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the Decision of 25 May 1993 of the Regional Trial Court of Cebu, Branch 24, in Civil Case No. CEB-13798; and REINSTATING the Decision of 12 February 1993 of the Municipal Trial Court in Cities of Cebu City, Branch 8, in Civil Case No. R-31419, subject to the modification that the private respondents, as lessees, may remove their house from the lot in question within sixty (60) days from finality of this Decision, unless within the same period the petitioners, as lessors, exercise their option under Article 1678 of the Civil Code by paying the private respondents one-half (1/2) of the value of such house, and should the parties be unable to agree on such value, the trial court of origin shall receive the evidence thereon and resolve the issue.

No pronouncement as to costs.

SO ORDERED.

Narvasa, C.J. (Chairman), Melo, Francisco, and *Panganiban, JJ.,* concur.

SECOND DIVISION

[G.R. No. 121143. January 21, 1997]

PURIFICACION G. TABANG, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION** and **PAMANA GOLDEN CARE MEDICAL CENTER FOUNDATION, INC.,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; P.D. 902-A; EXCLUSIVE JURISDICTION OF SEC OVER INTRACOPORATE CONTROVERSY; INTRACORPORATE CONTROVERSIES, EXPLAINED; CASE AT BENCH.— We agree with the findings of the NLRC that it is the SEC which has jurisdiction

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over the case at bar. The charges against herein private respondent partake of the nature of an intra-corporate controversy. The determination of the rights of petitioner and the concomitant liability of private respondent arising from her ouster as a medical director and/or hospital administrator, which are corporate offices, is an intra-corporate controversy subject to the jurisdiction of the SEC. A corporate officer's dismissal is always a corporate act, or an intra-corporate controversy, and the nature is not altered by the reason or wisdom with which the Board of Directors may have in taking such action. Also, an intra-corporate controversy is one which arises between a stockholder and the corporation. There is no distinction, qualification, nor any exemption whatsoever. The provision is broad and covers all kinds of controversies between stockholders and corporations.

2. **ID.; ID.; ID.; OUSTER OF CORPORATE OFFICER IS AN INTRACORPORATE CONTROVERSY; CASE AT BAR.**— Contrary to the contention of petitioner, a medical director and a hospital administrator are considered as corporate officers under the by-laws of respondent corporation. Section 2(i), Article I thereof states that one of the powers of the Board of Trustees is "(t)o appoint a Medical Director, Comptroller/ Administrator, Chiefs of Services and such other officers as it may deem necessary and prescribe their powers and duties." x x x Considering that petitioner, unlike an ordinary employee, was appointed by respondent corporation's Board of Trustees in its memorandum of October 30, 1990, she is deemed an officer of the corporation. Perforce, Section 5(c) of Presidential Decree No. 902-A, which provides that the SEC exercises exclusive jurisdiction over controversies in the election or appointment of directors, trustees, officers or managers of corporations, partnerships or associations, applies in the present dispute. Accordingly, jurisdiction over the same is vested in the SEC, and not in the Labor Arbiter or the NLRC.

3. **ID.; ID.; ID.; ID.; OFFICER DISTINGUISHED FROM AN EMPLOYEE.**— It has been held that an "office" is created by the charter of the corporation and the officer is elected by the directors or stockholders. On the other hand, an "employee" usually occupies no office and generally is employed not by action of the directors or stockholders but by the managing officer of the corporation who also determines the compensation to be paid to such employee.

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4. ID.; ID.; ID.; ID.; JURISDICTION OF THE SEC NOT REMOVED BY OTHER CLAIMS INVOLVING CORPORATE OFFICER; CASE AT BAR.— Even assuming that the monthly payment of P5,000.00 was a valid claim against respondent corporation, this would not operate to effectively remove this case from the jurisdiction of the SEC. In the case of Cagayan de Oro Coliseum, Inc. *vs.* Office of the Minister of Labor and Employment, etc., et al., we ruled that "(a)lthough the reliefs sought by Chavez appear to fall under the jurisdiction of the labor arbiter as they are claims for unpaid salaries and other remunerations for services rendered, a close scrutiny thereof shows that said claims are actually part of the perquisites of his position in, and therefore interlinked with his relations with the corporation. In Dy, et al. *vs.* NLRC, et al., the Court said: '(t)he question of remuneration involving as it does, a person who is not a mere employee but a stockholder and officer, an integral part, it might be said, of the corporation, is not a simple labor problem but a matter that comes within the area of corporate affairs and management and is in fact a corporate controversy in contemplation of the Corporation Code.'"

APPEARANCES OF COUNSEL

Roldan M. Noynay for petitioner.
Fernandez C. Fuentes for private respondent.

D E C I S I O N

REGALADO, *J.:*

This is a petition for *certiorari* which seeks to annul the resolution of the National Labor Relations Commission (NLRC), dated June 26, 1995, affirming *in toto* the order of the labor arbiter, dated April 26, 1994, which dismissed petitioner's complaint for illegal dismissal with money claims for lack of jurisdiction.

The records show that petitioner Purificacion Tabang was a founding member, a member of the Board of Trustees, and the corporate secretary of private respondent Pamana Golden

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Care Medical Center Foundation, Inc., a non-stock corporation engaged in extending medical and surgical services.

On October 30, 1990, the Board of Trustees issued a memorandum appointing petitioner as Medical Director and Hospital Administrator of private respondent's Pamana Golden Care Medical Center in Calamba, Laguna.

Although the memorandum was silent as to the amount of remuneration for the position, petitioner claims that she received a monthly retainer fee of five thousand pesos (P5,000.00) from private respondent, but the payment thereof was allegedly stopped in November, 1991.

As medical director and hospital administrator, petitioner was tasked to run the affairs of the aforesaid medical center and perform all acts of administration relative to its daily operations.

On May 1, 1993, petitioner was allegedly informed personally by Dr. Ernesto Naval that in a special meeting held on April 30, 1993, the Board of Trustees passed a resolution relieving her of her position as Medical Director and Hospital Administrator, and appointing the latter and Dr. Benjamin Donasco as acting Medical Director and acting Hospital Administrator, respectively. Petitioner averred that she thereafter received a copy of said board resolution.

On June 6, 1993, petitioner filed a complaint for illegal dismissal and non-payment of wages, allowances and 13th month pay before the labor arbiter.

Respondent corporation moved for the dismissal of the complaint on the ground of lack of jurisdiction over the subject matter. It argued that petitioner's position as Medical Director and Hospital Administrator was interlinked with her position as member of the Board of Trustees, hence, her dismissal is an intra-corporate controversy which falls within the exclusive jurisdiction of the Securities and Exchange Commission (SEC).

Petitioner opposed the motion to dismiss, contending that her position as Medical Director and Hospital Administrator

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was separate and distinct from her position as member of the Board of Trustees. She claimed that there is no intra-corporate controversy involved since she filed the complaint in her capacity as Medical Director and Hospital Administrator, or as an employee of private respondent.

On April 26, 1994, the labor arbiter issued an order dismissing the complaint for lack of jurisdiction. He ruled that the case falls within the jurisdiction of the SEC, pursuant to Section 5 of Presidential Decree No. 902-A.[1]

Petitioner's motion for reconsideration was treated as an appeal by the labor arbiter who consequently ordered the elevation of the entire records of the case to public respondent NLRC for appellate review.[2]

On appeal, respondent NLRC affirmed the dismissal of the case on the additional ground that "the position of a Medical Director and Hospital Administrator is akin to that of an executive position in a corporate ladder structure," hence, petitioner's removal from the said position was an intra-corporate controversy within the original and exclusive jurisdiction of the SEC.[3]

Aggrieved by the decision, petitioner filed the instant petition which we find, however, to be without merit.

We agree with the findings of the NLRC that it is the SEC which has jurisdiction over the case at bar. The charges against herein private respondent partake of the nature of an intra-corporate controversy. Similarly, the determination of the rights of petitioner and the concomitant liability of private respondent arising from her ouster as a medical director and/or hospital administrator, which are corporate offices, is an intra-corporate controversy subject to the jurisdiction of the SEC.

Contrary to the contention of petitioner, a medical director and a hospital administrator are considered as corporate officers under the by-laws of respondent corporation. Section 2(i), Article

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[1] *Rollo*, 31-35.

[2] *Ibid.*, 37.

[3] *Ibid.*, 37-45.

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I thereof states that one of the powers of the Board of Trustees is "(t)o appoint a Medical Director, Comptroller/Administrator, Chiefs of Services and such other officers as it may deem necessary and prescribe their powers and duties."[4]

The president, vice-president, secretary and treasurer are commonly regarded as the principal or executive officers of a corporation, and modern corporation statutes usually designate them as the officers of the corporation.[5] However, other offices are sometimes created by the charter or by-laws of a corporation, or the board of directors may be empowered under the by-laws of a corporation to create additional offices as may be necessary.[6]

It has been held that an "office" is created by the charter of the corporation and the officer is elected by the directors or stockholders.[7] On the other hand, an "employee" usually occupies no office and generally is employed not by action of the directors or stockholders but by the managing officer of the corporation who also determines the compensation to be paid to such employee.[8]

In the case at bar, considering that herein petitioner, unlike an ordinary employee, was appointed by respondent corporation's Board of Trustees in its memorandum of October 30, 1990,[9] she is deemed an officer of the corporation. Perforce, Section 5(c) of Presidential Decree No. 902-A, which provides that the SEC exercises exclusive jurisdiction over controversies in the election or appointment of directors, trustees, officers or

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[4] *Rollo,* 189.

[5] 2 Fletcher Cyc. Corp., 1982 rev. ed., Sec. 2690, as cited in R.N. Lopez, The Corporation Code of the Philippines Annotated, Vol. 1, 423; see also Sec. 25 of the Corporation Code.

[6] SEC Opinion, dated March 25, 1983, Mr. Edison Alba, *op cit.*; see also J. Campos, Jr., The Corporation Code, Comments, Notes and Selected Cases, Vol. 1, 383-384.

[7] 2 Fletcher Cyc. Corp., Ch. II, Sec. 266.

[8] Fletcher, *op cit.*, citing Aldritt *vs.* Kansas Centennial Global Exposition, Inc., 189 Kan 649, 371 P2d 818, 424.

[9] *Rollo*, 46.

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managers of corporations, partnerships or associations, applies in the present dispute. Accordingly, jurisdiction over the same is vested in the SEC, and not in the Labor Arbiter or the NLRC.

Moreover, the allegation of petitioner that her being a member of the Board of Trustees was not one of the considerations for her appointment is belied by the tenor of the memorandum itself. It states: "We hope that you will uphold and promote the mission of our foundation,"[10] and this cannot be construed other than in reference to her position or capacity as a corporate trustee.

A corporate officer's dismissal is always a corporate act, or an intra-corporate controversy, and the nature is not altered by the reason or wisdom with which the Board of Directors may have in taking such action.[11] Also, an intra-corporate controversy is one which arises between a stockholder and the corporation. There is no distinction, qualification, nor any exemption whatsoever. The provision is broad and covers all kinds of controversies between stockholders and corporations.[12]

With regard to the amount of P5,000.00 formerly received by herein petitioner every month, the same cannot be considered as compensation for her services rendered as Medical Director and Hospital Administrator. The vouchers[13] submitted by petitioner show that the said amount was paid to her by PAMANA, Inc., a stock corporation which is separate and distinct from herein private respondent. Although the payments were considered advances to Pamana Golden Care, Calamba branch, there is no evidence to show that the Pamana Golden Care stated in the vouchers refers to herein respondent Pamana Golden Care Medical Center Foundation, Inc.

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[10] *Ibid., id.*

[11] Fortune Cement Corporation *vs.* NLRC, et al., G.R. No. 79762, January 24, 1991, 193 SCRA 258.

[12] SEC, et al. *vs.* Court of Appeals, et al., G.R. No. 93832, August 23, 1991, 201 SCRA 124.

[13] *Rollo*, 113-119.

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Pamana Golden Care is a division of Pamana, Inc., while respondent Pamana Golden Care Medical Center Foundation, Inc. is a non-stock, non-profit corporation. It is stated in the memorandum of petitioner that Pamana, Inc. is a stock and profit corporation selling pre-need plan for education, pension and health care. The health care plan is called Pamana Golden Care Plan and the holders are called Pamana Golden Care Card Holders or, simply, Pamana Members.[14]

It is an admitted fact that herein petitioner is a retained physician of Pamana, Inc., whose patients are holders of the Pamana Golden Care Card. In fact, in her complaint[15] filed before the Regional Trial Court of Calamba, herein petitioner is asking, among others, for professional fees and/or retainer fees earned for her treatment of Pamana Golden Care card holders.[16] Thus, at most, said vouchers can only be considered as proof of payment of retainer fees made by Pamana, Inc. to herein petitioner as a retained physician of Pamana Golden Care.

Moreover, even assuming that the monthly payment of P5,000.00 was a valid claim against respondent corporation, this would not operate to effectively remove this case from the jurisdiction of the SEC. In the case of *Cagayan de Oro Coliseum, Inc. vs. Office of the Minister of Labor and Employment, etc., et al.*,[17] we ruled that "(a)lthough the relief's sought by Chavez appear to fall under the jurisdiction of the labor arbiter as they are claims for unpaid salaries and other remunerations for services rendered, a close scrutiny thereof shows that said claims are actually part of the perquisites of his position in, and therefore interlinked with, his relations with the corporation. In *Dy, et al., vs. NLRC, et al.*, the Court said: '(t)he question of remuneration involving as it does, a

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[14] *Rollo*, 852-853.

[15] Civil Case No. 2006-93-C; *Rollo*, 897-908.

[16] *Rollo*, 906-907.

[17] G.R. No. 71589, December 17, 1990, 192 SCRA 315; see also Dy, et al., *vs.* NLRC, et al., G.R. No. 68544, October 27, 1986, 145 SCRA 211.

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person who is not a mere employee but a stockholder and officer, an integral part, it might be said, of the corporation, is not a simple labor problem but a matter that comes within the area of corporate affairs and management and is in fact a corporate controversy in contemplation of the Corporation Code.'"

WHEREFORE, the questioned resolution of the NLRC is hereby AFFIRMED, without prejudice to petitioner's taking recourse to and seeking relief through the appropriate remedy in the proper forum.

SO ORDERED.

Romero, Puno, Mendoza, and *Torres, Jr., JJ.*, concur.

SECOND DIVISION

[G.R. No. 124076. January 21, 1997]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GERRY SARABIA,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; TESTIMONIES OF WITNESSES; WEIGHING THEIR CREDIBILITY IS BEST LEFT TO THE TRIAL COURT.**— There is no cogent reason to disturb the finding of guilt made by the trial court and affirmed by the appellate court. The age-old rule is that the task of assigning values to the testimonies of witnesses in the stand and weighing their credibility is best left to the trial court which forms its first-hand impressions as a witness testifies before it.

2. **ID.; ID.; ID.; THE RULE IS THAT POSITIVE PREVAILS OVER NEGATIVE; APPLICATION IN CASE AT BAR.**— It is also axiomatic that positive testimony prevails over negative testimony. In the case at bar, the positive testimony of