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SO ORDERED.

Peralta, (Chairperson),[*] *Bersamin,*[**] *Villarama, Jr.,*[***] and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 160641. June 20, 2012]

RAFAEL J. ROXAS and THE HEIRS OF EUGENIA V. ROXAS, INC., *petitioners, vs.* **HON. ARTEMIO S. TIPON, in his capacity as Presiding Judge of the Regional Trial Court of Manila, Branch 46, F. U. JUAN CORPORATION, and FERNANDO U. JUAN,** *respondents.*

[G.R. No. 160642. June 20, 2012]

RAFAEL J. ROXAS, GUILLERMO ROXAS and MA. EUGENIA VALLARTA, *petitioners, vs.* **HON. ARTEMIO S. TIPON, in his capacity as Presiding Judge of the Regional Trial Court of Manila, Branch 46, F. U. JUAN CORPORATION and FERNANDO U. JUAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; MOOT AND ACADEMIC CASE; CONSTRUED. — An issue or a case

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[*] Per Special Order 1228 dated June 6, 2012.

[**] Designated Acting Member in lieu of Associate Justice Jose Catral Mendoza, per Special Order 1241 dated June 14, 2012.

[***] Designated Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order 1229 dated June 6, 2012.

becomes moot and academic when it ceases to present a justiciable controversy, so that a determination of the issue would be without practical use and value. In such cases, there is no actual substantial relief to which the petitioner would be entitled and which would be negated by the dismissal of the petition.

2. ID.; SPECIAL CIVIL ACTIONS; CONTEMPT; CONTEMPT OF COURT, DEFINED. — Contempt of court is defined as a disobedience to the Court by acting in opposition to its authority, justice and dignity. It signifies not only a willful disregard or disobedience of the court's orders, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice. Contempt of court is a defiance of the authority, justice or dignity of the court; such conduct as tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice parties-litigant or their witnesses during litigation.

3. ID.; ID.; INDIRECT CONTEMPT; TWO ALTERNATIVE WAYS TO CHARGE A PERSON, NOTED. — It may be noted that a person may be charged with indirect contempt by either of two alternative ways, namely: (1) by a verified petition, if initiated by a party; or (2) by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt, if made by a court against which the contempt is committed. In short, a charge of indirect contempt must be initiated through a verified petition, unless the charge is directly made by the court against which the contemptuous act is committed.

4. ID.; ID.; ID.; NO VERIFIED PETITION IS REQUIRED IF PROCEEDINGS ARE INITIATED *MOTU PROPRIO* BY THE COURT. — The RTC initiated the contempt charge. x x x The RTC acted on the basis of the unjustified refusal of petitioners to abide by its lawful order. It is of no moment that private respondents may have filed several pleadings to urge the RTC to cite petitioners in contempt. Petitioners utterly violated an order issued by the trial court which act is considered contemptuous. Thus, in *Leonidas v. Judge Supnet*, the MTC's order to the bank to show cause why it should not be held in contempt, was adjudged as a legitimate exercise of

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the MTC's judicial discretion to determine whether the bank should be sanctioned for disregarding its previous orders. Independently of the motions filed by the opposing party, it was the MTC which commenced the contempt proceedings *motu proprio*. No verified petition is required if proceedings for indirect contempt are initiated in this manner, and the absence of a verified petition does not affect the procedure adopted.

5. ID.; ID.; ID.; THE WARRANT AND THE CONTEMPT PROCEEDINGS THAT PRECEDED IT WERE MOOTED BY THE DISMISSAL OF THE MAIN PETITION; CASE AT BAR. — The RTC's issuance of a warrant of arrest was pursuant to Section 8, Rule 71 of the Rules of Court. x x x However, the foregoing notwithstanding, the warrant and the contempt proceedings that preceded it were all similarly mooted by the dismissal of the main petition for dissolution of HEVRI. Given the mootness of the issues of inspection and audit, the very orders refused to be obeyed by petitioners, the citation of contempt and its consequences necessarily became moot.

APPEARANCES OF COUNSEL

Medialdea Ata Bello Guevarra and Suarez for petitioners.
Feria Feria La O' Tantoco for private respondents.

R E S O L U T I O N

PEREZ, *J.*:

The subject of this petition for review on *certiorari* is the Decision[1] dated 14 August 2003 of the Court of Appeals in CA-G.R. SP No. 67384 and CA-G.R. SP No. 73187 which affirmed the orders of Judge Artemio S. Tipon of the Regional Trial Court (RTC) of Manila, Branch 46 in Civil Case No. 01-99671 relating to an audit of corporate books and declaration of contempt of court.

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[1] Penned by Associate Justice Danilo B. Pine with Associate Justices Buenaventura J. Guerrero and Renato C. Dacudao, concurring. *Rollo*, pp. 50-62.

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Heirs of Eugenia V. Roxas, Inc. (HEVRI) is a registered corporation which operates Hidden Valley Springs Resort. F. U. Juan Corporation (FUJC) and Fernando U. Juan (Juan) are two of its stockholders who held 439,604 shares and one share, respectively.[2] On 10 November 1998, FUJC and Juan filed an Amended Petition[3] with prayer for temporary restraining order (TRO) and writ of preliminary injunction and appointment of a receiver, for HEVRI's dissolution before the Securities and Exchange Commission (SEC) on the following grounds:

1. That HEVRI, through its then President Rafael Roxas (Roxas) refused to furnish them copies of the minutes of the regular and special meetings of the Board of Directors and stockholders;
2. That they were not allowed to inspect the accounts of HEVRI despite demand;
3. That HEVRI failed to comply with the reportorial requirements of the Securities and Exchange Commission;
4. That despite huge profits derived from the operation of the Hidden Valley Springs Resort, HEVRI has not declared nor paid dividends;
5. That Roxas had grossly mismanaged HEVRI;
6. That Roxas and HEVRI had squandered the funds of the corporation, as well as its assets to the detriment of its stockholders.[4]

In their Answer, petitioners averred that they were under no legal obligation to furnish respondents copies of the corporation's financial statements and minutes of stockholders' and Board of Directors' meetings; that they had not been remiss in the filing of its General Information Sheets (GIS) and Audited Financial Statements with the government agencies concerned; that no

[2] *Rollo*, p. 485.

[3] Private respondent Fernando Juan was added as party-plaintiff.

[4] *Rollo*, pp. 234-236.

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dividends were declared or paid because corporate funds have been, and continue to be, used for rehabilitation and upgrading works; that the Amended Petition did not state facts with sufficient particularity which tend to show that Roxas has been mismanaging HEVRI.[5] Petitioners counterclaimed for damages.

Pursuant to Supreme Court Administrative Circular AM No. 00-11-03 dated 21 November 2000 in implementation of the provisions of the law transferring jurisdiction from SEC to the RTC, the case was transferred to the RTC of Manila, Branch 46.

During the hearing on the application for issuance of a TRO and/or writ of preliminary injunction on 26 July 2001, the RTC ordered an audit of the books of HEVRI, thus:

> The Court orders that an audit of the books of the Corporation be conducted. However before the Court will enforce the same the respondents are given until August 1, 2001 to file their comments/ oppositions, after which this incident will be deemed submitted for resolution.[6]

Petitioners contested the order of audit through a motion for reconsideration. In an Order dated 10 September 2001, their Motion for Reconsideration was denied, *viz*:

> The [private respondents herein] allege that respondent Rafael J. Roxas is making unauthorized and fraudulent disbursements of corporate funds and the former wants the latter restrained from further managing the respondent corporation.
>
> The best way the court can determine whether there is a ground for the issuance of a temporary restraining order or preliminary injunction is to be informed of what is the real score in the financial status of the corporation. What could be a better way of knowing whether there are unauthorized and fraudulent disbursements than an audit of the books? The respondents should not fear an audit if they have nothing to hide.[7]

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[5] *Id.* at 242-246.

[6] *Id.* at 103.

[7] *Id.* at 104.

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Thus, on 4 October 2001, the RTC designated Financial Catalyst, Inc. to audit the books of HEVRI, thus:

> WHEREFORE, the Financial Catalyst, Inc. of Unit 1107 Jollibee Plaza, Emerald Avenue, Ortigas Center, Pasig City 1605 Philippines is hereby designated to audit the books of Heirs of Eugenia V. Roxas, Inc.
>
> The Financial Catalyst, Inc. is requested to inform the court within seventy-two (72) hours from receipt of this order if it accepts the designation. Should it accept the designation, it should start the audit immediately.
>
> The president, vice president, corporate secretary, treasurer and other officers of the Heirs of Eugenia V. Roxas, Inc. are directed to cooperate with the auditing firm and to provide all the necessary support to accomplish its duty.
>
> The [private respondents herein] are hereby directed to make an initial deposit with the Clerk of Court the sum of FIFTY THOUSAND PESOS (₱50,000.00) to cover the expenses of audit. It is understood that the expenses of audit shall be taxed as cost against the losing party or parties.[8]

All the aforementioned orders of the RTC were assailed before the Court of Appeals in CA G.R. SP No. 67384. On 16 July 2002, the Court of Appeals issued a TRO enjoining RTC from implementing the questioned orders.

When petitioners refused to allow Financial Catalyst, Inc. to audit their books, the RTC declared Guillermo Roxas, Ma. Eugenia Vallarta and Roxas in contempt of court and issued a warrant for their arrest on 19 August 2002.[9] Said Order was also challenged before the Court of Appeals in CA-G.R. SP No. 73187.

Thereafter, the Court of Appeals resolved to consolidate the two (2) petitions.

Finding them without merit, the Court of Appeals dismissed the petitions and affirmed the questioned orders of the RTC.

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[8] *Id.* at 106.

[9] *Id.* at 115.

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The Court of Appeals upheld the right of private respondents as stockholders to inspect corporate books and records pursuant to Section 75 of the Corporation Code. It also defended the audit of the books of HEVRI for the proper determination of the issue of dissolution of the corporation. Further, the Court of Appeals sustained the validity of the indirect contempt proceedings. The Court of Appeals observed that Petitioners Guillermo Roxas, Ma. Eugenia Vallarta and Rafael Roxas were in fact given a chance to be heard in open court through an Order dated 14 June 2002:

> In view of the seriousness of the charge that may result in the imposition of a fine upon the defendants in an amount not exceeding thirty thousand pesos or imprisonment not exceeding six (6) months, or both or indefinite imprisonment until they comply with the ORDERS of the court, the Court:
>
> RESOLVES to hold a formal trial to enable the said defendants to defend themselves at a hearing scheduled on Friday, the 28th day of June, 2002 at 8:30 A.M. at Room 460, City Hall, Manila, Philippines.[10]

Petitioners moved for the cancellation of the hearing, which motion was denied.

A motion for reconsideration was filed but it was denied on 29 October 2003,[11] hence the instant petition.

Petitioners assert that the RTC effectively ruled that a stockholder's right to inspection and to financial information include the absolute right to cause the conduct of an audit. Petitioners insist that the trial court should have examined the audited financial statements first before ordering another audit. By declaring that an audit be conducted, petitioners claim that the trial court effectively granted private respondents' prayer for inspection and examination of the books of accounts of HEVRI without hearing or trial. Also according to petitioners, the appointment of an independent auditor was not even specifically

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[10] *Id.* at 613.

[11] *Id.* at 64.

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prayed for in the Amended Petition. Petitioners take exception to the ruling of the Court of Appeals that an audit will determine the financial status of the company. Petitioners aver that gross mismanagement, as alleged by private respondents, is a factor that must be proved by hard and convincing evidence. Finally, petitioners challenge the validity of the contempt order issued against them. Petitioners contend that the trial court did not *motu propio* initiate the contempt proceedings but it was prompted by private respondents through a motion for the issuance of a show cause order, thereby disregarding Section 4, Rule 71 of the Rules of Court.

Private respondents justified the order of audit by the RTC to determine the presence or absence of mismanagement and pursuant to Rule 32 of the Rules of Court. They also maintain that the directive to conduct an audit does not amount to a prejudgment of the case. Anent the citation for contempt, private respondents assert that petitioners' whimsical disregard of the authority of the trial court exemplified by the unreasonable and unjustified refusal to comply with the directed audit constitute indirect contempt of court.

On 1 August 2006, petitioners filed a Manifestation informing the Court that an Order[12] dated 14 February 2006 was issued by the RTC dismissing Civil Case No. 01-99671 for lack of jurisdiction, thus:

> WHEREFORE, premises considered, the Court orders the DISMISSAL of this case. The incident on the creation of a Management Committee is likewise denied for being moot and academic.[13]

As culled from the RTC Order and subsequent to the dismissal of the petition before the Court of Appeals, the RTC created a Management Committee on 15 March 2004. The trial court ordered the depositary banks of petitioners to freeze the latter's deposit. These Orders were also questioned before the Court

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[12] Presided by Judge Benjamin D. Turgano. *Id.* at 688-706.

[13] *Id.* at 706.

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of Appeals which issued a TRO restraining the Management Committee from taking over the management and administration of HEVRI. On 8 April 2005, the RTC issued an Omnibus Order which: 1) constituted the Interim Caretaker Committee; 2) granted defendants request for ocular inspection; 3) held in abeyance implementation of the audit; 4) required the former Management Committee to render its report, and set the schedule for the reception of defendants' evidence on the creation of the Management Committee. Thus, an Interim Caretaker Committee was constituted.[14]

In dismissing the case for dissolution, the trial court ruled that it lacked jurisdiction to entertain an action for dissolution considering that said action lies within the exclusive jurisdiction of the SEC. The trial court explained that only cases enumerated under Section 5 of Presidential Decree No. 902-A[15] were transferred to the RTC. SEC's power to suspend, revoke or terminate the franchise or certificate of registration of corporations is found in Section 6. Assuming that the RTC has jurisdiction to try the case, it pointed out that only one of the grounds cited by private respondents constitute a possible ground for involuntary dissolution, *i.e.*, failure to comply with the SEC's reportorial requirements. This possible infraction was rectified by the belated filing of the 1991-1995 GIS after the filing of the Amended Petition.

The trial court also held that there is no factual basis to hold Roxas liable for misappropriation; that Roxas is not the proper party impleaded in the Amended Petition because he was no longer the President of HEVRI at the time of filing; and that HEVRI cannot be ordered to declare dividends because the prerogative lies with the Board of Directors.

Finally, the RTC declared moot and academic the issues of the inspection of books in view of the takeover of the books by

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[14] *Id.* at 693.

[15] Reorganization of the Securities and Exchange Commission with Additional Powers and Placing the said Agency under the Administrative Supervision of the Office of the President.

the previous Management Committee; and creation of the Management Committee which has lost it legal basis to exist because the Court has no jurisdiction over the main action.[16]

Essentially, only two (2) issues must be resolved – the validity of the audit and the consequent indirect contempt citation.

The first issue has been rendered moot and academic with the dismissal of the principal action for dissolution. The directive for audit and the designation of Financial Catalyst, Inc. as the auditor, both incidents to the main action, have already lost their bearing. An issue or a case becomes moot and academic when it ceases to present a justiciable controversy, so that a determination of the issue would be without practical use and value. In such cases, there is no actual substantial relief to which the petitioner would be entitled and which would be negated by the dismissal of the petition.[17]

The issue of indirect contempt needs further discussion because while the Order of the RTC to allow audit of books of HEVRI has been rendered moot, it does not change the fact that at the time that the Order was a standing pronouncement, petitioners refused to heed it. Section 3, paragraph (b), Rule 71 of the Rules of Court provides:

> Sec. 3. Indirect contempt to be punished after charge and hearing. – After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:
>
> x x x x x x x x x
>
> (b) Disobedience of or resistance to a lawful writ, process, order or judgment of a court, x x x.

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[16] *Id.* at 705-706.

[17] *Romero II v. Estrada*, G.R. No. 174105, 2 April 2009, 583 SCRA 396, 404.

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Contempt of court is defined as a disobedience to the Court by acting in opposition to its authority, justice and dignity. It signifies not only a willful disregard or disobedience of the court's orders, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice. Contempt of court is a defiance of the authority, justice or dignity of the court; such conduct as tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice parties-litigant or their witnesses during litigation.[18] The asseverations made by petitioners to justify their refusal to allow inspection or audit were rejected by the trial court.

It may be noted that a person may be charged with indirect contempt by either of two alternative ways, namely: (1) by a verified petition, if initiated by a party; or (2) by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt, if made by a court against which the contempt is committed. In short, a charge of indirect contempt must be initiated through a verified petition, unless the charge is directly made by the court against which the contemptuous act is committed.[19]

The RTC initiated the contempt charge. In the Order[20] dated 9 January 2002, petitioners were directed to appear in court and to show cause why they should not be held in contempt of court for their refusal to allow Financial Catalyst, Inc. to audit the books of HEVRI. Petitioners filed an urgent motion for reconsideration claiming that said order was the subject of a pending petition before the Court of Appeals and that they can only be cited for contempt by the filing of a verified petition. The RTC denied the motion and reiterated

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[18] *Lu Ym v. Atty. Mahinay*, 524 Phil. 564, 572 (2006) citing *Heirs of Trinidad de Leon Vda. de Roxas v. Court of Appeals*, 466 Phil. 697, 711-712 (2004).

[19] *Mallari v. Government Service Insurance System*, G.R. No. 157659, 25 January 2010, 611 SCRA 32, 51.

[20] *Rollo*, p. 381.

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in its Order on 26 April 2002 explaining that it chose to initiate the contempt charge.

The RTC acted on the basis of the unjustified refusal of petitioners to abide by its lawful order. It is of no moment that private respondents may have filed several pleadings to urge the RTC to cite petitioners in contempt. Petitioners utterly violated an order issued by the trial court which act is considered contemptuous. Thus, in *Leonidas v. Judge Supnet*,[21] the MTC's order to the bank to show cause why it should not be held in contempt, was adjudged as a legitimate exercise of the MTC's judicial discretion to determine whether the bank should be sanctioned for disregarding its previous orders. Independently of the motions filed by the opposing party, it was the MTC which commenced the contempt proceedings *motu proprio*. No verified petition is required if proceedings for indirect contempt are initiated in this manner, and the absence of a verified petition does not affect the procedure adopted.[22]

The RTC's issuance of a warrant of arrest was pursuant to Section 8, Rule 71 of the Rules of Court, which reads:

> Sec. 8. *Imprisonment until order obeyed*. - When the contempt consists in the refusal or omission to do an act which is yet in the power of the respondent to perform, he may be imprisoned by order of the court concerned until he performs it.

However, the foregoing notwithstanding, the warrant and the contempt proceedings that preceded it were all similarly mooted by the dismissal of the main petition for dissolution of HEVRI. Given the mootness of the issues of inspection and audit, the very orders refused to be obeyed by petitioners, the citation of contempt and its consequences necessarily became moot.

WHEREFORE, this petition is hereby **DECLARED MOOT and ACADEMIC.** The warrant of arrest issued by the Regional Trial Court of Manila, Branch 46, against Guillermo B. Roxas, Ma. Eugenia Vallarta and Rafael B. Roxas is hereby **LIFTED.**

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[21] 446 Phil. 53 (2003).

[22] *Id.* at 69.

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SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

Brion, Sereno, and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 170026. June 20, 2012]

SHIMIZU PHILIPPINES CONTRACTORS, INC., *petitioner, vs.* **MRS. LETICIA B. MAGSALIN, doing business under the trade name "KAREN'S TRADING," FGU INSURANCE CORPORATION, GODOFREDO GARCIA, CONCORDIA GARCIA, and REYNALDO BAETIONG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL OF ACTIONS; FAILURE OF PLAINTIFF TO PROSECUTE AS A GROUND; RULE WHEN THE DISMISSAL IS DEEMED ADJUDICATION ON THE MERITS; VIOLATION IN CASE AT BAR.— The nullity of the dismissal order is patent on its face. It simply states its conclusion that the case should be dismissed for *non prosequitur*, a legal conclusion, but does not state the facts on which this conclusion is based. Dismissals of actions for failure of the plaintiff to prosecute is authorized under Section 3, Rule 17 of the Rules of Court. A plain examination of the December 16, 2003 dismissal order shows that it is an unqualified order and, as such, is deemed to be a dismissal with prejudice. "Dismissals of actions (under Section 3) which do not expressly state whether they are with or without prejudice are held to be with prejudice[.]"As a prejudicial dismissal, the December 16, 2003 dismissal order is also deemed to be a judgment on the merits so that the petitioner's complaint in Civil Case No. 02-488 can no longer be refiled on the principle of *res judicata*.