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Wilfredo V. Lapitan
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

Republic of the Philippines
Supreme Court
Manila

MAR 23 2018

THIRD DIVISION

PERFECTO M. PASCUA,
Petitioner,

G.R. No. 191460

-versus-

BANK WISE, INC. and
PHILIPPINE VETERANS BANK,
Respondents.

X-----X
BANKWISE, INC.,
Petitioner,

X-----X
G.R. No. 191464

Present:

VELASCO, JR., J., *Chairperson*,
BERSAMIN,
LEONEN,
MARTIRES,* and
GISMUNDO, JJ.

-versus-

PERFECTO M. PASCUA and
PHILIPPINE VETERANS BANK,
Respondents.

Promulgated:
January 31, 2018

X-----X
Wilfredo V. Lapitan

* On official business as per Letter dated January 18, 2018.

DECISION**LEONEN, J.:**

There is constructive dismissal when an employee is compelled by the employer to resign or is placed in a situation where there would be no other choice but to resign. An unconditional and categorical letter of resignation cannot be considered indicative of constructive dismissal if it is submitted by an employee fully aware of its effects and implications.

For resolution are two (2) separate Petitions for Review on Certiorari¹ assailing the July 13, 2009 Decision² and February 22, 2010 Resolution³ of the Court of Appeals in CA-G.R. SP No. 103453. The Court of Appeals affirmed the Labor Arbiter and National Labor Relations Commission's finding that Perfecto M. Pascua (Pascua) was constructively dismissed. The Court of Appeals, however, absolved Philippine Veterans Bank from liability and held only Bankwise, Inc. (Bankwise) liable for Pascua's money claims.

Pascua was employed by Bankwise as its Executive Vice President for Marketing on July 1, 2002.⁴

On September 29, 2004, Philippine Veterans Bank and Bankwise entered into a Memorandum of Agreement for the purchase of Bankwise's entire outstanding capital stock.⁵ On January 12, 2005, Philippine Veterans Bank allegedly assumed full control and management of Bankwise.⁶ Philippine Veterans Bank allegedly elected new members of the Board of Directors and appointed a new set of officers, including the President and Chief Operating Officer.⁷

Pascua was reassigned to a Special Accounts Unit but his duties, functions, and responsibilities were not clearly delineated or defined.⁸

¹ *Rollo* (G.R. No. 191460), pp. 8–33 and *Rollo* (G.R. No. 191464), pp. 10–41.

² *Rollo* (G.R. No. 191460), pp. 57–70 and *Rollo* (G.R. No. 191464), pp. 43–56. The Decision was penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Isaias P. Dicdican and Marlene Gonzales-Sison of the Seventh Division, Court of Appeals, Manila.

³ *Rollo* (G.R. No. 191460), pp. 82–84. The Resolution was penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Isaias P. Dicdican and Marlene Gonzales-Sison of the Former Seventh Division, Court of Appeals, Manila.

⁴ *Id.* at 47, NLRC Decision.

⁵ *Id.* at 85–95, Memorandum of Agreement.

⁶ *Id.* at 47, NLRC Decision.

⁷ *Id.* at 49.

⁸ *Id.*

On February 3, 2005, Pascua was informed by Roberto A. Buhain (Buhain), President of Bankwise, that as part of the merger or trade-off agreement with Philippine Veterans Bank, he should tender his resignation.⁹ Buhain assured Pascua that he would be paid all his money claims during this transition.¹⁰ Instead of tendering his resignation, Pascua wrote a letter dated February 7, 2005, wherein he pleaded, among others, that he stay in office until the end of the year.¹¹

Seeing as Pascua had yet to submit his resignation, Vicente Campa (Campa), a director of Bankwise, told him that it was imperative that he submit his resignation and assured his continued service with Philippine Veterans Bank.¹² Based on Campa's assurance, Pascua tendered his resignation on February 22, 2005. His letter of resignation read:

SIR:

IN ACCORDANCE WITH THE INSTRUCTIONS OF THE
PREVIOUS OWNERS OF THE BANK, I HEREBY TENDER
MY RESIGNATION FROM THE BANK.¹³

On March 6, 2005, Pascua wrote a letter to Campa reminding him of his money claims due to his resignation.¹⁴ Because of "the urgency of [his] financial needs,"¹⁵ he proposed the initial payment of his midyear bonus of ₱150,000.00 or the transfer of his Bankwise loan amounting to ₱1,000,000.00 to offset his claim.¹⁶ Pascua alleged that he was summoned by Buhain to his office on March 8, 2005 and handed a letter of acceptance of his resignation effective March 31, 2005.¹⁷

In a letter dated March 12, 2005, Pascua informed Buhain that per Buhain's suggestion, he asked Campa to request Bankwise's Board of Directors for the extension of his service until August 30, 2005. Both Philippine Veterans Bank and Bankwise, however, denied the request. Pascua allegedly inquired from Buhain how his money claims would be paid in view of "the passive attitude" of the banks. Buhain allegedly assured him that he already sought a meeting with Campa on the matter. During the meeting Campa also assured him that all his money claims would be paid by the previous owners of Bankwise.¹⁸

⁹ Id.

¹⁰ Id. at 49-50.

¹¹ Id.

¹² Id. at 51.

¹³ Id.

¹⁴ Id. at 52.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id. at 37, Labor Arbiter's Decision.

¹⁸ Id.

Due to the inaction of Philippine Veterans Bank and Bankwise, Pascua sent Buhain a letter dated April 13, 2005, demanding the early settlement of his money claims.¹⁹ The demand was not heeded. Thus, Pascua filed a Complaint for illegal dismissal, non-payment of salary, overtime pay, holiday pay, premium pay for holiday, service incentive leave, 13th month pay, separation pay, retirement benefits, actual damages, moral damages, exemplary damages, and attorney's fees against Bankwise and Philippine Veterans Bank.²⁰

In his November 25, 2005 Decision,²¹ the Labor Arbiter dismissed the Complaint on the ground that Pascua had voluntarily resigned. The Labor Arbiter relied on Pascua's resignation letter dated February 22, 2005 and paragraph 8 of his Contract of Employment²² stating that no verbal agreement between the employee and Bankwise may alter the terms of employment. The Labor Arbiter found that there was no evidence in writing to prove the alleged private agreement among Pascua, Buhain, and Campa.²³

Pascua appealed to the National Labor Relations Commission. In its October 31, 2007 Decision,²⁴ the National Labor Relations Commission reversed the Labor Arbiter's findings and held that Pascua was constructively dismissed.²⁵ It found that Pascua was separated from service as part of the merger or trade-off deal between Bankwise and Philippine Veterans Bank and was forced to accept his separation from service on the promise that he would be paid severance pay and his other benefits.²⁶ The dispositive portion of this Decision read:

WHEREFORE, premises considered, the assailed Decision is hereby REVERSED and SET ASIDE and a NEW one rendered whereby, the respondents Bank Wise, Inc. and Philippine Veterans Bank are hereby ordered to pay complainant Perfecto M. Pascua the amount of Php7,608,543.54 representing his backwages, separation pay and attorney's fees as above computed.

SO ORDERED.²⁷

¹⁹ Id. at 38.

²⁰ Id. at 102-103.

²¹ Id. at 35-45. The Decision, docketed as NLRC-NCR-00-05-04129-05, was penned by Labor Arbiter Edgardo M. Madriaga of the National Labor Relations Commission, Quezon City.

²² *Rollo* (G.R. No. 191464), pp. 67-68, Contract of Employment.

8. VERBAL AGREEMENT

It is understood that there are no verbal agreement or understanding between you and the Bank or any of its agents and representatives affecting this Agreement. And that no alterations or variations of its terms shall be binding upon either party unless the same are reduced in writing and signed by the parties herein.

²³ *Rollo* (G.R. No. 191460), p. 44.

²⁴ Id. at 46-55. The Decision, docketed as NLRC CA No. 047154-06, was penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Perlita B. Velasco and Romeo L. Go of the First Division, National Labor Relations Commission, Quezon City.

²⁵ Id. at 53.

²⁶ Id. at 51.

²⁷ Id. at 54.

Philippine Veterans Bank and Bankwise filed separate Motions for Reconsideration dated December 14, 2007²⁸ and December 17, 2007,²⁹ respectively, before the National Labor Relations Commission. In its March 14, 2008 Resolution, the National Labor Relations Commission resolved to deny the Motions for Reconsideration filed “by the respondents” even though it only mentioned the December 14, 2007 Motion for Reconsideration.³⁰

Philippine Veterans Bank filed a Petition for Certiorari before the Court of Appeals, arguing that Pascua’s resignation was voluntary. It also argued that even assuming Pascua was constructively dismissed, it should not be made liable with Bankwise since it was separate and distinct from it.³¹

On February 7, 2008, during the pendency of the Petition for Certiorari with the Court of Appeals, the Monetary Board of the Bangko Sentral ng Pilipinas determined that Bankwise was insolvent and adopted Resolution No. 157 forbidding Bankwise from further doing business in the Philippines.³² In the same Resolution, the Monetary Board placed Bankwise under receivership and designated Philippine Deposit Insurance Corporation as its receiver.³³ On October 30, 2008, the Monetary Board issued Resolution No. 1386 directing the Philippine Deposit Insurance Corporation to proceed with the liquidation of Bankwise.³⁴

On July 13, 2009, the Court of Appeals rendered its assailed Decision,³⁵ finding that Pascua was constructively dismissed but held that only Bankwise should be made liable to Pascua for his money claims.³⁶ The dispositive portion of this Decision read:

WHEREFORE, the petition is DISMISSED while the assailed decision of the NLRC is PARTLY AFFIRMED with the modification that only respondent Bank Wise is ordered to pay Perfecto M. Pascua backwages, separation pay and attorney’s fees.

SO ORDERED.³⁷

The Court of Appeals found that there was no certificate of merger

²⁸ *Rollo* (G.R. No. 191464), pp. 92–101, Philippine Veterans Bank’s Motion for Reconsideration.

²⁹ *Id.* at 102–107, Bankwise, Inc.’s Motion for Reconsideration.

³⁰ *Id.* at 108–109. The Resolution was penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Perlita B. Velasco and Romeo L. Go of the First Division, National Labor Relations Commission, Quezon City.

³¹ *Rollo* (G.R. No. 191460), pp. 179–200.

³² *Rollo* (G.R. No. 191464), p. 110, Monetary Board Resolution No. 157.

³³ *Id.*

³⁴ *Rollo* (G.R. No. 191460), p. 131, Monetary Board Resolution No. 1386.

³⁵ *Id.* at 57–70, Court of Appeals Decision.

³⁶ *Id.* at 70.

³⁷ *Id.*

between Bankwise and Philippine Veterans Bank; hence, Bankwise retained its separate corporate identity.³⁸ The Court of Appeals also pointed out that the National Labor Relations Commission's finding of Philippine Veterans Bank's liability was an error of judgment, and not of jurisdiction; hence, it did not commit grave abuse of discretion.³⁹

Pascua and Bankwise separately filed Motions for Reconsideration of this Decision. Both Motions, however, were denied by the Court of Appeals in its February 22, 2010 Resolution.⁴⁰

Pascua filed a Petition for Review on Certiorari⁴¹ with this Court docketed as G.R. No. 191460. Bankwise also filed a Petition for Review on Certiorari⁴² with this Court, docketed as G.R. No. 191464. This Court consolidated both Petitions on April 26, 2010.⁴³

Pascua argues that the Court of Appeals erroneously absolved Philippine Veterans Bank of its liability since it had already taken over the management and business operations of Bankwise by the time he was constructively dismissed.⁴⁴ He insists that since Bankwise was already declared insolvent, Philippine Veterans Bank should be held solidarily liable as Bankwise's assets are already exempt from execution.⁴⁵

Bankwise, on the other hand, claims that the Court of Appeals erred in finding it liable since the National Labor Relations Commission never resolved its Motion for Reconsideration.⁴⁶ Considering that its Motion for Reconsideration was still pending, the decision of the National Labor Relations Commission against it has not yet become final.⁴⁷

Bankwise also contends that assuming Pascua was enticed to resign in exchange for severance pay, it should not be held liable for the actions of Buhain and Campa, who acted beyond their authority.⁴⁸ It insists that paragraph 8 of Pascua's Contract of Employment states that no verbal agreement can alter or vary the terms of the contract unless it is reduced in writing.⁴⁹ It alleged that even assuming it was liable to Pascua, the liability

³⁸ Id. at 69.

³⁹ Id.

⁴⁰ Id. at 82-84. The Resolution, docketed as CA-G.R. SP No. 103453, was penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Isaias P. Dicdican and Marlene Gonzales-Sison of the Former Seventh Division, Court of Appeals, Manila.

⁴¹ Id. at 8-33, Pascua's Petition for Review

⁴² *Rollo* (G.R. No. 191464), pp. 10-41, Bank Wise's Petition for Review.

⁴³ Id. at 169.

⁴⁴ *Rollo* (G.R. No. 191460), p. 23.

⁴⁵ Id. at 27.

⁴⁶ *Rollo* (G.R. No. 191464), p. 24.

⁴⁷ Id. at 25.

⁴⁸ Id. at 29.

⁴⁹ Id. at 32.

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could not be enforced since it was undergoing liquidation by the Philippine Deposit Insurance Corporation.⁵⁰ It also points out that legal compensation should be an applicable defense since Pascua had three (3) outstanding loan obligations to it in the amount of ₱4,902,364.88.⁵¹

For its part, Philippine Veterans Bank asserts that it is a distinct and separate entity from Bankwise since the Memorandum of Agreement between them was not consummated.⁵² Even assuming that their Memorandum of Agreement was consummated, Bankwise expressly freed Philippine Veterans Bank from liability arising from money claims of its employees.⁵³ It also points out that even if Pascua was found to have been constructively dismissed, only Bankwise's corporate officers should be held liable for their unauthorized acts.⁵⁴

Philippine Veterans Bank likewise posits that Pascua was not constructively dismissed since he had voluntarily resigned. It points out three (3) letters of resignation that Pascua drafted demanding payment of his severance pay according to the terms he had specified. It argues that Pascua voluntarily resigned knowing that it was acquiring Bankwise and it is not obliged to absorb Bankwise's employees.⁵⁵

This Court is asked to resolve the sole issue of whether or not Pascua was constructively dismissed. Assuming that Pascua is found to have been constructively dismissed, this Court must also resolve the issue of whether or not Philippine Veterans Bank should be solidarily liable with Bankwise, Inc. for his money claims.

At the outset, however, this Court must first address the issue of whether or not the National Labor Relations Commission March 14, 2008 Resolution also resolved Bankwise, Inc.'s Motion for Reconsideration dated December 17, 2007.

I

The National Labor Relations Commission October 31, 2007 Decision⁵⁶ already attained finality when the records of the case were remanded to the Labor Arbiter and a writ of execution was issued in Pascua's favor.

⁵⁰ Id. at 33.

⁵¹ Id. at 34.

⁵² *Rollo* (G.R. No. 191460), p. 169, Philippine Veterans Bank's Consolidated Comment.

⁵³ Id. at 171.

⁵⁴ Id. at 172.

⁵⁵ Id. at 174-176.

⁵⁶ *Rollo* (G.R. No. 191464), pp. 82-91.

Philippine Veterans Bank filed a Motion for Reconsideration⁵⁷ dated December 14, 2007 while Bankwise filed a Motion for Reconsideration⁵⁸ dated December 17, 2007. On March 14, 2008, the National Labor Relations Commission resolved both motions in a Resolution⁵⁹ which read:

Acting on the Motion for Reconsideration dated December 14, 2007 filed by *the respondents* relative to the Decision promulgated by this Commission on October 31, 2007, We resolve to DENY the same as the motion raised no new matters of substance which would warrant reconsideration of the Decision of this Commission.⁶⁰ (Emphasis supplied)

The Philippine Deposit Insurance Corporation, on behalf of Bankwise, entered its appearance before the National Labor Relations Commission during the pendency of the Motions for Reconsideration.⁶¹ In a Comment dated August 27, 2008, it argued that the National Labor Relations Commission October 31, 2008 Decision could not have attained finality as to Bankwise since its Motion for Reconsideration was still pending.⁶² What may have been an unfortunate typographical error in the March 14, 2008 Resolution gave the impression that Bankwise's Motion for Reconsideration remained unacted upon.

Under the 2005 NLRC Revised Rules of Procedure,⁶³ execution proceedings only commence upon the finality of the National Labor Relations Commission's judgment. Rule XI, Section 1 states:

RULE XI EXECUTION PROCEEDINGS

Section 1. *Execution Upon Finality of Decision or Order.* - a) A writ of execution may be issued *motu proprio* or on motion, upon a decision or order that finally disposes of the action or proceedings after the parties and their counsels or authorized representatives are furnished with copies of the decision or order in accordance with these Rules, but only after the expiration of the period to appeal if no appeal has been filed, as shown by the certificate of finality. If an appeal has been filed, a writ of execution may be issued when there is an entry of judgment as provided for in Section 14 of Rule VII.

b) No motion for execution shall be entertained nor a writ of execution be issued unless the Labor Arbiter or the Commission is in possession of the records of the case which shall include an entry of judgment if the case was appealed; except that, as provided for in Section 14 of Rule V and Section 6 of this Rule, and in those cases where partial

⁵⁷ Id. at 92-101.

⁵⁸ Id. at 102-107.

⁵⁹ Id. at 108-109.

⁶⁰ Id. at 108.

⁶¹ Id. at 111-114.

⁶² Id. at 116.

⁶³ NLRC REV. RULES OF PROC. (2005), Rule 11, sec. 1. This has been superseded by the 2011 NLRC Rules of Procedure.

execution is allowed by law, the Labor Arbiter shall retain duplicate original copies of the decision to be implemented and proof of service thereof for the purpose of immediate enforcement.

By August 7, 2008, the records of the case were remanded to the Labor Arbiter for execution.⁶⁴ Thus, the National Labor Relations Commission already considered its March 14, 2008 Resolution as final and executory to all parties, including Bankwise. Bankwise was also given notice of the March 14, 2008 Resolution,⁶⁵ so it cannot claim that the Resolution only resolved Philippine Veterans Bank's Motion for Reconsideration.

In his October 13, 2008 Order,⁶⁶ the Labor Arbiter held that although Bankwise was liable, he could not issue a writ of execution against it since its assets were under receivership.⁶⁷ The Labor Arbiter, however, stated that Pascua was not precluded from filing his money claim before the Statutory Receiver.⁶⁸ Among the issues considered by the Labor Arbiter was the Philippine Deposit Insurance Corporation's argument that the March 14, 2008 Resolution did not resolve Bankwise's Motion for Reconsideration.⁶⁹

However, the Order was a definitive notice to Bankwise that the National Labor Relations Commission considered its judgment final and executory against Bankwise. Thus, Bankwise is bound by the finality of the National Labor Relations Commission October 31, 2007 Decision.

II

The employer has the burden of proving, in illegal dismissal cases, that the employee was dismissed for a just or authorized cause. Even if the employer claims that the employee resigned, the employer still has the burden of proving that the resignation was voluntary.⁷⁰ It is constructive dismissal when resignation "was made under compulsion or under circumstances approximating compulsion, such as when an employee's act of handing in his [or her] resignation was a reaction to circumstances leaving him [or her] no alternative but to resign."⁷¹

"Resignation is the voluntary act of an employee who is in a situation

⁶⁴ *Rollo* (G.R. No. 191460), p. 114.

⁶⁵ *Id.* at 212.

⁶⁶ *Id.* at 114–130.

⁶⁷ *Id.* at 126.

⁶⁸ *Id.* at 127.

⁶⁹ *Id.* at 117.

⁷⁰ See *Peñaflor v. Outdoor Clothing Manufacturing Corporation*, 624 Phil. 490 (2010) [Per J. Brion, Second Division].

⁷¹ *Id.* at 505 citing *Metro Transit Organization, Inc. v. NLRC*, 348 Phil. 334 (1998) [Per J. Bellosillo, First Division].

where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment.”⁷² In order to prove that resignation is voluntary, “the acts of the employee before and after the alleged resignation must be considered in determining whether he or she, in fact, intended to sever his or her employment.”⁷³

Pascua wrote three (3) letters addressed to Bankwise’s officers. The first letter dated February 7, 2005, was not a letter of resignation, but a plea from Pascua to remain in service until the end of the year:

. . . I beg to request that I be allowed to stay up to the end of the year and wind up my banking career with the institution that has given me the most daunting challenge ever. Given the opportunity[,] I would have preferred to be with the Marketing Group. Alternatively, I could supervise a Management Services Group (HRD, GSD, Asset Mgt and the like) a position previously held in another institution or any assignment which you feel I could do best as well under a new financial package under your best judgment. In any position, I commit to generate as much business as I can to the bank, both in terms of deposits and earning portfolios.

With all humility, I must admit that I am not prepared to lose my job for reasons already stated in our meeting. Being the sole breadwinner and having a graduating student denied by CAP support, and some financial obligations, losing my job will really spell some disaster in my life.⁷⁴

However, this is the only evidence that shows Pascua was unwilling to resign. Pascua admitted that he voluntarily sent a resignation letter on the condition that his money claims would be made.⁷⁵ Thus, his second letter was a reluctant acceptance of his fate containing only one (1) line:

IN ACCORDANCE WITH THE INSTRUCTIONS OF THE PREVIOUS OWNERS OF THE BANK, I HEREBY TENDER MY RESIGNATION FROM THE BANK.⁷⁶

Consistent with his intention to tender his resignation upon the payment of his money claims, his third letter was a proposal for a payment plan to cover his severance pay:

You will recall from our meeting with Mr. Buhain on March 31, 2005 that I presented an estimate of severance and other claims due to my

⁷² *Nationwide Security and Allied Services, Inc. v. Valderama*, 659 Phil. 362, 371 (2011) [Per J. Nachura, Second Division] citing *BMG Records (Phils.), Inc. v. Aparecio*, 559 Phil. 80–97 (2007) [Per J. Azcuna, First Division].

⁷³ *Id.*

⁷⁴ *Rollo* (G.R. No. 191460), p. 96.

⁷⁵ *Rollo* (G.R. No. 191464), p. 87.

⁷⁶ *Rollo* (G.R. No. 191460), p. 252.

attrition from a trade off agreement you have purportedly agreed with the new bank owners, represented by Philippine Veterans Bank, as part of the overall deal. The total amount of my claim approximates one million pesos. While you readily admitted and agreed in that meeting that my claim will be shouldered by the old owners, which you represent, you requested that we wait for Atty. Madara for his return by the end of the month.

Considering the urgency of my financial needs which I have confided to you on many occasion[s], may I respectfully propose the following:

1. Initial payment of my midyear bonus amounting to P150,000, immediately, or
2. Transfer of my bank loan with Bankwise for your account or assumption with a balance amounting to one million pesos as an offset to my claim[.]

For the record, and following my lawyer's advice[,] may I respectfully request for a copy of any document embodying the terms and conditions where old owners are liable to assume my severance and other benefits due to the trade off agreement.⁷⁷

Labor is a Constitutionally protected social class due to the perceived inequality between capital and labor.⁷⁸ Article 1700 of the Civil Code states:

Article 1700. The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.⁷⁹

The presumption is that the employer and the employee are on unequal footing so the State has the responsibility to protect the employee. This presumption, however, must be taken on a case-to-case basis.⁸⁰

In situations where special qualifications are required for employment, such as a Master's degree or experience as a corporate executive, prospective employees are at a better position to bargain or make demands from the employer.⁸¹ Employees with special qualifications would be on *equal* footing with their employers, and thus, would need a lesser degree of protection from the State than an ordinary rank-and-file worker.

⁷⁷ Id. at 253.

⁷⁸ See *Fuji Television Network v. Espiritu*, 749 Phil. 388 (2014) [Per J. Leonen, Second Division] citing *Jaculbe v. Silliman University*, 547 Phil. 352, 359 (2007) [Per J. Corona, First Division]; *Mercury Drug Co., Inc. v. CIR*, 155 Phil. 636 (1974), [Per J. Makasiar, En Banc]; and *Philippine Association of Service Exporters, Inc. v. Hon. Drilon*, 246 Phil. 393, 405 (1988) [Per J. Sarmiento, En Banc].

⁷⁹ CIVIL CODE, art. 1700.

⁸⁰ *Fuji Television Network v. Espiritu*, 749 Phil. 388, 428–429 (2014) [Per J. Leonen, Second Division].

⁸¹ Id. at 429.

Pascua, as the Head of Marketing with annual salary of ₱2,250,000.00,⁸² would have been in possession of the special qualifications needed for his post. He would have supervised several employees in his long years in service and might have even processed their resignation letters. He would have been completely aware of the implications of signing a categorically worded resignation letter. If he did not intend to resign, he would not have submitted a resignation letter. He would have continued writing letters to Bankwise signifying his continued refusal to resign.

Pascua's resignation letter, however, was unconditional. It contained no reservations that it was premised on his subsequent claim for severance pay and other benefits. His resignation was also accepted by his employers. In this instance, Pascua is not considered to have been constructively dismissed.

Pascua's third letter likewise indicates that he has already accepted the consequences of his voluntary resignation but that it would be subject to the payment of severance pay. However, his claim for severance pay cannot be granted. An employee who voluntarily resigns is not entitled to separation pay unless it was previously stipulated in the employment contract or has become established company policy or practice.⁸³ There is nothing in Pascua's Contract of Employment⁸⁴ that states that he would be receiving any monetary compensation if he resigns. He has also not shown that the payment of separation pay upon resignation is an established policy or practice of Bankwise since his third letter indicated that he was unaware of any such policy:

For the record, and following my lawyer's advice[,] *may I respectfully request for a copy of any document embodying the terms and conditions where old owners are liable to assume my severance and other benefits due to the trade off agreement.*⁸⁵ (Emphasis supplied)

Pascua cannot also rely on the verbal assurances of Buhain and Campa that he would be paid his severance pay if he resigns. Number 8 of his Contract of Employment states that verbal agreements between him and the Bankwise's officers on the terms of his employment are not binding on either party:

8. VERBAL AGREEMENT

⁸² *Rollo* (G.R. No. 191460), p. 66.

⁸³ *See CJC Trading v. National Labor Relations Commission*, 316 Phil. 887 (1995) [Per J. Feliciano, Third Division].

⁸⁴ *Rollo* (G.R. No. 191464), pp. 67-68.

⁸⁵ *Rollo* (G.R. No. 191460), p. 253.

It is understood that there are no verbal agreement or understanding between you and the Bank or any of its agents and representatives affecting this Agreement. And that no alterations or variations of its terms shall be binding upon either party unless the same are reduced in writing and signed by the parties herein.⁸⁶

It was incumbent on Pascua to ensure that his severance pay in the event of his resignation be embodied on a written agreement *before* submitting his resignation letter. He should have, at the very least, indicated his conditions in his resignation letter. His third letter cannot be considered the written statement of his money claims contemplated in his Contract of Employment since it was unilateral and was not signed by Bankwise's officers.

Considering that Pascua was not considered to have been constructively dismissed, there is no need to discuss the issue of Philippine Veterans Bank and Bankwise's solidary liability for money claims.

WHEREFORE, the Petition in G.R. No. 191460 is **DENIED**. The Petition in G.R. No. 191464 is **GRANTED**.

The July 13, 2009 Decision and February 22, 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 103453 are **REVERSED** and **SET ASIDE**. The Decision dated November 25, 2005 of the Labor Arbiter is **REINSTATED**. Bankwise, Inc. and Philippine Veterans Bank are absolved from the payment of Perfecto M. Pascua's money claims.

SO ORDERED.



MARVIC M.V.F. LEONEN

Associate Justice

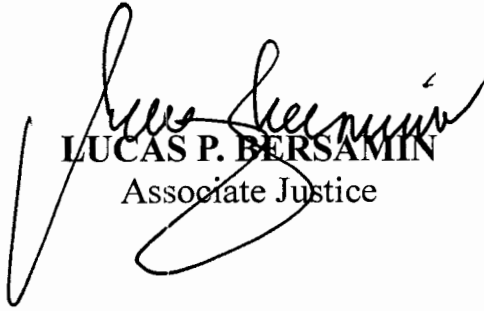
WE CONCUR:



PRESBITERO J. VELASCO, JR.

Associate Justice
Chairperson

⁸⁶ *Rollo* (G.R. No. 191464), p. 68.



LUCAS P. BERSAMIN
Associate Justice

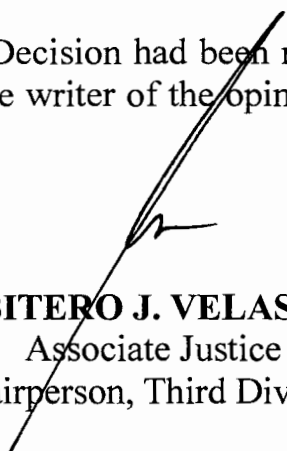
On official business
SAMUEL R. MARTIRES
Associate Justice



ALEXANDER G. GESMUNDO
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.



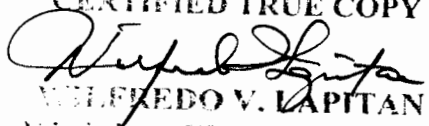
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above 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

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

MAR 23 2018