

THIRD DIVISION

[G.R. No. 197556, March 25, 2015]

**WATERFRONT CEBU CITY CASINO HOTEL, INC. AND MARCO
PROTACIO, PETITIONERS, VS. ILDEBRANDO LEDESMA,
RESPONDENT.**

D E C I S I O N

VILLARAMA, JR., J.:

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking to set aside the Decision^[1] dated March 17, 2011 and Resolution^[2] dated June 21, 2011 of the Court of Appeals (CA) in CA-G.R. CEB SP No. 05071. The CA reversed the Decision^[3] dated November 27, 2009 and Resolution^[4] dated February 22, 2010 of the National Labor Relations Commission (NLRC) and reinstated the Decision^[5] dated April 29, 2009 of the Labor Arbiter (LA). The LA declared that respondent Ildebrando Ledesma was illegally dismissed from his employment by petitioner Waterfront Cebu City Casino Hotel, Inc. (Waterfront).

The factual antecedents follow:

Respondent was employed as a House Detective at Waterfront located at Salinas Drive, Cebu City.

On the basis of the complaints filed before Waterfront by Christe^[6] Mandal, a supplier of a concessionaire of Waterfront, and Rosanna Lofranco, who was seeking a job at the same hotel, Ledesma was dismissed from employment.^[7] From the affidavits^[8] and testimonies^[9] of Christe Mandal and Rosanna Lofranco during the administrative hearings conducted by Waterfront, the latter found, among others, that Ledesma kissed and mashed the breasts of Christe Mandal inside the hotel's elevator, and exhibited his penis and asked Rosanna Lofranco to masturbate him at the conference room of the hotel.

On August 12, 2008, Ledesma filed a complaint^[10] for illegal dismissal which was docketed as NLRC RAB-VII Case No. 08-1887-08. The LA found that the allegations leveled against Ledesma are mere concoctions, and concluded that Ledesma was illegally dismissed. The dispositive portion of the April 29, 2009 Decision of the LA, reads:

WHEREFORE, in view of the foregoing, a decision is hereby rendered declaring the suspension as well as the dismissal of herein complainant illegal. Consequently, respondent Waterfront Cebu City Hotel is ordered to reinstate complainant Ildebrando Ledesma to his former position

without loss of seniority right and with full backwages reckoned from the date of the suspension up to actual reinstatement.

Herein respondent is likewise ordered to pay complainant Ledesma service incentive leave pay in the amount of THREE THOUSAND NINE HUNDRED TEN PESOS AND FIFTY CENTAVOS (P3,910.50) plus ten percent (10%) of the total monetary award as attorney's fees.

All other claims are DISMISSED for lack of merit.

SO ORDERED.^[11]

On appeal to the NLRC, the latter reversed the ruling of the LA and held that Ledesma's acts of sexual overtures to Christe Mandal and Rosanna Lofranco constituted grave misconduct justifying his dismissal from employment. The *fallo* of the November 27, 2009 Decision of the NLRC reads:

WHEREFORE, premises considered, the appealed Decision is hereby REVERSED and SET ASIDE. Another one is entered declaring the dismissal of complainant as valid.

SO ORDERED.^[12]

The NLRC denied Ledesma's motion for reconsideration in a Resolution dated February 22, 2010. A copy of the said Resolution was received by Atty. Gines Abellana (**Atty. Abellana**), Ledesma's counsel of record, on **March 15, 2010.**^[13]

On **May 17, 2010,**^[14] or sixty-three (63) days after Atty. Abellana received a copy of the NLRC's Resolution denying the motion for reconsideration, said counsel filed before the CA a petition for certiorari under Rule 65 of the Rules of Court.

In its Comment,^[15] Waterfront prayed for the outright dismissal of the petition on the ground that it was belatedly filed.

On August 5, 2010, Ledesma, now assisted by a new counsel, filed a motion for leave to file amended petition,^[16] and sought the admission of his Amended Petition for Certiorari.^[17] In the amended petition, Ledesma contended that his receipt on **March 24, 2010** (and not the receipt on March 15, 2010 by Atty. Abellana), is the reckoning date of the 60-day reglementary period within which to file the petition. Hence, Ledesma claims that the petition was timely filed on May 17, 2010.^[18]

By its Resolution^[19] dated August 27, 2010, the CA granted leave of court to Ledesma and admitted his amended petition for certiorari. The CA, thereafter, rendered a Decision dated March 17, 2011, reversing the Decision of the NLRC and reinstating the ruling of the LA. The *fallo* of the assailed CA Decision reads:

IN LIGHT OF ALL THE FOREGOING, this petition is **GRANTED**. The 27 November 2009 NLRC Decision and 22 February 2010 Resolution in NLRC Case No. VAC-09-000912-2009 is **REVERSED** and **SET ASIDE** and the 29 April 2009 Decision of the Labor Arbiter is hereby **REINSTATED**.

No pronouncement as to costs.

SO ORDERED.^[20]

The CA denied the motion for reconsideration filed by Waterfront in a Resolution dated June 21, 2011. Thus, the present petition for review on certiorari where Waterfront raised the main issue of whether the petition for certiorari was timely filed with the CA.^[21]

In his Comment,^[22] Ledesma sought the dismissal of the instant petition of Waterfront on the basis of the following formal infirmities: (1) the presentation of Gaye Maureen Cenabre, the representative of Waterfront, of a Community Tax Certificate before the Notary Public to prove her identity, violated A.M. No. 02-8-13-SC, and rendered the jurat in the verification and certification on non-forum shopping of the petition as defective; and (2) no certified true copy of the August 10, 2011 Board Resolution quoted in the Secretary's Certificate was attached to the petition.

The Court finds Waterfront's petition to be meritorious.

The procedural infirmities^[23] pointed out by Ledesma are not adequate to cause the dismissal of the present petition. Gaye Maureen Cenabre presented to the Notary Public a Community Tax Certificate numbered 27401128 to prove her identity instead of a current identification document issued by an official agency bearing her photograph and signature as required by A.M. No. 02-8-13-SC. This rendered the *jurat* in the verification/certification of non-forum shopping of Waterfront as defective. Nonetheless, any flaw in the verification, being only a formal, not a jurisdictional requirement, is not a fatal defect.^[24] In like manner, there is no need to attach the certified true copy of the Board Resolution quoted in the Secretary's Certificate attached to the petition. Only the judgment, order or resolution assailed in the petition are the attachments required under Section 4,^[25] Rule 45 of the Rules of Court to be duplicate originals or certified true copies.

On the main issue, the unjustified failure of Ledesma to file his petition for certiorari before the CA within the 60-day period is a ground for the outright dismissal of said petition.

Section 4, Rule 65 of the Rules of Court, as amended by A.M. No. 07-7-12-SC, reads:

SEC. 4. *When and where to file the petition.* – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed

not later than sixty (60) days counted from the notice of the denial of the motion.

If the petition relates to an act or an omission of a municipal trial court or of a corporation, a board, an officer or a person, it shall be filed with the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed with the Court of Appeals or with the Sandiganbayan, whether or not the same is in aid of the court's appellate jurisdiction. If the petition involves an act or an omission of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed with and be cognizable only by the Court of Appeals.

In election cases involving an act or an omission of a municipal or a regional trial court, the petition shall be filed exclusively with the Commission on Elections, in aid of its appellate jurisdiction.

In *Laguna Metts Corporation v. Court of Appeals*,^[26] we categorically ruled that the present rule now mandatorily requires compliance with the reglementary period. The period can no longer be extended as previously allowed before the amendment, thus:

As a rule, an amendment by the deletion of certain words or phrases indicates an intention to change its meaning. It is presumed that the deletion would not have been made if there had been no intention to effect a change in the meaning of the law or rule. The amended law or rule should accordingly be given a construction different from that previous to its amendment.

If the Court intended to retain the authority of the proper courts to grant extensions under Section 4 of Rule 65, the paragraph providing for such authority would have been preserved. The removal of the said paragraph under the amendment by A.M. No. 07-7-12-SC of Section 4, Rule 65 simply meant that there can no longer be any extension of the 60-day period within which to file a petition for *certiorari*.

The rationale for the amendments under A.M. No. 07-7-12-SC is essentially to prevent the use (or abuse) of the petition for certiorari under Rule 65 to delay a case or even defeat the ends of justice. Deleting the paragraph allowing extensions to file petition on compelling grounds did away with the filing of such motions. **As the Rule now stands, petitions for certiorari must be filed strictly within 60 days from notice of judgment or from the order denying a motion for reconsideration.**^[27] (Additional emphasis and underscoring supplied)

In the subsequent case of *Domdom v. Third & Fifth Divisions of the Sandiganbayan*,^[28] the absence of a specific prohibition in Section 4 of Rule 65, as amended, for the extension of the 60-day period to file a petition for certiorari was construed as a discretionary authority of the courts to grant an extension.

Republic v. St. Vincent De Paul Colleges, Inc.^[29] clarified the “conflict” between the rulings in *Laguna Metts Corporation*^[30] and *Domdom*,^[31] in that the former is the general rule while the latter is the exception, thus:

What seems to be a “conflict” is actually more apparent than real. A reading of the foregoing rulings leads to the simple conclusion that *Laguna Metts Corporation* involves a strict application of the general rule that **petitions for certiorari must be filed strictly within sixty (60) days from notice of judgment or from the order denying a motion for reconsideration.** *Domdom*, on the other hand, **relaxed the rule and allowed an extension of the sixty (60)-day period subject to the Court’s sound discretion.**^[32] (Emphasis in the original)

In relaxing the rules and allowing an extension, *Thenamaris Philippines, Inc. v. Court of Appeals*^[33] reiterated the necessity for the party invoking liberality to advance a reasonable or meritorious explanation^[34] for the failure to file the petition for certiorari within the 60-day period.

The petition for certiorari was filed with the CA beyond the 60-day period

Atty. Abellana, Ledesma’s counsel, admittedly received a copy of the NLRC Resolution denying the Motion for Reconsideration on **March 15, 2010** while Ledesma received his copy on **March 24, 2010.**

Ledesma erroneously asserted in his petition for certiorari filed before the CA, that the 60th day is May 15, 2010, counted from March 15, 2010.^[35] In computing a period, the first day shall be excluded, and the last included;^[36] hence, the last day to file his petition for certiorari is on **May 14, 2010**, a Friday. Ledesma therefore belatedly filed his petition on May 17, 2010.

Realizing his procedural *faux pas*, Ledesma filed an amended petition where he contended that he timely filed his petition for certiorari on May 17, 2010 counted from his receipt of the NLRC Resolution denying his motion for reconsideration on **March 24, 2010.**^[37] This stance is bereft of any legal basis. When a party to a suit appears by counsel, service of every judgment and all orders of the court must be sent to the counsel. This is so because notice to counsel is an effective notice to the client, while notice to the client and not his counsel is not notice in law.^[38] Receipt of notice by the counsel of record is the reckoning point of the reglementary period.^[39]

The negligence of Atty. Abellana in the computation of the 60-day period, and reckoning such period from the party’s receipt of the assailed NLRC resolution were similar arguments rejected in *Labao v. Flores*.^[40] In the *Labao* case,^[41] the respondents maintained that they should not suffer the negligence of their counsel in the late filing of their petition for certiorari, and the 60-day period be reckoned from their own notice of the NLRC’s denial of their motion for reconsideration. In