Supreme Court E-Library

FIRST DIVISION

[G.R. No. 168757. January 19, 2011]

RENATO REAL, *petitioner, vs.* **SANGU PHILIPPINES, INC. and/ or KIICHI ABE,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; INTRA-CORPORATE CONTROVERSY; NO INTRA-CORPORATE RELATIONSHIP BETWEEN THE PARTIES; RELATIONSHIP TEST, APPLIED.— [P]etitioner's status as a stockholder and director of respondent corporation is not disputed. What the parties disagree on is the finding of the NLRC and the CA that petitioner is a corporate officer. An examination of the complaint for illegal dismissal, however, reveals that the root of the controversy is petitioner's dismissal as Manager of respondent corporation, a position which respondents claim to be a corporate office. Hence, petitioner is involved in this case not in his capacity as a stockholder or director, but as an alleged corporate officer. In applying the relationship test, therefore, it is necessary to determine if petitioner is a corporate officer of respondent corporation so as to establish the intra-corporate relationship between the parties. And albeit respondents claim that the determination of whether petitioner is a corporate officer is a question of fact which this Court cannot pass upon in this petition for review on *certiorari*, we shall nonetheless proceed to consider the same because such question is not the main issue to be resolved in this case but is merely collateral to the core issue earlier mentioned. x x x We have however examined the records of this case and we find nothing to prove that petitioner's appointment was made pursuant to the above-quoted provision of respondent corporation's By-Laws. No copy of board resolution appointing petitioner as Manager or any other document showing that he was appointed to said position by action of the board was submitted by respondents. What we found instead were mere allegations of respondents in their various pleadings that petitioner was appointed as Manager of respondent corporation and nothing more. "The Court has stressed time and again that allegations must be proven by

Supreme Court E-Library

sufficient evidence because mere allegation is definitely not evidence." x x x While respondents repeatedly claim that petitioner was appointed as Manager pursuant to the corporation's By-Laws, the above-quoted inconsistencies in their allegations as to how petitioner was placed in said position, coupled by the fact that they failed to produce any documentary evidence to prove that petitioner was appointed thereto by action or with approval of the board, only leads this Court to believe otherwise. It has been consistently held that "[a]n 'office' is created by the charter of the corporation and the officer is elected (or appointed) by the directors or stockholders. Clearly here, respondents failed to prove that petitioner was appointed by the board of directors. Thus, we cannot subscribe to their claim that petitioner is a corporate officer. Having said this, we find that there is no intra-corporate relationship between the parties insofar as petitioner's complaint for illegal dismissal is concerned and that same does not satisfy the relationship test.

2. ID.; ID.; ID.; PRESENT CONTROVERSY DOES NOT RELATE TO INTRA-CORPORATE DISPUTE.— [R]espondents 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. For one, petitioner's continuous absences in his post in Ogino relates to his performance as Manager. Second, respondents' loss of trust and confidence in petitioner stemmed from his alleged acts of establishing a company engaged in the same line of business as respondent corporation's and submitting proposals to the latter's clients while he was still serving as its Manager. While we note that respondents also claim these acts as constituting acts of disloyalty of petitioner as director and stockholder, we, however, think that same is a mere afterthought on their part to make it appear that the present case involves an element of intra-

Supreme Court E-Library

corporate controversy. This is because before the Labor Arbiter, respondents did not see such acts to be disloyal acts of a director and stockholder but rather, as constituting willful breach of the trust reposed upon petitioner as Manager. It was only after respondents invoked the Labor Arbiter's lack of jurisdiction over petitioner's complaint in the Supplemental Memorandum of Appeal filed before the NLRC that respondents started considering said acts as such. Third, in saying that they were dismissing petitioner to cut operational expenses, respondents actually want to save on the salaries and other remunerations being given to petitioner as its Manager. Thus, when petitioner sought for reinstatement, he wanted to recover his position as Manager, a position which we have, however, earlier declared to be not a corporate position. He is not trying to recover a seat in the board of directors or to any appointive or elective corporate position which has been declared vacant by the board. Certainly, what we have here is a case of termination of employment which is a labor controversy and not an intra-corporate dispute. In sum, we hold that petitioner's complaint likewise does not satisfy the nature of controversy test. With the elements of intra-corporate controversy being absent in this case, we thus hold that petitioner's complaint for illegal dismissal against respondents is not intra-corporate. Rather, it is a termination dispute and, consequently, falls under the jurisdiction of the Labor Arbiter pursuant to Section 217 of the Labor Code.

3. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; GROUNDS FOR WHICH EMPLOYEE WAS TERMINATED, NOT PROVEN.— "In an illegal dismissal case, the *onus probandi* rests on the employer to prove that [the] dismissal of an employee is for a valid cause. Here, as correctly observed by the Labor Arbiter, respondents failed to produce any convincing proof to support the grounds for which they terminated petitioner. Respondents contend that petitioner has been absent for several months, yet they failed to present any proof that petitioner was indeed absent for such a long time. Also, the fact that petitioner was still able to collect his salaries after his alleged absences casts doubts on the truthfulness of such charge. Respondents likewise allege that petitioner engaged in a heated argument with the employees of Epson, one of respondents' clients. But just like in the charge of

Supreme Court E-Library

absenteeism, there is no showing that an investigation on the matter was done and that disciplinary action was imposed upon petitioner. At any rate, we have reviewed the records of this case and we agree with the Labor Arbiter that under the circumstances, said charges are not sufficient bases for petitioner's termination. As to the charge of breach of trust allegedly committed by petitioner when he established a new company engaged in the same line of business as respondent corporation's and submitted proposals to two of the latter's clients while he was still a Manager, we again observe that these are mere allegations without sufficient proof. To reiterate, allegations must be proven by sufficient evidence because mere allegation is definitely not evidence.

4. **ID.; ID.; ID.; FAILURE TO COMPLY WITH THE TWIN REQUIREMENTS OF NOTICE AND HEARING MAKES THE EMPLOYEE'S DISMISSAL ILLEGAL.—** [P]etitioner's dismissal was effected without due process of law. "The twin requirements of notice and hearing constitute the essential elements of due process. The law requires the employer to furnish the employee sought to be dismissed with two written notices before termination of employment can be legally effected: (1) a written notice apprising the employee of the particular acts or omissions for which his dismissal is sought in order to afford him an opportunity to be heard and to defend himself with the assistance of counsel, if he desires, and (2) a subsequent notice informing the employee of the employer's decision to dismiss him. This procedure is mandatory and its absence taints the dismissal with illegality. Since in this case, petitioner's dismissal was effected through a board resolution and all that petitioner received was a letter informing him of the board's decision to terminate him, the abovementioned procedure was clearly not complied with. All told, we agree with the findings of the Labor Arbiter that petitioner has been illegally dismissed.

5. **ID.; ID.; ID.; RELIEFS GRANTED TO AN ILLEGALLY DISMISSED EMPLOYEE.—** And, as an illegally dismissed employee is entitled to the two reliefs of backwages and reinstatement, we affirm the Labor Arbiter's judgment ordering petitioner's reinstatement to his former position without loss of seniority rights and other privileges and awarding backwages from the time of his dismissal until actually reinstated. Considering that petitioner has to secure the services of counsel

Supreme Court E-Library

to protect his interest and necessarily has to incur expenses, we likewise affirm the award of attorney's fees which is equivalent to 10% of the total backwages that respondents must pay petitioner in accordance with this Decision.

APPEARANCES OF COUNSEL

Reyes Tayao & Molo for petitioner.

Malaya Sanchez Francisco Añover & Añover Law Offices for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

The perennial question of whether a complaint for illegal dismissal is intra-corporate and thus beyond the jurisdiction of the Labor Arbiter is the core issue up for consideration in this case.

This Petition for Review on *Certiorari* assails the Decision[1] dated June 28, 2005 of the Court of Appeals (CA) in CA-G.R. SP. No. 86017 which dismissed the petition for *certiorari* filed before it.

Factual Antecedents

Petitioner Renato Real was the Manager of respondent corporation Sangu Philippines, Inc., a corporation engaged in the business of providing manpower for general services, like janitors, janitresses and other maintenance personnel, to various clients. In 2001, petitioner, together with 29 others who were either janitors, janitresses, leadmen and maintenance men, all employed by respondent corporation, filed their respective Complaints[2] for illegal dismissal against the latter and respondent

[1] CA *rollo*, pp. 370-394; penned by Associate Justice Perlita J. Tria Tirona and concurred in by Associate Justices Delilah Vidallon-Magtolis and Jose C. Reyes, Jr.

[2] *Id.* at 51-71.

Supreme Court E-Library

Kiichi Abe, the corporation's Vice-President and General Manager. These complaints were later on consolidated.

With regard to petitioner, he was removed from his position as Manager through Board Resolution 2001-03[3] adopted by respondent corporation's Board of Directors. Petitioner complained that he was neither notified of the Board Meeting during which said board resolution was passed nor formally charged with any infraction. He just received from respondents a letter[4] dated March 26, 2001 stating that he has been terminated from service effective March 25, 2001 for the following reasons: (1) continuous absences at his post at Ogino Philippines Inc. for several months which was detrimental to the corporation's operation; (2) loss of trust and confidence; and, (3) to cut down operational expenses to reduce further losses being experienced by respondent corporation.

Respondents, on the other hand, refuted petitioner's claim of illegal dismissal by alleging that after petitioner was appointed Manager, he committed gross acts of misconduct detrimental to the company since 2000. According to them, petitioner would almost always absent himself from work without informing the corporation of his whereabouts and that he would come to the office only to collect his salaries. As he was almost always absent, petitioner neglected to supervise the employees resulting in complaints from various clients about employees' performance. In one instance, petitioner together with a few others, while apparently drunk, went to the premises of one of respondents' clients, Epson Precision (Phils.) Inc., and engaged in a heated argument with the employees therein. Because of this, respondent Abe allegedly received a complaint from Epson's Personnel Manager concerning petitioner's conduct. Respondents likewise averred that petitioner established a company engaged in the same business as respondent corporation's and even submitted proposals for janitorial services to two of the latter's clients.

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[3] *Id.* at 115-116.

[4] *Id.* at 117.

Supreme Court E-Library

Because of all these, the Board of Directors of respondent corporation met on March 24, 2001 and adopted Board Resolution No. 2001-03 removing petitioner as Manager. Petitioner was thereafter informed of his removal through a letter dated March 26, 2001 which he, however, refused to receive.

Further, in what respondents believed to be an act of retaliation, petitioner allegedly encouraged the employees who had been placed in the manpower pool to file a complaint for illegal dismissal against respondents. Worse, he later incited those assigned in Epson Precision (Phils.) Inc., Ogino Philippines Corporation, Hitachi Cable Philippines Inc. and Philippine TRC Inc. to stage a strike on April 10 to 16, 2001. Not satisfied, petitioner together with other employees also barricaded the premises of respondent corporation. Such acts respondents posited constitute just cause for petitioner's dismissal and that same was validly effected.

Rulings of the Labor Arbiter and the National Labor Relations Commission

The Labor Arbiter in a Decision[5] dated June 5, 2003 declared petitioner and his co-complainants as having been illegally dismissed and ordered respondents to reinstate complainants to their former positions without loss of seniority rights and other privileges and to pay their full backwages from the time of their dismissal until actually reinstated and furthermore, to pay them attorney's fees. The Labor Arbiter found no convincing proof of the causes for which petitioner was terminated and noted that there was complete absence of due process in the manner of his termination.

Respondents thus appealed to the National Labor Relations Commission (NLRC) and raised therein as one of the issues the lack of jurisdiction of the Labor Arbiter over petitioner's complaint. Respondents claimed that petitioner is both a stockholder and a corporate officer of respondent corporation, hence, his action against respondents is an intra-corporate controversy over which the Labor Arbiter has no jurisdiction.

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[5] *Id.* at 162-181.

Supreme Court E-Library

The NLRC found such contention of respondents to be meritorious. Aside from petitioner's own admission in the pleadings that he is a stockholder and at the same time occupying a managerial position, the NLRC also gave weight to the corporation's General Information Sheet[6] (GIS) dated October 27, 1999 listing petitioner as one of its stockholders, consequently his termination had to be effected through a board resolution. These, the NLRC opined, clearly established petitioner's status as a stockholder and as a corporate officer and hence, his action against respondent corporation is an intra-corporate controversy over which the Labor Arbiter has no jurisdiction. As to the other complainants, the NLRC ruled that there was no dismissal. The NLRC however, modified the appealed decision of the Labor Arbiter in a Decision[7] dated February 13, 2004, the dispositive portion of which reads:

> WHEREFORE, all foregoing premises considered, the appealed Decision dated June 5, 2003 is hereby MODIFIED. Accordingly, judgment is hereby rendered DISMISSING the complaint of Renato Real for lack of jurisdiction. As to the rest of the complainants, they are hereby ordered to immediately report back to work but without the payment of backwages.
>
> All other claims against respondents including attorney's fees are DISMISSED for lack of merit.
>
> SO ORDERED.

Still joined by his co-complainants, petitioner brought the case to the CA by way of petition for *certiorari*.

Ruling of the Court of Appeals

Before the CA, petitioner imputed upon the NLRC grave abuse of discretion amounting to lack or excess of jurisdiction in declaring him a corporate officer and in holding that his action against respondents is an intra-corporate controversy and thus beyond the jurisdiction of the Labor Arbiter.

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[6] *Id.* at 237-240.

[7] *Id.* at 32-46.

Supreme Court E-Library

While admitting that he is indeed a stockholder of respondent corporation, petitioner nevertheless disputed the declaration of the NLRC that he is a corporate officer thereof. He posited that his being a stockholder and his being a managerial employee do not *ipso facto* confer upon him the status of a corporate officer. To support this contention, petitioner called the CA's attention to the same GIS relied upon by the NLRC when it declared him to be a corporate officer. He pointed out that although said information sheet clearly indicates that he is a stockholder of respondent corporation, he is not an officer thereof as shown by the entry "N/A" or "*not applicable*" opposite his name in the officer column. Said column requires that the particular position be indicated if the person is an officer and if not, the entry "N/A." Petitioner further argued that the fact that his dismissal was effected through a board resolution does not likewise mean that he is a corporate officer. Otherwise, all that an employer has to do in order to avoid compliance with the requisites of a valid dismissal under the Labor Code is to dismiss a managerial employee through a board resolution. Moreover, he insisted that his action for illegal dismissal is not an intra-corporate controversy as same stemmed from employee-employer relationship which is well within the jurisdiction of the Labor Arbiter. This can be deduced and is bolstered by the last paragraph of the termination letter sent to him by respondents stating that he is entitled to benefits under the Labor Code, to wit:

> In this connection (his dismissal) you are entitled to separation pay and other benefits provided for **under the Labor Code of the Philippines**.[8] (Emphasis supplied)

In contrast, respondents stood firm that the action against them is an intra-corporate controversy. It cited *Tabang v. National Labor Relations Commission*[9] wherein this Court declared that "an intra-corporate controversy is one which arises between a stockholder and the corporation;" that "[t]here is no distinction, qualification, nor any exemption whatsoever;"

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[8] *Id.* at 117.

[9] 334 Phil.424, 430 (1997).

Supreme Court E-Library

and that it is "broad and covers all kinds of controversies between stockholders and corporations." In view of this ruling and since petitioner is undisputedly a stockholder of the corporation, respondents contended that the action instituted by petitioner against them is an intra-corporate controversy cognizable only by the appropriate regional trial court. Hence, the NLRC correctly dismissed petitioner's complaint for lack of jurisdiction.

In the assailed Decision[10] dated June 28, 2005, the CA sided with respondents and affirmed the NLRC's finding that aside from being a stockholder of respondent corporation, petitioner is also a corporate officer thereof and consequently, his complaint is an intra-corporate controversy over which the labor arbiter has no jurisdiction. Said court opined that if it was true that petitioner is a mere employee, the respondent corporation would not have called a board meeting to pass a resolution for petitioner's dismissal considering that it was very tedious for the Board of Directors to convene and to adopt a resolution every time they decide to dismiss their managerial employees. To support its finding, the CA likewise cited *Tabang.* As to petitioner's co-complainants, the CA likewise affirmed the NLRC's finding that they were never dismissed from the service. The dispositive portion of the CA Decision reads:

> WHEREFORE, the instant petition is hereby DISMISSED. Accordingly, the assailed decision and resolution of the public respondent National Labor Relations Commission in NLRC NCR CA No. 036128-03 NLRC SRAB-IV-05-6618-01-B/05-6619-02-B/05-6620-02-B/10-6637-01-B/10-6833-01-B, STANDS.
>
> SO ORDERED.

Now alone but still undeterred, petitioner elevated the case to us through this Petition for Review on *Certiorari.*

The Parties' Arguments

Petitioner continues to insist that he is not a corporate officer. He argues that a corporate officer is one who holds an elective position as provided in the Articles of Incorporation or one who

[10] CA *rollo,* pp. 370-394.

Supreme Court E-Library

is appointed to such other positions by the Board of Directors as specifically authorized by its By-Laws. And, since he was neither elected nor is there any showing that he was appointed by the Board of Directors to his position as Manager, petitioner maintains that he is not a corporate officer contrary to the findings of the NLRC and the CA.

Petitioner likewise contends that his complaint for illegal dismissal against respondents is not an intra-corporate controversy. He avers that for an action or suit between a stockholder and a corporation to be considered an intra-corporate controversy, same must arise from intra-corporate relations, *i.e.*, an action involving the status of a stockholder as such. He believes that his action against the respondents does not arise from intra-corporate relations but rather from employer-employee relations. This, according to him, was even impliedly recognized by respondents as shown by the earlier quoted portion of the termination letter they sent to him.

For their part, respondents posit that what petitioner is essentially assailing before this Court is the finding of the NLRC and the CA that he is a corporate officer of respondent corporation. To the respondents, the question of whether petitioner is a corporate officer is a question of fact which, as held in a long line of jurisprudence, cannot be the subject of review under this Petition for Review on *Certiorari.* At any rate, respondents insist that petitioner who is undisputedly a stockholder of respondent corporation is likewise a corporate officer and that his action against them is an intra-corporate dispute beyond the jurisdiction of the labor tribunals. To support this, they cited several jurisprudence such as *Pearson & George (S.E. Asia), Inc. v. National Labor Relations Commission,*[11] *Philippine School of Business Administration v. Leano,*[12] *Fortune Cement Corporation v. National Labor Relations Commission*[13] and again, *Tabang v. National Labor Relations Commission.*[14]

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[11] 323 Phil. 166 (1996).

[12] 212 Phil. 716 (1984).

[13] G.R. No. 79762, January 24, 1991, 193 SCRA 258.

[14] *Supra* note 9.

Supreme Court E-Library

Moreover, in an attempt to demolish petitioner's claim that the present controversy concerns employer-employee relations, respondents enumerated the following facts and circumstances: (1) Petitioner was an incorporator, stockholder and manager of respondent company; (2) As an incorporator, he was one of only seven incorporators of respondent corporation and one of only four Filipino members of the Board of Directors; (3) As stockholder, he has One Thousand (1,000) of the Ten Thousand Eight Hundred (10,800) common shares held by Filipino stockholders, with a par-value of One Hundred Thousand Pesos (₱100,000.00); (4) His appointment as manager was by virtue of Section 1, Article IV of respondent corporation's By-Laws; (5) As manager, he had direct management and authority over all of respondent corporation's skilled employees; (6) Petitioner has shown himself to be an incompetent manager, unable to properly supervise the employees and even causing friction with the corporation's clients by engaging in unruly behavior while in client's premises; (7) As if his incompetence was not enough, in a blatant and palpable act of disloyalty, he established another company engaged in the same line of business as respondent corporation; (8) Because of these acts of incompetence and disloyalty, respondent corporation through a Resolution adopted by its Board of Directors was finally constrained to remove petitioner as Manager and declare his office vacant; (9) After his removal, petitioner urged the employees under him to stage an unlawful strike by leading them to believe that they have been illegally dismissed from employment.[15] Apparently, respondents intended to show from this enumeration that petitioner's removal pertains to his relationship with respondent corporation, that is, his utter failure to advance its interest and the prejudice caused by his acts of disloyalty. For this reason, respondents see the action against them not as a case between an employer and an employee as what petitioner alleges, but one by an officer and at same time a major stockholder seeking to be reinstated to his former office against the corporation that declared his position vacant.

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[15] Respondent's *Comment/Opposition (To the Petition for Review), rollo,* pp. 89-100.

Supreme Court E-Library

Finally, respondents state that the fact that petitioner is being given benefits under the Labor Code as stated in his termination letter does not mean that they are recognizing the employer-employee relations between them. They explain that the benefits provided under the Labor Code were merely made by respondent corporation as the basis in determining petitioner's compensation package and that same are merely part of the perquisites of petitioner's office as a director and manager. It does not and it cannot change the intra-corporate nature of the controversy. Hence, respondents pray that this petition be dismissed for lack of merit.

Issues

From the foregoing and as earlier mentioned, the core issue to be resolved in this case is whether petitioner's complaint for illegal dismissal constitutes an intra-corporate controversy and thus, beyond the jurisdiction of the Labor Arbiter.

Our Ruling

Two-tier test in determining the existence of intra-corporate controversy

Respondents strongly rely on this Court's pronouncement in the 1997 case of *Tabang v. National Labor Relations Commission*, to wit:

> [A]n 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.[16]

In view of this, respondents contend that even if petitioner challenges his being a corporate officer, the present case still constitutes an intra-corporate controversy as petitioner is undisputedly a stockholder and a director of respondent corporation.

It is worthy to note, however, that before the promulgation of the *Tabang* case, the Court provided in *Mainland*

[16] *Supra* note 9 at 430.

Supreme Court E-Library

Construction Co., Inc. v. Movilla[17] a "better policy" in determining which between the Securities and Exchange Commission (SEC) and the Labor Arbiter has jurisdiction over termination disputes,[18] or similarly, whether they are intra-corporate or not, *viz*:

> The fact that the parties involved in the controversy are all stockholders or that the parties involved are the stockholders and the corporation does not necessarily place the dispute within the ambit of the jurisdiction of the SEC (now the Regional Trial Court[19]). ***The better policy to be followed in determining jurisdiction over a case should be to consider concurrent factors such as the status or relationship of the parties or the nature of the question that is subject of their controversy***. In the absence of any one of these factors, the SEC will not have jurisdiction. Furthermore, it does not necessarily follow that every conflict between the corporation and its stockholders would involve such corporate matters as only SEC (now the Regional Trial Court[20]) can resolve in the exercise of its adjudicatory or quasi-judicial powers. (Emphasis ours)

And, while *Tabang* was promulgated later than *Mainland Construction Co., Inc.*, the "better policy" enunciated in the latter appears to have developed into a standard approach in classifying what constitutes an intra-corporate controversy. This is explained lengthily in *Reyes v. Regional Trial Court of Makati, Br. 142*,[21] to wit:

> *Intra-Corporate Controversy*
>
> A review of relevant jurisprudence shows a development in the Court's approach in classifying what constitutes an intra-corporate controversy. Initially, the main consideration in determining whether

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[17] 320 Phil. 353, 359-360 (1995).

[18] *See* C.A. Azucena Jr.'s *The Labor Code With Comments and Cases*, Volume II, 6th Edition (2007), pp. 46-49.

[19] Pursuant to Section 5.2 of Republic Act No. 8799 otherwise known as *The Securities Regulation Code*.

[20] *Id*.

[21] G.R. No. 165744, August 11, 2008, 561 SCRA 593, 609-612.

Supreme Court E-Library

a dispute constitutes an intra-corporate controversy was limited to a consideration of the intra-corporate relationship existing between or among the parties. The types of relationships embraced under Section 5(b) x x x were as follows:

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.

The existence of any of the above intra-corporate relations was sufficient to confer jurisdiction to the SEC (now the RTC), regardless of the subject matter of the dispute. This came to be known as the relationship test.

However, in the 1984 case of *DMRC Enterprises v. Esta del Sol Mountain Reserve, Inc.*, the Court introduced the nature of the controversy test. We declared in this case that it is not the mere existence of an intra-corporate relationship that gives rise to an intra-corporate controversy; to rely on the relationship test alone will divest the regular courts of their jurisdiction for the sole reason that the dispute involves a corporation, its directors, officers, or stockholders. We saw that there is no legal sense in disregarding or minimizing the value of the nature of the transactions which gives rise to the dispute.

Under the nature of the controversy test, the incidents of that relationship must also be considered for the purpose of ascertaining whether the controversy itself is intra-corporate. The controversy 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.

The Court then combined the two tests and declared that jurisdiction should be determined by considering not only the status

Supreme Court E-Library

or relationship of the parties, but also the nature of the question under controversy. This two-tier test was adopted in the recent case of *Speed Distribution Inc. v. Court of Appeals:*

> 'To determine whether a case involves an intra-corporate controversy, and is to be heard and decided by the branches of the RTC specifically designated by the Court to try and decide such cases, two elements must concur: (a) the status or relationship of the parties, and (2) the nature of the question that is the subject of their controversy.
>
> The first element requires that the controversy must arise out of intra-corporate or partnership relations between any or all of the parties and the corporation, partnership, or association of which they are not stockholders, members or associates, between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership, or association and the State insofar as it concerns the individual franchises. The second element requires that the dispute among the parties be intrinsically connected with the regulation of the corporation. If the nature of the controversy involves matters that are purely civil in character, necessarily, the case does not involve an intra-corporate controversy.' [Citations omitted.]

Guided by this recent jurisprudence, we thus find no merit in respondents' contention that the fact alone that petitioner is a stockholder and director of respondent corporation automatically classifies this case as an intra-corporate controversy. To reiterate, not all conflicts between the stockholders and the corporation are classified as intra-corporate. There are other factors to consider in determining whether the dispute involves corporate matters as to consider them as intra-corporate controversies.

What then is the nature of petitioner's Complaint for Illegal Dismissal? Is it intra-corporate and thus beyond the jurisdiction of the Labor Arbiter? We shall answer this question by using the standards set forth in the *Reyes* case.

Supreme Court E-Library

No intra-corporate relationship between the parties

As earlier stated, petitioner's status as a stockholder and director of respondent corporation is not disputed. What the parties disagree on is the finding of the NLRC and the CA that petitioner is a corporate officer. An examination of the complaint for illegal dismissal, however, reveals that the root of the controversy is petitioner's dismissal as Manager of respondent corporation, a position which respondents claim to be a corporate office. Hence, petitioner is involved in this case not in his capacity as a stockholder or director, but as an alleged corporate officer. In applying the relationship test, therefore, it is necessary to determine if petitioner is a corporate officer of respondent corporation so as to establish the intra-corporate relationship between the parties. And albeit respondents claim that the determination of whether petitioner is a corporate officer is a question of fact which this Court cannot pass upon in this petition for review on *certiorari*, we shall nonetheless proceed to consider the same because such question is not the main issue to be resolved in this case but is merely collateral to the core issue earlier mentioned.

Petitioner negates his status as a corporate officer by pointing out that although he was removed as Manager through a board resolution, he was never elected to said position nor was he appointed thereto by the Board of Directors. While the By-Laws of respondent corporation provides that the Board may from time to time appoint such officers as it may deem necessary or proper, he avers that respondents failed to present any board resolution that he was appointed pursuant to said By-Laws. He instead alleges that he was hired as Manager of respondent corporation solely by respondent Abe. For these reasons, petitioner claims to be a mere employee of respondent corporation rather than as a corporate officer.

We find merit in petitioner's contention.

"'Corporate officers' in the context of Presidential Decree No. 902-A are those officers of the corporation who are given

Supreme Court E-Library

that character by the Corporation Code or by the corporation's by-laws. There are three specific officers whom a corporation must have under Section 25 of the Corporation Code. These are the president, secretary and the treasurer. The number of officers is not limited to these three. A corporation may have such other officers as may be provided for by its by-laws like, but not limited to, the vice-president, cashier, auditor or general manager. The number of corporate officers is thus limited by law and by the corporation's by-laws."[22]

Respondents claim that petitioner was appointed Manager by virtue of Section 1, Article IV of respondent corporation's By-Laws which provides:

ARTICLE IV
OFFICER

Section 1. *Election/Appointment* – Immediately after their election, the Board of Directors shall formally organize by electing the President, Vice-President, the Secretary at said meeting.

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.

x x x[23] (Emphasis ours)

We have however examined the records of this case and we find nothing to prove that petitioner's appointment was made pursuant to the above-quoted provision of respondent corporation's By-Laws. No copy of board resolution appointing petitioner as Manager or any other document showing that he was appointed to said position by action of the board was submitted by respondents. What we found instead were mere

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[22] *Garcia v. Eastern Telecommunications Philippines, Inc.*, G.R. Nos. 173115 and 173163-164, April 16, 2009, 585 SCRA 450, 468.

[23] CA *rollo*, pp. 266-273.

Supreme Court E-Library

allegations of respondents in their various pleadings[24] that petitioner was appointed as Manager of respondent corporation and nothing more. "The Court has stressed time and again that allegations must be proven by sufficient evidence because mere allegation is definitely not evidence."[25]

It also does not escape our attention that respondents made the following conflicting allegations in their Memorandum on Appeal[26] filed before the NLRC which cast doubt on petitioner's status as a corporate officer, to wit:

x x x x x x x x x

24. Complainant-appellee Renato Real was appointed as the manager of respondent-appellant Sangu on November 6, 1998. Priorly [sic], he was working at Atlas Ltd. Co. at Mito-shi, Ibaraki-ken Japan. He was staying in Japan as an illegal alien for the past eleven (11) years. He had a problem with his family here in the Philippines which prompted him to surrender himself to Japan's Bureau of Immigration and was deported back to the Philippines. His former employer, Mr. Tsutomo Nogami requested Mr. Masahiko Shibata, one of respondent-appellant Sangu's Board of Directors, if complainant-appellee Renato Real could work as one of its employees here in the Philippines because he had been blacklisted at Japan's Immigration Office and could no longer go back to Japan. ***And so it was arranged that he would serve as respondent-appellant Sangu's manager, receiving a salary of ₱25,000.00***. As such, he was tasked to oversee the operations of the company. x x x (Emphasis ours)

x x x x x x x x x

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[24] Respondents' *Position Paper* filed with the Labor Arbiter, *id.* at 94-113; *Memorandum on Appeal* and *Rejoinder* filed with the NLRC, *id.* at 182-220 and 285-294; *Comment* filed with the CA, *id.* at 302-319; *Comment/ Opposition (To The Petition for Review)* and Memorandum filed before this Court, *rollo*, pp. 89-100 and 169-187.

[25] *General Milling Corporation v. Casio*, G.R. No. 149552, March 10, 2010 citing *Rimbunan Hijau Group of Companies v. Oriental Wood Processing Corporation*, 507 Phil. 631, 648-649 (2005).

[26] CA *rollo*, pp. 122-220 at 191 and 212.

Supreme Court E-Library

As earlier stated, complainant-appellee Renato Real was ***hired*** as the manager of respondent-appellant Sangu. As such, his position was reposed with full trust and confidence. x x x

While respondents repeatedly claim that petitioner was appointed as Manager pursuant to the corporation's By-Laws, the above-quoted inconsistencies in their allegations as to how petitioner was placed in said position, coupled by the fact that they failed to produce any documentary evidence to prove that petitioner was appointed thereto by action or with approval of the board, only leads this Court to believe otherwise. It has been consistently held that "[a]n 'office' is created by the charter of the corporation and the officer is elected (or appointed) by the directors or stockholders."[27] Clearly here, respondents failed to prove that petitioner was appointed by the board of directors. Thus, we cannot subscribe to their claim that petitioner is a corporate officer. Having said this, we find that there is no intra-corporate relationship between the parties insofar as petitioner's complaint for illegal dismissal is concerned and that same does not satisfy the relationship test.

Present controversy does not relate to intra-corporate dispute

We now go to the nature of controversy test. 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. For one, petitioner's continuous absences in his post in Ogino

[27] *Easycall Communications Phils., Inc. v. King*, G.R. No. 145901, December 15, 2005, 478 SCRA 102, 110.

Supreme Court E-Library

relates to his performance as Manager. Second, respondents' loss of trust and confidence in petitioner stemmed from his alleged acts of establishing a company engaged in the same line of business as respondent corporation's and submitting proposals to the latter's clients while he was still serving as its Manager. While we note that respondents also claim these acts as constituting acts of disloyalty of petitioner as director and stockholder, we, however, think that same is a mere afterthought on their part to make it appear that the present case involves an element of intra-corporate controversy. This is because before the Labor Arbiter, respondents did not see such acts to be disloyal acts of a director and stockholder but rather, as constituting willful breach of the trust reposed upon petitioner as Manager.[28] It was only after respondents invoked the Labor Arbiter's lack of jurisdiction over petitioner's complaint in the Supplemental Memorandum of Appeal[29] filed before the NLRC that respondents started considering said acts as such. Third, in saying that they were dismissing petitioner to cut operational expenses, respondents actually want to save on the salaries and other remunerations being given to petitioner as its Manager. Thus, when petitioner sought for reinstatement, he wanted to recover his position as Manager, a position which we have, however, earlier declared to be not a corporate position. He is not trying to recover a seat in the board of directors or to any appointive or elective corporate position which has been declared vacant by the board. Certainly, what we have here is a case of termination of employment which is a labor controversy and not an intra-corporate dispute. In sum, we hold that petitioner's complaint likewise does not satisfy the nature of controversy test.

With the elements of intra-corporate controversy being absent in this case, we thus hold that petitioner's complaint for illegal dismissal against respondents is not intra-corporate. Rather, it is a termination dispute and, consequently, falls under the

[28] Respondents' *Position Paper,* CA *rollo,* pp. 94-113 at 109-110.

[29] *Id.* at 221-236.

Supreme Court E-Library

jurisdiction of the Labor Arbiter pursuant to Section 217[30] of the Labor Code.

We take note of the cases cited by respondents and find them inapplicable to the case at bar. *Fortune Cement Corporation v. National Labor Relations Commission*[31] involves a member of the board of directors and at the same time a corporate officer who claims he was illegally dismissed after he was stripped of his corporate position of Executive Vice-President because of loss of trust and confidence. On the other hand, *Philippine School of Business Administration v. Leano*[32] and *Pearson & George v. National Labor Relations Commission*[33] both concern a complaint for illegal dismissal by corporate officers who were not re-elected to their respective corporate positions. The Court declared all these cases as involving

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[30] ART. 217. *Jurisdiction of the Labor Arbiters and the Commission.* (a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

1. Unfair labor practice cases;

2. ***Termination disputes***;

3. If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;

4. Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;

5. Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lock-outs; and

6. Except claims for Employees Compensation, Social Security, Medicare and Maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (₱5,000.00) regardless of whether accompanied with a claim for reinstatement

x x x x x x x x x

[31] *Supra* note 13.

[32] *Supra* note 12.

[33] *Supra* note 11 at 173-174.

Supreme Court E-Library

intra-corporate controversies and thus affirmed the jurisdiction of the SEC (now the RTC)[34] over them precisely because they all relate to corporate officers and their removal or non-reelection to their respective corporate positions. Said cases are by no means similar to the present case because as discussed earlier, petitioner here is not a corporate officer.

With the foregoing, it is clear that the CA erred in affirming the decision of the NLRC which dismissed petitioner's complaint for lack of jurisdiction. In cases such as this, the Court normally remands the case to the NLRC and directs it to properly dispose of the case on the merits. "However, when there is enough basis on which a proper evaluation of the merits of petitioner's case may be had, the Court may dispense with the time-consuming procedure of remand in order to prevent further delays in the disposition of the case."[35] "It is already an accepted rule of procedure for us to strive to settle the entire controversy in a single proceeding, leaving no root or branch to bear the seeds of litigation. If, based on the records, the pleadings, and other evidence, the dispute can be resolved by us, we will do so to serve the ends of justice instead of remanding the case to the lower court for further proceedings."[36] We have gone over the records before us and we are convinced that we can now altogether resolve the issue of the validity of petitioner's dismissal and hence, we shall proceed to do so.

Petitioner's dismissal not in accordance with law

"In an illegal dismissal case, the *onus probandi* rests on the employer to prove that [the] dismissal of an employee is for a

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[34] Pursuant to Section 5.2 of Republic Act No. 8799 otherwise known as *The Securities Regulation Code.*

[35] *Leandro M. Alcantara v. The Philippine Commercial and International Bank*, G.R. No. 151349, October 20, 2010 citing *Somoso v. Court of Appeals*, G.R. No. 78050, October 23, 1989, 178 SCRA 654, 663; *Bach v. Ongkiko Kalaw Manhit & Acorda Law Offices*, G.R. No. 160334, September 11, 2006, 501 SCRA 419, 426.

[36] *Id.* citing *Apo Fruits Corporation v. Court of Appeals*, G.R. No. 164195, February 6, 2007, 514 SCRA 537, 555.

Supreme Court E-Library

valid cause."[37] Here, as correctly observed by the Labor Arbiter, respondents failed to produce any convincing proof to support the grounds for which they terminated petitioner. Respondents contend that petitioner has been absent for several months, yet they failed to present any proof that petitioner was indeed absent for such a long time. Also, the fact that petitioner was still able to collect his salaries after his alleged absences casts doubts on the truthfulness of such charge. Respondents likewise allege that petitioner engaged in a heated argument with the employees of Epson, one of respondents' clients. But just like in the charge of absenteeism, there is no showing that an investigation on the matter was done and that disciplinary action was imposed upon petitioner. At any rate, we have reviewed the records of this case and we agree with the Labor Arbiter that under the circumstances, said charges are not sufficient bases for petitioner's termination. As to the charge of breach of trust allegedly committed by petitioner when he established a new company engaged in the same line of business as respondent corporation's and submitted proposals to two of the latter's clients while he was still a Manager, we again observe that these are mere allegations without sufficient proof. To reiterate, allegations must be proven by sufficient evidence because mere allegation is definitely not evidence.[38]

Moreover, petitioner's dismissal was effected without due process of law. "The twin requirements of notice and hearing constitute the essential elements of due process. The law requires the employer to furnish the employee sought to be dismissed with two written notices before termination of employment can be legally effected: (1) a written notice apprising the employee of the particular acts or omissions for which his dismissal is sought in order to afford him an opportunity to be heard and to defend himself with the assistance of counsel, if he desires, and (2) a subsequent notice informing the employee of the

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[37] *Pepsi Cola Products Philippines, Inc. v. Santos*, G.R. No. 165968, April 14, 2008, 551 SCRA 245, 252.

[38] *Supra* note 25.

Supreme Court E-Library

employer's decision to dismiss him. This procedure is mandatory and its absence taints the dismissal with illegality."[39] Since in this case, petitioner's dismissal was effected through a board resolution and all that petitioner received was a letter informing him of the board's decision to terminate him, the abovementioned procedure was clearly not complied with. All told, we agree with the findings of the Labor Arbiter that petitioner has been illegally dismissed. And, as an illegally dismissed employee is entitled to the two reliefs of backwages and reinstatement,[40] we affirm the Labor Arbiter's judgment ordering petitioner's reinstatement to his former position without loss of seniority rights and other privileges and awarding backwages from the time of his dismissal until actually reinstated. Considering that petitioner has to secure the services of counsel to protect his interest and necessarily has to incur expenses, we likewise affirm the award of attorney's fees which is equivalent to 10% of the total backwages that respondents must pay petitioner in accordance with this Decision.

WHEREFORE, the petition is hereby *GRANTED*. The assailed June 28, 2005 Decision of the Court of Appeals insofar as it affirmed the National Labor Relations Commission's dismissal of petitioner's complaint for lack of jurisdiction, is hereby *REVERSED* and *SET ASIDE*. The June 5, 2003 Decision of the Labor Arbiter with respect to petitioner Renato Real is *AFFIRMED* and this case is ordered *REMANDED* to the National Labor Relations Commission for the computation of petitioner's backwages and attorney's fees in accordance with this Decision.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Perez, JJ.,* concur.

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[39] *Supra* note 27 at 113-114.

[40] *Golden Ace Builders v. Jose Talde,* G.R. No. 187200, May 5, 2010.