

**FRANCHESKA ALEEN BALABA BUBAN vs. NILO DELA PEÑA**  
**G.R. No. 268399, January 24, 2024<sup>1</sup>**

**FACTS:**

On November 11, 2014, Francheska Aleen Balaba Buban (Buban) was hired as Customer Care Senior Specialist in Xerox Business. On March 22, 2015, Buban was subjected to multiple incidents of sexual harassment by Nilo Dela Peña (Dela Peña), her immediate supervisor. The incident began when Buban sought assistance for a system error. Dela Peña made sexual advances, grabbed her waist and tried to kiss her, and groped her breasts. Buban struggled to push him away, but Dela Peña was stronger. Mustering all her strength, Buban was able to break free from Dela Peña's hold and race out of the room.

From then on, Buban detested going to work for fear of running into Dela Peña. As a result, her health deteriorated. Distressed, Buban eventually reported the incident to the Human Resources Department; however, her case was never heard, and no protective measure was afforded to her by the management. Buban then filed a complaint before a Labor Arbiter (LA), alleging sexual harassment, non-payment of salary, moral and exemplary damages, and constructive dismissal. The Labor Arbiter (LA) ruled in her favor by holding Xerox Business and Dela Peña solidarily liable for damages, noting the employer's failure to implement mechanisms (like a Committee on Decorum and Investigation) to promptly address such allegations. The NLRC also affirmed the LA's finding, and increased the amount of moral damages and exemplary damages to PHP500,000.00. Unperturbed, Xerox Business sought for Partial Reconsideration, but the same was denied by the NLRC. Aggrieved, Xerox Business and Dela Peña separately sought the annulment of the NLRC's Decision. For his part, Dela Peña argued that the NLRC acted with grave abuse of discretion in declaring: (1) that Buban was constructively dismissed by reason of sexual harassment and (2) that he and Xerox Business were solidarily liable for payment of damages in favor of Buban. Dela Peña insisted that Buban's cause of action included only sexual harassment, damages, and attorney's fees, and not constructive dismissal. In its Decision, the Court of Appeals (CA) found that the NLRC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that Xerox Business had constructively dismissed Buban. Unfazed, Buban filed a Partial Motion for Reconsideration, which the CA denied in its Resolution.

**ISSUES:**

- 1) Whether there is constructive dismissal even if Buban did not cease reporting for work;

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<sup>1</sup> Full text available at <https://sc.judiciary.gov.ph/wp-content/uploads/2024/05/268399.pdf>.

- 2) Whether Buban is entitled to the twin benefits of separation pay and full backwages; and
- 3) Whether Buban is entitled to damages.

**RULING:**

1) **YES.** There is constructive dismissal even if Buban did not cease reporting for work. In the case at hand, the Labor Arbiter, the NLRC, and the CA are one in ruling that while Buban did not cease to be employed, she was nevertheless constructively dismissed on account of the hostile, offensive, and intimidating work environment perpetrated by Xerox Business. In so ruling, the Labor Arbiter cited *The Orchard Golf and Country Club v. Francisco* (G.R. No. 178125, March 18, 2013):

*The fact that Francisco continued to report for work does not necessarily suggest that constructive dismissal has not occurred, nor does it operate as a waiver. Constructive dismissal occurs not when the employee ceases to report for work, but when the unwarranted acts of the employer are committed to the end that the employee's continued employment shall become so intolerable. In these difficult times, an employee may be left with no choice but to continue with his employment despite abuses committed against him by the employer, and even during the pendency of a labor dispute between them. This should not be taken against the employee. Instead, we must share the burden of his plight, ever aware of the precept that necessitous men are not free men.*

In *Cornworld Breeding Systems Corporation v. Court of Appeals* (G.R. No. 204075, August 17, 2022), this Court explained constructive dismissal in this wise:

*[C]onstructive dismissal is defined as quitting or cessation of work because continued employment is rendered impossible, unreasonable[,] or unlikely; when there is a demotion in rank or a diminution of pay and other benefits. It exists if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him[/her] except to forego his[/her] continued employment. "There is involuntary resignation due to the harsh, hostile, and unfavorable conditions set by the employer.*

*The test for constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances.*

In cases involving sexual harassment, this Court declared in *LBC Express-Vis, Inc. v. Palco* (G.R. No. 217101, February 12, 2020) that "[a]n employee is considered

constructively dismissed if he or she was sexually harassed by her superior and her employer failed to act on his or her complaint with prompt and sensitivity.

2) **NO.** In stark contrast to the established jurisprudence, Buban did not resign from her employment. Despite the hostile, offensive, and intimidating environment, she persisted working. Other than the three-day unpaid salary in May amounting to PHP 2,630.58, the records are bereft of any allegation of demotion in rank or diminution of pay and other benefits. To stress, there is no economic loss to speak of to warrant the imposition of payment of separation benefits and backwages. Buban woefully failed to establish by substantial evidence her entitlement thereto.

Furthermore, the Court finds no cogent reason to depart from the uniform factual findings of the Labor Arbiter, the NLRC and the CA that Xerox Business was remiss in its duty under Section 4 of Republic Act No. 7877 to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment. Specifically, it failed to create a committee on decorum and investigation to promptly act upon the allegation of sexual harassment filed by Buban. Accordingly, pursuant to Section 5 of the law, Xerox Business was adjudged solidarily liable with Dela Peña for payment of damages arising from the acts of sexual harassment committed in the employment. To put things in proper perspective, Section 3(a) of Republic Act No. 7877 provides that workplace sexual harassment occurs when the employer, agent of the employer, or any other person who has authority over another in a work environment, imposes sexual favors on another, which creates an intimidating, hostile, or offensive environment for the latter. The essence of sexual harassment is the abuse of power by the offender, not the violation of the offended party's sexuality. Such abuse of power emanates from the fact that the superior can remove the subordinate from the workplace should the latter refuse the superior's amorous advances. What the law intends to correct "is the undue exercise of power and authority manifested through sexually charged conduct or one filled with sexual undertones."

3) **YES.** Buban is entitled to recover damages. The failure of Xerox Business to investigate the allegations of sexual harassment demonstrated its insensitivity, indifference, and utter disregard not only to the employee's security and welfare, but also to its duty under Republic Act No. 7877. On this matter, the CA acted accordingly in reducing the award of moral damages to PHP 100,000.00 and exemplary damages to PHP 50,000.00. The same is not only supported by the records of the case, but also consistent with prevailing jurisprudence. In *Toliongco v. Court of Appeals (G.R. No. 231748, July 08, 2020)*, this Court awarded moral damages amounting to PHP 100,000.00 and exemplary damages amounting to PHP 50,000.00 upon a finding of sexual harassment.