Supreme Court E-Library

1797 where petitioner's right to have the property covered by Transfer Certificate of Title No. 271131 registered in her name by virtue of the Deed of Absolute Sale made between MARENIR and petitioner has been upheld. I take it, of course, that such sale of the property and the corresponding transfer of title is without prejudice to outstanding encumbrances theretofore duly registered and annotated in TCT No. 271131.

FIRST DIVISION

[G.R. No. 119877. March 31, 1997]

BIENVENIDO ONGKINGCO, as President and GALERIA DE MAGALLANES CONDOMINIUM ASSOCIATION, INC., *petitioners, vs.* NATIONAL LABOR RELATIONS COMMISSION and FEDERICO B. GUILAS, *respondents.*

SYLLABUS

1. **COMMERCIAL LAW; SECURITIES AND EXCHANGE COMMISSION; P.D. 902-A SPECIFICALLY DELINEATES THE CASES UNDER THE EXCLUSIVE JURISDICTION THEREOF; DISMISSAL OF A CORPORATE OFFICER INCLUDED.—** Specifically delineated in P.D. 902-A are the cases over which the SEC exercises exclusive jurisdiction. Sec. 5(c) of said law expressly covers both election and appointment of corporate directors, trustees, officers and managers. In *Lozon vs. NLRC,* 240 SCRA 1 (1995) and *Espino vs. NLRC,* 240 SCRA 52 (1995) citing *Fortune Cement Corp. vs. NLRC,* the Court declared that: A corporate officer's dismissal is always a corporate act and/or an intra-corporate controversy and that nature is not altered by the reason or wisdom which the Board of Directors may have in taking such action. Based on the foregoing, we must rule that private respondent was indeed a corporate officer. He was appointed directly by the board of directors not by

Supreme Court E-Library

any managing officer of the corporation and his salary was, likewise, set by the same Board. Having thus determined, his dismissal or non-appointment is clearly an intra-corporate matter and jurisdiction, therefore, properly belongs to the SEC and not the NLRC.

2. **ID.; ID.; ID.; ID.; THE COMPLAINT FOR ILLEGAL DISMISSAL MAY INCLUDE MONEY CLAIMS.**— It is of no consequence, likewise, that the complaint of private respondent for illegal dismissal includes money claims, jurisdiction remains with the SEC as ruled in the case of *Cagayan de Oro Colliseum, Inc. vs. Office of the MOLE*, 192 SCRA 315 (1990): Although the reliefs sought by Chaves appear to fall under the jurisdiction of the labor arbiter as they are claims for unpaid salaries and other remunerations for services rendered, a close scrutiny thereof shows that said claims are actually part of the perquisites of his position in, and therefore interlinked with his relations with the corporation. In Dy *vs.* NLRC, the Court said: "(t)he question of remuneration involving as it does, a person who is not a mere employee but a stockholder and officer, an integral part, it might be said, of the corporation, is not a simple labor problem but a matter that comes within the area of corporate affairs and management, and is in fact a corporate controversy in contemplation of the Corporation Code."

APPEARANCES OF COUNSEL

Ramon U. Ampil for petitioner.
Bienvenida N. Carreon for private respondent.

D E C I S I O N

KAPUNAN, *J.*:

At fore, once again, is the jurisdictional tug of war between the National Labor Relations Commission (NLRC) and the Securities & Exchange Commission (SEC) in this special civil action *for certiorari* under Rule 65 of the Revised Rules of Court. It seeks to set aside the Resolutions of the NLRC in NLRC NCR Case No. 00-05-02780-92 (NLRC CA No. 004329-93) dated 9 March 1995 and 4 April 1995 which reversed the

Supreme Court E-Library

decision of Labor Arbiter Oswald Lorenzo and denied petitioners' motion for reconsideration, respectively.

Petitioner Galeria de Magallanes Condominium Association, Inc. (Galeria for brevity) is a non-stock, non-profit corporation formed in accordance with R.A. No. 4726, otherwise known as the Condominium Act. "Its primary purpose is to hold title to the common areas of the Galeria de Magallanes Condominium Project and to manage and administer the same for the use and convenience of the residents and/or owners."[1] Petitioner Bienvenido Ongkingco was the president of Galeria at the time private respondent filed his complaint.

On 1 September 1990, Galeria's Board of Directors appointed private respondent Federico B. Guilas as Administrator/ Superintendent. He was given a "monthly salary of P10,000 subject to review after five (5) months and subsequently thereafter as Galeria's finances improved."[2]

As Administrator, private respondent was tasked with the maintenance of the "performance and elegance of the common areas of the condominium and external appearance of the compound thereof for the convenience and comfort of the residents as well as to keep up the quality image, and hence the value of the investment for the owners thereof."[3]

However, on 17 March 1992, through a resolution passed by the Board of Directors of Galeria, private respondent was not re-appointed as Administrator.

As a result, on 15 May 1992, private respondent instituted a complaint against petitioners for illegal dismissal and non-payment of salaries with the NLRC.

In response, on 22 July 1992, petitioners filed a motion to dismiss alleging that it is the SEC, and not the labor arbiter, which has jurisdiction over the subject matter of the complaint.

Labor Arbiter Lorenzo granted the aforestated motion to dismiss in his order dated 29 December 1992. He ruled, thus:

[1] *Rollo*, p. 9.

[2] *Id.*, at 96.

[3] *Ibid.*

Supreme Court E-Library

A judicious calibration of the position taken by the contending parties preponderate clearly in favor of respondents, that this case is within the jurisdiction of the Securities and Exchange Commission and not this Office (Labor Arbiter).

Our reasons are as follows:

ONE. The Position of Administrator or Superintendent is a corporate position, whose appointment depended on the Board of Directors. As such, the position of the administrator is a corporate creation.

TWO. Clearly from the respondent corporation's Articles of Incorporation, Art. V, Sec. 6 thereof, the appointment and removal of the administrator is a prerogative that belongs to the Board, and thereby involves the exercise of deliberate choice and faculty of discriminative selection.

THIRD. Thus, we find lacking of merit the argument of complainant that since he is not a member of the condominium association where he was formerly administrator, or is not a unit holder thereof, since a person's relationship to a corporation is not determinative of the services performed but by the incidents of the relationship as they exist. (PSBA *vs.* LEANO, 127 SCRA 778.)

The resolution, therefore, of the other pending incident, which is the MOTION FOR SUBSTITUTION OF PARTIES is hereby deferred for action by the SEC.

WHEREFORE, in view of all the foregoing considerations, this Office hereby orders the dismissal of the instant action for reason of lack of jurisdiction. The complainant, if he is mindful should file this case with the Securities and Exchange Commission.

SO ORDERED.[4]

The NLRC, however, reversed the Labor Arbiter's order in its resolution dated 9 March 1995. It ruled in this wise:

We find merit in the appeal. It cannot be gainsaid that the complainant's cause of action in his complaint is illegal dismissal which issue falls four square within the jurisdiction of the NLRC. This is so, because while it may be true that the termination of the complainant was effected allegedly by a resolution of the Board of Directors of the respondent association, this did not make the dispute

[4] *Id.*, at 56-57.

Supreme Court E-Library

intracorporate in nature. Moreover, We have taken note of the fact that the complainant is neither a member of the association nor an officer thereof. Hence, We are more convinced that he is an employee of the respondent association occupying the position of administrator who is in (sic) charged with the function of managing and administering the building or condominium owned by the members. Indeed, there is a whale of difference between a member of the association who is a part owner of the building and a mere employee performing managerial and administrative functions which are necessary in the usual undertaking of the respondent Association. The complainant falls under the second category.

And, to the point of being repetitious, it needs to be stressed that the fact that the complainant was removed by the Board of Directors did not change the issue from an illegal dismissal case to an intracorporate one. For, what remains to be resolved here is whether or not the complainant's removal from his position as Administrator was for a just and valid cause and in compliance with due process. And, as the facts now stand, the issue is within the scope of authority of the National Labor Relations Commission to resolve.

We simply could not agree with the conclusions of law made by the Arbiter *a quo* on the applicability of the provisions of P.D. 902. Our view finds basis in the case of Gregorio Araneta University Foundation *vs.* Antonio J. Teodoro and NLRC (167 SCRA 79) wherein the Supreme Court had the occasion to clarify the jurisdiction of the Securities and Exchange Commission and that of the NLRC. It (Supreme Court) held, thus —

> "x x x Relying on Philippine School of Business Administration, et al., (127 SCRA 778) and Dy, et al., *vs.* National Labor Relations Commission, et al., (145 SCRA 211), Petitioner theorizes that since private respondent was a corporate officer, the present controversy is within the jurisdiction of the Securities and Exchange Commission, pursuant to P.D. 902-A, and not in the public respondent.
>
> Without need of applying the rule on estoppel by laches against petitioner, *its contention must fail on the ground of misplaced reliance. As explained in Dy, the same is true with Philippine Business Administration, the controversies therein were intra corporate in nature and squarely within the purview of Section 5(c), PD. 902-A since the real question was the invalidity of the board of director's meeting wherein corporate*

Supreme Court E-Library

officers involved were not re-elected, resulting in the termination of their services." (Italics supplied.)

As obtaining in this case, no intracorporate controversy exists, hence, the jurisdiction of the NLRC should be sustained.

WHEREFORE, finding merit on the appeal, the same is hereby, given due course. Accordingly, the Order appealed from is declared Null and Void and is hereby, VACATED and SET ASIDE. Accordingly, let the records of the case be remanded to the Arbitration Branch of origin for further proceedings. With the directive that the instant case be given priority in the calendar of the Labor Arbiter for the speedy disposition hereon. Concomitant hereto, the respondents are hereby directed to submit their position paper within ten (10) days from receipt hereof.

SO ORDERED.[5]

Petitioners filed a motion for reconsideration but the same was denied in the NLRC's resolution dated 4 April 1995.[6] Hence, the present recourse.

The petitioners raised a single issue:

THE PRIVATE RESPONDENT ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR COMMITTED GRAVE ABUSE OF DISCRETION IN TAKING COGNIZANCE OF A SUBJECT MATTER THAT FELL WITHIN THE ORIGINAL AND EXCLUSIVE JURISDICTION OF THE SEC.

The petition is granted.

Specifically delineated in P.D. 902-A are the cases over which the SEC exercises exclusive jurisdiction:

SECTION 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

a) Devices or schemes employed by or any acts of the board of directors, business associates, its officers or partners,

[5] *Id.*, at 28-31.

[6] *Id.*, at 33.

Supreme Court E-Library

amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, members of associations or organizations registered with the Commission.

b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the State insofar as it concerns their individual franchise or right to exist as such entity;

c) *Controversies in the election or appointment of directors, trustees, officers, or managers of such corporations, partnerships or associations.*

d) Petitions of corporations, partnerships or associations to be declared in the state of suspension of payments in cases where the corporation, partnership or association possesses property to cover all of its debts but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation, partnership or association has no sufficient assets to cover its liabilities, but is under the Management Committee created pursuant to this Decree. (Italics supplied.)

The Solicitor General contends that the case at bar falls outside the purview of the aforequoted provision. He insists that private respondent was a mere employee of petitioner corporation being tasked mainly, as administrator/superintendent, with the upkeep of the condominium's common areas. He, thus, maintains that private respondent cannot be deemed a corporate officer because "it is the nature of one's functions and not the nomenclature or title given to one's job which determines one's status in a corporation."[7]

The contentions of public respondent lack merit. That private respondent is an officer of petitioner corporation and not its mere employee cannot be questioned. The by-laws of the Galeria de Magallanes Condominium Association specifically includes

[7] *Id.*, at 103.

Supreme Court E-Library

the Superintendent/Administrator in its roster of corporate officers:

ARTICLE IV

OFFICERS

Section 1. *Executive Officers* — The Executive officers of the corporation shall be a President, a Vice President, a Treasurer, all of whom shall be elected by the Board of Directors. They may be removed with or without cause at any meeting by the concurrence of four directors. *The Board of Directors may appoint a Superintendent or Administrator and such other officers and employees and delineate their powers and duties as the Board shall find necessary to manage the affairs of the corporation.*[8] (Italics supplied.)

x x x x x x x x x.

Section 6. *The Superintendent or Administrator* — The Board of Directors may appoint a Superintendent or Administrator for the condominium project if the activities and financial condition of the Association so warrant. If one is so appointed, he shall be the principal administrative officer of the Association. He shall attend to routinary and day-to-day business and activities of the Association and shall keep regular officer hours for the purpose. He shall have such other duties and powers as may be conferred upon him by the Board of Directors or delegated by the President of the Association.

At the discretion of the Board of Directors, the work and duties of Superintendent or Administrator may be entrusted to a juridical entity which is qualified and competent to perform such work.[9]

Closely approximating the dispute at bar is the recent case of *Tabang v. NLRC*.[10] This Court, through Justice Florenz D. Regalado, ruled that:

Contrary to the contention of petitioner, a medical director and a hospital administrator are considered as corporate officers under the by-laws of respondent corporation. Section 2(i), Article I thereof states that one of the powers of the Board of Trustees is "(t)o appoint a Medical Director, Comptroller/Administrator, Chiefs of Services

[8] *Id.*, at 40.

[9] *Id.*, at 43.

[10] G.R. No. 121143, 21 January 1997.

Supreme Court E-Library

and such other officers as it may deem necessary and prescribe their powers and duties."

The president, vice-president, secretary and treasurer are commonly regarded as the principal or executive officers of a corporation, and modern corporation statutes usually designate them as the officers of the corporation. However, other offices are sometimes created by the charter or by-laws of a corporation, or the board of directors may be empowered under the by-laws of a corporation to create additional offices as may be necessary.

It has been held that an "office" is created by the charter of the corporation and the officer is elected by the directors or stockholders. On the other hand, an "employee" usually occupies no office and generally is employed not by action of the directors or stockholders but by the managing officer of the corporation who also determines the compensation to be paid to such employee.

In the case at bar, considering that herein petitioner, unlike an ordinary employee, was appointed by respondent corporation's Board of Trustees in its memorandum of October 30, 1990, she is deemed an officer of the corporation. Perforce, Section 5(c) of Presidential Decree No. 902-A, which provides that the SEC exercises exclusive jurisdiction over controversies in the election or appointment of directors, trustees, officers or managers of corporations, partnerships or associations, applies in the present dispute. Accordingly, jurisdiction over the same is vested in the SEC, and not in the Labor Arbiter or the NLRC.

Supplementing the afore-quoted ruling, in *Lozon v. NLRC*[11] and *Espino v. NLRC*,[12] citing *Fortune Cement Corp. v. NLRC*,[13] we declared that:

A corporate officer's dismissal is always a corporate act and/or an intra-corporate controversy and that nature is not altered by the reason or wisdom which the Board of Directors may have in taking such action.

Based on the foregoing, we must rule that private respondent was indeed a corporate officer. He was appointed directly by the Board of Directors not by any managing officer of the

[11] 240 SCRA 1 (1995).

[12] 240 SCRA 52 (1995).

[13] 193 SCRA 258 (1991), see also, *PSBA v. Leano*, 127 SCRA 778 (1985).

Supreme Court E-Library

corporation and his salary was, likewise, set by the same Board. Having thus determined, his dismissal or non-appointment is clearly an intra-corporate matter and jurisdiction, therefore, properly belongs to the SEC and not the NLRC.

The respondents also attack the SEC's jurisdiction over the instant case on grounds that Guilas was not elected by the Board of Directors but was merely appointed.

This particular argument baffles us. P.D. 902-A cannot be any clearer. Sec. 5(c) of said law expressly covers both election and appointment of corporate directors, trustees, officers and managers.[14]

It is of no consequence, likewise, that the complaint of private respondent for illegal dismissal includes money claims, jurisdiction remains with the SEC as ruled in the case of *Cagayan de Oro Coliseum, Inc. v. Office of the MOLE*:[15]

> Although the reliefs sought by Chaves appear to fall under the jurisdiction of the labor arbiter as they are claims for unpaid salaries and other remunerations for services rendered, a close scrutiny thereof shows that said claims are actually part of the perquisites of his position in, and therefore interlinked with his relations with the corporation. In Dy *vs.* NLRC, the Court said: "(t)he question of remuneration involving as it does, a person who is not a mere employee but a stockholder and officer, an integral part, it might be said, of the corporation, is not a simple labor problem but a matter that comes within the area of corporate affairs and management, and is in fact a corporate controversy in contemplation of the Corporation Code."

WHEREFORE, the petition for *certiorari* is given DUE COURSE, the assailed resolutions of the NLRC are hereby REVERSED and the Order of the Labor Arbiter dated 29 December 1992 REINSTATED.

SO ORDERED.

Bellosillo, Vitug, and *Hermosisima, Jr., JJ.,* concur.
Padilla (Chairman), J., No part.

---

[14] *Paguio v. NLRC*, 253 SCRA 166 (1996).

[15] 192 SCRA 315 (1990).