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THIRD DIVISION

[G.R. No. 161838. April 7, 2010]

REPUBLIC OF THE PHILIPPINES, represented by DANTE QUINDOZA, in his capacity as Zone Administrator of the Bataan Economic Zone, *petitioner, vs.* **COALBRINE INTERNATIONAL PHILIPPINES, INC. and SHEILA F. NERI,** *respondents*.

SYLLABUS

1. COMMERCIAL LAW; CORPORATION CODE; CORPORATION; EXERCISES POWERS THROUGH ITS BOARD OF DIRECTORS; EXEMPLIFIED. — A corporation has no power, except those expressly conferred on it by the Corporation Code and those that are implied or incidental to its existence. In turn, a corporation exercises said powers through its board of directors and/or its duly authorized officers and agents. Thus, it has been observed that the power of a corporation to sue and be sued in any court is lodged with the board of directors that exercises its corporate powers. In turn, physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors.

2. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; PLEADINGS; PARTIES-IN-INTEREST; CONSTRUED. — Section 2, Rule 3 of the Rules of Civil Procedure provides: SEC. 2. *Parties-in interest.* — A real party-in-interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party-in-interest. And "interest," within the meaning of the rule, means material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. Cases construing the real party-in-interest provision can be more easily understood if it is borne in mind that the true meaning of real party-in-interest may be summarized as follows: An action shall be

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prosecuted in the name of the party who, by the substantive law, has the right sought to be enforced.

3. ID.; ID.; ID.; ID.; REQUIREMENT REGARDING VERIFICATION OF A PLEADING IS FORMAL NOT JURISDICTIONAL; RATIONALE. — The Court has consistently held that the requirement regarding verification of a pleading is formal, not jurisdictional. Such requirement is simply a condition affecting the form of the pleading, non-compliance with which does not necessarily render the pleading fatally defective. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct, and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. The court may order the correction of the pleading if verification is lacking or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the rules may be dispensed with in order that the ends of justice may thereby be served.

4. ID.; ID.; ID.; ID.; CERTIFICATION AGAINST NON-FORUM SHOPPING; AS A RULE, THE CERTIFICATION SHOULD BE SIGNED BY A PERSON AUTHORIZED TO FILE THE COMPLAINT ON BEHALF OF THE CORPORATION; EXCEPTION, WHEN SUSTAINED. — The lack of certification against non-forum shopping is generally not curable by mere amendment of the complaint, but shall be a cause for the dismissal of the case without prejudice. The same rule applies to certifications against non-forum shopping signed by a person on behalf of a corporation which are unaccompanied by proof that said signatory is authorized to file the complaint on behalf of the corporation. In *Philippine Airlines, Inc. v. Flight Attendants and Stewards Association of the Philippines (FASAP),* we ruled that only individuals vested with authority by a valid board resolution may sign the certificate of non-forum shopping on behalf of a corporation. We also required that proof of such authority must be attached. Failure to provide a certificate of non-forum shopping is sufficient ground to dismiss the petition. Likewise, the petition is subject to dismissal if a certification was submitted unaccompanied by proof of signatory's authority. While there were instances where we have allowed the filing of a certificate against non-forum shopping by someone on behalf of a

corporation without the accompanying proof of authority at the time of its filing, we did so on the basis of a special circumstance or compelling reason. Moreover, there was a subsequent compliance by the submission of the proof of authority attesting to the fact that the person who signed the certification was duly authorized. In *China Banking Corporation v. Mondragon International Philippines, Inc.*, the CA dismissed the petition filed by China Bank, since the latter failed to show that its bank manager who signed the certification against non-forum shopping was authorized to do so. We reversed the CA and said that the case be decided on the merits despite the failure to attach the required proof of authority, since the board resolution which was subsequently attached recognized the pre-existing status of the bank manager as an authorized signatory. In *Abaya Investments Corporation v. Merit Philippines*, where the complaint before the Metropolitan Trial Court of Manila was instituted by petitioner's Chairman and President, Ofelia Abaya, who signed the verification and certification against non-forum shopping without proof of authority to sign for the corporation, we also relaxed the rule. We did so taking into consideration the merits of the case and to avoid a re-litigation of the issues and further delay the administration of justice, since the case had already been decided by the lower courts on the merits. Moreover, Abaya's authority to sign the certification was ratified by the Board.

5. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHEN AVAILABLE EVEN WHEN THE APPROPRIATE REMEDY IS APPEAL. — While indeed, the general rule is that the denial of a motion to dismiss cannot be questioned in a special civil action for *certiorari*, which is not intended to correct every controversial interlocutory ruling, and that the appropriate recourse is to file an answer and to interpose as defenses the objections raised in the motion, to proceed to trial, and, in case of an adverse decision, to elevate the entire case by appeal in due course, this rule is not absolute. Even when appeal is available and is the proper remedy, the Supreme Court has allowed a writ of *certiorari* (1) where the appeal does not constitute a speedy and adequate remedy; (2) where the orders were also issued either in excess of or without jurisdiction or with grave abuse of discretion; (3) for certain special considerations, as public welfare or public policy; (4) where in criminal actions, the court rejects rebuttal evidence

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for the prosecution as, in case of acquittal, there could be no remedy; (5) where the order is a patent nullity; and (6) where the decision in the *certiorari* case will avoid future litigations.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Vicente D. Millora for respondents.

D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for review on *certiorari* filed by petitioner is the Decision[1] dated January 21, 2004 of the Court of Appeals in CA-G.R. SP No 74667, which affirmed the Order[2] dated September 24, 2002 of the Regional Trial Court (RTC) of Balanga, Bataan, in Civil Case No. 548-ML, denying petitioner's Motion to Dismiss.

The Export Processing Zone Authority (EPZA), predecessor of the Philippine Economic Zone Authority (PEZA), is the owner of the Bataan Hilltop Hotel and Country Club, located at the Bataan Export Processing Zone, Mariveles, Bataan. Dante M. Quindoza is the Zone Administrator of the Bataan Economic Zone.

On August 4, 1994, EPZA, now PEZA, and respondent Coalbrine International Philippines, Inc. entered into a contract in which the latter would rehabilitate and lease the Bataan Hilltop Hotel, Golf Course and Clubhouse for twenty-five (25) years, which commenced on January 1, 1994, and renewable for another twenty-five (25) years at the option of respondent Coalbrine. Respondent Sheila F. Neri was the Managing Director of the hotel.

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[1] Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Mercedes Gozo-Dadole and Rosmari D. Carandang, concurring; *rollo*, pp. 36-41.

[2] Penned by Judge Benjamin T. Vianzon; *id.* at 76-79.

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On July 11, 1996, the PEZA Board passed Resolution No. 96-231 rescinding the contract to rehabilitate and lease, on the ground of respondent Coalbrine's repeated violations and non-performance of its obligations as provided in the contract. Subsequently, PEZA sent respondent Coalbrine a notice to vacate the premises and to pay its outstanding obligations to it.

On April 3, 1998, respondent Coalbrine filed with the RTC of Manila a Complaint for specific performance with prayer for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction with damages against PEZA and/or Bataan Economic Zone wherein respondent Coalbrine sought to declare that PEZA had no valid cause to rescind the contract to rehabilitate and lease; and to enjoin PEZA from taking over the hotel and country club and from disconnecting the water and electric services to the hotel. The complaint is pending with Branch 17 of the RTC of Manila.

On April 24, 2002, respondents Coalbrine and Neri filed with the RTC of Balanga, Bataan, a Complaint for damages with prayer for the issuance of a TRO and/or writ of preliminary prohibitory/mandatory injunction against Zone Administrator Quindoza, docketed as Civil Case No. 548-ML. Respondent alleged that: in October 2001, Quindoza started to harass the hotel's operations by causing the excavation of the entire width of a cross-section of the only road leading to the hotel for the supposed project of putting up a one length steel pipe; that such project had been stopped, which, consequently, paralyzed the hotel's operations; respondent Neri undertook the construction of a temporary narrow access ramp in order that the hotel guests and their vehicles could pass through the wide excavations; Quindoza had also placed a big "ROAD CLOSED" sign near the hotel, which effectively blocked all access to and from the hotel and created an impression that the hotel had been closed; in the last week of March 2002, Quindoza cut the pipelines that supplied water to the hotel to the great inconvenience of respondents and the hotel guests, and, subsequently, the pipelines were reconnected. Respondents prayed for the payment of damages, for the issuance of a TRO and a writ of preliminary injunction to enjoin Quindoza from cutting or disconnecting

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the reconnected water pipelines to the hotel and from committing further acts of harassment; and to cause the construction of a reasonable access road at Quindoza's expense.

Administrator Quindoza, through the Solicitor General, filed a Motion to Dismiss[3] on the following grounds:

1. The Honorable Court has no jurisdiction over the instant case;
2. The Honorable Court is an improper venue for the instant case;
3. Plaintiff (respondent Coalbrine) is guilty of forum shopping;
4. With respect to plaintiff (respondent) Neri, the complaint states no cause of action against defendant;
5. The complaint is fatally defective for being unauthorized.

On September 24, 2002, the RTC issued an Order[4] denying petitioner's motion to dismiss.

Administrator Quindoza filed a Motion for Reconsideration, which the RTC denied in its Order[5] dated December 9, 2002.

On January 2, 2003, petitioner Republic of the Philippines, represented by Dante Quindoza, in his capacity as Zone Administrator of the Bataan Economic Zone, filed with the CA a petition for *certiorari* under Rule 65 seeking to annul the RTC Orders, reiterating the grounds raised by Administrator Quindoza in the RTC.

On January 21, 2004, the CA issued its assailed Decision denying petitioner's petition for *certiorari* for lack of merit.

Hence, petitioner is now before us in a petition for review on *certiorari* raising the lone issue of respondent Neri's lack of proof of authority to file the complaint in the RTC of Balanga, Bataan, which was docketed as Civil Case No. 548-ML.

In their Comment, respondents argue that the Republic of the Philippines was not a party to the civil case subject of this

[3] *Id.* at 63-75.

[4] *Id.* at 76-79.

[5] *Id.* at 87.

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petition, hence, it has no personality to file the instant petition for review; that the RTC Order denying the motion to dismiss the complaint was a mere interlocutory order, thus, the same is not appealable and not a proper subject of a petition for *certiorari* unless it was shown that there was a grave abuse of discretion in its issuance; that petitioner had already filed an answer to the complaint incorporating the grounds stated in their motion to dismiss; and that respondents had already presented their evidence by way of an opposition to the motion to dismiss and in support of their application for the issuance of a writ of preliminary mandatory injunction.

In its Reply, petitioner argues that it has the personality to file this petition, since Administrator Quindoza is being sued for damages for certain acts he performed in an official capacity; that the denial of petitioner's motion to dismiss was tainted with grave abuse of discretion, which justified the filing of a petition for *certiorari* with the CA. The parties filed their respective memoranda as required under the Resolution dated January 26, 2005.

In its Memorandum, petitioner raises the following arguments, to wit:

THE COMPLAINT IS FATALLY DEFECTIVE FOR BEING UNAUTHORIZED.

PETITIONER REPUBLIC OF THE PHILIPPINES IS THE REAL PARTY-IN-INTEREST IN THE CASE AT BAR.

RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION IN DENYING PETITIONER'S MOTION TO DISMISS, NECESSITATING THE FILING OF A PETITION FOR *CERTIORARI* UNDER RULE 65 BEFORE THE HONORABLE COURT OF APPEALS.[6]

Petitioner claims that respondent Neri's signature in the verification and certification against non-forum shopping attached to the complaint filed by respondents in the RTC was defective, since there was no proof of her authority to institute the complaint

[6] *Id*. at 147.

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on behalf of the corporation; and that respondent Neri is not a real party-in-interest.

We agree.

The verification and certification against non-forum shopping reads:

x x x x x x x x x

That I am the Managing Director of Bataan Hilltop Hotel and one of the plaintiffs in this case.[7]

Notably, respondent Neri signed the verification/certification as one of the plaintiffs. However, we find that respondent Neri is not a real party-in- interest. Section 2, Rule 3 of the Rules of Civil Procedure provides:

SEC. 2. *Parties-in interest.* — A real party-in-interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party-in-interest.

And "interest," within the meaning of the rule, means material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest.[8] Cases construing the real party-in-interest provision can be more easily understood if it is borne in mind that the true meaning of real party-in-interest may be summarized as follows: An action shall be prosecuted in the name of the party who, by the substantive law, has the right sought to be enforced.[9]

The RTC based its conclusion that respondent Neri had a cause of action against petitioner on the allegations in the complaint. The CA, however, did not rule on the matter despite the fact that it was raised in petitioner's petition for *certiorari*

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[7] *Id*. at 59.

[8] See *Uy v. Court of Appeals*, 372 Phil. 743, 752 (1999).

[9] *Id*.

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filed before it and merely said that there was no necessity to discuss such issue after deciding the other grounds raised in the petition.

We find the RTC in error. A reading of the allegations in the complaint shows that the acts complained of and said to have been committed by petitioner against respondents have solely affected the hotel's operations where respondent Neri was the hotel's Managing Director and whose interest in the suit was incidental. Thus, we find that respondent Neri has no cause of action against petitioner. Consequently, the plaintiff in this case would only be respondent Coalbrine.

A corporation has no power, except those expressly conferred on it by the Corporation Code and those that are implied or incidental to its existence. In turn, a corporation exercises said powers through its board of directors and/or its duly authorized officers and agents.[10] Thus, it has been observed that the power of a corporation to sue and be sued in any court is lodged with the board of directors that exercises its corporate powers. In turn, physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors.[11]

In this case, respondent Coalbrine is a corporation. However, when respondent Neri filed the complaint in the RTC, there was no proof that she was authorized to sign the verification and the certification against non-forum shopping.

The Court has consistently held that the requirement regarding verification of a pleading is formal, not jurisdictional. Such requirement is simply a condition affecting the form of the pleading, non-compliance with which does not necessarily render the pleading fatally defective.[12] Verification is simply intended to secure an assurance that the allegations in the pleading are

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[10] *Shipside Incorporated v. Court of Appeals*, 404 Phil. 981, 994 (2001).

[11] *Id.*

[12] *Id.* at 994-995.

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true and correct, and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. The court may order the correction of the pleading if verification is lacking or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the rules may be dispensed with in order that the ends of justice may thereby be served.[13]

On the other hand, the lack of certification against non-forum shopping is generally not curable by mere amendment of the complaint, but shall be a cause for the dismissal of the case without prejudice.[14] The same rule applies to certifications against non-forum shopping signed by a person on behalf of a corporation which are unaccompanied by proof that said signatory is authorized to file the complaint on behalf of the corporation.[15]

In *Philippine Airlines, Inc. v. Flight Attendants and Stewards Association of the Philippines (FASAP),*[16] we ruled that only individuals vested with authority by a valid board resolution may sign the certificate of non-forum shopping on behalf of a corporation. We also required that proof of such authority must be attached. Failure to provide a certificate of non-forum shopping is sufficient ground to dismiss the petition. Likewise, the petition is subject to dismissal if a certification was submitted unaccompanied by proof of signatory's authority.

While there were instances where we have allowed the filing of a certificate against non-forum shopping by someone on behalf of a corporation without the accompanying proof of authority at the time of its filing, we did so on the basis of a special circumstance or compelling reason. Moreover, there was a subsequent compliance by the submission of the proof of authority attesting to the fact that the person who signed the certification was duly authorized.

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[13] *Id*. at 995.

[14] Rules of Court, Rule 7, Sec. 5.

[15] See *Shipside Incorporated v. Court of Appeals*, *supra* note 10, at 995.

[16] G.R. No. 143088, January 24, 2006, 479 SCRA 605, 608.

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In *China Banking Corporation v. Mondragon International Philippines, Inc.*,[17] the CA dismissed the petition filed by China Bank, since the latter failed to show that its bank manager who signed the certification against non-forum shopping was authorized to do so. We reversed the CA and said that the case be decided on the merits despite the failure to attach the required proof of authority, since the board resolution which was subsequently attached recognized the pre-existing status of the bank manager as an authorized signatory.

In *Abaya Investments Corporation v. Merit Philippines*,[18] where the complaint before the Metropolitan Trial Court of Manila was instituted by petitioner's Chairman and President, Ofelia Abaya, who signed the verification and certification against non-forum shopping without proof of authority to sign for the corporation, we also relaxed the rule. We did so taking into consideration the merits of the case and to avoid a re-litigation of the issues and further delay the administration of justice, since the case had already been decided by the lower courts on the merits. Moreover, Abaya's authority to sign the certification was ratified by the Board.

In the present case, the RTC, in denying petitioner's motion to dismiss the complaint when the latter raised respondent Neri's lack of authority to sign the certification, found that respondent Neri testified that she was the Managing Director of the Bataan Hilltop Hotel which was being leased by respondent Coalbrine, and that she was authorized by the Corporate Secretary to file the case. Notably, while the matter of lack of authority was raised by petitioner in its petition for *certiorari* filed with the CA, it chose not to tackle the issue after disposing of the other issues raised therein.

We cannot agree with the RTC's reasoning and find the certification signed by respondent Neri to be defective. The authority of respondent Neri to file the complaint in the RTC

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[17] G.R. No. 164798, November 17, 2005, 475 SCRA 332.

[18] G.R. No. 176324, April 16, 2008, 551 SCRA 646.

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had not been proven. First, the certification against non-forum shopping did not even contain a statement that she was authorized by the corporate secretary to file the case on behalf of Coalbrine as she claimed. More importantly, while she testified that she was authorized by the corporate secretary, there was no showing that there was a valid board resolution authorizing the corporate secretary to file the action, and to authorize respondent Neri to file the action. In fact, such proof of authority had not been submitted even belatedly to show subsequent compliance. Thus, there was no reason for the relaxation of the rule.

As to respondents' claim that petitioner Republic of the Philippines was not a party to the civil case subject of this petition since Administrator Quindoza was the sole defendant therein and, thus, has no personality to file this petition, their claim is not persuasive.

Notably, Administrator Quindoza was sued for damages for certain acts that he allegedly committed while he was the Zone Administrator of the Bataan Export Processing Zone. Therefore, the complaint is in the nature of suit against the State, and the Republic has the personality to file the petition.

Anent respondents' claim that the RTC Order denying a motion to dismiss is a mere interlocutory order, thus, not appealable and may not be a subject of a petition for *certiorari* filed by the petitioner before the CA, the same is also not meritorious.

While indeed, the general rule is that the denial of a motion to dismiss cannot be questioned in a special civil action for *certiorari,* which is not intended to correct every controversial interlocutory ruling,[19] and that the appropriate recourse is to file an answer and to interpose as defenses the objections raised in the motion, to proceed to trial, and, in case of an adverse

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[19] *Villarica Pawnshop, Inc. v. Gernale*, G.R. No. 163344, March 20, 2009, 582 SCRA 67, 77, citing *Heirs of Florencio Adolfo v. Cabral*, 530 SCRA 111, 117 (2007) and *Khemani v. Heirs of Anastacio Trinidad*, 540 SCRA 83, 93 (2007).

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decision, to elevate the entire case by appeal in due course,[20] this rule is not absolute.

Even when appeal is available and is the proper remedy, the Supreme Court has allowed a writ of *certiorari* (1) where the appeal does not constitute a speedy and adequate remedy; (2) where the orders were also issued either in excess of or without jurisdiction or with grave abuse of discretion; (3) for certain special considerations, as public welfare or public policy; (4) where in criminal actions, the court rejects rebuttal evidence for the prosecution as, in case of acquittal, there could be no remedy; (5) where the order is a patent nullity; and (6) where the decision in the *certiorari* case will avoid future litigations.[21]

In this case, we find that the RTC committed grave abuse of discretion amounting to lack of jurisdiction when it failed to consider the lack of proof of authority of respondent Neri to file the action on behalf of the corporation as we have discussed above.

WHEREFORE, the petition for review is *GRANTED*. The Decision dated January 21, 2004 of the Court of Appeals in CA-G.R. SP No 74667 is *REVERSED* and *SET ASIDE*. The Complaint in Civil Case No. 548-ML pending in the Regional Trial Court, Branch 4, Balanga, Bataan, is ordered *DISMISSED*.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Nachura, and *Mendoza, JJ.,* concur.

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[20] *Id.*, citing *Hasegawa v. Kitamura*, 538 SCRA 261, 271 (2007).

[21] *Id.* at 77-78, citing *Development Bank of the Philippines v. Pingol Land Transport System Company, Inc.*, 420 SCRA 652, 661 (2004), citing *Casil v. Court of Appeals*, 349 Phil. 187 (1998).