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THIRD DIVISION

[G.R. No. 157802. October 13, 2010]

MATLING INDUSTRIAL AND COMMERCIAL CORPORATION, RICHARD K. SPENCER, CATHERINE SPENCER, AND ALEX MANCILLA, *petitioners, vs.* **RICARDO R. COROS,** *respondent.*

SYLLABUS

1. LABOR LAW AND SOCIAL WELFARE LEGISLATION; LABOR RELATIONS; OFFICER OR EMPLOYEE OF A PRIVATE EMPLOYER; ILLEGAL DISMISSAL; COGNIZABLE BY THE LABOR ARBITER.— As a rule, the illegal dismissal of an officer or other employee of a private employer is properly cognizable by the LA. This is pursuant to Article 217 (a) 2 of the *Labor Code*, as amended, x x x which provides as follows: "Article 217. *Jurisdiction of the Labor Arbiters and the Commission.* — (a) **Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide**, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, **the following cases involving all workers, whether agricultural or non-agricultural**: 1. Unfair labor practice cases; 2. **Termination disputes;** 3. If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment; 4. **Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations**; 5. Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; and 6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (₱5,000.00) regardless of whether accompanied with a claim for reinstatement. (b) **The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters**. (c) Cases arising from the interpretation or

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implementation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements. (As amended by Section 9, Republic Act No. 6715, March 21, 1989).

2. COMMERCIAL LAW; CORPORATION CODE; CORPORATE OFFICER; ILLEGAL DISMISSAL; CONTROVERSY OVER ILLEGAL DISMISSAL OF A CORPORATE OFFICER IS KNOWN AS AN INTRA-CORPORATE DISPUTE; DISPUTE WHICH IS COGNIZABLE BY THE SECURITIES AND EXCHANGE COMMISSION (SEC).— Where the *complaint* for illegal dismissal concerns a corporate officer, however, the controversy falls under the jurisdiction of the Securities and Exchange Commission (SEC), because the controversy arises out of intra-corporate or partnership relations between and among stockholders, members, or associates, or 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 the controversy concerns their individual franchise or right to exist as such entity; or because the controversy involves the election or appointment of a director, trustee, officer, or manager of such corporation, partnership, or association. Such controversy, among others, is known as an intra-corporate dispute.

3. ID.; ID.; ID.; ID.; ID.; ID.; TWO ELEMENTS OF INTRA-CORPORATE DISPUTE.— In order to determine whether a dispute constitutes an intra-corporate controversy or not, the Court considers two elements instead, namely: (*a*) the status or relationship of the parties; and (*b*) the nature of the question that is the subject of their controversy.

4. ID.; ID.; ID.; ID.; ID.; ID.; ID.; JURISPRUDENCE REITERATING THESE ELEMENTS.— This was our thrust in *Viray v. Court of Appeals*: "The establishment of any of the relationships mentioned above will not necessarily always confer jurisdiction over the dispute on the SEC to the exclusion of regular courts. The statement made in one case that the rule admits of no exceptions or distinctions is not that absolute. The better policy in determining which body has jurisdiction over a case would be to consider not only the status or relationship of the parties

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but also the nature of the question that is the subject of their controversy. Not every conflict between a corporation and its stockholders involves corporate matters that only the SEC can resolve in the exercise of its adjudicatory or quasi-judicial powers. If, for example, a person leases an apartment owned by a corporation of which he is a stockholder, there should be no question that a complaint for his ejectment for non-payment of rentals would still come under the jurisdiction of the regular courts and not of the SEC. By the same token, if one person injures another in a vehicular accident, the complaint for damages filed by the victim will not come under the jurisdiction of the SEC simply because of the happenstance that both parties are stockholders of the same corporation. A contrary interpretation would dissipate the powers of the regular courts and distort the meaning and intent of PD No. 902-A." x x x True it is that the Court pronounced in *Tabang* as follows: "Also, an intra-corporate controversy is one which arises between a stockholder and the corporation. There is no distinction, qualification or any exemption whatsoever. The provision is broad and covers all kinds of controversies between stockholders and corporations." However, the *Tabang* pronouncement is not controlling because it is too sweeping and does not accord with reason, justice, and fair play. x x x In another case, *Mainland Construction Co., Inc. v. Movilla* (250 SCRA 290, 294-295), the Court reiterated these determinants thuswise: "In order that the SEC (now the regular courts) can take cognizance of a case, the controversy must pertain to any of the following relationships: a) between the corporation, partnership or association and the public; b) between the corporation, partnership or association and its stockholders, partners, members or officers; c) between the corporation, partnership or association and the State as far as its franchise, permit or license to operate is concerned; and d) among the stockholders, partners or associates themselves. The fact that the parties involved in the controversy are all stockholders or that the parties involved are the stockholders and the corporation does not necessarily place the dispute within the ambit of the jurisdiction of SEC. The better policy to be followed in determining jurisdiction over a case should be to consider concurrent factors such as the status or relationship of the parties or the nature of the question that is the subject of their controversy. In the absence of any one of these factors, the

SEC will not have jurisdiction. Furthermore, it does not necessarily follow that every conflict between the corporation and its stockholders would involve such corporate matters as only the SEC can resolve in the exercise of its adjudicatory or quasi-judicial powers."

5. ID.; ID.; ID.; ID.; ID.; JURISDICTION TRANSFERRED TO APPROPRIATE REGIONAL TRIAL COURTS UPON EFFECTIVITY OF R.A. NO. 8799.— Effective on August 8, 2000, upon the passage of Republic Act No. 8799, otherwise known as *The Securities Regulation Code*, the SEC's jurisdiction over all intra-corporate disputes was transferred to the RTC, pursuant to Section 5.2 of RA No. 8799, to wit: "5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby **transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court**: *Provided*, that the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. **The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code.** The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed."

6. ID.; ID.; DISMISSAL OF CORPORATE OFFICER *VIS-À-VIS* DISMISSAL OF CORPORATE EMPLOYEE; CRITERIA FOR DETERMINING VALIDITY.— The criteria for distinguishing between corporate officers who may be ousted from office at will, on one hand, and ordinary corporate employees who may only be terminated for just cause, on the other hand, do not depend on the nature of the services performed, but on the manner of creation of the office.

7. ID.; ID.; CORPORATE OFFICERS, DEFINED.— Section 25 of the *Corporation Code* provides: "Section 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.** Any two (2) or more positions may be held

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concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time. The directors or trustees and officers to be elected shall perform the duties enjoined on them by law and the by-laws of the corporation. Unless the articles of incorporation or the by-laws provide for a greater majority, a majority of the number of directors or trustees as fixed in the articles of incorporation shall constitute a quorum for the transaction of corporate business, and every decision of at least a majority of the directors or trustees present at a meeting at which there is a quorum shall be valid as a corporate act, except for the election of officers which shall require the vote of a majority of all the members of the board. Directors or trustees cannot attend or vote by proxy at board meetings."

8. ID.; ID.; ID.; IN THE CONTEXT OF PD NO. 902-A, EXCLUSIVELY THOSE WHO ARE GIVEN THAT CHARACTER EITHER BY THE CORPORATION CODE OR BY THE CORPORATION'S BY-LAWS.— Conformably with Section 25, a position must be expressly mentioned in the By-Laws in order to be considered as a corporate office. Thus, the creation of an office pursuant to or under a By-Law enabling provision is not enough to make a position a corporate office. *Guerrea v. Lezama*, the first ruling on the matter, held that the only officers of a corporation were those given that character either by the *Corporation Code* or by the By-Laws; the rest of the corporate officers could be considered only as employees or subordinate officials. Thus, it was held in *Easycall Communications Phils., Inc. v. King:* 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 occupies no office and generally is employed not by the 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 this case, respondent was appointed vice president for nationwide expansion by Malonzo, petitioner's general manager, not by the board of directors of petitioner. It was also Malonzo who determined the compensation package of respondent. Thus, respondent was *an employee, not a* "*corporate officer*." The CA was therefore correct in ruling that jurisdiction over the case was properly with the NLRC, not the SEC (now the RTC). This interpretation is the correct application of Section 25 of the *Corporation Code*, which plainly states that the

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corporate officers are the President, Secretary, Treasurer *and* such other officers as may be provided for in the By-Laws. Accordingly, the corporate officers in the context of PD No. 902-A are exclusively those who are given that character either by the *Corporation Code* or by the corporation's By-Laws.

9. ID.; ID.; ID.; ID.; THE SEC, THE PRIMARY AGENCY ADMINISTERING THE CORPORATION CODE, ADOPTED A SIMILAR INTERPRETATION OF SECTION 25 OF THE CORPORATION CODE.— It is relevant to state in this connection that the SEC, the primary agency administering the *Corporation Code*, adopted a similar interpretation of Section 25 of the *Corporation Code* in its Opinion dated November 25, 1993, to wit: "Thus, pursuant to the above provision (Section 25 of the Corporation Code), **whoever are the corporate officers enumerated in the by-laws are the exclusive Officers of the corporation and the Board has no power to create other Offices without amending first the corporate By-laws. However, the Board may create appointive positions other than the positions of corporate Officers, but the persons occupying such positions are not considered as corporate officers within the meaning of Section 25 of the Corporation Code and are not empowered to exercise the functions of the corporate Officers, except those functions lawfully delegated to them. Their functions and duties are to be determined by the Board of Directors/Trustees.**"

10. ID.; ID.; ID.; ID.; RATIONALE.— A different interpretation can easily leave the way open for the Board of Directors to circumvent the constitutionally guaranteed security of tenure of the employee by the expedient inclusion in the By-Laws of an enabling clause on the creation of just any corporate officer position.

11. ID.; ID.; ID.; ID.; IN THE CASE AT BAR, THE OFFICE OF VICE PRESIDENT FOR FINANCE AND ADMINISTRATION CREATED BY MATLING'S PRESIDENT PURSUANT TO BY LAW NO. V WAS AN ORDINARY, NOT A CORPORATE, OFFICE.— Moreover, the Board of Directors of Matling could not validly delegate the power to create a *corporate* office to the President, in light of Section 25 of the *Corporation Code* requiring the Board of Directors itself to elect the corporate officers. Verily, the power to elect the *corporate* officers

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was a discretionary power that the law exclusively vested in the Board of Directors, and could not be delegated to subordinate officers or agents. The office of Vice President for Finance and Administration created by Matling's President pursuant to By Law No. V was an ordinary, not a corporate, office. To emphasize, the power to create new offices and the power to appoint the officers to occupy them vested by By-Law No. V merely allowed Matling's President to create non-corporate offices to be occupied by ordinary employees of Matling. Such powers were incidental to the President's duties as the executive head of Matling to assist him in the daily operations of the business.

12. ID.; ID.; ID.; ID.; *TABANG* AND *NACPIL* SHOULD NO LONGER BE CONTROLLING.— The petitioners' reliance on *Tabang* is misplaced. The statement in *Tabang*, to the effect that offices not expressly mentioned in the By-Laws but were created pursuant to a By-Law enabling provision were also considered corporate offices, was plainly *obiter dictum* due to the position subject of the controversy being mentioned in the By-Laws. Thus, the Court held therein that the position was a corporate office, and that the determination of the rights and liabilities arising from the ouster from the position was an intra-corporate controversy within the SEC's jurisdiction. In *Nacpil v. Intercontinental Broadcasting Corporation*, which may be the more appropriate ruling, the position subject of the controversy was not expressly mentioned in the By-Laws, but was created pursuant to a By-Law enabling provision authorizing the Board of Directors to create other offices that the Board of Directors might see fit to create. The Court held there that the position was a corporate office, relying on the *obiter dictum* in *Tabang*. Considering that the observations earlier made herein show that the soundness of their *dicta* is not unassailable, *Tabang* and *Nacpil* should no longer be controlling.

13. ID.; ID.; ID.; ID.; ID.; IN THE CASE AT BAR, PETITIONERS' RELIANCE ON *PAGUIO* AND *ONGKINGKO* IS MISPLACED.— To begin with, the reliance on *Paguio* and *Ongkingko* is misplaced. In both rulings, the complainants were undeniably corporate officers due to their positions being expressly mentioned in the By-Laws, aside from the fact that both of them had been duly elected by the respective Boards

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of Directors. But the herein respondent's position of Vice President for Finance and Administration was not expressly mentioned in the By-Laws; neither was the position of Vice President for Finance and Administration created by Matling's Board of Directors. Lastly, the President, not the Board of Directors, appointed him. x x x In the respondent's case, he was supposedly at once an employee, a stockholder, and a Director of Matling. The circumstances surrounding his appointment to office must be fully considered to determine whether the dismissal constituted an intra-corporate controversy or a labor termination dispute. We must also consider whether his status as Director and stockholder had any relation at all to his appointment and subsequent dismissal as Vice President for Finance and Administration. Obviously enough, the respondent was not appointed as Vice President for Finance and Administration because of his being a stockholder or Director of Matling. He had started working for Matling on September 8, 1966, and had been employed continuously for 33 years until his termination on April 17, 2000, first as a bookkeeper, and his climb in 1987 to his last position as Vice President for Finance and Administration had been gradual but steady, as the following sequence indicates: 1966 – Bookkeeper; 1968 – Senior Accountant; 1969 – Chief Accountant; 1972 – Office Supervisor; 1973 – Assistant Treasurer; 1978 – Special Assistant for Finance; 1980 – Assistant Comptroller; 1983 – Finance and Administrative Manager; 1985 – Asst. Vice President for Finance and Administration; (and) 1987 to April 17, 2000 – Vice President for Finance and Administration. Even though he might have become a stockholder of Matling in 1992, his promotion to the position of Vice President for Finance and Administration in 1987 was by virtue of the length of quality service he had rendered as an employee of Matling. His subsequent acquisition of the status of Director/stockholder had no relation to his promotion. Besides, his status of Director/stockholder was unaffected by his dismissal from employment as Vice President for Finance and Administration.

14. ID.; ID.; ID.; ID.; ID.; IN THE CASE AT BAR, RESPONDENT'S CASE SIMILAR TO *PRUDENTIAL BANK AND TRUST COMPANY V. REYES*.— In *Prudential Bank and Trust Company v. Reyes*, a case involving a lady bank manager who had risen from the ranks but was dismissed, the Court held

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that her complaint for illegal dismissal was correctly brought to the NLRC, because she was deemed a regular employee of the bank. The Court observed thus: "It appears that private respondent was appointed Accounting Clerk by the Bank on July 14, 1963. From that position she rose to become supervisor. Then in 1982, she was appointed Assistant Vice-President which she occupied until her illegal dismissal on July 19, 1991. **The bank's contention that she merely holds an elective position and that in effect she is not a regular employee is belied by the nature of her work and her length of service with the Bank. x x x** As earlier stated, she rose from the ranks and has been employed with the Bank since 1963 until the termination of her employment in 1991. As Assistant Vice President of the Foreign Department of the Bank, she is tasked, among others, to collect checks drawn against overseas banks payable in foreign currency and to ensure the collection of foreign bills or checks purchased, including the signing of transmittal letters covering the same. It has been stated that "the primary standard of determining regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual trade or business of the employer. Additionally, "an employee is regular because of the nature of work and the length of service, not because of the mode or even the reason for hiring them." As Assistant Vice-President of the Foreign Department of the Bank she performs tasks integral to the operations of the bank and her length of service with the bank totaling 28 years speaks volumes of her status as a regular employee of the bank. In fine, as a regular employee, she is entitled to security of tenure; that is, her services may be terminated only for a just or authorized cause. This being in truth a case of illegal dismissal, it is no wonder then that the Bank endeavored to the very end to establish loss of trust and confidence and serious misconduct on the part of private respondent but, as will be discussed later, to no avail."

APPEARANCES OF COUNSEL

Reyes & Reyes Law Offices for petitioners.
Antonio R. Bacalso II for respondent.

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D E C I S I O N

BERSAMIN, *J.*:

This case reprises the jurisdictional conundrum of whether a complaint for illegal dismissal is cognizable by the Labor Arbiter (LA) or by the Regional Trial Court (RTC). The determination of whether the dismissed officer was a regular employee or a corporate officer unravels the conundrum. In the case of the regular employee, the LA has jurisdiction; otherwise, the RTC exercises the legal authority to adjudicate.

In this appeal *via* petition for review on *certiorari*, the petitioners challenge the decision dated September 13, 2002[1] and the resolution dated April 2, 2003,[2] both promulgated in C.A.-G.R. SP No. 65714 entitled *Matling Industrial and Commercial Corporation, et al. v. Ricardo R. Coros and National Labor Relations Commission*, whereby by the Court of Appeals (CA) sustained the ruling of the National Labor Relations Commission (NLRC) to the effect that the LA had jurisdiction because the respondent was not a corporate officer of petitioner Matling Industrial and Commercial Corporation (Matling).

Antecedents

After his dismissal by Matling as its Vice President for Finance and Administration, the respondent filed on August 10, 2000 a *complaint* for illegal suspension and illegal dismissal against Matling and some of its corporate officers (petitioners) in the NLRC, Sub-Regional Arbitration Branch XII, Iligan City.[3]

The petitioners moved to dismiss the *complaint*,[4] raising the ground, among others, that the complaint pertained to the

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[1] *Rollo*, pp. 53-61; penned by Associate Justice Oswaldo D. Agcaoili (retired), with Associate Justice Edgardo P. Cruz (retired) and Associate Justice Amelita G. Tolentino concurring.

[2] *Id.*, pp. 63-67.

[3] *Id.*, pp. 69-70.

[4] *Id.*, pp. 71-74.

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jurisdiction of the Securities and Exchange Commission (SEC) due to the controversy being intra-corporate inasmuch as the respondent was a member of Matling's Board of Directors aside from being its Vice-President for Finance and Administration prior to his termination.

The respondent opposed the petitioners' *motion to dismiss*,[5] insisting that his status as a member of Matling's Board of Directors was doubtful, considering that he had not been formally elected as such; that he did not own a single share of stock in Matling, considering that he had been made to sign in blank an undated indorsement of the certificate of stock he had been given in 1992; that Matling had taken back and retained the certificate of stock in its custody; and that even assuming that he had been a Director of Matling, he had been removed as the Vice President for Finance and Administration, not as a Director, a fact that the notice of his termination dated April 10, 2000 showed.

On October 16, 2000, the LA granted the petitioners' *motion to dismiss*,[6] ruling that the respondent was a corporate officer because he was occupying the position of Vice President for Finance and Administration and at the same time was a Member of the Board of Directors of Matling; and that, consequently, his removal was a corporate act of Matling and the controversy resulting from such removal was under the jurisdiction of the SEC, pursuant to Section 5, paragraph (c) of Presidential Decree No. 902.

Ruling of the NLRC

The respondent appealed to the NLRC,[7] urging that:

I

THE HONORABLE LABOR ARBITER COMMITTED GRAVE ABUSE OF DISCRETION GRANTING APPELLEE'S MOTION TO DISMISS WITHOUT GIVING THE APPELLANT AN OPPORTUNITY TO FILE HIS OPPOSITION THERETO THEREBY VIOLATING THE BASIC PRINCIPLE OF DUE PROCESS.

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[5] *Id.,* pp. 90-95.

[6] *Id.,* pp. 96-99.

[7] *Id.,* pp. 100-111.

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II

THE HONORABLE LABOR ARBITER COMMITTED AN ERROR IN DISMISSING THE CASE FOR LACK OF JURISDICTION.

On March 13, 2001, the NLRC set aside the dismissal, concluding that the respondent's *complaint* for illegal dismissal was properly cognizable by the LA, not by the SEC, because he was not a corporate officer by virtue of his position in Matling, albeit high ranking and managerial, not being among the positions listed in Matling's Constitution and By-Laws.[8] The NLRC disposed thuswise:

> WHEREFORE, the Order appealed from is SET ASIDE. A new one is entered declaring and holding that the case at bench does not involve any intracorporate matter. Hence, jurisdiction to hear and act on said case is vested with the Labor Arbiter, not the SEC, considering that the position of Vice-President for Finance and Administration being held by complainant-appellant is not listed as among respondent's corporate officers.
>
> Accordingly, let the records of this case be REMANDED to the Arbitration Branch of origin in order that the Labor Arbiter below could act on the case at bench, hear both parties, receive their respective evidence and position papers fully observing the requirements of due process, and resolve the same with reasonable dispatch.
>
> SO ORDERED.

The petitioners sought reconsideration,[9] reiterating that the respondent, being a member of the Board of Directors, was a corporate officer whose removal was not within the LA's jurisdiction.

The petitioners later submitted to the NLRC in support of the *motion for reconsideration* the certified machine copies of Matling's Amended Articles of Incorporation and By Laws to prove that the President of Matling was thereby granted "full power to create new offices and appoint the officers thereto,

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[8] *Id.*, pp. 112-116.

[9] *Id.*, pp. 117-120.

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and the *minutes of special meeting* held on June 7, 1999 by Matling's Board of Directors to prove that the respondent was, indeed, a Member of the Board of Directors.[10]

Nonetheless, on April 30, 2001, the NLRC denied the petitioners' *motion for reconsideration*.[11]

Ruling of the CA

The petitioners elevated the issue to the CA by petition for *certiorari*, docketed as C.A.-G.R. No. SP 65714, contending that the NLRC committed grave abuse of discretion amounting to lack of jurisdiction in reversing the correct decision of the LA.

In its assailed decision promulgated on September 13, 2002,[12] the CA dismissed the petition for *certiorari*, explaining:

> For a position to be considered as a corporate office, or, for that matter, for one to be considered as a corporate officer, the position must, if not listed in the by-laws, have been created by the corporation's board of directors, and the occupant thereof appointed or elected by the same board of directors or stockholders. This is the implication of the ruling in *Tabang v. National Labor Relations Commission*, which reads:
>
> > "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

[10] *Id.*, pp. 121-142.

[11] *Id.*, pp. 143-144.

[12] *Supra*, at note 1.

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or stockholders but by the managing officer of the corporation who also determines the compensation to be paid to such employee."

This ruling was reiterated in the subsequent cases of *Ongkingco v. National Labor Relations Commission* and *De Rossi v. National Labor Relations Commission.*

The position of vice-president for administration and finance, which Coros used to hold in the corporation, was not created by the corporation's board of directors but only by its president or executive vice-president pursuant to the by-laws of the corporation. Moreover, Coros' appointment to said position was not made through any act of the board of directors or stockholders of the corporation. Consequently, the position to which Coros was appointed and later on removed from, is not a corporate office despite its nomenclature, but an ordinary office in the corporation.

Coros' alleged illegal dismissal therefrom is, therefore, within the jurisdiction of the labor arbiter.

WHEREFORE, the petition for *certiorari* is hereby DISMISSED.

SO ORDERED.

The CA denied the petitioners' *motion for reconsideration* on April 2, 2003.[13]

Issue

Thus, the petitioners are now before the Court for a review on *certiorari*, positing that the respondent was a stockholder/member of the Matling's Board of Directors as well as its Vice President for Finance and Administration; and that the CA consequently erred in holding that the LA had jurisdiction.

The decisive issue is whether the respondent was a corporate officer of Matling or not. The resolution of the issue determines whether the LA or the RTC had jurisdiction over his *complaint* for illegal dismissal.

Ruling

The appeal fails.

[13] *Supra,* at note 2.

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I

The Law on Jurisdiction in Dismissal Cases

As a rule, the illegal dismissal of an officer or other employee of a private employer is properly cognizable by the LA. This is pursuant to Article 217 (a) 2 of the *Labor Code*, as amended, which provides as follows:

Article 217. *Jurisdiction of the Labor Arbiters and the Commission.* — (a) **Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide**, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, **the following cases involving all workers, whether agricultural or non-agricultural**:

1. Unfair labor practice cases;

2. **Termination disputes;**

3. If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;

4. **Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;**

5. Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; and

6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (₱5,000.00) regardless of whether accompanied with a claim for reinstatement.

(b) **The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.**

(c) Cases arising from the interpretation or implementation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the

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grievance machinery and voluntary arbitration as may be provided in said agreements. (As amended by Section 9, Republic Act No. 6715, March 21, 1989).

Where the *complaint* for illegal dismissal concerns a corporate officer, however, the controversy falls under the jurisdiction of the Securities and Exchange Commission (SEC), because the controversy arises out of intra-corporate or partnership relations between and among stockholders, members, or associates, or 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 the controversy concerns their individual franchise or right to exist as such entity; or because the controversy involves the election or appointment of a director, trustee, officer, or manager of such corporation, partnership, or association.[14] Such controversy, among others, is known as an intra-corporate dispute.

Effective on August 8, 2000, upon the passage of Republic Act No. 8799,[15] otherwise known as *The Securities Regulation Code*, the SEC's jurisdiction over all intra-corporate disputes was transferred to the RTC, pursuant to Section 5.2 of RA No. 8799, to wit:

> 5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby **transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court**: *Provided*, that the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. **The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code.** The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed.

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[14] Section 5 of Presidential Decree No. 902-A.

[15] President Estrada approved the law on July 19, 2000.

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Considering that the respondent's *complaint* for illegal dismissal was commenced on August 10, 2000, it might come under the coverage of Section 5.2 of RA No. 8799, *supra*, should it turn out that the respondent was a corporate, not a regular, officer of Matling.

II

Was the Respondent's Position of Vice President for Administration and Finance a Corporate Office?

We must first resolve whether or not the respondent's position as Vice President for Finance and Administration was a corporate office. If it was, his dismissal by the Board of Directors rendered the matter an intra-corporate dispute cognizable by the RTC pursuant to RA No. 8799.

The petitioners contend that the position of Vice President for Finance and Administration was a corporate office, having been created by Matling's President pursuant to By-Law No. V, as amended,[16] to wit:

BY LAW NO. V

Officers

The President shall be the executive head of the corporation; shall preside over the meetings of the stockholders and directors; shall countersign all certificates, contracts and other instruments of the corporation as authorized by the Board of Directors; shall have full power to hire and discharge any or all employees of the corporation; **shall have full power to create new offices and to appoint the officers thereto as he may deem proper and necessary in the operations of the corporation and as the progress of the business and welfare of the corporation may demand**; shall make reports to the directors and stockholders and perform all such other duties and functions as are incident to his office or are properly required of him by the Board of Directors. In case of the absence or disability of the President, the Executive Vice President shall have the power to exercise his functions.

The petitioners argue that the power to create corporate offices and to appoint the individuals to assume the offices

[16] *Rollo*, p. 135.

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was delegated by Matling's Board of Directors to its President through By-Law No. V, as amended; and that any office the President created, like the position of the respondent, was as valid and effective a creation as that made by the Board of Directors, making the office a corporate office. In justification, they cite *Tabang v. National Labor Relations Commission*,[17] which held that "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 officers as may be necessary."

The respondent counters that Matling's By-Laws did not list his position as Vice President for Finance and Administration as one of the corporate offices; that Matling's By-Law No. III listed only four corporate officers, namely: President, Executive Vice President, Secretary, and Treasurer; [18] that the corporate offices contemplated in the phrase "*and such other officers as may be provided for in the by-laws*" found in Section 25 of the *Corporation Code* should be clearly and expressly stated in the By-Laws; that the fact that Matling's By-Law No. III dealt with *Directors & Officers* while its By-Law No. V dealt with *Officers* proved that there was a differentiation between the officers mentioned in the two provisions, with those classified under By-Law No. V being *ordinary* or *non-corporate officers*;

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[17] G.R. No.121143, January 21, 1997, 266 SCRA 462, 467.

[18] *Rollo*, p. 134:

BY-LAW NO. III

Directors and Officers

The directors shall be elected by the stockholders at their annual meeting and shall hold their respective offices for a term of one year or until their successors are duly elected and qualified unless they shall be sooner removed as hereinafter provided; provided, however, that the foregoing provisions shall not apply to the first Board of Directors who are appointed to serve until the next annual meeting of the stockholders. Absence from two successive meetings of the Board of Directors may in the discretion of the Board terminate the membership of the director. Directors shall receive no compensation for their services except per diems as may be allowed by the stockholders.

The officers of the corporation shall be the **President, Executive Vice President, Secretary** and **Treasurer**, each of whom may hold his office

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and that the officer, to be considered as a corporate officer, must be elected by the Board of Directors or the stockholders, for the President could only appoint an employee to a position pursuant to By-Law No. V.

We agree with respondent.

Section 25 of the *Corporation Code* provides:

> Section 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.** Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time.
>
> The directors or trustees and officers to be elected shall perform the duties enjoined on them by law and the by-laws of the corporation. Unless the articles of incorporation or the by-laws provide for a greater majority, a majority of the number of directors or trustees as fixed in the articles of incorporation shall constitute a quorum for the transaction of corporate business, and every decision of at least a majority of the directors or trustees present at a meeting at which there is a quorum shall be valid as a corporate act, except for the election of officers which shall require the vote of a majority of all the members of the board.
>
> Directors or trustees cannot attend or vote by proxy at board meetings.

Conformably with Section 25, a position must be expressly mentioned in the By-Laws in order to be considered as a corporate

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until his successor is elected and qualified, unless sooner removed by the Board of Directors; Provided, That for the convenience of the corporation, the office of the Secretary and Treasurer my be held by one and the same person. Officers shall be designated by the stockholders' meeting at the time they elect the members of the Board of Directors. Any vacancy occurring among the officers of the Corporation on account of removal or resignation shall be filled by a stockholders' meeting. Stockholders holding one half or more of the subscribed capital stock of the corporation may demand and compel the resignation of any officer at any time.

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office. Thus, the creation of an office pursuant to or under a By-Law enabling provision is not enough to make a position a corporate office. *Guerrea v. Lezama*,[19] the first ruling on the matter, held that the only officers of a corporation were those given that character either by the *Corporation Code* or by the By-Laws; the rest of the corporate officers could be considered only as employees or subordinate officials. Thus, it was held in *Easycall Communications Phils., Inc. v. King*:[20]

> 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 occupies no office and generally is employed not by the 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 this case, respondent was appointed vice president for nationwide expansion by Malonzo, petitioner's general manager, not by the board of directors of petitioner. It was also Malonzo who determined the compensation package of respondent. Thus, respondent was *an employee, not a "corporate officer."* The CA was therefore correct in ruling that jurisdiction over the case was properly with the NLRC, not the SEC (now the RTC).

This interpretation is the correct application of Section 25 of the *Corporation Code*, which plainly states that the corporate officers are the President, Secretary, Treasurer *and* such other officers as may be provided for in the By-Laws. Accordingly, the corporate officers in the context of PD No. 902-A are exclusively those who are given that character either by the *Corporation Code* or by the corporation's By-Laws.

A different interpretation can easily leave the way open for the Board of Directors to circumvent the constitutionally guaranteed security of tenure of the employee by the expedient inclusion in the By-Laws of an enabling clause on the creation of just any corporate officer position.

It is relevant to state in this connection that the SEC, the

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[19] 103 Phil. 553 (1958).

[20] G.R. No.145901, December 15, 2005, 478 SCRA 102, 110-111.

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primary agency administering the *Corporation Code*, adopted a similar interpretation of Section 25 of the *Corporation Code* in its Opinion dated November 25, 1993,[21] to wit:

> Thus, pursuant to the above provision (Section 25 of the Corporation Code), **whoever are the corporate officers enumerated in the by-laws are the exclusive Officers of the corporation and the Board has no power to create other Offices without amending first the corporate By-laws. However, the Board may create appointive positions other than the positions of corporate Officers, but the persons occupying such positions are not considered as corporate officers within the meaning of Section 25 of the Corporation Code and are not empowered to exercise the functions of the corporate Officers, except those functions lawfully delegated to them. Their functions and duties are to be determined by the Board of Directors/Trustees.**

Moreover, the Board of Directors of Matling could not validly delegate the power to create a *corporate* office to the President, in light of Section 25 of the *Corporation Code* requiring the Board of Directors itself to elect the corporate officers. Verily, the power to elect the *corporate* officers was a discretionary power that the law exclusively vested in the Board of Directors, and could not be delegated to subordinate officers or agents.[22] The office of Vice President for Finance and Administration created by Matling's President pursuant to By Law No. V was an ordinary, not a corporate, office.

To emphasize, the power to create new offices and the power to appoint the officers to occupy them vested by By-Law No. V merely allowed Matling's President to create non-corporate offices to be occupied by ordinary employees of Matling. Such powers were incidental to the President's duties as the executive head of Matling to assist him in the daily operations of the business.

The petitioners' reliance on *Tabang, supra,* is misplaced. The statement in *Tabang,* to the effect that offices not expressly

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[21] SEC Folio 1960-1976, at p. 498.

[22] 2 Fletcher 377, cited in Agbayani, *Commentaries and Jurisprudence on the Commercial Laws of the Philippines*, Vol. 3, 1988 Edition, page 226.

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mentioned in the By-Laws but were created pursuant to a By-Law enabling provision were also considered corporate offices, was plainly *obiter dictum* due to the position subject of the controversy being mentioned in the By-Laws. Thus, the Court held therein that the position was a corporate office, and that the determination of the rights and liabilities arising from the ouster from the position was an intra-corporate controversy within the SEC's jurisdiction.

In *Nacpil v. Intercontinental Broadcasting Corporation*,[23] which may be the more appropriate ruling, the position subject of the controversy was not expressly mentioned in the By-Laws, but was created pursuant to a By-Law enabling provision authorizing the Board of Directors to create other offices that the Board of Directors might see fit to create. The Court held there that the position was a corporate office, relying on the *obiter dictum* in *Tabang*.

Considering that the observations earlier made herein show that the soundness of their *dicta* is not unassailable, *Tabang* and *Nacpil* should no longer be controlling.

III
Did Respondent's Status as Director and Stockholder Automatically Convert his Dismissal into an Intra-Corporate Dispute?

Yet, the petitioners insist that because the respondent was a Director/stockholder of Matling, and relying on *Paguio v. National Labor Relations Commission*[24] and *Ongkingko v. National Labor Relations Commission*,[25] the NLRC had no jurisdiction over his *complaint*, considering that any case for illegal dismissal brought by a stockholder/officer against the corporation was an intra-corporate matter that must fall under the jurisdiction of the SEC conformably with the context of PD No. 902-A.

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[23] G.R. No. 144767, March 21, 2002, 379 SCRA 653.

[24] G.R. No. 116662, February 1, 1996, 253 SCRA 166.

[25] G.R. No. 119877, March 31, 1997, 270 SCRA 613.

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The petitioners' insistence is bereft of basis.

To begin with, the reliance on *Paguio* and *Ongkingko* is misplaced. In both rulings, the complainants were undeniably corporate officers due to their positions being expressly mentioned in the By-Laws, aside from the fact that both of them had been duly elected by the respective Boards of Directors. But the herein respondent's position of Vice President for Finance and Administration was not expressly mentioned in the By-Laws; neither was the position of Vice President for Finance and Administration created by Matling's Board of Directors. Lastly, the President, not the Board of Directors, appointed him.

True it is that the Court pronounced in *Tabang* as follows:

> Also, an intra-corporate controversy is one which arises between a stockholder and the corporation. There is no distinction, qualification or any exemption whatsoever. The provision is broad and covers all kinds of controversies between stockholders and corporations.[26]

However, the *Tabang* pronouncement is not controlling because it is too sweeping and does not accord with reason, justice, and fair play. In order to determine whether a dispute constitutes an intra-corporate controversy or not, the Court considers two elements instead, namely: (*a*) the status or relationship of the parties; and (*b*) the nature of the question that is the subject of their controversy. This was our thrust in *Viray v. Court of Appeals*:[27]

> The establishment of any of the relationships mentioned above will not necessarily always confer jurisdiction over the dispute on the SEC to the exclusion of regular courts. The statement made in one case that the rule admits of no exceptions or distinctions is not that absolute. The better policy in determining which body has jurisdiction over a case would be to consider not only the status or relationship of the parties but also the nature of the question that is the subject of their controversy.

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[26] *Supra*, at note 16.

[27] G.R. No. 92481, November 9, 1990, 191 SCRA 308, 322-323.

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Not every conflict between a corporation and its stockholders involves corporate matters that only the SEC can resolve in the exercise of its adjudicatory or quasi-judicial powers. If, for example, a person leases an apartment owned by a corporation of which he is a stockholder, there should be no question that a complaint for his ejectment for non-payment of rentals would still come under the jurisdiction of the regular courts and not of the SEC. By the same token, if one person injures another in a vehicular accident, the complaint for damages filed by the victim will not come under the jurisdiction of the SEC simply because of the happenstance that both parties are stockholders of the same corporation. A contrary interpretation would dissipate the powers of the regular courts and distort the meaning and intent of PD No. 902-A.

In another case, *Mainland Construction Co., Inc. v. Movilla*,[28] the Court reiterated these determinants thuswise:

In order that the SEC (now the regular courts) can take cognizance of a case, the controversy must pertain to any of the following relationships:

a) between the corporation, partnership or association and the public;

b) between the corporation, partnership or association and its stockholders, partners, members or officers;

c) between the corporation, partnership or association and the State as far as its franchise, permit or license to operate is concerned; and

d) among the stockholders, partners or associates themselves.

The fact that the parties involved in the controversy are all stockholders or that the parties involved are the stockholders and the corporation does not necessarily place the dispute within the ambit of the jurisdiction of SEC. The better policy to be followed in determining jurisdiction over a case should be to consider concurrent factors such as the status or relationship of the parties or the nature of the question that is the subject of their controversy. In the absence of any one of these factors, the SEC will not have jurisdiction. Furthermore, it does not necessarily follow that every conflict between the corporation and its stockholders would involve such corporate

[28] G.R. No. 118088, November 23, 1995, 250 SCRA 290, 294-295.

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matters as only the SEC can resolve in the exercise of its adjudicatory or quasi-judicial powers.[29]

The criteria for distinguishing between corporate officers who may be ousted from office at will, on one hand, and ordinary corporate employees who may only be terminated for just cause, on the other hand, do not depend on the nature of the services performed, but on the manner of creation of the office. In the respondent's case, he was supposedly at once an employee, a stockholder, and a Director of Matling. The circumstances surrounding his appointment to office must be fully considered to determine whether the dismissal constituted an intra-corporate controversy or a labor termination dispute. We must also consider whether his status as Director and stockholder had any relation at all to his appointment and subsequent dismissal as Vice President for Finance and Administration.

Obviously enough, the respondent was not appointed as Vice President for Finance and Administration because of his being a stockholder or Director of Matling. He had started working for Matling on September 8, 1966, and had been employed continuously for 33 years until his termination on April 17, 2000, first as a bookkeeper, and his climb in 1987 to his last position as Vice President for Finance and Administration had been gradual but steady, as the following sequence indicates:

1966 – Bookkeeper
1968 – Senior Accountant
1969 – Chief Accountant
1972 – Office Supervisor
1973 – Assistant Treasurer
1978 – Special Assistant for Finance
1980 – Assistant Comptroller
1983 – Finance and Administrative Manager
1985 – Asst. Vice President for Finance and Administration
1987 to April 17, 2000 – Vice President for Finance and Administration

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[29] See also *Saura v. Saura, Jr.*, G.R. No. 136159, September 1, 1999, 313 SCRA 465; *Lozano v. De los Santos*, G.R. No. 125221, June 19, 1997, 274 SCRA 452.

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Even though he might have become a stockholder of Matling in 1992, his promotion to the position of Vice President for Finance and Administration in 1987 was by virtue of the length of quality service he had rendered as an employee of Matling. His subsequent acquisition of the status of Director/stockholder had no relation to his promotion. Besides, his status of Director/ stockholder was unaffected by his dismissal from employment as Vice President for Finance and Administration.

In *Prudential Bank and Trust Company v. Reyes,*[30] a case involving a lady bank manager who had risen from the ranks but was dismissed, the Court held that her complaint for illegal dismissal was correctly brought to the NLRC, because she was deemed a regular employee of the bank. The Court observed thus:

> It appears that private respondent was appointed Accounting Clerk by the Bank on July 14, 1963. From that position she rose to become supervisor. Then in 1982, she was appointed Assistant Vice-President which she occupied until her illegal dismissal on July 19, 1991. **The bank's contention that she merely holds an elective position and that in effect she is not a regular employee is belied by the nature of her work and her length of service with the Bank.** As earlier stated, she rose from the ranks and has been employed with the Bank since 1963 until the termination of her employment in 1991. As Assistant Vice President of the Foreign Department of the Bank, she is tasked, among others, to collect checks drawn against overseas banks payable in foreign currency and to ensure the collection of foreign bills or checks purchased, including the signing of transmittal letters covering the same. It has been stated that "the primary standard of determining regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual trade or business of the employer. Additionally, "an employee is regular because of the nature of work and the length of service, not because of the mode or even the reason for hiring them." As Assistant Vice-President of the Foreign Department of the Bank she performs tasks integral to the operations of the bank and her length of service with the bank totaling 28 years speaks volumes of her status as a regular employee of the bank. In fine,

[30] G.R. No. 141093, February 20, 2001, 352 SCRA 316, 327.

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as a regular employee, she is entitled to security of tenure; that is, her services may be terminated only for a just or authorized cause. This being in truth a case of illegal dismissal, it is no wonder then that the Bank endeavored to the very end to establish loss of trust and confidence and serious misconduct on the part of private respondent but, as will be discussed later, to no avail.

WHEREFORE, we deny the petition for review on *certiorari*, and affirm the decision of the Court of Appeals.

Costs of suit to be paid by the petitioners.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Villarama, Jr., and *Sereno, JJ.,* concur.

FIRST DIVISION

[G.R. No. 161431. October 13, 2010]

CALIBRE TRADERS, INC., MARIO SISON SEBASTIAN, and MINDA BLANCO SEBASTIAN, *petitioners, vs.* **BAYER PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45; ONLY QUESTIONS OF LAW REVIEWED; EXCEPTION; CASE AT BAR.— While only questions of law are reviewed in petitions for review on *certiorari*, the Court shall delve into the factual milieu of this case in view of the conflicting findings of facts by the trial court and the CA. The question arises whether Calibre has a cause of action against Bayerphil. The records before us though, highlight the lack of it.