Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

SANGWOO PHILIPPINES, INC. and/or SANG IK JANG, JISSO JANG, WISSO JANG, and NORBERTO TADEO,
Petitioners,

- versus -

SANGWOO PHILIPPINES, INC. EMPLOYEES UNION – OLALIA, represented by PORFERIA SALIBONGCOGON,[1]
Respondents.

x----------x

G.R. No. 173154

G.R. No. 173229

SANGWOO PHILIPPINES, INC. EMPLOYEES UNION – OLALIA, represented by PORFERIA SALIBONGCOGON,
Petitioners,

- versus -

SANGWOO PHILIPPINES INC. and/or SANG IK JANG, JISSO JANG, WISSO JANG, and NORBERTO TADEO,
Respondents.

Present:

CARPIO, *J.*, Chairperson,
BRION,
DEL CASTILLO,
PERLAS-BERNABE, and
LEONEN,* *JJ.*

Promulgated:
DEC 0 9 2013

x----------x

---

* Designated Acting Member per Special Order No. 1627.

1 "Forfiria Salimbongcogon" in some parts of the records.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court are consolidated petitions for review on *certiorari*[2] assailing the Decision[3] dated January 12, 2006 and Resolution[4] dated June 14, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 88965 that set aside the Resolutions[5] dated January 26, 2005 and March 31, 2005 of the National Labor Relations Commission (NLRC), deleted the award of separation pay, and ordered the payment of financial assistance of ₱15,000.00 each to its employees.

The Facts

On July 25, 2003, during the collective bargaining agreement (CBA) negotiations between Sangwoo Philippines, Inc. Employees Union-Olalia (SPEU) and Sangwoo Philippines, Inc. (SPI), the latter filed with the Department of Labor and Employment (DOLE) a letter-notice[6] of temporary suspension of operations for one (1) month, beginning September 15, 2003, due to lack of orders from its buyers.[7] SPEU was furnished a copy of the said letter. Negotiations on the CBA, however, continued and on September 10, 2003, the parties signed a handwritten Memorandum of Agreement, which, among others, specified the employees' wages and benefits for the next two (2) years, and that in the event of a temporary shutdown, all machineries and raw materials would not be taken out of the SPI premises.[8]

On September 15, 2003, SPI temporarily ceased operations. Thereafter, it successively filed two (2) letters[9] with the DOLE, copy furnished SPEU, for the extension of the temporary shutdown until March 15, 2004.[10] Meanwhile, on October 28, 2003, SPEU filed a complaint for unfair labor practice, illegal closure, illegal dismissal, damages and attorney's fees before the Regional Arbitration Branch IV of the NLRC.[11] Subsequently, or on February 12, 2004, SPI posted, in conspicuous places within the company premises, notices of its permanent closure and cessation of business operations, effective March 16, 2004, due to serious economic losses and financial reverses.[12] The DOLE was furnished a copy of said

---

2 *Rollo* (G.R. No. 173154), pp. 29-43; *rollo* (G.R. No. 173229), pp. 53-84.
3 *Rollo* (G.R. No. 173154), pp. 8-22. Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Noel G. Tijam and Mariflor Punzalan Castillo, concurring.
4 Id. at 23-24.
5 *Rollo* (G.R. No. 173229), pp. 113-122 and 124-125, respectively. Signed by Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo.
6 Id. at 138.
7 Id. at 35.
8 Id. at 135-137.
9 Id. at 154 and 154-A
10 Id. at 10.
11 Id. at 9.
12 Id. at 75-76.

notice on February 13, 2004, together with a separate letter notifying it of the company's permanent closure.[13] SPEU was also furnished with a copy of the notice of permanent closure. Forthwith, SPI offered separation benefits of one-half (½) month pay for every year of service to each of its employees. 234 employees of SPI accepted the offer, received the said sums and executed quitclaims.[14] Those who refused the offer, *i.e.*, the minority employees, were nevertheless given until March 25, 2004 to accept their checks and correspondingly, execute quitclaims. However, the minority employees did not claim the said checks.

The LA Ruling

In a Decision[15] dated June 4, 2004, the Labor Arbiter (LA) ruled in favor of SPI. The LA found that SPI was indeed suffering from serious business losses – as evidenced by financial statements which were never contested by SPEU – and, as such, validly discontinued its operations.[16] Consequently, the LA held that SPI was not guilty of unfair labor practice, and similarly observed that it duly complied with the requirement of furnishing notices of closure to its employees and the DOLE. Lastly, the LA ruled that since SPI's closure of business was due to serious business losses, it was not mandated by law to grant separation benefits to the minority employees.

Aggrieved, SPEU filed an Appeal Memorandum[17] before the NLRC.

The NLRC Ruling

In a Resolution[18] dated January 26, 2005, the NLRC sustained the ruling of the LA, albeit with modification. While it upheld SPI's closure due to serious business losses, it ruled that the members of SPEU are entitled to payment of separation pay equivalent to one-half (½) month pay for every year of service. In this relation, the NLRC opined that since SPI already gave separation benefits to 234 of its employees, the minority employees should not be denied of the same.

Dissatisfied, SPI filed a petition for *certiorari*[19] before the CA, praying for, *inter alia*, the issuance of a temporary restraining order (TRO) and/or a writ of preliminary injunction against the execution of the aforesaid NLRC resolution.

---

13 *Rollo* (G.R. No. 173154), pp. 75-76.
14 *CA rollo*, pp. 104-227.
15 *Rollo* (G.R. No. 173229), pp. 155-159. Penned by Labor Arbiter Enrico Angelo C. Portillo.
16 Id. at 158.
17 Id. at 160-199.
18 Id. at 113-122.
19 *CA rollo*, pp. 2-24.

The CA Proceedings

In a Resolution[20] dated April 12, 2005, the CA issued a TRO, which enjoined the enforcement of the NLRC resolution. Thereafter, in a Resolution[21] dated June 3, 2005, the CA issued a writ of preliminary injunction against the same.

Meanwhile, pursuant to the CA's Resolution[22] dated May 19, 2005 which suggested that the parties explore talks of a possible compromise agreement, SPI sent a Formal Offer of Settlement[23] dated May 24, 2005 to SPEU, offering the amount of ₱15,000.00 as financial assistance to each of the minority employees. On May 26, 2005, SPI sent a Reiteration of Formal Offer of Settlement to SPEU, reasserting its previous offer of financial assistance. However, settlement talks broke down as SPEU did not accept SPI's offer.

In a Decision[24] dated January 12, 2006, the CA held that the minority employees were not entitled to separation pay considering that the company's closure was due to serious business losses. It pronounced that requiring an employer to be generous when it was no longer in a position to be so would be oppressive and unjust. Nevertheless, the CA still ordered SPI to pay the minority employees ₱15,000.00 each, representing the amount of financial assistance as contained in the Formal Offer of Settlement.

Both parties filed motions for reconsideration which were, however, denied in a Resolution[25] dated June 14, 2006. Hence, these petitions.

The Issues Before the Court

The issues for the Court's resolution are as follows: (*a*) whether or not the minority employees are entitled to separation pay; and (*b*) whether or not SPI complied with the notice requirement of Article 297 (formerly Article 283)[26] of the Labor Code.

---

20 Id. at 424-427.
21 Id. at 441-444.
22 Id. at 432-433.
23 Id. at 438.
24 *Rollo* (G.R. No. 173154), pp. 8-22.
25 Id. at 23-24.
26 As amended and renumbered by Republic Act No. 10151, entitled "AN ACT ALLOWING THE EMPLOYMENT OF NIGHT WORKERS, THEREBY REPEALING ARTICLES 130 AND 131 OF PRESIDENTIAL DECREE NUMBER FOUR HUNDRED FORTY-TWO, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES."

The Court's Ruling

Both petitions are partly meritorious.

A. Non-entitlement to Separation Benefits.

Closure of business is the reversal of fortune of the employer whereby there is a complete cessation of business operations and/or an actual locking-up of the doors of establishment, usually due to financial losses. Closure of business, as an authorized cause for termination of employment,[27] aims to prevent further financial drain upon an employer who cannot pay anymore his employees since business has already stopped.[28] In such a case, the employer is generally required to give separation benefits to its employees, unless the closure is due to serious business losses.[29] As explained in the case of *Galaxie Steel Workers Union (GSWU-NAFLU-KMU) v. NLRC*[30] (*Galaxie*):

> The Constitution, while affording full protection to labor, nonetheless, recognizes "the right of enterprises to reasonable returns on investments, and to expansion and growth." In line with this protection afforded to business by the fundamental law, Article [297] of the Labor Code clearly makes a policy distinction. It is only in instances 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" that employees whose employment has been terminated as a result are entitled to separation pay. In other words, **Article [297] of the Labor Code does not obligate an employer to pay separation benefits when the closure is due to serious losses. To require an employer to be generous when it is no longer in a position to do so, in our view, would be unduly oppressive, unjust, and unfair to the employer. Ours is a system of laws, and the law in protecting the rights of the working man, authorizes neither the oppression nor**

---

27 Article 297 (formerly Article 283) of the Labor Code, as amended, provides:

> Article 297. *Closure of Establishment and Reduction of Personnel.* – **The employer may also terminate the employment of any employee due to** the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the **closing or cessation of operation of the establishment or undertaking** unless the closing is for the purpose of circumventing the provisions of this Title, **by serving a written notice on the worker and the Ministry of Labor and Employment at least one (1) month before the intended date thereof**. 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 at least one-half (½) month pay for every year of service, whichever is higher**. A fraction of at least six (6) months shall be considered as one (1) whole year. (Emphases and underscoring supplied)

28 *J.A.T. General Services v. NLRC*, G.R. No. 148340, January 26, 2004, 421 SCRA 78, 86.

29 *Galaxie Steel Workers Union (GSWU-NAFLU-KMU) v. NLRC*, G.R. No. 165757, October 17, 2006, 504 SCRA 692, 700-701, citing *North Davao Mining Corporation v. NLRC*, G.R. No. 112546, March 13, 1996, 254 SCRA 721, 729-730.

30 Id. at 701, citing *Cama v. Joni's Food Services, Inc.*, G.R. No. 153021, March 10, 2004, 425 SCRA 259, 269.

> **the self-destruction of the employer**. (Emphasis and underscoring supplied)

In this case, the LA, NLRC, and the CA all consistently found that SPI indeed suffered from serious business losses which resulted in its permanent shutdown and accordingly, held the company's closure to be valid. It is a rule that absent any showing that the findings of fact of the labor tribunals and the appellate court are not supported by evidence on record or the judgment is based on a misapprehension of facts, the Court shall not examine anew the evidence submitted by the parties.[31] Perforce, without any cogent reason to deviate from the findings on the validity of SPI's closure, the Court thus holds that SPI is not obliged to give separation benefits to the minority employees pursuant to Article 297 of the Labor Code as interpreted in the case of *Galaxie*. As such, SPI should not be directed to give financial assistance amounting to ₱15,000.00 to each of the minority employees based on the Formal Offer of Settlement. If at all, such formal offer should be deemed only as a calculated move on SPI's part to further minimize the expenses that it will be bound to incur should litigation drag on, and not as an indication that it was still financially sustainable. However, since SPEU chose not to accept, said offer did not ripen into an enforceable obligation on the part of SPI from which financial assistance could have been realized by the minority employees.

B. Insufficient Notice of Closure.

Article 297 of the Labor Code provides that before any employee is terminated due to closure of business, it must give a one (1) month prior written notice to the employee and to the DOLE. In this relation, case law instructs that it is the personal right of the employee to be personally informed of his proposed dismissal as well as the reasons therefor; and such requirement of notice is not a mere technicality or formality which the employer may dispense with.[32] Since the purpose of previous notice is to, among others, give the employee some time to prepare for the eventual loss of his job,[33] the employer has the positive duty to inform each and every employee of their impending termination of employment. To this end, jurisprudence states that an employer's act of posting notices to this effect in conspicuous areas in the workplace is not enough. Verily, for something as significant as the involuntary loss of one's employment, nothing less than an individually-addressed notice of dismissal supplied to each worker is proper. As enunciated in the case of *Galaxie*: [34]

> Finally, with regard to the notice requirement, the Labor Arbiter found, and it was upheld by the NLRC and the Court of Appeals, that the

---

31 *Ignacio v. Coca-Cola Bottlers Phils., Inc.*, G.R. No. 144400, September 19, 2001, 365 SCRA 418, 423.
32 *Shoppers Gain Supermart v. NLRC*, G.R. No. 110731, July 26, 1996, 259 SCRA 411, 423.
33 *Angeles, et al. v. Polytex Design, Inc.*, G.R. No. 157673, October 15, 2007, 536 SCRA 159, 167, citing *San Miguel Corporation v. Aballa*, G.R. No. 149011, June 28, 2005, 461 SCRA 392, 430.
34 *Galaxie Steel Workers Union (GSWU-NAFLU-KMU) v. NLRC*, supra note 28, at 701-702.

> written notice of closure or cessation of Galaxie's business operations was posted on the company bulletin board one month prior to its effectivity. **The mere posting on the company bulletin board does not, however, meet the requirement under Article [297] of "serving a written notice on the workers."** The purpose of the written notice is to inform the employees of the specific date of termination or closure of business operations, and must be served upon them at least one month before the date of effectivity to give them sufficient time to make the necessary arrangement. **In order to meet the foregoing purpose, service of the written notice must be made individually upon each and every employee of the company**. (Emphasis and underscoring supplied; citations omitted)

Keeping with these principles, the Court finds that the LA, NLRC, and CA erred in ruling that SPI complied with the notice requirement when it merely posted various copies of its notice of closure in conspicuous places within the business premises. As earlier explained, SPI was required to serve written notices of termination to its employees, which it, however, failed to do. It is well to stress that while SPI had a valid ground to terminate its employees, *i.e.*, closure of business, its failure to comply with the proper procedure for termination renders it liable to pay the employee nominal damages for such omission. Based on existing jurisprudence, an employer which has a valid cause for dismissing its employee but conducts the dismissal with procedural infirmity is liable to pay the employee nominal damages in the amount of ₱30,000.00 if the ground for dismissal is a just cause, or the amount of ₱50,000.00 if the ground for dismissal is an authorized cause.[35] However, case law exhorts that in instances where the payment of such damages becomes impossible, unjust, or too burdensome, modification becomes necessary in order to harmonize the disposition with the prevailing circumstances.[36] Thus, in the case of *Industrial Timber Corporation v. Ababon*[37] (*Industrial Timber*), the Court reduced the amount of nominal damages awarded to employees from ₱50,000.00 to ₱10,000.00 since the authorized cause of termination was the employer's closure or cessation of business which was done in good faith and due to circumstances beyond the employer's control, *viz.*:[38]

> In the determination of the amount of nominal damages which is addressed to the sound discretion of the court, several factors are taken into account: (1) the authorized cause invoked, whether it was a retrenchment or a closure or cessation of operation of the establishment due to serious business losses or financial reverses or otherwise; (2) the number of employees to be awarded; (3) the capacity of the employers to satisfy the awards, taken into account their prevailing financial status as borne by the records; (4) the employer's grant of other termination benefits in favor of the employees; and (5) whether there was a *bona fide* attempt to comply with the notice requirements as opposed to giving no notice at all.

---

35 See *Abbott Laboratories, Philippines v. Alcaraz*, G.R. No. 192571, July 23, 2013.
36 *Industrial Timber Corporation v. Ababon*, 520 Phil. 522, 527 (2006).
37 Id.
38 Id. at 527-528.

> In the case at bar, there was a valid authorized cause considering the closure or cessation of ITC's business which was done in good faith and due to circumstances beyond ITC's control. Moreover, ITC had ceased to generate any income since its closure on August 17, 1990. Several months prior to the closure, ITC experienced diminished income due to high production costs, erratic supply of raw materials, depressed prices, and poor market conditions for its wood products. It appears that ITC had given its employees all benefits in accord with the CBA upon their termination.
>
> **Thus, considering the circumstances obtaining in the case at bar, we deem it wise and just to reduce the amount of nominal damages to be awarded for each employee to ₱10,000.00 each instead of ₱50,000.00 each**. (Emphasis and underscoring supplied)

In this case, considering that SPI closed down its operations due to serious business losses and that said closure appears to have been done in good faith, the Court – similar to the case of *Industrial Timber* – deems it just to reduce the amount of nominal damages to be awarded to each of the minority employees from ₱50,000.00 to ₱10,000.00. To be clear, the foregoing award should only obtain in favor of the minority employees and not for those employees who already received sums equivalent to separation pay and executed quitclaims "releasing [SPI] now and in the future any claims and obligation which may arise as results of [their] employment with the company."[39] For these latter employees who have already voluntarily accepted their dismissal, their executed quitclaims practically erased the consequences of infirmities on the notice of dismissal,[40] at least as to them.

WHEREFORE, the petitions are **PARTLY GRANTED**. The Decision dated January 12, 2006 and Resolution dated June 14, 2006 of the Court of Appeals in CA-G.R. SP No. 88965 are hereby **AFFIRMED** with **MODIFICATION** deleting the award of financial assistance in the amount of ₱15,000.00 to each of the minority employees. Instead, Sangwoo Philippines, Inc. is **ORDERED** to pay nominal damages in the amount of ₱10,000.00 to each of the minority employees.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

---

39 *CA rollo*, pp. 104-227.

40 *Talam v. NLRC*, G.R. No. 175040, April 6, 2010, 617 SCRA 408, 426.

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second 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