Republic of the Philippines
Supreme Court
Manila



**FIRST DIVISION**

**NORMAN PANALIGAN, IRENEO VILLAJIN, and GABRIEL PENILLA,**
Petitioners,

- *versus* -

**PHYVITA ENTERPRISES CORPORATION,**
Respondent.

**G.R. No. 202086**

Present:

SERENO,
Chairperson,
LEONARDO-DE CASTRO,
DEL CASTILLO,
JARDELEZA,* and
CAGUIOA, *JJ.*

Promulgated:
JUN 21 2017

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## DECISION

**LEONARDO-DE CASTRO, *J.*:**

Before this Court is a petition for review on *certiorari* pursuant to Rule 45 of the 1997 Rules of Civil Procedure seeking to reverse and set aside the Court of Appeals Decision[1] dated November 24, 2011 and Resolution[2] dated May 29, 2012 in CA-G.R. SP No. 111653, entitled "*Phyvita Enterprises Corporation v. National Labor Relations Commission, Norman Panaligan, Ireneo Villajin, Gabriel Penilla.*" The former issuance reversed and set aside the Decision[3] dated June 9, 2009 as well as the Resolution[4] dated September 25, 2009 of the National Labor Relations Commission (NLRC) which essentially ruled that petitioners Norman Panaligan, Ireneo Villajin and Gabriel Penilla (PANALIGAN, *et al.*) were illegally dismissed from their employment by respondent Phyvita Enterprises Corporation (PHYVITA) and were entitled to various monetary awards. The Court of Appeals, thus, reinstated the Labor Arbiter's July 31, 2007 Decision[5] which dismissed the complaint for illegal dismissal but held that petitioners were entitled to payment of salary differential. The May 29, 2012 Court of Appeals Resolution, on the other hand, denied for lack of merit PANALIGAN, *et al.*'s, motion for reconsideration.

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* Per Raffle dated June 19, 2017.

1 *Rollo*, pp. 45-59; penned by Associate Justice Ramon M. Bato, Jr. with Associate Justices Josefina Guevara-Salonga and Florito S. Macalino concurring.

2 Id. at 61-62.

3 Id. at 84-96.

4 Id. at 97-99.

5 Id. at 123-128.

We restate the salient facts as narrated in the assailed November 24, 2011 Court of Appeals Decision here:

> Petitioner Phyvita Enterprises Corporation x x x [respondent herein] is a domestic corporation organized and existing under the [sic] Philippine laws engaged in the business of health club massage parlor, spa and other related services under the name and style of Starfleet Reflex Zone ("Starfleet").
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> Private respondents [petitioners herein] Norman Panaligan ("Panaligan"), Ireneo Villajin ("Villajin") and Gabriel Penilla ("Penilla") x x x were the employees of Phyvita assigned as Roomboys at Starfleet. Panaligan was hired last 1 March 2002. Villajin was hired last 22 October 2002 and Penilla was hired on 22 October 2002.
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> Sometime [on] 25 January 2005, the Finance Assistant of Phyvita for Starfleet Girly Enriquez ("Enriquez") discovered that the amount of One Hundred Eighty Thousand Pesos (Php180,000.00) representing their sales for 22nd, 23rd and 24th of January 2005 [was] missing including receipts, payrolls, credit card receipts and sales invoices. She immediately reported the same to her immediate superior Jorge Rafols ("Jorge Rafols"). As such, they searched for the missing documents and cash. However, their search remained futile.
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> On 26 January 2005, Jorge Rafols and Enriquez reported the incident to their Vice President for Operations Henry Ting ("Henry Ting").
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> As advised by Phyvita's Legal Officer Maria Joy Ting ("Joy Ting"), they reported the alleged theft incident to the Parañaque City Police Station to conduct an investigation. However, the Parañaque Police were not able to gather sufficient information that would lead them as to who committed said theft. Being unsuccessful, the said police investigation was merely entered into the police blotter.
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> On 4 April 2005, while the police investigation was pending, [Petitioners] together with other employees, namely, Terio Arroyo ("Arroyo"), Nilo Mangco ("Mangco"), Bruce Maranquez ("Maranquez"), Michael Lachica ("Lachica"), Allan Grasparil ("Grasparil"), Allan Rose ("Rose"), Angelo Bernales ("Bernales"), Roberto Reyes ("Reyes"), Rommel Garcia ("Garcia"), Jay Ar Kasing ("Kasing"), Manuel Marquez ("Marquez") and Arnel Pullan ("Pullan") filed a complaint before the Department of Labor and Employment (DOLE) – National Capital Region (NCR) against Starfleet docketed as NCR 00-0504-IS-002. Their complaint was based on the alleged underpayment of wages, nonpayment of legal/special holiday, five (5)-day service incentive leave pay, night shift differential pay, no pay slip, signing of blank payroll, withheld salary due to non-signing of blank payroll.
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> Acting on the said complaint, on 13 April 2005, an inspection was conducted by the DOLE-NCR through its Labor and Employment Officers Augusto Gwyne C. Lasay and Edgar B. Bumanglag.

In the interim, on 28 April 2005, individual Office Memoranda were issued by Starfleet's Assistant Operations Manager Jerry Rafols ("Jerry Rafols") against [Petitioners] directing them to explain in writing why no disciplinary action shall be imposed against them for alleged violation of Class D1.14 of Starfleet's rules and regulation[s], particularly any act of dishonesty, whether the company has incurred loss or not[,] more specifically their alleged involvement in a theft wherein important documents and papers including cash were lost which happened last 25 January 2005 at [Phyvita]'s establishment. [Petitioners] were, likewise, placed on preventive suspension pending the investigation of the said alleged theft they committed. They were even asked to report at Phyvita on the 3rd, 9th and 10th of May 2005, respectively. Upon personal service of the said Office Memoranda, the said employees refused to receive the same.

Acting on the said Office Memoranda, only Panaligan submitted his hand written explanation which merely stated "wala ako kinalaman sa ibinibintang [sakin]."

Come the scheduled administrative hearing dates, [Petitioners] failed to attend the same. As such, Human Resource Department Manager of Phyvita Leonor Terible issued Office Memoranda against the same employees recommending them to participate in the administrative proceedings that Phyvita will conduct.

Having failed to participate in the investigation proceedings conducted by Phyvita, Memoranda dated 26 May 2005 were issued against [Petitioners] informing them that they are terminated from their employment on the ground that they violated the company's rules and regulation[s] by stealing company documents and cash. They were also informed that such termination is without prejudice to the filing of criminal charges against them.

On 17 June 2005, Arroyo, Mangco, Maranquez, Lachica and Grasparil agreed to settle their claims, in the complaint filed before the DOLE-NCR, by way of Quitclaim and Releases duly executed before Senior Labor and Employment Officer Marilou D. Tumanguil.

On 28 June 2005, Phyvita, as represented by Enriquez, filed a criminal complaint for theft against [Petitioners] including Marquez, Lorenzo, Devanadero and Rose before the Office of the City Prosecutor of Parañaque.

On 31 July 2005, by virtue of the aforesaid Quitclaim and Releases, the said complaint before the DOLE-NCR, in so far as the [Petitioners], Rose, Bernales, Reyes, Garcia, Kasing, Marquez and Pullan are concerned, was endorsed to the NCR Arbitration Branch of the NLRC for proper proceedings.

On 30 September 2005, the criminal complaint was dismissed by 3rd Assistant City Prosecutor Antonietta Pablo-Medina there being no sufficient evidence submitted by the parties to warrant the finding of the crime of theft against aforesaid employees.

On 14 November 2006, [Petitioners] filed the complaint with the NLRC alleging, inter alia, illegal dismissal and payment of separation pay.

On 9 January 2007, they amended their complaint claiming for reinstatement and payment of full backwages, instead of their previous claim for separation pay. The case was docketed as NLRC NCR 00-11-09431-06.

Conciliation failed, thus, the parties submitted their respective Position Papers and Reply.

In their Position Paper and Reply, the [Petitioners] argue that, as room boys of Starfleet, they were required to report for work from 10 am to 7 pm as morning shift, 6 pm to 3 am as evening shift and 8 pm to 5 am as closing shift. They were also required to work six (6) days a week, including holidays, without any overtime pay, holiday pay, premium pay for holiday and rest day and service incentive leave pay. For their salary, they were only receiving a basic monthly salary of Php3,600.00 or Php138.00 per day. Being underpaid of their basic salary, their 13th month pay were likewise underpaid. They were also not given their pro-rated 13th month pay after their illegal dismissal last 2005. They also claim that Starfleet requires their employees to sign blank payroll sheets before their salaries are given to them. They also assert that their termination was a mere retaliatory measure on the part of Starfleet because they have filed a complaint before the DOLE and refused to amicably settle the same. They claim that to unjustly accuse them of stealing would be a violation of Article 118 of the Labor Code. Their dismissal was, likewise, in violation of the requirements provided by law and jurisprudence to validly terminate them. The charge of theft against them was baseless. In fact, the said criminal complaint against them was dismissed by the City Prosecutor for the simple reason that there was no direct, solid or concrete proof directing them to the commission of theft. Starfleet also has no basis to terminate them on the ground of loss of trust and confidence since said ground for dismissal was without any basis or proof.

Starfleet, Jorge Rafols and [Joy] Ting, on the other hand, stated in their Position Paper and Reply that [Petitioners] got involved in the theft of important office documents and other valuable items on 25 January 2005. They were given an opportunity to explain themselves through Memoranda but they refused to receive and acknowledge the same. They also did not appear during the administrative investigations. They claim that [Petitioners'] dismissal were legal under Article 282 of the Labor Code since the commission of theft is a serious misconduct and an act which gives rise to fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative. Thus, it is a sufficient ground to justify their dismissal. The dismissal of the criminal complaint against [Petitioners] is immaterial since they were still validly dismissed based on breach of trust. They even alleged that the filing of the instant labor complaint was a mere afterthought. In support of their claim that the employees were paid according to the mandated wage and benefits, they presented copies of their payroll sheets. On the alleged double bookkeeping, Starfleet countered the said allegation by stating that said blank payroll sheets does not prove anything primarily because they were not signed by the manager nor the payroll officer and does not contain any data. These blank payroll sheets were even the subject of the crime of theft which Starfleet filed against [Petitioners]. The fact that the

> blank payroll sheets are in their possession establishes the fact that they unquestionably committed the crime of theft.[6]

Labor Arbiter Jose G. De Vera declared in his Decision dated July 31, 2007 that PANALIGAN, *et al.*, were legally terminated from employment on the ground of loss of trust and confidence. The dispositive portion of said judgment reads:

> WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered ordering the respondents to pay the complainants the sum of ₱29,000.00 each, or the aggregate sum of ₱87,000.00 as salary differential.
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> All other claims, including the charge of illegal dismissal are dismissed for lack of merit.[7]

Upon appeal by PANALIGAN, *et al.*, the aforementioned ruling was reversed and set aside by the NLRC in its Decision dated June 9, 2009. The NLRC arrived at the conclusion that PANALIGAN, *et al.*, were illegally dismissed from employment, thus, ordering the following:

> ACCORDINGLY, the appealed Decision is hereby REVERSED and SET ASIDE and a new one is ENTERED declaring complainants to be illegally terminated whereby respondent-appellees Starfleet Reflex Zone/Jorge Rafols and [Joy] Ting liable to pay complainants their separation pay in the amount of Php69,524.00, Php69,524.00 and Php69,524.00 and; backwages in the amount of Php473,425.17, Php473,425.17 and Php473,425.17, respectively. Further, respondents are ordered to pay complainants their salary differentials in the amount of Php48,251.84, Php48,251.84 and Php48,251.84, respectively. And, the amount of Php6,000.00, Php6,000.00 and Php6,000.00, representing their respective unpaid salaries for the period of April 1-28, 2005.[8]

The NLRC subsequently denied PHYVITA's motion for reconsideration through a Resolution dated September 25, 2009.

Thus, PHYVITA elevated this case to the Court of Appeals. The appellate court reversed the NLRC issuances and reinstated the July 31, 2007 Decision of the Labor Arbiter, to wit:

> WHEREFORE, the instant petition is hereby GRANTED. The assailed Decision dated 09 June 2009 and Resolution 25 September 2009 issued by the National Labor Relations Commission are REVERSED and SET ASIDE. The Decision dated 31 July 2007 of Labor Arbiter Jose G. De Vera is hereby REINSTATED.[9]

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6 Id. at 46-50.
7 Id. at 128.
8 Id. at 95.
9 Id. at 58

A motion for reconsideration filed by PANALIGAN, *et al.*, was denied for lack of merit by the Court of Appeals in its Resolution dated May 29, 2012.

Hence, PANALIGAN, *et al.*, filed the present petition with this Court relying on the following grounds in support of the same:

I.

WITH ALL DUE RESPECT, THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN REVERSING THE JUDGMENT AWARD FOR SALARY DIFFERENTIALS AND UNPAID SALARIES WHEN THE BASIS FOR THE SAME WAS NOT EVEN DISCUSSED IN ITS DECISION.

II.

WITH UTMOST DEFERENCE, THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN HOLDING THAT RESPONDENT HAD SUBSTANTIALLY PROVEN THE LEGALITY OF PETITIONERS' DISMISSAL DUE TO SERIOUS MISCONDUCT DESPITE THE LACK OF CONVINCING EVIDENCE SHOWING THEIR INVOLVEMENT IN THE ALLEGED INCIDENT OF THEFT AND THE LACK OF CONCRETE PROOF THAT THE PAYROLLS WERE PART OF THE STOLEN ITEMS.

III.

WITH UTMOST DEFERENCE, THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN HOLDING THAT RESPONDENT HAD SUBSTANTIALLY PROVEN THE LEGALITY OF PETITIONERS' DISMISSAL DUE TO LOSS OF TRUST AND CONFIDENCE DESPITE THE FACT THAT IT IS SIMULATED, USED AS A SUBTERFUGE FOR ILLEGAL ACTION, ARBITRARILY ASSERTED AND A MERE AFTERTHOUGHT.[10]

PANALIGAN, *et al.*, argued that the assailed November 24, 2011 Decision of the Court of Appeals failed to state any factual, legal and equitable justification why the NLRC's monetary awards for salary differential and unpaid salaries were also set aside. They likewise asserted that theft, as the basis of their purported serious misconduct, was not established by evidence since, according to them, the ruling of the Court of Appeals failed to state how the alleged theft was committed by them and what evidence can be found on record to support such finding. Lastly, they maintained that the alleged theft was utilized by PHYVITA as a subterfuge to justify their dismissal without adequate cause. They characterized the criminal complaint against them as a retaliatory action by PHYVITA for their refusal to settle and withdraw the complaint they filed with the Department of Labor and Employment – National Capital Region Office

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[10] Id. at 19.

(DOLE-NCR) for underpayment of wages and nonpayment of other labor standard benefits.

On the other hand, PHYVITA claimed that the Court of Appeals correctly ruled that there were just causes to dismiss PANALIGAN, *et al.*, from their employment; namely, serious misconduct and loss of trust and confidence. PHYVITA contended that, despite the dismissal by the Office of the City Prosecutor of Parañaque of the criminal complaint for theft against PANALIGAN, *et al.*, on the ground of lack of probable cause, there was substantial evidence to support a valid dismissal from employment as ruled by the Court of Appeals. PHYVITA maintained that PANALIGAN, *et al.*'s possession of stolen payroll slips is sufficient to justify the termination of PANALIGAN, *et al.*

After an assiduous evaluation of the parties' submissions, we find the petition meritorious.

The fundamental question that needs to be resolved in this case is whether or not there exists just and valid cause for the termination of PANALIGAN, *et al.*'s, employment by PHYVITA. A review of the conflicting findings on this matter by the Labor Arbiter and the Court of Appeals, on one hand, and the NLRC, on the other, yields the conclusion that the allegations of **serious misconduct** and **loss of trust and confidence** against PANALIGAN, *et al.*, cannot be upheld.

The applicable provision of law to this case is Article 297 of the Labor Code, as amended, which states:

> ARTICLE 297. *Termination by Employer.* — An employer may terminate an employment for any of the following causes:
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> (a) **Serious misconduct** or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
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> (b) Gross and habitual neglect by the employee of his duties;
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> (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 representative; and
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> (e) Other causes analogous to the foregoing. (Emphases supplied.)

In *Maula v. Ximex Delivery Express, Inc,*[11] this Court reiterated previous pronouncements on the nature of serious misconduct as a just cause to terminate an employee according to the Labor Code. To quote:

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[11] G.R. No. 207838, January 25, 2017.

> Misconduct is improper or wrong conduct; it is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. The misconduct, to be serious within the meaning of the Labor Code, must be of such a grave and aggravated character and not merely trivial or unimportant. Thus, for misconduct or improper behavior to be a just cause for dismissal, (a) it must be serious; (b) it must relate to the performance of the employee's duties; and (c) it must show that the employee has become unfit to continue working for the employer.

On the other hand, loss of trust and confidence, as a just cause for termination of employment, is premised on the fact that an employee concerned holds a position where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected. The betrayal of this trust is the essence of the offense for which an employee is penalized. [12] Loss of trust and confidence to be a valid cause for dismissal must be work related such as would show the employee concerned to be unfit to continue working for the employer and it 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.[13]

Willful breach of trust, as just cause for the termination of employment, is founded on the fact that the employee concerned: (1) holds a position of trust and confidence, *i.e.*, managerial personnel or those vested with powers and prerogatives to lay down management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees; or (2) is routinely charged with the care and custody of the employer's money or property, *i.e.*, cashiers, auditors, property custodians, or those who, in normal and routine exercise of their functions, regularly handle significant amounts of money or property. In any of these situations, it is the employee's breach of the trust that his or her position holds which results in the employer's loss of confidence.[14]

For an employer to validly dismiss an employee on the ground of loss of trust and confidence under Article 282(c) of the Labor Code, the employer must observe the following guidelines: 1) loss of confidence should not be simulated; 2) it should not be used as subterfuge for causes which are improper, illegal or unjustified; 3) it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and 4) it must be genuine, not a mere afterthought to justify earlier action taken in bad

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12 *Cocoplans, Inc. v. Villapando,* G.R. No. 183129, May 30, 2016.
13 *Venzon v. ZAMECO II Electric Cooperative, Inc.*, G.R. No. 213934, November 9, 2016.
14 *Inocente v. St. Vincent Foundation for Children and Aging, Inc.*, G.R. No. 202621, June 22, 2016.

faith. More importantly, it must be based on a willful breach of trust and founded on clearly established facts.[15]

Thus, in order to dismiss an employee on the ground of loss of trust and confidence, the employee must be guilty of an actual and willful breach of duty duly supported by substantial evidence.[16] Substantial evidence is that amount of evidence which a reasonable mind might accept as adequate to support a conclusion.[17]

In termination cases, the burden of proof rests on the employer to show that the dismissal is for a just cause.[18] In the case at bar, PHYVITA failed to adduce substantial evidence that would clearly demonstrate that PANALIGAN, *et al.*, have committed serious misconduct or have performed actions that would warrant the loss of trust and confidence reposed upon them by their employer. Contrary to the findings of the Court of Appeals and the Labor Arbiter, no substantial evidence supports the allegation of theft leveled by PHYVITA against PANALIGAN, *et al.* - the said criminal act being the underlying reason for the dismissal of the latter from being employees of the former.

The records of this case clearly indicate that no direct evidence was presented to link PANALIGAN, *et al.*, to the theft that they allegedly committed. In fact, the questioned payroll sheets that PANALIGAN, *et al.*, attached to the labor complaint they filed before the DOLE-NCR are the only concrete proof that PHYVITA used to support its allegation. However, the said documents were not specifically enumerated as among the stolen items in the police report[19] of the alleged incident of theft, while a previous incident report[20] merely stated that "several copies of payroll" were taken. PHYVITA first claimed that these payroll sheets allegedly stolen from Enriquez's safekeeping were the same ones in PANALIGAN, *et al.*'s, possession when its employee, Jesse Pangilinan (Pangilinan), executed an affidavit[21] to that effect right after attending a preliminary hearing of the labor case initiated by PANALIGAN, *et al.* Pangilinan's statement was supported by the joint affidavit[22] made by Rommel Garcia (Garcia) and Jay-R Kasing (Kasing) who were also in PHYVITA's employ.

The problem with Pangilinan's statement is that it is self-serving since it favors his employer which is involved in a labor dispute with PANALIGAN, *et al.*, and it does not show criminal liability since it only establishes PANALIGAN, *et al.*'s, possession of the questioned payroll sheets but not the fact that they themselves stole the same.

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15 *Continental Micronesia, Inc. v. Basso*, G.R. Nos. 178382-83, September 23, 2015, 771 SCRA 329, 351, citing *Apo Cement Corporation v. Baptisma*, 688 Phil. 468, 480-481 (2012).

16 *Leo's Restaurant and Bar Café v. Densing*, G.R. No. 208535, October 19, 2016.

17 *Mamba v. Bueno*, G.R. No. 191416, February 7, 2017.

18 *Turks Shawarma Co. v. Pajaron*, G.R. No. 207156, January 16, 2017.

19 *Rollo*, p. 222.

20 Id. at 221.

21 Id. at 176-177.

22 Id. at 178-179.

Furthermore, Pangilinan's statement is inconsistent with the other facts on record. According to Pangilinan's affidavit, he only knew that the questioned payroll sheets were in the possession of PANALIGAN, *et al.*, when they presented the same during the May 29, 2005 DOLE-NCR hearing.[23] The aforementioned date is crucial to this case because the month before, or on April 28, 2005, PANALIGAN, *et al.*, were preventively suspended from work by PHYVITA and given written notices to explain in writing within twenty-four (24) hours why they should not face disciplinary sanction for their alleged involvement in the January 25, 2005 incident of theft.[24] Due to their non-appearance at the scheduled in-house investigation and conference, PANALIGAN, *et al.*, were then served individual notices dated May 26, 2005, that they were terminated from PHYVITA's employ for their alleged participation in the theft.[25] Thereafter, sometime in June 2005, Garcia and Kasing purportedly came forward and pointed to PANALIGAN, *et al.*, as among the perpetrators of the alleged theft. Considering the said chronology of events, there was no clear ground for PHYVITA to preventively suspend and later terminate the services of PANALIGAN, *et al.*, when the company's actions predated the bases for doing so – the discovery of the questioned payroll sheets by Pangilinan allegedly on May 29, 2005 as stated in his affidavit and the revelations of Garcia and Kasing allegedly made sometime in June 2005. Alternatively stated, respondent company had charged and terminated PANALIGAN, *et al.*, before it had even obtained its supposed "proof" of their misdeed.

To be sure, the joint affidavit of Garcia and Kasing deserves scant consideration because it contains statements which are hearsay. They merely claimed that another employee, Arnel Pullan, told them that PANALIGAN, *et al.*, were part of the group that stole the questioned payroll sheets from the Executive Office. Evidently, they did not have personal knowledge of the alleged theft. Furthermore, their claim was flatly denied by PANALIGAN, *et al.* It is likewise interesting to note that Garcia and Kasing were former co-complainants of PANALIGAN, *et al.*, in the labor case at issue but later withdrew from pursuing it after entering into a compromise agreement with PHYVITA along with six other complainants. Premises considered, their statements cannot be fully relied upon because it is highly probable that the same may have been secured in exchange for some consideration.

Similarly, the complaint-affidavit[26] of Girly Enriquez (PHYVITA's Finance Assistant) and the affidavit of Jorge Rafols (PHYVITA's Operations Manager) rely heavily on the assertions made by Pangilinan, Garcia and Kasing in order for said affiants to arrive at their conclusion that PANALIGAN, *et al.*, were responsible for the incident of theft. They did

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23 In other parts of the record, the date of the hearing was purportedly May 23, 2005.
24 *Rollo*, pp. 150-156.
25 Id. at 165-167.
26 Id. at 169-172.

not personally witness the commission of the alleged theft by PANALIGAN, *et al.* In fact, none of PHYVITA's witnesses did as Pangilinan merely provided doubtful circumstantial evidence and Garcia and Kasing put forward corroborating testimony that is undoubtedly hearsay and not of their personal knowledge. Given these circumstances, these affidavits executed by PHYVITA's officers cannot be given probative weight.

PHYVITA argues that, being in possession of stolen items, PANALIGAN, *et al.*, are presumed to have stolen the same unless contradicted or overcome by other evidence as mandated by Rule 131, Section 3(j) of the Revised Rules on Evidence, to wit:

> SEC. 3. *Disputable presumptions.* – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
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> x x x x
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> (j) That a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act; otherwise, that things which a person possesses, or exercises acts of ownership over, are owned by him[.]

We have held that the application of the disputable presumption that a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and doer of the whole act is limited to cases where such possession is either unexplained or that the proffered explanation is rendered implausible in view of independent evidence inconsistent thereto.[27] In the present case, petitioners' possession of the questioned payroll sheets was explained by the sworn affidavit of former PHYVITA employee Allan Grasparil (Grasparil) who freely admitted that he was the source of the documents which he allegedly received from Enriquez. Significantly, PHYVITA proffered no counter-statement from Enriquez specifically refuting Grasparil's narrative.

The June 9, 2009 Decision of the NLRC made use of Grasparil's testimony to support its finding that no substantial evidence was shown to prove that PANALIGAN, *et al.*, were guilty of theft and that they were illegally dismissed from employment, explaining thus:

> Notably, a former employee of respondent-appellees by the name of Mr. Allan Grasparil explained that a co-employee, Ms. Girly Enriquez, approached him on January 25, 2005 and required him to sign a payroll sheet. Further, he was also directed to let his other co-workers to sign the same and to thereafter return it to her. However, he failed to return the said document. That when they filed a complaint before the DOLE he allegedly remembered the payroll sheet and they used it as evidence (p. 120, record). Remarkably, this crucial statement of Mr. Grasparil was not disputed by

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27 *People v. Urzais*, G.R. No. 207662, April 13, 2016.

respondents-appellees. Hence, deemed admitted pursuant to Section 32, Rule 130 of the Revised Rules on Evidence, to wit:

> An act or declaration made in the presence and within the hearing or observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, and when proper and possible for him to do so, may be given in evidence against him.[28]

In *Fernandez v. Newfield Staff Solutions, Inc.*,[29] we reiterated our previous ruling in *Solas v. Power & Telephone Supply Phils., Inc.*[30] that this manner of silence constitutes an admission that fortifies the truth of the employee's narration.

It is worth noting that Grasparil was also one of the original complainants in the labor case filed against PHYVITA by PANALIGAN, *et al.*, but later withdrew from the same after entering into a compromise agreement with PHYVITA not unlike Garcia and Kasing. Therefore, we have a situation wherein three similarly situated individuals have divergent and conflicting claims over the important issue of who was the source of the questioned payroll sheets with Grasparil openly admitting the same and Garcia and Kasing pointing to PANALIGAN, *et al.*, based solely on hearsay evidence. At the very least, this circumstance casts doubt upon the evidence so far presented by both parties. With this development, we are compelled to uphold the case for PANALIGAN, *et al.*, since it is settled doctrine that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter.[31]

Grasparil also stated in his affidavit that aside from monetary consideration, his compromise agreement with the company included a mutual desistance from the cases they filed against each other. PHYVITA allegedly proceeded with the prosecution of the case against those who did not enter into a compromise with it. We quote the relevant portion of Grasparil's affidavit here:

> (3) Ukol po sa nasabing kaso sa nasabing ahensiya ng gobyerno [Department of Labor], ako po ay napilitang makipagkasundo sa aming *employer* upang iurong ang aking reklamo laban sa kanila at sa pangakong hindi nila ako idadawit sa kasong isinampa nila sa mga trabahador na nagreklamo laban sa kanila;
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> (4) Sa ganito pong sitwasyon ay binigyan nila ako ng halagang ₱15,000.00 bilang kabayaran sa aking *separation pay* at pag-uurong ng kasong [sic] sa **DEPARTMENT OF LABOR**;
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> (5) Tinupad naman po nila ang kanilang pangako at hindi nila ako idinawit sa kaso na kanilang isinampa sa aking mga kasama sa trabaho,

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28 *Rollo*, p. 88.

29 713 Phil. 707, 716 (2013), citing *Tegimenta Chemical Phils. v. Oco*, 705 Phil. 57, 64 (2013).

30 585 Phil. 513, 524 (2008).

31 *Continental Micronesia, Inc. v. Basso*, supra note 15 at 355.

> subalit itinuloy po nila ang kaso laban sa aking mga kasamahang hindi nakipagkasundo o nakipag-ayos sa kanila[.][32]

Taking into consideration the fact that the DOLE-NCR conducted an inspection of the respondent's premises on April 13, 2005 as a result of the labor complaint filed by PANALIGAN, *et al.*, on April 4, 2005[33] and PANALIGAN, *et al.*, were implicated in the alleged January 25, 2005 theft incident only thereafter, a reasonable inference can be made that PANALIGAN, *et al.*'s, termination of employment may have been indeed a retaliatory measure designed to coerce them into withdrawing their complaint for underpayment of wages and nonpayment of other labor standard benefits. Such an act is proscribed by Article 118 of the Labor Code which states:

> **Art. 118. Retaliatory Measures** – It shall be unlawful for an employer to refuse to pay or reduce the wages and benefits, discharge or in any manner discriminate against any employee who has filed any complaint or instituted any proceeding under this title or has testified or is about to testify in such proceedings.

There is no question that PANALIGAN, *et al.*, occupied positions that are reposed with trust and confidence. Jurisprudence states that the job of a roomboy or chambermaid in a hotel is clearly of such a nature as to require a substantial amount of trust and confidence on the part of the employer.[34] There is merit as well in PHYVITA's assertion that the dismissal of its criminal complaint does not necessarily exonerate PANALIGAN, *et al.*, from a charge of loss of trust and confidence. However, even with the lower burden of proof in labor cases, there is a dearth of substantial evidence to support a finding that PANALIGAN, *et al.*, were indeed guilty of a willful breach of their employer's trust. We are constrained to conclude that there is no just and valid cause to terminate the employment of PANALIGAN, *et al.*, for loss of trust and confidence or even for serious misconduct.

Therefore, we uphold the NLRC in finding that PANALIGAN, *et al.*, were illegally dismissed from employment by PHYVITA and, thus, are entitled to separation pay, in lieu of reinstatement, and full backwages. Given the obviously strained relations between the parties and the length of time that PANALIGAN, *et al.*, have been separated from their employment in PHYVITA, we agree with the NLRC that the doctrine of strained relations must apply wherein the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable.[35]

Finally, we find no reason to disturb the NLRC's ruling regarding the award of salary differentials and unpaid salaries for April 2005 to

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32 *Rollo*, p. 235.
33 Id. at 213-214.
34 *Manila Midtown Commercial Corp. v. Nuwhrain*, 242 Phil. 681, 686-687 (1988).
35 *TPG Corp. v. Pinas*, G.R. No. 189714 (Resolution), January 25, 2017.

PANALIGAN, *et al.* The Labor Arbiter and the NLRC both found that PANALIGAN, *et al.*'s, wages were underpaid based on the documents on record; they only differed in the period or the number of months. We agree with the NLRC that PHYVITA should be liable for PANALIGAN, *et al.*'s, claims for underpaid salaries that had not yet prescribed at the time of the filing of the complaint. Moreover, it is settled even in labor cases that "one who pleads payment has the burden of proving it. Even where the plaintiff must allege nonpayment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove nonpayment."[36] In another case, we upheld the NLRC's ruling that the burden of proof rests on the employer to show that it has not committed any violation of labor standard laws, in particular the full payment of the legally mandated wages.[37] If PHYVITA had truly paid PANALIGAN, *et al.*, their correct wages, it had every opportunity to produce all relevant payrolls and documents in the proceedings below instead of merely submitting incomplete documents relating to February 2005 salaries, 13th month pay and service incentive leave.

**WHEREFORE**, the petition is **GRANTED**. The Decision dated November 24, 2011 and the Resolution dated May 29, 2012 of the Court of Appeals in CA-G.R. SP No. 111653 are hereby **REVERSED** and **SET ASIDE**. The Decision dated June 9, 2009 and the Resolution dated September 25, 2009 of the National Labor Relations Commission in NLRC-LAC Case No. 09-002564-07 and NLRC-NCR Case No. 00-11-09431-06 are hereby **REINSTATED**.

**SO ORDERED.**

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

WE CONCUR:

**MARIA LOURDES P. A. SERENO**
Chief Justice
Chairperson

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36 *Audion Electric Co., Inc. v. National Labor Relations Commission,* 367 Phil. 620, 632 (1999).
37 *RTG Construction, Inc. v. Amoguis,* 257 Phil. 923, 929 (1989).

**MARIANO D. DEL CASTILLO**
Associate Justice

**FRANCIS H. JARDELEZA**
Associate Justice

**ALFREDO BENJAMIN S. CAGUIOA**
Associate Justice

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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