



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

JOSE ROMULO L. FRANCISCO,
Petitioner,

G.R. No. 194134

- versus -

Present:

VELASCO, JR., J., *Chairperson*,
PERALTA,
PEREZ,
REYES, and
JARDELEZA, JJ.

LOYOLA PLANS CONSOLIDATED
INC., JESUSA CONCEPCION and
GERARDO B. MONZON,
Respondents.

Promulgated:
February 1, 2016

X-----*Wilfredo V. Lapitan*-----X

DECISION

PERALTA, J.:

Before this Court is a petition for review on *certiorari* dated November 6, 2010 of petitioner Jose Romulo L. Francisco assailing the Resolution¹ dated February 19, 2010 and Resolution² dated October 12, 2010 of the Court of Appeals (CA) which ruled that it did not acquire jurisdiction over the person of private respondent Gerardo B. Monzon thereby dismissing the case with respect to Monzon.

The facts are as follows:

On November 8, 1993, respondent Loyola Plans Consolidated, Inc. (*Loyola*) hired petitioner Jose Romulo Francisco as National Training Officer

¹ Penned by Associate Justice Romeo F. Barza, with Associate Justices Magdangal M. De Leon and Mario V. Lopez; concurring, *rollo*, pp. 24-25.

² Penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justices Sesinando E. Villon and Amy C. Lazaro-Javier, concurring, *id.* at 27-29.

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on probationary basis with a salary of ₱6,600.00. On May 9, 1994, petitioner became a regular employee.³ Loyola added the Pasay-Parañaque Area Office as an extension sales office to petitioner's Makati Marketing Group on January 2, 1996.⁴ In January 1997, petitioner was paid ₱15,400.00 as Manager of the Makati Marketing Group.⁵

On July 1, 1997, petitioner filed a complaint for illegal dismissal against respondent Loyola and individual respondents Loyola's President and Chief Executive Officer Jesusa P. Concepcion and Loyola's Vice-President for Marketing and Sales Gerardo B. Monzon.⁶

In his position paper, petitioner alleged that Monzon, respondent's Vice-President for Marketing and Sales, deliberately falsified a resignation letter⁷ dated March 24, 1997 purportedly signed by petitioner.⁸ Petitioner received the same on April 1, 1997.⁹ Two memoranda, both dated March 25, 1997, instructing petitioner to relinquish the Loyola Makati Marketing Group and Pasay-Parañaque Area Office, and clearance forms to be filled-out by petitioner accompanied the alleged resignation letter.¹⁰

In a letter¹¹ dated April 14, 1997 addressed to Monzon, petitioner, through his counsel, protested the alleged illegal termination. In the said letter, petitioner accused Monzon of his criminal intentions prior to the sham acceptance of his falsified letter.¹² Petitioner also demanded Monzon to reinstate him with backwages within five days from the receipt of the said letter; otherwise, its liabilities will be increased from the suit that he would file against Loyola and Monzon.¹³ Petitioner informed Monzon that he should personally take the vehicle in petitioner's possession.¹⁴

When respondents ignored his demands, petitioner filed a case of falsification of private document against Monzon before the Office of the City Prosecutor of Makati City.¹⁵

On the other hand, Loyola claimed that petitioner voluntarily resigned from his post. In its position paper, Loyola alleged that petitioner showed dismal performance during his stint as Marketing Manager from May 1996 to

³ *Id.* at 90.

⁴ *Id.* at 376.

⁵ *Id.* at 91.

⁶ *Id.* at 353-354.

⁷ *Id.* at 355.

⁸ *Id.* at 376.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 356.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 378.

December 1996, with his actual sales below his projected forecast.¹⁶ In January 1997, Monzon called petitioner's attention regarding his poor sales performance from June to December 1996.¹⁷ Petitioner was given a chance to prove himself in attaining all the sales, collection and organization forecasts from January to March 1997, however, it was also agreed upon that petitioner would tender his irrevocable resignation should he fail to do so.¹⁸

Hence, when the company records showed that petitioner miserably failed to reach his goals, petitioner tendered his irrevocable resignation on March 24, 1997, which Monzon accepted on the same day.¹⁹ Loyola alleged that there was no illegal dismissal since petitioner voluntarily resigned.

The Labor Arbiter (*LA*) issued an Order²⁰ dated April 24, 1997 that the resolution of the illegal dismissal case should wait for the outcome of the criminal case filed against Monzon in Branch 66, Metropolitan Trial Court (*MeTC*) of Makati.²¹

On June 24, 1998, petitioner filed a Motion for Reconsideration against the Order issued by the *LA* praying that the illegal dismissal case should proceed independently from the criminal case against Monzon.²²

In a Resolution²³ dated June 22, 1999, the National Labor Relations Commission (*NLRC*), which treated the Motion for Reconsideration as an appeal, ruled that the case should be deferred pending the criminal case.²⁴ The *NLRC* ratiocinated that the determination whether petitioner was illegally dismissed is dependent upon the resolution of the criminal case involving the alleged forgery of the resignation letter.²⁵

In a Decision²⁶ dated February 10, 2004, the *MeTC* found Monzon guilty beyond reasonable doubt of the crime of Falsification of Private Document under Article 172, paragraph 2 of the Revised Penal Code.²⁷ The *MeTC* also held that damage had been caused to petitioner since he was terminated from his job causing financial constraints as a consequence of the forgery of the resignation letter.²⁸

¹⁶ *Id.* at 385.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Penned by Labor Arbiter Ernesto S. Dinopol, *id.* at 74-79.

²¹ *Id.* at 79.

²² *CA rollo*, pp. 435-436.

²³ *Rollo*, pp. 80-86.

²⁴ *Id.* at 82.

²⁵ *Id.*

²⁶ Penned by Presiding Judge Perpetua Atal-Paño, *id.* at 68-73.

²⁷ *Id.* at 73.

²⁸ *Id.*

On August 10, 2004, the Regional Trial Court (*RTC*), Branch 132 of Makati City affirmed the conviction of Monzon.²⁹ Likewise, the CA, in its Decision³⁰ dated March 18, 2005, affirmed the conviction of Monzon finding it more probable that he made the spurious resignation letter and made it appear that petitioner intended to resign from work than petitioner resigning from his job despite the difficulty in finding a stable job.³¹ In a Resolution³² dated November 14, 2005, this Court dismissed the petition for *certiorari* filed by Monzon for being the wrong remedy; for failing to state the material dates, and for a defective or insufficient certification against forum shopping.³³

In its Decision³⁴ dated September 5, 2007, the LA ruled for the petitioner. It held that the final conviction of Monzon in the falsification charges simultaneously made the illegal termination of petitioner with finality invoking the doctrines of *res judicata*, finality of judgment and estoppel by judgment.³⁵ The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding [petitioner] to have been illegally dismissed and in bad faith by respondents and ordering respondents Loyola Plans Inc., its President and Chief Executive Officer Jesusa P. Concepcion, and Gerardo B. Monzon, jointly an[d] severally”

1. To reinstate [petitioner] to his former position without loss of seniority rights and benefits; and the reinstatement immediately executory upon receipt of this Decision by the respondents and even pending appeal;

2. To submit a report compliance whether [petitioner] was physically reinstated or simply enrolled in the company’s payroll within ten (10) calendar days from receipt of this Decision;

3. To pay [petitioner]’s full backwages starting from date of his illegal dismissal on 15 April 1997, plus 13th month pay from 1 January 1997, until his actual reinstatement:

A. Backwages

4/15/97- 9/5/07 = 125 months

₱15,400.00 x 125 mos. = ₱1,925,000.00

13th Month Pay

₱1,925,000.00 ÷ 12 = 160,416.66

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₱592.30 x 5 x 125 ÷ 12 = 30,848.95

²⁹ Penned by Presiding Judge Rommel O. Baybay; *id.* at 65-67.

³⁰ Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Amelita G. Tolentino and Lucenito N. Tagle, concurring; *id.* at 58-64.

³¹ *Id.* at 62.

³² *Id.* at 54-55.

³³ *Id.* at 54.

³⁴ Penned by Labor Arbiter Patricio P. Libo-on, *id.* at 119-129.

³⁵ *Id.* at 122.

B. 13th Month Pay
$$1/1/97- 4/14/97 = 3.43 \text{ mos.}$$

$$\text{₱}15,400.00 \times 3.43 \div 12 = 4,401.83$$

$$\text{₱}2,120,667.44$$

4. To pay [petitioner] moral and exemplary damages in the respective amount of ₱1,000,000.00 each;

5. To pay [petitioner] 10% of the total awards as attorney's fees or in the amount of ₱212,066.74

SO ORDERED.³⁶

Maintaining that the personal acts of Monzon should not be taken against respondents Loyola and Concepcion, respondents elevated the case before the NLRC. In its Resolution³⁷ dated April 30, 2008, the NLRC affirmed with modifications the ruling of the LA. The decretal part of the decision reads:

WHEREFORE, foregoing premises considered, the Decision dated September 05, 2007, is hereby MODIFIED. The award of backwages should be computed from the finality of the judgment of conviction of individual respondent Gerardo Monzon up to his actual reinstatement. The award of moral and exemplary damages is DELETED and the award of attorney's fees based on the total monetary award in this Decision, is hereby maintained.

SO ORDERED.³⁸

Aggrieved, petitioner filed a petition for *certiorari* before the CA seeking the nullification of the Resolution of the NLRC. Petitioner asseverates that the NLRC has no jurisdiction to reverse its own final Resolution dated June 22, 1999 which affirmed the decision of the LA to hold the proceedings and await the outcome of the criminal case against Monzon, and to modify the final decision of this Court in the same case.³⁹ Petitioner insists that the award of damages of the LA has become final due to respondents' forum shopping.⁴⁰

In a Resolution⁴¹ dated October 14, 2008, the CA ordered respondents to file their comment on the petition for *certiorari* within ten (10) days from notice.⁴²

³⁶ *Id.* at 127-129.

³⁷ Penned by Commissioner Gregorio O. Bilog III, with Presiding Commissioner Lourdes C. Javier, concurring and Commissioner Tito F. Genilo, taking no part; *id.* at 89-107.

³⁸ *Id.* at 107.

³⁹ *Id.* at 167.

⁴⁰ *Id.*

⁴¹ Penned by Associate Justice Romeo F. Barza, with Associate Justices Mariano C. Del Castillo (now a member of this Court) and Arcangelita M. Romilla-Lontok, concurring; *CA rollo*, p. 274.

⁴² *Rollo*, p. 38.

On October 28, 2008, respondents' counsel filed a Manifestation and Motion⁴³ denying any legal relations with Monzon. It averred that Monzon has ceased to be in the employ of Loyola and had not made any communication with Loyola or its counsel.⁴⁴

However, the CA, in a Resolution⁴⁵ dated April 17, 2009, denied the said motion. It held that without any withdrawal of counsel filed by either Monzon or Atty. Josabeth Alonso before the CA, the latter's legal representation of Monzon subsists.⁴⁶ It also ruled that the manifestation and motion on October 28, 2008 of Alonso and Associates denying its legal relations with Monzon is not enough to sever its representation with him.⁴⁷ The CA ordered the respondents to file their comment within ten (10) days from the receipt of notice.⁴⁸

Thereafter, respondents' counsel filed an *Ex Parte* Motion dated May 8, 2009 moving to withdraw as counsel of individual respondent Monzon.⁴⁹ It avowed that it could no longer make a proper and full representation of Monzon, since the latter ceased to communicate with Loyola and its counsel when the former resigned from his post.⁵⁰

The CA granted the motion in its Minute Resolution⁵¹ dated July 21, 2009 and ordered that Monzon should be furnished with the copy of the said resolution for compliance.⁵²

In a Resolution⁵³ dated February 19, 2010, the CA dismissed the case with respect to Monzon. It held that the CA did not acquire jurisdiction over the person of Monzon since the copy of the Resolution dated July 21, 2009 mailed to Monzon's address of record was returned unclaimed.⁵⁴

The CA denied the Motion for Reconsideration filed by petitioner in its Resolution⁵⁵ dated October 12, 2010. The CA ruled that "while Section 26⁵⁶

⁴³ CA *rollo*, pp. 275-277.

⁴⁴ *Id.* at 276.

⁴⁵ *Rollo*, pp. 38-45.

⁴⁶ *Id.* at 44.

⁴⁷ *Id.*

⁴⁸ *Id.* at 45.

⁴⁹ *Id.* at 46-53.

⁵⁰ *Id.* at 47.

⁵¹ *Id.* at 34.

⁵² *Id.*

⁵³ *Supra* note 1.

⁵⁴ *Id.* at 25.

⁵⁵ *Supra* note 2.

⁵⁶ Section 26. *Change of attorneys.* — An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court. He may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the advance party.

of Rule 138 prescribes the usual means by which an attorney may withdraw as counsel for a client, there are instances where the court may be justified in relieving a lawyer from continuing his appearance in action or proceeding, without hearing the client, like when a situation develops where the client stops having any contact with the lawyer, who is thereby left without the usual means which are indispensable in the successful or proper defense of the client's cause."⁵⁷

Hence, petitioner filed the instant petition for review on *certiorari* before this Court raising the following issues:

1. The questioned dismissal is against the Court of Appeals' final resolution dated April 17, 2009.
2. Alonso and Associates fraudulently provided a sham address causing the failure of service to Monzon.
3. The questioned dismissal is against the Supreme Court's final resolution of the criminal case against Monzon.
4. Respondents judicially admitted illegal dismissal when they accepted the resignation letter in good faith which later on was proven to be falsified.
5. The Labor Arbiter's awards have become final and executory.
6. Respondents deliberately intended to render the final Supreme Court resolution ineffectual.
7. Respondents are solidarily liable to pay interest.

Petitioner essentially assails the Resolution dated February 19, 2010 of the CA which dismissed the case with respect to individual respondent Monzon, and the Resolution dated October 12, 2010 which denied his motion for reconsideration against the dismissal of the case. He maintains that such dismissal is against the final judgment of the criminal case against Monzon. Petitioner insists that the final resolution of the falsification charges against Monzon has already settled that he is illegally terminated from his job, thus, the awards of the LA should be enforced.

It is noted that the CA in a Resolution⁵⁸ dated March 14, 2011 resolved to hold in abeyance the pending petition for *certiorari* in light of the petition for review on *certiorari* filed by petitioner before this Court.

A client may at any time dismiss his attorney or substitute another in his place, but if the contract between client and attorney has been reduced to writing and the dismissal of the attorney was without justifiable cause, he shall be entitled to recover from the client the full compensation stipulated in the contract. However, the attorney may, in the discretion of the court, intervene in the case to protect his rights. For the payment of his compensation the attorney shall have a lien upon all judgments for the payment of money, and executions issued in pursuance of such judgment, rendered in the case wherein his services had been retained by the client.

⁵⁷ *Rollo*, p. 28.

⁵⁸ Penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justices Sesinando E. Villon and Amy C. Lazaro-Javier, concurring; *CA rollo*, pp. 885-886.

This Court finds the instant petition partly meritorious.

Petitioner alleges that the CA had already acquired jurisdiction over the person of respondent Monzon because of the successful service of the Resolution dated September 17, 2009 indicating the initial action of the CA on the petition to his counsel of record, Rayala, Alonso and Partners (later renamed as Alonso and Associates). Petitioner also avers that the CA already determined that a copy of his petition was duly served to his counsel after the service of its initial resolution dated September 17, 2009.

It is stressed that the petition for *certiorari* elevated to the CA is, by nature, an original and independent action. Therefore, the same is not considered as part of the trial that had resulted in the rendition of the judgment or order complained of.⁵⁹ Being an original action, there is a need for the CA to acquire jurisdiction over the person of the parties to the case before it can be resolved on its merits. Naturally, the CA acquired jurisdiction over the person of the petitioner upon the filing of the *certiorari* petition.

On the other hand, Section 4, Rule 46 of the Rules of Court, which covers cases originally filed before the CA, provides how the CA acquired jurisdiction over the person of the respondent, *viz.*:

SEC. 4. *Jurisdiction over person of respondent, how acquired.*
— The court shall acquire jurisdiction over the person of the respondent by the service on him of its order or resolution indicating its initial action on the petition or by his voluntary submission to such jurisdiction.

In other words, in petitions for *certiorari* filed before the CA, the latter acquires jurisdiction over the person of the respondent upon:

1. the service of the order or resolution indicating the CA's initial action on the petition to the respondent; or
2. the voluntary submission of the respondent to the CA's jurisdiction.

Records disclose that the CA served its Resolution dated September 17, 2008 indicating its initial action on the petition before it, directing petitioner to file certified copies of the parties' position papers, among others. The said order was sent to Monzon through Atty. Josabeth Alonso, his counsel of record.⁶⁰

Case law instructs that when a client is represented by counsel, notice to counsel is notice to client.⁶¹ In the absence of a notice of withdrawal or

⁵⁹ *Province of Leyte herein represented by Mr. Rodolfo Badiable in his capacity as the ICO-Provincial Treasurer, Province of Leyte v. Energy Development Corp.*, G.R. No. 203124, June 22, 2015.

⁶⁰ *Rollo*, p. 35.

⁶¹ *Manaya v. Alabang Country Club, Inc.*, 552 Phil. 226, 233 (2007).

substitution of counsel, the court will rightly assume that the counsel of record continues to represent his client.⁶²

In the case at bar, the counsel of respondents denied its representation of Monzon in a Motion and Manifestation dated October 28, 2008, or after the receipt of the Resolution dated October 14, 2008 of the CA directing them to file their comment. It was only on May 8, 2009 that the counsel of respondents formally filed an *Ex Parte* Motion to Withdraw as Counsel of Monzon. Hence, prior to such notice of withdrawal as counsel, the CA aptly held in its Resolution dated April 17, 2009 that without notice of withdrawal of counsel filed by Monzon or his counsel, the CA rightly assumed that counsel of record continues to represent Monzon.

Considering that the CA had issued a Resolution dated September 17, 2008 directing petitioner to file the necessary attachments, the resolution indicating the initial action taken by the CA, it cannot be denied that respondents were already aware of the *certiorari* proceedings before the CA and that jurisdiction had been acquired over their person. Thus, the CA had already acquired jurisdiction over both parties.

Therefore, the CA erred in dismissing the case with respect to Monzon on the ground that it did not acquire jurisdiction over his person when its minute resolution granting the withdrawal of counsel was returned unclaimed. The CA acquired jurisdiction over the person of Monzon upon the service of the resolution indicating its initial action to his counsel of record.

We will not rule upon the other issues raised by petitioner as this Court is not the proper venue to address the same in view of the pending petition for *certiorari* filed by the petitioner before the CA.

WHEREFORE, the instant petition is **PARTIALLY GRANTED**. The Resolution dated February 19, 2010 of the Court of Appeals in CA-G.R. SP No. 105131 dismissing the case against respondent Gerardo B. Monzon is hereby **REVERSED** and **SET ASIDE**.

The Court of Appeals is **DIRECTED** to resolve the case **WITH DISPATCH**.

SO ORDERED.



DIOSDADO M. PERALTA
Associate Justice


⁶²

Id.


WE CONCUR:

PRESBITERO J. VELASCO, JR.

Associate Justice
Chairperson

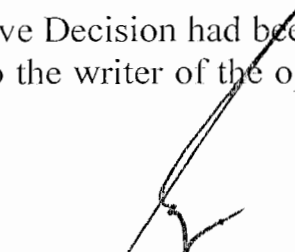

JOSE PORTUGAL PEREZ
Associate Justice


BIENVENIDO L. REYES
Associate Justice


FRANCIS H. VARDELEZA
Associate Justice

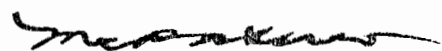
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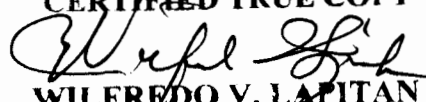
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third 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

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

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