ, CALLEJO, SR., and CHICO-NAZARIO, JJ., concur.

[1] Rollo, pp. 7-247, with Annexes.

[2] Id. at 209-218. Penned by Associate Justice Eliezer R. Delos Santos and concurred in by then Acting Presiding Justice (now Associate Justice of this Court) Cancio C. Garcia and Associate Justice Marina L. Buzon.

[3] Id. at 124-128 and 141-142, respectively dated August 27, 2001 and October 8, 2001.

[4] Id. at 114-122, dated September 6, 2000. Four complaints for illegal dismissal, illegal lay off and underpayment/nonpayment of overtime pay, premium pay for holiday, separation pay, retirement benefits, service incentive leave pay, actual, moral and exemplary damages and attorney's fees were filed.

[5] Culled from the decision of the labor arbiter quoted by the Court of Appeals.

[6] Supra note 2 at 210-212.

[7] Supra note 1 at 219-226.

[8] Id. at 247.

[9] Id. at 351-372.

[10] 364 Phil. 912 (1999).

- [11] Id. at 374-378.
- [12] Industrial Timber Corporation v. NLRC, 339 Phil. 395 (1997) citing San Pedro Hospital of Digos, Inc. v. Secretary of Labor, et al., G.R. No. 104624, October 11, 1996.
- [13] Asian Alcohol Corporation v. NLRC, supra note 10 at 926-927.
- [14] Ibid.
- [15] Reahs Corporation v. NLRC, 337 Phil. 698 (1997).
- [16] Ibid.
- [17] Dangan v. NLRC, 212 Phil. 653 (1984), citing Special Events Central Shipping Office Worker's Union v. San Miguel Corporation, 122 SCRA 557.
- [18] CA Records, pp. 167-187.
- [19] Matugas v. Comelec, G.R. No. 151944, January 20, 2004, 420 SCRA 365.
- [20] Lim v. COA, G.R. No. 130325, March 12, 2003, 399 SCRA 50.
- [21] Supra note 17, citations omitted.
- [22] NLRC Records, p. 39.
- [23] More Maritime Agencies, Inc. v. NLRC, 366 Phil. 646 (1999).