

FIRST DIVISION

[G.R. No. 152343, January 18, 2008]

MA. FE BACOS, Petitioner, vs. DOMINGO ARCEGA, Respondent.

DECISION

SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant Petition for Review on *Certiorari*^[1] seeking to reverse the Decision^[2] dated November 9, 2001 and Resolution dated February 19, 2002 of the Court of Appeals in CA-G.R. SP No. 64177.

The facts are:

On February 11, 1998, Domingo Arcega, respondent, filed with the Labor Arbiter in Banawe, Quezon City a complaint for illegal dismissal and

other monetary claims against Viabel International Garments, Inc. (Viabel) and/or Marlon Viado, docketed as NLRC-NCR Case No. 00-02-01455-98.

On February 25, 1999, Labor Arbiter Daisy G. Cauton-Barcelona rendered a Decision in favor of respondent, thus:

WHEREFORE, from all the foregoing considerations, We find complainant's dismissal illegal. The respondents are hereby ordered to pay complainant his backwages amounting to NINETY THOUSAND (P90, 000.00) Pesos; separation pay, in lieu of reinstatement, the amount of FORTY FIVE THOUSAND (P45, 000.00) Pesos; service incentive leave pay of FIVE THOUSAND ONE HUNDRED NINETY TWO & 40/100 (P5, 192.40) Pesos; 13th month pay of TWENTY SEVEN THOUSAND & 48/100 (P27,000.48) Pesos; and attorney's fees of SIXTEEN THOUSAND SEVEN HUNDRED NINETEEN & 28/100 (16, 719.28) Pesos.

Claims for moral and exemplary damages are DISMISSED for lack of merit.

SO ORDERED.

On May 21, 1999, due to the failure of Viabel and/or Marlon Viado to appeal to the National Labor Relations Commission (NLRC), the Labor Arbiter's Decision became final and executory. Upon respondent's motion, a writ of execution was issued.

On June 8, 1999, the sheriff of the NLRC levied twenty-eight (28) sewing machines belonging to Viabel and/or Marlon Viado and scheduled their sale at public auction on June 17, 1999.

On the same date, June 17, 1999, Maria Fe Bacos, petitioner, filed with the NLRC a notice of third party claim, alleging that the levied machines were previously sold to her by Marlon Viado in the amount of One Hundred Fifty Thousand Pesos (P150,000.00) as shown by the Deed of Absolute Sale notarized by Notary Public Mario Ramos on January 26, 1998.

On June 20, 1999, respondent filed an opposition to petitioner's third- party claim contending, among others, that it is "frivolous and spurious."

In an Order dated January 10, 2000, Labor Arbiter Barcelona dismissed the third-party claim on the ground that the Deed of Absolute Sale appears to be spurious.

On appeal by petitioner, docketed as NLRC CA No. 023229-2000, the NLRC, in its Resolution dated August 31, 2000, dismissed the same.

In another Resolution dated February 1, 2001, the NLRC denied petitioner's motion for reconsideration.

Petitioner then filed with the Court of Appeals a petition for *certiorari*, docketed as CA-G.R. SP No. 64177.

On November 9, 2001, the Court of Appeals (Tenth Division) rendered its Decision^[3] dismissing the petition, holding that:

The crux of the matter is whether herein petitioner had succeeded in substantiating her claim that the levied properties, comprising the 18 units of sewing machines of various types, were sold to her on January 26, 1998 by Marlon Viado, the respondent in NLRC NCR Case No. 00-02-01455-98, or prior to the levy of the same on June 8, 1999 by Percival P. Granado, the Deputy Sheriff of the NLRC NCR. We hold that petitioner failed in so doing. Aside from the "Deed of Absolute Sale" which the public respondent NLRC and the Labor Arbiter considered spurious, the petitioner did not adduce some other more convincing evidence, e.g., the testimony or affidavit of the notary public who allegedly notarized the contested document. In fact, petitioner's claim did not exactly have an auspicious start, for the reason that her notice of third-party claim did not specify the circumstances attending her alleged ownership of the subject properties, particularly as to the date she acquired the same, and from whom she acquired them. In addition, she failed to attach the deed of sale covering the alleged sale. If she indeed misplaced this important document that would prove her ownership of the subject properties, she only came up with the claim, which to us savors of a Johnny-come-lately, and presented the purported document only after the private respondent commented on her failure to prove her claim.

This is not to say, of course, that we are at all convinced of the genuineness or authenticity of the purported "Deed of Sale." We adopt the findings of the public respondent with regard to the non-inclusion of this piece of document by Atty. Mario G. Ramos in his notarial report. The fact alone that no copy of the "Deed of Sale" dated January 26, 1998 was on file with the Clerk of Court, is itself a "badge of fraud and simulation" that could "make any court suspicious and wary of imputing any