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SECOND DIVISION

[G.R. No. 188307. August 2, 2017]

MULTINATIONAL VILLAGE HOMEOWNERS' ASSOCIATION, INC., RAMON MAGBOO, JIMMY DEL MUNDO,[*] CARLOS RAPAY, and DR. JOSEFINA TIOPIANCO,[**] *petitioners, vs.* **ARNEL M. GACUTAN, RAFAEL TEYLAN, EDMUND T. HERNANDEZ, DANILO ARANETA, MIGUEL DAVID, JOLIE R. PELAYO, BOBBY D. YUTADCO,[***] DANIEL TENORIO, MICHAEL KHO, and DANILO CAMBEL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; REVIEWS AN ERROR OF JURISDICTION; PROPER REMEDY TO ASSAIL A RESOLUTION OF THE OFFICE OF THE PRESIDENT WHICH ALLEGEDLY MODIFIED A FINAL AND EXECUTORY DECISION.— As a rule, judgments, final orders or resolutions of the OP may be taken to the Court of Appeals by filing a verified petition for review within 15 days from notice. However, where the petition **alleges** grave abuse of discretion as when the assailed resolution substantially modifies a decision that already became final and executory, what is involved is an error of jurisdiction that is reviewable by *certiorari*, and no longer an error of judgment which is reviewable by an appeal under Rule 43. x x x [R]espondents in this case do not pray for a review on the merits of the OP resolutions. Rather, they challenge the jurisdiction of the OP to modify the dispositive portion of the Decision dated 10 March 2005 of the HLURB-NCRFO, which was affirmed by the final and executory OP Decision dated 16 May 2006. Necessarily, the case implicates an error of jurisdiction, **not** an error of judgment.

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[*] Also referred to in some parts of the records as Jaime Del Mundo.

[**] Also referred to in some parts of the records as Dr. Josefina Tiopiangco.

[***] Also referred to in some parts of the records as Roberto Yutadco.

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2. ID.; ID.; ID.; THE OFFICE OF THE PRESIDENT (OP) CLARIFICATORY RESOLUTION DID NOT VIOLATE THE DOCTRINE OF IMMUTABILITY OF FINAL AND EXECUTORY JUDGMENTS.— Stripped to its core, the present controversy concerns the alleged variance between the Decision dated 10 March 2005 of the HLURB-NCRFO, as affirmed by the final and executory OP Decision dated 16 May 2006, on the one hand, and the OP Clarificatory Resolution, on the other. x x x [The Court ruled,] the OP Clarificatory Resolution did not modify but merely clarified the ambiguity in the dispositive portion of the Decision dated 10 March 2005 of the HLURB-NCRFO. Indeed, when a final judgment is executory, it becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest Court of the land. The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time. However, where there is an ambiguity caused by an omission or a mistake in the dispositive portion of the decision, the Court may clarify such an ambiguity by an amendment even after the judgment has become final. x x x [A]ssuming that the OP Clarificatory Resolution modified the dispositive portion of the Decision dated 10 March 2005 of the HLURB-NCRFO, the supposed amendment partakes of a *nunc pro tunc* order. A *nunc pro tunc* order is an exception to the doctrine of immutability of final and executory judgments. x x x Further, in *Mocorro, Jr. v. Ramirez*, the Court cautioned that a *nunc pro tunc* judgment **cannot** prejudice any party.

3. POLITICAL LAW; ADMINISTRATIVE LAW; HOUSING AND LAND USE REGULATORY BOARD (HLURB); HOLD-OVER DIRECTORS CANNOT UNJUSTIFIABLY REFUSE TO CALL AND HOLD AN ELECTION WHEN MANDATED BY THE ASSOCIATION BY-LAWS.— HLURB Resolution No. 770, Series of 2004 (HLURB Resolution No. 770-04), entitled "Framework for Governance of Homeowners Associations," defines hold-over directors or officers in this wise: SECTION 67. *Hold-over*. — Where there is failure to elect a new set of directors or officers, the incumbents should

be allowed to continue in a holdover capacity until their successors are elected and qualified, subject to compliance with applicable HLURB Rules on the non-holding or postponement of regular or special elections. In this regard, HLURB Resolution No. R-771, Series of 2004 (HLURB Resolution No. R-771-04), entitled "Rules on the Registration and Supervision of Homeowners' Associations," lays down the rules on the election of directors x x x While HLURB Resolution Nos. 770-04 and R-771-04 do not expressly set the maximum period that a director or officer may serve in a hold-over capacity, the BOD of a homeowners' association cannot unjustifiably refuse to call and hold an election when mandated by the association by-laws. Section 4 of HLURB Resolution No. R-771-04 expressly authorizes the HLURB-NCRFO to call the election when the circumstances so warrant, as in this case. To sustain respondents' hold-over positions since 2005 is to make them stay in the BOD for approximately 12 years, notwithstanding the expiration of their one-year term. x x x Notably, Republic Act No. 9904, or the Magna Carta for Homeowners and Homeowners' Associations, was approved and became effective in 2010. Section 60 of its Implementing Rules and Regulations expressly sets forth that "**(i)n no case shall the hold-over term of the officers/directors/trustees exceed two (2) years**."

APPEARANCES OF COUNSEL

Tagle-Chua Cruz & Aquino for petitioners.
Sacramento Law Office for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This case involves an election contest between two rival groups of homeowners (the 2005 and 2004 directors as petitioners and respondents, respectively) whose feud started as far back as 2004.

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Petitioners come before this Court via Rule 45 of the Rules of Court to assail the Decision dated 27 February 2009[1] and Resolution dated 5 June 2009[2] of the Court of Appeals in CA-G.R. SP No. 99712. The Court of Appeals nullified the Resolution dated 2 April 2007 (Clarificatory Resolution)[3] and Resolution dated 18 June 2007[4] issued by the Office of the President (OP) in O.P. Case No. 05-K-377, and directed the Housing and Land Use Regulatory Board (HLURB) to enforce the earlier OP Decision dated 16 May 2006,[5] which in turn, reinstated the Decision dated 10 March 2005[6] of the HLURB-National Capital Region Field Office (NCRFO). Further, the Court of Appeals set aside all the elections conducted while the case was pending, effectively declaring respondents as hold-over directors since the expiration of their term in 2005.

The Antecedent Facts

Sometime during the first week of January 2005, respondents, as then officers and members of the Board of Directors (BOD) of petitioner Multinational Village Homeowners Association, Inc. (MVHAI), approved a resolution setting the annual election of the members of the BOD on 23 January 2005 and the guidelines on proxy voting, among others. To notify the homeowners, copies of the resolution were distributed. Two days before the scheduled election, or on 21 January 2005, petitioner Jimmy del Mundo sought injunctive relief[7] from the HLURB-NCRFO because of the alleged lack of transparency in the issuance of proxy forms and the alleged burning of election records to supposedly prevent verification of

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[1] *Rollo*, pp. 58-86. Penned by Associate Justice Romeo F. Barza, with Associate Justices Josefina Guevara-Salonga and Arcangelita M. Romilla-Lontok concurring.

[2] *Id*. at 88-90.

[3] *Id*. at 91-92.

[4] *Id*. at 93.

[5] *Id*. at 151-155.

[6] *Id*. at 132-147.

[7] Docketed as HLURB Case No. NCRHOA-020105-557.

the previous elections. On the same day, the HLURB-NCRFO granted the application and issued a restraining order against, not only the further issuance of proxy forms, but also proxy voting itself in the forthcoming election. In turn, the Committee on Election (Comelec) of petitioner MVHAI, which was constituted by respondents as the 2004 directors, issued a resolution in the early morning of 23 January 2005 postponing the village poll to prevent disenfranchising the voters who wanted to vote by proxy. Majority of the qualified members of petitioner MVHAI allegedly ignored the resolution of the Comelec and constituted a new Comelec to supervise the election. The village poll proceeded as scheduled and based on the results, petitioners garnered the highest number of votes. Insisting that petitioners were not authorized under the association by-laws to call an election, respondents refused to relinquish their posts and declared themselves as hold-over directors until elections were properly held.

Petitioners then filed an election contest docketed as HLURB Case No. NCRHOA-020105-557 before the HLURB-NCRFO praying that their election be affirmed and that respondents be permanently enjoined from acting as hold-over directors of petitioner MVHAI. Meanwhile, petitioners were provisionally allowed to maintain their seats in the 2005 BOD until judgment was rendered. In its Decision dated 10 March 2005,[8] the HLURB-NCRFO dismissed the complaint and nullified the 2005 election for having been called without authority. The dispositive portion reads in its entirety:

> WHEREFORE, the foregoing premises considered, a judgment is hereby rendered dismissing complainants' prayers for affirmation of their election but instead invalidating said election last January 23, 2005.
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> Accordingly, the complainants are hereby directed to peacefully and orderly relinquish their office and position to the former members of the Board of Directors of MVHAI and leave its clubhouse and turn-over [sic] the custody thereof to the Board of Directors, and submit a written accounting of moneys received and disbursed from the moment they took over on February 4, 2005 as well as inventory the items therein in

[8] *Rollo*, pp. 132-147.

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the presence of the Management Election Committee of MVHAI. To encourage and ensure a peaceful, humane, courteous, and orderly turn-over [sic] of the clubhouse and the above records and assets of MVHAI, let these proceedings be observed by the members of MVHAI, local government officials, interested entities; and, when warranted by overriding requirements of peace and tranquility, by authorized peace officers.

Let a [sic] Ad Hoc or Election Committee of MVHAI be immediately constituted and appointed which shall be composed of a competent professional or corporate attorney as chairman and representative of this Office, and one representative each from the parties who are members of MVHAI and are knowledgeable in corporate proceedings and with known reputation for competence, probity and integrity, which Committee shall provide MVHAI the requisite expertise and objectivity in calling and holding of the meeting of the members to elect the directors of MVHAI. The said Ad Hoc or Election Committee shall perform its functions and hold office in an accessible, open but secure portion or space of the clubhouse, free and unaffected or uncontrolled at all times from any partisan actions or influences of the parties.

After its constitution and appointment of its Chairman and two (2) members, the Committee shall forthwith meet to determine and formulate, among others, appropriate mechanics and rules for the qualification of the members who shall vote and seek an elective, etc. All meetings, discussions and deliberations to be conducted by the Ad Hoc or Election Committee shall be open and transparent to all parties and members of the association who shall have free and unrestrained access to the venue of said meeting or conferences of this special Committee.

This decision is immediately executory pursuant to Section 9, Rule VI of the 2004 Rules of Procedure of this Board.

IT IS SO ORDERED.[9]

Aggrieved, petitioners appealed to the HLURB-Board of Commissioners (BoC).[10] Reversing the decision of the HLURB-NCRFO, the HLURB-BoC declared the 2005 election valid on the ground that "the will of the majority of the members of (petitioner)

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[9] *Id*. at 146-147.

[10] Docketed as HLURB Case No. HOA-A-050413-0010.

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MVHAI x x x must be respected." The dispositive portion of the Decision dated 13 October 2005 reads:

> Wherefore, the appeal is granted. The decision of the office below is set aside and a new decision is rendered declaring the election held on January 23, 2005 for the Board of Directors of MVHA [sic] as valid.
>
> So ordered.[11]

Respondents then filed with the OP a Petition for Review, docketed as O.P. Case No. 05-K-377. In its Decision dated 16 May 2006, the OP granted the appeal, set aside the decision of the HLURB-BoC and reinstated the earlier decision of the HLURB-NCRFO. The dispositive portion reads:

> WHEREFORE, the instant appeal is hereby granted, and the assailed decision of the Board of Commissioners of the HLURB is SET ASIDE. The decision rendered by the NCR Field Office dated March 10, 2005 is hereby REINSTATED.
>
> SO ORDERED.[12]

For failure of petitioners to seek reconsideration and upon motion of respondents, the OP issued a Resolution dated 18 July 2006 declaring its Decision dated 16 May 2006 final and executory:

> WHEREFORE, in view of the foregoing, the Decision of this Office dated May 16, 2006 is hereby declared FINAL AND EXECUTORY. The records of this case are hereby remanded to the Housing and Land Use Regulatory Board for its appropriate action.
>
> SO ORDERED.[13]

The HLURB-NCRFO then issued a Writ of Execution dated 3 August 2006 (Writ)[14] ordering the sheriff of the Regional Trial Court of Parañaque City to execute the Decision dated 10 March 2005 of the HLURB-NCRFO. On the other hand, petitioners filed

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[11] *Rollo*, p. 150.

[12] *Id*. at 155.

[13] *Id*. at 156.

[14] *Id*. at 157-160.

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a Motion for Quashal of the Writ alleging that the Writ to be enforced had become *functus officio* because of a supposed material change in circumstances on account of the election held on 29 January 2006 and the subsequent constitution of the 2006 BOD. In its Order dated 16 August 2006,[15] the HLURB-NCRFO denied petitioners' motion holding that the 2006 election was invalid for having been called without authority under the by-laws of petitioner MVHAI.

Petitioners then filed a motion before the HLURB-BoC seeking to restrain the implementation of the Order dated 16 August 2006. On 31 August 2006, the HLURB-BoC enjoined the parties to maintain the status quo by allowing the 2006 BOD to continue performing their functions pending the resolution of the issues attendant to the implementation of the Writ.[16] Consequently, respondents went before the OP to assail the Status Quo Order of the HLURB-BoC. In its Order dated 2 January 2007,[17] the OP set aside the issuance and directed the HLURB-BoC to implement the final and executory OP Decision dated 16 May 2006. Meanwhile, the HLURB-BoC, instead of resolving petitioners' pending motion seeking to restrain the implementation of the Order dated 16 August 2006 and respondents' Urgent *Ex-Parte* Motion to Immediately Recall and/or Annul the Order dated 31 August 2006, sought for clarification from the OP on whom the Decision dated 16 May 2006 will be implemented against – whether the 2005 or 2006 BOD of petitioner MVHAI.[18]

In January 2007, the 2006 BOD of petitioner MVHAI planned to hold an election for the 2007 BOD. This prompted respondents to apply for injunctive relief[19] with the HLURB-NCRFO, which in turn, elevated the matter to the HLURB-BoC.[20] Citing the pending

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[15] *Id*. at 161-165.

[16] *Id*. at 166.

[17] *Id.* at 167-169.

[18] *Id.* at 170-172.

[19] Docketed as HLURB Case No. NCRHOA-011107-812.

[20] *Rollo*, pp. 173-174.

request for a clarificatory order from the OP, the HLURB-BoC refused to act on the application.[21] Consequently, the 2006 BOD of petitioner MVHAI conducted an election on 28 January 2007 and the 2007 BOD was subsequently constituted.

Meanwhile, respondents moved for the issuance of an Alias Writ of Execution, which the HLURB-NCRFO granted in its Order dated 9 February 2007.[22] On 12 February 2007, the HLURB-NCRFO issued an Alias Writ of Execution.[23] The Alias Writ was partially implemented on 29 March 2007 with the successful takeover of the clubhouse, which, by then, was already emptied of records.[24] Holed up in the auditorium of petitioner MVHAI, the 2007 BOD refused to relinquish the records arguing that the Alias Writ was only enforceable against the 2005 BOD and not them.

The OP Clarificatory Resolution

On 2 April 2007, the OP issued a Clarificatory Resolution in response to the request of the HLURB-BoC. The dispositive portion reads:

WHEREFORE, in order to give full meaning and equitably enforce the final and executory Decision of this Office dated May 16, 2006, it is hereby ordered that:

(1) The 2004 MVHOA Board of Directors shall call, conduct an election, and proclaim the winners within thirty (30) days from receipt of this resolution;

(2) The HLURB Board of Commissioners shall supervise the said election;

(3) Pending the conduct of the election and the proclamation of winners, all contracts to be entered into by the MVHOA shall be held in abeyance, but the 2004 Board of Directors shall manage MVHOA's daily operations; and

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[21] *Id*. at 175-177.

[22] *Id.* at 178-180.

[23] *Id*. at 181-185.

[24] *Id*. at 189-191.

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(4) The winners in the election shall immediately assume their post after their proclamation so as not to further prejudice the affairs of the MVHOA.

SO ORDERED.[25]

Respondents moved for a partial reconsideration of the OP Clarificatory Resolution. According to them, the OP Clarificatory Resolution substantially modified the dispositive portion of the Decision dated 10 March 2005 of the HLURB-NCRFO, which was reinstated by the final and executory OP Decision dated 16 May 2006. In its Resolution dated 18 June 2007,[26] the OP denied respondents' motion.

The Decision of the Court of Appeals

On 16 July 2007, respondents filed a Petition for *Certiorari*[27] under Rule 65 of the Rules of Court. Initially, the Court of Appeals dismissed the petition in its Resolution dated 10 August 2007[28] for allegedly being the wrong remedy. Upon motion of respondents,[29] the Court of Appeals reconsidered its resolution, reinstated respondents' Petition for *Certiorari*, and directed petitioners to file their comment.[30]

Meanwhile, to implement the OP Clarificatory Resolution, specifically the order to call and hold an election, the HLURB-BoC issued an Order dated 4 May 2007[31] directing the HLURB-NCRFO to supervise the election. The former also authorized the latter to conduct a pre-election conference for the purposes of "constituting a Committee on Election, drawing up the list of qualified voters, and such other matters as may be necessary in order to ensure

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[25] *Id*. at 92.

[26] *Id*. at 93.

[27] *Id*. at 94-128.

[28] *Id*. at 210-212.

[29] *Id*. at 213-224.

[30] *Id*. at 325-326.

[31] *Id*. at 204-205.

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orderly proceedings and adherence to the association by-laws."[32] In turn, the HLURB-NCRFO issued an Order dated 8 May 2007[33] notifying the parties about the scheduled pre-election conference on 11 May 2007. On 12 August 2007, the election proceeded as scheduled under the supervision of the HLURB-NCRFO for the constitution of the 2007 BOD, but without the participation of respondents.[34] Subsequent elections were likewise held on 25 January 2009 and 30 January 2009.[35]

In its Decision dated 27 February 2009, the Court of Appeals granted respondents' Petition for *Certiorari* and nullified all elections conducted during the pendency of the case. The dispositive portion reads in its entirety:

> WHEREFORE, in view of the foregoing, the petition is GRANTED. Accordingly, the Resolutions, dated 02 April 2007, and 18 June 2007, of the Office of the President in O.P. Case No. 05-K-377 are hereby NULLIFIED and SET ASIDE for being VOID. Perforce, all the elections conducted after the 10 March 2005 Decision of the HLURB-NCRFO are hereby NULLIFIED. Accordingly, the HLURB is hereby directed to enforce the Decision of the Office of the President dated May 16, 2006, which reinstated HLURB-NCR Field Office Decision dated March 10, 2005, with utmost dispatch until it is fully satisfied.
>
> SO ORDERED.[36]

Petitioners then filed a motion for reconsideration,[37] which the Court of Appeals denied in its Resolution dated 5 June 2009[38] for lack of merit. Hence, petitioners filed this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

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[32] *Id.* at 205.

[33] *Id*. at 206-207.

[34] *Id.* at 241-245.

[35] *Id*. at 30, 304.

[36] *Id*. at 84-85.

[37] *Id*. at 256-284.

[38] *Id*. at 88-90.

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The Issues

In sum, the issues to be resolved by the Court are the following:

I. Whether the Court of Appeals committed a reversible error in reconsidering the dismissal of and reinstating the Petition for *Certiorari* notwithstanding that the OP Clarificatory Resolution and Resolution dated 18 June 2007 sought to be nullified already became final and executory when respondents failed to timely appeal.

II. Whether the Court of Appeals committed a reversible error in declaring that the OP Clarificatory Resolution and Resolution dated 18 June 2007 modified the Decision dated 10 March 2005 of the HLURB-NCRFO, which was reinstated by the final and executory OP Decision dated 16 May 2006.

III. Whether the Court of Appeals committed a reversible error in invalidating all elections conducted during the pendency of this case.

The Ruling of the Court

We grant the petition.

Certiorari *is the proper remedy for assailing an order that allegedly modified a final decision.*

Petitioners argue that a petition for review under Rule 43 of the Rules of Court was the proper remedy to assail the OP Clarificatory Resolution and Resolution dated 18 June 2007 since they were final orders issued by the OP. On the other hand, respondents maintain that *certiorari* was warranted, considering that the OP committed grave abuse of discretion in modifying the dispositive portion of the Decision dated 10 March 2005 of the HLURB-NCRFO, which was reinstated *in toto* by the final and executory OP Decision dated 16 May 2006.

Respondents are correct.

As a rule, judgments, final orders or resolutions of the OP may be taken to the Court of Appeals by filing a verified petition for

review within 15 days from notice.[39] However, where the petition **alleges** grave abuse of discretion as when the assailed resolution substantially modifies a decision that already became final and executory, what is involved is an error of jurisdiction that is reviewable by *certiorari*, and no longer an error of judgment which is reviewable by an appeal under Rule 43. In *Fortich v. Corona*,[40] the Court thus explained:

> It is true that under Rule 43, appeals from awards, judgments, final orders or resolutions of any quasi-judicial agency exercising quasi-judicial functions, including the Office of the President, may be taken to the Court of Appeals by filing a verified petition for review within fifteen (15) days from notice of the said judgment, final order or resolution, whether the appeal involves questions of fact, of law, or mixed questions of fact and law.
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> However, we hold that, in this particular case, the remedy prescribed in Rule 43 is inapplicable considering that the **present petition contains an allegation that the challenged resolution is "patently illegal" and was issued with "grave abuse of discretion" and "beyond his** (respondent Secretary Renato C. Corona's) **jurisdiction" when said resolution substantially modified the earlier OP Decision of March 29, 1996 which had long become final and executory**. In other words, the crucial issue raised here involves an error of jurisdiction, not an error of judgment which is reviewable by an appeal under Rule 43. Thus, the **appropriate remedy to annul and set aside the assailed resolution is an original special civil action for *certiorari* under Rule 65**, as what the petitioners have correctly done. x x x.[41] (Emphasis supplied; citations omitted)

Petitioners' reliance on *De Los Santos v. Court of Appeals*[42] is misplaced. In *De Los Santos*, the petitioners went before the Court via *certiorari* to seek the **reversal** of the resolutions rendered by the Court of Appeals. Otherwise put, what was involved was an error

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[39] Rules of Court, Rule 43, Sec. 1.

[40] 352 Phil. 461 (1998).

[41] *Id*. at 477-478.

[42] 522 Phil. 313 (2006).

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of judgment, leading the Court to conclude that "x x x the remedy to obtain reversal or modification of a judgment is appeal x x x even if the error, or one of the errors, ascribed to the court rendering the judgment is its grave abuse of discretion or lack of jurisdiction or the exercise of power inexcess thereof."[43]

In contrast, respondents in this case do not pray for a review on the merits of the OP resolutions. Rather, they challenge the jurisdiction of the OP to modify the dispositive portion of the Decision dated 10 March 2005 of the HLURB-NCRFO, which was affirmed by the final and executory OP Decision dated 16 May 2006. Necessarily, the case implicates an error of jurisdiction, **not** an error of judgment.

The OP Clarificatory Resolution and Resolution dated 18 June 2007 were valid and did not violate the doctrine of immutability of final and executory judgments.

Stripped to its core, the present controversy concerns the alleged variance between the Decision dated 10 March 2005 of the HLURB-NCRFO, as affirmed by the final and executory OP Decision dated 16 May 2006, on the one hand, and the OP Clarificatory Resolution, on the other. Petitioners argue that the assailed resolutions did not modify the latter because the OP still ordered the holding of an election. Petitioners add that in any event, the amendment was justified by supervening events. Meanwhile, respondents contend that the assailed resolutions modified a final and executory decision in violation of the doctrine of immutability of final and executory judgments.

Respondents are wrong, but not for the reasons advanced by petitioners.

First, the OP Clarificatory Resolution did not modify but merely clarified the ambiguity in the dispositive portion of the Decision dated 10 March 2005 of the HLURB-NCRFO.

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[43] *Id*. at 319-320.

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Indeed, when a final judgment is executory, it becomes immutable and unalterable.[44] The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest Court of the land.[45] The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time.[46] However, where there is an ambiguity caused by an omission or a mistake in the dispositive portion of the decision, the Court may clarify such an ambiguity by an amendment even after the judgment has become final.[47] In *State Investment House, Inc. v. Court of Appeals*,[48] the Court made a jurisprudential survey establishing this doctrine:

> We begin by noting that the trial court has asserted authority to issue the clarificatory order in respect of the decision of Judge Fortun, even though that judgment had become final and executory. In *Reinsurance Company of the Orient, Inc. v. Court of Appeals*, this Court had occasion to deal with the applicable doctrine to some extent:
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> > "[E]ven a judgment which has become final and executory may be clarified under certain circumstances. The dispositive portion of the judgment may, for instance, contain an error clearly clerical in nature (perhaps best illustrated by an error in arithmetical computation) or an ambiguity arising from inadvertent omission, which error may be rectified or ambiguity clarified and the omission supplied by reference primarily to the body of the decision itself. Supplementary reference to the pleadings previously filed in the case may also be resorted to by way of corroboration of the existence of the error or of the ambiguity in the dispositive part of the judgment. In *Locsin et al. v. Paredes, et al.*, this Court allowed a judgment which had become final and executory to be clarified by

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[44] *Mayon Estate Corp. v. Altura*, 483 Phil. 404, 413 (2004).

[45] *Alba Patio de Makati v. National Labor Relations Commission*, 278 Phil. 370, 376 (1991).

[46] *Paramount Insurance Corp. v. Japzon*, 286 Phil. 1048, 1056 (1992).

[47] *Tuatis v. Sps. Escol*, 619 Phil. 465, 485 (2009).

[48] 275 Phil. 433 (1991).

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supplying a word which had been inadvertently omitted and which, when supplied, in effect changed the literal import of the original phraseology:

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In *Filipino Legion Corporation v. Court of Appeals, et al.*, the applicable principle was set out in the following terms:

> '[W]here there is ambiguity caused by an omission or mistake in the dispositive portion of a decision, the court may clarify such ambiguity by an amendment even after the judgment had become final, and for this purpose it may resort to the pleadings filed by the parties, the court's findings of facts and conclusions of law as expressed in the body of the decision.'

In *Republic Surety and Insurance Company, Inc. v. Intermediate Appellate Court*, the Court, in applying the above doctrine, said:

> 'x x x We clarify, in other words, what we did affirm. What is involved here is not what is ordinarily regarded as a clerical error in the dispositive part of the decision of the Court of First Instance, x x x. At the same time, what is involved here is not a correction of an erroneous judgment or dispositive portion of a judgment. What we believe is involved here is in the nature of an inadvertent omission on the part of the Court of First Instance (which should have been noticed by private respondents' counsel who had prepared the complaint), of what might be described as a logical follow-through of something set forth both in the body of the decision and in the dispositive portion thereof; x x x.'[49] (Citations omitted).

To recall, in its final and executory Decision dated 16 May 2006, the OP reinstated the Decision dated 10 March 2005 of the HLURB-NCRFO. Notably, the dispositive portion of the latter consists of two parts: (a) an order to petitioners to relinquish their positions in favor of respondents; and (b) an order to hold an election for the next BOD. In this regard, a comparison of the dispositive portions of the OP Clarificatory Resolution and the reinstated Decision dated 10 March 2005 of the HLURB-NCRFO is instructive.

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[49] *Id*. at 440-441.

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(a) Order to relinquish posts

HLURB-NCRFO Decision dated 10 March 2005	OP Clarificatory Resolution
WHEREFORE, the foregoing premises considered, a judgment is hereby rendered dismissing complainants' prayers for affirmation of their election but instead invalidating said election last January 23, 2005. Accordingly, the complainants are hereby directed to peacefully and orderly relinquish their office and position to the former members of the Board of Directors of MVHAI and leave its clubhouse and turn-over [sic] the custody thereof to the Board of Directors, and submit a written accounting of moneys received and disbursed from the moment they took over on February 4, 2005 as well as inventory the items therein in the presence of the Management Election Committee of MVHAI. To encourage and ensure a peaceful, humane, courteous, and orderly turn-over [sic] of the clubhouse and the above records and assets of MVHAI, let these proceedings be observed by the members of MVHAI, local government officials, interested entities; and, when warranted by overriding requirements of peace and tranquility, by authorized peace officers. x x x x[50]	WHEREFORE, x x x: x x x x (3) Pending the conduct of the election and the proclamation of winners, all contracts to be entered into by the MVHOA shall be held in abeyance, but the 2004 Board of Directors shall manage MVHOA's daily operations; and x x x x SO ORDERED.[51]

[50] *Rollo*, p. 146.

[51] *Id*. at 130.

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As illustrated in the foregoing table, the OP directed respondents, being the 2004 BOD, to manage the daily operations of petitioner MVHAI pending the election of the next BOD. Without doubt, respondents, as the legitimate BOD, can only manage the daily operations of petitioner MVHAI if they were allowed to sit in the board and enjoy physical possession of the clubhouse, records and other properties of petitioner MVHAI. In other words, paragraph 3 of the dispositive portion of the OP Clarificatory Resolution is simply a reiteration of the earlier order of the HLURB-NCRFO directing petitioners "to peacefully and orderly relinquish their office and position to the former members of the Board of Directors of MVHAI and leave its clubhouse and turn-over [sic] the custody thereof to the Board of Directors, and submit a written accounting of moneys received and disbursed from the moment they took over on February 4, 2005 as well as inventory the items therein."[52]

Contrary to the position of respondents, the omission of the exact same directive of the HLURB-NCRFO in the dispositive portion of the OP Clarificatory Resolution is not tantamount to its deletion as to constitute an amendment of a final and executory judgment. In *UPSI Property Holdings, Inc. v. Diesel Construction Co., Inc.*,[53] the Court thus held:

> The crucial issue for resolution revolves around the propriety of the inclusion of the legal interest in the writ of execution despite the "silence" of the Court in the dispositive portion of its judgment which has become final and executory.
>
> x x x x x x x x x
>
> Thus, contrary to UPSI's argument, there is no substantial variance between the March 24, 2008 final and executory decision of the Court and the writ of execution issued by the CIAC to enforce it. The Court's silence as to the payment of the legal interests in the dispositive portion of the decision is not tantamount to its deletion or reversal. The CA was correct in holding that if such was the Court's intention, it should have also expressly declared its deletion together with its express mandate to remove the award of liquidated damages to UPSI.

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[52] *Id*. at 146.

[53] 740 Phil. 655 (2014).

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x x x x x x x x x

x x x. As a corollary rule, the Court has clarified that "**a judgment is not confined to what appears on the face of the decision, but extends as well to those necessarily included therein or necessary thereto**."[54] (Emphasis in original; citation omitted)

More instructive, in *Republic Surety and Insurance Co., Inc. v. Intermediate Appellate Court*,[55] the Register of Deeds refused to cancel the existing transfer certificate of title (TCT) on the ground that the dispositive portion of the trial court's decision did not expressly order the cancellation of the TCT and revival of the old title in favor of the victorious party. Speaking through Justice Feliciano, the Court held that the missing "order to cancel and revive" should be deemed implied in the trial court's decision nullifying the deed of sale, thus:

x x x. What we believe is involved here is in the nature of an inadvertent omission on the part of the Court of First Instance x x x, of what might be described as a logical follow-through of something set forth both in the body of the decision and in the dispositive portion thereof: the inevitable follow-through, or translation into, operational or behavioral terms, of the annulment of the Deed of Sale with Assumption of Mortgage, from which petitioners' title or claim of title embodied in TCT 133153 flows. The dispositive portion of the decision itself declares the nullity *ab initio* of the simulated Deed of Sale with Assumption of Mortgage and instructed the petitioners and all persons claiming under them to vacate the subject premises and to turn over possession thereof to the respondent-spouses. Paragraph B of the same dispositive portion, confirming the real estate mortgage executed by the respondent-spouses also necessarily assumes that Title No. 133153 in the name of petitioner Republic Mines is null and void and therefore to be cancelled, since it is indispensable that the mortgagors have title to the real property given under mortgage to the creditor (Article 2085 [2], Civil Code). [56]

Indeed, even without the express reiteration of the order to petitioners to vacate their posts and turn over the physical possession

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[54] *Id*. at 664, 667 and 670.

[55] 236 Phil. 332 (1987).

[56] *Id*. at 339.

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of the clubhouse, records and assets of petitioner MVHAI, paragraph 3 of the dispositive portion of the OP Clarificatory Resolution already sufficed. By itself, the express recognition of respondents as the lawful BOD without more can be lawfully executed against petitioners and compel them to surrender their custody of the clubhouse, records and assets of petitioner MVHAI in favor of respondents. Respondents' stubborn insistence on a word-for-word reproduction of the dispositive portion of the Decision dated 10 March 2005 finds no basis in law.[57]

(b) Order to hold an election

HLURB-NCRFO Decision dated 10 March 2005	OP Clarificatory Resolution
WHEREFORE, x x x. x x x x Let a [sic] Ad Hoc or Election Committee of MVHAI be immediately constituted and appointed which shall be composed of a competent professional or corporate attorney as chairman and representative of this Office, and one representative each from the parties who are members of MVHAI and are knowledgeable in corporate proceedings and with known reputation for competence, probity and integrity, which Committee shall provide MVHAI the requisite expertise and objectivity in calling and holding of the meeting of the members to elect the directors of MVHAI. The said Ad Hoc or Election Committee shall perform its functions and hold office in an	WHEREFORE, in order **to give full meaning and equitably enforce the final and executory Decision of this Office dated May 16, 2006**, it is hereby ordered that: (1) The 2004 MVHOA Board of Directors shall call, conduct an election, and proclaim the winners within thirty (30) days from receipt of this resolution; (2) The HLURB Board of Commissioners shall supervise the said election; (3) x x x; and (4) The winners in the election shall

[57] See *Col. dela Merced v. Government Service Insurance System*, 677 Phil. 88, 108 (2011).

> accessible, open but secure portion or space of the clubhouse, free and unaffected or uncontrolled at all times from any partisan actions or influences of the parties.
>
> After its constitution and appointment of its Chairman and two (2) members, the Committee shall forthwith meet to determine and formulate, among others, appropriate mechanics and rules for the qualification of the members who shall vote and seek an elective, etc. All meetings, discussions and deliberations to be conducted by the Ad Hoc or Election Committee shall be open and transparent to all parties and members of the association who shall have free and unrestrained access to the venue of said meeting or conferences of this special Committee.
>
> This decision is immediately executory pursuant to Section 9, Rule VI of the 2004 Rules of Procedure of this Board.
>
> IT IS SO ORDERED.[58]
>
> immediately assume their post after their proclamation so as not to further prejudice the affairs of the MVHOA.
>
> SO ORDERED.[59]
> (Emphasis supplied)

Similarly, the OP Clarificatory Resolution did not amend in any way the order to call an election contained in the Decision dated 10 March 2005 of the HLURB-NCRFO. If at all, the former merely set a 30-day timeline within which to hold an election. Other than that, the OP Clarificatory Resolution did not order anything new.

With respect to the directive to respondents to call and conduct an election, this is consistent with the legal conclusion of both the HLURB-NCRFO and the OP that under the by-laws of petitioner MVHAI, only the BOD can call and hold an election.

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[58] *Id*. at 146-147.

[59] *Rollo*, p. 92.

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With respect to the supervision of the election by the HLURB-BoC, this was merely lifted from the body of the Decision dated 10 March 2005 of the HLURB-NCRFO. Paragraph 2 of the dispositive portion of the OP Clarificatory Resolution was also necessary to clarify how the Ad Hoc or Election Committee conceived by the HLURB-NCRFO would be constituted. In its Decision dated 10 March 2005, the HLURB-NCRFO thus explained:

> Indeed, the real test by which the full support and backing by the members for the election and their candidates may be assessed is through a determination in whole and in every respect the qualifications of all members to vote and, after urging them all to cast their votes, save for those whose history of apathy is legend or nature and customary practice of snubbing elections is unswerving, the credible and honest counting or tabulation of their votes.
>
> This objective may be achieved by **directing the opposing parties or protagonists in this highly-charged election contest to voluntarily and with good grace submit to an election to be supervised by this Office** in order that the members may unequivocally certify and attest through their ballots the bona fide representatives of their aspirations and goals in MVHAI.
>
> For this purpose, a **Management, Ad Hoc or Election Committee**, which shall be composed of persons in MVHAI who are knowledgeable in corporate proceedings and with known reputation for competence, probity, and integrity, **shall be constituted by this Office** to provide the MVHAI the requisite expertise and objectivity in calling and holding of the meeting of the members to elect the true directors of MVHAI.[60] (Emphasis supplied)

Significantly, in its Order dated 4 May 2007,[61] the HLURB-BoC interpreted paragraph 2 of the dispositive portion of the OP Clarificatory Resolution in accordance with the Decision dated 10 March 2005 of the HLURB-NCRFO. The Order dated 4 May 2007 of the HLURB-BoC reads in pertinent part:

> On April 02, 2007, the Office of the President promulgated a Resolution, the dispositive portion of which states:

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[60] *Id*. at 143.

[61] *Id*. at 204-205.

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x x x x x x x x x

Wherefore, for the purpose of implementing the above orders, specifically paragraph 2 of the dispositive portion, and considering that the case has been previously remanded for execution proceedings, the Expanded National Capital Region Field Office (ENCRFO) is hereby ordered to supervise the said election. It is hereby authorized to call and conduct a pre-election conference for the purpose, among others, of constituting a Committee on Election, drawing up the list of qualified voters, and such other matters as may be necessary in order to ensure orderly proceedings and adherence to the association by-laws.[62]

The alleged amendment introduced by the insertion of the supervisory role of the HLURB-BoC in the election to be conducted is more apparent than real. To repeat, it was merely meant to clarify what was omitted in the dispositive portion, but expressly mentioned in the body, of the Decision dated 10 March 2005 of the HLURB-NCRFO.

With respect to the directive to the winners in the election to immediately assume their posts after their proclamation, this is the direct consequence of the last paragraph of the Decision dated 10 March 2005 of the HLURB-NCRFO declaring its decision "immediately executory pursuant to Section 9, Rule VI of the 2004 Rules of Procedure of this Board."

Hence, the OP Clarificatory Resolution merely clarified the Decision dated 10 March 2005 of the HLURB-NCRFO, nothing more.

Second, assuming that the OP Clarificatory Resolution modified the dispositive portion of the Decision dated 10 March 2005 of the HLURB-NCRFO, the supposed amendment partakes of a *nunc pro tunc* order.

A *nunc pro tunc* order is an exception to the doctrine of immutability of final and executory judgments. Affirming the *nunc pro tunc* judgment rendered by the Court of Appeals, the Court explained in *Filipinas Palmoil Processing, Inc. v. Dejapa*:[63]

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[62] *Id*.

[63] 656 Phil. 589 (2011).

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As a general rule, final and executory judgments are immutable and unalterable, except under these recognized exceptions, to wit: (a) clerical errors; (b) *nunc pro tunc* entries which cause no prejudice to any party; and (c) void judgments. What the CA rendered on December 10, 2004 was a *nunc pro tunc* order clarifying the decretal portion of the August 29, 2002 Decision.

In *Briones-Vazquez v. Court of Appeals*, *nunc pro tunc* judgments have been defined and characterized as follows:

> The object of a judgment *nunc pro tunc* is not the rendering of a new judgment and the ascertainment and determination of new rights, but is one placing in proper form on the record, the judgment that had been previously rendered, to make it speak the truth, so as to make it show what the judicial action really was, not to correct judicial errors, such as to render a judgment which the court ought to have rendered, in place of the one it did erroneously render, nor to supply nonaction by the court, however erroneous the judgment may have been.[64]

Further, in *Mocorro, Jr. v. Ramirez*,[65] the Court cautioned that a *nunc pro tunc* judgment **cannot** prejudice any party, thus:

> The only exceptions to the rule on the immutability of final judgments are (1) the correction of clerical errors, (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party, and (3) void judgments. *Nunc pro tunc* judgments have been defined and characterized by the Court in the following manner:
>
> x x x x x x x x x

Unquestionably, respondent and Azur were adjudged by the RTC jointly and severally liable for actual damages. But the *fallo* of the RTC decision did not indicate how the amount of the actual damages award should be determined. While the decision stated that the award of actual damages in the amount of PhP2,000 per Sunday was to be computed from August 2, 1992, there is nothing in the *fallo* suggesting at the very least when the PhP2,000 per Sunday liability will end.

In accordance with the exception for modification of a final judgment, there is a need to amend the decision of the RTC pursuant to the *nunc pro*

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[64] *Id*. at 598.

[65] 582 Phil. 357 (2008).

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tunc rule which, we hasten to add, will cause **no prejudice to any party**. In this regard, justice and equity dictate that respondent and Azur should be held solidarily liable for actual damages in the amount of PhP2,000 for every actual illegal cockfight held, regardless of the staging date, in Azur's cockpit in Caibiran, Biliran, reckoned from August 2, 1992 to June 22, 2001 when the finality of the RTC Decision dated February 17, 1995 set in.[66] (Emphasis supplied)

To repeat, the OP Clarificatory Resolution did not add anything new, other than setting the 30-day timeline within which to conduct the election. This cannot in any way prejudice respondents considering that under the by-laws of petitioner MVHAI, the term of office of the BOD is one year only. Everything else in the assailed resolution is merely a reiteration of the body and/or *fallo* of the Decision dated 10 March 2005 of the HLURB-NCRFO. On the contrary, both the Decision dated 10 March 2005 of the HLURB-NCRFO and the OP Clarificatory Resolution were favorable to respondents as both issuances recognized them as the lawful BOD of petitioner MVHAI. Consequently, the OP Clarificatory Resolution is a valid *nunc pro tunc* order.

In view of the foregoing, the OP Clarificatory Resolution and Resolution dated 18 June 2007 denying respondents' Motion for Partial Reconsideration must be affirmed.

The election held on 12 August 2007 under the supervision of the HLURB and resulting in the constitution of the 2007 BOD of petitioner MVHAI was lawful.

Petitioners argue that the annual elections held during the pendency of the case before the Court of Appeals were justified by the expiration of the term of office of respondents as early as 2004. On the other hand, respondents claim that all elections, having been called by illegitimate BODs, were void.

Without doubt, the election of petitioners as the 2005 BOD of petitioner MVHAI is void. This was the categorical pronouncement of the HLURB-NCRFO, as affirmed by the OP in its Decision dated

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[66] *Id.* at 367-368.

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16 May 2006, which became final and executory. Pursuant to the doctrine of immutability of final and executory judgments, this Court can no longer disturb their conclusions of fact and law. However, the nullity of the 2005 election cannot be taken to the hilt as to invalidate all subsequent elections, particularly the election held on 12 August 2007.

The election held on 12 August 2007 was pursuant to the Decision dated 10 March 2005 of the HLURB-NCRFO, which was subsequently affirmed in the OP Decision dated 16 May 2006 and OP Clarificatory Resolution. Both parties were likewise duly notified of the pre-election proceedings as in fact, the HLURB orders were all attached as annexes to respondents' Petition for *Certiorari* before the Court of Appeals. However, respondents refused to participate because of their unfounded objection against the alleged variance between the Decision dated 10 March 2005 of the HLURB-NCRFO and the OP Clarificatory Resolution.

Surely, the annual election of directors of petitioner MVHAI cannot be held hostage by the whims of a group of homeowners who refuse to relinquish their seats in the BOD. In situations such as this, the issuances of the HLURB, which used to govern homeowners' associations at the time this case was filed, are instructive.

HLURB Resolution No. 770, Series of 2004 (HLURB Resolution No. 770-04), entitled "Framework for Governance of Homeowners Associations," defines hold-over directors or officers in this wise:

> SECTION 67. *Hold-over.* — Where there is failure to elect a new set of directors or officers, the incumbents should be allowed to continue in a holdover capacity until their successors are elected and qualified, subject to compliance with applicable HLURB Rules on the non-holding or postponement of regular or special elections.

In this regard, HLURB Resolution No. R-771, Series of 2004 (HLURB Resolution No. R-771-04), entitled "Rules on the Registration and Supervision of Homeowners' Associations," lays down the rules on the election of directors in this wise:

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SECTION 3. *Inquiry on Non-Holding or Postponement of Association Meeting or Elections.* — If the reasons stated in the affidavit of non-holding of regular membership meeting or election as provided in Section 2 above are found to be without merit, the Regional Office may order the directors or trustees and officers of the Homeowners Association to immediately call for the conduct of the meeting or election that was not held or postponed. The directors or trustees and officers who failed to comply with the order shall be held jointly and severally liable therefor.

SECTION 4. *Election Supervision.* — The **Regional Office may call a special election for the officers of a Homeowners Association** and set the rules that shall govern the conduct thereof in consultation with the association.

SECTION 5. *Authority to Supervise Election.* — The Regional Office may designate one of its responsible officials to supervise, without right of substitution or delegation, the conduct of the special election of a Homeowners Association. Within ten (10) working days after the date of the election, said election supervisor shall submit a report to the Regional Office stating, among others, the following:

a. Whether the special election was held as scheduled;
b. Time of the commencement and end of the election;
c. The following information as appearing in the report of the committee on election of the Homeowners Association:
    i. Number of qualified voters;
    ii. Number of votes cast;
    iii. Number of votes received by individual candidates;
    iv. Protest registered on the day of election, if any; and
    v. Such other information as he may deem relevant and necessary.

While HLURB Resolution Nos. 770-04 and R-771-04 do not expressly set the maximum period that a director or officer may serve in a hold-over capacity, the BOD of a homeowners' association cannot unjustifiably refuse to call and hold an election when mandated by the association by-laws. Section 4 of HLURB Resolution No. R-771-04 expressly authorizes the HLURB-NCRFO to call the election when the circumstances so warrant, as in this case. To sustain respondents' hold-over positions since 2005 is to make them stay in the BOD for approximately 12 years, notwithstanding the expiration of their one-year term.

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In *Valle Verde Country Club, Inc. v. Africa*,[67] the Court distinguished term from tenure, thus:

> Under the above-quoted Section 29 of the Corporation Code, a vacancy occurring in the board of directors caused by the expiration of a member's term shall be filled by the corporation's stockholders. Correlating Section 29 with Section 23 of the same law, VVCC alleges that a member's term shall be for one year and until his successor is elected and qualified; otherwise stated, a member's term expires only when his successor to the Board is elected and qualified. Thus, "until such time as [a successor is] elected or qualified in an annual election where a quorum is present," VVCC contends that "the term of [a member] of the board of directors has yet not expired."
>
> x x x x x x x x x
>
> Term is distinguished from tenure in that an officer's "tenure" represents the term during which the incumbent actually holds office. The tenure may be shorter (or, in case of holdover, longer) than the term for reasons within or beyond the power of the incumbent.
>
> Based on the above discussion, when Section 23 of the Corporation Code declares that "the board of directors x x x shall hold office for one (1) year until their successors are elected and qualified", we construe the provision to mean that the term of the members of the board of directors shall be only for one year; their term expires one year after election to the office. The holdover period — that time from the lapse of one year from a member's election to the Board and until his successor's election and qualification — is not part of the director's original term of office, nor is it a new term; the holdover period, however, constitutes part of his tenure. Corollary, when an incumbent member of the board of directors continues to serve in a holdover capacity, it implies that the office has a fixed term, which has expired, and the incumbent is holding the succeeding term.
>
> After the lapse of one year from his election as member of the VVCC Board in 1996, Makalintal's term of office is deemed to have already expired. That he continued to serve in the VVCC Board in a holdover capacity cannot be considered as extending his term. To be precise, Makalintal's term of office began in 1996 and expired in 1997, but, by virtue of the holdover doctrine in Section 23 of the Corporation Code, he continued to hold office until his resignation on November 10, 1998. This

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[67] 614 Phil. 390 (2009).

holdover period, however, is not to be considered as part of his term, which, as declared, had already expired.[68]

Notably, Republic Act No. 9904, or the *Magna Carta* for Homeowners and Homeowners' Associations, was approved and became effective in 2010. Section 60 of its Implementing Rules and Regulations expressly sets forth that "**(i)n no case shall the hold-over term of the officers/directors/trustees exceed two (2) years**."

WHEREFORE, the petition is **GRANTED**. The Resolutions dated 2 April 2007 and 18 June 2007 of the Office of the President in O.P. Case No. 05-K-377 are **AFFIRMED** and the election conducted pursuant thereto in 2007 is hereby declared **VALID**.

SO ORDERED.

Peralta, Mendoza, Leonen, and *Martires, JJ.,* concur.

THIRD DIVISION

[G.R. No. 189493. August 2, 2017]

FCA SECURITY AND GENERAL SERVICES, INC., and/or MAJ. JOSE LAID, JR., *petitioners, vs*. **SOTERO M. ACADEMIA, JR. II,** *respondent.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; AN EMPLOYER WHOSE DEFENSE IS AN EMPLOYEE'S VOLUNTARY RESIGNATION BEARS THE BURDEN OF PROVING SUCH DEFENSE BY CLEAR, POSITIVE AND CONVINCING EVIDENCE;

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[68] *Id*. at 395-399.