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FIRST DIVISION

[G.R. No. 168008. August 17, 2011]

PETRONILO J. BARAYUGA, *petitioner, vs.* **ADVENTIST UNIVERSITY OF THE PHILIPPINES, THROUGH ITS BOARD OF TRUSTEES, REPRESENTED BY ITS CHAIRMAN, NESTOR D. DAYSON,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; MOOT AND ACADEMIC CASES; A COURT WILL NOT DETERMINE A MOOT QUESTION OR AN ABSTRACT PROPOSITION, NOR EXPRESS AN OPINION IN A CASE IN WHICH NO PRACTICAL RELIEF CAN BE GRANTED; PETITION IN CASE AT BAR IS ALREADY MOOT.— The mootness of the petition warranted its denial. When the resolution of the issue submitted in a case has become moot and academic, and the prayer of the complaint or petition, even if granted, has become impossible of enforcement – for there is nothing more to enjoin – the case should be dismissed. No useful purpose would then be served by passing on the merits of the petition, because any ruling could hardly be of any practical or useful purpose in the premises. It is a settled rule that a court will not determine a moot question or an abstract proposition, nor express an opinion in a case in which no practical relief can be granted. Indeed, moot and academic cases cease to present any justiciable controversies by virtue of supervening events, and the courts of law will not determine moot questions, for the courts should not engage in academic declarations and determine a moot question.

2. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; GUIDING PRINCIPLES IN THE ISSUANCE THEREOF; CASE AT BAR.— A valid writ of preliminary injunction rests on the weight of evidence submitted by the plaintiff establishing: (*a*) a present and unmistakable right to be protected; (*b*) the acts against which the injunction is directed violate such right; and (*c*) a special

Supreme Court E-Library

and paramount necessity for the writ to prevent serious damages. In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion and will result to nullification thereof. Where the complainant's right is doubtful or disputed, injunction is not proper. The possibility of irreparable damage sans proof of an actual existing right is not a ground for a preliminary injunction. It is clear to us, based on the foregoing principles guiding the issuance of the TRO and the writ of injunction, that the issuance of the assailed order constituted patently grave abuse of discretion on the part of the RTC, and that the CA rightly set aside the order of the RTC.

3. ID.; EVIDENCE; PRESENTATION OF EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; PROOF OF PRIVATE DOCUMENT; CONDITION, NOT COMPLIED WITH IN CASE AT BAR.— [T]he petitioner rested his claim for injunction mainly upon his representation that he was entitled to serve for five years as President of AUP under the Constitution, By-Laws and Working Policy of the General Conference of the Seventh Day Adventists (otherwise called the *Bluebook*). All that he presented in that regard, however, were mere photocopies of pages 225-226 of the *Bluebook*, x x x Yet, the document had no evidentiary value. It had not been officially adopted for submission to and approval of the Securities and Exchange Commission. It was nothing but an unfilled model form. As such, it was, at best, only a private document that could not be admitted as evidence in judicial proceedings until it was first properly authenticated in court. Section 20, Rule 132 of the *Rules of Court* requires authentication as a condition for the admissibility of a private document, to wit: Section 20. *Proof of private document*. – Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either: (a) By anyone who saw the document executed or written; or (b) By evidence of the genuineness of the signature or handwriting of the maker. Any other private document need only be identified as that which it is claimed to be.

4. MERCANTILE LAW; CORPORATION LAW; CORPORATIONS; EDUCATIONAL CORPORATIONS; BOARD OF TRUSTEES; TERM OF OFFICE; PETITIONER'S ASSERTION OF A FIVE-YEAR DURATION

FOR HIS TERM OF OFFICE LACKED LEGAL BASIS; ELUCIDATED.— [T]he petitioner's assertion of a five-year duration for his term of office lacked legal basis. Section 108 of the *Corporation Code* determines the membership and number of trustees in an educational corporation, x x x The second paragraph of the provision, although setting the term of the members of the Board of Trustees at five years, contains a proviso expressly subjecting the duration to what is *otherwise provided* in the articles of incorporation or by-laws of the educational corporation. That contrary provision controls on the term of office. In AUP's case, its amended By-Laws provided the term of the members of the Board of Trustees, and the period within which to elect the officers, x x x In light of foregoing, the members of the Board of Trustees were to serve a term of office of only two years; and the officers, who included the President, were to be elected from among the members of the Board of Trustees during their organizational meeting, which was held during the election of the Board of Trustees *every two years*. Naturally, the officers, including the President, were to exercise the powers vested by Section 2 of the amended By-Laws for a term of only two years, not five years. Ineluctably, the petitioner, having assumed as President of AUP on January 23, 2001, could serve for only two years, or until January 22, 2003. By the time of his removal for cause as President on January 27, 2003, he was already occupying the office in a hold-over capacity, and could be removed *at any time*, *without cause*, upon the election or appointment of his successor. His insistence on holding on to the office was untenable, therefore, and with more reason when one considers that his removal was due to the loss of confidence on the part of the Board of Trustees.

5. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE DUE PROCESS; REQUIREMENTS THEREOF, SATISFIED IN CASE AT BAR.— The requirements of due process in an administrative context are satisfied when the parties are afforded fair and reasonable opportunity to explain their respective sides of the controversy, for the essence of due process is an opportunity to be heard. Here, the petitioner was accorded the full opportunity to be heard, as borne by the fact that he was granted the opportunity to refute the adverse findings contained in the GCAS audit

Supreme Court E-Library

report and that the Board of Trustees first heard his side during the board meetings before his removal. After having voluntarily offered his refutations in the proceedings before the Board of Trustees, he should not now be permitted to denounce the proceedings and to plead the denial of due process after the decision of the Board of Trustees was adverse to him. Nor can his urging that the proceedings were illegal for lack of prior notification be plausible in light of the fact that he willingly participated therein without raising the objection of lack of notification. Thereby, he effectively waived his right to object to the validity of the proceedings based on lack of due notice.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo and Ongsiako for petitioner.
Paguio & Associates for respondents.

D E C I S I O N

BERSAMIN, *J*:

The injunctive relief protects only a right *in esse*. Where the plaintiff does not demonstrate that he has an existing right to be protected by injunction, his suit for injunction must be dismissed for lack of a cause of action.

The dispute centers on whether the removal of the petitioner as President of respondent Adventist University of the Philippines (AUP) was valid, and whether his term in that office was five years, as he insists, or only two years, as AUP insists.

We hereby review the decision promulgated on August 5, 2004,[1] by which the Court of Appeals (CA) nullified and set aside the writ of preliminary injunction issued by the Regional Trial Court (RTC), Branch 21, in Imus, Cavite to prevent AUP from removing the petitioner.

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[1] *Rollo*, pp. 71-85; penned by Associate Justice Josefina Guevara-Salonga, with Associate Justice Conrado M. Vasquez, Jr. (later Presiding Justice of the CA, but already retired) and Associate Justice Fernanda Lampas-Peralta, concurring.

Supreme Court E-Library

Antecedents

AUP, a non-stock and non-profit domestic educational institution incorporated under Philippine laws on March 3, 1932, was directly under the North Philippine Union Mission (NPUM) of the Southern Asia Pacific Division of the Seventh Day Adventists. During the 3rd Quinquennial Session of the General Conference of Seventh Day Adventists held from November 27, 2000 to December 1, 2000, the NPUM Executive Committee elected the members of the Board of Trustees of AUP, including the Chairman and the Secretary. Respondent Nestor D. Dayson was elected Chairman while the petitioner was chosen Secretary.

On January 23, 2001, almost two months following the conclusion of the 3rd Quinquennial Session, the Board of Trustees appointed the petitioner President of AUP.[2] During his tenure, or from November 11 to November 13, 2002, a group from the NPUM conducted an external performance audit. The audit revealed the petitioner's autocratic management style, like making major decisions without the approval or recommendation of the proper committees, including the Finance Committee; and that he had himself done the canvassing and purchasing of materials and made withdrawals and reimbursements for expenses without valid supporting receipts and without the approval of the Finance Committee. The audit concluded that he had committed serious violations of fundamental rules and procedure in the disbursement and use of funds.

The NPUM Executive Committee and the Board of Trustees decided to immediately request the services of the General Conference Auditing Service (GCAS) to determine the veracity of the audit findings. Accordingly, GCAS auditors worked in the campus from December 4 to December 20, 2002 to review the petitioner's transactions during the period from April 2002 to October 2002. On December 20, 2002, GCAS auditors reported the results of their review, and submitted their observations and recommendations to the Board of Trustees.

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[2] CA *rollo,* Vol. I, pp. 19-20.

Supreme Court E-Library

Upon receipt of the GCAS report that confirmed the initial findings of the auditors on January 8, 2003, the NPUM informed the petitioner of the findings and required him to explain.

On January 15, 2003, Chairman Dayson and the NPUM Treasurer likewise informed the petitioner inside the NPUM office on the findings of the auditors in the presence of the AUP Vice-President for Financial Affairs, and reminded him of the possible consequences should he fail to satisfactorily explain the irregularities cited in the report. He replied that he had already prepared his written explanation.

The Board of Trustees set a special meeting at 2 p.m. on January 22, 2003. Being the Secretary, the petitioner himself prepared the agenda and included an item on his case. In that meeting, he provided copies of the auditors' report and his answers to the members of the Board of Trustees. After hearing his explanations and oral answers to the questions raised on issues arising from the report, the members of the Board of Trustees requested him to leave to allow them to analyze and evaluate the report and his answers. Despite a long and careful deliberation, however, the members of the Board of Trustees decided to adjourn that night and to set another meeting in the following week considering that the meeting had not been specifically called for the purpose of deciding his case. The adjournment would also allow the Board of Trustees more time to ponder on the commensurate disciplinary measure to be meted on him.

On January 23, 2003, Chairman Dayson notified the petitioner in writing that the Board of Trustees would hold in abeyance its deliberation on his answer to the auditors' report and would meet again at 10:00 a.m. on January 27, 2003. Chairman Dayson indicated that some sectors in the campus had not been properly represented in the January 22, 2003 special meeting, and requested the petitioner as Secretary to ensure that all sectors are duly represented in the next meeting of the Board of Trustees.[3]

In the January 27, 2003 special meeting, the petitioner sent a letter to the Board of Trustees. The members, by secret ballot,

[3] *Id.*, p. 182.

Supreme Court E-Library

voted to remove him as President because of his serious violations of fundamental rules and procedures in the disbursement and use of funds as revealed by the special audit; to appoint an interim committee consisting of three members to assume the powers and functions of the President; and to recommend him to the NPUM for consideration as Associate Director for Secondary Education.[4]

On January 28, 2003, the petitioner was handed inside the NPUM office a letter, together with a copy of the minutes of the special meeting held the previous day. In turn, he handed to Chairman Dayson a letter requesting two weeks within which to seek a reconsideration, stating that he needed time to obtain supporting documents because he was then attending to his dying mother.[5]

In the evening of January 28, 2003, the Board of Trustees, most of whose members had not yet left Cavite, reconvened to consider and decide the petitioner's request for reconsideration. During the meeting, he made an emotional appeal to allow him to continue as President, promising to immediately vacate his office should he again commit any of the irregularities cited in the auditors' report. He added that should the Board of Trustees not favor his appeal, he would settle for a retirement package for him and his wife and would leave the church.

The Board of Trustees denied the petitioner's request for reconsideration because his reasons were not meritorious. Board Member Elizabeth Role served the notice of the denial on him the next day, but he refused to receive the notice, simply saying *Alam ko na yan*.[6]

The petitioner later obtained a copy of the inter-school memorandum dated January 31, 2003 informing AUP students, staff, and faculty members about his relief as President and the

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[4] *Id.,* pp. 184-186.

[5] *Id.,* p. 187.

[6] *Id.*, p. 189.

Supreme Court E-Library

appointment of an interim committee to assume the powers and duties of the President.

On February 4, 2003, the petitioner brought his suit for injunction and damages in the RTC, with prayer for the issuance of a temporary restraining order (TRO), impleading AUP and its Board of Trustees, represented by Chairman Dayson, and the interim committee. His complaint alleged that the Board of Trustees had relieved him as President without valid grounds despite his five-year term; that the Board of Trustees had thereby acted in bad faith; and that his being denied ample and reasonable time to present his evidence deprived him of his right to due process.[7]

The suit being intra-corporate and summary in nature, the application for TRO was heard by means of affidavits. In the hearing of February 7, 2003, the parties agreed not to harass each other. The RTC used the mutual agreement as its basis to issue a *status quo* order on February 11, 2003.[8]

In their answer with counterclaim, the respondents denied the allegations of the petitioner, and averred that he had been validly removed for cause; and that he had been granted ample opportunity to be heard in his defense.[9]

Order of the RTC

On March 21, 2003, after summary hearing, the RTC issued the TRO enjoining the respondents and persons acting for and in their behalf from implementing the resolution removing him as President issued by the Board of Trustees during the January 27, 2003 special meeting, and enjoining the interim committee from performing the functions of President of AUP. The RTC did not require a bond.[10]

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[7] *Id.,* pp. 115-126.

[8] *Id.*, p. 110.

[9] *Id.,* pp. 146-158.

[10] *Id.,* pp. 108-109.

Supreme Court E-Library

After further hearing, the RTC issued on April 25, 2003 its controversial order,[11] granting the petitioner's application for a writ of preliminary injunction. It thereby resolved three issues, namely: (*a*) whether the special board meetings were valid; (*b*) whether the conflict-of-interest provision in the By-Laws and Working Policy was violated; and (*c*) whether the petitioner was denied due process. It found for the petitioner upon all the issues. On the first issue, it held that there was neither a written request made by any two members of the Board of Trustees nor proper notices sent to the members as required by AUP's By-Laws, which omissions, being patent defects, tainted the special board meetings with nullity. Anent the second issue, it ruled that the purchase of coco lumber from his *balae* (*i.e.*, mother-in-law of his son) was not covered by the conflict-of-interest provision, for AUP's Model Statement of Acceptance form mentioned only the members of the immediate family and did not extend to the relationship between him and his *balae*. On the third issue, it concluded that he was deprived of due process when the Board of Trustees refused to grant his motion for reconsideration and his request for additional time to produce his evidence, and instead immediately implemented its decision by relieving him from his position without according him the treatment befitting a university President.

Proceedings in the CA

With the Interim Rules for Intra-Corporate Controversies prohibiting a motion for reconsideration, the respondents forthwith filed a petition for *certiorari* in the CA,[12] contending that the petitioner's complaint did not meet the requirement that an injunctive writ should be anchored on a legal right; and that he had been merely appointed, not elected, as President for a term of office of only two years, not five years, based on AUP's amended By-Laws.

In the meanwhile, on September 17, 2003, the petitioner filed a supplemental petition in the CA,[13] alleging that after the

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[11] *Rollo*, pp. 128-131.

[12] *Id.*, pp. 132-231.

[13] CA *rollo*, Vol. I, pp. 556-575.

Supreme Court E-Library

commencement of his action, he filed in the RTC an urgent motion for the issuance of a second TRO to enjoin the holding of an AUP membership meeting and the election of a new Board of Trustees, capitalizing on the admission in the respondents' answer that he had been elected in 2001 to a five-year term of office. He argued that the admission estopped the respondents from insisting to the contrary.

The respondents filed in the CA a verified urgent motion for a TRO and to set a hearing on the application for preliminary injunction to enjoin the RTC from implementing the assailed order granting a writ of preliminary injunction and from further proceeding in the case. The petitioner opposed the motion for TRO, but did not object to the scheduling of preliminary injunctive hearings.

On February 24, 2004, the CA issued a TRO to enjoin the RTC from proceeding for a period of 60 days, and declared that the prayer for injunctive relief would be resolved along with the merits of the main case.

The petitioner sought a clarification of the TRO issued by the CA, considering that his cause of action in his petitions to cite the respondents in indirect contempt dated March 5, 2004 and March 16, 2004 filed in the RTC involved the election of a certain Robin Saban as the new President of AUP in blatant and malicious violation of the writ of preliminary injunction issued by the RTC. In clarifying the TRO, the CA explained that it did not go beyond the reliefs prayed for in the respondents' motion for TRO and preliminary injunctive hearings.

On August 5, 2004, the CA rendered its decision nullifying the RTC's writ of preliminary injunction. It rejected the petitioner's argument that Article IV, Section 3 of AUP's Constitution and By-Laws and Working Policy of the Conference provided a five-year term for him, because the provision was inexistent. It ruled that the petitioner's term of office had expired on January 22, 2003, or two years from his appointment, based on AUP's amended By-Laws; that, consequently, he had been a mere *de facto* officer appointed by the members of the Board of Trustees;

Supreme Court E-Library

and that he held no legal right warranting the issuance of the writ of preliminary injunction.

The CA declared that the rule on judicial admissions admitted of exceptions, as held in *National Power Corporation v. Court of Appeals,*[14] where the Court held that admissions were not evidence that prevailed over documentary proof; that the petitioner's being able to answer the results of the special audit point-by-point belied his allegation of denial of due process; that AUP was the party that stood to be injured by the issuance of the injunctive writ in the form of a "demoralized administration, studentry, faculty and staff, sullied reputation, and dishonest leadership"; and that the assailed RTC order sowed confusion and chaos because the RTC thereby chose to subordinate the interest of the entire AUP community to that of the petitioner who had been deemed not to have satisfied the highest ideals required of his office.

Issues

Undeterred, the petitioner has appealed, contending that:

I.

THE COURT OF APPEALS HAS DECIDED CONTRARY TO LAW AND JURISPRUDENCE WHEN IT RULED THAT THE EXTRAORDINARY WRIT OF *CERTIORARI* APPLIED IN THE CASE AT BAR.

II.

THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH THE ESTABLISHED LAW AND JURISPRUDENCE THAT "ADMISSIONS, VERBAL OR WRITTEN, MADE BY A PARTY IN THE COURSE OF THE PROCEEDINGS IN THE SAME CASE, DOES NOT REQUIRE PROOF," BY REQUIRING PETITIONER BARAYUGA TO PRESENT EVIDENCE THAT HIS TERM AS PRESIDENT OF AUP IS FOR FIVE (5) YEARS.

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[14] G.R. No. 113103, June 13, 1997, 273 SCRA 419.

Supreme Court E-Library

III.

THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW AND ESTABLISHED FACTS WHEN IT RULED THAT PETITIONER BARAYUGA HAS ONLY A TERM OF TWO (2) YEARS INSTEAD OF FIVE (5) YEARS AS CLEARLY ADMITTED BY PRIVATE RESPONDENT AUP IN ITS ANSWER.

IV.

THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW AND JURISPRUDENCE BY SOLELY RELYING ON THE CASE OF *NATIONAL POWER CORPORATION v. COURT OF APPEALS*, WHICH INVOLVE FACTS DIFFERENT FROM THE PRESENT CASE.

V.

THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW AND ESTABLISHED FACTS WHEN IT UNJUSTIFIABLY ALLOWED THE WAIVER OF NOTICE FOR THE SPECIAL MEETING OF THE BOARD OF TRUSTEES.

VI.

THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW AND ESTABLISHED FACTS WHEN IT ERRONEOUSLY CONCLUDED THAT PETITIONER BARAYUGA WAS MERELY OCCUPYING THE POSITION OF AUP PRESIDENT IN A HOLD-OVER CAPACITY.

The petitioner argues that the assailed RTC order, being supported by substantial evidence, accorded with law and jurisprudence; that his tenure as President under the Constitution, By-Laws and the Working Policy of the Conference was for five years, contrary to the CA's findings that he held the position in a hold-over capacity; that instead, the CA should have applied the rule on judicial admission, because the holding in *National Power Corporation v. Court of Appeals,* cited by the CA, did not apply, due to AUP not having presented competent evidence

Supreme Court E-Library

to prove that he had not been elected by the Board of Trustees as President of AUP; and that his removal during the special board meeting that was invalidly held for lack of notice denied him due process.

AUP counters that:

I

PETITIONER IS NOT AN ELECTED TRUSTEE OF THE AUP BOARD, NOR WAS (HE) ELECTED AS PRESIDENT, AND AS SUCH, HE CAN CLAIM NO RIGHT TO THE AUP PRESIDENCY, BEING TWICE DISQUALIFIED BY LAW, WHICH RENDERS MOOT AND ACAMEDIC ALL OF THE ARGUMENTS IN THIS PETITION.

II

EVEN IF WE FALSELY ASSUME *EX GRATIA* THAT PETITIONER IS AN ELECTED TRUSTEE AND ELECTED PRESIDENT, THE TWO (2) YEAR TERM PROVIDED IN AUP'S BY-LAWS – REQUIRED BY THE CORPORATION CODE AND APPROVED BY THE SEC – IS WHAT GOVERNS THE INTRA-CORPORATE CONTROVERSY, THE AUP'S ADMISSION IN ITS ANSWER THAT HE HAS A FIVE (5) YEAR TERM BASED ON HIS INVOKED SAMPLE CONSTITUTION, BY-LAWS AND POLICY OF THE SEVENTH DAY ADVENTIST NOTWITHSTANDING.

III

PURSUANT TO THE RULES AND SETTLED JURISPRUDENCE, THE ADMISSION IN THE ANSWER IS NOT EVEN PREJUDICIAL AT ALL.

IV

EVEN IF WE FALSELY ASSUME, JUST FOR THE SAKE OF ARGUMENT, THAT THE PETITIONER HAD A FIVE (5) YEAR TERM AS UNIVERSITY PRESIDENT, HE WAS NONETHELESS VALIDLY TERMINATED FOR LOSS OF CONFIDENCE, GIVEN THE NUMEROUS ADMITTED ANOMALIES HE COMMITTED.

V

PETITIONER CANNOT COMPLAIN THAT NOTICES OF THE BOARD MEETING WERE NOT SENT TO ALL "THE TWENTY FIVE

Supreme Court E-Library

(25) TRUSTEES OF THE AUP BOARD," SINCE: [1] AS THE AUP SECRETARY, IT WAS HE WHO HAD THE DUTY TO SEND THE NOTICES; [2] WORSE, HE ATTENDED AND EXHAUSTIVELY DEFENDED HIS WRITTEN ANSWER IN THE AUP BOARD OF TRUSTEES MEETING, THUS, WAIVING ANY "NOTICE OBJECTION"; [3] WORST OF ALL, HIS AFTERTHOUGHT OBJECTION IS DECEPTIVELY FALSE IN FACT.

The decisive question is whether the CA correctly ruled that the petitioner had no legal right to the position of President of AUP that could be protected by the injunctive writ issued by the RTC.

Ruling

We deny the petition for review for lack of merit.

1.

Petition is already moot

The injunctive writ issued by the RTC was meant to protect the petitioner's right to stay in office as President. Given that the lifetime of the writ of preliminary injunction was *co-extensive* with the duration of the act sought to be prohibited,[15] this injunctive relief already became moot in the face of the admission by the petitioner himself, through his affidavit,[16] that his term of office premised on his alleged five-year tenure as President had lasted only until December 2005. In short, the injunctive writ granted by the RTC had expired upon the end of the term of office (as posited by him).

The mootness of the petition warranted its denial. When the resolution of the issue submitted in a case has become moot and academic, and the prayer of the complaint or petition, even if granted, has become impossible of enforcement – for there is nothing more to enjoin – the case should be dismissed.[17] No

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[15] *Ticzon v. Video Post Manila, Inc.*, G.R. No. 136342, June 15, 2000, 333 SCRA 472.

[16] *Rollo*, pp. 101-109.

[17] *Lomo v. Mabelin*, G.R. No. 68649, December 29, 1986, 146 SCRA 473; *Bongat v. Bureau of Labor Relations*, G.R. No. L-41039, April 30, 1985, 136 SCRA 225, 229.

Supreme Court E-Library

useful purpose would then be served by passing on the merits of the petition, because any ruling could hardly be of any practical or useful purpose in the premises. It is a settled rule that a court will not determine a moot question or an abstract proposition, nor express an opinion in a case in which no practical relief can be granted.[18] Indeed, moot and academic cases cease to present any justiciable controversies by virtue of supervening events,[19] and the courts of law will not determine moot questions,[20] for the courts should not engage in academic declarations and determine a moot question.[21]

2.

RTC acted in patently grave abuse of discretion in issuing the TRO and writ of injunction

Nonetheless, the aspect of the case concerning the petitioner's claim for damages has still to be decided. It is for this reason that we have to resolve whether or not the petitioner had a right to the TRO and the injunctive writ issued by the RTC.

A valid writ of preliminary injunction rests on the weight of evidence submitted by the plaintiff establishing: (*a*) a present and unmistakable right to be protected; (*b*) the acts against

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[18] *Vda. de Dabao v. Court of Appeals*, G.R. No. 116526, March 23, 2004, 426 SCRA 91; *Banco Filipino Savings and Mortgage Bank v. Tuazon, Jr.*, G.R. No. 132796, March 10, 2004, 425 SCRA 129; *Paloma v. Court of Appeals*, G. R. No. 145431, November 11, 2003, 415 SCRA 590; *Philippine Airlines v. Pascua*, G. R. No. 143258, August 15, 2003, 409 SCRA 195; *City Sheriff v. Fortunado*, G.R. No. 80390, March 27, 1998, 288 SCRA 190; See also *Bongat v. Bureau of Labor Relations, supra,* citing *Central Azucarera Don Pedro v. Don Pedro Security Guards Union*, G.R. No. L-21610, March 15, 1968, 22 SCRA 1053.

[19] *Huibonhoa v. Concepcion*, G.R. No. 153785, August 3, 2006, 497 SCRA 563; *Province of Batangas v. Romulo*, May 27, 2004, 429 SCRA 736.

[20] *Cole v. Court of Appeals*, G.R. No. 137551, December 26, 2000, 348 SCRA 692.

[21] *Pepsi-Cola Bottling Company v. Secretary of Labor*, G.R. No. 96663, August 10, 1999, 312 SCRA 104.

Supreme Court E-Library

which the injunction is directed violate such right; and (*c*) a special and paramount necessity for the writ to prevent serious damages.[22] In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion[23] and will result to nullification thereof. Where the complainant's right is doubtful or disputed, injunction is not proper. The possibility of irreparable damage sans proof of an actual existing right is not a ground for a preliminary injunction.[24]

It is clear to us, based on the foregoing principles guiding the issuance of the TRO and the writ of injunction, that the issuance of the assailed order constituted patently grave abuse of discretion on the part of the RTC, and that the CA rightly set aside the order of the RTC.

To begin with, the petitioner rested his claim for injunction mainly upon his representation that he was entitled to serve for five years as President of AUP under the Constitution, By-Laws and Working Policy of the General Conference of the Seventh Day Adventists (otherwise called the *Bluebook*). All that he presented in that regard, however, were mere photocopies of pages 225-226 of the *Bluebook*, which read:

> Article IV-Board of Directors
>
> Sec. 1. This school operated by the _____ Union Conference/Mission of Seventh-Day Adventists shall be under the direct control of a board of directors, elected by the constituency in its quinquennial sessions. The board of directors shall consist of 15 to 21 members, depending on the size of the institution. *Ex officio* members shall be the union president as chairperson, the head of the school as secretary, the union secretary, the union treasurer, the union director of education, the presidents of the conferences/ missions within the union. xxx.

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[22] *Nisce v. Equitable PCI-Bank, Inc.*, G.R. No. 167434, February 19, 2007, 516 SCRA 231, 252.

[23] *Tayag v. Lacson*, G.R. No. 134971, March 25, 2004, 426 SCRA 282, 299.

[24] *Nisce v. Equitable PCI-Bank, supra* at note 22, p. 253.

Supreme Court E-Library

Sec. 2. The term of office of members of the board of directors shall be five years to coincide with the _____ Union Conference/Mission quinquennial period.

Sec. 3. The duties of the board of directors shall be to elect quinquenially the president, xxx.

Yet, the document had no evidentiary value. It had not been officially adopted for submission to and approval of the Securities and Exchange Commission. It was nothing but an unfilled model form. As such, it was, at best, only a private document that could not be admitted as evidence in judicial proceedings until it was first properly authenticated in court.

Section 20, Rule 132 of the *Rules of Court* requires authentication as a condition for the admissibility of a private document, to wit:

Section 20. *Proof of private document*. – Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

(a) By anyone who saw the document executed or written; or

(b) By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as that which it is claimed to be. (21 a)

For the RTC to base its issuance of the writ of preliminary injunction on the mere photocopies of the document, especially that such document was designed to play a crucial part in the resolution of the decisive issue on the length of the term of office of the petitioner, was gross error.

Secondly, even assuming that the petitioner had properly authenticated the photocopies of the *Bluebook*, the provisions contained therein did not vest the right to an office in him. An unfilled model form creates or establishes no rights in favor of anyone.

Thirdly, the petitioner's assertion of a five-year duration for his term of office lacked legal basis.

Supreme Court E-Library

Section 108 of the *Corporation Code* determines the membership and number of trustees in an educational corporation, *viz*:

> Section 108. *Board of trustees*. – Trustees of educational institutions organized as educational corporations shall not be less than five (5) nor more than fifteen (15): Provided, however, That the number of trustees shall be in multiples of five (5).
>
> Unless otherwise provided in the articles of incorporation or the by-laws, the board of trustees of incorporated schools, colleges, or other institutions of learning shall, as soon as organized, so classify themselves that the term of office of one-fifth (1/5) of their number shall expire every year. **Trustees thereafter elected to fill vacancies, occurring before the expiration of a particular term, shall hold office only for the unexpired period. Trustees elected thereafter to fill vacancies caused by expiration of term shall hold office for five (5) years**. A majority of the trustees shall constitute a quorum for the transaction of business. The powers and authority of trustees shall be defined in the by-laws.
>
> For institutions organized as stock corporations, the number and term of directors shall be governed by the provisions on stock corporations.

The second paragraph of the provision, although setting the term of the members of the Board of Trustees at five years, contains a proviso expressly subjecting the duration to what is *otherwise provided* in the articles of incorporation or by-laws of the educational corporation. That contrary provision controls on the term of office.[25]

In AUP's case, its amended By-Laws provided the term of the members of the Board of Trustees, and the period within which to elect the officers, thusly:

> Article I
>
> Board of Trustees
>
> Section 1. At the first meeting of the members of the corporation, and thereafter every two years, a Board of Trustees shall be elected.

[25] See Campos, *The Corporation Code*, Volume 2 (1990), p. 610.

Supreme Court E-Library

It shall be composed of fifteen members in good and regular standing in the Seventh-day Adventist denomination, **each of whom shall hold his office for a term of two years, or until his successor has been elected and qualified.** If a trustee ceases at any time to be a member in good and regular standing in the Seventh-day Adventist denomination, he shall thereby cease to be a trustee.

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Article IV

Officers

Section 1. *Election of officers*. – At their **organization meeting**, the members of the Board of Trustees shall elect **from among themselves** a Chairman, a Vice-Chairman, a President, a Secretary, a Business Manager, and a Treasurer. The same persons may hold and perform the duties of more than one office, provided they are not incompatible with each other.[26]

In light of foregoing, the members of the Board of Trustees were to serve a term of office of only two years; and the officers, who included the President, were to be elected from among the members of the Board of Trustees during their organizational meeting, which was held during the election of the Board of Trustees *every two years*. Naturally, the officers, including the President, were to exercise the powers vested by Section 2 of the amended By-Laws for a term of only two years, not five years.

Ineluctably, the petitioner, having assumed as President of AUP on January 23, 2001, could serve for only two years, or until January 22, 2003. By the time of his removal for cause as President on January 27, 2003, he was already occupying the office in a hold-over capacity, and could be removed *at any time*, *without cause*, upon the election or appointment of his successor. His insistence on holding on to the office was untenable, therefore, and with more reason when one considers that his removal was due to the loss of confidence on the part of the Board of Trustees.

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[26] Records Volume II, pp. 786, 788.

Supreme Court E-Library

4.
Petitioner was not denied due process

The petitioner complains that he was denied due process because he was deprived of the right to be heard and to seek reconsideration; and that the proceedings of the Board of Trustees were illegal due to its members not being properly notified of the meeting.

Still, the petitioner fails to convince us.

The requirements of due process in an administrative context are satisfied when the parties are afforded fair and reasonable opportunity to explain their respective sides of the controversy,[27] for the essence of due process is an opportunity to be heard.[28] Here, the petitioner was accorded the full opportunity to be heard, as borne by the fact that he was granted the opportunity to refute the adverse findings contained in the GCAS audit report and that the Board of Trustees first heard his side during the board meetings before his removal. After having voluntarily offered his refutations in the proceedings before the Board of Trustees, he should not now be permitted to denounce the proceedings and to plead the denial of due process after the decision of the Board of Trustees was adverse to him.

Nor can his urging that the proceedings were illegal for lack of prior notification be plausible in light of the fact that he willingly participated therein without raising the objection of lack of notification. Thereby, he effectively waived his right to object to the validity of the proceedings based on lack of due notice.[29]

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[27] *Samalio v. Court of Appeals,* G.R. No. 140079, March 31, 2005, 454 SCRA 462, 473.

[28] *Association of International Shipping Lines, Inc. v. Philippine Ports Authority,* G.R. No. 158000, March 31, 2005, 454 SCRA 701, 717.

[29] See third paragraph of Section 50 of the *Corporation Code* (B.P. Blg. 68).

Section 50. *Regular and special meetings of stockholders or members.* – xxx.

Supreme Court E-Library

5.
Conclusion

The removal of the petitioner as President of AUP, being made in accordance with the AUP Amended By-Laws, was valid. With that, our going into the other issues becomes unnecessary. We conclude that the order of the RTC granting his application for the writ of preliminary injunction was tainted with manifestly grave abuse of discretion; that the CA correctly nullified and set aside the order; and that his claim for damages, being bereft of factual and legal warrant, should be dismissed.

WHEREFORE, we *DENY* the petition for review on *certiorari* for lack of merit, and hereby *DISMISS* SEC Case No. 028-03 entitled *Dr. Petronilo Barayuga v. Nestor D. Dayson, et al*.

The petitioner shall pay the cost of suit.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Del Castillo, and *Villarama, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 171634. August 17, 2011]

LEONARDO S. UMALE, substituted by CLARISSA VICTORIA UMALE,[1] *petitioner, vs.* **ATTY. ALFREDO VILLAMOR, JR.,** *respondent.*

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Notice of any meeting may be waived, expressly or impliedly, by any stockholder or member.

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[1] Leonardo S. Umale, who died on March 16, 2006, was substituted by his wife Clarissa Victoria Umale.