Supreme Court E-Library

and *SET ASIDE*. The October 25, 1994 decision of the labor arbiter finding respondent guilty of illegal dismissal is *REINSTATED*, with the *MODIFICATION* that, in lieu of reinstatement, petitioner is awarded separation pay, the award of backwages to be computed from the time of her illegal dismissal up to her compulsory retirement age.

SO ORDERED.

Puno, C.J. (Chairperson), Sandoval-Gutierrez, Azcuna, and *Garcia, JJ.,* concur.

FIRST DIVISION

[G.R. No. 161886. March 16, 2007]

FILIPINAS PORT SERVICES, INC., represented by stockholders, ELIODORO C. CRUZ and MINDANAO TERMINAL AND BROKERAGE SERVICES, INC., *petitioners, vs.* **VICTORIANO S. GO, ARSENIO LOPEZ CHUA, EDGAR C. TRINIDAD, HERMENEGILDO M. TRINIDAD, JESUS SYBICO, MARY JEAN D. CO, HENRY CHUA, JOSELITO S. JAYME, ERNESTO S. JAYME, and ELIEZER B. DE JESUS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; LIMITED TO REVIEW OF QUESTIONS OF LAW; EXCEPTION. — It is axiomatic that in petitions for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised and passed upon by the Court. Factual findings of the CA are binding and conclusive and will not be reviewed or disturbed on appeal. Of course, the rule is not cast in stone; it admits of certain exceptions, such

Supreme Court E-Library

as when the findings of fact of the appellate court are at variance with those of the trial court, as here.

2. MERCANTILE LAW; CORPORATION LAW; CORPORATION CODE; PRIVATE CORPORATIONS; BOARD OF DIRECTORS; HAS THE SOLE POWER TO DETERMINE POLICIES, ENTER INTO CONTRACTS, AND CONDUCT THE ORDINARY BUSINESS OF THE CORPORATION WITHIN THE SCOPE OF ITS CHARTER; RATIONALE. — The governing body of a corporation is its board of directors. Section 23 of the Corporation Code explicitly provides that unless otherwise provided therein, the corporate powers of all corporations formed under the Code shall be exercised, all business conducted and all property of the corporation shall be controlled and held by a board of directors. Thus, with the exception only of some powers expressly granted by law to stockholders (or members, in case of non-stock corporations), the board of directors (or trustees, in case of non-stock corporations) has the sole authority to determine policies, enter into contracts, and conduct the ordinary business of the corporation within the scope of its charter, *i.e*., its articles of incorporation, by-laws and relevant provisions of law. Verily, the authority of the board of directors is restricted to the management of the regular business affairs of the corporation, unless more extensive power is expressly conferred. The *raison d' etre* behind the conferment of corporate powers on the board of directors is not lost on the Court. Indeed, the concentration in the board of the powers of control of corporate business and of appointment of corporate officers and managers is necessary for efficiency in any large organization. Stockholders are too numerous, scattered and unfamiliar with the business of a corporation to conduct its business directly. And so the plan of corporate organization is for the stockholders to choose the directors who shall control and supervise the conduct of corporate business.

3. ID.; ID.; ID.; ID.; ID.; NOT LIABLE IF THE CAUSE OF THE LOSSES IS MERELY AN ERROR IN BUSINESS JUDGMENT, NOT AMOUNTING TO BAD FAITH OR NEGLIGENCE. — If the cause of the losses is merely error in business judgment, not amounting to bad faith or negligence, director and/or officers are not liable. For them to be held accountable, the mismanagement and the resulting losses on

Supreme Court E-Library

account thereof are not the only matters to be proven; it is likewise necessary to show that the directors and/or officers acted in bad faith and with malice in doing the assailed acts. Bad faith does not simply cannote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a known duty through some motive or interest or ill-will partaking of the nature of fraud.

4. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; HE WHO ALLEGES A FACT BEARS THE BURDEN OF PROVING IT BY THE QUANTUM OF PROOF REQUIRED. — It is elementary in procedural law that bare allegations do not constitute evidence adequate to support a conclusion. It is basic in the rule of evidence that he who alleges a fact bears the burden of proving it by the quantum of proof required. Bare allegations, unsubstantiated by evidence, are not equivalent to proof under the Rules of Court. The party having the burden of proof must establish his case by a preponderance of evidence.

5. MERCANTILE LAW; CORPORATION LAW; CORPORATION CODE; PRIVATE CORPORATIONS; BOARD OF DIRECTORS; THE DETERMINATION OF THE NECESSITY FOR ADDITIONAL OFFICES AND/OR POSITIONS IN A CORPORATION IS A MANAGEMENT PREROGATIVE WHICH THE COURT HAS NO AUTHORITY TO REVIEW IN THE ABSENCE OF ANY PROOF THAT SUCH PREROGATIVE WAS EXERCISED IN BAD FAITH OR WITH MALICE. — [T]he determination of the necessity for additional offices and/or positions in a corporation is a management prerogative which courts are not wont to review in the absence of any proof that such prerogative was exercised in bad faith or with malice. Indeed, it would be an improper judicial intrusion into the internal affairs of Filport were the Court to determine the propriety or impropriety of the creation of offices therein and the grant of salary increases to officers thereof. Such are corporate and/or business decisions which only the corporation's Board of Directors can determine. So it is that in *Philippines Stock Exchange, Inc. v. CA*, the Court unequivocally held: "Questions of policy or of management are left solely to the honest decision of the board as the business manager of the corporation, and the court is

Supreme Court E-Library

without authority to substitute its judgment for that of the board, and as long as it acts in good faith and in the exercise of honest judgment in the interest of the corporation, its orders are not reviewable by the courts."

6. ID.; ID.; ID.; ID.; STOCKHOLDERS; DERIVATIVE SUIT; WHEN PROPER. — Under the Corporation Code, where a corporation is an injured party, its power to sue is lodged with its board of directors or trustees. But an individual stockholder may be permitted to institute a derivative suit in behalf of the corporation in order to protect or vindicate corporate rights whenever the officials of the corporation refuse to sue, or when a demand upon them to file the necessary action would be futile because they are the ones to be sued, or because they hold control of the corporation. In such actions, the corporation is the real party-in-interest while the suing stockholder, in behalf of the corporation, is only a nominal party.

7. ID.; ID.; ID.; ID.; ID.; ID.; REQUISITES. — [T]he requisites before a derivative suit can be filed by a stockholder are present in this case, to wit: "a) the party bringing suit be a shareholder as of the time of the act or transaction complained of, the number of his shares not being material; b) he has tried to exhaust intra-corporate remedies, *i.e.*, has made a demand on the board of directors for the appropriate relief but the latter has failed or refused to heed his plea; and c) the cause of action actually devolves on the corporation, the wrongdoing or harm having been, or being caused to the corporation and not to the particular stockholder bringing the suit."

8. ID.; ID.; ID.; ID.; ID.; ID.; EXHAUSTION OF INTRA-CORPORATE REMEDIES; WHEN UNNECESSARY. — And while it is true that the complaining stockholder must show to the satisfaction of the court that he has exhausted all the means within his reach to attain within the corporation itself the redress for his grievances, or actions in conformity to his wishes, nonetheless, where the corporation is under the complete control of the principal defendants, as here, there is no necessity of making a demand upon the directors. The reason is obvious: a demand upon the board to institute an action and prosecute the same effectively would have been useless and an exercise in futility.

Supreme Court E-Library

APPEARANCES OF COUNSEL

Quiason Makalintal Barot Torres and Ibarra for petitioners.
Angara Abello Concepcion Regala and Cruz for respondents.

D E C I S I O N

GARCIA, *J.*:

Assailed and sought to be set aside in this petition for review on *certiorari* is the Decision[1] dated 19 January 2004 of the Court of Appeals (CA) in *CA-G.R. CV No. 73827,* reversing an earlier decision of the Regional Trial Court (RTC) of Davao City and accordingly dismissing the derivative suit instituted by petitioner Eliodoro C. Cruz for and in behalf of the stockholders of co-petitioner Filipinas Port Services, Inc. (Filport, hereafter).

The case is actually an intra-corporate dispute involving Filport, a domestic corporation engaged in stevedoring services with principal office in Davao City. It was initially instituted with the Securities and Exchange Commission (SEC) where the case hibernated and remained unresolved for several years until it was overtaken by the enactment into law, on 19 July 2000, of Republic Act (R.A.) No. 8799, otherwise known as the *Securities Regulation Code*. From the SEC and consistent with R.A. No. 8799, the case was transferred to the RTC of Manila, Branch 14, sitting as a corporate court. Subsequently, upon respondents' motion, the case eventually landed at the RTC of Davao City where it was docketed as Civil Case No. 28,552-2001. RTC-Davao City, Branch 10, ruled in favor of the petitioners prompting respondents to go to the CA in *CA-G.R. CV No. 73827*. This time, the respondents prevailed, hence, this petition for review by the petitioners.

The relevant facts:

---

[1] Penned by Associate Justice Conrado M. Vasquez, Jr., and concurred in by Associate Justices Bienvenido L. Reyes and Arsenio J. Magpale; *Rollo*, pp. 29-37.

Supreme Court E-Library

On 4 September 1992, petitioner Eliodoro C. Cruz, Filport's president from 1968 until he lost his bid for reelection as Filport's president during the general stockholders' meeting in 1991, wrote a letter[2] to the corporation's Board of Directors questioning the board's creation of the following positions with a monthly remuneration of ₱13,050.00 each, and the election thereto of certain members of the board, to wit:

Asst. Vice-President for Corporate Planning	–	Edgar C. Trinidad (Director)
Asst. Vice-President for Operations	–	Eliezer B. de Jesus (Director)
Asst. Vice-President for Finance	–	Mary Jean D. Co (Director)
Asst. Vice-President for Administration	–	Henry Chua (Director)
Special Asst. to the Chairman	–	Arsenio Lopez Chua (Director)
Special Asst. to the President	–	Fortunato V. de Castro

In his aforesaid letter, Cruz requested the board to take necessary action/actions to recover from those elected to the aforementioned positions the salaries they have received.

On 15 September 1992, the board met and took up Cruz's letter. The records do not show what specific action/actions the board had taken on the letter. Evidently, whatever action/actions the board took did not sit well with Cruz.

On 14 June 1993, Cruz, purportedly in representation of Filport and its stockholders, among which is herein co-petitioner Mindanao Terminal and Brokerage Services, Inc. (Minterbro), filed with the SEC a petition[3] which he describes as a derivative suit against the herein respondents who were then the incumbent members of Filport's Board of Directors, for alleged acts of mismanagement detrimental to the interest of the corporation and its shareholders at large, namely:

---

[2] *Id*. at 56-57.

[3] *Id*. at 38-44.

Supreme Court E-Library

1. creation of an executive committee in 1991 composed of seven (7) members of the board with compensation of ₱500.00 for each member per meeting, an office which, to Cruz, is not provided for in the by-laws of the corporation and whose function merely duplicates those of the President and General Manager;

2. increase in the emoluments of the Chairman, Vice-President, Treasurer and Assistant General Manager which increases are greatly disproportionate to the volume and character of the work of the directors holding said positions;

3. re-creation of the positions of Assistant Vice-Presidents (AVPs) for Corporate Planning, Operations, Finance and Administration, and the election thereto of board members Edgar C. Trinidad, Eliezer de Jesus, Mary Jean D. Co and Henry Chua, respectively; and

4. creation of the additional positions of Special Assistants to the President and the Board Chairman, with Fortunato V. de Castro and Arsenio Lopez Chua elected to the same, the directors elected/appointed thereto not doing any work to deserve the monthly remuneration of ₱13,050.00 each.

In the same petition, docketed as SEC Case No. 06-93-4491, Cruz alleged that despite demands made upon the respondent members of the board of directors to desist from creating the positions in question and to account for the amounts incurred in creating the same, the demands were unheeded. Cruz thus prayed that the respondent members of the board of directors be made to pay Filport, jointly and severally, the sums of money variedly representing the damages incurred as a result of the creation of the offices/positions complained of and the aggregate amount of the questioned increased salaries.

In their common *Answer with Counterclaim*,[4] the respondents denied the allegations of mismanagement and materially averred as follows:

1. the creation of the executive committee and the grant of *per diems* for the attendance of each member are allowed under the by-laws of the corporation;

[4] *Id*. at 45-51.

Supreme Court E-Library

2. the increases in the salaries/emoluments of the Chairman, Vice-President, Treasurer and Assistant General Manager were well within the financial capacity of the corporation and well-deserved by the officers elected thereto; and

3. the positions of AVPs for Corporate Planning, Operations, Finance and Administration were already in existence during the tenure of Cruz as president of the corporation, and were merely recreated by the Board, adding that all those appointed to said positions of Assistant Vice Presidents, as well as the additional position of Special Assistants to the Chairman and the President, rendered services to deserve their compensation.

In the same Answer, respondents further averred that Cruz and his co-petitioner Minterbro, while admittedly stockholders of Filport, have no authority nor standing to bring the so-called "derivative suit" for and in behalf of the corporation; that respondent Mary Jean D. Co has already ceased to be a corporate director and so with Fortunato V. de Castro, one of those holding an assailed position; and that no demand to cease and desist from further committing the acts complained of was made upon the board. By way of affirmative defenses, respondents asserted that (1) the petition is not duly verified by petitioner Filport which is the real party-in-interest; (2) Filport, as represented by Cruz and Minterbro, failed to exhaust remedies for redress within the corporation before bringing the suit; and (3) the petition does not show that the stockholders bringing the suit are joined as nominal parties. In support of their counterclaim, respondents averred that Cruz filed the alleged derivative suit in bad faith and purely for harassment purposes on account of his non-reelection to the board in the 1991 general stockholders' meeting.

As earlier narrated, the derivative suit (SEC Case No. 06-93-4491) hibernated with the SEC for a long period of time. With the enactment of R.A. No. 8799, the case was first turned over to the RTC of Manila, Branch 14, sitting as a corporate court. Thereafter, on respondents' motion, it was eventually transferred to the RTC of Davao City whereat it was docketed as *Civil Case No. 28,552-2001* and raffled to Branch 10 thereof.

Supreme Court E-Library

On 10 December 2001, RTC-Davao City rendered its decision[5] in the case. Even as it found that (1) Filport's Board of Directors has the power to create positions not provided for in the by-laws of the corporation since the board is the governing body; and (2) the increases in the salaries of the board chairman, vice-president, treasurer and assistant general manager are reasonable, the trial court nonetheless rendered judgment against the respondents by ordering the directors holding the positions of Assistant Vice President for Corporate Planning, Special Assistant to the President and Special Assistant to the Board Chairman to refund to the corporation the salaries they have received as such officers *"considering that Filipinas Port Services is not a big corporation requiring multiple executive positions"* and that said positions *"were just created for accommodation."* We quote the *fallo* of the trial court's decision.

WHEREFORE, judgment is rendered ordering:

Edgar C. Trinidad under the third and fourth causes of action to restore to the corporation the total amount of salaries he received as assistant vice president for corporate planning; and likewise ordering Fortunato V. de Castro and Arsenio Lopez Chua under the fourth cause of action to restore to the corporation the salaries they each received as special assistants respectively to the president and board chairman. In case of insolvency of any or all of them, the members of the board who created their positions are subsidiarily liable.

The counter claim is dismissed.

From the adverse decision of the trial court, herein respondents went on appeal to the CA in *CA-G.R. CV No. 73827*.

In its decision[6] of 19 January 2004, the CA, taking exceptions to the findings of the trial court that the creation of the positions of Assistant Vice President for Corporate Planning, Special Assistant to the President and Special Assistant to the Board Chairman was merely for accommodation purposes, granted the respondents' appeal, reversed and set aside the appealed

---

[5] *Id*. at 109-114.

[6] *Supra* at note 1.

Supreme Court E-Library

decision of the trial court and accordingly dismissed the so-called derivative suit filed by *Cruz, et al.,* thus:

> IN VIEW OF ALL THE FOREGOING, the instant appeal is GRANTED, the challenged decision is REVERSED and SET ASIDE, and a new one entered DISMISSING Civil Case No. 28,552-2001 with no pronouncement as to costs.
>
> SO ORDERED.

Intrigued, and quite understandably, by the fact that, in its decision, the CA, before proceeding to address the merits of the appeal, prefaced its disposition with the statement reading *"[T]he appeal is bereft of merit*,"[7] thereby contradicting the very *fallo* of its own decision and the discussions made in the body thereof, respondents filed with the appellate court a **Motion For *Nunc Pro Tunc Order***,[8] thereunder praying that the phrase "*[T]he appeal is bereft of merit,*" be corrected to read "*[T]he appeal is impressed with merit*." In its resolution[9] of 23 April 2004, the CA granted the respondents' motion and accordingly effected the desired correction.

Hence, petitioners' present recourse.

Petitioners assigned four (4) errors allegedly committed by the CA. For clarity, we shall formulate the issues as follows:

1. Whether the CA erred in holding that Filport's Board of Directors acted within its powers in creating the executive committee and the positions of AVPs for Corporate Planning, Operations, Finance and Administration, and those of the Special Assistants to the President and the Board Chairman, each with corresponding remuneration, and in increasing the salaries of the positions of Board Chairman, Vice-President, Treasurer and Assistant General Manager; and
2. Whether the CA erred in finding that no evidence exists to prove that (a) the positions of AVP for Corporate Planning,

---

[7] CA decision, p. 5; *Rollo*, p. 33.

[8] *Id*. at 292-293.

[9] *Id*. at 305-306.

Supreme Court E-Library

> Special Assistant to the President and Special Assistant to the Board Chairman were created merely for accommodation, and (b) the salaries/emoluments corresponding to said positions were actually paid to and received by the directors appointed thereto.

For their part, respondents, aside from questioning the propriety of the instant petition as the same allegedly raises only questions of fact and not of law, also put in issue the purported derivative nature of the main suit initiated by petitioner Eliodoro C. Cruz allegedly in representation of and in behalf of Filport and its stockholders.

The petition is bereft of merit.

It is axiomatic that in petitions for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised and passed upon by the Court. Factual findings of the CA are binding and conclusive and will not be reviewed or disturbed on appeal.[10] Of course, the rule is not cast in stone; it admits of certain exceptions, such as when the findings of fact of the appellate court are at variance with those of the trial court,[11] as here. For this reason, and for a proper and complete resolution of the case, we shall delve into the records and reexamine the same.

The governing body of a corporation is its board of directors. Section 23 of the Corporation Code[12] explicitly provides that unless otherwise provided therein, the corporate powers of all corporations formed under the Code shall be exercised, all business conducted and all property of the corporation shall be controlled and held by a board of directors. Thus, with the exception only of some powers expressly granted by law to stockholders (or members, in case of non-stock corporations), the board of directors (or trustees, in case of non-stock corporations) has the sole authority to determine policies, enter into contracts,

---

[10] *Bank of the Philippine Islands v. Carlos Leobrero,* G.R. No. 137147, November 18, 2003, 416 SCRA 15, 18.

[11] *Id*.

[12] Batas Pambasa Blg. 68.

Supreme Court E-Library

and conduct the ordinary business of the corporation within the scope of its charter, *i.e.*, its articles of incorporation, by-laws and relevant provisions of law. Verily, the authority of the board of directors is restricted to the management of the regular business affairs of the corporation, unless more extensive power is expressly conferred.

The *raison d'etre* behind the conferment of corporate powers on the board of directors is not lost on the Court. Indeed, the concentration in the board of the powers of control of corporate business and of appointment of corporate officers and managers is necessary for efficiency in any large organization. Stockholders are too numerous, scattered and unfamiliar with the business of a corporation to conduct its business directly. And so the plan of corporate organization is for the stockholders to choose the directors who shall control and supervise the conduct of corporate business.[13]

In the present case, the board's creation of the positions of Assistant Vice Presidents for Corporate Planning, Operations, Finance and Administration, and those of the Special Assistants to the President and the Board Chairman, was in accordance with the regular business operations of Filport as it is authorized to do so by the corporation's by-laws, pursuant to the Corporation Code.

The election of officers of a corporation is provided for under Section 25 of the Code which reads:

> Sec. 25. *Corporate officers, quorum.* — Immediately after their election, the directors of a corporation must formally organize by the election of a president, who shall be a director, a treasurer who may or may not be a director, a secretary who shall be a resident and citizen of the Philippines, and **such other officers as may be provided for in the by-laws**. (Emphasis supplied.)

In turn, the amended Bylaws of Filport[14] provides the following:

---

[13] Aguedo Agbayani, *Commentaries and Jurisprudence on the Commercial Laws of the Phils.*, 1980 ed., Vol. III.

[14] *Rollo*, pp. 120-130.

Supreme Court E-Library

Officers of the corporation, as provided for by the by-laws, shall be elected by the board of directors at their first meeting after the election of Directors. x x x

The officers of the corporation shall be a Chairman of the Board, President, a Vice-President, a Secretary, a Treasurer, a General Manager and **such other officers as the Board of Directors may from time to time provide**, and these officers shall be elected to hold office until their successors are elected and qualified. (Emphasis supplied.)

Likewise, the fixing of the corresponding remuneration for the positions in question is provided for in the same by-laws of the corporation, *viz*:

x x x **The Board of Directors shall fix the compensation of the officers** and agents of the corporation. (Emphasis supplied.)

Unfortunately, the bylaws of the corporation are silent as to the creation by its board of directors of an **executive committee**. Under Section 35[15] of the Corporation Code, the creation of an executive committee must be provided for in the bylaws of the corporation.

Notwithstanding the silence of Filport's bylaws on the matter, we cannot rule that the creation of the executive committee by the board of directors is illegal or unlawful. One reason is the absence of a showing as to the true nature and functions of said executive committee considering that the "executive committee," referred to in Section 35 of the Corporation Code which is as powerful as the board of directors and in effect acting for the board itself, should be distinguished from other committees which are within the competency of the board to create at anytime and whose actions require ratification and

---

[15] Sec. 35. *Executive committee.* — The by-laws of a corporation may create an executive committee, composed of not less than three members of the board to be appointed by the board. Said committee may act, by majority vote of all its members, on such specific matters within the competence of the board, as may be delegated to it in the by-laws or on a majority vote of the board, except with respect to: x x x

Supreme Court E-Library

confirmation by the board.[16] Another reason is that, ratiocinated by both the two (2) courts below, the Board of Directors has the power to create positions not provided for in Filport's bylaws since the board is the corporation's governing body, clearly upholding the power of its board to exercise its prerogatives in managing the business affairs of the corporation.

As well, it may not be amiss to point out that, as testified to and admitted by petitioner Cruz himself, it was during his incumbency as Filport president that the executive committee in question was created, and that he was even the one who moved for the creation of the positions of the AVPs for Operations, Finance and Administration. By his acquiescence and/or ratification of the creation of the aforesaid offices, Cruz is virtually precluded from suing to declare such acts of the board as invalid or illegal. And it makes no difference that he sues in behalf of himself and of the other stockholders. Indeed, as his voice was not heard in protest when he was still Filport's president, raising a hue and cry only now leads to the inevitable conclusion that he did so out of spite and resentment for his non-reelection as president of the corporation.

With regard to the increased emoluments of the Board Chairman, Vice-President, Treasurer and Assistant General Manager which are supposedly disproportionate to the volume and nature of their work, the Court, after a judicious scrutiny of the increase *vis-à-vis* the value of the services rendered to the corporation by the officers concerned, agrees with the findings of both the trial and appellate courts as to the reasonableness and fairness thereof.

Continuing, petitioners contend that the CA did not appreciate their evidence as to the alleged acts of mismanagement by the then incumbent board. A perusal of the records, however, reveals that petitioners merely relied on the testimony of Cruz in support of their bold claim of mismanagement. To the mind of the Court, Cruz' testimony on the matter of mismanagement is bereft of any foundation. As it were, his testimony consists merely of

---

[16] H. de Leon, *The Corporation Code of the Phils*., 2002 ed., pp. 310-311.

Supreme Court E-Library

insinuations of alleged wrongdoings on the part of the board. Without more, petitioners' posture of mismanagement must fall and with it goes their prayer to hold the respondents liable therefor.

But even assuming, *in gratia argumenti,* that there was mismanagement resulting to corporate damages and/or business losses, still the respondents may not be held liable in the absence, as here, of a showing of bad faith in doing the acts complained of.

If the cause of the losses is merely error in business judgment, not amounting to bad faith or negligence, directors and/or officers are not liable.[17] For them to be held accountable, the mismanagement and the resulting losses on account thereof are not the only matters to be proven; it is likewise necessary to show that the directors and/or officers acted in bad faith and with malice in doing the assailed acts. Bad faith does not simply connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a known duty through some motive or interest or ill-will partaking of the nature of fraud.[18] We have searched the records and nowhere do we find a "dishonest purpose" or "some moral obliquity," or "conscious doing of a wrong" on the part of the respondents that "partakes of the nature of fraud."

We thus extend concurrence to the following findings of the CA, affirmatory of those of the trial court:

> x x x As a matter of fact, it was during the term of appellee Cruz, as president and director, that the executive committee was created. What is more, it was appellee himself who moved for the creation of the positions of assistant vice presidents for operations, for finance, and for administration. He should not be heard to complain thereafter for similar corporate acts.
>
> The increase in the salaries of the board chairman, president, treasurer, and assistant general manager are indeed reasonable enough

---

[17] *Board of Liquidators v. Heirs of Maximo M. Kalaw, et al*., G.R. No. L-18805, August 15, 1967, 20 SCRA 987.

[18] *Philippine Stock Exchange v. CA*, G.R. No. 125469, October 27, 1997, 281 SCRA 232.

Supreme Court E-Library

in view of the responsibilities assigned to them, and the special knowledge required, to be able to effectively discharge their respective functions and duties.

Surely, factual findings of trial courts, especially when affirmed by the CA, are binding and conclusive on this Court.

There is, however, a factual matter over which the CA and the trial court parted ways. We refer to the accommodation angle.

The trial court was with petitioner Cruz in saying that the creation of the positions of the three (3) AVPs for Corporate Planning, Special Assistant to the President and Special Assistant to the Board Chairman, each with a salary of ₱13,050.00 a month, was merely for accommodation purposes considering that Filport is not a big corporation requiring multiple executive positions. Hence, the trial court's order for said officers to return the amounts they received as compensation.

On the other hand, the CA took issue with the trial court and ruled that Cruz's accommodation theory is not based on facts and without any evidentiary substantiation.

We concur with the line of the appellate court. For truly, aside from Cruz's bare and self-serving testimony, no other evidence was presented to show the fact of "accommodation." By itself, the testimony of Cruz is not enough to support his claim that accommodation was the underlying factor behind the creation of the aforementioned three (3) positions.

It is elementary in procedural law that bare allegations do not constitute evidence adequate to support a conclusion. It is basic in the rule of evidence that he who alleges a fact bears the burden of proving it by the quantum of proof required. Bare allegations, unsubstantiated by evidence, are not equivalent to proof under the Rules of Court.[19] The party having the burden of proof must establish his case by a preponderance of evidence.[20]

---

[19] *Garcia v. De Vera,* A.C. No. 6052, December 11, 2003, 418 SCRA 27.

[20] *Pastor v. PNB,* G.R. No. 141316, November 20, 2003, 416 SCRA 283.

Supreme Court E-Library

Besides, the determination of the necessity for additional offices and/or positions in a corporation is a management prerogative which courts are not wont to review in the absence of any proof that such prerogative was exercised in bad faith or with malice.

Indeed, it would be an improper judicial intrusion into the internal affairs of Filport were the Court to determine the propriety or impropriety of the creation of offices therein and the grant of salary increases to officers thereof. Such are corporate and/or business decisions which only the corporation's Board of Directors can determine.

So it is that in *Philippine Stock Exchange, Inc. v. CA,*[21] the Court unequivocally held:

> Questions of policy or of management are left solely to the honest decision of the board as the business manager of the corporation, and the court is without authority to substitute its judgment for that of the board, and as long as it acts in good faith and in the exercise of honest judgment in the interest of the corporation, its orders are not reviewable by the courts.

In a last-ditch attempt to salvage their cause, petitioners assert that the CA went beyond the issues raised in the court of origin when it ruled on the absence of receipt of actual payment of the salaries/emoluments pertaining to the positions of Assistant Vice-President for Corporate Planning, Special Assistant to the Board Chairman and Special Assistant to the President. Petitioners insist that the issue of nonpayment was never raised by the respondents before the trial court, as in fact, the latter allegedly admitted the same in their *Answer With Counterclaim*.

We are not persuaded.

By claiming that Filport suffered damages because the directors appointed to the assailed positions are not doing anything to deserve their compensation, petitioners are saddled with the burden of proving that salaries were actually paid. Since the trial court, in effect, found that the petitioners successfully proved

---

[21] *Supra*.

Supreme Court E-Library

payment of the salaries when it directed the reimbursements of the same, respondents necessarily have to raise the issue on appeal. And the CA rightly resolved the issue when it found that no evidence of actual payment of the salaries in question was actually adduced. Respondents' alleged admission of the fact of payment cannot be inferred from a reading of the pertinent portions of the parties' respective initiatory pleadings. Respondents' allegations in their *Answer With Counterclaim* that the officers corresponding to the positions created "performed the work called for in their positions" or "deserve their compensation," cannot be interpreted to mean that they were "actually paid" such compensation. Directly put, the averment that "one deserves one's compensation" does not necessarily carry the implication that "such compensation was actually remitted or received." And because payment was not duly proven, there is no evidentiary or factual basis for the trial court to direct respondents to make reimbursements thereof to the corporation.

This brings us to the respondents' claim that the case filed by the petitioners before the SEC, which eventually landed in RTC-Davao City as Civil Case No. 28,552-2001, is not a derivative suit, as maintained by the petitioners.

We sustain the petitioners.

Under the Corporation Code, where a corporation is an injured party, its power to sue is lodged with its board of directors or trustees. But an individual stockholder may be permitted to institute a derivative suit in behalf of the corporation in order to protect or vindicate corporate rights whenever the officials of the corporation refuse to sue, or when a demand upon them to file the necessary action would be futile because they are the ones to be sued, or because they hold control of the corporation.[22] In such actions, the corporation is the real party-in-interest while the suing stockholder, in behalf of the corporation, is only a nominal party.[23]

---

[22] *Chua v. CA*, G.R. No. 150793, November 19, 2004, 443 SCRA 259, 267.

[23] *Asset Privatization Trust v. CA*, 360 Phil. 768, 804-805 (1998).

Supreme Court E-Library

Here, the action below is principally for damages resulting from alleged mismanagement of the affairs of Filport by its directors/officers, it being alleged that the acts of mismanagement are detrimental to the interests of Filport. Thus, the injury complained of primarily pertains to the corporation so that the suit for relief should be by the corporation. However, since the ones to be sued are the directors/officers of the corporation itself, a stockholder, like petitioner Cruz, may validly institute a "derivative suit" to vindicate the alleged corporate injury, in which case Cruz is only a nominal party while Filport is the real party-in-interest. For sure, in the prayer portion of petitioners' petition before the SEC, the reliefs prayed were asked to be made in favor of Filport.

Besides, the requisites before a derivative suit can be filed by a stockholder are present in this case, to wit:

a) the party bringing suit should be a shareholder as of the time of the act or transaction complained of, the number of his shares not being material;

b) he has tried to exhaust intra-corporate remedies, *i.e.*, has made a demand on the board of directors for the appropriate relief but the latter has failed or refused to heed his plea; and

c) the cause of action actually devolves on the corporation, the wrongdoing or harm having been, or being caused to the corporation and not to the particular stockholder bringing the suit.[24]

Indisputably, petitioner Cruz (1) is a stockholder of Filport; (2) he sought without success to have its board of directors remedy what he perceived as wrong when he wrote a letter requesting the board to do the necessary action in his complaint; and (3) the alleged wrong was in truth a wrong against the stockholders of the corporation generally, and not against Cruz or Minterbro, in particular. In the end, it is Filport, not Cruz which directly stands to benefit from the suit. And while it is

---

[24] *San Miguel Corporation, represented by Eduardo De Los Angeles v. Ernest Khan*, G.R. No. 85339, August 11, 1989, 176 SCRA 447, 462.

Supreme Court E-Library

true that the complaining stockholder must show to the satisfaction of the court that he has exhausted all the means within his reach to attain within the corporation itself the redress for his grievances, or actions in conformity to his wishes, nonetheless, where the corporation is under the complete control of the principal defendants, as here, there is no necessity of making a demand upon the directors. The reason is obvious: a demand upon the board to institute an action and prosecute the same effectively would have been useless and an exercise in futility. In fine, we rule and so hold that the petition filed with the SEC at the instance of Cruz, which ultimately found its way to the RTC of Davao City as *Civil Case No. 28, 552-2001*, is a derivative suit of which Cruz has the necessary legal standing to institute.

WHEREFORE, the petition is *DENIED* and the challenged decision of the CA is *AFFIRMED* in all respects.

No pronouncement as to costs.

SO ORDERED.

Puno, C.J. (Chairperson), Sandoval-Gutierrez, Corona, and *Azcuna, JJ.,* concur.

EN BANC

[G.R. No. 168253. March 16, 2007]

MAYOR NOEL E. ROSAL, *petitioner, vs.* **COMMISSION ON ELECTIONS, Second Division, and MICHAEL VICTOR IMPERIAL,** *respondents.*