

**Ma. Socorro Mandapat vs. Add Force Personnel Services, Inc. and Court of Appeals
G.R. No. 180285; 6 July 2010**

Facts: Ma. Socorro Mandapat (Mandapat) was hired by Add Force Personnel Services, Inc. (Add Force) as Sales and Marketing Manager to negotiate and consummate contracts with clients who wanted to avail of Add Force's services.

Add Force gave Mandapat a show-cause notice directing her to explain why she should not be disciplined for gross and habitual neglect of duties and willful breach of trust. The notice also placed her on preventive suspension during the course of the investigation. According to Add Force, during her 5-month stint as Sales and Marketing Manager, Mandapat failed to close a single deal, issued several proposals to clients which were grossly disadvantageous to Add Force or disregarded the client's budget ceiling, sent out several communications to clients containing erroneous data and computations, consistently failed to submit her reports, and submitted fictitious daily activity reports and reimbursement slips.

Mandapat gave Add Force her response to the show-cause memorandum along with her resignation letter supposedly in protest of the preventive suspension. Subsequently, she filed a complaint with the labor arbiter, claiming she was constructively dismissed when she was placed on preventive suspension, her access to the internet cut-off, and then pressured by Add Force to resign in exchange for separation pay. She denied that she was negligent, and faulted the Chief Executive Officer for his indecisiveness and the lack of support staff for the sales department. She claimed that her preventive suspension was illegal for being indefinite, since its duration was not stated in the show-cause memorandum. She argued that she did pose any danger to the lives of Add Force's officers or its properties to warrant the preventive suspension.

Add Force insisted that Mandapat resigned and was not dismissed. It explained that Mandapat was placed on preventive suspension because of the risk she posed on its property and business. Add Force added that Mandapat's preventive suspension for 1 day can hardly be considered indefinite, given that she immediately resigned 1 day after the suspension.

The Labor Arbiter found that the charges of gross and habitual neglect and loss of trust and confidence were not substantiated, and declared Mandapat to have been constructively dismissed. The National Labor Relations Commission (NLRC) affirmed the labor arbiter's finding of constructive dismissal.

Add Force brought the case to the Court of Appeals (CA) which reversed the decisions of the NLRC and the labor arbiter. The CA sustained the preventive suspension as a valid exercise of management prerogative pending investigation for a perceived violation of company rules. The CA ruled that Mandapat chose to resign from her job and her resignation mooted the issue of preventive suspension. Mandapat questioned the CA's ruling before the Supreme Court.

Issue: Whether or not Mandapat was constructively dismissed.

Held: Constructive dismissal exists when an act of clear discrimination, insensibility or disdain by an employer has become so unbearable to the employee leaving him with no option but to forego his continued employment.

There was no act of discrimination committed against Mandapat that would render her employment unbearable.

Preventive suspension may be legally imposed on employee whose alleged violation is the subject of an investigation. The purpose of his suspension is to prevent him from causing harm or injury to the company as well as to his fellow employees (*Section 8, Rule XXIII, Book V, Omnibus Rules Implementing the Labor Code, as amended by Department Order No. 9, Series of 1997*). No preventive suspension shall last longer than 30 days and the employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker (*Section 9, Rule XXIII, Book V, Omnibus Rules Implementing the Labor Code, as amended by Department Order No. 9, Series of 1997*). When preventive suspension exceeds the maximum period allowed without reinstating the employee either by actual or payroll reinstatement or when preventive suspension is for an indefinite period, only then will constructive dismissal set in.

While no period was mentioned in the show-cause memorandum, the inclusion of the phrase “during the course of investigation” would lead to a reasonable and logical presumption that said suspension in fact had a duration which could very well be not more than 30 days as mandated by law. And, as the CA correctly observed, the suspension was rendered moot by Mandapat’s resignation tendered a day after the suspension was made effective.

The preventive suspension was also necessary to protect Add Force’s assets and operations pending investigation of Mandapat. As Sales Manager, Mandapat had the power to enter into contracts that would bind Add Force, regardless of whether these contracts would prove to be beneficial or prejudicial to its interest.

The cutting-off of Mandapat’s internet access was not harassment but a consequence of the investigation against her and was intended to prevent her from having further access to the company’s network-based documents and forms. Add Force’s acts were just measures to protect itself while the investigation was ongoing.

There was no coercion employed on Mandapat to resign. Mere allegations of threat or force do not constitute evidence to support a finding of forced resignation. In order for intimidation to vitiate consent, the following requisites must concur: (1) the intimidation caused the consent to be given; (2) the threatened act is unjust or unlawful; (3) the threat is real or serious, there being evident disproportion between the evil and the resistance which all men can offer, leading to the choice of doing the act which is forced on the person to do as the lesser evil; and (4) it produces a well-grounded fear from the fact that the person from whom it comes has the necessary means or ability to inflict the threatened injury to his person or property. None of these requisites was proven by Mandapat. No demand was made on her to resign. At most, she was merely given the option to either resign or face disciplinary investigation, which Add Force had every right to conduct in light of her numerous infractions. There was nothing irregular in providing an option to her. Ultimately, the final decision on whether to resign or face disciplinary action rested on her alone.

Ponente: J. Jose Portugal Perez

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