

LINA M. BERNARDO, PETITIONER, VS. HONORABLE COURT OF APPEALS (FORMER FOURTH DIVISION) AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 189077. November 16, 2016

Ponente: JARDELEZA, J.

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JARDELEZA, J.:

This is a Petition for Certiorari[1] of the September 22, 2008 Decision[2] and May 13, 2009 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CR No. 30290. The CA found petitioner Lina M. Bernardo (Bernardo) guilty beyond reasonable doubt in Criminal Case No. 02-120 for the crime of estafa by means of false pretenses or fraudulent acts penalized under paragraph 2(a) of Article 315 of the Revised Penal Code.[4] For failure to file a motion for reconsideration within the reglementary period, Bernardo's conviction became final and was entered in the Book of Entries of Judgments by the CA. Bernardo now comes before us asking that the entry of judgment in the case be recalled.

Facts

Bernardo was charged with three counts of estafa in the Regional Trial Court (RTC) of Angeles City, Pampanga, Branch 61, dorketed as Criminal Case Nos. 02-120, 02-121 and 02-122.[5] The accusatory portions of the three Informations read:

[Criminal Case No. 02-120]

That sometime in the month of September, 2000, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of false pretenses, fraudulent acts and misrepresentations, defrauded the complainant, LUCY R. TANCHIATCO, in the following manner, to wit: the accused falsely pretending to possess credit, indorsed and rediscounted a Consumer Bank Check No. 0788549 dated December 31, 2000, in the amount of P50,000.00, which appears to have been issued by one Marcial S. Sadie, Jr., the accused falsely pretending that the said check was duly funded in her favor, and which representation was merely intended to induce the complainant to rediscount the corresponding amount of the check, as in fact, complainant did rediscount said check, and accused, once in possession of the said corresponding amount and far from complying with her obligation, did then and there willfully, unlawfully, and feloniously misappropriate, misapply and convert the said amount to her own personal use and benefit, and despite demands made upon her to return or redeem the amount of the check, accused failed and refused and still fails and refuses to comply with her obligation, to the damage and prejudice of said complainant, LUCY R. TANCHIATCO, in the aforementioned amount of FIFTY THOUSAND (P50,000.00) PESOS, Philippine Currency.

CONTRARY TO LAW.

[Criminal Case No. 02-121]

That sometime in the month of October, 2000, in the City of Angeles, Philippines, and within the jurisdiction

of this Honorable Court, the above-named accused, by means of false pretense, fraudulent acts and misrepresentations, defrauded the complainant, LUCY R. TANCHIATCO, in the following manner, to wit: the accused obtained a loan from complainant, LUCY R. TANCHIATCO, in the total amount of P75,000.00, by falsely pretending to possess properties in an affidavit dated November 27, 2000, given to the complainant for security of said loan, which affidavit states that accused was the owner of the stall and that the same could be transferred to any assignee, when in truth and in fact, signatures of transferor were forged/falsified, and which representation was merely intended to induce the complainant to allow accused to obtain a loan in the amount of P75,000.00, as in fact, complainant gave the amount of P75,000.00 to accused as loan, and accused once in possession of the said amount, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert the said amount to her own personal use and benefit, and despite demands made upon her to return the amount to complainant, accused failed and refused and still fails and refuses to comply with her obligation, to the damage and prejudice of said complainant, LUCY R. TANCHIATCO, in an aforementioned amount of SEVENTY FIVE THOUSAND (P75,000.00) PESOS, Philippine Currency.

CONTARARY TO LAW.

[Criminal Case No. 02-122]

That sometime in the month of November, 2000, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of false pretenses, fraudulent acts and misrepresentations, defrauded the complainant, LUCY R. TANCHIATCO, in the following manner, to wit: the accused obtained a loan from complainant LUCY R. TANCHIATCO, in the amount of P200,000.00, by falsely pretending to possess property in an affidavit dated November 27, 2000, given to the complainant for security of said loan, which affidavit states that accused was the owner of the stall and that the same could be transferred to any assignee, when in truth and in fact, the signature of transferor was forged/falsified, and which representation was merely intended to induce the complainant to allow accused to obtain a loan in the amount of P200,000.00, as in fact, complainant gave the amount of P200,000.00 to accused as a loan, and accused once in possession of the said amount, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert the said amount to her own personal use and benefit, and despite demands made upon her to return the amount to complainant, accused failed and refused and still fails and refuses to comply with her obligation, to the damage and prejudice of said complainant, LUCY R. TANCHIATCO, in an amount of TWO HUNDRED THOUSAND (P200,000.00) PESOS, Philippine Currency.

CONTRARY TO LAW.[6]

Bernardo pleaded "not guilty" to the offenses charged.[7] Trial then ensued. Four witnesses[8] testified for the prosecution, while the defense waived its right to present evidence.[9]

The testimony of the prosecution witnesses may be summarized as follows:

Complainant Lucy Tanchiatco (Tanchiatco) and Bernardo knew each other since 1982 or 1983, as they were neighbors. They became close friends sometime in the year 2000.[10] Tanchiatco usually buys from Bernardo in the Pampang Public Market, while Bernardo visits Tanchiatco in the former's house twice or four times in a week.[11]

On September 19, 2000, Bernardo went to the house of Tanchiatco to borrow money. As security for the loan, she offered the rediscounting of a Consumer Bank Check No. 00788549 in the amount of P50,000. The check dated December 31, 2000 was drawn from the account of a certain Marcial Sadie, Jr. (Sadie) and payable to the bearer. Tanchiatco did not personally know Sadie but upon the guarantee of Bernardo, she rediscounted the check and gave the money to Bernardo on the same day.[12] Later on, Bernardo introduced Sadie to her, but she did not inquire about the check.[13]

On October 10 and 12, 2000, Bernardo obtained loans from Tanchiatco, in the amount of P503000 and P25,000, respectively. As security, Bernardo gave Tanchiatco two affidavits of waiver of market stalls purportedly executed by her sister Carmelita Santos (Carmelita) and by Sadie. She promised Tanchiatco that in case she failed to pay her loan on December 31, 2000, the rights to the market stalls shall be transferred to the latter.[14] Bernardo further assured Tanchiatco that she will take care of everything as one of the market administrators is her friend.[15] Tanchiatco believed that Bernardo owns the market stalls although they were registered in the names of Sadie and Carmelita. There was a prohibition on owning more than one stall in the Pampang Public Market, hence, Bernardo has to put the stalls in the name of other persons.[16]

Then on November 20, 21 and 22, 2000, Bernardo again borrowed money from Tanchiatco totaling to P200,000. For the P170,000, she promised Tanchiatco that she would produce an affidavit of waiver of market stall in the name of a certain Teresita Garcia (Teresita).[17]

Bernardo defaulted in her loan obligations despite demands for her to pay. Expecting that the market stalls were already transferred in her name consistent with the affidavit of waivers given to her by Bernardo, Tanchiatco went to see the administrator of the Pampang Public Market. However, she learned that the market stalls were not transferred in her name. Sadie, Carmelita and Teresita also denied the execution of the affidavits of waiver.[18] Thus, Tanchiatco confronted Bernardo where the latter admitted that she was, in fact, the one who executed the affidavits.[19]

Tanchiatco filed a complaint against Bernardo in their barangay. However, no settlement was reached. Hence, she filed the present criminal complaints.[20]

During trial, Sadie testified that Bernardo was his co-vendor in the Pampang Public Market. He admitted that he owned the Consumer Bank check used as security for Bernardo's loan.[21] However, he asserted that the signature appearing on the check does not belong to him. In fact, he does not know how Bernardo came into possession of the check.[22] He added, that his account with Consumer Bank was already closed and that he did not issue the subject check.[23]

RTC Ruling

In its Decision[24] dated February 27, 2006, the RTC found that Bernardo never denied that the signature appearing at the dorsal side of the Consumer Bank check subject of Criminal Case No. 02-120 was hers.[25] It held that Bernardo offered that check for rediscounting knowing that it was a falsified check. The RTC declared that the rediscounting of the falsified check was done simultaneously with the parting of P50,000. Bernardo's assurance that the check was genuine and was issued by Sadie in her favor, caused Tanchiatco to part with her money to her own damage and prejudice,[26] which act constitutes estafa under Article 315, paragraph 2(a), of the Revised Penal Code.[27] Thus, the RTC convicted Bernardo of estafa by means of false pretenses or fraudulent acts in Criminal Case No. 02-120.[28]

As to Criminal Case Nos. 02-121 and 02-122, the RTC acquitted Bernardo after finding that the affidavits of waiver were not given prior to or simultaneous with the parting of the sums of money.[29] It ruled that the liability incurred by Bernardo for non-payment of the loans secured by the affidavits of waiver was purely civil in nature.[30]

Bernardo appealed her conviction to the CA. She took issue with the reliance of the RTC on the lone testimony of Sadie as regards the rediscounting of the Consumer Bank check.[31] She maintained that in order to merit credence, the testimony of Sadie should have been corroborated by other witnesses.[32] Bernardo also pleaded that rediscounting bills and notes is a legitimate transaction.[33] She alleged that she could not be convicted of

estafa by means of false pretenses or fraudulent acts because the element of deceit was not proven. The prosecution failed to prove that the check presented for rediscounting was spurious.[34]

The Office of the Solicitor General (OSG) countered that the non-presentation of a corroborating witness is not fatal to the case because corroborative evidence is necessary only when there is a suspicion that the witness falsified the truth.[35] However, there is no reason to suspect the veracity of Sadie's testimony as it is clear and straightforward and Sadie does not harbor any ill feelings towards Bernardo. Hence, his testimony deserves full credit and belief.[36]

On the element of deceit, the OSG maintained that Bernardo's act of rediscounting a check that does not belong to her in order to get money from Tanchiatco is in itself pure and simple deceit.[37] While rediscounting is a legal transaction, the presence of deceit makes the act of the author illegal.[38]

CA Ruling

In its Decision dated September 22, 2008, the CA held that the uncorroborated testimony of Sadie is sufficient to sustain Bernardo's conviction. Citing relevant jurisprudence, it stated that the number of witnesses has nothing to do with the credibility of a witness.[39] The CA ruled that Sadie is a credible witness having testified in a clear and straightforward manner, with no traces of ill motives against Bernardo.[40] Further, it was proven that the signature appearing on the right bottom of the Consumer Bank check was not Sadie's signature as he even wrote his customary signature three times in open court for comparison.[41] Thus, the CA affirmed the RTC's Decision in toto and adjudged that all the elements of estafa by means of false pretenses or fraudulent acts are present.

Bernardo, then represented by the Public Attorney's Office (PAO), received the notice of the CA Decision on September 25, 2008.[42] However, no motion for reconsideration was filed within the reglementary period. Hence, the CA Decision became final and executory on October 11, 2008. The PAO received an Entry of Judgment of the CA Decision on March 12, 2009.[43]

On April 9, 2009, Bernardo filed a Motion to Recall Entry of Judgment with attached Urgent Motion for Reconsideration[44] in the CA. Atty. Benju V. Ardaña (Atty. Ardaña), the new PAO lawyer assigned to the case of Bernardo, pleaded that he never received a copy of the CA Decision although the same was duly stamped as received by PAO on September 25, 2008. Hence, he was surprised that an Entry of Judgment was issued. Atty. Ardaña blamed Herminia Polo (Polo), a receiving and filing clerk at the PAO Special and Appealed Cases Service, as well as the secretary[45] of Atty. Joey Dolores Pontejos (Atty. Pontejos), the previous PAO lawyer handling the case, for taking upon herself to place a copy of the CA Decision inside its case folder without informing him that there was already a decision.[46] He alleged that the omission was unintentional and was a simple inadvertence on the part of Polo as she was busy preparing for the official transfer of Atty. Pontejos, who was reassigned to the PAO-Tacloban District Office.[47] Atty. Ardaña claimed that he relied on the status of the case reflected in the "Inventory of Cases" submitted by Atty. Pontejos, which showed that the case was "submitted for decision" in the CA. He asked for the CA's indulgence "in behalf of the erring staff." [48]

Meanwhile, the attached Urgent Motion for Reconsideration merely reiterated the arguments that Bernardo raised in his Appellant's Brief.

In its Resolution dated May 13, 2009, the CA found that the Urgent Motion for Reconsideration was filed 194 days from the PAO's receipt of the CA Decision.[49] The considerable lapse of time was attributable not only to the negligence of Polo, but also to Atty. Ardaña, whose duty included the proper disposition of the cases assigned to him.[50] On the merits of the case, the CA held that the grounds relied upon by Bernardo in the Urgent Motion for Reconsideration was just a rehash of the issues raised in the petition.[51] Accordingly, the CA denied the

Motion to Recall Entry of Judgment and the Urgent Motion for Reconsideration.

Hence, this petition, where Bernardo in her own behalf, raises the following issues:

- Whether the CA erred in denying the Motion to Recall Entry of Judgment; and
- Whether Bernardo should be convicted of the crime of estafa by means of false pretenses or fraudulent acts.

Our Ruling

Bernardo ascribes grave abuse of discretion to the CA for denying her Motion to Recall Entry of Judgment and Urgent Motion for Reconsideration on the ground of technicality. She claims that strict adherence to the rules will definitely cause her injustice.[52] She alleges that the CA completely disregarded the explanation of her then PAO counsel that the late filing of the motion for reconsideration was due to the simple inadvertence of the lawyer's secretary.[53] For the sound administration of justice, Bernardo prays that the case be decided on its merit.

The OSG counters that Bernardo has no ground to move for the recall of the entry of judgment because she received a copy of the Decision through her former counsel. It would have been different if her counsel was not furnished at all with the copy of the Decision, which would be tantamount to denial of due process.[54]

We find Bernardo's contentions without merit and deny the petition.

Section 2, Rule 36 and Section 8, Rule 120 of the Rules of Court, respectively, state:

Rule 36. x x x

Sec. 2. Entry of judgments and final orders. - If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments. The date of finality of the judgment or final order shall be deemed to be the date of its entry. The record shall contain the dispositive part of the judgment or final order and shall be signed by the clerk, with a certificate that such judgment or final order has become final and executory.

x x x

Rule 120. x x x

Sec. 8. Entry of judgment. - After a judgment has become final, it shall be entered in accordance with Rule 36. (Emphasis supplied.)

Substantially the same rules are found in Sections 1 and 5, Rule VII of the 2002 Internal Rules of Procedure of the CA (IRCA), to wit:

Sec. 1. Entry of Judgment. — Unless a motion for reconsideration or new trial is filed or an appeal taken to the Supreme Court, judgments and final resolutions of the Court shall be entered upon expiration of fifteen (15) days from notice to the parties.

(a) With respect to the criminal aspect, entry of judgment in criminal cases shall be made immediately when the accused is acquitted or his withdrawal of appeal is granted. However, if the motion withdrawing an appeal is signed by the appellant only, the Court shall first take steps to ensure that the motion is made voluntarily, intelligently and knowingly or may require his counsel to comment thereon.

When there are several accused in a case, some of whom appealed and others did not, entry of judgment shall be made only as to those who did not appeal. The same rule shall apply where there are several accused in a case, some of whom withdrew their appeal and others did not.

(b) Entry of Judgment in civil cases shall be made immediately when an appeal is withdrawn or when a decision based on a compromise agreement is rendered. (Secs. 1 and 7, Rule 11, RIRCA [a])

x x x

Sec. 5. Entry of Judgment and Final Resolution. - If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final resolution shall forthwith be entered by the clerk in the book of entries of judgments. The date when the judgment or final resolution becomes executory shall be deemed as the date of its entry. The record shall contain the dispositive part of the judgment or final resolution and shall be signed by the clerk, with a certificate that such judgment or final resolution has become final and executory. (Emphasis supplied.)

Applying the Rules of Court and the IRCA, since Bernardo neither moved for reconsideration nor appealed to this Court within the reglementary period, the CA Decision became final and executory. Thus, the CA is duty bound to enter it in the Book of Entries of Judgments. Accordingly, this petition is a futile attempt to reopen a case, which has been laid to rest since October 11, 2008.

We have consistently ruled that a decision that has acquired finality can no longer be modified in any respect or attacked directly or indirectly, even by the highest court of the land. The doctrine of finality and immutability of judgments is grounded on the fundamental considerations of public policy and sound practice to the effect that, at the risk of occasional error, the judgments of the courts must become final at some definite date set by law.[55]

It is only in rare cases that this Court resolves to recall an entry of judgment such as for instance, to prevent a miscarriage of justice.[56] We relax the rules of procedure in order to serve substantial justice considering (a) matters of life, liberty, honor or property, (b) the existence of special or compelling circumstances, (c) the merits of the case, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby.[57] None of these circumstances obtain in this case.

That a motion for reconsideration was filed belatedly due to the "simple inadvertence" of Polo is not a compelling reason to recall the entry of judgment, especially in the light of the admission of Atty. Ardaña that the notice of the CA Decision was duly received by the PAO on September 25, 2008; albeit, he did not know of it because the secretary did not inform him. We concur with the CA that Atty. Ardaña was negligent in failing to monitor the disposition of the case assigned to him. In *Ramos v. Lim*,[58] we stated that notice to counsel is an effective notice to the client.[59] It is incumbent upon the counsel, consistent with his duty to serve his client with competence and diligence, to inquire from the court about the status of the case.[60] Atty. Ardaña's mere reliance on Atty. Pontejo's inventory of cases falls short of the diligence required of him.

Notably, Bernardo is bound by Atty. Ardaña's negligence. Settled is the rule that the negligence and mistakes of the counsel are binding on the client.[61] The only exception, being when such counsel's negligence, is so gross and palpable resulting to a denial of due process to his client.[62] Here, both elements are missing. Atty. Ardaña's negligence is not gross in character. In *Sofio v. Valenzuela*,[63] we held that the failure of the counsel to file a motion for reconsideration amounts to simple negligence only.[64] Further, Bernardo was not deprived of due process because she received a copy of the CA Decision through her former counsel. She was also given the opportunity to present her side of the story. She filed a Motion to Recall Entry of Judgment in the CA, coupled with a motion for reconsideration. Where a party is given the opportunity to be heard either in pleadings or oral arguments, there is no denial of due process.[65]

Meanwhile, Bernardo also had herself to blame. The record of the case is bereft of showing that she made inquiries or follow-ups from Atty. Ardaña about the status of her case. It is the duty of Bernardo to be in touch

with her counsel as to the progress of the case. She cannot just sit back, relax, and wait for the outcome of the case.[66]

The 194 days delay in the filing of the motion for reconsideration of the CA Decision[67] is too long a delay to merit the liberality of this Court. Since the counsel of Bernardo received the notice of the CA Decision on September 25, 2008 and no motion for reconsideration or appeal to this Court was filed within 15 days from receipt of the notice, the Decision inevitably reached its finality on October 11, 2008. Thus, no grave abuse of discretion was committed by the CA when it denied the Motion to Recall Entry of Judgment and the motion for reconsideration. In fine, the finality of a decision is a jurisdictional event, which cannot be made to depend on the convenience of a party.[68]

Having affirmed the finality of the CA Decision, we shall no longer delve into the second issue raised. Passing upon the propriety of Bernardo's conviction would be inconsistent with our declaration of the finality and immutability of the CA Decision.

WHEREFORE, the petition is DISMISSED for lack of merit. The September 22, 2008 Decision and May 13, 2009 Resolution of the Court of Appeals in CA-G.R. CR No. 30290 are hereby AFFIRMED.

SO ORDERED.

Peralta, [**] (Acting Chairperson), Perez, and Reyes, JJ., concur.
Velasco, Jr., (Chairperson), J., on leave.

November 29, 2016

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on November 16, 2016 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on November 29, 2016 at 9:58 a.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[**] Designated as Acting Chairperson per Special Order No. 2395 dated October 19, 2016.

[1] Under Rule 65 of the Rules of Court. Rollo, pp. 9-31.

[2] Penned by Associate Justice Sesinando E. Villon with Associate Justices Andres B. Reyes, Jr. and Jose Catral Mendoza (now a Member of this Court), concurring. Id. at 68-76.

[3] Id. at 91-92.

[4] Act No. 3815 (1930).

[5] Rollo, pp. 68-70.

[6] Id.

[7] Rollo, p. 70.

[8] Complainant herself, Marcial Sadie, Carmelita Santos and Teresita Garcia, id. at 49-51.

[9] Id. at 51.

[10] Id. at 49.

[11] Id.

[12] Rollo, p.71.

[13] Id. at 49-50.

[14] Id. at 48.

[15] Id.

[16] Rollo, pp. 49-50.

[17] Id. at 48.

[18] Id. at 49.

[19] Id.

[20] Id.

[21] Rollo, p. 50.

[22] Id.

[23] Rollo, pp. 50-51.

[24] Id. at 45-53, penned by Judge Bernardita Gabitan Erum.

[25] Id. at 51.

[26] Id. at 52.

[27] 2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceptions.

(b) By altering the quality, fineness or weight of anything pertaining to his art or business.

(c) By pretending to have bribed any Government employee, without prejudice to the action for calumny which the offended party may deem proper to bring against the offender. In this case, the offender shall be punished by the maximum period of the penalty.

(d) By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the

bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be prima facie evidence of deceit constituting false pretense or fraudulent act. (As amended by R.A. No. 4885, approved on June 17, 1967.)

(e) By obtaining any food, refreshment or accommodation at a hotel, inn, restaurant, boarding house, lodging house, or apartment house and the like without paying therefor, with intent to defraud the proprietor or manager thereof, or by obtaining credit at hotel, inn, restaurant, boarding house, lodging house, or apartment house by the use of any false pretense, or by abandoning or surreptitiously removing any part of his baggage from a hotel, inn, restaurant, boarding house, lodging house or apartment house after obtaining credit, food, refreshment or accommodation therein without paying for his food, refreshment or accommodation. (Emphasis supplied.)

[28] Rollo, p. 53.

[29] Id. at 52.

[30] Id.

[31] Rollo, p. 41.

[32] Id. at 42.

[33] Id.

[34] Id.

[35] Rollo, pp. 61-62.

[36] Id. at 63.

[37] Id. at 63-64.

[38] Id. at 64.

[39] Id. at 72-73.

[40] Id. at 73-74.

[41] Id.

[42] Rollo, p. 79.

[43] Id. at 77.

[44] Id. at 85-89.

[45] Affidavit of Herminia Polo attached as Annex A to the Motion to Recall Entry of Judgment, id. at 83-84.

[46] Id. at 79.

[47] Id. at 79-80.

[48] Id. at 80.

[49] Id. at 91.

[50] Id. at 92.

[51] Id.

[52] Rollo, p. 20

[53] Id. at 21.

[54] Id. at 106.

[55] *Sofio v. Valenzuela*, G.R. No. 157810, February 15, 2032, 666 SCRA 55, 65, citing *Bañares II v. Balising*, G.R. No. 132624, March 13, 2000, 328 SCRA 36, 49-50.

[56] See *McBurnie v. Ganzon*, G.R. Nos. 178034 & 178117, October 17, 2013, 707 SCRA 646, 667.

[57] *Barnes v. Padilla*, G.R. No. 160753, September 30, 2004, 439 SCRA 675, 686-687, citing *Sanchez v. Court of Appeals*, G.R. No. 152766, June 20, 2003, 404 SCRA 540, 546.

[58] G.R. No. 133496, May 9, 2005, 458 SCRA 238.

[59] *Ramos v. Lim*, *supra*, at 244, citing *Lincoln Gerard, Inc. v. National Labor Relations Commission*, G.R. No. 85295, July 23, 1990, 187 SCRA 701.

[60] *Ramos v. Lim*, *supra* note 58, at 247.

[61] *Lagua v. Court of Appeals*, G.R. No. 173390, June 27, 2012, 675 SCRA 176, 182, citing *Sapad v. Court of Appeals*, G.R. No. 132153, December 15, 2000, 348 SCRA 304.

[62] *Pasiona, Jr. v. Court of Appeals*, G.R. No. 165471, July 21, 2008, 559 SCRA 137, 147, citing *Grande v. University of the Philippines*, G.R. No. 148456, September 15, 2006, 502 SCRA 67, 74; *Juani v. Alarcon*, G.R. No. 166849, September 5, 2006, 501 SCRA 135, 154; *GCP-Manny Transport Services, Inc. v. Principe*, G.R. No. 141484, November 11, 2005, 474 SCRA 555, 562-563; *Victory Liner, Inc. v. Gammad*, G.R. No. 159636, November 25, 2004, 444 SCRA 355, 361.

[63] *Supra* note 55.

[64] Id. at 68, citing *Pasiona, Jr. v. Court of Appeals*, *supra* note 62.

[65] *Pasiona, Jr. v. Court of Appeals*, *supra*, at 148, citing *Producers Bank of the Philippines v. Court of Appeals*, G.R. No. 126620, April 17, 2002, 381 SCRA 185, 194-195.

[66] *Manaya v. Alabang Country Club, Incorporated*, G.R. No. 168988, June 19, 2007, 525 SCRA 140, 148, citing *GCP-Manny Transport Services, Inc. v. Principe*, *supra* note 62, at 563-564.

[67] See the May 13, 2009 Resolution of the CA, rollo, p. 91.

[68] *NIA Consult, Inc. v. National Labor Relations Commission*, G.R. No. 108278, January 2, 1997, 266 SCRA 17, 22-23.

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