FIRST DIVISION

[G.R. No. 202974. February 7, 2018]

NORMA D. CACHO and NORTH STAR INTERNATIONAL TRAVEL, INC., *petitioners*, *vs*. **VIRGINIA D. BALAGTAS,** *respondent*.

SYLLABUS

1. **COMMERCIAL LAW; CORPORATION; INTRA-CORPORATE CONTROVERSY; TWO-TIER TEST TO DETERMINE INTRA-CORPORATE CONTROVERSY; RELATIONSHIP TEST, EXPLAINED.—** We agree with the appellate court's ruling that a **two-tier test** must be employed to determine whether an intra-corporate controversy exists in the present case, *viz*.: (a) the **relationship test,** and (b) the **nature of the controversy test**. x x x A dispute is considered an intra-corporate controversy under the **relationship test** when the relationship between or among the disagreeing parties is any one of the following: (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.

2. **ID.; ID.; ID.; ID.; ID.; THE EXECUTIVE VICE PRESIDENT POSITION IS ONE OF THE CORPORATE OFFICERS IN PETITIONER NORTH STAR'S BY-LAWS; RESPONDENT WAS APPOINTED BY THE BOARD AS PETITIONER NORTH STAR'S EXECUTIVE VICE-PRESIDENT, HENCE, SHE WAS ONE OF THE CORPORATE OFFICERS REGARDLESS OF THE FACT THAT HER DUTIES AND RESPONSIBILITIES ARE DETERMINED BY THE PRESIDENT INSTEAD OF THE BOARD.—** The rule is that corporate officers are those officers of a corporation who are given that character either by the **Corporation Code** or by the **corporation's by-laws**. Section 25 of the Corporation Code explicitly provides for the election of the corporation's president, treasurer, secretary, and

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such other officers as may be provided for in the by-laws. In interpreting this provision, the Court has ruled that if the position is other than the corporate president, treasurer, or secretary, it **must be expressly mentioned in the by-laws** in order to be considered as a corporate office. x x x [T]here may be **one or more vice president** positions in petitioner North Star and, by virtue of its by-laws, all such positions shall be corporate offices. x x x The use of the phrase "one or more" in relation to the establishment of vice president positions without particular exception indicates an intention to give petitioner North Star's Board ample freedom to make several vice-president positions available as it may deem fit and in consonance with sound business practice. To require that particular designation/ variation of each vice-president (*i.e.*, executive vice president) be specified and enumerated is to invalidate the by-laws' true intention and to encroach upon petitioner North Star's inherent right and authority to adopt its own set of rules and regulations to govern its internal affairs. Whether the creation of several vice-president positions in a company is reasonable is a question of policy that courts of law should not interfere with. Where the reasonableness of a by-law is a mere matter of judgment, and one upon which reasonable minds must necessarily differ, a court would not be warranted in substituting its judgment instead of the judgment of those who are authorized to make by-laws and who have exercised their authority. Thus, by name, the *Executive Vice President* position is embraced by the phrase "one or more vice president" in North Star's by-laws. x x x [T]he x x x Secretary's Certificate overcomes respondent Balagtas's contention that she was merely the *Executive Vice President* by name and was never empowered to exercise the functions of a corporate officer. Notably, she did not offer any proof to show that her duties, functions, and compensation were all determined by petitioner Cacho as petitioner North Star's President. In any case, that the *Executive Vice President's* duties and responsibilities are determined by the President instead of the Board is irrelevant. In determining whether a position is a corporate office, the board of directors' appointment or election thereto is controlling. x x x At this point, it is best to emphasize that the **manner of creation** (*i.e.*, under the express provisions of the Corporation Code or by-laws) and the **manner by which it is filled** (*i.e.*, by election or appointment of the board of directors) are sufficient in vesting a position the character of a corporate office. x x x [A]s *Executive Vice President,*

respondent Balagtas was one of petitioner North Star's corporate officers.

3. **ID.; ID.; ID.; ID.; NATURE OF CONTROVERSY TEST, ELUCIDATED.—** The existence of an intra-corporate controversy does not wholly rely on the relationship of the parties. The *incidents* of their relationship must also be considered. Thus, under the *nature of the controversy test*, the disagreement must not only be rooted in the existence of an intra-corporate *relationship*, but must as well pertain to the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation. If the relationship and its incidents are merely incidental to the controversy or if there will still be conflict even if the relationship does not exist, then no intra-corporate controversy exists.

4. **ID.; ID.; ID.; ID.; WHERE THE DISMISSAL IS INTIMATELY AND INEVITABLY LINKED TO RESPONDENT'S ROLE AS PETITIONER NORTH STAR'S EXECUTIVE VICE-PRESIDENT, SUCH DISMISSAL IS AN INTRA-CORPORATE CONTROVERSY.—** [I]t is clear that the termination complained of is intimately and inevitably linked to respondent Balagtas's role as petitioner North Star's *Executive Vice President*: *first*, the alleged misappropriations were committed by respondent Balagtas in her capacity as *vice president*, one of the officers responsible for approving the disbursements and signing the checks. And, *second*, these alleged misappropriations breached petitioners Cacho's and North Star's trust and confidence specifically reposed in respondent Balagtas as *vice president*. That all these incidents are adjuncts of her corporate office lead the Court to conclude that respondent Balagtas's dismissal is an intra-corporate controversy, not a mere labor dispute.

5. **ID.; ID.; ID.; INTRA-CORPORATE CONTROVERSY IS OUTSIDE THE LABOR ARBITER'S JURISDICTION; PETITIONERS ARE NOT ESTOPPED FROM QUESTIONING JURISDICTION.—** The Court has already held that the ruling in *Tijam v. Sibonghanoy* remains only as an exception to the general rule. Estoppel by laches will only bar a litigant from raising the issue of lack of jurisdiction in exceptional cases similar to the factual milieu of *Tijam v. Sibonghanoy*. To recall, the Court in *Tijam v. Sibonghanoy* ruled

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that the plea of lack of jurisdiction may no longer be raised for being barred by laches because it was raised for the first time in a motion to dismiss **filed almost 15 years after the questioned ruling had been rendered.** These exceptional circumstances are not present in this case. Thus, the general rule must apply: **that the issue of jurisdiction may be raised at any stage of the proceedings, even on appeal, and is not lost by waiver or by estoppel**. x x x [T]he issue in the present case is an intra-corporate controversy, a matter outside the Labor Arbiter's jurisdiction.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioners.
NBS Law Office for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, as amended, seeking to reverse and set aside the Decision[1] dated November 9, 2011 and Resolution[2] dated August 6, 2012 of the Court of Appeals in CA-G.R. SP No. 111637, which affirmed the Labor Arbiter's Decision[3] dated March 28, 2005.

This case stemmed from a Complaint[4] for constructive dismissal filed by respondent Virginia D. Balagtas (Balagtas) against petitioners North Star International Travel, Inc. (North Star) and its President Norma D. Cacho (Cacho) before the Labor Arbiter docketed as NLRC-NCR Case No. 04-04736-04.

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[1] *Rollo*, pp. 85-99; penned by Associate Justice Noel G. Tijam (now a member of this Court) with Associate Justices Marlene Gonzales-Sison and Leoncia R. Dimagiba concurring.

[2] *Id*. at 102-105.

[3] *Id*. at 264-273.

[4] *Id*. at 217-218.

The facts as narrated by the Court of Appeals are as follows:

In her *Position Paper* submitted before the Labor Arbiter, petitioner [Balagtas] alleged that she was a former employee of respondent TQ3 Travel Solutions/North Star International Travel, Inc., a corporation duly registered with the Securities and Exchange Commission (SEC) on February 12, 1990. She also alleged that she was one of the original incorporators-directors of the said corporation and, when it started its operations in 1990, she was the General Manager and later became the Executive Vice President/Chief Executive Officer.

On March 19, 2004 or after 14 years of service in the said corporation, petitioner was placed under 30 days preventive suspension pursuant to a Board Resolution passed by the Board of Directors of the respondent Corporation due to her alleged questionable transactions. On March 20, 2004, she was notified by private respondent Norma Cacho of her suspension and ordered to explain in writing to the Board of Directors her alleged fraudulent transactions within 5 days from said notice. Petitioner promptly heeded the order on March 29, 2004.

On April 5, 2004, while under preventive suspension, petitioner wrote a letter to private respondent Norma Cacho informing the latter that she was assuming her position as Executive Vice-President/Chief Executive Officer effective on that date; however, she was prevented from re-assuming her position. Petitioner also wrote a letter dated April 12, 2004 to the Audit Manager inquiring about the status of the examination of the financial statement of respondent corporation for the year 2003, which request was, however, ignored. Consequently, petitioner filed a complaint claiming that she was constructively and illegally dismissed effective on April 12, 2004.

In their defense, respondents averred that, on March 19, 2004, the majority of the Board of Directors of respondent corporation decided to suspend petitioner for 30 days due to the questionable documents and transactions she entered into without authority. The preventive suspension was meant to prevent petitioner from influencing potential witnesses and to protect the respondent corporation's property. Subsequently, the Board of Directors constituted an investigation committee tasked with the duty to impartially assess the charges against petitioner.

Respondents alleged that petitioner violated her suspension when, on several occasions, she went to the respondent corporation's office

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and insisted on working despite respondent Norma Cacho's protestation. Respondents also alleged that the complaint for constructive dismissal was groundless. They asserted that petitioner was not illegally dismissed but was merely placed under preventive suspension.[5]

The Decision of the Labor Arbiter

In his Decision dated March 28, 2005, the Labor Arbiter found that respondent Balagtas was illegally dismissed from North Star, *viz.*:

> WHEREFORE, judgment is hereby made finding the complainant to have been illegally dismissed from employment on July 15, 2004 and concomitantly ordering the respondent North Star International Travel, Inc., to pay her a separation pay computed at thirty (30) days pay for every year of service with backwages, plus commissions and such other benefits which she should have received had she not been dismissed at all.
>
> The respondent North Star International Travel, Inc. is further ordered to pay complainant three (3) million pesos as moral damages and two (2) million pesos as exemplary damages plus ten (10%) percent attorney's fees.[6]

Subsequently, petitioners appealed the case to the National Labor Relations Commission (NLRC). In their Notice of Appeal,[7] they prayed that Balagtas's Complaint be dismissed for lack of jurisdiction. While they maintained that Balagtas was never dismissed, they also alleged that she was a corporate officer, incorporator, and member of the North Star's Board of Directors (The Board). Thus, the NLRC cannot take cognizance of her illegal dismissal case, the same being an intra-corporate controversy, which properly falls within the original and exclusive jurisdiction of the ordinary courts.

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[5] *Id*. at 86-88.

[6] *Id*. at 273.

[7] Through a Notice of Appeal dated May 27, 2005. *Rollo*, pp. 275-287.

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The Ruling of the NLRC

In its Resolution[8] dated September 30, 2008, the NLRC ruled in favor of petitioners, *viz.*:

> WHEREFORE, the questioned Decision of the Labor Arbiter is REVERSED and SET ASIDE and the complaint is DISMISSED for lack of jurisdiction.[9]

The NLRC's findings are as follows: *First*, through a Board resolution passed on March 31, 2003, Balagtas was elected as North Star's **Executive Vice President** and **Chief Executive Officer**, as evidenced by a Secretary's Certificate dated April 22, 2003. *Second*, in her Counter Affidavit executed sometime in 2004 in relation to the criminal charges against her, respondent Balagtas had in fact admitted occupying these positions, apart from being one of North Star's incorporators. And, *third*, the position of "**Vice President**" is a corporate office provided in North Star's by-laws.[10]

Based on these findings, the NLRC ruled that **respondent Balagtas was a corporate officer of North Star at the time of her dismissal and not a mere employee**. A corporate officer's dismissal is always an intra-corporate controversy,[11] a subject matter falling within the Regional Trial Court's (RTC) jurisdiction.[12] Thus, the Labor Arbiter and the NLRC do not have jurisdiction over Balagtas's Complaint.

The NLRC also held that **petitioners North Star and Cacho were not estopped from raising the issue of lack of jurisdiction**. Citing *Dy v. National Labor Relations Commission*,[13] the NLRC explained that the Labor Arbiter heard

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[8] *Rollo*, pp. 294-315.

[9] *Id*. at 314.

[10] *Id*. at 307-308.

[11] *Tabang v. National Labor Relations Commission*, 334 Phil. 424, 430 (1997).

[12] Citing Republic Act No. 8799; *rollo*, p. 307.

[13] 229 Phil. 234 (1986).

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and decided the case upon the theory that he had jurisdiction over the Complaint. Thus, the Labor Arbiter's jurisdiction may be raised as an issue on appeal.

Aggrieved, respondent Balagtas moved for reconsideration but was denied. Thus, she elevated the case to the Court of Appeals *via* a petition for *certiorari*.

The Ruling of the Court of Appeals

In its assailed Decision, the Court of Appeals found merit in Balagtas's petition, *viz*.:

> WHEREFORE, the petition is hereby GRANTED. The assailed *Resolution*, dated September 30, 2008 of the National Labor Relations Commission dismissing the petitioner's complaint for lack of jurisdiction, is hereby REVERSED and SET ASIDE. The *Decision*, dated March 28, 2005 of the Labor Arbiter is AFFIRMED and this case is ordered REMANDED to the NLRC for the re-computation of petitioner's backwages and attorney's fees in accordance with this Decision.[14]

In ruling that the present case does not involve an intra-corporate controversy, the Court of Appeals applied a **two-tier test**, *viz*.: (a) the **relationship test**, and (b) the **nature of controversy test**.

Applying the **relationship test**, the Court of Appeals explained that no intra-corporate relationship existed between respondent Balagtas and North Star. While respondent Balagtas was North Star's *Chief Executive Officer* and *Executive Vice President*, petitioners North Star and Cacho failed to establish that occupying these positions made her a corporate officer. *First*, respondent Balagtas held the *Chief Executive Officer* position as a **mere corporate title** for the purpose of enlarging North Star's corporate image. According to North Star's by-laws, the company President shall assume the position of Chief Executive Officer. Thus, respondent Balagtas was not empowered to exercise the functions of a corporate officer, which was lawfully delegated

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[14] *Rollo*, pp. 98-99.

to North Star's President, petitioner Cacho.[15] And, second, petitioner North Star's By-laws only enumerate the position of *Vice President* as one of its corporate officers. The NLRC should not have assumed that the *Vice President* position is the same as the Executive *Vice President* position that respondent Balagtas admittedly occupied. Following *Matling Industrial and Commercial Corporation v. Coros*,[16] the appellate court reminded that "a position must be expressly mentioned in the by-laws in order to be considered a corporate office."[17]

On the other hand, the Court of Appeals elucidated that based on the allegations in herein respondent Balagtas's complaint filed before the Labor Arbiter, the present case involved **labor issues**. Thus, even using the **nature of controversy test**, it cannot be regarded as an intra-corporate dispute.[18]

The subsequent motions for reconsideration were denied.[19]

Hence, the present petition.

The Issues

Petitioners North Star and Cacho come before this Court raising the following issues

A.

WHETHER RESPONDENT BALAGTAS IS A CORPORATE OFFICER AS DEFINED BY THE CORPORATION CODE, CASE LAW, AND NORTH STAR'S BY-LAWS

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[15] *Id*. at 93-94.

[16] 647 Phil. 324 (2010).

[17] *Rollo*, p. 95.

[18] *Id*. at *People vs. De Guzman*, 95-96.

[19] In a Resolution dated August 6, 2012. Respondent Balagtas filed a Motion for Partial Reconsideration dated November 28, 2011 to seek clarification on the Decision's dispositive portion, more specifically the payment of her monetary award. On the other hand, petitioners Cacho and North Star filed a Motion for Reconsideration dated November 29, 2011 and reiterated that the present case involved an intra-corporate controversy.

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B.

WHETHER THE APPELLATE COURT'S DECISION REVERSING THE NLRC'S FINDING THAT BALAGTAS WAS A CORPORATE OFFICER FOR WHICH HER ACTION FOR ILLEGAL DISMISSAL WAS INAPPROPRIATE FOR IT TO RESOLVE, WAS CORRECT ESPECIALLY BECAUSE NO DISCUSSION OF THAT CONCLUSION WAS MADE BY THE APPELLATE COURT IN ITS DECISION

C.

WHETHER THE AWARD BY THE APPELLATE COURT OF SEPARATION PAY, BACKWAGES, DAMAGES, AND LAWYER'S FEES TO BALAGTAS WAS APPROPRIATE[20]

Petitioners Cacho and North Star insist that the present case's subject matter is an intra-corporate controversy. They maintain that respondent Balagtas, as petitioner North Star's *Executive Vice President* and *Chief Executive Officer*, was its corporate officer. Particularly, they argue that: *first*, under petitioner North Star's **by-laws**,*vice-presidents* are listed as corporate officers. Thus, the NLRC erred when it differentiated between: (a) "*vice president*" as a corporate office provided in petitioner North Star's by-laws, and (b) "*Executive Vice President*," the position occupied by respondent Balagtas. Its interpretation unduly supplanted the Board's wisdom and authority in handling its corporate affairs. Her appointment as one of petitioner North Star's *vice presidents* is evidenced by the **Secretary's Certificate** dated April 22, 2003. As held in *Matling*, if the position or office is created by the **by-laws** and the **appointing authority is the board of directors**, then it is a corporate office. *Second*, she had already been a corporate officer of petitioner North Star for quite some time, having been appointed as *General Manager* through a **Board Resolution** in 1997 and, subsequently, as *Executive Vice President* and *General Manager* in 2001, as evidenced by the **Secretary's Certificate** dated March 23, 2001. And *third*, respondent Balagtas has openly admitted her appointments to these positions. She even acknowledged being

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[20] *Rollo*, p. 49.

a *member of the Board* and at the same time petitioner North Star's *Executive Vice President* and *General Manager*.[21]

Considering all these in applying the **relationship test**, petitioners Cacho and North Star assert that respondent Balagtas is not petitioner North Star's mere employee but a corporate officer thereof whose dismissal is categorized as an intra-corporate matter.[22]

Petitioners Cacho and North Star further cite *Espino v. National Labor Relations Commission*[23] where the Court held that a corporate officer's dismissal is always a corporate act. It cannot be considered as a simple labor case. Thus, under the **nature of the controversy test**, the present case is an intra-corporate dispute because the primary subject matter herein is the dismissal of a corporate officer.

In refuting petitioners Cacho and North Star's allegations, respondent Balagtas avers that: *first*, she was not a corporate officer of petitioner North Star. The Board Resolution and Secretary's Certificates that purportedly support petitioners Cacho and North Star's claims were falsified, forged, and invalid. Petitioners Cacho and North Star failed to show that the *Executive Vice President* position she had occupied was a corporate office. Said position was a mere nomenclature as she was never empowered to exercise the functions of a corporate officer. In fact, in the 2003 General Information Sheet (GIS) of petitioner North Star, the field "corporate position" opposite respondent Balagtas's name was filled out as "not applicable." *Second*, she was no longer a stockholder and director of petitioner North Star. *Third*, she was merely an employee. Petitioner Cacho was the one who hired her, determined her compensation, directed and controlled the manner she performed her work, and ultimately, dismissed her from employment. *Fourth*, the issue of whether or not she was a corporate officer is irrelevant because

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[21] *Id*. at 54-64.

[22] *Id*. at 52.

[23] 310 Phil. 60, 73 (1995).

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her claim for back wages, commissions, and other monies is clearly categorized as a labor dispute, not an intra-corporate controversy.[24] And *fifth*, petitioners Cacho and North Star are already estopped from questioning the jurisdiction of the Labor Arbiter. They actively participated in the proceedings before the Labor Arbiter and cannot assail the validity of such proceedings only after obtaining an unfavorable judgment.[25]

The Ruling of the Court

The petition is meritorious.

The sole issue before the Court is whether or not the present case is an intra-corporate controversy within the jurisdiction of the regular courts or an ordinary labor dispute that the Labor Arbiter may properly take cognizance of.

Respondent Balagtas's dismissal is an intra-corporate controversy

At the onset, We agree with the appellate court's ruling that a **two-tier test** must be employed to determine whether an intra-corporate controversy exists in the present case, *viz*.: (a) the **relationship test**, and (b) the **nature of the controversy test**. This is consistent with the Court's rulings in *Reyes v. Regional Trial Court of Makati, Branch 142*,[26] *Speed Distributing Corporation v. Court of Appeals*,[27] and *Real v. Sangu Philippines, Inc.*[28]

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[24] Citing *Mainland Construction, Co., Inc. v. Movilla*, 320 Phil. 353 (1995).

[25] *Rollo*, pp. 627-642, citing *Prudential Bank and Trust Company v. Reyes*, 404 Phil. 961 (2001).

[26] 583 Phil. 591 (2008).

[27] 469 Phil. 739 (2004).

[28] 655 Phil. 68 (2011).

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A. Relationship Test

A dispute is considered an intra-corporate controversy under the **relationship test** when the relationship between or among the disagreeing parties is any one of the following: (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.[29]

In the present case, petitioners Cacho and North Star allege that respondent Balagtas, as petitioner North Star's *Executive Vice President*, was its **corporate officer**. On the other hand, while respondent Balagtas admits to have occupied said position, she argues she was *Executive Vice President* merely by name and she did not discharge any of the responsibilities lodged in a corporate officer.

Given the parties' conflicting views, We must now determine **whether or not the *Executive Vice President* position is a corporate office** so as to establish the intra-corporate relationship between the parties.

In *Easycall Communications Phils., Inc. v. King*,[30] the Court ruled that a corporate office is **created** by the charter of the corporation *and* the officer is **elected** thereto by the directors or stockholders. In other words, one shall be considered a corporate officer only if two conditions are met, *viz.*: (1) the position occupied was **created by charter/by-laws**, and (2) the officer was **elected (or appointed) by the corporation's board of directors** to occupy said position.

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[29] *Reyes v. Regional Trial Court of Makati, Branch 142*, *supra* note 26 at 607, citing *Union Glass & Container Corp. v. Securities and Exchange Commission*, 211 Phil. 222, 230-231 (1983).

[30] 514 Phil. 296, 302-303 (2005), citing *Tabang v. National Labor Relations Commission*, *supra* note 11 at 429; *Real v. Sangu Philippines, Inc.*, *supra* note 28 at 85-86.

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1. The Executive Vice President position is one of the corporate offices provided in petitioner North Star's By-laws

The rule is that corporate officers are those officers of a corporation who are given that character either by the **Corporation Code** or by the **corporation's by-laws**.[31]

Section 25 of the Corporation Code[32] explicitly provides for the election of the corporation's president, treasurer, secretary, and **such other officers as may be provided for in the by-laws**. In interpreting this provision, the Court has ruled that if the position is other than the corporate president, treasurer, or secretary, it **must be expressly mentioned in the by-laws** in order to be considered as a corporate office.[33]

In this regard, petitioner North Star's by-laws[34] provides the following:

ARTICLE IV

OFFICERS

Section 1. Election/Appointment – Immediately after their election, the Board of Directors shall formally organize by electing the Chairman, the President, **one or more Vice-President** (sic), the Treasurer, and the Secretary, at said meeting.

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[31] *Easycall Communications Phils., Inc. v. King*, *id.* at 302.

[32] 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. (Corporation Code of the Philippines, Batas Pambansa Big. 68, [May 1, 1980].)

[33] *Matling Industrial and Commercial Corporation v. Coros*, *supra* note 16 at 342-343.

[34] *Rollo*, pp. 164-181.

The Board may, from time to time, appoint such other officers as it may determine to be necessary or proper.

Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as President and Treasurer or Secretary at the same time.

Clearly, there may be **one or more vice president** positions in petitioner North Star and, by virtue of its by-laws, all such positions shall be corporate offices.

Consequently, the next question that begs to be asked is **whether or not the phrase "one or more vice president" in the above-cited provision of the by-laws includes the *Executive Vice President* position** held by respondent Balagtas.

In ruling that respondent Balagtas was not a corporate officer of petitioner North Star, the Court of Appeals pointed out that the NLRC should not have assumed that the "*Vice President*" position is the same as the "*Executive Vice President*" position that Balagtas admittedly occupied. In other words, that the **exact and complete name of the position** must appear in the by-laws, otherwise it is an ordinary office whose occupant shall be regarded as a regular employee rather than a corporate officer.

The appellate court's interpretation of the phrase "one or more vice president" unduly restricts one of petitioner North Star's inherent corporate powers, *viz*.: to adopt its own by-laws, provided that it is not contrary to law, morals, or public policy[35] for its internal affairs, to regulate the conduct and prescribe the rights and duties of its members towards itself and among themselves in reference to the management of its affairs.[36]

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[35] The Corporation Code provides, "SECTION 36. *Corporate Powers and Capacity*. — Every corporation incorporated under this Code has the power and capacity: x x x 5. To adopt by-laws, not contrary to law, morals, or public policy, and to amend or repeal the same in accordance with this Code[.]"

[36] *Gokongwei, Jr. v. Securities and Exchange Commission*, 178 Phil. 266, 296 (1979), citing *Mckee & Company v. First National Bank of San Diego*, 265 F. Supp. 1 (1967).

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The use of the phrase "one or more" in relation to the establishment of vice president positions without particular exception indicates an intention to give petitioner North Star's Board ample freedom to make several vice-president positions available as it may deem fit and in consonance with sound business practice.

To require that particular designation/variation of each vice-president (*i.e.*, executive vice president) be specified and enumerated is to invalidate the by-laws' true intention and to encroach upon petitioner North Star's inherent right and authority to adopt its own set of rules and regulations to govern its internal affairs. Whether the creation of several vice-president positions in a company is reasonable is a question of policy that courts of law should not interfere with. Where the reasonableness of a by-law is a mere matter of judgment, and one upon which reasonable minds must necessarily differ, a court would not be warranted in substituting its judgment instead of the judgment of those who are authorized to make by-laws and who have exercised their authority.[37]

Thus, by name, the *Executive Vice President* position is embraced by the phrase "one or more vice president" in North Star's by-laws.

2. Respondent Balagtas was appointed by the Board as petitioner North Star's Executive Vice President

While a corporate office is **created** by an express provision either in the Corporation Code or the By-laws, what makes one a corporate officer is his **election** or **appointment** thereto by the board of directors. Thus, there must be documentary evidence to prove that the person alleged to be a corporate officer was appointed by action or with approval of the board.[38]

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[37] *Gokongwei, Jr. v. Securities and Exchange Commission*, *id*. at 293, citing *People ex rel. Wildi v. Ittner*, 165 Ill. App. 360, 367 (1911).

[38] See *Real v. Sangu Philippines, Inc.*, *supra* note 28 at 87.

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In the present case, petitioners Cacho and North Star assert that respondent Balagtas was elected as *Executive Vice President* by the Board as evidenced by the Secretary's Certificate dated April 22, 2003, which provides:

> I, MOLINA A. CABA, of legal age, Filipino citizen, x x x after being duly sworn to in accordance with law, depose and state: That —
>
> 1. I am the duly appointed Corporate Secretary of North Star International Travel, Inc. x x x.
>
> 2. As such Corporate Secretary of the Corporation, I hereby certify that at the Regular/Special meeting of the Board of Directors and Stockholders of the Corporation which was held on March 31, 2003 during which meeting a quorum was present and majority of the stockholders were in attendance, the following resolutions were unanimously passed and adopted:
>
> "RESOLVED, AS IT IS HEREBY RESOLVED, that **during a meeting of the Board of Directors held last March 31, 2003, the following members of the Board were elected to the corporate position opposite their names:**
>
> | NAME | POSITION |
> |---|---|
> | NORMA D. CACHO | Chairman |
> | **VIRGINIA D. BALAGTAS** | **Executive Vice President**[39] |
>
> (Emphasis supplied)

On the other hand, respondent Balagtas assails the validity of the above-cited Secretary's Certificate for being forged and fabricated. However, aside from these bare allegations, the NLRC observed that she did not present other competent proof to support her claim. To the contrary, respondent Balagtas even admitted that she was elected by the Board as petitioner North Star's *Executive Vice President* and argued that she could not be

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[39] *Rollo*, p. 162.

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removed as such without another valid board resolution to that effect. To support this claim, respondent Balagtas submitted the very same Secretary's Certificate as an attachment to her Position Paper before the Labor Arbiter.[40] That she is now casting doubt over a document she herself has previously relied on belies her own claim that the Secretary's Certificate is a fake.

Thus, the above-cited Secretary's Certificate overcomes respondent Balagtas's contention that she was merely the *Executive Vice President* by name and was never empowered to exercise the functions of a corporate officer. Notably, she did not offer any proof to show that her duties, functions, and compensation were all determined by petitioner Cacho as petitioner North Star's President.

In any case, that the *Executive Vice President's* duties and responsibilities are determined by the President instead of the Board is irrelevant. In determining whether a position is a corporate office, the board of directors' appointment or election thereto is controlling. Article IV, Section 4 of North Star's By-laws provides:

> Section 4. The Vice-President(s) - If one or more Vice-Presidents are **appointed**, he/they shall have such powers and shall perform such duties as may from time to time be **assigned to him/them by the Board of Directors *or* by the President**. [Emphasis supplied.]

When Article IV, Section 4 is read together with Section 1 thereof, it is clear that while petitioner North Star may have one or more vice presidents and the President is authorized to determine each one's scope of work, their appointment or election still devolves upon the Board.

At this point, it is best to emphasize that the **manner of creation** (*i.e.*, under the express provisions of the Corporation Code or by-laws) and the **manner by which it is filled** (*i.e.*, by election or appointment of the board of directors) are sufficient in vesting a position the character of a corporate office.

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[40] *Id*. at 307-308.

Respondent Balagtas also denies her status as one of petitioner North Star's corporate officers because she was not listed as such in petitioner North Star's 2003 General Information Sheet (GIS).

This is of no moment.

The GIS neither governs nor establishes whether or not a position is an ordinary or corporate office. At best, if one is listed in the GIS as an officer of a corporation, his/her position as indicated therein could only be deemed a regular office, and not a corporate office as it is defined under the Corporation Code.[41]

Based on the above discussion, as *Executive Vice President*, respondent Balagtas was one of petitioner North Star's corporate officers. Thus, there is an intra-corporate *relationship* existing between the parties.

B. Nature of the Controversy Test

The existence of an intra-corporate controversy does not wholly rely on the relationship of the parties. The *incidents* of their relationship must also be considered. Thus, under the *nature of the controversy test*, the disagreement must not only be rooted in the existence of an intra-corporate *relationship*, but must as well pertain to the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation. If the relationship and its incidents are merely incidental to the controversy or if there will still be conflict even if the relationship does not exist, then no intra-corporate controversy exists.[42]

Verily, in a long line of cases,[43] the Court consistently ruled that a corporate officer's dismissal is *always* a corporate act,

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[41] See *Cosare v. Broadcom Asia, Inc.*, 726 Phil. 316 (2014).

[42] *Reyes v. Regional Trial Court of Makati, Branch 142*, *supra* note 26 at 608.

[43] *Locsin v. Nissan Lease Phils., Inc.*, 648 Phil. 596 (2010), citing *Estrada v. National Labor Relations Commission*, 331 Phil. 225 (1996); *Lozon v.*

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or an intra-corporate controversy which arises between a stockholder and a corporation. However, a closer look at these cases will reveal that the intra-corporate nature of the disputes therein did not hinge solely on the fact that the subject of the dismissal was a corporate officer.

In *Philippine School of Business Administration v. Leano*,[44] the complainant questioned the validity of his dismissal after his position was declared vacant and he was not re-elected thereto. The cases of *Fortune Cement Corporation v. National Labor Relations Commission*[45] and *Locsin v. Nissan Lease Phils. Inc.*[46] also share similar factual milieu.

On the other hand, the complainant in *Espino v. National Labor Relations Commission*[47] also contested the failure of the board of directors to re-elect him as a corporate officer. The Court found that the board of directors deferred his re-election in light of previous administrative charges filed against the complainant. Later on, the board of directors deemed him resigned from service and his position was subsequently abolished.

Finally, in *Pearson and George, (S.E. Asia), Inc. v. National Labor Relations Commission*,[48] the complainant lost his corporate office primarily because he was not re-elected as a member of the corporation's board of directors. The Court found that the corporate office in question required the occupant to be at the same time a director. Thus, he should lose his position as a corporate officer because he ceased to be a director for any reason (*e.g.*, he was not re-elected as such), such loss is not

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National Labor Relations Commission, 310 Phil. 1 (1995); *Espino v. National Labor Relations Commission*, *supra* note 23; *Fortune Cement Corporation v. National Labor Relations Commission*, 271 Phil. 268 (1991).

[44] 212 Phil. 717 (1984).

[45] *Supra* note 43.

[46] *Supra* note 43.

[47] *Supra* note 23.

[48] 323 Phil. 166 (1996).

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dismissal but failure to qualify or to maintain a prerequisite for that position.

The dismissals in these cases were all considered intra-corporate controversies not only because the complainants were corporate officers, but also, and more importantly, because they were not re-elected to their respective corporate offices and, thus, terminated from the corporation. "The matter of whom to elect is a prerogative that belongs to the Board, and involves the exercise of deliberate choice and the faculty of discriminative selection. Generally speaking, the relationship of a person to a corporation, whether as officer or as agent or employee, is not determined by the nature of the services performed, but by the incidents of the relationship as they actually exist."[49]

In other words, the dismissal must relate to any of the circumstances and incidents surrounding the parties' intra-corporate relationship. To be considered an intra-corporate controversy, the dismissal of a corporate officer must have something to do with the duties and responsibilities attached to his/her corporate office or performed in his/her official capacity.[50]

In respondent Balagtas's Position Paper filed before the Labor Arbiter she alleged as follows: (a) petitioner Cacho informed her, through a letter, that she had been preventively suspended by the Board; (b) she opposed the suspension, was unduly prevented from re-assuming her position as *Executive Vice*

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[49] *Philippine School of Business Administration v. Leano*, *supra* note 44.

[50] In *Real v. Sangu Philippines, Inc.* (*supra* note 28), the Court ruled, "As earlier stated, respondents terminated the services of petitioner for the following reasons: (1) his continuous absences at his post at Ogino Philippines, Inc.; (2) respondents' loss of trust and confidence on petitioner; and, (3) to cut down operational expenses to reduce further losses being experienced by the corporation. Hence, petitioner filed a complaint for illegal dismissal and sought reinstatement, backwages, moral damages and attorney's fees. From these, it is not difficult to see that the reasons given by respondents for dismissing petitioner have something to do with his being a Manager of respondent corporation and nothing with his being a director or stockholder."

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President,[51] and thereafter constructively dismissed; (c) **the Board did not authorize either her suspension and removal from office**; and (d) as a result of her illegal dismissal, **she is entitled to separation pay in lieu of her reinstatement to her previous positions**, plus back wages, allowances, and other benefits.[52]

The foregoing allegations mainly relate to incidents involving her capacity as *Executive Vice President*, a position above-declared as a corporate office, *viz.*: *first*, respondent Balagtas's claim of dismissal without prior authority from the Board reveals her understanding that the appointment and removal of a corporate officer like the *Executive Vice President* could only be had through an official act by the Board. And, *second*, she sought separation pay in lieu of reinstatement to her former positions, one of which was as *Executive Vice President*. Even her prayer for full back wages, allowances, commissions, and other monetary benefits all relate to her corporate office.[53]

On the other hand, petitioners Cacho and North Star terminated respondent Balagtas for the following reasons: (a) for allegedly appropriating company funds for her personal gain; (b) for abandonment of work; (c) violation of a lawful order of the corporation; and (d) loss of trust and confidence.[54] In their Position Paper, petitioners Cacho and North Star described in detail the latter's fund disbursement process,[55] emphasizing respondent Balagtas's role as the one who **approves** payment vouchers and the *signatory* on issued checks—**responsibilities specifically devolved upon her as the *vice president*. And as the *vice president*, respondent Balagtas actively participated in the whole process, if not controlled it altogether**. As a result, petitioners Cacho and North Star accused respondent

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[51] *Rollo*, pp. 245-247.

[52] *Id*. at 256-257.

[53] See *Espino v. National Labor Relations Commission*, *supra* note 23.

[54] *Rollo*, p. 267.

[55] *Id*. at 228-230.

Balagtas of **gravely abusing the confidence the Board has reposed in her** as *vice president* and misappropriating company funds for her own personal gain.

From these, it is clear that the termination complained of is intimately and inevitably linked to respondent Balagtas's role as petitioner North Star's *Executive Vice President: first*, the alleged misappropriations were committed by respondent Balagtas in her capacity as *vice president*, one of the officers responsible for approving the disbursements and signing the checks. And, *second*, these alleged misappropriations breached petitioners Cacho's and North Star's trust and confidence specifically reposed in respondent Balagtas as *vice president*.

That all these incidents are adjuncts of her corporate office lead the Court to conclude that respondent Balagtas's dismissal is an intra-corporate controversy, not a mere labor dispute.

Petitioners Cacho and North Star not estopped from questioning jurisdiction

Respondent Balagtas insists that petitioners belatedly raised the issue of the Labor Arbiter's lack of jurisdiction before the NLRC. Relying on *Tijam v. Sibonghanoy*,[56] she avers that petitioners, after actively participating in the proceedings before the Labor Arbiter and obtaining an unfavorable judgment, are barred by laches from attacking the latter's jurisdiction.

We disagree with respondent Balagtas.

The Court has already held that the ruling in *Tijam v. Sibonghanoy* remains only as an exception to the general rule. Estoppel by laches will only bar a litigant from raising the issue of lack of jurisdiction in exceptional cases similar to the factual milieu of *Tijam v. Sibonghanoy*. To recall, the Court in *Tijam v. Sibonghanoy* ruled that the plea of lack of jurisdiction may no longer be raised for being barred by laches because it was

[56] 131 Phil. 556 (1968).

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raised for the first time in a motion to dismiss **filed almost 15 years after the questioned ruling had been rendered**.[57]

These exceptional circumstances are not present in this case. Thus, the general rule must apply: **that the issue of jurisdiction may be raised at any stage of the proceedings, even on appeal, and is not lost by waiver or by estoppel**. In *Espino v. National Labor Relations Commission*,[58] We ruled:

> The principle of estoppel cannot be invoked to prevent this Court from taking up the question, which has been apparent on the face of the pleadings since the start of the litigation before the Labor Arbiter. In the case of *Dy v. NLRC*, supra, the Court, citing the case of *Calimlim v. Ramirez*, reiterated that the decision of a tribunal not vested with appropriate jurisdiction is null and void. Again, the Court in *Southeast Asian Fisheries Development Center-Aquaculture Department v. NLRC* restated **the rule that the invocation of estoppel with respect to the issue of jurisdiction is unavailing because estoppel does not apply to confer jurisdiction upon a tribunal that has none over the cause of action**. The instant case does not provide an exception to the said rule.[59] (Emphasis supplied.)

All told, the issue in the present case is an intra-corporate controversy, a matter outside the Labor Arbiter's jurisdiction.

WHEREFORE, the petition is hereby **GRANTED**. The Decision dated November 9, 2011 and Resolution dated August 6, 2012 of the Court of Appeals in CA-G.R. SP No. 111637 are **SET ASIDE**. NLRC-NCR Case No. 04-04736-04 is dismissed for lack of jurisdiction, without prejudice to the filing of an appropriate case before the proper tribunal.

SO ORDERED.

Sereno, C.J. (Chairperson), del Castillo, and *Jardeleza, JJ.*, concur.

Martires,[*] *J.*, on official leave.

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[57] *Figueroa v. People*, 580 Phil. 58 (2008).

[58] *Supra* note 23.

[59] *Id*. at 75-76.

[*] On official leave; per raffle dated January 31, 2018.