FIRST DIVISION

ASIAN INTERNATIONAL MANPOWER SERVICES, INC. (AIMS),	G.R. No. 169652
Petitioner,	Present:
- versus -	Panganiban, *C.J.* (Chairperson), Ynares-Santiago, Austria-Martinez, Callejo, Sr., and Chico-Nazario, *JJ.*
COURT OF APPEALS and ANICETA LACERNA,	Promulgated:
Respondents.	October 9, 2006

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

DECISION

YNARES-SANTIAGO, *J.*:

This petition for review under Rule 45 of the Rules of Court seeks to set aside the May 31, 2005 Decision[1] of the Court of Appeals in CA-G.R. SP No. 73276 which reversed the June 28, 2002 Resolution[2] of the National Labor Relations Commission (NLRC) and held that respondent Aniceta Lacerna (Lacerna) was illegally dismissed by petitioner Asian International Manpower Services, Inc. (AIMS).

The facts as alleged[3] by Lacerna show that Proxy Maid Services Centre (Proxy), a Hong Kong based recruitment agency hired her through AIMS, a recruitment entity in the Philippines. On February 10, 2000, she signed an employment contract to work as a domestic helper of Low See Ting who later cancelled the contract sometime in March 2000. Nevertheless, Lacerna heeded AIMS's advice to proceed to Hong Kong on the assurance that she will be provided with an employment abroad. Upon arrival at Proxy's office on April 1,

2000, Lacerna was fetched by her employer, Tan Kmin Shwe Lin Charmain (Charmain). However, the latter dismissed her in a Notification dated May 2, 2000 citing as reason the "difficult[y] in communication."[4]

On May 20, 2000, Proxy transferred Lacerna to Tam Ching-yee, Donna (Donna). On June 30, 2000 she was dismissed by Donna without stating the reason for her termination. Neither did Proxy explain why she was dismissed. On July 1, 2000, Lacerna agreed to take a three-day trial period with another employer, Daisy Lee. However, before she could sign her contract with the latter, the Hong Kong government denied her request for change of employer and advised her to submit a fresh application with her country of origin.

Following the denial of her work permit, Lacerna returned to the Philippines on July 13, 2000 but was informed by AIMS that Daisy Lee is no longer interested in hiring her. Lacerna demanded the return of her placement fee but was denied, hence, she filed the instant illegal dismissal case.

AIMS, on the other hand, alleged that Lacerna resigned after working for five days as a domestic helper of Low See Ting from April 1, 2000 to April 5, 2000, as evidenced by her resignation letter.[5] Proxy paid her wages and fare for a return ticket to the Philippines[6] but she refused to be repatriated. Thereafter, with the assistance of Proxy, she was hired in the household of Charmain. Unfortunately, the latter dismissed Lacerna on the ground of difficulty in communication. On May 8, 2000, the Hong Kong Immigration Department granted her an extension of time to stay in Hong Kong with a warning that the same is her last chance to stay in the country. When Lacerna requested another extension, the same was denied and she was directed to leave Hong Kong.

In her Reply,[7] Lacerna insisted that her first employer was Charmain because she never worked for Low See Ting, who as early as March 2000, cancelled the contract before she flew to Hong Kong. She added that the signature appearing in the resignation letter and receipt of payment for the period April 1 to 5, 2000 is not her handwriting.

On June 28, 2001, the Labor Arbiter ruled that Lacerna was not illegally dismissed because she resigned as domestic helper of Low See Ting. This was affirmed on appeal by the NLRC in its resolution dated June 28, 2002.

On May 31, 2005, the Court of Appeals reversed the decision of the NLRC and held that Lacerna was illegally dismissed because no just or authorized cause was shown to justify her dismissal by Donna, her last employer. It ruled that AIMS is solidarily liable with Proxy; and that Lacerna's resignation did not exempt AIMS from liability because Section 10 of Republic Act (R.A.) No. 8042, or the Migrant Workers and Overseas Filipinos Act of 1995 provides that the liability of the principal employer and the recruitment agency shall not be affected by any substitution, amendment, or modification of the contract of employment. The dispositive portion thereof, reads:

> WHEREFORE, the foregoing considered, the petition is GRANTED and the assailed Decision is REVERSED and SET ASIDE. Accordingly, private respondents are ordered to pay petitioner the following:
>
> 1. HK$11,010.00 corresponding to three (3) months of her salary or its equivalent in the Philippine Peso at the time of payment;
>
> 2. The amount of P18,000.00 with twelve percent (12%) interest per annum as reimbursement of her placement fee;
>
> 3. P10,000.00 as moral damages;
>
> 4. P10,000.00 as exemplary damages; and
>
> 5. Attorney's fees equivalent to ten percent (10%) of the total monetary award. No costs.
>
> SO ORDERED.[8]

AIMS filed a motion for reconsideration but was denied.

Hence, the instant petition.

The issues for resolution are: Was Lacerna illegally dismissed? If yes, may AIMS be held liable for the monetary claims of Lacerna.

On both issues, the Court rules in the affirmative.

There is no dispute that the last employer of Lacerna was Donna and not Daisy Lee because the Hong Kong government directed her repatriation before she could sign her contract with the latter. In dismissing her, Donna gave no reason for her termination. Neither did Proxy explain the ground for her dismissal. And where there is no showing of a clear, valid, and legal cause for the termination, the law considers the matter, a case of illegal dismissal.[9] In termination cases involving Filipino workers recruited for overseas employment, the burden of proving just or authorized cause for termination rests with the foreign based employer/principal and the local based entity which recruited the worker both being solidarily liable for liabilities arising from the illegal dismissal of the worker. In this case, the Court of Appeals correctly declared Lacerna's termination illegal since no reason was given to justify her termination.

AIMS argued that it cannot be held liable for the monetary claims of Lacerna because its contract was limited only to Lacerna's employment with Low See Ting. When she resigned as domestic helper of the latter, the contract was allegedly extinguished making AIMS no longer privy to the subsequent employment contract entered into by Proxy and Lacerna.

However, the records of the Immigration Department of Hong Kong belie the contention of AIMS that Lacerna was employed by Low See Ting. The May 8, 2000 letter of the Hong Kong Immigration Department, states:

> I refer to your application on 8 May 2000 for extension of stay to enable you to submit a fresh application for change of employer in Hong Kong.
>
> Our records show that you were a domestic helper whose employment contract was terminated x x x prematurely on 5-4-2000. Subsequently, you submitted an application for change of employer in Hong Kong. During the processing of the application, we were informed that your prospective employer had backed out. Such application was thereby cancelled and you were allowed an opportunity to submit another application for change of employer after production of evidence of a second prospective employment. You sought permission to submit a second application for change of employer.

> While we are prepared to accept and consider your second application for change of employer, I must remind you that this is final. If your second prospective employer again backs out or withdraws his/her sponsorship for whatever reasons, your further application for extension of stay for the reason of processing a new employment in Hong Kong will be refused. Your further application for change of employer will not be considered. If you still wish to work for a new employer in Hong Kong, you should submit a fresh application in your country of origin.[10]

Based on the foregoing, the Immigration Department noted that the application of Lacerna was her second request for change of employer. She filed the first application after her contract was pre-terminated on May 4, 2000. This refers to the pre-termination by Charmain in the Notification of Cancellation of Employment Contract dated May 2, 2000. However, the prospective employer subject of said first application backed out, hence, Lacerna submitted a second application for change of employer which was granted with a warning that the same will be her last chance to stay in Hong Kong. Said second application landed her a job in the household of Donna on May 20, 2000. When the latter dismissed Lacerna on June 30, 2000, she applied for the third time to change employer but was denied by the Immigration Department which directed her to leave Hong Kong. Thus:

> I refer to your application on 11 JUL 2000 for change of employer in Hong Kong after premature termination of contract.
>
> Please note that under the existing policy, foreign domestic helpers whose contracts are terminated prematurely are required to return to their place of origin where they may submit fresh application for entry to Hong Kong if they so wish. Permission to change employment in Hong Kong is given only in exceptional circumstances. These include, for example, cases where the employers are unable to continue with the contracts because of migration, external transfer, death or financial reasons or there is evidence that the domestic helpers have been abused or exploited.
>
> According to our records, you were on 19 MAY 2000 granted permission to remain in Hong Kong to work as a domestic helper under a standard 2-year employment contract. On 30 JUN 2000, your employment contract was terminated prematurely.
>
> Subsequently, you applied for change of employer in Hong Kong. During your application, you were allowed opportunities to provide information to support your case.

> Having taken into consideration the information made available and circumstances of your case, I am not satisfied that there are circumstances in your case which should justify exceptional consideration. Your application is therefore refused. If you wish to work for a new employer, you should submit a fresh application after you return to your place of domicile. Under the direct visa application system, your visa application can be submitted directly to this department through your prospective employer in Hong Kong. The normal processing time for a visa application submitted through such system is around 4 to 6 weeks.
>
> Please note that after termination of your contract, you are permitted to remain in Hong Kong up to 14 JUL 2000 and that you are required to leave Hong Kong on or before this date.[11]

The Hong Kong Immigration Department gave Lacerna only two chances to change employer. The subject of the first was the prospective employer who backed out, and the second was Donna. If we follow the version of AIMS, then the sequence of her employment would have been that with: (1) Low See Ting, (2) Charmain, (3) prospective employer who backed out, and (4) Donna. However Lacerna's employment with Low See Ting is not supported by the records of the Immigration Department. If Low See Ting was the first employer, then Lacerna's two chances to change employer would have ended on her prospective employer who backed out and would not have enabled her to work for Charmain and Donna. Clearly, the version of AIMS does not jibe with the official records of the Hong Kong government. Hence, between the alleged Lacerna's resignation letter to Low See Ting and the letters of the Hong Kong Immigration Department showing that Lacerna could not have been employed by her, credence must be given to the said official records, especially so that AIMS never assailed their authenticity.

Moreover, even granting that Lacerna truly resigned as domestic helper of Low See Ting, the liability of AIMS was not extinguished. The contract of Lacerna as approved by the Philippine Overseas Employment Administration (POEA) reveals that Proxy was her designated **principal** employer; the agreed salary was HK$3,670.00 a month; and the contract duration was for two years.[12] Since AIMS was the local agency which recruited Lacerna for Proxy, it is solidarily liable with the latter for liabilities arising from her illegal dismissal. To

detach itself from the liability of Proxy, AIMS must show by clear and convincing evidence that its contract is limited to Lacerna's employment by Low See Ting. However, aside from its bare allegation, AIMS presented no proof to corroborate its claim. On the contrary, it appears that in transferring Lacerna from one employer to another, Proxy did not demand a new placement fee from Lacerna. This only shows that Proxy's conduct was in accordance with the original contract executed with AIMS and not on an entirely new and separate agreement entered into in Hong Kong. This interpretation is in accord with the rule that all doubts in the construction of labor contracts should be resolved in favor of the working class. The Constitution mandates the protection of labor and the sympathetic concern of the State for the workers conformably to the social justice policy.[13] Verily, to absolve AIMS from liability based on its unsubstantiated claim that it is not privy to the subsequent employment provided by Proxy for Lacerna would be to undermine the avowed policy of the State. The joint and solidary liability imposed by law against recruitment agencies and foreign employers is meant to assure the aggrieved worker of immediate and sufficient payment of what is due him.[14] Thus, Section 10 of R.A. No. 8042, provides:

> SEC. 10. *Money Claims*. –
>
> x x x x
>
> The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/ placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.
>
> Such liabilities shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment or modification made locally or in a foreign country of the said contract.
>
> x x x x
>
> In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the worker shall be entitled to the full reimbursement of his placement fee with interest at twelve percent (12%) per

annum, plus his salaries for the unexpired portion of the employment contract or for three (3) months for every year of the unexpired term, whichever is less

The illegal dismissal of Lacerna entitles her to the full reimbursement of placement fee with interest at twelve percent (12%) per annum, plus salaries for the unexpired portion of her employment contract or for three months for every year of the unexpired term, whichever is less. Thus, the Court of Appeals was correct in ordering AIMS to pay HK$11,010.00 corresponding to three months of her salary or its equivalent in the Philippine Peso at the time of payment, plus placement fee of P18,0000.00.

The Court of Appeals, however, erred in awarding moral and exemplary damages inasmuch as Lacerna failed to prove that AIMS and Proxy are guilty of bad faith. While it is true that they were not able to justify Lacerna's dismissal, the same does not automatically amount to bad faith. Moral and exemplary damages cannot be based solely upon the premise that the employer dismissed the employee without cause or due process. The termination must be attended with bad faith, or fraud, or was oppressive to labor or done in a manner contrary to morals, good customs or public policy and that social humiliation, wounded feelings, or grave anxiety resulted therefrom. Similarly, exemplary damages are recoverable only when the dismissal was effected in a wanton, oppressive or malevolent manner. To merit the award of these damages, additional facts showing bad faith are necessary[15] but Lacerna failed to plead and prove the same in this case. Hence, the awards of moral and exemplary damages should be deleted.

The award of attorney's fees is sustained. In actions for recovery of wages or where an employee was forced to litigate and thus incurred expenses to protect his rights and interests, a maximum of ten percent (10%) of the total monetary award by way ofattorney's fees is justified under Article 111 of the Labor Code, Section 8, Rule VIII, Book III of its Implementing Rules, and paragraph 7, Article 2208 of the Civil Code. There need not be any showing that the employer acted maliciously or in bad faithwhen it withheld the wages. There need only be a showing that the lawful wages were not paid accordingly and that the employee was forced to file a case, as in the instant case.[16]

WHEREFORE, the petition is **PARTLY GRANTED**. The May 31, 2005 Decision of the Court of Appeals in CA-G.R. SP No. 73276 is **AFFIRMED** with the **MODIFICATION** that the awards of moral and exemplary damages are **DELETED** for lack of basis.

No costs.

SO ORDERED.

CONSUELO YNARES-SANTIAGO
Associate Justice

WE CONCUR:

ARTEMIO V. PANGANIBAN
Chief Justice
Chairperson

MA. ALICIA AUSTRIA-MARTINEZ
Associate Justice

ROMEO J. CALLEJO, SR.
Associate Justice

MINITA V. CHICO-NAZARIO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ARTEMIO V. PANGANIBAN
Chief Justice

---

[1] *Rollo*, pp. 34-46. Penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Ruben T. Reyes and Fernanda Lampas Peralta.
[2] *Id*. at 111-115. Penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan.
[3] *Id*. at 51-55, Lacerna's Position Paper.
[4] *Id*. at 79.
[5] *Id*. at 76.
[6] *Id*. at 77.
[7] *Id*. at 82-85.
[8] *Id*. at 45-46.
[9] *Sevillana v. I.T. (International) Corp*., G.R. No. 99047, April 16, 2001, 356 SCRA 451, 467.
[10] *Rollo*, p. 80.
[11] *Id*. at 81.
[12] *Id*. at 66.
[13] *Philippine National Construction Corporation v. National Labor Relations Commission*, G.R. No. 101535, January 22, 1993, 217 SCRA 455, 461.
[14] *Sevillana v. I.T. (International) Corp*., *supra* note 9 at 464-465.
[15] *San Miguel Corporation v. Del Rosario*, G.R. Nos. 168194 & 168603, December 13, 2005, 477 SCRA 604, 619-620.
[16] *San Miguel Corporation v. Aball*a, G.R. No. 149011, June 28, 2005, 461 SCRA 392, 432-433; *San Miguel Corporation v. Del Rosario*, *supra* at 619.