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THIRD DIVISION

[G.R. No. 197011. January 28, 2015]

ESSENCIA Q. MANARPIIS, *petitioner, vs.* **TEXAN PHILIPPINES, INC., RICHARD TAN and CATHERINE P. RIALUBIN-TAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CIVIL ACTIONS; PLEADINGS; VERIFICATION OF A PLEADING IS A FORMAL, NOT A JURISDICTIONAL, REQUIREMENT INTENDED TO SECURE THE ASSURANCE THAT THE MATTERS ALLEGED IN A PLEADING ARE TRUE AND CORRECT.— [W]e have consistently held that verification of a pleading is a formal, not a jurisdictional, requirement intended to secure the assurance that the matters alleged in a pleading are true and correct. Thus, the court may simply order the correction of unverified pleadings or act on them and waive strict compliance with the rules. It is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification; and when matters alleged in the petition have been made in good faith or are true and correct.

2. ID.; APPEALS; APPEAL BY *CERTIORARI* TO SUPREME COURT; AS A RULE, THE FINDINGS OF FACT OF THE COURT OF APPEALS ARE FINAL AND CONCLUSIVE, AND THE SUPREME COURT WILL NOT REVIEW THEM ON APPEAL; EXCEPTIONS.— Under the Rules of Court and settled doctrine, a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to questions of law. As a rule, the findings of fact of the CA are final and conclusive, and this Court will not review them on appeal. However, there are instances in which factual issues may be resolved by this Court, to wit: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) the CA goes

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beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellee; (7) the findings of fact of the CA are contrary to those of the trial court; (8) said findings of facts are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CLOSURE OF BUSINESS, AS VALID CAUSE FOR TERMINATION OF EMPLOYMENT; REQUIREMENTS.— Closure or cessation of business is the complete or partial cessation of the operations and/or shut-down of the establishment of the employer. It is carried out to either stave off the financial ruin or promote the business interest of the employer. Closure of business as an authorized cause for termination of employment is governed by Article 283 of the Labor Code, as amended. If the business closure is due to serious losses or financial reverses, the employer must present sufficient proof of its actual or imminent losses; it must show proof that the cessation of or withdrawal from business operations was *bona fide* in character. A written notice to the DOLE thirty days before the intended date of closure is also required, the purpose of which is to inform the employees of the specific date of termination or closure of business operations, and which must be served upon each and every employee of the company one month before the date of effectivity to give them sufficient time to make the necessary arrangement. The ultimate test of the validity of closure or cessation of establishment or undertaking is that it must be **bona fide** in character. And the burden of proving such falls upon the employer.

4. ID.; ID.; ID.; ABANDONMENT OF WORK, AS A JUST GROUND FOR DISMISSAL; ELEMENTS, EXPLAINED.— We have laid down the two elements which must concur for a valid abandonment, *viz*: (1) the failure to report to work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor being manifested by some overt acts. Abandonment as a just ground

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for dismissal requires the *deliberate, unjustified refusal* of the employee to perform his employment responsibilities. Mere absence or failure to work, even after notice to return, is not tantamount to abandonment. Furthermore, it is well-settled that the filing by an employee of a complaint for illegal dismissal with a prayer for reinstatement is proof enough of his desire to return to work, thus, negating the employer's charge of abandonment. An employee who takes steps to protest his dismissal cannot logically be said to have abandoned his work.

5. ID.; ID.; ID.; LOSS OF TRUST AND CONFIDENCE, AS A GROUND FOR DISMISSAL; UNSUPPORTED BY SUFFICIENT PROOF, LOSS OF CONFIDENCE IS WITHOUT BASIS AND MAY NOT BE SUCCESSFULLY INVOKED AS A GROUND FOR DISMISSAL.— On the issue of loss of confidence, we have held that proof beyond reasonable doubt is not needed to justify the loss as long as the employer has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of the trust and confidence demanded of his position. Nonetheless, the right of an employer to dismiss employees on the ground of loss of trust and confidence, however, must not be exercised arbitrarily and without just cause. Unsupported by sufficient proof, loss of confidence is without basis and may not be successfully invoked as a ground for dismissal. Loss of confidence as a ground for dismissal has never been intended to afford an occasion for abuse by the employer of its prerogative, as it can easily be subject to abuse because of its subjective nature, as in the case at bar, and the loss must be founded on clearly established facts sufficient to warrant the employee's separation from work.

6. ID.; ID.; ID.; ILLEGAL DISMISSAL; REMEDY; WHERE REINSTATEMENT IS NO LONGER VIABLE AS AN OPTION, SEPARATION PAY EQUIVALENT TO ONE MONTH SALARY FOR EVERY YEAR OF SERVICE SHOULD BE AWARDED AS AN ALTERNATIVE.— The normal consequences of petitioner's illegal dismissal are reinstatement without loss of seniority rights, and payment of back wages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to

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one month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of back wages. Given the strained relations between the parties, the award of separation pay, in lieu of reinstatement, is in order.

7. MERCANTILE LAW; CORPORATIONS; IN LABOR CASES, THE SUPREME COURT HAS HELD CORPORATE DIRECTORS AND OFFICERS SOLIDARILY LIABLE WITH THE CORPORATION FOR THE TERMINATION OF EMPLOYMENT OF EMPLOYEES DONE WITH MALICE OR BAD FAITH.— It is basic that a corporation being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, acting as such corporate agents are not theirs but the direct accountabilities of the corporation they represent. However, in certain exceptional situations, solidary liability may be incurred by corporate officers. In labor cases for instance, this Court has held corporate directors and officers solidarily liable with the corporation for the termination of employment of employees done with malice or bad faith. We sustain the NLRC's conclusion that the schemes implemented by the respondents to justify petitioner's baseless dismissal, and the manner by which such schemes were effected showed malice and bad faith on their part. Consequently, its affirmance of the order of the LA that the amounts awarded to petitioner are "payable in *solidum* by respondents" is proper. The NLRC likewise correctly upheld the award of attorney's fees considering that petitioner was assisted by a private counsel to prosecute her illegal dismissal complaint and enforce her rights under our labor laws.

APPEARANCES OF COUNSEL

Tanada Vivo & Tan for petitioner.
Angara Abello Concepcion Regala & Cruz for respondents.

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D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* under Rule 45 assailing the Decision[1] dated March 24, 2010, and Resolution[2] dated May 19, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 106661. The CA reversed and set aside the Decision[3] dated January 25, 2008 and Resolution[4] dated September 22, 2008 of the First Division of the National Labor Relations Commission (NLRC) in NLRC CA No. 029806-01, which affirmed the Decision[5] dated June 28, 2001 of the Labor Arbiter (LA) in NLRC Case No. 00-08-04110-2000.

Texan Philippines, Inc. (TPI), which is owned and managed by Catherine Rialubin-Tan and her Singaporean husband Richard Tan (respondents), is a domestic corporation engaged in the importation, distribution and marketing of imported fragrances and aroma and other specialized products and services. In July 1999, respondents hired Essencia Q. Manarpiis (petitioner) as Sales and Marketing Manager of the company's Aroma Division with a monthly salary of ₱33,800.00.[6]

Claiming insurmountable losses, respondents served a written notice (July 27, 2000) addressed to all their employees that TPI will cease operations by August 31, 2000.[7]

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[1] *Rollo,* pp. 82-106. Penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Amelita G. Tolentino and Mario V. Lopez.

[2] *Id*. at 48-51.

[3] *Id*. at 68-77. Penned by Commissioner Romeo L. Go and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Perlita B. Velasco.

[4] *Id*. at 78-79.

[5] Records (Vol. 1), pp. 195-208. Penned by Labor Arbiter Melquiades Sol D. Del Rosario.

[6] *Id*. at 15, 52, 93-95.

[7] *Id*. at 28.

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On August 7, 2000, petitioner filed a complaint for illegal dismissal, non-payment of overtime pay, holiday pay, service incentive leave pay, unexpired vacation leave and 13th month pay and with prayer for moral and actual damages. Subsequently, petitioner amended her complaint to state the true date of her dismissal which is July 27, 2000 and not August 31, 2000. She averred that on the same day she was served with notice of company closure, respondents barred her from reporting for work and paid her last salary up to the end of July 2000.[8]

On September 18, 2000, petitioner received the following memorandum[9]:

September 15, 2000

MEMO TO : **MS. ESSENCIA MANARPIIS**
Sales and Marketing Manager
Aroma Division

SUBJECT : **Notice Of Investigation And Grounding**

Dear Ms. Manarpiis,

You are hereby notified that an investigation will be conducted on 20 September 2000 at 2:00 p.m. in our office regarding your alleged violation of company rules and regulations, specifically:

I (par. B) - - Fraudulent Expense/Disbursement expenses
I (par. G) - - Collusion/Connivance with Intent to Defraud
II (Section 6) - - Sabotage
II (Section 12) - - Loss of Confidence
III (Section 2) - - Libel/Slander
III (Section 8 par. e) - - Other acts of Insubordination
V (par. C & D) - - AWOL/Abandonment
V (par. I) - - Committing other acts of gross inefficiency or incompetence

said acts constitutive of gross misconduct, gross insubordination and dishonesty. You may bring your witnesses and counsel if you

[8] *Id*. at 2, 8-10.

[9] *Id*. at 31-32.

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so desire. In the meantime, you will not be allowed to perform your usual functions, but will instead report to the undersigned.

Additionally, you are directed to submit to the undersigned your explanation in writing, within (72) hours from receipt hereof (but in no case later than 20 September 2000), why no appropriate disciplinary action and/or penalties may be imposed against you relative to the foregoing.

Failure to submit said written explanation within the prescribed period and/or attend the investigation hearing on 20 September 2000 shall constitute an implied admission of the charges and waiver on your part to due process.

For your information and compliance.

(SGD.) **RICHARD TAN**
(President)

Petitioner alleged that as sales and marketing manager, she received the agreed commission based on actual sales collection on the first quarter of 2000 and was expecting to also receive such commission on the 2nd, 3rd and 4th quarters. However, on July 27, 2000, after receiving a text message from respondent Richard Tan, she proceeded to her office and learned that her table drawers were forcibly opened and her files confiscated. She protested the company closure asserting that the alleged business losses were belied by TPI's financial documents. But despite her pleas, she was asked to pack up her things and by the end of the month her salary was discontinued. She then received the memorandum regarding the company closure and was required to turn over the company car, pager and cellphone. She was told not to report for work anymore.[10]

After receiving the September 15, 2000 memorandum, petitioner's counsel sent a reply stating that there was no point in the investigation because respondents already dismissed petitioner purportedly on the ground of cessation of business due to insurmountable losses, and also it was impossible for petitioner to respond to the charges which are devoid of particulars

[10] *Id.* at 15-16.

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as to the alleged irregularities she committed. It was pointed out that respondents should have investigated the supposed violations of company rules and fraudulent acts earlier and not when petitioner had filed an illegal dismissal complaint.[11]

Subsequently, petitioner received the following memorandum:[12]

September 25, 2000

TO : **MS. ESSENCIA MANARPIIS**
Sales and Marketing Manager
Aroma Division

SUBJECT : **NOTICE OF TERMINATION**

Ms. Manarpiis,

This is to inform you that your employment with the Company is terminated effective today, September 25, 2000, due to Dishonesty, Loss of Confidence, and Abandonment of Work.

An internal audit of the Company shows that several obligations of the Company were paid twice to the same supplier. Considering the level of your position, the inescapable conclusion is that you have colluded with the Company supplier to defraud the Company of its finances.

Moreover, you have fraudulently caused to be reimbursed representation expenses and other expense statements purporting to be that of your sales representatives while in truth and in fact they were yours, and you received the corresponding payments therefor.

Also, your attendance record showed that you have been absent without official leave (AWOL) since August 3, 2000 up to date.

A notice of AWOL dated September 14, 2000 has been sent to you but you refused to accept the same, much less, refused to act on it.

For your information and guidance

(SGD.) **RICHARD TAN**
President

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[11] *Id.* at 33-34.

[12] *Id.* at 35.

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Believing that her dismissal was without just cause, petitioner prayed for reinstatement if still viable, and if not, award of separation pay with back wages from August 1, 2000, and payment of her monetary claims for sales commissions, pro-rated 13th month pay, five days service incentive leave pay and sick leaves, as well as moral and exemplary damages plus attorney's fees.[13]

Respondents denied the charge of illegal dismissal and explained that TPI's closure was averted by a new financing package obtained by respondent Richard Tan. They asserted that the requisite notices of business closure to government authorities and to their employees were complied with, and notwithstanding that TPI has in fact continued its operations, petitioner was found to have committed infractions resulting in loss of confidence which was the ground for the termination of her employment. They likewise averred that respondent Rialubin-Tan gave specific instructions to petitioner for her to continue reporting for work even after August 31, 2000 but she instead went AWOL and subsequently abandoned her job, to the utmost prejudice of the company.[14]

On June 28, 2001, LA Melquiades Sol D. Del Rosario rendered a Decision declaring the dismissal of petitioner as illegal:

CONFORMABLY WITH THE FOREGOING, judgment is hereby rendered finding complainant's dismissal to be illegal. Consequently, she should be paid in solidum by respondents the following:

a) ₱304,200.00 as backwages as of May 31, 2001[;]

b) ₱101,400.00 as separation pay for 3 years[;]

c) 1% of the gross sales of complainant and .75% on other sales as determined by the parties as complainant's commissions;

d) 10% for and as attorney's fees of the money awards.

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[13] *Id*. at 21.

[14] *Id*. at 51-66.

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SO ORDERED.[15]

Respondents appealed to the NLRC which affirmed the LA's decision. Their motion for reconsideration was also denied.

In a petition for *certiorari* filed with the CA, respondents argued that the subsequent termination of petitioner on the grounds of dishonesty, loss of confidence and abandonment, after TPI was able to regain financial viability, was made in view of the fact that commission of the said offenses surfaced only during the audit investigation conducted after notice of cessation of business operation was sent to the employees. Despite advice for her to continue reporting for work after August 31, 2000, the effectivity date of the intended closure, petitioner just stopped doing so and instead filed the complaint for illegal dismissal and likewise failed to turn over all company documents and records in her possession. They also discovered that petitioner put up her own company "Vita VSI Scents," enticing clients to buy the same products they used to purchase from TPI.

By Decision dated March 24, 2010, the CA reversed the NLRC and ruled that petitioner was validly dismissed:

WHEREFORE, the petition is hereby **GRANTED**. The assailed Decision dated January 25, 2008 and the Resolution dated September 22, 2008 of the National Labor Relations Commission are hereby **REVERSED** and **SET ASIDE**. Resultantly, Essencia Manarpiis' complaint for illegal dismissal against Texan Philippines, Inc., Richard Tan and Catherine Realubin-Tan is hereby **DISMISSED** for lack of merit. No costs.

SO ORDERED.[16]

Petitioner filed a motion for reconsideration but it was denied by the CA.

Hence, this petition arguing that the CA committed patent reversible errors when it: (1) granted the unverified/unsworn

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[15] *Id*. at 207-208.

[16] *Rollo,* p. 105.

certification of non-forum shopping accompanying respondents' petition for *certiorari*; (2) granted respondents' petition for *certiorari* without finding any grave abuse of discretion on the part of NLRC; (3) disturbed the consistent factual findings of the LA and NLRC which were duly supported by substantial evidence and devoid of any unfairness and arbitrariness; and (4) substituted its own findings of facts to those of the LA and NLRC, the CA's findings being unsupported by substantial evidence.[17]

The petition is meritorious.

We first address petitioner's contention on the alleged formal infirmity of the petition for *certiorari* filed before the CA. Petitioner argued that the same was defective as the *jurat* therein was based on the mere community tax certificate of respondent Rialubin-Tan, instead of a government-issued identification card required under the 2004 Rules on Notarial Practice. Such ground was never raised by herein petitioner in her comment on the CA petition, thus, it cannot be validly raised by the petitioner at this stage.[18]

Furthermore, we have consistently held that verification of a pleading is a formal, not a jurisdictional, requirement intended to secure the assurance that the matters alleged in a pleading are true and correct. Thus, the court may simply order the correction of unverified pleadings or act on them and waive strict compliance with the rules. It is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification; and when matters alleged in the petition have been made in good faith or are true and correct.[19]

Under the Rules of Court and settled doctrine, a petition for review on *certiorari* under Rule 45 of the Rules of Court is

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[17] *Id*. at 27-28.

[18] *Medado v. Heirs of the Late Antonio Consing*, G.R. No. 186720, February 8, 2012, 665 SCRA 534, 543.

[19] *Id*. at 546, citing *Bello v. Bonifacio Security Services, Inc.*, G.R. No. 188086, August 3, 2011, 655 SCRA 143, 147-148.

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limited to questions of law. As a rule, the findings of fact of the CA are final and conclusive, and this Court will not review them on appeal.[20]

However, there are instances in which factual issues may be resolved by this Court, to wit: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) the CA goes beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellee; (7) the findings of fact of the CA are contrary to those of the trial court; (8) said findings of facts are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record.[21]

Considering that the findings of facts and the conclusions of the CA are contrary to those of the LA and the NLRC, we find it necessary to evaluate such findings.

On the issue of illegal dismissal, both the LA and NLRC found no just or authorized cause for the termination of petitioner's employment.

LA Del Rosario observed that respondents flip-flopped on the issue of petitioner's termination as when they claimed she was dismissed due to insurmountable losses so that TPI's personnel were notified of the company closure effective August 31, 2000, and at the same time they accused petitioner of fraudulent acts and abandonment of work resulting in loss of trust and confidence which caused her dismissal. He also found there

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[20] *Philippine Rural Reconstruction Movement (PRRM) v. Pulgar,* 637 Phil. 244, 251 (2010), citing *Amigo v. Teves,* 96 Phil. 252 (1954).

[21] *Macahilig v. National Labor Relations Commission,* 563 Phil. 683, 690 (2007).

was no compliance with the legal requisites of the said grounds for dismissal under Article 283 (business closure) such as the lack of termination report sent to the Department of Labor and Employment (DOLE), financial documents which are audited and signed by an independent auditor, and the two-notice requirement sent to the last known address of the employee alleged to have abandoned work under Book V, Rule XIV, Section 2 of the Omnibus Rules Implementing the Labor Code. It was noted that while TPI's financial documents have BIR stampmark, they were not shown to have been prepared by an independent auditor.

The NLRC upheld the LA's ruling that petitioner's dismissal was not valid, *viz*:

> As between the above, conflicting allegations, We find the version of the complainant more credible. Record of the instant case would provide that other than respondents' bare allegations that complainant was instructed to continue working even beyond 31 August 2000, no evidence was presented to substantiate the same. If respondents could easily issue a notice of business closure to all its employees, and at the same time, immediately require the complainant to surrender all company properties assigned to her, We could not understand why they could not easily issue another letter, this time, intended only for the complainant informing her that her employment was still necessary.
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> Relative to the company's closure due to business losses, prevailing jurisprudence would dictate that the same should be substantiated by competent evidence. Financial statements audited by independent external auditors constitute the normal method of proof of the profit and loss performance of the company. To exempt an employer [from] the payment of separation pay, he or she must establish by sufficient and convincing evidence that the losses were serious, substantial and actual x x x.
>
> In the instant case, respondents may have presented before the Labor Arbiter its Statement of Income for the year 1999. While its preparation may be in compliance with the requirements of the Bureau of Internal Revenue for taxation purposes, based on the jurisprudence provided above, the same would not suffice for purposes of respondents' defense in the instant case. In their appeal, respondents

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alleged that on the basis of the audited Statement of Income and Retained Earnings For the Year Ending 31 December 2000, the company incurred a net loss of almost half a million pesos. Assuming the same to be true since we cannot find a copy of said statement attached to [the] record, it would appear that the company had attained a better position in year 2000 as compared to year 1999 when they incurred a net loss of more than Two Million Pesos. Furthermore, said evidence is already immaterial considering that the company's intended closure did not actually take effect.

Upon a finding that complainant was not instructed to continue working even beyond 31 August 2000 but was told not to report to work upon receipt of the notice of company's closure, it certainly follows that respondents would no longer inform complainant of the company's continued operation after respondent Tan had allegedly succeeded in searching for funds. In fact, We are not even persuaded that the company's closure was prevented by the new funds sought by respondent Tan when in the first place, there was no intended closure at all but only a decision to dismiss complainant in a manner that would enable respondents evade liabilities under the Labor Code.

With regard to the alleged violation of company rules and regulations, We agree with the finding that respondent[s'] acts of issuing the two notices setting the case [for] investigation were mere afterthoughts. As highlighted in the assailed Decision, the first notice was issued after respondents had already received the summons in the instant case. More importantly, the above discussion would provide that prior to issuance of said first notice, complainant was already illegally dismissed. Furthermore, assuming for the sake of argument that complainant was not yet terminated, a reading of the said first notice would show that it does not conform with the requirements of due process. The same had failed to discuss the circumstances under which each of the charges therein was committed by the complainant. As can be noted from the letter dated 19 September 2000 sent by complainant's counsel to respondent Tan, it was impossible for his client to submit a written explanation thereto since the notice to explain is devoid of particulars regarding the alleged irregularities.

As a consequence of complainant['s] double termination, initially through the purported cessation of business operations, and thereafter, by imputing offenses violative of company rules and regulations, we agree with the finding [that] she was illegally dismissed, and as

such, entitled to backwages. She would have been entitled to reinstatement but we believe that the charges lodged by the respondents against the complainant had rendered reinstatement non-viable. Thus, she should be granted separation pay instead.[22] (Citations omitted)

The CA, however, considered the evidence of respondents sufficient to prove the alleged business losses and their good faith in resorting to closure of the company. It cited the 1999 Annual Income Tax Return showing a net loss of ₱2,290,580.48 and financial statement indicating a net loss of ₱2,301,228.61 for the year ended December 31, 1999; respondents' claim that it was forced to sell six company cars; and the DOLE termination report.

On the other grounds invoked by respondents to justify petitioner's termination, the CA cited the following infractions: (a) several company obligations towards a supplier which were paid twice during her term as Marketing and Sales Manager; (b) company funds procured by petitioner, represented to be "under the table" expenditures for the Bureau of Customs which she cannot explain when queried; (c) divulging confidential company matters to the customers; and (d) establishing her own company while still employed with TPI.

We reverse the CA and reinstate the LA's decision as affirmed by the NLRC.

Closure or cessation of business is the complete or partial cessation of the operations and/or shut-down of the establishment of the employer. It is carried out to either stave off the financial ruin or promote the business interest of the employer. Closure of business as an authorized cause for termination of employment is governed by Article 283[23] of the Labor Code, as amended.

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[22] *Rollo*, pp. 73-75.

[23] **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 workers and the Department of Labor

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If the business closure is due to serious losses or financial reverses, the employer must present sufficient proof of its actual or imminent losses; it must show proof that the cessation of or withdrawal from business operations was *bona fide* in character.[24] A written notice to the DOLE thirty days before the intended date of closure is also required, the purpose of which is to inform the employees of the specific date of termination or closure of business operations, and which must be served upon each and every employee of the company one month before the date of effectivity to give them sufficient time to make the necessary arrangement.[25]

The ultimate test of the validity of closure or cessation of establishment or undertaking is that it must be **bona fide** in character. And the burden of proving such falls upon the employer.[26]

After evaluating the evidence on record, we uphold the factual findings and conclusions of the labor tribunals that petitioner was dismissed without just or authorized cause, and that the announced cessation of business operations was a subterfuge for getting rid of petitioner. While the introduction of additional

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and Employment at least one (1) month before the intended date thereof. x x x 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 to 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.

[24] *Reahs Corporation v. NLRC,* 337 Phil. 698, 705 (1997), citing *Catatista v. NLRC,* 317 Phil. 54 (1995) and *Maya Farms Employees Organization v. NLRC*, G.R. No. 106256, December 28, 1994, 239 SCRA 508.

[25] *Galaxie Steel Workers Union (GSWU-NAFLU-KMU) v. NLRC*, 535 Phil. 675, 685 (2006), as cited in *Sangwoo Philippines, Inc. v. Sangwoo Philippines, Inc. Employees Union-Olalia,* G.R. Nos. 173154 & 173229, December 9, 2013, 711 SCRA 618, 627-628.

[26] *Espina v. Court of Appeals,* 548 Phil. 255, 275 (2007), citing *Mac Adams Metal Engineering Workers Union-Independent v. Mac Adams Metal Engineering*, 460 Phil. 583, 590 (2003) and *J.A.T. General Services v. NLRC,* 465 Phil. 785, 795 (2004).

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evidence before the NLRC is not proscribed, the said tribunal was still not persuaded by the company closure purportedly averted only by the alleged fresh funding procured by respondent Tan, for the latter claim remained unsubstantiated. The CA's finding of serious business losses is not borne by the evidence on record. The financial statements supposedly bearing the stamp mark of BIR were not signed by an independent auditor. Besides, the non-compliance with the requirements under Article 283 of the Labor Code, as amended, gains relevance in this case not for the purpose of proving the illegality of the *company closure or cessation of business,* which did not materialize, but as an indication of bad faith on the part of respondents in hastily terminating petitioner's employment. Under the circumstances, the subsequent investigation and termination of petitioner on grounds of dishonesty, loss of confidence and abandonment of work, clearly appears as an afterthought as it was done only after petitioner had filed an illegal dismissal case and respondents have been summoned for hearing before the LA.

We have laid down the two elements which must concur for a valid abandonment, viz: (1) the failure to report to work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor being manifested by some overt acts.[27] Abandonment as a just ground for dismissal requires the *deliberate, unjustified refusal* of the employee to perform his employment responsibilities. Mere absence or failure to work, even after notice to return, is not tantamount to abandonment.[28]

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[27] *Trendline Employees Association-Southern Philippines Federation of Labor (TEA-SPFL) v. NLRC,* 338 Phil. 681, 686 (1997), citing *Labor v. NLRC,* 318 Phil. 219, 240 (1995).

[28] *GSP Manufacturing Corporation v. Cabanban*, 527 Phil. 452, 454 (2006), citing *R.P. Dinglasan Construction, Inc. v. Atienza,* 477 Phil. 305, 314 (2004); *Samarca v. Arc-Men Industries, Inc.,* 459 Phil. 506, 516 (2003); *Phil. Industrial Security Agency Corp. v. Dapiton,* 377 Phil. 951, 959 & 960 (1999); and *Samahan ng mga Manggagawa sa Bandolino v. NLRC*, 341 Phil. 635, 646 (1997).

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Furthermore, it is well-settled that the filing by an employee of a complaint for illegal dismissal with a prayer for reinstatement is proof enough of his desire to return to work, thus, negating the employer's charge of abandonment.[29] An employee who takes steps to protest his dismissal cannot logically be said to have abandoned his work.[30]

Abandonment in this case was a trumped up charge, apparently to make it appear that petitioner was not yet terminated when she filed the illegal dismissal complaint and to give a semblance of truth to the belated investigation against the petitioner. Petitioner did not abandon her work but was told not to report for work anymore after being served a written notice of termination of company closure on July 27, 2000 and turning over company properties to respondent Rialubin-Tan.

On the issue of loss of confidence, we have held that proof beyond reasonable doubt is not needed to justify the loss as long as the employer has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of the trust and confidence demanded of his position.[31] Nonetheless, the right of an employer to dismiss employees on the ground of loss of trust and confidence, however, must not be exercised arbitrarily and without just cause. Unsupported by sufficient proof, loss of confidence is without basis and may not be successfully invoked as a ground for dismissal. Loss of confidence as a ground for dismissal has never been intended to afford an occasion for abuse by the employer of its prerogative, as it can easily be subject to abuse because of its subjective nature, as in the case at bar, and the

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[29] *Concrete Solutions, Inc./Primary Structures Corporation v. Cabusas,* G.R. No. 177812, June 19, 2013, 699 SCRA 44, 56-57, citing *New Ever Marketing, Inc. v. Court of Appeals,* 501 Phil. 575, 587 (2005).

[30] *GSP Manufacturing Corporation v. Cabanban*, *supra* note 28, at 455.

[31] *P.J. Lhuillier Inc. v. National Labor Relations Commission*, 497 Phil. 298, 311 (2005), citing *Reyes v. Zamora*, 179 Phil. 71, 89 (1979).

loss must be founded on clearly established facts sufficient to warrant the employee's separation from work.[32]

Here, loss of confidence was belatedly raised by the respondents who initiated an investigation on the alleged irregularities committed by petitioner only after the latter had questioned the legality of her earlier dismissal due to the purported company closure. As correctly observed by the NLRC, assuming to be true that respondents had not yet actually dismissed the petitioner, the notice of cessation of operations (memo dated July 27, 2000) addressed to all employees never mentioned the supposed charges against the petitioner who was also never issued a separate memorandum to that effect. Moreover, the turn over of company properties by petitioner on the same date as demanded by respondent Rialubin-Tan belies the latter's claim that she verbally instructed the former to continue reporting for work in view of the audit of the company's finances. Indeed, considering the gravity of the accusations of fraud against the petitioner, it is strange that respondents have not at least issued her a separate memorandum on her accountability for the alleged business losses.

To prove the dishonesty imputed to petitioner, respondents submitted before the NLRC a letter dated August 4, 2000 from one of TPI's suppliers advising the company of a supposed double payment made in February and March 2000. However, there is no showing that such payment was made or ordered by petitioner, and neither was it shown that this overpayment was reflected in the account books of TPI. Respondents likewise failed to prove their accusation that petitioner put up a competing business while she was still employed with TPI, and their bare allegation that petitioner divulged confidential company matters to customers. As to the supposed failure of petitioner to account for funds intended for "under the table" transactions at the Bureau of Customs, the same was never raised before the labor tribunals and not a shred of evidence was presented by respondent to prove this allegation.

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[32] *Id*. at 311-312, citing *Hernandez v. NLRC (Fifth Division),* 257 Phil. 275, 282 (1989), and *Labor v. NLRC, supra* note 27, at 242.

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Apropos we recall our pronouncement in *Lima Land, Inc., et al. v. Cuevas*:[33]

> As a final note, the Court is wont to reiterate that while an employer has its own interest to protect, and pursuant thereto, it may terminate a managerial employee for a just cause, such prerogative to dismiss or lay off an employee must be exercised without abuse of discretion. Its implementation should be tempered with compassion and understanding. The employer should bear in mind that, in the execution of the said prerogative, what is at stake is not only the employee's position, but his very livelihood, his very breadbasket. Indeed, the consistent rule is 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. The employer must affirmatively show rationally adequate evidence that the dismissal was for justifiable cause. Thus, **when the breach of trust or loss of confidence alleged is not borne by clearly established facts, as in this case, such dismissal on the cited grounds cannot be allowed**.[34] (Emphasis supplied)

The normal consequences of petitioner's illegal dismissal are reinstatement without loss of seniority rights, and payment of back wages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of back wages.[35] Given the strained relations between the parties, the award of separation pay, in lieu of reinstatement, is in order.

Finally, on the solidary liability of respondents Richard Tan and Catherine Rialubin-Tan for the monetary awards. It is basic

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[33] 635 Phil. 36 (2010).

[34] *Id*. at 53-54, citing *Marival Trading, Inc. v. National Labor Relations Commission,* 552 Phil. 762, 782 (2007), and *Fujitsu Computer Products Corporation of the Philippines v. Court of Appeals*, 494 Phil. 697, 728 (2005).

[35] *Golden Ace Builders v. Talde,* 634 Phil. 364, 369-370 (2010), citing *Macasero v. Southern Industrial Gases Philippines and/or Lindsay,* 597 Phil. 494, 501 (2009).

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that a corporation being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, acting as such corporate agents are not theirs but the direct accountabilities of the corporation they represent. However, in certain exceptional situations, solidary liability may be incurred by corporate officers. In labor cases for instance, this Court has held corporate directors and officers solidarily liable with the corporation for the termination of employment of employees done with malice or bad faith.[36]

We sustain the NLRC's conclusion that the schemes implemented by the respondents to justify petitioner's baseless dismissal, and the manner by which such schemes were effected showed malice and bad faith on their part. Consequently, its affirmance of the order of the LA that the amounts awarded to petitioner are "payable in *solidum* by respondents" is proper. The NLRC likewise correctly upheld the award of attorney's fees considering that petitioner was assisted by a private counsel to prosecute her illegal dismissal complaint and enforce her rights under our labor laws.

WHEREFORE, the petition is **GRANTED.** The Decision dated March 24, 2010 and Resolution dated May 19, 2011 of the Court of Appeals in CA-G.R. SP No. 106661 are hereby **REVERSED** and **SET ASIDE**.

The Decision dated June 28, 2001 of the Labor Arbiter in NLRC Case No. 00-08-04110-2000, as affirmed by the Decision dated January 25, 2008 of the National Labor Relations Commission in NLRC CA No. 029806-01, is hereby **REINSTATED.**

No pronouncement as to costs.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Reyes, and *Jardeleza, JJ.,* concur.

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[36] *Alba v. Yupangco,* G.R. No. 188233, June 29, 2010, 622 SCRA 503, 507-508, citing *MAM Realty Development Corporation v. NLRC*, 314 Phil. 838, 844-845 (1995).