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FIRST DIVISION

[G.R. No. 201298. February 5, 2014]

RAUL C. COSARE, *petitioner, vs.* **BROADCOM ASIA, INC. and DANTE AREVALO,** *respondents.*

SYLLABUS

1. **MERCANTILE LAW; CORPORATION CODE; PRIVATE CORPORATIONS; INTRA-CORPORATE CONTROVERSY; FALLS WITHIN THE JURISDICTION OF REGULAR COURTS; RELATIONSHIPS INVOLVED IN AN INTRA-CORPORATE CONTROVERSY.—** An intra-corporate controversy, which falls within the jurisdiction of regular courts, has been regarded in its broad sense to pertain to disputes that involve any of the following relationships: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the state in so far as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates, themselves.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; A DISPUTE INVOLVING A CHARGE OF ILLEGAL DISMISSAL FALLS UNDER THE JURISDICTION OF THE LABOR ARBITER.—** Settled jurisprudence, however, qualifies that when the dispute involves a charge of illegal dismissal, the action may fall under the jurisdiction of the LAs upon whose jurisdiction, as a rule, falls termination disputes and claims for damages arising from employer-employee relations as provided in Article 217 of the Labor Code. Consistent with this jurisprudence, the mere fact that Cosare was a stockholder and an officer of Broadcom at the time the subject controversy developed failed to necessarily make the case an intra-corporate dispute.

3. **ID.; ID.; ID.; A COMPLAINT FOR ILLEGAL DISMISSAL FILED BY AN OFFICER WHO IS NOT CLASSIFIED AS A CORPORATE OFFICER IS COGNIZABLE BY THE LABOR ARBITER.—** In *Matling Industrial and Commercial Corporation v. Coros*, the Court distinguished between a

"regular employee" and a "corporate officer" for purposes of establishing the true nature of a dispute or complaint for illegal dismissal and determining which body has jurisdiction over it. Succinctly, it was explained that "[t]he determination of whether the dismissed officer was a regular employee or corporate officer unravels the conundrum" of whether a complaint for illegal dismissal is cognizable by the LA or by the RTC. "In case of the regular employee, the LA has jurisdiction; otherwise, the RTC exercises the legal authority to adjudicate. Applying the foregoing to the present case, the LA had the original jurisdiction over the complaint for illegal dismissal because Cosare, although an officer of Broadcom for being its AVP for Sales, was not a "corporate officer" as the term is defined by law.

4. MERCANTILE LAW; CORPORATION CODE; PRIVATE CORPORATIONS; INTRA-CORPORATE DISPUTE; WHEN THE OFFICER CLAIMING TO HAVE BEEN ILLEGALLY DISMISSED IS CLASSIFIED AS A CORPORATE OFFICER, THE ISSUE IS DEEMED AN INTRA-CORPORATE DISPUTE WHICH FALLS WITHIN THE JURISDICTION OF THE TRIAL COURTS.— [T]here are two circumstances which must concur in order for an individual to be considered a corporate officer, as against an ordinary employee or officer, namely: (1) the *creation* of the position is under the corporation's charter or by-laws; and (2) the *election* of the officer is by the directors or stockholders. It is only when the officer claiming to have been illegally dismissed is classified as such corporate officer that the issue is deemed an intra-corporate dispute which falls within the jurisdiction of the trial courts.

5. ID.; ID.; ID.; ID.; DETERMINED BY THE STATUS OR RELATIONSHIP OF THE PARTIES AND THE NATURE OF THE QUESTION THAT IS THE SUBJECT OF THE CONTROVERSY.— [T]he mere fact that Cosare was a stockholder of Broadcom at the time of the case's filing did not necessarily make the action an intra-corporate controversy. "[N]ot all conflicts between the stockholders and the corporation are classified as intra-corporate. There are other facts to consider in determining whether the dispute involves corporate matters as to consider them as intra-corporate controversies." Time and again, the Court has ruled that in determining the existence of an intra-corporate dispute, the status or relationship

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of the parties **and** the nature of the question that is the subject of the controversy must be taken into account. Considering that the pending dispute particularly relates to Cosare's rights and obligations as a regular officer of Broadcom, instead of as a stockholder of the corporation, the controversy cannot be deemed intra-corporate.

6. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; WHEN PRESENT.— "[C]onstructive dismissal occurs when there is **cessation of work** because continued employment is rendered impossible, unreasonable, or unlikely as when there is a demotion in rank or diminution in pay or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee leaving the latter with no other option but to quit."

7. ID.; ID.; ID.; JUST CAUSES; ABANDONMENT; ELEMENTS; NOT PRESENT IN CASE AT BAR.— "Abandonment is the deliberate and unjustified refusal of an employee to resume his employment. To constitute abandonment of work, two elements must concur: '(1) the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act.'" Cosare's failure to report to work beginning April 1, 2009 was neither voluntary nor indicative of an intention to sever his employment with Broadcom. It was illogical to be requiring him to reportfor work, and imputing fault when he failed to do so after he was specifically denied access to all of the company's assets.

8. ID.; ID.; ID.; AN ILLEGALLY OR CONSTRUCTIVELY DISMISSED EMPLOYEE IS ENTITLED TO EITHER REINSTATEMENT, IF VIABLE, OR SEPARATION PAY, IF REINSTATEMENT IS NO LONGER VIABLE AND BACKWAGES.— In *Robinsons Galleria/Robinsons Supermarket Corporation v. Ranchez,* the Court reiterated that an illegally or constructively dismissed employee is entitled to: (1) either reinstatement, if viable, or separation pay, if reinstatement is no longer viable; and (2) backwages.

9. CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; AWARDED WHEN THE EMPLOYER ACTED IN BAD FAITH AND IN

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WANTON, OPPRESSIVE AND MALEVOLENT MANNER IN DISMISSING ITS EMPLOYEE.— The award of exemplary damages was x x x justified given the NLRC's finding that the respondents acted in bad faith and in a wanton, oppressive and malevolent manner when they dismissed Cosare. It is also by reason of such bad faith that Arevalo was correctly declared solidarily liable for the monetary awards.

APPEARANCES OF COUNSEL

Lawyers Advocate Circle for petitioner.
Batino Law Offices for respondents.

D E C I S I O N

REYES, *J.*:

Before the Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, which assails the Decision[2] dated November 24, 2011 and Resolution[3] dated March 26, 2012 of the Court of Appeals (CA) in CA-G.R. SP. No. 117356, wherein the CA ruled that the Regional Trial Court (RTC), and not the Labor Arbiter (LA), had the jurisdiction over petitioner Raul C. Cosare's (Cosare) complaint for illegal dismissal against Broadcom Asia, Inc. (Broadcom) and Dante Arevalo (Arevalo), the President of Broadcom (respondents).

The Antecedents

The case stems from a complaint[4] for constructive dismissal, illegal suspension and monetary claims filed with the National Capital Region Arbitration Branch of the National Labor Relations Commission (NLRC) by Cosare against the respondents.

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[1] *Rollo*, pp. 14-42.

[2] Penned by Associate Justice Mariflor P. Punzalan Castillo, with Presiding Justice Andres B. Reyes, Jr. and Associate Justice Franchito N. Diamante, concurring; *id.* at 44-65.

[3] *Id.* at 67-69.

[4] *Id.* at 70.

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Cosare claimed that sometime in April 1993, he was employed as a salesman by Arevalo, who was then in the business of selling broadcast equipment needed by television networks and production houses. In December 2000, Arevalo set up the company Broadcom, still to continue the business of trading communication and broadcast equipment. Cosare was named an incorporator of Broadcom, having been assigned 100 shares of stock with par value of ₱1.00 per share.[5] In October 2001, Cosare was promoted to the position of Assistant Vice President for Sales (AVP for Sales) and Head of the Technical Coordination, having a monthly basic net salary and average commissions of ₱18,000.00 and ₱37,000.00, respectively.[6]

Sometime in 2003, Alex F. Abiog (Abiog) was appointed as Broadcom's Vice President for Sales and thus, became Cosare's immediate superior. On March 23, 2009, Cosare sent a confidential memo[7] to Arevalo to inform him of the following anomalies which were allegedly being committed by Abiog against the company: (a) he failed to report to work on time, and would immediately leave the office on the pretext of client visits; (b) he advised the clients of Broadcom to purchase camera units from its competitors, and received commissions therefor; (c) he shared in the "under the-table dealings" or "confidential commissions" which Broadcom extended to its clients' personnel and engineers; and (d) he expressed his complaints and disgust over Broadcom's uncompetitive salaries and wages and delay in the payment of other benefits, even in the presence of office staff. Cosare ended his memo by clarifying that he was not interested in Abiog's position, but only wanted Arevalo to know of the irregularities for the corporation's sake.

Apparently, Arevalo failed to act on Cosare's accusations. Cosare claimed that he was instead called for a meeting by Arevalo on March 25, 2009, wherein he was asked to tender his resignation in exchange for "financial assistance" in the

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[5] *Id.* at 45, 102.

[6] *Id.* at 45.

[7] *Id.* at 120-121.

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amount of ₱300,000.00.[8] Cosare refused to comply with the directive, as signified in a letter[9] dated March 26, 2009 which he sent to Arevalo.

On March 30, 2009, Cosare received from Roselyn Villareal (Villareal), Broadcom's Manager for Finance and Administration, a memo[10] signed by Arevalo, charging him of serious misconduct and willful breach of trust, and providing in part:

1. A confidential memo was received from the VP for Sales informing me that you had directed, or at the very least tried to persuade, a customer to purchase a camera from another supplier. Clearly, this action is a gross and willful violation of the trust and confidence this company has given to you being its AVP for Sales and is an attempt to deprive the company of income from which you, along with the other employees of this company, derive your salaries and other benefits.x x x.

2. A company vehicle assigned to you with plate no. UNV 402 was found abandoned in another place outside of the office without proper turnover from you to this office which had assigned said vehicle to you. The vehicle was found to be inoperable and in very bad condition, which required that the vehicle be towed to a nearby auto repair shop for extensive repairs.

3. You have repeatedly failed to submit regular sales reports informing the company of your activities within and outside of company premises despite repeated reminders. However, it has been observed that you have been both frequently absent and/or tardy without proper information to this office or your direct supervisor, the VP for Sales Mr. Alex Abiog, of your whereabouts.

4. You have been remiss in the performance of your duties as a Sales officer as evidenced by the fact that you have not recorded any sales for the past immediate twelve (12) months. This was inspite of the fact that my office decided to relieve

[8] *Id.* at 193.

[9] *Id.* at 122.

[10] *Id.* at 123.

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> you of your duties as technical coordinator between Engineering and Sales since June last year so that you could focus and concentrate [on] your activities in sales.[11]

Cosare was given forty-eight (48) hours from the date of the memo within which to present his explanation on the charges. He was also "suspended from having access to any and all company files/records and use of company assets effective immediately."[12] Thus, Cosare claimed that he was precluded from reporting for work on March 31, 2009, and was instead instructed to wait at the office's receiving section. Upon the specific instructions of Arevalo, he was also prevented by Villareal from retrieving even his personal belongings from the office.

On April 1, 2009, Cosare was totally barred from entering the company premises, and was told to merely wait outside the office building for further instructions. When no such instructions were given by 8:00 p.m., Cosare was impelled to seek the assistance of the officials of *Barangay* San Antonio, Pasig City, and had the incident reported in the *barangay* blotter.[13]

On April 2, 2009, Cosare attempted to furnish the company with a memo[14] by which he addressed and denied the accusations cited in Arevalo's memo dated March 30, 2009. The respondents refused to receive the memo on the ground of late filing, prompting Cosare to serve a copy thereof by registered mail. The following day, April 3, 2009, Cosare filed the subject labor complaint, claiming that he was constructively dismissed from employment by the respondents. He further argued that he was illegally suspended, as he placed no serious and imminent threat to the life or property of his employer and co-employees.[15]

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[11] *Id.*

[12] *Id.*

[13] *Id.* at 50-51, 194.

[14] *Id.* at 125-127.

[15] *Id.* at 54.

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In refuting Cosare's complaint, the respondents argued that Cosare was neither illegally suspended nor dismissed from employment. They also contended that Cosare committed the following acts inimical to the interests of Broadcom: (a) he failed to sell any broadcast equipment since the year 2007; (b) he attempted to sell a Panasonic HMC 150 Camera which was to be sourced from a competitor; and (c) he made an unauthorized request in Broadcom's name for its principal, Panasonic USA, to issue an invitation for Cosare's friend, one Alex Paredes, to attend the National Association of Broadcasters' Conference in Las Vegas, USA.[16] Furthermore, they contended that Cosare abandoned his job[17] by continually failing to report for work beginning April 1, 2009, prompting them to issue on April 14, 2009 a memorandum[18] accusing Cosare of absence without leave beginning April 1, 2009.

The Ruling of the LA

On January 6, 2010, LA Napoleon M. Menese (LA Menese) rendered his Decision[19] dismissing the complaint on the ground of Cosare's failure to establish that he was dismissed, constructively or otherwise, from his employment. For the LA, what transpired on March 30, 2009 was merely the respondents' issuance to Cosare of a show-cause memo, giving him a chance to present his side on the charges against him. He explained:

> It is obvious that [Cosare] DID NOT wait for respondents' action regarding the charges leveled against him in the show-cause memo. What he did was to pre-empt that action by filing this complaint just a day after he submitted his written explanation. Moreover, by specifically seeking payment of "***Separation Pay***" instead of reinstatement, [Cosare's] motive for filing this case becomes more evident.[20]

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[16] *Id.* at 136-137.

[17] *Id.* at 54-55.

[18] *Id.* at 152.

[19] *Id.* at 182-188; erroneously dated January 6, 2009.

[20] *Id.* at 187.

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It was also held that Cosare failed to substantiate by documentary evidence his allegations of illegal suspension and non-payment of allowances and commissions.

Unyielding, Cosare appealed the LA decision to the NLRC.

The Ruling of the NLRC

On August 24, 2010, the NLRC rendered its Decision[21] reversing the Decision of LA Menese. The dispositive portion of the NLRC Decision reads:

> **WHEREFORE**, premises considered, the DECISION is REVERSED and the Respondents are found guilty of Illegal Constructive Dismissal. Respondents BROADCOM ASIA[,] INC. and Dante Arevalo are ordered to pay [Cosare's] backwages, and separation pay, as well as damages, in the total amount of [₱]1,915,458.33, per attached Computation.
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> **SO ORDERED**.[22]

In ruling in favor of Cosare, the NLRC explained that "due weight and credence is accorded to [Cosare's] contention that he was constructively dismissed by Respondent Arevalo when he was asked to resign from his employment."[23] The fact that Cosare was suspended from using the assets of Broadcom was also inconsistent with the respondents' claim that Cosare opted to abandon his employment.

Exemplary damages in the amount of ₱100,000.00 was awarded, given the NLRC's finding that the termination of Cosare's employment was effected by the respondents in bad faith and in a wanton, oppressive and malevolent manner. The claim for unpaid commissions was denied on the ground of the failure to include it in the prayer of pleadings filed with the LA and in the appeal.

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[21] Penned by Commissioner Nieves E. Vivar-De Castro, with Presiding Commissioner Benedicto R. Palacol and Commissioner Isabel G. Panganiban-Ortiguerra, concurring; *id.* at 189-203.

[22] *Id.* at 202.

[23] *Id.* at 200.

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The respondents' motion for reconsideration was denied.[24] Dissatisfied, they filed a petition for *certiorari* with the CA founded on the following arguments: (1) the respondents did not have to prove just cause for terminating the employment of Cosare because the latter's complaint was based on an alleged constructive dismissal; (2) Cosare resigned and was thus not dismissed from employment; (3) the respondents should not be declared liable for the payment of Cosare's monetary claims; and (4) Arevalo should not be held solidarily liable for the judgment award.

In a manifestation filed by the respondents during the pendency of the CA appeal, they raised a new argument, *i.e.*, the case involved an intra-corporate controversy which was within the jurisdiction of the RTC, instead of the LA.[25] They argued that the case involved a complaint against a corporation filed by a stockholder, who, at the same time, was a corporate officer.

The Ruling of the CA

On November 24, 2011, the CA rendered the assailed Decision[26] granting the respondents' petition. It agreed with the respondents' contention that the case involved an intra-corporate controversy which, pursuant to Presidential Decree No. 902-A, as amended, was within the exclusive jurisdiction of the RTC. It reasoned:

> Record shows that [Cosare] was indeed a stockholder of [Broadcom], and that he was listed as one of its directors. Moreover, he held the position of [AVP] for Sales which is listed as a corporate office. Generally, the president, vice-president, secretary or treasurer are commonly regarded as the principal or executive officers of a corporation, and modern corporation statutes usually designate them as the officers of the corporation. However, it bears mentioning that under Section 25 of the Corporation Code, the Board of Directors of [Broadcom] is allowed to appoint such other officers as it may deem necessary. Indeed, [Broadcom's] By-Laws provides:

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[24] *Id.* at 56.

[25] *Id.* at 57.

[26] *Id.* at 44-65.

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> Article IV
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> Officer
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> Section 1. Election / Appointment – Immediately after their election, the Board of Directors shall formally organize by electing the President, the Vice-President, the Treasurer, and the Secretary at said meeting.
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> **The Board, may, from time to time, appoint such other officers as it may determine to be necessary or proper. x x x**

We hold that [the respondents] were able to present substantial evidence that **[Cosare] indeed held a corporate office**, as evidenced by the General Information Sheet which was submitted to the Securities and Exchange Commission (SEC) on October 22, 2009.[27] (Citations omitted and emphasis supplied)

Thus, the CA reversed the NLRC decision and resolution, and then entered a new one dismissing the labor complaint on the ground of lack of jurisdiction, finding it unnecessary to resolve the main issues that were raised in the petition. Cosare filed a motion for reconsideration, but this was denied by the CA *via* the Resolution[28] dated March 26, 2012. Hence, this petition.

The Present Petition

The pivotal issues for the petition's full resolution are as follows: (1) whether or not the case instituted by Cosare was an intra-corporate dispute that was within the original jurisdiction of the RTC, and not of the LAs; and (2) whether or not Cosare was constructively and illegally dismissed from employment by the respondents.

The Court's Ruling

The petition is impressed with merit.

Jurisdiction over the controversy

As regards the issue of jurisdiction, the Court has determined that contrary to the ruling of the CA, it is the LA, and not the

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[27] *Id.* at 63-64.

[28] *Id.* at 67-69.

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regular courts, which has the original jurisdiction over the subject controversy. An intra-corporate controversy, which falls within the jurisdiction of regular courts, has been regarded in its broad sense to pertain to disputes that involve any of the following relationships: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the state in so far as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates, themselves.[29] Settled jurisprudence, however, qualifies that when the dispute involves a charge of illegal dismissal, the action may fall under the jurisdiction of the LAs upon whose jurisdiction, as a rule, falls termination disputes and claims for damages arising from employer-employee relations as provided in Article 217 of the Labor Code. Consistent with this jurisprudence, the mere fact that Cosare was a stockholder and an officer of Broadcom at the time the subject controversy developed failed to necessarily make the case an intra-corporate dispute.

In *Matling Industrial and Commercial Corporation v. Coros*,[30] the Court distinguished between a "regular employee" and a "corporate officer" for purposes of establishing the true nature of a dispute or complaint for illegal dismissal and determining which body has jurisdiction over it. Succinctly, it was explained that "[t]he determination of whether the dismissed officer was a regular employee or corporate officer unravels the conundrum" of whether a complaint for illegal dismissal is cognizable by the LA or by the RTC. "In case of the regular employee, the LA has jurisdiction; otherwise, the RTC exercises the legal authority to adjudicate.[31]

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[29] *Go v. Distinction Properties Development and Construction, Inc.*, G.R. No. 194024, April 25, 2012, 671 SCRA 461, 479-480, citing *Yujuico v. Quiambao*, 542 Phil. 236, 247 (2007).

[30] G.R. No. 157802, October 13, 2010, 633 SCRA 12.

[31] *Id.* at 15.

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Applying the foregoing to the present case, the LA had the original jurisdiction over the complaint for illegal dismissal because Cosare, although an officer of Broadcom for being its AVP for Sales, was not a "corporate officer" as the term is defined by law. We emphasized in *Real v. Sangu Philippines, Inc.*[32] the definition of corporate officers for the purpose of identifying an intra-corporate controversy. Citing *Garcia v. Eastern Telecommunications Philippines, Inc.*,[33] we held:

" 'Corporate officers' in the context of Presidential Decree No. 902-A are those officers of the corporation who are **given that character by the Corporation Code or by the corporation's by-laws**. There are three specific officers whom a corporation must have under Section 25 of the Corporation Code. These are the president, secretary and the treasurer. The number of officers is not limited to these three. A corporation may have such other officers as may be provided for by its by-laws like, but not limited to, the vice-president, cashier, auditor or general manager. The number of corporate officers is thus limited by law and by the corporation's by-laws."[34] (Emphasis ours)

In *Tabang v. NLRC*,[35] the Court also made the following pronouncement on the nature of corporate offices:

It has been held that an "office" is created by the charter of the corporation and the officer is elected by the directors and stockholders. On the other hand, an "employee" usually occupies no office and generally is employed not by action of the directors or stockholders but by the managing officer of the corporation who also determines the compensation to be paid to such employee.[36] (Citations omitted)

As may be deduced from the foregoing, there are two circumstances which must concur in order for an individual to be considered a corporate officer, as against an ordinary employee or officer, namely: (1) the *creation* of the position is under the

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[32] G.R. No. 168757, January 19, 2011, 640 SCRA 67.

[33] G.R. No. 173115, April 16, 2009, 585 SCRA 450, 468.

[34] *Supra* note 32, at 83-84.

[35] 334 Phil. 424 (1997).

[36] *Id.* at 429.

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corporation's charter or by-laws; and (2) the *election* of the officer is by the directors or stockholders. It is only when the officer claiming to have been illegally dismissed is classified as such corporate officer that the issue is deemed an intra-corporate dispute which falls within the jurisdiction of the trial courts.

To support their argument that Cosare was a corporate officer, the respondents referred to Section 1, Article IV of Broadcom's by-laws, which reads:

ARTICLE IV
OFFICER

Section 1. Election / Appointment – Immediately after their election, the Board of Directors shall formally organize by electing the President, the Vice-President, the Treasurer, and the Secretary at said meeting.

The Board may, from time to time, appoint such other officers as it may determine to be necessary or proper. Any two (2) or more compatible positions may be held concurrently by the same person, except that no one shall act as President and Treasurer or Secretary at the same time.[37] (Emphasis ours)

This was also the CA's main basis in ruling that the matter was an intra-corporate dispute that was within the trial courts' jurisdiction.

The Court disagrees with the respondents and the CA. As may be gleaned from the aforequoted provision, the only officers who are specifically listed, and thus with offices that are created under Broadcom's by-laws are the following: the President, Vice-President, Treasurer and Secretary. Although a blanket authority provides for the Board's appointment of such other officers as it may deem necessary and proper, the respondents failed to sufficiently establish that the position of AVP for Sales was created by virtue of an act of Broadcom's board, and that Cosare was specifically elected or appointed to such position by the directors. No board resolutions to establish such facts form part of the case records. Further, it was held in *Marc*

[37] *Rollo*, p. 110.

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II Marketing, Inc. v. Joson[38] that an enabling clause in a corporation's by-laws empowering its board of directors to create additional officers, even with the subsequent passage of a board resolution to that effect, cannot make such position a corporate office. The board of directors has no power to create other corporate offices without first amending the corporate by-laws so as to include therein the newly created corporate office.[39] "To allow the creation of a corporate officer position by a simple inclusion in the corporate by-laws of an enabling clause empowering the board of directors to do so can result in the circumvention of that constitutionally well-protected right [of every employee to security of tenure]."[40]

The CA's heavy reliance on the contents of the General Information Sheets,[41] which were submitted by the respondents during the appeal proceedings and which plainly provided that Cosare was an "officer" of Broadcom, was clearly misplaced. The said documents could neither govern nor establish the nature of the office held by Cosare and his appointment thereto. Furthermore, although Cosare could indeed be classified as an officer as provided in the General Information Sheets, his position could only be deemed a regular office, and not a corporate office as it is defined under the Corporation Code. Incidentally, the Court noticed that although the Corporate Secretary of Broadcom, Atty. Efren L. Cordero, declared under oath the truth of the matters set forth in the General Information Sheets, the respondents failed to explain why the General Information Sheet officially filed with the Securities and Exchange Commission in 2011 and submitted to the CA by the respondents still indicated Cosare as an AVP for Sales, when among their defenses in the charge of illegal dismissal, they asserted that Cosare had severed his relationship with the corporation since the year 2009.

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[38] G.R. No. 171993, December 12, 2011, 662 SCRA 35.

[39] *Id.* at 54.

[40] *Id.* at 55, citing *Matling Industrial and Commercial Corporation v. Coros*, *supra* note 30, at 27.

[41] *Rollo*, pp. 275-292.

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Finally, the mere fact that Cosare was a stockholder of Broadcom at the time of the case's filing did not necessarily make the action an intra- corporate controversy. "[N]ot all conflicts between the stockholders and the corporation are classified as intra-corporate. There are other facts to consider in determining whether the dispute involves corporate matters as to consider them as intra-corporate controversies."[42] Time and again, the Court has ruled that in determining the existence of an intra-corporate dispute, the status or relationship of the parties **and** the nature of the question that is the subject of the controversy must be taken into account.[43] Considering that the pending dispute particularly relates to Cosare's rights and obligations as a regular officer of Broadcom, instead of as a stockholder of the corporation, the controversy cannot be deemed intra-corporate. This is consistent with the "controversy test" explained by the Court in *Reyes v. Hon. RTC, Br. 142*,[44] to wit:

> Under the nature of the controversy test, the *incidents* of that relationship must also be considered for the purpose of ascertaining whether the controversy itself is intra-corporate. The controversy must not only be rooted in the existence of an intra-corporate relationship, but must as well pertain to the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation. If the relationship and its incidents are merely incidental to the controversy or if there will still be conflict even if the relationship does not exist, then no intra-corporate controversy exists.[45] (Citation omitted)

It bears mentioning that even the CA's finding[46] that Cosare was a director of Broadcom when the dispute commenced was

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[42] *Real v. Sangu Philippines, Inc.*, *supra* note 32, at 82.

[43] *Marc II Marketing, Inc. v. Joson, supra* note 38, at 51; *Real v. Sangu Philippines, Inc., supra* note 32, at 81; *Speed Distributing Corp. v. Court of Appeals,* 469 Phil. 739, 758 (2004).

[44] 583 Phil. 591 (2008)

[45] *Id.* at 608.

[46] *Rollo,* pp. 63-64.

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unsupported by the case records, as even the General Information Sheet of 2009 referred to in the CA decision to support such finding failed to provide such detail.

All told, it is then evident that the CA erred in reversing the NLRC's ruling that favored Cosare solely on the ground that the dispute was an intra-corporate controversy within the jurisdiction of the regular courts.

The charge of constructive dismissal

Towards a full resolution of the instant case, the Court finds it appropriate to rule on the correctness of the NLRC's ruling finding Cosare to have been illegally dismissed from employment.

In filing his labor complaint, Cosare maintained that he was constructively dismissed, citing among other circumstances the charges that were hurled and the suspension that was imposed against him *via* Arevalo's memo dated March 30, 2009. Even prior to such charge, he claimed to have been subjected to mental torture, having been locked out of his files and records and disallowed use of his office computer and access to personal belongings.[47] While Cosare attempted to furnish the respondents with his reply to the charges, the latter refused to accept the same on the ground that it was filed beyond the 48-hour period which they provided in the memo.

Cosare further referred to the circumstances that allegedly transpired subsequent to the service of the memo, particularly the continued refusal of the respondents to allow Cosare's entry into the company's premises. These incidents were cited in the CA decision as follows:

> On March 31, 2009, [Cosare] reported back to work again. He asked Villareal if he could retrieve his personal belongings, but the latter said that x x x Arevalo directed her to deny his request, so [Cosare] again waited at the receiving section of the office. On April 1, 2009, [Cosare] was not allowed to enter the office premises. He was asked to just wait outside of the Tektite (PSE) Towers, where [Broadcom] had its offices, for further instructions on how and when he could get his personal belongings. [Cosare] waited until 8 p.m.

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[47] *Id.* at 86.

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for instructions but none were given. Thus, [Cosare] sought the assistance of the officials of Barangay San Antonio, Pasig who advised him to file a labor or replevin case to recover his personal belongings. x x x.[48] (Citation omitted)

It is also worth mentioning that a few days before the issuance of the memo dated March 30, 2009, Cosare was allegedly summoned to Arevalo's office and was asked to tender his immediate resignation from the company, in exchange for a financial assistance of ₱300,000.00.[49] The directive was said to be founded on Arevalo's choice to retain Abiog's employment with the company.[50] The respondents failed to refute these claims.

Given the circumstances, the Court agrees with Cosare's claim of constructive and illegal dismissal. "[C]onstructive dismissal occurs when there is **cessation of work** because continued employment is rendered impossible, unreasonable, or unlikely as when there is a demotion in rank or diminution in pay or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee leaving the latter with no other option but to quit."[51] In *Dimagan v. Dacworks United, Incorporated*,[52] it was explained:

The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances. It is an act amounting to dismissal but is made to appear as if it were not. Constructive dismissal is therefore a *dismissal in disguise*. The law recognizes and resolves this situation in favor of employees in order to protect their rights

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[48] *Id.* at 50-51.

[49] *Id.* at 48.

[50] *Id.* at 79.

[51] *The University of the Immaculate Conception v. National Labor Relations Commission*, G.R. No. 181146, January 26, 2011, 640 SCRA 608, 618-619, citing *La Rosa v. Ambassador Hotel*, G.R. No. 177059, March 13, 2009, 581 SCRA 340, 346-347.

[52] G.R. No. 191053, November 28, 2011, 661 SCRA 438.

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and interests from the coercive acts of the employer.[53] (Citation omitted)

It is clear from the cited circumstances that the respondents already rejected Cosare's continued involvement with the company. Even their refusal to accept the explanation which Cosare tried to tender on April 2, 2009 further evidenced the resolve to deny Cosare of the opportunity to be heard prior to any decision on the termination of his employment. The respondents allegedly refused acceptance of the explanation as it was filed beyond the mere 48-hour period which they granted to Cosare under the memo dated March 30, 2009. However, even this limitation was a flaw in the memo or notice to explain which only further signified the respondents' discrimination, disdain and insensibility towards Cosare, apparently resorted to by the respondents in order to deny their employee of the opportunity to fully explain his defenses and ultimately, retain his employment. The Court emphasized in *King of Kings Transport, Inc. v. Mamac*[54] the standards to be observed by employers in complying with the service of notices prior to termination:

> [T]he **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis

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[53] *Id.* at 446.

[54] 553 Phil. 108 (2007).

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for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.[55] (Citation omitted, underscoring ours, and emphasis supplied)

In sum, the respondents were already resolute on a severance of their working relationship with Cosare, notwithstanding the facts which could have been established by his explanations and the respondents' full investigation on the matter. In addition to this, the fact that no further investigation and final disposition appeared to have been made by the respondents on Cosare's case only negated the claim that they actually intended to first look into the matter before making a final determination as to the guilt or innocence of their employee. This also manifested from the fact that even before Cosare was required to present his side on the charges of serious misconduct and willful breach of trust, he was summoned to Arevalo's office and was asked to tender his immediate resignation in exchange for financial assistance.

The clear intent of the respondents to find fault in Cosare was also manifested by their persistent accusation that Cosare abandoned his post, allegedly signified by his failure to report to work or file a leave of absence beginning April 1, 2009. This was even the subject of a memo[56] issued by Arevalo to Cosare on April 14, 2009, asking him to explain his absence within 48 hours from the date of the memo. As the records clearly indicated, however, Arevalo placed Cosare under suspension beginning March 30, 2009. The suspension covered access to any and all company files/records and the use of the assets of the company, with warning that his failure to comply with the memo would be dealt with drastic management action. The charge of abandonment was inconsistent with this imposed suspension. "Abandonment is the deliberate and unjustified

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[55] *Id.* at 115-116.

[56] *Rollo*, p. 152.

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refusal of an employee to resume his employment. To constitute abandonment of work, two elements must concur: '(1) the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) there must have been a clear intention on the part of the employee to sever the employer- employee relationship manifested by some overt act.'"[57] Cosare's failure to report to work beginning April 1, 2009 was neither voluntary nor indicative of an intention to sever his employment with Broadcom. It was illogical to be requiring him to report for work, and imputing fault when he failed to do so after he was specifically denied access to all of the company's assets. As correctly observed by the NLRC:

[T]he Respondent[s] had charged [Cosare] of abandoning his employment beginning on April 1, 2009. However[,] the show-cause letter dated March 3[0], 2009 (Annex "F", ibid) suspended [Cosare] from using not only the equipment but the "assets" of Respondent [Broadcom]. This insults rational thinking because the Respondents tried to mislead us and make [it appear] that [Cosare] failed to report for work when they had in fact had [sic] placed him on suspension. x x x.[58]

Following a finding of constructive dismissal, the Court finds no cogent reason to modify the NLRC's monetary awards in Cosare's favor. In *Robinsons Galleria/Robinsons Supermarket Corporation v. Ranchez,*[59] the Court reiterated that an illegally or constructively dismissed employee is entitled to: (1) either reinstatement, if viable, or separation pay, if reinstatement is no longer viable; and (2) backwages.[60] The award of exemplary damages was also justified given the NLRC's finding that the respondents acted in bad faith and in a wanton, oppressive and malevolent manner when they dismissed Cosare. It is also by

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[57] *Dimagan v. Dacworks United, Incorporated, supra* note 52, at 447, citing *Exodus International Construction Corporation v. Biscocho, et al.*, G.R. No. 166109, February 23, 2011, 644 SCRA 76.

[58] *Rollo*, p. 200.

[59] G.R. No. 177937, January 19, 2011, 640 SCRA 135.

[60] *Id.* at 144.

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reason of such bad faith that Arevalo was correctly declared solidarily liable for the monetary awards.

WHEREFORE, the petition is **GRANTED**. The Decision dated November 24, 2011 and Resolution dated March 26, 2012 of the Court of Appeals in CA-G.R. SP. No. 117356 are **SET ASIDE**. The Decision dated August 24, 2010 of the National Labor Relations Commission in favor of petitioner Raul C. Cosare is **AFFIRMED.**

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 205453. February 5, 2014]

UNITED TOURIST PROMOTIONS (UTP) and ARIEL D. JERSEY, *petitioners, vs.* **HARLAND B. KEMPLIN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION UNDER RULE 45 OF THE RULES OF COURT; LIMITED TO REVIEW OF QUESTIONS OF LAW; EXCEPTION.— It is settled that Rule 45 limits us merely to the review of questions of law raised against the assailed CA decision. The Court is generally bound by the CA's factual findings, except only in some instances, among which is, when the said findings are contrary to those of the trial court or administrative body exercising quasi-judicial functions from which the action originated.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; NOTICE AND HEARING